



May 12, 2024

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

**Re: Docket No. R-1818, RIN 7100-AG-67
Notice of Proposed Rulemaking: Debit Card Interchange Fees and Routing**

Dear Secretary Misback:

RaceTrac, Inc. (“RaceTrac”) appreciates the opportunity to submit this comment letter in response to the Federal Reserve Board’s (“Board” or “Fed”) Notice of Proposed Rulemaking (“NPRM” or “Proposal”) on debit card interchange fees and routing.¹

Overall, RaceTrac supports the Board’s Proposal to reduce the maximum debit interchange fee for regulated debit card issuers and to establish a regular process for updating the interchange fee limit every other year. These steps are much needed and long overdue. However, the Fed’s new proposed fee limits, while lower than the current limits, are still much too high. The Board’s own data, which it has collected over many years, clearly indicates that the rate, which the Fed established in 2011 when it promulgated Regulation II, is neither reasonable nor proportional to the costs incurred by covered issuers as required by the controlling statute. Therefore, while RaceTrac appreciates the Board’s recognition that the regulated rate must be reduced and that the related fraud loss fees and fraud prevention costs must be reassessed, we believe the Board must go further than what it has proposed to ensure consistency with the governing statute. It is also critically important that the Board safeguard the process for future fee limit adjustments so that banks are not able to manipulate it by inflating or misrepresenting costs. The Fed’s role and this rulemaking is very important to American consumers and businesses. Without active engagement by the Board, the system of centrally-fixed interchange rates subsidizes inefficiency, which results in inflated retail prices paid by all consumers—a group that includes people, including a portion of RaceTrac’s customers, who do not pay with payment cards.

¹ Federal Reserve Board, Notice of Proposed Rulemaking, *Debit Card Interchange Fees and Routing*, 88 Fed. Reg. 78100 (Nov. 14, 2023), available at <https://www.federalregister.gov/documents/2023/11/14/2023-24034/debit-card-interchange-fees-and-routing> [hereinafter *NPRM*].

Headquartered in Atlanta, Georgia, RaceTrac is a family-owned business that has been serving guests since 1934. RaceTrac, together with its solely franchise-brand RaceWay, operates over 800 convenience stores and employs over 10,000 team members across its footprint. RaceTrac customers can utilize multiple forms of payment, including credit card, debit card, and cash. In 2023, RaceTrac and RaceWay stores processed 320 million card transactions and paid \$143 million in total swipe fees, \$124 million in interchange fees, including over \$60 million in debit swipe fees.² Of those payment card transactions, 66% of the transactions were PIN debit and 34 percent were dual message (credit or signature debit). Swipe fees are generally our second largest expense behind labor.

Since it was finalized, Regulation II has had an important and beneficial impact on our business. This is not only because of the limit that the regulations imposed on ballooning debit interchange fees but also because of the important provisions prohibiting network exclusivity and enhancing routing competition. The positive impact of the routing competition provisions of Regulation II cannot be understated.³ Nonetheless, it is definitely time for the Fed to reexamine Regulation II and make necessary adjustments.

Additional detailed comments can be found below.

I. Introduction

a. About RaceTrac, Inc.

RaceTrac, Inc. is composed of two operating divisions: RaceTrac and RaceWay. RaceTrac operates 580 RaceTrac-branded retail fuel and convenience stores across ten states: Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, South Carolina, Tennessee, and Texas; and owns more than 230 franchise operated RaceWay-branded stores across 11 states: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. RaceTrac employs more than 10,700 individuals across its divisions and subsidiaries.

² Pre-COVID (2019), RaceTrac processed 280 million payment card transactions and paid \$107 million in swipe fees.

³ Regulation II injected competition into an otherwise anti-competitive marketplace, which enabled merchants, like RaceTrac, to better negotiate rates. This has been very important to the company, and we have actively sought out the best routing contracts. Despite the existence of basic routing competition in the “card present” space today, however, this is not the case in terms of e-commerce and contactless transactions when PIN or PINless debit capabilities are not available. In fact, if entering a PIN is not available for the transaction (e.g., a signature transaction) or if the issued card does not support PINless, the card will only route over the Visa or Mastercard rails. Without proper adjustments to Regulation II, depending on a merchant’s growing e-commerce transaction volume (which includes application-based transactions), the lack of routing competition in the “card-not-present” space could undercut any routing volume incentives that a merchant has in place with a debit network.

RaceTrac's affiliate, Energy Dispatch, hauls fuel for RaceTrac and RaceWay, and employs more than 250 drivers and operates 100 tractor-trailers out of six states: Alabama, Florida, Georgia, Louisiana, Tennessee, and Texas. Energy Dispatch delivers more than 1.2 billion gallons of fuel each year. RaceTrac also has a wholly-owned subsidiary, Metroplex Energy, Inc., which secures bulk fuel to supply RaceTrac and RaceWay stores and other third-party companies by rail, pipeline, truck, barge, and vessel across 23 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Virginia. Metroplex Energy sells about 5 billion gallons of fuel annually.

Gulf Oil, LLC. ("Gulf Oil" or "Gulf") is a wholly owned subsidiary of Metroplex Energy, Inc. Gulf Oil is the proud owner of the iconic Gulf trademark and is primarily a wholesaler of refined petroleum products, under the GULF brand, to various distributors and dealers throughout the United States. In addition, Gulf supplies bulk product and manages retail fuel sales at eleven fuel sites on the Massachusetts Turnpike pursuant to a long-term lease with the Massachusetts Department of Transportation.

Every day, RaceTrac welcomes more than a million guests to its stores. We operate under our mission to "make people's lives simpler and more enjoyable"—and for that reason, the company has been named a top workplace across many of the states in which it operates and has been recognized on the Forbes list of largest private companies every year since 1998. Since 2015, RaceTrac has built an average of 40 new stores annually and has invested hundreds of millions of dollars each year across our footprint. Each store that RaceTrac opens is a significant economic driver in the communities it serves as each of our stores employs approximately 18-22 people and collects sizeable taxes for states and localities.

b. Payments at RaceTrac

Today, RaceTrac accepts physical payment card transactions via swipe (magnetic strip), dip (chip), as well as contactless methods, such as mobile wallet methods (i.e., Apple Pay, Samsung Pay, and Android Pay) and e-commerce transactions through our website and app. Most payment card transactions at RaceTrac are considered "card present" and occur in the following instances: (1) face-to-face transaction inside the store at the point of sale (a RaceTrac employee is present); (2) self-checkout transaction inside the store at a self-checkout unit (a RaceTrac employee may or may not be present); (3) automated fuel dispenser transaction occurring outside the store on a card reader connected to the fuel pump (a RaceTrac employee is not present).

Despite the prevalence of card present transactions, we are also seeing an increasing number of "card-not-present" transactions, and we expect this number to

continue to grow.⁴ At RaceTrac, card-not-present transactions occur in the following scenarios: (1) website order where customer orders items prior to pick up at the store; (2) “in App” where customers purchase and reload digital RaceTrac gift cards within the RaceTrac application; and (3) fuel subscription where the customer signs up to receive discounts on fuel for a monthly fee via RaceTrac’s app and website and is billed monthly in a process referred to as “card on file.”⁵ Notably, in the card-not-present environment, the company experiences higher card fees and also runs into payment acceptance limitations.

For instance, whenever a customer pays with Apple Pay, Google Pay, or an electronic wallet, the branded card (e.g. Visa/Mastercard) in the wallet is encrypted and contains a token (a mapped personal account number) that is only un-encrypted by the entity that encrypts the data (e.g., Visa/Mastercard). By default, the transaction must be sent to them. This process has been problematic for retailers like RaceTrac. For instance, Mastercard refused to decrypt tokens until it was forced to do so by a regulator after a lengthy push by merchants. Further, we have experienced problems with card networks failing to validate the cryptogram and confirm the token is valid when we send it to the issuer for authorization. If we are unable to get validation of the cryptogram (i.e., confirmation the encryption is valid), the transaction is declined—and without cryptogram validation, there is no possibility of sending the transaction to be routed over another network. This is just one example of how the card networks circumvent the letter and spirit of the law.

c. Payments at Gulf

Gulf Oil has its own separate payments team and they have contracts with merchant processors and create deals for routing just like RaceTrac does. However, unlike RaceTrac, Gulf Oil operates as a distributor model, which is different from the owner-operator RaceTrac model. For instance, distributors own and operate their own point-of-sale (POS) and fuel dispenser (pump) systems, whereas RaceTrac, Inc. provides/owns/operates POS and pumps for our franchisees. In addition, Gulf has all funds settled to them on behalf of distributors, then Gulf charges distributors a fee for their processing service. For RaceTrac, in contrast, processing is a “hard cost” that is passed on directly to franchisees. Both Gulf and RaceTrac experience similar challenges in the payments space.

II. Comments on the Proposed Rule

RaceTrac generally supports the Board’s Proposal to revise Regulation II and believes it will, on the whole, further a more competitive and efficient payments space.

⁴ The growing number of wallet transactions are considered card-not-present by networks.

⁵ For fuel subscription purchases, the customer’s payment card number is maintained in a tokenized state and billed monthly in a process referred to as “card on file.”

Nonetheless, the company believes the Board could strengthen its final rule to enhance that competition and efficiency to better benefit retailers and consumers.

Interchange fees, and swipe fees more broadly, are a significant challenge for RaceTrac. In 2024, it is just not possible for a business like ours to function without accepting multiple forms of tender, including Visa, Mastercard, and other payment cards. And, in fact, we accept multiple forms of tender at our stores: from cash to cards. However, payment cards carry high fees that not only cut significantly into our profit margin every time a card is swiped, but also limit our ability to resist inflation's upward tug on prices. In fact, swipe fees are one of the highest operating costs we face. For almost all of our other operating costs, we can reduce costs by negotiating with suppliers or finding marketplace alternatives; however, Visa and Mastercard dominate the payment card market and do not negotiate with us over fee rates.⁶ Our stores compete vigorously every day to offer low prices for our guests, but when we face costs that we cannot reduce through competition, our consumers end up paying higher prices.

Given the lack of normal marketplace competition to keep centrally-fixed interchange fees in check, the Board's role in this space is essential. This is why Congress directed the Fed to limit such fees to levels that are reasonable and proportional to the cost incurred by the issuer for the transaction. Following market principles, when the fees associated with debit transactions are reduced, resulting in cost savings to merchants, the highly competitive nature of the retail marketplace ensures that such savings ultimately flow down to consumers. Frankly, given the tight profit margins in our channel, we must pass along savings to consumers or otherwise invest in ways to better serve customers. We cannot afford to do otherwise as we will risk losing market share to competitors. For the past decade, RaceTrac and other merchants have been hit head on by inflation and increased costs (e.g., production, supply chain, etc.). Regulation II has been very important to ensuring that consumers are shielded to a degree from those increased costs because of savings in the debit interchange space. For that reason, RaceTrac is supportive of the Board's efforts but, as described below, encourages the Board to go further in its final rule to ensure that security and marketplace efficiency is properly incentivized to the benefits of the market and consumers.

a. RaceTrac supports lowering the covered issuer cap but encourages the Federal Reserve to reduce the cap to below 14.4 cents.

Back in July 2011 when the Fed issued Regulation II, the Fed's final rule adopted a base limit of 21 cents for debit swipe fees fixed by card networks on behalf of banks with over \$10 billion in assets. For multiple reasons, it was surprising that the Fed set the limit that high. First, for over 100 years the Fed has regulated paper checks to clear

⁶ Specifically, interchange fees are centrally fixed by networks on behalf of issuers. Every issuer is on the same network-established schedule of fees *whether or not* a particular issuer's debit operations is efficient or secure. In fact, the current systems "incentives" ensure that networks are motivated to increase fees so that it is attractive for issuers to issue more of their cards.

at par. This means the banks that issue the checks deduct zero fees from the transaction amount received by retailers as checks pass through the system. Debit cards are essentially electronic versions of paper checks, so it just does not make sense that debit card transactions would be allowed to clear at *21 times higher than par*. Second, at that time, even with a generous interpretation of allowable costs, large bank debit card issuers had an average base per-transaction cost of only 7.7 cents, far less than the 21 cents the Board ultimately settled on. Third, the Fed's initial proposal in December 2010 would have set the limit at no higher than 12 cents, which not only would have adequately covered bank costs but also would have provided a healthy profit margin.⁷ It is troubling that when the Fed proposed this reasonable and justifiable fee limit in 2010, the banking industry waged an aggressive and ultimately successful effort to lobby the Fed for significantly higher fees. That bank lobbying effort was largely based on specious arguments and speculative claims that did not prove true, and we hope that misleading banking industry lobbying does not sway the Fed this time around. The debit fee limits that the Fed established in 2011 were higher than they should have been then, and as the NPRM notes, they are unquestionably excessive now.

As currently proposed, the Fed would lower the debit swipe fee base component from a maximum of 21 cents to 14.4 cents. This reduction is an important step forward. However, given that the Fed's latest data found that the average allowable costs of covered issuers are "approximately half" of what they were when the rate was initially set, it is unreasonable that the NPRM only reduces the base component fee by less than one-third.⁸ In short, this proposed rate is neither reasonable nor proportional to the costs incurred by covered issuers as required by the governing statute.

According to the Proposal, the Fed bases its 14.4 cent proposed rule on a "fixed multiplier" of 3.7 times the actual average covered issuer cost of 3.9 cents. Yet, this fixed multiplier caters too strongly toward low-volume, high-cost issuers in an attempt to hit an arbitrary target of full cost recovery for 98.5% of covered issuer transactions. Furthermore, the multiplier is much higher than it was when the Fed finalized its current rule over a decade ago. If finalized as proposed, it would provide a margin of 370%. Businesses in developed market economies simply do not make margins coming anywhere close to 370%. By way of comparison, businesses in the convenience store industry average margins of less than 2.5%.

In sum, the proposed rule would permit the largest banks (i.e., those who have the vast majority of debit transactions), to enjoy a debit interchange windfall that nearly

⁷ In fact, the 2010 proposal would have limited debit fees to 7 cents but allowed banks to charge up to 12 cents if they could demonstrate that more than 7 cents was needed to appropriately cover the individual bank's costs. This range of fees was "reasonable and proportional" to costs given average costs of 7.7 cents and typical profit margins in U.S. businesses of single digit (or low double digit) percentages.

⁸ Federal Reserve Board, Report, *2021 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions*, (Oct. 2023) at 3, available at <https://www.federalreserve.gov/paymentsystems/2021-Interchange-Fee.htm#:~:text=In%202021%2C%20the%20interchange%20fee,99.5%20percent%20of%20covered%20transactions> [hereinafter *2021 Report*].

quadruples the amount of their costs. This is neither reasonable nor fair to the merchants and consumers who are forced to pay higher prices when interchange fees are fixed at windfall levels. In the final rule, the Board should further reduce the 14.4 cent base component limit to a level that actually reflects the average allowable costs for covered issuers, which are now “approximately half” of what they were when the base component fee was set at 21 cents in 2011.

b. RaceTrac calls on the Board to eliminate the *ad valorem* fee and allow fraud losses to be apportioned after the fact as already happens today.

The current NPRM would also reduce the *ad valorem* component of the Fed’s debit fee limit from 0.05% of the transaction amount to 0.04%. Originally, the Fed designed this *ad valorem* component to cover issuer fraud losses back when issuers covered approximately 60% of fraud losses. While we appreciate the Board’s acknowledgment that the *ad valorem* fee for fraud losses must be reduced because “the issuer fraud losses on which the Board based the *ad valorem* component have fallen”⁹— in light of the data and the underlying statute, the Fed should do away with this component altogether.

Again, there is no question that a reduction is warranted, but the final rule must acknowledge and factor in that the largest card-issuing banks are increasingly charging back debit fraud losses to merchants and cardholders while continuing to claim that they need higher interchange fees to cover those same fraud losses. The Fed’s most recent data found that for covered bank issuers, from 2011 to 2021 the percentage of losses from fraudulent transactions absorbed by issuers *decreased* from 59.8% to 33.5%, while the percentage of losses absorbed by merchants *increased* from 38.3% to 47% and the percentage absorbed by cardholders *increased* from 1.8% to 19.5%.¹⁰ The banks should not be able to butter their bread on both sides. They make merchants absorb more of the costs of fraud losses than they absorb themselves. Therefore, they should not be able to require merchants to prepay for issuer fraud losses through interchange. The *ad valorem* component of the fee should be completely eliminated, unless and until, issuers once again pay for more of the fraud losses than merchants.

c. Any fraud prevention adjustment must be supported by a corresponding effective fraud prevention.

The Board is also proposing to increase the current issuer fraud-prevention adjustment from 1 cent to 1.3 cents per transaction. This adjustment should not be available for all covered issuers. Rather, the Board should require each issuer to demonstrate in each data collection period that the issuer is complying with steps that are actually effective in reducing fraud. For example, it is clear from the Fed’s latest data

⁹ NPRM, *supra* note 1 at 78100.

¹⁰ 2021 Report, *supra* note 8 at 3.

collection that fraud is low and getting lower for single-message (i.e., PIN-authorized) debit transactions, while fraud is high and getting higher for dual-message (i.e., Visa and Mastercard signature-authorized) debit transactions.¹¹ Why should issuers automatically get the fraud prevention adjustment amount if they are steering transactions toward more fraud-prone networks and forms of authentication?

Congress specifically stipulated that the Board must establish fraud prevention standards that “*require* issuers to take *effective* steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions” and that an issuer can only receive a fraud prevention adjustment if the issuer “complies” with the Board’s standards.¹² Since the law Congress passed *requires* issuers to comply with fraud prevention standards that are *actually effective* in reducing fraud, the Board must do a better job of holding issuers accountable. RaceTrac has made significant investments to prevent debit fraud, including investing \$20 million to install payments infrastructure to support EMV, and issuers should likewise do their part before getting rewarded with the fraud prevention adjustment. Thus, RaceTrac urges the Board to condition an issuer’s eligibility for the fraud prevent adjustment on the issuer demonstrating that the adjustment is supporting fraud prevention steps that are effective in minimizing fraud.

d. RaceTrac supports an automatic adjustment of the rate every other year, provided issuers are not able to circumvent legal requirements.

RaceTrac supports the Board’s proposal to regularly update the debit swipe fee limits every other year, especially given that the limits have not been updated at all in the 12 years since Regulation II was issued. However, the Fed must not lock in the excessively high 3.7 multiplier for the base component fee. That must be lower (with 2.7 being a very high, maximum number). The Fed also must take great care to monitor the cost data being submitted by covered issuers—and to watch out for issuers that try to inflate or misrepresent their costs or to cram non-allowable costs into the calculation. There is a long and growing history of major banks and card networks trying to game the requirements of the Durbin Amendment, which has forced the Fed, the Federal Trade Commission, and the Department of Justice to take action in response.¹³ The

¹¹ 2021 Report, *supra* note 8 at 20.

¹² 15 U.S.C. 1963o-2(a)(5)(A)(ii)(II) and 15 U.S.C. 1963o-2(a)(5)(A)(ii) (emphasis added).

¹³ See, e.g., Bloomberg, *Visa Faces DOJ Scrutiny for How It Prices ‘Token’ Technology* (Aug. 16, 2023), <https://www.bloomberg.com/news/articles/2023-08-16/visa-v-faces-doj-probe-for-how-it-prices-tokenization-technology>; Federal Trade Commission, *Final Order Requiring Mastercard to Stop Blocking Competing Debit Payment Networks* (May 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-approves-final-order-requiring-mastercard-stop-blocking-use-competing-debit-payment-networks>; Dept. of Justice, *Justice Department Sues American Express, Mastercard and Visa to Eliminate Rules Restricting Price Competition; Reaches Settlement* (Oct. 4, 2010), <https://www.justice.gov/opa/pr/justice-department-sues-american-express-mastercard-and-visa-eliminate-rules-restricting>.

This was also evident during the LIBOR scandal, where it was evident that banks have been willing in the past to misrepresent their costs when reporting to regulators. See, e.g., BBC, *Interest rate ‘rigging’ evidence ‘covered up’ by banks* (May 22, 2023), <https://www.bbc.com/news/business-65635243>.

Fed must be vigilant in watching out for continued banking industry efforts to manipulate the system under the regular updating mechanism.

e. RaceTrac supports the 60-day implementation window.

Finally, since retailers have been waiting more than a decade for an updated rate, we support the Board implementing the new rate as expeditiously as possible.

III. Conclusion

In closing, RaceTrac urges the Board to move forward with its proposed fee reductions and its process for regular future adjustments, but with lower fee levels and with careful safeguards to prevent manipulation of the process by card issuers. RaceTrac appreciates the opportunity to provide these comments and stands ready to be of assistance to the Board in its consideration of these issues.

Sincerely,

A handwritten signature in blue ink that reads "Karla Ahlert". The signature is written in a cursive, flowing style.

Karla Ahlert
Chief Financial Officer
RaceTrac, Inc.