

Testimony of Suzanne Martindale
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on
The Future of Money: How Mobile Payments Could Change Financial Services
before the
Committee On Financial Services
Subcommittee On Financial Institutions And Consumer Credit
March 22, 2012

Chairman Capito, Ranking Member Maloney and Members of the Committee, thank you for the opportunity to testify about mobile payments on behalf of Consumers Union, the advocacy and policy arm of *Consumer Reports*®.

“Mobile payments” allow consumers to buy products or transfer money with a mobile device. The market includes a range of different technologies, and many ways to fund transactions. The U.S. mobile payments market is still developing, and it remains unclear which trends will prevail. It is too soon to know which consumers will benefit most from the industry’s growth – or, inversely, be most vulnerable to risk. However, policymakers can make a few simple fixes to ensure that mobile payments are safe.

The mobile payments market is, in a word, complex. There are multiple ways to initiate payments. Some services involve sending a text message, or using an application downloaded to the device. Others employ a chip embedded in the hardware, which the consumer waves at a contactless reader.

Furthermore, multiple parties are involved in completing a transaction. Consumers, merchants, third-party processors, wireless carriers and financial institutions all play a role in the ecosystem. With so many players involved, the risk of confusion increases should something go wrong. Who is responsible for fixing a problem? If the different parties all point fingers at each other, the consumer may be out of luck.

Despite these challenges, mobile payments in the U.S. are projected to gross \$214 billion by 2015,¹ in part due to their potential to provide speed and convenience for

¹ Andrew Johnson, *In Mobile Payments, Lack of Interoperability Threatens Adoption*, AM. BANKER, Dec. 9, 2010, available at http://www.americanbanker.com/issues/175_235/lack-of-interoperability-1029690-1.html.

consumers and merchants.² Some merchants are also interested in the technology because mobile payment service providers may charge lower processing fees than traditional credit and debit card networks at the point of sale.³

Mobile payment technologies also have the potential to serve new audiences. They may appeal to young, tech-savvy consumers, as well as consumers who go outside the traditional banking system for financial services. For “unbanked” or “underbanked” consumers, mobile payments may provide increased access to financial services.⁴ Low-income households and households of color in particular are more likely to be unbanked or underbanked.⁵ Meanwhile, according to a recent Pew study, cell phone adoption is higher among households of color, as is smartphone adoption.⁶ This presents an opportunity for mobile payment technologies to penetrate these markets. However, these same markets may be vulnerable to risk without adequate safeguards.

Internationally, mobile payments have garnered attention for helping consumers in developing countries gain access to financial services. An estimated 5 billion consumers worldwide have mobile phones, while only 1.5 billion have access to financial services.⁷ In Kenya, where more consumers have cell phones than have bank accounts, Safaricom’s popular M-PESA service enables consumers to manage transactions entirely through their mobile phones.⁸ M-PESA customers can deposit or withdraw cash and send money through a network of agents and ATM machines, and can buy goods and services with their mobile phones – all without a bank account.⁹

² See, e.g., Kate Fitzgerald, Starbucks National Push for Mobile Payments, AM. BANKER, Dec. 6, 2010, available at http://www.americanbanker.com/issues/175_232/starbucks-mobile-payments-1029437-1.html. Starbucks’ President of U.S. Operations, told *The American Banker* that using mobile payments technology at point of sale was part of their effort to move customers through checkout more quickly. *Id.*

³ For example, Bling, a mobile payments service that uses contactless readers at the point of sale, charges a 1.5% transaction fee, about half the amount of the usual credit card fee on the merchant. Jefferson Graham, *Customers Pay By Smartphones, Not Credit Cards*, USA TODAY, Dec. 1, 2010, available at http://www.usatoday.com/tech/news/2010-12-01-mobilepayments01_ST_N.htm.

⁴ The Federal Deposit Insurance Corporation (FDIC) reported in December 2009 that 25.6% of U.S. households, about 30 million, rely on non-banks for some or all of their financial services needs. FED. DEPOSIT INS. CORP., FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 11 (2009), available at http://www.fdic.gov/householdsurvey/Full_Report.pdf.

⁵ *Id.* at 10-11.

⁶ PEW INTERNET & AMERICAN LIFE PROJECT, 35% OF AMERICAN ADULTS OWN A SMARTPHONE 9 (2011), available at http://www.pewinternet.org/~media/Files/Reports/2011/PIP_Smartphones.pdf.

⁷ Andrea McKenna, *Worlds of Difference in ‘Mobile Money’ Strategy*, AM. BANKER, Nov. 19, 2010, available at http://www.americanbanker.com/issues/175_223/mobile-money-strategy-from-haiti-1028902-1.html.

⁸ Safaricom Ltd., M-PESA, <http://www.safaricom.co.ke/index.php?id=250>.

⁹ *Id.* (“M-PESA Services”).

However, U.S. consumers have been slow to adopt mobile payments, for several reasons. Some mobile payment systems remain limited in scope and availability. For example, the new Google Wallet uses an NFC (or near field communication) chip embedded in the mobile device, which the consumer waves at a contactless reader to make a payment. However, Google Wallet is only available to Sprint customers with a Nexus S smartphone.¹⁰ Another mobile payments system, Bling Nation, uses a sticker with an embedded chip that the consumer affixes to the device and waves at a reader. However, Bling Nation is still available only through pilot programs in Palo Alto, Chicago and Austin.¹¹

Furthermore, market research indicates that consumers have concerns about security of their financial information. In a survey released last week, the Federal Reserve found that over 40% of consumers cited security concerns as a reason for not using mobile payments.¹²

Finally, not all ways to pay with a mobile device are created equal when it comes to consumer protections. Although consumers may not be aware of it, U.S. payments law is fragmented. The level of protections against unauthorized transactions and errors varies depending on whether a consumer links payment to a credit card, debit card or bank account, prepaid card, prepaid phone deposit, or phone bill.¹³ Traditional credit and debit cards have mandatory protections under existing law; however, prepaid cards do not.¹⁴ Mobile payments linked to a prepaid phone deposit or phone bill are especially problematic, because they do not fit neatly into existing legal categories.¹⁵ Wireless

¹⁰ Google Wallet FAQ, <http://www.google.com/wallet/faq.html#payments> (last visited June 7, 2011).

¹¹ Elizabeth Woyke, *Bling Nation Prepares National Rollout of Mobile Payments, Handset Partnerships*, FORBES, Nov. 20, 2010, available at <http://blogs.forbes.com/elizabethwoyke/2010/11/15/bling-nation-prepares-national-rollout-of-mobile-payments-handset-partnerships/>; Dusan Belic, *Bling Nation Expands FanConnect to Austin*, INTOMOBILE, Mar. 29, 2011, available at <http://www.intomobile.com/2011/03/29/bling-nation-expands-fanconnect-austin/>.

¹² BD. OF GOVERNORS OF THE FED. RESERVE SYS., CONSUMERS AND MOBILE FINANCIAL SERVICES 1 (2012), available at <http://www.federalreserve.gov/econresdata/mobile-device-report-201203.pdf>.

¹³ See Gail Hillebrand, *Before the Grand Rethinking: Five Things to do Today with Payments Law and Ten Principles to Guide New Payments and New Payments Law*, 83 CHI.-KENT L. REV. 769, 772-73 (2008) (discussing variation in protections among different payments methods).

¹⁴ Prepaid card funds are typically held in pooled accounts. Regulation E's official staff interpretations appear to exempt funds in pooled accounts from the definition of "accounts" covered by the regulation. See Official Staff Interpretation of 12 C.F.R. § 205.2(b)(3), 12 C.F.R. § 205, Supplement I (2011).

¹⁵ At present, these charges are typically for small-dollar text donations or digital content, but some companies are exploring the possibility of paying for other goods and services with prepaid phone deposits and phone bills. See Andrew Johnson, *Plan to Make the iPhone a Payment Tool May Accelerate*, AM. BANKER, Nov. 4, 2010, available at http://www.americanbanker.com/issues/175_212/iphone-payment-tool-plan-1028195-1.html (quoting Paul Grill, First Annapolis Consulting, who commented on "potential

carriers may provide voluntary protections, but they are typically not disclosed in customer contracts.¹⁶

The different ways to pay by mobile device, and the varying consumer protections that apply to each, create the potential for confusion when a consumer is faced with a transaction gone wrong. Consumers need to know where to complain and how to get their money back in case of errors or unauthorized use. Consumers cannot afford to lose precious funds due to inadequate protections. For low- and moderate-income consumers, this loss could be especially acute.

Until U.S. payments law is updated to provide clear, guaranteed protections for all payment methods, consumers may be at risk when using mobile payments technology. Nonetheless, a few simple fixes could close gaps in protections and provide clarity to the industry. The Consumer Financial Protection Bureau (CFPB) is in a unique position to address mobile payments, because it has jurisdiction over payment service providers¹⁷ and can clarify regulations implementing federal consumer financial laws.¹⁸ Congress and other federal agencies also have an important role to play in establishing sensible rules of the road that protect consumers and foster innovation. Further dialogue between industry, regulators and consumers is the first step toward shaping a safe and thriving mobile payments market.

Thank you again for the opportunity to testify. I am happy to answer any of your questions.

convergence between the mobile and the e-commerce space,” in which more types of goods are billed to wireless plan).

¹⁶ Consumers Union reviewed the customer contracts of the top wireless carriers, and found that the protections carriers provide fall short of what consumers get when they use credit cards and debit cards. In addition, many of the protections that wireless carrier representatives maintain that they provide are not disclosed in customer contracts, making it difficult to know whether consumers can count on these safeguards when problems arise. See Consumers Union, *How Top Wireless Companies Compare on Consumers Protections for Mobile Payments* (2011), available at http://defendyourdollars.org/document/how_top_wireless_carriers_compare_on_consumer_protections_for_mobile_payments.

¹⁷ Section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the CFPB jurisdiction over “covered persons” providing consumer financial products or services, including payments services. See Pub L. No. 111-203, 124 Stat. 1376, 1957-58 (2010).

¹⁸ Title X of the Dodd-Frank Act transfers to the CFPB the authority to write rules under consumer financial laws, including EFTA and TILA. See §§ 1002(12) and (14) and 1022(a), 124 Stat. at 1957, 1980.