



March 24, 2022

VIA ELECTRONIC MAIL

Mr. Terry O'Reilly
CEO
WYEP-FM
67 Bedford Square
Pittsburgh, PA 15203

Dear Mr. O'Reilly,

RE: Audit of Community Service Grants Awarded to the Pittsburgh Community Broadcasting Corporation, WYEP-FM, Pittsburgh, Pennsylvania for the Period July 1, 2018 through June 30, 2020 (Report No. ASR2009-2112)

The Corporation for Public Broadcasting (CPB) awarded \$826,718 in grants to Pittsburgh Community Broadcasting Corporation, licensee of WYEP-FM (WYEP), over a two-year period. The audit report referenced above concluded that WYEP complied with the CSG Certification of Eligibility, the numerous provisions in the Communications Act of 1934, 47 U.S.C. §396, et sec. (Communications Act or Act), CPB's guidelines concerning non-federal financial support (NFFS), and the terms of its community service grants (CSGs), with two exceptions. Namely, WYEP overstated NFFS resulting in CSG overpayments of \$7,043¹ and it did not comply with the open meetings and open financial records requirements.

The specific findings and CPB's determinations for WYEP follow.

I. Recommendations 1 and 2: CSG Overpayment of \$7,043 and Financial Reporting Errors

A. Underwriting Credit Language

CPB Guidelines² provide that a station may report revenues received for underwriting credits as NFFS, consistent with the Communications Act and the Federal Communications Commission's (Commission) requirements. Underwriting credits are used in part to calculate a station's CSG and may not contain certain statements, including qualitative, descriptive, or comparative language, and other information, such as a call to action, price, or value information.

¹ Calculated using the FY 2022 incentive rate of return, which was not available when the audit report was published.

² FY 2019 and 2020 Financial Reporting Guidelines (CPB Guidelines), Part II., Section VI. NFFS: Underwriting Revenues.

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The audit report disallowed certain underwriting revenues that WYEP reported as NFFS, totaling \$87,635 (resulting in a \$4,306 CSG overpayment), concluding that the underwriting credit's language is "very similar" to language used by another public broadcasting station deemed to be unacceptable by the Commission in 1999. In that decision, the Commission found the station's underwriting credits to be impermissible advertisements for the benefit of for-profit entities. It admonished the station to conform its practices to applicable Commission policies, but without imposing any penalty or forfeiture of revenues.

The audit report concedes that the decision to disallow WYEP's underwriting credits was not based on the Commission's review and findings, but rather the OIG's application of the Commission's 1999 decision, concluding that the language in WYEP's underwriting credits was very "similar."

We agree that there are similarities to be found in the language used by WYEP and that which the Commission found impermissible in its 1999 opinion. We do not, however, consider it appropriate for CPB to exercise its subjective judgement on a grantee's compliance with regulations which only the Commission has jurisdiction to decide in quasi-judicial enforcement proceedings. For that reason, CPB has traditionally deferred to the Commission for decisions on compliance with its regulations. Accordingly, CPB will allow the \$87,635 in NFFS associated with WYEP's underwriting credits, but it reserves the right to determine otherwise should the Commission find them impermissible.

Action: No further action is required of WYEP at this time.

B. Out-of-Period Underwriting Contributions

CPB Guidelines³ provide that a station must comply with Generally Accepted Accounting Principles when preparing its financial statements; therefore, underwriting revenues must be reported in the fiscal year (FY) accrued. The audit found that WYEP reported some revenues in the wrong FY, resulting in CSG overpayments of \$2,483. Consequently, it recommended that CPB recover these funds and require WYEP to identify the corrective actions it will implement to ensure compliance with this requirement.

We and the station agreed with the amount of the CSG overpayment, and the station explained the issue had been addressed with the implementation of a new traffic system that allowed it to run reports through the end of the calendar month. With that, and the penalty assessed below, we will not require that WYEP-FM provide any additional documentation.

Action: WYEP must return the \$2,483 in CSG overpayments which CPB will collect by an offset to its fiscal year (FY) 2023 CSG.

C. Donations Not Used for Public Broadcasting Purposes

CPB Guidelines provide that contributions reported as NFFS must meet several criteria,

³ CPB Guidelines, Part I, Section I. Financial Statements.

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including that the funds be used to support the station's public broadcasting activities⁴. The audit found that WYEP acted as a pass-through entity for certain membership contributions, providing the same to a local charitable organization and therefore, it did not meet the purpose criterion, resulting in CSG overpayments of \$669. Accordingly, the audit recommended that CPB recover these funds and require WYEP to identify the corrective actions it will implement to ensure compliance with this requirement.

We and the station agreed with the amount of the CSG overpayment and considering the amounts involved, the penalty assessed below and the overall audit results, we will not require that WYEP-FM provide any additional documentation.

Action: WYEP must return the \$669 in CSG overpayments which CPB will collect by an offset to its FY 2023 CSG.

D. Revenue Received from Public Broadcasting Entity

CPB Guidelines⁵ provide that contributions from public broadcasting entities may not be reported as NFFS. The audit found an underwriting contribution was from a public broadcasting entity, resulting in CSG overpayments of \$511. Accordingly, the audit recommended that CPB recover these funds and require WYEP to identify the corrective actions it will implement to ensure compliance with this requirement.

We and the station agreed with the amount of the CSG overpayments. Considering the amounts involved, the penalty assessed below and the overall results of the audit, we will not require that WYEP-FM provide any additional documentation.

Action: WYEP must return the \$511 in CSG overpayments which CPB will collect by an offset to its FY 2023 CSG.

E. Membership Premiums

CPB Guidelines⁶ provide that a station must follow IRS rules and regulations when considering whether the fair market value of premiums should be deducted from membership contributions. The audit found that the station overstated the fair market value of some premiums and it failed to include the cost of others. Since the under- and overstatements occurred in the same fiscal years, the audit netted those amounts, resulting in a \$927 CSG underpayment which we will offset against the CSG overpayments in this section.

The audit recommended that CPB require WYEP to identify corrective actions it will implement to ensure its compliance with this requirement going forward.

We and the station agreed with the amount of the CSG underpayment and considering the penalty assessed below and that we are satisfied that the station understands the requirements, we will not require that WYEP-FM provide any additional documentation.

⁴ CPB Guidelines, Part II, Section II. Contribution vs. Payment.

⁵ CPB Guidelines, Part II, Section V. NFFS: Excluded Revenues.

⁶ CPB Guidelines, Part II, Section V. NFFS: Excluded Revenues.

Action: No further action is required of WYEP.

F. CSG Non-compliance Policy

CPB adopted the CSG Non-compliance Policy to encourage grantees to comply with the applicable provisions governing their CSG and the Communications Act. Failure to comply with these requirements which results in a CSG overpayment subjects the recipient to a ten percent penalty of the overpayment amount. The net CSG overpayment is \$2,736 as shown below. Therefore, CPB will assess a penalty of \$274.

Action: WYEP must provide the \$274 penalty to CPB within 45 days of the date of this correspondence.

Description	FY 2019 NFFS	FY 2020 NFFS	Total Misstated NFFS	CSG Effect ⁷
Out of Period Underwriting Contributions	\$51,941	\$0	\$51,941	\$2,483
Donations Not Used for Public Broadcasting Purposes	\$0	\$13,088	\$13,088	\$669
Underwriting Received from Public Broadcasting Entity	\$0	\$10,000	\$10,000	\$511
Incorrect Premium Offset Against Membership	\$(20,725)	\$1,238	\$(19,487)	\$(927)
Total	\$31,216	\$24,326	\$55,542	\$2,736
CPB's FY 2021 Incentive Rate of Return	4.78040952%			
CPB's FY 2022 Incentive Rate of Return		5.11401657%		

II. Recommendations 3 and 4: Underwriting Agreements

A. Underwriting Agreements

CPB Guidelines provide that a station may report revenues received for underwriting credits as NFFS⁸ and the General Provisions require that stations maintain sufficient records to “facilitate an effective audit” as provided in the Communications Act⁹. The audit found that WYEP did not have written agreements with its donors, but determined the underwriting qualified as NFFS, relying on additional procedures.

Because the audit was able to certify WYEP’s underwriting credits and other sponsorship arrangements, we will not require additional documentation for these contributions but require that WYEP discuss the issue with its independent accountant to ensure it will have documentation for future underwriting contributions that complies with CPB guidance and Generally Accepted Accounting Principles.

Action: WYEP must provide CPB with written confirmation that it has discussed the underwriting documentation requirements with its independent accountant, signed by its licensee official and head of grantee, within 45 days of the date of this correspondence.

⁷ Calculated using the FY 2022 incentive rate of return, which was not available when the audit report was published.

⁸ CPB Guidelines, Part II, Section VI. NFFS: Underwriting Revenues.

⁹ 2022 Radio CSG General Provisions and Eligibility Criteria (General Provisions), Part I, Section 3, Record Keeping Requirements.

B. Constructive Receipt

CPB Guidelines provide that stations must have a written agreement when receiving underwriting contributions through a third party, i.e. constructive receipt¹⁰. While the audit found that the station did not have a written agreement to support underwriting constructively received, it was able to verify the same using alternate procedures. We and the station agreed that the required documentation was lacking, and considering the amount involved and that the audit was able to verify the same, we will not require any additional documentation but will require WYEP to review its documentation requirements with its independent accountant.

Action: WYEP must provide CPB with written confirmation that it has reviewed with its independent accountant, the documentation requirements for underwriting contributions received constructively. The confirmation is due within 45 days of the date of this correspondence and must be signed by WYEP's licensee official and head of grantee.

III. Recommendation 5: Communications Act and General Provisions Compliance

A. Open and Closed Meetings

The Communications Act requires that stations provide advance notice of their open governing body meetings including their open committee meetings and CPB finds stations compliant if they provide at least seven-days' advance notice¹¹. The Act also requires that the reasons for closed meetings must be documented and made available to the public and CPB finds stations compliant if the written documentation is available within 10 days of the meeting¹².

The audit found inadequate notice for five of 40 open meetings reviewed during the audit period. The audit also found that the station closed one meeting and did not have or make the documentation available for inspection within 10 days. The audit recommended that CPB require WYEP to identify the corrective actions it will implement to ensure its compliance with these requirements.

WYEP agreed with the finding and identified the actions it will take to correct the issues in its response letter dated September 1, 2021. We agree that the station was not compliant, and, based on said correspondence and the penalty assessed below, we will not require additional documentation.

Action: No further action is required of WYEP.

B. Posting Current Financial Information

The Communications Act requires stations to make available to the public their annual

¹⁰ CPB Guidelines, Part II, Section VI. NFFS: Underwriting Revenues.

¹¹ CSG 2021 Compliance Booklet (Compliance Booklet), Section 1 (E), Notice of Open Meetings.

¹² Compliance Booklet, Section 2 (C), Closed Meeting Documentation.

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financial and audit reports and other financial information they are required to provide to CPB¹³. CPB finds stations compliant if they post their most recent audited financial statement and annual financial report (AFR) on their website.

The audit found that WYEP had posted its most recent audited financial statement on its website but did not post its AFR, and the audit recommended that CPB require WYEP to identify the corrective actions and controls it will implement to avoid this error in the future. WYEP agreed with the finding and promptly corrected the issue before the audit's completion. Considering WYEP's swift action, the overall results and the penalty assessed below, we will not require additional documentation.

Action: No further action is required of WYEP.

C. Community Advisory Board (CAB) Meetings

The Communications Act requires that stations make good faith efforts to ensure that the CAB meets at regular intervals¹⁴. The audit found that WYEP's CAB met in FYs 2018, 2019 and 2021 but did not meet in FY 2020 which the station explained was due to the station manager's resignation and the subsequent leadership reorganization and due to challenges arising from the COVID-19 pandemic. Although station officials held a similar meeting in 2020 to inform the public of its programming addressing issues of race, justice, diversity and inclusion, that meeting did not include the CAB and we cannot count it as a CAB meeting. We recognize that the CAB has met twice in FY 2021 and considering this and the surrounding circumstances, we believe that WYEP made a good faith effort to keep regular CAB meetings and consider it compliant with the Act. Accordingly, we will not require additional documentation.

Action: No further action is required of WYEP.

D. CSG Non-compliance Policy

In accordance with the CSG Non-compliance Policy, stations are subject to a penalty of \$5,000 for failure to comply with a category in the Act. Accordingly, for WYEP's non-compliance with the open and closed meeting requirements which are collectively one category, and the open financial records requirements, and considering the prompt steps WYEP took to correct this and the overall audit findings, we will assess a reduced penalty of \$2,500 for each.

Action: WYEP must provide \$5,000 in penalties to CPB for these non-compliance issues, within 45 days of the date of this correspondence.

CPB will recover the CSG overpayments of \$2,736 through a reduction to WYEP's FY 2023 CSG award and will notify the grantee when the grant adjustment is made.

Within 45 days of the date of this correspondence, please forward a check in the amount of \$5,274 for the non-compliance penalties. The check should be made payable to CPB, and sent to the attention of Nick Stromann, Vice President, Controller, Corporation for Public Broadcasting, 401 Ninth Street N.W.,

¹³ General Provisions, Section 2 (C), Open Financial Records.

¹⁴ Compliance Booklet, Section 3(E), The Public's Access to Financial Information.

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Washington, D.C. 20004-2129.

If you wish CPB to consider additional information relating to this matter, please provide the same in writing within 30 days of the date of this letter. Otherwise, CPB will consider these determinations final, and WYEP must comply with the actions set forth above. CPB reserves the right to take any other action it deems appropriate until these issues are resolved to CPB's satisfaction.

Kind regards,

Jackie J. Livesay

Jackie J. Livesay
Deputy General Counsel & Vice President, Compliance

CC: VIA ELECTRONIC MAIL

Chris Capato, Vice President, Finance & Administration, WYEP-FM

Maxwell King, Board Chair, WYEP-FM

Michael Levy, Executive Vice President & Chief Operating Officer, CPB

J. Westwood Smithers, Jr., Senior Vice President & General Counsel, CPB

William P. Tayman, Jr., Chief Financial Officer & Treasurer, CPB

Kimberly Howell, Inspector General, CPB

William J. Richardson, III, Senior Director & Deputy Inspector General, CPB

Kathy Merritt, Senior Vice President, Radio, Journalism & CSG Services, CPB

Katherine Arno, Vice President, Community Service Grants and Station Initiatives, CPB

Nick Stromann, Vice President, Controller, CPB

Andrew Charnik, Director, Radio CSG Policy & Administration, CPB

Forrest Lillibridge, Director, Grants Administration, CPB