Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

Report Number ILR 2012-F
November, 2012

A Limited Review of the Community Education Channel Agency's TV Production Truck

The Community Education Channel Agency (CECA) is an interlocal entity[1] or interlocal cooperation organization operating in Washington County. In addition to Washington County, the interlocal entity consists of Dixie State College (DSC), which acts as the fiscal agent, Washington County School District, and several municipalities in Washington County.

We found that there have been significant oversight concerns with the CECA. For example, the CECA purchased a full-size TV production truck that, over time, was seldom used for local mission-supported broadcasting. Instead, the CECA leased the vehicle on the open market, which action reportedly competed with private businesses. Also, procurement and inventory controls at the CECA were inadequate because they did not consistently follow DSC policies. An internal audit by DSC found substantial internal control problems that led to criminal charges being brought against one individual and the removal of the former CECA director.

Over time, the TV production truck was seldom used for local broadcasting.

[1] *Utah Code* 11-13-203 provides a definition of an interlocal as the following: "an interlocal entity is: separate from the public agencies that create it; a body politic and corporate; and a political subdivision of the state. Any two or more Utah public agencies may enter into an agreement to approve the creation of a Utah interlocal entity to accomplish the purpose of their joint or cooperative action. . ."

The CECA has not been in compliance with the *Utah Code* requirement for a financial audit of the CECA.

Further, we found that the CECA has not complied with the ***Utah Code,*** which requires the filing of a financial audit with the State Auditor's office. The CECA could produce no evidence that an annual financial audit has ever been completed. In fact, the CECA board chair confirmed that a financial audit of the CECA has not occurred, but indicated that the board would correct this in the future. A legislative audit of UTOPIA recently raised oversight concerns with that interlocal organization. The UTOPIA audit also found that poor planning, mismanagement, and unreliable business partners led to significant financial questions about that interlocal organization.

The *Utah Code* could be clearer about the oversight structure that an interlocal organization should have.

A review of the ***Utah Code*** shows that the statute could be amended to clarify oversight of interlocal entities like the CECA. Since the CECA consists of cities, a county, a school district, and a state college, the statute could be more specific about which of those organizations' rules and policies the CECA must follow. Had the CECA consistently followed the policies of DSC, which was acting as the organization's fiscal agent, we believe that Board of Regent policy might have precluded the leasing of the TV truck outside of the campus community. We were told that the CECA board had always intended the CECA to follow DSC policies, but we could not find that direction in the interlocal agreement, the financing agreement, or the bylaws. The CECA board chair told us that the board recently asserted that the CECA must follow DSC policies.

We recommend that the Legislature review ways the statute governing interlocal agreements can be clarified to ensure that adequate oversight and monitoring is occurring.

Audit Scope and Objectives

We were asked to review the leasing of the CECA's TV production truck for private purposes, both in Utah and out of the state. The scope of the audit included the following:

- Review the oversight structure and activities of the CECA
- Review the use of the TV production truck and the details of the CECA's lease of the truck
- Review areas where oversight of CECA could be strengthened

Lease of TV Production Truck Reportedly Competed with Private Business

In May 2009, the CECA purchased a TV production truck and tractor for $440,000 (see Appendix A for more information). Interviewed CECA board members indicated that they supported this purchase, though no records of board minutes approving the action could be produced. The procurement process used to select the truck was not well documented. Even more, the leasing of the truck, which took the truck away from CECA use for a significant amount of time, did not help further the mission of the CECA "to produce and manage unique, quality TV and live-stream content addressing educational and local government while involving students and faculty in producing these programs." Recognizing that the truck is not needed, CECA and DSC officials have now sold the truck (the tractor is still owned by the CECA). The CECA received $191,000 (after paying commission) from the sale of the truck and a diesel generator.

The CECA purchased a TV production truck in May 2009. Over time, the truck was rarely used for local programming. Instead, it was leased out and reportedly competed with private business.

Initially, the truck was used to create learning opportunities for students but, over time, it was seldom used for local events and students had limited learning experiences with the truck's equipment. Leasing the truck was required in order to generate the revenue necessary to support its purchase. The CECA leased the truck, first to the previous owner of the vehicle (located in Washington State) and then to a production company located in Salt Lake City. The CECA did not engage in a competitive lease process. Instead, they simply selected a company that approached them and did not give other businesses the opportunity to bid on the lease. It is not clear, since board minutes were not kept during this period, but some evidence exists to show that the board may not have been properly briefed on the purchase and lease of the truck.

Over time, the truck was seldom used for local events and students had limited learning experiences with the truck.

Even more, the lease not only significantly reduced CECA's use of the truck, but also, by most accounts, the lease amount charged by the CECA was much lower than comparable market leasing rates for a similar truck. It was reported that the truck competed with some private business.

Unfortunately, CECA's oversight and control problems with the TV production truck are not the entity's only weakness. After a whistleblower came forward with allegations of fraud, the DSC

Oversight and control problems at the CECA are not limited to the lease of the TV truck. A DSC internal audit found other significant control weaknesses.

internal auditor found other significant control weaknesses, insufficient oversight, and potentially criminal activities. The audit led to the removal of two individuals, with one of them being charged criminally.

CECA Production Truck Reportedly Competed Against Private Business

One private contractor (who leases his truck to the same production company that leased the CECA truck) reported that the CECA lease harmed his business income. We also heard from current CECA officials that other private contractors told them that they lost business to the CECA TV production truck.

It appears that the lease rate for the truck was underpriced and hurt some private businesses.

The CECA leased the truck out for $4,667 a month. The private contractor we spoke with said that a competitive lease on a truck similar to the CECA's would be significantly higher. However, exact comparisons are difficult to make because of the variability in truck specifications and staffing levels. When new management at the CECA took over, they recognized the low lease amount and tried to negotiate for a higher rate without success. Even though the appropriateness of the lease amount is not exactly known, it is known that the CECA did not engage in a competitive lease. The CECA did not advertise or solicit bids for the lease of the truck.

Over Time, Dixie State College Students and Faculty Obtained Limited Benefit from TV Truck

The communities participating in the CECA appear to have received minimal benefit from the TV truck purchase.

It appears that, over time, the campus community around Dixie State College and the cities participating in the interlocal organization received limited benefit from the purchase of the TV production truck. In the three years the CECA owned the truck, the interlocal rarely used the TV production truck to broadcast events in the local area. The use of the truck was more predominant in the first year the truck was purchased and decreased over time. Records of the truck's use were not well kept, and we had to rely on estimates from current CECA officials. However, it is known that the truck's use in the local area decreased over time. The production company leasing the truck broadcast sporting events in the western U.S., but these games did not involve DSC sports.

Figure 1 shows the limited use of the TV production truck over the three years the CECA owned it. Note that events listed in Figure 1 only represent those events known by current management, because records of truck usage were not well kept.

Figure 1 Reported Events for Which the TV Truck Was Used in the Local Community. The TV production truck was initially used in local broadcasting. However, over time the truck was seldom used in the local area. Since no reliable records exist to document the truck's use, the table below is an estimate provided by current CECA officials.

Date	Event	# of Students Participating
May 1, 2009	Dixie State College Graduation	4
May 21, 2009	Pine View/Dixie High School Graduation	4
May 22, 2009	Snow Cyn/Hurricane High School Graduation	4
Aug 27, 2009	Adams State vs. DSC Football	15
Sep 11, 2009	Hurricane High vs. Dixie High Football	15
Sept 26, 2009	Humboldt State vs. DSC Football	15
Oct 10, 2009	Western Oregon vs. DSC Football	15
Nov 13, 2009	Whittier College vs. DSC Basketball	15
Dec 4, 2009	Northwest Nazarene vs. DSC Basketball	15
Dec 5, 2009	Montana State vs. DSC Basketball	15
Feb 11, 2012	Acad. of Art vs. DSC Basketball (men and women)	15
Feb 14, 2012	Cal Baptist vs. DSC Basketball (men and women)	15

Source: Community Education Channel Agency (CECA) estimate. We recognize that other events may have occurred, but adequate information was not available.

The TV truck was rarely used for local mission-oriented events.

The vehicle was used for a number of events in 2009 in the local area, but, over time, the use of the truck in the local area decreased. We were told that the truck was rarely seen at the CECA building located on the DSC campus.

Sale of the Truck Reportedly Had No Impact on Teaching and Learning Opportunities at DSC. Current CECA and DSC management indicated that the truck was outdated and no longer needed for the CECA's mission. Consequently, management members we spoke with said they believe the sale of the truck will have no impact on students or faculty.

Sale of the truck reportedly had no adverse effect on teaching, but leaves the CECA with ongoing debt that continues to hamper CECA operations.

Since students and faculty rarely used the truck, the sale of the truck should have no negative affect on teaching. However, the loan taken out to purchase the truck (and other equipment) will leave the CECA with ongoing debt that could hamper the organization for some time. As DSC's internal audit office stated in an audit of the

CECA, "The CECA has now exhausted all means to purchase any future pieces of equipment except for the limited amount of funds that are in college account VPC805."

Oversight of CECA Should Be Strengthened

Going forward, questions about the CECA's oversight structure should be addressed.

We question the adequacy of oversight of the CECA. Admittedly, oversight appears to have improved since the DSC's internal audit report was released. Nevertheless, concerns about the CECA's oversight structure should be addressed. Individuals we spoke with at the Attorney General's Office, State Auditor's Office, and the Office of Legislative Research and General Counsel all indicated that requirements for interlocal organizations' fiscal responsibilities could be more clear in the law. Specifically, it is not always clear what rules and policies these organizations should follow, or if rules of member entities always transfer to the interlocal entity. In the case of the CECA, we were told that board members instructed the CECA director to follow the rules and policies of DSC. However, the board did not specify this directive in the interlocal agreement, financing agreement, or the bylaws, and the CECA director did not consistently follow DSC's policies.

The ***Utah Code*** could be clarified to specify that certain fiscal rules and policies must be implemented by interlocal organizations, especially for those like the CECA that have multiple jurisdictions creating them. Following are some concerns we identified with the CECA, based on our limited review.

- **Unclear Policy Direction** – State Board of Regents Administrative Rules seem to prohibit the lease of the TV truck in the manner the CECA used, but the CECA did not consistently follow Regents rules.

- **Incomplete Board Oversight** – We were provided inadequate documentation indicating board involvement with establishing policies and procedures or the approval of the purchase of the TV production truck.

- **Non-Compliance with Financial Reporting** – *Utah Code* requires the CECA board to ensure that an annual financial audit will be conducted, but this has not occurred.

We recommend that the Legislature consider clarifying the ***Utah Code*** to give interlocal organizations like the CECA clearer direction on the rules and policies they are required to follow. Further, boards overseeing interlocal organizations must ensure applicable laws and rules are being followed.

We recommend that the Legislature consider clarifying the *Utah Code* to give interlocals like the CECA clear direction on rules and policies they are required to follow.

Utah Code Could Clarify what Rules and Policies Interlocal Organizations like the CECA Should Follow

The ***Utah Code*** could be clearer on some areas of interlocal organizations' fiscal procedures. With the CECA, the statute could be more clear about rules and policies that should govern the organization. For example, the ***Utah Code*** contains a provision that stipulates an interlocal agreement must specify "the manner in which the interlocal entity is to be governed" [11-13-206(1)(b)(iii)]. However, officials we talked with were not clear whether that provision meant that specific policies had to be identified and implemented. Neither the CECA interlocal cooperation agreement, the financing agreement, or the entities' bylaws contain mention of the governing rules and policies it must follow.

A recent audit conducted on the Utah Telecommunication Open Infrastructure Agency (UTOPIA) found similar issues. The audit report states the following:

> ***Utah Code*** does not contain fiscal procedures that specifically target interlocal entities. Title 10, Chapter 6 contains the Uniform Fiscal Procedures Act for Utah Cities. Title 17B contains similar fiscal procedures for local and special services districts. Neither section of statute mentions any applicability to interlocal agencies such as UTOPIA. However, the Utah Attorney General has issued an opinion stating that Title 10 does apply to interlocal agencies:
>
> > Cities may not grant powers to an interlocal agency which they do not possess themselves individually. It necessarily follows that cities have no power or authority to act in contravention to the requirements of the Fiscal Procedures Act and they cannot endow their interlocal progeny with such power or authority. (*Office of*

***Utah Code* does not contain fiscal procedures that specifically apply to interlocal entities.**

the Attorney General State of Utah Informal Opinion No. 87-31, June 17, 1987)

Since the CECA is made up of multiple jurisdictions of different classes, it is not clear what rules and policies the CECA should be following.

The UTOPIA audit report recommended that UTOPIA follow the "Uniform Fiscal Procedures Act for Utah Cities." This recommendation made sense for UTOPIA since all members of the interlocal agreement were cities. However, in the case of the CECA, the fiscal procedures to follow are not as clear, since there are multiple jurisdictions of different classes that comprise the CECA. We recommend the Legislature clarify the statute to require interlocal organizations to establish, through the articles of incorporation or amendments thereto, which fiscal procedures should be adopted and followed by the interlocal entity. In our opinion, because Dixie College is the CECA's fiscal agent, it makes most sense to require the CECA to follow all applicable policies of DSC and the Board of Regents.

Lease of TV production truck does not appear to be in harmony with Board of Regents policies.

Lease of TV Production Truck Does Not Appear to Be in Harmony with Board of Regents Policies. We believe the State Board of Regents has a reasonably clear policy on competition with private business that, had it been followed, might have prevented the leasing of the TV truck for production use outside DSC's local community. Note that the use of the truck outside of DSC's local community was for activities not related to the college. For example, the truck may have been used to televise a game in Idaho where Boise State University played Fresno State University. The telecast did not involve Dixie State College or the State of Utah. Figure 2 provides some of the relevant policy provisions and the CECA's corresponding non-compliance.

Figure 2 Board of Regents Policy 555. The Board of Regents places limitations on when and how campuses can engage in activities that are normally reserved for private business. The Regents policy also emphasizes that campus activity should be limited to the campus's local community. We believe the CECA's actions with the TV production truck are not in harmony with these rules.

Provisions of Regents Policy 555	Action of CECA
Institutions are expected to provide their campus communities appropriate services . . . this responsibility includes, but is not limited to, instructional, research, and public service programs; libraries; computing programs; and other academic support services.	Local community broadcasts (for example, convocations) are probably in harmony with this rule, but sporting events out of state are clearly not serving the campus community.
Institutions may provide other services to their campus communities even though such services are practically available elsewhere . . . provided such services are not advertised to the general public and are <u>not</u> generally provided to persons who are not members of the campus community.	The TV production truck was used primarily for sporting events outside of the campus community, even outside the state.
An institution shall not provide services to persons other than members of the campus community <u>unless</u> . . . the service offers substantial and valuable educational or research experience for registered students and faculty [or] . . . The service consists of recreational, cultural, and athletic events . . . [or] public service radio and TV broadcasting . . .	There is no documentation of "substantial and valuable educational" experience for students, and research was not being conducted by faculty. Local broadcasts seem to fit into the intent of this policy, but out-of-state sporting events not related to DSC's campus community appear to be in violation with the intent of this policy.

Rules and policies that the CECA is required to follow could be more clearly specified.

The rules and policies that the CECA is required to follow could be more clearly specified. Policy uncertainty can create an atmosphere of poor business practice that leads to waste of taxpayer funds.

CECA Board Oversight Can Improve

CECA board can bolster its oversight. We understand the board deliberated many important decisions regarding the CECA. It was also reported to us that the board may not have always received pertinent business information from CECA management. Clearly, the board needs competent information to execute its oversight responsibility.

Some of these matters were discussed in the DSC internal audit and we understand they are being corrected.

However, we believe the board's oversight neglected several key areas of the CECA. For example, the board did not always adequately document actions they took in board minutes. There were no board minutes taken at the time of the truck's approval. The DSC internal audit report stated that:

> The board has not kept minutes of their board meetings for the last several years. Without the proper recording of minutes, it is difficult to actually know what was said or presented to the CECA board by [the director of the CECA].

In addition, the board has not been in compliance with financial reporting requirements in the ***Utah Code*** (discussed more in the next section). Further, there is little evidence that the board had been involved in ensuring that the CECA consistently followed the policies of DSC. We were told that the board had always intended the CECA to follow DSC policies, but we could not find that direction in the interlocal agreement or the bylaws. The board chair told us that the board recently asserted that the CECA must follow DSC policies. We believe adding that assertion to the interlocal agreement or bylaws would help clarify the board's intent.

A DSC internal audit found significant internal control weaknesses.

The DSC audit also found significant internal control weaknesses that had not been addressed at the CECA, which included:

- Noncompliance with Fair Labor Standards Act
- Lack of equipment or asset management systems
- Lack of proper procedure for private use of college property and equipment

Though DSC was acting as the CECA's fiscal agent, the CECA was not complying with DSC's purchasing policy.

The DSC internal audit also criticized past management of the CECA for not keeping the board informed on all its liabilities and not seeking approval from the board for several purchases. As mentioned, the board needs good information to properly execute its duties, and it appears the board may not have always received that information.

Although DSC was acting as the fiscal agent for the CECA, the CECA was not consistently complying with DSC's purchasing policy, which was another finding of the internal audit. Again, this may be due to the lack of clear direction from the ***Utah Code*** and the board about which policies the CECA should be following. We do agree with the internal audit recommendation that, as the fiscal agent, the DSC should have a more involved role. Part of that role should be ensuring that the board receives competent and reliable business information.

Financial Audit Requirement Was Not Followed

Utah Code requires the board of an interlocal entity with revenue or expenditures of $350,000 or more to have its accounts audited. The CECA's funding level meets this requirement, but the entity was unable to produce any evidence that an audit has been done. In fact, the CECA board chair acknowledged that a financial audit has not occurred. The State Auditor's office conducts audits of DSC, but has not included CECA transactions as part of those audits. However, a review of CECA transactions could be explored with the State Auditor in the future.

***Utah Code* requires interlocal entities like the CECA to have a financial audit of its accounts, but this audit has not occurred.**

Had an audit been conducted, many concerns discussed in this report and the DSC internal audit report may have been resolved much sooner. Again, the statute gives the governing board of the CECA responsibility to ensure that an audit occurs. Figure 3 shows the language in the ***Utah Code*** that requires the CECA board to have a financial audit conducted and filed with the State Auditor's Office.

Figure 3 Financial Audit Requirement. ***Utah Code*** requires a financial audit of an entity with revenue or expenditures greater than $350,000. CECA had income greater than this amount but has not undergone a financial audit.

Utah Code

51-2a-102(6)(b) "Governing board means the governing board of each interlocal organization having the power to tax or to expend public funds."

51-2a-201(1). "The governing board of an entity whose revenues or expenditures of all funds is $350,000 or more shall cause an audit to be made of its accounts by a competent certified public accountant."

51-2a-202(1) "The governing board of each entity required to have an audit. . . shall ensure that the audit is. . . (a) made at least annually; and (b) filed with the state auditor within six months of the close of the fiscal year of the entity."

FY 2012 CEC Accounting Summary
Total Income = $401,000
Total Expense = $408,000

The CECA board is not in compliance with the ***Utah Code***. In the future, the board should ensure that this requirement in statute is met. The CECA board chair has indicated that this problem will be corrected in the future.

Recommendations

1. We recommend that the Legislature consider clarifying Title 11, Chapter 13 of the ***Utah Code*** to:

    a. Require that interlocal agreements specify what rules and policies will govern the interlocal entity.

    b. Require interlocal entities in their interlocal agreements to specify what fiscal and procurement procedures will be followed

    c. Require interlocal entities to include in their interlocal agreements how they will track liabilities

2. We recommend that the governing board of the CECA ensure all applicable laws and rules pertaining to the CECA are adhered to.

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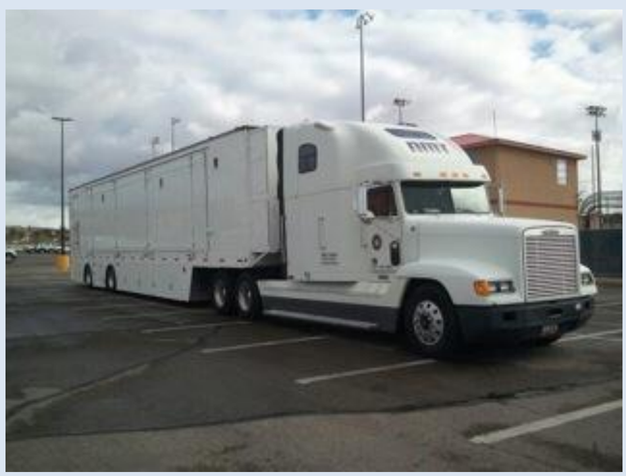
Appendix A History of TV Production Truck. This table shows some of the key points of the purchase and sale of the CECA's TV production truck.

Date	Event and Activity
Mid-1990's	The Community Educational Channel Agency (CECA) was formed in the mid-1990's. The CECA was formed as an interlocal cooperation agreement. Dixie State College has been designated as the fiscal agent for the CECA.
Spring-Summer 2007	A second amended interlocal cooperation agreement was signed and enacted. The following parties are listed as members of the interlocal organization of the Community Education Channel Agency. • Dixie State College (DSC) • Hurricane City • Ivins City • St. George City • Santa Clara City • Washington City • Washington County • Washington County School District The cooperation agreement states that "the Sponsoring Public Entities do hereby empower the CECA with the requisite and necessary authority to maximize its ability to achieve its stated purposes, and do hereby enable it to exercise that authority in ways and by means as its *Board of Directors deems necessary and proper*."
May 18, 2009	TV Production truck was purchased on May 18, 2009 for $440,000. The bill of sale was signed only by the director of the CECA. Board members indicated that the sale was approved by the board, but board minutes approving the purchase were not provided. 
May 18, 2009	Reportedly, after purchase, the truck was immediately leased to the previous owner of the truck.
May 2009 to Feb 2012	Truck was used for some local events where Dixie State College students participated. Events broadcast were generally sporting events, but some high school and college graduations were also broadcast. Over time the use of the truck for local events decreased.
Abt May 2010	Truck leased to new production company in Salt Lake City. The lease was for $4,666.66 a month. The CECA still has debt on the truck.

Date	Event and Activity
2010-2012	Truck used to broadcast sporting events in western U.S. These sporting events were not affiliated with DSC.
2011-2012	Competitor complains to a legislative member that the CECA truck was competing with his business.
February 2012	Dixie State College conducted an internal audit of the CECA that was released in February 2012. The internal audit found the CECA was engaged in questionable business practices and detected several significant internal control weaknesses. Criminal charges are pending based on the findings of the audit.
August 2012	The CECA and Dixie State College sent the truck to California at the end of August 2012 to be leased with a pending sale on the truck.
October 2012	TV production truck sold. The CECA was paid $225,000 for the trailer and a diesel generator (the tractor used to pull the trailer has not yet been sold). The CECA netted $191,250 from the sale after paying the broker for his services.

Agency Response

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School of Business & Communication

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20 November 2012

John M. Schaff, Auditor General
Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, UT 84114-5315

RE: Report Number ILR 2012-F, November 2012, A Limited Review of the Community Education Channel Agency's TV Production Truck

Mr. Schaff,

On behalf of Dixie State College of Utah I offer the following response to the final "Exposure Draft," of the subject report.

First, I wish to thank you and your staff, and especially Kade Minchey for your professionalism and even-handed approach to this audit. I assure you that we have taken your findings and those of our own internal audit very seriously and have already taken a number of corrective actions to ensure CEC's compliance with all applicable rules and regulations.

That said, we believe that the prior problems associated with CEC would not have occurred if a few individuals would not have willfully violated directions and procedures that were clearly stated and already in place. Those individuals have been dismissed and additional safeguards have already been put in place to ensure future compliance. Therefore, we do not see the benefit or need to associate our situation with UTOPIA or other interlocal agreements in general, or to use this situation as a springboard to enact additional legislation concerning interlocal agencies. We believe that is out-of-scope and should not be explicitly included in this particular audit.

The audit suggests that CEC violated *Utah Code* by not holding annual audits. We have two issues related to this finding. First, all CEC financial transactions take place via DSC accounts. Therefore, any and all audits of the college de facto include CEC. The only transactions that have not gone through college accounts are the unauthorized loan withdrawals for which criminal proceedings are currently underway. Second, we understand *Utah Code* exempts interlocal agencies with revenues or expenditures less than $350,000 from these annual audits. We believe CEC revenues have generally been less than $350,000, and except for times when loans have added to available funds for expenditures, they have also been less than $350,000. CEC's current revenue base consists of approximately $15,000 per month from Baja Communications through the city of St. George, approximately $120,000 per year total from the various cities in Washington County, with another $10,000 or so per year in miscellaneous income.

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Again, we appreciate the opportunity of being shown how we can improve CEC and have already incorporated significant changes in order to comply with audit recommendations. These changes include; moving direct oversight of CEC from facilities to academics (better aligns CEC and its mission with DSC's mission, students and faculty); dismissal and appropriate legal action against individuals who willfully violated rules and policies; assigning accounting and financial reporting responsibility to Communication Department accountant; creation and regular meetings of a finance oversight committee; hiring of full-time internal auditor by DSC; explicit direction to comply with DSC purchasing and finance policies; and divestiture of the broadcast trailer.

Cordially,

William Christensen, Ph.D.
Dean, Business & Communication
Dixie State College of Utah