In the Matter of Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests

MB Docket No. 14-226
RM-11684

Comments on the Proposed Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests

COMMENTS OF:

Brand Activation Association, a Division of the Association of National Advertisers
Edward M. Kabak
Chief Legal Officer
650 First Ave., Suite 2 SW
New York, NY 10016

Counsel of Record:
Ronald R. Urbach
Allison Fitzpatrick
DAVIS & GILBERT, LLP

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The Brand Activation Association ("BAA"), a division of the Association of National Advertisers, respectfully submits these Comments in response to the request by the Federal Communications Commission ("FCC" or "Commission") regarding its proposed amendment ("Amendment") to Section 73.1216 of the Rules Related to Broadcast Licensee-Conducted Contests ("Contest Rule").\(^1\) The BAA supports the Commission's analysis and conclusions with respect to the Amendment to the Contest Rule. Specifically, as articulated in the Commission's Notice of Proposed Rulemaking ("NPRM"),\(^2\) the BAA supports the Commission's Amendment to the Contest Rule which would allow broadcast licensees to comply with their obligation to disclose material contest terms by either (i) periodically broadcasting the material terms or (ii) making such terms available in writing on a publicly accessible Internet website.

As explained in the NPRM and in our Comments below, the Amendment (a) is pro-consumer because it provides consumers with material information in a way that is easier to comprehend and comports with current consumer practices for gathering and consuming information and (b) is pro-business/licensees because it allows licensees greater flexibility in the manner in which they communicate the contest material terms, which will have positive effects on programming and help prevent audience erosion. For the reasons stated herein, we believe the Amendment should apply to both radio licensees and television licensees.

I. **Background**

The BAA is one of the leading not-for-profit trade organizations serving the advertising and marketing industry. Formerly known as the Promotion Marketing Association, Inc., the BAA was established in 1911 as a resource for research, education, and collaboration for marketing professionals. Although the BAA changed its name in 2012 to reflect the broader marketing activities of its members, it has remained unwavering in its mission to hold its members to the highest

\(^{1}\) 47 C.F.R. § 73.1216.

\(^{2}\) In the Matter of Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests (FCC) RM-11684 (Proposed Nov. 21, 2014).
ethical and professional standards. Representing over $750 billion of sales in the brand activation disciplines that convert strategies into building consumer bonds, the organization is composed of Fortune 500 companies, top digital, advertising and marketing agencies, law firms, retailers, service providers and academia, representing thousands of brands worldwide. Championing the highest standards of excellence and recognition in its industry, the BAA’s objective is to foster a better understanding of brand activation/promotion and integrated marketing and their role in the overall marketing process.

II. The Commission Should Adopt the Amendment to the Contest Rule

A. The Amendment Aligns with 21st Century Practices

The Amendment aligns with 21st century practices by reflecting the fact that many consumers increasingly use the Internet to obtain information and many companies (including licensees) use the Internet to convey information to consumers. We agree with Commissioner O’Rielly’s statement in support of the Amendment, that “[t]he 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.” Indeed, the Contest Rule should reflect the fact that the Internet is part of consumers’ everyday lives and grant licensees the ability to direct consumers to their websites for contest information.

1. The Amendment Responds to the Way That Today’s Consumers Seek Out – and Businesses Convey – Information

The Contest Rule was enacted in 1976, prior to the Internet. Since the Internet, the information landscape has dramatically changed, as the Internet provides consumers with another avenue to access information and companies another channel to communicate with consumers.

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3 Statement of Comm’r O’Rielly, In the Matter of Amendment of Section 73.1216.
The Internet has become part of consumers’ everyday lives. According to a 2014 survey from the Pew Research Center, “the vast majority of Americans believe their use of the web helps them learn new things, stay better informed on topics that matter to them, and increases their capacity to share ideas and creations with others.” 81% of those surveyed stated that the Internet helps them be better informed about what products and services to buy. Another Pew Research Center survey found that 87% of American adults use the Internet. These statistics will only become more pronounced as time goes on.

The Internet allows consumers to have access to information “on demand” at any time of the day on any topic. The Internet also gives consumers the time to absorb this information at their own pace. As a result, many consumers use the Internet every day to obtain information whether about sports, entertainment, health or promotions. The Amendment aligns this reality with the Contest Rule by allowing the public the ability to access information in a manner consistent with how they typically obtain their daily information.

Companies (including broadcasters and non-broadcasters) take advantage of the Internet’s capabilities to communicate with the public. The Internet provides companies (including licensees) with unlimited space, available through multiple websites, social media pages and apps, to communicate with the public about all topics of interest, including their products, locations, environmental initiatives and promotions. The Amendment aligns this reality with the Contest Rule.

We support the Amendment because allowing licensees to fulfill their obligations under the Contest Rule by directing consumers to material contest terms posted on the licensee’s website is a

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logical extension of the way that consumers already seek out information and how stations already use their websites (and social media pages and apps) to communicate with consumers.

2. **The Amendment Reflects the Current Contest Environment**

Since the enactment of the Contest Rule, and particularly in recent years, contests have become far more complicated, especially with the rise of user-generated-content ("UGC") promotions, which have multi-level entry requirements, take place on numerous social media platforms at the same time, and require compliance with very specific and detailed submission and content restrictions. One additional way to disclose these lengthy and complex disclosures is via a website where consumers can access the official rules at any time of the day during the contest period. Accordingly, by allowing licensees to direct consumers to a website for contest information in each advertisement, the Amendment provides consumers with the ability to access the specific information that they need to enter contests. In addition, because many of today's contests take place on the Internet (whether on company's websites or social media pages or apps), the Amendment directs consumers to that same environment where they may be accustomed to entering a contest.

3. **A Website Link Effectively Communicates Contest Information to Consumers**

Directing consumers to a website link in each contest advertisement provides many advantages. Most notably, a link in each contest advertisement ensures that all viewers and listeners have access to the pertinent contest information. This change would help address the fact that the Contest Rule's definition of material terms is vague, which may lead to uncertainty and consumer erosion.

The definition of "material terms" can create uncertainty amongst licensees by providing a non-exclusive list of non-material required terms. The Contest Rule provides that:

[material 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.⁸

The Contest Rule has a non-exclusive list of "material terms," which depends on the "exact nature of the contest," and requires broadcasters, who are likely not experts in promotions law, to determine the material terms of the contest for themselves. In addition, to the extent licensees rely on the enumerated terms, the list does not delineate between the terms that are most important to consumers entering into a contest (e.g., eligibility, end date) and those that are not of such importance to consumers (e.g., tie-breaking procedures, basis for valuation of prizes). As such, this definition does not provide licensees with practical or useful guidance.

The Contest Rule's definition of "material terms" is in sharp contrast to the broadcast advertising standards and guidelines (collectively, the "Network Guidelines"), which delineate a clear, succinct list of "material" disclosures, thereby making compliance easier for non-licensees, even when they are advertising their contests on licensee stations. For example, the ABC Television Network Advertising Standards and Guidelines⁹ require the following disclosures in all advertisements:

1. Specific eligibility and entry requirements;
2. Termination date (deadline for entries);
3. No purchase necessary;
4. Void where prohibited;
5. Where to get complete rules; and

The Network Guidelines are consistent with most state promotions laws, which typically allow for an abbreviated list of specifically identified terms with a link to the full terms for advertisements.¹⁰

⁸ 47 C.F.R. § 73.1216.
¹⁰ For example, in 2005, the state of Florida amended its sweepstakes/contest disclosure law so that advertisers were
In contrast to the clarity of Network Guidelines and certain state laws, the Contest Rule's non-exclusive list results in potential licensee confusion and uncertainty with respect to disclosure requirements. Consequently, many licensees provide more than the material terms and read the entire official rules during a radio broadcast or scroll the text of the rules across the screen during a television broadcast. Commissioner O'Rielly noted the futility of this drive-by approach to disclosures in his statement in support of the Amendment:

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.\(^\text{11}\)

This approach results in a “data dump,” a delivery of information in a manner that does not educate the consumer. In fact, studies point to the potential that audiences often depart during these periodic announcements of material terms.\(^\text{12}\) As Clear Channel Communications points out in its statement in support of the Amendment, radio licensees often interrupt programming to broadcast these complicated and often lengthy terms. As such, many consumers may either change the channel or simply tune out, in either case, not receive the information that could be determinative in deciding whether or not to enter a contest.\(^\text{13}\)

Even if a consumer does not change the channel, because of the number of disclosures required to be delivered, it can be challenging for the consumer to process all of it, thereby making it

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\(^{11}\) Statement of Comm’r O’Rielly, In the Matter of Amendment of Section 73.1216.

\(^{12}\) Clear Channel Communications’ comments in support of the Amendment cites a Media Monitors study that finds that audience erosions is twice as great during these announcements as during commercial breaks. Comments of Clear Channel Comm’ns, Inc. in Support of the Petition for Rulemaking, In the Matter of the Commission’s Licensee-Conducted Contests Rule

\(^{13}\) Id.
more difficult in deciding whether or not to enter a contest. However, if the advertisement were to provide the consumer with a website address for the Official Rules, the consumer could go to the site to obtain all the material information he/she needs to enter the contest.

B. The Amendment Would Provide Licensees with Flexibility and Would No Longer Place Them at an Unfair Disadvantage to Other Sponsors

The Amendment would provide licensees with greater flexibility as to the manner in which they can meet their obligations without undercutting their duty to adequately inform consumers. Further, the Amendment would place broadcasters on equal footing with other non-broadcast sponsors of contests, who are not subject to the Contest Rule.

1. The Amendment Would Provide Licensees With Greater Flexibility, Allowing Them to Strengthen Relationships With Their Audiences

By giving broadcasters the option of directing consumers to their websites for the material contest terms, the Amendment would allow broadcasters greater freedom to control and improve their programming and, thereby, their relationships with their audiences. As noted above, the Contest Rule can lead to audience erosion. By eliminating the requirement for on-air broadcast of material terms, broadcasters will be more able to retain audiences, a consistent challenge in the current broadcast environment. Further, the valuable airtime wasted on these announcements “can be better used by broadcasters to provide programming of interest to their communities” or to provide consumers with more relevant information about the contest. The result would be a benefit to both broadcasters and consumers.

2. The Amendment Would Put Licensees on an Equal Footing with Other Contest Sponsors So That They are No Longer at an Unfair Disadvantage

Because the Contest Rule requires disclosure of extensive and overly-inclusive material terms at periodic intervals during the contest period, the Contest Rule imposes unduly onerous obligations

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14 See note 12, infra.
15 Statement of Comm’r O’Rielly, In the Matter of Amendment of Section 73.1216.
on licensees, to which non-licensee contest sponsors are not subject. As a result, radio and television sponsors are placed at a unique – and to some degree – unfair disadvantage compared to non-licensees. Indeed, the Contest Rule has resulted in certain licensees being punished (even fined) for conduct which would not be punishable if they were non-licensees. For example, in Saga Communications of New England, the Commission fined Saga for failure to deliver prizes within 30 days, holding that even though promptness is not specified as a requirement under the Contest Rule, prizes should be awarded in a prompt manner.16 Notably, non-licensees would not be in violation of any law or rule (or their own rules) if they had failed to deliver the prize within 30 days in this same instance. The fear of being punished for conduct for which non-licensees are not punished has likely resulted in several licensees refraining from engaging in any contests, thereby depriving stations of valuable promotional benefits – the same benefits that non-licensees routinely enjoy.

For such reasons, the Amendment would provide radio and television licensees with an option for disclosing material contest terms that is available to all other promotion sponsors without the fear of punishment for non-material offenses. Accordingly, licensees would no longer be placed at an unfair disadvantage and could participate on a level playing field with non-licensee sponsors.

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III. Conclusion

The BAA respectfully requests that the Commission adopt the Amendment to the Contest Rule because it would be beneficial both to consumers and licensees.

Respectfully submitted,

[Signature]
Edward M. Kabak
Chief Legal Officer
Brand Activation Association,
A division of the Association of National Advertisers
650 First Avenue, Suite 2SW
New York, NY 10016

[Signature]
On behalf of Brand Activation Association
Ronald R. Urbach
Allison Fitzpatrick
DAVIS & GILBERT LLP
1740 Broadway
New York, NY 10019