

Anti-Discrimination in Ad Contracts - Are You Ready?

Legal Alert
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Garvey Schubert Barer Legal Update, October 10, 2008.

The FCC's ban on "no urban/no Spanish" dictates is in effect. Do your advertising contracts comply?

The March 2008 Garvey Schubert Barer article [A Cornucopia of New Rules on Increased Diversity of Ownership in Broadcast Entities](#) provided a general description of a battery of initiatives that were adopted by the FCC to expand opportunities in the broadcast industry for new entrants and small business, including minorities and women.

One of the initiatives requires broadcasters to certify at renewal time that:

they do not discriminate on the basis of race or gender, and
their advertising sales contracts contain non-discrimination clauses that prohibit all forms of discrimination.

The FCC concluded there is a need for such clauses because of some reports of advertising contracts that contain "no urban" and "no Spanish" dictates.

The FCC has not proposed any particular language to comply with the non-discrimination requirement. It has not yet revised renewal applications to contain a non-discrimination certification.

Meanwhile, National Association of Broadcasters and various associations representing advertisers and advertising agencies are in the process of recommending model language for advertising contracts that prohibit discrimination.

For now, we suggest that broadcasters review their existing advertising contracts to ensure that they contain an express non-discrimination clause. If they do not, we recommend that a notice be sent to advertisers and the station's advertising rep firm along the following lines:

In compliance with the FCC's new policy requiring licensees of broadcast stations to include non-discrimination clauses in their advertising contracts, [Licensee]'s existing contracts are hereby amended to include the following clause:

Non-Discrimination. [Licensee] does not discriminate on the basis of race, gender or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for

advertising that includes any such restriction will not be accepted.

We also recommend that any new advertising contracts contain the above non-discrimination clause.