

The

# Call letter

Indiana Broadcasters Association

July/August 2010

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The Call Letter is published by the Indiana Broadcasters Association. For information contact the Association at Phone (317) 573-0119, FAX (317) 573-0895, E-mail: indba@aol.com, Web Site: www.indianabroadcasters.org, located at: 3003 E. 98th St., Ste. 161, Indianapolis, IN 46280.

## President's Message

By Linda Compton, President & CEO

### Hot Time Summer in the City. . .

And it sure does not seem to be getting any cooler as Congress continued to debate issues affecting the broadcast industry on a daily basis. TV's hot seat comes from recent legislation dealing with increasing communications access for persons with disabilities as advocates on behalf of the disabled have been pushing for changes to communications laws and regulations to ensure that the Internet and other forms of electronic communication are more accessible to disabled people. While our industry supports the need we need to make sure there is ample time for the industry to examine all aspects before implementation.



Performance Tax continues to play, hot and heavy, in Congress as our opponents continue to push their side of the issue. NAB continues to try to keep the issue away from moving toward the copyright issues and the Copyright board. Spectrum Management continues to be at the forefront before the FCC and within Congress in varying degrees. The Congress maintains that there needs to be studies done. This will continue to be an important conversation with Congress and the FCC to make sure the system that is built benefits all Americans. Retransmission Consent - IBA position on this; keep it just like it is, no need to fix anything.

Are we now ready for our Congressional District meetings? Hopefully you'll be able to attend as we begin in August. Watch for the dates as we get them scheduled, we need your participation. Together we can make a difference.

Significant financial difference for the IBA is not the dues you pay, but the commitment you make to participate in the IBA NCSA program. The majority of IBA stations run the programs, but many of you do not. Without your participation the NCSA programs simply are not as effective as they could be. If you are not sure if you are participating, call the IBA office at: 1-800-342-6276 or email indba@aol.com.



# Announcements

## Marconi Radio Awards Selection Academy

Applications are now being taken for membership into the NAB Marconi Radio Awards Selection Academy. The Academy votes to determine the winners, and is made up of general managers, program directors, regional radio executives, owners, programming consultants and former radio executives. If you would like an application for the Academy, or have any questions regarding the Academy or the Marconis, contact NAB Radio's Susan Platt at [splatt@nab.org](mailto:splatt@nab.org).

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## Early Radio Broadcasting History Financing the Radio Industry 1898 - 1927

Soon after Marconi's groundbreaking demonstrations, there was speculation about transmitting radio signals to paying customers. However, there was no practical way to limit broadcasts to specific receivers, so for a couple decades broadcasting activities were largely limited to experiments, plus a limited number of public service transmissions by government stations. During the 1922 "broadcasting boom", most programming was commercial-free, and entertainers, caught up in the excitement of this revolutionary new invention, performed for free. Meanwhile, a few people wondered how to pay for all this. In early 1922, the American Telephone & Telegraph Company began promoting the controversial idea of using advertising to finance programming. Initially AT&T claimed that its patent rights gave it a monopoly over U.S. radio advertising, but a 1923 industry settlement paved the way for other stations to begin to sell time. And eventually advertising-supported private stations became the standard for U.S. broadcasting stations.



To download the Radio Heard Here spots go to  
<http://www.radioheardhere.com/radioadvertising.htm>.

**RADAR: 236 Million Hear Radio Every Week**

# Member Services

## Public Records Resource Information

Indiana Coalition for Open Government website explains the law regarding access to death records in the state of Indiana. This resource could be great information for your station(s) News Department.

INDIANA COALITION FOR OPEN GOVERNMENT  
<http://www.indianacog.org>

## Legal Hotlines **FREE** to IBA Members

**State Legal Hotline** - Bingham McHale, LLP @317-686-5227, leave your name, phone number, station call letters and your brief question and the attorney will call you right back with an answer.

**Federal Legal Hotline** - Federal Legal Hotline - Pillsbury Winthrop Shaw Pittman, Attorney Scott Flick, 202-663-8167, or email [scott.flick@pillsburylaw.com](mailto:scott.flick@pillsburylaw.com) or Attorney Dick Zaragoza, 202-663-8266, email: [richard.zaragoza@pillsburylaw.com](mailto:richard.zaragoza@pillsburylaw.com)

*The Legal Hotlines are a member service of the Indiana Broadcasters Association. The hotlines are designed to ask routine legal questions and should not take more than 5 minutes of the attorney's time. This service is not intended to replace the station(s) attorney or law firm.*

**Bingham ● McHale**  
attorneys at law



Pillsbury  
Winthrop  
Shaw  
Pittman<sup>LLP</sup>



## MY MEMBER PACKET

Have you registered with the IBA website? If not DID YOU KNOW all the member services available to IBA members?

HAVE QUESTIONS REGARDING THE ADVERTISING OF INTERNET GAMBLING? You will find the answer in the IBA's Advertising Laws & Regulations Handbook on the IBA website at [www.indianabroadcasters.org](http://www.indianabroadcasters.org). Point to "My Member Packet" on the menu, then click on the first item, Advertising Laws & Regulations Handbook.

Note: If you have not been to the IBA website, you will need to register. Scroll to the right hand margin, click on "register" - enter your information using your OWN e-mail address and OWN password - click on the scroll down menu and choose the Station/Company you are with, then submit.



About IBA
Amber Alert
Broadcast Pioneers
EAS
Events
Inspection Program
Job Bank
Legal Services
Legislative
Member Radio & TV Stations
<b>My Member Packet</b>
Publications
Student Page
Used Broadcast Equipment

**Address:**  
3003 E. 98th St., Ste. 161  
Indianapolis, IN 46280

**Phone Numbers:**  
800.342.6276 (Indiana Only)  
317.573.0119 (Direct Line)  
317.573.0895 (Fax)

**Email:**  
[INDBA@aol.com](mailto:INDBA@aol.com)

## Advertising Laws and Regulations Handbook

Prepared by:  
**Indiana Broadcasters Association**

*In cooperation with*  
**Bingham McHale, LLP**  
Indianapolis  
And  
**Pillsbury Law**  
Washington, DC



[www.indianabroadcasters.org](http://www.indianabroadcasters.org)  
[indba@aol.com](mailto:indba@aol.com)

# Member Services

# SuperFleet®

## Association Fueling Program



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[www.superfleet.net](http://www.superfleet.net)



**CONTACT:**

**SHEILA HURST**

Phone: 800-831-8076 ext. 2043

Fax: 317-872-3479

E-Mail: [sdhurst@ssallc.com](mailto:sdhurst@ssallc.com)



## Political Broadcasting Reference Guide

prepared by:

Indiana Broadcasters Association

In cooperation with

Bingham McHale, LLP, Indianapolis

Pillsbury Law, Washington, DC

Log onto to [www.indianabroadcasters.org](http://www.indianabroadcasters.org)

TOP OF FRONT PAGE or contact the IBA to

obtain one via email. 1-800-342-6276 x 104

or 317-573-0119 x 104

## 2010 Political Broadcast Window

**November 2, 2010 General Election**

Political Window: September 3, 2010 to November 2, 2010

Political Broadcasting Agreement Forms

Members can obtain Political Broadcast Forms from the NAB (National Association of Broadcasters)

The form PB-16, are available to NAB members at NO CHARGE. To request the forms:

NAB TV Member Stations call: 202-429-5347

NAB Radio Member Stations call: 202-429-5400

PB-16 is available for non members at the

[www.nabstore.com](http://www.nabstore.com)

**LBS LOCAL BROADCAST SALES**  
On-Demand Broadcast Sales Training

## Local Broadcast Sales - On Demand Broadcast Sales Training

The IBA is able to underwrite the On Demand Broadcast Sales Training for members again in 2010 due to member radio and television stations participating in the NCSA program.

There are already 11 speakers and over 300 topics that you can use to train your sales staff; Local Broadcast Sales 101 to Commercial Copywriting to Web Sales to Business Development . . . and a whole lot more!

Speakers: Paul Weyland, Dan O'Day, Bill Caudill, Stephen Warley, Gary Moore, Susan Nowicki, Diane Darling, David Topus, Andrea Eliscu, John Tkac and Ron Steiner. . . and here are a few of the topics that we know you can't wait to get to:

Motivating Yourself in Today's Economy, Small Market Sales, Web Sales Strategies, Automotive Sales Strategies, Television Sales Strategies, Effective Networking and guess what? There is a lot more!

You will need to contact the IBA for the Indiana Access code to use this training ([indba@aol.com](mailto:indba@aol.com) or call 1-800-342-6276 x 104 or local 317-573-0119 x 104). Then you will go to the LBS site, set up your profile and enter the access code and you have FREE SALES TRAINING ALL YEAR, it's that simple!

## IBA 23rd Annual Spectrum Awards CALL FOR ENTRIES

The IBA 23rd Annual Spectrum Awards Call for Entries will be coming to you the first week in July, 2010. **SAVE THOSE SPOTS!** Did you know that at the Spectrum Awards Show the IBA will be awarding 2 "Service to Indiana" awards, one for radio and one for television! **SAVE SAVE SAVE** those spots!



## Broadcasters Calendar - September

### September 14

Copyright Royalty Fee - Monthly Usage Statement of Account Form Due-By this date, commercial and noncommercial webcasters and those simulcasting radio programming on the Internet must submit the Monthly Report of Use and Monthly Usage Statement of Account forms for the month ending July 31, 2010. The monthly usage report must be filed with SoundExchange even if the webcaster or simulcaster has not exceeded its minimum fee liability. If a monthly usage payment is due, SoundExchange will accept payment in the form of a check, a money order, or a bank transfer. A signed copy of the Monthly Usage Statement of Account must accompany the monthly usage payment. Both reports must be submitted to SoundExchange via e-mail, file transfer protocol (FTP), or CD-ROM.

### September 30

EEO 1 Report Due-This is the deadline by which broadcasters that are subject to the federal Equal Employment Opportunity Commission's (EEOC) reporting requirements must file their EEO 1 Report (Form 100). We encourage you to consult with counsel familiar with this regulatory area and to visit <http://www.eeoc.gov/stats/jobpat/e1instruct.html>.

Traditional Deadline for Suspended FCC Form 395-B-This is the traditional date used by the FCC as the deadline for the filing of FCC Form 395-B, the Annual Employment Report. As of the date of this publication, this filing requirement remains suspended.

## 2010 Event Calendar

**September 29 - October 1:** 2010 Radio Show  
The Radio Advertising Bureau (RAB) and National Association of Broadcasters (NAB) have joined forces to bring for this year's Radio Show which will be held September 29 - October 1, 2010 at the Grand Hyatt Hotel in Washington, DC. The website for the Radio Show is: [www.nabradioshow.com](http://www.nabradioshow.com)

**October 12, 13:** IBA Annual Engineer/IT Workshop, Marriott Hotel, Keystone Crossing

**October 14:** IBA Hall of Fame, Marriott Hotel, Keystone Crossing

**November 7 - 9:** NAB Futures Summit, Rancho Palos Verdes, California

**November 13:** IBA 23rd Annual Spectrum Awards, Marriott Hotel Indianapolis North

## NEW! Local Broadcast Sales - 2010 Digital Webinar Series

ALL WEBINARS ARE SCHEDULED FROM 1 PM TO 2 PM EST.

The following webinars are FREE to IBA members. IBA will send login information to the membership as we receive that information from LBS, which will be most likely a week prior.

1. **Using Social Networks to Grow your Pipeline** - Tuesday, August 10

*Audience: Sales Managers, Account Executives*

2. **Developing Valuable Web Content** - Tuesday, September 14

*Audience: Sales Managers, Account Executives, Web Producers, Program Producers, News Producers*

3. **Marketing and Promoting Your Website** - Tuesday, October 12

*Audience: Sales Managers, Account Executives, Web Producers, Promotions Managers, Promotions Producers*

### VIEW LOCAL BROADCAST SALES WEBINARS ANYTIME

In case you've missed any of the LBS webinars, they are now archived on the LBS website to be viewed at your convenience.

To view any of the past webinars right now, visit: <http://bit.ly/LBSDigitalWebinars>

To learn about upcoming LBS Digital Sales webinars, visit: <http://bit.ly/LBSDigitalWebinarsSchedule>

# Engineer Corner



## MONTHLY RMT SCHEDULE

The Required Monthly Test for Indiana EAS, the third Thursday of each month, ODD months @ 2:50 pm eastern time and EVEN months 4:50 am eastern time. All RMT will originate from the State Primary, WFBQ-FM, Indianapolis.

## 2010 EAS RMT Schedule

August 19, 2010	4:50 am Eastern
September 16, 2010	2:50 pm Eastern
October 21, 2010	4:50 am Eastern
November 18, 2010	2:50 pm Eastern
December 16, 200	4:50 am Eastern

## Resources

Tower Service & Manufacturing - 317-359-5366 or 800-331-5103  
Weber Climbing Service - Chuck Weber, 812-371-9308 or 812-579-9330  
Electronics Research, Inc., 812-925-6000  
FCC in an Emergency, After Normal Business Hours - 24 hours a day at (202) 418-1122

## EAS RULES

Go to SBE website: [www.sbe.org/gov\\_eas.php](http://www.sbe.org/gov_eas.php)

## IBA Alternative Broadcast Inspection

Dale Gehman, CPBE/CBNT, [dgehman@gradiotv.com](mailto:dgehman@gradiotv.com), PH: 717-859-6410

## Helpful Websites:

<a href="http://www.hazard.com">www.hazard.com</a>	<a href="http://www.safteng.net">www.safteng.net</a>	<a href="http://www.eagletowersvc.com">www.eagletowersvc.com</a>	<a href="http://www.mysafetygear.com">www.mysafetygear.com</a>
<a href="http://www.toolboxtopics.com">www.toolboxtopics.com</a>	<a href="http://www.gradiotv.com">www.gradiotv.com</a>	<a href="http://www.scmisinc.com">www.scmisinc.com</a>	

## Reminder to Do Your Research

Remember to choose your contractors carefully when deciding who should work on your critical equipment. Check references and do your research. At a minimum, ensure they have all the necessary licenses and bonds that your company requires.

## Certified Broadcast Network Technologist (CBNT) Tutorial and Exam Offered at the IBA 2010 Engineer/IT Workshop

On Tuesday, October 12, 2010, Terry Baun, CPBE, will give the tutorial and proctor the CBNT exam. The tutorial and exam will be from 8:00 am to 6:00 pm, in conjunction with the 2010 IBA Engineer/IT Workshop at the Marriott Hotel, 3645 River Crossing Parkway, Indianapolis.

**To Register for the CBNT go to: [http://www.sbe.org/documents/ApplicationDfillable\\_000.pdf](http://www.sbe.org/documents/ApplicationDfillable_000.pdf)**

Please put on the CBNT application that you will be taking the exam in conjunction with the IBA October 12, 2010 Engineer Workshop. The exam is \$55.00 for SBE members and \$121.00 non SBE members, but includes membership in SBE for one year.

## Opposing Unnecessary Advertising Restrictions

Congress is nearing completion on its work to pass financial reform legislation. The current legislation includes language regarding advertising, and the National Association of Broadcasters has been working closely with House and Senate leaders to ensure that the final bill does not impose burdensome and unfair advertising restrictions that could hurt broadcasters' ability to serve their local communities.

### **History**

Last December, the U.S. House of Representatives passed its version of the financial reform bill, which included "aiding and abetting" language that could hold a broadcaster responsible for the content of an advertisement months or years after it aired, as well as language that would give the Federal Trade Commission (FTC) expanded authority to accelerate the process of issuing new rules and make it easier to impose large monetary fines. The Senate version of the legislation that passed included the "aiding and abetting" language, but did not include language expanding the FTC's authority. With two different versions of the bill having been passed by the House and Senate respectively, the legislation required a conference. During conference negotiations, a proposal offered by House Energy and Commerce Committee Chairman Henry Waxman (CA-30) to give the FTC expanded regulatory authority was rejected. Had the FTC been granted streamlined rulemaking authority, it would have been easier for the agency to issue new rules, including rules that define and restrict unfair and deceptive advertising for a broad range of products and services. Included in the final bill is language that will protect broadcasters who receive advertising from another entity or person, in the event an ad is later determined to be unfair or deceptive. While NAB would have preferred stronger language as to intent to engage in an unfair, deceptive or abusive act, we are pleased that the language added clarifies the law and protects broadcasters. On June 30, 2010, the House passed the conference version of financial regulatory reform legislation and the Senate is expected to vote on the bill in mid-July. While it is no longer part of this legislation, granting expanded rulemaking authority to the FTC may come up again but the timing is uncertain. NAB will continue to monitor this issue and educate members of Congress on the harmful effects of advertising restrictions on local broadcast stations and their audiences.

### **NAB Position**

Advertising revenue is critical to stations. Unnecessary restrictions on advertising that reduce revenue will harm broadcasters' ability to continue serving local communities with vital news and information and valued entertainment programming.

### **Action Needed**

Congress should oppose any legislation that increases federal agencies' authority to restrict advertising and impose monetary penalties on broadcasters.

## Increasing Communications Access for Persons with Disabilities

Representatives from organizations that advocate on behalf of the disabled have been pushing for changes to communications laws and regulations to ensure that the Internet and other forms of electronic communication are more accessible to disabled people.

Leaders in both the House and Senate Commerce Committees have expressed support for greater accessibility of modern communications and have introduced legislation to achieve this goal. In April of 2010, Sen. Mark Pryor (AR) and Sen. John Kerry (MA) introduced S. 3304, the Twenty First Century Communications and Video Accessibility Act of 2010, which is companion legislation to H.R. 3101 the Twenty First Century Communications and Video Accessibility Act of 2009, introduced by Congressman Ed Markey (MA-7) last June.

These bills are comprehensive in nature and would place numerous obligations on multiple sectors of the communications industry, including consumer electronics manufacturers, software companies, phone and Internet providers, cable companies, creators of video programming and broadcasters. Specific to the broadcast industry, the legislation would expand television stations' existing closed captioning obligations to video programming, including programming distributed over the Internet; give the Federal Communications Commission (FCC) the authority to issue video description requirements; and require greater accessibility to televised emergency information to the blind or visually impaired.

### **History**

In 2000, the FCC issued requirements for the top four television broadcast networks in the top 25 markets to video describe approximately four hours of programming per week. However, a federal appeals court struck down those regulations, finding that the FCC did not have the authority to issue them. This legislation would give the FCC the authority to reissue the 2000 video description regulations and possibly expand upon them.

The House and Senate Commerce Committees held hearings on this subject in both the 109th and current 110th Congresses. At a May 26, 2010 Senate Commerce hearing, Senate Commerce Communications Subcommittee Chairman John Kerry indicated that this July will mark the 20th anniversary of the Americans with Disabilities Act and that Congress should try to pass legislation in 2010 to expand upon that landmark legislation.

### **NAB Position**

NAB supports the goal of increased accessibility of modern communications to persons with disabilities. As Congress

looks to address these issues, the organization will seek to ensure that any mandates placed upon broadcasters work in conjunction with the efforts already taking place within the industry, such as the captioning proceedings the Society of Motion Picture and Television Engineers (SMPTE) is undertaking. Additionally, the issues of video description of programming and emergency alerts are very complex, and all aspects of those issues should be fully examined before any possible mandates are enacted.

#### **Action Needed**

Congress should work with broadcasters to ensure that policies to increase the accessibility of modern communications are achievable, effective and work in coordination with industry efforts currently underway.

### **Political Advertising and the Lowest Unit Charge Issue**

In the 45-day period prior to a primary or caucus, or the 60-day period prior to a general or run-off election, Congress has limited what a radio or television station may charge a political candidate for airtime. Candidates are entitled to a lowest unit charge (LUC) - also referred to as lowest unit rate (LUR) - during these periods, which is the lowest advertising rate "of the station for the same class and amount of time for the same period." This provides a candidate the benefit of all discounts offered to a commercial advertiser for the same class and amount of time, without regard to the frequency of the candidate's advertising.

#### **History**

Since the enactment of this regulation (Federal Election Campaign Act of 1971), there have been several proposals offered to amend its provisions.

In the 111th Congress, legislation has been offered in response to the Supreme Court's campaign finance ruling - Citizens United vs. Federal Election Commission - that includes changes to the lowest unit charge. S. 3295, introduced by Sen. Charles Schumer (NY), would for certain advertising that directly refers to federal candidates:

- o Expand LUC beyond candidates to now include political parties and political committees;
- o Greatly extend the time period by up to 180 days in which to calculate the advertising rate discount;
- o Require priority placement of certain federal candidate and political entity ads by making them non-preemptible; and
- o Impose new compliance and reporting obligations on stations.

#### **NAB Position**

NAB strongly opposes changes to the lowest unit charge, which would have a serious impact on local broadcasters. The proposed changes in S. 3295 would penalize small business advertisers and would crowd out state and local candidates who are not entitled to the same right to access enjoyed by federal candidates. These changes also raise serious questions under the First Amendment.

#### **Action Needed**

Congress should not mandate additional advertising price reductions for federal politicians at the expense of local businesses and other advertisers.

### **A Performance Tax Puts Local Jobs at Risk Issue**

At the behest of the foreign-owned record labels, some in Congress have introduced a bill to impose a performance tax on local radio broadcasters. The "Performance Rights Act" would impose a new fee on local stations for the music they air on the radio - music that provides free promotion to the labels and artists. This new performance tax could financially cripple local radio stations putting jobs at risk, stifle new artists trying to break into the recording business and harm the listening public who rely on local radio.

#### **History**

Because of the promotional value of free radio airplay, Congress has repeatedly rejected the record labels' attempts to impose a performance tax on local radio stations. In 1971 and 1976, Congress considered and refused to grant a performance tax. In 1995, Congress again refused to impose a performance fee to avoid jeopardizing what Congress called "the mutually beneficial economic relationship between the recording and traditional broadcasting industries," House Report 104-274 (1995).

In 2008, H. Con. Res. 244, the Local Radio Freedom Act, a pro-radio, anti-performance tax resolution was introduced by Reps. Gene Green (TX-29) and Mike Conaway (TX-11). The resolution was introduced with 51 original bipartisan cosponsors and by the end of the 110th Congress had 226 cosponsors, well over a majority of the House of Representatives. A companion resolution was introduced in the Senate, S. Con. Res. 82, sponsored by Sens. Blanche Lincoln (AR) and Roger Wicker (MS), and closed the year with 14 bipartisan cosponsors.

In 2009, Reps. Gene Green (TX-29) and Mike Conaway (TX-11) and Sens. Blanche Lincoln (AR) and John Barrasso (WY) re-introduced the Local Radio Freedom Act. Both bills have again received strong, bipartisan support, with more than 260 members of Congress supporting H. Con. Res. 49, well over a majority of the House, and 27 senators signing onto S. Con. Res. 14.

#### **NAB Position**

NAB strongly opposes the performance tax legislation pending in Congress because the record labels and artists receive a great benefit from the free airplay provided by radio stations.

For more than 80 years, record labels and performers have thrived from radio airplay - what is essentially free advertising - from local radio broadcasters. Free, over-the-air radio touches 239 million listeners a week, a number that dwarfs the reach of Internet and satellite radio. Free radio airplay provides the recording industry increased popularity, visibility and record sales. In fact, 85 percent of listeners of all audio services identify radio as the place they first heard new music.

And the promotion by local radio does not just include the music; it includes concert promotion, on-air interviews with bands, and ticket and CD giveaways. But now the record labels find themselves struggling because they have failed to adapt their business models to the digital age. While their business model suffers, they seek to recoup revenues on the backs of local radio stations that are, ironically, their greatest promotional tool. The value of free radio promotion to record labels and performers is well recognized. Since record labels are not required to pay radio stations for the promotion of their albums and artists, broadcasters should not be required to pay for the use of the labels' music.

#### **Action Needed**

Congress should oppose a performance tax or fee on free and local over-the-air radio broadcasters.

#### **Retransmission Consent: Keep It Fair**

The retransmission consent process allows broadcasters to negotiate for the retransmission of their programming by cable and satellite operators. This negotiation process allows local television stations to continue to provide the best content and services for their viewers and communities, and the system is working as intended.

#### **Issue**

In 1992, Congress established a process to provide local television stations the opportunity to negotiate with, and seek compensation from, pay television providers (such as cable and satellite) for retransmission of stations' valuable signals to subscribers. This process benefits viewers, pay television operators and broadcasters alike.

Under the current system, broadcasters and pay TV providers must work together to reach mutually beneficial agreements. The Federal Communications Commission (FCC) has reviewed this process and reported that it takes place on a "level playing field," and is not in need of reform.

For years, pay TV companies have attracted subscribers using broadcast programming, but recently, some have been urging legislators and regulators to change the system, simply because they don't want to compensate broadcasters for their content.

Retransmission consent is critical to broadcasters' ability to provide local news, lifesaving weather and community information, as well as high-value, top-quality entertainment programming. At a time when broadcasters face even stiffer competition in the marketplace, their content is still by far the most in demand. This is evidenced by the fact that their program ratings are significantly higher than programming offered by pay TV providers. In fact, during the 2008-09 television season, broadcast programming dominated the primetime program rankings, accounting for 197 of the top 200 programs.

The recent calls from pay TV companies for government intervention - such as the right to continue carrying broadcasters' signals without a negotiated agreement, or mandatory arbitration upon a pay TV provider's request - do not "reform" or

improve the current system. The possibility of government intervention would remove the incentive to fairly negotiate and would reward pay TV providers who take negotiations out of the board room and into the media and legislature. The system is fair, it works and it benefits consumers. There's no need to fix what isn't broken.

#### **History**

Before 1992, cable companies retransmitted the signals of local television stations without the stations' consent and resold those signals to their subscribers for profit. When enacting the 1992 Cable Act, Congress created a process to allow broadcasters to negotiate for fair compensation of their programming - the retransmission consent process. Congress stressed that it did not intend to dictate the outcome of the marketplace negotiations between broadcasters and cable operators.

In recent years, the FCC reviewed the retransmission consent process and recommended no changes in a report to Congress. The FCC found that local stations and pay television providers negotiate on a "level playing field" and that retransmission consent has benefited broadcasters, cable and satellite operators and, most importantly, consumers. Over the years, many thousands of retransmission consent agreements have been successfully negotiated between local television stations and cable and satellite companies. Simply put, the process is working as Congress intended. Turning back the clock will do more to restrict viewers' programming choice than enhance it.

#### **NAB Position**

Viewers, local broadcast stations and pay TV operators all benefit from the retransmission consent process. Retransmission negotiations are fair and market-driven, and there is no need to change the process that Congress established and has worked well for nearly two decades.

#### **Action Needed**

Congress should allow broadcasters and pay television operators to continue to conduct private, market-driven negotiations for retransmission consent and avoid tilting the scales in favor of either party. Government intervention would only disrupt a marketplace that has resulted in more programming choices and services for local television viewers.

#### **Ensuring Efficient Spectrum Management**

In its recently released National Broadband Plan, the Federal Communications Commission (FCC) says that current spectrum allocations are not sufficient to meet the expected increase in demand for high speed wireless Internet service. To meet that demand, the plan recommends the reallocation of up to 500 MHz of spectrum, including up to 120 MHz currently used by television broadcasters. NAB is working to ensure that any change to spectrum policy going forward does not limit consumer access to the full potential of digital broadcasting.

### **Issue**

The FCC presented a National Broadband Plan to Congress on March 16, 2010. The 359-page document includes language calling for the reallocation of up to 120 MHz of broadcast TV spectrum. Free, local television is a lifeline service providing timely news, emergency and community information to all viewers. NAB is working to promote spectrum policies that do not restrict consumer access to the full potential of digital television (DTV), including high definition (HD) and multicast programming and mobile DTV.

### **History**

As part of the American Recovery and Reinvestment Act of 2009, Congress directed the FCC to develop a National Broadband Plan to ensure that all people of the U.S. have access to broadband. The FCC presented a comprehensive plan to Congress on March 16, 2010.

Some parties, including FCC Chairman Julius Genachowski, have expressed concerns about a "looming" spectrum crisis - specifically claiming that the current amount of spectrum designated for wireless companies to provide service is insufficient to meet the rapidly increasing demand for wireless broadband. In September 2009, the FCC asked for comment on whether current spectrum allocations, including but not limited to the bands below 3.7 GHz, are adequate to support near- and longer-term demands of wireless broadband. In early December 2009, the FCC asked more directly whether the government should consider designating some or all of the spectrum currently being used to deliver broadcast television service to meet claimed wireless broadband needs.

NAB and the Association for Maximum Service Television, Inc. (MSTV) responded aggressively to the FCC's inquiry, arguing that over-the-air television, including advanced services like high definition and mobile broadcasting, are a necessary complement to a quality wireless broadband system. NAB and MSTV have also encouraged the FCC to consider all frequencies that may be suitable for wireless broadband (including frequencies above 3.7 GHz).

### **NAB Position**

NAB was pleased by initial indications from FCC members that any spectrum reallocation would be voluntary, and was therefore prepared to move forward in a constructive fashion on that basis when the National Broadband Plan was released. However, there are concerns that many aspects of the released plan may in fact not be as voluntary as originally promised. Further, NAB opposes any attempts to impose spectrum fees on broadcasters, as suggested under the plan. NAB believes that no reallocation plan should move forward without a complete accounting of how the airwaves are allocated, licensed and used, and therefore strongly supports congressional efforts to conduct an inventory of all available spectrum.

In considering the efficiency and productivity of the current use of spectrum, the FCC and Congress should consider the important public services broadcasters offer to all Americans through that spectrum, free of charge. Broadcast television provides local and national news and information, universal

service, educational programming, and timely and vital emergency information. The future availability of these free services could be threatened if over-the-air broadcast distribution were eliminated or confined to inadequate levels.

In addition to the services already provided by broadcasters, advances in quality and quantity of programming and other services will lead to increased efficiency of spectrum use. Broadcasters are poised to do even more with their existing 6 MHz channels, offering new services like mobile DTV to complement current programming streams. These services will be provided over stations' existing spectrum assignments, further increasing the efficiency of the nation's over-the-air television service.

### **Action Needed**

NAB will continue working to ensure that policymakers recognize that broadcasting and broadband are both important aspects of America's communications system and are not mutually exclusive. NAB is committed to working with the FCC and Congress to build a communications system that benefits all Americans.



# Business Credit: Understanding Bad Debt Federal Income Taxes

By Attorney Scott Leisz, Bingham McHale, LLP, Indianapolis

In today's economic climate, business credit continues to affect the financial strength of businesses across the country. In our previous newsletter, we outlined basic business credit advice. In this issue, we address federal income tax issues that lurk behind any debt restructuring or debt forgiveness that a company may arrange with one or more of its customers.

**Introduction** - The current poor business conditions have increasingly led to customers having problems paying and have raised the need for businesses to work with customers to reduce outstanding debts and modify obligations. One popular option is loan workouts: they give customers breathing room, and they help the company improve its odds of receiving some repayment. When the receivables cannot be collected, however, a business should consider declaring it "bad debt." Such a decision carries consequences, and there are several implications-for businesses and customers-worth consideration.

**Bad Debt Basics** - Bad debt is the portion of a business's receivables that it believes it can no longer collect. A company can choose to cancel bad debt by 1) reducing the principal or 2) accepting property worth less than the full amount of the debt. If a company chooses to cancel its bad debt, it is entitled to a deduction on its federal income taxes.

The deduction depends on whether the debt is business debt or nonbusiness debt. Bad debt belonging to a nonbusiness is deductible as a short-term capital loss, while bad debt belonging to a business is deductible from ordinary income. This is an important distinction as a deduction from ordinary income can be taken in the full amount of the deduction, while a short-term capital loss may only offset capital gains and may not be able to be taken in full.

To claim a deduction for bad debt in a given tax year, the company must establish that it had no hope to collect the debt. If, at the time of the restructure, the company receives something in exchange for the debt, like a modified debt instrument on the underlying collat-

eral, the company will recognize gain or loss equal to the difference between the value of what was received and the balance of the bad debt. (If the deducted bad debt is collected, the portion of the bad debt that is collected should be included in the lender's income for the year in which it is recovered.)

## **Implications for Companies** -

Customers needing to restructure their debt obligations typically need their interest and principal payments to better match their cash flows. However, without careful planning, the benefits of debt restructuring can be lost, by triggering cancellation of indebtedness income ("COD"). COD is problematic because troubled customers frequently lack the cash to pay the income tax on COD.

COD generates taxable income under federal income tax law because the release of the obligation to repay the whole or a portion of the indebtedness is equal to an accession to wealth. For companies to increase their chances of being repaid on restructured debt, it is important that they understand the basic triggers of COD, and work with the exceptions to produce better tax results.

## **Implications for Customers** -

Customers have several helpful exemptions from COD when they do not have enough net operating losses to shelter COD. There also are statutory exclusions from COD that come with a trade-off. This means the customer will not pay taxes on the COD amount in the taxable year, but must instead recognize a portion of the excluded amount when selling assets. Such exemptions and exclusions include:

### **Purchase Price Reduction Exception** -

If the customer is not in bankruptcy or otherwise insolvent, then it is treated as having paid a lesser amount for the product(s), and the business is treated as having sold the product(s) for a lesser amount.

**Insolvency Exclusion** - Income does not include an amount that otherwise would constitute COD if the discharge occurs while the borrower is insolvent. For tax purposes, insolvency means there is an excess of liabilities over the fair market value of assets.

**Bankruptcy Exclusion** - A separate exclusion exists when a discharge occurs while the customer is in bankruptcy. The bankruptcy exclusion is broader than the insolvency exclusion since bankruptcy exclusion applies even if debt discharge makes the customer solvent.

## **Different Tax Treatment For Exchange Or Sale Of The Bad Debt** -

There is a critical tax difference between a pure debt restructuring and a restructuring which includes asset or entity interest transfers. The former can result in COD treated as ordinary income, while the latter may generate capital gains. This difference may not matter to a borrower structured as a C-corporation, because C-corporations face no difference in tax rates on capital gains versus tax rates on ordinary income. However, for a partnership, an S-corporation, or individual customers, utilizing assets or entity interest transfers may generate long-term capital gains income which may only be taxed at the current 15% long-term capital gains rate. This possibility of converting what might otherwise be COD taxable at a 35% federal rate into long-term capital gains taxable at a 15% rate creates an important planning opportunity. Thus, in any debt restructuring, it may be wise to consider the tax consequences of a foreclosure, the issuance of a deed in lieu of foreclosure, or a sale to a third party.

**Conclusion** - There are few financial transactions that do not have tax consequences. Companies need to be mindful of such consequences when restructuring debt so they do not inadvertently create large income tax liability for customers, which could further inhibit repayment. Likewise, customers in the process of restructuring their debt need to be wary, and should even consider retaining qualified tax advisors to carefully analyze their situation and to see which type of restructure might best suit their needs. The ordinary income nature of COD, the possibility of generating capital gains income through a sale transaction, and the complexity of applying COD definitional exceptions and statutory exclusions to various business organizations are all considerations that should be kept in mind when restructuring debt.

# Human Resources



## RADIO & TV CAREERS IN BROADCASTING BROCHURE

Get your copy of the RADIO & TELEVISION brochure titled "Careers in Radio" and "Careers in Television." The brochure covers careers in broadcasting, i.e. the kind of experience or education a person needs' how to find a job in broadcasting and schools in Indiana with a broadcasting curriculum. If any IBA member station would like an original of the brochure for your station(s) go to the IBA website, [www.indianabroadcasters.org](http://www.indianabroadcasters.org); on the menu point to "Student Page," then click on "Careers In Broadcasting." You can place your station logo directly on these brochures to use for recruiting.

## EEO Member Service - Free to Member Stations

YOU NEED HELP WITH YOUR EEO. . . and YOU NEED BROADCAST COMPLIANCE SERVICE (BCS). Three years ago the IBA became one of the first states in the nation to provide Broadcast Compliance Service (BCS), a web-based outreach and reporting service, to help you comply with the FCC's EEO Rules as a free membership service.



The FCC has been showing renewed interest in diversity and EEO compliance and has been examining outreach and reporting records recently, including records from Indiana stations.

BCS is easy to use and it's FREE to IBA members.

CONTACT BCS AND SIGN UP - IT'S THAT EASY - 1-866-227-4336 - IT'S THAT SIMPLE.

Visit [www.indianabroadcasters.org](http://www.indianabroadcasters.org) and click on "MY MEMBER PACKET," for information on IBA's Member Services.

## IBA Website Job Bank

IBA members can now post reoccurring job openings on the IBA website. Go to [www.indianabroadcasters.org](http://www.indianabroadcasters.org) and point "Job Bank" on the menu and then click on "Post a Position" when the form opens up complete the form, then at the bottom of the form page there is a box to check if you would like to make the posting reoccur. Please contact the IBA office if you have any questions regarding the website Job Bank. Call Gwen, 1-800-342-6276 x 104.



## CareerPage.Org

[www.careerpage.org](http://www.careerpage.org)  
(for "member login"  
contact the IBA)



1-800-342-6276 x 104 or 317-573-0119 x 104

## National Student Media Convention Career Fair

The National Student Media Convention is an annual convention. Three large student media organizations, College Media Advisors, Associated Collegiate Press and College student media (newspaper, magazine, television, radio and online) advisors and their students from across the nation gather to attend sessions and network with each other. Average attendance is 2,000 people.

WHERE: Galt House, Louisville, KY

WHEN: Saturday, October 30, 2010, 8:30 am to Noon

Cost: \$75.00 - Includes boxes to collect resumes, lunch for up to two recruiters on Saturday and a table for each recruiter to conduct interviews.

For Broadcasters To Register Contact: Candy Walton, 605-202-0573

## Welcome to CareerPage.org

brought to you by the National Alliance of State Broadcasters Associations.

The members of NASBA are the managers and chief executives of state broadcast trade associations throughout the U.S. and Puerto Rico. NASBA created this site to enable job-seekers to find jobs in the exciting field of broadcasting, and to allow our member radio and TV stations to post their job openings at a central location.

The broadcasters of the United States and Puerto Rico are equal opportunity employers.

