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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

WILLIAM STEVEN GANDEE, D.C.,	)	
	)	
Complainant,	)	Case No. 09-51-TP-CSS
	)	
v.	)	
	)	
CHOICE ONE COMMUNICATIONS, INC. d/b/a ONE COMMUNICATIONS,	)	
	)	
Respondent.	)	

ANSWER

Now comes Respondent, Choice One Communications, Inc, d/b/a One Communications ("One Communications") to answer the complaint of William Steven Gandee, D.C. ("Gandee") as follows:

1. One Communications denies the allegations of sentence 1 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of sentence 1 of that complaint, which reads in full as follows:

   > The Gandee Chiropractic Life Center, Inc., ("Gandee Chiropractic") owned and operated by Dr. William Steven Gandee, D.C. ("Gandee") in Summit County, Ohio, has held and utilized the phone number known as (330) 724-5521 for approximately 27 years prior to April of 2006.

2. One Communications denies the allegations of sentence 2 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of sentence 2 of that complaint, which reads in full as follows:

   > In 2006, AT&T was the phone company providing service to Gandee Chiropractic under the referenced phone number.

3. One Communications denies the allegations of sentence 3 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of that sentence, which reads in full as follows:

> Following a change of office location, Gandee contacted his phone provider, AT&T, and forwarded this phone number to the new location.

4. One Communications denies the allegations of sentence 4 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of that sentence, which reads in full as follows:

> Gandee shared the office space with Dr. Keith Ungar, D.C. ("Ungar") who was the lessee of the building where Gandee moved his practice.

5. One Communications admits that Ungar contacted it and asserted that he possessed authority to act regarding the phone number at issue, but denies the remaining allegation of sentence 5 of Gandee's complaint, which reads in full as follows, on the basis that evidence exists demonstrating that Ungar possessed Gandee's express or implied consent to the actions described therein, or in the alternative, that Gandee expressly ratified Ungar's actions as described therein.

> In September of 2006, Ungar contacted Choice One Communications and requested, without authority to do so, that he be placed on Gandee's account.

Further answering, One Communications attaches as Exhibit A hereto a letter of agency (LOA), signed by Ungar, in which Ungar asserts that he possesses authority to direct a Preferred Carrier Change (PIC) related to phone number 330-724-5521 and in which Ungar directs One Communications to pursue a PIC change for that number.

6. One Communications denies the allegations of sentence 6 of Gandee's complaint, which reads in full as follows, on the basis that evidence exists to demonstrate that Gandee consented to Ungar's action.

> Choice One Communications, without Gandee's consent, changed the contact information and removed Gandee's name from the account.

7. One Communications denies the allegation of sentence 7 of Gandee's complaint, which reads in full as follows, on the basis that Gandee either expressly or impliedly consented to Ungar's actions or in the alternative, that Gandee expressly ratified Ungar's actions as described therein.

> Gandee never gave the authority or permission to either AT&T or Choice One Communications for anyone to change the account name or contact Information on his phone number account.

8. One Communications admits that its records identify Ungar as the only account representative with authority to make changes regarding phone no. 330.724.5521 and further admits that without authorization by Ungar, it can not comply with Gandee's demand that it release that number to Gandee. Further answering One Communications denies the remaining allegations of sentence 8 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of sentence 8 of that complaint, which reads in full as follows:

> Gandee subsequently left this office location in March of 2008 and requested that his original phone number (330-724-5521) be returned to him for his own business use, but both Ungar and Choice One Communications have refused his request.

9. One Communications admits that its records identify Ungar as the only account representative with authority to make changes regarding phone no. 330.724.5521 and that its records have identified Ungar as the appropriate account representative since the date

the number was ported to it by AT&T. Further answering, One Communications affirms that it will act according to the lawful direction of the identified account representative or that of this Commission. Further answering One Communications denies the remaining allegation of sentence 8 of Gandee's complaint on the basis that One Communications lacks sufficient information to form a belief regarding the truth or falsity of those allegations, which read in full as follows:

> As a result of Choice One Communications' unauthorized changing of the account name and subsequent refusal to release the phone number, Gandee has lost, and continues to lose, a significant number of patients as well as thousands of dollars in revenue.

AFFIRMATIVE DEFENSES

10. To the extent that Complainant seeks money damages through its complaint, this Commission lacks subject matter jurisdiction over the subject matter of Complainant's allegations.
11. Complainant has failed to join Complainant's professional corporation as a necessary party to this action.
12. Complainant assumed the risk of Ungar's actions.
13. Complainant's claims are barred by the doctrine of estoppels.
14. Complainant was contributorily negligent.
15. Complainant is responsible for fraud against Respondent.
16. Complainant's claims are barred by laches.
17. Complainant's claims are barred by waiver.
18. Complainant's claims are barred by the doctrine of ratification.

Respectfully submitted,

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ONE COMMUNICATIONS, INC.

CERTIFICATION OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon counsel for complainant by depositing the same in the United States Mail, postage prepaid, addressed as follows, this 11th day of February, 2009.

Thomas A. Skidmore, Esq.
One Cascade Plaza
12th Floor
Akron, OH 44308

Michael D. Dortch

LETTER OF AGENCY

1. Subscriber's billing name: Center for Natural Medicine
2. Subscriber's billing address: 2828 S. Arlington Rd Akron, OH 44312
3. Each telephone number to be covered by the preferred carrier change order (list all numbers): 330-724-5521, 330-896-8500,

Existing Numbers: 330-245-1729, 330-475-0065, 330-475-0058, 330-644-1148, 330-644-7246, 330-644-9298, 330-644-9292, 330-645-3200, 330-645-7000

4. By submitting this LOA, I:

A. authorize Choice One Communications Inc. and/or its subsidiaries and/or authorized agents (collectively "Choice One") to act as my agent for the purpose of taking all actions hereunder in connection with my preferred carrier change;
B. warrant that I am free of any third-party obligation preventing me from doing so, and that I have the legal authority to execute this LOA;
C. desire to make Choice One my preferred carrier;
D. understand that only one carrier may be designated as my interstate or interLATA preferred interexchange carrier for any one telephone number;
E. understand that Choice One, my preferred carrier, will be the carrier directly setting my rates;
F. authorize Choice One to notify all appropriate parties, including my current local and/or long distance telephone company(ies), of this decision and to make the necessary changes for my current and future services without further permission;
G. direct my chosen intraLATA and/or intrastate/interstate/international long distance company(ies), if not Choice One, to comply with Choice One's current applicable access tariff(s). Choice One may obtain any records from my local, data, Internet, intraLATA long distance, and/or intrastate/interstate/international long distance phone company(ies) necessary to provide these services;
H. may be charged a tariffed fee for changing my long distance and/or local phone company(ies), and I understand that I may inquire of Choice One what fees, if any, will apply to these changes;
I. authorize Choice One and/or its authorized agents to make any and all inquiries necessary for the purpose of obtaining credit information.

Client Name: Keith S. Ungar

X Client Authorized Signature: [signature]

Print Name & Title: Keith S. Ungar Pres