

FCC Modernizes Contest Rules

September 21, 2015

On September 17, 2015, the Federal Communications Commission (FCC or Commission) unanimously approved a Report and Order (R&O) modernizing its Contest Rule. As originally promulgated in 1976, the Contest Rule required broadcasters to periodically announce on-air the material terms of a licensee-conducted contest (material terms include how to enter, eligibility restrictions, entry deadline dates, prize information, time and means of winner selection, and tie-breaking procedures). Under the revised Contest Rule, radio and television stations will have the option to disclose material contest terms on any Internet website readily accessible to the public (including the station or licensee's website), provided that they satisfy certain requirements. Chief among these is a mandate that broadcasters posting material contest terms online also periodically announce the website address where the terms are posted. Stations may continue to broadcast material terms disclosures on-air, but are no longer required to do so. The Commission heralded the change as "another step to modernize [its] rules to reflect how Americans access and consume information in the 21st century," and stated an intent to "afford[] broadcasters more flexibility in the manner of their compliance with" the Contest Rule "while giving consumers improved access to important contest information."

In its Notice of Proposed Rulemaking (NPRM) released in November 2014, the Commission proposed to revise the Contest Rule to require broadcasters to announce on-air the "complete, direct website address" where contest terms are posted. In response to comments received pursuant to the NPRM, which suggested that a literal interpretation of such a requirement could be read "to require a mechanical recitation of a web address as it appears on an Internet browser (e.g., 'http-colon-backslash, etc.),' " the Commission declined to adopt this proposal. Instead, broadcasters need only describe the

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web address where individuals can find material terms disclosures with “information sufficient for a consumer to find those terms easily.” The Commission further clarified that “simple instructions or natural language (e.g., ‘for contest rules go to kxyz.com and then click on the contest tab’)” are acceptable.

Rather than require broadcasters to announce the website address “each time the station mentions or advertises the contest” as proposed in the NPRM, the R&O mandates that broadcasters announce the website address “periodically.” The Commission declined to specify a minimum number of times per day that such announcements must be made, suggesting instead that the number of announcements should increase with the frequency with which a contest is mentioned or advertised. The Commission did warn that “[i]f we find that licensees are failing to broadcast the website address with adequate frequency, we will revisit this issue in the future.”

Also under the new Contest Rule, broadcasters electing to disclose material contest terms online must establish a link or tab on the home page of a “publicly accessible” website that will take consumers to contest information. The R&O explains that the Commission interprets the term “publicly accessible” to mean that the website “is designed to be accessible to the public 24/7, for free, and without any registration requirement.” The link or tab must be conspicuously located on the website home page and labeled in a way that makes clear its relation to contest information. The revised Contest Rule does not, however, dictate the precise location on the home page where the link or tab must be located.

The R&O further specifies that material terms disclosures must remain posted for at least thirty days after the contest has concluded (*i.e.*, thirty days after a winner has been selected and the station has notified the winner personally or publicly). In addition, if a material contest term changes after the contest is first announced, the station must announce on-air that the contest terms have changed and direct their audiences to the disclosure website to review the changes. Such announcements must be made within 24 hours of the change and occur periodically thereafter until the contest ends. Finally, the Commission stated that it will “require that any material contest terms disclosed on an Internet website conform in all substantive respects to contest terms broadcast over the air.”

The Commission framed the Contest Rule changes as a win for both broadcasters and the public. Indeed, the revised rule will afford broadcasters more flexibility and will benefit consumers by improving their access to important contest information. The rule changes also better reflect how information is accessed and consumed in the 21st century.

The new Contest Rule requires the approval of the Office of Management and Budget (OMB) and will not go into effect until Federal Register publication of a notice regarding OMB approval, which will also announce the effective date of the new rule.