

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

JOINT COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Beasley Media Group, Inc., Blackhawk Broadcasting LLC, Bristlecone Broadcasting LLC, Broadcasting Licenses, L.P., Calkins Media Inc., CBS Radio Inc., Eagle Creek Broadcasting of Laredo, LLC, Galaxy Communications LLC, Greater Media, Inc., HJV Limited Partnership, M. Belmont VerStandig, Inc., Mountain Licenses, L.P., Sarkes Tarzian, Inc., Stainless Broadcasting, L.P., and The Trustees of the University of Pennsylvania (collectively, the “Joint Commenters”), by their attorneys, hereby respond to the Notice of Proposed Rulemaking (the “NPRM”) in the above-captioned proceeding.¹ Joint Commenters are the direct or indirect licensees of well over 200 full-power radio and television broadcast stations.

In response to a Petition for Rulemaking submitted by Entercom Communications Corp. (the “Entercom Petition”), the Commission issued the NPRM, which seeks comment on a proposal to modernize Section 73.1216 of the FCC’s rules (the “Contest Rule”) “in a manner that reflects how consumers access information in the 21st Century”² by providing broadcast licensees greater flexibility in how they disclose the material terms of contests. Joint Commenters support

¹ In the Matter of Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast of Licensee-Conducted Contests, FCC 14-184 (rel. Nov. 21, 2014).

² NPRM at 1, ¶ 1 (citing Entercom Petition).

the NPRM's proposal to allow licensees to satisfy their Contest Rule disclosure requirement by posting contest terms on publicly accessible websites. However, any revisions to the Contest Rule ultimately adopted by the Commission should be sufficiently robust to account for changes in technology and the realistic expectations of modern audiences, while allowing broadcast stations to disclose contest terms information in a reasonable, user-friendly manner.

I. THE CURRENT ON-AIR MATERIAL TERMS REQUIREMENT IS OUTDATED AND INEFFECTIVE.

The current Contest Rule requires broadcast stations to periodically disclose contest material terms on the air.³ While stations may use non-broadcast methods to supplement material terms disclosures, there is at present no substitute for the on-air disclosures.⁴ Joint Commenters concur with the Entercom Petition that the current on-air disclosure requirement, without any non-broadcast alternative, is outdated and ineffective.

It is extremely difficult for the public to follow and retain the specifics of lengthy material terms disclosures. Given the breadth of information deemed "material," the public has an understandable tendency to tune out when it hears voluminous contest details on air. "Even if a listener happens to hear (or see in the case of television) a periodic announcement of the material terms, processing and remembering all of the information is a near impossible task."⁵ Permitting stations to direct the public to a place where they can read a contest's material terms

³ A contest's materials terms generally include: "how to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures." 47 C.F.R. § 73.1216, Note 1(b).

⁴ NPRM at 3, ¶ 3.

⁵ Entercom Petition at 3.

will allow them to review and comprehend these terms at their own pace, rather than being dependent on the on-air announcer.

Moreover, broadcasters are placing an increased amount of content online. As they do, the public's expectations about where to find information are changing.⁶ The public expects written contest rules to be posted on the Internet. Today's audiences generally do not expect to learn all they need to know about how to enter a station contest through periodic on-air material terms disclosures. Given the sweep and prominence of the Internet, in Joint Commenters' experience, most members of the public expect to find the relevant rules for a station's contest by visiting a website associated with the station. For this reason, Joint Commenters strongly support the NPRM's tentative conclusion that broadcasters should be given the option to disclose material contest terms online in lieu of on-air announcements. Joint Commenters do not oppose preservation of an on-air disclosure option, which could be useful for simple contests or for small or rural broadcasters who lack broadband capability. But, on-air disclosures should not be the exclusive method for complying with the Contest Rule.

II. THE COMMISSION SHOULD PERMIT BROADCAST STATIONS TO POST CONTEST RULES ONLINE WITHOUT IMPOSING SEPARATE "MATERIAL TERMS" DISCLOSURE REQUIREMENTS; THE COMMISSION SHOULD NOT REGULATE THE FORMAT OR LOCATION OF ONLINE DISCLOSURES.

In the NPRM, the Commission asks: "[I]s it necessary to require that licensees set apart or distinguish in some way contest terms deemed 'material' from other contest information to ensure that this important information is readily available to the public and not buried in lengthy

⁶ Entercom Petition at 3. ("There are dramatic differences in how the average American expects to access and digest information than they did in 1976 when the Contest Rule was enacted. Today, the internet is a medium Americans primarily use for obtaining instantaneous information.")

fine print?”⁷ In addition, the Commission asks whether it should “adopt rules specifying the format for contest disclosures that are posted on websites”⁸ and whether it “should require a link on the website’s home page to the contest terms?”⁹

There is no need to require broadcasters to separate out material terms. Where stations provide comprehensive contest rules that address more than the enumerated material terms, it would be an unnecessary burden, and potentially confusing to the public, to require stations to separately identify and post the “material terms” of a given contest. Commission concerns would be adequately addressed through a general requirement that if contest rules are to be posted online, those rules must include all terms that have been historically deemed material, such as how to enter, entry deadlines, etc. Joint Commenters note that non-licensee contest promoters are not required to distill material terms from their rules when conducting sweepstakes or contests online; any Commission regulation requiring such additional disclosures places licensees at a competitive disadvantage in the marketplace.

There is no reason or justification for the Commission to regulate the format or exact location of online material terms disclosures.¹⁰ The Commission does not regulate the format of the currently-required on-air disclosures and there is no need to start doing so now. The revised Contest Rule should simply facilitate easy public access to contest rules on websites.

⁷ NPRM at 7, ¶ 12.

⁸ *Id.* at 6, ¶ 10.

⁹ *Id.* at 7, ¶ 11.

¹⁰ The Commission also requires that stations post to their website their EEO public file reports. *See* 47 C.F.R. § 73.2080. The Commission does not regulate the format of these reports and does not dictate where on a station’s website the reports must be posted. *See id.* *See also Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order, 17 FCC Rcd 24018, 24063 ¶ 142 (rel. Nov. 20, 2002) (“broadcasters are free to use any format in their public file report”).

Government-mandated disclosure formats would unnecessarily impinge on licensee discretion. Licensees are incentivized by marketplace competitive concerns to ensure that their websites are user-friendly and the public can easily find and understand a contest's terms. Additionally, there is no reason to require that contest terms be linked on a website's homepage. Broadcasters are best-suited to determine where on their websites is the appropriate place to post contest terms.

III. THE COMMISSION SHOULD ADOPT A REASONABLE, FLEXIBLE STANDARD THAT WILL REMAIN RELEVANT REGARDLESS OF CHANGES IN STATION CONTESTING AND ADVANCES IN TECHNOLOGY.

Under the Commission's proposal, a station would satisfy the material terms disclosure obligation by "broadcast[ing] the complete, direct website address where the contest terms are posted."¹¹ In the NPRM, the Commission explained that the "complete, direct website address" is the one "that will take the consumer directly to the page on the website where the contest terms are posted."¹²

The Commission should not dictate how website addresses are announced. Instead, the Commission should give stations flexibility and discretion to direct their audiences to websites containing contest terms so that users can easily find the terms for a particular contest. The website address read or displayed on-air should be easy to understand, remember and follow, with enough detail so that users can easily find the written rules or material terms for a particular contest. For example, it will be much easier for audiences to remember "Go to country123.com/rules" or "Go to country123.com and click on our contest page link to find the

¹¹ NPRM at 7-8, ¶ 13.

¹² *Id.* The Commission also stated that where contest terms are posted on the home page of a broadcaster's website or there is a direct link to the contest terms on the home page, then announcing the home page address "will suffice." *Id.* at 7-8, ¶ 13 n.42.

rules” than to remember “Go to country123.com/beta_contests/2015_guitargiveaway%1126.”¹³

Even on the visual medium of television, making viewers remember a long URL with various alphanumeric and non-alphanumeric characters would be entirely too cumbersome and impractical for the public to write down, let alone recall.

Furthermore, it is common for website addresses and their subdirectories to change periodically while contests are executed, so disclosure of a complete, direct website address including local host names and subdirectories would be unreasonably onerous. URLs frequently change as a result of backend infrastructure modifications, and server migrations, as well as website redesigns and other upgrades. Many of these ongoing changes to directories and subdirectories may be performed by vendors and unbeknownst to station programming and promotions departments. In addition, many stations include their call letters, frequencies, trade names, or references to their stations’ formats, affiliations, or owners in their website addresses. Changes in any of these are not uncommon and would undoubtedly cause the station to also modify the URL to its website to take into account the new calls, frequency, format, or owner. For any contest lasting longer than one day, there is an increased chance that a URL that takes a person directly to a contest’s terms will change during the contest. The more specific a website disclosure is required to be, the more room there is for public confusion. Stations are adept at conveying information to consumers clearly and concisely, and stations pride themselves on being able to communicate information important to their local audiences. Accordingly, the Commission should leave website architecture and infrastructure questions to the licensees’

¹³ Many stations conduct multiple contests at any given time and link the rules to all active contests on one page of the station’s website. The revised Contest Rule should make clear that directing audiences to this general page would satisfy the website disclosure requirement.

discretion and permit licensees, as the experts who understand their audiences, to determine how best to communicate their website information to their audiences.

Additionally, because changes in station contesting and technology are inevitable, it would be inconsistent with the NPRM's purpose for the Commission to micromanage website disclosure. Given the complexity of the Internet and the speed with which technology changes, the Commission should not mandate the specific information that must be read on the air. Rather, the FCC should require only that stations provide reasonable instructions on air that enable audiences to find the contest rules or material terms on a website. There is no need for the FCC to regulate the precise website information a broadcaster must provide on-air.

The Commission also seeks comment on the length of time a broadcaster should be required to keep contest information posted.¹⁴ Under current requirements, on-air material terms must be disclosed periodically until a contest's end. There is no reason to expand this time period for written contest rules posted on station websites. The Commission should require only that contest rules or material terms be posted on the website from the beginning of the contest (reasonably concurrent with the first opportunity to enter) through the contest's end.

IV. THE COMMISSION SHOULD ADOPT A REASONABLE, FLEXIBLE STANDARD THAT ACCOMMODATES THE REALITIES OF THE INTERNET AND THE LIMITS OF TECHNOLOGY.

The FCC has sought comment on whether a "non-station website that is used to comply with the Contest Rule's disclosure requirements must be 'accessible to the public 24/7 during the contest, for free, and without any registration requirement.'"¹⁵ Joint Commenters agree that contest rules should be available online for free, without registration requirements, but stations

¹⁴ NPRM at 7, ¶ 11.

¹⁵ *Id.*

should not be held to a strict 24/7 standard regardless of the website used to post contest terms. System outages, power failures, system upgrades, and hacked websites over which stations have little to no control may prevent websites from remaining publicly accessible 24/7.¹⁶ Websites are often taken down for a limited period of time for routine maintenance or when a site is redesigned or relaunched. There is no reason for the FCC to address station website design (or third party websites) and IT matters, and stations should not be penalized for IT issues either within or beyond their control.

V. STATIONS SHOULD ONLY BE REQUIRED TO AIR THE WEBSITE DISCLOSURE *PERIODICALLY*, CONSISTENT WITH THE CURRENT CONTEST RULE.

The Commission suggests listing the full website address every time the contest is mentioned or advertised.¹⁷ This proposal is burdensome and unnecessary. Joint Commenters do not support requiring stations to “broadcast the complete, direct website address where the contest terms are posted *each time the station mentions or advertises a contest.*”¹⁸

It is unreasonable to require this disclosure every time a contest is mentioned. Rather, stations should only be required to broadcast instructions on how to find the website displaying the contest rules *periodically* in their reasonable discretion. The FCC should not saddle stations

¹⁶ The Commission is aware of technology’s inherent problems. For example, the FCC’s website has crashed during filing windows when there is increased traffic to the site. *See, e.g.,* Jim Puzzanghera, *Surge in Net Neutrality Comments Crashes FCC Site; Deadline Extended*, Los Angeles Times, (July 15, 2014, 12:45 PM), <http://www.latimes.com/business/technology/la-fi-tt-fcc-website-net-neutrality-20140715-story.html>. Additionally, during the Federal government shutdown in October 2013, the FCC’s website was taken offline for 16 days. Users were not able to access any information on the FCC’s website, including the FCC-hosted television online public inspection files. The Commission’s website has also been offline for routine maintenance.

¹⁷ NPRM at 7-8, ¶ 13.

¹⁸ *Id.* (emphasis added).

that mention or advertise their contests frequently with mandatory accompanying website disclosure announcements that may prove as burdensome as the current on-air “material terms” announcement requirement.¹⁹ Stations inclined to mention or advertise contests several times per hour would be discouraged from doing so by redundant website disclosure requirements.

Requiring the disclosure each time a station mentions a contest will also not serve the public interest. Airtime is limited. If a station is required to announce where to find a contest’s terms each time the contest is mentioned, it takes away valuable airtime that can be used to serve another purpose, such as a local traffic, news or weather report. Unlike on-air material terms that can be spread throughout different dayparts, there is no way to split up a URL or directions to find contest terms on a station’s website. If the Commission insists that stations broadcast the complete, direct URL to the website containing a contest’s terms each time a station mentions a contest on-air, the new Contest Rule will be more burdensome than the current rule.

Joint Commenters instead urge the Commission to retain a periodic disclosure requirement consistent with the current rules. The Commission should adopt a requirement that broadcasters announce information directing the public to the relevant website periodically in a reasonable manner, essentially mirroring the way stations handle the periodic material terms disclosure now. What is “periodic” may depend on the circumstances, but this judgment call should be left to broadcasters’ good faith discretion.

¹⁹ As Commissioner O’Rielly previously stated: “This update should make complying with the rules *easier* for broadcasters and consumers, not *more* difficult.” Michael O’Rielly, *Introducing the Internet to the FCC’s Contest Rule*,” Official FCC Blog (June 16, 2014, 1:31 PM), <http://www.fcc.gov/blog/introducing-internet-fcc-s-contest-rule> (emphasis in original).

VI. CONCLUSION.

Subject to the additional considerations described herein, Joint Commenters strongly favor the proposed revisions to the Contest Rule that would allow for material terms to be posted on a publicly available website.

Respectfully submitted,

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