



7/11/2011

To our advertising agencies and program providers:

In the 2011-2012 timeframe, our stations must file an application with the Federal Communications Commission ("FCC") in order to renew our broadcasting licenses for another 8-year term. The FCC has recently adopted a new form of application (FCC Form 303-S) which we must file in order to do so. That form requires us to certify, regarding advertising contracts, as follows:

Non-Discriminatory Advertising Sales Agreements. Commercial licensee certifies that its advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses.

On the surface, such a certification is simple to make because all our advertising agreements have contained that clause for some years. However, on March 22, 2011, the FCC released a *Public Notice* (copy attached) that places an obligation on us to conduct due diligence to insure that agencies, networks, rep firms and program suppliers like your company, with which it deals, also comply with the FCC's requirements:

Licensees must have a good faith basis for an affirmative certification and a reasonable basis for believing that factual information provided to the Commission is truthful and accurate. **For example, a licensee that uses a third party to arrange advertising sales is responsible for exercising due diligence to ensure that the advertising agreement contains the nondiscrimination clause and does not discriminate on the basis of race or ethnicity.** Furthermore, a broadcaster that learns of a violation of a nondiscrimination clause while its license renewal application is pending should update its license renewal application so that it continues to be accurate. A misrepresentation in an application filed with the Commission could result in the initiation of license revocation proceedings [emphasis added].

Needless to say, this concerns us because the federal government has now imposed a condition on the renewal of our operating license that requires us to guarantee that the agreements you have with your clients also contain a nondiscrimination clause.

As you can see, this is an extremely important matter. The agreements you have with your clients must contain a non-discrimination clause. Here is a suggested clause that we believe will comply with the FCC's requirements:

“This agency [network][rep firm][program supplier] does not discriminate in the sale of advertising time, and will accept no advertising which is placed with an intent to discriminate on the basis of race or ethnicity. When you engage us to place advertising for you, you certify that you are not buying broadcasting air time under our advertising sales contract for a discriminatory purpose, included but not limited to decisions not to place advertising on particular stations on the basis of race, national origin, or ancestry, and that this requirement is a material term of our advertising contract with you.”

Though the FCC has mandated certification on our part, we believe that none of the agencies, network, representative firms or program suppliers has policies that differ from those stated by the FCC. If, for some reason, your policies do not conform to those stated in the notice, we do need to hear from you. If, as we believe, you are in compliance, we need not hear back from you.

Thank you for your understanding of this situation and unless we hear otherwise from you, our presumption is that you too understand the importance of having similar non-discrimination clauses in your agreements.

Attachment: March 22, 2011, FCC Enforcement Advisory



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 11-500
March 22, 2011
Enforcement Advisory No. 2011-06

FCC ENFORCEMENT ADVISORY

NON-DISCRIMINATION IN BROADCAST ADVERTISING

Broadcasters Are Reminded That They Must Certify In Broadcast Applications That Their Advertising Contracts Do Not Discriminate

The Enforcement Bureau issues this Enforcement Advisory to remind commercial broadcast licensees of their obligation to certify on their renewal application (Form 303-S) that their advertising sales contracts do not discriminate on the basis of race or ethnicity and that such contracts contain nondiscrimination clauses.¹

What is the new nondiscrimination in advertising certification requirement about? As the Commission stated in the *Promoting Diversification of Ownership in the Broadcast Services Report and Order*, discrimination has no place in the broadcast industry.² Accordingly, in that *Order*, the Commission required commercial broadcasters to certify in their renewal applications that their advertising contracts contain nondiscrimination clauses.³ In adopting this requirement, the Commission addressed reports that some advertising contracts contain “no urban/no Spanish” dictates that are intended to minimize the proportion of African American or Hispanic customers patronizing an advertiser’s venue — or dictates that presume that African Americans or Hispanics cannot be persuaded to buy an advertiser’s product or service.⁴

What are licensees required to do? Licensees of commercial broadcast stations must certify that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses.⁵ A renewal application cannot be submitted without completion of the certification. Form 303-S contains both a “yes” and “no” box for the certification requirement to provide licensees that are unable to make an affirmative certification an opportunity to explain the reasons for noncompliance. If the response to the non-discrimination certification question on

¹ See Public Notice, *Media Bureau Announces Revisions To License Renewal Procedures and Form 303-S; Radio License Renewal Cycle To Commence On May 2, 2011*, DA No. 11-489 (MB rel. Mar. 14, 2011) (describing the specific amendments made to Form 303-S concerning new nondiscrimination certification requirement), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0314/DA-11-489A1.pdf.

² See *Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922, 5940 ¶ 40 (2008).

³ See *id.* at 5941 ¶ 49.

⁴ See *id.*

⁵ See FCC Form 303-S (eff. March 2011) (a copy of which is available from the FCC’s website), available at <http://www.fcc.gov/Forms/Form303-S/303s.pdf>.

the form is “no,” the licensee must attach an exhibit identifying the persons and matters involved and explaining why the noncompliance is not an impediment to a grant of the station’s license renewal application. A “no” answer and associated explanation will be considered by the Commission in determining whether to renew the license.⁶

Licensees must have a good faith basis for an affirmative certification and a reasonable basis for believing that factual information provided to the Commission is truthful and accurate.⁷ For example, a licensee that uses a third party to arrange advertising sales is responsible for exercising due diligence to ensure that the advertising agreement contains the nondiscrimination clause and does not discriminate on the basis of race or ethnicity. Furthermore, a broadcaster that learns of a violation of a nondiscrimination clause while its license renewal application is pending should update its license renewal application so that it continues to be accurate.⁸ A misrepresentation in an application filed with the Commission could result in the initiation of license revocation proceedings.

Need More Information? For additional information regarding compliance and enforcement of the nondiscrimination certification requirement, please contact Amelia Brown of the Enforcement Bureau at 202-418-2799 or at amelia.brown@fcc.gov. Media inquiries should be directed to David Fiske at 202-418-0513 or david.fiske@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at 202-418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-Tell-FCC (1-888-835-5322) for further information about the nondiscrimination certification requirement.

Issued by: Chief, Enforcement Bureau

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⁶ See 47 U.S.C. § 309(k).

⁷ See 47 C.F.R. § 1.17.

⁸ See 47 C.F.R. § 1.65 (applicants have a continuing obligation to advise the FCC, through amendments, of any substantial and material changes in the information furnished in this application).