

**CORPORATION FOR PUBLIC BROADCASTING**

**OFFICE OF INSPECTOR GENERAL**

**Report of Evaluation  
Vermont Public Television Complaint**

**Report No. ECT1402-1404**

**May 5, 2014**



Corporation  
for Public  
Broadcasting

Office of Inspector General

Date: May 5, 2014  
To: Jackie Livesay, Deputy General Counsel  
cc: Ted Krichels, Senior Vice President, System Development and Media Strategy  
From: Mary Mitchelson, Inspector General   
Subject: Report of Evaluation – Vermont Public Television Complaint,  
Report No. ECT1402-1404

### Summary

The Office of Inspector General (OIG) received an anonymous complaint that the Vermont Public Television (VPT) Board of Directors (Board) had not complied with the open meeting requirements of the Communications Act of 1934, as amended (Act), in holding 22 closed meetings. We initiated a limited scope evaluation of the complaint to determine whether a violation of the Act had occurred and found violations as follows.

Based on our limited scope work, we found that:

- 17 of the 22 meetings identified in the complaint constituted meetings that were closed based on circumstances permitted by the Act and Corporation for Public Broadcasting's (CPB) guidelines; and
- for those 17 closed meetings, VPT failed to comply with the Act and CPB requirements to prepare written explanations and make them available to the public within a reasonable time.

Our conclusions are based primarily on our interviews, with limited corroborating documentation of who attended the meetings, what committees met, and what business was transacted. Meeting minutes were not produced for 15 of the 17 meetings identified in our review.

Further, we could not determine whether the committees that met were properly constituted under the station's bylaws or why minutes were not prepared, as also required by the station's bylaws. We requested all Board documentation to establish the governance and authority for committees of the board. We received only one Board resolution for the establishment of the Audit Committee, which was not dated.

We recommend that CPB:

1. using CPB's Grantee Non-Compliance Policy, sanction VPT for its noncompliance with grant requirements; and
2. obtain documentation from VPT to demonstrate that its newly adopted internal controls are working effectively to ensure compliance with CPB's open meeting requirements.

Our scope and methodology is set out in Exhibit A. We did not evaluate the station's compliance with all Act requirements, nor did we review the financial information reported to CPB on the station's Annual Financial Report.

In response to the draft report, VPT agreed with our findings and suggested revisions for clarification. VPT asked that we reconsider our recommendation for sanctions. VPT also stated that it provided CPB with documentation in February 2014 to demonstrate its compliance with open meeting requirements and that it is willing to provide CPB with supplemental documentation upon request. VPT's specific comments are summarized following our findings and recommendations, and its complete response is Exhibit C.

We made no changes to our draft findings and recommendations in response to VPT's comments.

This report presents the conclusions of OIG, and the findings reported do not necessarily represent CPB's final position on these issues. The report contains recommendations that we believe would be appropriate to resolve these findings. CPB will make a final management decision on the reported findings and recommendations in accordance with established CPB audit resolution procedures.

Based on VPT's response, we consider Recommendation 1 to be unresolved, pending CPB's management decision. We consider Recommendation 2 resolved but open, pending CPB's management decision.

### **Background**

On January 6, 2014, OIG received an anonymous complaint dated December 24, 2013, forwarded by VPT senior management officials, alleging that VPT's Board had failed to comply with the open meeting requirements of the Act. Specifically, the complaint alleged that 22 meetings took place that constituted Board meetings, all but one were not publicly announced in advance, the reasons for the meetings were not publicly disclosed, and minutes were not prepared but for two meetings. The complaint went on to allege that during these meetings the Chair and Vice Chair of the Board conducted business by voting and taking actions on behalf of the Board and that public meetings were held in the conference rooms of private law firms, which *de facto* restricted public access. Accompanying the complaint was additional information compiled by the station and a letter signed by station officials rescinding the station's November 2013 certification of compliance with the Act requirements, which included the open meeting requirements codified at 47 U.S.C. § 396(k)(4).

We forwarded the complaint, accompanying documents, and letter rescinding the station's certification of compliance to CPB officials and initiated a limited scope inquiry to determine whether the allegations of open meeting violations had merit. By letter dated January 15, 2014, CPB informed VPT that it was ineligible to receive or use any Community Service Grant funds, because VPT had rescinded its certification of compliance.

The VPT Board initiated its own review of the allegations and on January 8, 2014 assigned its Audit Committee to address the issues raised by the complaint and to review compliance policies. The Audit Committee reported its findings and recommendations to the Board on February 26, 2014 during a public meeting.

The Audit Committee found that the meetings had been closed based on circumstances permitted by the Act, 18 of the 22 meetings identified in the complaint constituted meetings under CPB's eligibility requirement definition, no post-meeting explanations had been issued, and 8 additional closed meetings had taken place that were also closed based on circumstances permitted by the Act. VPT subsequently posted on its website a list of 26 meetings held in 2011 through 2013, with a footnote stating that some of the 26 meetings did not involve formal committees of the Board and thus did not meet the legal definition of a "meeting." For each of these 26 meetings, VPT provided a post-meeting explanation.

By letter dated February 27, 2014, VPT informed CPB of its findings and its actions to implement controls to ensure compliance with the Act's open meeting requirements in the future. In that letter, VPT stated that it had identified 26 closed meetings for which it had not prepared the required explanations until the station's recent web posting. CPB restored VPT's eligibility effective March 11, 2014.

## **Results of Evaluation**

### **Open Meeting Requirements**

Sections 396(k)(4) and 397(5) of the Act and CPB eligibility requirements contain specific requirements concerning open meetings and what constitutes a meeting. CPB Certification Requirements for Station Grants Recipients, Open Meeting Requirements ("CPB Guidance").

Not every gathering or teleconference of Board members is a Board or committee meeting. To be a "meeting" under the Act: 1) a quorum must be present, 2) deliberations must take place, and 3) the deliberations must determine or result in conduct or disposition of business of the body related to public broadcasting. Act, § 397(5); CPB Guidance, II.A.1.

The Act and CPB Guidance also identify the circumstances permitting the closing of a meeting (*e.g.*, matters relating to individual employees or requiring confidential advice of counsel) and a process to follow to provide the public with an explanation. Act, § 396(k)(4). CPB requires that an explanation for closing a meeting be publicly available within a reasonable time.

If a session is closed to the public pursuant to the statutory exceptions ... a written statement containing an explanation of the reasons for closing the meeting must be made publicly available within a reasonable period of time thereafter. The explanation for a

closed meeting, however, does not have to be made available in the same manner as the notice of an open meeting. The explanation for the closing of a meeting preferably should use the words of the statute.

CPB Guidance, II.A.4.

VPT's bylaws, dated 2003 and 2013, contain provisions that mirror the statutory and CPB requirements about closed meetings by stating: "If any such meeting is closed pursuant to this section, the Board or committee shall thereafter, within a reasonable period of time, make available to the public a written statement containing an explanation of the reasons for closing the meeting." Section 13, Open Meetings.

### **VPT Failed to Comply With Open Meeting Requirements**

Based on our limited scope work, we found that:

- 17 of the 22 meetings identified in the complaint constituted meetings that were closed based on circumstances permitted by the Act and CPB's guidelines. Three meetings did not meet the Act's definition of a meeting. For the remaining two meetings, we could not determine what committee met and whether a quorum was present; and
- For those 17 closed meetings, VPT failed to comply with the Act and CPB requirements to prepare written explanations and make them available to the public within a reasonable time.

Our conclusions are based primarily on our interviews with limited corroborating documentation of who attended the meetings, what committees met, and what business was transacted. We requested copies of all Board and committee meeting minutes; we were not provided meeting minutes for 15 of the 17 closed meetings identified in our review. Our analysis of the 22 meetings is summarized in Exhibit B.

In our interviews of key Board members present at these closed meetings, the interviewees stated that they did not recall getting specific orientation on CPB compliance requirements, including open meetings, when they became members of the Board. Further, they indicated that they were not aware, until the present inquiry, of the requirement in the Act, CPB Guidance, and VPT bylaws to provide post-meeting explanations for the closed meetings that they organized and participated in.

Our review of the documentation VPT provided showed that the Board had been briefed on CPB requirements. Two meetings of the Board included agenda items on CPB's open meeting requirements. A September 17, 2012 Board meeting listed the following agenda item: "Board Education session: Review of CPB Eligibility Requirements." Presentation slides from a November 12, 2012 Board retreat included a review of CPB's eligibility requirements, including those applicable to open and closed meetings. Moreover, a third meeting, an April 29, 2013 Board meeting, included an agenda item of a Board education session where an attorney made a presentation about fiduciary responsibilities, including an understanding of corporate purpose and mission as well as the duty of care and loyalty to the organization over personal interest.

Even absent these specific briefings, as members of the board responsible for the oversight of the station, all VPT Board members should have been aware of the open meeting requirements of both CPB and the station's bylaws. Noncompliance with open meeting and other Act requirements jeopardizes continual CPB funding, undermines public confidence in the station, and does not provide the public with the transparency envisioned by the Act.

### ***Recommendations***

We recommend that CPB:

1. using CPB's Grantee Non-Compliance Policy, sanction VPT for its noncompliance with grant requirements; and
2. obtain documentation from VPT to demonstrate that its newly adopted internal controls are working effectively to ensure compliance with CPB's open meeting requirements.

### ***VPT Response***

VPT responded to our draft report on April 28, 2014, Exhibit C. It expressed satisfaction that our findings were similar to the conclusions of VPT Board's Audit Committee regarding meetings closed for authorized purposes but without post-meeting explanations. VPT offered suggested revisions to our findings as points of clarification. VPT asked OIG to: add language in two places to describe VPT's corrective actions of 2014; change the wording of our first finding; omit a reference to an April 2013 presentation to the Board on its fiduciary responsibilities; and add language about volunteer Board members' reliance on station management for day-to-day compliance with open meeting requirements.

In response to Recommendation 1, VPT asked us to reconsider and rescind our recommendation for sanctions, because sanctions were not warranted. VPT offered three reasons: 1) VPT quickly initiated an investigation of the allegations and acknowledged there had been violations; 2) VPT's Board acted quickly to establish procedures to ensure future compliance; and 3) in recent OIG audits, OIG did not recommend sanctions unless the station had been previously warned of noncompliance.

In response to Recommendation 2, VPT noted that it provided requested documentation of compliance to CPB in February 2014 and stated its willingness to provide additional documentation upon request.

### ***OIG Review and Comments***

We reviewed VPT's response and concluded that VPT's suggested revisions were not necessary to our analysis or to understanding our conclusions. We acknowledged VPT's 2014 actions to implement controls to address future compliance in the background section of our report. Our first finding regarding meetings is clear, and we presented our analyses and conclusions about each of the 22 meetings identified in the complaint in Exhibit B. Our reference to the April 29, 2013 Board meeting's education session on fiduciary responsibilities supports our conclusion that Board members should have known about their duty to comply with the Act. We also note that the agenda for that meeting included an item on open meeting requirements as part of the education session. Finally, Board members' previous reliance on station management is irrelevant to their obligation to follow their own bylaws and to comply with the Act.

With regard to VPT's three arguments against recommending sanctions, we acknowledge that VPT did promptly investigate the complaint and took steps to remedy the violations and improve its procedures. Notwithstanding, we found that over the course of two years VPT repeatedly failed to comply with CPB requirements, and with its own bylaws, by holding closed meetings for which it made no post-meeting explanations available to the public. OIG found 17 instances; VPT acknowledged 26 instances. Further, our limited review examined only one aspect of the multifaceted open meetings requirement and was not a full compliance audit of all additional Act compliance matters, such as open financial records, Community Advisory Board, EEO, and donor lists. Finally, we note that upon receipt of the complaint, VPT rescinded its certification of compliance with the Act. That is a clear indication of the gravity it attributed to the allegations -- allegations that both VPT's review and our independent evaluation largely substantiated.

We concluded that the magnitude of violations we found with regard to only one aspect of Act compliance warranted a penalty, and our recommendation for sanctions was consistent with our past practice.

### **Other Matters**

Although not part of our scope, we reviewed TV announcement logs provided to us in response to our document requests. Our review found that 3 of 15 Board meetings did not provide seven days advance notice of the upcoming meeting, as required. The announcement logs covered the period 1/24/11 through 1/27/14. We did not conduct any further work to determine whether station officials also made announcements through other means to satisfy the seven days advance notice requirement (e.g., website postings, "Legal Notices" in a local newspaper, or recorded announcement on the station's phone system). CPB Guidance, III.C.1.

In order to fully evaluate the extent of this condition, we would have to perform a full audit of open meeting requirements.

### Scope and Methodology

Our objective was to examine the 22 allegedly closed meetings identified in the complaint to determine whether: a) there were Board or committee meetings held pursuant to the Act; b) the meetings were closed due to circumstances permitted by the Act; c) VPT prepared statements explaining the reasons for closing the meetings; and d) made the statements available to the public within a reasonable time period. The 22 alleged meetings occurred during the period July 2011 through August 2013.

Our evaluation included interviews of current and former members of the VPT Board, a review of documents provided by station officials and the interviewees, and interviews of other individuals who contacted OIG about the anonymous complaint and other VPT issues.

Specifically, we interviewed and talked with five current and former members of the Board, station officials, and several other individuals who asked for confidentiality. We also reviewed the following documents provided by persons interviewed and station officials regarding the complaint:

- email correspondence;
- meeting minutes of the Board, Governance Committee, Investment Committee, Audit Committee, and Compensation Committee;
- Amended and Restated Bylaws of Vermont ETV, Inc., amended September 15, 2003 and November 18, 2013;
- corporate policies and procedures;
- Charter of the Audit Committee;
- other documents.

We did not evaluate the station's compliance with all Communications Act requirements (e.g., seven days advance notice of open public meetings or quarterly on-air announcements of station's open meeting's policy; open financial records; CAB activities; EEO reporting, and donor list and political activities prohibitions). Additionally, we did not review financial information reported to CPB on the station's Annual Financial Report.

We could not determine whether the committees that met were properly constituted under the station's bylaws or why minutes were not prepared as required by the station's bylaws. We did not evaluate the eight additional meetings identified in VPT's Audit Committee report.

Our work was performed during the period January 6, 2014 through March 18, 2014. The evaluation was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspections and Evaluations*, dated January 2012.

Analysis of Closed Meetings

Meeting #	Date	Meeting of Board of Directors or Committee	OIG Conclusion			
			Quorum	Transacted Business	Closure Explanation	Comments
1	7/28/2011	unable to determine (UTD)	UTD	Yes	NA	Unable to verify if a quorum was present because unable to identify committee. No minutes to verify participants.
2	11/3/2011	Compensation Committee	Yes	Yes	No	
3	2/28/2012	Executive Committee	Yes	Yes	No	
4	3/11/2012	Executive Committee	Yes	Yes	No	
5	3/14/2012	Board of Directors Meeting	Yes	Yes	No	
6	4/4/2012	Executive Committee	Yes	Yes	No	
7	4/11/2012	No Meeting	No	NA	NA	Not a meeting because there was not a quorum.
8	4/12/2012	Executive Committee	Yes	Yes	No	
9	4/13/2012	Board of Directors Meeting	UTD	Yes	NA	Unable to verify if a quorum was present. No minutes to verify participants.
10	4/16/2012	Board of Directors Meeting	Yes	Yes	No	
11	4/18/2012	Executive Committee	Yes	Yes	No	
12	4/23/2012	No Meeting	No	NA	NA	Not a meeting because there was not a quorum.
13	4/24/2012	Executive Committee	Yes	Yes	No	
14	5/7/2012	Executive Committee	Yes	Yes	No	
15	5/21/2012	Executive Committee	Yes	Yes	No	
16	6/11/2012	Executive Committee	Yes	Yes	No	
17	6/15/2012	Executive Committee	Yes	Yes	No	
18	7/26/2012	Board of Directors Meeting	Yes	Yes	No	
19	8/21/2012	Board of Directors Meeting	No	NA	NA	Not a meeting because there was not a quorum.
20	11/7/2012	Executive Committee	Yes	Yes	No	
21	12/21/2012	Executive Committee	Yes	Yes	No	
22	8/19/2013	Audit Committee	Yes	Yes	No	

NA not applicable



VERMONT  
PUBLIC  
TELEVISION



April 28, 2014

BY ELECTRONIC AND OVERNIGHT MAIL

Mr. William J. Richardson III  
Deputy Inspector General  
Corporation for Public Broadcasting  
401 Ninth Street NW  
Washington, DC 20004-2129

204 Ethan Allen Avenue  
Colchester, Vermont  
05446-3129  
Tel: 802-655-4800  
Fax: 802-655-6593  
www.vpt.org

Re: Report of Evaluation -- Vermont Public Television Complaint

Dear Deputy Inspector General Richardson:

Thank you for your April 2, 2014 letter concerning your office's evaluation of an anonymous complaint regarding the open meetings practices of Vermont Public Television ("VPT" or "the Station"). On behalf of VPT, I wish to express our sincere thanks to the Office of Inspector General ("OIG") for its attention to this matter and for offering VPT an opportunity to comment on the draft report ("the Draft Report") before it becomes final. I submit the following response to the findings and recommendations outlined in the Draft Report.

WETK-DT Burlington 33  
WVER-DT Rutland 28  
WVTB-DT St. Johnsbury 20  
WVTA-DT Windsor 41  
W53AS Bennington 53  
W36AX Manchester 36

I. Comments on Findings in the Draft Report

To begin, we are pleased that the findings of the Draft Report regarding VPT's compliance with open meeting requirements mirror the findings reached by the VPT Board's Audit Committee following its own internal review.<sup>1</sup> Specifically, the Draft Report confirms the Audit Committee's conclusion that each of the Board or committee meetings identified in the complaint was properly closed under the Communications Act of 1934 ("the Act"). See 47 U.S.C. § 396(k)(4). Further, the Draft Report, like the Audit Committee's report, concludes that any noncompliance with CPB open meeting requirements was limited to the failure to provide post-meeting notifications on the Station's website. Given the substantial agreement between the two reports, VPT's comments on the substantive findings of the Draft Report are limited to the following four points of clarification.

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<sup>1</sup> These findings were presented to the VPT Board and the public during a February 26, 2014 meeting, and summarized in a report submitted to CPB and the OIG the next day.

A.	Draft Report (pages 1, 4)	Suggested Revision
	17 of the 22 meetings identified in the complaint constituted meetings that were closed based on circumstances permitted by the Act and Corporation for Public Broadcasting's (CPB) guidelines.	17 of the 22 <u>discussions</u> identified in the complaint constituted "meetings" <u>under the Act</u> . <u>Each of these meetings</u> was closed based on circumstances permitted by the Act and Corporation for Public Broadcasting's (CPB) guidelines.

*Explanation:* VPT understands that OIG staff determined that 17 of the 22 phone calls or gatherings identified in the anonymous complaint constituted "meetings," as that term is defined in the Act. Further, each of these 17 "meetings" was properly closed for reasons permitted by the Act and CPB guidelines. As currently drafted, however, the above-quoted sentence may give rise to the misimpression that five calls or gatherings identified in the complaint were "meetings" that were improperly closed to the public. For clarification purposes, VPT respectfully requests that the Draft Report be revised to clarify that all Board and committee discussions that constituted "meetings" under the Act were properly closed in accordance with statutory and agency guidance.

B.	Draft Report (page 4)	Suggested Revision
	In our interviews of key Board members present at these closed meetings, the interviewees stated that they did not recall getting specific orientation on CPB compliance requirements, including open meetings, when they became members of the Board.	In our interviews of key Board members present at these closed meetings, the interviewees stated that they did not recall getting specific orientation on CPB compliance requirements, including open meetings, when they became members of the Board. <u>However, in February 2014, the Board voluntarily adopted a resolution to "[e]xpand the Open Meeting Requirements training provided to new Board members during orientation to promote early awareness and understanding of such requirements."</u>

*Explanation:* VPT also wishes to clarify the Draft Report's discussion of the information that was made available to Board members regarding compliance with CPB open meeting requirements. The Board members' above-referenced statement was made in response to a narrow question posed by the OIG investigator about whether they recalled receiving information about open meeting requirements during initial new-member orientation. Due in large part to this exchange, the VPT Board unanimously adopted a resolution to "[e]xpand the Open Meeting Requirements training provided to new Board members during orientation to promote early awareness and understanding of such requirements." As shown above, VPT

respectfully requests that the Draft Report be revised to account for the action taken by the Board with respect to new-member training.

C.	Draft Report (page 4)	Suggested Revision
	<p>Moreover, a third meeting, an April 29, 2013 Board meeting, included an agenda item of a Board education session where an attorney made a presentation about fiduciary responsibilities, including an understanding of corporate purpose and mission as well as the duty of care and loyalty to the organization over personal interest.</p>	<p>[Omit.]</p>

*Explanation:* VPT respectfully suggests omitting this statement from the Draft Report. This portion of the Draft Report discusses “specific briefings” provided to VPT Board members regarding CPB eligibility requirements and open meeting rules. However, the April 29 presentation did not involve a discussion of CPB grant funding eligibility or the open meeting requirements. Rather, the meeting minutes make clear that the presentation addressed general corporate duties of care and loyalty, with a particular emphasis on the need to act in furtherance of the corporate mission rather than self-interest. We request deletion of this statement to avert potential confusion.

D.	Draft Report (page 4)	Suggested Revision
	<p>Even absent these specific briefings, as members of the board responsible for the oversight of the station, all VPT Board members should have been aware of the open meeting requirements of both CPB and the station’s bylaws. Noncompliance with open meeting and other Act requirements jeopardizes continual CPB funding, undermines public confidence in the station, and does not provide the public with the transparency envisioned by the Act.</p>	<p><u>Previously, VPT’s Board members, all of whom serve in a volunteer capacity, relied on Station management to manage day-to-day compliance with the open meeting requirements. Nonetheless, as members of the board responsible for the oversight of the station, all VPT Board members should have been aware of the open meeting requirements of both CPB and the station’s bylaws. Noncompliance with open meeting and other Act requirements jeopardizes continual CPB funding, undermines public confidence in the station, and does not provide the public with the transparency envisioned by the Act. In February 2014, VPT’s Board voluntarily adopted a series of enhancements to its compliance protocol that, among other things, place the Board in a position of actively managing compliance with the open meeting requirements in concert with Station management.</u></p>

*Explanation:* VPT respectfully submits that any discussion of the Board's open meeting practices should recognize the Board's recent decision to assume a more active role in managing compliance. In previous years, the VPT Board members delegated primary responsibility for managing compliance with CPB funding requirements, including the open meeting requirements, to the Station's management. VPT fully acknowledges that this approach failed to prevent certain shortcomings in CPB compliance—namely, the omission of post-meeting web notifications following properly closed meetings addressing sensitive personnel matters. To ensure full compliance going forward, VPT has adopted a series of enhancements to its compliance protocol that, among other things, place the Board in a position of actively managing compliance with the open meeting requirements.<sup>2</sup> As set forth above, VPT respectfully requests that the Draft Report be revised to reflect the steps that VPT has taken to ensure future compliance with the open meeting requirements.

## II. Comments on the Recommendation in the Draft Report

The Draft Report concludes with two recommendations to CPB: (1) “sanction VPT for its noncompliance with grant requirements”; and (2) “obtain documentation from VPT to demonstrate that its newly adopted internal controls are working effectively to ensure compliance with CPB’s open meeting requirements.” VPT will address these recommendations in reverse order.

### A. Recommendation re: Evidence of Compliance

VPT will gladly provide CPB with any documentation it requires to confirm the effectiveness of VPT’s new compliance measures. Indeed, VPT has already provided, at CPB’s request, certain documentation demonstrating its compliance with open meeting requirements. Specifically, in letters of February 7 and 12, 2014, CPB requested that VPT provide evidence demonstrating that the Station had posted to its website all required compliance policies and written explanations for all closed meetings from the current grant period. VPT promptly provided the requested documentation, as well as additional related documentation, in its letter of February 27, 2014. VPT remains more than willing to provide CPB with any additional documentation it requires to verify the continued effectiveness of VPT’s compliance measures.

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<sup>2</sup> These prospective compliance measures, which were adopted on February 26, 2014 in a unanimously approved Board resolution, are attached hereto as Appendix 1.

B. Recommendation re: Sanctions

VPT respectfully submits that a recommendation for sanctions is not warranted for at least three reasons. First, VPT has been candid and forthright in accepting responsibility for the omission of certain post-meeting notices from its website. Second, VPT already has, on its own initiative, developed and implemented a comprehensive set of compliance measures to ensure prospective compliance with open meeting requirements. Third, precedent from recent OIG reports involving comparable station activity counsels against the recommendation of a sanction here. Each of these considerations are discussed below.

First, from the outset of this matter, VPT has been forthright and open in accepting responsibility for its failure to post web notices following certain closed meetings. Although the other allegations in the original anonymous complaint proved baseless, VPT understands that the omission of post-meeting notifications fell short of what was required under the Act and CPB guidelines. Accordingly, the Station openly acknowledged that these post-meeting notices were not provided, and did so while the OIG review was taking place. Additionally, the Station has taken steps to remedy these shortcomings by posting web notices for each of the closed meetings identified in the course of the review. VPT respectfully submits that this full, open, and early acceptance of responsibility weighs against a recommendation of sanctions.

Second, VPT has undertaken prompt and aggressive steps to ensure full prospective compliance with all aspects of the open meeting requirements. The VPT Board immediately tasked its Audit Committee to develop a set of measures to ensure future compliance with open meeting requirements, and the Board unanimously adopted these measures by formal resolution at its February 26, 2014 meeting. A full account of these measures is provided in Appendix 1, but they include the implementation of an open meetings compliance check before each meeting, the development of enhanced open meetings training, and the performance of an annual open meeting compliance review. Significantly, VPT took these actions entirely of its own initiative even before the release of the Draft Report. The proactive development of these compliance measures underscores VPT's commitment to fulfilling all grant obligations, and again counsels against the imposition of sanctions here.

Third, recent OIG reports from other matters strongly weigh against recommending sanctions here. Indeed, a number of recent OIG reports issued since the adoption of CPB's Grantee Non-Compliance Policy have concluded that a recommendation of sanctions was not necessary despite finding violations that were either comparable to or more egregious than the actions at issue here. The following three reports, all of which were issued within the past eight months, are instructive in this regard:

- *New York Public Radio, Report No. ASR1302-1307 (Sept. 27, 2013)*: In this report, the OIG concluded that, among other violations, the grantee "did not fully comply with Communications Act requirements for making information available to the public by providing: 1) written statements explaining the reasons for closing a public

meeting.” Having found this violation (the same as the violation at issue here), OIG issued the following recommendation:

We recommend that CPB officials require [the grantee] to revise its current open meetings policies to . . . prepare a written statement documenting the reasons for closing a public meeting within a reasonable time after the closed meeting was held to explain why the meeting was closed . . . and submit revised policies to CPB for its review and approval.

Notably, the report also found that the grantee had failed to make required financial statements available to the public and had misstated non-federal funding, which resulted in a CSG overpayment. Nonetheless, the report did not recommend any sanctions.

- *Radio Catskill, Report No. ASR1303-1304 (Sept. 12, 2013)*: In this report, the OIG concluded that the grantee failed to comply with a myriad of requirements under the Communications Act, including the requirement to “provide written statements explaining the reasons for closing a meeting to the public.”<sup>3</sup> The report further noted that the grantee had been warned by CPB in 2011 about the need to “comply with the Communications Act requirements per CPB guidelines,” and that the grantee subsequently failed to “tak[e] appropriate corrective actions to address all Act requirements after being instructed to do so.” In response to the many Communications Act violations identified in the report, OIG recommended that “CPB management require [the grantee] to fully comply with all requirements of the Communications Act and provide CPB documentation of its compliance.” Separately, the report also recommended that CPB penalize the grantee, but it explained that this recommendation was prompted by the grantee “not taking appropriate corrective actions to comply with all Act requirements after being instructed by CPB to do so in November of 2011.”
- *National Public Radio Inc., Report No. APR1305-1402 (Mar. 24, 2014)*: In this report, the OIG concluded that the grantee had claimed duplicate payroll expenses of over \$99,000 and “did not fully comply with open financial records requirements of the Act.” With respect to the latter violation, the report specifically determined that the grantee “did not make [certain required financial reports] available to the public

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<sup>3</sup> In addition to this violation, the report further found that the grantee did not: (1) “comply with the requirement for quarterly on-air announcements for open meetings”; (2) “have evidence that open meeting announcements for the Community Advisory Board (CAB), Board of Trustees, or the committees of the Board of Trustees were made seven or more days prior to the meetings”; (3) “maintain records of CAB members’ attendance at public meetings”; or (4) “prepare written implementing policies on open meetings, open financial records, CAB, EEO, or donor list and political activities requirements of the Act.”

Mr. William J. Richardson III  
Deputy Inspector General  
April 28, 2014  
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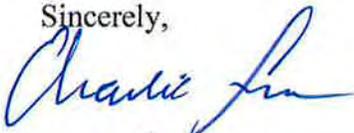
by posting them to its web site, nor did it develop documentation informing the public how to obtain these reports.” In light of this failure to post required information on the grantee’s website, the report recommended that CPB require the grantee to: (1) “comply with 47 U.S.C. Section 396(k)(5) of the Act by making the financial reports . . . available to the public”; and (2) “develop procedures explaining how financial reports can be obtained by the public.” Notably, the report did not recommend sanctions.

As these reports make clear, the OIG has exercised its discretion to not recommend sanctions or penalties in evaluating conduct identical to -- and in some cases worse than -- the conduct at issue here. And when the OIG did recommend sanctions or penalties, this recommendation was explicitly based on the fact that the grantee had disregarded previous warnings and instructions from CPB to comply with Communication Act requirements. This precedent counsels strongly against the recommendation of sanctions here, especially when viewed in conjunction with VPT’s full acceptance of responsibility and proactive adoption of comprehensive compliance measures. Accordingly, VPT respectfully requests that the OIG rescind the recommendation for sanctions.

\* \* \*

On behalf of VPT, I again thank you for your attention to this matter and for the opportunity to comment on the Draft Report. We would greatly appreciate the opportunity to meet with you to discuss our comments on the above findings and recommendations. In the interim, should you have any questions or concerns, please do not hesitate to contact me directly at (802) 655-4800.

Sincerely,



Charlie Smith  
Interim President and CEO  
Vermont Public Television

cc: Pam Mackenzie, Chair, VPT Board  
Tom Pelletier, Chair, Audit Committee of the VPT Board  
Scott A. Freling, Esq., Covington & Burling LLP  
Ted Krichels, SVP for Systems Development & Media Strategy, CPB  
Jackie Livesay, Vice President for Compliance, CPB  
Mary Mitchelson and Helen Mollick, CPB Office of Inspector General

# Appendix 1

VERMONT ETV, INC.  
RESOLUTION OF THE BOARD OF DIRECTORS

Whereas, in response to the receipt of an anonymous letter (the "Letter") submitted to the Corporation for Public Broadcasting ("CPB") in late December 2013, alleging violations of the Open Meeting Requirements of the CPB, Vermont ETV, Inc. ("VPT") directed the Audit Committee of its Board of Directors to conduct a review of those allegations; and

Whereas, the Audit Committee has completed its review, and subsequently presented its findings to VPT during a February 26, 2014 meeting of its Board of Directors; and

Whereas, the Audit Committee has recommended that VPT adopt certain policies that are designed to strengthen VPT's compliance with the Open Meeting Requirements, which are attached to this resolution as Exhibit A; and

Whereas, the Board of Directors desires to accept the findings and recommendations of the Audit Committee and to provide for continued cooperation with CPB in the completion of CPB's review;

Now, therefore, be it resolved that:

1. VPT hereby accepts the findings of the Audit Committee's review of allegations in the December 2013 anonymous letter.
2. VPT hereby adopts the compliance policies recommended by the Audit Committee, as set forth in Exhibit A.
3. VPT hereby authorizes the Audit Committee to convey its findings to CPB and to continue to cooperate with CPB in connection with its review of these matters.
4. VPT hereby authorizes the President/CEO of VPT and the Chair of the Audit Committee, either acting together or singly, to make any post-meeting public notices required in connection with previously conducted closed meetings in order to bring VPT into compliance with the Open Meeting Requirements.

**Exhibit A**

**Audit Committee Recommendations for Open Meeting Compliance**

1. Publish an enhanced Open Meetings Policy on the VPT website, which shall read as follows:

VPT maintains an open meetings policy to the public with regards to meetings of its Board of Directors, any committee of the Board, and the VPT Community Council. Members of the public are welcome to attend such meetings, except when they are conducted in closed session to discuss a matter that is not appropriate for public disclosure. Closed sessions can be conducted to consider matters relating to individual employees, proprietary information, litigation, and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization.

VPT will give reasonable notice to the public of the fact, time and place of an open meeting -- at least one week (7 days) in advance of the scheduled date of an open meeting -- and will allow all persons to attend any open meeting of the Board or Board committee without requiring, as a condition of attendance, that the person register or provide such person's name or any other information, except as would be reasonably required to maintain a safe meeting environment. If a meeting is closed pursuant to one of the recognized exceptions noted above, VPT make available to the public, within a reasonable period of time after the closed meeting, a written statement containing an explanation of the reason(s) for closing the meeting.

Notice of meetings will be provided via an announcement accessible on VPT's web site (<http://www.vpt.org>) and by letter, e-mail, fax, phone, or in person to any individuals who have specifically requested to be notified. In addition, VPT will make on-air announcements in advance of regularly scheduled Board meetings. Finally, VPT will make on-air announcements on at least three consecutive days during each calendar quarter that explain the station's open meeting policy and provide detail on how the public can obtain information regarding specific dates, times, and locations of Board or committee meetings.

2. Designate two individuals -- a VPT senior officer and a VPT Board member -- as having joint responsibility for overseeing the organization's compliance with Open Meeting Requirements. These "Designated Officials" will be the President/CEO of VPT and the Chair of the Board's Governance Committee. The Designated Officials will be responsible for deciding, in advance, whether a meeting may be conducted in closed session, and for ensuring that any pre- or post-meeting notices that may be required are issued.
3. Require that every meeting of the Board or a committee begin with: (i) confirmation that prior notice requirements or any other Open Meeting Requirements obligations have been fulfilled, and (ii) if the meeting is to be conducted as an entirely closed session, documentation of the basis for the closed session and confirmation that the conduct of business in the closed session

will be limited to the matters forming such basis. These determinations shall be made in consultation with the Designated Officials.

4. Require that every meeting of the Board or a committee close with confirmation that the person presiding over the meeting will coordinate with the Designated Officials to ensure that any post-meeting requirements are fulfilled.
5. Implement an Open Meeting Requirements checklist that Board and committee chairs would use during each meeting to accomplish Items # 3 and 4 above.
6. Expand the Open Meeting Requirements training provided to new Board members during orientation to promote early awareness and understanding of such requirements.
7. Provide an annual training/briefing on the Open Meeting Requirements, which would be provided to all Board and senior VPT officials at a set time each year (e.g., during the annual retreat).
8. Require an annual written acknowledgement from each Board member that he/she has reviewed the Open Meeting Requirements and understands the obligations thereunder.
9. Before VPT submits its annual Certification of Eligibility to CPB, the Designated Officials will review the terms of this Certification with members of the Board to confirm that they are not aware of any failure to comply with CPB requirements.
10. Implement an annual review by the Audit Committee of compliance with the Open Meetings Requirements, in coordination with the Designated Officials. This review shall be completed in advance of VPT's submission of the annual Certification of Eligibility to CPB.