

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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