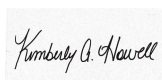


December 10, 2024

To: Jackie J. Livesay, Deputy General Counsel and Vice President, Compliance
Kathy Merritt, Senior Vice President, Radio, Journalism and CSG Services

From: Kimberly A. Howell, Inspector General



Digitally signed by
Kimberly Howell
Date: 2024.12.10
16:03:31 -05'00'

Subject: Evaluation of KOTO-FM, San Miguel Educational Fund, Inc., Telluride, Colorado,
Compliance with Selected Communications Act and General Provisions Transparency
Requirements, Report No. ECR2417-2501

We have completed an unannounced evaluation of compliance with selected requirements of the 2024 Corporation for Public Broadcasting (CPB) Community Service Grant (CSG) awarded to KOTO-FM Public Radio, licensed to San Miguel Educational Fund, Inc. (SMEF), Telluride, Colorado. Our specific objectives were to verify compliance with 11 requirements of the Communications Act of 1934, as amended, (Act) for open and closed meetings and open financial records, as well as the 2024 Radio CSG General Provisions and Eligibility Criteria (General Provisions) for transparency as presented in Exhibit A. Background information on the station and CSG program can be found in Exhibit B.

Based on our review of the KOTO-FM website on September 11, 2024, and subsequent information provided by station management, we found the station was compliant with seven of the eleven applicable requirements reviewed. The station was not compliant with four requirements.

Specifically, we found that KOTO-FM was not compliant with:

- posting its most recent audited financial statement on its website;
- posting its most recent CPB Annual Financial Report (AFR) on its website;
- providing advance notice of open meetings of the station's governing body committees; and
- making available to the public the reasons for closing an executive session for one of its board meetings within the required 10 days.

In response to our preliminary observations issued on September 24, 2024, the station took immediate action to post its most recent audited financial statement and AFR on its website and is now compliant with open financial records requirements. Station management did not believe that the committee meetings required public notice as they did not have quorums. Station management said it was an oversight that it did not make the reasons available to the public within 10 days for the May closed executive session of its board. Further, they said that they have procedures to provide this information to the public when they post board meeting agendas on their website prior to board meetings and leave them posted thereafter; the agendas include the reasons for any closed session of the board meeting.

We recommend that CPB require KOTO-FM to identify the corrective actions and controls it will implement to ensure future compliance with Act requirements for:

- 1) open financial records;
- 2) advance notice of open meetings of the station's governing body committees; and
- 3) making available to the public the reasons for closing executive sessions of a board meeting within the required 10-day period.

In response to our draft report KOTO-FM management stated the organization has made enhancements to its processes and corrected its oversights. They stated that their organization is committed to full compliance moving forward.

KOTO-FM management stated that the station had misunderstood what financial records were required and said that the staff had confused the AFR and the audited financial statements. The staff and board members were updated on the correct requirements and the station took immediate action to ensure that the required open financial records were posted and updated on its website.

Station management also reiterated that the staff and board were under the impression that noticing committee meetings was not required because they did not interpret CPB and the Act requirements as applicable to KOTO-FM's committee meetings. They did not believe these committee meetings met the prerequisites for a meeting because they lacked a quorum of board members, were informal and no votes were taken. After the evaluation, they said they have a better understanding of the provisions and will provide advance notice of committee meetings going forward.

Their response also acknowledged that it was an oversight that the closed meeting documentation for its May 2024 meeting was not made available to the public within the 10-day required period. The station has enhanced its process for maintaining the required documentation and making it available to the public at its central office and on its website. The station's complete response to the draft report is presented in Exhibit D.

Based on KOTO-FM's response to our draft report and our verification that the most recent open financial records are now posted on the station's website we consider recommendation one resolved and closed. We consider recommendation two resolved but open pending CPB

management's final decision to accept KOTO-FM's corrective actions to ensure its future compliance.

We initiated this evaluation to address station accountability as identified in our Annual Plan. We conducted our evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation*. We have summarized our KOTO-FM website review in Exhibit A, provided background on KOTO-FM and the CSG program in Exhibit B, and provided our evaluation scope and methodology in Exhibit C.

cc: Ruby Calvert, Chair, CPB Board of Directors
Elizabeth Sembler, Chair, Audit and Finance Committee, CPB Board of Directors
U.S. Senate Committee on Homeland Security and Governmental Affairs
U.S. House of Representatives Committee on Oversight and Accountability
U.S. Senate Committee on Commerce, Science and Transportation
U.S. House of Representatives Energy and Commerce Committee
U.S. Senate Committee on Appropriations
U.S. Senate Labor-HHS-Education Appropriations Subcommittee
U.S. House of Representatives Committee on Appropriations
U.S. House of Representatives Labor-HHS-Education Appropriations Subcommittee

FINDINGS AND RECOMMENDATIONS

ACT AND GENERAL PROVISIONS COMPLIANCE

Open Financial Records

Neither the FY 2023 and FY 2022 audited financial statements nor AFRs were posted to the station's website on the date of our review, September 11, 2024. The FY 2023 audited financial statement, dated May 25, 2024, had been previously submitted to CPB. Further, the FY 2023 AFR was submitted to CPB on August 14, 2024, and was approved by CPB on August 26, 2024. Therefore, both were available to be posted to the web on the date of our website review.

The financial information webpage contained a link to the 2022 Annual Financial Report and a link to the 2022 Audited Financial Statements. The 2022 Annual Financial Report linked to a schedule of revenues and expenditures for the year end 2021 and 2022 information with the budget for 2022. The 2022 Audited Financial Statements link did not work.

CPB requires grantees to make the audited financial statements and AFRs available for public inspection on the station website.

C. Open Financial Records: The Act requires stations to make available to the public their annual financial and audit reports and related financial information they are required to provide to CPB (47 U.S.C. § 396(k)(5) and § 396(1)(3)(b)). CPB also requires that Grantee post the following documents on its station website:

1. its most recent audited financial statement, or unaudited financial statement if permitted; and
2. its most recent AFR or FSR (whichever is applicable).

CPB Radio CSG General Provisions 2024, Section 2. Communications Act Requirements.

The Act also provides:

Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (1)(3)(B) of this section.

The Act, 47 U.S.C. § 396 (k)(5).

After receiving our Preliminary Observations dated September 24, 2024, the station's executive director took immediate action and posted the most recent FY 2023 audited financial statement and AFR to the station's website, which we subsequently verified. Station management said that it had posted audited financial statements and other financial

information on its website but that it had not posted the AFRs. Management stated it was an oversight/misunderstanding on KOTO-FM's part and has taken corrective actions to ensure future compliance.

KOTO-FM was not compliant with Act open financial records requirements on the date of our review and may be subject to penalties under CPB's Non-Compliance Policy.

Recommendation:

We recommend that CPB management require KOTO-FM to:

- 1) identify the corrective actions and controls it will implement to ensure future compliance with Act and General Provisions requirements for open financial records, both the audited financial statement and AFR.

KOTO-FM Response:

In response to our draft report, KOTO-FM management stated that the station had misunderstood what financial records were required and said that the staff had confused the AFR and the audited financial statements. Further they stated that the link to its most recent audited financial statements had been broken and that links would be checked moving forward to avoid this oversight. The staff and board members were updated on the correct requirements and the station took immediate action to ensure that the required open financial records were posted and updated on its website.

OIG Review and Comment:

Based on KOTO-FM management's response to our preliminary observations, the draft report, and our verification that the station's required open financial records are posted to its website we consider recommendation one resolved and closed.

Advance Notice of Open Meetings

The station did not fully comply with the open meeting requirements because it did not provide seven-day advance notice for its committee meetings. We noted the following committees of the governing Board, Events/Fundraising, Finance, KOOK,¹ and Scholarship, provided reports regarding station business during the governing board meetings. We did not find any notices of meetings or other information on the committee meetings except those noted in the governing board minutes.

In response to our preliminary observations, station management said they did not consider these meetings subject to open meeting notice requirements because they did not have a quorum and therefore did not post the seven-day notices for those committee meetings. The station's by-laws

¹ KOOK is a signal expansion project to serve the communities of Ouray and Ridgeway, Colorado on 90.3. KOOK-FM.

state: “Public notice shall be posted on KOTO, and mentioned on the community Calendar, in the seven-day period prior to any SMEF committee meeting that constitute a quorum.” Because station management said they never have a quorum, they did not believe they were required to post the seven-day notices.

They further explained that the committees are comprised of one or two board members, a staff member and a member of the community in some cases.² Station management said the committees discuss events, finances, fundraising and projects in the works and did not make decisions; they did not see how this constituted “deliberations that determine or result in the joint conduct or disposition of business relating to public broadcasting.” As there were no minutes for these committee meetings, we could not independently verify what transpired at those meetings.

However, based on our review of the station’s governing board minutes from October 16, 2023, through August 19, 2024, as posted on KOTO-FM’s website, we noted four committees presented committee reports from their respective meetings. We found committee reports, on station-related business, were provided in six of the nine minutes reviewed. We found the committee reports indicated decisions were made regarding equipment purchases, setting budgets, and that the finance committee had voted on an investment portfolio rebalancing. We also noted in the February 19, 2024, meeting minutes that the board committee structure was discussed and included having a board member, a staff member, and a member from the public on each committee. The minutes also listed the prior 2023 committee assignments and designated four to five committee members that aligned with the committee structure discussed above.

The Act requires permittees of public broadcasting stations to hold open meetings of its governing board, any committee or such governing body or any advisory body preceded by reasonable notice to the public.

The Act further defines the term meeting:

The term ‘meeting’ means the deliberations of at least the number of members of the governing or advisory body, or committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in 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.

The Act, 47 U.S.C. § 397 (5).

CPB provides additional guidance:

C. Prerequisites for a “Meeting”: In order for a gathering of board, committee, or CAB members to constitute a meeting under the Act, the following is necessary:

1. The presence of a quorum; and

² We noted the committee composition aligned with the station’s by-laws for committee structure.

2. Deliberations that determine or result in joint conduct or disposition of business relating to public broadcasting.

Note that deliberations do not require any formal action or vote. Any discussion of public broadcasting issues that may influence the opinion of members makes it a meeting.

CPB's Communications Act Compliance guidance, 1. Open Meetings, C. Prerequisites for a Meeting. (June 2021).

The Act, 47 U.S.C. §396 (k)(4), requires that stations provide the public with reasonable advance notice of open meetings. Specifically:

Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public.

Further, CPB requires that stations provide the public with reasonable advance notice and defines reasonable notice as seven days advance notice, as follows.

- A. Open Meetings: Meetings of Grantee's governing body, its committees and CAB must be open to the public (47 U.S.C. § 396(k)(4)). In addition, CPB requires Grantee to give at least seven days advance notice of meetings, including the time and place, by:
 1. posting notice on its station website;
 2. broadcasting notice on-air between 6 a.m. and 11 p.m., as shown by the station's log;
 3. placing notice in the "Legal Notices" section of a local newspaper in general circulation in the station's primary coverage area; or
 4. giving notice through a recorded announcement accessible on the station's phone system.

CPB's Communications Act Compliance guidance, 1. Open Meetings, E. Notice of Open Meetings (June 2021). CPB Radio CSG General Provisions 2024, Section 2.A. Open Meetings contains the same four options for advance notice of meetings.

We attribute this condition to the station's application of its by-laws. The station's by-laws provide that KOTO-FM's governing board is comprised of seven directors and under Article V. Directors Meetings Section 7. Quorum it states: "Four directors shall constitute a quorum of the board of directors." There is no mention of what constitutes a quorum for the committees or advisory boards.

We found that the station's advisory board did have open meetings preceded by seven-day advance notice. The station's Citizen Advisory Board is comprised of ten members, none of whom are directors.³ Station management believes that because only one or two board members are on a committee, it will never constitute a quorum. It appears that the quorum requirement is being applied inconsistently for KOTO-FM committees and advisory boards, but in accordance with the by-laws if there is a quorum the seven-day public notice is required. Based on our understanding of board committee meetings, we would consider a quorum based on a simple majority of the members on the committee and not the number of directors on the committee. The station was not fully compliant with CPB General Provisions open meeting requirements at the time of our review and may be subject to penalties under CPB's Non-Compliance Policy.

Closed Meeting Documentation- Reasons Available to Public within 10 days

We found that KOTO-FM did not make the reasons for closing a meeting available to the public within the required 10 days for one of four closed executive sessions of the Board of Director's governing meetings

The Act allows closed meetings for one of five reasons and requires the reasons for closed meetings be made available to the public as follows:

Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions 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. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved 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.

The Act, as amended, 47 U.S.C. § 396 (k)(4). Financing Restrictions.

CPB adds requirements that establish a reasonable time for making information regarding closed meetings available to the public.

B. Closed Meetings: Grantee must document why any meetings of its governing body, its committees, and CAB were closed and make available to the public a written statement of the reason(s) within a reasonable time after the closed meeting (47 U.S.C. § 396(k)(4)). CPB also requires that the written statement be made available

³ The current CAB consists of nine non-governing board directors and one staff. Based on our review of KOTO-FM's CAB website page describing the CAB makeup, the CAB members would consist of one member from the SMEF board, one staff and the rest from volunteers and/or listeners.

for inspection, either at Grantee's central office or on its station website, within 10 days after each closed meeting.

CPB Radio CSG General Provisions 2024, Part I Section 2.B. Closed Meetings.

In response to our preliminary observations, station management provided us with the procedures it follows to ensure that the public is made aware of the reasons for closing an executive session of its board meeting. Station management said that it posts the agendas for the meetings on its website when it sends out the seven-day notice and keeps them up after the meeting, the agendas include the reasons for closing the session. It also documents the reasons in its minutes. However, they acknowledged that it must have been an oversight for the one meeting they missed in May 2024. Station management said going forward that they would also keep a file at the central office documenting the reason within the 10-day period.

The station was not fully compliant with Act and General Provisions requirements for open and closed meeting requirements and may be subject to penalties under CPB's Non-Compliance Policy.

Recommendation:

We recommend that CPB management require KOTO-FM to:

- 2) identify the corrective actions and controls it will implement to ensure future compliance with Act and General Provisions requirements for open and closed meetings.

KOTO-FM Response:

In response to our draft report, KOTO-FM management reiterated that the staff and board were under the impression that noticing committee meetings was not required because they did not interpret CPB and the Act requirements as applicable to KOTO-FM's committee meetings. They did not believe these committee meetings met the prerequisites for a meeting because they lacked a quorum of board members, were informal and no votes were taken. After the evaluation, they have a better understanding of the provisions and will notice the meetings going forward.

The station management's response also said that it was an oversight that the closed meeting documentation for its May 2024 meeting was not made available to the public within the 10-day required period. The station has enhanced its process for maintaining the required documentation and making it available to the public at its central office and on its website.

OIG Review and Comment:

Based on KOTO-FM management's response to our draft report, we consider recommendation two resolved but open pending CPB's management decision accepting the station's corrective actions to ensure future compliance.

Exhibit A

**Summary of Website Review
KOTO-FM as of September 11, 2024**

Requirements	Met	Not Met
1) 7-day advance notice of governing body meeting		
a) available on website	X	
b) available by other means		
2) 7-day advance notice of board committee meetings:		
a) available on website		X
b) available by other means		
3) 7-day advance notice of Community Advisory Board meetings:		
a) available on website		
b) available by other means	X	
4) If closed meetings were held, was documentation prepared explaining the basis for closing meeting in accordance with Act:		
a) available on website	X	
b) available at central office		
5) If closed meeting documentation was prepared, was it available within 10-days of the closed meeting		X
6) Most recent AFR or FSR available on website		X
7) Most recent audited or unaudited financial statements available on website		X
8) Senior/executive management information on website	X	
9) Governing body members on website	X	
10) CAB members on website	X	
11) Grantee's annual report on local content and services included in the grantee's current 2023 SAS on its content and services that serve local needs; and analysis about the reach and impact of the local services in its community.		
a) available on website		
b) available at the central office	X	

Background

KOTO-FM is licensed to the San Miguel Educational Fund, Inc. in Telluride, Colorado. As stated on the station's website, since 1975, KOTO-FM has provided the Telluride region with high-quality, commercial-free, non-underwritten community radio. Along with locally produced shows, KOTO-FM broadcasts programming from National Public Radio and airs other syndicated programs. The station's mission is "to inform, educate, and entertain while reflecting the needs, desires, and diversity of our community."

CPB's Community Service Grant Program

The Communications Act of 1934 (Act) provides that specific percentages of the appropriated funds CPB receives annually from the United States Treasury must be allocated and distributed to licensees and permittees of public TV and radio stations. Each year CPB awards CSG grants to public TV and radio stations based in part on the amount of Non-Federal Financial Support (revenues) claimed by all stations on their Annual Financial Report (AFR) or Financial Summary Report (FSR) submitted to CPB. The CSG calculation process starts with separate amounts appropriated for the TV and radio CSG pools, adjusted by based grants and supplemental grants. The funds that remain are called Incentive Grant Pools, one is for TV and the other for radio.

In addition to the annual filing of a station's AFR(s) or FSR(s) for radio and/or television, the chief executive of the station and a licensee official annually certify to CPB the station's compliance with Act requirements and selected General Provisions requirements in the legal agreement awarding the station CSG funds. These certifications specifically address open and closed meetings, open financial records, CPB Employment Statistical Report, and donor information requirements under Section IV Communications Act Compliance of the agreement. Station officials responsible for closed meetings and the CPB Employment Statistical Report requirements are identified in the grant agreement. Additionally, the certification also addresses Website Postings Required under Section V. Selected General Provisions Requirements of the agreement.

Scope and Methodology

We performed an evaluation of KOTO-FM's compliance with selected provisions of the Act and grant certification requirements. Our specific objectives were to verify compliance with selected Act requirements for open and closed meetings and open financial records, as well as 2024 Radio Community Service Grants General Provisions and Eligibility Criteria for Transparency. The scope of the evaluation included reviews of the information posted on the station's website as of September 11, 2024, as well as information provided in response to our Preliminary Observations issued on September 24, 2024.

We reviewed documents supporting the station's compliance with the Act requirements to provide advance notice of public meetings, notice of closed meeting reasons, and make financial information available to the public. We also reviewed the station's website and processes to determine its compliance with CPB's transparency requirements for eligibility. We informed station management of our evaluation on September 24, 2024, and we requested additional information to support the station's compliance, including, as applicable, transparency information maintained at its central office for documents that was required to be made available to the public at its central office if not posted on its website.

We also reviewed CPB's Integrated Station Information System (ISIS) to determine if the evaluated information made available to the public was the most recent information submitted to CPB. In addition, we verified with station management that board and management listings posted to its website were current.

We conducted our fieldwork from September 11 through October 4, 2024, and performed our evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation*.



KOTO COMMUNITY RADIO
207 N. PINE STREET
TELLURIDE, COLORADO
(970) 728-4334

William J. Richardson III
Deputy Inspector General
Office of the Inspector General
Corporation for Public Broadcasting

Response to evaluation of KOTO-FM, San Miguel Educational Fund, Inc., Telluride, Colorado
Compliance with Selected Communications Act and General Provisions Transparency Requirements, Draft Report No.
ECR2417-XXXX

Dear Mr. Richardson,

Thank you for providing the draft evaluation report of KOTO-FM's compliance with the Communications Act and General Provisions transparency requirements. Staff has reviewed the draft report thoroughly and we appreciate the detailed evaluation conducted by your team. As the executive director, I take full responsibility for any shortfalls and apologize for the time and resources expended to conduct this evaluation.

KOTO is committed to high standards of transparency and compliance with all CPB regulations and guidelines. KOTO staff is working diligently to uphold these standards moving forward and is committed to improvement in all categories. As one of the few remaining non-commercial, non-underwritten radio stations in the country, CPB support is critical for station operations. The loss of CPB funding would severely impact the quality radio programming and community services we have offered for 50 years.

Thank you for the opportunity to address the findings listed in the evaluation and to improve compliance.

- posting the most recent audited financial statement on its website;
- posting the most recent CPB Annual Financial Report (AFR) on its website;
- providing advance notice of open meetings of the station's governing body committees;
- and making available to the public the reasons for closing an executive session for one of its board meetings within the required 10 days.

OPEN FINANCIAL RECORDS

- There has been a misunderstanding as to what financial records were required and staff confused AFR and AFS to be the same thing. Upon realizing this error, staff immediately corrected the documents dating back to 2020.
- Communication was sent to all staff and board members to ensure we remain in compliance moving forward. Please accept our apologies and accountability for this oversight.

- In addition, a link to one of our audited financial statements was broken. Upon realizing this, staff immediately remedied the situation. All links will be triple checked moving forward. This was a simple oversight on our part and we apologize.

ADVANCE NOTICE OF OPEN MEETINGS

With respect to providing advance notice about open meetings, there has been much confusion about this at a staff and board level. Up until this evaluation, we, as a collective organization, were under the impression that noticing committee meetings was not required due to the following language:

Open Meetings

Because of the statutory definition of “meeting,” not all sessions of governing bodies, their committees, or advisory bodies are subject to the open meetings provisions of the Act. The following elements must be present in order for a board, etc., session to meet the statutory definition of a meeting: (1) a quorum, for purpose of taking action, must be in attendance; (2) deliberations must take place; and (3) the deliberations must determine or result in the joint conduct or disposition to the business of the particular body, but only to the extent that such deliberations relate to public broadcasting.

- Based on the language above and the makeup of KOTO’s committees, we did not think KOTO’s committees met the prerequisites for a “meeting” as we never have a quorum of board members present on any committee. We misinterpreted the language to mean that all three of these factors must be present to necessitate noticing a meeting.
- Committees have met in an informal manner to workshop, brainstorm and share information to help streamline decision-making at the full board level and improve communication among board and staff members. No votes are taken.
- Moving forward, staff and board members will notice committee meetings in the same manner as regular monthly board meetings and CAB meetings. We apologize for our misinterpretation and lack of understanding of the provisions. We will take the proper steps to achieve compliance in this area.

CLOSED MEETING DOCUMENTATION

- KOTO provides notice of closed meetings via agendas that are posted 7 days in advance of meetings and kept on the website indefinitely following the meeting. With the knowledge that there must be separate documentation available to the public in the 10 days after a closed meeting, KOTO staff have taken steps to maintain a file at the central office (207 N Pine Street) and on our website (KOTO.org) with documentation explaining the closed session. We will ensure that it’s updated immediately following a closed meeting. Thank you for bringing this to my attention.
- There was mention of a meeting in May where the minutes reflected an executive session that was not on the meeting agenda. There is no explanation or recollection for this oversight. Communications have been sent to the board to ensure it does not happen again.

In summary, please accept my most sincere apology for lack of compliance in the aforementioned categories. Thank you for the opportunity to improve. Our organization is committed to full compliance moving forward.

Respectfully,

Cara Pallone

Executive Director

KOTO Community Radio