

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

RALEIGH, NORTH CAROLINA

MAILING ADDRESS OFFICE ADDRESS
POST OFFICE BOX 1800 1600 WACHOVIA CAPITOL CENTER
RALEIGH, N.C. 27602 150 FAYETTEVILLE STREET
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

L.P. McLENDON, JR.
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL MCGINN
MICHAEL D. MEEKER
WILLIAM G. MCNAIRY
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JENNIFER C. NOBLE
DAVID L. NEAL

HENRY E. FRYE
OF COUNSEL

J. LEE LLOYD
SPECIAL COUNSEL

FOUNDED 1897

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W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
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HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WASHINGTON OFFICE
601 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

(919) 834-9216
email:whargrove@brookspierce.com

January 5, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Dear Secretary Dortch:

This firm is counsel to KETV Hearst-Argyle Television, Inc., licensee of Station KETV(TV), Omaha, Nebraska.

This letter is in response to the Commission's December 7, 2006, letter of inquiry to KETV concerning a complaint alleging that the station had broadcast a commercial for "Axe Cologne" and that the content of the commercial was indecent.

On behalf of the licensee, it is respectfully requested that the time in which to respond to the Commission's letter of inquiry be extended. The letter was addressed in care of this law firm and sent to the former address of the station's corporate offices in New York. (This law firm's correct address is on file with the Commission as counsel for KETV.) The Commission's letter was not received at that office until a few days before the holiday season. The station immediately began an investigation of the complaint.

I am advised by KETV's General Manager that, so far, the investigation indicates the commercial which is the subject of the complaint was not broadcast on KETV in "non-network" time periods on December 5, 2005. The ABC Television Network, with which KETV is affiliated, has not been able, given the intervening holidays, to complete its investigation to

Ms. Marlene H. Dortch
January 5, 2007
Page 2

determine if the commercial was broadcast on KETV in an ABC Network program on December 5.

Accordingly, it is respectfully requested that the licensee be given a short extension of time until February 10, 2007, in which to fully complete its investigation of this matter and provide a comprehensive response to the Commission's inquiry.

If any question should arise during your consideration of this matter, it is respectfully requested that you communicate with this office.

Very truly yours,


Wade H. Hargrove
Counsel to KETV Hearst-Argyle Television, Inc.

WHH/bp

cc: Benigno E. Bartolome
Debbie Byrd

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DAVID L. NEAL

January 19, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Via FedEx

Re: Complaint
FCC File No. EB-06-IH-0997

Dear Secretary Dortch:

This firm is counsel to KETV Hearst-Argyle Television, Inc., licensee of Station KETV(TV), Omaha, Nebraska.

This letter is in response to the Commission's December 7, 2006, Letter of Inquiry to Station KETV concerning a complaint alleging that the Station had broadcast a commercial for "Axe Cologne" at approximately 5:30 p.m. on December 31, 2005, and that the content of the commercial was indecent.

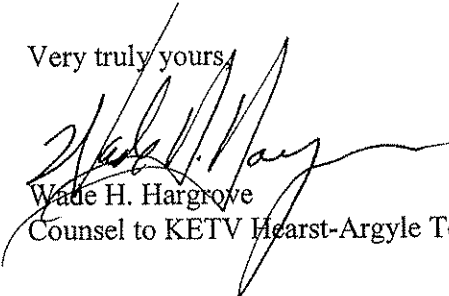
Upon receipt of the Commission's Letter of Inquiry, the Station conducted an investigation. It appears from the attached affidavit of the Station's President and General Manager that a commercial for Axe Cologne was not broadcast on KETV at any time on December 31, 2005—either in local programming or network programming from the ABC Television Network with which the Station is affiliated. It appears that, if at all, the commercial was broadcast by another television station or televised by cable or satellite.

It is, therefore, respectfully requested that the complaint be dismissed.

Secretary Marlene H. Dortch
January 19, 2007
Page 2

If any questions should arise in the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Very truly yours,



Wade H. Hargrove
Counsel to KETV Hearst-Argyle Television, Inc.

WHH:bp

Enclosures

cc: Benigno E. Bartolome (via e-mail)
Debbie Byrd (via e-mail)

**Before The
Federal Communications Commission
Washington, D.C.**

FCC File No.: EB-06-IH-0997

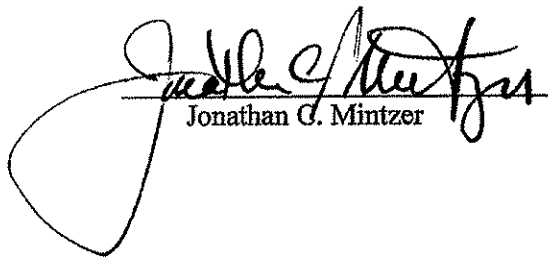
**DECLARATION OF
JONATHAN C. MINTZER**

I, Jonathan C. Mintzer, do hereby state and declare as follows:

1. I am Vice President and General Counsel of KETV Hearst-Argyle Television, Inc., licensee of Station KETV, Omaha, Nebraska.
2. I have reviewed the Commission's Letter of Inquiry dated December 7, 2005, concerning a complaint received by the Commission that Station KETV broadcast an Axe cologne commercial containing allegedly indecent content at approximately 5:30 p.m. on December 31, 2005.
3. Based upon the enclosed Declaration of Station KETV's President and General Manager, Mr. Joel Vilmenay, and the enclosed Declaration of Ms. Amy Williams, who is employed by the ABC Television Network with which Station KETV is affiliated, it appears that the Station did not broadcast a commercial for Axe cologne at any time on December 31, 2005. I have no knowledge, independent of those Declarations that would indicate an Axe cologne commercial was broadcast by Station KETV on December 31, 2005.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge, information and belief.

This 11th day of January 2007.


Jonathan C. Mintzer

**Before The
Federal Communications Commission
Washington, D.C.**

File No.: EB-06-IH-0997

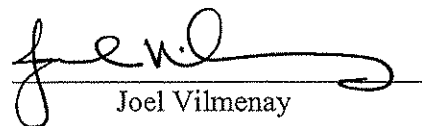
**DECLARATION OF
JOEL VILMENAY**

I, Joel Vilmenay, do hereby declare and state as follows:

1. I am President and General Manager of Station KETV(TV) Omaha, Nebraska.
2. I have reviewed the Commission's Letter of Inquiry of December 7, 2006, concerning a complaint that Station KETV allegedly broadcast a commercial for Axe cologne on December 31, 2005, at approximately 5:30 p.m.
3. Following receipt of the complaint, I reviewed the Station's program logs for December 31, 2005, and have discussed the matter with the relevant station personnel who, in the normal course would have knowledge of non-network commercials broadcast by the Station on that date. I find no record nor do I have any knowledge of any kind, based upon my investigation, that would indicate the Station broadcast a commercial of any kind for Axe cologne in any non-network time periods on December 31, 2005.
4. Station KETV is affiliated with the ABC Television Network and from 5:30 p.m. to 6:00 p.m. (Central Time) on December 31, 2005, the Station broadcast ABC's *World News Tonight*. Accordingly, I conferred with the ABC Television Network and was informed by Ms. Amy Williams of ABC that the ABC Television Network did not broadcast a commercial for Axe cologne in any ABC Television Network program at any time on December 31, 2005. (See attached Declaration of Ms. Amy Williams.)
5. My investigation, therefore, leads me to believe that the Axe cologne commercial was not broadcast on Station KETV on December 31, 2005, and that the commercial the complainant allegedly saw was broadcast by another television station or, perhaps, televised by cable, satellite, or other video delivery system.

I declare under penalty of perjury under the law of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge, information and belief.

This 11th day of January 2007.


Joel Vilmenay

**Before the
Federal Communications Commission
Washington, D.C.**

FCC File No. EB-06-IH-0997

**DECLARATION OF
AMY WILLIAMS**

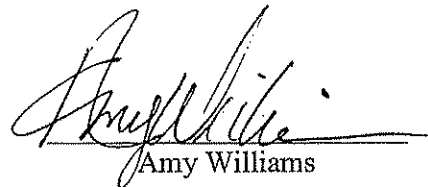
I, Amy Williams, do hereby declare and state as follows:

1. I am employed by the ABC Television Network in the position of Director, Affiliate Relations.

2. At the request of Mr. Joel Velmenay, President and General Manager of Station KETV in Omaha, Nebraska, which is affiliated with the ABC Television Network, I reviewed our logs and records of commercials broadcast on the Network December 31, 2005. Our records do not indicate that an Axe cologne commercial was broadcast, nor do I have any other information or knowledge to indicate that an Axe cologne commercial was broadcast, on the ABC Television Network at any time on December 31, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge, information and belief.

This 18th day of January 2007.


Amy Williams



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

DEC 7 2006

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND FACSIMILE AT (212) 887-6865

KETV Hearst-Argyle Television, Inc.
c/o Brooks, Pierce, et.al.
888 7th Ave Floor 27
New York, New York 10106

Re: Station KETV(TV), Omaha, Nebraska
File No. EB-06-IH-0997

Dear Licensee:

The Enforcement Bureau is investigating allegations contained in the enclosed redacted complaint (the "Complaint") that KETV Hearst-Argyle Television, Inc. (the "Licensee") broadcast prohibited material over the above-referenced station (the "Station"), in violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.¹ Specifically, it is alleged that indecent material was aired during the Station's broadcast of a commercial for "Axe Cologne" on December 31, 2005, at approximately 5:30 p.m. We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,² to provide the information and Documents, as defined herein, within thirty (30) calendar days from the date of this letter.

Instructions

Request for Confidential Treatment. If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's rules.³ Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

¹ See 47 C.F.R. § 73.3999.

² See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

³ See 47 C.F.R. § 0.459.

KETV Hearst-Argyle Television, Inc.
Page 2

Claims of Privilege. If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Method of Producing Documents. Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

Identification of Documents. For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

Documents No Longer Available. If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

Retention of Original Documents. With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

KETV Hearst-Argyle Television, Inc.
Page 3

Continuing Nature of Inquiries. The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (1) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Unless otherwise indicated, the period of time covered by these inquiries is December 31, 2005 to the present.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Broadcast," when used as noun, shall mean audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten

KETV Hearst-Argyle Television, Inc.
Page 4

note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

Inquiries: Documents and Information to be Provided

1. State whether the Licensee broadcast any or all of the material described in the Complaint over the Station on December 31, 2005, at approximately 5:30 p.m. Provide a recording of the broadcast on DVD or a VHS videocassette tape, including the complained-of material plus the 15 minutes aired before and after it, and a written transcript of the recording.
2. With regard to the broadcast referred to in the response to Inquiry 1 above, if the programming described in the Complaint does not accurately reflect the material aired over the Station, describe any inaccuracies.
3. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1 and 2 above.

Instructions for Filing Responses

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,⁴ and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.⁵ Failure to respond

⁴ See 47 C.F.R. § 1.16.

⁵ See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

KETV Hearst-Argyle Television, Inc.
Page 5

appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.⁶

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Debbie J. Byrd, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Elizabeth Valinoti, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Debbie J. Byrd, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Elizabeth Valinoti, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to debbie.byrd@fcc.gov and to elizabeth.valinoti@fcc.gov.

Sincerely,



Benigno E. Bartolome
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Enclosure

⁶ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).



Complaint Type: Broadcast

Account Type: Residential

Congressional Complaint

IC Number:	06-WB11344234	Case Type:	Complaint
Date Received:	01/03/2006	Complainant:	[REDACTED]
Date Entered:	01/03/2006	Date Assigned:	03/08/2006
Entered By:	FCC_NOTES01	Date Reassigned:	
Assigned To:	Jada Barnes/FCCIN	Service Date:	Referral
Date Closed:	03/14/2006	Response Date:	
Closed By:	Jada Barnes	Original Analyst:	
Close Letter Needed?	<input type="radio"/> Yes <input checked="" type="radio"/> No	Purged By:	Purged Date:
		Removed By:	Removed Date:
Supervisor Check:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Indecency Referral Code:	Further IHD Review - Broadcast/Indecency - Profanity

Current Status: Closed

Associated Case:

Complaint Summary:

I was watching television with my kids, when this commercial for Axe cologne for men came on. It showed a young man without a shirt spraying cologne on from his wrist, up his arm, down his stomach to his crouch. The next shot was him sitting in a car with a girl who smelled him from his wrist, up his arm and down his stomach to his crouch. The caption was something like, "You can lead her where you want". How do I explain this to my kids?

Apparent Carrier:

Yes - Check here if you wish to serve both a Wireline and Wireless carrier.

Problem Number:			
Title: None	First Name: [REDACTED]	Middle Initial: [REDACTED]	Last Name: [REDACTED]
Contact Name:	[REDACTED]	Best Time to Call:	
Contact Number:	[REDACTED] Ext.	Consumer's Telephone Number:	Ext.
Fax Number:	[REDACTED]	TTY Number:	
Email Address:	[REDACTED]	Internet Address:	
PO Box:	[REDACTED]	Address:	[REDACTED]
City:	[REDACTED]	State:	[REDACTED] Zip: [REDACTED]

On Behalf Of:	
Company Name:	
Party's Name:	Relationship with the Party:
Party's Contact Number: Ext.	PO Box:
	Address:
	City:State:Zip:
Other Party that can be contacted?	
Name:	Relationship:
Contact Number: Ext.	Address:
	City, State: Zip:
**Amount of credit FCC effort generated:	Duplicate Credit Checked: <input type="checkbox"/> Yes <input checked="" type="radio"/> No

Have you paid any of the disputed charges?

Did the company billing for these charges adjust or refund some or all of the disputed charges?

If yes, what was the amount of the adjustment or refund?

b. Telephone number for the carrier(s) or company(ies) involved with your complaint, including area code: Phone: Ext:

c. Which type of service is involved with your complaint: TCPA Information from 475

- 1. the telephone number of the individual or company who called or faxed you: Ext:
- 2. your telephone number(s) on which the call or fax was received: Ext:
- 3. a description of the telemarketing call, pre-recorded message, or unsolicited fax, including an identification of the company whose products or services were being advertised, and any phone numbers that were included in the call or fax:
- 4. the "opt-out" number(s) provided in the call(s) or on the fax(es): Ext:
(List number(s) given in the call(s) or fax(es) for you to contact if you do not want to receive any additional calls or faxes.)
- 5. Have you: (a) purchased anything from the company being advertised in the call or fax; (b) made an inquiry or application to that company; or (c) given consent to the company to send you the call or fax? If so, please describe and state when you had such contact with the company.

Broadcast Information from 475B

- (1) Date of Program: December 31, 2005
- (2) Time of Program: 5:30PM
- (3) Network: abc
- (4) Call Sign, Channel OR Frequency of the station on which you viewed/heard the material:
- (5) City and State Where Program Was Viewed:
- (6) Name of Program or DJ/Personality/Song/Film: commercial

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Omaha, NE
Axe body spray

Updated? Yes No

ANALYSIS SECTION

Correspondence Type: Complaint Inquiry Source Code: Internet

Apparent Carrier(s): Re-Serve Carrier(s):

Responding Carrier(s): Assigned Subject Code: Programming Issues

Program Type: TV

Activity Code: Direct Assigned Code Acronym: PROG

Final Responsible Party: Sub-Category: Indecent (INDE)

Copy of Response Sent to Consumer by Carrier?: Yes No

Mediation with Carrier/Complainant?: Yes No Response Type:

Referral Information

Date Referred: 03/14/2006

Referred To: Agency Name(s): FCC/Enforcement Bureau Company Name(s):

Deferment Information

Date Deferred: Reason: None

Date Undeferred: