

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.1216 of the) MB Docket No. 14-226
Commission's Rules Related to Broadcast)
Licensee-Conducted Contests)
)

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TABLE OF CONTENTS

Executive Summary i

I. Introduction and Summary 1

II. The Benefits Associated with Modernizing the Contest Rule Outweigh any Potential Costs..... 2

III. Licensees Should be Provided Flexibility Regarding Contest Disclosure Format on Websites Because Contests Vary Dramatically and Licensees are in the Best Position to Determine the Format that Best Conveys Contest Information to their Audiences 3

IV. The FCC Should Provide Broadcasters with the Flexibility on How to Direct their Audiences to a Website 4

V. Licensees Should Only be Required to Maintain Contest Information on its Website through the Conclusion of the Contest..... 5

VI. The FCC Should Not Refine the Definition of “Material” and Should Only Require Licensees to Post Material Terms on a Website Conveying Contest Information 6

VII. The FCC Should Provide Licensees with Discretion in How to Broadcast Contest Website Information because a Licensee is in the Best Position to Determine how to Convey this Information in the Most User-Friendly Way Possible 7

VIII. Licensees Should Announce Contest Website Information at an Average of Three Times Per Day During a Contest to Ensure an Effective Way to Convey this Information to Consumers 8

IX. The FCC Should Require Licensees that Post Material Terms on a Website to Announce any Material Changes within 24 Business Hours of When the Change Occurs Until Entry to the Contest Closes at an Average of Three Times Per Day..... 11

X. The FCC Should Not Change the Current Contest Rule with Respect to Broadcasting Material Terms because the Rule is Well-Established and the Purpose of Amending the Rule is to Give Licensees an Alternate Option with Complying with the Contest Rule and Not Creating Additional Regulatory Obligations 12

IX. Conclusion 13

EXECUTIVE SUMMARY

Entercom Communications Corp. (“Entercom”) filed a Petition for Rulemaking (“Petition”) urging that the Federal Communications Commission (“FCC”) amend 47 C.F.R. § 73.1216, which governs licensee-conducted contests (the “Contest Rule”). In its Petition, Entercom proffered that licensees should be afforded the option to post contest material terms on the internet rather than be mandated to broadcast material terms. The proposed amendment was intended to modernize the Contest Rule because technology has changed since the rule’s adoption in 1976 and consumers expect to access detailed information at their fingertips on the internet.

The Federal Communications Commission released this Notice of Proposed Rulemaking (the “NPRM”) stemming from Entercom’s Petition. In these comments, Entercom provides its overall support to the NPRM, but suggests further revisions to the FCC’s proposal in order to best serve the public and to not unduly burden licensees with unnecessary regulatory obligations. The rule change will inevitably benefit consumers because they will be able to access detailed contest information on the internet “on-demand” instead of having to wait for announcements to be broadcast. Licensees will benefit from the rule change because most licensees already have dedicated station websites where they can post contest information and they can eliminate negative, disruptive programming that does not serve the public interest.

It should be noted that Entercom recommended the rule change in order to provide licensees with additional flexibility to comply with the Contest Rule and not to change the Contest Rule wholesale. As such, Entercom recommends that the Commission provide licensees with flexibility with respect to format of contest disclosure on a website, directing their

audiences to a website for contest information, and determining what material terms of a particular contest have to be disclosed. Contests vary dramatically and the licensee, not the FCC, is in the best position to make these determinations in order to best serve its audience and to alleviate any potential legal challenges arising from the conduct of the contest.

Additionally, Entercom suggests that licensees are only required to post the material terms on a website because the current rule only requires the broadcast of material terms in order to advise audiences of the key elements of a contest. This concept does not change because the information can be posted on the internet. Again, a licensee is in the best position to determine what information needs to be conveyed to its audience for a contest to ensure that participants have a full understanding of how the contest will be conducted to eliminate any confusion that may cause a customer service or legal issue. Entercom also suggests that the FCC only require licensees that choose to post contest material terms to a website are only required to do so until the contest is concluded (i.e., winner is selected). There is no benefit to requiring a longer period because participants will only need to refer to contest details while the contest is active and leaving the information on the website after the contest has expired can only lead to confusion.

Furthermore, Entercom recommends that the FCC retain the ability for licensees to be able to broadcast announcements for some contests because there are many simple contests where it would make sense to just broadcast the material terms rather than post them on the internet. Also, the small number of licensees that do not have websites can continue to broadcast material terms to meet their regulatory obligations.

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COMMENTS OF
ENTERCOM COMMUNICATIONS CORP.

Entercom Communications Corp. (“Entercom”)¹, submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding (the “NPRM”). As advocated in Entercom’s original Petition for Rulemaking, the FCC should amend 47 C.F.R. § 73.1216 governing licensee-conducted contests (the “Contest Rule”) in order to modernize the outdated Contest Rule to provide licensees with the option to post contest material terms on the internet. Entercom generally supports the NPRM but suggests modifications to some of the FCC’s proposals in order to best serve the public while alleviating the burden on licensees to ensure their compliance with the Contest Rule.

I. INTRODUCTION AND SUMMARY.

The Contest Rule should be amended to better serve the public by providing broadcast Licensees the option of posting detailed contest information on the internet rather than requiring the on-air broadcast of these lengthy disclosures when broadcast does not make sense.

¹ Entercom filed the Petition for Rulemaking, CGB Docket No. RM-11684 (filed Jan. 20, 2012) (the “Petition”) that initiated this rulemaking proceeding. Entercom incorporates its Petition into these comments by this reference and will focus its comments on addressing the specific issues and questions raised in the NPRM.

Today's society consumes information dramatically different than it did in 1976, when the Contest Rule was initially adopted, and expects that information be instantly available any time of the day. Consumers already rely on accessing licensee websites at any time to obtain up to date information on subjects such as news, weather, traffic, song names, etc. instead of waiting for announcements to be broadcast on the station. Logically, it makes sense for the public to expect to visit the internet to obtain detailed information about a station contest. The Contest Rule should be updated to reflect this expectation and licensees should be allowed the option to post contest material terms on the internet rather than being required to broadcast disruptive, ineffective programming that does not best serve the public.

II. THE BENEFITS ASSOCIATED WITH MODERNIZING THE CONTEST RULE OUTWEIGH ANY POTENTIAL COSTS.

The NPRM seeks comment on the costs and benefits of permitting licensees to comply with the Contest Rule by permitting licensees to post contest material terms on the internet.² Modernizing the Contest Rule by permitting licensees to post contest material terms on the internet provides more benefits to consumers and licensees than any potential costs that can be imposed on licensees. By permitting licensees to post contest material term information on the internet, consumers will benefit because they will be able to easily access this information at a time of their choosing instead of waiting on periodic announcements. The amendment will benefit licensees because they will be able to eliminate negative, ineffective programming that does not best serve the public interest. At least ninety percent (90%) of all AM/FM commer

² See NPRM ¶ 10.

cial radio stations full power television stations in the U.S. have a website.³ Since the majority of licensees already have made an investment in obtaining their own website there would be no very little cost to licensees in amending the rule to provide the option of posting contest information on the internet. Audiences are already accustomed to accessing station websites for supplemental information that accompanies a station’s on-air programming such as news, weather, traffic, song title information, etc. Entercom stations have long used its station websites for posting information about contest rules. For the small portion of licensees that do not have their own website and determine that obtaining a website would be cost prohibitive, it should be noted that the proposed amendment is merely providing licensees another option of conveying contest information to the public. As Entercom initially proposed in its Petition, a licensee can still choose to broadcast contest material terms information over the air if it determines that method of disclosure makes the most sense for a particular contest or for its business.

III. LICENSEES SHOULD BE PROVIDED FLEXIBILITY REGARDING CONTEST DISCLOSURE FORMAT ON WEBSITES BECAUSE CONTESTS VARY DRAMATICALLY AND LICENSEES ARE IN THE BEST POSITION TO DETERMINE THE FORMAT THAT BEST CONVEYS CONTEST INFORMATION TO THEIR AUDIENCES.

The NPRM seeks comment on whether the FCC should adopt rules specifying the format for contest disclosures that are posted on websites.⁴ Entercom recommends that the FCC does not impose regulation on format of contest disclosures, but instead allows licensees to have flexibility on the format provided that licensees disclose material terms on the internet in a clear, conspicuous manner. Licensee discretion with respect to format would best serve the public interest because there is no way to create a standardized “template” for format due to the varying

³ See BIA Media Access Pro, February 2015.

⁴ See NPRM ¶ 10.

nature of contests. Contests consist of various elements from simple call-in or text type of contests for an opportunity to win a simple prize (e.g., concert tickets or gift certificates, etc.) to more elaborate contests that can involve asking participants to submit user-generated content (e.g., photos and videos) for an opportunity to win an elaborate prize (e.g., a unique opportunity to meet a celebrity or a new vehicle, etc.). Accordingly, it would be best to leave the format of the contest material terms disclosures in the hands of the licensee because the licensee will be able to figure out how best to convey this information to the public based on the type of contest involved. Furthermore, a licensee is incentivized to provide clear, conspicuous disclosures of contest material terms to provide good customer service to its audience and to minimize the potential for legal problems arising out of the conduct of the contest. As such, each individual licensee is in the best position to know what type of format will best accomplish this purpose.

IV. THE FCC SHOULD PROVIDE BROADCASTERS WITH THE FLEXIBILITY ON HOW TO DIRECT THEIR AUDIENCES TO A WEBSITE.

The NPRM seeks comment on whether the FCC should require licensees to provide a link on the website's home page to the contest material terms.⁵ Entercom suggests that the FCC provide licensees with flexibility on how to direct their audiences to a website. From a customer service perspective, a licensee will naturally want to provide simple, clear instructions to its audience on how to access the website with contest information. In some instances, directing an audience to a website home page to access a link to contest rules might make sense. For example, Entercom station websites are already formatted with a "Contest Rules" link footer that directs you to the station's general contest rules, which are used to cover simple contests (e.g., a call-in contest to win a pair of concert tickets, etc.). In these instances, it will make sense for the

⁵ See NPRM ¶ 11.

licensee to simply direct its audience to go to its home page and click on a link (e.g., go to koit.com and then click on the “Contest Rules” link). However, for more complex contests that a station may conduct a station may create a special contest page or website to direct its audience to because there will be more information to convey about the contest to the audience (e.g., contests involving multiple stations with large cash prizes, etc.). For these contests, it will be simple for licensees to guide its audience to the direct website to access contest information (e.g., go to koitcashcontest.com). As a result, it makes sense for the FCC to provide licensees with the discretion and flexibility on where to place contest information on its website based on the nature of the contest. It is inherent that the licensee will want to make access as simple and easy to remember to encourage participation and to provide good customer service to its audience.

V. LICENSEES SHOULD ONLY BE REQUIRED TO MAINTAIN CONTEST INFORMATION ON ITS WEBSITE THROUGH THE CONCLUSION OF THE CONTEST.

The NPRM seeks comment on how long a licensee should be required to maintain contest information on the website.⁶ Entercom proposes that a licensee should be required to maintain contest information on a website from the time the audience is first told how to enter or participate and shall continue until the contest has concluded (i.e., winner selected). Maintaining the material terms information in written format during this period will best serve the public because the audience will be told where to seek the detailed information about the contest and actual participants can refer to the website for contest details for the remainder of the contest to find helpful information related to their participation such as deadlines, event locations, etc.

⁶ See NPRM ¶ 11.

VI. THE FCC SHOULD NOT REFINER THE DEFINITION OF “MATERIAL” AND SHOULD ONLY REQUIRE LICENSEES TO POST MATERIAL TERMS ON A WEBSITE CONVEYING CONTEST INFORMATION.

The NPRM seeks comment on whether or to what extent the FCC needs to refine the definition of “material” given the proposed change to the Contest Rule.⁷ Entercom proposes that the FCC maintains the current definition of “material terms” as enumerated in the current version of the Contest Rule.⁸ The material terms definition has been part of the contest rule since its inception in 1976 and licensees are accustomed to how the definition is applied. As noted in the current version of the Contest Rule, “material terms may vary widely depending on the exact nature of the contest...”⁹ Therefore, it is best if the determination of what is material in a particular contest is left within the discretion of the licensee because the licensee is in the best position to determine what needs to be disclosed to its audience to comply with the Contest Rule.

Additionally, Entercom recommends that the Commission should only require the posting of material terms on a website because the material terms are the real “heart” of any contest since they “define the operation of the contest and which affect participation therein.”¹⁰ Any additional information conveyed about a contest is purely supplemental to the Contest Rule because this information does not tell the audience how a contest works

⁷ See NPRM ¶ 12.

⁸ See 47 C.F.R. § 73.1216, Note 1(b).

⁹ *Id.*

¹⁰ *Id.*

or how someone can participate. In fact, some of this supplemental information is required by state law and not federal law, so it is best for a licensee to make this determination instead of the FCC.¹¹ The FCC should not mandate any further regulations surrounding contest material terms disclosures other than the requirements that have been imposed in the initial Contest Rule. Entercom proposed the Contest Rule change to provide licensees with an additional option of conveying material terms to audiences and did not intend to impose additional regulations on licensees that do not align with the overall spirit of the Contest Rule, which is to disclose the key elements of a contest to ensure fairness in participation.

VII. THE FCC SHOULD PROVIDE LICENSEES WITH DISCRETION IN HOW TO BROADCAST CONTEST WEBSITE INFORMATION BECAUSE A LICENSEE IS IN THE BEST POSITION TO DETERMINE HOW TO CONVEY THIS INFORMATION IN THE MOST USER-FRIENDLY WAY POSSIBLE.

The NPRM seeks comment on whether it should require stations that choose to satisfy their disclosure obligations via an Internet website to broadcast the complete, direct website address where the contest terms are posted.¹² Entercom submits that this proposal is counter-productive and burdensome and recommends that the FCC provide licensees with flexibility on how to convey this information to audiences because the complete, direct website might not be the best way to convey this information in a natural and user-friendly format that is easy for audiences to remember. Providing a general dot com location (e.g., KOIT.com) is a ubiquitous way to direct audiences to a website and gets audiences to the same location as the “complete, direct website address.” A complete, direct website address could be interpreted as

¹¹ For example, some states require the disclosure of odds and the disclosure of how to obtain a winners’ list from a contest administrator. Since these laws are state specific, it is best if the licensee makes the determination if this supplemental information needs to be disclosed for a particular contest.

¹² See NPRM ¶ 13.

<http://www.koit.com> and audiences do not need this extraneous information in order to access a website. Additionally, if contest rules are located on another page other than a home page then a simple description could just be provided. For example, “For contest rules go to koit.com and then click on contest banner.” The complete, direct website could be <http://www.koit.com/contestpage/rules> and is less helpful than providing simple instructions in natural language. This long and complex identification is difficult to remember and will inevitably inhibit the public’s access to contest information and will be counterproductive to the goal of improving accessing to this information. Accordingly, licensees should be provided with discretion of directing audiences to the website because they will be able to determine the best path to direct its audience for easy access.

VIII. LICENSEES SHOULD ANNOUNCE CONTEST WEBSITE INFORMATION AT AN AVERAGE OF THREE TIMES PER DAY DURING A CONTEST TO ENSURE AN EFFECTIVE WAY TO CONVEY THIS INFORMATION TO CONSUMERS.

The NPRM proposes that licensees broadcast the website address where contest terms are available each time a licensee mentions or advertises a contest.¹³ This requirement is burdensome and unnecessary. In its Petition, Entercom proposed that the website where the material terms can be found be broadcast “periodically”, which would mirror the current requirement for the broadcast of material terms. However, Entercom recognizes that the FCC desires more specificity in this regard and proposes that the FCC require a minimum number of announcements instead of requiring that the website information be included in every mention or advertisement. Including the information in every mention or advertisement is unduly burdensome to licensees and not practical. In the NPRM, the FCC made an assessment that requiring the website information in every contest mention or announcement is not burdensome

¹³ See NPRM ¶ 13.

to licensees. To the contrary, it would be unduly burdensome to licensees due to the large volume of contest mentions and announcement that are made to promote contests and due to the live nature of some of these mentions. If the FCC required this, this mandate could swallow the purpose of amending the rule by creating unnecessary clutter and unintended technical violations of the Contest Rule.

There are various types of mentions and advertisements for contests (short promos and long advertisements) and it does not make sense to require the inclusion of the website information in all of these mentions and advertisements. For example, in a major station promotion, a station can mention the contest in short promotional mentions up to three times an hour right before and during contest plays. A station will also do live short promotional mentions over 6 or 7 second song introductions and following top of the hour station identifications to keep building the momentum of a contest. It would be unnecessary and burdensome for a licensee to tag all of these short contest mentions that are only a few seconds long with website information when the intention of these short mentions is to just build excitement around the contest and not actually convey detailed information about the contest.

The current Contest Rule does not require the broadcast of material terms for contest teasers and short promotional mentions leading up to the start of a contest since the obligation to broadcast "...material terms arises at the time an audience is first told how to enter or participate..."¹⁴ As such, it would not make sense to require including the website information in every short promotional mention about a contest because it will only be adding a burdensome regulatory obligation to licensees that is not required under the current Contest Rule. On the

¹⁴ See 47 C.F.R. § 73.1216, Note 2.

other hand, a station also does longer mentions and advertisements where it provides more detailed information about a contest than it does in the short promotional mentions. These longer mentions and advertisements are typically pre-recorded and scheduled in a station's traffic system. It would make sense to add the contest website information to these type of announcements because the broadcast of these announcements are tracked, which would ensure compliance with the Contest Rule.

Also, using live on-air talent is an effective way to engage an audience in a contest. Due to human error, there will inevitably be occasions that an air talent can forget to mention a website when innocently mentioning a contest; therefore, inadvertently violating the rule. It is not uncommon for a licensee to advertise or mention a contest 100 times and live talent could possibly miss mentioning the website location for contest material terms just one time causing a technical violation of the Contest Rule. Entercom does not believe this unintended result is the spirit behind the FCC's proposal so the FCC should not require that the website be announced in each mention or advertisement.

Entercom does understand the FCC's desire to have licensees broadcast the website location an adequate number of times to better inform the public of contest information. As a counter-proposal, Entercom recommends that if a licensee decides to post material terms on a website that it announces the website location at an average of at least three times per day from the time participants are told how to enter until entry into the contest has ended. A licensee can easily prerecord an announcement with the required information and schedule those announcements in a traffic system to ensure broadcast. Therefore, a licensee can control its efforts to constantly comply with the Contest Rule. The reason why an average of three times per day is recommended is because a licensee can schedule these announcements to run in major

dayparts in which a contest is advertised or promoted (i.e., morning drive, mid-day and afternoon drive, etc.) to ensure that the announcements air when the majority of its audience is tuning into the station. A licensee will most likely run more than three announcements per day to provide adequate information to its audience and to ensure compliance with the rule, but a guarantee of an average of three announcements per day seems reasonable in an effort to best provide information to consumers and alleviate the burden of unnecessary clutter on licensees. Also, an average of three announcements per day is suggested because there is always the possibility that an announcement can be pre-empted due to event of significant local, regional or national importance or missed due to human or technical error. If these events occur, a licensee can schedule additional make goods for the missed announcements to meet the average of three announcements per day in order to ensure compliance with the Contest Rule.

IX. THE FCC SHOULD REQUIRE LICENSEES THAT POST MATERIAL TERMS ON A WEBSITE TO ANNOUNCE ANY MATERIAL CHANGES WITHIN 24 BUSINESS HOURS OF WHEN THE CHANGE OCCURS UNTIL ENTRY TO THE CONTEST CLOSES AT AN AVERAGE OF THREE TIMES PER DAY.

The NPRM seeks comments on the appropriate frequency and duration of broadcasting changes to the material terms if a licensee chooses to post contest information on a website.¹⁵ Entercom recommends that these licensees should announce the material rules change at an average of least three times per day within 24 business hours of the rule change and shall continue to make these announcements until entry to the contest is over. A licensee can have these announcements recorded and scheduled in its traffic system to ensure that they are broadcast in order to comply with the Contest Rule. These announcements can be added to the daily contest website disclosure announcements that are already scheduled to air.

¹⁵ See NPRM ¶ 13.

X. THE FCC SHOULD NOT CHANGE THE CURRENT CONTEST RULE WITH RESPECT TO BROADCASTING MATERIAL TERMS BECAUSE THE RULE IS WELL-ESTABLISHED AND THE PURPOSE OF AMENDING THE RULE IS TO GIVE LICENSEES AN ALTERNATE OPTION WITH COMPLYING WITH THE CONTEST RULE AND NOT CREATING ADDITIONAL REGULATORY OBLIGATIONS.

The NPRM seeks comments on whether the FCC should make any changes to the rule to improve the effectiveness of broadcasting material terms.¹⁶ Entercom advises that the FCC maintain the rule with respect to broadcasting material terms because broadcasting these announcements to comply with the Contest Rule is well established. Entercom's proposal of amending the Contest Rule is to give an additional option to broadcasters to convey contest information to consumers and not to impose additional obligations on licensees. As discussed in Entercom's Petition¹⁷, broadcasting material terms will make sense for simple contests where less information has to be conveyed to the consumer. These will be short, simple announcements without a lot of information to convey so the information will be provided in an effective, comprehensible way to consumers. Also, the broadcast method of disclosure can continue to be utilized by the small portion of licensees that do not have websites and will eliminate any potential economic burden that creating and maintaining a website may create.

¹⁶ See NPRM ¶ 14.

¹⁷ See Entercom Petition at 5.

XI. CONCLUSION.

For the reasons stated above, Entercom respectfully urges the Commission to update the Contest Rule as proposed in the NPRM, but with the suggested modifications contained in these comments.

Respectfully submitted,

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