

110TH CONGRESS  
2D SESSION

# H. R. 5546

To amend the antitrust laws to ensure competitive market-based rates and terms for merchants' access to electronic payment systems.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2008

Mr. CONYERS (for himself, Mr. CANNON, Ms. ZOE LOFGREN of California, Mr. SHUSTER, Mr. WEINER, Mr. DELAHUNT, Mr. PLATTS, Mr. WELCH of Vermont, Mr. SULLIVAN, Mr. WILSON of South Carolina, Mr. GOHMERT, Mr. HALL of Texas, Mr. BOOZMAN, and Mr. PETERSON of Pennsylvania) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the antitrust laws to ensure competitive market-based rates and terms for merchants' access to electronic payment systems.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Credit Card Fair Fee  
5 Act of 2008".

1 **SEC. 2. LIMITED ANTITRUST IMMUNITY FOR THE NEGOTIA-**  
2 **TION AND DETERMINATION OF RATES AND**  
3 **TERMS FOR ACCESS TO COVERED ELEC-**  
4 **TRONIC PAYMENT SYSTEMS.**

5 (a) DEFINITIONS.—For purposes of this Act:

6 (1) “Access agreement” means an agreement  
7 giving a merchant permission to access a covered  
8 electronic payment system to accept credit cards  
9 and/or debit cards from consumers for payment for  
10 goods and services as well as to receive payment for  
11 such goods and services, conditioned solely upon the  
12 merchant complying with the rates and terms speci-  
13 fied in the agreement.

14 (2) “Acquirer” means a financial institution  
15 that provides services allowing merchants to access  
16 an electronic payment system to accept credit cards  
17 and/or debit cards for payment, but does not include  
18 independent third party processors that may act as  
19 the acquirer’s agent in processing general-purpose  
20 credit or debit card transactions.

21 (3) “Antitrust Division” means the Antitrust  
22 Division of the U.S. Department of Justice.

23 (4) “Antitrust Laws” has the meaning given it  
24 in subsection (a) of the first section of the Clayton  
25 Act (15 U.S.C. 12(a)), except that such term in-  
26 cludes section 5 of the Federal Trade Commission

1 Act (15 U.S.C. 45) to the extent section 5 applies  
2 to unfair methods of competition as well as any  
3 similar State law.

4 (5) “Base year” means the most recent full cal-  
5 endar year prior to the initiation of a proceeding  
6 under this Act.

7 (6) “Commission” means the Federal Trade  
8 Commission Bureau of Competition.

9 (7) “Credit card” means any general-purpose  
10 card or other device issued or approved for use by  
11 a financial institution allowing the cardholder to ob-  
12 tain goods or services on credit on terms specified by  
13 that financial institution.

14 (8) “Covered electronic payment system” means  
15 an electronic payment system that has been used for  
16 at least 20% of the combined dollar value of U.S.  
17 credit, signature-based debit, and PIN-based debit  
18 card payments processed in the applicable base year.

19 (9) “Debit card” means any general-purpose  
20 card or other device issued or approved for use by  
21 a financial institution for use in debiting a card-  
22 holder’s account for the purpose of that cardholder  
23 obtaining goods or services, whether authorization is  
24 signature-based or PIN-based.

1           (10) “Electronic payment system” means the  
2           proprietary services and infrastructure that route in-  
3           formation and data to facilitate transaction author-  
4           ization, clearance, and settlement that merchants  
5           must access in order to accept a specific brand of  
6           general-purpose credit and/or debit cards as pay-  
7           ment for goods and services.

8           (11) “Financial institution” has the same  
9           meaning as in section 603(t) of the Fair Credit Re-  
10          porting Act.

11          (12) “Issuer” means a financial institution that  
12          issues credit cards and/or debit cards or approves  
13          the use of other devices for use in an electronic pay-  
14          ment system, but does not include independent third  
15          party processors that may act as the issuer’s agent  
16          in processing general-purpose credit or debit card  
17          transactions;

18          (13) “Market power” means the ability profit-  
19          ably to raise prices above those that would be  
20          charged in a perfectly competitive market.

21          (14) “Merchant” means any person who ac-  
22          cepts credit cards and/or debit cards in payment for  
23          goods or services that they provide.

24          (15) “Normal rate of return” means the aver-  
25          age rate of return that a firm would receive in an

1 industry when conditions of perfect competition pre-  
2 vail.

3 (16) “Party” means either all providers of a  
4 single covered electronic payment system collectively  
5 or all merchants collectively.

6 (17) “Person” has the meaning given it in sub-  
7 section (a) of the first section of the Clayton Act (15  
8 U.S.C. 12(a)).

9 (18) “Provider” means any person who owns,  
10 operates, controls, serves as an issuer, or serves as  
11 an acquirer for a covered electronic payment system.

12 (19) “State” has the meaning given it in sec-  
13 tion 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

14 (20) “Terms” means all rules applicable either  
15 to providers of a single covered electronic payment  
16 system or to merchants, and that are required in  
17 order to provide or access that covered electronic  
18 payment system for processing credit and/or debit  
19 card transactions.

20 (21) “Voluntarily negotiated access agreement”  
21 means an executed agreement voluntarily negotiated  
22 between 1 or more providers of a single covered elec-  
23 tronic payment system and 1 or more merchants  
24 that sets the rates and terms pursuant to which the  
25 1 or more merchants can access that covered elec-

1       tronic payment system to accept credit cards and/or  
2       debit cards from consumers for payment of goods  
3       and services, and receive payment for such goods  
4       and services.

5       (b) ACCESS TO COVERED ELECTRONIC PAYMENT  
6 SYSTEMS.—Access to any covered electronic payment sys-  
7 tem by merchants shall be subject to this Act.

8       (c) AUTHORITY AND LIMITED ANTITRUST IMMUNITY  
9 FOR NEGOTIATIONS AND PARTICIPATION IN PRO-  
10 CEEDINGS.—Notwithstanding any provision of the anti-  
11 trust laws, in negotiating access rates and terms and par-  
12 ticipating in any proceedings in accordance with sub-  
13 section (d), any providers of a single covered electronic  
14 payment system and any merchants may jointly negotiate  
15 and agree upon the rates and terms for access to the cov-  
16 ered electronic payment system, including through the use  
17 of common agents that represent either providers of a sin-  
18 gle covered electronic payment system or merchants on a  
19 non-exclusive basis. Any providers of a single covered elec-  
20 tronic payment system also may jointly determine the pro-  
21 portionate division among themselves of paid access fees.

22       (d) DETERMINATION OF ACCESS RATES AND  
23 TERMS.—

24               (1) PROCEEDINGS.—Proceedings under this Act  
25       shall determine rates and terms for access to a cov-

1       ered electronic payment system during the 3-year  
2       period beginning on January 1 of the second year  
3       following the year in which the proceedings are to be  
4       commenced, except where a different transitional pe-  
5       riod is provided under section 6. Except as specified  
6       in a voluntarily negotiated access agreement, no  
7       other fees, terms, or conditions of any kind may be  
8       imposed directly or indirectly on any merchant for  
9       accessing a covered electronic payment system. The  
10      parties to each proceeding shall bear their own costs.

11               (2) DETERMINATIONS OF THE ELECTRONIC  
12      PAYMENT SYSTEM JUDGES.—

13               (A) APPLICABILITY.—The schedule of  
14      rates and terms determined by the Electronic  
15      Payment System Judges with respect to a sin-  
16      gle covered electronic payment system shall,  
17      subject to paragraph (4), be binding on all pro-  
18      viders of that single covered electronic payment  
19      system and merchants affected by this para-  
20      graph during the 3-year period specified in sub-  
21      paragraph (1). For any given covered electronic  
22      payment system, such rates and terms shall be  
23      the same for all merchants, regardless of mer-  
24      chant category or volume of transactions (either  
25      in number or dollar value) generated.

## 1 (B) STANDARD FOR DETERMINATIONS.—

2 In establishing rates and terms for access to a  
3 covered electronic payment system by mer-  
4 chants, the Electronic Payment System Judges  
5 shall establish rates and terms that most closely  
6 represent the rates and terms that would be ne-  
7 gotiated in a hypothetical perfectly competitive  
8 marketplace for access to an electronic payment  
9 system between a willing buyer with no market  
10 power and a willing seller with no market  
11 power. In determining such rates and terms,  
12 the Electronic Payment System Judges shall  
13 consider the costs necessary to provide and ac-  
14 cess an electronic payment system for proc-  
15 essing credit and/or debit card transactions as  
16 well as a normal rate of return in such a hypo-  
17 thetical perfectly competitive marketplace. The  
18 Electronic Payment System Judges shall not in-  
19 clude any anticompetitive rates or terms.

## 20 (C) USE OF EXISTING RATES AND TERMS

21 AS EVIDENCE.—In determining such rates and  
22 terms, the Electronic Payment System Judges  
23 generally shall decide the appropriate weight to  
24 be given to any evidence submitted by a party  
25 regarding the rates and terms for access to



1 comparable electronic payment systems, includ-  
2 ing rates and terms set forth in voluntarily ne-  
3 gotiated access agreements filed pursuant to  
4 subparagraph (4). The Electronic Payment Sys-  
5 tem Judges shall give significant weight, how-  
6 ever, to rates voluntarily negotiated between  
7 one or more providers of a single covered elec-  
8 tronic payments system and one or more mer-  
9 chants that are substantially below those rates  
10 reflective of the market power of covered elec-  
11 tronic payment systems that existed prior to the  
12 enactment of this Act.

13 (3) INITIATION.—The procedures under sub-  
14 paragraphs (1) and (2) shall be initiated pursuant to  
15 section 5.

16 (4) VOLUNTARILY NEGOTIATED ACCESS AGREE-  
17 MENTS.—

18 (A) AGREEMENTS BETWEEN THE PAR-  
19 TIES.—Voluntarily negotiated access agree-  
20 ments may be executed at any time between 1  
21 or more providers of a single covered electronic  
22 payment system and 1 or more merchants, and  
23 such voluntarily negotiated access agreements  
24 shall be given effect with respect to those par-

1           ties in lieu of any determination by the Elec-  
2           tronic Payment System Judges.

3           (B) FILING AGREEMENTS WITH THE ELEC-  
4           TRONIC PAYMENT SYSTEM JUDGES.—Any pro-  
5           viders of a single covered electronic payment  
6           system and merchants affected by this section  
7           must jointly file with the Electronic Payment  
8           System Judges any voluntarily negotiated ac-  
9           cess agreements that affect any domestic or  
10          international market, including related docu-  
11          mentation evidencing any consideration being  
12          given, any marketing or promotional agree-  
13          ments between the parties, and any subsequent  
14          amendments to such agreements and docu-  
15          mentation.

16          (C) TIMING OF AND ACCESS TO FILINGS.—  
17          The parties to any voluntarily negotiated access  
18          agreement executed subsequent to the enact-  
19          ment of the Credit Card Fair Fee Act of 2008  
20          must jointly file such agreement, amendment,  
21          or documentation with the Electronic Payment  
22          System Judges within 30 days of executing the  
23          agreement, amendment, or documentation. The  
24          Electronic Payment System Judges shall make  
25          publicly available all such agreements, amend-

1           ments, and related documentation executed sub-  
2           sequent to the date of enactment of this Act.

3 **SEC. 3. ELECTRONIC PAYMENT SYSTEM JUDGES.**

4           (a) APPOINTMENT.—The Antitrust Division and  
5 Commission shall appoint 3 full-time Electronic Payment  
6 System Judges, and shall appoint 1 of the 3 as the Chief  
7 Electronic Payment System Judge.

8           (b) FUNCTIONS.—Subject to the provisions of this  
9 Act, the function of the Electronic Payment System  
10 Judges shall be to make determinations of access rates  
11 and terms calculated to most closely represent the rates  
12 and terms that would be negotiated in a hypothetical per-  
13 fectly competitive marketplace for access to an electronic  
14 payment system between a willing buyer with no market  
15 power and a willing seller with no market power. In deter-  
16 mining such rates and terms, the Electronic Payment Sys-  
17 tem Judges shall consider the costs necessary to provide  
18 and access an electronic payment system for processing  
19 credit and/or debit card transactions as well as a normal  
20 rate of return in such a hypothetical perfectly competitive  
21 marketplace.

22           (c) RULINGS.—The Electronic Payment System  
23 Judges may make any necessary procedural or evidentiary  
24 rulings in any proceeding under this Act and may, before  
25 commencing a proceeding under this Act, make any proce-

1 dural rulings that would apply to the proceedings con-  
2 ducted by the Electronic Payment System Judges.

3 (d) ADMINISTRATIVE SUPPORT.—The Antitrust Divi-  
4 sion and Commission shall provide the Electronic Payment  
5 System Judges with the necessary administrative services  
6 related to proceedings under this Act.

7 (e) LOCATION.—The offices of the Electronic Pay-  
8 ment System Judges and staff shall be in the Antitrust  
9 Division or Commission.

10 (f) QUALIFICATIONS OF ELECTRONIC PAYMENT SYS-  
11 TEM JUDGES.—

12 (1) IN GENERAL.—Each Electronic Payment  
13 System Judge shall be an attorney who has at least  
14 7 years of legal experience. The Chief Electronic  
15 Payment System Judge shall have at least 5 years  
16 of experience in adjudications, arbitrations, or court  
17 trials. Of the other 2 Electronic Payment System  
18 Judges, 1 shall have significant knowledge of elec-  
19 tronic payment systems, and the other shall have  
20 significant knowledge of economics. An individual  
21 may serve as an Electronic Payment System Judge  
22 only if the individual is free of any financial conflict  
23 of interest under subsection (m).

24 (2) DEFINITION.—In this subsection, the term  
25 “adjudication” has the meaning given that term in

1 section 551 of title 5, but does not include medi-  
2 ation.

3 (g) STAFF.—The Chief Electronic Payment System  
4 Judge shall hire 3 full-time staff members to assist the  
5 Electronic Payment System Judges in performing their  
6 functions.

7 (h) TERMS.—The individual first appointed as the  
8 Chief Electronic Payment System Judge shall be ap-  
9 pointed to a term of 6 years, and of the remaining individ-  
10 uals first appointed as Electronic Payment System  
11 Judges, 1 shall be appointed to a term of 4 years, and  
12 the other shall be appointed to a term of 2 years. There-  
13 after, the terms of succeeding Electronic Payment System  
14 Judges shall each be 6 years. An individual serving as an  
15 Electronic Payment System Judge may be reappointed to  
16 subsequent terms. The term of an Electronic Payment  
17 System Judge shall begin when the term of the prede-  
18 cessor of that Electronic Payment System Judge ends.  
19 When the term of office of an Electronic Payment System  
20 Judge ends, the individual serving that term may continue  
21 to serve until a successor is installed.

22 (i) VACANCIES OR INCAPACITY.—

23 (1) VACANCIES.—If a vacancy should occur in  
24 the position of Electronic Payment System Judge,  
25 the Antitrust Division and Commission shall act ex-

1 peditionally to fill the vacancy, and may appoint an  
2 interim Electronic Payment System Judge to serve  
3 until another Electronic Payment System Judge is  
4 appointed under this section. An individual ap-  
5 pointed to fill the vacancy occurring before the expi-  
6 ration of the term for which the predecessor of that  
7 individual was appointed shall be appointed for the  
8 remainder of that term.

9 (2) INCAPACITY.—In the case in which an Elec-  
10 tronic Payment System Judge is temporarily unable  
11 to perform his or her duties, the Antitrust Division  
12 and Commission may appoint an interim Electronic  
13 Payment System Judge to perform such duties dur-  
14 ing the period of such incapacity.

15 (j) COMPENSATION.—

16 (1) JUDGES.—The Chief Electronic Payment  
17 System Judge shall receive compensation at the rate  
18 of basic pay payable for level AL-1 for administra-  
19 tive law judges pursuant to section 5372(b) of title  
20 5, and each of the other two Electronic Payment  
21 System Judges shall receive compensation at the  
22 rate of basic pay payable for level AL-2 for adminis-  
23 trative law judges pursuant to such section. The  
24 compensation of the Electronic Payment System  
25 Judges shall not be subject to any regulations adopt-

1 ed by the Office of Personnel Management pursuant  
2 to its authority under section 5376(b)(1) of title 5.

3 (2) STAFF MEMBERS.—Of the staff members  
4 appointed under subsection (g)—

5 (A) the rate of pay of 1 staff member shall  
6 be not more than the basic rate of pay payable  
7 for level 10 of GS–15 of the General Schedule;

8 (B) the rate of pay of 1 staff member shall  
9 be not less than the basic rate of pay payable  
10 for GS–13 of the General Schedule and not  
11 more than the basic rate of pay payable for  
12 level 10 of GS–14 of such Schedule; and

13 (C) the rate of pay for the third staff  
14 member shall be not less than the basic rate of  
15 pay payable for GS–8 of the General Schedule  
16 and not more than the basic rate of pay payable  
17 for level 10 of GS–11 of such Schedule.

18 (3) LOCALITY PAY.—All rates of pay referred to  
19 under this subsection shall include locality pay.

20 (k) INDEPENDENCE OF ELECTRONIC PAYMENT SYS-  
21 TEM JUDGE.—

22 (1) IN MAKING DETERMINATIONS.—

23 (A) IN GENERAL.—The Electronic Pay-  
24 ment System Judges shall have full independ-  
25 ence in making determinations concerning ad-

1 justments and determinations of rates and  
2 terms for access to covered electronic payment  
3 systems and in issuing other rulings under this  
4 title, except that the Electronic Payment Sys-  
5 tem Judges may consult with the Antitrust Di-  
6 vision and Commission on any matter other  
7 than a question of fact.

8 (B) CONSULTATION.—Notwithstanding the  
9 provisions of subparagraph (A), the Electronic  
10 Payment System Judges shall consult with the  
11 Antitrust Division and Commission with respect  
12 to any determination or ruling that would re-  
13 quire that any act be performed by the Anti-  
14 trust Division and Commission, and any such  
15 determination or ruling shall not be binding  
16 upon the Antitrust Division or Commission.

17 (2) PERFORMANCE APPRAISALS.—

18 (A) IN GENERAL.—Notwithstanding any  
19 other provision of law or any regulation of the  
20 Antitrust Division and Commission, and subject  
21 to subparagraph (B), the Electronic Payment  
22 System Judges shall not receive performance  
23 appraisals.

24 (B) RELATING TO SANCTION OR RE-  
25 MOVAL.—To the extent that the Antitrust Divi-



1           sion and Commission adopt regulations under  
2           subsection (m) relating to the sanction or re-  
3           moval of an Electronic Payment System Judge  
4           and such regulations require documentation to  
5           establish the cause of such sanction or removal,  
6           the Electronic Payment System Judge may re-  
7           ceive an appraisal related specifically to the  
8           cause of the sanction or removal.

9           (l) INCONSISTENT DUTIES BARRED.—No Electronic  
10          Payment System Judge may undertake duties that conflict  
11          with his or her duties and responsibilities as an Electronic  
12          Payment System Judge.

13          (m) STANDARDS OF CONDUCT.—The Antitrust Divi-  
14          sion and Commission shall adopt regulations regarding the  
15          standards of conduct, including financial conflict of inter-  
16          est and restrictions against ex parte communications,  
17          which shall govern the Electronic Payment System Judges  
18          and the proceedings under this Act.

19          (n) REMOVAL OR SANCTION.—The Antitrust Division  
20          and Commission may sanction or remove an Electronic  
21          Payment System Judge for violation of the standards of  
22          conduct adopted under subsection (m), misconduct, ne-  
23          glect of duty, or any disqualifying physical or mental dis-  
24          ability. Any such sanction or removal may be made only  
25          after notice and opportunity for a hearing, but the Anti-

1 trust Division and Commission may suspend the Elec-  
2 tronic Payment System Judge during the pendency of  
3 such hearing. The Antitrust Division and Commission  
4 shall appoint an interim Electronic Payment System  
5 Judge during the period of any such suspension.

6 **SEC. 4. PROCEEDINGS OF ELECTRONIC PAYMENT SYSTEM**

7 **JUDGES.**

8 (a) PROCEEDINGS.—

9 (1) IN GENERAL.—The Electronic Payment  
10 System Judges shall act in accordance with regula-  
11 tions issued by the Electronic Payment System  
12 Judges and the Antitrust Division and Commission,  
13 and on the basis of a written record, prior deter-  
14 minations and interpretations of the Electronic Pay-  
15 ment System Judges under this Act, and decisions  
16 of the court of appeals under this section.

17 (2) JUDGES ACTING AS PANEL AND INDIVID-  
18 UALLY.—The Electronic Payment System Judges  
19 shall preside over hearings in proceedings under this  
20 Act en banc. The Chief Electronic Payment System  
21 Judge may designate an Electronic Payment System  
22 Judge to preside individually over such collateral  
23 and administrative proceedings, and over such pro-  
24 ceedings under paragraphs (1) and (2) of subsection  
25 (b), as the Chief Judge considers appropriate.

1           (3) DETERMINATION LIMITED TO CHOOSING  
2 ONE OF THE TWO FINAL OFFERS.—Prior to the  
3 commencement of a direct hearing in a proceeding  
4 under section 5(b)(3)(B)(xi), the party entitled to  
5 receive access fee payments shall file with the Elec-  
6 tronic Payment System Judges its final offer of  
7 rates and terms. Simultaneously, the party obligated  
8 to pay access fee payments shall file with the Elec-  
9 tronic Payment System Judges its final offer of  
10 rates and terms. The parties also shall exchange  
11 these final offers, which cannot be amended. In  
12 making a determination under section 5(c), the Elec-  
13 tronic Payment System Judges shall be limited to  
14 choosing, without modification, one of these two  
15 final offers.

16           (4) VOTING AND DISSENTING OPINIONS.—Final  
17 determinations of the Electronic Payment System  
18 Judges in proceedings under this Act shall be made  
19 by majority vote. An Electronic Payment System  
20 Judge dissenting from the majority on any deter-  
21 mination under this Act may issue his or her dis-  
22 senting opinion, which shall be included with the de-  
23 termination.

24           (b) PROCEDURES.—

1           (1) INITIATION.—The Electronic Payment Sys-  
2           tem Judges shall cause to be published in the Fed-  
3           eral Register notice of commencement of proceedings  
4           referred to in section 3 as provided under section 6.

5           (2) VOLUNTARY NEGOTIATION PERIOD.—

6           (A) IN GENERAL.—Promptly after the  
7           commencement of a proceeding, the Electronic  
8           Payment System Judges shall initiate a vol-  
9           untary negotiation period among the parties.

10          (B) LENGTH.—The voluntary negotiation  
11          period initiated under subparagraph (A) shall  
12          be 3 months. Nothing in this subsection, how-  
13          ever, prohibits parties from negotiating and en-  
14          tering into voluntarily negotiated access agree-  
15          ments at any other time.

16          (C) DETERMINATION OF NEED FOR SUB-  
17          SEQUENT PROCEEDINGS.—At the close of the  
18          voluntary negotiation proceedings, the Elec-  
19          tronic Payment System Judges shall determine  
20          if further proceedings under this Act are nec-  
21          essary. In any such proceeding, all providers of  
22          the covered electronic payment system shall  
23          participate as a single party and all merchants  
24          shall participate as a single party, except to the

1 extent certain providers or merchants pursue  
2 voluntarily negotiated access agreements.

3 (3) REGULATIONS.—

4 (A) IN GENERAL.—The Electronic Pay-  
5 ment System Judges may issue regulations to  
6 carry out their functions under this title. All  
7 regulations issued by the Electronic Payment  
8 System Judges are subject to the approval of  
9 the Antitrust Division and Commission. Not  
10 later than 120 days after Electronic Payment  
11 System Judges are first appointed after the en-  
12 actment of the Credit Card Fair Fee Act of  
13 2008, such judges shall issue regulations to  
14 govern proceedings under this Act. In setting  
15 these regulations, the Electronic Payment Sys-  
16 tem Judges shall consider the regulations  
17 issued by the Copyright Royalty Judges pursu-  
18 ant to 17 U.S.C. 803(b)(6).

19 (B) REQUIREMENTS.—Regulations issued  
20 under subparagraph (A) shall include the fol-  
21 lowing:

22 (i) WRITTEN DIRECT STATEMENTS.—

23 The written direct statements of the par-  
24 ties to a proceeding shall be filed by a date  
25 specified by the Electronic Payment Sys-

1           tem Judges, which may be not earlier than  
2           4 months, and not later than 5 months,  
3           after the end of the voluntary negotiation  
4           period under paragraph (3). Notwith-  
5           standing the preceding sentence, the Elec-  
6           tronic Payment System Judges may allow  
7           a party in a proceeding to file an amended  
8           written direct statement based on new in-  
9           formation received during the discovery  
10          process, within 15 days after the end of  
11          the discovery period specified in clause (ii).  
12          In this Act, the term “written direct state-  
13          ments” means witness statements, testi-  
14          mony, and exhibits to be presented in the  
15          proceedings, and such other information  
16          that is necessary to establish access terms  
17          and rates as set forth in regulations issued  
18          by the Electronic Payment System Judges.

19               (ii) DISCOVERY SCHEDULE.—Fol-  
20          lowing the submission to the Electronic  
21          Payment System Judges of written direct  
22          statements by the parties to a proceeding,  
23          the judges shall meet with the parties for  
24          the purpose of setting a schedule for con-  
25          ducting and completing discovery. Such

1 schedule shall be determined by the Elec-  
2 tronic Payment System Judges. Discovery  
3 in such proceedings shall be permitted for  
4 a period of 60 days, except for discovery  
5 ordered by the Electronic Payment System  
6 Judges in connection with the resolution of  
7 motions, orders, and disputes pending at  
8 the end of such period.

9 (iii) INITIAL DISCLOSURES.—In a pro-  
10 ceeding under this Act to determine rates  
11 and terms for access to a single covered  
12 electronic payment system, certain persons  
13 must make initial disclosures within 30  
14 days of commencement of the proceeding.  
15 The 10 largest issuers for the covered elec-  
16 tronic payment system, the 10 largest  
17 acquirers for the covered electronic pay-  
18 ment system, and any person operating or  
19 controlling the covered electronic payment  
20 system must produce to merchants both  
21 the costs necessary to provide that elec-  
22 tronic payment system for processing cred-  
23 it and/or debit card transactions that were  
24 incurred during the most recent full cal-  
25 endar year prior to the initiation of the

1 proceeding and any agreements regarding  
2 rates and terms for access to the covered  
3 electronic payment system. The 10 largest  
4 merchants in terms of utilization of the  
5 covered electronic payment system must  
6 produce to the providers of the covered  
7 electronic payment system both the costs  
8 necessary to access an electronic payment  
9 system for processing credit and/or debit  
10 card transactions during the most recent  
11 full calendar year prior to the initiation of  
12 the proceeding and any agreements regard-  
13 ing rates and terms for access to the cov-  
14 ered electronic payment system. Any dis-  
15 agreement between the providers of a sin-  
16 gle covered electronic payment system and  
17 the merchants regarding which persons are  
18 required to make such initial disclosures  
19 shall be resolved by the Electronic Pay-  
20 ment System Judges.

21 (iv) DEPOSITIONS.—

22 (I) In a proceeding under this  
23 Act to determine access rates and  
24 terms, each party shall be permitted  
25 to take depositions of every witness



1 identified by the other party. Each  
2 party also shall be permitted to take  
3 five additional depositions in the en-  
4 tire proceeding.

5 (II) A deposition notice or sub-  
6 poena may name as the deponent a  
7 public or private corporation or a  
8 partnership or association and de-  
9 scribe with reasonable particularity  
10 the matters on which examination is  
11 requested. In that event, the organiza-  
12 tion so named shall designate one or  
13 more officers, directors, or managing  
14 agents, or other persons who consent  
15 to testify on its behalf, and may set  
16 forth, for each person designated, the  
17 matters on which the person will tes-  
18 tify. A subpoena shall advise a non-  
19 party organization of its duty to make  
20 such a designation. The persons so  
21 designated shall testify as to matters  
22 known or reasonably available to the  
23 organization.

24 (III) The Electronic Payment  
25 System Judges may increase the per-

1                   mitted number of depositions for good  
2                   cause in exceptional circumstances,  
3                   and shall resolve any disputes among  
4                   persons within either party regarding  
5                   the allocation of the depositions per-  
6                   mitted under this clause.

7                   (v) WRITTEN DISCOVERY.—In a pro-  
8                   ceeding under this Act to determine access  
9                   rates and terms, each party shall be per-  
10                  mitted to serve written discovery requests  
11                  on 10 persons. These written discovery re-  
12                  quests may include requests for production  
13                  or inspection, a total of no more than 10  
14                  requests for admission in the entire pro-  
15                  ceeding, and a total of no more than 25 in-  
16                  terrogatories in the entire proceeding. The  
17                  Electronic Payment System Judges may  
18                  increase the permitted number of requests  
19                  for admission or interrogatories for good  
20                  cause in exceptional circumstances, and  
21                  shall resolve any disputes among persons  
22                  within either party regarding the allocation  
23                  of the requests for admission or interroga-  
24                  tories permitted under this clause.

1           (vi) SUBPOENAS.—Upon the request  
2 of a party to a proceeding to determine ac-  
3 cess rates and terms, the Electronic Pay-  
4 ment System Judges may issue a subpoena  
5 commanding a person to appear and give  
6 testimony, or to produce and permit in-  
7 spection of documents or tangible things, if  
8 the Electronic Payment System Judges’  
9 resolution of the proceeding may be sub-  
10 stantially impaired by the absence of such  
11 testimony or production of documents or  
12 tangible things. Such subpoena shall speci-  
13 fy with reasonable particularity the mate-  
14 rials to be produced or the scope and na-  
15 ture of the required testimony. Nothing in  
16 this clause shall preclude the Electronic  
17 Payment System Judges from requesting  
18 the production by a person of information  
19 or materials relevant to the resolution by  
20 the Electronic Payment System Judges of  
21 a material issue of fact.

22           (vii) OBJECTIONS TO DISCOVERY RE-  
23 QUESTS.—Any objection to such a request  
24 or subpoena shall be resolved by a motion  
25 or request to compel production made to

1 the Electronic Payment System Judges in  
2 accordance with regulations adopted by the  
3 Electronic Payment System Judges. Each  
4 motion or request to compel discovery shall  
5 be determined by the Electronic Payment  
6 System Judges, or by an Electronic Pay-  
7 ment System Judge when permitted under  
8 subsection (a)(2). Upon such motion, the  
9 Electronic Payment System Judges may  
10 order discovery pursuant to regulations es-  
11 tablished under this paragraph. In deter-  
12 mining whether discovery will be granted  
13 under this clause, the Electronic Payment  
14 System Judges may consider—

15 (I) whether the burden or ex-  
16 pense of producing the requested in-  
17 formation or materials outweighs the  
18 likely benefit, taking into account the  
19 needs and resources of the parties, the  
20 importance of the issues at stake, and  
21 the probative value of the requested  
22 information or materials in resolving  
23 such issues;

24 (II) whether the requested infor-  
25 mation or materials would be unrea-

1 sonably cumulative or duplicative, or  
2 are obtainable from another source  
3 that is more convenient, less burden-  
4 some, or less expensive; and

5 (III) whether the party seeking  
6 discovery has had ample opportunity  
7 by discovery in the proceeding or by  
8 other means to obtain the information  
9 sought.

10 (viii) VOLUNTARILY NEGOTIATED AC-  
11 CESS AGREEMENTS.—In proceedings to de-  
12 termine access rates and terms, the Elec-  
13 tronic Payment System Judges shall make  
14 available to the parties all documents filed  
15 pursuant to section 3(d)(4), including re-  
16 lated documentation evidencing any consid-  
17 eration being given, any marketing or pro-  
18 motional agreements between the parties,  
19 and subsequent amendments to such  
20 agreements and documentation.

21 (ix) SETTLEMENT CONFERENCE.—  
22 The Electronic Payment System Judges  
23 shall order a settlement conference between  
24 the parties in the proceeding to facilitate  
25 the presentation of offers of settlement be-

1           tween the parties. The settlement con-  
2           ference shall be held during a 21-day pe-  
3           riod following the end of the discovery pe-  
4           riod and shall take place outside the pres-  
5           ence of the Electronic Payment System  
6           Judges.

7           (x) DIRECT AND REBUTTAL HEAR-  
8           INGS.—At the conclusion of the 21-day pe-  
9           riod following the end of the discovery pe-  
10          riod, the Electronic Payment System  
11          Judges shall determine if further pro-  
12          ceedings under this Act are necessary. If  
13          so, the Electronic Payment System Judges  
14          shall schedule a direct hearing of not more  
15          than 30 court days and a rebuttal hearing  
16          of not more than 20 court days during  
17          which both parties will be allowed to put  
18          on witnesses.

19          (xi) SPONSORING WITNESSES.—No  
20          evidence, including exhibits, may be sub-  
21          mitted in the written direct statement or  
22          written rebuttal statement of a party with-  
23          out a sponsoring witness, except for re-  
24          quests for admission that have been admit-  
25          ted by the receiving party, where the Elec-

1           tronic Payment System Judges have taken  
2           official notice, in the case of incorporation  
3           by reference of past records, or for good  
4           cause shown.

5           (xii) HEARSAY.—Hearsay may be ad-  
6           mitted in proceedings under this Act to the  
7           extent deemed relevant and reliable by the  
8           Electronic Payment System Judges.

9           (xiii) APPLICABILITY OF THE FED-  
10          ERAL RULES OF EVIDENCE.—To the extent  
11          not inconsistent with this subparagraph,  
12          the Federal Rules of Evidence shall apply  
13          to proceedings under this Act.

14          (4) PENALTIES FOR FAILURE TO COMPLY WITH  
15          A DISCOVERY REQUEST.—

16          (A) FAILURE TO COMPLY.—Any person  
17          fails to comply with a discovery request if they,  
18          their employee, or agent fails, without substan-  
19          tial justification, to:

20                  (i) make initial disclosures required  
21                  under section 3(b)(3)(B);

22                  (ii) be sworn or to answer a question  
23                  as a deponent after being directed to do so  
24                  by the Electronic Payment System Judges;

1 (iii) answer an interrogatory sub-  
2 mitted pursuant to section 3(b)(3)(B);

3 (iv) produce non-privileged documents  
4 requested pursuant to section 3(b)(3)(B);  
5 or

6 (v) admit the genuineness of any doc-  
7 ument or the truth of any matter as re-  
8 quested under section 3(b)(3)(B), and the  
9 person requesting the admissions there-  
10 after proves the genuineness of the docu-  
11 ment or the truth of the matter.

12 For purposes of this Act, any disclosure, an-  
13 swer, or response that is false or substantially  
14 misleading, evasive, or incomplete is to be treat-  
15 ed as a failure to disclose, answer, or respond.

16 (B) NEGATIVE INFERENCE IN CURRENT  
17 PROCEEDING.—If any person fails to comply  
18 with a discovery request, the Electronic Pay-  
19 ment System Judges may issue an order that  
20 the matters regarding which the order was  
21 made or any other designated facts shall be  
22 taken to be established for the purposes of the  
23 current proceeding in accordance with the claim  
24 of the person seeking discovery and obtaining  
25 the order.



1 (C) CIVIL PENALTY.—

2 (i) GENERALLY.—Any person who  
3 fails to comply with a discovery request  
4 shall be subject to a civil penalty, which  
5 shall be assessed by the Electronic Pay-  
6 ment System Judges, of not more than  
7 \$25,000 for each violation. Each day of  
8 violation shall constitute a separate viola-  
9 tion.

10 (ii) NOTICE AND HEARINGS.—No civil  
11 penalty may be assessed under this sub-  
12 section except pursuant to an order of the  
13 Electronic Payment System Judges and  
14 unless the person accused of the violation  
15 was given prior notice and opportunity to  
16 request and participate in a hearing before  
17 the Electronic Payment System Judges  
18 with respect to the violation.

19 (iii) DETERMINING AMOUNT.—In de-  
20 termining the amount of any penalty as-  
21 sessed pursuant to this subsection, the  
22 Electronic Payment System Judges shall  
23 take into account the nature, cir-  
24 cumstances, extent, and gravity of the vio-  
25 lation or violations and, with respect to the

1 violator, ability to pay, any prior history of  
2 such violations, the degree of culpability,  
3 economic benefit or savings (if any) result-  
4 ing from the violation, and such other mat-  
5 ters as justice may require.

6 (iv) REVIEW.—Any person who re-  
7 quested a hearing with respect to a civil  
8 penalty under this subsection and who is  
9 aggrieved by an order assessing the civil  
10 penalty may file a petition for judicial re-  
11 view of such order with the United States  
12 Court of Appeals for the District of Co-  
13 lumbia Circuit. Such a petition may be  
14 filed only within the 30-day period begin-  
15 ning on the date the order making such as-  
16 sessment was issued. The court shall have  
17 jurisdiction to enter a judgment affirming,  
18 modifying, or setting aside in whole or in  
19 part, the order of the Electronic Payment  
20 System Judges, or the court may remand  
21 the proceeding to the Electronic Payment  
22 System Judges for such further action as  
23 the court may direct. The Antitrust Divi-  
24 sion shall represent the Electronic Pay-  
25 ment System Judges before the court.

1                   (v) ENFORCEMENT.—If any person  
2                   fails to pay an assessment of a civil pen-  
3                   alty after it has become a final and  
4                   unappealable order or after the appropriate  
5                   court has entered final judgment, the Elec-  
6                   tronic Payment System Judges shall re-  
7                   quest the Antitrust Division to institute a  
8                   civil action in an appropriate district court  
9                   of the United States to collect the penalty,  
10                  and such court shall have jurisdiction to  
11                  hear and decide any such action. In hear-  
12                  ing such action, the court shall have au-  
13                  thority to review the violation and the as-  
14                  sessment of the civil penalty on the record.

15                  (c) DETERMINATION OF ELECTRONIC PAYMENT SYS-  
16                  TEM JUDGES.—

17                   (1) TIMING.—The Electronic Payment System  
18                  Judges shall issue their determination in a pro-  
19                  ceeding the earlier of either (i) 11 months after the  
20                  conclusion of the 21-day settlement conference pe-  
21                  riod under subsection (b)(3)(B)(ix) or (ii) 15 days  
22                  before the expiration of the then current statutory  
23                  rates and terms.

24                   (2) REHEARINGS.—

1           (A) IN GENERAL.—The Electronic Pay-  
2           ment System Judges may, in exceptional cases,  
3           upon motion of a party in a proceeding under  
4           this Act, order a rehearing, after the determina-  
5           tion in the proceeding is issued under para-  
6           graph (1), on such matters as the Electronic  
7           Payment System Judges determine to be appro-  
8           priate.

9           (B) TIMING FOR FILING MOTION.—Any  
10          motion for a rehearing under subparagraph (A)  
11          may be filed only within 15 days after the date  
12          on which the Electronic Payment System  
13          Judges deliver to the parties in the proceeding  
14          their initial determination concerning rates and  
15          terms.

16          (C) PARTICIPATION BY OPPOSING PARTY  
17          NOT REQUIRED.—In any case in which a re-  
18          hearing is ordered, any opposing party shall not  
19          be required to participate in the rehearing, ex-  
20          cept that nonparticipation may give rise to the  
21          limitations with respect to judicial review pro-  
22          vided for in subsection (d)(1).

23          (D) NO NEGATIVE INFERENCE.—No nega-  
24          tive inference shall be drawn from lack of par-  
25          ticipation in a rehearing.

1 (E) CONTINUITY OF RATES AND TERMS.—

2 (i) If the decision of the Electronic  
3 Payment System Judges on any motion for  
4 a rehearing is not rendered before the expi-  
5 ration of the statutory rates and terms  
6 that were previously in effect, in the case  
7 of a proceeding to determine successors to  
8 rates and terms that expire on a specified  
9 date, then the initial determination of the  
10 Electronic Payment System Judges that is  
11 the subject of the rehearing motion shall  
12 be effective as of the day following the date  
13 on which the rates and terms that were  
14 previously in effect expire.

15 (ii) The pendency of a motion for a  
16 rehearing under this paragraph shall not  
17 relieve persons obligated to make access  
18 fee payments who would be affected by the  
19 determination on that motion from paying  
20 the access fees required and complying  
21 with the terms under the relevant deter-  
22 mination or regulations.

23 (iii) Notwithstanding clause (ii),  
24 whenever access fees described in clause  
25 (ii) are paid, the recipient of those pay-

1                   ments shall, within 60 days after the mo-  
2                   tion for rehearing is resolved or, if the mo-  
3                   tion is granted, within 60 days after the  
4                   rehearing is concluded, return any excess  
5                   amounts previously paid to the extent nec-  
6                   essary to comply with the final determina-  
7                   tion of access rates and terms by the Elec-  
8                   tronic Payment System Judges. Any un-  
9                   derpayment of access fees resulting from a  
10                  rehearing shall be paid within the same pe-  
11                  riod.

12                  (3) CONTENTS OF DETERMINATION.—A deter-  
13                  mination of the Electronic Payment System Judges  
14                  shall include the rates and terms for access to the  
15                  relevant covered electronic payment system, shall be  
16                  supported by the written record, and shall set forth  
17                  the findings of fact relied on by the Electronic Pay-  
18                  ment System Judges. The Electronic Payment Sys-  
19                  tem Judges shall make publicly available in their en-  
20                  tirety all determinations issued pursuant to this  
21                  paragraph.

22                  (4) CONTINUING JURISDICTION.—The Elec-  
23                  tronic Payment System Judges may, with the ap-  
24                  proval of the Antitrust Division and Commission,  
25                  issue an amendment to a written determination to

1 correct any technical or clerical errors in the deter-  
2 mination in response to unforeseen circumstances  
3 that would frustrate the proper implementation of  
4 such determination. Such amendment shall be set  
5 forth in a written addendum to the determination  
6 that shall be distributed to the parties to the pro-  
7 ceeding and shall be published in the Federal Reg-  
8 ister.

9 (5) PROTECTIVE ORDER.—The Electronic Pay-  
10 ment System Judges may issue such orders as may  
11 be appropriate to protect confidential information,  
12 including orders excluding confidential information  
13 from the record of the determination that is pub-  
14 lished or made available to the public, except that  
15 any terms or rates of an access agreement, including  
16 those set forth in filings under section 3(d)(4), may  
17 not be excluded.

18 (6) PUBLICATION OF DETERMINATION.—Within  
19 60 days of the Electronic Payment System Judges  
20 issuing a determination pursuant to this subsection,  
21 the Antitrust Division and Commission shall cause  
22 the determination, and any corrections thereto, to be  
23 published in the Federal Register. The Electronic  
24 Payment System Judges also shall publicize the de-  
25 termination and corrections in such other manner as

1 the Antitrust Division and Commission consider ap-  
2 propriate, including, but not limited to, publication  
3 on the Internet. The Electronic Payment System  
4 Judges also shall make the determination, correc-  
5 tions, and the accompanying record available for  
6 public inspection and copying.

7 (7) LATE PAYMENT.—A determination of Elec-  
8 tronic Payment System Judges may include terms  
9 with respect to late payment, but in no way shall  
10 such terms prevent providers of a single covered  
11 electronic payment system from asserting other  
12 rights or remedies provided under this title.

13 (d) JUDICIAL REVIEW.—

14 (1) APPEAL.—Any determination of the Elec-  
15 tronic Payment System Judges under subsection (c)  
16 may, within 30 days after the publication of the de-  
17 termination in the Federal Register, be appealed, to  
18 the United States Court of Appeals for the District  
19 of Columbia Circuit, by any aggrieved party to the  
20 proceeding under this Act who would be bound by  
21 the determination. Any party that did not partici-  
22 pate in a rehearing may not raise any issue that was  
23 the subject of that rehearing at any stage of judicial  
24 review of the hearing determination. If no appeal is  
25 brought within that 30-day period, the determina-



1       tion of the Electronic Payment System Judges shall  
2       be final, and shall take effect as set forth in para-  
3       graph (2).

4               (2) EFFECT OF RATES AND TERMS.—

5               (A) The pendency of an appeal under this  
6       subsection shall not relieve persons obligated to  
7       make access fee payments who would be af-  
8       fected by the determination on appeal from pay-  
9       ing the access fees required and complying with  
10      the terms under the relevant determination or  
11      regulations.

12              (B) Notwithstanding subparagraph (A),  
13      whenever access fees described in subparagraph  
14      (A) are paid, the recipient of such payments  
15      shall, within 60 days after the final resolution  
16      of the appeal, return any excess amounts pre-  
17      viously paid (and interest thereon, if ordered  
18      pursuant to paragraph (3)) to the extent nec-  
19      essary to comply with the final determination of  
20      access rates and terms on appeal. Any under-  
21      payment of access fees resulting from an appeal  
22      (and interest thereon, if ordered pursuant to  
23      paragraph (3)) shall be paid within the same  
24      period.

1           (3) JURISDICTION OF COURT.—If the court,  
2           pursuant to section 706 of title 5, modifies or va-  
3           cates a determination of the Electronic Payment  
4           System Judges, the court may enter its own deter-  
5           mination with respect to the amount or distribution  
6           of access fees and costs, and order the repayment of  
7           any excess fees, the payment of any underpaid fees,  
8           and the payment of interest pertaining respectively  
9           thereto, in accordance with its final judgment. The  
10          court also may vacate the determination of the Elec-  
11          tronic Payment System Judges and remand the case  
12          to the Electronic Payment System Judges for fur-  
13          ther proceedings.

14          (e) ADMINISTRATIVE MATTERS.—

15           (1) AUTHORIZATION OF APPROPRIATIONS.—  
16           There are authorized to be appropriated such sums  
17           as may be necessary to pay the costs incurred under  
18           this Act. All funds made available pursuant to this  
19           subparagraph shall remain available until expended.

20           (2) POSITIONS REQUIRED FOR ADMINISTRA-  
21           TION.—Section 307 of the Legislative Branch Ap-  
22           propriations Act, 1994, shall not apply to employee  
23           positions in the Antitrust Division and Commission  
24           that are required to be filled in order to carry out  
25           section 3.

1 **SEC. 5. INSTITUTION OF PROCEEDINGS BEFORE ELEC-**  
2 **TRONIC PAYMENT SYSTEM JUDGES.**

3 (a) INITIAL PROCEEDINGS.—

4 (1) TIMING.—Proceedings referred to in section  
5 3(d)(1) shall be commenced as soon as practicable  
6 after the effective date of the Credit Card Fair Fee  
7 Act of 2008 to determine access terms and rates  
8 under section 3 for access to covered electronic pay-  
9 ment systems, to be effective for the period begin-  
10 ning on January 1, 2010, and ending on December  
11 31, 2011. The Electronic Payment System Judges  
12 shall cause notice of commencement of such pro-  
13 ceedings to be published in the Federal Register.

14 (2) PROCEDURES SPECIFIC TO THE INITIAL  
15 PROCEEDINGS.—

16 (A) DISCOVERY PERIOD.—Notwithstanding  
17 section 5(b)(4)(B)(iv), discovery in the initial  
18 proceedings addressed in this subsection shall  
19 be permitted for a period of 90 days, except for  
20 discovery ordered by the Electronic Payment  
21 System Judges in connection with the resolu-  
22 tion of motions, orders, and disputes pending at  
23 the end of such period.

24 (B) CONSIDERATION OF CHANGES IN  
25 RATES AND TERMS BETWEEN DATE OF ENACT-  
26 MENT AND INITIAL DETERMINATION.—In deter-

1 mining the access rates and terms under section  
2 3 for access to covered electronic payment sys-  
3 tems, to be effective for the period beginning on  
4 January 1, 2010 and ending on December 31,  
5 2011, the Electronic Payment System Judges  
6 shall consider changes in rates and terms made  
7 by a covered electronic payments system be-  
8 tween the date of enactment of this Act and  
9 such initial determination. Based upon such  
10 consideration, the Electronic Payment System  
11 Judges may adjust their determination of the  
12 rates and terms for this initial proceeding to re-  
13 flect the economic impact such changes had on  
14 the parties.

15 (b) SUBSEQUENT PROCEEDINGS.—Subsequent to the  
16 proceedings addressed in subsection (a), proceedings re-  
17 ferred to in section 3(d)(1) shall next be commenced in  
18 2010 to determine access rates and terms to become effec-  
19 tive on January 1, 2012. Thereafter, such proceedings  
20 shall be repeated in each subsequent third calendar year.  
21 The Electronic Payment System Judges shall cause notice  
22 of commencement of proceedings referred to in section  
23 3(d)(1) to be published in the Federal Register.

1 **SEC. 6. GENERAL RULE FOR VOLUNTARILY NEGOTIATED**  
2 **ACCESS AGREEMENTS.**

3 Any access rates or terms under this title that—

4 (1) are agreed to pursuant to a voluntarily ne-  
5 gotiated access agreement for a period shorter than  
6 would otherwise apply under a determination pursu-  
7 ant to this Act and

8 (2) are then adopted by the Electronic Payment  
9 System Judges as part of a determination under this  
10 Act

11 shall remain in effect for such period of time as would  
12 otherwise apply under such determination, except that the  
13 Electronic Payment System Judges shall adjust those  
14 rates to reflect national monetary inflation during the ad-  
15 ditional period the rates remain in effect beyond that con-  
16 templated in the voluntarily negotiated access agreement.

17 **SEC. 7. EFFECTIVE DATE.**

18 The effective date of this Act shall be the date of en-  
19 actment.

○