

**Before the  
Federal Communications Commission  
Washington, D.C. 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	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: November 21, 2014**

**Released: November 21, 2014**

**Comment Date: [60 days after publication in the Federal Register]**

**Reply Comment Date: [90 days after publication in the Federal Register]**

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai and O'Rielly  
issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking ("NPRM"), we propose to amend Section 73.1216 of our rules governing broadcast licensee-conducted contests ("Contest Rule")<sup>1</sup> by, among other things, allowing licensees to comply with their obligation to disclose material contest terms either by broadcasting the material terms or making such terms available in writing on a publicly accessible Internet website. The NPRM stems from a Petition for Rulemaking ("Petition") filed by Entercom Communications Corp. ("Entercom" or "Petitioner") requesting that the Commission so update the Contest Rule in a manner that reflects how consumers access information in the 21<sup>st</sup> Century.<sup>2</sup> The Petition was unopposed, and supported by a number of commenters, as listed in Appendix A.<sup>3</sup> As discussed below, we propose to modernize our rules to provide broadcast licensees with greater flexibility in the methods by which they may satisfy their obligation to disclose material contest terms, without relaxing licensees' duty to conduct contests with due regard for the public interest.<sup>4</sup>

**II. BACKGROUND**

**A. The Contest Rule**

2. Radio and television stations frequently run contests as a form of promotion, advertisement, and entertainment.<sup>5</sup> The Commission adopted the existing Contest Rule in 1976 to address

<sup>1</sup> 47 C.F.R. § 73.1216.

<sup>2</sup> See Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM-11684 (filed Jan. 20, 2012). Entercom is licensed to operate 87 primary broadcast radio stations throughout the United States. See [https://licensing.fcc.gov/cdbs/cdbs\\_docs/ef/Form323/323\\_print/323\\_101.cfm?form=323\\_101.cfm&acct=0&appn=101608757&fac\\_num=48651&formid=322](https://licensing.fcc.gov/cdbs/cdbs_docs/ef/Form323/323_print/323_101.cfm?form=323_101.cfm&acct=0&appn=101608757&fac_num=48651&formid=322) (visited Oct. 22, 2014).

<sup>3</sup> We note that we received no comments on the Petition from consumer advocacy groups or members of the general public and encourage all interested parties to file in response to this NPRM.

<sup>4</sup> See *infra* nn. 6, 9.

<sup>5</sup> Belo Corp. *et al.* ("Joint Broadcasters") state that in 2012, their member stations conducted hundreds, if not thousands of contests. Joint Broadcasters Comments at 2. National Public Radio ("NPR") notes that its member

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concerns about the manner in which broadcast licensees were conducting contests over the air.<sup>6</sup> That rule provides, in part:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.<sup>7</sup>

The Contest Rule contains prescriptions regarding the time and manner of disclosing material contest terms:

[T]he 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 material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.<sup>8</sup>

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stations use contests as a way of deepening audience engagement and as a way of generating content for online or broadcast distribution and for fundraising. NPR Comments at 2; *see also* Comments of the Adventist Radio Broadcasters' Association at 2 ("ARBA Comments") (stating that radio broadcasters run contests to "bond" with listeners).

<sup>6</sup> *See Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 F.C.C.2d 1072 (1976) ("*Contest Rule Report and Order*") (adopting Section 73.1216 of the Commission's Rules). *See also Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly*, 45 F.C.C.2d 1056-57 (1974) (identifying contest practices that raise questions about a broadcast licensee's responsibility to the public, such as: (1) disseminating false or misleading information regarding the amount or nature of prizes; (2) failing to control the contest to assure a fair opportunity for contestants to win the announced prizes; (3) urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes; (4) failing to award prizes, or failing to award them within a reasonable time; (5) failing to set forth fully and accurately the rules and conditions for contests; (6) changing the rules or conditions of a contest without advising the public or doing so promptly; and (7) using arbitrary or inconsistently applied standards in judging entries.) ("*Contest Rule Public Notice*").

<sup>7</sup> 47 C.F.R. § 73.1216. The Contest Rule defines "contest" as "a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public." *Id.*, Note 1(a). In addition, the rule provides that:

[m]aterial terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending on the exact nature of the contest, they will 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.

*Id.*, Note 1(b).

<sup>8</sup> *Id.*, Note 2. The Contest Rule does not apply to licensee-conducted contests that are not broadcast or advertised to the general public or to a substantial segment of the public, to contests in which the general public is not requested or permitted to participate, to the commercial advertisement of non-licensee-conducted contests, or to a contest conducted by a non-broadcast division of the licensee or by a non-broadcast company related to the licensee. *See id.*, Note 3.

The Contest Rule was premised on the Commission's conclusion that "a licensee's contests should be conducted fairly and substantially as represented to the public, and . . . failure to do so falls short of the degree of responsibility expected of licensees."<sup>9</sup>

3. As set forth above, the Contest Rule requires a licensee to broadcast the material terms of a contest the first time it informs its audience how to enter or participate, and to repeat such terms a reasonable number of times thereafter.<sup>10</sup> Although, under the rule, licensees are permitted to employ non-broadcast methods for disclosing material contest terms, they may not substitute such methods for the required broadcast disclosure.<sup>11</sup>

#### **B. Petition for Rulemaking**

4. In January 2012, Entercom filed the Petition requesting that the Commission revise the disclosure requirements of Section 73.1216. Specifically, Petitioner proposes that the Commission amend Section 73.1216 to permit broadcasters to satisfy their obligation to disclose material contest terms either by: (i) broadcasting such terms on the station (as required by the current rule)<sup>12</sup>; or (ii) providing material terms in written form on a website and upon request by email, facsimile, mail, or in person, provided that the station makes periodic announcements informing viewers and listeners how and where the public can obtain access to the material terms.<sup>13</sup> In addition, Petitioner asserts that broadcasters that lack their own websites should be allowed to post contest terms on the website of a state broadcasters' association that permits such posting.<sup>14</sup>

5. Petitioner contends that its proposed revisions will bring the Contest Rule into alignment with how Americans access and consume information in the 21st Century and provide for a more effective means of distributing contest information to the public.<sup>15</sup> It asserts that, "[i]n today's fast paced world, Americans expect to instantly access information . . . by merely logging on to a website [or] conducting [an Internet] search"; thus, it argues, reliance on broadcast announcements to disseminate

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<sup>9</sup> See *Contest Rule Public Notice*, 45 F.C.C.2d at 1056. See also *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 F.C.C.2d 934 (1975) ("*Contest Rule NPRM*") ("A recurring problem in recent years has been the failure of some licensees to assure that their contests are conducted with due regard for the public interest. . . . The proposed rule would require licensees who conduct broadcast contests to take certain steps to assure that they are promoted and conducted properly. . . ."); *id.* at 935, Appendix B ("The presentation of false or misleading program material violates a licensee's basic duty to deal honestly with its audience, and is contrary to the public interest").

<sup>10</sup> See 47 C.F.R. § 73.1216, Note 2.

<sup>11</sup> See *infra* n.28 and accompanying text.

<sup>12</sup> As discussed *infra*, Petitioner does not propose complete elimination of broadcast disclosure because, it argues, such on-air announcements may still make sense for some licensees and for simple contests where little information has to be conveyed to listeners. See Entercom Petition at 5.

<sup>13</sup> *Id.* Although Petitioner proposes to require licensees to make contest terms available, upon request, via email facsimile, postal mail, or in person, we decline to propose this at this time because we believe that permitting licensees to disclose contest terms through broadcast and Internet methods is adequate to ensure the availability of material contest information to the public.

<sup>14</sup> *Id.* at 4. Petitioner has stated that it does not object to the Named State Broadcasters Associations' ("NSBA") alternative proposal, under which "stations [would have] the option of posting . . . contest rules on *any* Web site that allows such posting so long as: (i) the Web site is accessible to the public 24/7 during the contest, for free and without any registration requirement; and (ii) the station airs periodic announcements during the contest giving the Web site address where the contest rules may be viewed." See Reply Comments of Entercom Communications Corp. (filed Dec. 28, 2012) at 3-4 ("Entercom Reply" or "Reply"), citing Joint Comments in Support of Petition for Rulemaking (filed Dec. 13, 2012) at 6 ("NSBA Comments").

<sup>15</sup> See Entercom Petition at 1, 4.

material contest information is no longer an acceptable way to inform the public about contest terms.<sup>16</sup> Petitioner asserts that the vast majority of broadcasters already have dedicated websites where they can post complete contest information that the public can access “on demand.”<sup>17</sup> Moreover, it argues that licensees can disseminate contest information via additional methods, such as email, that are more effective than broadcast at conveying contest terms.<sup>18</sup>

6. Petitioner argues that, because the current rule requires licensees to disclose material contest terms via broadcast only periodically, such disclosures may not be heard or seen by an audience member interested in the contest.<sup>19</sup> Further, Petitioner contends that the material terms of some contests can be quite complex and lengthy, such that even if listeners hear (or see, in the case of television) a periodic announcement of such terms, it is nearly impossible for them to comprehend and remember all of the information disclosed.<sup>20</sup> Thus, it asserts, audiences are not likely to obtain useful information from such broadcasts.<sup>21</sup>

7. Petitioner contends that the public today accesses information in ways that are dramatically different from how the public accessed information when the Contest Rule was adopted, and cites evidence that the Internet is the medium used by most Americans to obtain information instantaneously.<sup>22</sup> According to Petitioner, the public is accustomed to accessing station websites to obtain current news, weather, traffic reports, and other information, and, therefore, the public reasonably expects to find contest information on station websites.<sup>23</sup> Petitioner further notes that the Commission itself has recognized the ubiquity and efficiency of the Internet and its utility to Commission processes.<sup>24</sup>

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<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.* at 2 (asserting that broadcasters can easily and quickly disseminate complete contest information to the public by email, facsimile, mail, or in person). *See also* Clear Channel Comments at 3-4 and Exh. A (discussing a study of Arbitron PPM data which showed that stations airing a contest disclosure lost more than one quarter of their net listening audience during commercial breaks containing this announcement, as opposed to only 13% of their net audience during commercial breaks that did not contain such an announcement – *i.e.*, almost twice the audience was lost during breaks containing contest disclosures) (citing Media Monitors, Katy Perry Contest Disclaimer on KDND Study, conducted Sept. 20, 2010)).

<sup>19</sup> *See* Entercom Petition at 2. *See also* NPR Comments at 2.

<sup>20</sup> Entercom Petition at 2-3; Beasley Broadcasting Group, Inc. *et al.* (“Joint Commenters”) Comments at 2 (arguing that broadcast contest disclosures may be replete with so much detail that they are nearly impossible to digest – even for those consumers who are genuinely interested); Joint Broadcasters Comments at 4 (noting that the public will often have difficulty processing, comprehending, or remembering broadcast contest terms). *See also* ARBA Comments at 2; Clear Channel Communications, Inc. (“Clear Channel”) Comments at 4; North Carolina Association of Broadcasters (“NCAB”) Comments at 2; Radio One, Inc. (“Radio One”) Comments at 2.

<sup>21</sup> Entercom Petition at 3.

<sup>22</sup> *Id.* Petitioner cites a 2010 survey that revealed that people aged 12 and over view the Internet as the most essential medium in their lives relative to television, radio, or newspapers, and that 84% of respondents have access to the Internet from at least one location. *See id.* at 3, nn.4-5 (citing Arbitron Inc./Edison Research, The Infinite Dial 2010: Digital Platforms and the Future of Radio (2010)). Petitioner also cites a report that shows that 81% of all adults 18 and over accessed the Internet in a given 30-day period. *See id.* at 3, n.6 (citing International Demographics, Inc. The Media Audit 2010/2011 – 80 Market National Aggregate Report).

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.*

8. In November 2012, the Commission's Consumer and Governmental Affairs Bureau ("CGB") issued a Public Notice inviting comment on the Petition.<sup>25</sup> Each of the sixteen parties that responded to the Public Notice support the Petitioner's request to commence a rulemaking proceeding to modernize the Contest Rule.<sup>26</sup>

### III. DISCUSSION

9. We propose to amend the Contest Rule to allow broadcasters to satisfy their obligation to disclose material contest terms by making such terms available in writing on a publicly accessible Internet website. We believe that this rule revision will give broadcasters greater flexibility in the means by which they may comply with the Contest Rule and is consistent with the Commission's recognition that the Internet is an effective tool for distributing information to broadcast audiences.<sup>27</sup> We seek comment on this proposal. Although the Commission's rule currently requires that material terms be disclosed periodically by announcements broadcast on the station,<sup>28</sup> we agree with parties who assert that the dramatic changes in the way that consumers access information since the Contest Rule was adopted justify updating the rule.<sup>29</sup> As some commenters note, the public is accustomed to accessing station websites to obtain a broad range of information.<sup>30</sup> In fact, the record reflects that some licensees already

<sup>25</sup> See *Consumer and Governmental Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed*, Public Notice, Report No. 2969 (rel. Nov. 28, 2012) ("*Public Notice*").

<sup>26</sup> See Appendix A.

<sup>27</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4540 ¶ 10 (2012) ("*Enhanced Disclosure Second Report and Order*") (concluding that "[t]he evolution of the Internet and the spread of broadband Internet access, has made it easy for stations to post material online and for many consumers to find information online" and, therefore, it makes "plain common sense" to place broadcasters' public files online to make them more accessible and to advance the goals of the public file requirement). See also *Commission Seeks Comment on Petition for Rulemaking Filed by the Campaign Legal Center, Common Cause and the Sunlight Foundation Seeking Expansion of Online Public File Obligations to Cable and Satellite TV Operators, Bureau Also Seeks Comment on Expanding Online Public File Obligations to Radio Licensees*, Public Notice, DA 14-1149, MB Docket No. 14-127 (rel. Aug. 7, 2014). In addition, as some parties note, Commission rules require radio and television licensees to post annual EEO public file reports on their websites if they have them, see Virginia Assn. of Broadcasters ("VAB") Comments at 3 (citing 47 C.F.R. § 73.2080(c)(6)); Ohio Assn. of Broadcasters ("OAB") Comments at 3; NCAB Comments at 3, and require television licensees to include on station websites contact information for personnel who can address closed captioning issues. See NCAB Comments at 3.

<sup>28</sup> In particular, the Contest Rule provides that: "The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest. . . . In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner." 47 C.F.R. § 73.1216, Note 2. See also *Good Karma Broad. LLC*, 27 FCC Rcd 10938, 10941 n.32 (EB 2012) ("Posting contest rules on a station's website does not satisfy Section 73.1216's requirement that a licensee broadcast the material terms of a contest it conducts."); Joint Commenters Comments at 2, citing *Clear Channel Communications, Inc.*, 27 FCC Rcd 343, 346 ¶ 6 (EB 2012) ("While stations are free to provide contest information in other formats, including Internet postings, numerous Commission decisions have repeatedly made clear that 'licensees cannot avail themselves of alternative non-broadcast announcements to satisfy the requirement that they accurately announce a contest's material terms.'").

<sup>29</sup> See Emmis Comments at 1 ("[A]ffording stations the option of posting contest rules on websites, with periodic on-air announcements directing listeners to those sites, would properly reflect changes in technology since the rule was adopted decades ago, and would better inform listeners than the rule in its current form."); Entercom Petition at 4 ("[T]here are now other simple and more effective ways to distribute contest information to the public"). See also ARBA Comments at 3; Joint Broadcasters Comments at 5-6; National Assn. of Broadcasters ("NAB") Comments at 3; NCAB Comments at 2; OAB Comments at 2; VAB Comments at 2; Entercom Reply Comments at 2.

<sup>30</sup> See Entercom Petition at 4 (noting that the public is accustomed to accessing station websites at any time to obtain up-to-date information regarding news, weather, traffic, song names, etc., instead of waiting for station broadcasts); Clear Channel Comments at 3 (asserting that many, if not most, broadcasters already have websites where they

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use their websites to post contest-related information, and allow consumers to enter and participate in contests via station websites.<sup>31</sup> Parties contend that posting material contest terms in writing on station websites will give potential contest participants immediate access to those terms and allow the public to review the terms at their convenience,<sup>32</sup> thereby meeting consumer expectations for accessing such information<sup>33</sup> and potentially reducing consumer confusion.<sup>34</sup>

10. We propose to allow a broadcast station to satisfy its Section 73.1216 disclosure obligation by posting material 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 readily publicly accessible Internet website.<sup>35</sup> We seek comment on the costs and benefits of adopting this proposal. In addition, we seek comment on whether and to what extent we should adopt rules specifying the format for contest disclosures that are posted on Internet websites.

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provide a variety of programming-related content, news, and general station information to the public); NPR Comments at 2 (agreeing that audiences visit local public radio station websites to obtain information). NAB points to BIA Media data indicating that at least 90% of all AM/FM commercial radio stations in the U.S. have a website and consumers are familiar with the sites and visit them often. NAB Comments at 3, n.6 (citing BIA Media Access Pro, Dec. 2012).

<sup>31</sup> Clear Channel Comments at 3, 4-5 (many broadcasters have websites where they often post contest rules, and unlike in 1976, many contests today are promoted on-air but conducted primarily online via the station's website, Facebook page or other social media site); Joint Commenters Comments at 3 (many stations already choose to post material contest terms online and many contests take place wholly or partially online, often through station websites, making websites the logical place for disclosing material terms); Joint Broadcasters Comments at 2, n.3 (many member stations have promoted contests on-air but conducted them online, and many contests require online entry through a station website entry form, by "liking" the station's Facebook page or becoming a member of the station's online club); NPR Comments at 2 (many public radio station contests require the public to use a station website to enter); NCAB Comments at 2 (stating that one AM/FM member station reported nearly 19,500 monthly views of their contest page on two websites); Radio One Comments at 1-2 (each of Radio One's 55 stations spread over 16 urban markets have an online presence where listeners may obtain information about contests at their convenience).

<sup>32</sup> See Entercom Petition at 3; Cox Comments at 1 (arguing that the proposed rule change will allow immediate, round-the-clock access to contest terms, thereby allowing participants to read the rules at their own pace). See also Clear Channel Comments at 3; Joint Broadcasters Comments at 5; Local TV, LLC ("Local TV") Comments at 1; NAB Comments at 2; NPR Comments at 2; NSBA Comments at 5; OAB Comments at 3.

<sup>33</sup> See Entercom Petition at 4; Clear Channel Comments at 3, 5 n.11 (stating that online posting would meet consumer expectations and that the public likely would prefer to obtain contest information online or through other non-broadcast means, even if such contests are conducted over the air). See also Joint Commenters Comments at 3; NSBA Comments at 3; NAB Comments at 2; OAB Comments at 3; Joint Broadcasters Comments at 4; VAB Comments at 2.

<sup>34</sup> See NSBA Comments at 5. For example, the posting of material contest terms online would allow such terms to be reviewed at the convenience of the listener or viewer and thus may give members of the public a better understanding of contest terms than if the terms were aired in a broadcast announcement. In addition, NSBA asserts that adopting the proposed revisions will reduce burdens on the Commission because the agency will receive fewer complaints that stations have failed to disclose the material terms of contest rules in broadcast announcements or have failed to broadcast such announcements with sufficient frequency. See *id.* at 5, n.5 (citing *Clear Channel*, 27 FCC Rcd at 345-46, ¶ 6; *Good Karma*, 27 FCC Rcd at 10939, ¶ 3, 10942, ¶ 9); Entercom Reply Comments at 2.

<sup>35</sup> As noted above, although Petitioner proposes to allow stations that do not have their own website to post material contest terms to the website of a state broadcasters' association, NSBA has asserted that "there is no unanimity among the State Associations for agreeing to serve as a third-party Web host for station contest rules." See NSBA Comments at 6. See also VAB Comments at 3; OAB Comments at 4; NCAB Comments at 3. NSBA thus proposes to allow licensees the option of posting their contest rules on any website that allows such posting, under certain conditions. NSBA Comments at 6. Petitioner does not oppose NSBA's proposal. See Entercom Reply at 3-4.



11. If a licensee uses an Internet website to disclose material contest terms, how could we ensure that such terms are easy for consumers to locate on that website? For example, should we require a link on the website's home page to the contest terms? How long should a licensee be required to maintain the contest information on the website? NSBA asserts that 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."<sup>36</sup> Should a revised Contest Rule contain these requirements? Are there other website characteristics or requirements that the rule should mandate to promote the goal of public accessibility? We are sensitive to the possibility that consumers may become frustrated if they cannot readily locate a contest's material terms on a non-licensee website, and seek comment on how licensees might anticipate and avoid problems associated with posting content rules to non-licensee sites. We propose to apply the same rule to radio and television licensees, but seek comment on whether any differences in those services merit different treatment in the rule.<sup>37</sup> In particular, we seek comment on the impact of the above proposals on small broadcasters.

12. We note that the disclosure requirements in Section 73.1216 pertain to "material" contest terms, defined as those terms that "define the operation of the contest and which affect participation therein."<sup>38</sup> Section 73.1216 provides that "material terms may vary widely depending on the exact nature of the contest," but that such terms generally will 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.<sup>39</sup> To the extent that licensees have difficulty determining which terms are "material" and thus subject to disclosure under the Contest Rule,<sup>40</sup> would revising the rule as proposed eliminate or reduce the need for licensees to make this determination, insofar as they could post *all* contest information in writing online? On the other hand, is 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 fine print? We seek comment generally on whether or to what extent we need to refine the definition of "material" given our proposed change to the Contest Rule. To avoid consumer confusion, we propose that, consistent with existing Commission precedent, any material terms announced on air must not differ from the material terms disclosed on a website.<sup>41</sup>

13. We propose further to modify the Contest Rule by requiring 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<sup>42</sup> each time the station mentions or advertises a contest. Under the

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<sup>36</sup> NSBA Comments at 6. The issue whether licensees that do not have their own websites should be permitted to post material contest terms on any public website could become moot over time. NSBA argues that regulatory reliance on websites will encourage those few licensees that do not have websites to establish them. *Id.* at 3.

<sup>37</sup> For example, Petitioner asserts that, in complying with the Contest Rule, radio is at a disadvantage relative to television because radio licensees must interrupt programming to satisfy the rule's disclosure requirements, thereby driving away audiences. Nevertheless, Petitioner's proposed rule revisions apply to all broadcasters. *See* Entercom Petition at 2-3, 5 n.8. *See also* ARBA Comments at 2; Emmis Communications Corp. ("Emmis") Comments at 1; Joint Broadcasters Comments at 4; Joint Commenters Comments at 2; NAB Comments at 2; Radio One Comments at 3; VAB Comments at 2.

<sup>38</sup> *See* 47 C.F.R. § 73.1216, Note 1(b) (defining "material terms").

<sup>39</sup> *Id.*

<sup>40</sup> *See, e.g.,* Joint Commenters Comments at 4; Cox Enterprises, Inc. ("Cox") Comments at 2.

<sup>41</sup> For example, if the on air announcement or advertising for the contest identifies a particular prize by brand name or model, then the website disclosure must be the same.

<sup>42</sup> By complete, direct website address, we mean the address that will take the consumer directly to the page on the website where the contest terms are posted. If licensees post the contest terms on the home page of the website or

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current rule, stations are required to broadcast material terms periodically after their initial disclosure.<sup>43</sup> The discretion afforded licensees under the current rule to determine when they will broadcast material terms after initial disclosure can potentially leave a consumer without access to such terms at the time a contest is advertised on air, as well as create uncertainty for broadcasters about their compliance with the rule.<sup>44</sup> Although the rule changes we propose diverge from Petitioner’s proposal (which would require stations to broadcast announcements identifying the website address only periodically), we believe that requiring licensees to broadcast the website address where contest terms are available each time they mention or advertise a contest will better inform the public of material contest information and is not unduly burdensome. We believe that such a requirement is less burdensome than requiring a licensee to periodically broadcast material contest terms in full. Therefore, we propose to require licensees to broadcast the website address on which material contest terms are posted each time they mention or advertise a contest. In addition, if a licensee that chooses to satisfy its disclosure obligations via the Internet changes the material terms of a contest after the contest is first announced, we propose that the licensee must announce on air that the contest rules have changed and direct participants to the website to review the changes. We seek comment on the appropriate frequency and duration of this requirement. For example, should this announcement have to be made each time the licensee announces the contest and broadcasts the website address where such terms are posted, and if so, for how long should that requirement last?<sup>45</sup> We seek comment on these proposals, including the costs and benefits of adopting these rules. We also seek comment on the impact of these proposals on small licensees.

14. We propose that we should still permit broadcast disclosure as one means of complying with the Contest Rule. As Petitioner notes, broadcast disclosure of material contest information “may still make sense for some broadcasters and for extremely simple contests where very little information has to be conveyed to the [audience].”<sup>46</sup> If we retain broadcast disclosure as a method of complying with the Contest Rule, should we make any changes to the rule to improve the effectiveness of broadcasting material contest terms?

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post a direct link to the contest terms on the home page, then announcing the home page address will suffice to ensure consumers can easily find and review the terms of the contest.

<sup>43</sup> See 47 C.F.R. § 73.1216, Note 2.

<sup>44</sup> See Cox Comments at 2 (stating that stations must often consult counsel for guidance on how often “periodic” announcements must be made).

<sup>45</sup> The Commission has interpreted the existing Contest Rule to impose on licensees an obligation to notify the public of changes to material contest terms by announcing such changes over the air. See *Access 1 New Jersey License Co., LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4232, 4235, ¶ 8 and n.24 (EB 2007) (finding that a licensee’s failure to notify the public of changes to material contest terms violated the Contest Rule). See also *Clear Channel Broad. Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4072 (EB 2006) (imposing forfeiture for unannounced contest rule change that excluded contestant’s multiple entries). Thus, if we were to amend the Contest Rule to permit disclosure of material contest terms via a website, licensees that chose to comply with their disclosure obligations via broadcast similarly would be required to notify the public of changes to such terms through broadcast announcements.

<sup>46</sup> See Entercom Petition at 5. See also NCAB Comments at 2 (asserting that on-air disclosure of material terms may work easily and well for relatively simple contests – for example, straightforward “call in and win” contests); cf. OAB Comments at 2 (arguing that on-air disclosure should be retained as an option for simple contests, but that written disclosures are often better for contests with multiple entry mechanisms including performance of complex tasks to enter and progression through various elimination rounds).



#### IV. PROCEDURAL MATTERS

##### A. Regulatory Flexibility Act

15. As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>47</sup> the Commission has prepared an Initial Regulatory Flexibility Act Analysis (“IRFA”) relating to this NPRM. The IRFA is attached to this NPRM as Appendix C.

##### B. Paperwork Reduction Act

16. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.<sup>48</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>49</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>50</sup>

##### C. Ex Parte Rules

17. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under Section 1.1206(b) of the Commission’s rules.<sup>51</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>52</sup> Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

##### D. Filing Requirements

18. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,<sup>53</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (“ECFS”), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.<sup>54</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

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<sup>47</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>48</sup> Pub. L. No. 104-13.

<sup>49</sup> Pub. L. No. 107-198.

<sup>50</sup> 44 U.S.C. § 3506(c)(4).

<sup>51</sup> See 47 C.F.R. § 1.1206(b); *see also id.* §§ 1.1202, 1.1203.

<sup>52</sup> See *id.* § 1.1206(b)(2).

<sup>53</sup> See *id.* §§ 1.415, 1.419.

<sup>54</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

19. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, DC 20554.

20. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

21. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

22. Additional Information. For additional information on this proceeding, contact Raelynn Remy, [Raelynn.Remy@fcc.gov](mailto:Raelynn.Remy@fcc.gov) of the Media Bureau, Policy Division, (202) 418-2936.

## V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303, this Notice of Proposed Rulemaking IS ADOPTED.

24. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Comments filed in CGB Docket No. RM-11684**

Adventist Radio Broadcasters' Association (ARBA)  
Clear Channel Communications, Inc.  
Colorado Broadcasters' Association (CBA)  
Cox Enterprises, Inc., on behalf of Cox Media Group  
Emmis Communications Corporation  
Joint Commenters (Beasley Broadcasting Group, Inc., *et al.*)  
Joint Broadcasters (Belo Corp., *et al.*)  
Local TV, LLC  
Named State Broadcasters Associations (Alabama Broadcasters Association, *et al.*) (NSBA)  
National Association of Broadcasters (NAB)  
National Public Radio, Inc. (NPR)  
North Carolina Association of Broadcasters (NCAB)  
Ohio Association of Broadcasters (OAB)  
Radio One, Inc.  
Saga Communications, Inc.  
The Virginia Association of Broadcasters (VAB)

**Reply Comments filed in CGB Docket No. RM-11684**

Entercom Communications Corp.

## APPENDIX B

## Proposed Rule Changes

Note: For ease of review, the proposed rule changes are written below with additions in bold underlined text.

The Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 73 – Radio Broadcast Services.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Amend § 73.1216 by revising Note 2 to read as follows:

§ 73.1216 Licensee-Conducted Contests.

\* \* \* \* \*

Note 2: 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.~~**

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## APPENDIX C

## Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Act Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rule Changes**

2. The NPRM stems from an unopposed Petition for Rulemaking filed by Entercom Communications Corp. requesting that the Commission update Section 73.1216 of its rules governing broadcast licensee-conducted contests (the “Contest Rule”)<sup>4</sup> in a manner that reflects how consumers access information in the 21<sup>st</sup> Century.<sup>5</sup> The NPRM proposes to amend the Contest Rule by, among other things, allowing licensees to comply with their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet website.

3. In particular, the NPRM proposes to amend the Contest Rule: (i) to permit a licensee that chooses to satisfy its disclosure obligations by means of an Internet website to make material contest terms available on the station’s website, the licensee’s website, or, if neither the station nor the licensee has its own website, any publicly accessible Internet website; (ii) to require that any material contest terms announced on air not differ from the material terms disclosed on a website; (iii) to require a station that chooses to satisfy its disclosure obligation via the Internet to broadcast the complete, direct website address where the contest terms are posted each time the station mentions or advertises a contest; and (iv) to require that, if a licensee that chooses to satisfy its disclosure obligation via the Internet changes the material terms of a contest after the contest is first announced, the licensee announce on air that the contest rules have changed and direct participants to the website to review the changes. These proposals are intended to modernize the Contest Rule in a manner that gives broadcasters greater flexibility in the methods by which they satisfy their obligation to disclose material contest terms, while ensuring adequate notice of such terms to the public.

**B. Legal Basis**

4. The proposed action is authorized pursuant to Sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> 47 C.F.R. § 73.1216.

<sup>5</sup> See Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM-11684 (filed Jan. 20, 2012).

**C. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>9</sup> The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>10</sup> The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>11</sup> The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000.<sup>12</sup> Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

7. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations.<sup>13</sup> Of this total, 1,221 stations (or about 88 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.<sup>14</sup> NCE stations

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<sup>6</sup> 5 U.S.C. § 603(b)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>9</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>10</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>11</sup> 13 C.F.R. § 121.201; 2012 NAICS code 515120.

<sup>12</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table).

<sup>13</sup> See *Broadcast Station Totals as of June 30, 2014*, Press Release (MB rel. July 9, 2014) (*Broadcast Station Totals*) at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-328096A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf).

<sup>14</sup> See *Broadcast Station Totals*, *supra*.



are non-profit, and therefore considered to be small entities.<sup>15</sup> Based on these data, we estimate that the majority of television broadcast stations are small entities.

8. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.<sup>16</sup> The Commission has estimated the number of licensed Class A television stations to be 432.<sup>17</sup> The Commission has also estimated the number of licensed LPTV stations to be 2,028.<sup>18</sup> Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

9. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>19</sup> must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

10. *Radio Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”<sup>20</sup> The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.<sup>21</sup> Census data for 2007 shows that 2,926 firms in this category operated in that year.<sup>22</sup> Of this number, 2,877 firms had annual receipts of less than \$25,000,000, and 49 firms had annual receipts of \$25,000,000 or more.<sup>23</sup> Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

11. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,553 stations and the number of commercial FM radio stations to be

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<sup>15</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>16</sup> 13 C.F.R. § 121.201; NAICS code 515120.

<sup>17</sup> See *Broadcast Station Totals*, *supra*.

<sup>18</sup> See *Broadcast Station Totals*, *supra*.

<sup>19</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 21.103(a)(1).

<sup>20</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “Programming may originate in their own studio, from an affiliated network, or from external sources.”

<sup>21</sup> 13 C.F.R. § 121.201; NAICS code 515112.

<sup>22</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515112), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table).

<sup>23</sup> *Id.*

6,622, for a total number of 11,175.<sup>24</sup> Of this total, 9,898 stations (or about 90 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 23, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) AM radio stations to be 168 stations and the number of noncommercial educational FM radio stations to be 4,082, for a total of 4,250.<sup>25</sup> NCE stations are non-profit, and therefore considered to be small entities.<sup>26</sup> Therefore, we estimate that the majority of radio broadcast stations are small entities.

12. *Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.<sup>27</sup> The Commission has estimated the number of licensed low power FM stations to be 814.<sup>28</sup> Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

13. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>29</sup> must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

14. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements.

15. *Reporting Requirements.* The NPRM does not propose to adopt reporting requirements.

16. *Recordkeeping Requirements.* The NPRM proposes certain recordkeeping requirements that would be applicable to covered small entities. In particular, the NPRM:

- proposes to allow broadcast licensees to satisfy their obligation to disclose material contest terms by posting such terms on the station’s website, the licensee’s website, or, if neither the station nor the licensee has its own website, any publicly accessible Internet website;

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<sup>24</sup> See *Broadcast Station Totals as of June 30, 2014*, Press Release (MB rel. July 9, 2014) (*Broadcast Station Totals*) at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-328096A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf). This document only indicates the total number of AM stations as 4,721. The breakdown between licensed AM commercial and noncommercial stations was obtained from Staff review of the Consolidated Database System (CDBS). See [http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs\\_pa.htm](http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm).

<sup>25</sup> See *Broadcast Station Totals*, *supra*.

<sup>26</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>27</sup> See 13 C.F.R. § 121.201, NAICS Code 515112.

<sup>28</sup> See *News Release*, “Broadcast Station Totals as of June 30, 2012” (rel. Jul. 19, 2012) ([http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-304594A1315231A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf)).

<sup>29</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 21.103(a)(1).

- proposes that any material contest terms announced on air must not differ from the material terms disclosed on a website;
- proposes to 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 each time the station mentions or advertises a contest;
- proposes that, if a licensee that chooses to satisfy its disclosure obligations via an Internet website changes the material terms of a contest after the contest is first announced, such licensee be required to announce on air that the contest terms have changed and direct participants to the website to review the changes; and
- seeks comment on whether a licensee that chooses to satisfy its disclosure obligations via the Internet and that changes contest terms after a contest is first announced, must repeat that the contest terms have changed each time it announces the contest and broadcasts the website address where such terms are posted, and if so, how long that requirement should last.

17. *Other Compliance Requirements.* The NPRM seeks comment on other compliance requirements that would be applicable to covered small entities. In particular, the NPRM:

- seeks comment on whether and to what extent the Commission should adopt rules specifying the format for contest disclosures that are posted on Internet websites and how long stations should be required to maintain such disclosures on a website;
- seeks comment on whether licensees should be required to set apart or distinguish in some way contest terms deemed “material” from other contest information to ensure that important contest information is readily available to the public;
- seeks comment on whether to adopt requirements designed to ensure that the material terms of a contest are easy for consumers to locate on a public website;
- seeks comment on whether to require that a public website that is used to comply with the Contest Rule’s disclosure requirements be accessible to the public 24/7 during the contest, for free, and without any registration requirement, and whether there are other characteristics that such websites should be required to possess;
- seeks comment on how licensees can anticipate and avoid problems associated with posting contest terms to non-licensee websites;
- seeks comment on whether there are any differences between radio and television licensees that merit different treatment in the rule; and
- seeks comment on whether, if broadcast disclosure is retained as one method of complying with the Contest Rule, any changes should be made to the rule to improve the effectiveness of broadcasting material contest terms.

18. Because no commenter provided information specifically quantifying the costs and administrative burdens associated with the Petitioner’s proposed rule revisions, we cannot precisely estimate the impact of the rules proposed in the NPRM on small entities. However, the proposed revisions will afford all licensees, including small broadcasters, greater flexibility in the method by which they comply with the Contest Rule. In addition, we note that the proposed revisions were derived largely from the Petition for Rulemaking in this proceeding, which was unopposed and supported by all commenters, including small broadcasters. Thus, we find it reasonable to conclude that any costs or burdens on small entities resulting from the proposed requirements will be outweighed by the benefits.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

19. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification,

consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>30</sup>

20. The accompanying NPRM principally proposes to amend Section 73.1216 of the Commission's rules by allowing all licensees, including small broadcasters, to meet their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet website. This revision to the rule is intended to give broadcasters greater flexibility in the manner by which they satisfy their obligation to disclose material contest terms, while ensuring adequate notice of such terms to the public. Whereas under the current rule, licensees must expend time and resources developing broadcast messages that adequately disclose important contest information, licensees will have the option to disclose such information through the Internet. Permitting disclosure through this additional method is potentially less costly and administratively burdensome for licensees, and will minimize the economic impact on small entities. One commenter has estimated, for example, that as much as two hours that are presently devoted by licensees to the production of contest-related broadcast spots will be spared. Moreover, the air time that is likely to be freed up as a result of more abbreviated contest-related announcements in some cases could be used for advertising spots. As noted, the Petition for Rulemaking in this proceeding was uniformly supported by commenting parties, including small entities. Thus, we anticipate that the proposed rule revisions, if adopted, will only benefit small broadcast entities. Nevertheless, the NPRM seeks comment on the potential impact of its proposed rules on such entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

21. None.

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<sup>30</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF  
CHAIRMAN TOM WHEELER**

Re: *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226

Today, we are taking an important step to modernize the way Americans receive and understand information—specifically contest rules—in the digital age.

Almost forty years ago, the Commission adopted the Contest Rule to ensure that television and radio broadcasters would conduct contests fairly and substantially as represented to the public. At that time, the Commission adopted the rule out of concern about the ways in which broadcasters were conducting contests over the air.

Since then, we are now living in what I like to call the fourth great network revolution—the marriage of computing and connectivity. Americans obtain information today in ways that are vastly different from when the Contest Rule was adopted. Recent information reveals that Americans spend more time using their mobile devices than they do watching television. Access to the Internet is more ubiquitous than access to television—so we should reflect that in our rules.

While requiring broadcasters to comply with their obligation to disclose important contest information through on-air announcements made sense when the radio and television were dominant methods of accessing information, such a requirement is less useful today. Revising the Contest Rule in a way that reflects how the public accesses and consumes information in the 21st Century only makes sense.

To that end, we are proposing to update the Contest Rule by allowing broadcasters to meet their obligation to disclose important contest information either through broadcast announcements or by making such information available on the Internet. In addition, we are proposing rule changes that would define the disclosure obligation in cases where a broadcaster has chosen to meet that obligation easily through an Internet website.

Updating the Contest Rule as proposed gives consumers the option to make informed decisions by accessing contest information “on demand” and allowing them to review it at their convenience. Allowing stations to disclose contest information on the Internet would also meet consumer expectations about how and where to obtain this kind of information.

The proposed rule changes would also give broadcasters more flexibility in the methods by which to meet their obligation to disclose important contest information, without relaxing their duty to conduct contests with due regard for the public interest. It's important to note that we are giving broadcasters a new option, but they can meet their obligation using today's current requirements.

I applaud the leadership of my colleagues up here with me today, especially that of Commissioner O'Rielly. I would also like to thank the Media Bureau staff for their hard work, with a special call out to Raelynn Remy and Mary Beth Murphy in the Policy Division and Media Bureau Chief Bill Lake. Thanks to you all—both in this room and out of it—we have advanced the ball in a significant way.

By launching this rulemaking, the Commission is taking another step to modernize its rules in a way that capitalizes on the Internet's ubiquity and efficiency to meet the needs and expectations of consumers. The Commission recognizes that the Internet is an effective tool for distributing information to consumers, and today's action is consistent with that value.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226

I enjoy a hearty contest. Be it on a field, court, park, dance floor, or even an occasional quiz show... if I know the rules, and how to keep score, I am entertained.

And I am not alone. America is a nation that loves competition. Just look at the phenomenal growth of collegiate and professional sports, lotteries, and the gaming industry. It is clear we enjoy both games of skill and games of chance.

There are scores of contests that take place in our country each year. Many are conducted over radio and television stations as a means of deepening audience engagement, raising money for charitable causes, and generating additional content. Although I do not participate in these contests for obvious reasons, the public should understand the rules of every game they are eligible to play.

I am told that lawyers are taught never to ask a question at trial if they do not know the answer. And conventional wisdom suggests that no one should enter a contest if they are unfamiliar with the rules. There is, however, a saying that goes, "you can't win, if you don't play". But I would add that, "If you're going to play the game, you should know how to win."

With that in mind, we are amending our rules today on contests conducted by licensees to make sure their material terms are more accessible to viewers and listeners.

Our basic Contest Rule, which has been in place since 1976, provides in pertinent part, that:

A licensee that broadcasts or advertises information about a contest it conducts, shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.... A contest is a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public.<sup>1</sup>

Today's item will allow licensees to meet this disclosure obligation by permitting them to make terms of any contest available on a publicly accessible website. Doing so makes sense, given today's consumption patterns, and will help interested participants find contest information they may have missed over the air in a place where they are bound to discover it: on the internet.

I want to commend my colleague, Commissioner O'Rielly, for his commitment to bringing this item to the attention of the Commission and for urging us to act expeditiously. I also applaud the Media Bureau for presenting us this morning with a winner of an item, and thank the staff for their great work.

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<sup>1</sup> 47 C.F.R. § 73.1216.



**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226

It was 1976 when this Nation celebrated its bicentennial. That same year, with a little less fanfare, the Federal Communications Commission put in place a rule governing contests over the radio and television. This rule requires radio and television stations to fully and accurately disclose on air the terms of any contest they offer as a promotion, advertisement, or entertainment.

The values informing this rule are solid. They have stood the test of time. After all, we continue to care about honesty and transparency. We have concerns about contest fraud and deception. But when it comes to media and communications, in 2014 we are in a whole new world. Social media has upended simple connections over the telephone, mobile payments have made inroads into our wallets, and online video is poised to become the new digital classroom and doctor's office. So I think it's time for broadcasters to be able to use 21<sup>st</sup> century tools to carry out their public interest obligations with respect to on air contests. As a result, I am pleased to support this rulemaking. Thank you to the Media Bureau for bringing it before us today. Thank you also to my colleague, Commissioner O'Rielly, who drew the Commission's attention to this issue in a blog post this summer and has helped set us on a course to modernize our policies.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226

In 1985, I won a radio contest at the ripe-old age of twelve. In reality, it was my father who entered. But upon winning, he became embarrassed and gave the radio station my name. The result? An envelope soon arrived in the mail with my name on it, a rare and exciting event for me at that age. Inside was a cassette tape with a number of popular songs, including the theme to *Miami Vice*. This marked my first and only victory in a broadcast contest. You might say that I peaked at twelve, and it's been all downhill ever since.

On a more serious note, this item proposes to amend the FCC's contest rule, which currently requires broadcasters to disclose the material terms of any contest through periodic over-the-air announcements. The Commission adopted this rule way back in 1976. Given the state of technology in the 1970s, the rule made sense at the time. But needless to say, the world has changed in the many years since. So, too, should our contest rule. In particular, the rule should reflect the digital world in which we live.

That's why Commissioner O'Rielly and I called for the Commission to modernize our contest rule. Today, we start the process to do just that. Specifically, we propose to give broadcasters the option of disclosing the material terms of contests on a publicly accessible website so long as the station broadcasts the website address each time that it mentions the contest. This would allow interested viewers or listeners to review the contest rules at their convenience and ease the burden imposed on broadcasters.

This isn't just an academic exercise. Contest rules are not the most compelling content. For some reason, people just don't find them as catchy as songs like *All About That Bass* by Meghan Trainor or *Happy* by Pharrell Williams. And there is evidence that many audience members change the channel when these rules are read on air.

So I thank the Chairman for launching the process of updating our contest rule. I also thank him and my other colleagues for their support of my suggestions for improving the item. Returning back to that cassette tape I "won" back in 1985, the item brings to mind the immortal words of Sonny Crockett, the police detective played by Don Johnson on *Miami Vice*: "Well, you win some, and you win some." I will happily vote to approve.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, MB Docket No. 14-226

The item before us would modify an outdated Commission regulation to reflect and embrace the full capabilities of the Internet to disseminate the particular rules for a broadcast contest to American consumers. I am pleased to support it and thank the Chairman for bringing the matter forward at this time.

Broadcast contests can be fun, entertaining, and sometimes lucrative for the audience. They can help keep listeners or viewers tuned to a particular program or specific station. It is important that these contests are run fairly and actually deliver what they promise. One way to do this is to ensure the information regarding a broadcast contest is widely available. And that's why the Internet is a perfect tool for this purpose.

The implementation of our current rule leaves a lot to be desired. I suspect that many radio listeners have experienced the auctioneer-style announcer rattle through the particulars of a contest at breathtaking speed during some rush hour commute. Many of us have also tried to glimpse at the microscopic fine print – which few can actually read – that appears on the television screen at the end of a contest promotion. These disclosures provide information about the terms and conditions of broadcast contests, but given the method by which they are delivered to comply with the Commission's rules, they can be ignored or overlooked by viewers and listeners. Not to mention, some in the audience may even turn to another channel or station during these disclosures. These announcements also waste valuable airtime that can be better used by broadcasters to provide programming of interest to their communities.

It is just plain common sense and a reflection of the current marketplace to allow broadcasters to announce a website where viewers and listeners can go, at any time, to review these rules, instead of doing so on air. It is also important that broadcasters have the option – as opposed to being required – to disclose the contest rules online. Today's notice should ultimately result in greater flexibility, fewer burdens on stations, and greater availability of contest information for consumers.

I thank the staff of the Media Bureau for preparing this notice. I look forward to completing this proceeding in the very near future. We shouldn't allow this to languish in the NPRM stage for one more day than necessary.