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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov

March 22, 2013

Michael L. Iaccarino
Chief Executive Officer
Mobile Messenger
6601 Center Drive W
Los Angeles, California 90045

Dear Mr. Iaccarino,

I am writing to you about the abusive practice of placing unauthorized third-party charges on wireless telephone bills, commonly referred to as "wireless cramming." Wireless cramming is already harming consumers and, given the number of wireless telephone users in the country, it has the potential to become a billion dollar problem. As a company that plays a critical role in the placement of third-party charges on wireless telephone bills, I would like to learn what your company is doing to prevent cramming.

In 2011, the Senate Committee on Commerce, Science, and Transportation completed a year-long investigation into the practice of placing unauthorized third-party charges onto consumers' wireline telephone bills. The investigation showed that cramming on wireline telephone bills was a problem of epidemic proportions, costing American consumers and businesses billions of dollars in unauthorized charges over the past decade.[1] In response to my staff's findings, several telephone companies took a number of positive steps last year to curtail cramming on their customers' wireline telephone bills. Unfortunately, consumers are now facing a similar problem on their wireless telephone bills.

With millions of American consumers and businesses now using wireless telephones, it is imperative that we learn from the failures of wireline third-party billing and apply those lessons to wireless billing. As of June 2012, approximately thirty-five percent of U.S. homes reported

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[1] *See* Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Charges on Telephone Bills* (July 12, 2011) (available at http://commerce.senate.gov).

being "wireless-only,"[2] and it has been estimated that this number will be as high as forty-five percent by the end of 2013.[3]

Last year, I introduced the *Fair Telephone Billing Act of 2012*, to put a stop to cramming on telephone bills once and for all. The legislation would have limited third-party charges on wireline telephone bills to telephone-related services, such as collect calls, and it would have directed the Federal Communications Commission (FCC) to develop rules to ensure that wireless consumers are protected from unauthorized third-party charges on their bills. I included the provisions related to wireless telephone bills because we have already seen enough evidence showing that cramming on wireless bills is a significant problem. Since my staff uncovered the multi-billion dollar scam that plagued wireline bills for over a decade, my goal has been to avert a multi-billion dollar scam on wireless telephone bills.

I also wrote to the four largest wireless carriers – AT&T, Verizon, T-Mobile, and Sprint – about my concerns related to the growing incidence of cramming on wireless telephone bills. In response, the carriers sent letters explaining the procedures that they have implemented to prevent unauthorized third-party charges from appearing on consumers' wireless bills. The carriers also described the important role that your company and other billing aggregators play in third-party billing. When asked to identify the third-party vendors that had placed third-party charges on the bills of its wireless customers, one carrier stated that "this information is not collected or stored," but that "the aggregators may have access to this information."[4]

In recent months, evidence has continued to mount showing that the wireless carriers' procedures for preventing cramming is not working. For example, the National Association of State Utility Consumer Advocates (NASUCA) recently filed comments with the FCC, informing them of the findings of a study that showed the percentage of fraudulent third-party charges on wireless bills appeared to be increasing.[5] The review estimated that wireless cramming likely costs consumers millions of dollars a year.[6]

My staff also recently obtained data from the California Public Utilities Commission (CPUC), which raised questions about wireless billing. Wireless carriers are required to provide

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[2] Blumberg SJ, Luke JV, *Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2012*, National Center for Health Statistics (Dec. 2012) (available at http://www.cdc.gov/nchs/nhis.htm).

[3] Brogan, Patrick, *The Transformation of Personal Communications and the Erosion of Traditional Voice Provider Dominance*, US Telecom Research Brief (Jan. 4, 2013) (available at http://www.ustelecom.org/sites/default/files/documents/130104_TPRC_Exec_Summary_Final.pdf).

[4] Letter from carrier to Chairman John D. Rockefeller IV (July 11, 2012).

[5] *Ex Parte* Comments of the National Association of State Utility Consumer Advocates, In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), CG Docket No. 11-116 (Jan. 2, 2013).

[6] Citizens Utility Board, *Analysis: Frequency of Cellphone "Cramming" Scam Doubles In Illinois, CUB Concerned Wireless Customers Targeted As Landline Laws Tighten* (Dec. 4, 2012) (available at http://www.citizensutilityboard.org/newsReleases20121204_CellphoneCramming.html).

quarterly reports to the CPUC on the number and dollar value of charges placed on the wireless bills of consumers with California area codes, as well as the number and dollar value of those charges that were refunded to consumers.[7] This data shows that millions of charges, which wireless carriers placed on wireless bills, were later refunded. Between January and September 2012, over 2 million charges, totaling over $19 million, were refunded to wireless consumers with California area codes. These refunds amounted to thirteen percent of all the charges placed on consumers' bills. A refund rate this high suggests that many charges appearing on consumers' wireless bills are unauthorized.

Finally, a recent review of consumer complaint websites by my staff suggests problems with third-party billing as well. Consumers continue to complain on the Internet that they are experiencing unauthorized charges on their wireless bills. The types of so-called "services" that are appearing on these consumers' wireless bills – including "services" for weekly text messages about horoscopes, fashion tips, and celebrity gossip – are alarmingly similar to the services proven to be fraudulent on wireline telephone bills. These complaints, in addition to the findings cited recently by NASUCA and information provided to the CPUC, call into question the effectiveness of many of the protections that the carriers and others have put in place to protect consumers from unauthorized third-party charges.[8]

To help the Senate Commerce Committee further understand the magnitude of cramming on wireless bills and what is being done to prevent it, please provide responses to the following requests and questions.

1. Identify each carrier with whom you have a contract or agreement to place third-party charges on wireless bills at any time during the last two years, and provide a copy of the contract or agreement.

2. Identify each third-party vendor that you work with or contract with to place third-party charges on consumers' wireless phone bills at any point during the last two years. For each such third-party vendor, provide the following information:

   a. All d/b/a's, addresses, and telephone numbers used by the third-party vendor;
   b. The billing descriptors for the third-party vendor and for each of the third-party vendor's products or services, as you provided to the carrier(s);
   c. The name and contact information for the officers, directors, or other principals of the third-party vendor;

[7] California Revised General Order 168, Part 4 (available at http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/138818.pdf).

[8] For example, a recent news article reported the story of a small business owner who was charged over $300 for a service that he never authorized on a cell phone that he never used. In the article, a company spokesman acknowledged that, despite requiring double opt-in, "that's not to say it's impossible for a customer to get, say, a text message from a third-party that does not follow this process." *Telecom firms can't say how 'crammed' charges were billed to unused phone*, NBC News (Jan. 25, 2013).

d. A description of the products or services the third-party vendor was providing to consumers and the amount the third-party vendor charged consumers for the products or services on a monthly basis; and

e. The total dollar amount the third-party vendor charged consumers through third-party charges on wireless phone bills, for each of the last two years.

3. Does Mobile Messenger have a process for vetting potential third-party vendors before working with them to place charges on customers' wireless telephone bills? If so, please explain this process.

4. Identify the steps that Mobile Messenger is taking to monitor and control the occurrence of unauthorized third-party charges on consumers' wireless phone bills.

5. Provide all documents and communications related to consumer complaints, inquiries, or contacts about third-party charges on their wireless telephone bills, including but not limited to, all communications on this subject from the Better Business Bureau, state Attorneys General, state utility commissions or public service commissions, the Federal Trade Commission, or the Federal Communications Commission.

Please provide the requested information by Friday, April 12, 2013.

The Committee is requesting this information under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Melanie Tiano or Molly Crawford with the Committee staff at (202) 224-1300.

Sincerely,

John D. Rockefeller IV
Chairman

cc: John Thune
Ranking Member