

October 1, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex B)
600 Pennsylvania Avenue, NW
Washington, DC 20580

**RE: Paper, Plastic...or Mobile? An FTC Workshop on Mobile Payments
(Project No. P124808)**

Ladies and Gentlemen:

MasterCard Worldwide ("MasterCard")¹ submits this letter for the record in connection with the April 26, 2012, Federal Trade Commission ("FTC") workshop entitled *Paper, Plastic...or Mobile?* ("Workshop"). Our submission follows up on MasterCard's participation in the Workshop.² The discussion and topics addressed in this submission are intended to assist the FTC in understanding MasterCard's role in mobile payments, as well as the legal framework that exists around payment transactions initiated with a mobile device that access a payment card account.

As discussed below, MasterCard believes that the use of mobile phones to initiate payment transactions that access payment card accounts does not require additional regulation. Rather, mobile phones are merely a form factor for such payment transactions, like cards or fobs. The underlying financial transaction is unchanged by the form factor used to initiate it.³ Indeed,

¹ MasterCard advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. In the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 27 billion payments each year, and provides analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to more than 20,000 of the world's leading financial institutions. With more than 33.3 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard.

² James Anderson, Group Head of Mobile Product Development for MasterCard's Emerging Payments Group, participated in the Workshop as a panelist for the discussion segment entitled *Opportunities and Challenges for Businesses and Consumers*.

³ This submission does not address legal or other issues that may arise in connection with mobile payment transactions that involve other types of financial accounts (e.g., PayPal transactions or the posting of charges to a

the laws and regulations that govern payment card transactions are well-established and provide clear guidance to payment system participants regarding their respective roles and responsibilities in connection with payment card transactions whether initiated by mobile phone or another form factor. Layering additional regulatory conditions or requirements on these types of payments would stifle innovation in this area and serve as a disincentive for additional competition in the provision of mobile payments. Before addressing these issues, we thought it would be helpful to provide some basic information about MasterCard and our payment system's role in developing and securing mobile payments.

Background on MasterCard

MasterCard is a global payments and technology company that connects billions of consumers, thousands of financial institutions, and millions of merchants, governments and businesses worldwide, enabling them to use electronic forms of payment instead of cash and checks. MasterCard does not issue payment cards of any type, nor does it contract with merchants to accept those cards. In the MasterCard payment system, those functions are performed by numerous financial institutions. MasterCard refers to the financial institutions that issue payment cards bearing the MasterCard brands as "issuers." MasterCard refers to the financial institutions that enter into contracts with merchants to accept MasterCard-branded payment cards as "acquirers." MasterCard owns the MasterCard family of brands and licenses issuers and acquirers to use those brands in conducting payment transactions. MasterCard also provides the networks through which issuers and acquirers can interact to complete payment transactions, and sets certain rules regarding those interactions.

MasterCard's Role in Mobile Payments

MasterCard has been a leader in the transformation of mobile phones into secure mobile payment devices for many years. MasterCard continues to invest substantial financial resources and human capital in developing the technology necessary for the mobile payments ecosystem. To date, these efforts have focused on three areas. The first of these is a contactless-based method of initiating a payment transaction. MasterCard's *PayPass* "tap-and-go" product is at the forefront of this space. The second area is the development of a simplified shopping experience through the use of portable and home-based smart devices, such as mobile phones, tablets, smart TVs, and personal computers. MasterCard's *PayPass* Wallet Services are an example of this type of system. Third, MasterCard is working on developments in mobile commerce-enabled systems with the rapid deployment of smart phones, including the innovative MasterCard *inControl* platform.

MasterCard PayPass

MasterCard's *PayPass* technology is a contactless payment method that enables consumers to pay with a payment product without having to present a card. MasterCard has been building the *PayPass* infrastructure over the last decade, focusing on interoperability

mobile phone user's account with a mobile phone carrier). However, MasterCard believes that any party that provides payment services accessible through a mobile device should be subject to the types of consumer protection laws applicable to payment card issuers.

standards, acceptance locations, security, and the enablement of devices to perform *PayPass* transactions. *PayPass* is designed to displace cash for everyday purchases, and enhance credit, debit and prepaid payment products. A secure chip and radio antenna embedded in a *PayPass*-enabled card, key fob, device or phone transmits a customer's payment card details wirelessly to a *PayPass* reader at checkout. The reader then verifies the transaction with the customer's bank through the MasterCard payment system and indicates approval almost instantly.

Encryption technology and MasterCard's Zero Liability protection on a *PayPass*-enabled credit, debit or prepaid MasterCard-branded card make using *PayPass* at checkout as safe as using a card. *PayPass* also has built-in safeguards to help prevent unwanted purchases. The chip-based device, whether attached to a phone, fob, or card, never leaves a customer's hands at checkout. The device must be very close to the card reader for it to work. And, the device only bills the customer once, even if it is tapped twice. As we continue to develop the *PayPass* program, MasterCard is committed to expanding merchant acceptance in key categories, developing contactless payments for transit, working to expand functionality to mobile phones and other options, expanding beyond low-value payment channels, and increasing marketplace awareness and education. By linking a mobile phone to MasterCard *PayPass*, we bring a new level of convenience to consumers by enabling them to tap and go at any of our contactless-enabled merchants around the globe with the reliability and protections of all MasterCard transactions.

PayPass Wallet Services

MasterCard's *PayPass* Wallet Services are making it safer and easier to shop at merchants online. The *PayPass* Wallet Services provide a turnkey digital wallet that connects to MasterCard's acceptance network. It can be used with all major payment card brands and can be accessed by mobile phone, tablet, or computer. The *PayPass* Online acceptance network is the network of online merchants that have added a *PayPass* button on their checkout page and allow cardholders to initiate a purchase with a *PayPass* Wallet. MasterCard's partners can also plug their own digital wallet solutions into the *PayPass* Online acceptance network. For consumers, *PayPass* Wallet Services provide secure and faster checkout online and a simple way to use mobile devices for payments. For merchants, *PayPass* Wallet Services are designed to lead to increased sales from mobile devices, reduced fraud, and lower operating costs.

MasterCard inControl

MasterCard *inControl* is an innovative platform that offers an array of advanced authorization, transaction routing and alert controls to satisfy consumer demand for increased security and budgeting capability. With *inControl*, spending limits and controls can be set on payment accounts to enable account owners to determine exactly where, when and how their cards are used. Coupled with these controls, real-time email or text alerts can be sent to account owners to provide transparency into the spending activity occurring on the account. For consumers, *inControl* provides a new level of financial control and awareness that is unmatched in today's market. Cardholders create personalized spending profiles for themselves and their family members by setting up spending limits according to budget goals and account security concerns. Cardholders can also choose to receive real-time alerts on specific transactions as well as when spending is nearing a budgeted amount. Because of our substantial investment in

innovations like *inControl*, consumers can harness their mobile phones in ways that enable them to manage their finances more efficiently and spend with greater confidence.

The Existing Legal Framework for Mobile Payments

What is often lost in the discussion regarding mobile payments is the fact that a robust legal framework is already in place to address the payment activities that occur when a mobile device is used in lieu of a payment card to initiate and complete a payment transaction. This framework includes various Federal statutes and regulations, including the Electronic Fund Transfer Act (“EFTA”) and Regulation E, which apply to mobile payments that involve the use of debit card information and consumer access to funds associated with a deposit account, and the Truth in Lending Act (“TILA”) and Regulation Z, which apply to mobile payments that involve the use of credit card information to access an open-end line of credit. The Bureau of Consumer Financial Protection (“Bureau”) is the primary Federal regulator responsible for interpreting and enforcing these laws and regulations.

It is important to recognize that the existing laws and regulations applicable to payment card transactions provide a well-established and well-understood legal regime that governs the interactions between payment system participants, including interactions between consumers and merchants, and between consumers and card issuers. For example, the existing legal framework establishes procedures for consumers to resolve transactional errors made by the card issuer, provides a mechanism for initiating a dispute with a merchant where goods or services purchased with a credit card were not delivered to the consumer as agreed, and limits a consumer’s liability in cases where a payment card is lost or stolen. In addition, regulations mandate that card issuers provide cardholders with periodic statements that provide detailed information about transactional history, including credits and refunds and any fees or charges that are owed in connection with the account. This information assists consumers in exercising their rights under Federal law and provides clear guidance to card issuers about how to comply with applicable legal requirements. Moreover, consumers receive additional benefits and protections under payment card network rules and programs, including policies such as MasterCard’s Zero Liability policy, which offers MasterCard cardholders peace of mind, as in most instances they are not liable in the event of the unauthorized use of a MasterCard-branded product.

There is no legal distinction between a mobile payment transaction that involves the use of payment card information to initiate a payment transaction and a payment transaction where the card itself is used—the same legal framework applies to the transaction. For mobile payments that utilize a credit card number, the applicable provisions of TILA and Regulation Z govern the transaction. For mobile payments that utilize a debit card number, the applicable provisions of the EFTA and Regulation E apply to the transaction. For mobile payments that utilize a prepaid card number, the EFTA and Regulation E apply in many instances. Prepaid payroll cards and prepaid cards that are loaded with a Federal government payment are subject to the EFTA and Regulation E.⁴ The Bureau intends to subject other reloadable prepaid cards to

⁴ See 12 C.F.R. § 210.5(b)(5)(i)(D) (mandating that an issuer of any prepaid card that receives Federal payments comply with the payroll card provisions of Regulation E (12 C.F.R. 1005.18)); 75 *Fed. Reg.* 80,335 (Dec. 22, 2010) at 80,338 (expressing the Treasury Department’s view that in response to the regulatory mandate, issuers of prepaid cards “will choose to modify the terms and conditions of the card accounts to include all of the payroll card protections to card holders, so that their cards will be eligible to receive Federal payments”). It is MasterCard’s

the EFTA and Regulation E.⁵ And, many non-reloadable prepaid cards are subject to the “gift card” provisions of the EFTA and Regulation E.

Irrespective of whether a payment account is accessed by card, Internet, telephone call or mobile phone application, the same regulatory protections apply. The use of a mobile device to access payment card account information is simply another means for accessing the underlying financial account that is associated with the payment card. Regardless of how payment transactions occur, the end result is that existing legal requirements apply to the transaction.

Before considering whether new or additional consumer protection steps are required in connection with mobile payments that access payment card accounts, MasterCard encourages the FTC and other Federal or state regulators to give consideration to whether existing consumer protection laws that apply to these payments, such as the EFTA, TILA, and the Gramm-Leach-Bliley Act financial privacy laws, provide adequate protections to consumers.

* * *

MasterCard appreciates the opportunity to include its views as part of the Workshop’s record. We would welcome the opportunity to address any follow-up questions that may arise in connection with our submission.

Sincerely,

Randi D. Adelstein
Vice President
Managing U.S. Public Policy and Regulatory Counsel

understanding that the view expressed by the Treasury Department has indeed taken hold throughout the prepaid card industry, and that today, many issuers of reloadable prepaid cards voluntarily comply with Regulation E’s payroll card provisions.

⁵ See 77 Fed. Reg. 30,923 (May 24, 2012).