



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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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).



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:
March 22, 2011

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FCC ENFORCEMENT BUREAU RELEASES ADVISORY ON REQUIREMENT FOR BROADCASTERS TO CERTIFY THAT ADVERTISING CONTRACTS ARE NON-DISCRIMINATORY

Washington, D.C. – The Federal Communications Commission’s Enforcement Bureau today released an Enforcement Advisory to alert commercial television and radio broadcasters to an important new requirement to certify that their advertising sales contracts contain nondiscrimination clauses and do not discriminate on the basis of race or ethnicity.

FCC Chairman Julius Genachowski said, “It should be clear from today’s advisory that the Commission will vigorously enforce its rules against discrimination in advertising sales contracts. As the Commission stated in its order adopting the rule, discrimination simply has no place in broadcasting.”

A new Form 303-S, used for broadcast license renewals, was announced by the Media Bureau on Monday, March 14, 2011 (DA 11-489). The revised form requires the certification described above. Today’s Enforcement Advisory explains that the new requirement is aimed at advertising contracts that contain “no urban/no Spanish” dictates, by which advertisers and their agencies intentionally by-pass urban and Latino stations, supposedly because the client has dictated that its ads not be placed with those outlets. Commercial broadcasters must complete the certification in order to renew their broadcast licenses. If they cannot affirmatively certify that their advertising agreements do not discriminate on the basis of race or ethnicity, they must explain why this should not be an impediment to granting the station’s license renewal application. The broadcaster’s response and explanation will be considered by the Commission in determining whether to renew the license.

The Enforcement Advisory also designates a specific contact in the Enforcement Bureau to respond to inquiries from the public and licensees. On issuing the Advisory, Michele Ellison, Chief of the Enforcement Bureau said, “The advisory puts everyone on notice that the Commission has no tolerance for this type of insidious discrimination. Our leadership has asked us to bring renewed focus to these important broadcasting issues. We will work in close collaboration with the Media Bureau to give this new requirement meaning.”

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