



Virginia Association of Broadcasters Legal Review



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February 12, 2016

Legal Memorandum

“Modernized” Station-Conducted Contest Regulations Are Now Effective!

At long last, the promise of greater flexibility in the on-air disclosures required for station-conducted contests has been realized: **The effective date of the new disclosure rules is today, February 12, 2016.** As we have previously discussed, the FCC’s new rules—adopted by [Report and Order](#) some five months ago—will allow stations to dispense with the on-air recitation of all “material terms” of station-conducted contests, so long as stations post the material terms on the web and meet certain other requirements. **It is critical that stations understand that the new rules require more than the mere posting of contest rules to the web!** As discussed below (and as discussed in prior memoranda on the topic), stations must dot all the compliance i’s and cross all the regulatory t’s in order to safely avail themselves of the new regulations—for some stations, new internal operational policies may need to be developed and website protocols may need to be revised. Ultimately, however, the implementation of this new flexibility should prove to be a relief for many stations as well as listeners and viewers.

It has taken a bit of time for the FCC’s Report and Order to proceed through the federal Office of Management and Budget review process and find its way to the *Federal Register*—a prerequisite to the new rules becoming “effective”—but that day has finally arrived. Now, here is a review of what the stations must keep in mind when conducting contests and sweepstakes.

When stations conduct contests and promotions, the following rules apply:

1. If a station mentions on air how to enter or participate in a contest, all “material terms” of the contest must be fully and accurately disclosed.
2. The station must conduct the contest substantially as announced or advertised (including in substantial compliance with the published terms and conditions governing the contest).

3. No contest description may be false, misleading, or deceptive with respect to any material term.

“Material terms” will, of course, vary from contest to contest. According to the FCC, material terms generally include, but are not limited to, the following:

- How to enter or participate;
- Eligibility restrictions;
- Entry deadline dates;
- Whether prizes can be won;
- The odds of winning;
- The extent, nature, and value of prizes;
- The basis for valuation of prizes (e.g., approximate retail value);
- Time and means of selection of winners;
- Tie-breaking procedures, if any.

In accordance with the new rules, broadcasters have the option to comply with the “material terms” disclosure requirements by posting the disclosures on their respective webpages. This new rule has the potential to decrease on-air “clutter” and make station contesting more “user-friendly.” In addition, the new rule provides greater flexibility by permitting stations to meet their long-required, FCC-mandated contest rule disclosure obligations *either* (1) by posting the “material terms” on station websites *or* (2) by broadcasting all the material terms on the air.

For stations that elect to meet their “material terms” disclosure requirements by posting them on a website, here are the critical details of the new rules:

“Publicly Accessible” Website. The new rules require that the website employed for contest rule disclosure purposes be “publicly accessible.” In order to be considered “publicly accessible” the website must meet the following three criteria

- ✓ It must be designed to be accessible to the public 24 hours per day, 7 days per week (“24/7”)
- ✓ It must be free
- ✓ It must be available without any registration requirement

The website may be the station’s website, the licensee’s website or, if neither owns its own website, then any Internet website that is readily accessible to the public. Broadcasters will not be held liable for failure to adhere to the 24/7 accessibility requirement if factors beyond their control temporarily limit accessibility (e.g., system outages or power failures) so long as the website was designed to be accessible 24/7.

Identification of Website Address. The new rules provide flexibility concerning the specificity and frequency with which the website address must be identified and announced. Stations may broadcast the address of the website in any manner that provides sufficient information for a consumer to find the material terms “easily.” The FCC provided the following example as sufficient identification of the website address under the new rules:

“For contest rules, go to KXYZ.com and then click on the contest tab.”

Please note that directing listeners and viewers to the station homepage is permissible, so long as the announcement gives *additional information about how to navigate* past the homepage to the page where the material terms (or complete contest rules) reside.

Regarding the **frequency** of the announcement of the website address, the new rules require that the website address be “periodically” broadcast until the contest is concluded. This is a departure from the FCC’s initial proposal. Originally, the Commission proposed to require that the website address be broadcast *each time* the station mentioned or advertised the contest over the air. The Commission landed on the “periodically” requirement in response to broadcaster comments opposing the “each time” standard. Nonetheless, the FCC has indicated that it will revisit the frequency issue if the FCC finds that broadcasters are failing to announce the website address frequently enough.

Internet Link to Contest Terms. The new rules require that the link to the webpage used to disclose the “material terms” be conspicuously located on the website home page and that it “be labeled in a way that makes clear its relation to contest information.” The material terms may be on a webpage dedicated to that purpose, but the link to that webpage must be located on the homepage.

Duration of Online Disclosure Obligation. The existing rule requires that the disclosure of material terms be made at the time the audience is first told how to participate in the contest and then a reasonable number of times thereafter. In addition to the requirement that the website be announced “periodically” throughout the contest, the new rules require stations to keep the material terms posted on the website for at least **thirty days** after *winner selection*. A winner is considered selected when any of the following have occurred:

- (i) the winner has been personally notified, or
- (ii) the winner has been publicly announced on-air, or
- (iii) the winner has been announced on the same website where the material terms of the contest were disclosed.

To be clear, this 30-day continued-posting requirement only applies to stations that meet their material terms disclosure obligation by website posting. Stations that meet their obligations by announcing all material terms on-air are not required to maintain the material terms online for 30 days beyond winner selection.

Changes to Material Contest Terms. For stations that choose to meet their material terms disclosure obligations by website posting, the Commission adopted requirements in the event that the contest rules change after the contest has begun. (*Please Note:* It is always risky to change contest rules after a contest has begun. Doing so may violate state laws and may attract the attention of the Federal Trade Commission. Stations should consult with legal counsel before making changes to contests mid-stream.) The FCC pointed out that such mid-stream changes are rare and tend to arise only where circumstances beyond the anticipation or control of the broadcaster have occurred. Where the material terms of a contest are changed after the contest is

first announced, the station must announce on-air that the contest rules have been changed and direct participants to the website to review the changes. Such announcements must start within 24 hours of the change in material terms and then periodically until the conclusion of the contest and the winner is selected.

The Commission observed that even under the new rules, it would continue to find a violation of the station-conducted contest rule where a change in material terms is made by the broadcaster which unfairly or deceptively alters the operation of the contest or the nature or value of the prize or materially disadvantages existing contestants. In other words, the new rules are not intended to provide stations with new opportunities to make changes to contests after the contests have been launched.

Consistency of Contest Terms. The new rules require that the material terms of a contest, as reflected on the website, be consistent “in all substantive respects” with the terms broadcast over the air. The FCC noted that a violation would be found if a licensee fails to disseminate consistent information about the contest. The Commission warned that ambiguities would be construed against the licensees. This aspect of the new rules is really a natural outgrowth of the existing requirement that stations conduct their contests substantially as announced or advertised. For example, if station talent mentions on-air that listeners can “enter all month long to win tickets” it would likely be inconsistent for the material terms posted to the website to disclose that the entry deadline is actually the 10th of the month.

Time to Have Internal Meetings to Discuss the New Rules! Stations that wish to avail themselves of the new flexibility discussed above would be well-advised to schedule internal meetings with all station staff that are involved in contests and promotions, including (but not limited to) on-air talent, promotions staff, IT staff (station webmaster), sales staff, and administrative staff. While the new rules are now—as of today, February 12, 2016—in effect, most stations are not in a position to immediately “flip the switch” and begin availing themselves of the new flexibility. Stations should first make sure that all the requisite policies, procedures, and protocols are in place, from the new on-air messaging to the website links to the posting of the material terms to the winner announcement to the 30-day period to a full understanding by all relevant station staff of the new rules, and so on.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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