



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14-226; FCC 14-184]

Broadcast Licensee-Conducted Contests

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend its rules governing broadcast licensee-conducted contests (the “Contest Rule”) in a manner that reflects how consumers access information in the 21st Century. This document 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. In addition, the Commission proposes to adopt rules that would define the disclosure obligation in cases where a station chooses to meet that obligation through an Internet website.

DATES: Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 14-226, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: 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.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov. For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at (202) 418-2120 or Raelynn.Remy@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 14-184, adopted and released on November 21, 2014. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio

format), by sending an e-mail to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The Notice of Proposed Rulemaking seeks comment on potential information collection requirements. If the Commission adopts any information collection requirements, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” 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, Public Law 104-13. Public and agency comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Summary

I. INTRODUCTION

1. In the Notice of Proposed Rulemaking (NPRM), we propose to amend § 73.1216 of our rules governing broadcast licensee-conducted contests (“Contest Rule”)¹ 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 21st Century.² The Petition was unopposed, and

¹ 47 CFR 73.1216.

² See Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM-11684 (filed Jan. 20, 2012).

supported by a number of commenters.³ 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.

II. BACKGROUND

A. The Contest Rule

2. Radio and television stations frequently run contests as a form of promotion, advertisement, and entertainment. The Commission adopted the existing Contest Rule in 1976 to address concerns about the manner in which broadcast licensees were conducting contests over the air. 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.⁴

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

³ 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 the NPRM.

⁴ 47 CFR 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).

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.⁵

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."

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.⁶ 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.

B. Petition for Rulemaking

4. In January 2012, Entercom filed the Petition requesting that the Commission revise the disclosure requirements of § 73.1216. Specifically, Petitioner proposes that the Commission amend § 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)⁷; 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

⁵ 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.

⁶ See 47 CFR 73.1216, Note 2.

⁷ 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.

obtain access to the material terms.⁸ 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.

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. 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 material contest information is no longer an acceptable way to inform the public about contest terms. 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.” 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.

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. 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. Thus, it asserts, audiences are not likely to obtain useful information from such broadcasts.

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

⁸ 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.

instantaneously. 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. Petitioner further notes that the Commission itself has recognized the ubiquity and efficiency of the Internet and its utility to Commission processes.

8. In November 2012, the Commission's Consumer and Governmental Affairs Bureau ("CGB") issued a Public Notice inviting comment on the Petition. 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.

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. 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,⁹ 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. As some commenters note, the public is accustomed to accessing station websites to obtain a broad range of information. In fact, the record reflects that some licensees already use their websites to post contest-related information, and allow consumers to enter and participate in contests via station websites. Parties

⁹ 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 CFR 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 § 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.'").

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, thereby meeting consumer expectations for accessing such information and potentially reducing consumer confusion.

10. We propose to allow a broadcast station to satisfy its § 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.¹⁰ 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.

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." 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. In particular, we seek

¹⁰ 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.

comment on the impact of the above proposals on small broadcasters.

12. We note that the disclosure requirements in § 73.1216 pertain to “material” contest terms, defined as those terms that “define the operation of the contest and which affect participation therein.” 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. To the extent that 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? 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.¹¹

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 posted¹² each time the station mentions or advertises a contest. Under the current rule, stations are required to broadcast material terms periodically after their initial disclosure. The discretion afforded licensees under the current rule to determine when they will broadcast material

¹¹ 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.

¹² 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 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.

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. 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?¹³ 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].” If we retain broadcast disclosure as a method of complying with the

¹³ 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.

Contest Rule, should we make any changes to the rule to improve the effectiveness of broadcasting material contest terms?

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

15. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)¹⁴ 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 the 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”).¹⁵ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.¹⁶

1. Need for, and Objectives of, the Proposed Rule Changes

16. The NPRM stems from an unopposed Petition for Rulemaking filed by Entercom Communications Corp. requesting that the Commission update § 73.1216 of its rules governing broadcast licensee-conducted contests (the “Contest Rule”)¹⁷ in a manner that reflects how consumers access information in the 21st Century.¹⁸ 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.

17. In particular, the NPRM proposes to amend the Contest Rule: (i) to permit a licensee that

¹⁴ 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. 104-121, Title II, 110 Stat. 857 (1996).

¹⁵ See 5 U.S.C. 603(a).

¹⁶ See *id.*

¹⁷ 47 CFR 73.1216.

¹⁸ See Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM-11684 (filed Jan. 20, 2012).

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.

2. Legal Basis

18. 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.

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

19. 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.¹⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²¹ A small business

¹⁹ 5 U.S.C. 603(b)(3).

²⁰ 5 U.S.C. 601(6).

²¹ 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,

(continued...)

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.²² 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.

20. Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”²³ The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.²⁴ 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 \$25,000,000.²⁵ 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.

21. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations.²⁶ 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 395.²⁷ NCE stations

(Continued from previous page) _____
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).

²² 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.

²³ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁴ 13 CFR 121.201; 2012 NAICS code 515120.

²⁵ 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.

²⁶ 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.

²⁷ See Broadcast Station Totals, *supra*.

are non-profit, and therefore considered to be small entities.²⁸ Based on these data, we estimate that the majority of television broadcast stations are small entities.

22. 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.²⁹ The Commission has estimated the number of licensed Class A television stations to be 432.³⁰ The Commission has also estimated the number of licensed LPTV stations to be 2,028.³¹ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

23. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³² 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.

24. Radio Stations. This economic Census category “comprises establishments primarily

²⁸ See generally 5 U.S.C. 601(4), (6).

²⁹ 13 CFR 121.201; NAICS code 515120.

³⁰ See Broadcast Station Totals, supra.

³¹ See Broadcast Station Totals, supra.

³² “[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 CFR 21.103(a)(1).

engaged in broadcasting aural programs by radio to the public.”³³ The SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.³⁴ Census data for 2007 shows that 2,926 firms in this category operated in that year.³⁵ 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.³⁶ 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.

25. 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 6,622, for a total number of 11,175.³⁷ 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 4,250.³⁸ NCE stations are non-profit, and therefore considered to be small entities.³⁹ Therefore, we estimate that the majority of radio broadcast stations are small entities.

26. 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

³³ 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.”

³⁴ 13 CFR 121.201; NAICS code 515112.

³⁵ 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.

³⁶ Id.

³⁷ 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. 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.

³⁸ See Broadcast Station Totals, supra.

³⁹ See generally 5 U.S.C. 601(4), (6).

standard for this category: those having \$38.5 million or less in annual receipts.⁴⁰ The Commission has estimated the number of licensed low power FM stations to be 814.⁴¹ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

27. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations⁴² 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.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. 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.

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

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

⁴⁰ See 13 CFR 121.201, NAICS Code 515112.

⁴¹ 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).

⁴² “[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 CFR 21.103(a)(1).

- 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;
- 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.

31. 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.

32. 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.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities,

and Significant Alternatives Considered

33. 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.⁴³

34. The accompanying NPRM principally proposes to amend § 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.

⁴³ 5 U.S.C. 603(c)(1) through (c)(4).

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

35. None.

B. Paperwork Reduction Act

36. 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 1995.⁴⁴ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁴⁵ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁴⁶

C. Ex Parte Rules

37. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under § 1.1206(b) of the Commission’s rules.⁴⁷ 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.⁴⁸ Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

⁴⁴ Pub. L. 104-13.

⁴⁵ Pub. L. 107-198.

⁴⁶ 44 U.S.C. 3506(c)(4).

⁴⁷ See 47 CFR 1.1206(b); see also *id.* 1.1202, 1.1203.

⁴⁸ See *id.* 1.1206(b)(2).

D. Filing Requirements

38. Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules,⁴⁹ 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.⁵⁰

- 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>.
- 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.

39. 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 12th 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

⁴⁹ See *id.* 1.415, 1.419.

⁵⁰ See Electronic Filing of Documents in Rulemaking Proceedings, Report and Order, 13 FCC Rcd 11322 (1998).

Street, S.W., Washington, DC 20554.

40. 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 12th 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.

41. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to 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>.

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

V. ORDERING CLAUSES

43. 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.

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

List of Subjects in 47 CFR Part 73

Advertising, Consumer protection, Fraud, Television broadcasters.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

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

Authority: 47 USC 154, 303, 334, 336, 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 shall be made by the station conducting the contest by either: (a) periodic disclosures broadcast on the station; or (b) written disclosures on the station’s Internet website, the licensee’s website, or if neither the individual station nor the licensee has its own website, any Internet website that is publicly accessible. In the former case, a reasonable number of periodic broadcast disclosures is sufficient. In the latter case, the station shall announce over the air the availability of material terms on the website and identify the complete, direct website address where the terms are posted 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.

* * * * *

[FR Doc. 2014-29633 Filed 12/18/2014 at 8:45

am; Publication Date: 12/19/2014]