

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

In the Matter of)	MB Docket No. 14-226
)	
Amendment of Section 73.1216 of the)	
Commission's Rules Related to Broadcast)	RM-11684
Licensee-Conducted Contests)	
)	

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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Summary

The Station Contest Rule, as currently written, requires licensees to disclose the material terms of a contest in periodic broadcasts on the station conducting the contest. The Commission enacted this rule nearly forty years ago to ensure that broadcast licensees promote and conduct their contests fairly and honestly. The purpose of the rule may be timeless, but the method of disclosure required has not kept pace with modern technology. Acknowledging this, the Commission has wisely proposed to amend the rule to allow stations to satisfy their disclosure obligations by posting contest terms on the station's Internet website, the licensee's website, or if neither the individual station nor the licensee has its own website, any Internet website that is publicly accessible.

Giving broadcasters the flexibility to choose between on-air and online station contest disclosures will better enable them to reach and inform their audiences. This flexibility will also bring broadcast licensees one step closer to regulatory parity with their cable, satellite, and Internet competitors, to whom the Station Contest Rule does not apply. With this in mind, the Commission should be careful not to unduly encumber the online disclosure option. Accordingly, the State Associations support the Commission's proposed modification to the Station Contest Rule with the following additional changes as marked:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The disclosure of material terms shall be made by the station conducting the contest by either: (a) periodic disclosures broadcast on the station or (b) written disclosures on the station's Internet website, the licensee's website, or if neither the individual station nor the licensee has its own website, any Internet website that is publicly accessible. In the former case, a reasonable number of periodic broadcast disclosures is sufficient. In the latter case, the station shall announce over the air the availability of material terms on the website and identify the ~~complete, direct~~ website address where the terms ~~are posted~~ **can be found, e.g. "wxyz.com" or "KISS101.5.com"**, each time the station ~~mentions or~~

advertises **affirmatively promotes** the contest **(i.e., does more than mention the contest in passing)**. Material contest terms that are disclosed on an Internet website must conform in all substantive respects to those mentioned over the air. Any changes to the material terms during the course of the contest must be fully disclosed on air or the fact that such changes have been made must be announced on air and participants must be directed to the written disclosures on the website.

As the State Associations' edits propose, the Commission should not require licensees to broadcast the "complete and direct" website address where contest terms are located "each time" a licensee makes *any* mention or reference to a station contest. Rather, the rule should require licensees to announce the website's home address (e.g., "wxyz.com") only when the station affirmatively promotes the contest. Additionally, the Commission should refrain from micro-managing stations that choose to post contest disclosures on the Internet. There is no reason for the Commission to depart from its long-standing policy of leaving the manner of disclosure to the licensee's discretion. Further, because the State Associations agree that rules posted online should be available 24/7 during the contest, for free, and without any registration requirement (subject to technical outages and other *force majeure* events), the Associations see no reason to adopt retention requirements. Such requirements would only increase audience confusion and, in any event, are better dealt with at the state level.

Allowing broadcasters to make contest information available online will eliminate or reduce disputes about whether terms are "material," because broadcasters will be able to place *all* contest terms on the website. The FCC should not negate this benefit by requiring broadcasters to set apart "material" terms. Nor is there any reason for the Commission to redefine "material" or otherwise alter the rule for broadcasters that opt to make contest disclosures on-air—an option the State Associations continue to support. Of course, if changes are made to the material terms on the website after the contest is first announced, the State

Associations agree that licensees should announce that the contest terms have changed and direct their audience to the website for the updated rules.

Finally, the State Associations believe that there are no material differences between TV and radio that would merit different treatment under the proposed rule. Consistent with these considerations, the State Associations urge the Commission to proceed expeditiously to adopt the formulation of the modified Station Contest Rule proposed herein by the State Associations.

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**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico,

Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations” or “Associations”) by their attorneys in this matter, hereby file these Joint Comments in response to the Commission’s Notice of Proposed Rulemaking released November 21, 2014, in the above captioned proceeding.¹

INTRODUCTION

Over the last several years, the Commission has increasingly recognized that the “evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today.”² In fact, a 2014 study shows that 87% of Americans use the Internet.³ As of 2013, more than 74% of American households reported having high-speed Internet in their homes.⁴ Further, one cannot ignore the ubiquity of mobile Internet platforms, with 93% of smartphone owners using their phones to access the Internet.⁵ More adults turn to local TV station websites for local news and event information than any other source,⁶ and at

¹ See *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 29 FCC Rcd 14185 (Nov. 21, 2014) (the “NPRM”).

² *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, MB Docket No. 14-127 (rel. Dec. 18, 2014) (“*Expansion of Online Public File NPRM*”).

³ PEW RESEARCH CENTER, *THE WEB AT 25 IN THE U.S.* 17 (2014), available at <http://www.pewinternet.org/2014/02/27/the-web-at-25-in-the-u-s/>.

⁴ U.S. CENSUS BUREAU, *COMPUTER AND INTERNET USE IN THE UNITED STATES: 2013* at 2 (2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>.

⁵ EDISON RESEARCH AND TRITON DIGITAL, *THE INFINITE DIAL 2014* at 34 (2014); PEW RESEARCH INTERNET PROJECT, *CELL INTERNET USE 2013* (2013), <http://www.pewinternet.org/2013/09/16/cell-internet-use-2013/>.

⁶ TVB, *THE 2012 MEDIA COMPARISONS STUDY* (2012).

least 90% of AM/FM radio stations have websites.⁷ These facts reaffirm what the Commission has announced before: “The Internet is an effective, low-cost means of maintaining contact with, and distributing information to, viewers and listeners.”⁸

Accordingly, as qualified by these Joint Comments, the State Associations generally support the Commission’s proposal to further modernize the broadcast disclosure provisions contained in the Station Contest Rule by amending Section 73.1216 by revising Note 2 as follows:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee’s discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The **disclosure of** material terms ~~should~~ **shall** be disclosed ~~periodically~~ **made** by ~~announcements broadcast on~~ the station conducting the contest, ~~but need not be enumerated each time an announcement promoting the contest is broadcast~~ **by either: (a) periodic disclosures broadcast on the station or (b) written disclosures on the station’s Internet website, the licensee’s website, or if neither the individual station nor the licensee has its own website, any Internet website that is publicly accessible.** ~~Disclosure of material terms in~~ **In the former case,** a reasonable number of announcements **periodic broadcast disclosures** is sufficient. ~~In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.~~ **In the latter case, the station shall announce over the air the availability of material terms on the website and identify the complete, direct website address where the terms are posted each time the station mentions or advertises the contest. Material contest terms that are disclosed on an Internet website must conform in all substantive respects to those mentioned over the air. Any changes to the material terms during the course of the contest must be fully disclosed on air or the fact that such changes have been made must be announced on air and participants must be directed to the written disclosures on the website.**

If the FCC were to adopt these proposed changes consistent with these Joint Comments, it would correctly and wisely embrace the efficiencies of the technology that exists today and would improve broadcasters’ ability to easily reach and fully inform their audience of contest rules. The State Associations therefore applaud the Commission’s decision to initiate this proceeding

⁷ See BIA Media Access Pro, December 2012.

⁸ *Expansion of Online Public File NPRM* ¶ 15.

and—given that the Petition for Rulemaking was filed more than three years ago⁹—urge the Commission to proceed as expeditiously as possible.

DISCUSSION

I. The FCC’s Proposed Amendment Is the Logical Next Step in the Commission’s Ongoing Efforts to Modernize Broadcast Disclosure Procedures

Acknowledging the accessibility of the Internet, the Commission has over the last several years worked to move more broadcast-related content online. For example, the FCC has required broadcasters with websites to post EEO reports to their sites.¹⁰ In 2012, the Commission modified the requirement that TV stations maintain public files at their main studios by requiring stations to post most documents in an online file hosted by the FCC.¹¹ And in 2014, the Commission proposed expanding the online public file to more media as part of an ongoing effort to modernize disclosure procedures.¹²

The State Associations submit that the proposed Station Contest Rule amendment is a long-overdue solution to the inherent problems caused by forcing broadcasters to rapidly announce or display contest terms in limited on-air time and space. Under the current rule, broadcasters must balance the risk of omitting “material” terms of a contest against the risk of audience loss if the announcement is too long and detailed. As a result, audience members must race to read and understand the terms displayed or announced. Easing these burdens, the

⁹ See *In the Matter of Entercom Communications Corp. Petition to Amend Section 73.1216 Licensee-conducted contests*, Petition for Rulemaking (filed Jan. 20, 2012).

¹⁰ 47 C.F.R. § 73.2080(c)(6) (“ . . . the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its website, if it has one, an EEO public file report . . .”).

¹¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Online Public File Order*”) (“[t]his updating of our rules harnesses current technology to make information concerning broadcast service *more accessible to the public* and, over time, *reduce broadcasters’ costs of compliance*”) (emphasis added).

¹² *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, MB Docket No. 14-127 (rel. Dec. 18, 2014). That proposal presents some serious implementation and other issues that will need to be evaluated in the proceeding.

proposed amendment allows broadcasters to make use of the virtually infinite space of the Internet to post all contest terms, and thus enables listeners and viewers to read and digest contest terms at a pace and time most convenient to them. The proposed rule also brings broadcast licensees closer to regulatory parity with their cable, satellite, and Internet competitors that are not required to interrupt their programming with contest term announcements.

II. The FCC Should Not Require Licensees to Broadcast the Complete and Direct Website Address Each Time a Contest is Mentioned

Although generally supportive of the proposed amendment, the State Associations caution the Commission against adopting a requirement to broadcast the complete, direct website address where the material contest terms are posted each time a station mentions or advertises a contest. Such a rigid requirement will invariably result in the most technical of violations if and when a licensee utters any whisper of a contest without also spouting out a complete URL. As only a “reasonable number” of periodic broadcast announcements have been sufficient under the existing rule, this proposed “each time” requirement for Internet disclosures threatens unintended consequences and would overly encumber the Internet disclosure option. The rule should, therefore, exempt passing references to a contest from any requirement to announce the contest terms’ web address.

Additionally, rather than require the broadcast of a “complete and direct website address,” which is typically a lengthy and easily forgettable string of letters and punctuation, the rule should only require stations to announce the address of the website’s home page. An address of “wxyz.com” is not only simpler than “http://www.prizes.wxyz.com/Contest/1DYNDM” for a station host to announce, but also simpler for the audience to remember. Most, if not all, Americans who are familiar with the Internet understand how to navigate a website, and will be able to easily locate the contest terms from the home page.

III. The FCC Should Not Micro-Manage Broadcasters That Choose to Post Station Contest Disclosures on the Internet

A. The FCC Should Not Adopt Requirements Specifying the Format or Location of Station Contest Disclosures

The Commission has asked whether it should adopt rules specifying the format for station contest disclosures that are posted on Internet websites.¹³ The State Associations see no basis for additional rule changes that would, in effect, micro-manage a station's use of a website to post contest rules. Nothing in the proposed amendment threatens to upset the Commission's longstanding policy of leaving, in general, the "manner of disclosure" to the licensee's discretion (and for that matter, state law).¹⁴ Indeed, the Internet is a medium that is readily customizable to accommodate individual preferences: users can adjust font size by adjusting the resolution of their screen or simply "zooming" in; users can highlight selected text to adjust font or background color at the literal click of a button; and most web browsers enable users to easily search text within a page by using the "find" function. Moreover, because contest disclosures are subject to state law requirements, and therefore vary from state to state, any FCC micro-management of the manner or format of disclosure would inevitably subject stations to dueling requirements with no countervailing benefit. Additional rule changes regulating the format of contest disclosures are, therefore, neither necessary nor appropriate at this time. The Commission is, of course, free to reassess this at a future date when it has the benefit of some real world experience with the new rule. At that time, interested parties would be better able to submit informed comments regarding such requirements, if necessary.

¹³ *NPRM* ¶ 10.

¹⁴ *See* 47 C.F.R. § 73.1216, Note 2.

The Commission has also questioned how it may best ensure that contest terms are easy to locate on station websites, and how licensees might avoid problems associated with posting contest rules to non-licensee sites.¹⁵ The State Associations submit that broadcasters are inclined to ensure the terms of their contests are obvious and easy for their viewers and listeners to access, whether on their own website or a non-licensee site. Additionally, most Internet search engines are adept at directing the user to the exact location of the subject queried and would bring the viewer or listener straight to the contest rules if there ever existed any confusion. The State Associations therefore maintain that the Commission need not adopt additional rules to govern the location of online contest terms. Such requirements would unnecessarily burden broadcasters' efforts to comply with their disclosure obligations and obviate the proposed rule's intended benefits.

B. The Commission Should Not Adopt Retention Requirements for Online Station Contest Disclosures

The State Associations agree that rules posted online should be accessible to the public 24/7 for the duration of the contest, for free, and without any registration requirement, subject to technical outages or other *force majeure* events. This will ensure that interested listeners and viewers can access and review the rules at a time most appropriate for them. Because rules posted online will already be freely accessible during the term of the contest, the State Associations caution the Commission against adopting retention requirements. The Internet already provides users with a variety of tools to preserve online material, if they so choose. For example, users can easily copy and paste the terms into a new document, take a "screen shot" of the rules, or convert the web page itself to a PDF; users can then save the terms to their hard drives, USB drives, or the Cloud. Moreover, retaining contest terms online past the term of a

¹⁵ *NPRM* ¶ 11.

particular contest would result in having multiple sets of rules on a station’s website—a result that would only lead to audience confusion. In any event, retention requirements would be better dealt with under applicable state laws.

IV. Allowing Broadcasters to Post All Contest Information Online Will Eliminate or Reduce Disputes About Whether Terms Are “Material”

The proposed rule revision promises to reduce the Commission’s administrative burdens, licensees’ compliance burdens, and audience confusion. As proposed, the amendment will enable broadcasters to make *all* contest information available online and will therefore eliminate the need for broadcasters to make inherently subjective judgment calls as to what is “material.” Making all contest information available online will, in turn, eliminate or significantly reduce the risk of audience misperception, as well as reduce the number of complaints alleging that a broadcaster has not fully and accurately disclosed all material terms.¹⁶ The amendment therefore benefits broadcasters, the Commission, and the public alike.

A. The Commission Should Not Require Broadcasters to Set Apart or Distinguish “Material” Terms Posted Online

The FCC has asked whether it should adopt requirements that broadcasters set apart or distinguish in some way contest terms deemed “material.”¹⁷ However, there is no realistic concern that any terms—material or immaterial—will get lost in any fine print. As noted above, Internet users can eliminate “fine print” with the click of a mouse and search for words of interest with the stroke of a few keys. Moreover, any such requirement would lead to endless

¹⁶ See, e.g., *Greater Boston Radio, Inc.*, 28 FCC Rcd 01951 (2013) (finding licensee failed to fully and accurately broadcast all material terms, because “only the complete rules of the Contest, made available via the Station’s website . . . spelled out that what was being awarded”); *Good Karma Broadcasting, LLC Licensee of Station WKNR(AM), Cleveland, Ohio*, 27 FCC Rcd. 10938 (2012) (rejecting licensee’s assertion that “it is within licensee’s discretion to determine that certain prizes are ‘not as worthy of [on-air] discussion’” despite online disclosure reserving right to substitute prizes of equal or greater value).

¹⁷ *NPRM* ¶ 12.

disputes over what is “material” and what is not, what is “set apart” enough and what is not, and so on. This would result in costly and protracted FCC involvement, possibly even involving interpretations of state law regarding what is “material” in that state. Any conceivable benefit from imposing such a requirement—and the State Associations assert there is none—would be vastly overshadowed by the resulting cloud of confusion and attendant regulatory burdens.

B. Retaining the On-Air Disclosure Option Does Not Require the Commission to Redefine “Material”

The State Associations support the FCC’s proposal to retain on-air announcements as one way for broadcasters to satisfy their disclosure obligation. Allowing this flexibility will ensure that the rule imposes no additional burden on small broadcasters for whom it might make sense to continue to broadcast contest disclosures. With the addition of the online disclosure option, some broadcasters may rely only on on-air announcements when running simple contests with uncomplicated terms; contests that are not typically subject to confusion or require lengthy rules. The State Associations therefore see no need to alter the on-air option as the FCC has suggested. Nor does retaining the on-air option introduce any demonstrated need to redefine what is “material.” On this point, the FCC has proposed requiring that any material terms announced on-air must not differ from the material terms disclosed on the station’s website.¹⁸ The State Associations offer a more clear solution: a requirement that the printed rules govern all operation of the contest would eliminate the need to parse what is “material” and whether the printed terms meaningfully differed from the on-air terms. On-air ad-libbed references to a contest may be questioned, but if they are always subject to the interpretation in the printed rules, there is no reason for any further definition.

¹⁸ *Id.*

Of course, the State Associations agree with the FCC that if a licensee changes material terms on the website after the contest is first announced, the licensee should announce on-air that the contest rules have changed and direct participants to the website to review the changes. While the benefit is clear—keeping the audience fully and accurately informed of the rules—the costs to broadcasters would be minimal, as broadcasters seek to thoughtfully plan their contests to avoid the need for midstream rule changes in any event.

V. No Material Differences Exist Between TV and Radio to Merit Different Treatment in the Station Contest Rule

Lastly, the State Associations see no material differences between radio and TV stations that would justify different treatment in the proposed rule. In fact, the currently recognized “material” difference governing disclosures between the two mediums—that TV stations can visibly scroll terms while audibly encouraging viewers to participate, whereas radio is constrained to audio—is superficial at best. Most people do not read the disclosures in the short amount of time broadcasters have to flash or scroll the terms on screen; the reality is that TV stations are still limited by the amount of “space” available in a spot announcement. Radio and TV licensees are under the same obligation to “fully and accurately disclose the materials terms” of their contests, and radio and TV audiences would benefit equally from having written contest terms posted online and accessible at any time of their choosing. As such, the State Associations assert that any differential treatment under the Station Contest Rule is unnecessary, would introduce confusion, and would raise issues of fairness.

CONCLUSION

For the foregoing reasons, the State Associations support the Commission’s proposal to amend the Station Contest Rule in a manner consistent with these Joint Comments. Specifically, the Associations submit that the new Station Contest Rule, Note 2 should read as follows:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The disclosure of material terms shall be made by the station conducting the contest by either: (a) periodic disclosures broadcast on the station or (b) written disclosures on the station's Internet website, the licensee's website, or if neither the individual station nor the licensee has its own website, any Internet website that is publicly accessible. In the former case, a reasonable number of periodic broadcast disclosures is sufficient. In the latter case, the station shall announce over the air the availability of material terms on the website and identify the ~~complete, direct~~ website address where the terms ~~are posted~~ **can be found, e.g. "wxyz.com" or "KISS101.5.com"**, each time the station ~~mentions or~~ advertises **affirmatively promotes** the contest **(i.e., does more than mention the contest in passing)**. Material contest terms that are disclosed on an Internet website must conform in all substantive respects to those mentioned over the air. Any changes to the material terms during the course of the contest must be fully disclosed on air or the fact that such changes have been made must be announced on air and participants must be directed to the written disclosures on the website.

Respectfully submitted,

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