

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

In the Matter of)
)
Amendment of Title 47 CFR § 73.1216) Docket No. _____
(Licensee-Conducted Contests)) RM-11684
)

To: The Secretary
Attn: The Commission

SUPPORTING COMMENTS OF SAGA COMMUNICATIONS, INC.

Saga Communications, Inc. (“Saga”)¹ hereby submits its Supporting Comments on the “Petition for Rulemaking” filed January 20, 2012, by Entercom Communications Corp. (“Entercom”), which requests the Commission to initiate a rulemaking proceeding for the purpose of amending Section 73.1216 of the Commission’s Rules.² On November 28, 2012, the Consumer & Governmental Affairs Bureau released a Public Notice³ inviting statements opposing or supporting the Entercom Petition for Rulemaking.⁴

Saga urges the Commission without further delay to issue a Notice of Proposed Rulemaking proposing the amendment of the Contest Rule as Entercom has suggested.

The 36-year-old Contest Rule had its genesis in a Report and Order, *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, 60 FCC 2d 1072, 38 RR 2d 828 (1976) that was adopted to give the Commission the flexibility of

¹ Saga is a broadcasting company whose business is devoted to acquiring, developing and operating broadcast properties. The company owns or operates broadcast properties in 26 markets, including 61 FM and 30 AM radio stations and television stations in three markets.

² Title 47 CFR § 73.1216, herein the “Contest Rule.”

³ Report No. 2969. Originally, a Public Notice soliciting comments was released on November 20, 2012. A corrected Public Notice was released November 28, 2012.

⁴ Comments may be filed by December 20, 2012, so these Comments are timely filed.

monetary forfeitures where stations failed “to assure that their contests are conducted with due regard for the public interest.” The simple rule⁵ was adopted along with three explanatory Notes. It is Note 2 (guidelines with respect to the time and manner of disclosure of material contest terms) that Entercom seeks to bring into the modern age. Entercom is quite right to point out that, “relying on broadcast announcements for material contest information may have been an acceptable way to attempt to inform the public about the terms of a contest when the Contest Rule was enacted in 1976, but it is certainly not the case today, especially when there are superior methods that are simple to implement.”

Entercom’s proposed change to Note 2 gives the licensee the option to disclose the material terms of a contest either using the current broadcast method or “in written form on a Web site and by email, facsimile, mail or in person upon request by the public, provided that the station broadcast periodic announcements of how and where the public can obtain the material terms in written form.”⁶

Revising Note 2 as proposed would result in better communication with the public since contestants would be referred to the internet Web site to review the rules at their leisure and with whatever detail they desired. Currently, if a listener is listening in a daypart different from the one during which the rules are broadcast, or is not listening intently, he or she may not understand the material terms. Broadcast of announcements

⁵ Simply drafted, but not so simple with which to comply, as numerous FCC Enforcement Bureau cases attest.

⁶ Entercom also proposes that disclosure of material terms may be made on the internet Web site of its state broadcasters association where the station does not have its own Web site.

may comply with the rule, but publication on the internet would better serve the purpose of the rule.

The Commission has a legal obligation to review the Contest Rule. More than thirty-two years ago, the Commission formally began the important task of relieving broadcasters of compliance with irrelevant rules.⁷ In its Notice of Proposed Rulemaking (“NPRM”), *Deregulation of Radio*, 73 FCC 2d 457 (1979), the Commission announced “The proceeding that we are instituting reflects the Commission's continuing concern that its rules and policies should be relevant to an industry and a technology characterized by dynamic and rapid change.” In the NPRM, the Commission remarked “Additionally, the President [at the time, Jimmy Carter] has ordered Executive Agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones.”⁸ In 1979, the technological landscape was vastly different from today’s. There was no internet. Personal computers were in their infancy.⁹ There was a fledgling cable television industry. People listened to AM radio more than FM radio. There was no HD radio. There was no digital media. Times have changed, but the FCC’s antiquated Contest Rule has not. The Commission should promptly issue an NPRM leading to adopting the changes Entercom suggests.

⁷ Even earlier, the FCC was looking for ways to eliminate useless regulation. In 1972, the Commission commenced a re-regulation study and created a multidisciplinary Reregulation Staff to examine all technical broadcast rules. See Public Notice entitled “Broadcast Regulation Study,” FCC Mimeo No. 83444, April 6, 1972.

⁸Executive Order No. 12044, March 23, 1978, 43 FR 12661. In the NPRM, the Commission noted, “Although this Order does not apply to the Commission, which is not an Executive Agency, it clearly evidences a national policy to reduce the burdens imposed by unnecessary governmental regulation.”

⁹ For example, the pioneer in personal computers, Apple, Inc., was founded on April 1, 1976, and incorporated on January 3, 1977. Source: http://en.wikipedia.org/wiki/Apple_Inc.

It may be that an NPRM is not even necessary. In *JEM Broadcasting Company, Inc., v. FCC*, 22 F. 3d 320 (D. C. Cir. 1994), the Court upheld the summary dismissal of an application for a construction permit based on the now defunct “hard-look” processing rule. The applicant contended that the so-called "hard look" rules could not be applied against it because the rules were promulgated without notice and comment in violation of the Administrative Procedure Act, 5 U.S.C. § 553 (1988). The Court ruled the claim meritless, in part, because “notice and comment rulemaking was not required.”¹⁰ Here, there would be no change to the rule itself, merely a revision of Note 2. Saga believes this may be carried out without notice and comment; however, should the Commission disagree, Saga fully supports the release of an appropriate NPRM and the sooner the better.

In light of the foregoing, the Commission should, on an expeditious basis, issue an NPRM leading to the revision of Note 2 of the Contest Rule.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

/s/

By: Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
202-363-4560

December 18, 2012

¹⁰ We think the "hard look" rules fall comfortably within the realm of the "procedural" as we have defined it in other cases. See *Ranger v. FCC*, 111 U.S. App. D.C. 44, 294 F.2d 240 (D.C. Cir. 1961).

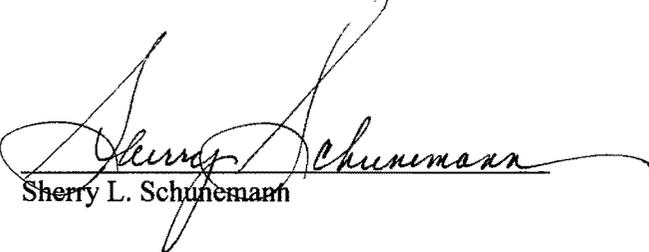
CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing “Supporting Comments of Saga Communications, Inc.” was mailed this 18th of December, 2012, by First Class, U.S. Mail, postage prepaid, to the following:

Peter H. Doyle, Esq.
Chief
Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (electronic mail)

Anjali Singh, Esq.
Assistant Chief
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
Washington, DC 20554 (electronic mail)

John C. Donlevie, Esq.
Executive Vice President & General Counsel
Carrie Ward, Esq.
Associate Counsel
401 City Avenue, Suite 809
Bala Cynwyd, PA 19004)


Sherry L. Schunemann