

content to determine whether it would meet these requirements.

Accordingly, review under our new policy interpretation will be essentially the same as before. The policy will be applied to each individual program for which a grant is sought, and the grantee must comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.<sup>35</sup> If the essential purpose of a program is to advance or inhibit religion, its funding would not be permissible. We do not believe the likelihood of entanglement is any greater than it was under our prior policy.

Under our prior policy interpretation, if, for example, part of a program encompassed a Catholic mass, the entire project would have been considered ineligible for funding. In contrast, under the new approach, we will make a determination on eligibility based on the test that any benefit to a sectarian interest resulting from the receipt of NTIA funds must be attenuated or incidental.

### 3. Telecommunications and Information Infrastructure Assistance Program (TIIAP)

To be eligible for a TIIAP grant, an applicant must be one of the following: a state or local government, an accredited college or university, or a non-profit entity. Individuals and for-profit organizations are not eligible to apply. A sectarian organization is eligible to apply, as long as the organization meets these requirements. TIIAP funds are provided for the "planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety or other social services."<sup>36</sup>

In contrast to PTFP, however, where the broadcaster maintains editorial control, a TIIAP grantee may sometimes, but not always, exercise editorial control over the content of its communications network. For example, a network may involve a bulletin board where the operator does not have control of messages sent among

individuals. In some cases, therefore, it could be difficult for a TIIAP applicant to certify that facilities will not be used for essentially sectarian purposes. Accordingly, TIIAP awards will be subject to the policy which requires that the NTIA-funded facilities will not be used for essentially sectarian purposes to the extent that the applicant controls the content of network communications.<sup>37</sup>

To avoid excessive entanglement in religion, we will not review the content of information transmitted over TIIAP-funded networks unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee is using NTIA funded equipment or materials in connection with sectarian activities. In such instances, rather than examining only the questioned activity, NTIA will examine the overall purpose of the project to determine whether NTIA funding provides an attenuated or incidental benefit to the sectarian interest and thus whether it is permissible.

For example, TIIAP might provide funding to a local organization to establish a public computer bulletin board. As part of this bulletin board, a church-affiliated youth group might post information regarding meetings and meeting times, which includes a meeting time for a worship service. Under NTIA's prior policy, this project might have been ineligible for funding because the information regarding the sectarian meetings and meeting times would have appeared on the network. Applying NTIA's new policy interpretation, we would examine the overall purpose of the project to determine whether it fell within the TIIAP's statutorily authorized purposes and whether any benefit to religion was merely incidental or attenuated. If the answer to both questions was yes, such a grant would be permissible under the new policy interpretation.

### IV. Conclusion

NTIA's modified policy interpretation appropriately harmonizes the First Amendment's Free Exercise and Establishment Clauses, consistent with current jurisprudence. The new interpretation of our policy concerning use of NTIA grant funds in connection with sectarian activities will provide

grant applicants greater flexibility, while continuing to avoid unwarranted government entanglement with religion.

### Rulemaking Requirements

1. It has been determined that this rule is not significant for purposes of Executive Order 12866.

2. Because this rule relates to public property, loans, grants, benefits, or contracts, it is exempt from the notice and comment and delayed effective date requirements of the Administrative Procedure Act (APA).

3. Because a notice of proposed rulemaking is not required by the APA or any other law, a Regulatory Flexibility Analysis is not required and was not prepared.

4. This rule contains information collection requirements subject to the provisions of the Paperwork Reduction Act. This collection has clearance from the Office of Management and Budget under OMB Approval No. 0660-0003.

5. This policy does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

### List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting and recordkeeping requirements, Telecommunications.

(Catalog of Federal Domestic Assistance No. 11.550)

Dated: December 15, 1995.

Larry Irving,

*Assistant Secretary of Communications and Information.*

For the reasons set out in the preamble, 15 CFR part 2301 is amended as follows:

### PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

1. The authority for part 2301 continues to read as follows:

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95-567, 92 Stat. 2405, codified at 47 U.S.C. 390-394, 397-399b; the Public Broadcasting Amendments Act of 1981, Pub. L. 97-35, 95 Stat. 725; the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, section 5001, 100 Stat. 117; and the Public Telecommunications Act of 1988, Pub. L. 100-626, 102 Stat. 3207.

2. Section 2301.1 is amended by revising the definition of public telecommunications services to read as follows:

#### § 2301.1 Definitions.

\* \* \* \* \*

<sup>35</sup> Each award will contain a special award condition which requires that: "The grantee will neither use nor allow the NTIA-funded equipment, facilities or programming to be used for purposes the essential thrust of which is sectarian." There are often special award conditions attached to each award which provide conditions on the Federal funds in addition to those required by OMB Circulars. As noted above in n. 30, *supra*, NTIA considers this language to mean the same thing as not allowing the NTIA-funded equipment, facilities or programming to be used for essentially sectarian purposes.

<sup>36</sup> Pub. L. No. 103-317, 1994 U.S.C.C.A.N. (108 Stat.) 1724, 1747; 47 U.S.C. § 390-393.

<sup>37</sup> The special award condition for the TIIAP awards will read as follows: "During the Federal interest period, to the extent that the grantee maintains control over network transmissions, the grantee will neither use nor allow the NTIA-funded network to be used for purposes the essential thrust of which is sectarian." As noted in fn. 35, *supra*, NTIA considers this language to mean the same thing as not allowing the NTIA-funded network to be used for essentially sectarian purposes.