Congress of the United States
House of Representatives
Washington, DC 20515

May 11, 2005

Kenneth A. Konz
Inspector General
Corporation for Public Broadcasting
401 9th St., N.W.
Washington, D.C. 20004-2129

Dear Mr. Konz:

We are writing to request an investigation by your office into recent actions by the Corporation for Public Broadcasting (CPB) that may be in violation of the Public Broadcasting Act of 1967 (PBA) which authorized the CPB. This act establishes specific limitations of the role of the CPB and its board in programming development and programming decisions made by individual public televisions stations. It also forbids "political or other tests" from being used in taking employee actions and prohibits interference by federal officials over public telecommunications or the content or distribution of public programming. PBA, Secs. 398-99. Recent news reports suggesting that the CPB increasingly is making personnel and funding decisions on the basis of political ideology are extremely troubling.

On May 2, *The New York Times* published an article stating that Kenneth Y. Tomlinson, CPB' s chairman, had contracted last year with a consultant to monitor the "political content" of the "Now With Bill Moyers" program on the Public Broadcasting System for its "anti-Bush," "anti-business" and "anti-Tom DeLay" biases. It appears that this is the only public television show for which this review was undertaken, and it is unclear why these terms were selected, or how they were defined. The final report was never released to Mr. Moyers, the board of directors or the public for review, but Mr. Moyers left the show, and it was reduced from one hour to 30 minutes in length. "Chairman Exerts Pressure on PBS, Alleging Biases," *The New York Times*, May 2, 2005, A.1. Recently, Mr. Tomlinson cited "the left-wing bias" of "NOW" as a reason for his active support of a new PBS show entitled "The Journal Editorial Report." "PBS Dial Dynamics," *The Washington Times*, May 10, 2005.

These activities by Mr. Tomlinson are particularly disturbing since the Corporation is supposed to carry out its purposes and functions "in ways that will most effectively assure the maximum freedom of the public telecommunications entities . . . from interference with, or control of, program content or other activities." PBA, Sec. 396 (g). Congress intended that the CPB serve as a shield rather than a source of political interference into public broadcasting. Furthermore, the CPB is forbidden from actually producing programs, scheduling or distributing

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them. Any assistance to the "production and acquisition of programs" is supposed to be "evaluated on the basis of comparative merit by panels or outside experts, representing diverse interests and perspectives, appointed by the Corporation." PBA, Sec. 396(g)(2). It is reported, however, that Mr. Tomlinson was involved in securing $5 million in corporate funding for "The Journal Editorial Report," and to have pressed PBS into distributing it. Most recently, he has complained that only one-fifth of local public television stations are running the "Journal" show, and many of them run it at 4 a.m. *The Washington Times, supra.* Mr. Tomlinson previously told the Association of Public Television Stations that they should make sure their programming better reflected the "Republican mandate." *The New York Times, supra.*

Additionally, it is reported that Mr. Tomlinson hired Mary Catherine Andrews, while she was still director of the White House Office of Global Communications, to draft guidelines for the work of two ombudsmen to review the content of public radio and television broadcasts. Ms. Andrews was subsequently hired by CPB. The ombudsmen who were hired -- Ken Bode, a former Hudson Institute fellow who endorsed Republican Mitch Daniels for governor of Indiana, and William Schulz, a former *Reader's Digest* editor and close friend of Mr. Tomlinson -- do not appear to represent a broad spectrum of opinions.

CPB's own research has shown that the American public believes public television and radio programming is objective and balanced. If CPB is moving in the direction of censorship of public affairs content based on partisanship and political views, this will severely erode the public trust that public broadcasting heretofore has enjoyed.

Therefore, we are asking that your office fully investigate the issues outlined in the attached Appendix A and report back to us in an expeditious manner. If your staff has any questions or needs additional information, please contact the Democratic staffs of the House Appropriations Committee and the House Energy and Commerce Committee.

Your immediate assistance in this matter is appreciated.

Sincerely,

DAVID OBEY
Ranking Member
Committee on Appropriations

JOHN D. DINGELL
Ranking Member
Committee on Energy and Commerce

Cc: Honorable Joe Barton
Honorable Jerry Lewis
Honorable Ralph Regula

APPENDIX A

1. Sometime last year, Kenneth Y. Tomlinson, CPB chairman, contracted with an outside consultant to review the "political content" of the "Now with Bill Moyers" television show. Please determine the circumstances of this contract, including:

   a. who initiated this review and on what basis;
   b. whether the issuance of the contract followed CPB's contracting procedures;
   c. whether the CPB chairman has the right to authorize such contracts, whether approval of the board of directors is required and whether such approval was obtained for this contract;
   d. the purpose, scope, cost and source of funds for the contract;
   e. the name of the outside consultant;
   f. what standard was used to detect "political content" and who determined the definition of "political content";
   g. what deliverables were received, by whom, and what use was made of such deliverables by CPB; and
   h. distribution and use of deliverables by the CPB or any of its directors, officers or employees.

   Please provide to us copies of all relevant documents, including the original contract and the final report.

2. Please determine whether since 2001 CPB has executed any similar consulting or other contracts to review programming for political content. If so, please describe the circumstances of each of those contracts and provide copies of the contracts and the deliverables.

3. It has been reported that Bush Administration White House personnel were involved in the development of the guidelines for work to be performed by the CPB ombudsmen in reviewing PBS programming for "balance and accuracy." Are these reports accurate? If so, please describe the extent of this involvement and whether it violated the prohibition in the Public Broadcasting Act against exercising "direction, supervision or control over public telecommunications . . ." or its programming content. PBA, Sec. 398(a) and (c). Provide to us a copy of any communications between CPB and Bush Administration White House personnel concerning the hiring and activities conducted by any such personnel on behalf of CPB, including a copy of any guidelines that may have been produced. If White House personnel were involved in developing the guidelines, determining the nature and scope of the ombudsmen's work, or selecting programming to be reviewed, please identify those persons.

   Your investigation should include a review of CPB's correspondence and hiring of Mary Catherine Andrews; whether and how much she was paid for her work for CPB while working at the White House Office of Global Communications;

whether she obtained permission from the White House and/or CPB ethics officer to work at both entities at the same time; from whom she obtained information concerning those guidelines, including any White House personnel; and who reviewed them. Provide to us a copy of all documentation concerning the recruitment and hiring of Mary Catherine Andrews.

4. All officers, agents and employees of the Corporation are to be selected or appointed without a "political test." Please describe the selection process for the two ombudsmen. One reportedly endorsed the Republican governor of Indiana, and the other is a self-described conservative and a close friend of CPB Chairman Tomlinson. Please review the selection of the ombudsmen to determine if their selection followed CPB personnel procedures and was done without a "political test." Describe the search undertaken, whether the Board approved their selection as designated neutrals, and whether there was any discussion with Bush Administration or other federal officials prior to selection.

5. There appears to be a great deal of confusion about exactly what the ombudsmen are supposed to do, and how they intend to carry out their mandate. (See, *e.g.*, "PBS Stations Eye CPB Ombudsmen with Apprehension," *Communications Daily*, April 29, 2005.) The first ombudsmen reports on National Public Radio's reporting on fighting in Mosul, Iraq, that were posted on CPB's Web site do not provide any information regarding the nature of the complaints or provide a reason as to why the ombudsmen decided to look at this particular report. http://www.cpb.org/ombudsmen/ *See also The Ombudsman Association Code of Ethics.* Please describe the process for receiving complaints and the selection and investigation process.

6. How is the ombudsmen process integrated with the procedures outlined in Section 19 of the Public Telecommunications Act of 1992 for the Corporation to obtain public views and then establish a "comprehensive policy and set of procedures" to review programming for a variety of criteria, including quality, diversity, creativity, excellence, innovation, objectivity and balance to be used in awarding grants?

7. According to a recent *Salon* article, several personnel changes at the CPB may have involved political bias. For example, after Chairman Tomlinson refused to renew the contract of Kathleen Cox, CPB's former chief executive officer, he hired as the interim chief executive officer W. Kenneth Ferree, a Republican who was a top adviser to Michael Powell, former Republican chairman of the Federal Communications Commission. Michael Pack, the senior vice president for television programming was named a few weeks after he represented Lynne Cheney, the Vice President's wife, in a meeting with PBS to request a series of programs on which Mrs. Cheney would appear. "Big Bird Flies Right: How Republicans Learned to Love PBS," *The New Yorker,*" June 7, 2004. Section 396 of the PBA of 1967 prohibits any "political test or qualification" to be used in

"selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation."

Please review the process used by the CPB to remove Kathleen Cox and to hire Mr. Ferree and Michael Pack, including whether established personnel policies were used, how the employee action decisions were made and by whom, whether any "political tests or qualifications" were used in the hiring of and what role the board of directors played in any of these personnel actions.

8. Please review whether the statement attributed to CPB Chairman Tomlinson that PBS programming should reflect "the Republican mandate" was, in fact, made by Mr. Tomlinson and, if so, in what context. If made, is this a violation of the Code of Ethics for CPB Directors which require that directors avoid "being partial to any particular organization or their own personal interests"?

9. It has been reported that Mr. Tomlinson played a personal role in the funding of and approval of the "Journal Editorial Report" and the Tucker Carlson show. Please describe the process for the funding and selection of these programs by PBS, and the involvement of Mr. Tomlinson or any other CPB official. Additionally, please review all efforts made by CPB to get local stations to run these shows. Has there been any attempt to review the "objectivity and balance" of their content?

10. The 2004 "Open to the Public" report required by Section 19 of the Public Telecommunications Act of 1992 has not yet been released. What is the status of this report, who is preparing it, and why has it been held up?