

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

751—1.1(17A,8D) Purpose. The Iowa telecommunications and technology commission and the Iowa communications network were established by Iowa Code chapter 8D to coordinate communications of state government, effect maximum practical consolidation and joint use of communications services and manage, develop, operate and ensure compatibility of the fiberoptic network.

751—1.2(17A,8D) Organization. The commission's structure consists of five commissioners and the state auditor as an ex officio member of the commission. The commission has the sole authority to manage, develop, operate and ensure compatibility of the state communications network. The network is supervised by the commission and operated by the executive director of the network or the commission's designee. The commission has rule-making authority.

751—1.3(17A,8D) Advisory committees.

1. The telemedicine advisory committee performs advisory functions related to the delivery of telemedicine applications.
2. The telecommunications advisory committee provides technical expertise to the network.
3. The commission may establish or dissolve other committees and advisory groups from time to time as necessary.

751—1.4(17A,8D) Education telecommunications council. The education telecommunications council establishes scheduling and site usage policies for educational users of the network, coordinates the activities of the regional telecommunications councils and develops proposed rules and changes to rules for recommendations to the commission. The council also may recommend long-range plans for enhancements needed for educational applications.

The regional telecommunications councils advise the education telecommunications council on the assessment of local educational needs and the coordination of program activities including scheduling.

751—1.5(17A,8D) Administrative elements of the commission.

1.5(1) Executive director. The executive director or the commission's designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission.

1.5(2) Administrative elements. In order to carry out the functions of the commission, the following divisions and offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, maintenance of a circuit database, and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's Web site.

b. The office of the chief financial officer is responsible for final review of the financial books and records prepared by the finance division prior to providing them to the commission, asset inventory and management, personnel transactions, and purchasing and contracting activities, as well as coordination with the attorney general's office for legal counsel.

c. The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, and facilities.

d. The network operations and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. The division is responsible for all operational aspects of the fiberoptic network. The division is also responsible for the technical operation of the fiberoptic network, including research and development, and network systems.

e. The service delivery division coordinates the activities between the engineers, individual sites, and authorized users. The division is responsible for providing cost estimates for services; tracking

service requests; executing installation services; assisting authorized users in finding the best structure to meet the users' needs; developing new products and services; maintaining price tables; and providing customer service and assistance.

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751—1.6(17A,8D) Location of offices.

1.6(1) Main office. The main office is located in the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. The telephone number is (515)725-4692. The toll-free number is 1-877-426-4692. The fax number is (515)725-4727. The E-mail address is ICN.info@iowa.gov. The home page address on the World Wide Web is <http://www.icn.state.ia.us>.

1.6(2) Network. The hub for the network is located in the Joint Forces Headquarters (JFHQ) Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131.

751—1.7(8D) Business hours.

1.7(1) Normal business hours. The normal business hours of the main office are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. The Network Operations Center (NOC) operates on a 24-hour, seven-day-a-week basis at the network hub in the JFHQ Armory in Johnston, Iowa.

1.7(2) Emergency incident reports. The 24-hour emergency telephone number for reporting cable cuts, system failures or other incidents is 1-800-572-3940, or (515)323-4400.

These rules are intended to implement Iowa Code sections 17A.3(1)“a,” 8D.1, 8D.3(3)“b,” 8D.5 and 8D.6.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

751—2.1(17A,22) Purpose and scope.

2.1(1) This chapter implements Iowa Code section 22.11 by establishing commission policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound commission determinations with respect to the handling of records and the implementation of the fair information practices Act. This commission is committed to the policies set forth in Iowa Code chapter 22; commission staff shall cooperate with members of the public in implementing the provisions of that chapter.

2.1(2) This chapter does not:

- a. Require the commission to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the commission which are governed by the rules of another commission.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

751—2.2(17A,22) Definitions. As used in this chapter:

"Commission" means the Iowa telecommunications and technology commission.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the commission is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the commission or a person lawfully delegated authority by its executive director to act for the commission in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the commission from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol or other unique retriever assigned to an individual.

"Subject" means that person identified in a record.

751—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* A request for access to a record should be directed to the executive director or the particular commission office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the executive director at the ICN main office location as listed in 751—subrule 1.6(1). If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person within the commission.

2.3(2) Office hours. Open records shall be made available during all customary office hours which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access unfeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4) or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.4(17A,22) and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from commission files. Examination and copying of commission records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the commission's office. If photocopy equipment is not available in the commission office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests when the imposition of fees is inequitable or when a waiver is in the public interest. Charges for examination or copies requested in writing by a person in a capacity as representative of another governmental entity or where copies are provided under provisions of a written commission contract may be waived.

b. Copying and postage costs. Anyone making a request for reproduction of the commission's records will prepay for services at the following rates, in addition to actual mailing costs:

(1) Photocopies (direct copies on 8½" x 11" or 8½" x 14" paper)—50 cents per page. For direct photocopies on 11" x 17" paper—65 cents per page. The fee for photocopies exceeding 11" x 17" will be reviewed and reasonable fees will be provided to the requester upon determination of the commission's ability to photocopy.

(2) Paper copy from microfilm records—50 cents per page.

(3) Microfiche copy from microfilm records—\$1 per fiche.

(4) The actual reproduction cost will be charged for any blueprint, picture, oral tape or any other work product not subject to photocopying.

(5) Computer-stored information. Tape files—\$100 per file, copied only to 9-track tape with standard IBM labels. Three UP gummed mailing labels and 4 UP Cheshire labels, 30 cents per 1000 records read, and \$10 per 1000 labels written. There will be a \$15 charge for information copied on computer diskette. A minimum charge of \$15 or actual cost will be assessed, whichever is greater. Electronic copies (8½" x 11", 8½" x 14", or 11" x 17") will be provided at no cost. Requests for electronic copies exceeding 11" x 17" will be reviewed and reasonable fees will be provided to the requester upon determination of the commission's ability to transmit and duplicate. Programming time over ten minutes will be charged at the rate of \$25 per hour or any portion of an hour.

c. Supervisory fee. An hourly fee may be charged for actual commission expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in commission offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a commission clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees (\$15 per hour or any portion of one hour) may be charged where appropriate for either paper or electronic copy requests. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

751—2.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.3(17A,22).

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specified period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

751—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from

examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the commission by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the commission does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reason for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

2.5(7) Processing of business confidentiality claims.

a. Applicability/availability. Businesses which provide information to the commission in applications, reports or otherwise in recorded form, or from or about which information is obtained and recorded by the commission, may request that information not be disclosed to others for reasons of business confidentiality. Until such time as a request for confidentiality is received by the commission, the information provided to the commission will be available to the public pursuant to subrule 2.3(3). If a claim is received after the information itself is received, the commission will make such efforts as are administratively practicable to associate the claim with all copies of the previously received information. However, the commission cannot ensure that such efforts will be effective, in light of the possibility of prior disclosure or dissemination of the information beyond the commission's reasonable control.

b. Form. A business which submits information to the commission may assert a business confidentiality claim in the manner prescribed in the application or instruction, if any, otherwise by placing on or attaching to the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." When only a portion of the information is claimed to be confidential, only that portion shall be deleted from the application, report or other recorded submission, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the commission, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of 2.5(7) "c."

A business which has reason to believe that the commission has received information which the business asserts to be confidential may request that such information, described with reasonable specificity, be maintained as confidential, in the same manner as specified above.

c. Contents of claim. All claims for confidentiality must be substantiated with the following information:

(1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;

(2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;

(3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;

(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;

(5) A reference to any other determinations of confidential status of the information or similar information.

d. Initial action by commission. All claims will be reviewed within ten days of receipt for completeness. If the claim does not include the substantiation required by 2.5(7) "c," the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.5(7) "c" is not received by the commission within ten days of the date on the return receipt, the commission will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the commission until further notice. A timely response from the notice under this paragraph will be ruled on by the commission within ten days, based on the compliance with 2.5(7) "c."

e. Initiation of official determination. All claims not rejected under 2.5(7) "d" shall receive an official determination when a request for disclosure covering such information is received by the commission or when the commission deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

f. Substantive criteria for use in confidentiality determinations. Determinations shall hold that business information is entitled to confidential treatment for the benefit of a particular person if:

- (1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;
- (2) The information is not readily obtainable by others by legitimate means;
- (3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;
- (4) No statute or rule specifically requires disclosure of the information; and
- (5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

Prior determinations by the courts, the commission or other agencies on the information or similar information shall be given due consideration and effect.

g. Preliminary determination—opportunity for comment. The commission shall transmit its preliminary determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days, subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request.

h. Final determination. A final decision shall be issued within ten days after the close of the comment period to the preliminary determination. If any substantial comments are received, the final decision shall be made by the executive director or the commission's designee. If no substantial comments are received, the claimant and the person requesting disclosure, if any, shall be notified that the preliminary determination is the final decision.

i. Contested case status. All procedures within this rule shall not be considered contested case proceedings as provided in Iowa Code chapter 17A.

751—2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any commission proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents or objections to the custodian or to the attorney general. The request to review a written statement must be dated and signed by requester and shall include the current address and telephone number of the requester or the requester's representative.

751—2.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the commission to disclose records about that person to the person's attorney.

751—2.8(17A,22) Notice to suppliers of information. When a commission form requests a person to supply information about that person, the commission shall notify the person of the use that will be made of the information, which persons outside the commission might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a

failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

751—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 2.10(17A,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the commission with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.
- c.* To another government commission or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government commission or instrumentality has submitted a written request to the commission specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

751—2.10(17A,22) Routine use.

2.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all commission records:

- a.* Disclosure to those officers, employees and agents of the commission who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action or regulatory order.
- c.* Disclosure to the commission or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the commission.
- d.* Transfer of information within the commission, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the commission is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

751—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to commission disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the commission may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

751—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the commission need not release the following records to the subject:

a. The identity of a person providing information to the commission need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

751—2.13(17A,22) Availability of records.

2.13(1) *General.* Commission records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids;

b. Bids that are opened and only the vendor's name is announced. The proposals will remain confidential until the proposals have been evaluated and the notice of intent to award a contract is made. See Iowa Code section 72.3;

c. Tax records made available to the commission;

d. Records which are exempt from disclosure under Iowa Code section 22.7;

e. Minutes of closed meetings of a government body;

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d";

g. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the commission.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Trade secrets which are recognized and protected as such by law including but not limited to network plans from authorized users.

j. Reports to the commission and the agency which, if released, would give advantage to competitors and serve no public purpose including network redesign and engineering or other research and development working papers for improvement or enhancement of the network.

k. Any data processing software developed by the agency.

l. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The commission may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the commission initially determines that it will release such records, the commission may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

751—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the commission by personal identifier in record systems as defined in rule 2.2(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the commission are:

2.14(1) Payroll and personnel information system.*

2.14(2) Vendor files.

2.14(3) Certificates of insurance for contractors performing work for the commission.

2.14(4) Referrals to the attorney general.

2.14(5) Contract and lease files.

2.14(6) Accounts receivable and accounts payable system.*

2.14(7) Various grant planning files, confidential trade secrets, litigation files.

All of the above-listed records are collected pursuant to the authority of Iowa Code Supplement chapter 8D. All are stored in paper form with those items noted by an asterisk (*) also stored in electronic form. Supplementary records in these categories are stored in paper form or on microfilm or microfiche. None of the information stored can be matched, collated or compared.

751—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the commission other than record systems as defined in rule 2.2(17A,22). These records are routinely available to the public. However, the commission's files of these records may contain confidential information designated as confidential by the originator of the records in conformance with Iowa Code chapter 22. In addition, some records may contain information about individuals. All storage is in paper form with those items noted by an asterisk (*) also stored in electronic form. None of the information can be matched, collated or compared.

2.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Commission records. Agendas, minutes and materials presented to the commission are available from the office of the executive director, except these records concerning closed sessions which are confidential under Iowa Code section 21.5 or which are otherwise confidential by law.

2.15(3) Meeting participants. Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

2.15(4) Publications. News releases, annual reports, project reports, and commission newsletters, for example, are available from the commission offices for public information. Commission news releases, project reports, and newsletters may contain information about individuals, including commission staff or members of the commission, the councils or committees.

2.15(5) *Statistical reports.* Periodic reports for various commission programs are available from the commission offices for public information.

2.15(6) *Published materials.* The commission uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.15(7) *Policy manuals.* The commission's policy manual, containing the policies and procedures for programs administered by the commission, is available in the office of the commission. Policy manuals do not contain information about individuals.

2.15(8) *Asset files.* Asset management database and inventory database contain a listing of the assets owned by the network.*

2.15(9) *Mailing lists/contact lists.* Names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public*, for example, may be used for distribution of informational material, such as newsletters, policy directives or educational bulletins. They are also used to provide contacts for coordination of services or as reference information sources.

2.15(10) *Authorized user lists.* The network maintains a list of persons authorized to use the network.

2.15(11) *Bid/purchasing process.* For example, specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, supply orders, and correspondence.

2.15(12) *Project files.* For example, plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, lease/rental files, and 28E agreements.

2.15(13) *Data processing files.* For example, operations logs, data base user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output forms designations, system software, hardware/software documentation and configurations, problem determinations and resolutions records, and incident reports.

2.15(14) *Administrative records.*

- a. Reports: For example, weekly, monthly, annual, biennial, statistical, analysis, and activity.
- b. Correspondence: For example, public, interdepartmental, and internal.
- c. Policies and procedures.
- d. Organizational charts, and table of authorized positions.
- e. Memberships: Professional/technical organizations.
- f. Planning: Disaster recovery plans, emergency operation plans.
- g. Budget and financial records.
- h. Accounting records such as accounts receivable, accounts payable, receipts, invoices, claims, vouchers, and departmental billings.
- i. Legislative files such as pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.15(15) *Other records.* All other records that are not exempted from disclosure by law are open.

These rules are intended to implement Iowa Code section 22.11, Iowa Code Supplement section 8D.3(3) "b," and 1996 Iowa Acts, House File 2407.

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CHAPTER 3
DECLARATORY ORDERS

751—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa telecommunications and technology commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at the ICN main office location as listed in 751—subrule 1.6(1). A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

751—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The Iowa telecommunications and technology commission may also give notice to any other persons.

751—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the Iowa telecommunications and technology commission.

3.3(3) A petition for intervention shall be filed at the ICN main office location as listed in 751—subrule 1.6(1). Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

 BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

Petition by (Name of Original Petitioner)
 for a Declaratory Order on
 (Cite provisions of law cited in original
 petition).

}

PETITION FOR
 INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

751—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The Iowa telecommunications and technology commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

751—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the ICN main office location as listed in 751—subrule 1.6(1).

751—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa telecommunications and technology commission at the ICN main office location as listed in 751—subrule 1.6(1). Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa telecommunications and technology commission.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 751—4.12(17A).

751—3.7(17A) Consideration. Upon request by petitioner, the Iowa telecommunications and technology commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

751—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 751—4.2(17A).

751—3.9(17A) Refusal to issue order.

3.9(1) The Iowa telecommunications and technology commission shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order.
3. The commission does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other commission or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a commission decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

751—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

751—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

751—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was

based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final commission action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 4 CONTESTED CASES

751—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa telecommunications and technology commission. Contested cases generally include, but are not limited to, appeals of administrative orders issued by the executive director and the withdrawal of an authorized user's right to use the service offered by the commission.

751—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Commission" means the Iowa telecommunications and technology commission, as designated in Iowa Code chapter 8D, as having appellate jurisdiction over a particular matter.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Executive director" means the director or an authorized representative of the commission.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or commission named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge or, under certain circumstances, members of the commission or the entire commission.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire commission did not preside.

751—4.3(17A) Time requirements.

4.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

751—4.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

751—4.5(17A) Notice of hearing.

4.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement

of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the commission, members of the commission, administrative law judge from the department of inspections and appeals); and
- i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 4.6(17A), that the presiding officer be an administrative law judge.

751—4.6(17A) Presiding officer.

4.6(1) In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chair of the commission will determine whether the hearing shall be held before the commission, one or more members of the commission, or an administrative law judge. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission head or members of the commission.

4.6(2) The executive director may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the commission nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an intercommission appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

4.6(3) The executive director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 4.6(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

4.6(4) An administrative law judge assigned to act as presiding officer in telecommunications matters shall have the following technical expertise: must be familiar with telecommunications transactions.

4.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intracommission appeal in order to exhaust adequate administrative remedies.

4.6(6) Unless otherwise provided by law, commission heads and members of multimembered commission heads, when reviewing a proposed decision upon intracommission appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

751—4.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

751—4.8(17A) Telephone or network proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference or on the Iowa Communications Network in which all parties have an opportunity to participate. Other telephone or network proceedings, including the hearing for the contested case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or network hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or network hearing may be assessed equally to each party.

751—4.9(17A) Disqualification.

4.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 4.9(3) and 4.23(9).

4.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.25(17A) and seek a stay under rule 4.29(17A).

751—4.10(17A) Consolidation—severance.

4.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

751—4.11(17A) Pleadings.

4.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

4.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

751—4.12(17A) Service and filing of pleadings and other papers.

4.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the executive director of the commission at the ICN main office location as listed in 751—subrule 1.6(1). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ICN main office location as listed in 751—subrule 1.6(1), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Telecommunications and Technology Commission at the ICN main office location as listed in 751—subrule 1.6(1) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

751—4.13(17A) Discovery.

4.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

751—4.14(17A) Subpoenas.

4.14(1) Issuance.

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

751—4.15(17A) Motions.

4.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.15(3) The presiding officer may schedule oral argument on any motion.

4.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

4.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 4.28(17A) and appeal pursuant to rule 4.27(17A).

751—4.16(17A) Prehearing conference.

4.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive director to all parties. For good cause the presiding officer may permit variances from this rule.

4.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.16(3) In addition to the requirements of subrule 4.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

751—4.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.17(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

751—4.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

751—4.19(17A) Intervention.

4.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.19(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

751—4.20(17A) Hearing procedures.

4.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.20(2) All objections shall be timely made and stated on the record.

4.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.20(6) Witnesses may be sequestered during the hearing.

4.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

751—4.21(17A) Evidence.

4.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

751—4.22(17A) Default.

4.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 4.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause

existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 4.25(17A).

4.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

4.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 4.29(17A).

751—4.23(17A) Ex parte communication.

4.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 4.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not

disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.23(1).

4.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 4.17(17A).

4.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

751—4.24(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

751—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

751—4.26(17A) Posthearing procedures and orders.

4.26(1) *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

4.26(2) *Final decision or order.*

a. When a quorum of the entire commission presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of commission members constituting less than a quorum of the board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within 30 days.

4.26(3) Decisions and orders.

a. *By whom prepared.* The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. *Content of decision or order.* The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed finding of fact in accordance with subrule 4.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. *Delivery.* A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

751—4.27(17A) Appeals and review.

4.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.27(2) Review. The commission member of the commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a commission member or the commission initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.27(5) Scheduling. The commission shall issue a schedule for consideration of the appeal.

4.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

751—4.28(17A) Applications for rehearing.

4.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the commission decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.27(4), the applicant requests an opportunity to submit additional evidence.

4.28(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

751—4.29(17A) Stays of commission actions.

4.29(1) *When available.*

a. Any party to a contested case proceeding may petition the commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commission may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

4.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—4.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

751—4.31(17A) Emergency adjudicative proceedings.

4.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the commission may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before issuing an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the commission's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the commission;

(3) Certified mail to the last address on file with the commission;

(4) First-class mail to the last address on file with the commission; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the commission shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

751—4.32(17A,8D) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may request a meeting with appropriate staff. The request should be made in writing to the executive director, setting forth a concise statement of the circumstances giving rise to the controversy, the text or citation to any applicable law, commission rule, or decision, and a statement of the settlement proposed. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the commission meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the commission's disposition of the request. If the commission determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 4.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 4.5(17A).

These rules are intended to implement Iowa Code chapters 8D and 17A.

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CHAPTER 5
PURCHASING

751—5.1(8D) Applicability of competitive bidding.

5.1(1) The commission shall use competitive bidding to purchase goods and services from private agencies when the estimated annual value of the contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000, unless there is adequate justification for a sole-source procurement pursuant to subrule 5.1(2) or another provision of law.

a. When the estimated annual value of the contract is equal to or greater than \$5,000, but less than \$50,000, or the estimated value of the multiyear contract in the aggregate, including any renewals, does not exceed \$150,000, the commission, in its sole discretion, shall use either a formal or informal competitive selection process to procure the goods or services.

b. When the estimated annual value of the contract is equal to or greater than \$50,000 or the estimated value of the multiyear contract in the aggregate, including any renewals, exceeds \$150,000, the commission shall use a formal competitive bidding process to procure the goods or services.

c. For any single item, the commission may spend up to the maximum amount permitted by Iowa Code Supplement section 8D.11 to acquire the item. This maximum amount is not applicable to purchases under the contracting authority permitted by Iowa Code section 8D.13 or any other authority of the commission.

5.1(2) The commission shall avoid sole-source procurements unless clearly necessary and justifiable. The commission may purchase goods or services using a sole-source procurement under the following circumstances:

a. The executive director or commission's designee determines that one vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the goods or perform the services; or

b. The goods or services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

c. The commission is hiring the services of experts, advisors, counsel, or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

d. The federal government or other provider of funds for the service being purchased, other than the state of Iowa, has imposed clear and specific restrictions on the commission's use of the funds in a way that restricts the commission to only one service provider; or

e. Applicable law requires, provides for, or permits the use of a sole-source procurement; or

f. There is an immediate or emergency need for the item or service; or

g. The item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties; or

h. The executive director or the commission's designee determines that the best interests of the commission will be served by exemption from the bidding process.

5.1(3) When the annual value of the contract exceeds \$5,000 or when the estimated value of the multiyear contract in the aggregate, including renewals, is equal to or greater than \$15,000, the commission shall complete a sole-source justification form. The executive director or the executive director's designee shall sign the sole-source justification form.

751—5.2(8D) Methods of obtaining bids or proposals used by the commission. The commission shall obtain bids or proposals by one of the following methods. If more than one method is applicable to the purchase of a particular item, the commission shall choose the method of bidding to be utilized.

For any method used, the commission may provide notice of the solicitation electronically and vendors may submit proposals electronically unless the bidding documents provide otherwise.

5.2(1) *Formal invitations to bid.*

a. A formal invitation to bid may be required for any item if cost is the major criterion for selection. Other criteria may also be used, provided that the commission describes the criteria in the bid documents. The commission shall prepare a written invitation-to-bid form and shall transmit the form either by mail, electronically, or digitally to selected vendors in the business of providing the goods or services sought by the commission.

b. The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items. The price quoted by the vendors shall remain binding throughout the applicable time period.

5.2(2) *Informal selection process.*

a. The commission may use an informal selection process when permitted by rule 5.1(8D). An informal selection process is a streamlined competitive bidding process in which the commission makes an effort to contact at least three prospective vendors to solicit bids or proposals to provide the goods or services sought by the commission. Informal bids or proposals may be obtained by the commission through use of a written bid form faxed or mailed to selected vendors, E-mail, posting a notice on the commission's Web site and inviting bids or proposals electronically or over the telephone.

b. Written informal bids and proposals shall be opened as received, and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If a bid is received by E-mail, the E-mail shall be printed or stored in a secure electronic format so that the bid can be retrieved and read in machine-readable form. The information contained in the E-mail shall be recorded on a form similar to the telephone bid form. If an informal bid is received by fax, the information on the fax shall be recorded on a form similar to the form used for telephone bids.

5.2(3) *Formal requests for proposals.*

a. Whenever a requirement exists for an item and cost may not be the sole criterion for selection and rule 5.1(8D) requires the commission to conduct a formal competitive selection process, the commission shall issue a formal request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the commission's requirements and goals to allow the vendor to propose a solution to the commission's requirements.

b. The terms quoted by the vendor shall remain binding throughout the applicable time frame.

c. The commission may request best and final offers as part of the request-for-proposal process.

5.2(4) *Auctions and reverse auctions.*

a. The commission may purchase items at auction when the auction is conducted electronically, digitally or otherwise. For any single item, the commission may spend up to the maximum amount permitted by Iowa Code section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2, to acquire the item. However, the commission shall not make a bid for any item for which the bid price at the auction exceeds the reasonable market price of an item. The commission shall perform a market analysis prior to the auction to determine the market price for items available by auction. The commission shall retain the market analysis with any other documentation for the purchase of the item at the auction.

b. The commission may purchase items using a reverse auction. A reverse auction is a price negotiation technique using secure Internet-based technology. This technique involves posting a requirement on an Internet site accessible by the public that allows vendors to post bids publicly. The buyer offers to purchase a product or service for a maximum amount (reserve price), and then the sellers or suppliers bid down the purchase price the buyer will actually pay for fulfillment. Vendors are able to see the current bids (but not the identity of the bidders) and post new or revised bids that are lower, thus increasing competition. When the commission conducts a reverse auction, the following requirements shall be met:

(1) The invitation to bid or the request for proposals shall provide notification of the intent to use the reverse auction process and provide instructions for participating in that process. The bidding documents

shall also provide notification that a bidder's consent to disclosure of the bidder's bid price as part of the auction process is required in order to participate.

(2) The commission shall determine the specifications and requirements of the items to be acquired.

(3) The commission shall identify and provide notice to potential vendors concerning the proposed acquisition.

(4) The commission shall establish prequalification requirements to be met by a vendor in order to be eligible to participate in the reverse auction. The prequalification requirements shall be included in the bidding documents.

(5) Prior to conducting a reverse auction, the commission shall establish a threshold amount, which shall be the maximum amount that the commission is willing to pay for the items to be acquired.

(6) Evaluation factors other than price shall be clearly listed and explained. The commission may direct bidders to supply technical proposals or other information in order to evaluate other factors and to use the reverse auction only as a price negotiation tool.

(7) The commission shall set the time of the auction.

(8) The commission shall establish minimum bid decrements.

(9) The commission shall establish the currency for the offering of bids.

(10) The commission shall establish the language for the bids.

(11) The commission may purchase additional quantities of the item if there are additional funds left at the end of the auction. The commission shall purchase additional quantities from the successful vendor.

751—5.3(8D) Items purchased through the department of administrative services. Goods and services may be obtained by the commission through the department of administrative services whenever procurement through administrative services is appropriate and in the best interests of the commission. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

751—5.4(8D) Notice of bids or requests.

5.4(1) The commission shall post solicitations of formal bids or requests on the commission's Internet Web page.

5.4(2) The commission expressly adopts 11 IAC 105.7(1) and shall enforce the notice requirements and consequences for insufficient notice contained therein.

5.4(3) All contracts of the commission shall comply with the legal notice requirements relating to targeted small businesses.

751—5.5(8D) Contract purchases. The commission may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable. The commission may also purchase items from other contracts obtained by other governmental entities if the law or the contract allows.

751—5.6(8D) Blanket purchase agreements. If the commission foresees a requirement for frequent purchases of off-the-shelf items, the commission may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

751—5.7(8D) Prospective vendor selection.

5.7(1) Any firm or business legally transacting business within Iowa at the time the contract for goods or services is executed, may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the commission. The commission may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor which the commission chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons:

- a. Failure to respond to three consecutive solicitations;
- b. Failure to deliver within specified delivery dates;
- c. Failure to deliver in accordance with specifications;
- d. Attempts to influence the decision of any state employee involved in the procurement process;
- e. Evidence of agreements by the vendor to restrain trade or impede competitive bidding;
- f. Any other activities of the vendor which the commission determines would render the vendor unsuitable; and
- g. Failure to pay subcontractors.

5.7(2) The executive director shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the executive director. If the executive director ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the executive director's action to the commission pursuant to the criteria for vendor appeals contained in these rules.

5.7(3) The commission shall select vendors to receive solicitation documents based on the commission's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the commission. The commission shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

751—5.8(8D) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the commission. Bids and proposals which do not conform to the specifications stated may be rejected. The commission reserves the right to waive deficiencies in the bids or proposals if in the judgment of the commission the best interests of the commission would be served by the waiver.

751—5.9(8D) Time of delivery. When evaluating bids or proposals the commission may consider the time of delivery when determining the successful vendor.

751—5.10(8D) Cash discounts. When evaluating bids or proposals the commission may consider cash discounts.

751—5.11(8D) Tie bids. The commission shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. An Iowa business is a resident of the state of Iowa. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the commission shall document the drawing.

751—5.12(8D) Time of submission. Vendors shall submit all formal bids and proposals in sufficient time to actually reach the commission prior to the date and time set for the opening of the bids or proposals. Vendors shall submit all informal bids in time to reach the commission prior to the time specified by the commission. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. The commission shall notify all vendors to which invitations to bid or requests for proposals were sent of any changes in the time of submission. If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals, the commission shall return unopened any responses already received. If an informal invitation to bid is canceled prior to the time set for receiving bids, the commission shall destroy any bids already received.

751—5.13(8D) Modification or withdrawal of bids or proposals. Vendors may modify or withdraw bids or proposals prior to the time and date set for the bid or proposal opening. Modifications or

withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. Vendors may withdraw a bid or proposal after opening only with the approval of the commission if the commission finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the commission.

751—5.14(8D) Financial security. The commission may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, cashier's check, certificate of deposit, or letter of credit made payable to the commission, or any other form specified by the commission.

751—5.15(8D) Rejection of bids and proposals. The commission reserves the right to reject any or all bids or proposals. The commission may reject bids and proposals because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the commission's requirements, insufficient evidence of a vendor's financial capability to perform the contract, or for any other reason if the commission determines that the best interests of the commission will be served by rejecting any or all bids. Following the rejection of bids or proposals, the commission may request new bids or proposals at any time deemed convenient by the commission.

751—5.16(8D) Background and informational statements. Bidders may be required to describe their organizational structure, to identify key personnel and to submit personnel to criminal history checks and background investigations. Any changes in key personnel during the bidding process or during the contract term must be reported to the commission before the change occurs.

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and that is aggrieved by the commission's notice of intent to award may appeal the decision by filing a written notice of appeal before the Iowa telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays. The commission's address is listed in 751—subrule 1.6(1). The commission must actually receive the notice of appeal at this address within the specified time frame to be considered timely. The notice shall state the following:

1. The relief demanded and the facts and law relied upon for relief;
2. The particular provisions of the statutes and rules involved with specific reference to the grounds identified in Iowa Code section 17A.19(10);
3. On whose behalf the petition is filed; and
4. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

751—5.18(8D) Procedures for vendor appeal. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with 751 IAC 4, unless the provisions of this rule provide otherwise.

5.18(1) Hearing. Upon receipt of a notice of vendor appeal, the commission shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 45 days of the date the notice of appeal was received by the commission.

5.18(2) Discovery. The parties shall serve any discovery requests upon the other parties at least 20 days prior to the date set for hearing. The parties must serve responses to discovery at least 10 days prior to the date set for the hearing.

5.18(3) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

5.18(4) Evidence for a telephone or network hearing. If the hearing is conducted by telephone or on the fiberoptic network, the parties must deliver all exhibits to the office of the presiding officer three days

prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

5.18(5) Contents of decision. The administrative law judge shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

5.18(6) Record requirements. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least five years from the date of the proposed decision.

5.18(7) Dismissal. A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

5.18(8) Stay of agency action for vendor appeal.

a. When available.

(1) Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the commission which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the executive director within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

b. When granted. The presiding officer or commission, as appropriate, shall grant a stay when it concludes that the movant has satisfied the standards for the grant of a stay included in 751—subrule 4.29(2).

c. Vacation. A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—5.19(8D) Review of proposed decision.

5.19(1) The proposed decision shall become the final decision of the commission 15 days after mailing of the proposed decision, unless prior to that time a party submits an appeal from, or a commission member requests a review of the proposed decision.

5.19(2) A party appealing the proposed decision shall mail a copy of the notice of an appeal to all other parties. If a commission member requests a review of the proposed decision, the commission will mail a copy of the request for review to all parties. Within 15 days after mailing of a notice of appeal or of a request for review, any party may submit to the commission (in an original and eight copies) exceptions to and a brief in support of or opposition to the proposed decision, copies of which exceptions or brief shall be mailed by the submitting party to all other parties to the proceeding. The executive director shall notify the parties if the commission deems oral arguments by the parties to be appropriate. The executive director will schedule review of the proposed decision at the next commission meeting occurring not less than 30 days after mailing of the notice of appeal or request for review.

5.19(3) A party appealing a proposed decision shall mail or deliver the notice of appeal to the executive director of the Iowa telecommunications and technology commission at the ICN main office

location as listed in 751—subrule 1.6(1). Failure to request review will preclude judicial review unless the commission reviews a decision on its own motion. Notice of the review will be sent to all parties participating in the appeal.

5.19(4) The commission shall review the proposed decision based on the record and limited to issues raised in the hearing. The commission shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues shall be specified in the party's request for review. The party seeking review shall be responsible for transcribing any tape of the proceeding before the presiding officer and file the transcript as part of the record for review. The party seeking review shall bear the cost of the transcription regardless of the method used to transcribe the tape.

5.19(5) Each party shall have opportunity to file exceptions to the proposed decision and to present briefs in support of or in opposition to the proposed decision. The commission may set a deadline for submission of briefs. When the commission consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

5.19(6) Requests for rehearing shall be made to the commission within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

5.19(7) Judicial review of the commission's final decisions may be sought in accordance with Iowa Code section 17A.19.

751—5.20(8D) Purchasing cooperative or consortium.

5.20(1) Membership. The commission may join a purchasing cooperative or consortium composed of public or private entities, or both, for the purpose of reducing overall telecommunications business costs for the commission and its authorized users.

5.20(2) Prior to joining a purchasing cooperative or consortium, the commission shall review membership obligations to ensure that the commission's membership obligations are not inconsistent with the laws and rules governing the commission.

5.20(3) Notwithstanding the provisions of subrules 5.20(1) and 5.20(2), the commission may purchase goods and services through the cooperative or consortium without conducting a separate competitive bidding process so long as the cooperative or consortium uses or used a competitive bidding process or procedure.

These rules are intended to implement Iowa Code sections 8D.3(3) "b" and 8D.11.

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CHAPTER 6
CONTRACTS FOR PROFESSIONAL SERVICES

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CHAPTER 7
AUTHORIZED USE AND USERS

751—7.1(8D) Definitions. For the purposes of interpreting these rules, the following definitions are applicable.

“Authorized facility” means a site operated by an authorized user that is consistent with the written mission of the authorized user.

“Authorized use” means use of the network by an authorized user or by persons acting on behalf of an authorized user as provided in this chapter for the following purposes of the authorized user: (1) state or federal communications as defined in this chapter; (2) education or educational purposes as defined in this chapter; (3) training programs provided under state law and training programs developed by authorized users; (4) telemedicine or related purposes as defined in this chapter; (5) official governmental use by a state agency or a federal agency as defined in this chapter consistent with authorized purposes under applicable state or federal law; (6) establishing and operating a shared data only network for law enforcement, emergency management, disaster services, emergency warning and other emergency information dissemination services to federal, state and local law enforcement agencies and local emergency management offices; or (7) city of Des Moines.

“Authorized user” means a private or public agency except for a public or private agency which was required pursuant to Iowa Code section 8D.9(1) to certify to the commission not later than July 1, 1994, of the agency’s intent to become a part of the network and which did not provide such certification. Agencies that obtain legislative approval to join the network after July 1, 1994, will be treated as a public or private agency for purposes of this definition and all provisions of Iowa Code chapter 8D.

“Commission” means the Iowa telecommunications and technology commission.

“Dial-up access” means the ability of an authorized user using technical or mechanical means to access a computer network using a telecommunications facility and modem.

“Direct connection” means a connection to the network by an authorized facility using owned, leased or contracted telecommunications facilities.

“Educational use” means a use that is within the written mission of an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, an institution under the control of the board of regents, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, and a county library as provided in Iowa Code chapter 336.

“Federal agency” means each board, commission, department, or agency of the executive, legislative, and judicial branches of the United States, or the U.S. Post Office which receives a federal grant for pilot or demonstration projects or the independent establishments and corporations of the federal government as identified from time to time in The United States Government Manual, the official handbook of the federal government, published on an annual basis by the Office of the Federal Register as a special edition of the Federal Register. The Manual includes comprehensive information on the agencies of the legislative, judicial, and executive branches. The Manual also includes information on quasi-official agencies; international organizations in which the United States participates and boards, commissions and committees of the federal government. For example, independent establishments and corporations may include the following:

- Central Intelligence Agency
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Defense Nuclear Facilities Safety Board
- Environmental Protection Agency
- Export-Import Bank of the United States
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- Federal Election Commission
- Federal Emergency Management Agency
- Federal Reserve System

Federal Trade Commission
Federal Trade Commission's Consumer Line
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Railroad Passenger Corporation (Amtrak)
National Science Foundation
Nuclear Regulatory Commission
Peace Corps
Pension Benefit Guaranty Corporation
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Social Security Administration
Tennessee Valley Authority
United States Arms Control and Disarmament Agency
United States Information Agency
United States International Development Cooperation Agency
United States International Trade Commission
United States Postal Service
United States Trade Representative

"Internet access" means access to the Internet and its successors.

"Internet service provider" means a private for-profit or a not-for-profit service provider who acts as a gateway to the Internet and its successors.

"Library" means a city library, a regional library as provided in Iowa Code chapter 256, or a county library as provided in Iowa Code chapter 336, or a library that is part of an authorized user facility and which may be a center for lifelong learning within a community, provides equity of access to information and publications in all formats whether actually stored at the library or off site, to enhance the lives of its customers regardless of age, color, creed, national origin, race, religion, marital status, gender, physical disability or familial status, economic or social status, or location, and is a place for people to gather for meetings, classes and discussion groups.

"Network" means the Iowa communications network, the fiberoptic network owned and leased by the state of Iowa and operated by the commission.

"Part I" means the communications connections between the central switching hub of the network located at joint forces headquarters (JFHQ) armory and the 15 community colleges, the universities governed by the board of regents and Iowa public television and the other regional switching centers for the remainder of the network. These are state-owned facilities.

"Part II" means the communications connections between the Part I regional switching centers and each of the 99 counties located in the state. These are state-owned facilities.

"Part III" means the communication connections between the secondary switching centers and the school districts and libraries and any other private or public agency authorized by the general assembly to connect to the network. Part III consists of primarily leased equipment and telecommunications facilities except that some sites are owned by the state as designated by the general assembly.

"Person" means an individual, corporation, limited liability company, or any other legal entity.

"Private agency" means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, a hospital licensed pursuant to Iowa Code chapter 135B or a physician clinic to the extent provided in Iowa Code section 8D.13, subsection 16, or the Iowa Hospital Association.

“*Public agency*” means a state agency, an institution under the control of the board of regents, the judicial department as provided in Iowa Code section 8D.13, subsection 17, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, a county library as provided in Iowa Code chapter 336, or a judicial district department of correctional services established in Iowa Code section 905.2 to the extent provided in Iowa Code section 8D.13, subsection 15, an agency of the federal government, or a U.S. Post Office which receives a federal grant for pilot and demonstration projects. “Public agency” also includes any homeland security or defense facility or disaster response agency established by the administrator of the homeland security and emergency management division of the department of public defense or the governor, or any facility connected with a security or defense system or disaster response as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

“*Requesting authorized user*” means an authorized user initiating a network video scheduling request regardless of the specific site from which the event originates.

“*School*” means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, an institution under the control of the board of regents, or a school corporation.

“*State agency*” means each board, commission, or department of the executive, legislative, or judicial branches of the state of Iowa and other entities created or authorized by the general assembly.

“*State communications*” refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

“*Telecommunications facility*” means a collection of fibers which originates at an access point and ends at the fiberoptic termination connector attached to other electronic and optronic equipment necessary to transmit voice, video or data transmissions across the fiberoptic network.

“*Telemedicine*” means use of a telecommunications system for diagnostic, clinical, consultative, data, and educational services for the delivery of health care services or related health care activities by licensed health care professionals, licensed medical professionals, and staff who function under the direction of a physician, a licensed health care professional, or hospital for the purpose of developing a comprehensive, statewide telemedicine network or education.

751—7.2(8D) Internet access provided by the network. The commission may offer Internet access to authorized users as permitted by these rules as one of the services of the network.

751—7.3 Reserved.

751—7.4(8D) Authorized facility connectivity. The following facilities used by authorized users shall be permitted to connect directly to the network.

7.4(1) Educational facilities. The following educational facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

- a. Public or private K-12 schools;
- b. Public or private school administration facilities;
- c. Area education agencies;
- d. Local school board offices;
- e. Accredited private nonprofit colleges or universities eligible for tuition grants;
- f. Regents facilities;
- g. Community colleges;
- h. Off-site, dedicated classrooms, wherever located;
- i. Iowa law enforcement academy;
- j. University-affiliated research facilities.

7.4(2) State agency facilities. The following state agency facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

- a. State departments, agencies, and field offices;
- b. Iowa National Guard facilities;
- c. Judicial branch facilities;
- d. Community-based correction facilities;
- e. Buildings owned or leased by the state;
- f. Iowa state fairgrounds;
- g. Legislative branch facilities.

7.4(3) Federal government facilities. The following federal agency facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

- a. Federal departments and agencies including regional, territorial, zone and state offices;
- b. Federal judicial branch facilities;
- c. Federal legislative branch facilities;
- d. Buildings owned or leased by the federal government.

7.4(4) U.S. Post Office. A U.S. Post Office may have a direct connection to the network for voice, video and data transmissions if it receives a federal grant for a pilot or demonstration project.

7.4(5) Telemedicine connectivity.

a. The following telemedicine facilities may connect directly to the network for video and data transmissions including Internet access.

- (1) Hospitals licensed pursuant to Iowa Code chapter 135B;
- (2) Physician clinics to the extent provided in Iowa Code section 8D.13(16).
- b. Access is offered to the Iowa Hospital Association for the purposes of collection, maintenance, and dissemination of health and financial data for hospitals and for hospital education services.

7.4(6) Library connectivity. The following libraries may connect to the network for voice, video and data transmissions including Internet access.

- a. City public libraries;
- b. Regional public libraries as provided in Iowa Code chapter 256;
- c. County libraries as provided in Iowa Code chapter 336.

7.4(7) County and local government facilities. The following county and local government facilities may have a direct connection to the network for voice, video and data transmissions including Internet access.

- a. County courthouses or other state judicial facilities to the extent the courthouse or other state judicial facilities are used by state judicial branch employees or its vendors or service providers;
- b. The city of Des Moines governmental facilities.

7.4(8) Emergency services for county and local government facilities. The following facilities may be connected to the network for data transmissions only:

- a. Emergency management facilities;
- b. Federal, state and local enforcement agency facilities as provided in Iowa Code section 80.9;
- c. Disaster services sites or facilities;
- d. Emergency warning sites, facilities, or telecommunications facilities;
- e. Other emergency information dissemination service sites, facilities, or telecommunications facilities;
- f. Local emergency management offices established under the authority of Iowa Code sections 29C.9 and 29C.10.

751—7.5(8D) Use or access to all services. The following persons may use or access the network for voice, video and data transmissions including Internet access that exist or may be available in the future at the facility of an authorized user if the use is consistent with the written mission of the authorized user allowing access to the network at its site:

1. All students;
2. Faculty and educational staff;
3. Educational board members and staff;
4. School foundation members;

5. Alumni organization members;
6. State and federal employees;
7. State and federal members of boards, commissions, councils, advisory groups and committees;
8. State and federal elected officials;
9. State and federal appointed officials;
10. State and federal judges, judiciary employees, administrative law judges, associate judges, magistrates, referees, mediators and participants;
11. State and federal judicial board or commission members;
12. Employees of the city of Des Moines;
13. Community-based corrections employees;
14. Library employees or volunteer staff members;
15. Library board and staff members;
16. Library users.
17. Persons under the care, control or custody of the department of corrections, judicial district department correctional services, the department of human services, or their agents serving persons under the care, control or custody of the agent.

751—7.6(8D) Use or access to voice and data services. The following persons may use or access the network for voice and data transmissions including Internet access that exists or may be available in the future at the facility of an authorized user if the use is consistent with the written mission of the authorized user and the person or persons are acting on behalf of the authorized user:

1. Alumni of educational institutions;
2. Educational member associations;
3. Parent-teacher organizations, for example, parent-teacher associations, home and school associations;
4. Professional boards where educational employees serve, for example, a university professor serves on the board of the Iowa Association of Economists;
5. State and federal government-sponsored entity employees, for example, Federal Home Loan Bank Board employees, Federal Deposit Insurance Corporation employees;
6. Vendors and service providers;
7. State or federal governmental association members;
8. State or federal governmental employee union members;
9. Other state governmental employees;
10. Professional boards where state or federal employees serve, for example, state employees serving on the Association of Business and Industry;
11. City and county employees;
12. Local elected officials;
13. Local boards, commissions, advisory councils or committees;
14. Fire department employees and staff whether paid or volunteer;
15. Local government associations, for example, League of Cities, ISAC.

751—7.7(8D) Use or access to full motion interactive video services—prerequisites. The full motion interactive video services may be used by certain persons and entities if the use meets the following conditions:

1. The use is within the requesting authorized user's written mission; and
2. A representative of the authorized user is present and participating in the session; or
3. The authorized user has a written contract with the person accessing the network; and
4. The use does not facilitate or enable a private person or entity to use the network for direct pecuniary gain.

7.7(1) Use or access to full motion interactive video services. The following persons may access the network for video transmissions at the facility of an authorized user if the use satisfies the conditions outlined above:

- a. Alumni of educational institutions;
- b. Educational member associations;
- c. Parent-teacher organizations, for example, parent-teacher associations, home and school associations;
- d. Professional boards where educational employees serve, for example, a university professor serves on the board of the Iowa Association of Economists;
- e. State and federal government-sponsored entity employees, for example, Federal Home Loan Bank Board employees, Federal Deposit Insurance Corporation employees;
- f. Vendors and service providers;
- g. State or federal governmental association members;
- h. State or federal governmental employee union members;
- i. Other state governmental employees;
- j. Professional boards where state or federal employees serve, for example, state employees serving on the Association of Business and Industry;
- k. City and county employees;
- l. Local elected officials;
- m. Local boards, commissions, advisory councils or committees;
- n. Fire department employees and staff whether paid or volunteer;
- o. Federal, state and local law enforcement employees and staff;
- p. Emergency management employees and staff;
- q. County sheriff's office employees and staff;
- r. Local government associations, for example, League of Cities, ISAC;
- s. Patients acting under the direction of a licensed health care professional;
- t. Health care employees of facilities that have a contractual agreement with a hospital or physician clinic;
- u. Health care employees of facilities that do not have a contractual agreement with a hospital or physician clinic;
- v. Medical association members, for example, members of the Association of Iowa Hospitals and Health Systems, members of Iowa Medical Society, members of the Iowa Osteopathic Medical Association, members of the Iowa Chiropractic Society, members of the Iowa Nurses Association;
- w. Professional boards on which health professionals serve, for example, a physician serving on the board of the American Cancer Society.

7.7(2) Reserved.

751—7.8(8D) Use or access for home-schooled students with dual enrollment. A home-schooled student with dual enrollment may use the ICN at the school district at which the student is enrolled subject to a written local school district policy for serving home-schooled students with dual enrollment.

751—7.9(8D) Use or access for U.S. Post Office employees. U.S. Post Office employees acting under a contractual pilot or demonstration project may use or access the voice, data, and video services of the network including Internet access if the use or access is part of an authorized or contractual pilot or demonstration project.

751—7.10(8D) Use or access by shared data network users. The following persons may use or access the shared data network described in Iowa Code section 8D.13(19) if the use is for the purpose of establishing and operating a shared data only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in Iowa Code section 80.9, and local emergency management offices established under the authority of Iowa Code sections 29C.9 and 29C.10:

- 1. Federal, state or local law enforcement personnel;
- 2. Emergency management personnel;

3. Disaster management site and facility personnel;
4. Other emergency information dissemination personnel;
5. Local emergency management personnel.

751—7.11(8D) Use or access to telemedicine users. The following persons and entities may use or access the network for data and video services including access to the Internet if the use is for telemedicine or educational purposes:

1. Licensed health care professionals or licensed health care professionals who function under the direction of or in collaboration with a physician or a hospital, or both, for example, other doctors, students, nurses, physician's assistants, therapists, clinical social workers, psychologists;
2. Hospital or physician clinic staff members;
3. Professional boards on which health professionals serve, for example, a nurse serving on the board of the American Cancer Society;
4. Patients acting under the direction of a licensed health care professional;
5. Health care employees of facilities that have a contractual agreement with the hospital or physician;
6. Health care employees of facilities that do not have a contractual agreement with the hospital or physician clinic;
7. Employees of health care associations for various health care employees, for example, Association of Iowa Hospitals and Health Systems, Iowa Medical Society, Iowa Osteopathic Medical Association, Iowa Chiropractic Society, Iowa Nurses Association;
8. Professional board members where a health care professional serves as a member of a board, for example, a physician serving on the board of the American Cancer Society.

This chapter is intended to implement Iowa Code sections 8D.2, 8D.3(1), 8D.3(3) "b," and 8D.13(14) to 8D.13(17).

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CHAPTER 8 SCHEDULING DISPUTES

751—8.1(8D) Definitions. For the purposes of interpreting the rules in this chapter, the following additional definitions are applicable.

“*Challenge*” means a dispute regarding a scheduled and validated video session.

“*Scheduling conflict*” shall exist when the number of authorized users requesting the use of network facilities or services at a given time or location exceeds the network facilities or services then available. A dispute arising over scheduling shall not be a contested case proceeding.

751—8.2(8D) Role of education telecommunications council. The education telecommunications council is responsible for establishing scheduling and site usage policies for educational users of the network, subject to the approval of the commission. The education telecommunications council shall establish conflict resolution policies for educational users, subject to the approval of the commission, to resolve scheduling disputes. In the event that an affected party challenges an education telecommunications council decision or in the event that a scheduling conflict exists between educational users and other authorized users, the commission or the commission’s designee shall resolve the dispute or challenge.

751—8.3(8D) Role of administrative telecommunications advisory council. The administrative telecommunications advisory council is responsible for establishing scheduling and site usage policies for noneducational users of the network, including libraries, subject to the approval of the commission. The administrative telecommunications advisory council shall establish conflict resolution policies for noneducational users subject to the approval of the commission to resolve scheduling disputes.

751—8.4(8D) Factors for decision maker. In the event that a challenge exists the chair of the commission or the executive director, or the commission’s designee (decision maker) shall decide which authorized user or users shall be granted use of the network facilities or services available at the time requested. In making such a decision, the decision maker shall consider all relevant factors known to the decision maker including, but not limited to, the following factors:

1. Timing of request;
2. Regional telecommunications council and education telecommunications council policies if conflict involves educational users;
3. Nature, frequency or duration of the use requested;
4. Site availability;
5. Number of users requesting use;
6. Whether the use is an educational use;
7. Any other factor deemed relevant by the decision maker based upon the evidence presented or information available.

751—8.5(8D) Summary determination for decision maker. In the event a challenge must be resolved in less than 24 hours, the decision maker shall consider the factors in rule 8.4(8D) and shall decide which authorized user or users shall use the authorized facility. No oral testimony shall be taken. The decision of the decision maker shall be final and shall constitute other agency action.

751—8.6(8D) Decision by decision maker. In the event a challenge can be resolved without a summary determination, the decision maker shall consider the factors identified in rule 8.4(8D). No oral testimony shall be taken. The decision maker shall prepare a memorandum regarding the conflict. The memorandum shall identify the authorized user or users involved, the nature of the scheduling conflict, the decision maker’s decision, the factors considered by the decision maker and the reasons for the decision. The memorandum shall be created within 24 hours after the decision is made and shall be maintained by the decision maker for at least 12 months after the decision is made. A copy of the memorandum shall be faxed and mailed to each authorized user affected by the decision. The

memorandum shall include a notice regarding the time within which an aggrieved party may appeal with filing instructions included in the notice.

751—8.7(8D) Notice of appeal. Any authorized user affected by the decision regarding a scheduling conflict may appeal that decision to the commission by filing written notice of appeal thereof either by fax, hand delivery or by regular or overnight mail with the decision maker within five days after the authorized user receives a copy of the decision. The notice of appeal shall identify the decision in question and the authorized user making the appeal.

751—8.8(8D) Documents supporting appeal. Within ten days following filing of the notice of appeal, the aggrieved party shall file with the decision maker a written statement of evidence identifying all reasons or evidence upon which the authorized user relies in support of its appeal. The aggrieved party may attach to the statement of evidence any documents or information which the user wishes to submit, provided that no more than 25 pages of attachments shall be submitted unless the aggrieved party obtains permission of the commission to attach additional documentation for good cause shown. The commission or the commission's designee may decide whether to hear oral arguments by the parties.

751—8.9(8D) Decision of commission. Within seven days after the statement of evidence is filed, the commission or the commission's designee shall file a written appeal decision affirming, reversing or modifying the decision of the decision maker regarding the scheduling conflict.

751—8.10(8D) Final agency action. The appeal decision shall state the factors considered by the commission and the reasons for the decision. The decision shall be delivered to each authorized user affected by the decision. The appeal decision shall constitute final agency action for the purposes of Iowa Code chapter 17A.

This chapter is intended to implement Iowa Code sections 8D.3(3) "b," 8D.3(3) "c" and 8D.8.

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CHAPTER 9
REQUESTS FOR WAIVER
OF NETWORK USE BY
CERTIFIED USERS

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, “certified user” means an area education agency, community college, regents institution, or private college that has certified with the commission that it is or will be a part of the network.

9.1(1) Conditions.

a. One of the following conditions shall be satisfied in the request:

(1) The costs to the certified user for services provided by the network are not competitive with the same services available from another provider.

(2) The certified user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The certified user shall use the network for video, data, and voice requirements that are not provided pursuant to such contract.

b. A certified user shall have the burden of proof regarding the question of whether the services provided by the network are not competitive with the same services available from another provider.

9.1(2) Waiver submission. A request for waiver must be received at the ICN main office location as listed in 751—subrule 1.6(1) not less than 15 days prior to the next regularly scheduled commission meeting. A request for waiver renewal must be submitted not less than 15 days prior to the next scheduled commission meeting preceding the expiration of the current waiver. A listing of certified users not meeting this submission requirement shall be included in the commission’s annual report related to the network.

751—9.2(8D) Request for proposal, direct negotiation. A certified user may issue a request for proposals (RFP) or a request for information (RFI) or negotiate directly with public and private vendors for the provision of telecommunication services.

If a certified user seeks a waiver and is unable to supply the information necessary for the commission to make a determination as to the competitiveness of its services and the services provided by the certified user’s proposed vendor, for whatever reason, including but not limited to restrictions imposed by a nondisclosure agreement, the commission may deny the request for a waiver. An affidavit from the certified user indicating that the commission’s services are not competitive will not be sufficient to support a grant of waiver under these rules or Iowa Code section 8D.9.

751—9.3(8D) Contents for waiver petition. Upon receipt of a request for a waiver pursuant to Iowa Code section 8D.9(2), commission staff members will forward a copy of the request to the commission members along with any supplemental information filed by the petitioner. The petitioner shall specifically address each reason for which it is seeking a waiver, and recite any facts supporting its response. The petitioner shall enclose copies of all related letters, records, or other documents in support of its request. Filing a request for a waiver shall not commence a contested case proceeding.

751—9.4(8D) Waiver investigation, limited discovery. The commission staff shall commence a waiver investigation upon receipt of the petition for a waiver. The commission staff may make requests for supporting data from the petitioner or propound interrogatories to the petitioner or conduct depositions of relevant persons regarding information possessed by the petitioner relative to the waiver petition. Data requests or interrogatories served by commission staff shall either be responded to or objected to, with a concisely stated ground for relief, within seven days of receipt. The commission chair shall rule on all objections. Depositions of relevant persons must be conducted within 30 days after the petition for waiver is filed unless the parties agree otherwise.

751—9.5(8D) Notice of hearing and discovery. Within 20 days after the petition for a waiver has been filed with the commission, the staff will notify the petitioner of the time and place for a hearing before

the commission. Any information the staff has assembled for the commission to consider shall be made available to the petitioner at least 30 days before a meeting of the commission where the petitioner's request for waiver will be considered. The petitioner shall have the right to pose interrogatories or depose staff members involved in the development of any information for the commission to consider. The hearing to consider the waiver shall be held within 90 days after receipt of the request for the waiver unless the parties agree otherwise.

751—9.6(8D) Hearing. At the commission meeting where the petition is considered, the petitioner and the commission staff will have an opportunity to present any relevant evidence to the commission bearing on the appropriateness of the petition. The hearing will be informal. The hearing will be mechanically recorded. The recording shall constitute the official record of the hearing. Either party may at its own expense have a certified court reporter present to record the hearing. In the event of an appeal, the appealing party shall, at its cost, be responsible for transcribing the record of the meeting for judicial review. In the event the decision of the commission is subject to arbitration pursuant to Iowa Code section 679A.19, the commission shall have the record transcribed with the cost to be split evenly between the parties subject to the arbitration.

9.6(1) Official record and in camera requests. All of the information received by the commission from the staff and the petitioner including the petition and attachments will be included in the record of the hearing. The petitioner may ask the commission to examine any proprietary information in camera and in conformance with Iowa Code chapter 22. The tape recording for the hearing and the evidence presented to the commission will constitute the record of the proceeding.

9.6(2) Decision. The commission members, the petitioner and the staff will be afforded an opportunity to ask questions regarding the information presented at the time of the meeting. At the close of the meeting, the commission will issue a decision that is dictated into the record or the matter will be taken under advisement to be discussed and decided at a subsequent public meeting. The commission's decision shall be reduced to writing and shall constitute final agency action. In the event the decision is appealed by a regents institution, the resolution of the dispute shall be subject to the provisions of Iowa Code section 679A.19.

751—9.7(8D) Evaluation criteria. In considering the evidence regarding competitive service, the commission may consider any of the following:

9.7(1) The type of third-party service being offered to the petitioner versus the type of service the commission can offer.

9.7(2) The direct costs of service being offered to the petitioner versus the direct cost of the service offered by the commission, including but not limited to the following:

- a. The unit cost of individual services;
- b. The cost for bundled services;
- c. The costs of leased lines to access an individual service;
- d. The cost of installation charges;
- e. The cost of coordination fees;
- f. The costs of equipment necessary to access a service;
- g. The costs of setup fees;
- h. Any other direct cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(3) The indirect costs of service being offered to the petitioner versus the indirect cost of service offered by the commission, including but not limited to the following:

- a. Service availability;
- b. Protection from fraudulent use of the service;
- c. Availability of advanced billing services;
- d. Response time to service outages;
- e. Redundancy to ensure continuous service;
- f. Disaster recovery plan;

g. Any other indirect cost related to the service sought by the certified user and identified in the evidence presented to the commission.

9.7(4) Any discounts the petitioner has been offered versus the discounts the commission can offer.

9.7(5) Any other enhanced value items included in the offer of service by a service provider selected by the petitioner versus the enhanced value items the commission can offer including but not limited to the entire range of services the commission offers to an authorized user.

9.7(6) Any other relevant information included in the evidence before the commission regarding the petition for waiver.

751—9.8(8D) Voluntary decertification. A certified user may voluntarily withdraw its certification to use the services of the commission. The certified user must give the commission 60 days' prior written notice before the withdrawal will take effect. In the event the commission has property located on the property of the certified user, the commission and the certified user may enter into an agreement allowing the property to remain in place to serve the network. In the event the certified user decides to apply for certification after a voluntary withdrawal, the certified user will have to seek permission of the general assembly to recertify or as otherwise provided by law.

This chapter is intended to implement Iowa Code sections 8D.3(3) "b" and 8D.9(2) "b."

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CHAPTER 10
USE OF THE NETWORK—NOT A VESTED RIGHT
AND WRITTEN WARNING, SUSPENSION,
PROBATION, DECERTIFICATION, AND REVOCATION
OF USE OF THE NETWORK

751—10.1(8D) Authorized use not a vested right. The ability to use the fiberoptic network is a privilege conferred by law to any person who qualifies as an authorized user.

751—10.2(8D) Written warning, suspension, probation or revocation of authorization to use the network. The commission may provide a written warning, suspend, place on probation, or revoke the authorization of any authorized user to use the network or a requesting authorized user sponsoring an event on the network or disconnect any authorized facility or disconnect an originating authorized facility for one or more of the following reasons:

1. In the case of a video transmission, a requesting authorized user allows a use of the network by an unauthorized user;
2. In the case of a data or voice transmission, an authorized user allows use of the network by an unauthorized user;
3. Selling or reselling network time to an authorized user or an unauthorized user;
4. Failure to pay the appropriate rate for services rendered by the commission;
5. Failure to adhere to any terms or conditions contained in any agreement between the commission and the authorized user;
6. Failure to be present or participate in or have a contract authorizing originating use for a full motion interactive video session;
7. Any fraud, deceit, misrepresentation or other conduct prejudicial to the commission in the operation of network;
8. Any violation of federal, state or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the authorized user has substantial control;
9. Obtaining use of the network by fraud, misrepresentation, or concealment;
10. Making a knowing misrepresentation of fact to the commission or its staff on any report, application form or questionnaire required to be submitted to the commission or its staff;
11. Denying the commission or its authorized representatives access to a fiberoptic termination site or any other access to fiberoptic cable or optronics equipment deemed necessary for the operation of the network;
12. Failure to promptly produce for inspection or audit within a reasonable time any book, record, document or other item required to be produced by law, these rules, or the terms of any agreement between the commission and the authorized user related to the use of the network;
13. Failure to follow the instructions of the commission for the operation of the equipment in the commission's portion of a shared fiberoptic termination site room;
14. Failure to notify the commission of a material change of circumstances regarding the organizational structure of an authorized user that would change the status of an authorized user or authorized user of the network;
15. Any other activity or action related to the use of the fiberoptic network by an authorized user or by an authorized facility that the commission determines is in violation of state or federal law or these rules.

751—10.3(17A,8D) Notice of the violation. In the event the commission determines that an authorized user has violated any of the provisions of these rules, the commission will provide a written notice by certified mail, return receipt requested, to the authorized user describing the violation and the penalty for the violation.

751—10.4(17A,8D) Effective date and length of suspension, probation or revocation. The effective date of the suspension, probation or revocation of the use or access to the network shall be 20 days following service of the notice of suspension, probation or revocation. An aggrieved authorized user may request a stay of the commission's action regarding use and ask the commission to reconsider its decision. The commission at its discretion may reconsider its decision based upon any further information or evidence the aggrieved party may offer to the commission. The commission may take oral testimony to supplement the evidence presented. The commission's decision shall be reduced to writing and shall constitute final agency action. The decision shall be mailed to the aggrieved parties. In the event the authorized user is a state agency or an institution governed by the board of regents, the provisions of Iowa Code section 679A.19 shall govern any appeal. In the case of a suspension or probation, the commission has the discretion to fix the length of the suspension or probation relative to the severity of the violation by the authorized user.

751—10.5(17A,8D) Methods of service. The notice shall be served upon the authorized user by certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the authorized user may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension, probation, or revocation and provide for an opportunity for a hearing.

751—10.6(17A,8D) Decertification. In the event a certified user violates the provisions of Iowa Code section 8D.9(2) and fails to obtain a waiver from the commission to use another service provider, and uses services from another provider, the commission after notice and hearing in conformance with these rules, may decertify the user. In the event decertification becomes final, the commission will remove all of its equipment from the fiberoptic termination site located at the user's site and terminate all services to the user.

This chapter is intended to implement Iowa Code sections 8D.2, 8D.3(3) "b," 8D.9 and 8D.13(14) to 8D.13(17).

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CHAPTER 11
ASSET ALLOCATION AND OWNERSHIP

751—11.1(8D) Ownership of the Part I and Part II equipment. All of the facilities, cable, optronics and other equipment and replacements thereof installed to operate and maintain as Part I and Part II sites are property of the state of Iowa unless the equipment was purchased by a regents institution or a state agency. The commission and the state of Iowa do not own the interconnect from the fiberoptic termination site to the classroom nor any of the equipment or furnishings located within the video classroom. The commission has the duty to maintain all aspects of the telecommunication facilities, cable, optronics and other equipment and replacements thereof if these items are attached to Part I and Part II sites. The equipment purchased by the regents is subject to separate agreements between the commission and regents and those agreements will govern ownership and maintenance of the equipment purchased by the regents, this rule notwithstanding.

751—11.2(8D) Access defined. For the purpose of this chapter, access means those persons or entities allowed to enter the fiberoptic termination site room and place equipment or other items in the fiberoptic termination site room.

751—11.3(8D) Access to fiberoptic termination site room. For Part I and Part II fiberoptic termination sites, the commission shall determine which entities shall have access to the fiberoptic termination site room and shall notify each authorized facility in writing as to the extent and nature of equipment placement in the fiberoptic termination site room or as otherwise allowed by written agreements in existence prior to December 1, 1996, or by state or federal law. Unauthorized equipment will be disconnected from any connections contained in the fiberoptic termination site room after 30 days' written notice to the owner sent by certified mail return receipt requested from the commission advising the owner that the presence of its equipment in the fiberoptic termination site room is unauthorized. Unauthorized equipment must be removed by the equipment owner within 90 days of written notice sent by the commission to the owner. If the equipment is not removed within this time period, the commission will remove the equipment and charge the owner the cost of the removal. When a commission fiberoptic termination site room is co-located in shared use facilities, the commission will negotiate an agreement with the authorized user that determines which entities have access and the procedures for access. Preexisting agreements (before December 1, 1996) for commission equipment placement between authorized users and the commission (or the department of general services) will be honored. The commission and authorized users may negotiate new agreements for equipment placement.

751—11.4(8D) Access to fiberoptic termination site room for Part III. For Part III sites, the commission shall determine which entities may have access to the fiberoptic termination site room at the site in a manner consistent with written agreements in existence prior to December 1, 1996, or state or federal law.

751—11.5(8D) Authorized connections to the network. The commission shall have the sole and exclusive authority to determine whether any person or entity may use the commission's point of presence sites to connect in any location in the state where the commission has established a network connection as otherwise permitted by state or federal law. In the event the commission determines that some other person or entity has attempted to connect to a network location, the commission may demand removal of the unauthorized equipment within 90 days upon written notice to the owner of the equipment. In the event the equipment is not removed within 90 days, the commission may disconnect the equipment at the owner's expense and prevent any further connectivity pending a hearing in conformance with 751—Chapter 4 to determine whether the use of the network's site is appropriate.

751—11.6(8D) Power source to the fiberoptic termination site room. The authorized facility shall maintain a constant source of power and adequate heating and cooling for the fiberoptic termination site room and for the equipment contained therein.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 12
RATES AND RATE DISPUTES

751—12.1(8D) Purpose. The commission shall establish rates to be charged to all authorized users for the use of the network.

751—12.2(8D) Definitions. For the purposes of interpreting these rules, the following definitions are applicable.

“*Educational or training event*” on the network means any event designed to have an instructional outcome.

“*Meeting event*” means any event on the network that is designed to achieve a decisional outcome including but not limited to meetings, hearings, mediations, discussion groups, public meetings or other adjudicatory proceedings.

751—12.3(8D) Notice of rates. Upon approval of rates to be charged to authorized users for use of any network services offered by the commission, the commission shall provide written notice to the affected users.

12.3(1) A rate increase for voice and data transmissions shall become effective upon the date established by the commission.

12.3(2) Video rates shall be established in September of each fiscal year with an effective date of July 1 of the next following fiscal year.

751—12.4(8D) Rates for educational users. Rates for educational access shall among other things ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network. Educational rates for K-12 and area education agencies shall include meeting events for authorized users. All other meeting events for other educational users shall be charged at the administrative rate established for state agencies for meeting events. Educational use for state agencies shall be charged at the higher educational rate. The purpose of the meeting event shall determine the charge for the session not the originating or receiving sites for the meeting event itself. If the training or meeting event is for federal authorized users or telemedicine authorized users, the rate applicable to these users shall apply. An educational user and area education agency users other than K-12 users must certify the type of use it intends at the time an event is scheduled on the network.

751—12.5(8D) Rates for telemedicine and the federal government. A fee established by the commission to be charged to a hospital licensed pursuant to Iowa Code chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection to or use of the network related to such user. The fees charged for use of the network shall be based on the ongoing expenses of the network.

751—12.6(8D) Rate dispute resolution.

12.6(1) Definitions. A rate dispute shall exist when the payor disagrees with the rate charged by the commission for the service used by the user. A rate dispute shall not be a contested case proceeding.

12.6(2) Factors in rate dispute. In the event of a rate dispute, the executive director, or the commission’s designee (decision maker) shall decide which rate is applicable for the network service used. In making such a decision, the executive director or the commission’s designee shall consider all relevant factors known to the decision maker supplied by the commission staff or the user including, but not limited to, the following:

- a. Nature, frequency or duration of the use requested;
- b. The purpose of the use;
- c. The audience for the use;
- d. Whether the use is for training, testing, a meeting or other use;
- e. Whether the use is an educational use;

f. Any other factor deemed relevant by the decision maker based upon the evidence presented.

12.6(3) *Written decision.* In the event that the decision maker makes a decision regarding the rate dispute, the decision maker shall prepare a memorandum regarding the conflict and its resolution. No oral testimony shall be taken regarding the rate dispute. The memorandum shall identify the authorized user or users involved, the nature of the rate dispute, the decision maker's decision, the factors considered by the decision maker and the reasons for the decision. The memorandum shall be created within 24 hours after the decision is made and shall be maintained by the decision maker for at least 12 months after the decision is made. A copy of the memorandum shall be faxed and mailed to each authorized user affected by the decision. The memorandum shall include a notice regarding the time within which an aggrieved party may appeal with filing instructions included in the notice.

12.6(4) *Notice of appeal.* Any authorized user affected by the decision regarding a rate dispute may appeal that decision to the commission by filing written notice of appeal thereof either by fax, hand delivery or by regular or overnight mail with the decision maker within five days after the authorized user receives a copy of the decision. The notice of appeal shall identify the decision in question and the authorized user making the appeal.

12.6(5) *Filing supporting documents for appeal.* Within seven days following filing of the notice of appeal, the aggrieved party shall file with the executive director or the commission's designee, a written statement of evidence identifying all reasons or evidence upon which the aggrieved party relies in support of its appeal. The appealing user may attach to the statement of evidence any documents or information which the user wishes to submit, provided that no more than 25 pages of attachments shall be submitted unless the aggrieved party obtains permission of the commission to attach additional documentation for good cause shown. The commission may allow oral arguments.

12.6(6) *Time for appeal decision.* Within seven days after the statement of evidence is filed, the commission or the commission's designee shall file a written appeal decision affirming, reversing or modifying the decision of the decision maker regarding the rate dispute.

12.6(7) *Final agency action for appeal.* The appeal decision shall state the factors considered by the commission and the reasons for the decision. The decision shall be delivered to each authorized user affected by the decision. The appeal decision shall constitute final agency action for the purposes of Iowa Code chapter 17A.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 13
SITE CHARGES AND OTHER FEES

751—13.1(8D) Site charges. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the requesting authorized user for a video transmission provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this chapter shall be paid by the originating site directly to the receiving site. For purposes of this rule, “operating costs” include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13.1(1) Site fee. The hourly charge for a site may be up to \$12.50 per hour for use of a classroom for interactive video transmission.

13.1(2) Notwithstanding the provisions of the introductory paragraph of rule 13.1(8D), if an entity requests a receiving site location in a video classroom facility which is authorized by, but not funded by the originator of the session, the video classroom facility shall bill the requesting entity directly for the operating costs relating to the site.

751—13.2(8D) Other fees. The commission shall charge the following fees based on the ongoing operational costs of the network:

13.2(1) Staff time devoted to a cable cut. An administrative fee shall be added to the cost of repair for a cable cut. The fee shall be charged to the person or entity who caused the cable cut. The fee shall be a minimum of \$150. In the event commission staff members must devote more than ten hours to the cable cut repair, the actual hourly rate of a telecommunications technician shall be added to the cost of the cable cut for the total time all staff members are required to devote to the cable cut and repair.

13.2(2) Informal resolution of cable cuts. Commission staff members are authorized to resolve cable cut repair costs informally including making adjustments to the administrative fees attributable to the cable cut and repair or the revenue lost from the cable cut. Any settlement of a disputed claim must be reduced to writing.

13.2(3) Estimate for cable relocation cost. An administrative fee equaling the commission’s cost to provide an estimate for a cable move for a property owner shall be charged to the property owner. Notwithstanding the foregoing, if the commission has preexisting agreements in effect prior to December 1, 1996, that refer specifically to the cost of a cable relocation, those agreements will be honored. The commission and authorized users may enter into new agreements for construction and maintenance of the fiberoptic network.

This chapter is intended to implement Iowa Code sections 8D.3(3) “b” and 8D.13.

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CHAPTER 14
ACCESS TO FACILITIES

751—14.1(8D) Access policy. An authorized user shall develop written policies or rules governing the use of the network by authorized users as identified by 751—Chapter 7. These policies must be consistent with the Iowa Code and these rules. These policies shall be filed with the commission and reviewed by the commission upon written request.

14.1(1) Contents of the written policy. Each authorized user facility shall develop at a minimum use and access policies that address the following:

- a. The network is a limited access network and cannot be used for a profit-making venture.
- b. The use of the network must be consistent with the written mission of the authorized user.
- c. The user may not resell time on the network. However, consistent with Iowa Code section 8D.13, the user may charge a site or usage fee to cover operational costs of the facility or as established by the commission. A usage fee shall include the fees charged by a university or college for services offered by the university or college, for example, student housing or a computer lab fee.
- d. The user may not enable for-profit persons or entities to use the network for the pecuniary advantage of the for-profit entity. This provision is intended to apply to video use of the network only. This rule is not intended to limit the ability of the board of regents to fully support various research programs and other initiatives performed under the written mission statements of the regents institutions. The rule is not intended to limit other authorized users from performing their missions when the use of the network is otherwise authorized by these rules.

14.1(2) Reserved.

751—14.2(8D) Use of a video classroom. The primary use of an interactive video classroom is to accomplish the written mission of the authorized user. The commission, through its various advisory councils, shall establish request for usage procedures that address the use and availability of video classrooms, including hours of operation, availability for other authorized users, discretion of authorized facilities to deny or cancel requested use, and other non-network related usage of classrooms connected to the network. The intent of such request for usage procedures will be to encourage the greatest allowable use of interactive video classrooms while preserving appropriate local authority and control over authorized facilities. The procedures shall be forwarded to the commission upon completion. The procedures shall be completed by January 1, 1998.

751—14.3(8D) Hours of operation. A video classroom shall be open during the normal hours of operation for an authorized user unless other hours of operation are arranged by the user and the site. Sites shall, at a minimum, support access and facilities use Monday through Friday, 7 a.m. to 10:30 p.m., and Saturday, 8 a.m. to 4 p.m. For sites where the institution has used its own funding for the fiberoptic connection and the fiberoptic termination site equipment, the institution may permit or deny accessibility to other authorized users.

751—14.4(8D) Charges and financial responsibility. Except as provided for by subrule 13.1(2), the requesting authorized user is financially responsible for all commission-established site and site usage charges incurred for the use of the classroom.

751—14.5(8D) Accommodations for the disabled. Each authorized user site shall comply with the Americans With Disabilities Act and the Iowa Civil Rights Act regarding access to and use of the video classroom or video conference room. The requesting authorized user of any service offered by the commission shall comply with the Americans With Disabilities Act and the Iowa Civil Rights Act. The requesting authorized user is responsible for providing qualified interpreters or auxiliary aids if requested. The cost of reasonable accommodation is assumed by the requesting authorized user.

751—14.6(8D) No smoking policy. The fiberoptic termination site room is a smoke-free area. No smoking is permitted.

751—14.7(8D) No endorsement. Use of the network does not imply endorsement of, or agreement with, the purpose(s) or the expression of any person or entity by the commission or the state of Iowa or its employees or staff.

751—14.8(8D) Copyrighted material. Use of copyrighted materials shall be consistent with current U.S. copyright laws and definitions of fair use. Appropriate use of copyrighted material is the responsibility of the user, and not the commission.

This chapter is intended to implement Iowa Code section 8D.3.

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CHAPTER 15
ADVISORY COUNCILS, COMMITTEES
AND GROUPS

751—15.1(8D) Meetings for advisory councils, committees and groups. Any advisory councils, committees or groups established by Iowa Code chapter 8D or at the direction of the commission must meet at least twice annually. If any of these groups fail to meet and advise or provide recommendations to the commission, the commission may appoint new members to the advisory councils, committees or groups or as otherwise provided by law.

751—15.2(8D) Attendance by members. Each advisory council shall establish attendance policies for its members subject to approval by the commission. In the event the commission, through the recommendations of an advisory council, a committee or group, removes a member from an advisory council, a committee or group, the commission may replace that member immediately.

751—15.3(8D) Duties of advisory councils, committees and groups. The advisory councils, committees and groups at a minimum shall have the following duties:

15.3(1) *Develop rules.* Develop proposed rules for commission consideration regarding use of and access to the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the advisory group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

15.3(2) *Prepare reports.* As requested from time to time by the commission, provide information, reports and perform special projects to assist the commission in completing its mission.

15.3(3) *Provide notices of meetings and minutes of meetings.*

a. Each advisory council, committee or group shall prepare minutes of its meetings and submit the minutes to the commission within 30 days of the date of the meeting.

b. Each advisory council, committee or group shall provide notice of its meetings to interested parties identified by the commission or the advisory council, committee or group.

15.3(4) *Develop mission statement.* Each advisory council, committee or group shall prepare a written mission statement. The mission statements shall be filed with the commission.

15.3(5) *Scheduling and site usage policies.* Subject to approval by the commission, the advisory councils, committees and groups shall establish site and usage policies for authorized users of the network.

751—15.4(8D) Additional duties of education telecommunications council. The council shall coordinate the activities of the regional telecommunications councils. The council shall also recommend long-range plans for enhancements needed for educational applications.

751—15.5(8D) Additional duties of regional educational telecommunications council. The regional telecommunications councils shall advise the education telecommunications council on the assessment of local educational needs and the coordination of program activities including scheduling. The community college located in the merged area of a regional educational telecommunications council shall staff and facilitate the activities of the council.

This chapter is intended to implement Iowa Code sections 8D.3, 8D.5, 8D.6, and 8D.7.

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CHAPTER 16
UNIFORM WAIVER AND VARIANCE RULES

751—16.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the commission. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the commission. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

16.1(1) Definitions.

“*Commission*” or “*Iowa telecommunications and technology commission*” means the Iowa telecommunications and technology commission established by Iowa Code chapter 8D operating the Iowa Communications Network.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

16.1(2) Authority.

a. A waiver or variance from rules adopted by the commission may be granted in accordance with this chapter if (1) the commission has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which a waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

751—16.2(17A,ExecOrd11) Commission discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the commission upon consideration of all relevant factors.

16.2(1) Criteria for waiver or variance. The commission may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether a waiver should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

16.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the commission from granting waivers or variances in other contexts including those described in Iowa Code section 8D.9 or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

751—16.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

16.3(1) Application. All petitions for waiver or variance must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

16.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the commission and the petitioner relating to the use of the network, other regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each use of the network, license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the affected use of the network, regulated activity, license, grant or loan within the last five years.
- f. Any information known to the requester regarding the commission's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver or variance.

16.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a commission rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant the petitioner a waiver or variance.

751—16.4(17A,ExecOrd11) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been provided.

751—16.5(17A,ExecOrd11) Commission responsibilities regarding petition for waiver or variance.

16.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting or a meeting over the network operated by the commission, between the petitioner and the commission's designee, a committee of the commission, or a quorum of the commission.

16.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the commission so provides by rule or order; or (c) when a statute so requires.

16.5(3) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

16.5(4) Conditions. The commission may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

16.5(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.5(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

16.5(7) Time for ruling. The commission shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

16.5(8) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

16.5(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the commission shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the ICN main office location as listed in 751—subrule 1.6(1).

751—16.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance issued by the commission pursuant to this chapter may be withdrawn, canceled, modified, declared void or revoked if, after appropriate notice and hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of granting the waiver or variance; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order; or
4. The waiver or variance is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

751—16.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

751—16.9(17A,ExecOrd11) Defense. After the commission issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

751—16.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

751—16.11(17A,ExecOrd11) Summary reports. Semiannually, the commission shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION	
Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER

Requests for waiver or variance from a commission rule shall include the following information in the petition for waiver or variance where applicable and known to the petitioner:

- a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver or variance is requested.
- c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.
- d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting the waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
- e. Provide a history of prior contacts between the commission and petitioner relating to the use of the network, regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected use of the network, license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the affected use, regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the commission's treatment of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the commission, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The commission may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the ICN main office location as listed in 751—subrule 1.6(1). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]

[Filed 9/20/07, Notice 6/20/07—published 10/10/07, effective 11/14/07]

CHAPTER 17
MISCELLANEOUS

751—17.1(8D) Content of transmissions. The commission and the commission's staff shall not monitor the content of transmissions on the network. From time to time, it may be necessary to monitor transmissions on the network to effect trouble isolation and correction. This type of monitoring will be kept to an absolute minimum and used only to efficiently and effectively manage the network. Each authorized user shall have responsibility that the use of the network is consistent with the mission of the authorized user and consistent with the law and these rules. Discovery of an unauthorized monitoring must be reported back to the authorized user.

751—17.2(8D) Areas of responsibility for the commission. Consistent with and in addition to the duties and obligations imposed upon the commission by Iowa Code sections 8D.1, 8D.2(6), 8D.3 and 8D.13, the commission's areas of responsibility include but are not necessarily limited to the following:

17.2(1) Management of the network for state communications;

17.2(2) Telephone service for state-owned buildings located on the capitol complex ending at the intermediate distribution frame located on each floor of the buildings;

17.2(3) Access devices for the distribution of state communications.

751—17.3(8D) Transfer and disposal of assets.

17.3(1) The commission may dispose of its property under its ownership or control when it becomes unnecessary or unfit for further use by the commission. The commission may dispose of unnecessary or unfit property under its control by sale, auction, broker, trade, consignment or any manner which the commission determines will fairly dispose of the property. Proceeds from the disposition of the property will be retained by the commission.

17.3(2) Notice of the disposition of unnecessary or unfit property will be noticed in a newspaper of general circulation, trade journals or on the commission's home page on the Internet. The commission will attempt to advertise its unnecessary or unfit property on other home pages maintained by other state agencies.

17.3(3) In the event of a purchase of unnecessary or unfit property, payment for the unnecessary or unfit property shall be by certified check, electronic funds transfer, or an irrevocable letter of credit and must be in U.S. dollars. Any sale to an entity in a foreign country shall be in conformance with the policies and procedures of the U.S. State Department, the U.S. Department of Commerce and the U.S. Department of Defense. Before title is transferred or the property is delivered, the commission must receive good funds for the purchase of the property. Upon receipt of good funds, the commission shall issue a bill of sale for the property and the item or items of property will be removed from the commission's inventory. In the event of a trade of property, the commission will issue a bill of sale relinquishing ownership of its property upon receipt of the property exchanged. The commission shall require the trader to provide a document transferring ownership to the commission and the state of Iowa.

17.3(4) Notwithstanding any contrary provision in this chapter or these rules, and consistent with Iowa Code section 8D.12, the commission may dispose of unnecessary or unfit property under its ownership or control by sale, auction, broker, trade, consignment, gift, transfer, or any manner in which the commission determines will fairly dispose of the property to any branch of the government of the state of Iowa, any Iowa state agency, or any institution under the control of the Iowa board of regents. Contrary provisions of subrules 17.3(1) to 17.3(3) do not apply to the disposition of property pursuant to this subrule. Dispositions pursuant to this subrule are valid so long as the executive director of the Iowa communications network determines that the transfer is in the best interests of the state of Iowa.

17.3(5) Notwithstanding any contrary provision in this chapter or these rules, upon request by an authorized user, the commission may procure, in accordance with all applicable administrative rules and provisions of Iowa Code chapter 8D, any telecommunications equipment, devices or services requested by or on behalf of an authorized user. The commission may further transfer the title to, or benefit of, the telecommunications equipment, devices or services to the authorized user. The commission may

accordingly bill the authorized user through the commission's regular process for the telecommunications equipment, devices or services or for the use of such telecommunications equipment, devices or services. Nothing in this subrule shall permit the commission to purchase or transfer title to Part III fiber as defined in Iowa Code section 8D.13(2) "c" unless such purchase or transfer is authorized by Iowa Code chapter 8D or an Act of the legislature approved by the governor.

751—17.4(8D) Partnerships with private or public entities. The commission may enter into partnership or other arrangements in order to maximize income for the network. The following agreements are specifically permitted by this rule:

17.4(1) Agreements to use space in the fiberoptic termination site rooms in a manner consistent with law.

17.4(2) Agreement to use the rights-of-way obtained by the commission for the construction and maintenance of the network in a manner consistent with law.

17.4(3) Agreements to share equipment, any telecommunications facilities, or any other real or personal property used to operate a telecommunications network or single communication site in a manner consistent with law.

751—17.5(8D) Circuit testing. Circuit testing is authorized on the network by the commission's maintenance contractor or Iowa public television personnel or network staff. Any other request for a test of the network must be made through commission staff.

751—17.6(8D) Waiver and modification. Rescinded IAB 5/30/01, effective 7/4/01.

These rules are intended to implement Iowa Code sections 23A.2, 8D.3 and 8D.11.

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CHAPTER 18
PROCEDURE FOR RULE MAKING

751—18.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

751—18.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the commission may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

751—18.3(17A) Public rule-making docket.

18.3(1) Docket maintained. The commission shall maintain a current public rule-making docket.

18.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the commission. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of commission personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the commission of that possible rule. The commission may also include in the docket other subjects upon which public comment is desired.

18.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any commission determinations with respect thereto;
- h. Any known timetable for commission decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

751—18.4(17A) Notice of proposed rule making.

18.4(1) Contents. At least 35 days before the adoption of a rule the commission shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;

- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the commission shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the commission for the resolution of each of those issues.

18.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 18.12(2) of this chapter.

18.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the commission a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the commission shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the commission for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

751—18.5(17A) Public participation.

18.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the executive director at the ICN main office location as listed in 751—subrule 1.6(1) or to the person designated in the Notice of Intended Action.

18.5(2) *Oral proceedings.* The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the commission by the administrative rules review committee, a governmental subdivision, a commission, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a commission or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

18.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. *Presiding officer.* The commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral

proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the commission at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the commission decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the commission.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

18.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

18.5(5) Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the executive director at the ICN main office location as listed in 751—subrule 1.6(1) in advance to arrange access or other needed services.

751—18.6(17A) Regulatory analysis.

18.6(1) Definition of small business. A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

18.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the commission’s small business impact list by making a written application addressed to the executive director at the ICN main office location as listed in 751—subrule 1.6(1). The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;

- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The commission may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The commission may periodically send a letter to each registered small business or organization, business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

18.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the commission shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the commission shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

18.6(4) *Qualified requesters for regulatory analysis—economic impact.* The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

18.6(5) *Qualified requesters for regulatory analysis—business impact.* The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

18.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the commission shall adhere to the time lines described in Iowa Code section 17A.4A.

18.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

18.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

18.6(9) *Publication of a concise summary.* The commission shall make available to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

18.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A unless a written request expressly waives one or more of the items listed in the section.

18.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A.

751—18.7(17A,25B) Fiscal impact statement.

18.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

18.7(2) If the commission determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

751—18.8(17A) Time and manner of rule adoption.

18.8(1) *Time of adoption.* The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

18.8(2) *Consideration of public comment.* Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis, or fiscal impact statement issued in that rule-making proceeding.

18.8(3) *Reliance on commission expertise.* Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

751—18.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

18.9(1) The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

18.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the commission shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

18.9(3) The commission shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

18.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

751—18.10(17A) Exemptions from public rule-making procedures.

18.10(1) *Omission of notice and comment.* To the extent the commission for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: no categories exempt.

18.10(3) *Public proceedings on rules adopted without them.* The commission may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 18.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the commission shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 18.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 18.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

751—18.11(17A) Concise statement of reasons.

18.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the executive director of the commission at the ICN main office location as listed in 751—subrule 1.6(1). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

18.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the commission's reasons for overruling the arguments made against the rule.

18.11(3) *Time of issuance.* After a proper request, the commission shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

751—18.12(17A) Contents, style, and form of rule.

18.12(1) *Contents.* Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4 or if the commission in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4 or the commission in its discretion decides to include such reasons; and

g. The effective date of the rule.

18.12(2) *Incorporation by reference.* The commission may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the commission finds that the incorporation of its text in the commission proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the commission proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The commission may incorporate such matter by reference in a proposed or adopted rule only if the commission makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this commission, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The commission shall retain permanently a copy of any materials incorporated by reference in a rule of the commission.

If the commission adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

18.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the commission shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the commission. The commission will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the commission shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

18.12(4) *Style and form.* In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

751—18.13(17A) Commission rule-making record.

18.13(1) *Requirement.* The commission shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

18.13(2) *Contents.* The commission rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of commission submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the commission's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the commission, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule

and that were created or compiled by the commission and considered by the Iowa telecommunications and technology commission, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the commission is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the commission shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2), by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any commission response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

18.13(3) *Effect of record.* Except as otherwise required by a provision of law, the commission rule-making record required by this rule need not constitute the exclusive basis for commission action on that rule.

18.13(4) *Maintenance of record.* The commission shall maintain the rule-making record indefinitely from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 18.13(2) “g,” “h,” “i,” or “j.”

751—18.14(17A) *Filing of rules.* The commission shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the commission shall use the standard form prescribed by the administrative rules coordinator.

751—18.15(17A) *Effectiveness of rules prior to publication.*

18.15(1) *Grounds.* The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.15(2) *Special notice.* When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b” (3), the commission shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the commission to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to

the commission of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 18.15(2).

751—18.16(17A) General statements of policy.

18.16(1) *Compilation, indexing, public inspection.* The commission shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

18.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the commission to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 18.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

751—18.17(17A) Review by commission of rules.

18.17(1) Any interested person, association, commission, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The commission may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

18.17(2) In conducting the formal review, the commission shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the commission’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the commission or granted by the commission. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the commission’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

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