

CHAPTER 16
UNIFORM WAIVER RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

751—16.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers 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*” 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 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 is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no statute or rule otherwise controls the granting of a waiver from the rule from which a waiver is requested.

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

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

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

16.2(1) Criteria for waiver. The commission may, in response to a completed petition, grant a waiver 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 on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver 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 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 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 rules not precluded. These uniform waiver rules shall not preclude the commission from granting waivers 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.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

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

16.3(1) Application. All petitions for waiver 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 shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver is requested.
- b. The specific waiver requested, including the precise scope and operative period that the waiver will extend.
- c. The relevant facts that the petitioner believes would justify a waiver.
- 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.
- 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, 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.
- 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.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

16.3(3) Burden of persuasion. When a petition is filed for a waiver 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.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

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.

16.5(1) Additional information. Prior to issuing an order granting or denying a waiver, 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 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 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 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 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.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

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 under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the ICN main office location as listed in 751—subrule 1.6(1).

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.7(17A,ExecOrd11) Voiding or cancellation. A waiver 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 order withheld or misrepresented material facts relevant to the propriety or desirability of granting the waiver; 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 is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

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

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.9(17A,ExecOrd11) Defense. After the commission issues an order granting a waiver, 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.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver 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.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

751—16.11(17A,ExecOrd11) Submission of waiver information. Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify 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 granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5828C, IAB 8/11/21, effective 9/15/21]

Exhibit A

Sample Petition (Request) for Waiver

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

- a. Provide the petitioner’s (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.
- d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting the waiver to the petitioner is consistent with the public interest; and (3) granting the waiver 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 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; 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.
- 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.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

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:

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 on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver 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 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.

3. All petitions for waiver 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.

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

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