# WRITTEN SUMMARY OF TESTIMONY OF LAURA BINION ON BEHALF OF CHECKFREE CORPORATION

CheckFree Corporation is a leading provider of financial electronic products and services. Its largest business unit, the Electronic Commerce division, enables consumers to receive and pay bills electronically. The CheckFree system enables consumers, using the Internet, to receive electronic bills, pay bills electronically and make payments not related to bills – to anyone. For the year ended June 30, 2002, CheckFree processed approximately 316 million payment transactions and delivered approximately 3.8 million e-bills.

Although the number of electronic payments and e-bills continues to grow each year, most bills are still printed on paper and mailed to the consumer and then paid by the consumer with a paper check. Industry studies indicate that 17 billion paper bills are produced each year and 42.5 billion checks are written each year within the United States. Industry studies also indicate that of the 17 billion consumer bills produced each year, 74% are paid by paper check, 11% are paid electronically and the remainder are paid by other means such as cash, payroll deduction or money order.

Many states have considered or passed laws that regulate electronic bills and electronic payments. These laws tend to fall into two categories – laws that directly regulate electronic payments as part of the states' overall banking regulations and laws that indirectly regulate electronic payments by regulating processes that deal with privacy and security. Many of these laws attempt to protect legitimate consumer concerns. However the sheer number and types of laws and the number of different jurisdictions passing these laws can add substantial costs to the provision of electronic bill payment and presentment. These costs include registration fees, costs associated with bonding requirements and, in some cases, costs associated with making operational changes to the company's systems. These laws, and the costs associated with them, have the inadvertent effect of stifling competition. They drive up the cost of doing business and become a barrier to entry into the electronic bill payment marketplace. They also drive up the cost to consumers to pay bills electronically and slow down the transition by consumers from paper bill payment to electronic bill payment.

The direct regulation of electronic payments is usually through existing state banking laws that regulate money transmitters or the "sale of checks". Currently CheckFree is regulated by the State of Texas and is discussing possible regulation with the States of Louisiana and Nevada. The Texas Department of Banking regulates CheckFree as a Check Seller under Chapter 152 of the Texas Finance Code. This Code Section requires that CheckFree obtain a license from the Texas Department of Banking, be audited once a year by the Department of Banking and post a bond in the amount of $3,000,000. The amount of the bond is based upon the number of locations at which the license holder proposes to sell checks and the license holder's financial condition in relation to the dollar volume of the license holder's outstanding checks. According to the statute, the bond represents money held in trust for the benefit of check purchasers. It is unclear whether these purchasers must be residents of the state of Texas or be physically present at the time of the check purchase. Similarly, the Office of Financial Institutions of the State of Louisiana believes that CheckFree should be licensed under L.A.R.S.

6:1031 et seq. because it engages in the business of "money transmission or selling checks". Regulation under this statute requires paying an annual license fee based in part on the number of "selling locations" the licensee has within the State of Louisiana, payment of the commission examiner's hourly fees in the event of an examination and the posting of a surety bond in an amount "deemed appropriate by the commissioner" based on the applicant's business plan.

Although the states of Texas and Louisiana are attempting to protect consumers by extending the application of the banking laws to CheckFree, it is CheckFree's position that the costs to CheckFree outweigh any benefit to consumers. The cost of complying with the Texas statute is approximately $7,500. While this is not a large sum of money, if you multiply it by 50 (if each state passes a statute) and pay it each year, the amount becomes substantial. In addition, it is unclear what benefit, if any, the consumers in Texas receive from this regulation. CheckFree processed 316 million payments in its fiscal year ended June 30, 2002. Assuming an average payment amount of $100, CheckFree processed $31.6 billion in payments last year. The $3 million bond posted in Texas would hardly begin to make consumers in Texas whole should CheckFree fail to fulfill its obligations. In fact much of it would probably be used up in trying to determine which of CheckFree's customers would be entitled to some portion of the $3 million. Since CheckFree's customers use the Internet or the telephone to make payments, it is unclear who would be entitled to protection – customers who live in Texas, customers who bank in Texas or customers who were physically located in Texas when they requested a payment be made.

The indirect regulation of electronic billing and payment is through the numerous state and local regulations that deal with privacy and security. In 2002, CheckFree monitored all 50 states to determine what laws were being considered in these areas that, if passed, would require CheckFree to somehow change the way in which it did business. More than 548 laws have been introduced this year alone that could potentially impact CheckFree. Fortunately, only one law passed and has actually become effective. That law was SB 168 that was passed in California and became effective July 1, 2002. The bill had numerous provisions and was designed to protect consumers from identity theft. Much of the bill dealt with consumer reporting agencies and the ability of the consumer to report identity theft to these agencies. However, one section of the bill restricted companies from (i) printing an individual's social security number on any card required for the individual to access products or services of the company and (ii) requiring an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number is also required to access the Web site.

In order to make CheckFree's systems comply with this law, CheckFree spent several hundred thousand dollars. Again, this is not a large sum of money. However, when you multiply it by all the jurisdictions (including counties and cites) that have shown an interest in regulating in one form or another privacy and security, you can easily reach a very prohibitive number. The problem this type of legislation can have becomes even more apparent when you realize that even if a small city passes a restriction, CheckFree must change its systems as they apply to all of its customers because it is impossible for CheckFree to segregate customers based on geography. The problem becomes even more troublesome when you realize that cities and states can take conflicting views and actually pass conflicting legislation.

The cost of complying with the types of legislature described above can have the impact of stifling competition. CheckFree has staff devoted solely to tracking and monitoring legislation and additionally retains outside counsel to ensure that our interests are represented when new laws are considered and to further ensure that we are compliant with existing or new laws. Smaller companies or new entrants into the market may not be able to afford these costs. More significant is that as these types of legislation (and the resulting costs) grow it will become more expensive for the consumer to pay bills electronically because these costs are ultimately passed down to the consumer.

As the figures stated at the beginning of this testimony illustrate, electronic bill payment is still an emerging marketplace. If it is to be successful, we must find a way to regulate this business in a manner that actually benefits consumers without burdening the companies and competition.