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

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

COMMENTS OF ALPHA MEDIA LLC; EMMIS COMMUNICATIONS
CORPORATION; GRAY TELEVISION, INC.; NEXSTAR BROADCASTING, INC.;
AND RADIO ONE, INC. ("JOINT COMMENTERS")

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Alpha Media LLC; Emmis Communications Corporation; Gray Television, Inc.; Nexstar Broadcasting, Inc.; and Radio One, Inc. ("Joint Commenters"), by counsel, submit these comments in response to the Notice of Proposed Rulemaking ("NPRM") regarding the Commission's licensee-conducted contest rule (the "Contest Rule").

Joint Commenters represent licensees of television and radio stations serving communities across the United States. Each is dedicated to providing its audience with quality, in-demand programming and content, including contests. Licensee-conducted contests are a common way for stations to interact with their audiences and for advertisers to promote their products. Certain aspects of the Contest Rule no longer correspond to consumer expectations and the manner in which detailed information is most commonly disseminated in the 21st Century. The revisions to the Contest Rule proposed by the Commission would update the rule in a manner that is beneficial to

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2 These communities span from KUPL(FM), Portland, Oregon; to WFNF(AM), Brazil, Indiana; to WITN-TV, Washington, North Carolina.
3 47 C.F.R. 73.1216.
consumers and broadcasters alike.

I. INTRODUCTION

The goal of section 73.1216 of the Commission’s rules is to ensure that broadcast licensees promote and conduct contests fairly and honestly. This objective is an important one that remains valid. Yet, because of advancements in communications technology over the four decades since the rule was adopted, broadcast licensees are now able to provide the detailed information listeners or viewers need about participating in station contests far more effectively using methods other than over-the-air announcements. Perhaps more than any other technology, the internet has radically transformed our everyday lives, including when, where, and how we access information. Consequently, on-air material term disclosures for licensee-conducted contests no longer reflect the best means through which to provide consumers with detailed information. In acknowledgment of this changing landscape and consumer expectations, the FCC has modernized a number of its rules, including the online public file rule for television licensees.\(^4\) Allowing broadcasters to post material terms for licensee-conducted contests online is an appropriate next step. Online disclosures, accompanied by certain, more limited broadcast announcements, will improve consumer access to material terms, reduce on-air clutter, and open-up additional inventory for programming. Online material contest term disclosures are a win-win for consumers and broadcasters.

II. ALLOWING BROADCASTERS FLEXIBILITY TO DETERMINE THE FORMAT OF ONLINE DISCLOSURES IS A PRAGMATIC APPROACH

As the Commission correctly points-out, “[r]adio and television station frequently run
contests as a form of promotion, advertisement, and entertainment. 5 In addition to contests run by a station alone, broadcasters regularly work with local businesses in the community to develop and conduct contests. As a result, broadcasters and their promotional partners are constantly innovating and creating new contests. Contests vary widely in their form and complexity. For example, Gray Television’s WTAP recently conducted a contest in which participants were asked to guess when a marble would fall out of an ice sculpture located in a local jewelry store. The individual who guessed closest to the date and time of the actual marble drop won a diamond valued at approximately $7,000. Meanwhile, Alpha Broadcasting’s KINK(FM) conducted a number of listen-to-win and text-to-win contests for concert tickets, including tickets to an up-coming Sufjan Stevens show valued at $40.00 each.

As these two examples aptly demonstrate, the breadth of licensee-conducted contests is simply too vast for a “one-size-fits-all” disclosure format. Instead, broadcasters and their promotional partners should retain the flexibility they enjoy under the current Contest Rule to decide upon a disclosure format that best fits the contours of a particular contest. 6 This makes sense from a practical standpoint, as there is no evidence on the record to suggest that a “one-size-fits-all” approach would provide listeners or viewers with more or better information than they currently receive. So long as material terms are presented in a clear, readily understandable manner, the Commission should continue to allow broadcasters flexibility with regard to the format of material terms disclosures. 7

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5 NPRM ¶2.
6 See NPRM at ¶10.
7 However, broadcasters should not require individuals to register on a station’s website in order to obtain contest rules.
III. POSTING A LINK TO MATERIAL TERMS ON STATION WEBSITES WOULD PROVIDE CONSUMERS WITH QUICK AND EASY ACCESS TO MATERIAL CONTEST TERMS AND IS CONSISTENT WITH CURRENT PRACTICE

In the NPRM, the Commission asks whether it should require broadcasters to post a link to material terms on their homepages.\(^8\) Joint Commenters support such a requirement. Posting a link on a station’s homepage is an effective way to guide consumers to material term disclosures. Indeed, many broadcasters already use their homepages to direct consumers to material contest terms. Consistent with current practice, broadcasters should retain the flexibility to maintain material terms on a separate contest page that is accessible via a clearly labeled link or tab from the broadcaster’s homepage. For example, Emmis Communications’ KGSR(FM) houses material contest terms under a tab on its homepage entitled “Contests.”\(^9\)

Exactly where a link or tab is located on a station’s homepage should be left to the discretion of broadcasters. “Tabs” often appear near the top of a webpage, acting as a kind of index for a website. Links, alternatively, may appear at the top, along the side, towards the bottom, or in the footer of a webpage. There is no evidence on the record to suggest that any particular location is preferable to another.\(^10\) And indeed, website design and internet technology are constantly evolving, representing a regulatory “moving target.” Requiring only that the link or tab be clearly identified and located conspicuously on a station’s homepage will provide broadcasters with the necessary flexibility to adapt as technology advances while furthering the Commission’s underlying goal of promoting fairness in licensee-conducted contests.

\(^8\) NPRM at ¶11.
\(^10\) Although listeners or viewers may “see” a link or tab located near the top of a webpage first, consumers are accustomed to scrolling to the bottom of webpages to obtain “legal” information, such as terms of use or a privacy policy.
IV. MATERIAL TERM DISCLOSURES PROVIDE CONSUMERS WITH “NEED TO KNOW” INFORMATION THAT IS EASILY UNDERSTOOD AND THAT SHOULD REMAIN AVAILABLE ONLINE FOR THE DURATION OF A CONTEST

A. The current definition of “material terms” ensures consumers receive the most important information about a contest.

In the NPRM, the Commission asks “whether or to what extent we need to refine the definition of ‘material’ ....” Joint Commenters do not believe that any refinement to the definition is necessary. The Contest Rule defines material terms as “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 or winners; and/or tie-breaking procedures.” This definition, in place for decades, is clearly articulated such that licensees have no difficulty determining which terms are “material” and must be disclosed. The definition also ensures that the most important information about a contest is conveyed to consumers and, moreover, is consistent with many state law requirements.

B. The Commission should require only that material terms be posted online.

The Contest Rule currently requires broadcasters to periodically announce material contest terms on-air. This requirement strikes the right balance between informing listeners and viewers about a contest, and not overwhelming them with information such that they simply “tune out.” Accordingly, Joint Commenters urge the Commission to require broadcasters to post

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11 NPRM ¶12.
12 47 C.F.R. § 73.1216, n. 1(b).
13 See NPRM ¶12 (“To the extent licensees have difficulty determining which terms are ‘material’ and thus subject to disclosure under the Contest Rule, 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.”)
14 See, e.g., Mich. Comp. Laws §750.372a(d) (“Any person who shall conduct a game promotion within this state shall disclose to participants as to such game promotion, ..., the geographic area or number of outlets in which the game promotion is proposed to be conducted, an accurate description of each type of prize to be made available, the minimum number and minimum amount of cash prizes to be made available and the minimum number of each other type of prize to be made available.”).
15 See NPRM ¶12 (asking whether licensees should be required to “post all contest information in writing online”).
only material contest terms online rather than all information about a contest. Material terms are easy for consumers to digest and highlight the most important aspects of a contest. Providing more information may actually have the adverse effect of discouraging consumers from “wading through” the disclosures, resulting in listeners and viewers who are less informed about a contest. In addition, there is no evidence in the record to suggest that material terms are inadequate to appropriately inform consumers.

C. **Material contest terms should remain posted until the end of a contest.**

The Commission also asks how long a licensee should be required to maintain material terms on its website. Without question, listeners and viewers should have access to a contest’s material terms for the duration of the contest. More precisely, material terms should remain posted at least until a contest winner has been announced or notified (whichever occurs first). This requirement would provide broadcasters with a clear and readily ascertainable date on which to remove material terms from their websites. In addition, the ability to access material contest terms through the conclusion of a contest is consistent with the expectations of listeners and viewers, who are unlikely to want to access material contest terms after a winner has been identified. Further, a requirement to maintain rules online after a contest has ended could create consumer confusion about whether a contest is still ongoing.

V. **ANNOUNCEMENTS AIRED 3X PER DAY THAT DESCRIBE WHERE MATERIAL CONTEST TERMS CAN BE FOUND ONLINE AND/OR THAT NOTIFY CONSUMERS THAT A MATERIAL TERM HAS CHANGED PROVIDE A SUFFICIENT LEVEL DISCLOSURE AND MEET CONSUMERS’ EXPECTATIONS**

A. **Three daily announcements will adequately inform consumers about where to find material contest terms.**

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16 Id. ¶11.
17 The winners of some licensee-conducted contests are announced for the first time on-air. In other contests, winners are notified via email or phone first, and then announced publicly. In still other contests, winners are notified privately and never announced on-air.
The Commission proposes requiring broadcasters to announce where material contest terms can be found online each time a contest is mentioned or advertised.\textsuperscript{18} Joint Commenters urge the Commission not to adopt this proposal because it would create clutter, disrupt the viewer or listener experience, and be unduly burdensome.\textsuperscript{19} Stations commonly conduct multiple contests on any given day during any given month. The number of times contests are mentioned or advertised therefore can consume a sizeable amount of air-time. Requiring broadcasters to state the web address of online material terms each and every time a contest is mentioned or advertised decreases the amount of time available for programming, and may turn-off consumers who “already know that” material terms are online. Indeed, a station’s website is the “obvious” place to turn for information about material terms, particularly for 21st Century consumers who are accustomed to going to a business’s website to find information about any of its products or services.\textsuperscript{20} There is simply no need for a station to remind consumers that material terms are available on their websites every time a contest is mentioned. Moreover, this would unnecessarily require more information than the current rule requires, with its “periodic” disclosure mandate.

Joint Commenters suggest that a reasonable middle ground between the “periodic” announcements required by the current rule, and the “every mention” announcements proposed in the \textit{NPRM}, would be for the Commission to require a broadcaster to announce on-air that contest rules are available online three times per day (excluding the overnight hours of between 12:00 a.m. and 6:00 a.m.). Stations could pre-record and schedule these announcements, or

\textsuperscript{18} \textit{NPRM} §13.
\textsuperscript{19} It is unclear from the \textit{NPRM} what the Commission means when it refers to “mentions.” Contest “mentions” may consist of \textit{ad lib} reminders by a DJ or anchor to enter a contest. Such \textit{ad lib} mentions typically occur over a song intro or immediately before a cut to a commercial break. “Mentions” could also consist of longer material term disclosures, which are typically produced or scripted and scheduled to air at least once a day. Material term disclosures can consume sixty seconds or more of air-time.
\textsuperscript{20} Indeed, many contests already involve an online component. The majority of contests conducted by stations owned by Alpha Media LLC involve a digital or interactive element in order to participate (\textit{e.g.}, online entry).
could schedule them as scripted “live read” contest spots to be read by on-air talent at specified times. This would allow stations to ensure compliance and log the broadcast of commercial announcements using their traffic systems. The thrice-daily announcements would also be frequent enough to reasonably ensure that consumers are informed about where material terms for station contests can be found.

**B. On-air disclosure announcements should describe where online material terms can be found.**

In the *NPRM*, the Commission proposes modifying 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 . . .” The Commission then clarifies that by “complete, direct website address” it means:

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 a website or 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.

Joint Commenters agree with the Commission that a station electing to post material contest terms online could satisfy its on-air disclosure requirement by announcing its homepage’s web address. However, such an announcement should not be required to include a mechanical recitation of the web address exactly as it appears in an internet browser. Instead, a station should be allowed to satisfy its on-air disclosure requirement by describing the dot com location where material contest terms can be found. For example, a station could announce “For a complete list of material terms, visit WXYZ dot com and click on ‘contests’!” There would be

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21 *NPRM* at ¶13.
22 *Id.* at n. 42.
no need for the station to provide additional information regarding the web address of its homepage, such as “https” or “www”. Not only are consumers already familiar with the mechanics of accessing websites, but browsers automatically fill-in “https” and “www.” Articulating these portions of the website address is therefore unnecessary. In addition, consumers increasingly use Google or other search engines to access websites, obviating the need for direct website addresses at all.

C. **To ensure consumers are aware of a change in material contest terms, change announcements should be aired 3x daily until entry period closes.**

A change to a material contest term is relatively rare. Nevertheless, such a change would likely be important to consumers, and therefore Joint Commenters agree with the Commission that broadcasters should be required to announce on-air that a material term has changed. Specifically, broadcasters should announce that a change has occurred at least three times per day until the end of the entry period, either in combination with the thrice-daily general contest announcements or in separate announcements. This will ensure consumer awareness of rule changes without compromising the consumer’s experience or increasing the regulatory burden on broadcasters.

VI. **CONCLUSION**

Joint Commenters applaud the Commission for its proposal to modernize the Contest Rule. Allowing broadcasters to satisfy their material contest terms disclosure obligation online in conjunction with on-air announcements embraces 21st Century technology and promotes the public interest.

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21 Id. ¶13 (“[If] a licensee ... 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.”)
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