



## **NEW ABA Website Password!**

The username and password for the Alabama Broadcasters Association website has changed. Last year's username and password will only work for a few more days.

If you have renewed your membership, contact the ABA for the new combo. Otherwise, the new logins will be included in membership packages in the next few weeks.

Contact [tcurrier@al-ba.com](mailto:tcurrier@al-ba.com) for the new password.

February 17, 2009

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## **DTV Update**

The following TV stations are ceasing analog operations tonight:

WAAY Huntsville

WTTO/WDBB/WABM Birmingham

WCOV Montgomery

WBPG Mobile

All of Alabama Public TV

**Please Promote 2-1-1 phone service re DTV**

## Record Labels Hammering Alabama Congressmen and Senators

Senator Shelby's Chief of Staff indicated this week that the record labels are hammering them on the "performance tax." We can't let them gain any ground in Alabama!

Please contact Senators Shelby and Sessions to talk about this issue so they will be prepared when the bill is introduced in the Senate.\* We need to triple the contacts to Reps Aderholt and Davis. You can find all the contact info in the upper left corner of the ABA website at [www.al-ba.com](http://www.al-ba.com). **MailScanner has detected a possible fraud attempt from "albroadcasters.pmailus.com" claiming to be www.al-ba.com.**

Thanks to the following Congressmen for co-sponsoring HCR 49\* - Local Radio Freedom Act - supporting broadcasters against the RIAA (record labels) and their attempted "performance tax."

The 2-1-1 Connects Alabama service provided by United Way agencies across the state is taking calls regarding the DTV transition. We're asking all radio and TV stations to help us promote the number through the final transition date of June 12.

Callers can ask 2-1-1 operators for the following information:

General DTV FAQs; TV station phone numbers; TV station digital channel numbers; best converter box brands; antenna retailers and installers; and, for a contact at a volunteer group that will help with converter box installation.

There have already been 72 calls since we began promoting 2-1-1 last week. We expect calls to increase dramatically tomorrow. Here's a summary:

38% FAQs

24% Volunteer/Donations

15% Antenna Retail

14% Station Info

7% Converter box Retail

## NAB, SoundExchange Reach Agreement On Streaming Rates

WASHINGTON -- February 16, 2009: The NAB and SoundExchange have come to an agreement on Internet streaming rates for local radio stations that simulcast their programming online or create new Internet-only stations. The deal was made under the Webcaster Settlement Act of 2008 and covers all copyrighted, commercially released musical performances.

The new agreement keeps the per-performance rate structure but reduces the rates set by the Copyright Royalty Board for 2009 and 2010 by about 16 percent and establishes rates for 2011-2015. This year's rate is \$0.0015 per streamed recording, moving up to \$0.0025 in 2015. Additionally, the NAB said it has reached agreements with individual labels to waive some restrictions that apply to Internet programming, including allowing some artists to be played more often within a four-hour period.

Rep Bachus

Rep Griffith

Rep Rogers

Rep Bright

Rep Bonner

\* The bill will have a new number in the Senate when it is reintroduced soon. We'll keep you posted. HCR 49 is the number of the Local Radio Freedom Act in the House of Representatives. In the last Congress, it was known as HCR 244.

"Because of the explosive growth of music on the Internet, this is good news for everyone involved in music -- from artists to labels to broadcasters and to fans," said SoundExchange Exec. Director John Simson. "It provides radio stations more opportunity to grow their online businesses in a stable business environment. Furthermore, it gives artists and copyright holders the opportunity to have more of their music played while being fairly compensated in more places as radio services expand their offerings on the Internet."

NAB EVP Dennis Wharton said, "Today's announcement provides local radio stations with the ability to enhance their local service with an online component, boosting listeners' access to music, local news, and information. By ensuring the continued viability of Internet streaming for America's radio stations, today's agreement further strengthens the relationship between free, local radio and our 235 million weekly listeners."

## Reporter Shield bill introduced in the new Congress

Wednesday, Feb 11, Reps. Rick Boucher (VA-9), Mike Pence (IN-6), John Conyers

(MI-14) and Bob Goodlatte (VA-6), along with 35 of their House colleagues, introduced the "Free Flow of Information Act." This bill, which passed the House by a 398-21 margin last Congress, seeks to protect the public's right to information by setting federal standards for protecting journalists and the identities of their confidential sources. A similar measure will be introduced in the Senate in the near future.

NAB, along with a broad coalition of media companies and journalism organizations, will continue to work with both chambers of Congress as well as the Department of Justice to advance this legislation. President Obama was a cosponsor of federal shield legislation during his tenure in the United States Senate. We will continue to make you aware of further developments.

## Cumulus Changes in Montgomery

Bernie Barker is now the General Manager of the Cumulus cluster in Myrtle Beach. The new Manager of the Cumulus properties in Montgomery is Bill Jones.

Bill has been in the radio industry for over 30 years in various markets, including Mobile, Jacksonville, Memphis and Nashville, with the last 12 in Montgomery. In addition to managing

## CALLING ALL SALUKIS

Are there any Southern Illinois University-Carbondale graduates in Alabama TV or radio? If so and you plan to be at NAB2009, please email [dlyleiba@aol.com](mailto:dlyleiba@aol.com). There's going to be a reunion of alumni during the convention.

the cluster of Montgomery stations, he is also the Cumulus National Format Director and oversees 51 of the company's country stations nationwide.

## **We need your available inventory!**

The ABA "pays the bills" with money acquired for the PEP program. The more spots you air and the better time periods help us convince more clients to join PEP.

Sadly, the Alabama Coal Association recently pulled out of the program because they were disappointed in airtimes.

Please make sure your staff understands the importance of the PEP program. It's your station's commitment back to the Association for the free or low cost services provided daily and the lobbying efforts in Montgomery and Washington.

Also, when a client is no longer in the PEP program it's important to pull their

## **Small Business Health Premium Deduction**

Effective in January of this year, a new act provides increased income tax deductions for health insurance premiums paid by qualifying small businesses and their employees. A qualifying employee may deduct, as an adjustment to income on the employee's Alabama individual income tax return, an amount equal to 50% of the amount paid during the tax year as health insurance premiums. As well, a qualifying employer may deduct as a business expense on the Alabama income tax return, to compute Alabama taxable income, an amount equal to 50% of the amount paid during the tax year as health insurance premiums on behalf of a qualifying employee.

## **Battling DirectTV in Huntsville and Montgomery**

Huntsville and Montgomery television stations are not carried on Direct TV. This is, as you can imagine, a huge problem. The two markets are among 31 DMAs in the entire country facing this issue. The satellite companies refuse to follow through on promises to add the remaining local channels so now, our only option is to legislate.

Rep Stupak of Michigan has introduced HR 927, the Satellite Consumers Right to Local Channels Act to require the satellite companies to carry local stations.

Here's a link to his news release:

[http://www.house.gov/apps/list/speech/mi01\\_stupak/morenews/20090210satellite.html](http://www.house.gov/apps/list/speech/mi01_stupak/morenews/20090210satellite.html).

**The Board of the Alabama Broadcasters Association voted Friday to support HR 927.**

**We've asked all Alabama TV stations to contact our DC delegation. Please go to our website at <http://www.al-ba.com/> and look in the upper left corner for your Congressman's contact information. Reach out to them by phone and email to let them know how important this is to Alabama TV viewers. Talk about the number of calls the affected stations receive on this issue each year. If applicable in your area, talk about the many homes who can't get good over the air reception and don't have cable as**

spots. It's hard to convince them to pay us again if they see/hear their spots airing for free.

Please contact Sharon Tinsley at [stinsley@al-ba.com](mailto:stinsley@al-ba.com) if you have any questions. Contact Cindi McGee at [cmcgee@al-ba.com](mailto:cmcgee@al-ba.com) if you need spots.

Current PEP clients: Army National Guard, Alabama PALS (People Against A Littered State) and the Alabama State Bar.

## Thanks to Radio for DTV spots!

Many radio stations across the state volunteered to run spots over the weekend and through Wednesday to make sure audiences realize that some TV stations would still be switching this evening though Congress set a new national date. Thank you so much!

an option – they have to turn to satellite. Talk about the importance of viewer's having access to news and weather from their local stations.

We have an uphill battle. Because we're only talking about 31 TV markets it's going to be hard to get a lot of the folks who aren't impacted by this to help. Without every TV station in the state weighing in, we won't be heard.

Please take five minutes to write an email to your Congressman's office.

## JUDGE DECLARES COMMERCIAL TOOTH WHITENING ILLEGAL - Are these people advertising with you?

(from the Alabama Dental Association) In an order issued on February 5, 2009, Montgomery County Circuit Court Judge Tracey McCooley ruled that teeth whitening procedures being performed in beauty parlors, free-standing kiosks and other commercial settings constituted the practice of dentistry. Judge McCooley declared that "...the court finds that the processes by which the plaintiffs provide teeth whitening services constitute the performance of a dental operation and not merely the sale of a product. Simply put, the fact that citizens of this state may purchase and apply tooth whitening products approved by the FDA for 'over the counter' sale in their homes does not permit plaintiffs or others not properly licensed to advertise and perform dental services or operations which affect the public health, safety and welfare."

Judge McCooley's ruling was in response to a lawsuit filed by White Smile USA, Inc. and one of that company's business partners D'Markos, L.L.C. As of result of Judge McCooley's ruling, the Board of Dental Examiners of Alabama will inform all commercial tooth whitening businesses in Alabama that they are in violation of Alabama law and their failure to cease and desist will subject them to appropriate action by the Board.

Judge McCooley noted that Alabama law provides that an individual is "... deemed to be practicing dentistry who performs or attempts or professes to perform any dental operation or dental service of any kind, gratuitously or for (compensation) ...." Judge McCooley's ruling further stated "...the teeth whitening services provided and activities performed by the (plaintiffs)...fall within the scope of the practice of dentistry...." During oral arguments, the plaintiff's attorney asserted that the employees of White Smile USA did nothing more than facilitate

their customers in using the company's products to whiten their own teeth. Judge McCooley said printed exhibits presented by the Dental Board's counsel, James Ward, refuted the plaintiff's claim of passive involvement with their customers. The Judge stated; "...the Court finds it significant that the Plaintiff White Smile USA, INC. has adopted and published to its business partners, including Plaintiff D'Markos, L.L.C., 'Application Instructions' for their cosmetic teeth whitening system that include a process of some twenty-seven different steps, many of which call for active participation by the technicians identified in White Smile USA's own literature as 'cosmetic teeth whitening specialists.' The

'Application Instructions' are part of a White Smile USA's twelve page 'Training Manual,' the mere existence of which the Court believes underscores the significant differences between the processes by which the Plaintiffs provide teeth whitening services and any teeth whitening products approved by the FDA for 'over the counter' sale."

Judge McCooley also cited White Smile for possibly compromising the health and safety of its

customers in performing teeth whitening. "The Court notes the numerous proclamations regarding the safety of the product and processes made in White Smile USA's literature... It is the Court's opinion that White Smile USA's attempt to emphasize safety accentuates what is clearly an important aspect of this case; the health, safety and welfare of the citizenry of this state.

The Court finds that the processes by which the Plaintiffs provide teeth whitening services involve a number of health and safety issues, including but not limited to risk of cross-contamination and the spread of disease and/or infection. Therefore, it is in the best interest of the health, safety and welfare of the public that such activities be subject to regulation by the Board as the practice of dentistry. The Court also notes that while White Smiles USA's consent form makes reference to potential risks, it does not identify all instances where teeth whitening is contraindicated. The Court finds that a properly trained and licensed dentist will better serve the individual patient and the public at-large in this regard."

At the conclusion of the February 2, 2009, hearing, the plaintiffs requested that Judge McCooley stay her finding pending an appeal to the Alabama Supreme Court. That motion was denied by Judge McCooley.

For further information regarding this release, contact Mr. Jim Ward, legal counsel for the Board of Dental Examiners of Alabama at (205) 871-5404 or email [jward@wardwilsonlaw.com](mailto:jward@wardwilsonlaw.com).

**Renew your ABA Membership now!**

**You can do so online or call the**

**ABA office at 800-211-5189.**

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