

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Applied Card Systems, Inc., and Applied Card Systems
of Pennsylvania, Inc., File No. 032 3040

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc. (collectively “respondents” or “ACS”).

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After the public comment period, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement’s proposed order.

This matter concerns the debt collection practices of ACS in attempting to collect delinquent debt owed or allegedly owed to its affiliate, Cross Country Bank (“CCB”). The complaint alleges that respondents used unfair debt collection practices in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. The proposed complaint alleges two counts regarding ACS’s debt collection practices. First, the complaint alleges that ACS has repeatedly called non-debtor third parties in an attempt to either speak with a CCB cardholder or get location information about a cardholder, after the third parties have informed ACS that they do not know the cardholder or that the cardholder does not live at their residence. ACS makes these repeated calls without a reasonable belief that the third parties now have correct or complete information about CCB’s cardholders. Second, the complaint alleges that ACS has engaged in conduct purposely designed to harass third parties at the number called.

The proposed consent order tracks the complaint and contains injunctive provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed order contains two injunctive provisions. The first prohibits respondents from communicating with any third party, for the purpose of acquiring cardholder location information, more than once without a request by the third party for subsequent calls or a reasonable belief that the third party has complete or correct location information for the debtor. The second injunctive provision of Part I prohibits respondents from engaging in abusive conduct such as continued calls and the use of abusive language.

Part II of the proposed order contains a broad fencing-in provision that pertains to all consumers. Among other things, it bars respondents from (i) placing collection calls after 8 o’clock antemeridian and before 9 o’clock postmeridian, local time of the person called; (ii) placing calls to a consumer’s place of employment if they have reason to know that such calls are employer-prohibited; (iii) using false, deceptive, or misleading representations in collection calls; (iv) collecting amounts from consumers that are not legally due; and (v) applying payments received to those accounts except as designated by consumers.

Part III of the proposed order requires the respondents to distribute copies of the order to certain

company officials and employees. Parts IV through VI of the proposed order are monitoring, record keeping, and compliance provisions. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.