

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.

[Filed 3/21/97, Notice 1/15/97—published 4/9/97, effective 5/14/97]

[Filed 12/1/04, Notice 10/13/04—published 12/22/04, effective 1/26/05]