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To: All Broadcast Clients

October 29, 2008

## FCC REQUIRES NON-DISCRIMINATION PROVISIONS IN ADVERTISING SALES CONTRACTS

Earlier this year, the FCC released a *Report and Order and Third Further Notice of Proposed Rule Making* concerning diversity in the broadcast industry. The FCC, considering reports that certain advertising sales contracts contain so-called "no urban/no Spanish" dictates, required that, beginning with the next renewal cycle, broadcasters certify in their renewal applications that advertising sales contracts to which they are parties do not discriminate on the basis of race or gender, and that such contracts contain nondiscrimination clauses.

The current Form 303-S renewal application does not include this certification, but the Commission is in the process of amending the form to include such provision. We expect that the new form will be approved shortly.

The FCC's staff has informally advised our office that the period for which the certification must be made will begin on the date that the new renewal form has been approved. However, such advice is not binding, and out of an abundance of caution, so that licensees may affirmatively certify that their advertising sales contracts comply with the nondiscrimination provision, we recommend that appropriate nondiscrimination language be added to advertising sales contracts immediately.

The Commission did not specify how the nondiscrimination provision should be expressed, but we recommend that language along the lines of the following be added as soon as possible to all advertising sales contracts:

**NONDISCRIMINATION POLICY:**  
[Licensee] and its stations do not discriminate in advertising contracts on the basis of race, ethnicity or gender, and will not accept any advertising which is intended to discriminate on the basis of race, ethnicity or gender. Advertiser represents and warrants that it is not purchasing advertising time from Licensee or its stations that is intended to discriminate on the basis of race, ethnicity or gender.

Stations should be particularly careful not to accept orders for advertising that contain written or implied unwritten "no urban/no Spanish" or similar dictates.

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If you have any questions concerning these new nondiscrimination provisions, please contact an attorney in our office at (202) 429-8970.

*Leventhal Senter & Lerman PLLC*

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact an attorney in our office.