August 11, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, D.C. 20551

RE: Comments on Proposal to Clarify Regulation II
Docket No. R-1748, RIN 7100-AG15

Dear Secretary Misback:

RaceTrac, Inc. ("RaceTrac") supports the Board of Governors of the Federal Reserve System's ("Board") proposed clarification of Regulation II ("Proposal" or "clarification").[1] Despite Regulation II's network competition requirements, far too frequently, debit card issuers and networks have not adhered to the terms of Regulation II and have failed to make available two networks to process debit transactions on significant numbers of debit transactions. To end these failures, RaceTrac encourages the Board to finalize and implement its Proposal to clarify Regulation II swiftly. Nevertheless, in this letter RaceTrac also recommends that the Board make several changes to its Proposal to strengthen the final rule.

Headquartered in Atlanta, Georgia, RaceTrac is a family-owned business that has been serving guests since 1934. RaceTrac, together with its franchise-brand RaceWay, operates over 750 convenience stores and employs nearly 10,000 team members across its footprint. RaceTrac customers can utilize multiple forms of payment, including credit card, debit card, and cash. In 2020, RaceTrac and RaceWay stores processed 262 million card transactions and paid $93 million in swipe fees.[2] Of those payment card transactions, 60 percent of the transactions were PIN debit and 13 percent were signature debit. **Swipe fees are generally our second largest expense behind labor**.

Since it was finalized, Regulation II has had an important and beneficial impact on our business. This is not only because of the limit that the regulations imposed on

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[1] Federal Reserve System, Board of Governors, Notice of Proposed Rulemaking, *Debit Card Interchange Fees and Routing*, 86 Fed. Reg. 26189 (May 13, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-05-13/pdf/2021-10013.pdf [hereinafter *Proposal*].

[2] Pre-COVID (2019), RaceTrac processed 280 million payment card transactions and paid $107 million in swipe fees.

ballooning debit interchange fees but also because of the important provisions prohibiting network exclusivity and enhancing routing competition. The positive impact of the routing competition provisions of Regulation II cannot be understated. Regulation II injected competition into an otherwise anti-competitive marketplace, which enabled merchants, like RaceTrac, to better negotiate rates. This has been very important to the company and we have actively sought out the best routing contracts. Despite the existence of basic routing competition in the "card present" space today, however, this is the not the case in terms of e-commerce and contactless transactions when PIN or PINless debit capabilities are not available. In fact, if entering a PIN is not available for the transaction or if the issued card does not support PINless, the card will only route over the Visa or Mastercard rails. Without proper adjustments to Regulation II, depending on a merchant's growing e-commerce transaction volume, the lack of routing competition in the "card-not-present" space could undercut any routing volume incentives that a merchant has in place with a debit network.

Additional detailed comments can be found below.

I. Introduction

a. About RaceTrac, Inc.

The company is composed of two operating divisions: RaceTrac and RaceWay. RaceTrac operates 549 RaceTrac-branded retail fuel and convenience stores across seven southern states: Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Texas; and owns more than 200 franchise operated RaceWay-branded stores across 11 states: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. RaceTrac employs nearly 10,000 individuals across its divisions and subsidiaries.

RaceTrac's affiliate, Energy Dispatch, hauls fuel for RaceTrac and RaceWay, and employs more than 230 drivers and operates 88 tractor-trailers out of six states: Alabama, Florida, Georgia, Louisiana, Tennessee, Texas. Energy Dispatch delivers more than 1.2 billion gallons of fuel each year. RaceTrac also has a wholly-owned subsidiary, Metroplex Energy, which secures bulk fuel to supply RaceTrac and RaceWay stores and other third-party companies by rail, pipeline, truck, barge and vessel across 13 states: Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Virginia. Metroplex Energy sells about 4.8 billion gallons of fuel annually.

Every day, RaceTrac welcomes more than a million guests to its stores. We operate under our mission to "make people's lives simpler and more enjoyable"—and for that reason, the company has been named a top workplace across many of the states in which it operates and has been recognized on the Forbes list of largest private companies every year since 1998.

Since 2015, RaceTrac has built an average of 40 new stores annually, investing about $225 million each year across our footprint. We plan to invest another $300 million to build 31 new stores in 2021, which will lead to expanded employment opportunities as each of our stores employs approximately 20-22 people.

b. Payments at RaceTrac

Today, RaceTrac accepts physical payment card transactions via swipe (magnetic strip), dip (chip), as well as contactless methods, such as mobile wallet methods (i.e., Apple Pay, Samsung Pay, and Android Pay). Most payment card transactions at RaceTrac are considered "card present" and occur in the following instances: (1) face-to-face transaction inside the store at the point of sale (a RaceTrac employee is present); (2) self-checkout transaction inside the store at a self-checkout unit (a RaceTrac employee may or may not be present); (3) automated fuel dispenser transaction occurring outside the store on a card reader connected to the fuel pump (a RaceTrac employee is not present).

Despite the prevalence of card present transactions, we are also seeing an increasing number of "card-not-present" transactions, and we expect this number to continue to grow. At RaceTrac, card-not-present transactions occur in the following scenarios: (1) website order where customer orders items prior to pick up at the store; (2) "in App" where customers purchase and reload digital RaceTrac gift cards within the RaceTrac application; and (3) fuel subscription where the customer signs up to receive discounts on fuel for a monthly fee via RaceTrac's app and website and is billed monthly in a process referred to as "card on file."[3] Notably, in the card-not-present environment, the company experiences higher card fees and also runs into payment acceptance limitations.

II. Comments on the Proposed Clarification

RaceTrac supports the Board's Proposal to clarify Regulation II and believes it will, on the whole, facilitate competition in the payments space and promote compliance with the law, ultimately benefiting retailers and consumers. Nonetheless, the company believes the Board could strengthen its clarification with specific changes, all of which are described in more detail below.

a. RaceTrac Supports the Clarification for Card-Not-Present Transactions

Today, it is quite common for card issuers to refuse to enable debit networks competing with Visa and Mastercard to carry card-not-present transactions such as those occurring over the Internet and mobile phone applications. In short, there is a routine and

[3] For fuel subscription purchases, the customer's payment card number is maintained in a tokenized state and billed monthly in a process referred to as "card on file."

widespread violation of the law occurring. This must stop. The Board's proposal to clarify that merchants must be able to choose from – and issuers must enable – at least two unaffiliated networks on a card to handle *all types* of transactions is appropriate.[4]

b. The Board Should Protect Against Regulatory Violations Based on Methods of Authentication

RaceTrac believes the Board's clarification that two networks do not need to be enabled for each method of authentication should be revisited and further developed.[5] Although the Board addressed this issue during litigation challenging Regulation II, since that time, the marketplace has changed so much that the Board's position is no longer consistent with what is happening across the retail landscape. As the Board correctly prognosticated, debit networks, often referred to as PIN debit networks, have all developed the technology to handle transactions authenticated by PIN as well as those that are not.

With this Proposal, the Board is trying to make clear that mobile app and wallet, as well as Internet transactions, must have two enabled networks available; however, such transactions often do not have PIN authentication available. Thus, there is ambiguity that issuers will exploit to circumvent the prohibition on network exclusivity. For example, a card issuer could enable a debit network while also blocking its ability to handle non-PIN transactions (NB: this is exactly what happens with card-not-present transactions today), yet because of the proposed language regarding authentication, the card issuer will have an argument that it is nonetheless fulfilling the regulatory requirements by simply having one global and one domestic network available. Although such an approach would violate both the letter and the spirit of the Board's clarification that two networks must be available for every specific type of transaction, the mixed messages in the Proposal regarding authentication is an open invitation for card issuers to try to circumvent and undermine what the Board is trying to do.

Perhaps the Board's authentication text is an attempt to "future-proof" Regulation II so that networks, which are unable to immediately handle a new authentication method when it first emerges, will still be sufficient for issuers to use to achieve compliance? Unfortunately, the proposed language is guaranteed to be misinterpreted and weaken the rest of Regulation II. Fortunately, there is a fairly simple solution to avoid this pitfall: the Board should incorporate language stating that issuers are required to enable the networks they put on their card to be able to process any and all methods of authentication that those networks are able to handle. Such an approach protects the Board's intent while also ensuring that Regulation II will be future-proofed and allow networks time to adopt new authentication capabilities.

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[4] Proposal, *supra* note 1 at 26190, 26192, 26194.

[5] Proposal, *supra* note 1 at 26192, 26194.

Moreover, RaceTrac encourages the Board to integrate language clarifying that the major card networks (i.e., Visa and Mastercard) may not prevent competitor networks from processing specific authentication methods, such as biometrics and PINless. The importance of such a clarification cannot be understated—Visa and Mastercard *already* interfere with their competitors' ability to handle biometric authentication data when it comes from mobile payment platforms such as Apple Pay.

c. RaceTrac Supports the Clarification that Regulation II Applies Regardless of Form Factors or Means of Access

Under the Proposal, the Board clarifies that at least two unaffiliated networks must be enabled to process debit transactions regardless of form factors or "means of access."[6] This is an important distinction that will improve compliance with Regulation II. Despite the existing language of Regulation II prohibiting network exclusivity, which applies "regardless of whether the debit card is issued in plastic card form and also applies to any supplemental device …issued in connection with a plastic card,"[7] many transactions on mobile phone applications or through mobile wallets do not have network options. We have seen this firsthand, none of our online ordering purchases have travelled through the domestic debit networks. Thus, the Board's clarification that these and other form factors, access devices (i.e., a fob, e-wallet, etc.) and "other means of access" must also have two network options is a welcome change as these types of payments are proliferating. Moreover, given rapid changes in the payments space, RaceTrac supports the Board's emphasis that the clarification applies to other means of access that "may be developed in the future."[8]

d. It is Imperative the Board Clarify and Enforce Regulation II for Card Present Transactions

It is also important that the Board clarify that (1) issuers must enable, and (2) networks cannot interfere with, the ability of competitor debit networks to process transactions made using all methods of authentication that such networks are able to handle during in-person physical card present transactions. Such a clarification is needed to ensure that in-person physical card present transactions, as well as all other settings, have sufficient network options to comply with Regulation II.[9] Regrettably, today there are still cases in which the major card networks manipulate the configuration of point-of-sale terminals as well as merchants' ability to address authentication that ultimately limits competitor networks' availability to process non-PIN transactions. Because of the myriad

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[6] Proposal, *supra* note 1 at 26192-3, 26195.

[7] Proposal, *supra* note 1 at 26192.

[8] Proposal, *supra* note 1 at 26195.

[9] This is particularly important for the fuel retailing industry where fuel transactions at the pump have a different merchant category code (5542) from in-store food or merchandise purchases (5541) and have separate routing tables (with different chargeback liability).

ways in which Visa and Mastercard impose these restrictions, it would be invaluable for the Board to emphatically state that authentication cannot be used to limit or reduce the types of transactions that specific networks can handle, when those networks have the technical ability to process those transactions. Without such a clear position, the next ten years will continue to exhibit the chicanery and technical legerdemain that have been evident over the past ten years.

In sum, the Board has an opportunity with this rulemaking to put the kibosh on a whole host of problems that have plagued the market for the past few years. Unfortunately, however, without additional clarification, the Proposal, while including many positive elements, will be insufficient. RaceTrac urges the Board to clearly state that not only must issuers fully enable the networks on their cards but also that no network may hamper its competitor's ability to process debit transactions.

e. It is Time for the Board to Significantly Reduce the Debit Fees Allowable Under Regulation II

There is no question that it is time for the Board to reduce the level of allowable debit interchange fees. Under the Electronic Funds Transfer Act ("EFTA"),[10] the Board is obligated to limit debit interchange fees to a level that is "reasonable and proportional" to the "cost incurred by the issuer with respect to the transaction."[11] Per the Board's own analysis, issuers' costs have dropped significantly in the approximately two decades since the Board drafted Regulation II. In fact, the Board's report highlights that covered issuers' average costs of authorization, clearance and settlement of debit transactions is 3.9 cents per transaction.[12] 3.9 cents are a far cry from the current rate set under Regulation II: 21 cents + 0.05 percent of the transaction amount + one additional cent for fraud prevention costs, which has become a normal charge whether or not the issuer actually and effectively prevents fraud. Another interesting point in the report: in 99.4 percent of the transactions covered by Regulation II, allowable debit fees now *exceed* issuers' costs.[13] There is no reason for Regulation II to have limits that are so far above the actual costs issuers face. Moreover, despite the existence of Regulation II, we routinely see issuers and networks using workarounds (i.e., switch fees, assessment fees, and other fees) to

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[10] 15 U.S.C. 1693 *et seq.*

[11] 15 U.S.C. §1693o–2(a)(2)

[12] Board of Governors of the Federal Reserve, *2019 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions* (May 2021) at 4, *available at* https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2019.pdf.

[13] *Id.*

increase card fees overall,[14] which makes it harder for merchants to pass on their reduced costs to their customers because those cost savings are negated.

Considering the available data as well as the consistent decrease in issuer costs over the past ten years, RaceTrac calls upon the Board to review and lower the interchange fee standards to a "reasonable and proportional" level as required by EFTA.

III. Conclusion

RaceTrac appreciates the opportunity to provide these comments and stands ready to be of assistance to the Board in its consideration of these issues.

Sincerely,

Karla Ahlert

Karla Ahlert
Chief Financial Officer
RaceTrac, Inc.

[14] Switch fees are debit fees imposed by the networks when routing debit card transactions. Assessment fees are fees imposed by the networks for transactions that pass through the credit/signature debit rails. While signature debit interchange is still capped by Regulation II, assessment fees are not. (For example, in January 2019, Visa increased its credit assessment fee from 0.13% of the transaction total to 0.14%.) Visa's Fixed Acquirer Network Fee ("FANF") came about in 2012 shortly after the Durbin Amendment was passed. This is a tiered monthly fee based on merchant location volume in the card present environment and sales volume in the card-not-present environment.