



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

THE FCC'S STATION-CONDUCTED CONTEST RULE: Disclosure Relief in Sight (But the New Rule Is Not Yet in Effect!)

When stations conduct contests and promotions, they must keep in mind the FCC's following rules: (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 contest must be conducted substantially as announced or advertised, and (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; and
- ✓ Tie-breaking procedures, if any.

Soon broadcasters will have the option to comply with "material terms" disclosure requirements by posting the disclosures on their respective webpages—this rule modification has the potential to decrease on-air "clutter" and make station contesting more "user-friendly." In short, the Commission has adopted an [Order](#) which creates greater flexibility by permitting broadcasters 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 the material terms on the air. **It is critical to understand, however, that the new flexibility is not yet in effect, and the new rules may not go into effect before the new year.**

Before we tell you about the new flexibility created by the new rules, it is important to reiterate that all of the FCC’s fundamental station-conducted contest policies are still in place. Stations must (i) conduct their contests substantially as announced or advertised, (ii) disclose all “material terms” of contests in a manner that is complete, accurate, and timely; (iii) and ensure that the information is not false, misleading or deceptive.

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 will require that the website employed for contest rule disclosure purposes be “publicly accessible.” In order to be considered “publicly accessible” under the new rules, 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 at 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 occur (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 identified the following example as sufficient identification under the new rules: “For contest rules, go to KXYZ.com and then click on the contest tab.” Thus, 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 will require that the website address be “periodically” broadcast until the contest is concluded. The Commission indicated that the frequency issue would be revisited if it later finds that broadcasters are failing to broadcast the website address frequently enough.

Internet Link to Contest Terms. The new rules will 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 will require stations to keep the material terms posted on the website for at least thirty days after winner selection (i.e., 30 days after (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 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.

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 do not provide stations with new opportunities to make changes to contests after they have been launched.

Consistency of Contest Terms. The new rules will 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. Thus, 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.

Effective Date of the New Flexible Rules. As noted above, the new rules are not yet in effect. The FCC first needs to obtain approval from OMB (the federal Office of Management and Budget) for the new rules. The FCC has sent the rules to OMB, and OMB is accepting comments on the new rules until December 7, 2015. If OMB approves the new rules (which will presumably occur, since the rules are intended to decrease burdens on broadcast stations), such approval will occur after December 7. The FCC will subsequently establish the effective date for the new rules through publication in the Federal Register, which may very well occur after the calendar turns to the new year. We are monitoring the situation, and we will advise when the effective date is known. Until then, stations should continue to disclose all material terms of their contests on-air a reasonable number of times, starting with the first time the contest is referenced on the air.

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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