

Committee on Consumer Affairs

Date	6/23/08
Start Time	
Finish Time	

**Statement of Andrew Eiler
Director of Legislative Affairs
Department of Consumer Affairs
before the
City Council Committee on
Consumer Affairs
on
Intro 80-A**

June 23, 2008

Good afternoon, Chairman Comrie, and Committee members. I am Andrew Eiler, Director of Legislative Affairs for the Department of Consumer Affairs. Commissioner Mintz asked me to thank you for the opportunity to appear before you at your hearing on Intro 80-A to require the registration of private ATM machines.

The laudable objective of this proposal is aimed at protecting consumers from the consequences of the identity theft epidemic sweeping the country that, according to Federal Trade Commission data, struck 220,322 victims during calendar year 2006. New York State ranked 8th highest in the per capita incidence of victims, with about two thirds of the reported cases of identity theft occurring in New York City. Another revealing measure of the scope of this nationwide epidemic is that during calendar year 2006, the FTC received over 246,000 identity theft complaints, or more than five times as many as the almost 47,000 for shop-at-home/catalog sales complaints, the next highest category.

The spreading epidemic of identity theft prompted the Department to launch the City's first identity theft awareness and prevention campaign in April 2008. New Yorkers were encouraged to shred their documents containing personal information at Shred Fest NYC, held at 11 locations throughout the City in collaboration with the Office of Criminal Justice Coordinator, Parks and Recreation and the Sanitation Department. More than 1,000 New Yorkers brought 13 tons of personal documents, including bank statements, pay stubs, credit card applications, to be shredded by equipment donated by three industrial shredding companies. All participants received DCA's identity theft tips that highlighted proactive steps consumers could take to protect against identity theft and 50 lucky "early birds" even got free home shredders.

While Intro 80-A seeks to prevent identity theft, DCA is concerned that the proposal, which essentially requires simply the registration of certain types of ATM machines, neither quarantines the epidemic nor provides relief to any of its victims.

We believe the proposal as currently envisioned misses the mark for the following reasons:

1. The only requirement the bill imposes on the use of independent ATM machines is that they be registered with the Department and that a

registration decal be placed on the machine. Neither the registration requirement nor a decal on the machine would, however, in any way affect either the hardware or the software governing the operation of the machine to make it less susceptible to penetration that facilitates identity theft.

2. The registration requirement targets the machine as the source of identity theft by documenting the ATM's location. Identifying the location of ATM transactions would only help consumers identify where a theft might have occurred if they were aware at the time they were making an ATM transaction that the security of the device had been breached to facilitate identity theft. Consumers are rarely, if ever, aware of such a breach. Thus, a record of where ATMs are located is unlikely to assist in identifying where the identity theft occurred.
3. The source of identity theft and the trigger points for initiating fraudulent transactions for the purpose of preventing them can be established only by conducting a forensic accounting of the flow of electronic transfers that establishes patterns showing where and how the security of the transfer systems are compromised. The bill, however, includes none of the enforcement tools that would be needed to conduct such forensic accounting or to establish whether fraudulent transactions have occurred. Without such information, redress cannot be obtained, leaving the Department unable to assist consumers injured by identity theft
4. Unlike DCA decals on scales in supermarkets or on gas pumps, by example, a registration decal from this Department on an ATM is also likely to convey inappropriately to consumers a seal of approval regarding the effective functioning of that unit or, equally inappropriately, that the Department is in a position to redress other transactional concerns such as failure to properly dispense money, etc. which create expectations the Department would be unable to fulfill.

For these reasons, the Department's assessment is that Intro 80-A would not be an effective tool for combating the identity theft epidemic. By the same token, the Department shares the Committee's concern that more effective strategies are needed protect consumers. We would be pleased to consider and discuss with the Council more targeted approaches for enhancing the security of ATM transactions and for curbing identity theft.

Thank you again for this opportunity to testify. I would be pleased to answer your questions.

June 23, 2008

The Council of the City of New York
Committee on Consumer Affairs
250 Broadway
New York, New York

Chairperson Comrie, members of the Consumer Affairs Committee:

Good afternoon and thank you for the invitation to speak with the committee today.

I am John Gaccione, Deputy Director of Westchester County's Department of Consumer Protection. I have been a member of the department for 22 years and I am presently the department's chief enforcement officer.

I would like to give you a brief overview and summary of the registration of Automatic Teller Machines (ATMs), (Article XXIII of the Consumer Protection Code) in Westchester County as administered by our department.

In 1996, New York State passed "The ATM Safety Act", which required banks and other financial institutions to provide safety features for consumers using ATMs under the control of those institutions. The legislation did not address non-bank ATM's.

A White Paper, prepared by the New York State Police and released in March 2004, titled "A Review and Analysis of the Privately Owned ATM Industry", noted the increase in the use of privately owned and operated ATMs and the lack of regulation of these machines.

In August of 2004, Westchester County's ATM registration requirement was passed in response to concerns about the skyrocketing rate of identity theft along with the lack of accountability requirements for non-bank/privately owned and or operated ATMs. Similar to the Committee's proposed legislation, the registration does exclude those ATM's which fall under the dominion and control of federally and state chartered banks, trust companies, savings banks, savings and loans associations and credit unions.

The registration requirement was designed to discourage potential criminal activity, provide information about the machines to law enforcement and to inform consumers on how to safely use ATM machines.

Our legislation requires:

Documentation be provided to the department with information on the owner/operator of the ATM.

A registration fee of \$75.00 for a 2 year period.

That the Department of Consumer Protection distribute a registration sticker to the owner operator, to be placed on the ATM, providing tips for consumers on how to safely use ATMs.

ATM statistics:

In 2005, the department processed 819 applications for ATM registrations

In 2006, 210 applications were processed.

In 2007, 748 applications were processed.

In 2008, 146 applications have so far been processed.

At present 1011 machines are registered with the department.

Our records indicate the 2 largest operators of non bank ATMs in Westchester as Cardtronics of Houston, Texas and Merimak, Petaluma, Ca.

In summary, I would like to make the following two observations:

One - That registration of non-bank ATM's addresses the issue of accountability. If there is a consumer problem with the use of a non-bank ATM, there is a place to start an investigation.

Two - Most recently, there has been a decrease in the number of non-bank ATMs in use and a shift to bank sponsored ATM's, which would do not fall under our ATM registration requirement. This has impacted our total number of registered non-bank ATM's in the County.

Thank you for this opportunity to speak with the committee and I will gladly answer any questions the Committee has.



**STATEMENT IN SUPPORT OF REGISTRATION AND REGULATION
OF PRIVATE ATMS
IN NEW YORK CITY
NEW YORK CITY COUNCIL
JUNE 23, 2008**

The New York Public Interest Research Group (NYPIRG) is pleased to support efforts to require registration and regulation of private automated teller machines (ATMs). NYPIRG is New York State's largest non partisan, non-profit student directed consumer protection, social justice and environmental preservation organization. NYPIRG represents the interests of tens of thousands of college students and community supporters.

We are pleased to have the opportunity to discuss this important consumer protection issue. We congratulate the City Council on examining the issue of private, non-bank ATMs. Our hope is that New York City will demonstrate the leadership that the state Legislature and the New York State Banking Department have failed to show in this area.

Private non-bank, non-government, non-credit union ATMs do a brisk business and collect billions of dollars in fees as part of our national electronic banking system. Yet there is no accurate tally of the number of private ATMs operating, no assurance that taxes are properly collected, no real safeguards against money laundering, and inadequate consumer protections from identify theft, withdrawal shortchanges and other consumer problems. Indeed, neither New York State nor New York City can state with any certainty how many private ATMs are in operation, where they are located and who is responsible for their operation.

This is a glaring loophole in our electronic banking system that must be closed.

Under state and federal laws, anyone can purchase and ATM—in some cases for around \$100—connect to our national banking system, and begin taking money out of consumer accounts, transferring funds, accessing sensitive information and collecting substantial surcharge fees.

These private ATMs operate just like bank and credit union ATMs with one key difference: they're virtually unregulated. No one knows whether the private ATMs are owned by felons or honest shopkeepers; no one knows if they're paying taxes; no one knows if they're engaging in money laundering; and no one knows if they're facilitating identity theft or other types of fraud. Again, amazingly no one knows how many private ATMs are operating out there.

These are not academic concerns. In late fall 2003, a ring of ATM scam artists set up a phony ATM at a New York City grocery store. The crooks were able to capture the ATM card and PIN numbers and

create bogus cards. Then in a single day they withdrew \$225,000 from some 300 accounts at Citibank and J.P. Morgan Chase ATMs. The ringleader was a felon convicted of bank fraud and deported a decade before this crime wave. All told, the ring “skimmed” personal bank information from some 21,000 people and stole at least \$3.5 million according to federal prosecutors. See Con Men and Cash Machines, Criminals Focus on Weak Link in Banking: A.T.M. Network, Walt Bogdanich, *The New York Times*, August 3, 2003.¹

In December 2003, the television news magazine show *Dateline* aired a segment demonstrating that even a convicted felon on probation could set up a private ATM with just a few calls. Despite giving clear signals that he had a shady past, the ATM hardware companies and servicers were more than happy to ignore the obvious red-flag signs that this was not a person to do business with.²

As of 2004, several states—Illinois, Maine, New Hampshire, Vermont and Wyoming, as well as the District of Columbia—regulated private ATMs.

Years ago there were no private ATMs. Until the mid 1990s when national networks started allowing surcharges when consumers used an ATM not owned by their bank there was no financial incentive to establish private ATMs. So the laws that were put in place on a federal level and in New York have not caught up to the explosion of private “off-label” ATMs. Now there are thousands—perhaps tens of thousands—of these unregulated portals to our national electronic banking network.

Moreover, while private ATMs may offer convenience—since they’re often placed at locations that banks and credit unions won’t place their own ATMs—their sky-high surcharge rates show they’re not introducing price competition to the marketplace. The slight costs of regulation will not impact consumers negatively, but will help weed out scam artists and ensure that tax dollars are collected and the prospects for money laundering are reduced.

In the state Legislature NYPIRG supported legislation that would have required the state Banking Department to regulate private ATMs and require that owner/operators undergo a criminal background check. (See, e.g., S.7605/2004, introduced by Senate Banking Committee Chair Hugh Farley.) This legislation would have required that the ATM networks that connect private ATMs to the network, such as Cirrus and Plus, register with the Banking Department and confirm that a private ATM owner/operator had completed a background check before hooking a new ATM up to the network. The Banking Department was authorized under that legislation to conduct background checks and take steps to verify compliance with the law.

Proposed Intro No. 80-A is a promising start. In addition, we would add that New York should require criminal background checks for owners/operators, independent service operators (the companies that connect ATMs to the banking network) and other companies that stock ATMs with cash and paper for receipts. Before any company hooks up an ATM to the network they should confirm with the City that the owner/operator has had a background check and is registered to operate an ATM. At least six years

¹ This article is available at available at

<http://query.nytimes.com/gst/fullpage.html?res=9803E6DD103EF930A3575BC0A9659C8B63&scp=1&sq=criminals+focus+on+weak+link+in+Banking%3A+A.T.M.+Network&st=nyt>.

² See *Dateline* story at www.msnbc.msn.com/id/3607110/.

of record retention should be required; tough financial and criminal penalties should be established. The City should create an ATM registry and post it on the Internet so that consumers can check on their local ATM. This will help honest merchants gain business. Private ATMs should also display each of the participating network names and logos conspicuously on the ATM so consumers can assess whether they are eligible to avoid a surcharge for being outside their bank's network. The City should also anticipate new services that are emerging through stand alone ATMs, such as event ticket purchases and bill paying.

Thank you for the opportunity to share our views on this important consumer issue. Please contact NYPIRG's Legislative Counsel Russ Haven at 518 436-0876 if you have any questions regarding this statement or would like to discuss this issue further.



COUNTY OF ROCKLAND
DEPARTMENT OF WEIGHTS AND MEASURES
OFFICE OF CONSUMER PROTECTION

18 New Hempstead Road, 6th Floor
 New City, NY 10956
 (845) 708-7600
 (845) 708-7616 FAX

C. SCOTT VANDERHOEF
 County Executive

TERRY D. GRIGSBY
 Director

Gary Altman
 Legislative Council
 Council of the City of New York
 250 Broadway
 New York, NY 10007

Re: Registration of private ATM machines

Dear Mr. Altman:

Thank you for giving me the opportunity to relate the experience that Rockland County has had with its required registration of private ATM machines. Our experience is as follows:

1. Prior to the enactment of our local law my office had received sporadic complaints in relationship to privately owned ATM's. Our records reflect four complaints in 2003 and 2004 three of which were about the fee charged for the use of the private ATM's and one complaint about non receipt of the full amount that was withdrawn from the ATM. The complaints about the amount of the fee were not acted upon because of a lack of any jurisdiction and the fourth complaint was resolved when it was determined that it was a mechanical failure resulting in the customer not receiving the full amount requested.
2. In late 2004, members of the Rockland County Legislature proposed local legislation to require registration of privately owned ATM's for the reasons set forth in the Legislative findings and intent (copy enclosed). The local law was passed but the County Executive vetoed the law because he felt that:
 - a. Regulation should be done on a statewide level rather than a county by county basis and
 - b. The lack of complaints received by the county (see #1 above)

The Legislature overrode that veto and the law took effect in February 2005.

3. After the effective date of the law, my office undertook the task of registering these ATM's and produced a standard sticker to be placed on the ATM's with the required disclosures (see Section 214-14E).

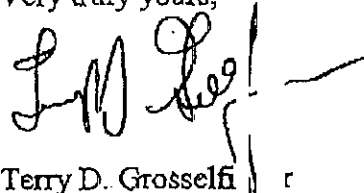
4. Our biggest task was searching out these private ATM's and making the owners/operators aware of our local requirement. This did take substantial time and continues today on an ongoing basis. It was also problematic for us to determine if an ATM was in fact "privately owned" or if owned and operated by a financial institution as described in the law. Our experiences were that once the owner was made aware of the requirement to register their ATM they promptly did so.
5. Our complaint experience since the enactment of the law has been limited to one complaint that a registered machine failed to disperse the amount requested. In that case, by the time my investigator arrived at the location of the machine (within an hour) it had been removed from service and the customer had received their monies (the problem was another mechanical failure).

I cannot express any opinion as to if the law here in Rockland County has been effective in preventing identity theft and there have been no reported cases of theft of monies from the users of the private ATM's to this office.

Therefore, the experience of our County is limited in determining the need for such legislation in your City and if in fact it would meet the goals or resolve issues that may exist in a more urban setting.

Hopefully, this information will help in your deliberations on the proposed legislation before you.

Very truly yours,



Terry D. Grosself
Director

General Code E-Code: Rockland County, NY

~~§ 214-5. Penalties for offenses.~~

~~A banking organization found to be in violation of any provision of § 214-3, § 214-4 or § 214-5 of this chapter shall have 10 business days to correct the violation. If not corrected within 10 days, the banking organization shall be subject to a civil penalty of not more than \$250 for the first offense and a fine not more than \$500 for a second or subsequent offense. Each violation of any provision of this chapter with respect to a particular automated teller machine facility shall be considered a separate violation thereof.~~

~~§ 214-6. Consumer safety information.~~

~~Upon the original issuance or reissuance of an automated teller machine facility access device to an automated teller machine facility, the issuing banking organization shall provide its consumer with written information concerning safety precautions to be employed while using an automated teller machine facility. Such written information shall include, at a minimum, the information described in Subsection A through (e) of § 214-3 of this chapter. In addition, upon the effective date of this chapter, such written information shall also include a statement indicating that, notwithstanding efforts to restrict access to an automated teller machine facility located within the interior of a building to persons authorized to use such facility, entrance is sometimes obtained by persons who are not authorized to use the automated teller machine facility.~~

~~§ 214-7. Enforcement statistics.~~

- ~~A. The local law enforcement agencies shall be authorized to enforce this chapter.~~
- ~~B. Statistics of crimes associated with the use of automated teller machines compiled and maintained by the Police Department shall be made available upon the request of any banking organization and the Office of Consumer Protection.~~

~~§ 214-8. Compliance with building code and other applicable provisions.~~

~~Nothing contained in this chapter shall be construed to exempt or relieve any banking organization from complying with all relevant provisions of any municipal codes or building code and all other applicable provisions of law.~~

~~§ 214-9. Exemptions.~~

~~The provisions of this chapter shall not apply to any unenclosed automated teller machine located in any building, structure or space whose primary purpose of function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.~~

ARTICLE II Registration of Privately Owned ATMs [Adopted 12-20-2005 by L.L. No. 2-

2005 Editor's Note: This local was vetoed by the County Executive, which veto was overridden by a two-thirds majority of the County Legislature 2-1-2005 by Res. No. 37-2005.]

§ 214-10. Title.

This article shall be known as "The Personal Identity, Social Security Number and Automated Teller Machine Protection Act."

§ 214-11. Legislative findings and intent.

- A. Identity theft has been recognized as one of the fastest growing crimes in America. In 2003, approximately \$1,000,000,000,000 was transacted through America's roughly 375,000 ATM machines. Of this \$1,000,000,000,000, approximately \$50,000,000 was stolen. The Federal Trade Commission reported that between 1998 and 2003, 27.3 million Americans became victims of identity theft. In 2002 alone, businesses lost \$48,000,000,000 to identity thieves, and victimized consumers incurred \$5,000,000,000 in out-of-pocket**

- expenses. Identity theft is often associated with other serious crimes, including mail fraud, organized crime, money laundering, weapons trafficking, computer crimes and terrorism including, but not limited to, the U.S. Secret Service, the U.S. Postal Inspection Service, the Commission and the FBI are designated as principal law enforcement agencies for identity theft. Although legislative research indicates that few U.S. counties regulate such conduct as of the present date, this legislation, Rockland County hereby expresses its determination to assist in combating such crimes.
- B. The Rockland County Legislature hereby finds and determines that privately owned and operated teller machines, hereinafter "ATMs," provide a valuable service to residents, businesses and tourists in Rockland County by enabling access to their funds without having to travel to their own or another bank.
 - C. However, these private ATMs are currently unregulated by federal, state or local government. Complaints have been made that unscrupulous ATM owners are using the information obtained via their machines to steal from those conducting transactions.
 - D. In addition, although bank ATMs are mandated to provide certain safety enhancements such as rearview mirrors or security cameras, private ATMs are not so required. Furthermore, no license or permit is currently required for private ATMs, making their owners untraceable and handicapping law enforcement efforts to locate potential sources of identity or monetary theft.
 - E. Therefore, the Rockland County Legislature has determined that Rockland County should undertake to protect its residents and others using private ATMs from the theft of their identities or money by enactment of this article.

§ 214-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

- ATM OPERATOR — A person, organization, or company operating a private ATM, but shall not in any event mean an EFT network. Generally, the operator is the person who provides the service by which the physical ATM is connected through wired or wireless services to the banking network in order to conduct the transactions through the private ATMs, whether to receive cash, make a balance inquiry or deposit funds, if such is allowed by the ATM itself.
- ATM PLACEMENT AGREEMENT — An agreement between a merchant and a private ATM operator or a distributor representing a private ATM operator regarding the operation of a private ATM at a specified site, including the merchant's place of business.
- BANK ACCOUNT — As this term is used in the vernacular, including but not limited to a fund, account or other place where a person can deposit his or her money so that it is protected by federal banking laws or Security and Exchange Commission rules.
- BOOKS AND RECORDS — Includes all of the following:
 - A. A private ATM operator's most recent federal income tax return or, if the private ATM operator has not previously filed tax returns, the tax returns of its principals, general partners, or majority shareholders.
 - B. A private ATM operator's financial statements, including a balance sheet and income statement.
- CONSUMER or CUSTOMER — A person or other entity conducting a transaction at a private ATM.
- DISTRIBUTOR — A person, other than a private ATM operator, who owns, invests in, leases a private ATM or enters into a private ATM placement agreement with a merchant and subsequently contracts with a private ATM operator for operating the private ATM.
- EFT NETWORK — One or more electronic funds transfer networks that are available to financial institutions that enable the transfer of funds in and out of a customer's bank account when the customer completes a transaction.
- ENFORCING AGENT — The Director of the Rockland County Department of Weights and Measures Office of Consumer Protection or his or her designee(s). [Amended 8-2-2005 by L.L. No. 1105]
- FINANCIAL INSTITUTION — A bank, savings association, or credit union or any affiliate or subsidiary thereof, which is recognized as such by the federal Gramm-Leach Bliley Act of 1999 (15 U.S.C. § 1811).
- MERCHANT — The owner or lessee who has possession of the location or premises in which a private ATM is installed and made available to the merchant's customers or invitees. A merchant may own or lease a

General Code B-Code: Rockland County, NY

private ATM without being considered a distributor, provided that the private ATM is intended solely for placement in that merchant's location or premises.

MONETARY TRANSACTION — The act of accessing an account at a financial institution with a credit card, debit card, or other bank card at a private ATM for the purpose of making cash withdrawals, balance inquiries, deposits, fund transfers from or to the account, or engaging in any other transaction.

OPERATING AN ATM or OPERATING THE ATM — The process of maintaining or providing the connection of a private ATM to any EFT network, regardless of who holds legal or equitable title in the private ATM.

PIN or PERSONAL IDENTIFICATION NUMBER — A series of numbers that identifies the cardholder and permits use of the card.

PRIVATE AUTOMATED TELLER MACHINE or PRIVATE ATM — Any machine that is subject to federal or state banking regulations used to gain access to a person's money in a bank account.

SPONSORSHIP AGREEMENT — The agreement between a financial institution and the private ATM operator that governs the operation of a private ATM within an EFT network.

§ 214-13. Registration of private ATMs.

A. Any private ATM operator, distributor and merchant operating a private ATM in Rockland County available for other than private use, and every private ATM machine in service in Rockland County, shall be registered with the Rockland County Department of Consumer Protection.

B. If the private ATM operator or distributor is also registered with at least one EFT network through a sponsorship agreement with a financial institution that is a member of the EFT network, such EFT registration information shall accompany private ATM registration with the Department of Consumer Protection. Every subsequent ATM registration by an individual or business shall reference such first registration, and all new information not presented with such prior registrations must contain any

C. Each time an ATM machine is moved from its currently registered location to another location within Rockland County, it must be re-registered, at a reduced fee, as provided herein.

D. All registrations for private ATMs recorded under this article must contain such information as required by the Director of Consumer Protection to effectuate the intent of this article.

E. With respect to any private ATM placed into use prior to the effective date of this article, the ATM operator, distributor, or the merchant shall, between themselves, decide which one of the following by that date:

- (1) Comply with all of the applicable information listed in Subsections A through D.
- (2) File with the Rockland County Department of Consumer Protection the required information, including any alterations to the private ATM undertaken prior to the article's effective date.

F. Registration fees.

(1) The initial registration of any private ATM operator or distributor operating a private ATM in Rockland County must be accompanied by a one-time fee in the sum of \$55. Such fee shall be paid by the registered party to place one ATM in Rockland County.

(2) Each additional machine placed in Rockland County by a registered party shall be subject to a fee of \$25.

(3) A machine that is already registered and operating in Rockland County may be moved to another location, provided that the registered party updated the registration and pays a fee in the sum of \$10 per private ATM per location.

G. Notwithstanding any other provision of this article, while any party to the placement of a private ATM may file and pay the appropriate registration forms and fees, and while any party may be subject to the penalties contained in § 214-21 of this article, the merchant shall be responsible for the failure to file registration and pay the appropriate fees required by this article. This section shall not be used by operators or distributors to seek indemnification from the merchant for the fees or penalties.

§ 214-14. Requirements for registered private ATMs.

General Code E-Code: Rockland County, NY

- All private ATM operators, distributors and merchants in Rockland County must provide or file all of the following:
- A. All merchants, operators and distributors must keep and file such records as required by the Director of Consumer Protection to effectuate the intent of this article.
 - B. Comply with all EFT network operating rules and all local, state, and federal regulations governing the operations of its private ATMs.
 - C. Maintain comprehensive and verifiable inventory procedures and establish controls that identify the location of all of the private ATMs that they operate or have distributed or possesses, that are available for use by the public in Rockland County.
 - D. Operate or distribute private ATMs physically within Rockland County pursuant to a written agreement with merchants who are legally authorized to conduct business in New York State and Rockland County, and file a copy of said agreements, and any modifications to said agreements, with the Rockland County Office of Consumer Protection.
 - E. Post in a conspicuous place on the front of each private ATM a notice in at least twenty-four-point type setting forth:
 - (1) The name of the merchant and the private ATM operator or distributor;
 - (2) The telephone number to the Rockland County Office of Consumer Protection;
 - (3) A telephone number of the private ATM operator or distributor;
 - (4) The Federal Trade Commission's identity theft telephone hotline phone number, currently 1-877-id-theft;
 - (5) The fee charged to use the private ATM and the maximum amount that can be withdrawn in any single transaction; and
 - (6) The following statement: "Protect your identity: safeguard your card and PIN number, and take your receipt."

§ 214-15. Agreements between private ATM distributors and operators.

A distributor must provide the private ATM operator with all of the following before it accepts any private ATM placement agreement:

- A. The distributor's full legal name and any trade name under which the distributor is conducting business.
- B. The distributor's federal and New York income tax identification numbers and, if the distributor is a sole proprietor, his or her social security number.

§ 214-16. Safety rules for private ATMs.

The following safety rules apply to all private ATMs:

- A. All private ATMs must be in well-lit areas; and
- B. All private ATMs must have devices, such as mirrors or other reflective panels, that allow consumers to see behind them as they conduct their transactions. Such devices may be affixed to, or separate and independently of, the private ATM.

§ 214-17. EFT network rules or regulations to continue.

Nothing in this article shall be interpreted or construed to modify, amend, suspend, supersede, or cancel any EFT network rule or regulation.

§ 214-18. Exemptions.

The following entities are exempt from the requirement of this article unless they are acting in the private ATM arena:

- A. Any financial institution regulated by the federal or state government.

General Code E-Code: Rockland County, NY

- B. A subsidiary or affiliate of an entity specified in Subsection A.
- C. A person providing ATM services to a financial institution regulated by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the U.S. Office of Thrift Supervision, the National Credit Union Administration, or the State of New York or any of its departments where the state requires the information required by this article.

§ 214-19. No impact on banking regulations.

This article has no impact on or intent to affect bank accounts, federal and state banking procedures or banking regulations, as such is not within the jurisdiction of the County of Rockland.

§ 214-20. No waiver.

The requirements of this article may not be waived.

§ 214-21. Penalties for offenses. [Amended 8-2-2005 by L.L. No. 10-2005]

Any private ATM operator, distributor or merchant that knowingly or otherwise operates a private atm without complying with all the requirements of this article and/or provides false or misleading information in connection with placing private ATMs into service to the public shall be subject to a civil penalty of up to \$500 for the first such act of noncompliance or of providing false or misleading information, and a civil penalty of up to \$1,000 for every subsequent such act, to be assessed and collected by any enforcing agent. For the purpose of this section, every day that any private ATM operator, distributor or merchant knowingly or otherwise operates a private ATM without complying with all the requirements of this article shall constitute a separate act of noncompliance.

§ 214-22. Use of social security numbers by County government, its contract agencies and Rockland Community College.

A County department, a contract agency of the County, and Rockland Community College when utilizing funds from the County, shall be prohibited from using federal social security numbers as a means of identification or record-keeping unless the use of a social security number is mandated or otherwise required by federal or state law. This does not prevent such departments, Rockland Community College, or contract agencies from utilizing the "last four digits" of such social security number alone or in conjunction with numerical, alphabetical or other symbols for said purposes.

§ 214-23. Reporting to federal authorities; guidance to victims.

Any enforcing agent learning of potential identity theft shall report any involved individuals and other involved entities to the Federal Trade Commission or other appropriate federal and state authorities and provide guidance to victims, whether the theft resulted from an ATM machine or some other source.

§ 214-24. Identify theft public education and awareness effort.

The Commissioner of Finance shall distribute all funds received under this article, whether by registration or civil penalty, to the Rockland County Office of Consumer Protection until its enforcement costs under this article are fully reimbursed. Any excess funds generated by this article, after all such enforcement expenses to the Office of Consumer Protection are reimbursed, shall be remitted to the Computer Crime Unit for the purpose of funding a public awareness and education effort specifically designed to prevent identity theft.

§ 214-25. Intermunicipal cooperation.

The Computer Crime Unit, under the supervision of the District Attorney and the Sheriff of Rockland County, shall aspire to collaborate with local law enforcement entities within the County to report incidences of identity theft to the Federal Trade Commission.

General Code E-Code: Rockland County, NY

§ 214-26. No liability.

Nothing in this article shall be deemed to create liability to Rockland County for identifying the perpetrator of other crimes associated with the use of ATMs.

§ 214-27. Applicability.

This article shall apply to any private ATM placement in Rockland County before, on or after the effective date of this article.

NYC Council Committee on Consumer Affairs

Proposed Int. No. 80-A

June 23, 2008

Darryl Ware - supporting documents

Merchant Application and ATM Operator Agreement

**Wash Water Solutions, Inc. (ISO)
MetaBank ("Bank")**

SECTION A – Application: Merchant/ATM Operator Completes Lines 1-10 ** PLEASE PRINT CLEARLY**

1. Name of Location (Doing Business As)		2. Physical Street Address of Location	
3. City, State Zip		4. Location Phone Number	5. Location Fax Number
6. Business Tax ID Number	7. Financial Institution Number (FI #, FDIC, NCUA, ASI)	8. Email Address of Business Principal	
9. Type of Business (Sole Proprietor, Partnership, LLC, Corporation, Financial Institution)		10. Merchandise/Services Sold	

SECTION B – Application: ATM Operator Completes Lines 11 - 26 ** PLEASE PRINT CLEARLY**

11A. ATM Operator Principal First Name	11B. ATM Operator Principal Last Name	12. ATM Operator Principal "FULL" Legal Name (if same as 10-11, write "Same")	
13. ATM Operator Principal Home Street Address		14. ATM Operator Principal City, State, Zip	
15. ATM Operator Principal Social Security Number		16. ATM Operator Principal Driver License Number, Issuing State and Expiration Date	
17. ATM Operator Principal Date of Birth		18. Any other names by which you are now or have been known:	
19. Are you on parole or probation? Yes or No?	20. Have you ever been convicted of a felony? Yes or No?	21. Percentage of Ownership held by above named ATM Operator Principal	
22. Are there any other persons/entities that own or control [10%] or more of ATM Operator? Yes or No?		23. If the answer to #21 is Yes, such person/entities are deemed Other Principals. Please include details referenced in 10-21 regarding every Other Principal, on a separate ATM Operator Agreement.	
24. APPLICATION DECLARATION: The undersigned Applicant represents that all information contained in this Application for Sponsorship, and any other documentation supplied thereto, is true and correct. The Applicant hereby applies for an account relationship with Bank, as an ATM Operator sponsored by Bank. The undersigned acknowledges that in order to fight the funding of terrorism and money laundering activities, Bank is required to verify the identity of each person who opens an account with Bank. Therefore, the undersigned agrees that Bank is authorized to obtain Consumer and (if applicable) Business Credit Reports and to undertake a Criminal Background Investigation in connection with this Application. Applicant authorizes Bank or any of its agents to investigate information or data obtained from this Application. If there is more than one Principal indicated above, Applicant hereby provides the signed authorization for such Other Principals as well. Applicant agrees to provide any further information, including financial data, as may be reasonably requested by Bank. Applicant may, upon written request, obtain a complete and accurate disclosure of the nature and scope of the investigation requested hereunder. Applicant acknowledges that Bank may accept or deny this Application in its reasonable discretion.			
25. SIGNATURE OF ATM OPERATOR PRINCIPAL / DATE			

Meta Payment Systems, a division of MetaBank, ("Bank") sponsors the ATM Terminal and financial transactions on the ATM Terminal that you financially participate in.

SECTION C – AGREEMENT BETWEEN Merchant/ATM OPERATOR, ISO AND BANK Line 26

26. In the event this Application is accepted by Bank, the above named ATM Operator, ISO and the Bank (collectively, the "parties") hereby agree as follows: (1) Bank will sponsor the ATM Terminal and financial transactions on the ATM Terminal that ATM Operator financially participates in. ATM Operator and ISO acknowledge that they have signed a separate agreement governing the placement and operation of the ATM Terminal(s) and to abide by the terms of such separate agreement; (2) The parties agree at all times to comply with applicable laws and regulations. (3) ATM Operator and ISO agree to comply at all times with all system and network rules, including but not limited to the Plus System, Inc., MasterCard/Cirrus, etc. Bylaws and Operating Regulations, which Bylaws and Operating Regulations may be amended from time to time; (4) The Bank may terminate this Agreement in Bank's sole discretion or in the event that either ATM Operator or ISO fail to comply with this Agreement and/or with the Bylaws and Operating Regulations; (5) ATM Operator and ISO will indemnify and hold harmless the Bank, the processor, the Networks you participate in (including but not limited to Plus System, Inc., MasterCard/Cirrus, etc.) and Network Members, from and against any and all claims, losses or damages arising out of ATM Operator's or ISO's failure to comply with this Agreement, with applicable laws and regulations, and with the Bylaws and Operating Regulations. (6) the surcharge amount shall not exceed the fee defined in Section F.

SECTION D – ATM Operator Completes Lines 27-31 ** PLEASE PRINT CLEARLY**

27. Check Recipient Name (Name of person (or entity) to whom the monthly commission check should be made out)		28. Mailing/Billing Address (What address should your monthly commission check be mailed to)	
29. Corporate/Alternate Phone Number	30. Corporate/Alternate Fax Number	31. City, State, Zip	

SECTION E – ATM Operator Identification (ISO Representative Completes Lines 32-35) ** PLEASE PRINT CLEARLY**

32. By signing below, I certify that the document used to identify this ATM Operator was provided to me and the above identification information is true and accurate and reflects the identity of this ATM Operator.			
33. Signature of Sales Representative for ISO		34. Typed /Printed Name	35. Date
34. Name of Registered ISO / Sales Representative for ISO		35. Processor	

SECTION F – ATM Operator Completes Lines 36- 37 (ISO Completes Lines 38- 49) ** PLEASE PRINT CLEARLY**

36. Surcharge Amount	37. Terminal Phone Number	38. Terminal Manufacturer	39. Terminal Model
40. Terminal Serial Number (# inside the ATM)	41. Terminal ID Number	42. Does this terminal have a Certified Self Encrypting PIN PAD? Yes or No?	43. Encrypting PIN PAD (EPP) Serial Number
44. Is this terminal Triple DES compliant? Yes or No?	45. Is this a Scrip Terminal? Yes or No?	46. Software Version	47. Firmware Version
48. Activating Custodian (1)		49. Activating Custodian (2)	

SIGNATURE OF ATM OPERATOR

SIGNATURE OF ISO

SIGNATURE OF BANK

NAME:
TITLE:
DATE:

NAME
TITLE
DATE

NAME
TITLE
DATE

Request for Taxpayer Identification Number and Certification

Give form to the
 requester. Do not
 send to the IRS.

Print or type
 See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	<input type="checkbox"/> Exempt from backup withholding
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								
or								
Employer identification number								

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding,
- or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or

• Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

Sample Quarterly Report

	A	B	C	D	E	F	G	H	I	J	K
1											
2	ISO's Name	Sponsor Bank Institution's Full Name	Merchant Location Name	Street Address	City	State	Zip	Premise (On / Off)	Type Required for all Off Premise ATMs ONLY.	Create Date ATM was installed. If unknown,	Device Manufacturer
3	WWS	MetaBank	STATE LINE FOOD & BEVERAGE	182 FAIRFIELD DR	BREWSTER	NY	10509	1	21	10/28/02	Cross
4	WWS	MetaBank	TOPRAK LTD	540 MAMARONECK AVE	MAMARONECK	NY	10543	1	21	11/06/02	Triton
5	WWS	MetaBank	Port Chester Gas, Inc.	230 Boston Post Rd	Portchester	NY	10573	1	21	12/12/02	Triton
6	WWS	MetaBank	White Plains Pharmacy	276 MAIN ST	WHITE PLAINS	NY	10607	1	14	12/19/02	Triton
7	WWS	MetaBank	PNK FOODS INC	400 EAST MAIN STREET	JEFFERSON VALLEY	NY	10535	1	23	05/01/01	Triton

Sample Quarterly Report

	L	M	N	O	P	Q	R	S	T	U
1	Required Data									
	Device Model Number	Firmware Version	Software Version	Device Serial Number	Processing Company	Processor Terminal ID Number	Does the ATM have a Camera at the location? (Y/N/U)	Does the Terminal have the 3 required stickers? (Y or N)	Is the machine TDES Compliant? (Y or N)	PIN Security Standards (Y/N) (Does it have an approved encrypting PIN Pad as per www.visa.com/pin)?
2	2100	V10.10.04	V10.13.15	0000100405	GenPass	C1998506	u	Y	Y	n
3	9610	SD02.04B41	SA-9900.48	8815604	GenPass	TD012336	u	Y	Y	Y
4	9110	KD01.06B45	KD990003.04	L9100023303553	GenPass	TD012365	u	Y	Y	Y
5	9110	KD01.07B45	KD990003.04	L91000233396319	GenPass	TD012369	u	Y	Y	Y
6	9600	SD04.01B40	XA-8880.02	90000002791	CoreData	24888029	u	Y	Y	Y

Sample Quarterly Report

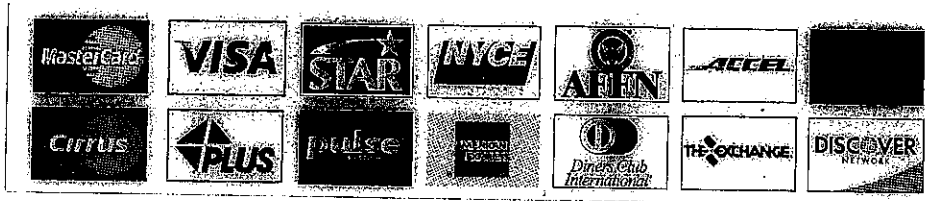
	V	W	X	Y	Z	AA	AB	AC	AD	AE
1	V		X	Y	Z	AA	AB	AC	AD	AE
			Has EXHIBITS							
2	Limited hours for the ATM? (Y/N)	Publish ATM listing on Network Website (Y or N)	(Merchant Application/ATM Operator Agreement) been signed and forwarded to	Principal Member BID	Principal Member Routing #	Contact Phone	Contact (First Name)	Contact (Last Name)	Surcharge - does the ATM surcharge? (Y/N)	Restricted access to the ATM? (Y/N)
3	Y	Y	Y	10010785	273970116	845.279.2837	Darryl	Ware	Y	N
4	Y	Y	Y	10010785	273970116	845.279.2837	Darryl	Ware	Y	N
5	Y	Y	Y	10010785	273970116	845.279.2837	Darryl	Ware	Y	N
6	Y	Y	Y	10010785	273970116	845.279.2837	Darryl	Ware	Y	N
7	Y	Y	Y	10010785	273970116	845.279.2837	Darryl	Ware	Y	N

Sample Quarterly Report

	AF	AG	AH	AI	AJ	AK
	Network Requested Data, Not Required					
1						
2	STAR Deposits Program(Y/N), if you belong to this program, you do not surcharge other STAR Deposit Program participants' card holders for making deposits at your participating ATMs & vice-versa.	Bilingual (Y/N). If Y, fill in column AR. If N, leave column AR blank	Additional language (only if you answered Y in column AQ)	Handicap access (Y/N) meets ADA regulation	Mint-statements (Y/N) offered at this ATM? If unknown leave blank.	STAR POS (Y/N) (stamps, vouchers, etc) at the ATM? If unknown, leave blank.
3		Y	SPANISH	Y		n
4				Y		n
5				Y		n
6				Y		n
7				Y		n

Sample Quarterly Report

	AL	AM	AN	AO	AP	AQ	AR	AS	AT	AU
1										
2	STARsf (Y/N) surcharge free network (#/Ka Avail, Agree) see comment for more info.	Talking ATM (Y/N)	(ISO) Financial Institution Routing/Transit Enter a number - 9 digits 021906808	DRIVE UP Enter 0 or 1 (1 - Drive Up) or 0 - No Drive Up)	WALK UP Enter 0 or 1 (1 - Useable by pedestrians 0 - Not useable by pedestrians)	Country Code (3 digit)	SIC Code			
3	n			0	0					
4	n			0	0					
5	n			0	0					
6	n			0	0					
7	n			0	0					



Operational Problems or Suspicious Activity

This terminal is sponsored by MetaBank
and is operated by WWS ATMs in
compliance with all regulatory and network
rules. In the event of operational problems or
to report suspicious activity at the terminal,
please call WWS at 1-866-997-2867

FEE NOTICE

_____, the Operator of this
terminal, will assess a fee of \$ _____
for a cash withdrawal performed by a
U.S. cardholder.

**This charge is in addition to any fees
that may be assessed by your financial
institution. This additional charge will
be added to your transaction amount
and deducted from your account.**

**If you have any questions, please
contact your financial institution.**

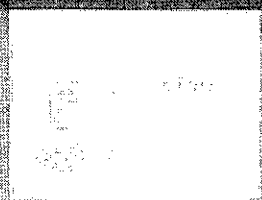
FEE NOTICE

International Bankers for
Commerce Bank
ATM
25 JAN 08 BA43 11-218-07

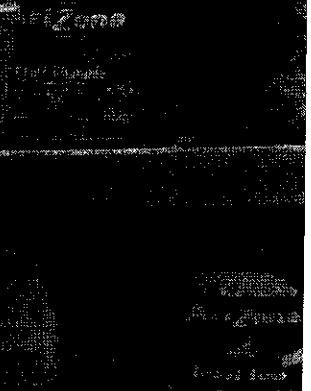
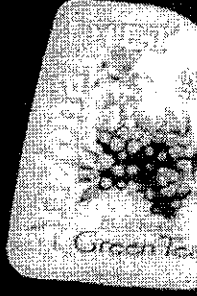
ATM



Triston



WWS ATM
CARD SERVICE
845-279-2037



ATM

FEE NOTICE

The fee schedule for this ATM is as follows:

Withdrawal	2.00
Deposit	0.00
Transfer	0.00

WWS ATM
6142782037

Department of Justice
Equal Housing Opportunity

The program is subject to the Equal Housing Opportunity Act. Any bank participating in this program is required to accept all requests for credit, subject to the same credit standards that apply to other customers. No person should be denied credit on the basis of race, sex, or other protected characteristics.

1 **2** **3** **4** **5** **6** **7** **8** **9** **0** ***** **#**

35

Ice

Mobil 5000

EXON

Shopping cart with various items including bags and containers.



Michael E. Keller
General Counsel

TESTIMONY

**MICHAEL E. KELLER
GENERAL COUNSEL, CARDTRONICS**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS**

**PROPOSED INTRO 80-A:
REGISTRATION OF PRIVATE AUTOMATED TELLER MACHINES**

JUNE 23, 2008

3110 Hayes Road, Suite 300
Houston, TX 77082
mkeller@cardtronics.com

Tel 281.668.1761
Fax 281.892.0102
Cell 713.208.0186
www.cardtronics.com

Good Afternoon,

My name is Michael Keller and I am pleased to have this opportunity to appear before the Council as it considers whether to require owners and operators of ATMs who are not financial institutions to register their ATMs with the Department of Consumer Affairs.

I know that as the City's leaders it is your goal to make the City a better place for all of its citizens and visitors. Accordingly, on behalf of all non-Bank ATM owners and operators of ATMs, I thank you for giving the ATMIA and Cardtronics an opportunity to discuss the merits of the proposed legislation.

I appear before you today in two capacities.

First, I am speaking as the General Counsel of Cardtronics, the nation's largest operator and manager of ATMs. Cardtronics owns or operates over 30,000 ATMs throughout the United States. In the state of New York, we own or operate approximately 3,000 ATMs. In New York City, we own or operate slightly above 1,000 ATMs.

I am also speaking to you today as the Co-Chair of the Government Relations Committee of the ATMIA.

The ATM Industry Association ("ATMIA") is a non-profit trade association serving all businesses and groups in the ATM industry. ATMIA has over 1,000 member companies in more than 50 countries. Its world wide members currently own and operate over 1.67 million ATM's.

It is my understanding that the principal rationale for the proposed legislation is that:

1. **ATMs are "*vulnerable to manipulation by unscrupulous machine operators or third parties*" and**
2. **ATMs are not regulated by state or federal governments.**

I would like to address both points.

A. ATMs are “*vulnerable to manipulation by unscrupulous machine operators or third parties*”.

While the ATMIA acknowledges that identify theft is an increasingly common crime in the United States, we respectfully believe the acts required by the proposed legislation will not deter any criminal activity, but will only make it more expensive for non-bank ATM owners and operators to operate their ATMs, which will result in more and more consumers using Bank ATMs and point of sale (“POS”) electronic terminals, which as I will discuss below are much more susceptible to criminal activities.

The essence of identity theft is the misappropriation of personal identification data or documents belonging to the victim, or the creation of false personal identification data or documents, with intent to commit fraud. Although criminals can and have used ATMs to commit fraudulent acts, they have not used ATMs to conduct “identity theft”.

The main reason for ATMIA’s disassociation of identity theft from ATM fraud is that the information which can be stolen from an ATM transaction, such as a PIN or card data cannot be used to carry out and complete identity theft; for example, by opening up new accounts in the victim’s name. The primary criminal activity at an ATM is the theft of card numbers and their associated PIN by the use of electronic skimming devices that are surreptitiously attached to the ATM in conjunction with hidden cameras. The skimming device captures the cardholder’s card number, while the camera records the cardholder entering his/her PIN. The criminal then uses this captured information, not to commit identity theft against the consumer, but to fraudulently withdraw cash from the consumer’s bank account. Registration of the ATMs would not deter this type of illegal activity, as the criminal will not care whether the ATM is or is not registered with the City, State or national government.

In fact, the proposed legislation does not even address the thousands of POS terminals or ATMs installed at nationally chartered banks, the latter of which are or course exempt

from any locally imposed regulation on their ‘banking’ activity. For this reason alone, the proposed amendment to the Code will have no impact at those locations where skimming is most prevalent. Skimmers target devices that have thousands of transactions per month—such as “pay at the pump” POS terminals and drive-thru bank ATMs. The non-bank ATMs operated by our members have, on average, only a few hundred transactions per month, making them a poor target for skimmers.

To support our contention that skimming at non-bank ATMs is not a growing problem, but indeed is a diminishing threat to consumers, I have passed out today a table or graph that shows over the last 7 years criminal activity at Non-Bank ATMs resulting in PIN compromises (in orange) has dramatically declined, while such activity at Bank ATMs (in gray) has remained fairly level, while such activity at POS devices (in red) has soared.

This chart is provided by Fair Isaac, a worldwide recognized leader in fighting electronic payment crimes. Fair Isaac is not affiliated in any way with ATMIA. ATMIA, together with hundreds of other organizations, including many banks, is a subscriber to the publications issued by Fair Isaac. I encourage each of you to visit the Fair Isaac web site at: <http://www.fairisaac.com/fic/en>

B. ATM’s are “not regulated by the state or federal governments”.

While it may be factually accurate to state ATMs in New York are not “per se” regulated by the state or federal government, it is not accurate to state that ATM operators own and operate their ATMs without any rules or regulations or that such rules and regulations do not have significant teeth.

ATMs placed by ISOs operate under the same federal laws as any bank-owned ATM, including Regulation E, (Electronic Funds), BSA/AML (Anti Money Laundering) and the Patriot Act. Additionally, the electronic payment networks, such as PLUS, Cirrus, Amex, etc., (the “Networks”) have established both administrative and technological

standards to maintain the safety and integrity of the electronic payment system over which each day billions of dollars flow. Examples of such standards are:

- ADMINISTRATIVE STANDARDS

Non-bank ATMs are allowed to connect to this electronics payment system allowing electronic funds transfers, only if they are sponsored by a state or nationally chartered financial institution. This “sponsoring bank” is charged with ensuring that each ATM owner / operator complies with Network rules, including security rules such as the PCI standards (see below). Significant fines (in excess of \$5000 per day) or termination of ATM services occurs if an ATM operator fails to comply with such rules.

Furthermore, the Networks have interpreted the “know your customer” requirements of the Patriot Act as mandating that each sponsoring bank collect personal information on each ATM operator, including a criminal background check.

- TECHNOLOGICAL STANDARDS

Further, ATMIA, together with the Networks have made technological improvements to ATMs and have adopted administrative procedures to reduce the frequency of criminal attacks on ATMs. In addition to Network rules regarding ‘who’ can operate an ATM, the Networks also have stringent technical guidelines. Examples of such guidelines are:

ENCRYPTION of ELECTRONIC TRANSMISSIONS. Over the last several years (and at significant cost to ATM owners and operators), every deployed ATM has been reconfigured with an Encrypted Pin Pad (“EPP”) and Triple Data Encryption Standards (“3DES”). EPP and 3DES make it much more difficult for criminals to intercept cardholder information and PINs as the consumer enters

such information into the ATM or while his information is being transmitted from the ATM to the processor.

PAYMENT CARD INDUSTRY (PCI) STANDARDS. Recognizing that data thieves focus on target rich environments, i.e. data centers and the electronic transmission of data to and from such centers, the payment card industry through its PCI Security Standards Council has focused on developing technology based standards. We invite you and your staff to visit their website at: <https://www.pcisecuritystandards.org/> to read more about their efforts to combat identify theft. The ATMIA endorses the standards created by the PCI Security Standards Council.

As noted above, the ATM owner or operator does indeed have a flurry of requirements that he must comply with or lose his ability to operate his ATM. Each of those requirements is designed to make the ATM transaction a safe and secure transaction—that's the reason they focus on who is the operator and the technical specifications of the ATM.

The proposed law does neither. Further, it has several provisions which we believe are unduly burdensome or could confuse the consumer. In particular, the requirement that all written agreements with the merchant regarding the ATM must be provided to the Department of Consumer Affairs is troublesome. ATM deployments are very competitive. Requiring ATM owners and operators to file their business agreements with the Department would make it impossible for merchants and other ATM operators to negotiate business contracts in private.

Much of the notice requirements would be redundant to those required by current federal and Network rules or could confuse the consumer as to whom he should contact in the event of an ATM issue. The placing of so many phone numbers on the ATM (the ATM provider or distributor, telephone number of the Department of Consumer Affairs, and the FTC hotline number is a good example. If a consumer encounters issues with his

ATM, he should first and foremost contact his financial institution. The placing of a myriad of phone numbers on the ATM could lead the consumer to believe that by calling the City or the FTC he has taken action to protect his bank account from criminal activity.

CONCLUSION

Identity theft and ATM skimming can produce quick financial gain to the criminal. The greater the gain (dollars) in relation to the lack of severity of the consequences (prison time) if caught, the greater the likelihood for an attack.

ATMIA has supported efforts by state governments, including recent proposals in Albany, to make it a crime to affix to any ATM or other electronic payment device, such as a POS terminal, that captures consumer information. We have and we will support any bill at any level: city, county, state or national that targets the criminals and not the ATM owner or merchant.

The ATMIA does not believe the proposed legislation will in any meaningful way fight either identity theft or ATM skimming in New York City. The bill does not address the real problem—the criminal element—instead it would impose upon the non-bank ATM operators in the City additional costs and administrative burdens. For these reasons the ATMIA does not support the proposed legislation.

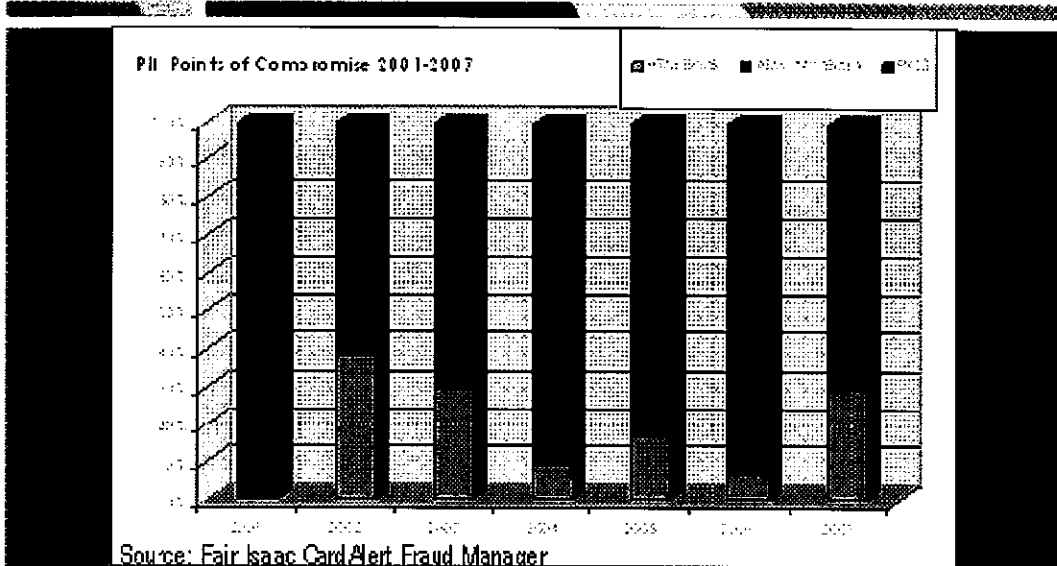
ATMIA and Cardtronics have supported a state wide ATM registration system under the Secretary of State's office and would suggest that a statewide uniform measure is much preferable over each city and county having separate requirements—on top of potential state wide requirements.

We are available at any time to meet with you and your staff to discuss our concerns regarding the proposed legislation at your convenience.

Sincerely,

Michael E. Keller,
General Counsel

PIN Points of Compromise – US



Professional Development



TESTIMONY

**RICHARD STERN
PRESIDENT & CEO, TRM/ACCESS TO MONEY**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS**

**PROPOSED INTRO 80-A:
REGISTRATION OF PRIVATE AUTOMATED TELLER MACHINES**

JUNE 23, 2008

Good afternoon, my name is Richard Stern and I am the President and CEO of TRM/Access to Money. We are an owner and operator of over 12,000 ATM machines throughout the United States and over 500 such machines in the City of New York. Our Executive Offices are in Cherry Hill, New Jersey, and we have offices in Whippany New Jersey and Portland Oregon. As an Independent Sales Organization, in order for us to operate, we must comply with requirements set by the various networks such as Visa, Master Card, Pulse and Nyce that process the electronic fund transfers. These network requirements are established in order to provide security and establish consumer confidence. The networks require us to do the following with respect to the ATM's that we operate:

- (i) Obtain sponsorship from a state or nationally chartered bank. We are sponsored by Pueblo Bank, Metabank, and Citizens in order for us to connect to the various networks that permit electronic payments,
- (ii) Ensure that every machine that we operate has been what is commonly called, "triple DES upgraded". What that means is that the key pads that each consumer uses to enter his/her PIN number are encrypted such that it is virtually impossible to intercept cardholder information. This requirement was first mandated by the networks to be completed by December 31, 2007 and we achieved 100% compliance with this regulation in the first quarter of 2008 at a cost of several million dollars to our Company, and
- (iii) Obtain background checks on every merchant where we have placed an ATM which required us to gather significant personal information on each merchant. Again, our Company absorbed the cost of obtaining this information which was significant.

It is important to recognize that the perceived harm that is the impetus for this proposed legislation is not caused solely by the ATM machines that we deploy, but rather by devices placed on those machines by third parties. In other words, card skimming requires that either a sophisticated reader be placed on the machine or a card reader in conjunction with some other mechanism be utilized in order to match the card number with the PIN number. I point this out because the machines that Independent Sales Organizations deploy, or Private ATM's as described in the proposed legislation, are not left in unmanned bank vestibules or kiosks; but rather are placed in convenience stores, gas stations, restaurants or other retail locations that have many people watching the machine at all times. Therefore, it is much more difficult for an individual to place a device on the ATM and then retrieve that device later on without being noticed. Alternatively, bank machines that are in 24 hour access lobbies without human supervision are prime targets for this activity. It is also precisely because Private ATM's are in the retail environments described above that we believe this proposed legislation will have a detrimental effect on both the consuming public and the retailers that outweigh the actual benefits.

TRM/Access to Money deploys ATM's in two ways. We either place a machine that we own in a retail location, or we sell a machine to a merchant and act as the electronic processor for that particular machine. In either case, the ATM is an ancillary revenue source for that business owner and is also viewed as an important marketing tool to help attract customers into that location. Adding cost and administrative exposure will reduce these benefits and cause merchants to rethink whether having an ATM is a worthwhile endeavor. We know this because since the introduction of the triple DES and background check regulations described above, there has been an almost 10-15% reduction in the number of non bank owned ATM's deployed nationwide. While the loss of the ATM to the merchant will be the loss of a beneficial ancillary revenue source it will be an even greater loss to the consuming public. Private ATM's serve the public in two very important ways. First, it provides a meaningful convenience by allowing consumers to obtain access to their money beyond that provided by bank operated ATM's. Private ATM's are often located in areas not necessarily serviced by bank operated machines. The removal of these machines could create an undue hardship on certain consumers by forcing them to travel or requiring them to seek out inconvenient machines. Moreover, as noted above, the alternative for some may be to use unsupervised bank machines at off hours. This may create an undue safety risk that would not be present if the local convenience store ATM were still available. More importantly, Private ATM's are often a less expensive alternative to bank operated machines. Private ATM surcharges are typically less than the surcharge charged by banks to non-customers. Our average surcharge is less than \$2.00 while banks are now charging \$2.50 or higher. By adding costs and administrative burdens, it is likely that some merchants will elect not to continue with their ATM program, thereby reducing the number of ATM's in New York City and removing this important convenience for the public.

For the reasons I have outlined above and for the reasons that will be pointed out by other testimony today, it is our belief that this proposed legislation is both unnecessary and will have detrimental consequences. Please know that to the extent actual statistics indicate that the non-bank operated ATM's do create a risk to the consuming public, we are prepared to address that risk and work closely with the appropriate parties to alleviate that problem. Consumer trust and confidence is an important component of our business and we are always motivated to ensure that such trust and confidence is not jeopardized. However, we believe that the perceived issues that are being discussed today are just that, perception and not reality. Thank you for your time.

NYC Council Committee on Consumer Affairs

Proposed Int. No. 80-A

June 23, 2008

Roger Mogan - supporting documents

WWS ATMs, Brewster, NY, 845-279-2837

In 20 point type, the following is an example of the amount of space needed to follow the proposed NYC ATM regulations

Merchant: Joe Lowe's Deli and Catering(example only)

Telephone: 212-555-1234

NYC Hotline number: 311

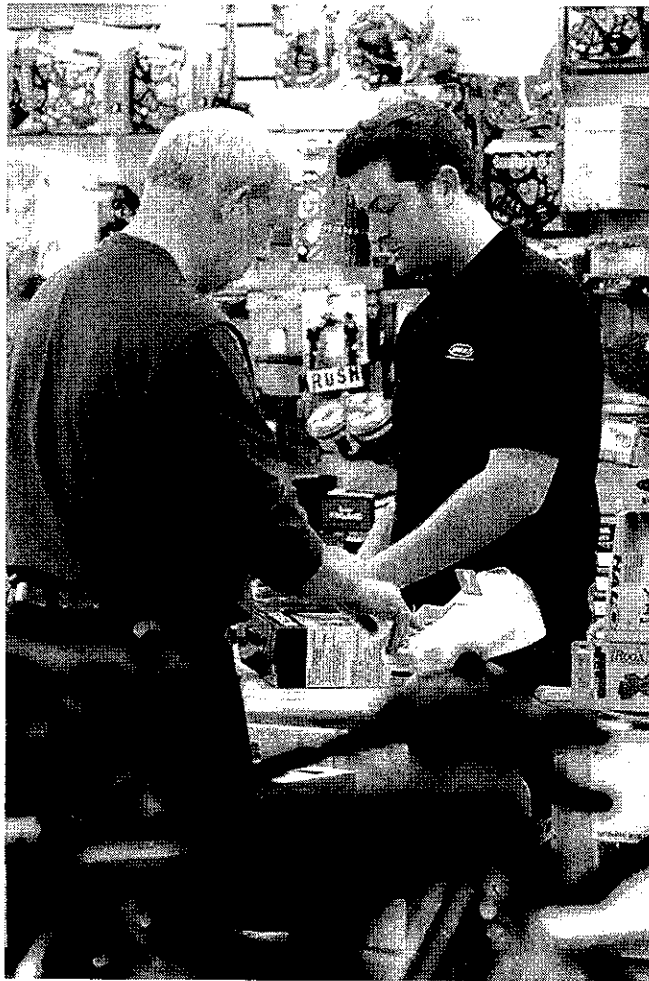
Federal Trade Commission Complaints: 877-
IDTHEFT

ATM Fee for Withdrawl transactions at this ATM:
\$1.01

**PROTECT YOUR INDENTITY: SAFEGUARD
YOUR CARD AND PIN and take YOUR RECIEPT.**

This is in addition to any affixed license required, in addition to all the stickers currently mandated by Network and Banking regulations.

Most ATM models are not conducive to the size of your notification requirements, especially in light of current sticker requirements in place.



Focusing on these environments will help protect consumers against identity theft.