Corporate Headquarters
2609 Cameron Street
Mobile, AL 36607
ph: 251.479.4500
fax: 251.473.4588
web: GTL.net

September 29, 2011

By Email

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1404 (Debit Card Interchange Fees and Routing)
RIN No. 7100 AD63 (Interim Final Rule)

Dear Ms. Johnson:

Global Tel*Link Corporation ("GTL") hereby respectfully submits these comments in the above-referenced proceeding, specifically focusing on the issue of adjusting the interchange transaction fee to account for costs incurred by issuers in preventing fraud in relation to electronic debit card transactions. In light of the generous interchange transaction fee afforded issuers pursuant to the final rule adopted on July 20, 2011, by the Board of Governors of the Federal Reserve System (the "Board") in Docket No. R-1404, GTL submits that issuers should not be entitled to an additional adjustment for fraud prevention cost recovery, and at the maximum, must not receive an adjustment in excess of $0.01.

BACKGROUND

GTL (along with its wholly-owned subsidiaries) provides secure, customized, highly specialized telecommunications services to correctional facilities throughout the United States. GTL serves all types of correctional facilities, from the smallest county jails to thirty-five of the nation's Departments of Correction. GTL has been serving the secure telecommunications needs of the corrections industry for over twenty years, during which time its service has evolved from traditional public payphone to sophisticated software-based security systems that not only connect inmates with friends and family by telephone but, just as importantly, assist law enforcement and corrections entities in their attempts to prevent illegal activities that may originate within their inmate populations, and prosecute such crimes when they occur.

GTL has no retail outlets, and the called parties of inmates pay for calls in several different ways, one of which is with debit cards via a website interface that results in 100% of payments falling into the "card not present" ("CNP") category. As a result of the specific demographic that makes up the predominant class of called parties of inmates, debit cards are a favored method of payment. A large percentage of GTL's end users do not carry credit, and paying for inmate calls using personal checks or money orders can mean a time delay in the ability to receive calls from loved ones in confinement. In 2010, GTL spent over $4.4M in interchange transaction fees. Additionally, in 2010, GTL rejected the equivalent of one month's revenue – hundreds of thousands of calls – in order to avoid exceeding VISA and MasterCard chargeback thresholds. GTL has spent $1.3 million and devoted thousands of person-hours to date, and will spend close to $260,000 on PCI data security standard compliance in 2011.

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GTL shares all of the burdens and all of the concerns of entities like Amazon.com and Dell.com, whose arguments and comments GTL supports. GTL lacks the ability to pass along some or all of the financial burden of accepting CNP debit payments to the card users through the price of goods or services. GTL is regulated as a telecommunications utility at both the federal and state level, and is restricted in the call rates and ancillary fees it can charge for inmate calls under its governing regulations, and its contracts with the correctional facilities it serves. As a non-brick-and-mortar, CNP-transaction merchant, GTL bears a disproportionate burden with respect to accommodating interchange fees than other merchants. GTL joined similarly situated merchants such as Amazon.com and Dell in its comments filed to the *Notice of Proposed Rulemaking* in this Docket in arguing that the interchange fee should be set at par, based on the distribution of cost and investment among issuers, acquirers and merchants with respect to debit card transactions. The final rules that issued from the rulemaking firmly favor issuers, such that the result of this interim rulemaking on this single issue *must* recognize the factual circumstances of CNP merchants as they relate to debit card use fraud prevention.

INTERIM RULE

Beginning July 21, 2011, and as an interim measure, card issuers were granted to right to adjust the newly imposed debit card interchange fee by $0.01, in order to recover their costs of preventing debit card use fraud. According the EFTA Section 920(a)(5), the Board may allow an adjustment to the interchange transaction fee received or charged by an issuer if:

1) Such adjustment is reasonably necessary to make allowances for costs incurred by an issuer in preventing fraud that is related to electronic debit card transactions, and;
2) The issuer complies with fraud prevention standards established by the Board.

The Board must consider, when issuing the standards and ultimate regulation:

1) The nature, type and occurrence of fraud;
2) The available and economic means to reduce fraud;
3) The fraud prevention and data security costs expended by EACH party involved in a debit transaction (*not the least of which is the card-accepting merchant*);
4) The costs of fraud absorbed by each party to a debit transaction.

With respect to the proposal to have the Board set standards for the method of fraud prevention, it appears that the majority of commenters in the *NPRM* phase feel that the Board should not mandate the use of specific fraud-preventing technologies. As long as merchants are not subject to any prescription for how they implement fraud prevention technologies, GTL is agnostic with respect to the final rule on the matter. It bears noting, however, that to the extent that issuers are entitled to receive an adjustment to their already generous interchange fee for the purpose of recouping their investment in fraud prevention programs, it might be helpful to have some standards set for the purpose of measuring entitlement to the $0.01 fee. Should the Board determine that the type of fraud prevention programs developed and implemented by issuers be left to the discretion of the issuer, there is no way of determining whether or not an issuer has invested capital in the implementation of a worthwhile technology. There should be a nexus between the right to collect the fee and the outlay of money toward a program or technology that truly mitigates the frequency of debit card fraud.

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As a CNP merchant, GTL is among the category of merchants that expends the greatest amount of money in the interchange fee and fraud prevention realm. While the interim rule requires the Board to consider the cost of fraud on each of the parties to a debit card transaction, it appears that the proposal to offer issuers a $0.01 subsidy to stem debit card fraud is a display of partiality to only one party to fraud. Regardless of the developments and improvements in fraud prevention the issuers may undertake in exchange for receipt of the fee, it is highly unlikely that merchants will scale back their own investments in the same.

GTL is responsible for preventing fraud before and during the authorization and settlement of a debit card transaction. GTL spend hundreds of thousands of dollars per year (approximately $60,000.00 per month) on fraud prevention activities. In addition, GTL rejects thousands of cards per month, even those authorized and approved by the card's issuing bank, on the suspicion of fraud and the inability of the transaction to meet GTL's fraud prevention thresholds. Even though issuing banks may have authorized, cleared and settled a transaction for its own cardholders, GTL bears 100% of the liability for unauthorized or fraudulent use of credit cards, which costs GTL approximately $100,000.00 per month in returned funds and over $20,000.00 per month in chargeback fees. GTL is also responsible for protecting the issuing banks' customers/cardholders who use GTL's services through its compliance with PCI-DSS standards; an expense that runs into millions of dollars.

Receipt of the fee by issuers would be most justifiable if they could show that the money enabled them to reduce the amount of fraud expense incurred by other parties to a debit transaction. GTL agrees with Amazon.com that before a fraud adjustment can be considered, or justifiably received, issuers should have enough faith in their fraud prevention technologies and programs that they will agree to accept complete responsibility for their cardholders' fraudulent activities.[1] Quoting Amazon.com's comments: "[I]f issuers do not trust their fraud prevention technology enough to take complete responsibility for cardholder fraud, [adjustment to the interchange fee] is not reasonably necessary and they should receive no fraud adjustment for that technology."[2]

If the Board is not the appropriate body to set technology standards for the issuers, than technology utilized by issuers must effectively reduce the current level at which merchants are subjected to chargebacks. If GTL does not experience a reduction in its cost to accept debit cards as payment, it will continue to invest heavily in its own fraud prevention technologies and programs. The inequity arises when this is the state of GTL's accommodation of debit card users, yet issuers are the only party to a debit card transaction to have its costs reimbursed. GTL's concern is that the issuers will emerge from this rulemaking with a $0.01 adjustment to the interchange fee, and merchants' will experience no positive change in the frequency of debit card fraud and no reduction in their own costs of fraud prevention.

GTL recognizes that the issuers are subject to various compliance obligations with respect to adherence to whatever fraud prevention requirements are finally adopted in this Docket. For that reason, and that reason alone, GTL does not oppose up to a $0.01 adjustment for issuers. However, given the significant financial burden fraud prevention and PCI-DSS compliance places on GTL, any adjustment ultimately adopted cannot exceed $0.01.

[1] Comments of Amazon.com in Docket No. R-1404 RIN 7100-AD63, filed Nov. 20, 2010, at 10.
[2] *Id.*

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If GTL bears all the risk to prevent fraud, is forced to reject millions of dollars in potential revenue per year in order to avoid suspicious transactions, bears all of the risk to protect cardholders using GTL systems pursuant to PCI compliance rules, and 100% of the expense of fraudulent transactions authorized and cleared by the issuing bank falls on GTL, what role does the issuing bank have with respect to fraud prevention and what incentives are there to ensure that fraud prevention funds are spent on fraud prevention systems, policies and methods that benefit the merchant?

In closing, GTL has an obligation to the correctional facilities it serves, the inmates they house, and the friends and families of those inmates, to connect and complete as many inmate phone calls as possible. The Board has an opportunity to facilitate the maximum fulfillment of this obligation by adopting fraud prevention requirements that fairly consider the costs of debit card fraud on all the parties to a transaction, and refrain from treating the card issuers with inequitable favoritism.

Respectfully submitted,

Dorothy E. Cukier

Dorothy E. Cukier
Executive Director, External and Regulatory Affairs