

**Sarah Jane Hughes**  
**Responses to Additional Questions for the Record**  
**Posed by the Honorable Tony Cárdenas**  
**“The Disrupter Series: Mobile Payments”**  
**December 1, 2015**

**Question 1 from Representative Cárdenas: How do mobile payments assist unbanked and under-banked individuals? Is this at a lower cost than other options available?**

**Question 2 from Representative Cárdenas: How do mobile payments help small businesses?**

**Question 3 from Representative Cárdenas: What do you see as the biggest obstacle to mobile payment adoption? What can be done to fix it?**

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**Question 1 from Representative Cárdenas: How do mobile payments assist unbanked and under-banked individuals? Is this at a lower cost than other options available?**

Response from Sarah Jane Hughes:

“Representative Cárdenas, Mobile payments assist unbanked and under-banked individuals in numerous ways. It is important to recognize that the manner in which mobile payments assist each group may be different so I have organized my response by looking first at special values to both groups and then at special values to one or the other of these groups.

Before beginning my direct answer, I would like to distinguish between “mobile payments” and “mobile banking.” A mobile payment may not require the consumer who owns the mobile phone to access a bank account. Thus, a consumer can make a deposit of funds to a merchant such as Starbuck’s and then debit purchases from that deposit via the mobile phone. This type of transaction is conceptually comparable to that consumer using a prepaid card that she purchased from Starbuck’s. Of course, that deposit only works at Starbuck’s so its utility is limited compared with other options.

A second category of mobile payments do not require advance deposits of funds. Rather, the consumer authorizes a payment that gets billed to the consumer’s mobile phone service account in the following month. This type of “mobile payment” does not fall under the Electronic Funds Transfer Act or Regulation E because there is no underlying “account” at a depository institution from which the payment is debited.

Other “mobile payments” work more like traditional credit or debit cards in that they provide the consumer to access her own demand deposit account at a depository

institution. The phone is the device used to access the demand deposit account – rather than using the card as the access device. The phone operates as a means of storing credentials and also as the link for communicating the consumer’s authorization for the payment transaction to be processed by the merchant and along the path to the consumer’s own demand deposit account.

“Mobile banking” refers in my view to my communications with the bank that holds my demand deposit account. Unbanked individuals would not have access to “mobile banking.” Under-banked individuals would have access and might find communicating with distant branches or banks without branch networks very convenient and reasonably priced.

Now proceeding to your specific question, mobile payments assist both unbanked and under-banked individuals by allowing them a ready alternative to cash or debit and credit transactions at participating merchants. Smart phones – through which most mobile payments are made in the United States – operate as substitutes for home computers for increasingly large numbers of unbanked and under-banked individuals and, thus, allow the consumer access to making payments they otherwise might have to make in person or through more expensive and time-consuming means, such as by procuring money orders or cashier’s checks.

Focusing a bit more on the issue of cost, mobile payments can be cost-effective for consumers compared with some optional means for making payments. As noted above, they can be less costly than using money orders or cashier’s checks for payments made by consumers who do not have bank accounts. For others, mobile payments and other Internet- or telephone bill payment options can prevent late payments, higher interest charges or default on a credit relationship with an accompanying repossession of a valuable consumer item, such as a car.

However, if a payment issue arises outside the scope of an established legal regime such as the protections of Regulation E and the Electronic Fund Transfer Act, the lack of predictability in the outcome of disputes or resolution of errors can make mobile payments costly for consumers.

**Question 2 from Representative Cárdenas: How do mobile payments help small businesses?**

Response from Sarah Jane Hughes: Payments innovations that enable more small businesses to engage with more customers are good for the economy. As a means of making payments, mobile payments may become more important to small businesses in several ways. First, as commercial banks shrink their networks of branch banks, using mobile payments and remote deposit capture of checks will reduce the difficulty, time, risk and cost of moving cash or paper payments instruments such as checks from merchants to banks. Second, to the extent that transactions clear and settle faster when made through mobile payments or mobile banking, such a development will aid small

businesses in managing cash flow and save them certain forms of accounting expenses and reconciliation.

Additionally, mobile payments may help merchants capture more impulse transactions than they might have if the consumer has left her cash, checkbook, or credit card at home on the day of the transaction.

Finally, mobile payments allow merchants to reach unbanked and under-banked consumers and, thus, expand the range of customers their businesses can serve.

I should say that to the extent we expect mobile payments to contribute to the general economy and to the prosperity of small businesses, we need to ensure through sound guidance from Congress that functional regulators that depository institutions continue to provide banking services to small businesses no matter where they may be located.

**Question 3 from Representative Cárdenas: What do you see as the biggest obstacle to mobile payment adoption? What can be done to fix it?**

Response from Sarah Jane Hughes: The lack of more orderly laws governing the data security and privacy rights of individuals among the participants from merchant to payments processors and mobile providers as well as depository institutions is one of the bigger obstacles to wider acceptance, particularly as consumers focus more attention on privacy and data security following the high-profile data-security breaches and identity thefts events of the past four years.

Additionally, the lack of laws spelling out the responsibilities of the mobile service providers is an obstacle because of unfair, deceptive and abusive practices that some mobile service providers have allowed third parties to perpetrate via the providers' monthly statements. These include "mobile cramming" billing problems as I mentioned during my testimony that the Federal Trade Commission, Federal Communications Commission, State Attorneys General, and the Consumer Financial Protection Bureau addressed in federal court and administrative enforcement proceedings over the past two years, and the apparent lack of well-grounded dispute resolution procedures among the mobile service providers to set forth charges on bills in a straightforward manner or to handle consumers' complaints about cramming on their bills.

Congress might revisit the allocation of responsibilities among the FTC, FCC, and CFPB for enforcement of laws pertaining to mobile payments (not mobile banking) and fill in gaps between the existing regulatory schemes and legislation, and engage in oversight to be certain that the agencies are fulfilling Congress' purposes in enacting the laws that govern in this area.