

[T]he [constitutional] guarantee of neutrality [toward religion] is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, *including religious ones*, are broad and diverse. . . . More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to *religious speakers* who participate in broad-reaching government programs neutral in design. 115 S.Ct. at 2521–22 (emphasis added).

NTIA's new policy interpretation will ensure both that the program funds are neutrally provided and that any benefit to religion will be attenuated or incidental. NTIA will behave neutrally toward all grant applicants. All grant applicants (including sectarian organizations) will be eligible for funding (assuming they meet NTIA's other eligibility requirements), provided they comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.<sup>25</sup> If, as we discuss further below, questions arise regarding compliance, however, NTIA will determine whether the recipients' use of grant funds has the primary, and thus impermissible, effect of advancing or inhibiting religion. Where some benefit appears to inure to a sectarian interest, further analysis of the potential benefit will be undertaken to determine whether it is merely incidental or attenuated and thus permissible.

With regard to the third prong of the *Lemon* test—avoiding excessive entanglement of government with religion—NTIA's administrative procedures will remain essentially the same as before. NTIA will avoid analyzing individual programs unless a compliance problem comes to NTIA's attention. Thus, under the new policy, excessive government entanglement with religion will continue to be avoided as under our prior policy.

<sup>25</sup> The PTFP regulation at 15 C.F.R. § 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing. See also n. 3, *supra*.

## B. Application of New Interpretation to Particular NTIA Programs

Specific application of this new interpretation to each of the three NTIA grant programs is discussed below.

### 1. The Public Telecommunications Facilities Program (PTFP).

Under the PTFP rules, a sectarian organization is eligible to apply as long as it meets the general PTFP eligibility requirements.<sup>26</sup> The purpose of PTFP is to make public telecommunications services available to U.S. citizens. PTFP funds the construction and planning of public telecommunications services,<sup>27</sup> subject to the eligibility requirements for applicants.<sup>28</sup>

To determine whether a grant would have the primary effect of establishing religion, NTIA will apply the *Lemon* test. To determine eligibility and the overall purpose of the planning and construction of public telecommunications facilities, NTIA will examine the applicant's proposal and its organizational purposes, as required by the statutory criteria. This approach ensures that grant awards will neither advance nor inhibit religion.

To avoid Government entanglement in religion and programming decisions, NTIA will continue its policy of reviewing the project narrative and supporting documents, while also relying on the applicants' assurances that they comply with NTIA's policy on sectarian activities. General monitoring of grantees' activities will continue under the normal administrative process pertaining to Federal assistance programs.

Accordingly, as under our prior policy, submission of broadcast schedules and program listings will not generally be required. We will not review the content of all programs or activities for sectarian content unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee may be using NTIA-funded equipment or materials in connection with a project the essential thrust of which is sectarian. For example, under the prior approach, a single sectarian program in a broadcast schedule would have rendered the project ineligible for

<sup>26</sup> To be eligible for a construction or planning grant, an applicant must be one of the following: a public broadcast station; a noncommercial telecommunications entity; a system of public telecommunications entities; a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or a state or local government (or any agency thereof), or a political or special purpose subdivision of a state. See 15 CFR § 2301.4(a), (b).

<sup>27</sup> 47 U.S.C. 390–393; 15 CFR Part 2301 *et seq.*

<sup>28</sup> For definitions of eligible organizations and projects, see 15 CFR 2301.4.

funding. Under our new approach, a single program with sectarian aspects will not necessarily render the project ineligible.<sup>29</sup> In such instances, NTIA will examine the overall purpose of the project to determine if it is consistent with the PTFP's statutory purposes. Further inquiry may be made as necessary to ensure that any benefit to a sectarian interest is merely attenuated or incidental as permitted under current jurisprudence.

To implement this new approach, we do not need to revise the language in the PTFP regulation, assurance or definition of "sectarian" as it pertains to our policy on sectarian activities.<sup>30</sup> We shall, however, revise the definition of "public telecommunications services" to delete the last sentence which provides, "It does not include essentially sectarian programming."<sup>31</sup>

### 2. National Endowment for Children's Educational Television (NECET)

Pursuant to NECET's enabling legislation,<sup>32</sup> in order to be eligible to apply for a grant, an applicant must be one of the following: an individual, corporation (for-profit or not-for-profit), partnership, association, joint stock company, trust, or state or local governmental entity.<sup>33</sup> A sectarian organization is eligible to apply, as long as it meets these eligibility requirements. NECET funds are available "to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills."<sup>34</sup> Presently, in making a NECET grant, NTIA must, as a part of its evaluation and review process, review program proposals and

<sup>29</sup> While this example uses one program, we wish to emphasize that we are not setting any percentage or hourly maximum on the amount of sectarian programming that would be considered allowable.

<sup>30</sup> See 15 CFR 2301.1; 15 CFR 2301.5(d)(2)(xvi); 15 CFR 2301.22(d). The PTFP regulation at 15 CFR 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing.

<sup>31</sup> 15 CFR 2301.1.

<sup>32</sup> 47 U.S.C. 394.

<sup>33</sup> 47 U.S.C. 394(i)(2).

<sup>34</sup> 47 U.S.C. 394 (a).