

## RAINBOW COMMUNICATIONS' ACCEPTABLE USE POLICY FOR BROADBAND INTERNET SERVICES

Rainbow Telecommunications Association, Inc. and its subsidiary(s), referred to as "Rainbow Communications", have adopted this Acceptable Use Policy ("AUP") to outline the acceptable use of Rainbow Communications' Broadband Internet service ("Broadband Service"). This AUP is in addition to any restrictions contained in the Rainbow Communications Service Terms and Conditions (the "Subscriber Agreement"). All capitalized terms used in this AUP that are not defined here have the meanings given to them in the Subscriber Agreement.

You, the customer, must comply with this AUP. Your failure to do so could result in the suspension or termination of your Broadband Service account. If you do not agree to comply with this AUP, you must immediately stop all use of the Broadband Service and notify Rainbow Communications so that we can close your account.

Rainbow Communications may revise this AUP from time to time and will have the latest version posted on its website. Rainbow Communications will use reasonable efforts to make customers aware of any changes to this AUP, which may include sending e-mail announcements or posting additional information on Rainbow Communications' website. Revised versions of this AUP are effective immediately upon posting. Accordingly, customers of the Rainbow Communications Broadband Service should read any Rainbow Communications announcements they receive and regularly visit the Rainbow Communications web site and review this AUP to ensure that their activities conform to the most recent version. You can send questions regarding this AUP to, and report violations of it to our webform available at <http://www.rainbowtel.net/acceptable-use-policy-contact-us>. To report illegal content on the Internet go to [www.ftc.gov](http://www.ftc.gov).

### I. Prohibited Uses and Activities

In general, this AUP prohibits uses and activities involving the Broadband Service that are illegal, infringe the rights of others, or interfere with or diminish the use and enjoyment of the Broadband Service by others.

#### A. Network and Usage Restrictions

No user of the Broadband Service, Customer Equipment, or Rainbow Communications Equipment may, individually or in combination with another:

1. restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Broadband Service (except for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
2. restrict, inhibit, interfere with, or otherwise disrupt performance of the Broadband Service or cause a performance degradation,
3. regardless of intent, purpose or knowledge, cause a performance degradation to any Rainbow Communications (or Rainbow Communications supplier) facilities used to deliver the Broadband Service;
4. resell the Broadband Service or otherwise make available to anyone outside the proximity of the premises the ability to use the Broadband Service (for example, through Wi-Fi or other methods of networking), in whole or in part, directly or indirectly. The Broadband Service is for personal and non-commercial residential use only and you agree not to use the Broadband Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit), if service is desired for a commercial enterprise the user should contact Rainbow Communications;
5. connect Rainbow Communications Equipment to any computer or device outside the proximity of your premises;
6. interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host; and
7. access and use the Broadband Service with anything other than a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Broadband Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless expressly permitted to do so by Rainbow Communications.

#### B. Conduct and Information Restrictions

No user of the Broadband Service, Customer Equipment, or Rainbow Communications Equipment may, individually or in combination with another:

1. avoid incurring charges for or otherwise being required to pay for usage of the Broadband Service;
2. invade another person's privacy, stalk, harass, or otherwise violate the rights of other persons;
3. undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, or otherwise violate any local, state, federal, or non-U.S. law, order, or regulation;
4. post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful;
5. upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Broadband Service or otherwise that is protected by copyright or other proprietary right, without obtaining any required permission of the owner;
6. collect, or attempt to collect, personal information about third parties without their consent;
7. transmit unsolicited bulk or commercial messages commonly known as "spam;"
8. send voluminous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupts a server, account, blog, newsgroup, chat, or similar service;
9. initiate, perpetuate, or in any way participate in any pyramid or other illegal scheme;
10. participate in the collection of voluminous amounts of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including "spyware") designed to facilitate this activity;
11. collect responses from unsolicited bulk messages;
12. falsify, alter, or remove message headers;
13. falsify references to Rainbow Communications or its network, by name or other identifier, in messages;
14. impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity (for example, "phishing"); and
15. violate the rules, regulations, terms of service. or policies applicable to any network, server, computer database, service, application, system, or website that you access or use.

### **C. Technical Restrictions**

No user of the Broadband Service, Customer Equipment, or Rainbow Communications Equipment may, individually or in combination with another:

1. use the Internet service or facilities for web-hosting, e-mail hosting, or other unusually high-bandwidth consumption unless you have made special subscription arrangements with Rainbow Communications and the usage does not otherwise violate law or regulation;
2. access any other person's computer or computer system, network, software, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts without express permission to do so;
3. use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, such as password guessing programs, decoders, password gatherers, keystroke loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is strictly prohibited;
4. copy, distribute, or sublicense any proprietary software provided in connection with the Broadband Service by Rainbow Communications or any third party, except that you may make one copy of each software program for back-up purposes only;
5. distribute programs that make unauthorized changes to software (cracks);
6. use or run dedicated, stand-alone equipment or servers from the premises that provide network content or any other services to anyone outside of your premises local area network ("Premises LAN"), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, e-mail, Web hosting, file sharing, and proxy services and servers;

7. use or run programs from the premises that provide network content or any other services to anyone outside of your Premises LAN, except for personal and noncommercial residential use; and
8. service, alter, modify, or tamper with the Rainbow Communications Equipment or Broadband Service or permit any other person to do the same who is not authorized by Rainbow Communications.

## **II. Customer Conduct and Features of the Broadband Service**

### **A. Customer Obligations**

In addition to being responsible for your own compliance with this AUP, you are also responsible for any use or misuse of the Broadband Service that violates this AUP, even if it was committed by a friend, family member, or guest with access to your Broadband Service account. Therefore, you must take steps to ensure that others do not use your account to gain unauthorized access to the Broadband Service by, for example, strictly maintaining the confidentiality of your Broadband Service login and password. In all cases, you are solely responsible for the security of any device you choose to connect to the Broadband Service, including any data stored or shared on that device. It is also your responsibility to secure the Customer Equipment and any other premises equipment or programs not provided by Rainbow Communications that connects to the Broadband Service from external threats such as viruses, spam, bot nets, and other methods of intrusion.

### **B. Rainbow Communications' Rights**

Rainbow Communications reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that it, in its sole reasonable discretion, deems to be in violation of Sections I or II of this AUP, or otherwise harmful to Rainbow Communications' network or customers using the Broadband Service, regardless of whether this material or its dissemination is lawful so long as it violates this AUP. Neither Rainbow Communications nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions) made on the Broadband Service. However, Rainbow Communications and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this AUP and to disclose, block, or remove them in accordance with this AUP, the Subscriber Agreement, and applicable law.

### **C. Service Restrictions**

All of Rainbow Communications' network and system services are provided according to scheduled fees for each type of service. You agree to use such services in accordance with the terms set forth below.

#### **1. Email and Web-Hosting Services**

- (i) **Unsolicited Email Prohibited** -You may not use Rainbow Communications-hosted email addresses for the purpose of sending unsolicited email. You may not use or cause to be used Rainbow Communications' equipment, network connectivity, or other resources to originate, deliver, relay or otherwise transmit unsolicited email messages. You may not engage in any of the foregoing prohibited activities by using the service of any other provider, third-party agent, rem ailing service or address forwarding service, in such a way that Rainbow Communications' network addresses or Rainbow Communications-hosted web or email services are in any way identified as being associated with the sending of unsolicited email.
- (ii) **Unauthorized use, or forging, of mail header information** (e.g., "spoofing") is prohibited.
- (iii) **Fraudulent Activity Prohibited** -You may not use the Rainbow Communications email and web-hosting services to make fraudulent offers to sell or buy products, items, services, or to advance any type of financial scam such as "pyramid schemes", "Ponzi schemes", or "chain letters." You may not use techniques to hide or obscure the source of any e-mail or other communications.
- (iv) Rainbow Communications reserves the right to suspend or delay delivery of email to Customer utilizing the Rainbow Communications email services and/or the virtual domain email if the volume of email being redirected, stored, or delivered on the Customer's behalf is deemed excessive. Excessive traffic is

defined as any volume of email traffic that noticeably degrades performance on the server in question, in the sole discretion of Rainbow Communications. Rainbow Communications will attempt to notify the account holder via the account contact information on record; however, Rainbow Communications reserves the right to delete the contents of such email boxes upon thirty (30) days after attempted notification.

- (v) The Broadband Service may not be used to communicate or distribute email or other forms of communications in violation of Section I of this AUP. As described below in Section III of this AUP, Rainbow Communications uses reasonable network management tools and techniques to protect customers from receiving spam and from sending spam (often without their knowledge over an infected computer).
- (vi) Rainbow Communications is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Rainbow Communications is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Rainbow Communications' sole discretion.
- (vii) If Rainbow Communications believes in its sole reasonable discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Broadband Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Rainbow Communications
  - (i) reserves the right to block access to and prevent the use of any of these identifiers and
  - (ii) may at any time require any customer to change his or her identifier. In addition, Rainbow Communications may at any time reserve any identifiers on the Broadband Service for Rainbow Communications' own purposes. In the event that a Broadband Service account is terminated for any reason, all e-mail associated with that account (and any secondary accounts) will be permanently deleted as well.

## 2. Instant, Video, and Audio Messages

Each user is responsible for the contents of his or her instant, video, and audio messages and the consequences of any of these messages. Rainbow Communications assumes no responsibility for the timeliness, mis-delivery, deletion, or failure to store these messages. In the event that a Broadband Service account is terminated for any reason, all instant, video, and audio messages associated with that account (and any secondary accounts) will be permanently deleted as well.

## 3. Personal Web Pages and File Storage

You are solely responsible for any information that you or others publish or store on the any personal web page or in any storage files. You are also responsible for ensuring that all 'content made available through personal web pages is appropriate for those who may have access to it. For example, you must take appropriate precautions to prevent minors from receiving or accessing inappropriate content. Rainbow Communications reserves the right to remove, block, or refuse to post or store any information or materials, in whole or in part, that it, in its sole reasonable discretion, deems to be in violation of Section I of this AUP. For purposes of this AUP, "material" refers to all forms of communications including text, graphics (including photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings.

## III. Network Management and Limitations on Data Consumption

Rainbow Communications manages its network with the goal of delivering a fast, safe and uncompromised broadband Internet experience to all of its customers. But, high-speed bandwidth and network resources are not unlimited. Managing the network is essential for the promotion of best possible Broadband Internet experience by all of Rainbow Communications' customers. The company uses reasonable network management practices that are consistent with industry standards. Rainbow Communications tries to use tools and technologies that are minimally intrusive and, in its independent judgment guided by industry experience, among the best in class. Of course, the company's network management practices will change and evolve along with the uses of the Internet and the challenges and threats on the Internet.

If Rainbow Communications didn't manage its network, its customers would be subject to the negative effects of spam, viruses, security attacks, network congestion, and other risks and degradations of service. By engaging in responsible network management, including enforcement of this AUP, Rainbow Communications can strive to deliver the best possible broadband Internet experience to all of its customers.

Please see Rainbow Communications' [Network Management Policy](http://www.rainbowtel.net/network-management-practices-disclosure) on the Rainbow Communications website, available at <http://www.rainbowtel.net/network-management-practices-disclosure> , for specific information.

#### **A. Network Usage and Data Consumption Restrictions**

You acknowledge that all of the Rainbow Communications Internet services are intended for periodic, active use of email, user newsgroups, transfers via file transfer protocol ("FTP"), Internet chat, Internet games, and browsing of the Internet. You must comply with all current bandwidth, data storage, and other limitations on the Rainbow Communications Internet services that have been established by Rainbow Communications and Rainbow Communications suppliers. You agree not to intentionally use the Rainbow Communications Internet service on a standby or inactive basis in order to maintain a connection. The excessive use or abuse of Rainbow Communications' network resources by one Customer may have a negative impact on all other Customers. Accordingly, in addition to the Prohibited Uses and Activities provided in Section I, you may not use the Rainbow Communications Internet service or take any action, directly or indirectly, that will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined in Rainbow Communications' sole reasonable discretion. Such prohibited actions include, but are not limited to: using the Rainbow Communications Internet Services to host a web server site which attracts excessive traffic at your location, continuously uploading or downloading streaming video or audio, use net hosting, continuous FTP uploading or downloading, or acting in a manner that negatively effects other users' ability to engage in real time exchanges and use of the Rainbow Communications Internet Services.

The Broadband Service is for personal and non-commercial residential use only. Therefore, Rainbow Communications reserves the right to suspend or terminate Broadband Service accounts where data consumption is not characteristic of a typical residential user of the Broadband Service as determined by Rainbow Communications in its sole reasonable discretion. Rainbow Communications will contact customers whose bandwidth usage is considered excessive, over 1 Terabyte, and try to help those customers find an Internet plan that better suits their needs. If a reasonable solution is not found and usage remains excessive, Rainbow Communications reserves the right to limit, suspend, or terminate the high volume user's Internet service.

Common activities that may cause excessive data consumption in violation of this AUP include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) FTP, (ii) peer-to-peer applications, and (iii) newsgroups. You must also ensure that your use of the Broadband Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Broadband Service, nor represent (as determined by Rainbow Communications in its sole discretion) an overly large burden on the network. In addition, you must ensure that your use of the Broadband Service does not limit or interfere with Rainbow Communications' ability to deliver and monitor the Broadband Service or any part of its network.

If you use the Broadband Service in violation of the restrictions referenced above, that is a violation of this AUP. In these cases, Rainbow Communications may, in its sole reasonable discretion, suspend or terminate your Broadband Service account or request that you subscribe to a version of the Broadband Service (such as a commercial grade Internet service, if appropriate) if you wish to continue to use the Broadband Service at higher data consumption levels. Rainbow Communications may also provide versions of the Broadband Service with different speed and data consumption limitations, among other characteristics, subject to applicable Broadband Service plans.

Rainbow Communications' reasonable determination of the data consumption for Broadband Service accounts is final.

Please see Rainbow Communications' [Network Management Policy](http://www.rainbowtel.net/network-management-practices-disclosure) on the Rainbow Communications website, available at <http://www.rainbowtel.net/network-management-practices-disclosure> , for specific information regarding excessive data use.

#### **IV. Violation of this Acceptable Use AUP**

Rainbow Communications reserves the right, in its sole reasonable discretion, to immediately suspend or terminate your Broadband Service account and terminate the Subscriber Agreement if you violate the terms of this AUP or the Subscriber

## Agreement.

Rainbow Communications does not routinely monitor the activity of individual Broadband Service accounts for violations of this AUP, except for determining aggregate data consumption in connection with the data consumption provisions of this AUP. However, in the company's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Broadband Service. Rainbow Communications has no obligation to monitor the Broadband Service *and/or* the network. However, Rainbow Communications and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to, among other things, operate the Broadband Service; identify violations of this AUP; *and/or* protect the network, the Broadband Service Rainbow Communications users.

Rainbow Communications prefers, depending on the situation, to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Rainbow Communications also prefers to have customers directly resolve any disputes or disagreements they may have with others, whether customers or not, without Rainbow Communications' intervention. However, if the Broadband Service is used in a way that Rainbow Communications or its suppliers, in their sole reasonable discretion, believe violates this AUP, Rainbow Communications or its suppliers may take any responsive actions they deem reasonably appropriate under the circumstances with or without notice. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Broadband Service (including but not limited to newsgroups). Neither Rainbow Communications nor its affiliates, suppliers, or agents will have any liability for any of these responsive actions. These actions are not Rainbow Communications' exclusive remedies and Rainbow Communications may take any other legal or technical actions it deems appropriate with or without notice.

Rainbow Communications reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Rainbow Communications' servers and network. During an investigation, Rainbow Communications may suspend the account or accounts involved *and/or* remove or block material that, in Rainbow Communications' sole reasonable discretion, potentially violates the law or this AUP. You expressly authorize and consent to Rainbow Communications and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) system administrators at other Internet service providers or other network or computing facilities in order to enforce this AUP. Upon termination of your Broadband Service account, Rainbow Communications is authorized to delete any files, programs, data, e-mail and other messages associated with your account (and any secondary accounts).

The failure of Rainbow Communications or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time or to create any rights for you or any third party. You agree that if any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. You agree to indemnify, defend and hold harmless Rainbow Communications and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this AUP. Your indemnification will survive any termination of the Subscriber Agreement.

## **V. Redress and Governing Law**

### **A. Governing Law / Resolution of Disputes – Arbitration**

Any dispute or claim between you, the Customer, and Rainbow Communications arising out of or relating to the service provided in connection with this Acceptable Use Policy or the Subscriber Agreement shall be resolved by arbitration ("Arbitration"), unless otherwise specified in Customer's individual Subscriber Agreement. To the extent that there is a conflict regarding this Arbitration provision, the Customer's individual Subscriber Agreement supersedes the Terms and Policies of the individual Services.

The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The parties agree that no arbitrator has the authority to: (i) award relief in excess of what the Subscriber Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in Arbitration. CUSTOMER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

## **B. Governing Law / Resolution of Disputes. Governing Law**

The Agreement and the relationship between you and Rainbow Communications shall be governed by the laws of the state of Kansas without regard to its conflict of law provisions and the Communications Act of 1934, as amended, and any regulations promulgated thereunder. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with the Arbitration provision herein, you and Rainbow Communications agree to submit to the personal and exclusive jurisdiction of the courts located within the state of Kansas and waive any objection as to venue or inconvenient forum. The failure of Rainbow Communications to exercise or enforce any right or provision of this AUP or the Subscriber Agreement shall not constitute a waiver of such right or provision. If any provision of this AUP or the Subscriber Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this AUP or the Subscriber Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the service, this AUP or the Subscriber Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. Nothing contained herein is meant to limit any authority of the Federal Communications Commission.

## **VI. Copyright and Digital Millennium Copyright Act Requirements**

Rainbow Communications is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Broadband Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Broadband Service (or any part of the Broadband Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged Infringements. It is Rainbow Communications' policy in accordance with the DMCA and other applicable laws to reserve the right to terminate or suspend the Broadband Service provided to any customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Rainbow Communications, in its sole reasonable discretion, believes is infringing these rights. Rainbow Communications may terminate the Broadband Service at any time with or without notice for any affected customer or user.