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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

ELLEN DONESKI, STAFF DIRECTOR  
DAVID SCHWIETERT, REPUBLICAN STAFF DIRECTOR

March 13, 2014

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

Dear Mr. Iaccarino,

I am writing regarding the subpoena I am issuing today to Mobile Messenger for documents the company has been withholding from the Committee. One year ago I wrote to you to request information and documents as part of the inquiry by the Senate Committee on Commerce, Science, and Transportation into reports that consumers across the country were being charged on their wireless telephone bills for third-party services they neither wanted nor authorized, a practice known as “cramming.”<sup>1</sup> As you know, billing aggregators such as Mobile Messenger have played a key role in the process of placing third-party vendor charges on consumers’ wireless bills, and carriers have relied on aggregator assistance in verifying that consumers have authorized the purchase of third-party services for which they are charged.

Unfortunately, one year after my March 2013 request, major gaps remain in Mobile Messenger’s response. First, you failed to respond to my request to identify your third-party vendors, their officers, other names under which these companies may have done business, and the total charges you helped these companies place on consumer bills. Second, with respect to my request for copies of your contracts with major carriers, the documents you provided – 8 and 11 months after my request<sup>2</sup> – are heavily redacted with no accompanying explanation of the nature of redactions, and these redactions impede the

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<sup>1</sup> Letter from Chairman John D. Rockefeller IV, to Michael L. Iaccarino, Chief Executive Officer, Mobile Messenger (Mar. 22, 2013).

<sup>2</sup> Responses from Mobile Messenger (Nov. 6, 2013) and (Feb. 12, 2014).

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Committee's ability to review basic contract terms. Third, you have failed to confirm that you have fully addressed my request for documents relating to consumer complaints.

In a May 24, 2013, letter to the Committee, Mobile Messenger did provide a lengthy narrative describing various steps the company purportedly takes to vet third-party vendors before working with them, and to monitor and control the occurrence of unauthorized third-party charges on consumers' wireless bills.<sup>3</sup> The company underscored that it is "committed to consumer protection,"<sup>4</sup> and that the company has spent considerable resources to ensure that the subscription and billing process and the company's content provider and advertiser clients abide by the "robust" industry guidelines.<sup>5</sup>

In November 2013, however, the Texas Attorney General brought an action against Mobile Messenger and five third-party vendors that raised serious questions about Mobile Messenger's representations regarding its commitment to consumer protection. According to the Texas Attorney General's complaint, Mobile Messenger was part of a "deceptive scheme" in which it actively assisted content providers with circumventing the same types of consumer protection measures touted in your May 24, 2013, letter to the Committee.<sup>6</sup> The alleged conduct described in this action also raises broader concerns about the effectiveness of the voluntary industry procedures and practices for controlling wireless cramming.

As you know, I followed up on the Texas action with a November 26, 2013, letter to Mobile Messenger requesting information relating to the allegations in the Texas case and urging Mobile Messenger to address my March 2013 requests.<sup>7</sup> In multiple communications with your company representatives since then, my staff has reiterated the Committee's interest in the requested information and the possibility of issuing a subpoena regarding gaps in Mobile Messenger's response. Yet four months after my November request, Mobile Messenger has failed to produce a single document concerning the Texas action, nor has the company provided the Committee an explanation of why it is withholding this information.

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<sup>3</sup> Response from Mobile Messenger (dated May 24, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

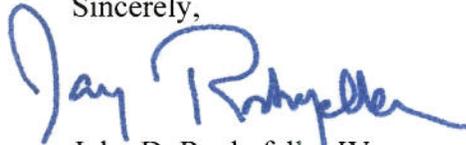
<sup>6</sup> *Texas v. Mobile Messenger U.S. Inc., et al.*, Travis County District Court, 345<sup>th</sup> Judicial District (No.) (Nov. 6, 2013) (online at <https://www.oag.state.tx.us/newspubs/releases/2013/Mobile-Messenger-POP.pdf>).

<sup>7</sup> Letter from Chairman John D. Rockefeller IV, to Michael L. Iaccarino, Chief Executive Officer, Mobile Messenger (Nov. 26, 2013).

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For these reasons, I am today issuing a subpoena to Mobile Messenger for information requested in my March 2013 and November 2013 letters to the company.

Sincerely,

A handwritten signature in blue ink that reads "Jay Rockefeller". The signature is fluid and cursive, with the first name "Jay" and the last name "Rockefeller" clearly legible.

John D. Rockefeller IV  
Chairman

cc: John Thune  
Ranking Member