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FOR IMMEDIATE RELEASE:  
June 27, 2001

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**PRESS STATEMENT OF COMMISSIONER GLORIA TRISTANI**  
*Re: Enforcement Bureau Letter Ruling on Indecency Complaint  
Against WTXF-TV, Philadelphia, Pennsylvania*

The FCC's Enforcement Bureau has dismissed an indecency complaint filed by Ms. Cherie Degnan of Ambler, Pennsylvania. On January 23, 2001, Ms. Degnan wrote to the FCC's Enforcement Bureau and explained that, earlier that day, "full frontal male and female nudity was broadcast as part of a News Program" on WTXF-TV of Philadelphia, Pennsylvania. According to Ms. Degnan, those images were broadcast at approximately 8:53 a.m. without advance warning from the television station. The Enforcement Bureau dismissed Ms. Degnan's complaint because, according to the Bureau, her failure to provide a "tape, transcript, or significant excerpts" of the broadcast prevented the Bureau from determining whether the images broadcast were indecent in context.

At the outset, I would note that the Bureau letter dismissing Ms. Degnan's complaint seems to rely erroneously on the First Amendment to justify the procedural hurdles involved with the filing of indecency complaints. The Enforcement Bureau tells Ms. Degnan that "the FCC generally requires complainants to provide a full or partial tape or transcript or significant excerpts of the program" because a broadcaster's speech has certain protections under the First Amendment.<sup>1</sup>

In fact, the First Amendment has nothing to do with the Bureau's evidentiary standard for complaint filing. The First Amendment simply ensures that, once all the evidence is in, the FCC does not punish broadcast speech that is not indecent. The First Amendment does *not* require a certain level of proof in a citizen's complaint to the FCC. The FCC is free to gather evidence however it wants – from complainants or from broadcasters.

These complaint filing requirements (tape, transcript, or significant excerpt) are not only unrelated to the First Amendment, they are disconnected from reality. People do not normally tape or transcribe the programs they are watching or listening to, and thus it is unfair to expect people file such material with their complaints. If for some reason the

<sup>1</sup> Letter from Charles W. Kelley, Chief, Investigations and Hearing Div., Enforcement Bureau, F.C.C., to Cherie Degnan (File No. EB-01-1H-0105/RBP).

complainant happens to have that information, the easier it will be for the Commission to evaluate the complaint. But failing to produce that kind of documentation should not result in dismissal of indecency complaints, as is the Bureau’s general practice.

As to Ms. Degnan’s specific complaint, there is no disagreement that context is critical in determining whether the broadcast of a particular statement or image is indecent.<sup>2</sup> We know from Ms. Degnan’s letter that male and female frontal nudity was televised in the morning, when children are likely to be in the audience. We also know that courts have affirmed the Commission’s ban on the broadcast of “material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.” Since Ms. Degnan’s complaint appears to describe the televised broadcast of “sexual organs” – in her words “full frontal male and female nudity” – during the time of day when indecent broadcasting is prohibited, it is certainly possible that the Bureau would have found an indecency violation. In my view, the complaint contained sufficient evidence to begin an investigation into whether the context of this nudity amounted to an indecent broadcast. At a minimum, Ms. Degnan’s complaint merited more than the summary dismissal it received from the Bureau.

In sum, the Bureau has continued to enforce unreasonable filing requirements for indecency complaints (tape, transcript, or significant excerpt). The Bureau then failed to mitigate that problem by deciding not to contact WTXF to inquire about Ms. Degnan’s complaint. The Bureau’s action – or inaction – in this case will further embolden broadcasters to ignore the FCC’s rules against indecent broadcasting, and in so doing, encourage them to air material that is harmful to children.

I sincerely hope the Commission will reevaluate its handling of indecency complaints. The indecency complaint process, as presently configured, tilts sharply in favor of broadcasters and against members of the public who wish to register an indecency complaint. Surely there is a more effective way of enforcing Congress’s ban on indecent broadcasting while affording all due fairness to broadcasters. Making the complaint process more accessible to the public would be good public policy and would more faithfully comply with Congress’s directives to the FCC regarding broadcast indecency.

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<sup>2</sup> *WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd at 1841; *Infinity Broadcasting Corp.*, 3 FCC Rcd 930, 931-32 (1987) *aff’d in part, vacated in part, remanded sub nom. Act I*, 852 F.2d 1332 (D.C. Cir. 1993).