ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of West Penn Multi-List, Inc., File No. 0810167

The purpose of this analysis is to facilitate comment on the proposed consent order [illegible]

I. The Respondent

West Penn is a Pennsylvania membership corporation that provides multiple listing services to real estate professionals based in the Pittsburgh metropolitan area and surrounding counties. It is owned by its membership, which comprises more than 6800 subscribers. Respondent serves the great majority 1(o)-(u)10(7(i)15m88E/-)-20(e)a8(e)-8ru(e)-nTve olate prov by the Commission in numerous other consent orders involving MLS restrictions that have been announced since 2006. A general discussion of industry background and the Commission's reasoning is contained in the Analysis to Aid Public Comment issued in connection with five of those consent orders in the "real estate sweep" announced in October 2006.

[1] In particular, certain

[1] *See* http://www.ftc.gov/os/caselist/0610268/0610268consentanalysis.pdf. *See also In the Matter of Multiple Listing Service, Inc.*, FTC File No. 061-0090 (analysis of consent order in matter involving similar conduct by Milwaukee, Wisconsin area MLS), located at

conduct by Respondent is similar to activity addressed in the Commission's consent order traditional format approved by the Respondent. This policy, known as the "Web Site Policy," prevents properties with non-traditional listing contracts from being displayed on a broad range of public web sites, including the "Realtor.com" web site operated by the National Association of Realtors and web sites operated by brokers or brokerage firms that are MLS members. The conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS and from public web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along.

In addition to the restrictions that disadvantage Exclusive Agency Listings, Respondent's rules also include a provision that requires brokers to submit their listing contracts to the MLS, which retains them on file for two years. The complaint alleges that the collection of listing contracts by Respondent allows West Penn to enforce its exclusion of Exclusive Agency Listings.

Furthermore, Respondent has established a default duration of one year for all listing contracts. In setting such a lengthy standard contract, the MLS has placed the burden on individual consumers to negotiate shorter terms or request early termination of their service agreements with listing brokers.

Respondent adopted each of the challenged rules and policies at some point after March 2006. On September 9, 2008, prior to agreeing to the proposed consent order and prior to the Commission's acceptance of the consent order and proposed complaint for public comment, the Board of Directors of West Penn voted to rescind the restrictions.

C. Competitive Effects of the Respondent's Rules and Policies

West Penn's rules and policies have discouraged its members from offering or accepting Exclusive Agency Listings. Thus, the restrictions impede the provision of unbundled brokerage services, and may make it more difficult and costly for home sellers to market their homes. Furthermore, the rules and policies have caused home sellers to switch away from Exclusive Agency Listings to other forms of listing agreements. By excluding Exclusive Agency Listings from the MLS and prohibiting them from being transmitted to popular real estate web sites, the West Penn restrictions have adverse effects on home sellers and home buyers. When home sellers switch to full-service listing agreements from Exclusive Agency Listings, they may be required to contract for more services than they desire, and miss opportunities to save money on brokerage fees. In particular, the rules deny home sellers choices for marketing their homes, and deny home buyers the chance to use the internet easily to see all of the houses listed by real estate brokers in the area, making their search less efficient.

Respondent's rules also deter listing brokers and home sellers from contracting for services for terms of less than 365 days. The complaint alleges that West Penn's rule requiring agreements to run for 365 days reduces certain forms of competition among brokers and thereby limits consumer choice. As courts have recognized, the competitive process can be subverted

Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. The proposed order includes examples of such practices, but the conduct it enjoins is not limited to those five enumerated examples. The proposed order also requires West Penn to stop collecting and retaining listing agreements, and prevents Respondent from setting the length of time for such agreements. In addition, the proposed order states that, within thirty days after it becomes final, Respondent shall have conformed its rules to the substantive provisions of the order. West Penn is further required to notify its participants of the order through its usual business communications and its web site. The proposed order requires notification to the Commission of changes in the Respondent's structure, and periodic filings of written reports concerning compliance.

The proposed order applies to Respondent and entities it owns or controls, including any affiliated web site it operates. The order does not prohibit participants in the MLS, or other independent persons or entities that receive listing information from Respondent, from making independent decisions concerning the use or display of such listing information on participant or third-party web sites, consistent with any contractual obligations to Respondent. The proposed order will expire in 10 years.