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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

BANK ONE, UTAH, NATIONAL ASSOCIATION,

Plaintiff,

vs.

MICHAEL K. GUTTAU, in his official capacity as Superintendant of Banking and Administrator of Electronic Transfer of Funds, Iowa Division of Banking, Iowa Department of Commerce,

Defendant.

CIVIL NO. 4-98-CV-10247

ORDER

Before the Court is a motion for preliminary injunction, filed May 7, '1998, by plaintiff Bank One, Utah, National Association ("Bank One" or "the Bank").' Defendant Michael Guttau, in his official capacity as Superintendent of Banking and Administrator of Electronic Transfer of Funds, Iowa Division of Banking, Iowa Department of Commerce ("the Administrator"), resisted the motion and filed a motion to dismiss on May 28, 1998.' Bank One resisted the motion to dismiss, and filed a repiy brief June 1, 1998. This Court held a hearing June 5, 1998. The matter is now considered fully submitted.

'The Office of the Comptroller of the Currency ("OCC") filed an amicus curiae brief in support of plaintiff Bank One June 1, 1998.

'The Iowa Bankers Association, the Iowa Independent Bankers Association, and the Iowa Credit Union League filed an amicus curiae brief in support of defendant June 2.5, 1998.

I. BACKGROUND

Plaintiff Bank One is a national bank organized and existing under the National Bank Act ("NBA"), 12 U.S.C. § 21 *et seq.* The Bank's main office is in Salt Lake City, Utah,. and it has no branch offices in Iowa. Bank One owns and operates "Rapid Cash" Automatic Teller Machines ("ATMs") across the United States.[3] In 1997, Bank One installed and operated several ATM machines in Sears, Roebuck & Co. ("Sears") stores across Iowa, pursuant to a contract between the two businesses.

On October 23, 1997, the Administrator ordered Sears to cease operation of the ATMs, citing several violations of Iowa ATM law. At the time, the Administrator was unaware of any contractual relationship concerning the ATM machines between Sears and Bank One. Although Iowa law afforded Sears thirty days to appeal the cease-and-desist order, Sears did not exercise its option to do so. In December 1997, the Administrator filed a state district court action to enforce the administrative orders and to enjoin Sears from establishing, operating, or utilizing ATMs in Iowa in violation of the Iowa Code.' After the Administrator filed suit, Sears instructed Bank One to remove all of its ATMs in Iowa stores. Bank One complied with Sears' request and is currently holding the ATMs in storage.

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[3]Many of the laws discussed in the instant case refer to "electronic fund transfers," a term which includes several types of financial transactions. Bank One challenges Iowa law only as it pertains to ATMs. Therefore, the contents of this Order are concerned solely with the manner in which the relevant laws reguiate ATMs, and do not consider the relationship between the laws at issue and other electronic fund transfers.

'The parties filed cross-motions for summary judgment in the case. The parties have fully briefed the motions, and oral argument was held May 22, 1998. The court's ruling on said motions is pending.

Bank One filed suit in this Court, challenging several provisions of Iowa law. Specifically, Bank One attacks five types of restrictions contained in Iowa's electronic fund transfer ("EFT") law. The Bank describes the restrictions as follows:

> 1) a geographic restriction barring out-of-state banks from establishing and operating ATMs in Iowa, see Iowa Code § 527.4(1);
> 2) requirements that banks apply for and obtain permission to establish and operate each separate ATM in Iowa, see Iowa Code §§ 527.5(3) and (7); Iowa Admin. Code r. 187-10.4(3) (1996);
> 3) a pricing restriction that limits what an ATM owner may charge for services, see Iowa Code § 527.5(6);
> 4) interconnection and "monopoly switch" restrictions concerning the configuration and processing of transactions at Iowa ATMs, see Iowa Code §§ 527.5(8)(a), 527.9; Iowa Admin. Code r. 187-10.4(3)b(5) (1996); and
> 5) an advertising restriction that flatly bans advertising at Iowa ATMs, see Iowa Code § 527.5(5).

Plaintiffs Memo. of Law in Supp. of Mtn. for Prelim. Injunction, at 1. In general, Bank One argues that these provisions of Iowa law conflict are contrary to various federal statutes and the United States Constitution. In his motion to dismiss, the Administrator asserts that the state lawsuit, involving the Administrator and Sears, requires this Court to abstain from hearing the instant case, pursuant to the Younger abstention doctrine. Initially, the Court will discuss the state law which provides for these ATM restrictions, and the specific statutory and regulatory sections that Bank *One* challenges. Because the Bank challenges several state law provisions, the reievant statutory language is set forth below

II. IOWA ATM LAW

A. The Geographic Restriction

The Iowa Code contains the following geographic restriction:

> A satellite terminal shall not be established within this state except by a financial institution whose principal place of business is located in this state, one which has a business location licensed in this state under chapter 536A,[5] or one which has an office located in this state and which meets the requirements of subsection 4,[6] Iowa Code § 527.4(4).

Iowa Code § 527.4(1). Plaintiff challenges this restriction on several grounds. First, Bank One argues that the restriction is pre-empted by the NBA because Iowa law interferes with the powers

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[5]Chapter 536A is the Iowa Industrial Loan Law.

[6]Subsection 4 states:

> A financial institution whose licensed or principal place of business is not located in this state may establish, control, maintain, or operate any number of satellite terminals at the locations identified in subsection 3, paragraphs "*a*", "*b*", "c", and "*d*" if both of the following apply:
>
> a. The other state provides for the establishment, control, maintenance, or operation of satellite terminals by a financial institution, whose licensed or principal place of business is located in this state, on a reciprocal basis.
>
> *b*. All satellite terminals, wherever located, that are owned, controlled, maintained, or operated by the financial institution are available for use on a nondiscriminatory basis by any other financial institution which engages in electronic transactions in this state and by all customers who have minimum contact with this state and who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

Iowa Code § 527.4(4).

the NBA grants national banks. Second, Bank One argues that the restriction violates the dormant Commerce Clause because the restriction discriminates against interstate commerce by benefitting in-state economic interests through burdening out-of-state competitors. Finally, Bank One argues that the restriction violates the Equal Protection Clause because the restriction favors Iowa residents solely by burdening the residents of other states.

B. The Approval and Certification Requirements

Bank One also challenges the following provision:

> An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:
>
> a. The name and business address of the controlling financial institution.
>
> b. The location of the satellite terminal.
>
> c. A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.
>
> d. An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.
>
> The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated'by or solely on behalf of the controlling financial institution, by which transactions originating at that institution will be received.

Iowa Code § 527.5(3). Another code section supplements this provision:

> If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in that informational statement or amendment and according to the agreements attached

> thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition,, limitation, or obligation imposed by this chapter.

Iowa Code § 527.5(7). Additionally, Bank One challenges an administrative rule, which requires the central routing unit to certify various entities engaged in electronic fund transfers. See Iowa Admin. Code r. 187-10.4(3) (1996). The section also sets forth the procedures with which all financial institutions and data processing centers must comply.' *Id.* Under Iowa law, a central routing unit must confirm and certify compliance with these procedures. *Id.* Bank One argues that this provision is pre-empted by federal law, because the approval and certification requirements interfere with the exercise of powers granted to national banks under the NBA.

Additionally, Bank One argues that Iowa Code § 527.3(2) improperly permits the Administrator to exercise visitorial powers over- national banks, The section provides:

> The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained'in the course of such an examination shall not be disclosed, except as provided by law.

Iowa Code § 527.3(2). Bank One argues that this provision is pre-empted by 12 U.S.C. § 484(a), which states in pertinent part: "No national bank shall be subject to any visitorial powers except as

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'For the most part, these procedures are technical. For example, "The establishing financial institution and its data processing center must ensure that all transaction data transmitted by the establishing financial institution's data processing center conforms to the central routing unit's electronic communication format standards." Iowa Admin. Code r. 187-10.4(3)a(1) (1996).

authorized by Federal law, vested in the courts ofjustice or such as shall be, or have been exercised or directed by Congress...."

C. The Pricing Restriction

The Iowa Code regulates "interchange fees":[8]

> The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

Iowa Code § 527.5(6). Bank One argues that federal law pre-empts this provision. Specifically, Bank One suggests the Iowa statute is contrary to an OCC regulation, 12 C.F.R. § 7.4002 (1998). The regulation expressly permits national banks to charge its customers non-interest fees.

[8]The owner of an ATM terminal charges an "interchange fee" to the financial institution which issued an ATM card that is used at the terminal. See Memo. in Supp. of Plaintiffs Mtn. for Prelim. Injunction at 3.

D. The Interconnection and Monopoly Switch Requirements

The Iowa Code contains an interconnection requirement:

> A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:
>
> * * *
>
> 2. a. A satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal
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> * * *
>
> d. Paragraph "a" applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa if all satellite terminals owned, controlled, operated, or maintained by the financial institution whose licensed or principal place ofbusiness is located in this state, and to all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device.

Iowa Code § 527.5(2). Bank One argues that this requirement is pre-empted by the NBA. Additionally, Bank One argues the monopoly switch requirement is similarly pre-empted. The relevant provision states:

> Satellite terminals located in this state shall be directly connected to either of the following:
>
> (1) A central routing unit approved pursuant to this chapter.
>
> (2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

Iowa Code § 527.5(S)(a).

Bank One also argues that this code section violates the dormant Commerce Clause.

E. The Advertising Ban

The Iowa Code limits advertising on ATMs:

> A satellite terminal in this state shall bear a sign or label identifying each type of financial institution utilizing the terminal. A satellite terminal location in this state.. shall not be used to advertise individual financial institutions or a group of financial institutions. However, a satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal, The administrator may authorize methods of identification the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

Iowa Code § 527.5(5). Bank One argues that this provision is pre-empted by the NBA. Additionally, Bank One argues that the ban on advertising violates the Free Speech Clause of the First Amendment.

In its complaint, Bank One seeks a judgment declaring the aforementioned sections of the Iowa Code unconstitutional and a permanent injunction precluding the Administrator from enforcing the aforementioned sections of the Iowa Code against Bank One or any of its landlords. In the motion before the Court, Bank One seeks a preliminary injunction preventing the Administrator and his agents from taking action against the company to enforce sections 527.4 and 527.5 of the iowa Code and the relevant implementing regulations.

III. MOTION TO DISMISS

A. Standard of Review

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss all or a portion of the claim "for failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss, the Court will accept as true all factual allegations in the complaint. *McSherry v. Trans World Airlines, Inc.*, 81 F.3d 739, 740 (8th Cir. 1996) (citing

Leatherman v. Tarrant Co. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 163-65 (1993)). However, "conclusory allegations of law and unwarranted inferences are insuffkient" to defeat a 12(b)(6) motion to dismiss. *In re Syntex*, 95 F.3d 922, 926 (8th Cir. 1996) (citation omitted). A motion to dismiss will be granted "only if no set of facts would entitle thk plaintiff to relief." *Id.* (citing *Conley v. Gibson*, 355 U.S. 41, 45-47 (1957)).

B. Younger Abstention Doctrine

Several abstention doctrines require federal courts to decline to exercise jurisdiction under particular circumstances. *County of Allegheny v. Frank Mashuda Co., 360* U.S. 185 (1959). Under the Younger abstention doctrine, a federal court will abstain from hearing a case when a ruling will prove especially disruptive to state court proceedings. *Younger v. Harris, 401* U.S. 37 (1971). A court must address three factors when examining a Younger abstention issue: (1) whether there is a ongoing state judicial proceeding; (2) whether an important state interest is involved; (3) whether the federal plaintiff has an adequate opportunity for judicial review of constitutional claims during or after the proceeding. *Middlesex County Ethics Comm. v. Garden Slate Bar Ass., 457* U.S. 423, 432 (1982)..

For purposes of this motion to dismiss, the Court will assume that the first two Younger abstention factors have been satisfied, *i.e.*, an ongoing state judicial proceeding exists, and an important state interest is involved in the ongoing state proceeding. Nevertheless, defendant's motion fails on the third ground: the Administrator has not demonstrated any manner in which Bank One had or has an adequate opportunity to raise federal issues in the state court proceeding. Initially, the Court notes that Bank One is *not* a party to the state court proceeding. To satisfy

this Younger factor, the Administrator must demonstrate a reason for this Court to treat Bank One as if it is a party to the state court action.

The Administrator argues that the Bank and Sears are so closely related that the Court should consider Bank One a party to the state court proceeding. The United States Supreme Court has recognized that "there plainly may be some circumstances in which legally distinct parties are so closely related that they should all be subject to the Younger considerations which govern any one of them...." *Doran v. Salem Inn, Inc.*, *422* U.S. 922, 928 (1975). However, in *Doran*, the Supreme Court declined to recognize the case as a situation when such treatment would be appropriate, noting:

> this is not such a case;-while respondents are represented by common counsel, and have similar business activities and problems, they are apparently unrelated in terms of ownership, control, and management. We thus think that each of the respondents should be placed in the position required by our cases as if that respondent stood alone.

422 U.S. at 928-29. In the instant case, the parties are less similar than those in *Doran*.[9] A bank and a retail store do not have similar business interests. Bank One and Sears are separate corporations, unrelated to each other in terms of ownership, control, or management. See Second Affidavit of David W. Thomas, ¶ 3. Indeed, although Bank One had a contractual relationship with Sears, the bank also acknowledges that it had similar contracts with another national retail

[9]In *Doran*, the operators of three bars challenged a municipal ordinance prohibiting topless dancing. After a federal court denied the parties' motion for a temporary restraining order, but before the court issued a preliminary injunction enjoining the ordinance, one of the bars resumed its presentation of topless dancing and consequently received criminal summonses. The town attorney argued on appeal that the Younger abstention doctrine required the federal court to dismiss the federal complaint because of the pending criminal proceedings against one of the bar operators in the state court

chain. Thus, the outcome of the federal litigation would affect retailers other than Sears. Additionally, Sears' counsel in the state court litigation differs from Bank One's counsel in the instant case. See Second Affidavit of David W. Thomas, ¶ 6.

Bank One and Sears have differing interests in their respective lawsuits, as well. In the state case, Sears is accused of violating the Iowa EFT statutes. In federal court, Bank One challenges the constitutionality of several provisions of the Iowa EFT Act. Sears could not raise all of the constitutional challenges Bank One raises as Sears has not been accused of violating all of the statutes named in Bank One's complaint. Additionally, Bank One has interests in the outcome of the federal litigation beyond Sears because Bank One does not install and operate ATMs exclusively in Sears' stores. This conclusion is similar to that of the Eighth Circuit in *Women's* Services, in which the court found abstention inappropriate."

The purposes underlying the Younger doctrine also indicate that abstention is inappropriate in the instant case:

> The principle underlying Younger . . . is that state courts are fully competent to adjudicate constitutional claims, and therefore a federal court should, in all but the most exceptional circumstances, refuse to interfere with an ongoing state . . . proceeding.

Doran, 422 U.S. at 930. In the instant case, a ruling on the federal case would not interfere with the state proceeding as the state proceeding does *not* involve constitutional claims. Sears has not defended itself by making constitutional challenges to the Iowa EFT Act; therefore, there is no danger that the federal and state courts could issue conflicting rulings. In *Doran*, the Supreme

[10]In *Women's* Sews., the state court criminal defendant was a physician who had been charged with violating an abortion statute. A different physician and a professional corporation brought suit challenging the constitutionality of three abortion statutes in federal court.

Court noted that "neither declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs, and the State is free to prosecute others who may violate the statute." 422 U.S. at 931. Thus, even if this Court were to issue a preliminary injunction, the relief would not interfere with the Administrator's actions towards parties other than Bank One." A ruling by this Court in the instant case will not interfere with the state court proceeding by the Administrator against Sears, and therefore Younger is inapposite.

The Court finds no grounds for deeming Sears and Bank One closely related, for purposes of a Younger analysis." The Court finds Sears and Bank One are legally distinct and separate,

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"At the June 5 hearing, Bank One acknowledged that injunctive or declaratory relief granted by this Court may interfere with the state court proceedings between Sears and the Administrator. Hearing Transcript, at 12-13. To resolve this difficulty, Bank One offered to exclude Sears from the parties affected by the relief the Bank requested. Consequently, the Court agrees to exclude Sears from the parries included within the scope of Bank One's requested relief, and therefore the pending state action will not be affected by this Court's ruling.

[12]The parties also consider whether the Bank and Sears are "closely intertwined." The Eighth Circuit has acknowledged that in some cases, the interests of the parties involved in state and federal litigation may be so intertwined that Younger abstention would be appropriate, even though the party seeking relief in federal court is not a named party in a state court proceeding. See *Women's Servs., P.C.* v. *Douglas,* 653 F.2d 355, 356-359 (8th Cir. 1981) (citing Hicks v. *Miranda*, *422* U.S. 332 (1975)). In analyzing this principle, the court noted:

> Such a case may arise where the interests of the parties seeking relief in federal court are closely related to those of the parties in the pending state proceeding and where the federal action seeks to interfere with pending state proceedings.

Women's Servs., 653 F.2d at 358 (citation and internal quotation marks omitted). The Court believes the standard set forth by the Eighth Circuit is the same analysis set forth in *Doran*.

both as entities and in terms of their interests, and therefore declines to abstain or dismiss the instant case pursuant to Younger.[13]

IV. PRELIMINARY INJUNCTION

When evaluating whether to issue a preliminary injunction, a court should consider the following factors: 1) plaintiffs probability of success on the merits; 2) the threat of irreparable harm to plaintiff; 3) the balance between this harm and potential harm to others if relief is granted; and 4) whether an injunction serves the public interest. See *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 929 (Sth Cir. 1994) (citation omitted). No single factor is dispositive. See *Calvin Klein Cosmetics Corp. v. Lenox Lab., 815* F.2d 500, 503 (8th Cir. *1987); Dataphase,* 640 F.2d at 113. The Eighth Circuit favors a flexible analysis:

> At base, the question is whether the balance of equities so favors the movant that justice requires the court to intervene . . . until the merits are determined. The equitable nature oithe proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of eachcase.... The likelihood that plaintiff will prevail is meaningless in isolation.

Dataphase Sys., Inc. c. CL Sys., Inc.. 640 F.2d IO?, 113 (8th Cir. 1981). Employing the Eighth Circuit's pragmatic approach, this Court now considers plaintiffs motion seeking a preliminary injunction.

A. Plaintiff's Probability of Success on the Merits

Plaintiff has challenged five different restrictions contained in Iowa's ATM law. In challenging the restrictions. Bank One has presented several rationales as to why the restrictions

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[13]The Administrator also suggests thar Bank One intervene in the state proceeding, rather than file suit in federal court. Absent any persuasive authority explaining why Bank One is required to proceed in this manner, the Court declines to require Bank One to intervene in the state proceeding.

are unconstitutional. Bank One argues that each of the five restrictions are pre-empted by the NBA. The Administrator responds that the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. §§ 1693 *et* seq., rather than the NBA, is the relevant federal law. Defendant asserts that the EFTA permits states to adopt ATM laws more restrictive than those included in the fed&l act, and that the NBA is not concerned with the establishment and operation of ATMs by national banks. As a preliminary matter, the Court will briefly review both acts.

1. The National Bank Act

The NBA, 12 U.S.C. §§ 21 et seq., permits and provides for the formation of national banking associations. Congress charged the OCC with overseeing national banks, and the agency is the primary regulator of national banks. The NBA authorizes national banks to: "exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking," including receiving deposits and circulating currency. 12 U.S.C. § 24 (Seventh).

Enactment of the NBA created a dual banking system consisting of federal and state banks. In describing the relationship between federal and state law governing national banks, the Supreme Court has noted:

> National banks are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation.... It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional....
>
> National banks are instrumentalities of the federal government created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the effkiencies of these

> agencies of the federal government to discharge the duties for the performance of which they were created.

McClellan v. Chipman, *164 U.S. 347, 347-57 (1896); see also Anderson Nat'1 Bank v. Luckett,* 321 U.S. 233, 248 (1944) ("...national banks are subject to state laws, unless those laws infringe the national banking laws or impose an undue burden on the performance of the bank's functions."); *National State Bank v. Long, 630* F.2d 981, 985 (3d Cir. 1980) (finding state anti-redlining statute applicable to national banks, and noting "... congressional support remains for dual regulation.").

In some instances, the NBA subjects national banks' branch offices to state banking law provisions. In particular, 12 U.S.C. § 36 sets forth conditions under which national banks may establish and operate branches. For example, a national bank may establish and operate new branch offices if the host state's law permits, so long as the national bank obtains OCC approval. See 12 U.S.C. § 36(c). Additionally, a host state's laws concerning community reinvestment, consumer protection, fair lending, and the establishment of intrastate branches apply to branches of an out-of-state national bank operating in the host state. See 12 U.S.C. § 36(f).

Prior to 1996, ATMs were considered "branches" under section 36, and thus were commonly believed to be subject to state banking law requirements. The Economic Growth and Regulatory Papenvork Reduction Act of 1996 ("EGRPRA") amended section 36(j), which currently reads:

> The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business ... at which deposits are received, or checks paid, or money lent. *The term "branch", as used in this section, does not include an automated teller machine or a remote service unit.*

12 U.S.C. § 36(j) (emphasis added to EGRPRA amendment). The OCC and Bank One reason[14] that by excluding ATMs from the definition of a "branch," Congress intended to exclude ATMs from state regulation altogether.

2. The EFTA[15]

The Administrator relies upon the EFTA, 15 U.S.C. § 1693, et seq., in arguing that Congress intended State law to control the electronic transfer of funds activities of national banks. Congress set forth the purposes of the Act: "It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights." 15 U.S.C. § 1693(b). Enacted in November 1978, the EFTA addresses disclosure and documentation of EFT transactions, error resolution, and issuance of access cards, among other subjects. The EFTA also discusses the Act's relationship with State law:

> This subchapter does not annul, alter, or affect the laws of any State relating to electronic funds transfers, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection of such law affords any consumer is greater than the protection afforded by this subchapter.

15 U.S.C. § 1693q. The Administrator argues that this Act controls the instant case.

"Plaintiffs argument that the NBA pre-empts state ATM law is derived primarily from the OCC's interpretation of the NBA, set forth in an OCC Interpretive Letter. *See generally OCC* Interpretive Letter No. 772 [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-136 (March 6, 1997); see *also* OCC Interpretive Letter No. 821, Fed. Banking L. Rep. (CCH) ¶ 81-271 (Feb. 17, 1998).

[15]The EFTA includes automated teller machine transactions in its electronic funds transfer definition. *See* 15 U.S.C. § 1693a(6).

3. The OCC Interpretive Letter

Plaintiff and the OCC argue that the Court must defer to the OCC's interpretive letters, in which the agency states that the NBA pre-empts state banking law. See OCC Interpretive Letter No. 772 [1996-97 Transfer Binder] Fed. Banking L. Rep, (CCH) ¶ 81-136 (March 6, 1997). The letter interprets 12 U.S.C. § 36(j) in light of the EGRPRA amendment which became effective September 30, 1996. The letter stated: "We believe national banks have authority to operate ATMs . . . without geographic restriction." *Id.* The letter deferred determining whether state laws could restrict that authority.

A recent OCC interpretive letter did address whether the state of Connecticut could restrict the authority of national banks to install and operate ATMs. See OCC Interpretive Letter No. 821, Fed. Banking L. Rep. (CCH) ¶ 81-271 (Feb. 17, 1998). Although the OCC concluded that the state's law did not restrict the installation and operation of ATMs by national banks, the agency explored the issue of whether the NBA would preempt state ATM law that placed restrictions on national banks' ATM operations. The letter concluded that if the state law was interpreted to place geographic restrictions on ATMs operated by federal banks, then the restriction would conflict with the NBA, which permits national banks to operate ATMs without geographic restriction, and therefore federal law would pre-empt state law. The OCC makes a simiiar pre-emption argument regarding Iowa law in its amicus brief before this Court.

The United States Supreme Court set fonh an analysis for determining whether to accord deference to an agency's interpretation of a statute in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984). First, a court must examine whether Congress has explicitly addressed the specific question at issue. *Id.* at 843. If Congress has

unambiguously addressed the precise issue, then both the court and the agency must adhere to congressional intent. *Id.* at 842-43. When an agency interpretation is available, a court may not "simply impose its own construction on the statute, as would be necessary in the absence of an agency interpretation." Id at 843. Rather, if the statute is silent or ambiguous with'respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute," *Chevron,* 467 U.S. at 843. If Congress has expressly delegated authority to an agency to fill gaps in a statutory provision, then the agency interpretation is controlling unless it is arbitrary, capricious, or manifestly contrary to the statute. *Id.* at 844. However, if Congress has implicitly granted the agency authority to interpret a statute, then a court may not substitute its own construction of the statute unless the agency interpretation is unreasonable. *Id.*

The instant case presents questions for which Congress has implicitly granted the OCC authority to interpret the statute, and therefore the Court must consider whether the agency interpretation is reasonable. Although the Court must defer to a reasonable agency interpretation, the Court finds the agency's interpretation unreasonable, for the reasons set forth below.[16]

4. Pre-emption of State Law

Under some circumstances, federal law may pre-empt state law, pursuant to the Supremacy Clause. U.S. Const. art. VI, cl. 2. In analyzing a pre-emption issue, a court "[s]tart[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . .

[16]The Court notes that it need not defer to the OCC's First Amendment, Commerce Clause, or Equal Protection interpretations, as the agency has not been charged with constitutional interpretation. The Court will not further address OCC Interpretive Letters treating these issues.

[a] Federal Act unless that [is] the clear and manifest purpose of Congress." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (citations and internal quotation marks omitted). The ultimate touchstone in analyzing a pre-emption issue is congressional intent, which may be expressly stated or implied. *Id.*

A federal statute may expressly pre-empt state law. See *Bamett Bank v. Nelson, 5 17* U.S. *25, 3 1 (1996); ANR Pipeline Co. v. Iowa State Commerce Comm'n, 828* F.2d 465,468 (8th Cir. 1987). If a statute does not expressly pre-empt state law, a court should consider whether "the federal statute's 'structure and purpose,' or nonspecific statutory language, nonetheless reveal a clear, but implicit, pre-emptive intent." *Bamett Bank,* 5 17 U.S. at 3 1 (citations and internal quotation marks omitted), A court may discern congressional intent to pre-empt state law if the "federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it." *Cipollone, 505* U.S. at 516 (citations and internal quotation marks omitted). Even if federal law does not appear to occupy a legislative field, the state law is pre-empted if it conflicts with federal law. *Id.* (citations omitted); see *also ANR Pipeline Co.*, 828 F.2d at 468 (citations omitted). A conflict may arise when compliance with the laws of both jurisdictions is physically impossible, or when the state law prevents the fulfillment of Congress' purposes and objectives. *ANR Pipeline Co., S28* F.2d at 468 (citations omitted).

Plaintiff has made pre-emprion challenges to several provisions of Iowa law. Although the initial pre-emption questions may be considered generally, the Court will address the remaining pre-emprion question-whether the statutes conflict with federal law-individually.

Congress has not explicitly addressed the issue of whether the NBA preempts state ATM laws. The sole mention of ATMs relevant to the instant case is the EGRPRA amendment to 12 U.S.C. § 36(j). As the NBA does not explicitly address the whether state ATM laws are pre-empted, the Court must next examine whether the NBA implicitly pre-empts state law.

This Court has noted authority discussing the dual system of regulation applicable to national banks. See, e.g., *Anderson Nat 'I Bank v. Luckett*, 321 U.S. at 248; McClellan v. *Chipman*, 164 U.S. at *347-57; National State Bank* v. *Long, 630* F.2d at 985. Title 12 also indicates congressional intent to subject national banks to state Iaw in some instances. *See* 12 U.S.C. § 36. Indeed, a recent amendment to section 36, the Riegle-Neal Clarification Act of 1997," indicated Congress' intent to retain the dual regulatory system. The NBA does not indicate federal regulation so pervasive as to prevent state law from applying to national banks.

a. The In-State Office Requirement

The Court must consider whether Iowa's requirement that a bank maintain an in-state office in order to operate an ATM conflicts with federal law. The Court finds no language in the statutes at issue which creates an irreconcilable conflict. The right to operate ATMs is not an enumerated power in the NBA. However, 12 U.S.C. § 24 (Seventh), authorizes national banks to perform functions incidental to the business of banking, such as receiving deposits. Bank One

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[17]The provision states:

> The laws of the host State regarding community investment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State....

12 U.S.C. § 36(f)(1).

characterizes Iowa's in-state office restriction as a limitation on the Bank's authority granted by this section. This Court believes the interpretation is inaccurate. The Iowa EFT Act limits all banks, and not solely federally-chartered banks, from establishing ATMs in the state if they do not have an office in Iowa. Contrary to plaintiffs interpretation, the office requirement is not a "geographic restriction" on national banks; it is a restriction on banks without offices in Iowa. Rather than limiting the Bank's authority to carry on its incidental powers, the Iowa law limits the Bank's ability to carry on the business of banking in a state with which it has no formal contacts.

Plaintiff argues *Barnett Bank* v. *Nelson* controls the instant case. 5 17 U.S. 25 (1996) (holding federal law pre-empted state statute which prohibited national banks from selling insurance within the state). In *Barrett,* a state statute prohibited banks from selling most types of insurance, despite a federal law which permitted national banks to sell insurance in small towns. The Supreme Court noted that the powers vested in national banks, both enumerated and incidental, were not normally limited by state law:

> the Federal Statute says that its grant of authority to sell insurance is an "addition to the powers now vested by law in national [banks]." In using the word "powers," the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental "powers" to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law....

Barnett Bank, 5 17 U.S. at 21 (citations and internal quotations omitted), However, the Court aiso discussed instances in which federal law would not pre-empt state law:

> In defining the pre-emprive scope of statutes and regulations granting a power to nationai banks, these cases take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power explicitly granted. *To say this is not to deprive States of the power to regulate national*

banks, where (unlike here) doing so does not prevent or significantly interfere with the national bank's powers.

Bamett Bank, 517 U.S. at 33 (citations omitted) (emphasis added).

Bamett indicates that the power of a national bank to operate ATMs need not be enumerated to pre-empt state law. The Court believes the operation of ATMs would indeed fall within the incidental: powers of a national bank under 12 U.S.C. § 24; *see also First Nat 'I Bank v. Taylor*, 907 F.2d 775, 775 (8th Cir. 1990) ("The 'incidental powers' of national banks are not limited to activities that are deemed essential to the exercise of express powers . . . courts have analyzed the issue by asking whether the activity is closely related to an express power and is useful in carrying out the business of banking."). Despite the Bank's characterization of the requirement as an interference with its ability to perform the business of banking, such as receiving deposits, the Court views the restriction differently. Contrary to plaintiffs characterization, a more accurate statement of the question presented is whether a state law, by preventing banks without in-state offices from operating ATMs, significantly interferes with the ability of national banks to perform the business of banking. This Court believes it does not. Iowa's office requirement, Iowa Code §§ 527.4(1) and (4), does not prevent national banks with offices in Iowa from operating ATMs as a means of serving their customers. The Iowa law only prohibits out-of-state banks, both federally-chartered and state-chartered, *from* operating ATMs in the state if no branch office exists in the state. Bank One seeks authority under the NBA to

expand operations, rather than perform the business of banking.** The Court believes the NBA does not provide the Bank with such powers.

Plaintiff also cites the EGRPRA amendment as authority that national banks should not be subject to in-state office restrictions. Legislative history indicates that the EGRPRA amendment was an attempt to scale down regulatory paperwork. The subtitle under which the amendment was located was titled "Eliminating unnecessary regulatory requirements and procedures." The Senate Report stated:

> This subtitle addresses regulatory filing requirements that may hamper the business operations of the affected institutions. These requirements may slow the implementation of such ordinary institutions. These requirements may slow product line expansion, business expansion, office premises purchase, or branch moves within a given neighborhood.
>
> Some current regulatory notice and application requirements govern activities that do not have any significant public policy implications. As a result, regulators tend to approve these applications in the ordinary course. Nevertheless, there are delays and costs associated with the preparation of the necessary paperwork and mandated review or notice periods. For instance, the bill as reported will eliminate, for ATMs and in certain other cases, the notice requirements for branch closure. *The bill also eliminates the branch application requirement for ATMs. Federal Reserve Governor Phillips described this latter requirement as "an anachronism," and FDIC Chair Helfer testified that "[w]e do not see a compelling reason for an agency to approve these facilities in advance or even to have prior notice of their establishment.*[19]

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[18]A Bank One affidavit admits: "In states such as Iowa, in which Bank One, Utah has no branch offices, *few customers hold ATM cards issued by Bank One, Utah.*" Affidavit of Bard L. Estabrook, ¶ 2 (emphasis added).

[19]The Chairperson's comment questions the necessity of Iowa's approval requirements; however, the usefulness of Iowa's requirement is not at issue. Indeed, it is possible that Congress determined OCC approval was unnecessary for ATMs because state regulation provided satisfactory monitoring of ATM facilities.

S. Rep. No 104-l 85, 8 (Dec. 14, 1995) (emphasis added), Plaintiff is correct in noting that the report also described the section as an attempt to remove ATMs from "prior approval requirements or geographic restrictions." *See* S. Rep. No. 104-185, 24 (Dec. 14, 1995). Contrary to plaintiffs interpretation, however, the Court believes such text indicates that Congress intended to fully remove ATMs from the OCC approval requirements set forth in 12 U.S.C. § 36(c), but does not unequivocally establish that Congress intended to remove ATMs from state law requirements altogether, including geographic restrictions. The Court believes the EGRPRA is inconclusive on whether the NBA pre-empts state ATM laws, because the section deals solely with branches of national banks.

The Court finds that Iowa's in-state office requirement does not significantly interfere with the incidental powers of national banks. Consequently, the Court finds that plaintiff is unlikely to prevail on the merits of this claim.

b. The Certification and Approval Requirements

Plaintiff also argues that Iowa's certification and approval requirements are pre-empted. In support of the argument, the Bank contends that Iowa cannot establish licensing requirements which may be used to bar national banks from operating in the state. Additionally, Bank One asserts that the requirements permits states to exercise visitorial authority over national banks, in violation of 12 U.S.C. § 484(a).

Iowa Code § 527.5(3), read alone, contains nothing which might offend federal law. The provision merely requires any bank operating an ATM in Iowa to file an informational statement with the Administrator, including a schedule of charges and an agreement to comply with Iowa ATM law. Section 527.5(7) supplements the aforementioned section, granting the Administrator

authority to disapprove a request to establish an ATM terminal in the State. Contrary to plaintiffs view, however, the Court does not believe these provisions are "licensing" requirements. Plaintiff is correct in noting that the Eighth Circuit recognized that Arkansas could not prohibit national banks, "either by direct coercion or through a license requirement," from performing certain banking activities. *First Nat 'I Bank v. Taylor, 907* F.2d 775, 780 (8th Cir. 1990). Plaintiff takes the Eighth Circuit's conclusion out of context, however. The Eighth Circuit did not set forth a general rule forbidding states to "license" national banks. Rather, the statement was made in the context of the particular Arkansas requirements, which the court described as "extensive," including licensing fees, maintenance of specific capital and surplus levels, financial information disclosure, and inspection by the state commissioner of banking. *Id.* at 777 n.6. The informational statement required by Iowa law is benign. See Iowa Code § 527.5(3). The Court believes the limited information requested by the Administrator does not significantly interfere with the Bank's incidental or enumerated powers.

Plaintiff also challenges Iowa Code § 527.5(7), which gives the Administrator authority to disapprove the establishment of an ATM. The Court notes that the provision requires the Administrator to approve the establishment of an ATM unless grounds for denial exist under any applicable law or rule. Thus, the Administrator does not have unfettered discretion in denying permission to establish ATMs. Plaintiff does not challenge any specific grounds for denial of permission to establish an ATM, except the other four restrictions discussed at length in this Order. The Court finds no cause to declare this provision pre-empted.

The Iowa Administrative Code also requires the central routing unit to certify compliance with the Iowa EFT Act.[20] Plaintiff takes issue with this provision because it permits a private entity to certify ATMs. Although plaintiff does not identify the legal basis for its challenge of this regulation., the Court finds no contravention of federal law. Iowa law requires all ATMs to be connected to a central routing unit, and this regulation is merely an aid to the Administrator in ascertaining compliance with the technical requirements of Iowa Code sections 527.5 and 527.9. The regulations do not delegate authority to the central routing unit to exercise visitorial powers over a national, or other, bank.

Finally, Bank One asserts that Iowa Code § 527.3(2), which permits the Administrator to examine an operator of an ATM, vests the State with visitorial powers over national banks. Initially, the Court notes that the succeeding subsection, Iowa Code § 527.3(3), states: "Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal...." Reading subsections 527.3(2) and 527.3(3) together suggests a legislative intent to avoid giving the Administrator visitorial authority over any banks through the Iowa EFT Act. Plaintiff provides no authority demonstrating that the Iowa provision has been

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[20]The Iowa administrative rule states, in peninent part:

> To assist the administrators with compliance examinations of a central routing unit, a central routing unit shall certify financial institutions, satellite terminals located in the state, and data processing centers directly connected to satellite terminals located in this state or directly connected to cardholder financial institutions, to demonstrate that satellite terminals located in this state and the central routing unit are performing in accordance with the requirements of Iowa Code sections 527.5 and 527.9.

Iowa Admin. Code r. 187-10.4(3)a(1j (1996)

construed in a manner which permits the Administrator to exercise visitorial authority over national banks. In absence of any indication that the Iowa EFT Act would be construed in such a manner, the Court finds no conflict with Iowa law."

c. The Pricing Restriction

Plaintiff argues that Iowa Code § 527.5(6), which allows banks to charge only reasonable interchange fees,, is pre-empted by a federal regulation which expressly permits national banks to charge customers non-interest fees." Although the federal regulation presented by plaintiff appears to address the ability of a national bank to establish ATM charges, the Court believes the

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"The Court notes that the "visitorial powers" argument also presents a ripeness issue. A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States, 118 S.* Ct. 1257, 1259 (1998) (citation and internal quotation marks omitted). When interpreting statutes, "[t]he operation of a statute is better grasped when viewed in light of a particular application." *Id.* at 1260. Plaintiff's argument that the Administrator could impose visitorial powers over a national bank is entirely speculative and not ripe. The same reasoning is also applicable to Iowa Code § 527.5(7) and Iowa Admin. Code r. 187-10.4(3)a(1) (1996).

"The regulation states:

> (a) *Customer charges and fees.* A national bank may charge its customers non-interest charges and fees....
> (b) *Considerations.* The establishment of non-interest charges and fees, and the amounts thereof, is a business decision to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A bank reasonably establishes non-interest charges and fees if the bank considers the following factors, among others:
>
> (1) The cost incurred by the bank, plus a profit margin, in providing the service;
>
> (2) The deterrence of misuse by the customers of banking services;
>
> (3) The enhancement of the competitive position of the bank in accordance with the bank's marketing strategy; and
>
> (4) The maintenance of the safety and soundness of the institution.

12 C.F.R. § 7.4002 (1998)

EFTA, and not the NBA, addresses bank charges for the use of ATMs. As the EFTA's declaration of purpose noted, the Act was intended to establish the rights and liabilities of *all participants* in electronic fund transfer systems, which would include the parties charging interchange fees. See 15 U.S.C. § 1693(a). This construction is reasonable, as the EFTA contains various provisions regarding charges and fees for use of ATMs. See, e.g., 15 U.S.C. § 1693c(b) (requiring a financial institution to notify customers of any cost increases for access to an account through electronic means); 15 U.S.C. § 1693d(c) (requiring periodic statements to customers including the amount of any fee or charge assessed).

As discussed previously, the EFTA defers to state law unless the state law is inconsistent with the Act. See 15 U.S.C. § 1693q. The Court believes that the Iowa requirement that interchange fees be reasonable is consistent with the EFTA.[23]

d. The Interconnection and Monopoly Switch Requirements

The Bank claims that the interconnection requirement of Iowa Code § 527.5(2) imperrnissibly burdens national banks in performing their incidental powers under the NBA. In effect, plaintiff challenges Iowa's universal access requirement. See Memo. of Law in Supp. of Plaintiffs Mtn. for Prelim. Inj., at 17 ("Although in many instances a national bank may wish to provide universal access to its network, state law may not force that decision on national banks wishing to pursue different banking strategies."). As the universal access requirement is concerned with providing ATM access to consumers, it falls within the consumer protection goals

[23]The Court finds plaintiffs argument that the OCC regulations disfavor a "public utility', ATM system inapposite. The regulation cited by plaintiff appears to be concerned with preventing price collusion among banks, and not with preventing a "public utility" model. A close reading of 12 C.F.R. § 7.4002 (1998) indicates the regulation requires national banks to charge reasonable fees.

of the EFTA. This Court has previously explained the manner in which the EFTA defers to state law requirements which are more stringent, yet consistent with, the federal statute. Accordingly, the Court believes the EFTA permits the Iowa interconnection and monopoly switch requirements as a means of guaranteeing universal access for Iowa ATM users."

e. The Advertising Restriction

As the final prong of the pre-emption argument, plaintiff challenges the advertising restriction set forth at Iowa Code § 527.5. The Bank relies upon *Franklin Nat'1 Bank v. New York, 347* U.S. 373 (1954). In *Franklin,* the Supreme Court struck down a state law which forbade national banks to use the word "saving" or "savings" in their business or advertising. Iowa Code § 527.5 differs from the statute struck down in *Franklin,* in that Iowa does not completely ban advertising. The Supreme Court noted:

> We cannot believe that the incidental powers granted to national banks should be construed so narrowly as to preclude the use of advertising in any branch of their authorized business. It would require some affirmative indication to justify an interpretation that would permit a national bank to engage in a business but gave no right to let the public know about it.

Franklin Nat 'I Bank, 347 U.S. at 377-78. Unlike the statute at issue in *Franklin,* the advertising restriction set forth in the Iowa Code does not prohibit national, or any other, banks from advertising their ATM services. The restriction only applies to the advertising of financial institutions on ATM machines. This is not a random restriction, but one devised to prevent ATM customer confusion, given Iowa's non-discriminatory access requirements. Accordingly, the

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[24]Even if the Court were to find that the NBA controls this area, the Court believes the NBA does not pre-empt Iowa law. The ability to choose an ATM network is not part of, and does not interfere with, a national bank's incidental or enumerated powers to perform the business of banking.

restriction is not pre-empted by the NBA, because it does not prevent a national bank from performing its powers incidental to the business of banking.

f. Conclusion

The NBA contains no language expressly pre-empting state ATM law on the issues before the Court. The dual regulatory system of banking, subjecting national banks to state law in some instances, indicates Congress did not intend federal law to occupy the field. After examining each Iowa EFT Act provision challenged by plaintiff, the Court finds no conflicts between the NBA and Iowa law. Accordingly, the Court finds that plaintiff is unlikely to succeed on the merits of these claims.

5. The Dormant Commerce Clause

The dormant Commerce Clause limits a state's power to enact laws which discriminate against interstate commerce. *West Lynn Creamery v. Healy*, 512 U.S. 186, 192 (1994). Economic protectionism, defined as "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors," is impermissible under the dormant Commerce Clause, unless "the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism." *Id.* (citation and internal quotation marks omitted). "In the absence of conflicting federal legislation, the States retain authority under their general police powers to regulate matters of legitimate local concern, even though interstate commerce may be affected." *Lewis v. BT Invest. Managers*, 447 U.S. 27, 36 (1980) (citations and internal quotation marks omitted). Regardless of a State's justification for a regulation which affects interstate commerce, a State may not erect barriers against interstate commerce "unless there is some reason, apart from their

origin, to treat [out-of-state entities] differently." Id at 36 (citation and internal quotation marks omitted).

When undertaking a dormant Commerce Clause analysis, "the first step . . . is to determine whether [the statute] regulates evenhandedly with only incidental effects on state commerce, or discriminates against interstate commerce." *Fulton Corp. v. Faulkner,* 516 U.S. 325, 331 (1996) (citations and internal quotation marks omitted). A state law that facially discriminates against interstate commerce, or that in effect favors in-state economic interests over out-of-state economic interests, is "virtually per se invalid." *Id.* (citations and internal quotation marks omitted). A statute invalid under the per se rule is subject to strict scrutiny if the defending party wishes to justify it. *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine,* 117 S. Ct. 1590, 1601 (1997). A defending party may satisfy this heavy burden by demonstrating that the law "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* (citations and internal quotation marks omitted). This burden is a heavy one; in fact, "facial discrimination by itself may be a fatal defect." *Id.* (citations and internal quotation marks omitted). However, "where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, 397 U.S. 137,* 142 (1970); see *also Brown-Forman Distillers Corp. v. New York State Liquor Auth.,* 476 U.S. 573, 579 (1986) (citing the *Pike v. Bruce Church* balancing approach).

a. The In-State Office Restriction

Bank One argues that Iowa's in-state office restriction, Iowa Code § 527.4(1), violates the dormant Commerce Clause because it is a protectionist law which places greater burdens on out-of-state banks than it places on in-state banks. Arguing that the statute is facially discriminatory, the Bank asserts that § 527.4(1) "prohibits out-of-state banks . . . from establishing ATMs within the State." Memo. of Law in Support of Plaintiffs Motion for Prelim. Inj., at 13. The Administrator responds that the law is facially neutral and that in-state office requirements do not violate the dormant Commerce Clause.

The Iowa statute at issue is not facially discriminatory. Despite plaintiffs argument, the statute contains no discriminatory language. See Iowa Code § 527.4(1). Rather than excluding out-of-state banks from establishing ATMs in the state, the statute sets forth the following requirements for these financial institutions to establish satellite terminals in Iowa: (1) an office must be located in the state; (2) the institution's home state must provide for the establishment of satellite terminals by out-of-state banks on a reciprocal basis; and (3) any satellite terminals established by the financial institution, wherever they may be located, must offer universal access to the terminals. Iowa Code §§ 527.4(1), 527.4(4). In sum, the statutory language does not prohibit out-of-state banks from establishing ATMs in the state. The statutory requirements for out-of-state banks and in-state banks-an office in Iowa and nondiscriminatory access-are essentially the same.

Although the statute may not be facially discriminatory, this Court must also evaluate whether the statute is discriminatory in effect when construed in conjunction with other statutory

provisions. The in-state office requirement, Iowa Code § 527.4(1), is further explained in Iowa Code § 527.2(13): "'Office' means and includes any business location in this state of a financial institution at which is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office." Thus, to satisfy Iowa Code § 527.4(1), the bank must be prepared to offer the barking services discussed above.

Further examination of the Iowa Code clarifies which financial institutions may perform the aforementioned banking services in the state:

> A person other than a state bank which is subject to the provisions of this chapter and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit, shall not engage in this state in the business of receiving money for deposit, transact the business of banking, or establish in this state a place of business for such purpose.

Iowa Code § 524.107(1). This section expressly permits a national bank to perform banking services, and therefore to open a branch, if federal law permits such action.[25] *Lewis v. BT Inv.*

"Plaintiff is concerned that national banks attain access to the Iowa market, and plaintiffs arguments speak to access by national banks. Accordingly, the Court will not address any relationship behveen the Commerce Clause and Iowa's ATM law pertaining to out-of-state banks which are organized under the laws of another state. However, the Court notes that in a case heavily relied upon by plaintiff, the United States Supreme Court commented:

> We readily accept the submission that, both as a matter of history and as a matter of present commercial reality, banking and related financial activities are of profound local concern.... [S]ound financial institutions and honest financial practices are essential to the health of any State's economy and to the well-being of its people. Thus, it is not surprising that ever since the early days of our Republic, the states have chartered banks and have actively regulated their activities.

Lewis, 447 U.S. at 38

Managers, 447 U.S. 27, 38 (1980). In other words, the sole state law requirement for a national bank to operate in Iowa is that federal law must authorize the bank to perform such banking functions.

Accordingly, the Court must examine *federal* law to determine whether a national bank may operate an office in Iowa and thus qualify to operate an ATM under Iowa Code § 527.4(4). Plaintiff cites 12 U.S.C. § 36(g)(1) as the appropriate section governing this question, which provides in pertinent part:

> (g) State "opt-in" election to permit interstate branching through de novo branches
> (1) In general
> Subject to paragraph (2), the Comptroller of Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if-
> (A) there is in effect in the host State a law that-
> (i) applies equally to all banks; and
> (ii) expressly permits all out-of-State banks to establish de novo branches in such State; and
> (B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.[26]

12 U.S.C. § 36(g)(l). As plaintiff explains, and this Court agrees, federal law "permit[s] national banks to establish branches outside their home states only if the new state has a law that 'expressly permits all out-of-State banks [to open such branches]'." Plaintiffs Reply Memo. of Law in Supp. of Mtn. For Prelim. Inj., at 23. No party has cited, and this Court cannot find, any Iowa law which expressly permits out-of-state banks to establish de novo branches in the state.

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[26]The Court notes that the conditions listed in the aforementioned paragraph (2) are not relevant to the Commerce Clause issue; therefore, the Court need not state them.

Plaintiff points out, and again the Court agrees, the result of the interaction between these statutes is that out-of-state national banks cannot open branches, and perform banking services in Iowa-effectively barring the same national banks from opening offices to satisfy the ATM operation requirements of Iowa Code § 527.4. Notably, the fact that national banks are barred from operating ATMs in Iowa is a result of federal law rather than Iowa law. As plaintiff mentions often, the NBA governs activities by national banks, and the NBA provides that a national bank may establish a de novo office by complying with state law. 12 U.S.C. § 36(g)(l). The fact that this provision exists demonstrates that Congress contemplated instances in which national banks were unable to establish de novo branches in a state because state law would not permit them to do so.

Returning to the initial dormant Commerce Clause question of whether Iowa's law has a discriminatory effect, the only national banks which are barred from establishing ATMs in Iowa are those banks which fail to establish an office. Therefore, any national banks with offices in Iowa are eligible to apply for authority to operate ATMs within the parameters of Iowa Code § 527.4. Iowa's "geographic restriction" for out-of-state banks is essentially an office requirement. Plaintiff's argument to the contrary–that Iowa carefully crafted a law barring out-of-state banks from establishing branch offices to essentially bar out-of state-banks from operating ATMs–is inaccurate. *Federal* law defers to state law regarding the establishment of national bank branches. The state law at issue, and challenged by plaintiff, is a mere office requirement, which is applicable to all banks which operate ATMs in Iowa. Any "discriminatory effect" is a result of federal law, which governs the branch office requirements for national banks.

For the foregoing reasons, the statute at issue can be described as an even-handed statute which indirectly affects interstate commerce. This Court must therefore employ the dormant Commerce Clause balancing analysis: whether Iowa has a legitimate interest in regulating ATMs in this manner, and whether the burden on interstate commerce clearly exceeds the local benefits. As the Court mentioned previously, *supra* note 23, banking and related financial activities are of "profound local concern."* Indeed, the Administrator explains clearly the State's interest in protecting consumers by providing an ATM system which "does not impair the safety and soundness of a person's funds." Defendant's Brief in Resistance to Mtn. for Prelim. Inj., at 36. The State interest is legitimate.

Continuing the analysis, the Court must consider whether the burdens imposed of interstate commerce clearly exceed the local benefits, The Iowa Code sets forth carefully crafted banking law which, in part, ensures the safety and soundness of customers' funds. A financial institution, including a national bank,[28] may not engage in the practice of banking in the state unless it complies with Iowa banking law. The Iowa EFT Act is one part of Iowa banking law, and plaintiff has offered no explanation as to why ATMs should be singled out as an area in need

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"The Court recognizes that in *Lewis*, the Supreme Court noted that state banking laws were legitimately a local concern, yet proceeded to declare the Florida statutes in violation of the dormant Commerce Clause. 447 U.S. at 38. The statutes at issue contained outright prohibitions on certain out-of-state financial institutions doing business in Florida. Iowa's statute contains an office requirement which is applicable to all banks doing business in Iowa; thus, the cases are distinguishable.

[28] *See* 12 U.S.C. § 36(f).

of fewer consumer protections. Indeed, the EFTA suggests consumer protections are essential for ATMs. The parties have presented to the Court limited information discussing the relationship between an in-state office and a sound ATM system. At this stage in the proceedings, however, the Court finds that the benefits to consumers resulting from the office requirement outweigh the burdens on interstate commerce, and that the law furthers the State's legitimate interest in consumer protection. The Court finds plaintiff is unlikely to succeed on the merits of this dormant Commerce Clause claim.

b. The Interconnection Requirement

Bank One also argues that Iowa's interconnection requirement, Iowa Code § 527.5(2), violates the dormant Commerce Clause. Plaintiff reasons that the provision violates the dormant Commerce Clause in two ways. First, plaintiff challenges the statute because it "directly requires that ail transactions at Iowa ATMs must be routed through Shazam, even if out-of-state networks can process the transactions more efficiently." Memo. of Law in Supp. of Plaintiffs Mtn. for Prelim. Injunction, at 18. Additionally, plaintiff argues that Iowa Code § 527.5(8)(a) gives Iowa's central routing unit power to veto the entry of any competing central processing unit. Defendant responds that the challenged provisions are necessary to provide nondiscriminatory access to ATMs, which Iowa law guarantees, and to support the consumer protection goals of the Iowa EFT Act, including reliability and safety.

The Court finds that the interconnection requirement is not facially discriminatory. The Court also finds no manner in which the interconnection requirement is discriminatory in effect. The fact that all ATM transactions in Iowa must be routed through either an approved central

routing unit ("CRU"),[29] or a data processing center ("DPC") directly connected to the CRU does not result in a discriminatory effect on interstate commerce. The Shazam CRU connection is a requirement for *all* ATMs operating in Iowa and is intended to preserve Iowa's universal access mandate. Shazam is not an "Iowa" network; it is a larger network that Iowa has approved as a CRU. Thus, plaintiff cannot say that the choice of Shazam is, in itself, a forced preference for an in-state business. Plaintiff's argument is circular; the choice of a CRU which provides universal access for all Iowa ATMs is by definition a preference for an in-state network. Iowa could not guarantee universal access in any other manner. Like the in-state office requirement, the Court finds that this requirement applies the same burdens on all ATM operators, and cannot be called discriminatory in effect.'*

The Court must again employ a balancing analysis if the Court finds the statute evenhanded, with only incidental effects on interstate commerce, See *Pike, 397* U.S. at *142.* The State cites as legitimate interests reliability, safety, and universal access. The State has chosen to operate its ATM system in a monopolistic manner by requiring ail transactions to connect to the Shazam CRU either directly or indirectly through a DPC. The benefits to local consumers include

[29]Currently, the only CRU approved in Iowa is Shazam.

[30]The two cases cited by plaintiff, *Hughes v. Oklahoma, 441* U.S. 322 (1979) and *National Solid Waste Management Assoc. v. Williams, 877* F. Supp. 1367 (D. Minn. 1995) are inapposite. *Hughes* involved a state law which *forbade* the transportation of minnows for sale out of Oklahoma. *Williams* involved a solid waste management statute which imposed greater costs on out-of-state waste processing than in-state waste processing. As explained, the instant case offers no apt comparison.

nondiscriminatory access, and the avoidance of stacking problems which arise when multiple networks are involved in a transaction.

Although Bank *One* argues that the interconnection requirement burdens out-of-state banks, the Court disagrees. Shazam does not exclude banks who wish to participate in the CRU based on out-of-state status. The interconnection requirement is merely a decision by the Iowa legislature regarding the most appropriate manner in which to operate an ATM system. Although Iowa law permits other CRUs to be approved, the agency has currently approved only one: Shazam. The Shazam network does not charge out-of-state banks more to participate than in-state banks. Indeed, there is no evidence of burdens on out-of-state banks that are not placed on in-state banks as well. The Court finds no dormant Commerce Clause violation, and thus plaintiff is unlikely to succeed on the merits of this claim.

6. The First Amendment

Bank One argues that Iowa's ban on advertising at ATMs, Iowa Code § 527.5(5), is a restriction on commercial speech which violates the First Amendment. U.S. Const. amend. I. The Administrator responds that the statute is a legitimate time, place, and manner restriction and is not content-based.

a. Time, Place, Manner Restriction

Because the Administrator argues that the advertising restriction is a legitimate time, place, and manner restriction, this Court must consider whether the restriction is a content-based or content-neutral limitation. "Government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the speech." *Ward v. Rock Against Racism,* 491 U.S. 781, 791-92 (1989) (citations and internal quotation marks omitted). "[A]

restriction on speech is content-based when the message conveyed determines whether the speech is subject to the restriction." *Whitton v. Gladstone*, 54 F.3d 1400, 1403-04 (8th Cir. 1995).

Even a cursory review of Iowa Code § 527.5(5) indicates that it is content-based. The restriction only applies to advertisements of "individual financial institutions or a group of larger financial institutions." Iowa Code § 527.5(5). Apparently any other type of advertisement on an ATM would not run afoul of the Iowa law. The sole distinction between permissible advertisements and impermissible ones, under Iowa law, is content-based-i.e., whether the advertisement contains a message from a financial institution. Under any "commonsense understanding" of the term, the restriction in Iowa Code § 527.5(5) is content-based. See *City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 429 (1995). A content-based restriction on speech cannot be considered under a time, place, manner analysis. Discovery *Network*, 507 U.S. at 430-3 1. The advertising restriction is more appropriately evaluated under a commercial speech analysis.

b. Commercial Speech

The Supreme Court has recognized that a state may regulate commercial speech more freely than some other forms of protected speech. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 498 (1996) (citation omitted); *see also Central Hudson Gas & Electric Corp. v. Public Serv. Comm 'n*, 447 U.S. 557, 563 (1980) ("The Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression."). Among justifications for this lessened protection is "the greater hardiness of commercial speech, inspired as it is by the profit motive, likely diminishes the chilling effect that may attend its regulation." *44 Liquormart*, 5 17 U.S. at 499 (citation and inremai quotations omitted). In the context of commercial speech,

reasonable time, place, and manner restrictions are permissible, provided that "they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels of communication of the information." *Friedman* v. Rogers, 440 U.S. 1, 9 (1979). A state's power to regulate commercial speech is not boundless, however: "The State retains less regulatory authority when its commercial speech restrictions strike at the substance of the information communicated rather than the commercial aspect of [it]...." *Id.* (citations and internal quotation marks omitted).

A four-part analysis exists for determining whether a regulation of commercial speech exceeds the scope of restrictions permitted by the First Amendment. See *Central Hudson, 447* U.S. at 546-66. First, a court must consider whether the expression subject to regulation is protected by the First Amendment; that is, whether the speech is truthful and nonmisleading. Id at 566. If the expression is truthful and nonmisleading, then a court must consider whether the asserted governmental interest is substantial. *Id.* When the government interest is substantial, then a court must make two additional inquiries: whether the regulation directly advances the governmental interest asserted; and whether the regulation is more extensive than necessary to serve that interest. *Id.* Although the State has the burden of proving a reasonable fit between the legislature's ends and the means chosen to accomplish the ends, the State need not use the least restrictive means available. *Board of Trustees of the State Univ. of New York v. Fox, 492* U.S. 469, 480-81 (1989).

In the instant case, Bank One does not seek to place false and deceptive advertisements on its ATMs. Indeed, the advertisements BankOne seeks to place are undisputedly truthful, and a

motive for placing deceptive information regarding financial institutions on ATMs is difficult to imagine. Thus, the advertisements Bank One seeks to employ constitute the type of commercial speech protected by the First Amendment. *Fox, 492* U.S. at 475.

restriction stems from the state's universal access policy: the State worries that displaying advertising for a particular institution on an ATM may mislead customers into believing they do not have access to that particular terminal. Preventing ATM users from being misled is a substantial government interest. *See Friedman v. Rogers, 440* U.S. 1, 15 (1979) (finding a substantial state interest in protecting the public from the misleading use of optometrical trade names).

At this point, the burden is on the Administrator to establish a "reasonable fit" between its legitimate interest in avoiding misleading customers and the state prohibition of advertising financial institutions at ATMs. The Court believes the State has met its burden. The absence of conspicuous signage on an ATM eliminates the State's concern that members of the public may misconceive their ability to access an ATM.

Additionally, the means used by the State is quite narrowly tailored. The bank operating each ATM must identify itself in the manner described by the Iowa statute. This eliminates any concern regarding a lack of information. By statutory mandate, consumers will always be able to discern the bank operating a particular ATM. The advertising restriction is also reasonable because financial institutions have several other means of advertising. The parties have not indicated any other method of commercial speech by a financial institution which is restricted in

Iowa. Indeed, the Iowa Administrative Code expressly permits financial institutions which operate ATMs to advertise the terminals "in newspaper, radio, television, or other media...." Iowa Admin. Coder. 187-10.6(3) (1996).

The Court finds that the restrictions of advertising at ATMs, pursuant to Iowa Code § 527.5(5), are not contrary to the First Amendment. The State has a legitimate interest in maintaining the system of universal access to ATMs, and the advertising restriction is part of the State's strategy to promote and encourage this.scheme. Additionally, the restriction itself does not withhold information from consumers, and provides ample alternative means of commercial speech for financial institutions. The statute's effects on the commercial speech of financial institutions in Iowa is, at most, incidental. Accordingly, the Court finds plaintiff is not likely to succeed on the merits of this claim.

7. The Equal Protection Clause

Bank One argues that the in-state office restriction, Iowa Code § 527.4, violates the Equal Protection Clause because it discriminates in favor of in-state financial institutions. The Administrator responds that the restriction does not violate the Equal Protection Clause, as it survives the rational basis scrutiny used to evaluate economic and social legislation.

When legislation impairs fundamental rights, or is drawn upon suspect distinctions such as alienage, race, or religion, the analysis of whether the legislation is valid under the Equal Protection Clause requires heightened scrutiny. *Friedman v. Rogers, 440* U.S. 1, 17 (1979) (citations omitted). However, economic and social legislation need only have rational basis review to survive an Equal Protection Clause challenge. *Id.* (citations omitted). Under rational basis review, a law need only be reasonably related to a legitimate state interest, permitting a state

to make reasonable classifications among persons within its jurisdiction. *Western & Southern Life Ins. Co. v. State Bd. of Equalization*, 45 1 U.S. 648, 656-657 (198 1) (citations omitted); see *also Metropolitan Life Ins. Co.* v. *Ward*, 470 U.S. 869, 875 (1985) (noting the Equal Protection analysis for economic and social legislation discriminating against foreign corporations is subject to rational basis review) (citations omitted)). "[Under rational basis scrutiny, a law is] entitled to a presumption of validity and will be upheld unless the varying treatment of different groups . . . is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Parham v. Hughes*, 441 U.S. 347, 351 (1979) (citations and internal quotation marks omitted).

The law at issue neither implicates a fundamental right nor discriminates based on a suspect criterion. Therefore, this Court must evaluate the restriction under rational basis review. The Administrator's proffered legitimate purpose of the Iowa EFT Act is consumer protection. Notably, the Iowa legislature set forth as justifications for the Iowa Act:

> 1. That electronic funds transfer systems should provide reliable service to the consumer with full protection of privacy of personal financial information.
> 2. That electronic funds transfer systems should not impair the safety and soundness of a person's funds.
> 3. That electronic funds transfer systems are essential facilities in the channels of commerce.
> 4. That regulation of electronic funds transfer systems should be fair and not unduly impede the development of new technologies which benefit the public.

Iowa Code § 527.1.

Under the lenient standard of rational basis review, this Court finds no Equal Protection Clause violation. Consumer protection is undeniably a legitimate purpose. See *Exxon Corp. v. Eagerton*, 462 U.S. 176, 196 (1983). Additionally, the Court finds that the State's purpose is

reasonably related to the office restriction set forth in Iowa Code §§ 527.4(1) and (4). Although Bank One characterizes the restriction as geographic, the Court notes that the restriction is actually a branch requirement: a financial institution may not operate an ATM in Iowa unless the institution has a branch office in Iowa. Thus, the distinction is not between out-of-state banks and in-state banks; rather, the distinction is between banks operating a branch in Iowa and those that do not. The Iowa legislature has determined that consumers are better served by an ATM operator with a branch in the state than by an ATM operator without a branch in the state. The Court finds this a legitimate assessment, and consequently finds the restriction is reasonably related to the State's consumer protection purposes. As plaintiff has not overcome the presumption of validity for its Equal Protection claim, the Court finds plaintiffs claim is unlikely to succeed on the merits.

B. The Threat of Irreparable Harm to Plaintiff

Plaintiff makes several arguments regarding the irreparable harm it faces if an injunction is not granted. The Bank argues that the deprivations of constitutional rights it has suffered is sufficient to support a finding of irreparable harm. This Court has found that Bank One is unlikely to prevail on the merits of its First Amendment, Commerce Clause, and Equal Protection Clause claims, and therefore concludes that Bank One is not suffering irreparable harm as a result of constitutional deprivations.

Bank One also argues that the Administrator's suit against Sears, and the threat that the Administrator may enforce Iowa's ATM laws against Bank One, are causing irreparable harm. The specific harms Bank One argues have resulted from these actions are financial. In particular, the Bank submits that it has been forced to remove several ATMs that it had installed in Iowa.

Plaintiff also had to delay plans to install additional ATMs in Iowa. Additionally, the Bank is paying monthly fees to lease and store the ATMs. The Court believes these costs were self-inflicted, and not a result of *defendant's* actions, because Bank One chose to violate Iowa ATM law. See Affidavit of Mary Fehring, ¶¶ 4-5 (indicating Bank One representative called the Administrator's office in September 1997, inquiring about Iowa ATM law). Bank One, in all likelihood, could have acquired standing to challenge the Iowa ATM law without illegally establishing ATMs.

The most significant harm to Bank One is lost revenue. The Bank notes that it had a plan to deploy ATMs in Iowa, and the Administrator's actions have deprived Bank One of significant revenue each month.[31] The lost revenue is particularly harmful to Bank One because the Eleventh Amendment would likely prevent the Bank from recovering damages from the State. The Court finds that although this lost revenue is speculative, it may be considered irreparable harm, since the Bank will not be able to recover damages from the State. The Court finds that plaintiff has made a marginal showing of irreparable harm.

C. The Balance of Harms

Iowa's EFT law is carefully crafted to protect consumers who use ATMs. Although Bank One criticizes the Administrator's description of Iowa's EFT law as a consumer protection statute, and characterizes it as a "red herring," the Court believes the Administrator's description is appropriate. Regardless of the merits of Bank One's challenges to the Iowa statutes,. the Court

[31]The Court notes that Bank One is currently able to establish ATMs in Iowa. If Bank One does not wish to establish a local office, the Bank may contract with a local financial institution and establish ATMs. See Iowa Code §§ 527.4(3) and 527.5(1).

believes severe disruption of Iowa's ATM system would result if a preliminary injunction were issued.

Bank One's alleged harm is monetary. If this Court were to enjoin the Administrator from enforcing ATM laws, the harm to Iowa's ATM system could besubstantial. Iowa's universally accessible system may be affected, as well as the anti-stacking aspect of Iowa's ATM arrangement. In balancing the financial setbacks incurred by Bank One with the potential harms to Iowa's ATM system the Court believes the potential harm to the ATM system is considerably greater than any of Bank One's lost opportunities. Accordingly, the Court finds that this factor weighs in the Administrator's favor.

D. Public Interest

As discussed previously, the Court believes the Iowa ATM system would be disrupted if this Court were to issue a preliminary injunction. For reasons set forth in the previous section, the Court believes this factor falls in favor of the Administrator. Iowa's current ATM law provides consumers with a stable system to which users have nondiscriminatory access. Absent a strong showing that the Iowa ATM system is contrary to federal statutory law or the Constitution, the Court will not disrupt the system, because such a disruption would adversely affect the public interest.

V. CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is DENTED. Additionally, the *Court* finds three of the *Dataphase* factors strongly weigh against granting a preliminary injunction, and one factor marginally falls in favor of the plaintiff After considering the balance of equities discussed above, the Court finds that justice does not require Court intervention to alter the status quo of the parties until the merits of this case are determined. Plaintiff's motion for a preliminary injunction is DENIED.

IT IS SO ORDERED

Dated this 24th day of July, 1998

RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT