#### Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of

Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests MB Docket No. 14-226

RM-11684

#### COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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February 18, 2015

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#### I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)<sup>1</sup> submits these comments in support of the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking<sup>2</sup> to modernize its regulations on contests conducted by broadcast radio and television stations. The Commission's proposal to update its contest rules accurately reflects how today's consumers access information. Listeners and viewers will benefit from online disclosure of the material terms of licensee-conducted contests, which will largely replace the current practice of fleeting and rapidly communicated on-air announcements. Broadcasters will be able to better serve their listeners and viewers, providing more meaningful opportunities for them to access and understand the disclosed information. Moreover, in light of the fact that the Commission applies its

<sup>&</sup>lt;sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

<sup>&</sup>lt;sup>2</sup> Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests, Notice of Proposed Rulemaking, 29 FCC Rcd 14185 (Nov. 21, 2014) (NPRM).

contest rules only to over-the-air radio and television broadcasters – and not to contests conducted by satellite or Internet radio, cable and satellite television or over commercial wireless networks – adoption of the FCC's proposal will be an important step towards bringing broadcasters into regulatory parity with their competitors.

#### II. THE FCC SHOULD MODERNIZE ITS CONTEST RULES TO BENEFIT CONSUMERS AND REDUCE REGULATORY BURDENS

#### A. TECHNOLOGICAL CHANGES HAVE ENHANCED BROADCASTERS' ABILITY TO INFORM CONSUMERS AND BETTER SERVE THE PUBLIC INTEREST

The FCC adopted its current contest rule in 1976. At that time, broadcasters had only two possible avenues to distribute information to consumers: over-the-air and via hard copy made available at the licensee's place of business. Times undoubtedly have changed. As the Commission itself noted, there have been "dramatic changes in the way that consumers access information since the Contest Rule was adopted."<sup>3</sup> Among other developments, the Internet has added a critical third avenue to easily connect with, and inform, consumers.<sup>4</sup> The Commission has recognized that the Internet is, specifically, "an effective tool for distributing information to broadcast audiences."<sup>5</sup>

Consumers today expect to communicate with any kind of commercial enterprise via the Internet. Nearly every advertisement – on any medium – directs consumers to the advertiser's website or app. Eighty-one percent of Americans online report that their

<sup>&</sup>lt;sup>3</sup> NPRM, ¶ 9.

<sup>&</sup>lt;sup>4</sup> According to a recent report by the Pew Research Center, 87 percent of online adults "say the internet and cell phones have improved their ability to learn new things," including 53 percent "who say it has improved this 'a lot." Kristen Purcell, *Americans Feel Better Informed Thanks to the Internet*, Pew Research Center, Internet, Science & Tech (Dec. 8. 2014) (Pew Report).

<sup>&</sup>lt;sup>5</sup> NPRM, ¶ 9 (citing Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order, 27 FCC Rcd 4535, ¶ 10 (2012)).

Internet and mobile phone use "has made them better informed about products and services today than they were five years ago."<sup>6</sup> One of the Internet's great advances has been to open a direct line of communication for important information between consumers and businesses and between consumers and media outlets. Consumers are familiar with local broadcast stations' websites and visit them frequently.<sup>7</sup>

The Internet has opened up new ways for broadcasters and their listeners and viewers to communicate about contests specifically. The record in this proceeding demonstrates that many licensees already "use their websites to post contest-related information."<sup>8</sup> In addition, many popular syndicated programs, such as *The Steve Harvey Show, Live with Kelly and Michael* and *The Bob & Tom Show* all post contest rules online.<sup>9</sup> Allowing broadcasters to disclose licensee-conducted contest rules online comports with current practice for syndicated programming and meets consumer expectations about how and where to obtain contest information.

Paving the way for online distribution of information also will help the FCC meet the goals of its contest rules. As the record indicates, contest rules can often be lengthy and detailed. The current rules that *de facto* require a rapid recitation of the material

<sup>&</sup>lt;sup>6</sup> Pew Report at 2.

<sup>&</sup>lt;sup>7</sup> See, e.g., How Americans Get Their News, American Press Institute (Mar. 17, 2014) (whether from the TV broadcast or the station's website, 93 percent of Americans say they used a TV news operation as source of news in the last week).

<sup>&</sup>lt;sup>8</sup> NPRM, ¶ 9.

<sup>&</sup>lt;sup>9</sup> See, e.g., Steve Harvey Contests, Steveharveytv.com, *available at* <u>http://www.steveharveytv.com/tag/contests/</u> (last visited Feb. 12, 2015); Official Rules for the Laugh With Rodney Carrington in Vegas Contest, *BobandTom.com*, available at <u>http://www.bobandtom.com/common/page.php?pt=Official+Rules+for+the+Laugh+With+Rodney+</u> <u>Carrington+in+Vegas+Contest&id=3041&is\_corp=0</u> (last visited Feb. 12, 2015); Winter Gone Wild Travel Trivia Contest, Livekellyandmichael.com, *available at* <u>http://livekellyandmichael.dadt.com/contests/traveltrivia/triviaindex/</u> (last visited Feb. 12, 2015).

terms on-air can make contest terms difficult for consumers to comprehend. Allowing broadcasters to inform listeners and viewers by posting contest information online will permit consumers to carefully read and better understand the material terms of contests. Listeners and viewers can also easily miss periodic on-air disclosure of material terms. In contrast, online disclosures are always available to consumers, and may be accessed via an increasing variety of devices, including mobile phones and tablets.<sup>10</sup>

Even those listeners and viewers uninterested in contests will benefit from the shift to online disclosure. Current contest rule announcements can annoy consumers, particularly those not interested in participating in any given contest. These announcements interrupt programming the broadcasters have otherwise carefully prepared, and may even encourage "some in the audience" to "turn to another channel or station during these disclosures."<sup>11</sup> The proposed rules will help make the broadcast experience better meet consumer preferences and expectations.

#### B. MANY OF THE FCC'S CURRENT CONTEST RULES APPLICABLE TO ON-AIR DISCLOSURES WILL TRANSLATE EASILY TO THE ONLINE CONTEXT

While the Commission is proposing a shift in where contest rule disclosures are

made, there is no reason to alter the substance of the current rules.<sup>12</sup> Many of the

<sup>&</sup>lt;sup>10</sup> In 2014, an estimated 160 million Americans ages 12 and older owned smartphones, an over 500 percent increase in the past five years. Smartphone penetration in 2014 approached 75 percent of those under age 55, and nearly 40 percent of Americans ages 12 and older owned a tablet. More than half owned a television connected to the Internet. Edison Research and Triton Digital, *The Infinite Dial 2014, available at http://www.edisonresearch.com/the-infinite-dial-2014/* 

<sup>&</sup>lt;sup>11</sup> NPRM, Statement of Commissioner Michael O'Rielly.

<sup>&</sup>lt;sup>12</sup> NAB does not mean to suggest here that the broadcast contest rules as a whole are still necessary to serve the public interest. Rather, if the Commission believes it necessary to retain the contest rules, then there is no reason to change the substance of most of those rules in the context of online disclosures.

elements of the FCC's long-standing rules can easily be imported into the online environment.

First, the Commission should continue to refrain from prescribing any particular format for the disclosures.<sup>13</sup> As should be evident, neither broadcasters, their websites nor their contests are "one size fits all." Fishing contests differ significantly from trivia contests, and a contest for a car, concert or Super Bowl tickets, or a cash prize will have distinctly different material terms. Given the wide variety of contests, a rigid standardized disclosure format could restrict broadcasters in ways that hamper their ability to communicate important information to consumers in the clearest manner. Due to the varying nature of contests and those who conduct them, NAB urges the FCC to continue to provide broadcasters with appropriate flexibility to implement updated contest regulations in ways tailored to meet the needs of their listeners and viewers.

A newly specified disclosure format is also wholly unnecessary. Nothing about the change from on-air to online disclosures suggests that a standardized format is now essential. If anything, there would appear to be less need for strict standardization in the online environment, given licensees' enhanced ability to communicate contest details online. Broadcasters are, in any event, incentivized to fully disclose all material terms.<sup>14</sup>

<sup>&</sup>lt;sup>13</sup> NPRM, ¶ 10.

<sup>&</sup>lt;sup>14</sup> Broadcasters obviously want viewers and listeners to enter contests. If online disclosure are unclear or inadequate, consumers may not even know how to enter or, at the least, will be reluctant to enter contests they do not understand. In addition, states regulate contests extensively, and broadcasters conducting contests must comply with myriad state laws about disclosing the terms of contests.

Second, NAB recommends that the FCC should not specify, for the first time, the duration that material contest terms must remain available.<sup>15</sup> As the Commission recognizes in its current on-air rules, contests vary in duration, so a specific length of time for making disclosures is impractical. Most notably, broadcasters should be permitted to remove contest terms from their websites as soon as a contest ends to avoid consumer confusion. Ensuring that consumers are not mislead by viewing material terms for expired contests is also consistent with state contest laws.

Third, the record in this proceeding does not support a change in the definition of material terms.<sup>16</sup> The current standard has worked for nearly 40 years without any meaningful challenges. The Commission has correctly recognized that "material terms may vary widely depending upon the exact nature of the contest."<sup>17</sup> Thus, a "one size fits all" mandate to disclose particular terms would be unlikely to "fit" many contests. In addition, altering the current definition of "material terms" to require numerous, boilerplate disclosures would run the risk of making contest terms resemble the lengthy website privacy statements that consumers routinely ignore. Such an outcome would not serve the interests of those entering broadcast contests.

Fourth, NAB supports the transparent and accessible online disclosure of material contest terms and strongly agrees that the broadcasters must periodically identify where

<sup>&</sup>lt;sup>15</sup> See NPRM, ¶ 11 (asking how long a licensee should be required to maintain contest information on a website).

<sup>&</sup>lt;sup>16</sup> NPRM, ¶ 12.

<sup>&</sup>lt;sup>17</sup> 47 C.F.R. § 73.1216, note 1(b).

material terms can be located.<sup>18</sup> A shift to online disclosure, however, should not lead the Commission to now require stations to "broadcast the website address where contest terms are available *each time they mention or advertise* a contest."<sup>19</sup> On-air talent may "mention" a contest multiple times each hour in passing, as a lead-in to a song or television program, or in conversation with a co-host. For example, a DJ may remind listeners to tune-in during the next hour for a chance to win concert tickets in the few seconds leading into a hit song, like *Shake It Off.* As a result, broadcasters could be required to air website addresses dozens of times per day or hundreds of times per week. NAB suggests a better solution would be to require broadcasters to announce, periodically, the pertinent address with sufficient information for the consumer to easily find the material contest terms online.

Fifth, NAB supports allowing broadcasters to continue to disclose material contest terms over-the-air, if they choose.<sup>20</sup> For some contests with uncomplicated terms, traditional on-air disclosure may be appropriate, and the smallest broadcasters, particularly, should have the flexibility to provide disclosures either on-air or online.

#### C. NEW ISSUES ASSOCIATED WITH MOVING CONTEST DISCLOSURES ONLINE CAN BE RESOLVED CONSISTENT WITH THE APPROACH OF THE CURRENT RULES

The proposal to move contest disclosures online raises a few novel issues that the

Commission's rules for on-air disclosures do not address. NAB strongly believes that

<sup>&</sup>lt;sup>18</sup> Under the FCC's current rules, the material terms of contests "should be disclosed periodically." The exact frequency of these disclosures is not specified, but disclosure "in a reasonable number of announcements is sufficient." 47 C.F.R. § 73.1216, note 2.

<sup>&</sup>lt;sup>19</sup> NPRM, ¶ 13 (emphasis added).

<sup>&</sup>lt;sup>20</sup> NPRM, ¶ 14.

these issues are best resolved by remaining consistent with how the current rules treat similar issues.

Most notably, the Commission inquires whether there should be a specific place on broadcasters' websites where contest rules must be disclosed.<sup>21</sup> While NAB agrees with the Commission that material contest terms must be easily accessible online, we urge the FCC to refrain from dictating specific locations on a licensee's website. The layout of each station's website is different, and what may work well for one broadcaster's website may not be practical or appropriate for another. The Commission's lodestar should be ensuring that consumers have ready access to contest terms, rather than mandating one specific location for all broadcasters' websites.<sup>22</sup>

The Commission also must decide how broadcasters should identify website locations on-air. NAB recommends that stations announce the website where material contest terms can be found in a manner that clearly indicates its location. For example, station KXYK could announce that "detailed information is available at KXYK.com/contests," or "more information on KXYK's webpage under the contests tab." Announcements such as these provide clear and sufficient direction for consumers and easily lend themselves to frequent on-air references.

The Commission should refrain from requiring licensees to announce the *complete, direct* website address where the contest terms are posted.<sup>23</sup> Specifying complete web addresses would be jarring for consumers and eliminate some of the

<sup>&</sup>lt;sup>21</sup> NPRM, ¶ 11.

<sup>&</sup>lt;sup>22</sup> See 47 C.F.R. § 73.1216, note 2 ("manner of disclosure of the material terms of a contest are within the licensee's discretion").

<sup>&</sup>lt;sup>23</sup> NPRM, ¶ 13 (emphasis added).

benefits that would otherwise be realized by moving disclosures online. It would also be overly burdensome to on-air talent and may discourage frequent references to contests, or even lead to fewer stations adopting online disclosures. Consumers simply do not expect to hear, and could be more confused by, an entire Web address, such as "visit h-tt-p colon backlash backslash w-w-w dot k-x-y-k dot com backslash contest backslash terms."<sup>24</sup> If the goal is to empower consumers, the Commission must allow broadcasters to provide the simplest and clearest identifying information so that the average listener or viewer can easily locate the pertinent Web page.

#### III. THE FCC'S REVIEW MUST TAKE INTO ACCOUNT THAT ITS CONTEST RULES APPLY ONLY TO BROADCAST RADIO AND TELEVISION AND NOT TO COMPETING PLATFORMS WITHIN ITS JURISDICTION

NAB sincerely appreciates the Commission's recognition of the need to modernize the licensee-conducted contest rule. The sheer advances in technology alone make the proposed changes essential. But it is also critical for the Commission to affirmatively acknowledge that these rules currently only apply to broadcasters, and not to any other competitive platforms, including satellite or streaming radio, cable or satellite television or wireless services. These types of disparately-applied rules handicap broadcasters as they compete for consumer acceptance with other services with lesser regulatory burdens.

When the FCC adopted its contest rules in 1976, ARAPNET, the precursor to the Internet, had only recently developed. The electronic media available to consumers consisted of three major television broadcast networks and broadcast radio. It is a vast

<sup>&</sup>lt;sup>24</sup> As an example from the FCC's website, it would be burdensome for FCC staff to direct consumers to "http://transition.fcc.gov/eb/broadcast/contests.html" every time it received a question. Specific website address are often quite confusing (e.g., most consumers would not expect "transition" to be required before "FCC.gov").

understatement to observe this is no longer the relevant media and telecommunications landscape. Broadcasters now compete with cable and satellite television, satellite radio, and the Internet for consumers' and advertisers' time and attention. The FCC is well aware of the growth of subscription television,<sup>25</sup> subscription and streaming radio,<sup>26</sup> and the Internet.<sup>27</sup> Indeed, Chairman Wheeler in this proceeding stated that "[a]ccess to the Internet is more ubiquitous than access to television."<sup>28</sup> Despite the ubiquity of online and multichannel video and audio competitors, the FCC imposes specific contest rules only upon broadcasters – even though these competitors frequently conduct contests.<sup>29</sup>

As the Commission has previously observed in a variety of contexts, competing

services should have regulatory parity.<sup>30</sup> Giving broadcasters additional flexibility to meet

http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=894894. Pandora and Spotify, two of the largest online streaming music websites, have a combined 115 million active users. *See. Pandora One Subscription Changes*, PANDORA (Mar. 18, 2014), http://blog.pandora.com/2014/03/18/6128/; Candice Katz, *10 Million Subscribers!*, SPOTIFY (May

<sup>&</sup>lt;sup>25</sup> In 2014, 77% of consumers subscribed to a pay TV service. See PriceWaterhouseCoopers, 2014 Global Entertainment and Media Outlook (2014), available at <a href="http://www.pwc.com/us/en/industry/entertainment-media/publications/outlook/tv-subscriptions.jhtml">http://www.pwc.com/us/en/industry/entertainment-media/publications/outlook/tv-subscriptions.jhtml</a>.

<sup>&</sup>lt;sup>26</sup> Sirius has 27.3 million subscribers. *See SiriusXM Reports Fourth Quarter and Full-Year 2014 Results*, SiriusXM Satellite Radio (Feb. 5, 2015),

<sup>21, 2014),</sup> https://news.spotify.com/us/2014/05/21/10-million-subscribers/.

<sup>&</sup>lt;sup>27</sup> According to the FCC, 94 percent of Americans are technically capable of connecting to residential Internet service sufficient to support streaming or downloading of video programming. Report, GN Docket No. 11-121, 27 FCC Rcd 10342, 10369 (2012). A 2014 report found that 87 percent of American adults use the Internet, and 97 percent of young adults (ages 18-29) do so. *The Web at 25 in the U.S.*, Report, Pew Research Center, at 5 (Feb. 27, 2014).

<sup>&</sup>lt;sup>28</sup> NPRM, Statement of Chairman Tom Wheeler.

<sup>&</sup>lt;sup>29</sup> See Appendix A (providing examples of contests by other competitors).

<sup>&</sup>lt;sup>30</sup> See, e.g., Basic Service Tier Encryption and Compatibility Between Cable Systems and Consumer Electronics Equipment, Report and Order, 27 FCC Rcd 12786, ¶ 8 (2012) ("In addition, encryption will . . . establish regulatory parity between cable operators and their satellite competitors"); Amendment of the Commission's Rules Related to Retransmission Consent, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, ¶ 41 (2011) ("Accordingly, to achieve regulatory parity between cable systems and other MVPDs, we seek comment. . . .").

the current contest rule can at least start to reduce the gulf that currently exists between how broadcasters and other media and telecommunications services are regulated in this area. Broadcasters merely seek to provide a competitive public service to their listeners and viewers, and providing flexibility in this context can begin the process of making broadcast regulation more level with the regulation of services against whom local stations compete on a daily basis.

#### IV. CONCLUSION

NAB strongly supports the Commission's proposal to modernize its licenseeconducted contest rules. Consumers will clearly benefit from broadcasters utilizing the Internet to provide disclosure of the material terms of station contests. Broadcasters will be able to find new and innovative ways to hold contests and to inform viewers about their material terms. Moreover, given the disparity in regulation in this area between broadcasters and all other media and telecommunications mediums, fundamental fairness and competition will be well served by starting to reduce the unnecessary burdens that hamper growth and innovation in broadcast radio and television.

Respectfully submitted,

#### NATIONAL ASSOCIATION OF BROADCASTERS

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February 18, 2015

## **Appendix A**

Contests by Broadcast Competitors

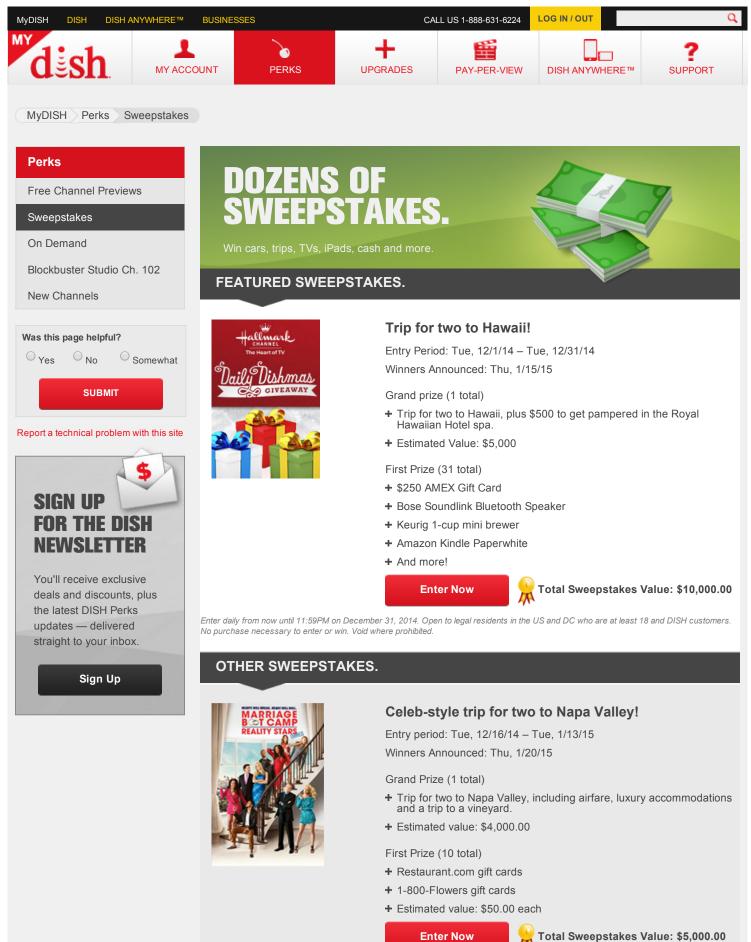
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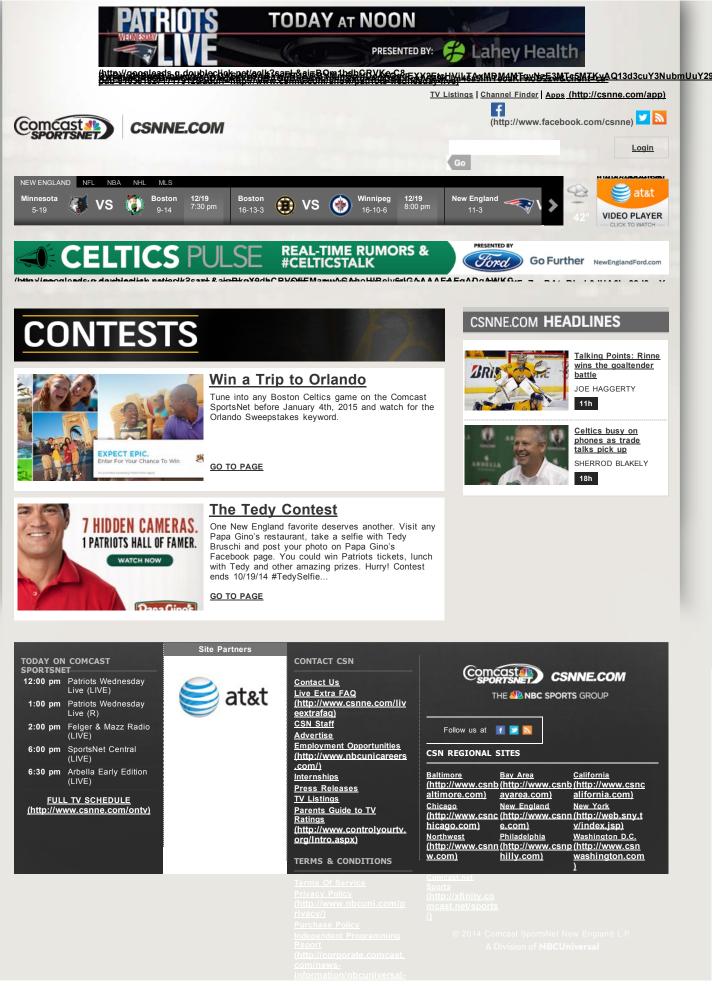
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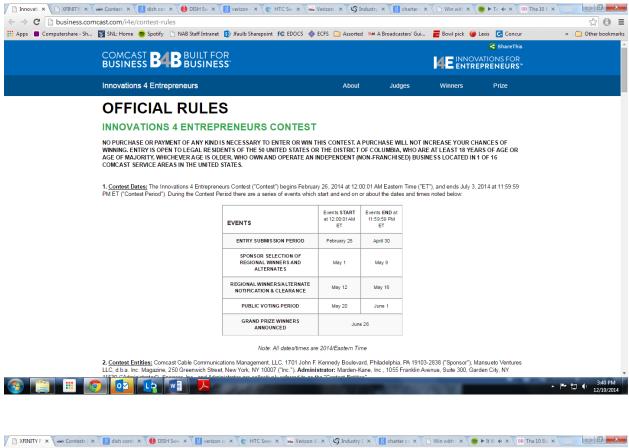
Prize	Value (\$)	Date	Winner	City
iPad Mini	\$330.00	Mon 07/14/14	Jonathan S.	Hermon
iPad Mini	\$330.00	Mon 07/14/14	Ming T.	Cincinnati
iPad Mini	\$330.00	Mon 07/14/14	Tammy C.	Cedar Creek
iPad Mini	\$330.00	Mon 07/14/14	Thomas B.	Scappoose
New Cookware Set	\$1215.00.	Wed 07/16/14	Luz L.	Ocala
Stand Mixer	\$640.00	Wed 07/16/14	Marilyn P.	Chicago
Stand Mixer	\$640.00	Wed 07/16/14	Carlos S.	Austin
Stand Mixer	\$640.00	Wed 07/16/14	Terry D.	Dixon

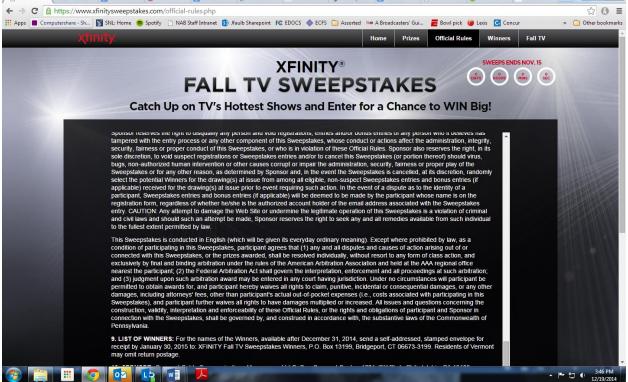
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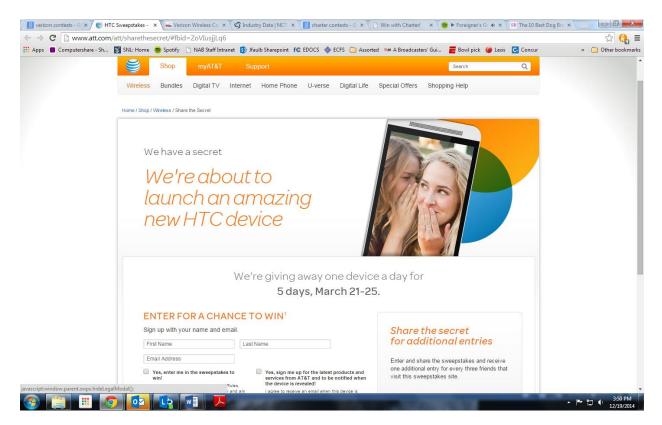
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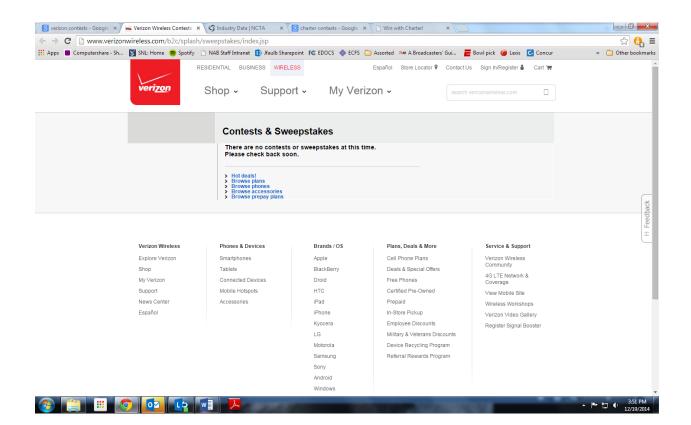


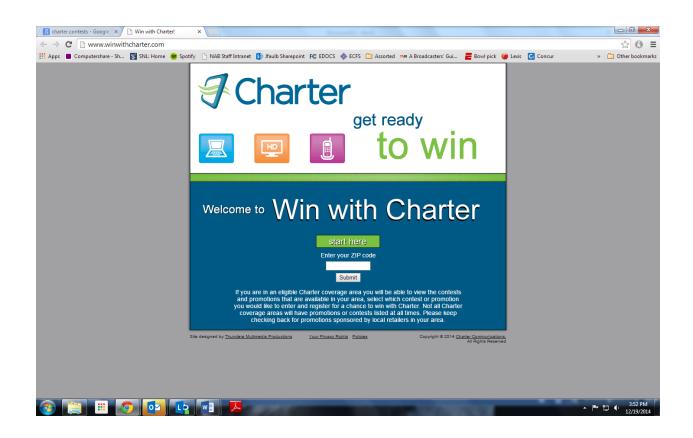














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	Terms of Use and AT&T privacy policy and am at least the age of majority.	I agree to receive an email when this device is revealed even if I unsubscribed from AT&T marketing messages.	S 🚹
	Enter Now		

