

# STATE OF COLORADO

---

**Department of Regulatory Agencies**

M. Michael Cooke  
Executive Director



---

Bill Owens  
Governor

**DIVISION OF BANKING**

Richard Fulkerson  
State Bank Commissioner

**BULLETIN**

**TO:** Chief Executive Officer  
**FROM:** Division of Banking  
**DATE:** April 17, 1996  
**SUBJECT:** Automated Teller Machine Surcharges

The Division of Banking (Division) has received ongoing inquiries from the banking industry regarding the ability of Automated Teller Machine (ATM) operators in Colorado to assess surcharges for ATM transactions. There seems to be some confusion regarding what ATM surcharges are and the permissibility of such charges under Colorado law.

**Introduction**

It is important to differentiate between surcharges and interchange fees. Interchange fees apply to foreign<sup>1</sup> card transactions between the ATM owner and the card issuer. The card issuer is assessed an interchange fee by the electronic fund transfer networks, in the form of a "foreign transaction fee." A portion of the fee is generally credited to the ATM owner. Although the card issuer may elect to absorb the interchange fee to promote usage of the card, the customer is often assessed a set fee to offset the interchange fee. Interchange fees are established by the networks and are not subject to voluntary change by the banks; however, the fee that the issuing bank assesses its customer for use of another bank's ATM must be disclosed to the customer in the initial Regulation E disclosure.

Surcharges are transaction fees set by the ATM owner and charged directly to the cardholder when the ATM transaction is consummated. According to the banking industry, these transaction fees, which are in addition to interchange fees, augment ATM revenues and, in many instances, enable the bank to own and operate an ATM without experiencing a loss.

---

<sup>1</sup>For the purposes of this bulletin "foreign" refers to those transactions in which the issuer and acquirer are different U.S. entities and the transaction is switched through a network charging an interchange fee. PLUS and CIRRUS regulations disallow surcharges on cards issued by non-U.S. Banks.

### Contractual Requirements/Restrictions

Network contracts have often limited the operations of ATMs or otherwise imposed requirements or restrictions not contemplated by state law. It is the position of the Division that Colorado law has never prohibited ATM operators from assessing surcharges, so long as adequate disclosures are provided. Nevertheless, network contracts have prohibited surcharges due to concerns that such fees would discourage ATM acceptance and usage. A number of states have recently enacted legislation to clarify the ability to impose surcharges within the respective states. Many of the major networks now allow surcharging, or plan to permit surcharging in the near future. For example, the PULSE network has allowed surcharges for sometime and the PLUS and CIRRUS networks began allowing surcharges effective April 1 of this year.

### Disclosures

Network contracts require that specific disclosures be made if surcharges will be assessed. In addition, the Division expects, at a minimum, that surcharges be disclosed prior to the commencement of an ATM transaction and the consumer provided with the option of canceling the ATM transaction without incurring a fee. If the consumer elects to enter into the ATM transaction, the amount of the surcharge is debited directly to the accessed account.

In this regard, it has been brought to the attention of the Division that these disclosure requirements appear to conflict with the ban on advertising at off-premise ATM locations set forth in Section 11-6.5-104(1)(a)(III), Colorado Revised Statutes, and Banking Board Rule EFT-1. Specifically, the Division has been advised that PLUS regulations require the ATM member to disclose the amount of the surcharge and the name of the terminal owner in two different ways.

First, a sign no smaller than 4 inches by 4 inches bearing the following heading in 18-point type font and the following text in 14-point type font must be posted on or immediately adjacent to the ATM:

#### FEE NOTICE

(Terminal Owner) may charge a (\$amount) fee to U.S. cardholders for withdrawing cash. This fee is added to the amount of your withdrawal and is in addition to any fees that may be charged by your financial institution.

The name of the ATM owner<sup>2</sup> must be inserted for the term "Terminal Owner" in the disclosure.

In addition, PLUS regulations require that a message be displayed on the ATM screen when the ATM transaction is initiated informing the cardholder of the amount of the surcharge and the identity of the recipient of the surcharge.

While the foregoing disclosures pertain to the specific requirements of the PLUS network, the Division understands that other networks require similar types of disclosures prior to assessing surcharges.

---

<sup>2</sup>The terminal owner may be an entity other than the member bank.

Chief Executive Officer  
Page 3  
April 17, 1996

The Division considers such disclosures to be for the express benefit of the cardholder. Therefore the Division does not consider the use of the bank name, if the bank is the terminal owner, in the context of the required disclosure to be in violation of Section 11-6.5-104(1)(a)(III) or Rule EFT-2, provided that the disclosures are unobtrusive, generic, and no larger than the size required by the applicable network.

#### Conclusion

The Division will propose formal rule making to the State Banking Board in the near future to further clarify these issues.

If you have specific questions concerning this memorandum, please contact Richard Fulkerson at 303-894-7590.

C: Examination Staff

Om041796