

**New York City Council
Joint Hearing of the Committee on Finance
and the Committee on Consumer Affairs
on Int. No. 680 (ATM Surcharges)**

**Prepared Testimony of David E. Sorkin¹
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I want to thank the Speaker and the committee chairs, Council Members Berman and Koslowitz, for their concern about this important issue and for inviting me to testify today.

Five years ago there were over 100,000 ATMs in the United States; today there are nearly 300,000.² Each month American consumers use ATMs a billion times, mostly to withdraw cash.³ ATMs undeniably are a convenience that can save us time and money and generally make our lives easier. Surcharging of ATM transactions, however, represents an unfair burden on consumers and a substantial obstacle to competition.

Surcharges are additional fees tacked onto ATM withdrawals by the ATM owner at the time of the transaction, over and above the fees that are automatically built into the transaction. Until 1996, most ATM networks prohibited their members from imposing surcharges.⁴ The networks lifted their surcharge bans in 1996, and over 90% of banks now impose ATM surcharges.⁵ Nonbanks—"independent service operators," or ISOs—have been deploying ATMs rapidly in the past few years to capitalize on the opportunity to collect surcharges. But the change with the greatest impact on consumers is what has happened to the more than 100,000 ATMs that didn't surcharge five years ago: the vast majority of them have been converted to surcharging ATMs, and only 10,000 to at most 20,000 no-surcharge ATMs now remain.

There are basically three kinds of ATMs: those that don't impose surcharges at all; those that impose surcharges on everyone; and those that discriminate, imposing surcharges only on people who don't have an account at the bank that owns the ATM. The first kind of ATM is clearly good for consumers, because it forces banks to compete with one another for customers. The third kind injures consumers because it interferes with competition among banks. I'm ambivalent about the ATMs that surcharge everyone; I think they have mixed effects, but I don't think we'll be ready to deal with them until after we address the problem of discriminatory surcharging.

The first category, nonsurcharging ATMs, has been around for many years. Banks installed ATMs for the convenience of their own customers, and so the banks could save money by reducing their reliance on live tellers. Banks soon

realized that both they and their customers could benefit by networking their ATMs together, so that a customer of one bank could use a different bank's ATMs.

In a network transaction, the cardholder's bank pays a switching fee to the ATM network and an interchange fee to the ATM owner. These fees are set by the ATM networks, and historically have been designed to cover the actual costs of processing the transaction.⁶ For cash withdrawals, these fees usually total about 50 cents, most of which goes to the ATM owner.⁷ The switching and interchange fees are paid by the cardholder's bank, which may pass them on to the cardholder directly in the form of "off-us" or "foreign" transaction fees (often marked up to \$1 or more in order to yield additional revenues), or indirectly in the form of minimum balance requirements or monthly account maintenance fees.

ATMs are tremendously beneficial to consumers. Consumers need not select a bank based solely on its physical location, since they can obtain cash from ATMs and use the telephone, mail, or even the Internet for other banking transactions and communications. Banks and other financial institutions therefore have to compete with one another rather than enjoying localized monopolies, and they must compete with prices and services rather than merely branch locations.⁸ Of course, a bank that has a branch near a particular consumer's home or office still has a substantial comparative advantage over faraway banks, since many consumers prefer to deal with a local bank or to engage in some transactions in person, and may place greater trust in a local bank. The point is merely that ATMs broaden consumers' options substantially, and prevent banks from being able to charge monopoly prices for checking accounts and other services. If Chase or Citibank wants to charge \$9.50 per month for a checking account, then a consumer can go to Amalgamated or CFS or Flatbush Federal for a free account.⁹

The second type of ATM adds a surcharge to every cash withdrawal. If I use a surcharging ATM to withdraw \$40 from my checking account, the receipt may tell me that \$41.50 has been deducted from my account, and my monthly statement may reflect that \$41.50 debit plus a \$1 "off-us" fee imposed by my bank, which had to pay interchange and switching fees through the ATM network. Much has been made of this "double dipping," since a consumer pays twice for one service, and in fact there is some economic research that says having two entities set price components independently will lead to inflated prices, since neither one bears the full impact of its price increases.¹⁰

Most of the ATMs in this second category are owned by ISOs, although banks also have begun deploying unbranded ATMs that collect a surcharge on every transaction.¹¹ They tend to be bare-bones cash dispensers rather than high-end full-function ATMs, and they can be tremendously profitable, since the owner receives both the interchange fee and the surcharge. The only downside for ATM

owners is that surcharges and a glut of ATMs have caused monthly transaction volumes to fall.

The nonbank ATM market isn't as competitive as it ought to be, and as a result surcharges are artificially high. The interchange fees and surcharges that an ATM owner receives may add up to several times the ATM owner's actual costs.¹² Instead of driving down surcharges, this disparity has led to a glut of ATMs, and the resulting decline in per-machine transaction volumes has been used to justify high surcharges.¹³ Still, even with excessive surcharges, consumers do enjoy at least some benefit from the availability of these additional ATMs. However, if these nonbank ATMs begin displacing banks' existing no-surcharge ATMs, then they may end up harming consumers.¹⁴

Finally, the third type of ATM imposes surcharges only on people who aren't customers of the bank that owns the machine.¹⁵ Most of the 100,000-plus ATMs that existed five years ago have shifted into this category, and these remain the highest volume ATMs.¹⁶

Discriminatory surcharging is especially harmful because of its external effects on the related market of checking account deposits. By assessing surcharges against customers of competing banks, an ATM owner can pressure them into shifting their accounts in order to avoid paying surcharges.¹⁷ Competition for deposit accounts therefore gives banks a perverse incentive to raise rather than lower their prices for ATM usage.¹⁸ A bank may lose accountholders if it imposes a fee that makes economic sense, such as a \$3 charge for transactions involving a human teller,¹⁹ but ATM surcharges have the opposite effect because they apply only to nonaccountholders. Especially for large banks, imposing high surcharges is a "win-win" proposition: they either gain market share, or earn substantial revenues from surcharges.²⁰

There is some controversy over whether consumers in fact switch banks in response to surcharges. Anecdotal evidence suggests it happens frequently, but I am unaware of any studies that provide a definitive answer to this question.²¹ A survey conducted for the PULSE ATM network in 1997 reported that few people had switched banks because of charges for ATM usage.²² However, respondents were asked only whether they had switched banks *solely* in response to ATM charges, and over 8% of the ATM card users surveyed said that they had done so.²³ A 1998 survey of community bank customers in New England found that one third of them would likely switch banks to avoid paying surcharges.²⁴ A 1999 study also supports the proposition that surcharges are likely to result in account shifting. While checking account deposits are inelastic with respect to interest rates paid, they are highly elastic with respect to bank fees, especially foreign ATM fees: for every 1% increase in foreign ATM fees, the supply of deposits declined by 1.75%.²⁵ It stands to reason that consumers would be at least as

sensitive to ATM surcharges, and probably even more so, since surcharges are experienced in a much more obvious manner than are foreign ATM fees.

The legislation before the Council would prohibit banks from imposing ATM surcharges; in effect, it would eliminate the third type of ATMs, the ones that are most harmful to competition. The main argument against legislation of this nature is that it interferes with the free market—that banks should be free to set whatever price the market will bear for the use of their ATMs. But we don't have a completely free market to begin with: banks are already highly regulated, there is little competition among ATM networks, and surcharges bear little relationship to competitive market prices. More importantly, eliminating discriminatory surcharges will force banks to compete with one another in the checking account market.²⁶ A ban on discriminatory surcharges is not so much a constraint on prices as it is a regulation of anticompetitive business practices: banks would be prevented from tying the use of their ATMs to the sale of their checking account services.²⁷

Another set of arguments against a surcharge ban concerns the effect that it would have on the overall availability of ATMs. Opponents say that consumers will no longer enjoy convenient access to ATMs if surcharges are eliminated.²⁸ But this claim ignores the fact that banks had deployed well over 100,000 ATMs before they were allowed to surcharge, and the number of ATMs had been increasing steadily every year.²⁹ Surcharging caused the growth rate to accelerate, and we now have a glut of ATMs. But it's not just the ones in low-volume remote locations that surcharge—almost all ATMs do.

Even in the worst possible case, if we were to lose *all* of the new ATMs that have been deployed since the surcharge bans were lifted, we would still be better off under the proposed legislation than we are today. But that's not likely to happen: ATMs are much cheaper today than they were five years ago, but interchange fees haven't fallen, so we should be able to afford more ATMs than we had in 1996 even without surcharges.³⁰ Furthermore, the law wouldn't affect ATMs deployed by nonbanks, although they probably would lose some business to bank ATMs, and the market would finally put some downward pressure on their inflated surcharges.

Another variation of the argument that ATMs will disappear if banks aren't allowed to surcharge is that they will sell off their ATMs to nonbanks who are exempt from the legislation.³¹ I doubt that would happen—banks found it in their interest to deploy ATMs before 1996, and the reasons behind that haven't changed much—but even if it did, at least we would be rid of the greatest danger to competition, discriminatory surcharges, and small banks would be able to compete with large ones on a level playing field. And the average surcharge would probably be lower than it is now, since nonbanks don't have the same perverse incentives to overcharge as large banks do.

Yet another variation of this argument is that banks will withdraw from ATM networks, and deny other banks' customers access to their ATMs. That too seems highly unlikely—even a bank with a 33% market share benefits considerably by giving its customers access to other banks' ATMs. ATM networks won't let a bank deny access to its own ATMs while continuing to use the network for the bank's own customers; Bank of America and Wells Fargo apparently got away with this in Santa Monica only because so few ATMs were involved.³²

The final question is whether it makes sense for New York City to prohibit bank surcharges at the local level. From a policy perspective, I believe such a law is clearly justified: neither the federal government nor the state has acted to protect consumers from this predatory practice, and the industry has failed to address the problem. Furthermore, surcharges affect New York City residents more than they affect many other consumers, since the city already has a concentrated banking market, and bank fees here are among the highest in the country.³³ Also, because banks often impose a uniform surcharge across their entire ATM networks, residents of high-density urban areas probably are subsidizing remote ATMs with lower transaction volumes.

From a legal perspective, the question is more difficult. It is true that some courts and federal agencies hold the view that only the federal government has the authority to ban surcharges.³⁴ But these rulings are not binding on New York City, and there is certainly a plausible argument that the Electronic Fund Transfer Act explicitly permits the enactment of stronger consumer protections than those afforded by federal law, as the attorneys general of California, New York, and several other states argued in supporting the right of San Francisco and Santa Monica to ban ATM surcharges.³⁵ Although uniformity is desirable, it may make sense to evaluate the effects of various regulations at the state and local levels before implementing a national surcharge ban. In any case, even if the New York City legislation is ultimately struck down by the courts, it will send an important message to Congress and the banking industry that the public demands an end to anticompetitive ATM surcharges.

That concludes my testimony, although I am happy to respond to questions and I hope to participate in further discussions about this important issue. Thank you.

¹ Assistant Professor of Law, Center for Information Technology and Privacy Law, The John Marshall Law School, Chicago, Illinois; e-mail david@sork.com; web site www.atmsurcharges.com.

² “ATM Growth Not Forever, Industry Experts Agree,” Bank Network News, Aug. 25, 2000, p. 1, 2000 WL 11757966.

³ Ibid.

⁴ Surcharges were permitted in a few states before 1996, generally due to state laws that prevented ATM networks from prohibiting them.

⁵ U.S. Public Interest Research Groups, “ATMs: Always Taking Money,” Apr. 1, 1999, http://www.pirg.org/reports/consumer/atm99/atm_report.pdf.

⁶ David A. Balto, “ATM Surcharges: Panacea or Pandora’s Box,” 12 Review of Banking & Financial Service 169, Oct. 9, 1996, <http://www.stopatmfees.com/ATM2balto.htm>. Balto notes that switching fees have declined due to cost reductions, but interchange fees have remained stable for decades. Ibid.; David Balto, “ATM Surcharges Raise Broad Antitrust Issues,” American Banker, June 12, 1998, p. 12, 1998 WL 4884041.

⁷ Switch fees range from \$0.02 to \$0.15 per transaction, and interchange fees range from \$0.30 to \$0.60. James J. McAndrews, “ATM Surcharges,” Current Issues in Economics and Finance (Federal Reserve Bank of New York), Apr. 1998, p. 2, http://www.ny.frb.org/rmaghome/curr_iss/ci4-4.htm.

⁸ Balto, “ATM Surcharges Raise Broad Antitrust Issues” (noting that ATM networks “created a level playing field” for small and large banks to compete with one another).

⁹ The monthly charge for a standard checking account at Chase or Citibank is currently \$9.50, according to information posted on the banks’ web sites (<http://www.chase.com/>, <http://www.citibank.com/>). Several New York banks offer free checking accounts, including Amalgamated Bank of New York, CFS Bank, and Flatbush Federal Savings and Loan, and most offer a “lifeline” account that offers a limited number of transactions for \$3.00 per month. Mark Green & Eric Schneiderman, “Ranking Banking: The 2000 Consumer Bank Scorecard,” Dec. 1999, <http://pubadvocate.nyc.gov/documents/bank00.htm>.

¹⁰ McAndrews, “ATM Surcharges,” p. 4.

¹¹ A variation on this is a hybrid ATM that surcharges nonaccountholders a higher amount than accountholders. Ann All, “Brand Imbrolio,” ATMmarketplace.com, Oct. 19, 2000, http://www.atmmarketplace.com/news_story.htm?i=4924.

¹² Nicolas P. Retsinas (Director, Office of Thrift Supervision), “Ultimately, Going On-Line Helps the Bottom Line,” American Banker, Feb. 11, 1997, p. 13, 1997 WL 4747501 (citing costs of \$2.93 for a teller transaction, \$1.82 for a telephone transaction, \$0.27 for an ATM transaction, \$0.24 for a PC banking transaction, and \$0.02 for a PC banking transaction on the Internet); Lawrence J. Radecki, “Banks’ Payments-Driven Revenues,” Economic Policy Review (Federal Reserve Bank of New York), July 1999, p. 53, http://www.ny.frb.org/rmaghome/econ_pol/799rad.htm (citing costs of \$1.07 for a transaction requiring the help of branch personnel, \$0.54 for a telephone transaction, and \$0.27 for an ATM transaction); Michelle Clark Neely, “What Price Convenience? The ATM Surcharge Debate,” Regional Economist (Federal Reserve Bank of St. Louis), July 1997, p. 4, <http://www.stls.frb.org/docs/publications/re/1997/c/re1997c3.pdf> (citing costs of \$1.06 for a teller transaction and \$0.36 for an ATM transaction).

There is considerable controversy surrounding the actual cost of providing ATM services. While the \$0.27 figure appears to be the most reliable estimate, industry representatives have cited much higher estimates in order to justify surcharges. Some of these estimates presumably are higher because they are based on full-function ATMs that can cost up to ten times as much as basic cash dispensers. Charles Keenan, “Low-End Cash Dispensers Widen ATM Universe,” American Banker, Apr. 30, 1999, p. 1, 1999 WL 6034865 (full-service ATMs cost \$20,000 to \$40,000, while basic cash dispensers cost about \$5,000); Jocelyn Parker, “Convenience Cash,” Detroit Free Press, Aug. 30, 1999, <http://www.freep.com/business/qatm30.htm>, 1999 WL 22011209 (basic cash dispenser costs \$3,000). Most off-premise ATMs, especially those deployed by ISOs, are basic cash dispensers, and in any event it hardly seems reasonable to include the cost of additional optional functions like the ability to accept deposits, sell noncash items, etc., when computing the cost per cash withdrawal, unless they end up

lowering the cost rather than raising it, as may occur if advertising on ATM screens turns out to be profitable.

Another explanation for differing cost estimates is that per-ATM transaction volumes have declined over the past few years, and ATM capital and maintenance costs are being amortized over fewer transactions. “Network ATM Volumes Fall on Hard Times,” *Bank Network News*, July 23, 1999, p. 1, 1999 WL 10293178 (monthly transactions per ATM were 6,580 in 1995, 4,973 in June 1998, and 3,997 in March 1999); “Off-Premise Trend Bolsters ATM Volume,” *Bank Network News*, July 24, 2000, p. 1, 2000 WL 11757955 (total transactions increased from 907.4 million in March 1999 to 1.1 billion in March 2000; average monthly transactions per ATM increased from 3,997 to 4,029, after declining for four consecutive years). But the declining transaction volumes are largely a consequence of surcharging itself—both directly, because consumers are using ATMs less, and indirectly, because surcharging has led to a glut of ATMs. It certainly seems unfair for consumers to bear the brunt of cost increases that are attributable to declining transaction volumes that would not have occurred absent surcharges.

While technological advancements and economies of scale have lowered the cost of processing ATM transactions, the proportion of ATMs that are located away from bank premises has increased in recent years, and it is more expensive to install and maintain off-premise ATMs. Joanna Stavins, “ATM Fees: Does Bank Size Matter?,” *New England Economic Review* (Federal Reserve Bank of Boston), Jan./Feb. 2000, p. 13, <http://www.bos.frb.org/economic/neer/neer2000/neer100b.htm>, 2000 WL 28771361 (citing cost estimates for off-premise ATMs ranging from \$0.48 to \$1.85).

¹³ A hypothetical ATM that collects a \$1.50 surcharge plus a \$0.50 interchange fee might require only 500 transactions per month to break even, whereas a no-surcharge ATM might require 2,000. The fact that surcharges tend to be relatively uniform, rather than varying substantially based upon ATM location and volume, lends further support to the proposition that there is little competition among ATM owners. McAndrews, “ATM Surcharges,” pp. 4-5.

¹⁴ This may occur if merchants and other property owners are induced to rent space to ISOs that offer to share surcharge revenues, or if banks remove ATMs that due to declining transaction volumes. To paraphrase Gresham’s Law, the bad ATMs may drive out the good ones.

¹⁵ ATM networks have spawned selective surcharge subnetworks over the past few years, in which banks agree not to surcharge one another’s customers. At least so far, these subnetworks have been comprised primarily of small financial institutions with few ATMs. For example, NYCE includes over 2,300 financial institutions with 39,000 ATMs, and its SUM selective surcharge program includes 370 institutions with only 2,380 ATMs. “SUM Selective Surcharging Program Expands in New Hampshire and Michigan,” *Business Wire*, Nov. 20, 2000. Other selective surcharge programs exhibit similar statistics, typically averaging only two to seven ATMs per member institution. Robert E. Litan, “ATM Fees: An Economic Analysis,” Nov. 5, 1999, p. 19, http://www.aba.com/aba/PDF_Files/GR_atmfees.pdf. No-surcharge networks face particular difficulties in markets where a few large banks control most of the ATMs. David A. Balto, “Sorry Legacy of the ATM Surcharge Fight,” *American Banker*, June 10, 1998, p. 17, 1998 WL 4883923.

¹⁶ Recent Case, “State Banking Law—Connecticut Supreme Court Holds that Statute Does Not Prohibit ATM Surcharge Fees: *Burke v. Fleet National Bank*, 742 A.2d 293 (Conn. 1999),” 113 *Harvard Law Review* 2122, 2127 (June 2000).

¹⁷ Balto, “ATM Surcharges: Panacea or Pandora’s Box”; David A. Balto, “ATM Surcharges a Threat to Competition,” *American Banker*, May 24, 1996, p. 12, 1996 WL 5564510. “The argument is that large banks, owning most of the ATMs in a community, will impose large surcharges that apply only to non-customers. Consider the small bank customer who has been relying on convenient ATMs owned by large banks, and is now confronted with a large surcharge. He may be able to find a convenient ATM without a surcharge, or he may be willing to pay the surcharges. But in many cases he will avoid the surcharge by simply moving his account to the bank that owns the ATM.” Paul M. Horvitz, “ATM Surcharges: Their Effect on Competition and Efficiency,” *Journal of Retail Banking Services*, Autumn 1996, p. 57, 1996 WL 11536708.

¹⁸ Balto, “ATM Surcharges: Panacea or Pandora’s Box”; Balto, “ATM Surcharges Raise Broad Antitrust Issues”; Recent Case, “State Banking Law,” p. 2127.

¹⁹ First Chicago (now part of Bank One) imposed such a fee in 1995. Neely, “What Price Convenience? The ATM Surcharge Debate,” p. 4.

²⁰ Horvitz, “ATM Surcharges: Their Effect on Competition and Efficiency”; Balto, “ATM Surcharges Raise Broad Antitrust Issues.” Large banks tend to impose higher surcharges and to impose surcharges earlier than do their smaller competitors. Board of Governors of the Federal Reserve System, “Annual Report to the Congress on Retail Fees and Services of Depository Institutions,” July 2000, pp. 10, 18-20, <http://www.federalreserve.gov/boarddocs/RptCongress/2000fees.pdf>; U.S. General Accounting Office, “Automated Teller Machines: Survey Results Indicate Banks’ Surcharge Fees Have Increased,” Report No. GAO/GGD-98-101, Apr. 24, 1998, pp. 8-12, <http://www.atmsurcharges.com/documents/gg98101.pdf>; Balto, “Sorry Legacy of the ATM Surcharge Fight” (noting that surcharges at larger banks are 15% higher than at smaller banks, despite economies of scale); Kristen Min, “Banks Are Leading on ATM Surcharges, but Some Key Consumers Are Retreating,” *Journal of Retail Banking Services*, Winter 1998, p. 35, 1998 WL 12297550; Alan Kline, “Half of Small Banks Report Surcharging on ATMs,” *American Banker*, Sept. 16, 1997, p. 1, 1997 WL 15651642; U.S. Public Interest Research Groups, “ATMs: Always Taking Money,” Apr. 1, 1999, http://www.pirg.org/reports/consumer/atm99/atm_report.pdf. Economist Joanna Stavins confirms that large banks have higher surcharges and has examined possible explanations for this phenomenon, but does not appear to have considered the account-shifting effect. Stavins, “ATM Fees: Does Bank Size Matter?”

In New York City the two largest banks, Chase and Citibank, were not as quick to surcharge as many other banks, and actually were the last of the ten largest banks in the U.S. to begin surcharging. However, New York banks with more ATMs do impose higher surcharges on average than smaller banks do, and nonsurcharging ATMs now remain only at a handful of small banks. “Guilty as Surcharged: Automated Teller Machines Are Asking Too Much,” New York City Council Staff Report, Jan. 2000, p. 12, <http://www.council.nyc.ny.us/loi/atm.pdf> (in a 1999 survey, higher surcharges of \$1.50 (vs. \$1.00) were found at 41% of banks, representing 49% of the city’s bank-owned ATMs).

Surcharges have the greatest anticompetitive effects in geographic areas where the banking market is already highly concentrated. In many metropolitan areas, two or three large banks control the majority of ATMs, including nearly all of those in high-volume locations. In San Francisco, for example, Bank of America and Wells Fargo control 86% of the city’s ATMs. Santa Monica Appellants’ Opening Brief, *Bank of America, N.A. v. City and County of San Francisco*, No. 99-17590 (9th Cir.), filed Jan. 27, 2000, p. 7, <http://www.stopatmfees.com/appealbr.pdf>. Fleet and BankBoston together owned 70% of the ATMs in the Boston area before they merged with one another in 1999. “A Powerful ATM Fleet Becomes a Liability,” *Bank Network News*, Mar. 26, 1999, p. 3, 1999 WL 10293116. The dominant New York City banks, Chase and Citibank, have a combined market share of more than 50% of bank deposits in Manhattan. Paul Beckett & Nikhil Deogun, “In Manhattan, an Upstart Bank Moves in on Giants’ Home Turf,” *Wall Street Journal*, March 9, 2000, p. B1, 2000 WL-WSJ 3021005.

²¹ Two recent articles describe various surveys of consumers’ responses to surcharging, but it appears that none of these surveys even asked whether respondents had switched banks. Stavins, “ATM Fees: Does Bank Size Matter?,” p. 17; Helen Stock, “ATM Fees Changing People’s Habits, Surveys Find,” *American Banker*, Nov. 24, 1999, p. 5, 1999 WL 21145163.

²² Analytica, Inc., “Research on Consumers’ Use of ATM Cards and Feelings about ATM Fees and Surcharges,” Aug. 1997, <http://www.pulse-eft.com/kits/2000/surcharge/research-data/consumer-research-1997.pdf>.

²³ *Ibid.*

²⁴ Anne Marie Squeo, “DOJ Launches Antitrust Probe of ATM Fees,” *Legal Intelligencer*, Aug. 3, 1998, p. 4.

²⁵ Joanna Stavins, “Checking Accounts: What Do Banks Offer and What Do Consumers Value?,” *New England Economic Review* (Federal Reserve Bank of Boston), Mar./Apr. 1999, p. 11, <http://www.bos.frb.org/economic/neer/neer1999/neer299a.htm>.

²⁶ “Eliminating surcharges would increase economic efficiency and render markets more, rather than less, competitive.... The no-surcharge rule creates price certainty ... [and] enhances consumer welfare.” *SouthTrust Corp. v. Plus System, Inc.*, 913 F. Supp. 1517, 1524 (N.D. Ala. 1995).

²⁷ A bank that wanted to operate ATMs with nondiscriminatory surcharges (as a few have already begun to do) might need to do so through a separate nonbank deployer.

²⁸ Litan, “ATM Fees: An Economic Analysis,” pp. 4, 22; Dove Associates, Inc., “1999 ATM Deployer Study,” Nov. 1998, p. 94 (reporting that 74% of banks said they would remove some off-premise ATMs if surcharges were prohibited).

²⁹ Dove Associates, Inc., “1999 ATM Deployer Study,” p. 4 (noting that the number of ATMs in the United States has increased every year since 1980).

³⁰ In Connecticut and Iowa, which prohibited surcharges even after the ATM networks changed their rules in 1996, ATM deployment continued to grow, and at a faster rate than elsewhere in the country. “Guilty as Surcharged,” p. 26. Conversely, after Louisiana and Mississippi enacted statutes that invalidated the ATM networks’ surcharge prohibitions, only “a handful” of new ATMs were deployed, but surcharges were imposed on 75% of the existing ATMs in those states. David Balto, “ATM Surcharges Likely to Hurt Small Banks,” *American Banker*, May 22, 1996, p. 13, 1996 WL 5564403.

³¹ Litan, “ATM Fees: An Economic Analysis,” pp. 4-5, 23; Anne C. Pidgeon, Note, “‘Show Me the Money’—But Don’t Make Me Pay for It: An Analysis of Why Legislation Banning ATM Surcharges is Inappropriate and Unwarranted,” 3 *N.Y.U. Journal of Legislation & Public Policy* 393, 418-19 (1999/2000), <http://www.nyu.edu/pubs/jlpp/articles/vol3num2/pidgeon.pdf>.

³² The State PIRGs, “ATM Fee Backlash: Local Rebellions Against Unfair Surcharge Spread” (White Paper), Mar. 2000, pp. 12-13, http://www.pirg.org/reports/consumer/atm/atm_white.pdf.

³³ U.S. Public Interest Research Group, “Big Banks, Bigger Fees: The 1999 PIRG Bank Fee Survey,” Oct. 14, 1999, p. 5, <http://www.pirg.org/reports/consumer/bankfees/>.

³⁴ *Bank One, Utah, N.A. v. Gutttau*, 190 F.3d 844 (8th Cir. 1999); *First Union National Bank v. Burke*, 48 F. Supp. 2d 132 (D. Conn. 1999); *Bank of America v. City & County of San Francisco*, No. C-99-4817-VRW (N.D. Cal. July 3, 2000), <http://www.cand.uscourts.gov/>; Melanie Elizabeth Doule, Note, “Does Federal Law Preempt State or Local Laws that Ban ATM Surcharges?,” 4 *North Carolina Banking Institute* 497 (Apr. 2000); Sam Zuckerman, “Banks Win Round on ATM Fees,” *San Francisco Chronicle*, July 4, 2000, p. A1, 2000 WL 6486190.

³⁵ Attorney General Lockyer Files “Friend of the Court” Brief Protecting Right of States to Regulate Bank ATM Fees,” Press Release, Feb. 1, 2000, <http://caag.state.ca.us/press/2000/00-009.htm>; The State PIRGs, “Campaign to End Extra ATM Fees: Legal Status of ATM Fee Challenges,” <http://www.stopatmfees.com/newpage4.htm>.