

THE VERMONT ASSOCIATION OF BROADCASTERS

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The VAB Voice



WCAX wins DuPont Award

A three-part series about illegal immigrants working on Vermont farms earned a prestigious DuPont Columbia Journalism Award for WCAX reporter Kristin Carlson last month.



WCAX was one of only six stations nationwide to be so honored. The series was photographed by Joe Carroll and produced by Kristin Kelly.

The DuPont committee said the reports "neither advocate nor condemn the hiring practice but instead inform the audience about what's going on in the barn next door."

AD REVENUES TO GROW?

Barclays Capital last week announced its revenue forecast for the broadcasting industry. If correct, things are certainly looking up!

The financial firm said it expects overall spending on advertising to increase 3.5% to 167.6 billion dollars. Local TV advertising is expected to increase by 5% in 2010, while radio spending will inch up by 2.2% this year.

Nationally, ad spending is expected to be spurred on by the Winter Olympic Games, the 2010 World Cup and by an increase in non-candidate campaign spending.

February, 2010

VAB Commercial Award Entries Due Feb 28

Radio, TV stations and advertising agencies have until Feb. 28 to enter their best work in the 2010 VAB Commercial of the Year Awards.

The winners will be announced during the luncheon at the May 27, 2010 VAB Convention at the Capitol Plaza Hotel in Montpelier.

Stations and agencies may submit up to nine total entries. Winners will be

selected for Most Moving, Best Produced and Most Creative awards in the categories of Commercials, PSA's, Promos. A new category, Spec Ads, will honor great ads that never aired.

Except for the Spec Ads, all spots, promos and PSA's must have aired between Feb. 15, 2009 and Feb. 15, 2010. Stations must be members in good standing of the VAB

and any ad agencies taking part must be VAB associate members.

All entries will be judged by a panel of students and faculty of Champlain College.

Rules and entry forms will be mailed to all stations and agencies and are also available on our website, www.vab.org. You can also find a list of last year's winners on our website. Good luck to all!

Former FCC Commissioner James H. Quello, 1914 - 2010

A longtime friend of free over-the-air broadcasting passed away last month. Former FCC Commissioner and Acting Chairman Jim Quello passed away Jan. 24 at his home in Alexandria, Virginia. He was 95.

His 22-year tenure at the FCC was marked by revolutionary changes in the delivery and regulation of TV programming, cable services and wireless telecommunications.

Quello was born in Calumet, Michigan and graduated from Michigan State University. In World War II, Quello survived six amphibious landings and saw action in North Africa, Italy, France and Germany. He rose to the rank of Lt. Colonel by the end of the war.

Back home in Michigan after the war, Quello became publicity director for WXYZ radio in Detroit and later served for many



James H. Quello

years as general manager of Detroit's WJR radio. He was appointed to the FCC in 1974 by Richard Nixon, despite opposition from former Commissioner Nicholas Johnson, consumer advocate Ralph Nader and a variety of public interest groups.

He oversaw many key changes in broadcasting, including cable rate regulation, media ownership deregulation, the first spectrum auctions and approval for wireless phone service.

He was also an opponent of an increase in violence and vulgar language in broadcasting. After retirement, he told the Washington Post, "I wouldn't be surprised if a big bolt of lightning came out of the sky and hit Howard Stern right in the crotch," a reference to the shock jock who was often at odds with the FCC.

Quello also opposed forcing TV stations to present a minimum of three hours a week of educational programming for children. He eventually gave in on the issue under pressure from Congress and others. He served at the FCC until 1996.

In retirement, he wrote an autobiography entitled, "My Wars: Surviving WWII and the FCC."

He was predeceased by his wife, Mary, and is survived by two sons, James and Richard Quello. - Jim Condon

David Oxenford

Be Aware of Legal Risks from Corporate Campaign Cash

The Supreme Court Decision in Citizens United v. Federal Election Commission has been mostly analyzed by broadcast trade publications as a good thing - creating one more class of potential buyers for broadcaster's advertising time. What has not been addressed are the potential legal issues that this "third party" money may pose for broadcasters during the course of political campaigns.

First, the need for broadcasters to vet the truth of allegations made in political ads sponsored by non-candidate advertisers. The political broadcasting rules enforced by the FCC allow broadcasters to run ads sponsored by the candidates themselves without fear of any liability for the claims made in those ads. In fact, the Communications Act forbids a station from censoring a candidate ad. This is not so for ads run by third parties - like PACs, Right to Life groups, labor unions, unincorporated associations like MoveOn.org and, after the Citizens United case, corporations.

Stations are not required to accept third party ads and, even where these ads address a candidate, the station has full rights to accept or reject the ads based on the ad's content. However, because the station can choose whether or not to run the ad, the station can also be held liable for the content of those ads. While the standard for liability under the rules of defamation are very high for public figures such as a political candidate, there still can be liability if the station runs an ad with "malice", meaning they either know the content of the ad is false, or run it with reckless disregard of the truth of the claims made.

The other potential issue that this decision may bring to the fore is the status of the Zapple Doctrine. More than 30 years ago, the FCC adopted the Zapple Doctrine, or "quasi-equal opportunities" as an outgrowth of the Fairness Doctrine. The Zapple case held that where supporters of a candidate are allowed to buy time on a station, supporters of the opposing candidate should also be allowed to buy roughly equivalent amounts of time. While the remainder of the Fairness Doctrine has been declared by the FCC or by the Courts to be unconstitutional over the last 25 years, Zapple has never been officially overturned. With an influx of corporate money into political campaigns, Zapple issues are more likely to find their way to the FCC in coming elections.

Finally, the Citizens United case did not upset the record-keeping and disclosure requirements of the Bipartisan Campaign Reform Act ("BCRA"). BCRA imposed many such obligations on broadcasters. Thus, the sale of time to corporate groups, just like the sale of time to any other third-party group, requires a full public file disclosure when such purchases are made to address a Federal issue or election. Essentially, all the same information about the purchase that would be kept for a candidate buy must be kept for a third-party buy - including the class of spots purchased, the schedule run, the price paid, and the identity of the purchaser. Even advertising buys dealing with state and local elections require an identification of the buyer and its principal officers or directors.

Thus, while more money may flow into broadcast stations as a result of the Citizens United decision, that money may come with some additional headaches for broadcasters.



CAPITOL MATTERS

VAB Files Comments on National Broadband Plan

On Feb. 17, the FCC will present its national broadband plan to Congress, and broadcasters will be watching closely to see what the plan includes.

Spectrum, according to FCC Chair Julius Genachowski, is "oxygen" to broadband wireless providers. But will the oxygen be taken from over-the-air broadcasters, thus creating a vacuum?

CTIA—The Wireless Association (which includes Sprint, AT&T and Nextel) say they need another 800 MHz to meet future needs.



Broadcasters recently sacrificed 100 MHz of spectrum in the switch to digital TV, and the FCC says they must share the 300 MHz they have left with unlicensed mobile devices. These devices will be allowed to harness the "white spaces" between channels, although interference concerns remain.

Instead of claiming more of the broadcasting spectrum, some have urged the FCC to look elsewhere. David Donovan of the pro-broadcasting Association for Maximum Service Television notes spectrum in the 2 GHz band hasn't been touched in ten years, and suggests it would be a more appropriate place for the wireless broadband companies.

Genachowski says spectrum needs for wireless broadband will increase 30-fold over the coming years and the FCC needs to prepare now. CTIA has suggested moving over-the-air broadcasters to low-power distributed transmission system (DTS) transmitters.

The VAB joined most other state broadcasting associations last week in filing comments about the CTIA proposal. The CTIA is completely impractical. It lacks any technical data support. Implementation, if it was possible, would cost billions of dollars and lead to major interference and coverage area problems.

We support further study of our available spectrum; However, our industry needs what little spectrum we have left to make room for own expansion plans, including mobile point-to-multipoint HD broadcasting. We'll keep you posted! - Jim Condon