

**THE VERMONT ASSOCIATION OF
BROADCASTERS**

500A DALTON DRIVE
COLCHESTER, VT 05446
(802) 655-5764
VAB@VAB.ORG
WWW.VAB.ORG

The VAB Voice



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SUPER BOWL SUPER-SOLD
The NFL's regular season is just getting underway, but Fox reports it has nearly sold out Super Bowl XLV, to be broadcast February 6, 2011. Fox is getting about \$3 million per 30-second spot, and reportedly has only a few fourth-quarter avails left.



Overall, network sales for football spots is running well ahead of last year's recession-plagued season. NBC, CBS and ESPN all report they are more than 90 percent sold out for their football telecasts this season.

**THE EMMY AWARDS:
RATINGS FLAT, CONTRACT UP**
Nearly 13.5 million people tuned in to the Aug. 30 Emmy Awards telecast on NBC, AMC's "Mad Men" took home the trophy for best new drama, while ABC's "Modern Family" won for best comedy.



Although the ratings were up slightly from 2009, the awards show has seen its viewership drop by about a third since 2002. That was the year the big four TV networks inked an eight-year deal to broadcast the show, an investment of \$52 million. The networks are looking to pay a much smaller fee this time around. Some cable networks, which won the lion's share of awards this year, may also be included in the broadcast rotation, industry sources say.

DEAL OR NO DEAL ON PERFORMANCE TAX?

You may have heard that a deal may be imminent in the ongoing battle over imposition of a "performance tax" on radio. Given the chance by Congress to directly negotiate a deal with the RIAA, the NAB believes the negotiated deal would be preferable to the harsh terms called for in the current House and Senate bills.

NAB President Gordon Smith has said the broadcast industry could narrowly prevail this year, but that the issue would come back again, year after year.

The deal being negotiated presents some genuine advantages to local stations. Whatever may be agreed to will still need Congressional approval, but that will probably be a formality.

The NAB's Smith recently sent us some of the proposed details:

"To date, the negotiation process has yielded the following potential terms. These terms have not been agreed to, but are under discussion by the industry.

Terms include:

- A tiered rate of 1 percent or less for all net revenue (roughly \$100 million for the industry) which is permanent and can not be adjusted without a statutory change (passing a new law) or by mutual agreement.
- Permanent removal of CRB jurisdiction for terrestrial and streaming rates.



NAB President Gordon Smith

"It is because of your grassroots advocacy and our position of strength that we have been able to garner such significant concessions..."

- A streaming rate reduction.
Inclusion of an activated radio chip on all future mobile phones.

- Resolution of AFTRA issues (agency commercial replacement on webcasts).

More specifically, the tiered rate of 1 percent or less for all net revenue would be as follows:

Commercial and non-profit stations with revenue less than \$50,000 annually would pay the lesser of \$100 or 1% of revenue annually.

Commercial and non-profit stations with revenue between \$50,000 and \$100,000 annually would pay \$500 annually.

Non-profit stations with revenue

more than \$100,000 annually would pay \$1,000 annually.

Commercial stations with revenue between \$100,000 and \$500,000 annually would pay the lesser of \$2,500 or 1% of revenue annually.

Commercial stations with revenue between \$500,000 and \$1,250,000 annually would pay \$5,000 annually.

Commercial stations with revenue more than \$1,250,000 annually would pay 1% of revenue annually.

It is important to note that stations with incidental music use – news, talk and sports radio – would not pay for music. Additionally, religious services – not religious stations – would be exempt from music fees.

And again, the above referenced rates would be permanently fixed by statute and can only be changed by act of Congress or joint agreement between both parties.

It is because of your grassroots advocacy and our position of strength that we have been able to garner such significant concessions from the musicFIRST coalition. But it is important to reiterate, there is no agreement on the table and these terms have not been agreed to, but are being shared with you for your feedback. To submit your comments, please visit www.nab.org/radiofeedback. We will respond to your message as soon as possible."



VAB AWARD NOMINATIONS ARE DUE BY SEPTEMBER 30!

Don't miss the opportunity to suggest a nominee for one of the VAB's annual awards:

The VAB Hall of Fame

Honorees shall have demonstrated excellence in their field over a substantial career in radio and/or television.

Broadcaster of the Year

The purpose of the award is to recognize one broadcaster in a given year for extraordinary personal and professional accomplishment in that particular year.

Distinguished Service Award

Honorees shall have made unique contributions to the industry and to their specific area of expertise. This award is not limited to on-air professionals.

Alan Noyes Community Service Award

This award recognizes volunteerism to the community above and beyond the standard concept of community service for a VAB member station or individual. You may nominate an individual or a station.

Make your nominations on-line at

www.vab.org

Or email your nomination directly to VAB Executive Director Jim Condon at vab@vab.org.

The VAB Board of Directors will announce the award winners in advance of our VAB Hall of Fame Dinner. Details of the dinner will be coming to you soon!

David Oxenford

FCC CRACKS DOWN ON STATION CONESTS

In another sign of just how closely the FCC monitors contests conducted by broadcast stations, the FCC last month issued a Notice of Apparent Liability (a notice of a fine of \$4000) to Nassau Broadcasting for being imprecise in the wording of the contest rules for a contest to be held at one of its stations.

In the rules of the contest, the station stated that entries would be accepted "through June 13, 2008." In fact, the contest was conducted on the evening of June 12, and the station cut off entries to the contest on June 12. When a listener went to enter the contest on June 13, and was told that she could not enter as the prize had already been awarded, the listener filed a complaint at the FCC. The FCC, reading the language "through June 13" to mean that listeners could enter the contest up to and including that day, fined the licensee \$4000 for misleading its listeners as to the proper rules for the contest it conducted.

This is another indication of just how seriously the FCC's Enforcement Bureau is taking the enforcement of Section 73.1216 of the Commission's rules, which requires licensees "to fully and accurately disclose the material terms" of any contests that it conducts, and to "conduct the contest substantially as announced or advertised."

In this case, it seems likely that the licensee was simply imprecise in its wording - stating that entries would be taken "through June 13" when it meant "before June 13." This would have seemed evident from the fact that the rules said the winner would be announced on the morning show on June 13. Clearly, if the winner was going to be announced on the morning of June 13, it wouldn't do much good entering after that time. But the ambiguity in the rules is construed by the FCC against the party who prepared the rules - as is evident from the finding in this case that these rules did not fully and accurately describe the rules of the contest. So what should a broadcaster do to make sure that this kind of ambiguity does not hit them in one of their contests?

Here are a couple of ideas:

1. Carefully write the rules for the contest to state exactly what one needs to do to participate in the contest and to win the prize being given away. Make sure to disclose any material benefits that will enhance anyone's chances to win a contest (like being a member of a loyal listener's club, who is told when a drawing will be held).
2. Have several people read the rules as written to make sure that there are no ambiguities like the one that hit the licensee here.
3. Carefully conduct the contest in accordance with the rules. Don't write the rules and forget them - as that can lead to trouble as is evident in this case, and has been the cause of other fines in past cases.
4. Make sure the contest rules are properly publicized. As we have written before, the FCC requires that stations broadcast the material rules over-the-air enough that the station is confident that the average listener likely to participate in the contest will have had the opportunity to hear them.

Given the emphasis that the FCC has put on contests in the past few years, broadcasters need to conduct their contests carefully - as it is clear that the Commission is watching!

(David Oxenford is a partner in the law firm of Davis Wright Tremaine).