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#### THANK YOU RADIO!

Three big winners at last month's American Music Awards may be in hot water with their foreign-owned record labels. As the record labels seek to diminish the value of radio in an effort to win support for a new radio performance tax, three recording stars took the time to thank radio stations at the awards show.

Artist of the Year Taylor Swift, Male Country Singer of the Year Keith Urban and Breakthrough Artist of the Year Gloriana, a country music band, all said country radio stations were responsible for their popularity. RBR.Com says most record execs agree, but are afraid to say so. Once in a while, the website notes, an exec lets the truth slip out, such as earlier this year when Clive Davis said, "Radio is still the leading force of determining what songs and artists break through."

#### OPRAH EXIT TO AID ELLEN?

Now that Oprah Winfrey has announced plans to retire in 2011, industry execs wonder if Ellen DeGeneres may be the one to scoop up the most affiliates and ratings. Oprah has been involved in launching other shows, including Rachel Ray, Dr. Oz and Dr. Phil, currently the #2 syndicated show. But the New York Times suggests Ellen will be a more likely venue for big-time celebrities that now go on Oprah's show.

The Times says Oprah and DeGeneres share the cover of "O" this month and suggests Oprah may be anointing Ellen as her successor. The Times quoted Ellen as saying Oprah, "will always be the queen of daytime television," adding, "and she also said she is leaving me all of her money."

# The VAB Voice



December, 2009

## HUNDREDS GATHER TO MOURN LOSS OF TED TEFFNER

There weren't enough seats to accommodate the overflow crowd of mourners who attended a memorial service in Stowe late last month for former VAB President and longtime WCAX-TV engineer Ted Teffner.

Teffner, 69, passed away suddenly at his home in Bradenton, Florida on Nov. 12.

Friends and family gathered at the Stowe Community Church to honor the man who had been a fixture on the Vermont broadcasting scene for decades.

Teffner began working for WCAX in 1959, eventually serving as Chief Engineer and Vice President. He is credited with bringing Vermont into the digital television age.

Meticulously planning and constructing the infrastructure needed to complete the switch to digital was years in the making, and as WCAX President Peter Martin noted, will serve as Ted's crowning achievement.

Martin said if you look for a monument to Ted, all you have to do is look around Stowe, "a town which he loved and served with such distinction for so many years. If we look up at the



mountain, Mount Mansfield, which lay at the heart of his professional life for 50 years, if we seek Ted Teffner's monument, look around you," he said.

Teffner was also a longtime member of the Stowe selectboard and the Stowe Electric Commission.



Ted pictured with NAB State Association Outreach Director Robin Oxford at the VAB 2009 Convention.

Fellow selectboard member and longtime friend Dick Marron said Ted's determination and attention to detail was responsible for the recent 115kv power line upgrade for Stowe, an upgrade which will benefit town residents for decades to come.

Ted's son, Chris, recalled how he would complain when his dad made him stack the winter wood just so. Later, Chris said, he came to understand his father's guiding belief that something worth doing was worth doing right.

For the VAB, Teffner served two consecutive two-year terms as President. He also served as the longtime VAB Legislative Liaison, and went to Capitol Hill many times to meet with the Vermont delegation and persuade them to support our positions.

Ted is survived by his wife, Betty, sons Chris and Jake, a brother, David, among many other relatives.

Contributions in Ted's memory may be made to the North Country Animal League, 3524 Laporte Road, Morrisville, VT 05661, or to the Stowe Community Church Organ Fund, PO Box 991, Stowe, VT, 05672.



## LETTERS FROM ASCAP, BMI; WHAT'S A BROADCASTER TO DO?

By David Oxenford

Radio broadcasters have been receiving letters about music royalties - from ASCAP, BMI and the Radio Music Licensing Committee (RMLC). The ASCAP and BMI letters are asking the broadcaster to sign a letter committing themselves to some royalty obligation for 2010. They pose three options to the broadcaster - sign up to pay royalties for 2010, join the RMLC negotiating group, or notify ASCAP and BMI that they will be negotiating their own royalties. The RMLC letter suggests that the broadcaster join in their negotiating group to help to establish a new royalty structure with these entities. What does it all mean, and what should a broadcaster do?

These letters are all triggered because the rates for royalties that commercial radio broadcasters pay to ASCAP and BMI expire at the end of 2009. RMLC represents most radio broadcasters in their dealings with the performing rights organizations (or "PROs"). If there is no new deal covering these royalties in place by the end of the year, broadcasters will need to determine how to pay royalties when the current agreements expire. As the old agreements are about to expire, and no new agreements are in place, the flurry of letters has followed to put broadcasters on notice of the current situation. Of course, none of these letters is entirely clear in spelling out all the issues involved.

So what do broadcasters need to know? First, under the antitrust consent decrees which govern the operation of ASCAP and BMI, once an entity that wants to use music notifies the PRO that it is ready to negotiate a deal, it can use the music without infringement, though the royalties ultimately adopted will apply retroactively. The process for setting a royalty starts with a negotiation period. If no deal can be reached, the parties go to rate court - usually a long, expensive hearing before a US District Court judge, which will set rates retroactively to the first use of the music.

After receiving the letters from ASCAP and BMI, some broadcasters have thought that they might negotiate their own deals. Theoretically, that is possible. However, most radio operators won't be able to negotiate a separate royalty, as ASCAP and BMI are forbidden from negotiating a royalty that treats similar music users in a different manner.

In the BMI letter, they offer a 4% discount off current rates for stations who do not sign up to be included in the RMLC negotiating group. That may be attractive to some radio operators. Note, however, that the discount will be subject to retroactive adjustment should the RMLC end up with different rates. So it may be that this deal would afford only a temporary discount.

Why was the proposed discount offered if it is only temporary? Perhaps the deal is intended to be used, if many stations select it, as evidence before the District Court as to what an interim rate should be if there is no voluntary agreement between the parties. So, while RMLC may argue that, because of the change in the health of the radio industry the current rate structure should be abandoned even for the interim period, the PROs might be able to use the agreement of many broadcasters to the interim deals they have offered as evidence of the continuing reasonableness of the current rates as an interim rate.

And then there is the option of signing up with RMLC to be considered part of their negotiating group. Practically speaking, most commercial broadcasters will end up being bound by the outcome of the RMLC actions. Some broadcasters have been concerned about signing on to the RMLC group, worrying that RMLC will assess them a fee. Many broadcasters remember that there is an RMLC assessment as part of the current agreements. But that fee was agreed to by the Court and assessed on all stations that were subject to the settlement (essentially all commercial stations), so it was not a "voluntary" fee. Practically speaking, the RMLC is every broadcaster's agent, as virtually every commercial station will be bound by the deal that they either negotiate or litigate.

These are complex issues that every station should review with their attorney. But broadcasters should consider all of the implications of their actions, not just on themselves, but also on the industry as a whole.

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