

Double ATM Fees, Triple Trouble

A Fifth PIRG National Survey of ATM Surcharging Rates April 1, 2001-- The Fifth Anniversary of ATM Surcharging

SUMMARY AND HIGHLIGHTS

Five years ago, on April 1, 1996, the national ATM networks, Plus and Cirrus, first allowed their member banks to impose a second double fee, called a surcharge, on non-customers using their ATMs. Before 1996, ATM owners in shared ATM networks had always been compensated by receiving part of the so-called "foreign fee" that most banks already charged their own accountholders who used another owner's ATM. The part sent by the consumer's own bank to the ATM owner is called an "interchange fee." Even when a bank doesn't impose a foreign fee on its own accountholders using others' machines, the ATM owner has always received an interchange fee, which is a bank-to-bank payment.¹

Surcharges aren't shared with anyone. Surcharges contribute dramatically to the profits of ATM owners, lessen the benefit to consumers of shared ATM networks and encourage the growth of bigger banks. Both the Federal Reserve Board's Annual Reports to Congress and PIRG studies show that bigger banks charge bigger fees to all their customers, even those who don't use ATMs. Not only is ATM surcharging unfair to consumers, since it is charging them twice for one transaction, it is also anti-competitive, since it encourages consumers to switch their accounts to bigger, higher-fee banks, ultimately limiting consumer choice. All consumers will end up paying higher bank fees unless surcharging is banned.

This PIRG national survey, done in March 2001, compares surcharging and other ATM fee practices at 333 banks and 43 credit unions to the results of six previous PIRG ATM surveys and reports since national surcharging began.² Among the highlights of its findings:

- **The cost of using an foreign ATM has nearly tripled since surcharging began in 1996. Before surcharging, consumers paid only an foreign fee, averaging \$1.01 nationally, to use an foreign ATM. In 2001, consumers pay two fees, the surcharge and foreign fee. The national average combined surcharge (\$1.47) and foreign fee (\$1.39) in 2001 is \$2.86.**
- **The average surcharge at all banks was \$1.47 in 2001, up from \$1.37 in 1999.**
- **Big banks³ continue to impose higher ATM fees and surcharge at higher rates. Big banks also lead the way in imposing a new ATM fee, the annual ATM card rental fee.**

POSITIVE SIGNS IN 2001:

SURCHARGE BAN INTEREST REMAINS HIGH: Iowa's administrative ban on ATM surcharges remains in effect.⁴ Iowa is the only jurisdiction where a surcharge ban is being enforced. In 1999, the cities of Santa Monica, by city council vote, and San Francisco, by a 2-1 citizen referendum vote, banned ATM surcharges. These cities, and the cities of Woodbridge and Newark, NJ, which banned surcharges in 2000, have had their bans enjoined by federal district courts. The California cities have appealed to the U.S. Ninth Circuit Court of Appeals and a decision is expected late in the year. CALPIRG, U.S. PIRG and other

consumer groups have supported the appeal.⁵ In December 2000, the New York City Council held hearings on a proposal introduced by Speaker Peter Vallone. Although interest in local ATM surcharge bans remains high in other cities and states, the federal court actions have had a chilling effect on enactment of additional bans. So far, courts have ruled that the National Bank Act preempts both state and local action over national banks. The cities, the states and consumer groups argue instead that the non-preemptive Electronic Funds Transfer Act clearly gives them authority to regulate ATM fees.

SELECTIVE SURCHARGE ALLIANCES GROW: On the positive side, small banks and credit unions continue to offer selective surcharging alliance networks, where alliance members do not surcharge each other's customers, but do surcharge others. The largest alliance may be the Massachusetts-based SUM Network, which has expanded into Connecticut, New York, Ohio, other states and Puerto Rico. It includes over 250 member banks with over 1700 ATMs and competes with New England's surcharging leader, the massive FleetBoston ATM network.⁶ Other no-surcharge and selective surcharge alliances include the Pennsylvania Freedom Alliance, the Louisiana Community Cash Network, and numerous credit union networks. Until 1999, development of these small bank selective surcharge networks had been stymied by anti-competitive rules of ATM networks, until the U.S. Justice Department investigated.⁷

BIG U.S. BANK ENDS SURCHARGE, BRITISH CONSUMERS DEFEAT SURCHARGES: The nation's 7th largest bank, Washington Mutual, eliminated surcharging in California and other states in 2000. In England, consumers in the United Kingdom will save an estimated £270m a year, because they can now use most of the nation's ATMs without paying fees.

SURCHARGE RATES, FEES REMAIN LOW IN MASSACHUSETTS, CONNECTICUT

In Connecticut (\$1.10, 71%) and Massachusetts (\$1.00, 67%) average surcharges and surcharge rates reported are among the lowest in the nation, but actual surcharging levels may be even lower due to the penetration of the SUM selective surcharging program. Reported levels are low because surcharging did not start in either state in 1996, as it did elsewhere. The Connecticut Banking Commissioner prohibited surcharging for several years, until overturned on a technicality. In Massachusetts, a long-running MASSPIRG anti-surcharge campaign⁸, as well as the strong threat of legislative action, caused banks to delay the onset of surcharging for several years. Those factors have kept rates low. However, actually surcharging rates may be even lower-- 25 of 29 Massachusetts banks surveyed are members of the SUM selective surcharge program. Similar findings may exist in Connecticut and other SUM states.

NEGATIVE SIGN: REGULATORS CONTINUE TO AID AND ABET BIG BANKS

Throughout the regulatory, legislative and judicial battles on ATM surcharges, the banks have been armed with friend-of-the-court briefs and specious agency opinion letters prepared by the federal Office of the Comptroller of the Currency, the nation's chief national regulator.⁹ In a troubling recent development, the OCC has proposed an arcane amendment¹⁰ allegedly to "simplify" bank regulations. The proposal is clearly a backdoor attempt to improve the banks' litigation position in the Ninth Circuit Court of Appeals appeal by San Francisco and Santa Monica to uphold their fee bans. Comments are due by April 2. The OCC has also aided and abetted the banks in their efforts to overturn local laws requiring banks to offer low-cost accounts or regulating usurious and predatory payday lenders affiliated with banks.¹¹

CONCLUSION

Surcharging is both anti-consumer and anti-competitive. First, it is unfair to charge consumers twice for one transaction. Second, big banks, with more ATMs, benefit more from surcharging than small banks and credit

unions, which have lower fees in general, do. Surcharging exacerbates the trend toward industry consolidation. Fewer banks means less competition and, ultimately, higher fees for all consumers. PIRG urges support of state and federal legislation to ban ATM surcharging. Fee disclosure legislation is inadequate and will not work.

**DETAILED FINDINGS, ANALYSIS, RECOMMENDATIONS AND DATA CHARTS FOLLOW
DETAILED FINDINGS**

SURCHARGES TRIPLE COST OF USING FOREIGN ATM SINCE 1996

Cost of "Convenience"		
COST OF USING FOREIGN ATM		
NEARLY TRIPLES		
1995-2001 Rise = 183%		
	1995	2001
Foreign Fee	\$1.01	\$1.39
Surcharge	\$0.00	\$1.47
TOTAL	\$1.01	\$2.86
Data: USPIRG		

This 2001 PIRG report finds that the cost of using an foreign ATM has nearly tripled since surcharging began in 1996. Before surcharging, consumers paid one fee, a foreign fee, averaging \$1.01 nationally, to use another ATM owner's ATM. In 2001, consumers pay two fees, the surcharge and foreign¹² fee. The national average combined surcharge (\$1.47) and foreign fee (\$1.39) in 2001 is \$2.86.

INCREASE IN PERCENTAGE OF BANKS SURCHARGING

In March 2001, according to this PIRG report, 94% of 333 banks in 24 states and the District of Columbia surcharged non-accountholders. Fifty percent (50%) of 43 credit unions imposed surcharges. Before April 1996, surcharging was only allowed in 15 states and was not allowed across the Plus or Cirrus national switches. It is now allowed in 49 states and the District of Columbia. Surcharging is prohibited in Iowa.

**SURCHARGING AT BIG BANKS, SMALL BANKS AND CREDIT UNIONS:
CHANGES FROM 1999**

- The average bank surcharge increased to \$1.47 in 2001, from \$1.37 in 1999.
- The percentage of big banks imposing surcharges increased from 95% to 97%, compared to PIRG's 1999 survey. Average big bank surcharges in 2001 were \$1.55, up from \$1.42 in 1999.
- Small bank surcharges in 2001 averaged \$1.36 in 2001, up from \$1.30 in 1999.
- Credit union surcharges averaged \$1.24 in 2001, up from \$0.98 in 1999. Fifty percent (50%) of credit unions imposed surcharges in 2001.

**FOREIGN FEES AT BIG BANKS, SMALL BANKS AND CREDIT UNIONS:
CHANGES FROM 1999**

The surcharge is in addition to the foreign fee that most banks charge their own customers and share with ATM owners. The part sent to the ATM owner is called an "interchange fee." Even in those circumstances where a bank didn't impose an foreign (also called a foreign fee) on its own accountholders using others'

machines, the ATM owner always received an interchange fee, which is a bank-to-bank payment. The network itself also receives a fee from the consumer's bank, called a "switch" fee.

- In 2001 the survey found 84% of banks imposed foreign fees averaging \$1.39 on their customers using other owners' ATMs, up from \$1.20 in 1999.
- In 2001, nearly all big banks (97%) charged their own accountholders foreign fees averaging \$1.52 to use other ATMs, up from \$1.32 in 1999.
- In 2001, 68% of small banks imposed foreign fees averaging \$1.17, on their customers using other ATMs, up from \$1.01 in 1999.
- Some of the highest foreign fees (\$2) are being imposed by the nation's biggest banks, including Bank of America, First Union, Wachovia and Fleet. According to industry data, interchange fees paid to ATM owners range from 30-75 cents, depending on the network, and switch fees paid to the network are smaller, around 10 cents. So the foreign fees of \$2 being imposed by several of the nation's biggest banks on their own customers appear to include a hefty profit margin.
- Credit union foreign fees averaged \$0.86 in 2001. However, while a small number of banks (10%), including Citibank, are now offering some local foreign transactions for free each month before imposing fees, a much more significant number of credit unions (64%) offer free foreign transactions before imposing fees.

NEW ANNUAL RENTAL FEE FOR ATM CARDS

In this report, PIRG has identified a new trend. Growing numbers of banks are not only imposing ATM transaction fees, but also charging ATM card annual fees. Some banks charge the annual card rental fees for plain ATM cards, some for ATM debit (cards that can be used like a credit card in merchant transactions without a secret PIN code) cards, and some for both types of card.¹³ In this report, we found that more big banks (24%) were imposing annual card fees than small banks (12%). In addition, big banks with annual card fees were more likely to impose both annual card fees and transaction fees. Small banks that impose annual card fees were more likely to offer some or all local ATM transactions for free. The following chart summarizes our results. We will conduct additional research into this trend for our pending 2001 update to the detailed 1999 "Bigger Banks, Bigger Fees" report.

ANNUAL ATM CARD RENTAL FEE RESULTS			
	Small Banks	Big Banks	All Banks
Average Check Card Annual Fee	\$12.91	\$14.14	\$13.76
Percent Charging Annual Fee For ATM or Check Card Or Both	12%	24%	18%
Percentages Below for those banks charging Annual Fees for either ATM or Check card or Both			
Percent With Either Annual Fee Offering Free Local Off Us Fees	44%	3%	15%
Percent With Either Annual Fee Offering Either Free Local Off Us Or Some Free Local Off Us Transactions	56%	11%	25%

Banks With Neither Annual Card Fees Nor Local Off Us Fees	27%	2%	14%
Notes: (Some banks offering free local off us fees may charge regional/national foreign fees. 8% of credit unions had annual fees—other credit union results too small to analyze.)			
Data: PIRG 2001			

AVERAGE SURCHARGE RATES INCREASING

- In 2001, PIRG found the most common surcharge was \$1.50, found at 58% of all banks. The second most common surcharge was \$1.00, found at 19% of banks, followed by \$2.00, found at 15% of all banks. Surcharges ranged from 50 cents to \$2.50.

ANALYSIS

BANK FEE STRATEGY

Revenue from ATM surcharges is a major part of the big banks' three-part strategy to boost fee income. Big banks are:

(1) Increasing existing fees: PIRG's more detailed 1997 and 1999 Big Banks, Bigger Fees, reports, which include checking and savings and incidental fees as well as ATM fees, have identified a growing gap between fees charged by big and small banks. The results are paralleled by the Federal Reserve, which has found that multi-state (big) banks charge "significantly higher" fees than locally owned banks. [Federal Reserve Board Annual Report To The Congress on Fees and Services of Depository Institutions, June 1997, June 1998, June 1999, June 2000.] In testimony to the House Banking Committee, Federal Reserve Board Chairman Alan Greenspan reported he was "troubled" by rising bank fees. [11 Feb 1999, in answer to question from member.]

(2) Inventing new fees such as the ATM surcharge: human teller fees, deposit-item-returned fees (charged to consumers or businesses who deposit someone else's bounced checks) and fees charged for calling computerized account computers are examples of other new fees.

(3) Making it harder for consumers to avoid fees. Making it harder to avoid fees includes, for example, changing "average" balance requirements on checking accounts to "minimum daily balance" requirements, as well as raising those minimums dramatically.

MARKET ISN'T GOOD ENOUGH FOR BUYERS TO COMPARE PRICES:

Banks argue that the marketplace should decide whether consumers want the "convenience" offered by surcharging machines. The true choice for consumers should be between banks that charge high fees and banks that do not. If surcharging contributes to the extinction of small, low-cost competitors, then big banks will be able to increase the high fees that they already impose on their own customers. The marketplace the bankers talk about worked unacceptably poorly in this survey. Surveyors who attempted to find out about ATMs were given the run-around both by bank telephone and branch representatives, who said "I don't know, look at the machine," or told surveyors the wrong amount. ATM machines often had the wrong surcharge warning or no surcharge warning. Representatives were also unable to tell consumers how many ATMs they owned. In addition, only a few bank Internet sites include any detailed fee disclosures. Even fewer of these include any ATM transaction fees.¹⁴

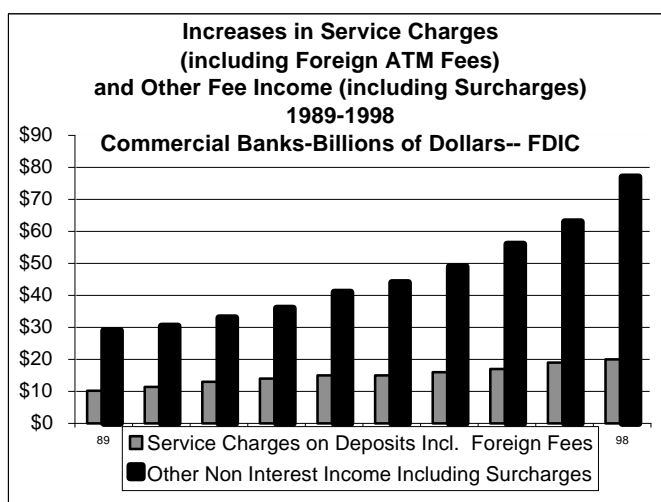
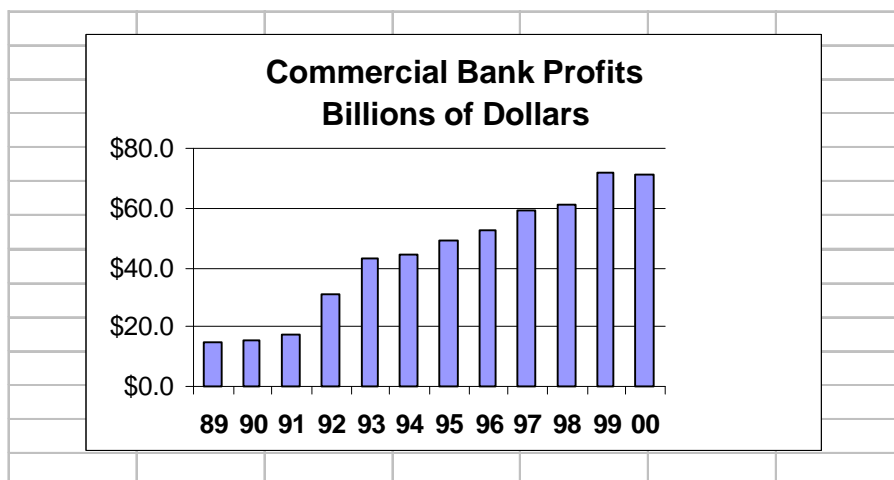
PIRG's primary position is that surcharge bans work the best to protect consumers and the marketplace. In the absence of a surcharge ban, selective surcharging is a positive step, although it doesn't go far enough. Second, did the Department of Justice act soon enough for this alternative solution to even have a chance? As

Federal Trade Commission (FTC) antitrust attorney David Balto has argued, "in order for a network to be a viable alternative, it must have a critical mass of card holders and ATMs." Balto goes on to argue that since small banks and credit unions generally offer higher savings interest rates and lower fees, that "by focusing competition on the size of a bank's ATM network [as surcharges do], competition in terms of interest rates and fees may be weakened."¹⁵

How ATM Surcharges And Foreign Fees Contribute To Bank Profits

In 1999, banks had their ninth straight year of record profits. The \$71.7 billion reported to the FDIC exceeded the previous 1998 record \$61.8 billion by 16%, or \$9.9 billion. In 2000, the string was narrowly broken, when bank profits suffered a tiny decline of about \$300 million from the previous record, but were still the second highest ever. Fee income continues to drive a significant amount of bank income. According to the FDIC, "continued strength in non-interest revenues, particularly fee income," is a critical part of commercial bank income. For example, non-interest income accounted for 44% of net operating revenues in the fourth quarter 1999.

In the Federal Deposit Insurance Corporation's quarterly reports on bank income and expenses, ATM surcharges are incorporated in the lump-sum category, "other non-interest income." This fast growing category includes credit card fee income and other fees. Foreign ATM fees are incorporated in the category "Revenue from deposit account service fees."



In 1989, service charges on deposits, including foreign fees, were \$10.3 billion, rising to \$19.8 billion in 1998. Other non-interest income, including surcharges, rose from \$29.0 billion in 1989 to \$77.2 billion in 1998.

In March 2000, BankRate.com projected that ATM surcharge revenues would total \$2 billion in 2000, consistent with previous PIRG and U.S. Congressional Budget Office estimates that ATM surcharge revenues annually total over \$2 billion.¹⁶ Although the total number of foreign transactions has declined slightly, the percentage of banks surcharging and the amount of the surcharge have both increased, maintaining surcharge revenue at over \$2 billion.

STATES AND CITIES STEP UP THE PACE, CONGRESS FAILS

The bank lobby's stranglehold on state legislatures and Congress means that any action to protect consumers from double ATM fees will likely occur at the local level. While the district court action in the California case has had a chilling effect on enactment of other surcharge bans, interest remains high and both the Chicago and New York City Councils are considering bans.

In our amicus brief and accompanying motion in support of the Appeal to the U.S. Ninth Circuit Court of Appeals, CALPIRG, U.S. PIRG and other leading consumer groups argued the following as critical reasons for the lower court to be overturned and the local bans allowed to go forward:

“The groups have a significant interest in this case because the District Court ruling found that consumer protection Ordinances banning unconscionable surcharge fees for non-customer ATM transactions are preempted by federal law. Consumers will be harmed if the ruling is upheld because 1) consumers will be forced to pay excessive surcharges as non-customers for ATM transactions and 2) the traditional authority of states to regulate in the area of banking and consumer protection will be undermined.

The groups have an interest in helping to preserve the ability of states to enact consumer safeguards in the area of banking. Consumer protection and banking are areas in which states have traditionally had authority to regulate. The broad interpretation by the District Court of the National Bank Act places all current and future state consumer laws that deal with deposit services and fees at risk. The District Court's ruling is contrary to clear Congressional intent in both the National Bank Act (“NBA”) and the Electronic Funds Transfer Act (“EFTA”) and the longstanding history of dual state-federal control over banking regulation in this country.

The Amici have a significant interest in the issues presented in this case because they involve important consumer banking protections and the continuing ability of states to enact such protections. The decision in this case could have an impact on all current and future state consumer laws that involve deposit services and charges. These groups believe that authorities, arguments and policy considerations exist that have not yet been thoroughly addressed by the parties.¹⁷”

ATM surcharge ban or fee cap or moratorium legislation has been considered by at least 26 legislatures since 1997, including Alabama, Alaska, Arizona, California, Connecticut, Iowa, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, Ohio, Rhode Island, Tennessee, Texas, Washington, Wisconsin, and West Virginia.

Federal ATM surcharge ban legislation has been proposed by former Senate Banking Chairman Al D'Amato (R-NY) and Representatives Bernie Sanders (I-VT) and Maxine Waters (D-CA). Unfortunately, these bills have not moved in previous Congresses.

THE BATTLE IN THE UNITED KINGDOM OVER THE “DOUBLE WHAMMY”

Consumers in the United Kingdom will save an estimated £270m a year, because they can now use most of the nation's ATMs without paying fees. As a result of widespread consumer outrage, the banks agreed in 2000 to abandon plans to begin assessing an ATM surcharge on non-customers who use their ATMs.

Further, many banks announced plans to eliminate the disloyalty fee (commonly called a foreign fee in the United States) banks charge their own customers for using another's ATMs.

This is an enormous victory for British consumers who were facing the "double whammy" - as the disloyalty fee plus the surcharge was commonly referred to by the British press. Not only will consumers in the United Kingdom avoid the "double whammy" that most Americans are now hit with every time they make a withdraw from an ATM that is not owned by their bank, but many British consumers are now able to withdraw money from most ATMs without paying any fees (no surcharge and no disloyalty or foreign fee) at all.¹⁸

RECOMMENDATIONS

FOR CONSUMERS: TO SAVE MONEY

- Use your own bank or credit union ATM whenever possible to avoid surcharges and "foreign" fees. When you cannot, avoid double-dipping surcharge machines by using machines with a "No Surcharge" logo. Complain to your bank if it surcharges other consumers. For a national list containing links to many local non-surcharging ATMs, try <http://www.atmsurcharges.com/>, a site run by a consumer, David Sorkin, who is a law professor in Illinois.
- Bank at a credit union, not at a bank. If you don't qualify to join a member-owned credit union, then consider banking at a community bank, especially one that is a member of a "Selective Surcharge Alliance" and pools its ATMs with those of other banks that don't surcharge each others' customers.

FOR CONSUMERS: TO FIGHT BACK

- Urge federal, state and local legislators to support banning ATM surcharges.
- Urge legislators to support legislation opposing bank fees generally. PIRG, the Consumer Federation of America and Consumers Union support a proposal to require all banks to offer low-cost lifeline checking accounts, as only New Jersey and New York require¹⁹.

FOR LEGISLATORS AND REGULATORS

- Ban ATM surcharges. Until then, enforce the consumer protection laws better.
- Enact legislation requiring all banks to offer low-cost lifeline checking accounts, as only New Jersey and New York require.
- If you consider fee disclosure laws, consider worthwhile laws that would require an ATM screen to disclose all fees -- including both foreign fees and surcharges.
- To make it easier for consumers to shop around, Congress or the regulators should update the Truth In Savings law to (1) require disclosure of ATM surcharges, (2) require all account fee disclosures to appear on one brochure in a similar format to the tabular box required on credit card solicitations, and (3) require all disclosures to appear in a similar tabular box on any bank website. States should enact

legislation similar to New Hampshire's requiring such a printed disclosure and should enforce the provision against all branches of all banks, regardless of state or national charter.

- Congress should rein in what it has called the "over-aggressive" preemption actions of the OCC, which have had a chilling effect on consideration of ATM surcharge, lifeline banking, and other consumer protection laws. When no federal law protects consumers better, states and cities should have the right to do the job.
- As at least Massachusetts does, enact state or federal laws requiring that all ATM surcharge information -- on an ATM by ATM basis -- be provided to governments so that lists of surcharging ATMs can be posted on the Internet and published in brochures.
- Federal regulators should consider the role of ATMs when conducting bank and ATM network merger analysis. Reinvigorate the investigation of anti-competitive ATM network rules. Federal regulators should also improve the GAO's annual studies of ATM surcharges, which are merely redundant of PIRG's studies. Instead, this agency should use its greater resources to conduct detailed analyses of the effects of surcharging on consumers and small banks.

METHODOLOGY

Banks are not required to post ATM surcharge data on brochures or Internet sites. PIRG surveyors randomly selected banks and made phone calls or visits to determine surcharges and obtain fee schedules for other ATM transaction fee policies. When possible, surveyors verified data at actual ATM machines, including by testing with ATM cards. Banks doing business in more than one state were counted as multiple banks. Banks found to have more than one surcharge or more than one foreign fee in different markets in the same state were counted as multiple banks. Some ATMs, especially small bank and credit union ATMs, may impose selective surcharges on only some customers-- this survey does not account for that practice. PIRG surveys count the 300 largest banks, as ranked by FDIC deposit data, as "big banks," since these banks control nearly 2/3rds of all deposits. The remainder of banks are "small banks." New York City foreign fees obtained from January 2001 "Ranking Banking" report, New York Office of the Public Advocate.

¹ The network itself also receives a fee from the consumer's bank, called a "switch" fee.

² PIRG released surcharge surveys in April 1996, October 1996, April 1997, April 1998, and April 1999. We did not release a surcharge survey in 2000. Instead, we released a detailed white paper on ATM surcharge and bank fee issues. See our ATM and bank fee report archive at <http://www.pirg.org/consumer/banks/index.htm> The white paper, "ATM Fee Backlash" (April 2000) is available on the PIRG StopATMFees.Com web site at <<http://www.stopatmfees.com/whitepaper.htm>> or <http://www.pirg.org/reports/atm/atm_white.pdf>

³ Big banks own the majority of ATMs. Out of the approximately 9,000 banks nationwide, the 300 largest control nearly two-thirds of all deposits, according to the Federal Deposit Insurance Corporation (FDIC). We define those as "big" banks. The Federal Reserve Board uses a similar methodology in its bank fee reports. It compares local banks and multi-state banks and obtains similar results. There is a strong correlation between big banks and multi-state banks. See the Federal Reserve's 2000 report at <<http://www.federalreserve.gov/boarddocs/RptCongress/2000fees.pdf>> and find links to earlier reports at <<http://www.federalreserve.gov/boarddocs/RptCongress/>>

⁴ The courts have overturned other more minor aspects of Iowa ATM regulation.

⁵ See our friend of the court brief on the <<http://www.stopatmfees.com/latest.htm>> page.

⁶ See <<http://www.massbankers.org>> "After extensive work with the NYCE Corporation, the Association helped to bring about a change in network rules that allowed for selective surcharging and led to a new NYCE program designed to offer smaller community banks and consumers a significant ATM option. The

SUM Program now includes 250 Massachusetts Banks and credit unions offering more than 1,700 machines. The SUM Program was recently extended to the entire NYCE market area.”

⁷ Following a complaint from State Senator Leonard Bodack (D-PA), a leading surcharge opponent, the U.S. Department of Justice began an investigation in the summer of 1998 into ATM network rules that resulted in the networks dropping anti-competitive rules designed to prevent small banks from forming selective surcharge alliances. In most states, ATM network ownership and management control is based on the number of ATMs a bank member contributes to the shared network, so bigger banks control policies.

⁸ See <<http://www.masspirg.org/consumer/banks/atm.html>>

⁹ The nation’s chief thrift and savings and loan regulator, the Office of Thrift Supervision (OTS) has also been active.

¹⁰ See Federal Register of January 30, 2001, Volume 66, Number 20, Page 8178-8184

¹¹ See PIRG’s “OCC Watch” page on the <http://www.stopatmfees.com> page.

¹² In this report’s summary charts, we list ATM foreign fees in two categories – local network and regional/national networks. Some banks charge the same fee for all foreign transactions. Many impose a higher fee for transactions on regional networks and/or the Plus or Cirrus national networks. We calculate combined foreign ATM costs based on surcharges and foreign transactions across the regional/national Plus or Cirrus networks, which are the networks that encouraged the growth of surcharging nationally.

¹³ Over the last five years, as plain, PIN-only ATM cards expired and needed to be replaced, banks quietly sent consumers ATM debit cards, which are cards with either VISA (Visa Checkcard) or Mastercard (Mastermoney card) logos and can be used with or without secret PIN codes. Consumers who do not want a debit card have complained to PIRG that many banks make it difficult to obtain a plain ATM card. While a plain ATM card can be used in some merchant transactions (local gas stations and grocery stores) with a PIN, an ATM debit card can be used virtually anywhere a credit card can be used in off-line, non-PIN, signature based transactions on the credit card network. Banks make much more money on merchant fees with off-line transactions. Consumers also face greater legal liability risk now that ATM cards can be used without PINs. Even though the banks have voluntarily, under pressure from PIRG and other consumer groups, limited liability, they have opposed changes to the laws to statutorily limit ATM card consumer liability to \$50 or less, the same as credit card liability. Further, when someone steals your credit card, you then argue with the bank over whether you owe the bank money. When someone steals your ATM debit card, you need to argue with the bank about getting your own money back from your own checking account. The latter is more difficult and shows why the law needs to be strengthened.

¹⁴ A disclosure amendment to the Electronic Funds Transfer Act was included in the 1999 Gramm-Leach-Bliley Financial Services Modernization Act. The amendment merely codifies existing network rules that require a fee disclosure either on the ATM machine or on the ATM screen.

¹⁵ [See “Regulatory, Competitive and Antitrust Challenges of ATM Surcharges,” Balto, David, in BNA Analysis and Perspective, 13 July 1998.] Several of Balto’s papers are archived at the PIRG ATM fees site: <<http://www.stopatmfees.com/anticomp.htm>>.

¹⁶ According to GAO, banks owned 132,000 ATMs in January 1998 and averaged 1,023 foreign ATM transactions per machine per month (the increase in the number of ATMs has resulted in a decline in per-ATM transactions). At a 94% surcharging rate at \$1.47/transaction in 2001, this corresponds to annual ATM surcharge revenue of approximately \$2.4 billion. Actual revenues may be slightly lower due to selective surcharge networks.

¹⁷ See brief of CALPIRG et al in Appeal of “Cities of San Francisco and Santa Monica vs. Bank Of America, N.A.; Wells Fargo Bank, N.A.; And California Bankers Association,” No. 00-16355 at <http://www.stopatmfees.com/9th.htm>

¹⁸ See “Banks Ditch Charges For Cash Machine Withdrawals”, Money Unlimited, 1 Jan 2001. See also ATM Surcharge Bulletin, January 2001, by Stacy Mitchell, <<http://www.newrules.org>>

¹⁹ See testimony of Ed Mierzwinski, U.S. PIRG, before Congress on lifeline banking: 27 June 2000 <<http://www.house.gov/financialservices/62700toc.htm>>