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The VAB Voice

Vermont Association of Broadcasters

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NSSA AWARD FOR COMMO

VAB Hall of Famer George Commo is now in double digits when it comes to the annual Vermont Sportscaster of the Year award. Commo picked up his tenth Sportscaster of the Year award from the National Sportscasters and Sportswriters Association at their June 11 banquet in Salisbury, North Carolina. Writer John Feinstein and NBC's Bob Costas, pictured above with George, were named to the NSSA Hall of Fame.

SPEAKING OF SPORTS…

WCAX-TV has announced it has formed an on-air alliance with NESN, the regional cable channel that broadcasts Boston Red Sox baseball. Red Sox announcers Don Orsillo, Jerry Remy (below with WCAX Sports Director Mike McCune) and Jenny Dell will provide live updates

from Fenway during the Channel 3 News at 6 p.m. Meanwhile, McCune will appear on the NESN pre-game show and WCAX meteorologist Sharon Meyer will provide regional weather updates on NESN during the game. NESN has similar alliances with WBZ in Boston and WJAR in Providence.

ABC-22/FOX-44 METEOROLOGIST WINS MISS VERMONT CROWN

The weekend meteorologist for ABC-22 and FOX-44 will represent Vermont next year at the Miss America pageant in Las Vegas. Chelsea Ingram won the Miss Vermont 2012 title June 30 in South Burlington.

A native of Cary, North Carolina, Ingram received a degree in meteorology from North Carolina State University and did post-graduate work at Lyndon State. She represented Caledonia County at the pageant. .

Ingram, who is also a trained opera singer, would become the first Vermont resident to win the Miss America crown if victorious next year in Las Vegas. Good luck, Chelsea!

Chelsea Ingram

CHANGES ON THE VAB BOARD

Eric Michaels

Eric Michaels of Radio Vermont, who had been serving as the VAB's Vice-President, has been called on to take the helm as VAB President. He'll fill the vacancy created by the health-related resignation of former President Judy Leech of Pine Tree Broadcasting.

In addition, the VAB Board appointed former VAB President Candis Leopold of Hall Communications to fill out Michaels' term as Vice President. The other current members of the board are Secretary Michael Waggoner, Treasurer Dennis Snyder, Member-at-Large Alex Martin and immediate Past President Ken Kasz.

New board elections will be help next May. If you're interested in serving, please contact any board member or Executive Director Jim Condon.

Thank you, Judy!

We all thank Judy Leech for her great service to the VAB and dedication to helping all Vermont broadcasters. We wish her a full and speedy recovery. Thank you, Judy!

IT'S TIME TO SUBMIT YOUR HALL OF FAME NOMINATIONS

Do you know someone, past or present, who is deserving of special recognition from the VAB? It's easy to get involved!

Simply go to our homepage at **www.vab.org** to make your nominations for the VAB Hall of Fame, Broadcaster of the Year, Distinguished Service Awards and our Community Service Awards.

The deadline for nominations is September 15, 2012. The winners will be announced in advance of the VAB Hall of Fame banquet, which will be held Saturday, December 1 at the Burlington Hilton Hotel. We look forward to receiving your nominations and we hope to see you at the banquet!

COURT KICKS THE CAN DOWN THE ROAD

By Scott R. Flick

In a unanimous decision, the U.S. Supreme Court ruled June 21 that it would like to have as little to do with the FCC's broadcast indecency policy as possible. Rather than the momentous ruling on the constitutional future of broadcast indecency enforcement that advocates on all sides of the issue had hoped for, the mighty sound of the Court punting on the constitutional issue reverberated throughout Washington.

Faced with a pair of Second Circuit decisions finding the FCC's indecency policy to be unconstitutionally vague and therefore chilling to broadcast speech, the Court ruled in an 8-0 vote that the FCC had failed to give adequate notice to Fox and ABC at the time of their asserted indecent broadcasts that the FCC was going to start finding "fleeting indecencies" (verbal or visual) actionable. The Court concluded that it had no need to go further and delve into the constitutionality of the FCC's indecency enforcement.

On a pragmatic level, the Court's ruling seems to indicate that the appropriate "notice" on fleeting indecencies didn't occur until the FCC announced its decision to begin prosecuting such indecencies in a 2004 case involving NBC and the Golden Globes Awards. As a result, broadcast stations facing indecency complaints should see those complaints dismissed by the FCC as long as the program at issue aired before the 2004 Golden Globes decision. Unfortunately, stations facing complaints for programs aired after that 2004 decision may find that the Court ruling is irrelevant to them.

While the Supreme Court will usually avoid making a constitutional ruling if it can decide a case on other grounds, the Court's hesitance to step into this fray is striking. Rather than eliminating the chilling effect on First Amendment speech by providing clarity as to what the FCC can constitutionally demand of broadcasters, the Court actually increased the chilling effect. Airing anything that a single member of the public might allege is indecent can lead to:

1. a prolonged indecency investigation by the FCC;
2. withholding of FCC action on a station's license renewal application while the investigation proceeds;
3. withholding of FCC action on any application to sell or transfer that station; and
4. large fines, short-term renewals, and other FCC sanctions.

On top of all that, the Court has now undeniably added another contributor to the chilling effect:

5. years of expensive litigation to demonstrate that the FCC's actions in sanctioning a station for indecency were administratively or constitutionally improper.

With all these chilling factors, only a foolhardy broadcaster would air content that could subject it to this process, even if it knew from the beginning that it would ultimately win in court. That is the very definition of an impermissible chilling effect upon First Amendment speech.

Unfortunately, by putting that decision off until another day, the Court leaves the waters of FCC indecency enforcement as murky (and chilling) as ever. Given that the FCC now has a backlog of 1.5 million indecency complaints involving 9700 programs--a backlog that was left pending while the FCC awaited guidance from the Court--the Court's unwillingness in the decision to engage on the real issue before it is bad for the FCC, bad for broadcasters, and bad for viewers and listeners.

- Scott Flick is an attorney with Pillsbury Winthrop Shaw Pittman LLP

CAPITOL MATTERS

FILE RULES NOT A PRA VIOLATION?

The federal Office of Management and Budget (OMB) ruled June 22 that the FCC's strict new requirements regarding the online filing of TV station political files is not a violation of the Paperwork Reduction Act (PRA).

The four network-affiliated stations in each of the Top 50 markets will, at first, be the only entities required to follow the new rules. Broadcast groups contend the new rules will be more burdensome, expensive and duplicative than the FCC has estimated.

Broadcasters also object to the online posting of political spot rates, instead offering to aggregate the spending information by candidate.

Two other appeals of the FCC order are pending, one in U.S. District Court and one with the agency itself.

SUPCO RULING SEEN AS BENEFIT TO WIRELESS

In advance of likely rulemaking this fall regarding the auction of broadcast spectrum to wireless companies, the U.S. Supreme Court announced June 22 it would not take up the issue of broadcast ownership laws.

Media General, Tribune Corp and the NAB had petitioned the court to overturn a lower court ruling that generally upheld current FCC rules. If the court had taken the case and the lower court verdict overturned, it's likely the FCC would have been ordered to scale back its regulations, including rules about content that have been in place, more or less, since 1969.

Media observers believe such a scenario would have increased the value of broadcast properties, meaning those companies would be less likely to take part in the "voluntary" spectrum auction.

TEXAS AM HIT WITH BIG PUBLIC FILE FINES

A Beaumont, Texas area AM station that failed to file quarterly issues/programs lists and other documents owes a whopping $65,000 in fines. The FCC first fined KBPO-AM in 2010 for failing to maintain its public file. A 2011 inspection revealed the problem had not been corrected. Not only were the issues files missing, but there was no copy of the FCC station authorization, the service contour map, the most recent ownership report or the "Public and Broadcasting" manual. Station owners said the situation was caused "by an oversight."

Quarterly Issues Programs/Lists must be prepared and placed in your station's Public Inspection File on or before July 10, 2012.