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December 6, 2010

Louise L. Roseman  
Director  
Reserve Bank Operations and Payments Division  
Martin Building  
20th and C Streets, N.W.  
Washington, DC 20551

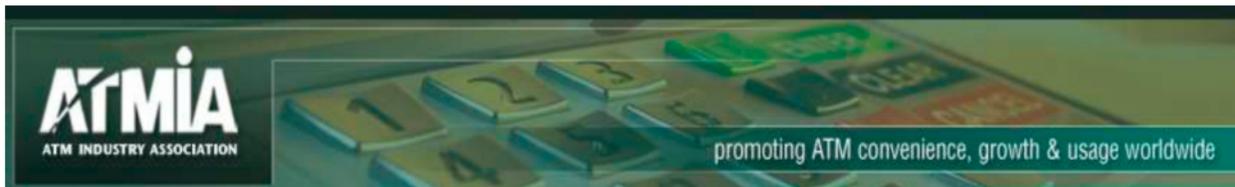
Dear Ms. Roseman:

I am the CEO of the ATM Industry Association (ATMIA), a non-profit trade association that represents the ATM industry, including owners and operators of over 200,000 non-bank ATMs in the United States. As an integral part of the debit card industry, we are writing to respectfully urge you to ensure that the regulations implementing Section 920 of the Electronic Funds Transfer Act (the “Act”) apply to ATM transactions. As discussed more fully below, that result is consistent with the explicit language of the Act, as well as Congress’s intent in passing it. We address first the Act’s application to ATM transactions and then explain why the result we advocate is consistent with Congress’s expressed intent in passing the Act.

A. The Act’s Application to ATM Transactions

Because the Act defines “electronic debit transaction[s]” to include ATM transactions, Section 920(a) and (b) both should apply to ATM routing and fees. This is apparent from the fact the Act defines “electronic debit transaction” as any transaction using a “debit card” and a “debit card” is defined in subsection 920(c) (2) as “any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means. ...” Since ATM transactions debit the same asset account (usually a demand deposit account) as point-of-sale debit transactions and in most cases travel over the same networks, they quite clearly are captured by this definition. As a result, ATM transactions should be considered “electronic debit transaction[s]” for purposes of the Act.

We believe this conclusion has implications for the way the Board should approach the various rulemakings mandated by the Act. For starters, Section 920(b)’s prohibition against networks or issuers restricting the number of networks “on which electronic debit transaction[s] may be processed” to less than two unaffiliated networks should apply to ATM networks.



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Requiring issuers to ensure that there be two competing ATM networks on their debit cards should impose no additional burdens on issuers because they likely will be adding debit networks to comply with the regulations and in virtually all cases the same networks that offer PIN debit functionality also offer ATM functionality. Moreover, such a requirement is consistent with introducing additional competition into the debit market. Indeed, prohibiting the large networks from entering into exclusive deals with issuers regarding ATM network functionality will prevent them from using such deals to harm competing debit networks by excluding them from critical ATM volumes.<sup>1</sup>

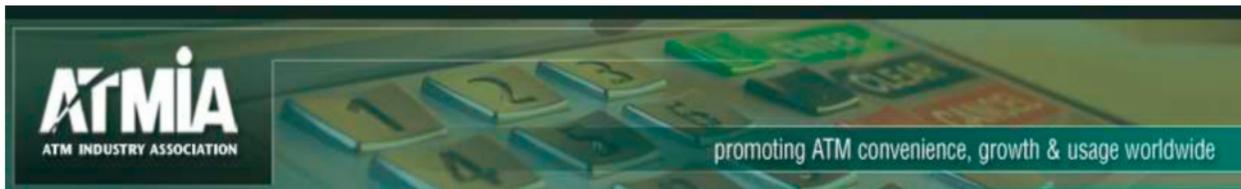
Moreover, Section 920(b)'s prohibition against rules that "inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions..." likewise should apply to ATM transactions. Put differently, non-bank owners of ATMs should be treated like merchants for purposes of Section 920(b). Non-bank ATM owners provide cash dispensing services to consumers and accept payment, through the imposition of convenience fees that are paid by cardholders, for those services. As a result, they are akin to merchants that receive payments for goods and services, and thus, there is no reason to distinguish between them and merchants in terms of their ability to direct the routing of transactions under the Act.<sup>2</sup> As a result, debit network rules or issuer practices that mandate that issuers control the routing of ATM transactions, therefore, should be prohibited by the regulations.

While Section 920(a) applies to ATM transactions for the reasons set forth above, we do not believe that Section 920(a) applies to ATM interchange fees (or any fees for that matter) paid to non-bank ATM owners and operators based upon the way the industry currently operates. Unlike point-of-service debit interchange, ATM interchange currently flows from the issuer to the ATM owner. This distinction renders Section 920(a) (1) inapplicable to ATM interchange paid to non-bank ATM owners and operators because it is not an "interchange transaction fee that an issuer ... receives[s] or charge[s] with respect to an electronic debit transaction." Should interchange payments to the issuer be implemented for ATM transactions – a problematic and economically unjustified development that is quite possible given the industry trends discussed

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<sup>1</sup> We address more fully below the linkages between debit and ATM network competition.

<sup>2</sup> The conclusion that the Act applies to ATM transaction is reinforced by the fact that Section 920(c) (11)'s definition of "payment card network" clearly applies to the debit/ATM networks, including MasterCard (Cirrus) and Visa (Plus). Consistent with that definition, ATM networks provide "the proprietary services, infrastructure and software that route information and data to conduct debit card ... authorization, clearance and settlement" and ATM owners use those networks to accept debit cards to pay for the cash dispensing services they provide. That conclusion does not mean that non-bank ATMs constitute a payment card network. In that regard, Senator Durbin clearly stated on the Senate Floor that the definition of payment card network was not intended to include non-bank ATM owners or operators as they are not networks. On July 15, 2010, Senator Durbin stated "The amendment does not intend, for example, to define ATM owners/operators or acquiring banks as payment card networks unless those entities also operate networks as do Visa, MasterCard, Discover and American Express." 156 Cong. Rec. S5926 (daily ed. Jul. 10, 2010) (statement of Sen. Richard J. Durbin).



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below – ATM interchange should then be subject to Section 920(a) as issuers would then be receiving or charging ATM interchange. Having said that, unless and until that happens, Section 920(a)'s requirement that debit interchange be “reasonable and proportional” to issuer costs should not apply to ATM interchange paid to non-bank ATM owners and operators.

By contrast, we believe that Section 920(a) should apply to the network fees that payment card networks charge to non-bank ATM owners. As discussed more fully below, those fees have been increased recently, particularly by MasterCard, to fund debit exclusivity deals with large issuers. As such, those network fees, effectively, could substitute for interchange by funding deals between Visa or MasterCard (or other debit networks) and debit issuers. To the extent that happens, such fees could be used to circumvent Section 920(a)'s regulation of debit interchange. As such, the regulations prescribed pursuant to Section 920(a) (8) should ensure that ATM network fees not be used as a device to circumvent the Act.

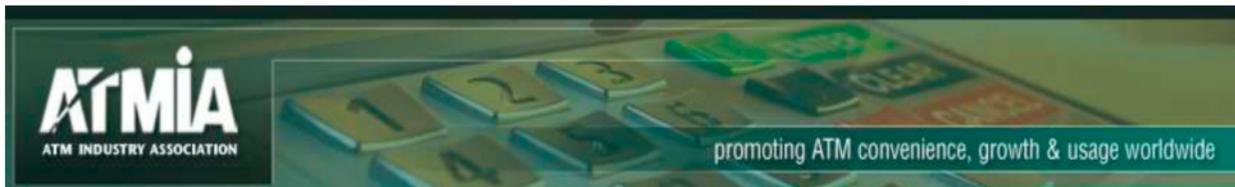
Networks also could fund issuer deals by further increasing the differential between the ATM interchange paid for transactions at bank-operated ATMs and transactions at non-bank operated ATMs. If this happens, such network policies could be regulated pursuant to subsection 920(a) (8) or other language in the statute preventing such circumvention.

#### B. Applying the Act to ATM Transactions is Consistent with Congressional Intent

As you are undoubtedly aware, the Act was enacted to restrain the exercise of market power in the debit market by dominant networks, largely Visa's and MasterCard's dominant networks. Because competition in the debit market is inextricably linked to competition in the ATM market – after all, debit and ATM functionality reside on the same card and are usually provided through the same network – the market power that motivated Congress to regulate this industry has harmed non-bank ATM owners as well as merchants.

The best example of this is the exclusive contractual arrangements between networks (largely Visa and MasterCard networks) and issuers that limit the placement of competing networks on the card. Those deals harmed merchants by eliminating their ability to route transactions to cheaper debit/ATM networks and Section 920(b) was crafted to fix that problem. At the same time, the emergence of these exclusive arrangements also harmed non-bank ATM owners because these deals are now being funded, in part, by fees and other onerous economic terms that the dominant networks are imposing on non-bank ATM owners. Given this backdrop, applying Section 920(b) to ATM network exclusivity and ATM network routing is consistent with the Act's underlying rationale and will help ensure vibrant competition in the related debit and ATM markets going forward.

To more fully explain how competition in the debit market impacts non-bank ATM owners in the related ATM market some additional background might prove helpful. When a



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consumer conducts an ATM transaction at a non-bank ATM, the owners and operators of that non-bank ATM recoup their operational costs and earn revenue for providing services to consumers through two fees:

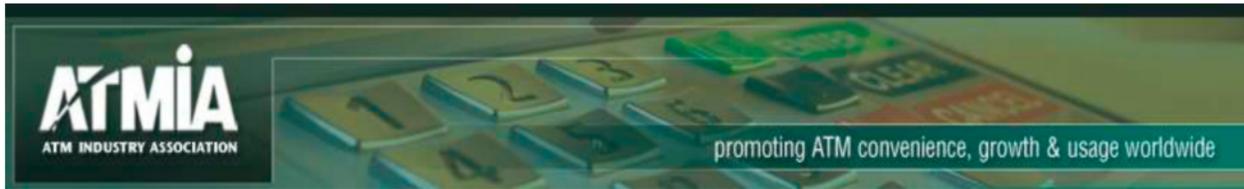
- (i) the “ATM interchange fee” which is set by the payment card networks and paid by the issuer (in contrast with POS debit interchange, which is paid to the issuer), and
- (ii) the convenience fee (or surcharge) which is set by the ATM owner/operator within certain parameters set by the payment card networks.

Non-bank ATM owners and operators also pay ATM network fees to the payment card networks for each ATM transaction. Thus, all else being equal, ATM owners prefer to route transactions to networks that charge lower network fees and provide greater interchange payments. Most importantly, the payment card networks have imposed various network rules which significantly impact non-bank ATM owners. These network rules are not the product of negotiations. To the contrary, these rules are simply imposed on non-bank ATM owners and operators who must agree to them because they cannot compete without accepting the dominant networks’ ATM transactions. Put simply, these dominant networks have unbridled power over non-bank ATM owners, including the power to raise network fees or decrease interchange payments without losing volume. That power is virtually identical to the debit network market power over merchants that motivated Congress to pass the Act.

This power and its inextricable relationship to competition in the debit market was on display recently when MasterCard raised the network fees for Cirrus ATM transactions, and significantly reduced the interchange the large issuers would pay to non-bank ATM owners for such transactions, as part of its strategy to gain debit exclusive deals with the large debit issuers.<sup>3</sup> Visa implemented similar, albeit less drastic, changes several years ago. These changes in the economics that have long underpinned the ATM industry were enabled by payment card network rules that restrain ATM owners’ ability to steer cardholders to lower cost networks, via discounted convenience fees or other inducements. These rules against differential convenience fees require that any convenience fee charged by an ATM owner be the same for all networks, irrespective of the network fees charged by the network or the interchange fees it provides to the ATM owner. (See Exhibit A which includes (1) MasterCard 2010-2011 U.S. Region Interchange Programs and Rates (see page 10 for ATM Rates), (2) Visa’s Announcement of Changes to the U.S. Domestic ATM Tiered Interchange Qualification Process, and (3) MasterCard’s Pricing Bulletin for the U.S. Region dated December 2, 2009 (see page 3 for ATM Program Support Fee.) Thus, non-bank ATM owners are prevented from countering

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<sup>3</sup> Exclusive debit deals between Visa or MasterCard and large debit issuers usually include an ATM component because ATM functionality is a core feature of debit cards. As such, Visa and MasterCard can (and have) used their ability to drive superior ATM economics to debit issuers to help cement their debit exclusivity deals with issuers. Any attempt to unwind those deals must also deal with the way ATM fees and pricing can affect issuer incentives to favor Visa or MasterCard over competing networks.



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MasterCard's or Visa's conduct by charging lower convenience fees for competing network transactions. If they had the ability to do that, and thereby steer cardholders to cheaper networks, they might have restrained MasterCard's and Visa's ability to use their market power to gain debit deals with issuers. But they did not have that freedom because they must accept MasterCard or Visa transactions to remain viable.

Thank you for considering our views on this important subject. We are an integral part of the debit card industry and would greatly appreciate an opportunity to explain in person the critical and not well appreciated linkage between competition in the debit and ATM industries. In the interim, if you have any questions please do not hesitate to contact me at (605) 271-7371.

Yours sincerely,

A handwritten signature in black ink that reads 'Michael Lee'.

Michael Lee  
CEO