

NYMRAD Unveils NextRadio at Advertising Week

New York Market Radio (NYMRAD) unveiled NextRadio, the industry initiative to make FM broadcast radio available on mobile phones via a pre-loaded, downloadable app. The event was held 9/26 during Advertising Week at the Times Center in NYC. The FM radio mobile platform eliminates the costly data-usage fees associated with mobile streaming and features: a buy-button for purchases and coupons, hyper-local geo-targeting advertising opportunities, two-way listener interactive elements, and more.

The NextRadio panel was moderated by David Pogue, Technology Columnist at the New York Times, and included: David Owens, VP/Product, Sprint Corporation; Paul Brenner, SVP/CTO, Emmis Communications; Joel Klaiman, EVP/GM, Columbia Records; and Joe Riccitelli, EVP/GM, RCA Records.

It was announced earlier this month that NextRadio is up and running on two Sprint smartphones and consumers are downloading it and using it. The ground-breaking arrangement with Sprint led by Jeff Smulyan of Emmis Communications and marks the first time a U.S. wireless carrier is making FM broadcast radio accessible on a broad array of its devices.

Riccitelli confirmed that Radio is the number one driver for new music, putting to rest any unsubstantiated reports to the contrary. "Listening to radio on mobile phones is continuous distribution," he added noting that consumers can transition from listening in their car to listening on their mobile phone without interruption. Klaiman agreed, observing that FM on radio also contributes "elongated listening."

Owens highlighted the interactive elements of the platform, specifically pointing out real-time benefits, such as a consumer texting a friend what song they are listening to at that very moment and text-to-win-tickets options.

The panel discussed how the NextRadio app can increase music sales in addition to exposure, and how the revenue-generating capabilities apply to other advertising categories. Riccitelli noted the power of the "buy" button on the NextRadio app, and Brenner referenced location-based advertising, couponing, and click-to-route features.

"Radio will be even more dynamic and interactive with the enhanced advertiser capabilities of the NextRadio app on mobile phones," observed Joe Puglise, President, Clear Channel Media and Entertainment, NY, and Chairman of NYMRAD, who introduced the panel. "Radio has always connected with its listeners," commented Deborah Beagan, Executive Director, NYMRAD. "With NextRadio, advertisers can tap into that strong listener loyalty while engaging consumers directly."

Immediately following the panel discussion, NYMRAD hosted a special "meet and greet" reception with some of New York Market's biggest radio stars: Danielle Monaro from "The Elvis Duran Morning Show, Z-100; Paul "Cubby" Bryant, WKTU; Peter Rosenberg, Cipa Sounds, Laura Stylze, Shani Kulture and Ebro from HOT 97 Morning Show, along with Funk Master Flex; Lulu and LaLa, 92.3 NOW Morning Show; Wayne Cabot, WCBS Newsradio 880; Bill Plaxx, FRESH; DJ Envy, Angela Yee, and Charlamagne tha God from "The Breakfast Club Morning Show", Power 105; Kelly Ford, Midday Personality on NASH; Race Taylor and John Foxx, WPLJ; Madelyn Rodriguez, Speedy, Diane Sanchez, Univision; Shaila and Bob Lee, WBLS.

This is NYMRAD's fourth year presenting radio-centric events at Advertising Week. Previous speakers at NYMRAD's events have included Richard Branson, Chris Hughes, Donny Deutsch, Mary J Blige and more. ■

Article courtesy of Carl Marcucci from www.rbr.com.

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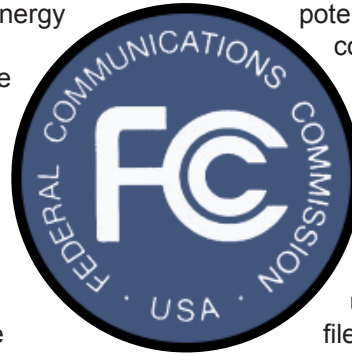
Upton, Walden Slam FCC UHF Decision

Count the heads of House Energy & Commerce Committee and Communications Subcommittee among those not happy with the FCC's vote to eliminate the UHF discount.

Rep. Fred Upton (R-Mich.), chair of E&C, and Rep. Greg Walden (R-Ore.), chair of the subcommittee, had advised the FCC before the vote not to make its release of the Notice of Proposed Rulemaking the trigger date for the demise of the discount and were not happy it had voted 2-1--Republican Commissioner Ajit Pai dissenting--to do so.

The FCC did grandfather transactions currently before the FCC and all current station holdings, although when those UHF's are sold, the grandfather does not get to go along, as it were.

"Today's action by the FCC reveals a startling failure to recognize the chilling effect of regulatory uncertainty and a disregard for the



potential economic consequences of commission action. Rather than following the good process of adopting new rules and then applying them prospectively as we suggested in a letter to the Acting Chairwoman," they said in a statement, "the FCC instead will apply as yet undefined rules to applications filed anytime after today." That is assuming the FCC releases the NPRM Thursday--it was expected to--since it is the release that is the trigger.

"The practical reality of this decision is that the commission has created a regulatory purgatory for broadcasters between now, September 26, 2013, and whenever it gets around to adopting new rules -- potentially sidelining countless jobs and billions of dollars in new investment," they said. "The FCC sadly failed in the ultimate effort to pursue policies that promote our economy and create jobs." ■

Article courtesy of John Eggerton from Broadcasting & Cable.

Label Love for Radio

On September 26 during a panel discussing the new NextRadio app, the radio industry received some good news from outside its own walls, which is always a good thing. Executive Vice President & General Manager at RCA Records Joe Riccitelli said radio is by far the number one driver for the discovery of new music. And that statement flies right in the face of what some Internet pure play companies have said about music discovery as the battle for the ears of the consumer continues.

To prove his point about consumers discovering new music on the radio, Riccitelli said, "You can see a direct correlation. If you looked at a terrestrial radio audience chart and at the iTunes top 10 singles chart, I would say 75 percent of it matches up." He also said the NextRadio app created by Emmis is good for his industry. "Listening to the radio on phones is continuous distribution." And he likes the fact there is now a "buy" button that can be associated with terrestrial radio, which consumers will have at their fingertips if they have access to the NextRadio app.

The panel was sponsored by New York Market Radio (NYMRAD). ■

Article courtesy of www.radioink.com.

Rep. Mel Watt Introduces New Performance Royalty Bill

As expected, Rep. Mel Watt (D-NC) has introduced a new Performance Royalty bill into the House of Representatives. The “Free Market Royalty Act” would create a performance right for AM/FM radio.

The musicFIRST Coalition has released a statement, with Executive Director Ted Kalo praising Watt’s new legislation. Kalo says, “The Free Market Royalty Act signals accelerating momentum for an AM/FM performance right and fair pay for music creators on all platforms. Like the 2009 Performance Rights Act, which passed both the House and Senate Judiciary Committees with broad, bipartisan majorities, this bill would end the decades old government taking of music creators’ performance property rights. It would, once and for all, establish a performance right for sound recordings broadcast over-the-air. The musicFIRST Coalition has been flexible in supporting a variety of approaches establishing a terrestrial right, including the 2009 bill, the 2012 Interim First Act, and this legislation. After saying no to each and every approach to date, the broadcasters have run out of excuses.”

He added, “We believe the current statutory license system is a benefit to music creators and services, and we support the current system. But those services who benefit most from it are its greatest critics, and those broadcasters who use the ‘market’ as a dodge to thwart a performance right have

done the most to undermine a true, free market. Thank you again, Congressman Mel Watt, for your continuing leadership on behalf of artists and music creators.”

On the other hand, the NAB has released its own statement, opposing Watt’s Free Market Royalty Act. NAB EVP of Communications Dennis Wharton says, “NAB respectfully opposes the legislation, and appreciates the support of 183 members of Congress who stand with America’s hometown radio stations against the offshore record labels. NAB believes market-based negotiations like the recent Warner Music-Clear Channel accord demonstrate that this issue is already being addressed in the free market. This legislation would impose new costs on broadcasters that jeopardize the future of our free over-the-air service.”

In the same release, the NAB announced that five additional Members of Congress have signed on as cosponsors of a resolution that opposes “any new performance fee, tax, royalty, or other charge” on local broadcast radio stations. The Local Radio Freedom Act is now currently co-sponsored by 171 Members of the House and 12 Senators. These five members are Reps. Kevin Cramer (R-ND), Scott DesJarlais (R-TN), Richard Hanna (R-NY), David Valadao (R-CA) and Kevin Yoder (R-KS). ■

Article courtesy of www.fmqb.com.

“NAB respectfully opposes the legislation, and appreciates the support of 183 members of Congress who stand with America’s hometown radio stations against the offshore record labels.”



Upcoming VAB Career Fairs

- ▶ **Norfolk State University, Thursday, October 10th**
10:00 a.m. until 2:30 p.m., *Student Center*
- ▶ **Virginia State University, Thursday, October 24th**
12 p.m. - 5:00 p.m., *Gateway Dining & Event Center*
- ▶ **University of Virginia, Wednesday, November 6th**
10:00 a.m. - 3:00 p.m., *Newcomb Hall 3rd Floor*

If you have questions, please contact Carolyn McCray at (434) 326-9811 or email carolyn.mccray@easterassociates.com. ■

EEOC Continues to Find Fault with “No-Fault” Attendance Policies

John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in Tysons Corner, Virginia; Paul M. Lusky is a Partner with the Firm. For more information, please contact Mr. Kruchko at (703) 734-0554 or JKruchko@KruchkoandFries.com, or Paul Lusky at (410) 321-7310 or PLusky@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

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Many employers use so-called “no-fault” attendance policies to discourage excess absenteeism and tardiness. Under such policies, each absence and/or late arrival at work is treated as an occurrence without any determination as to whether the policy violation is excused or unexcused. Normally, after so many occurrences in a period of time, the employee will begin receiving progressive discipline.

Regulations construing the Family and Medical Leave Act (“FMLA”) prohibit employers from charging employees under a no-fault attendance policy where the absence is caused by a serious health condition. Most employers also refrain from charging employees with no-fault absences when they are absent due to a work-related injury. It now appears that exceptions may have to be made for absences caused by disabilities covered under the Americans with Disabilities Act (“ADA” or the “Act”).

For several years now, the Equal Employment Opportunity Commission (“EEOC”) has been targeting no-fault attendance policies for violations of the ADA. In July of this year, the agency announced that it had filed suit against an Ohio medical transportation services company for allegedly violating the ADA by denying a reasonable accommodation to an employee with multiple sclerosis. In its press release, the EEOC said the employee requested, as a reasonable accommodation, additional points under a no-fault attendance policy but the company responded by firing the employee.

In March, 2012, the EEOC sued AT&T for violating the ADA because the company allegedly fired a customer service representative who had requested a leave of absence in order to receive treatment for Hepatitis C. Although AT&T granted the initial leave request, the company subsequently fired the employee when she returned to work from the leave of absence for violating the company’s attendance

policy. AT&T allegedly refused to exempt the employee’s leave of absence from the penalty provisions of its no-fault policy. Labeling the company’s policy as “draconian,” the EEOC said it would seek a court order prohibiting AT&T from counting absences caused by employee disabilities as “chargeable” absences under the policy.

In 2011, the EEOC negotiated a \$20 million settlement with Verizon Communications to resolve a discrimination lawsuit charging the company with violating the ADA by failing to accommodate employees with disabilities under its no-fault attendance plan. In addition to the \$20 million payment, the settlement also included a court-ordered consent decree requiring Verizon to revise its attendance plan to excuse absences caused by disabilities, at least where the absences had not been “unreasonably unpredictable, repeated, frequent or chronic” and “[did] not pose a significant difficulty or expense for Verizon’s business.” (Verizon Consent Decree, ¶ 20.03).

Objections to EEOC’s Approach to No-Fault Attendance Policies

If the EEOC’s consent decree with Verizon is intended to be the “model” for no-fault attendance policies that employers can use to avoid liability under the ADA, employers will soon come to realize that the EEOC’s approach does not provide them with a workable roadmap for dealing with serious attendance problems. There are inherent flaws in the “model” policy negotiated for use by Verizon in its consent decree with the EEOC.

First, the consent decree allows Verizon to charge absences caused by a disability to employees only when the absences pose a significant difficulty or expense for the company’s business, (Verizon Consent Decree, ¶ 20.03 (g)), or if the company can show that the absences caused by the disability were “unreasonably” unpredictable, frequent or chronic. (Verizon Consent Decree, ¶ 20.03 (d)). These two provisions appear to be merely a restatement of the nebulous “undue hardship” standard for determining whether an accommodation is reasonable under the ADA. Arguably, an employer

should be able to discipline employees for absenteeism without a showing of undue hardship because regular attendance is an essential function under the ADA. A disabled employee who cannot perform the essential functions of a job is simply not a qualified disabled individual under the Act.

The argument that regular attendance is, in fact, an essential job function is generally supported by case law. See *Rios-Jimenez v. Principi*, 520 F.3d 31 (1st Cir. 2008) (“At the risk of stating the obvious, attendance is an essential function of any job.”); *Miller v. University of Pittsburgh Medical Center*, 350 Fed. Appx. 727 (3d Cir. 2009) (“Given the nature of [the plaintiff’s] job . . . we find it evident that attendance is an essential element of this position.”); *Lamb v. Qualex, Inc.*, 33 Fed. Appx. 49 (4th Cir. 2002) (“[A]n employee who does not come to work cannot perform any of his job functions, essential or otherwise.”). The argument is very basic - - employees cannot perform the essential functions of their job if they are not working.

Another problem with the EEOC’s approach to no-fault attendance policies is that it converts an objective standard (a requisite amount of points under the policy allows discipline) to a subjective standard. Thus, in the consent decree with Verizon, absences caused by a disability are only chargeable against an employee if, under circumstances particular to each individual, the absences were “unreasonably” frequent or “significantly” difficult or expensive. The EEOC’s approach eliminates the no-fault mechanism inherent in the policy; in effect, requiring the employer to find that the disabled employee was at fault before discipline can be administered.

Finally, the EEOC’s enforcement position relative to no-fault attendance policies requires a far greater level of involvement by employers in initiating the reasonable accommodation process than the ADA originally intended. For example, even without a request for accommodation by a disabled employee facing discharge under Verizon’s no-fault attendance plan, EEOC’s consent decree with Verizon requires the company to determine whether the absences caused by a disability should be excused as an accommodation to the disabled employee.

There is absolutely no support in the ADA for the proposition that an employer has to seek out employees and ask them if they would like an accommodation for absences that may or

may not have been caused by a disability. The legislative history of the ADA confirms that it is the disabled employee who has the obligation to request an accommodation. The EEOC’s enforcement approach to attendance plans turns this legislative history on its head by placing the burden on employers to solicit requests for accommodation from disabled employees with excessive absenteeism.

Recommendations

(1) Employers should include language in attendance policies stating that “regular, reliable attendance is an essential function of every employee’s job.”

(2) Employers should include language in attendance policies stating that “unscheduled, intermittent absences create an undue hardship for other employees and the Company.”

(3) Employers should include language in attendance policies stating: “Any employee facing suspension or discharge under this policy may petition for relief from such disciplinary action by submitting a written statement to the attendance program administrator within 72 hours of the absence triggering the suspension or discharge.”

(4) Employers subject to the FMLA should also include language in the attendance policy that states: “All petitions for relief from discipline under this policy relating to absences caused by a serious health condition covered under the Family and Medical Leave Act must be supported by a medical certification from the employee’s health care provider.”

(5) Any employee requesting relief from suspension or discharge on grounds that the absences were caused by a disability covered under the ADA should be asked to present medical documentation from a health care provider relating to the nature of the disability and any evidence verifying that the particular absence in question was caused by the disability.

Conclusion

If employers must now make exceptions to their no-fault attendance policies for absences caused by disabilities, in addition to illnesses and injuries covered under the FMLA and state workers’ compensation statutes, it may be reasonable to ask whether it makes any sense to keep administering such policies at all. ■

Article courtesy of John G. Kruchko and Paul M. Lusky, Kruchko & Fries.

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How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- ▶ Go to www.vabonline.com. Login with your user name and password.
- ▶ Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

Part-Time On-Air Host Charlottesville, VA

Lite Rock Z95.1 Charlottesville Best Variety and the area's leading music radio station needs on-air help. If you're an experienced radio professional and have the ability to work flexible hours (that may include weekdays and weekends). If you understand how to communicate with an adult audience in an entertaining way and you're not afraid of computers or automation systems, we want to talk with you. Send us your information ... (Anything that you believe might help you land the job) to: Brand Manager Les Sinclair, 1140 Rose Hill Dr. Charlottesville VA 22903 or email it to les@z95.net. EOE.

Continuity Director Arlington, VA

Salem Communications is the leading U. S. radio broadcaster targeting audiences interested in conservative NewsTalk and Christian and family-themed programming. We currently have a full-time position available at WAVA/Family Talk/WRC Radio. Full-Time Continuity Director needed to assist Traffic Manager with Traffic management duties including advertising and program contract input, acting as a liaison with Sales Department employees, and confirming traffic orders with Production and Programming department. This individual must be highly detailed and love working with people. This person will need to be able to work in a fast-paced environment, supporting the Traffic needs for four radio stations in the Salem of Washington, DC cluster. Our Continuity Director will work closely with our Traffic Manager, General Sales Manager, Station Manager, Production Manager and Program Manager. This person will serve as a back-up to our Traffic Manager, having the ability to

build daily radio logs. Experience in radio traffic and related fields preferred. No relocation is offered. Benefits include: Health and dental insurance Life insurance 401(k) retirement plan with company match Two Weeks of Annual Vacation Send your cover letter and resume to Tom Moyer, Station Manager: tomm@salemmediadc.com. For more details, visit WAVA.com, Keyword: Jobs Salem Communications EOE.

Experienced Local Sales Manager Charleston, WV

Bristol Broadcasting Company is seeking an experienced Local Sales Manager to lead our team of professionals at our top-rated, five-station Charleston, West Virginia, cluster. The preferred candidate will have several years of experience in broadcast sales management and a proven track record. We are looking for the person who can train and inspire our salespeople and can collaborate efficiently with our programmers. A pleasant, professional demeanor and a go get 'em attitude are essential. Bristol Broadcasting Company, a stable company with the same family ownership for more than 50 years, will offer a salary/commission plan plus benefits. If this sounds like you, apply with your resume and references to: salesmanagerwanted@bristolbroadcasting.com. No phone calls please. EOE.

Account Executive Charlottesville, VA

When you were a kid, daydreaming about your future... You probably didn't fantasize about working in sales. Yet, one in three people in the u.s. end up working in a sales career! We're looking for people who thrive on hard work and high expectations to join our sales team. If you have charisma, professionalism

and the ability to persuade, send your resume and a compelling cover letter to adsales@3wv.com. Previous sales experience is welcome, but not necessary. EOE.

Account Executive Norfolk / Portsmouth / Virginia Beach, VA

Be a part of the expanding and exciting world of multi-platform marketing and join the most successful sales team in the Norfolk, VA market selling both NBC and Fox Television, Internet and Mobile advertising solutions. Applicants must have excellent communication, organizational, computer and follow-through skills. The ideal candidate should be competitive and goal oriented with a strong desire to succeed. Individuals must be comfortable meeting with prospects, developing new business, making presentations and have a desire to help businesses grow. College degree preferred. Please send cover letter and resume to Local Sales Manager, WAVY-TV/WVBT, 300 WAVY Street, Portsmouth, VA 23704. Or Shuneca.Harrington@wavy.com No phone calls, please. EOE.

Part Time Production Operator Norfolk / Portsmouth / Virginia Beach, VA

WAVY-TV/WVBT-TV FOX43 has an immediate opening for a part-time Production Operator. Candidate will operate robotic cameras and teleprompter for evening and weekend newscasts; however, employee must be willing and able to work any and all shifts. Some studio production experience preferred. A college degree in Communication or equivalent experience is desired. Dave Whitener, Production Manager, WAVY-TV, 300 Wavy Street, Portsmouth, VA 23704 or email to dave.whitener@wavy.com. No phone calls, please. EOE.

Country Morning Host and Co Host Winchester, VA

Centennial Broadcasting II, LLC in gorgeous Winchester Virginia is looking for a morning host and co-host for the dynamic and new Big Country B105. B105 is on two frequencies – 104.9 WZFC and 105.5 WXBN. Our morning host should have experience “driving the bus” and the ability to communicate with adults, concentrating on adults 18 to 49. Our co-host doesn’t need to have morning experience, but previous radio experience is preferred. Duties of the talent will include web site (Vortal), FaceBook and Twitter communication, public service and paid remote broadcasts, commercial production, and being the “face” of our new radio station. Previous experience maintaining websites is a plus, as is experience with Audio Vault (we are running the brand spanking new one, and it’s pretty neat), and Adobe Audition. Send resume’s and a short (less than 2 minute) aircheck to Chris Roth, Director of Programming at chris@winc.fm – please don’t send links, offers to voice track, or voice over demos. Our timeline for filling these positions is immediate. Time is of the essence. EOE.

Video-Journalist FT Lynchburg, VA

The Video-Journalist position, with emphasis on Photojournalism, is primarily responsible for gathering news by shooting and editing news, sports, and special features and responsible for setting up ENG vans for live remotes. This person must display high journalistic standards and be prepared to cover stories alone which will require using effective interviewing techniques. Due to the dangers inherent with the operation of an ENG van equipped with a mast, this person must make safety “Priority One.” The individual must be a good communicator, work well with others, and take direction from management regarding job performance and shooting/editing style and technique. ESSENTIAL Advanced education in the field of Broadcast Journalism or equivalent broadcasting work experience. Demonstration of skills by performance in audition or

aircheck, supported by references and pre-employment interviews. Available 24 hours per day, seven days per week, and for extended periods of overtime, if needed. Able to control high stress periods and heavy workload. Valid Virginia Driver’s license within 30 days of employment, acceptable driving record maintained. Knowledge of journalistic standards as they relate to on-air presentation of news stories. Accurate and comprehensive writing skills. Ability to act and react appropriately on camera. Ability to maintain professional personal appearance. Ability to lift and transport standard camera equipment. Available to travel overnight to off-site locations, including foreign destinations, for extended periods of time, if needed. Access to an automobile if needed for transportation. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EOE.

Production Assistant PT (p.m. hours) Lynchburg, VA

Primarily responsible for in-studio production assistance, including the operation of Camera, Audio, character generator, or etc. as assigned by shift supervisor. Also responsible for field technician assistance for Creative Services as needed. Knowledge of television production or willingness to learn. Knowledgeable in the operation of personal computers. Basic understanding of audio-visual components. Some knowledge of electronics preferred, but not necessary. Available to work irregular hours and holidays. Also available for long hours during special circumstances. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EEO/M/F.

Associate Producer Roanoke, VA

Your Hometown News Leader, WDBJ7, is accepting applications for a part time Associate Producer to join our award-winning newsroom. Located in beautiful Southwest Virginia, WDBJ7 is the most watched television station in Southwest and Central Virginia. In addition to shooting and editing your own video, you will have the opportunity to work with an experienced and talented photography staff. The associate producer is responsible for helping in producing content for newscasts and web by researching and writing stories and filling in as producer of a show or fill in for other positions such assignment editor. We are seeking someone with a Bachelor’s degree and at least 6 months of experience in the field. Interested candidates please visit the following web site: <http://www.schurz.com/careers/career-opportunities/?fuseaction=mExternal.showJob&RID=1550>. EOE.

Accounting Clerk Kingsport, TN

Holston Valley Broadcasting Corporation is seeking to hire an Accounting Clerk. Holston is a privately-held company, which owns and operates 8 radio stations in the greater Tri-Cities, TN/VA, area including WKPT, WTFM, WVEK, WRZK, and WMEV, and the market’s ABC, MyNetworkTV, Retro TV, and TNN television affiliates. Among the duties for this full-time position are the following: Controllership Functions: 1. Daily reconciliation of Television Program Logs 2. Monthly billing of clients for commercial television programs and commercial announcements 3. Preparing and making daily bank deposits 4. Reconciliation of bank accounts. Benefits include paid vacation, health and dental insurance, and 401(k) Plan. Please forward resume and qualifications to: Accounting Clerk position c/o Holston Valley Broadcasting Corporation 222 Commerce St. Kingsport, TN 37660 Or e-mail: hr@hvbcgroup.com Fax: (423) 246-6261 Holston Valley Broadcasting is an Equal Opportunity Employer based in Kingsport, Tennessee.



LEGAL REVIEW

This legal review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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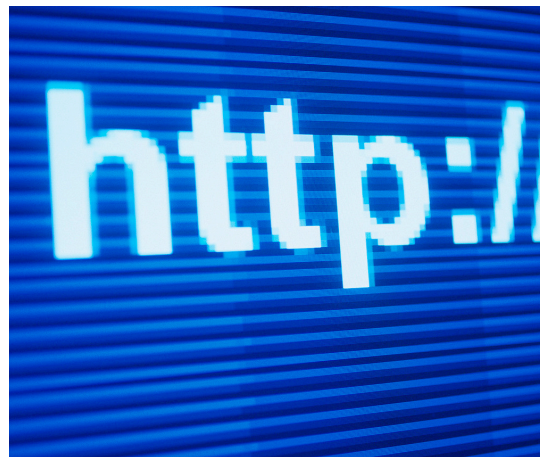
Special Report: Associations Urge FCC to Defer Expansion of Online Political File Requirements to Small Market TV Stations

The VAB joined two other state broadcast associations last week in urging the FCC (1) not to expand the online political file requirement (currently applicable to Big Four Network affiliates in the Top 50 DMAs) and (2) not to adopt and impose a “standardized” form that all television stations would be required to complete and post online as part of the Commission’s political file rules.

The Commission’s rules requiring television stations to place their public inspection files online went into effect August 2, 2012. As of that date, television stations in the top 50 markets that are affiliated with Big Four Networks have been required to upload political file documents “immediately” to their online public files. The FCC proposed to expand the requirements to all television stations effective July 1, 2014. In the pending proceeding, the Commission invited comment on expanding the online political file requirement to all television stations.

In joint comments filed with the FCC last week, the associations warned that the requirement will impose significant risks to and cost burdens on smaller market stations, with no offsetting public interest benefits. The joint comments noted that the “immediacy” requirement is particularly problematic for thinly staffed, small market stations as they respond to the demands of the fast-paced political advertising marketplace.

The associations urged the Commission to, at least, consider alternative approaches, such as deferring its requirement for stations in small markets to give them time to prepare for an expensive new regulatory burden. Adoption of this phase-in proposal would mean that Big Four Network affiliates in additional markets—all of which have more than 300,000 television households—would become subject to the online political file rules, while the requirement would be deferred for all stations in markets with fewer



than 300,000 television households.

In addition, the associations agreed with NAB in their comments that online disclosure of proprietary political advertising rates would enable competitors (e.g., cable, newspaper, radio stations, billboard companies, online video distributors, and ad agencies) to access this sensitive information on a real-time, immediate basis and use it to competitively disadvantage these stations. The associations urged the Commission to address the competitive disparity in the FCC’s public and political file rules.

The associations also urged the FCC to reject a proposal to impose a “standardized” political reporting form, pointing out that not only are such standardization requirements inconsistent with the intended purpose of the political file, they are inconsistent with the Commission’s charge to avoid burdensome regulation and unnecessary paperwork for broadcasters. The Commission has rejected such standardized “one size fits all” reporting requirements in the past, and the associations asked the FCC to allow broadcasters continued flexibility in preparing political files. ■

Article courtesy of Brooks, Pierce, McLendon, Humphrey & Leonard LLP.