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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

November 26, 2013

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

Dear Mr. Iaccarino,

I am again writing to you as part of the inquiry by the Senate Committee on Commerce, Science, and Transportation into widespread reports of “wireless cramming,” the practice where third-party vendors use the billing platforms of wireless phone carriers to charge consumers for services they never authorized. As part of this review, the Committee has been examining how carriers have implemented a two-step consumer consent process known as the “double opt-in” that the wireless industry claims insulates consumers from unauthorized third-party charges on their wireless bills.¹

As you know, wireless carriers allow third-party vendors to use the wireless phone bill system to charge consumers for their services. Billing aggregators such as your company have been playing a middleman role in this process, contracting with various third-party content providers to assist them in getting their charges placed on the billing platforms of wireless carriers.

As part of this role, wireless carriers have increasingly required the assistance of aggregators to verify that consumers have authorized purchase of the third-party services for which they are being charged on their wireless bills. Carriers also have established consumer refund thresholds for vendors that are designed to flag potentially troublesome vendor conduct.²

Given the billing aggregator responsibilities within the wireless industry’s voluntary system for preventing and detecting cramming, allegations regarding your company that were set

¹ Under wireless industry standards, a valid consumer authorization of a third-party vendor charge on a wireless platform requires a sequence of “clear and unambiguous” vendor disclosures in addition to two consumer confirmations of intent to purchase the vendor service – or a “double opt-in.” See Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging*, Version 7.0, Section 2.5 (Oct. 16, 2012).

² Wireless carrier responses to Chairman Rockefeller.

forth in an enforcement action recently filed by the Texas Attorney General are particularly troubling.

In this action, *Texas v. Mobile Messenger U.S. Inc., et al.*, the Texas AG alleges that Mobile Messenger was part of a “deceptive scheme” to trick consumers into signing up for unwanted “services” including ringtones, weekly tests messages about horoscopes and celebrity gossip, and coupons. According to the complaint, your company was actively assisting content providers with circumventing consumer protections that carriers have implemented, including the double opt-in and thresholds relating to consumer complaints and audit reports.³ The complaint alleges:

At the very least, Defendant Mobile Messenger is actively involved in the creation of the PSMS programs and aware of the deceptive methods the Defendant content providers are using. But rather than acting as a gatekeeper to keep the bad content providers out as expected by the carriers, Mobile Messenger continues to facilitate the deceptive conduct by allowing the Defendant content providers to continue to deceptively bill consumers. In fact, Defendant Mobile Messenger affirmatively assists the Defendant content providers in avoiding detection by consumers and the wireless carriers so that they can continue to engage in their deceptive conduct.⁴

The complaint details a number of troubling alleged examples of such conduct, including:

- In August 2013, Mobile Messenger received an unfavorable audit report about a specific content provider, then forwarded the audit to the content provider with the following note: “p.s. expect another email to switch to another sprint code shortly” – a move that helped the content provider circumvent the carrier’s policy of suspending provider codes upon negative audit findings.⁵
- In February 2012, a carrier terminated all short codes belonging to a particular content provider for “egregious violations.” Knowing the carrier would not approve new short codes for this violator, Mobile Messenger arranged for the violator to be assigned short codes registered in a different content provider’s name, such that the violator could bill through the carrier’s platform without the carrier’s knowledge.⁶

While it would not be appropriate at this juncture to draw conclusions regarding the claims in the complaint, the alleged conduct by your company concerns issues at the core of the Committee’s wireless cramming inquiry. I therefore ask that you provide the Committee a copy of all documents you provided to the Texas Attorney General’s office in the case *Texas v. Mobile Messenger U.S. Inc., et al.*

³ Plaintiff’s Original Petition, *State of Texas v. Mobile Messenger U.S. Inc., et al* (Nov. 6, 2013).

⁴ *Id* at 22-23.

⁵ *Id.* at 24.

⁶ *Id.* at 26.

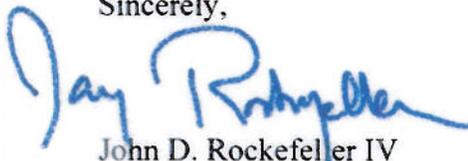
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Further, I ask that you provide a complete response to the Committee's previous request for all documents and communications related to consumer complaints, inquiries, or contacts about third-party charges on their wireless telephone bills, including 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, from the period from March 2011 through present,⁷ along with an explanation of the role that your company plays in obtaining and managing short codes for third-party content providers.

Please provide the requested information by Tuesday, December 10, 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 with the Committee staff at (202) 224-1300.

Sincerely,

A handwritten signature in blue ink that reads "John D. Rockefeller IV". The signature is stylized and cursive.

John D. Rockefeller IV
Chairman

cc: John Thune
Ranking Member

⁷ See Letter from Chairman Rockefeller to Michael L. Iaccarino, Chief Executive Officer, Mobile Messenger (Mar. 22, 2013) (online at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=af584a36-3827-4db6-947f-32714468280e). Given recent allegations, the request for complaints has been extended beyond the original request.