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May 31, 2007

Via Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

FILED/ACCEPTED

MAY 31 2007

Federal Communications Commission
Office of the Secretary

**ATTENTION: Debbie J. Byrd
Investigations and Hearings Division
Enforcement Bureau, Room 4-C330**

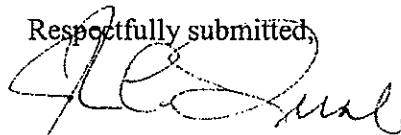
RE: Station KMSP-TV, Minneapolis, Minnesota
EB-06-IH-1749

Dear Ms. Byrd:

On behalf of Fox Television Stations, Inc. ("FTS"), enclosed herewith please find its response to the letter, dated May 3, 2007 from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, with respect to the above-referenced matter. Please note that the letter referenced WFTC(TV), but as discussed in the response, FTS has determined that the programming at issue was actually broadcast on KMSP-TV.

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,



John C. Quale

Counsel to Fox Television Stations, Inc.

Enclosures

cc: Benigno E. Bartolome, FCC Room 4-C330

RESPONSE OF FOX TELEVISION STATIONS, INC.
TO FCC LETTER OF INQUIRY

Station KMSP-TV
File No. EB-06-IH-1749

Inquiries: Documents and Information to be Provided

State whether the Licensee broadcast the material described in the Complaint over the Station on March 18, 2006, at approximately 5:45 p.m. Provide a recording of the broadcast by DVD or a VHS videocassette tape (two copies), including the complained-of material plus the 15 minutes aired before and after it, and a written transcript of the recording.

Response

The Letter of Inquiry in this file, dated May 3, 2007 (the "LOI"), and addressed to WFTC(TV), Minneapolis, Minnesota, states: "Specifically, it is alleged that indecent material was aired during the Station's broadcast of the movie, 'Tomcats' on March 18, 2006 at approximately 5:45 p.m." There was one complaint attached to the LOI:

"Indecent scene of the movie shown on tv of a batchers party in which there were woman indecently dressed. Show near nude backsides of women who appear as strippers. Many women were very under dressed."

In response to the LOI, Fox Television Stations, Inc., the Licensee of WFTC(TV), states that the Station did not broadcast the movie, "Tomcats" on March 18, 2006.

However, KMSP-TV, Minneapolis is also licensed to Fox Television Stations, Inc. (the "Licensee"), and on March 18, 2006, from 4:00 to 6:00 p.m., KMSP did broadcast the movie, "Tomcats," which included a bachelor party scene. Accordingly, in a spirit of cooperation, the Licensee will respond to the LOI as if the complainant and the Commission had correctly identified the station. The Licensee has not retained an air-check tape from March 18, 2006. In order to respond to the Commission's request, the Licensee has obtained a copy of the requested movie segment from its distributor, Debmar-Mercury LLC. A declaration of the Co-President of Debmar-Mercury attached hereto serves as evidence that the tape being provided to the Commission with this Response is an accurate representation of the relevant section of "Tomcats" as it was furnished to KMSP for broadcast. KMSP broadcast the movie with a Parental Guideline Rating of "TV 14" (Parents Strongly Cautioned).

Analysis

The complainant was incorrect when she alleged that the "batchers party" (sic) scene in "Tomcats" is indecent. It may be sophomoric humor, but it is not indecent.

The Commission's evaluation of indecency involves two determinations:

First, . . . the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.

The Commission has set forth three principal factors for evaluation: (1) the explicitness or graphic nature of the description or depiction of sexual or excretory organs or activities; (2) whether the material dwells on or repeats at length the descriptions or depictions; and (3) whether the material appears to pander or is used to titillate, or whether the material appears to have been presented for its shock value.¹

The bachelor party scene from "Tomcats" does not meet the Commission's indecency standard. The scene is critical to the development of the movie's plot. In it, Kyle is celebrating his "last hurrah" as a single man prior to his marriage to Natalie. Kyle's best friend, Jerry, is secretly in love with Natalie. Jerry is appalled when he hears Kyle brag that after his marriage he will still sleep with whomever he wants while Natalie is at home with the kids. Jerry decides to stop the wedding.

The scene contains no description or depiction of sexual or excretory organs or activities. At most, it contains only innuendo: *e.g.*, "one last dip in the bachelor pool." The Commission has previously determined that innuendo is not indecent except where its sexual references are unmistakable or its sexual meaning is inescapable,² which is clearly not the case here. There is no nudity in the scene: the men are fully clothed; the women are wearing nothing more revealing than swimsuits commonly worn at beaches and family pools across America. Possible sexual activities are only conveyed by allusion. It is left to the mind of the viewer to imagine the possible off-screen activities referred to in such ambiguous lines as: "You wouldn't believe what she can do with ping-pong balls," or "go in the bedroom and start warming up without me."

Even if the Commission were to find that the bachelor party scene describes or depicts sexual activities, it would still not meet the second part of the indecency standard: there is no explicit or graphic depiction of sexual activities; the scene is relatively brief and does not dwell on its suggestions of off-camera activities; and the scene is presented to further the plot of the movie and not for its shock value or to pander or titillate. There is adequate precedent to demonstrate that the Commission should not find this material to be indecent. Even within the single Omnibus Order, there are no fewer than four examples of similar material that the Commission found to be not indecent:

¹ In re Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, 16 FCC Rcd 7999, ¶¶ 7-10 (2001) (emphasis in original) (citation omitted) ("Indecency Policy Statement").

² Indecency Policy Statement, ¶ 14 (finding material indecent where "unmistakable sexual references remain that render the sexual meaning of the innuendo inescapable."); *but see* NBC Telemundo License Co., 19 FCC Rcd. 23025 (2004) ¶ 7 (finding "repeated use of sexual innuendo and double entendre" not patently offensive and therefore not indecent); and Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005, 21 FCC Rcd. 2664 (2006) (the "Omnibus Order"), ¶ 202.

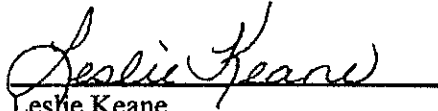
1. "Alias" (January 5, 2005), Omnibus Order, ¶¶ 147-52 (male and female characters in bed, kissing, caressing, and rubbing against each other with no display of sexual organs and no sexually graphic language).
2. "Two and a Half Men" (February 21, 2005), Omnibus Order, ¶¶ 160-62 (no nudity or depiction of a sexual organ or description of sexual organs or activities; viewers left to surmise what is happening).
3. "Golden Phoenix Hotel & Casino Commercial" (February 19, 2005), Omnibus Order, ¶¶ 166-72 (women in sexually suggestive casino show-style costumes jumping onto the bed of a fully clothed man without any actual display of sexual organs).
4. "The Simpsons" (September 9, 2004), Omnibus Order, ¶¶ 219-23 (female dancer at strip club shown from behind in a "thong," with no cartoon nudity or depictions of physical contact involving cartoon sexual organs).

Following a viewing of the tape provided herewith, an examination of the script, and a review of relevant precedent, the Commission should find that the scene that was the subject of the complaint is not indecent and that no further action is warranted.

DECLARATION

Under penalty of perjury, Leslie Keane hereby states as follows:

1. I am a Vice President of Fox Television Stations, Inc., licensee of KMSP-TV, Minneapolis, Minnesota.
2. I have read the foregoing Response of KMSP to the FCC Letter of Inquiry, (the "Response"), which is responsive to the letter, dated May 3, 2007, to Fox Television Stations, Inc., from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau
3. I have personal knowledge of the facts contained in the Response and declare that such facts are true and correct.



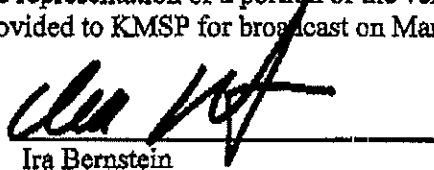
Leslie Keane
Vice President/Programming & Research
KMSP-TV
Fox Television Stations, Inc.
11358 Viking Drive
Eden Prairie, MN 55344
(952) 946-5617

May 31, 2007

DECLARATION

Under penalty of perjury, Ira Bernstein hereby states as follows:

1. I am Co-President of Debmar-Mercury LLC ("Debmar-Mercury"), a television production and distribution company.
2. Debmar-Mercury distributes the movie, "Tomcats" to television stations in the United States, including KMSP(TV) in Minneapolis.
3. The video recording submitted with the Response of KMSP to the FCC Letter of Inquiry dated May 3, 2007 to Fox Television Stations, Inc., from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau is an accurate representation of a portion of the version of "Tomcats" that Debmar-Mercury provided to KMSP for broadcast on March 18, 2006.



Ira Bernstein
Co-President
Debmar-Mercury LLC
225 Santa Monica Boulevard
Santa Monica, California 90401
(310) 393-6000

Date: 5/30/07

Tomcats Script

(Segment 6)

Oh, Michael, you're the greatest.

Here you go.

Dude.

Dude!

Oh, yeah!

I brought you a plant.

Oh, dude. Don't make me laugh.

Has Natalie been here all night?

She never left my side.

She says this whole thing happened because I've got too much karma in my genitals.

-How was it?

-It was all right.

Doc says the other rocket launcher's good, so....

Mike, Come here. Come here.

Come here.

I want my ball.

Kyle, I understand that,
but look on the bright side.

-You still have one healthy one.

-You don't understand. I want it.

I want to take it home with me, and the nurses said I can't do that.

It's not a tooth, Kyle.

It belongs to me. I miss it.

Please. Get my nut.

It fell right on the floor.

-What? The kidney?

-Slipped from my hand, how I was so embarrassed.

I can't believe I'm doing this.

Oh no. Oh, no!

Okay, come on. Come to papa.

Slippery little guy. Got you.

I got to put this in something. Got to find something to put this in.

Oops. Where'd it go? Where'd you go?

Where'd you.....go?

Hey, you can't be in here.

Hold the sticky buns. Give me these.

-Stand in line.

-Give them to me.

You have to.....stand.....in.....line!

Doctor!

Do not eat that!

----- (commercial break) -----

Did you get it?

Yep. I got it.

Wow. So that's what a nut looks like?

Yeah. That's a nut.

Thanks, Mike. You're a Lifesaver.

I appreciate it.

Mike, remember our deal, about banging every girl in the world? That's on you now, pal.

I'll get right on that.

Call me.

Don't get too comfortable.

You have got to wait your turn.

Hurry up, Michael, I'm next.

-Girls, give me a coupe of minutes of rest.

-Kyle doesn't take this long.

Two, three minutes and he's airways done.

Hurry if you want to get every woman in the world.

Please, let me shut my eyes, for like, literally seconds...
...and then just a little sandwich.

Michael... Michael...

Michael. It's Carlos.

I know you got three days and fourteen hours to go.....but since
you've run out of stuff for me to take.....I remind you, if you don't
pay, you die.

No problem. I'll have it.

You're as bad a liar as you are a gambler, Mr. Delaney. I'll see you
Friday.

Hey, Mike. How's it going, man?

Oh, I'm just kidding, man.

I'm all better.

I'm fine.

Hey, I bring this everywhere I go.

Thanks to you.

Thanks for showing up today. Thanks for coming by.
I really wanted you to be here.

Here for what?

You're busted, Mike.
Natalie told me what you did.

She what?

How you found her.
I can't believe it.

Kyle, I am so sorry.

You tracked her down after hearing my story to see if we'd fit.

Who does that?

Thank you. You're the best, pal.

She tell you she's a cop?

That whole cosmetics counter thing?
That was an undercover gig.

Very clever.

Thank you.

You know what?

When death has literally got you by the balls.....everything you've
been afraid of suddenly seems unimportant.

There are things that I can do now.....that I never could do before.

For instance:

Officer Natalie Parker.....I have been arrested by your beauty.

And I'd love to serve a life sentence.....in the jail of your heart.

Oh, my God.

Yes.

Of course I'll marry you, Kyle.

I can't believe I've done this. I've delivered Natalie right into the
devil's lair.

I finally feel I can have something real with someone.

You know, something solid. Built on trust. Like what you and Tricia
have.

Now she's going to go off and marry him.

Why don't you step up, man. Tell her how you feel.

Tell her you love her, you puss.

Have you been listening?
She loves Kyle.

Steve, it's so weird.

For the first time in my life.....someone else matters
more to me than.....I matter to myself.

Well, you changed after all that stuff you went through.

I'm exercising. People change.

You know what?
Maybe Kyle has changed too.

All he went through.
Maybe he's a changed man now.

Oh, yeah, baby! Aha!

All right! Ooh, give it to me. Uhh! Yeah! Uhh!
Whoo!! All right. Ooh! Give it to me.

I'll be right back, baby. Oh God, Hello.

What's up, everybody? Yahoo!!
How rockin' is this?

Calm down! Whoo! Oo! mm!

Yo! Hey Mike.
What's the matter? You're not having a good time, buddy?

Get a load of some of these women.
They're amazing.

You see that one there? In the blue?

You wouldn't believe what she can do with Ping-Pong balls.

Gentlemen, it is show time!

Come on, come on!

Mike, did you see this?

Yo, Cherry, come here! Come here, Cherry.

Hey, sit down.

What do you say we go back in the bedroom?
-Can I bring a friend?

Sure, eh, it's my bachelor party.
The more, the merrier.

Oh, hello there!

You're cool with this?

Everybody's entitled to a last hurrah.

You want to go in the bedroom and start warming up without me?

I'll be there in a minute. Okay.

Thank you. Thank you.

What're you talking about, ''last hurrah''?

I just figure you're getting married tomorrow morning at 9 a.m.

You know, you're entitled one last dip in the bachelor pool.

You're funny. You're hysterical, man.

You're joking, right?

-I thought you loved her.

-Love's got nothing to do with it.

Natalie will be a great baby-maker.

I could still sleep with whoever I want. That's the beauty of it.

She'll be at home with the kids.

She'll never know.

Hey, girls! What's up?

I thought you were going to go warm up in bed without me.

You did it, man.

You won the bet, man!

You'll be rich.

Tomorrow morning at 9am you're gonna be rich.

Rich!

No, Steve. No, I'm not.

I have got a wedding to stop!

(Commercial Break)

(Segment 8)

I cannot believe you let Kyle plan this wedding.

It doesn't matter.

You're going through with this?

Hey. Look at me.

Do I look amazing or what?

We're in luck. My uncle Murray's performing the ceremonies.

He's my hero.

And the witnesses sign in triplicate.

That's three, tres, trois.....and then...
...I stamp a little, I notarize, I file it. Voilà.

Can't you just feel the romance?

Oh, no. Oh, no!

No!

Where are my clothes?
Where are my clothes?!

Clothes. Where are my clothes?

Excuse me, ma'am? Ma'am?
Excuse me, ma'am. Please get up.

Have you seen a pair of pants?

I'm gonna borrow your jacket, okay?
There we go.

Please. Okay. There we go. Okay.
Here we go.

I promise I'll return this, okay?

Slow down!

That was close.

I can't believe this. It's terrible.

Sorry. Sorry. I'm sorry.

Fur coat!

What are you--? Stop it!

Marriage is a state.....that is not entered into easily.

It is damn hard, kids.

It requires dedication and a lot of sacrifices.

Like for instance, if you have a mother-in-law.....who figures she can stay over with you whenever she damn pleases! She comes in and stays in the toilet for an hour and a half!
Who reads War and Peace in the toilet?!

Mommy!

I'm a good stranger. It's okay.

Hey, you! Stop!

I'm not weird. We were just talking.

Kyle, do you promise to make love to Natalie.....and only Natalie...
...until one of you is dead?

I wasn't looking at you.

Don't do that.

Be advised, we're looking for a peeping Tom.

This guy is really twisted.

And do you, my handsome nephew.....take Natalie to be your
lawful wedded wife.....through the good times and the bad times...
...and the times she won't talk to you for months.....and even worse,
when she will.....so you pretend you're asleep at night so she'll
leave you alone.....but you lie there in the dark listening to her
grind her teeth...
...hour after hour.....like a hacksaw?

I made it.

Nice dress, bonehead!

Sorry. My mistake.

Stop the wedding!

I love you!

I thought you said you were done with all that.

It's not Peter.
I don't even know who this guy is.

I'm curious, Mr. Delaney.
How did you get the money?

I guess you could say I sold my soul.

Yeah, I see a lot of that.
Michael.

Way to go, Kyle. Marry the best woman in the world and it's not enough
for you.

What?

You're married?!

Thanks a lot, [beep].
You got something on your nose.

You were in on it together.
Take me for a ride.

What do you mean? You got it all!
Why'd you tap me on the nose?

You really don't know, do you?

It happened on our wedding night. I thought everything was fine.
I was ready to give her a hose down. Well, hello, Mrs. Brenner.

Actually, I'm gonna keep my own name.

Yeah, whatever.

Yeah. A little of the old bubbly.

Kyle, remember our first time?

When you left me out in Malibu with nothing but a roll of quarters?

Yeah. That was so hot.

Here's to that.

Let's swap bodily fluids, baby.

When I woke up, she was gone.

The next day, marriage was annulled, she was nowhere to be found.

Never saw her again. Figured you two had a scam to get the bachelor cash.

That's cool, though. I'm getting more women now than ever.

Chicks really dig a guy with a broken heart.

Kyle, I am so sorry.

I'm kidding. I just play that. You know me. I'll be a one-ball babe-hound when I'm eighty.

I got a date with a new girl. She's fantastic.

What, another cosmetics counter girl?

No, man, no. A librarian. She's so hot. A little redheaded girl.
She gave me this book to read.

This book will change your life.

I gotta go.

I like to be spanked with a day-old carrot.

How much you got?

Twenty bucks.

Excuse me.

Michael?

I've got a proposal, but it might sound a little strange.

You say the Chinese Theater is this way?

Thank you very much, ma'am.

-Where's the carrot?

-I got it.

I just wanted to give you this.

You were there?

I tried to stop the wedding, but I was late.

So, this proposal.....does it involve sex?

Yeah, I'd say there'd be a fair amount of sex involved.

Definitely a house and a ring.

-Maybe even some children.

-Children?

At least a dog.

Definitely not a hamster.

I like dogs.

So, what's up, Delaney?

You love me or something?

I do.

I now happily ratify.....your union as husband and wife.

You may kiss your bride.

Wait.

Not until you say those three little words.

She couldn't mean...

I love you.

This is fantastic. You're like a big, bad dominatrix and everything.

I can't wait to get to this.
Show me what you got.

I don't know.

I think something's missing.

Yeah, something's missing, get your boot out of that little thing.

You got to do something to me. Let's see what you got.

Oh, hey.

(Credits roll)