



January 21, 2021

VIA ELECTRONIC MAIL

Mr. Ray Timothy
Executive Director
KUEN-TV
101 Wasatch Drive
Salt Lake City, UT 84112-1107

Dear Mr. Timothy,

RE: Audit of Certain Grants awarded to the Utah State Board of Regents, KUEN-TV, for the Period July 1, 2017 through June 30, 2019, (Report No. AST2005-2007)

The Corporation for Public Broadcasting (CPB) awarded \$7.4 million in grants, including community service grants (CSGs), to the Utah State Board of Regents, licensee of KUEN-TV (KUEN), over a two-year period. The report referenced above examined KUEN's compliance with those grant terms, specifically, the Certification of Eligibility¹, the applicable provisions in the Communications Act of 1934, 47 U.S.C. §396, et seq. (Act), the television General Provisions and Eligibility Criteria (General Provisions) and the Financial Reporting Guidelines (Guidelines). The findings identified misreported non-federal financial support (NFFS) that resulted in CSG grant overpayments and it questioned some CSG costs.

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

I. Recommendation 1: NFFS

The audit found KUEN overstated its NFFS resulting in CSG overpayments for fiscal years 2018 and 2019².

A. Indirect Administrative Support

The audit determined that the amount KUEN identified as indirect administrative support (IAS) was ineligible because the funds were not provided by its licensee, per CPB's Guidelines (Part I, Section 2.7 Indirect Administrative Support).

¹ AKA CSG Agreement and Certification of Eligibility.

² CSG overpayments were calculated using the FY 2021 incentive rate of return, which was not available when the audit was finalized.

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KUEN disagreed and explained that the funds were provided by the University of Utah as IAS to KUEN pursuant to a memorandum of understanding between the University and KUEN's licensee. KUEN also argued Utah state law³ directs the University of Utah to provide administrative support to KUEN.

While CPB does not dispute that the University of Utah may provide administrative support to KUEN, under CPB's Guidelines, IAS is recognized when it is provided by the station's licensee, i.e. Utah State Board of Regents. Therefore, we agree with this finding, and KUEN must return the \$741,303 in CSG overpayments through an adjustment to its 2022 CSG. The audit also recommended that CPB require KUEN to document the controls it will use to avoid this issue in the future, and we agree.

Action: KUEN must return \$741,303 in CSG overpayments to CPB, which CPB will collect through an offset to its 2022 CSG. KUEN must also provide CPB with documentation explaining the controls it will put into place to avoid this issue in the future, within 45 days of the date of this correspondence.

B. In-kind Instructional Television

The Communications Act⁴ and CPB's Guidelines prohibit stations from reporting donations provided by public broadcasting entities as NFFS (Part I, Section 2.2 Contribution vs. Payment). Accordingly, the audit disallowed donations of in-kind instructional television contributions that KUEN received from public broadcasting entities, i.e., Utah State University and the University of Utah.

KUEN pointed to CPB's desk reviews from 2006 and 2017 that did not challenge the in-kind donations because of the ineligible public broadcasting sources. A desk review is not an in-depth review of the station's documentation, unlike an audit. The rules concerning this issue are clearly addressed in the Communications Act and CPB's Guidelines, and we agree with this finding. Further, the Guidelines impose restrictions to prevent stations from reporting the same funds as NFFS.

The balance of the in-kind contributions disallowed by the audit was the value of production and studio services that cannot be reported as NFFS per the Guidelines (Part I, Section 2.6.6 In-kind Contributions for Instructional Television and Educational Radio). The Guidelines permit in-kind contributions for only six activities and cites local productions as an example of a disallowed activity.

While KUEN identified the in-kind contributions as the prorated value of utilization specialists, an NFFS eligible in-kind activity, the audit concluded that this classification was erroneous and disallowed them. The Guidelines define a utilization specialist as having specialized education and skills in curriculum development.

³ Utah Code, Section 53B-17-101 et seq.

⁴ 47 U.S.C. § 397 (9) (A).

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We agree and KUEN must return the CSG overpayments of \$598,654 associated with this misreporting. As the audit recommends, we require that KUEN identify the corrective actions and controls it will implement to ensure its future compliance with these requirements.

Action: KUEN must return \$598,654 in CSG overpayments to CPB, which CPB will collect through an offset to its 2022 CSG, and KUEN must provide CPB with the documentation of the controls it will use to avoid this misreporting in the future, within 45 days of the date of this correspondence.

C. Ineligible Sources and Reporting Errors

The Communications Act and CPB's Guidelines provide that federal funds may not be reported as NFFS, whether received directly or indirectly from the federal government (Part I, Section 2.3 NFFS Criteria). Therefore, the audit disallowed federal funds that KUEN included as NFFS and an expired grant sourced from a government agency that KUEN had mistakenly reported as NFFS.

We and KUEN agree with these findings. Therefore, KUEN must return the CSG overpayments of \$15,840. The audit also recommended that CPB require KUEN to document the controls it will use to avoid this issue in the future, and we require the same.

Action: KUEN must return \$15,840 in CSG overpayments, which CPB will collect through an offset to its 2022 CSG, and KUEN must provide CPB with the documentation identifying the controls it will use to avoid this issue in the future within 45 days of the date of this correspondence.

D. 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 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. Considering the CSG overpayment of \$1,355,797 set forth above, a ten percent penalty is \$135,580. However, given the significant impact of COVID 19 on grantees, we will reduce the penalty by fifty percent, to \$67,790.

Action: KUEN must provide the \$67,790 penalty to CPB within 45 days of the date of this correspondence.

II. Recommendation 2: Questioned Costs

The General Provisions⁵ governing the CSGs allows KUEN to use the funds to cover the portion of their employee's salary spent working on the station's public television operations. The audit questioned \$9,238 in CSG costs which covered the time KUEN's executive director spent assisting entities other than KUEN.

⁵ Section 11(G) for 2018 and 2019.

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KUEN agreed with this finding and provided the auditors with an estimate of the portion of time its executive director spent on activities unrelated to public broadcasting, which was used to determine this amount. We agree that KUEN must return the \$9,238 in misspent CSG funds to CPB. The report also recommended that CPB require KUEN to identify the corrective actions and controls it will implement to ensure its future compliance with these requirements. Considering the amount involved and the corrective action described in its correspondence of September 11, 2020, we will not require additional documentation. In accordance with CPB's CSG Non-compliance Policy, failure to comply with requirements of the General Provisions are subject to a penalty of \$1,000 per infraction. We are assessing a penalty of \$1,000.

Action: KUEN must return the \$9,238 in misspent CSG funds and the \$1,000 penalty to CPB within 45 days of the date of this correspondence.

CPB will recover the CSG overpayments of \$1,355,797 through a reduction to KUEN's FY 2022 CSG award and we will alert KUEN when the grant adjustment is made. Within 45 days of the date of this correspondence, please forward a check in the amount of \$78,028 for penalties and the return of misspent funds, along with the documentation describing corrective actions and controls that KUEN will take to ensure future compliance with NFFS reporting and CSG spending requirements. The check should be made payable to CPB and forwarded to the attention of Nick Stromann, Vice President, Controller, Corporation for Public Broadcasting, 401 Ninth Street N.W., Washington, D.C. 20004-2129. The documentation should be sent to Tim Bawcombe, Director of Television CSG Policy and Review, at tbawcombe@cpb.org.

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 KUEN 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
Assistant General Counsel & Vice President, Compliance

CC: VIA ELECTRONIC MAIL

Laura Hunter, Chief Operating Officer, Utah Education Network
Lisa Kuhn, Chief Financial Officer, Utah Education Network
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Kimberly Howell, Inspector General, CPB
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Katherine Arno, Vice President, Community Service Grants and Station Initiatives, CPB
Nick Stromann, Vice President, Controller, CPB
Tim Bawcombe, Director, Television CSG Policy and Review, CPB