

**IOWA COMMUNICATIONS ALLIANCE
ANTITRUST COMPLIANCE PROGRAM
AUGUST 2014**



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I. Policy of Full Compliance

It is policy of the Iowa Communications Alliance (the “Alliance”) to comply fully with all applicable antitrust laws, both state and federal. Consistent with this policy of full compliance, the Alliance has adopted this Antitrust Compliance Policy (the “Policy”).

II. Procedures and Conduct

A. Procedures

1. The Alliance shall observe the following procedures:
 - i. Other than in exceptional circumstances (and in all cases in compliance with applicable Alliance bylaws), director and member meetings will be regularly scheduled and conducted pursuant to a written agenda distributed in advance to attendees;
 - ii. Other than in exceptional circumstances, (and in all cases in compliance with applicable Alliance bylaws), discussions at director and member meetings shall be limited to agenda items;

- iii. Alliance business shall be conducted only through official meetings of the directors (including committees of directors) and/or members (including committees of members) or through appropriate written action in lieu of a meeting approved using processes and procedures in compliance with the Alliance bylaws;
 - iv. Minutes shall be kept of all director and member meetings;
 - v. All agenda and minutes of director and member meetings shall be reviewed by designated Alliance staff prior to finalization. Alliance staff shall consult with Alliance legal counsel concerning such agenda and minutes, if and to the extent staff determines that a sensitive topic or compliance issue under the antitrust laws is implicated;
 - vi. Alliance legal counsel will be consulted prior to any exchange or collection of industry data to assure that it is undertaken in compliance with applicable antitrust laws; and
 - vii. If at any time an Alliance director, member, or staff believes that a sensitive topic under the antitrust laws is being or is about to be discussed, the director, member, or staff shall raise his or her concern to those present or to Alliance staff. If a concern is raised relating to an antitrust issue, Alliance directors, members and staff will end any discussion, seek advice of Alliance legal counsel or, if necessary, suspend or terminate any meeting until such issue is appropriately resolved or addressed.
2. The Alliance will maintain the following policies regarding membership:
- i. The Alliance will not exclude competitors from membership, if the applicant otherwise meets membership requirements as set forth in the Alliance bylaws. Decisions concerning application for membership shall in all cases be made in compliance with applicable Alliance bylaws and policies in effect at the time of the decision.
 - ii. The Alliance will not restrict members from dealing with nonmembers.
 - iii. The Alliance will not prevent nonmembers from obtaining access to information not otherwise available, which, if denied, would limit the ability of the nonmember to compete effectively with members.
 - iv. Alliance legal counsel will review all action by the Alliance or the Board of Directors that has the effect of rejecting a membership application or removing a member from membership.
 - v. Any Alliance director, member, or staff who participates in conduct that the Board of Directors, in consultation with Alliance legal counsel, determines to be contrary to this Policy shall be subject to disciplinary measures, up to and including, termination of participation in Alliance activities or termination of Alliance membership, provided any member discipline or termination shall be determined and carried out in accordance with the Alliance bylaws. Any proposed action under this subsection shall be reviewed by Alliance legal counsel prior to member discipline or removal.
 - vi. A copy of this Policy shall be included in the Board of Directors Policy Manual. A copy of this Policy will be made available to all members, including via posting on the Alliance website. If Alliance legal counsel or staff believes that a meeting of the Board of Directors or of the members will involve a sensitive topic or compliance issue under the antitrust laws, the following statement shall either be read or a sign-in sheet with this or a substantially similar Antitrust Avoidance Statement shall be used:

Before we begin, let me take the opportunity to remind you that it is the established policy of the Iowa Communications Alliance to comply with all laws, including the antitrust laws. Because our group contains members that are or may be competitors, we must continue to be careful to confine our discussions, both formal and informal, to the topics described on our agenda. As you all know and appreciate, in order to comply with our policy, we will not address, in the group or separately, any issues related to our respective companies' current or future pricing for unregulated services, terms of service or costs, strategic plans or initiatives, bidding situations, and contracts with specific customers or in specific geographic areas. If you have any questions or concerns about these matters as we proceed, please raise them immediately.

B. Conduct

1. The **Alliance and its members and representatives shall not engage** in activities or discussions, whether formal or informal, which might be construed as a joint or concerted attempt to:
 - i. Raise, lower, or stabilize prices for unregulated services;
 - ii. Regulate the amount of services available;
 - iii. Allocate markets, customers, or territories;
 - iv. Restrict competitive bidding;
 - v. Encourage boycotts or joint refusals to deal;
 - vi. Foster unfair trade practices;
 - vii. Assist in monopolization; or
 - viii. In any way violate federal antitrust or applicable state laws.

2. The following are **examples of activities** that, within the Alliance context, **most likely would not be found to violate antitrust laws**, applicable state laws or this Policy:
 - i. Discussions regarding strategies for lobbying of federal and state governments in order to obtain favorable legislation or regulatory treatment to the benefit of the industry;
 - ii. Discussions relating to pricing of services regulated by any state or federal governing body, so long as the discussions are strictly related to the regulated prices; and
 - iii. The setting of standards or formulation of industry best practices utilizing a reasonable and objective process that is designed to enhance the quality of service; and
 - iv. The collection, use and distribution of industry data in a manner that meets applicable Department of Justice and Federal Trade Commission safe harbor guidelines found in the 1996 *Statements of Antitrust Enforcement Policy in Health Care* and broadly applicable to other industry trade associations.

III. General Overview of Pertinent Antitrust Laws

A. Federal Antitrust Laws

The federal antitrust provisions of primary concern to Alliance members acting within the Alliance context are **Section 1 of the Sherman Act** (15 U.S.C. § 1); **Section 5 of the Federal Trade Commission Act** (15 U.S.C. § 45); and the **Robinson-Patman Act** (15 U.S.C. § 13).

Section 1 of the Sherman Act prohibits agreements, combinations, or conspiracies in restraint of trade. Although courts have interpreted Section 1 to prohibit only joint or concerted actions that are “unreasonable” restraints of trade, the courts have further found that particular practices such as price fixing or division of customers or markets are by their very nature so pernicious as to automatically be deemed “per se” unreasonable without the need for detailed inquiry as to their effect on the market.

Violation of the Sherman Act Section 1 is a felony, punishable by significant fines for individuals and corporations and/or imprisonment for individuals. In addition, government authorities may pursue civil enforcement actions. Violation of the Sherman Act Section 1 may also subject those involved to civil liability for treble damages and attorneys’ fees in private suits.

Section 5 of the Federal Trade Commission Act (“FTC Act”) prohibits unfair methods of competition and unfair deceptive acts or practices. Essentially any violation of the Sherman Act Section 1 would also constitute a violation of Section 5 of the Federal Trade Commission Act. Violation of Section 5 of the FTC Act may result in injunctions, cease and desist orders, and civil penalties against those involved.

The Robinson-Patman Act makes it unlawful for any person engaged in commerce to discriminate in price or knowingly induce or receive prohibited price discrimination. The Robinson-Patman Act applies to sales of commodities.

B. Related State Laws

Most states have antitrust statutes which equate to the Sherman Act Section 1, except that they apply to actions affecting commerce within the state, as opposed to interstate commerce. Iowa, where the Alliance is based and operates, has a state antitrust equivalent of the Sherman Act Section 1 at Iowa Code §553 called the Iowa Competition Law. Violation of the Iowa Competition Law subjects the violator to civil damages, which may be three times the amount of actual damages sustained, and the payment of the plaintiff’s attorney fees. Additionally, the Iowa Attorney General has the power to investigate possible violations of the statute and to enforce the statute by bringing an action in the name of the state – for either civil or criminal penalties. Iowa also has, at Iowa Code § 551.1, a statutory prohibition of unfair price discrimination done “for the purpose of destroying the business of a competitor in any locality or creating a monopoly.”

IV. Member Responsibilities

This Policy cannot and does not attempt to comprehensively reference or address all activities that may violate federal antitrust laws or relevant state laws. As it relates to any sensitive topics or compliance issues, the Alliance and its individual members are expected to seek legal counsel and to individually assess their obligations and responsibilities under federal antitrust laws and relevant state laws.