

ALERT

New License Renewal Application Form Contains Certification Concerning Nondiscrimination in Advertising Sales Agreements

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On March 14, 2011, the Federal Communications Commission (FCC) released a revised version of its broadcast license renewal application form (FCC Form 303-S). As anticipated, the revised form contains a new question requiring commercial licensees to certify that their "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." Prohibited discriminatory practices include, but are not limited to, "no urban/no Spanish" dictates. (As a side note, in March 2008, when the FCC initially announced its intention to add this certification to FCC Form 303-S, it mistakenly stated that advertising sales contracts were prohibited from discriminating on the basis of race or *gender*. In a March 2010 erratum, the agency corrected this to race and *ethnicity*, and the new FCC Form 303-S is consistent with this change).

The certification will cover the time period from March 14, 2011 to the date of the station's license renewal application filing. Accordingly, commercial licenses should ensure *immediately* that their advertising sales contracts comply with the nondiscrimination requirement. Language such as the following should suffice:

"In accordance with Paragraphs 49 and 50 of United States Federal Communications Commission Report and Order No. FCC 07-217, _____ [Licensee] will not discriminate in any contract

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for advertising on the basis of race or ethnicity, and all such contracts will be evaluated, accepted, negotiated and completed without regard to race or ethnicity."

If a commercial licensee is unable to certify compliance, it will be required to attach an exhibit to its license renewal application that explains the noncompliance and demonstrates that such noncompliance should not be an impediment to renewal of its license.

If you have any questions, please contact one of the attorneys listed below.