



Corporation
for Public
Broadcasting

January 31, 2023

VIA ELECTRONIC MAIL

Mr. Mark Leonard
CEO / General Manager
KUON-TV
1800 N 33rd St.
Lincoln, NE 68503

Dear Mr. Leonard,

RE: Audit of Community Service and Other Grants Awarded to KUON-TV, Lincoln, Nebraska, for the Period July 1, 2018 through June 30, 2020, (Report No. AST2112-2213)

The Corporation for Public Broadcasting (CPB) awarded \$3.14 million in grants, including Community Service Grants (CSGs), Interconnection, Distance Service, Universal Service Support, and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) stabilization funds to the University of Nebraska, licensee of KUON-TV, over a two-year period. With two exceptions, the audit report referenced above concluded that KUON-TV complied with its CSG Certification of Eligibility, the relevant provisions in the Communications Act of 1934, 47 U.S.C. §396, *et seq.* (Communications Act), CPB's Financial Reporting Guidelines (Guidelines) concerning non-federal financial support (NFFS), and the terms of its CSG. Namely, it found that KUON-TV overstated its NFFS, and that KUON-TV did not fully comply with the advance notice requirements in the Communications Act and CPB's Television CSG General Provisions and Eligibility Criteria.

The specific findings and CPB's determinations for KUON-TV follow.

I. Recommendations 1 and 2: Overstated NFFS

The audit found that KUON-TV overstated its NFFS resulting in CSG overpayments of \$9,106 (\$3,472 related to its FY 2021 CSG and \$5,634 related to its FY 2022 CSG) as detailed below.

A. Ineligible Payments/Exchange Transactions

CPB's Guidelines distinguish payments from contributions and identify NFFS-eligible payments. Stations may report contributions¹ and underwriting credits as NFFS, but must exclude payments made in exchange for materials, production services, and personnel.²

¹ Guidelines FY 2020 - Part II, Section II – Contribution vs. Payment.

² Guidelines FY 2020 - Part II, Section V – NFFS: Excluded Revenues, L.

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The audit found that KUON-TV inaccurately classified a payment received in exchange for services and goods as NFFS. The revenues at issue were provided under a contract that described the same as compensation for services including materials, production services, personnel, giving ownership of the copyright to the productions and the right to “exploit” the programs to the “co-producer”. Accordingly, the audit found that these revenues were payments provided to KUON-TV in exchange for services and rights, which KUON-TV should have excluded as NFFS.

KUON-TV disagreed with the finding, arguing that the co-production agreements are contributions. However, the contract terms do not support KUON-TV’s argument and we agree with the audit finding. Therefore, the station must return the resulting \$9,106 CSG overpayment.

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 an overpayment of the recipient’s CSG subjects the recipient to a penalty of ten percent of the amount of the overpayment. Accordingly, we are assessing a penalty of \$911, in addition to requiring KUON-TV to return the overpayment.

The audit recommended that CPB require KUON-TV to identify the corrective actions it will implement to ensure its future compliance with CPB’s NFFS and annual financial reporting requirements. CPB agrees and requires KUON-TV to identify the corrective actions it will implement to ensure that ineligible payments are not reported as NFFS revenues on its Annual Financial Report (AFR).

Action: KUON-TV must return \$9,106 in CSG overpayments to CPB, which we will recover through an adjustment to its FY 2024 CSG award. Within 45 days of the date of this correspondence, the station must provide CPB with the \$911 penalty, and the documentation identifying corrective actions it will implement to ensure that ineligible payments are not reported as NFFS revenues on its AFR.

II. Recommendation 3: Communications Act Noncompliance

A. Open Meetings – Advance Notice

The Communications Act requires that stations provide advance notice of their open governing body meetings, including their open committee and CAB meetings. According to the Act, “the term ‘meeting’ means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body’s business, or the committee’s business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.”³ With regard to notice, CPB finds stations compliant if stations provide at least seven-days’ advance notice.⁴

³ §397(5).

⁴ CPB’s Communications Act Compliance requirements, 1. Open Meetings, E. Notice of Open Meetings (June 2021).

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The audit found that KUON-TV did not provide the necessary notice for five meetings of the licensee's Board of Regents' Audit, Risk, and Compliance Committee⁵ meetings which involved discussions of public broadcasting business, including motions and votes.

KUON-TV is managed by the Nebraska Educational Telecommunications Commission (Commission) pursuant to an agreement with the Board of Regents. The audit found the Commission and its committees provided the requisite notice for 13 meetings during which it discussed business related to the station or public broadcasting.

Initially KUON-TV took issue with the finding⁶, however, after discussing the same, KUON-TV and the Board of Regents have agreed to provide the necessary notice as explained in its correspondence of January 23, 2023.

We agree with the audit finding and acknowledge the commitment of KUON and the Board of Regents to conduct all future station business at open meetings of the Board. We expect the Board to adhere to the premise that a "meeting" occurs, and must be open to the public, whenever a quorum of the Board or committee of the Board deliberates and conducts business relating to public broadcasting, *even if no action is taken*. This is consistent with the long-standing interpretation of the Act that business is conducted whenever such deliberation might influence the members' opinions, regardless of whether matters are voted upon or otherwise approved. Local laws and practices may differ, but all licensees must comply to be eligible for a CSG.

In accordance with CPB's CSG Non-compliance Policy, stations are subject to a penalty of \$5,000 for failure to comply with a category in the Communications Act. Because a majority of KUON-TV's meetings complied with the open meetings requirement and considering the overall results of the audit, we will impose a reduced penalty of \$2,500.

Action: KUON-TV must provide the \$2,500 open meeting notice penalty to CPB within 45 days of the date of this correspondence.

CPB will recover the CSG overpayments of \$9,106 via an adjustment to its FY 2024 CSG award, and we will alert the station when we make those adjustments. Within 45 days of the date of this correspondence, please provide required documentation to Tim Bawcombe, Director of TV CSG Policy and Review, at tbawcombe@cpb.org and forward a check in the amount of \$3,411 for the non-compliance penalties, payable to CPB, to the attention of Nick Stromann, Vice President, Controller, Corporation for Public Broadcasting, 401 Ninth Street N.W., Washington, D.C. 20004-2129.

⁶ August 3, 2022 letter from KUON-TV to the Office of Inspector General.

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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 KUON-TV 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

Katherine Ankerson, Executive Vice Chancellor for Academic Affairs, University of Nebraska-Lincoln
Heath Mellow, Vice President for External Relations, The University of Nebraska System
Phil Bakken, Chief of Staff and Corporation Secretary, University of Nebraska System
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, Journalism & CSG Services, CPB
Katherine Arno, Vice President, Community Service Grants and Station Initiatives, CPB
Nick Stromann, Vice President, Controller, CPB
Tim Bawcombe, Director, Television CSG Policy & Review, CPB
Forrest Lillibridge, Director, Grants Administration, CPB
Pat Saks, Director, Business & Administration, CPB