



The Green Sheet

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Demand for written retraction

In September 2005 The Green Sheet published an article by Patti Murphy of The Takoma Group titled "FTC Has ISOs in Its Sights" (Sept. 26, 2005, issue 05:09:02).

This article was based on information provided at the Western Payments Alliance (WesPay) Payments Symposium 2005 and in discussion with a conference presenter, Lauren France, a Federal Trade Commission (FTC) employee. At the WesPay conference Ms. France stated the allegations of a complaint against Universal Processing Inc., in the language of the complaint.

In addition, The Green Sheet published a second article written by David H. Press of Integrity Bankcard Consultants Inc., titled "Processing for Online Pharmacies: Going, Going ... Gone?" (Nov. 14, 2005, issue 05:11:01). This article was sourced to a Sept. 7, 2005 FTC settlement announcement.

In these two articles many references are made to the company Universal Processing, the subject of an FTC probe, with which the FTC reached a settlement that was published Sept. 7, 2005.

Although all who care to view this FTC action can read the settlement, it is important to point out that the settlement announcement includes the following note that may have been useful to have included in the second article:

"Note: A stipulated permanent injunction and final order is for settlement purposes only and does not constitute an admission by the defendant of a law violation."

Universal Processing believes that the two articles have many factual errors, and The Green Sheet has received a demand for a written retraction of these two articles.

After reviewing the demand and all the material concerning the complaint filed by the FTC against defendant Universal Processing, The Green Sheet feels that the concerns voiced by Universal Processing through its attorney are best expressed in its own language, which follows:

"After reviewing the substantive content of Ms. Murphy and Mr. Press' articles, I can only surmise that the articles' glaring factual misrepresentations and extensive deficiencies are the result of a malicious attempt by The Green Sheet to undermine my client's competitive advantage, substantial goodwill and well-earned reputation.

"A) Ms. Murphy's article

"Paragraph 2 states that Lauren France is an attorney for the FTC. She is not. Rather, Ms. France is employed by the FTC as one of its many investigators. Paragraph 4 provides readers with a description of the compromise reached between my clients and the FTC as a forfeiture of my clients' 'ill

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A look at the free equipment trend

By Michael Nardy

National Association of Payment Professionals (NAOPP)

Let's begin the new year by taking a look back. By far the biggest change in the past year has been the advent of "free" POS terminal programs and equipment giveaways from several major ISOs and processors.

These companies have all stepped up to the plate and improved the ability to sell their merchant programs through the use of innovative marketing, which allows merchant level salespeople (MLSs) to perceivably give away terminals to merchants (in addition to the normal course of action of selling, leasing or renting POS equipment).

This practice has sparked a furious debate on GS Online's MLS Forum, including pitting company against company and MLS against MLS.

Although no two free terminal programs are the same, and no company is right or wrong in its service offering, the programs have certainly caused a wave and huge splash in the industry, probably the largest I know of since the start of revenue share programs.

Without providing too many opinions on the various programs (and there are many), I will provide an overview of the topic.

Free terminals: A brief overview

Most MLSs surviving on residual incomes know where the free terminal concept really originated. It started when a merchant said, "If I give you this business will you upgrade my equipment for free?" In other words, quid pro quo; the MLS gives away a terminal and gets the bankcard business.

Whether this type of offer was first made in 2005, 1998, 1992 or 1964, banks, ISOs, processors and salespeople alike have been doing it for some time. It occurs in every facet of business: The soda distributor that gives away the soda fountain when you buy the syrup; the cell phone

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company that offers a 100% rebate on the cost of the phone when you sign a two-year agreement; or the liquor distributor that offers free neon signs to advertise the product you are selling.

A "this for that" relationship is almost omnipresent in the sales process, no matter what is being sold. With the free terminal programs, however, the major difference we must acknowledge now is the large-scale approach taking place.

No longer are we targeting bigger merchants and sacrificing a few hundred dollars for a large residual commission. Now, those offering free terminal programs are challenging the industry with a huge outlay in equipment for a boon in their monthly new account numbers.

The goals of these programs, depending on which company you talk to, are to bring on new merchants; entice converted merchants to do business with the company; secure a longer term from current merchants; and make sure the company's MLS partners are the most successful in the industry.

The ongoing debate: free or not?

On the MLS Forum, the debate runs deep as to whether free terminal programs are really free, i.e., whether the processor is making money or being charitable.

"I have seen some ISOs charge [a] merchant 1.75%, .25 cents with a .35 batch fee, a 99 annual with 1.99 mid and non fees, and then charge the merchant a 59.90 lease," wrote MLS Forum member MXS.

When you as an MLS charge annual, batch, monthly mini-

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mum or statement fees, and then advertise a free terminal, it may not actually appear to be free. But on the contrary, as many have pointed out, the fees existed before the free terminal programs began.

"Compared to any of the options that I have seen, selling or leasing the terminal at reasonable rates, and keeping the ongoing processing fees in line is the best way to make a friend and build a long-term relationship with the merchant," wrote bankcard101.

Really, the debate is not over which ISO program to use, but rather your own sales approach. If you did not charge annual, batch, minimum or statement fees before the advent of a free terminal program, and you are doing so now, then it seems that any free terminal program you offer won't really be free.

"There are ISOs with truly free placements out there; you just need to look," wrote makingmoney. "No batch fees, no termination fee, same Schedule A you use for a nonplacement account, etc. Usually come with a monthly minimum of about \$25, and that's it. They can come in handy from time to time."

Indeed, there may be programs that allow a free terminal placement without any changes from the normal Schedule A under which you normally operate. The following post by MLBratton sums up what most processors would allow: higher rates accommodating a free terminal and amortizing the cost of the terminal over two years:

"I cannot imagine a MSP out there that would not support free equipment placement [at a higher cost structure to the merchant]. I also believe a merchant will understand

that his processing costs are higher because he does not have to purchase equipment."

There is no doubt that the free equipment debate will continue; however, the approach that you take (truly free or not) will guide whether you believe that a free terminal program must be free of costs altogether, or may include an ROI for the processor investing in the terminals.

**Free terminals:
Financial burden on the ISO**

In a recent MLS Forum post, member newyorker wrote, "The massive amount of debt that some of these processors are taking on to finance these programs will undoubtedly lead to a shakeout. ... They will not all survive with that kind of debt servicing. There will be consolidation."

This brings up a point about the

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amount of debt companies are taking on while they compete in a free equipment world. Some have found a friend in the equipment manufacturing companies that allow them to finance the terminals on a rental or purchase program. A debt of hundreds of thousands of dollars, if not millions, may not be necessarily the case.

Creative financing is a key factor in growing a business without relying on large cash expenditures to keep a free terminal program going. Another side to this issue: Companies that are outlaying large amounts of money to buy terminals or pay bonuses have to be careful to manage their cash flow and attrition well. If they bring on 100 new applications a month with a free terminal program, and then lose 100 accounts a month as a result of attrition, the program is a losing proposition.

Similarly, offering one terminal and program as a free unit and then altering it to a different type of terminal might be the death of a program. It also can lead to ISO attrition, not only merchant attrition.

"It does make sense that some of the entities offering 'free terminals' would endure financial difficulties," Bankcard101 wrote. "Implementation of the program could turn into an administrative nightmare: Changing the criteria under which the deals are written; getting that information out to the MLS; making certain that deals submitted under the free terminal program meet established criteria; keeping the MLS onboard while removing one of his revenue sources; and attempting to recoup terminals when a merchant cancels or goes out of business.

"There are bound to be losses from terminals not recouped when a mer-

chant cancels or goes out of business. I also question the long-term retention capabilities once the merchant realizes that they did not receive a free terminal but are in fact paying dearly for that free terminal through additional fees."

Regardless, the free terminal programs' success, as told by the various ISOs and processors offering them, may provide some proof that the business model for this type of program to augment the current ISO program is not so bad, at least in the short term. What will be interesting to see are the posts on the MLS Forum in the year ahead as these programs, and the companies offering them, mature. ■

Michael Nardy is Chief Executive Officer of Electronic Payments Inc. (EPI), a private transaction and payment processing company. He is also a founding sponsor of NAOPP. For more information, e-mail him at mike@elecpayments.com.

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