



Corporation
for Public
Broadcasting

January 11, 2019

VIA ELECTRONIC MAIL AND HARDCOPY TO FOLLOW

Ms. Sandra Cordova Micek
President and CEO
WTTW-TV
5400 North Saint Louis Avenue
Chicago, IL 60625-4698

Dear Ms. Micek,

RE: Audit of Community Service and Other Grants at WTTW-TV, Chicago, Illinois, for the Period July 1, 2015 through June 30, 2017, Report No. AST1804-1809

The audit referenced above examined \$7,790,668 in grant funds awarded by the Corporation for Public Broadcasting (CPB) to WTTW and found \$2,497 was not spent in accordance with the grant agreement requirements. The review of \$7,664,637 in community service grants (CSG) that CPB awarded WTTW found that they were overpaid by \$673,276 because of misreported nonfederal financial support (NFFS). Lastly, in examining its Certification of Eligibility requirements and the statutory provisions of the Communications Act of 1934, 47 U.S.C. §396, et sec. (Communications Act or Act), the report determined that WTTW generally complied with all requirements except it was “not in full compliance” with the open and closed meetings requirements. The specific audit findings and CPB’s determinations are as follows.

- I. Recommendations 1, 2, & 3: The reporting errors shown in the table below have been adjusted to reflect the 2019 incentive rate of return which was not available at the time the audit report was issued and to reflect the amount CPB will recover as a CSG overpayment.

Revenues	NFFS Overstated	CSG Overpayment
Ineligible Payment Sources	\$3,645,644	\$440,922
Membership Premium Exclusions	\$1,289,909	\$156,286
Ineligible Contribution Recipient	\$250,505	\$30,955
Ineligible In-kind Contributions	\$100,760	\$12,427
Ineligible Contribution Source	\$491	\$61
Total	\$5,287,309	\$640,651

A. Ineligible Payment Sources:

1. **Work for Hire:** Fees that stations receive for production services may not be reported as NFFS¹, as stated in the Financial Reporting Guidelines (Guidelines). According to the report, WTTW believes that payments it received from its co-producer under a contract to produce a 20-part music performance series, constitute underwriting, and made several arguments as to why. Because the contract unmistakably describes the services provided as a “work for hire”, it could not be considered a donation or reported as NFFS.

After the audit report was released, WTTW explained to us in its November 15, 2018 correspondence (November correspondence) that this co-producer intended to make a portion of the contract payment as a donation to WTTW and provided us with additional documentation. However, the documentation does not support WTTW’s claim, and we agree with the finding. Therefore, WTTW must return the resulting CSG overpayment to CPB.

Regarding the recommendation that WTTW provide CPB with a description of the corrective actions and controls it will implement to ensure future compliance, based on the November correspondence, it is evident that the station understands the requirements in the Guidelines concerning this issue and we will not require additional documentation.

Action: WTTW must return the \$432,620 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

2. **Teacher Awards Program:** Underwriting revenues, that stations may report as NFFS, are defined in the Guidelines as contributions donors make to stations that are primarily to support the stations’ programming or activities in exchange for underwriting credits². In addition, there must be documentation that describes the donation and states the donor’s intent at the time the donation is made. The report disallowed \$250,843 reported as underwriting because WTTW did not have that documentation. The finding was strengthened by the invoices WTTW issued to the foundation that provided the funds, which specified that the funds were to cover its out-of-pocket production costs. Instead, the report concluded that the payment was for services, i.e. an exchange transaction that may not be reported as NFFS pursuant to the Guidelines³ and we disagree.

WTTW explained that the foundation had underwritten its production costs for 32 years and, because of their longstanding relationship, they no longer enter into a written contract. WTTW obtained a letter from the foundation, dated November 6, 2018 that explained it provided the funds for underwriting. Concerning the invoices, it is our opinion that their existence does not automatically disqualify the funds as underwriting and the substance of the transaction must be reviewed. WTTW explained that the foundation requested that WTTW provide the invoices for its own records and to verify WTTW’s production costs. Based on this information, and in limited instances, recognizing a donation when documentation that validates the transaction is obtained, there is no question that the funds were intended as underwriting and we will recognize the same. However, this is an exceptional case and going forward we remind WTTW that the necessary documentation

¹ Part I, NFFS Guiding Principles and Policy, Section 2.4 – Revenues That Do Not Qualify as NFFS Due to Policy Restrictions.

² Part I, NFFS Guiding Principles and Policy, Section 2.5 – Underwriting.

³ Part I, NFFS Guiding Principles and Policy, Section 2.3 – NFFS Criteria (Interpretations)

must be in place at the time the donation is made. Accordingly, there is no \$30,253 CSG overpayment.

Action: No further action is required of WTTW.

3. Program Producer Fee: The Guidelines specifically exclude presenting station fees from NFFS⁴. The report found that WTTW received and erroneously reported \$70,000 as NFFS when the funds were presenting station fees paid by a program producer to have WTTW distribute its program to public television stations. WTTW and we agree with this finding. Accordingly, WTTW must return the resulting CSG overpayment of \$8,302 to CPB.

Based on the November correspondence, it is evident that the station understands the requirements in the Guidelines concerning this issue and we will not require additional documentation.

Action: WTTW must return the \$8,302 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

4. Educational Programs: Stations may report as NFFS payments they receive from educational institutions and state and local government agencies for the production and distribution of educational television programs, under the Guidelines⁵. The report disallowed a \$20,000 payment that WTTW reported as NFFS, classifying it as an exchange transaction because it was not from a degree-granting educational institution as defined in the Guidelines. We recently updated the Guidelines because the “degree granting” qualification was not consistent with the Act, which requires only that such payments be received from an educational institution. Therefore, , we will recognize the payment as NFFS and there is no \$2,372 CSG overpayment.

Action: No further action is required of WTTW.

5. Production Services: Fees that stations receive for production services may not be reported as NFFS⁶, as stated in the Guidelines. The audit noted that WTTW had recorded a \$40,000 payment that it received for production services, from a third-party funder, as deferred revenue that would be reported as NFFS on its 2018 annual financial report. Although outside of the audit scope, the audit recommends that CPB ensure that WTTW reports this amount correctly. Since WTTW stated in its November correspondence that it will not include the amount as NFFS, we accept WTTW’s representation and consider this matter closed.

Action: No further action is required of WTTW.

⁴ Part I, NFFS Guiding Principles and Policy, Section 2.3 – NFFS Criteria (Presenting Station Fees for Introducing Programs into Public Television Distribution).

⁵ Part I, NFFS Guiding Principles and Policy, Section 2.3 – NFFS Criteria (Interpretations)

⁶ Part I, NFFS Guiding Principles and Policy, Section 2.4 – Revenues That Do Not Qualify as NFFS Due to Policy Restrictions.

- B. **Membership Premium Exclusions:** If a station receives a contribution and provides the donor with a premium, the Guidelines require that station follow the Internal Revenue Service guidance, reducing the donation by the fair market value of the premium. The resulting amount may be reported as NFFS⁷. The report found that WTTW had deducted the cost of premiums it provided to donors instead of their fair market value. Both WTTW and we agree with this finding and WTTW must return the associated CSG overpayment to CPB.

Considering the information concerning membership premium exclusions in WTTW's November correspondence, we will not require it to provide an additional description of its corrective actions and controls.

Action: WTTW must return the \$156,286 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

- C. **Ineligible Contribution Recipient:** The Guidelines provide that CSG recipients with radio and television stations must establish a methodology to allocate donations that are not earmarked for the radio or television station⁸. The audit found that WTTW did not have a "formal written policy" nor a consistent practice for allocating unmarked contributions. Consequently, \$250,505 that should have been allocated to its commercial radio station was mistakenly allocated to WTTW and misreported as NFFS. When brought to its attention, WTTW agreed to document its policy for allocating funds and apply it consistently to unrestricted donations. While we do not agree that the policy needs to be a "formal written policy", WTTW was unable to demonstrate that it applied a consistent practice; accordingly, we agree in theory with the recommendation and require that WTTW return the resulting CSG overpayment to us.

As with the findings above, we accept the description in WTTW's November correspondence as evidence of the corrective actions and controls it implemented to ensure appropriate allocations going forward.

Action: WTTW must return the \$30,955 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

- D. **Ineligible In-kind Contributions:** To be eligible as NFFS, in-kind contributions must be documented as described in the Guidelines⁹. The donor provided an in-kind donation and the report found that WTTW did not deduct from that donation the fair market value of the internet ads it provided in exchange. It also found that WTTW valued an in-kind donation using its underwriting rate card instead of the fair market value assigned by the donor. Lastly, WTTW incorrectly reported an in-kind contribution used for a fundraising event as NFFS. Together the resulting CSG overpayment is \$12,427 and WTTW and we agree. As with the findings above, we accept the description in WTTW's November correspondence as confirmation of the corrective actions and controls it has implemented.

Action: WTTW must return the \$12,427 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

⁷ Part III, AFR and FSR Line Item Instructions, Section 5, Line 10.1 – NFFS Exclusions – Fair Market Value of High-end Premiums That Are Not of Insubstantial Value.

⁸ Part III, AFR and FSR Line Item Instructions, Section 5, Line 10 – Allocating Memberships for Joint Licensees.

⁹ Part I, NFFS Guiding Principles and Policy, Section 2.6 – In-kind Contributions.

- E. Ineligible Contribution Source: Funds received from a public broadcasting entity may not be reported as NFFS under the Guidelines¹⁰. The report disallowed \$491 in royalty payments that WTTW reported as NFFS, because they were provided by a public broadcasting entity, i.e. PBS. WTTW and CPB agree with this finding and WTTW will return the related CSG overpayment to CPB. As with the findings above, we accept the description in WTTW's November correspondence as evidence of the corrective actions and controls it has implemented.

Action: WTTW must return the \$61 CSG overpayment to CPB, which CPB will recover by deducting the corresponding NFFS from that which WTTW reports for 2018.

- F. Penalties: We adopted the CSG Non-compliance Policy to encourage stations 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. With a total CSG overpayment of \$640,651, we are assessing a penalty of \$64,065 for the reporting errors.

Action: WTTW must forward the penalty of \$64,065 to CPB within 45 days of the date of this correspondence.

- II. Recommendations 4 and 5: The governing body of station's receiving a CSG are required under the Communications Act to give reasonable notice of all open board, board committee and advisory board meetings, unless closed for specified reasons¹¹. CPB considers 7-days reasonable¹². If any of these meetings are closed, the reasons for closing those meetings must be made available to the public within a reasonable period¹³, and CPB requires that the documentation be available within ten days of the meeting¹⁴.

The audit found that out of 37 meetings, WTTW did not provide advance notice for 19 board committee meetings, nor did it document timely the reasons for closing four board committee meetings that took place during the audit. Furthermore, the audit found through archived web postings, that WTTW did make available within the required period, the reasons for closing other meetings. While we agree with this finding, we will not require WTTW to describe the corrective actions it will implement to ensure compliance going forward because it has explained the same in its November correspondence.

In accordance with the CSG Non-compliance Policy, a penalty of \$5,000 may be assessed for noncompliance with each of the Act's requirements. Considering the number of meetings that WTTW did not provide notice and its failure to document the reasons for closing its board committee meetings which took place while the audit was in process, we will assess a penalty of \$5,000 as open and closed meetings constitute one category in the Communications Act.

Action: WTTW must forward the penalty of \$5,000 to CPB within 45 days of the date of this correspondence.

¹⁰ Part I, NFFS Guiding Principles and Policy, Section 2.3 – NFFS Criteria (Interpretations).

¹¹ §397(5).

¹² Section I (E) of the Compliance Booklet.

¹³ §396 (k)(4).

¹⁴ Section II (C) of the Compliance Booklet.

- III. Recommendations 6, 7, & 8: The audit included a review of two grants CSG awarded WTTW. For the American Graduate grant, the report indicates that there were \$2,497 in unsupported costs and WTTW and we agree. It also found that an incorrect indirect cost rate was applied in the American Creed Grant and WTTW and we agree. Accordingly, we require that WTTW return \$2,497 to CPB. Since WTTW's November correspondence explains that it has corrected the indirect cost rate for the American Creed grant and amended its subcontracts to provide CPB with audit access to its subcontractor's books and records, we will not require any additional documentation.

Action: WTTW must return the grant overpayment of \$2,497 to CPB, within 45 days of the date of this correspondence.

Please make the check for a total of \$71,562¹⁵ payable to CPB and forward it to the attention of Nick Stromann, Vice President, Controller, Corporation for Public Broadcasting, 401 Ninth Street N.W., Washington, D.C. 20004-2129. As explained above, we will recover the CSG overpayments by reducing WTTW's 2020 CSG.

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. Failing that, CPB will consider these determinations final and WTTW will be required to comply with the action 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
Assistant General Counsel & Vice President, Compliance

CC: VIA ELECTRONIC MAIL

James Mabie, Licensee Official, WTTW
John Shields, Controller, WTTW
Michael Levy, Executive Vice President & Chief Operating Officer, CPB
Steven J. Altman, Executive Vice President & Chief Policy & Business Affairs Officer, CPB
J. Westwood Smithers, Jr., Senior Vice President & General Counsel, CPB
William P. Tayman, Jr., Chief Financial Officer & Treasurer, CPB
Ted Krichels, Senior Vice President, System Development & Media Strategy, CPB
Deborah Sanchez, Senior Vice President, Education & Children's Content Operations
Mary Mitchelson, Inspector General, CPB
William J. Richardson, Deputy Inspector General, CPB
Greg Schnirring, Vice President, CSG & Station Initiatives, CPB
Nick Stromann, Vice President, Controller, CPB
Katherine Arno, Director, TV CSG Policy & Review, CPB
Nadine Feaster, Director, Grants Administration, CPB

¹⁵ \$69,065 in penalties + \$2,497 American Graduate grant overpayment.