

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 William Steven Gandee, D.C.,
4 Complainant,

5 vs.

6 Choice One Communications of Ohio, :
7 Inc., d/b/a One Communications :
8 Respondent. :Case No.

9 Brian Longworth, D.C., :09-51-TP-CSS
10 Complainant, :

11 vs. :

12 Choice One Communications of Ohio, :Case No.
13 Inc., d/b/a One Communications, :09-52-TP-CSS
14 Respondent. :

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16 PROCEEDINGS

17 before Jim Lynn, Attorney Examiner, at the
18 Public Utilities Commission of Ohio, 180 East
19 Broad Street, Hearing Room No. 11-D, Columbus,
20 Ohio, on Thursday, January 20, 2011, at 1:00
21 P.M.

22 - - -

23 Armstrong & Okey, Inc.
24 222 East Town Street, 2nd Floor
25 Columbus, Ohio 43215
 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

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APPEARANCES:

Mr. Thomas Skidmore
National City Center
One Cascade Plaza
12th Floor
Akron, Ohio 44308

On behalf of the Complainants.

Kravitz, Brown & Dortch, LLC
By Mr. Michael D. Dortch
65 East State Street
Suite 200
Columbus, Ohio 43215

and

Ms. Paula Foley
Regulatory Affairs Counsel
5 Wall Street
Burlington, Massachusetts 01803

On behalf of the Respondent.

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1 Thursday Afternoon,
2 January 20, 2011.

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4 ATTORNEY EXAMINER: The Public
5 Utilities Commission of Ohio has assigned for
6 hearing at this time and place Case No.
7 09-51-TP-CSS in the matter of William Steven
8 Gandee versus Choice One Communications of Ohio,
9 Inc., dba One Communications, and Case No.
10 09-52-TP-CSS in the matter of Brian Longworth
11 versus Choice One Communications of Ohio, Inc.,
12 dba One Communications.

13 My name is Jim Lynn and I have been
14 assigned to hear these cases. Mr. Dortch, you
15 have a preliminary matter?

16 MR. DORTCH: Thank you, Your Honor.
17 Your Honor, as a preliminary matter and before
18 appearances, Mike Dortch on behalf of One
19 Communications of Ohio, Inc. And I would move
20 the Bench to consolidate the matters of William
21 Steven Gandee versus Choice One Communications
22 of Ohio, Case No. 09-51-TP-CSS with the matter
23 of Brian Longworth versus Choice One
24 Communications of Ohio, Inc., Case No.
25 09-52-TP-CSS.

1 ATTORNEY EXAMINER: Thank you. Mr.
2 Skidmore, any objections to that motion?

3 MR. SKIDMORE: No objections.

4 ATTORNEY EXAMINER: The motion will
5 be granted. Thank you.

6 MR. DORTCH: Thank you, Your Honor.

7 ATTORNEY EXAMINER: At this point
8 then we will have the appearances of the
9 parties. Mr. Dortch.

10 MR. DORTCH: Michael Dortch with
11 co-counsel Paula Foley on behalf of Choice One
12 Communications Ohio, Inc., doing business as One
13 Communications.

14 ATTORNEY EXAMINER: Thank you. Mr.
15 Skidmore.

16 MR. SKIDMORE: Thomas Skidmore on
17 behalf of the complainants Brian Longworth who
18 is to my right and to his right is William
19 Gandee.

20 ATTORNEY EXAMINER: Thank you,
21 gentlemen. Given those matters then we are
22 ready to proceed. Mr. Skidmore, you will have
23 the opportunity to go first. Will you be
24 calling a witness?

25 MR. SKIDMORE: Yes, we will, Your

1 Honor. We are going to call Brian Longworth
2 first.

3 (WITNESS SWORN)

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5 BRIAN LONGWORTH

6 called as a witness on behalf of the
7 Complainants, being first duly sworn, testified
8 as follows:

9 ATTORNEY EXAMINER: Please take a
10 seat. And, Mr. Skidmore, please continue.

11 DIRECT EXAMINATION

12 By Mr. Skidmore:

13 Q. Mr. Longworth, if you could please
14 introduce yourself to Your Honor and the
15 participants today.

16 A. My name is Brian Longworth.

17 Q. Mr. Longworth, where do you
18 currently reside?

19 A. Jackson Township. That is in Stark
20 County, Ohio.

21 Q. And do you currently operate a
22 business?

23 A. Yes.

24 Q. And first of all why don't you tell
25 us a little bit about your educational

background.

A. I graduated from High School at Manchester which is in Summit County, went to the University of Akron, and then went on to chiropractic college in Atlanta, Georgia, a place called Life Chiropractic University, Life Chiropractic College. I graduated in 1988 and been in practice since.

I had ten years with my brother then I started my own practice in 1998 named Health First Chiropractic.

Q. Now, you are a graduate of the University of Akron, did you say?

A. Well, it was two years. You have to have two years of undergraduate work to get into chiropractic college.

Q. And then you have been a licensed chiropractor in the State of Ohio since 1988?

A. Yes.

Q. And have you ever had your license revoked or suspended?

A. No.

Q. And your license is current, you currently operate a chiropractic business in Akron; is that right?

1 A. Yes.

2 Q. What is the name of your
3 chiropractic business?

4 A. Health First Chiropractic.

5 Q. Are you the sole shareholder of
6 Health First Chiropractic?

7 A. Yes.

8 Q. And how long has that corporation
9 been in existence?

10 A. Since 1998.

11 Q. And at what location was Health
12 First Chiropractic located at in 1998?

13 A. 3577 South Arlington Road.

14 Q. That is currently where your
15 business is located today?

16 A. Yes.

17 Q. And the telephone number that you
18 had for Health First Chiropractic let's say in
19 1998 is what telephone number?

20 A. 330-896-8500.

21 Q. And how long has that been the phone
22 number for Health First Chiropractic?

23 A. Since 1998.

24 Q. And with what phone company has that
25 phone number be associated with since 1998?

1 A. AT&T.

2 Q. Okay. And from 1998 until now who
3 handles the decisions with regards to that
4 particular phone number on behalf of Health
5 First Chiropractic?

6 A. Me.

7 Q. And since 1998, Mr. Longworth --
8 well, your business moved at some point between
9 1998 and today; is that right?

10 A. Yes.

11 Q. And --

12 A. April of 2006.

13 Q. And where did your company move to?

14 A. 2828 South Arlington Road.

15 Q. And when you moved your practice in
16 the spring of 2006 -- or 2008?

17 A. April of 2006.

18 Q. 2006. What happened to your
19 telephone number with AT&T?

20 A. It was forwarded to that building.

21 Q. And who forwarded your telephone
22 number?

23 A. I did.

24 Q. And in the spring of 2006 did you
25 ever authorize another individual to change the

1 telecommunications company from anything but
2 AT&T?

3 A. No.

4 Q. After the spring of 2006 your
5 business moved back to its original location; is
6 that right?

7 A. In February of 2008.

8 Q. I am sorry. February of 2008. And
9 in February of 2008 if you would tell us what
10 happened when you attempted to forward your
11 phone.

12 A. I attempted to reverse the call
13 forwarding back to my office in February of --
14 probably February of 2008. And the number had
15 been switched over to Choice One without me
16 having any prior knowledge.

17 Q. So when you went to forward
18 the telephone number back to your location who
19 did you first contact?

20 A. AT&T.

21 Q. And you contacted AT&T to request
22 the number be forwarded back to the original
23 location?

24 A. Right.

25 Q. And what was your understanding as

1 to the status of that particular phone number
2 with AT&T when you attempted to do that?

3 A. My understanding was that the
4 forwarding would just be reversed, go back to
5 the original location. Unfortunately, that
6 wasn't the case.

7 Q. Okay. And what was the status of
8 the phone number with AT&T when you made that
9 request?

10 A. They no longer had -- they didn't
11 have the number anymore. It was under Choice
12 One. Or One Communications they said.

13 Q. And so after you were given that
14 information by AT&T then what did you do next?

15 A. I called One Communications.

16 Q. Okay. And do you recall
17 approximately when you called?

18 A. Probably the same day because I was
19 furious.

20 Q. And you called One Communications.
21 Do you remember who you called?

22 A. I don't know off the top of my head.
23 I had actually talked to various individuals,
24 but I don't know, I can't remember the names.

25 Q. And what were you told by One

1 Communications?

2 A. I wasn't the authorized -- I was not
3 authorized to have any authority over that phone
4 number, so I couldn't do anything.

5 Q. They told you that you could not
6 authorize the forwarding back of that phone
7 number to your original location?

8 A. Yes. I was not the authorizing
9 individual for the phone number anymore.

10 Q. Okay. And did you authorize someone
11 at some point since you originally obtained that
12 phone number in 1998 to change or move that
13 phone number --

14 A. No.

15 Q. -- somewhere else?

16 A. No.

17 Q. After you made the initial inquiry
18 in the spring of 2008 to Choice One
19 Communications do you recall what you were told
20 that you were to do from there?

21 A. They didn't really give me any
22 instruction I don't believe. They didn't tell
23 me anything. I was no longer the authorized
24 agent, so I had no authority over the phone
25 number.

1 So I called back to AT&T and they
2 don't have the number anymore, so I pretty much
3 didn't have any recourse. Obviously had to go
4 this route.

5 Q. Now, this is the business telephone
6 number for Health First?

7 A. Yes.

8 Q. And is this the number that patients
9 call?

10 A. Yes.

11 Q. And is this a phone number that you
12 have advertised?

13 A. Every advertising piece I ever did
14 was that phone number.

15 Q. And through that advertising that is
16 how patients contact you; is that right?

17 A. Sure.

18 Q. So, if you would tell us what
19 happened after February of 2008 with your
20 efforts to reobtain or have your phone number
21 forwarded back to the new location.

22 MR. DORTCH: Objection. Relevance.
23 If you review the complaint in this matter it is
24 a complaint that raises allegations of slamming.
25 Dr. Longworth has established the number has

1 been transferred away. He states it was
2 transferred away without his authorization.

3 Obviously there is more to that
4 story, but subsequent efforts really aren't
5 relevant to the substance of the complaint.

6 ATTORNEY EXAMINER: Mr. Skidmore, do
7 you want to ask that question a different way?

8 MR. SKIDMORE: Well, first I think
9 it's certainly relevant to the efforts of my
10 client attempting to contact Choice One
11 Communications and what their duty is with
12 regards to their investigation as to
13 unauthorized use of the telephone number. So, I
14 think it's certainly relevant to what his
15 communications were with Choice One
16 Communications in his efforts to reobtain his
17 telephone number.

18 ATTORNEY EXAMINER: Repeat
19 the question one more time.

20 Q. Dr. Longworth, after February of
21 2008, spring of 2008, tell us about the
22 communications that you had with Choice One in
23 trying to reacquire your phone number.

24 ATTORNEY EXAMINER: I will let that
25 question stand. Please go ahead.

1 A. I mean, my communication with them
2 was limited so that until there was a hearing
3 that the Court said that they would have to
4 bring the phone number back to me, which was in
5 May of '09.

6 Q. When you had conversations with
7 Choice One Communications did you inform them
8 that you had never given anyone authority to
9 transfer your phone number?

10 A. Yes. The initial call I said I
11 never authorized that. But, it didn't seem to
12 matter.

13 ATTORNEY EXAMINER: If I can ask
14 the witness, what hearing are you --

15 THE WITNESS: Well, it was a
16 hearing that was in Akron basically to get
17 the phone number back to my name.

18 ATTORNEY EXAMINER: Hearing at the
19 local court level?

20 THE WITNESS: Yes.

21 MR. SKIDMORE: For background
22 information, there was a case in Summit County
23 Common Pleas Court, I believe we referred to it
24 in some of the filings in the documentation when
25 we filed this case, in which there was a hearing

1 that was held by the Court to determine whether
2 a gentleman by the name of Keith Ungar who had
3 signed a letter of authority had authorization
4 from either Dr. Longworth or Dr. Gandee to port
5 the phone number from AT&T to Choice One.

6 ATTORNEY EXAMINER: I just wanted to
7 be clear for the record. Please go ahead.

8 MR. DORTCH: Your Honor, I would ask
9 to address one more thing about the hearing, if
10 I might. The hearing that we referred to a
11 moment ago occurred in the Summit County Court
12 of Common Pleas, and the lone object of that
13 hearing was to determine whether Dr. Ungar or
14 Dr. Longworth had the legal right to control the
15 fate of that telephone number.

16 One Communications participated in
17 that hearing by explaining the facts and law to
18 the Magistrate Judge conducting the hearing, and
19 One Communications took no position one way or
20 another on who should or should not have the
21 right to direct anything at any point in time
22 with regard to that number.

23 ATTORNEY EXAMINER: All right. Mr.
24 Skidmore.

25 Q. So, Dr. Longworth, after the spring

1 of 2008 -- well, first of all let me ask you
2 this. Do you know what was happening to the
3 patient calls that were going to the telephone
4 number in question in this case?

5 A. They remained in that building with
6 Dr. Ungar.

7 Q. And so you were not receiving direct
8 telephone calls at your new location?

9 A. No.

10 Q. Is that right? And how long a
11 period of time -- and we are talking again about
12 phone number 330-896-8500; is that right?

13 A. Yes.

14 Q. And from the spring of 2008 the
15 patient calls then continued to go to the other
16 location?

17 A. Correct.

18 Q. And they were being answered by who?

19 A. Dr. Ungar's office.

20 Q. And what was the name of the
21 business that Dr. Ungar was running out of that
22 location?

23 A. Advanced Pain Relief and Wellness
24 Center.

25 Q. And Dr. Ungar is also a

1 chiropractor; is that right?

2 A. Correct.

3 Q. And was Dr. Ungar then referring
4 those patients to you?

5 A. No.

6 Q. And after the spring of 2008 when
7 was the next time that you were able to obtain
8 the telephone number 330-896-8500?

9 A. I want to say it was July of '09,
10 August of '09.

11 Q. So that is approximately --

12 A. Sixteen months.

13 Q. Sixteen months later?

14 A. Yes.

15 ATTORNEY EXAMINER: You say 16
16 months, Dr. Longworth. You mean 16 months after
17 the number was no longer with AT&T or --

18 THE WITNESS: Sixteen months from
19 the time I left that facility and went back to
20 my old one.

21 ATTORNEY EXAMINER: Okay. Thank
22 you.

23 Q. So, it's 16 months approximately
24 from the time that you requested Choice One
25 Communications after you had spoken to AT&T?

1 Strike that. From the spring of 2008 --

2 A. February of '08.

3 Q. You made an initial request to have
4 your phone transferred back to AT&T or
5 originally?

6 A. Yes.

7 Q. AT&T then referred you to Choice One
8 Communications or somehow you got to Choice One.

9 A. Right.

10 Q. Then it was approximately 16 months
11 after you made that initial request to Choice
12 One until you actually received your phone
13 number back in August of 2009?

14 MR. DORTCH: Objection. Relevancy,
15 Your Honor. The number was either slammed or it
16 was not slammed. The amount of time it took for
17 Dr. Longworth to prosecute an action against Dr.
18 Ungar in which a determination was made about
19 who did or did not control that number is not
20 relevant to the issue of slamming.

21 ATTORNEY EXAMINER: I will overrule
22 that. I think what we are trying to do here is
23 determine a time line when things occurred,
24 which will be of value when the Commission
25 finally looks at the outcome, a summary of

1 the case. So, I appreciate your comments, but
2 overrule that. Mr. Skidmore.

3 Q. So then during that 16-month period
4 you had continued -- or tell me about the
5 advertising for that telephone number.

6 A. We got a new phone number.
7 Basically started over.

8 Q. Okay.

9 A. And, I mean, I don't know, following
10 the hearing, which ruled in my favor, I
11 requested Choice One to give me back the number
12 in May of '09 and it took until -- I had to end
13 up doing -- they didn't even release the number
14 then.

15 Q. So, in May of 2009 the court in
16 Summit County ruled that Dr. Ungar did not have
17 the authority to transfer the phone number from
18 AT&T to Choice One Communications?

19 MR. DORTCH: Objection. Hearsay.
20 Your Honor, if I may, One Communications is
21 prepared to stipulate that the Magistrate Judge
22 conducting the proceedings issued a report and
23 recommendation I believe it was May 2009 that
24 was adopted by the Judge in that proceeding
25 several weeks later, and I believe that that

1 occurred in May of 2009. I am sorry, I don't
2 have those pleadings before me.

3 MR. SKIDMORE: Your Honor, I
4 actually have the pleadings we are discussing.
5 We may be able to mark it as an exhibit and
6 present them so you have the proper time line.
7 I can provide those to the Court and to Mr.
8 Dortch.

9 ATTORNEY EXAMINER: All right. We
10 will do that.

11 MR. SKIDMORE: Can I approach, Your
12 Honor?

13 ATTORNEY EXAMINER: Yes. You were
14 going to point to a certain page?

15 MR. SKIDMORE: Yes. In Exhibit 5,
16 Your Honor, without getting into too lengthy of
17 reading of the entire opinion because it's five
18 pages long, I will bring your attention to page
19 4 under conclusions of law. So that the Court
20 is aware of the specific issue that was before
21 the Court then, under item No. 1, starting in
22 the middle at the end of line 1, it says "The
23 sole issue for the Magistrate for ruling on
24 limited order of reference in a hearing
25 conducted before him on May 14th, 2009 was

1 whether or not the transfer of phone number
2 330-896-8500 by the letter of agency described
3 above was authorized by Dr. Longworth and that
4 Dr. Ungar had complete authority to sign the
5 document and otherwise represent to the phone
6 carriers that he was empowered to make such
7 transfer."

8 So that pretty much summarizes the
9 particular issue. Then again without reading
10 the whole thing, basically item 2 states that it
11 specifically concluded that "Dr. Ungar was never
12 authorized directly or indirectly in writing or
13 by oral agreement between himself and Brian
14 Longworth wherein Brian Longworth directly or
15 indirectly authorized Keith S. Ungar to transfer
16 Dr. Longworth's phone number 330-896-8500 into
17 the name of Center of Natural Medicine as was
18 accomplished by the false representations made
19 by Keith S. Ungar in the letter of agency
20 described above."

21 ATTORNEY EXAMINER: Having said
22 that, Mr. Dortch, does that accomplish what --

23 MR. DORTCH: I am sorry, Your Honor.

24 ATTORNEY EXAMINER: Given what Mr.
25 Skidmore was reading how does that mesh with

1 what you were stating before you were handed
2 this exhibit? But you were mentioning something
3 about this being adopted by the Summit County
4 Court and so forth.

5 MR. DORTCH: Correct, Your Honor.
6 And Mr. Skidmore has now read a limited portion
7 of the Magistrate's decision, and I simply would
8 point out that the exhibit that Mr. Skidmore has
9 also included in his package marked as Exhibit 6
10 is the Judge's decision adopting the
11 Magistrate's report and recommendation as of
12 June 9, 2009 just for purposes of clarifying the
13 dates that things occurred.

14 I will withdraw my objection based
15 upon the hearsay to Exhibits 5 and 6.

16 ATTORNEY EXAMINER: All right.
17 Thank you for producing the exhibit at that
18 time. Please go ahead, Mr. Skidmore.

19 Q. So, Dr. Longworth, you participated
20 in the hearing, and according to the decision
21 the court had ruled that the phone number was to
22 be --

23 MR. DORTCH: Objection. The Court's
24 ruling is clear from the decision. I don't
25 think Dr. Longworth needs to paraphrase it.

1 MR. SKIDMORE: I will withdraw it.

2 Q. Dr. Longworth, the date of the
3 Magistrate's decision of May 19th, 2009, page 5
4 states that "The party known as Choice One
5 Communications, the phone carrier in this
6 matter, is ordered and otherwise directed to
7 forthwith transfer the ownership of the records
8 of such entity and physically allow the change
9 of the phone number, that being 330-896-8500, in
10 the name of Brian Longworth, and to ensure that
11 the corporate records of such business entity
12 show that Keith S. Ungar or any other
13 aforementioned business entities has no
14 ownership in such name."

15 Do you recall that ruling?

16 A. Yes.

17 Q. Okay. Tell me from the date of this
18 ruling in May of 2008 --

19 A. Wasn't it June 9th?

20 Q. Well, this decision came out May
21 19th, 2009. Sorry. And from the date of that
22 decision in May of 2009 you received your phone
23 numbers back -- your phone number back when?

24 A. I want to say it was at least July
25 if not August. But, it was by no help from the

1 Choice One. I can tell you that much.

2 Q. Tell he how you got --

3 A. I got my phone numbers by faxing
4 that court order to AT&T so AT&T could approach
5 Choice One, showing them the order, and
6 eventually that is what I had to do without --
7 they didn't help me, give any direction,
8 nothing.

9 Q. And that happened you believe
10 sometime in July or August of 2009?

11 A. I think July.

12 ATTORNEY EXAMINER: When you say
13 they --

14 THE WITNESS: Choice One.

15 ATTORNEY EXAMINER: All right.

16 MR. SKIDMORE: No further questions.

17 ATTORNEY EXAMINER: Okay. Mr.
18 Dortch.

19 MR. DORTCH: Thank you, Your Honor.
20 Thank you.

21 CROSS-EXAMINATION

22 By Mr. Dortch:

23 Q. Good afternoon, Dr. Longworth.

24 A. Good afternoon.

25 Q. Dr. Longworth, you testified a few

1 minutes ago there came a point in time when you
2 relocated your business from 3577 South
3 Arlington Road to 2828 South Arlington Road. Do
4 you recall testifying to that?

5 A. Yes.

6 Q. Now, the fact is you didn't simply
7 relocate your business; did you?

8 A. We joined.

9 Q. You joined practices?

10 A. The three of us joined practices.

11 Q. Who were the three?

12 A. Dr. Gandee, Dr. Ungar and myself.

13 Q. So Dr. Gandee, who is a complainant
14 in Case No. 09-51 and Dr. Ungar. And who is Dr.
15 Ungar?

16 A. Dr. Ungar was the person who
17 actually had -- he was the occupant of that
18 facility we removed to.

19 Q. So you and Dr. Gandee combined your
20 practices with Dr. Ungar at the location
21 controlled by Dr. Ungar; correct?

22 A. I wouldn't say combined. We all
23 practiced under the same facility, yes.

24 Q. Practice in the same facility. Did
25 you practice under the same name?

1 A. For advertising purposes.

2 Q. For advertising purposes. And in
3 fact you, Dr. Gandee, you, Dr. Longworth, and
4 Dr. Ungar all practiced under the name Advanced
5 Pain and Wellness Center; correct?

6 A. Yes.

7 Q. And you testified earlier that Dr.
8 Ungar did business as Advanced Pain and Wellness
9 Center, but in fact wasn't he previously doing
10 business as the Center for Natural Medicine?

11 A. He did both.

12 Q. Thank you. And, so, for some
13 large -- well, strike large. For some period of
14 time you, Dr. Gandee and Dr. Ungar advertised
15 your business collectively under one name,
16 Advanced Pain and Wellness Center?

17 A. Yes.

18 Q. And to the best of your knowledge
19 then there was no way the public would know that
20 Advanced Pain and Wellness Center was anything
21 but a single entity. Is that fair?

22 A. Yes.

23 Q. Now, you testified that you
24 relocated your practice in was it September
25 2008? April 2008, I think.

1 A. When I moved back to my old
2 business?

3 Q. No. I am sorry. When you first
4 moved from your original location to Dr. Ungar's
5 location.

6 A. It was April of '06.

7 Q. April of '06. I apologize. And
8 what time did Dr. Gandee relocate his practice?
9 Was it at the same time?

10 A. Yes.

11 Q. So he also moved in April of '06?

12 A. Yes.

13 Q. Did you gentlemen have a joint
14 operating agreement or a partnership agreement
15 or any documents describing how you would
16 operate your practices?

17 A. I would have to say, no. I mean,
18 there was -- we talked and things were written
19 down, but nothing was official

20 Q. You didn't consult anybody to draw
21 up any papers for you. You just had a handshake
22 agreement. Is that fair enough?

23 A. For the most part, yes.

24 Q. Well, now, all three of you were in
25 the same location starting April of 2006. And

1 you don't leave until February of 2008. Do I
2 recall that testimony accurately?

3 A. Yes.

4 Q. So, nearly two full years you are
5 there; correct?

6 A. Twenty-two months.

7 Q. Twenty-two months. How did you
8 divide expenses?

9 A. We made the payment out of a single
10 account.

11 Q. So you paid it out of a single
12 account?

13 A. Overhead was paid out of a single
14 account, yes.

15 Q. And were one of the three of you
16 responsible for seeing that the bills got paid?

17 A. Dr. Ungar did it most.

18 Q. Dr. Ungar did that?

19 A. Most of the time, yes, although he
20 had someone --

21 Q. So you three had an office manager
22 or someone?

23 A. He had someone that worked for him
24 to pay the bills sometimes, yes.

25 Q. Dr. Ungar had someone that was in

1 his employ who paid these bills?

2 A. At times.

3 Q. You testified that when you moved
4 you had your AT&T number forwarded.

5 A. Correct.

6 Q. Who was paying your AT&T bill after
7 it was forwarded?

8 A. The corporation. The three of us.
9 The corporation.

10 Q. So, if I understand correctly
11 Advanced Pain and Wellness Center was paying
12 your AT&T bill?

13 A. Correct. Well, me being part of
14 that Advanced Pain and Wellness Center you
15 understand as well; right?

16 Q. I do. Effectively you were a
17 corporation. I am sorry. Advanced Pain and
18 Wellness Center was a corporation; was it?

19 A. Actually I am not sure. I don't
20 think it was -- I don't know. I don't know.

21 Q. So you have no --

22 A. It was the name that Ungar did his
23 chiropractic business under.

24 Q. You don't know sitting here today
25 whether it was a corporate entity if you owned

1 any shares in it?

2 A. We actually were a corporate entity
3 called GLU Corporation.

4 Q. Who was GLU Corporation?

5 A. That was the three of us.

6 Q. Gandee, Longworth and Ungar?

7 A. Yes.

8 Q. Was Dr. Ungar the president of GLU
9 Corporation?

10 A. No.

11 Q. Who was the president of GLU
12 Corporation?

13 A. I don't know that we had one.

14 Q. Did you have --

15 A. I mean, like I said, this was set up
16 and I don't know if it ever was filed properly
17 or not to be honest with you because he had
18 somebody else do that as well.

19 Q. And when you say he had somebody
20 else, you mean Dr. Ungar?

21 A. Yes.

22 Q. So Dr. Ungar has his own location,
23 he rents the location. Dr. Ungar controls the
24 location that you all moved into; correct?

25 A. How do you mean controlled?

1 Q. He rented it?

2 A. Well, until we moved in then we
3 rented it.

4 Q. Did he move his practice to that
5 location?

6 A. He was paying rent before we moved
7 there, and then when we removed in we all three
8 paid rent.

9 Q. You all three divided the rent?

10 A. Yes. Well, paid it out of one
11 corporation.

12 Q. And you keep referring --

13 A. Well, call it an account.

14 Q. So you are not sure whether GLU
15 Corporation was actually set up?

16 A. Properly.

17 Q. You don't know whether you owned any
18 shares in GLU Corporation?

19 A. If it was set up I would own a
20 third.

21 Q. Did you ever receive a certificate?

22 A. I don't believe so.

23 Q. Share certificate?

24 A. No.

25 Q. Was there a bank account established

1 for GLU Corporation?

2 A. Yes.

3 Q. You believe so?

4 A. There was.

5 Q. Who established that bank account?

6 A. Me and Dr. Ungar.

7 Q. You and Dr. Ungar, you went
8 physically to the bank to do so together?

9 A. Yes.

10 Q. Who were the signatories on that
11 account?

12 A. All three of us.

13 Q. And all expenses of all three
14 practices were paid out of that account?

15 A. Correct.

16 Q. Now, you are aware that Dr. Ungar
17 arranged to have the AT&T account that was held
18 in your name transferred to One Communications
19 Corp?

20 A. Was I aware?

21 Q. Yes.

22 A. No.

23 Q. Are you aware of that today?

24 A. What do you mean? He did it.

25 Q. Do you know he did it?

1 A. I do now.

2 Q. And you are not suggesting here
3 today that One Communications just reached out
4 and grabbed your account and move it?

5 A. I don't know how it happened to be
6 honest.

7 Q. Are you aware that Dr. Ungar
8 submitted a letter of agency?

9 A. I am aware because of the hearing
10 that we had in Akron, yes. That is how I found
11 out about that letter.

12 Q. And that letter of agency was
13 submitted to One Communications in October of
14 2006; correct?

15 MR. SKIDMORE: Objection.

16 A. I don't know.

17 Q. You don't know?

18 A. I mean --

19 MR. SKIDMORE: Based on his
20 knowledge. I think he is asking the question --
21 I thought he testified he didn't know.

22 A. I only --

23 ATTORNEY EXAMINER: What is your
24 question again, Mr. Dortch?

25 Q. I don't recall the precise question.

1 I believe my question was are you aware that in
2 October of 2006 Dr. Ungar submitted a letter of
3 agency to One Communications?

4 A. I am aware now, yes.

5 Q. And you moved your practice in April
6 of 2006?

7 A. Correct.

8 Q. Your AT&T bill was paid until
9 September of 2006 I presume?

10 A. It was until February of '08 because
11 my fax number wasn't transferred so I continued
12 to get a bill.

13 Q. So you continued to get billed by
14 AT&T?

15 A. For the forward of the fax.

16 Q. Did you notice a difference in your
17 AT&T bill?

18 A. I didn't look at it.

19 Q. Do you have an office manager?

20 A. No.

21 Q. Who pays your bills?

22 A. Now, me.

23 Q. Did you notice if your AT&T bill
24 diminished at some point in time while you were
25 still --

1 A. I didn't pay the bill at that time.
2 I didn't see it.

3 Q. Let me finish my question then you
4 can go ahead and answer. Okay?

5 A. Sorry.

6 Q. Thanks.

7 A. No problem.

8 Q. At any time while you were with Dr.
9 Ungar and still practicing out of that location
10 did you notice that your AT&T bill had
11 diminished?

12 A. No.

13 Q. And this is because Dr. Ungar was
14 paying your bills?

15 A. Yes. Pretty much.

16 Q. I understand the relationship
17 between you, Dr. Gandee and Dr Ungar proved
18 unsatisfactory. Is that fair?

19 A. Yes.

20 Q. What were the issues?

21 A. Financial for me.

22 Q. Did the relationship deteriorate
23 between you, Dr. Gandee and Dr. Ungar before you
24 made the decision to leave?

25 MR. SKIDMORE: Objection as to the

1 relevancy of this particular line of questioning
2 in regards to the phone number in this case.

3 ATTORNEY EXAMINER: Repeat
4 the question again or state it different.

5 MR. DORTCH: I will repeat
6 the question. The question was whether the
7 relationship between Dr. Ungar, Dr. Gandee and
8 Dr. Longworth had deteriorated prior to Drs.
9 Ungar and Gandee leaving the location. I am
10 asking the question as part of the foundation
11 that I would like to lay to explain the ultimate
12 hostility between Dr. Longworth, Gandee and
13 Ungar that resulted in the need for a court
14 ruling on who was entitled to possess this
15 telephone number.

16 ATTORNEY EXAMINER: I will let the
17 question stand.

18 MR. DORTCH: Thank you, Your Honor.

19 A. You will have to repeat it.

20 Q. No problem. I will try it again.
21 I realize it was long. Dr. Longworth, the
22 question is pretty simple. At some point in
23 time the relationship between you, Dr. Gandee
24 and Dr. Ungar began to deteriorate.

25 A. Yes.

1 Q. Did it not? Was that brief and
2 ugly, meaning a month or so before you decided
3 to leave, or was this something that occurred
4 over a period of time?

5 A. I would say it was more brief.

6 Q. And the result was that you decided,
7 you and Dr. Gandee both decided you were pulling
8 up stakes and leaving; correct?

9 A. Correct.

10 Q. Did Dr. Ungar take action to try to
11 stop you from doing so?

12 A. Yes.

13 Q. What did he do?

14 A. Filed a restraining order.

15 Q. He sought and obtained a temporary
16 restraining order?

17 A. Yes.

18 Q. That TRO was ultimately dissolved;
19 correct?

20 A. Yes.

21 Q. What were you restrained from doing
22 there for a period?

23 A. Leaving.

24 Q. From leaving.

25 MR. SKIDMORE: Your Honor, based on,

1 I mean, without having the actual restraining
2 order, I would like to inform the Court that it
3 was an ex parte, illegal order that was obtained
4 that was ultimately dissolved for the failure of
5 Dr. Ungar to notify my clients of any type of
6 potential hearing, it was ultimately dissolved
7 and ultimately denied.

8 ATTORNEY EXAMINER: Okay.

9 MR. DORTCH: Well, the injunction
10 was denied, but a restraining order, properly or
11 improperly, had in fact been entered; is that
12 correct?

13 ATTORNEY EXAMINER: All right.
14 Thank you.

15 MR. SKIDMORE: That is true.

16 THE WITNESS: Yes.

17 ATTORNEY EXAMINER: Thank you.

18 Q. In fact, Dr. Ungar locked you and
19 Dr. Gandee out of the practice; correct?

20 A. After we had moved. In other words,
21 we still had some possessions there.

22 Q. And while you had possessions there
23 you chained down your equipment; is that
24 correct.

25 A. A specific piece.

1 Q. A specific piece. And you were
2 refused access to the computer system; correct?

3 A. The server.

4 Q. The server. Okay. And when you
5 asked him -- I don't know Dr. Ungar's first
6 name.

7 A. Keith.

8 Q. Keith. When you asked him, Keith,
9 why don't you just let go of my telephone
10 number, let it get ported back to me what did he
11 say?

12 MR. SKIDMORE: Objection. Hearsay.

13 A. I don't know.

14 ATTORNEY EXAMINER: I would agree
15 that is hearsay.

16 Q. Did you ask Dr. Ungar to release
17 the telephone number and allow you to retake it?

18 A. I think I did, yes.

19 Q. Did he respond?

20 A. I think he said I will think about
21 it.

22 Q. Did he ever release it to your
23 knowledge?

24 A. No.

25 Q. So, in fact, he refused to release

1 it, didn't he? In fact, you had to have a
2 hearing that we referred to earlier in Summit
3 County Court of Common Pleas for the Court to
4 determine whether Dr. Ungar controlled that
5 number or you did; correct?

6 A. Yes.

7 Q. And at that hearing Dr. Ungar
8 insisted that he had the authority to control
9 that number; did he not?

10 A. I believe so.

11 MR. SKIDMORE: Objection. Again we
12 are way off of the particular issue in this
13 case. We are kind of relitigating a case that
14 has already been litigated in Summit County.

15 MR. DORTCH: I have know -- I am
16 sorry. I thought you were finished.

17 MR. SKIDMORE: We have a finding
18 from the Summit County court that has factual
19 findings with regards to the relationship of the
20 parties and what actually occurred in Summit
21 County. I am not sure I understand the
22 relevance of this particular line of
23 questioning.

24 ATTORNEY EXAMINER: Mr. Dortch.

25 MR. DORTCH: The relevance, Your

1 Honor, is Mr. Skidmore and his clients' intent,
 2 if they can do so, to hold my client responsible
 3 for some 16 to 18 months of damages ultimately
 4 as a result of what they allege to be a slamming
 5 issue. The fact of the matter is we are
 6 attempting to show that we had a letter of
 7 agency that conforms to the FCC rules and
 8 regulations that was issued to us, that we acted
 9 on that letter of agency; that when the
 10 gentlemen's business relationship fell apart the
 11 reason why Drs. Longworth and Gandee were unable
 12 to recover their telephone numbers is because
 13 their business partner refused to relinquish it
 14 to them.

15 And as I am about to turn to
 16 the fact of the matter is that my client
 17 relinquished Dr. Longworth's telephone number
 18 approximately 30 days after the court order
 19 determined which of these gentlemen was entitled
 20 to control the number.

21 ATTORNEY EXAMINER: That was a very
 22 detailed answer, but I lost track of what
 23 the initial question was

24 MR. DORTCH: Well, the objection was
 25 one of relevancy.

1 ATTORNEY EXAMINER: And the question
2 again was?

3 MR. DORTCH: I believe I have lost
4 track of the question now.

5 (QUESTION READ)

6 ATTORNEY EXAMINER: I will let that
7 question stand.

8 MR. DORTCH: Thank you, Your Honor.

9 A. I believe he did.

10 Q. Now, we had a little dialogue
11 earlier about the orders that where issued in
12 that case that Dr. Ungar filed against you and
13 Dr. Gandee. Do you recall that discussion?

14 A. Yes.

15 Q. And in fact the Magistrate's order
16 was issued in May 2009, and the judgement of
17 the Court was issued in June of 2009; correct?

18 A. Yes.

19 Q. You said that you had to fax AT&T a
20 copy of the Court's order.

21 A. Yes.

22 Q. Do you know when you did so?

23 A. After several attempts to get my
24 phone number I got somebody from AT&T that said
25 that would probably be the best way.

1 Q. You said several attempts to get
2 your phone number. Several attempts through
3 whom?

4 A. Both AT&T and Choice One.

5 Q. And do you know when AT&T submitted
6 a port order to Choice One?

7 A. I don't.

8 Q. But in any event you believe that
9 you obtained your telephone number back at some
10 point in time probably July 2009?

11 A. Late July, yes. I am guessing
12 again. I don't know the exact --

13 ATTORNEY EXAMINER: That Court
14 order, did you ever fax it to anyone at Choice
15 One or --

16 THE WITNESS: I did with AT&T.

17 ATTORNEY EXAMINER: Just with AT&T.
18 Okay.

19 Q. Do you recall completing a port
20 order for AT&T?

21 A. I don't know. No, I don't know.

22 Q. So you don't know whether you ever
23 actually provided AT&T with a letter of agency?

24 A. I wasn't told I needed to. I don't
25 recall doing that, no.

1 MR. DORTCH: Your Honor, I have no
2 more questions for Dr. Longworth.

3 ATTORNEY EXAMINER: Thank you, Dr.
4 Longworth.

5 THE WITNESS: Sure.

6 ATTORNEY EXAMINER: Mr. Skidmore.

7 MR. SKIDMORE: I have a couple more
8 follow-up questions.

9 REDIRECT EXAMINATION

10 By Mr. Skidmore:

11 Q. Dr. Longworth, is it your testimony
12 that Choice One Communications never voluntarily
13 relinquished the phone number back to you?

14 A. Yes.

15 MR. DORTCH: Objection.

16 ATTORNEY EXAMINER: What basis?

17 MR. DORTCH: Your Honor, I don't
18 know how Dr. Ungar could possibly testify to
19 what my client, a corporate entity, did
20 voluntarily or involuntarily.

21 ATTORNEY EXAMINER: I will let the
22 question stand. Ask the question again.

23 Q. The question was, Dr. Longworth,
24 Choice One Communications never voluntarily
25 relinquished the telephone number back to you;

1 is that correct?

2 A. Correct.

3 Q. And since 1998 your corporate
4 entity, Health First Chiropractic, has remained
5 as a valid corporation in the State of Ohio?

6 A. Correct.

7 Q. So, when you moved your practice to
8 2828 South Arlington Road Health First
9 Chiropractic remained as a valid Ohio
10 corporation.

11 A. Correct.

12 Q. As a matter of fact, some of your
13 billing to your patients was still billed within
14 that --

15 A. All my billing was still billed
16 under my corporate entity.

17 MR. SKIDMORE: Nothing further.

18 ATTORNEY EXAMINER: I have a few
19 questions for you, sir.

20 EXAMINATION

21 By the Attorney Examiner:

22 Q. Just to refresh my memory and
23 summarize some things for the record, you
24 indicated that you joined what I will call
25 the combined practice, three together.

1 A. That's right.

2 Q. At that point in time the telephone
3 number you had for so many years was still --
4 your carrier was still AT&T and that you didn't
5 become aware that that number -- the carrier for
6 that number was changed to One Communications
7 until you decided to left the combined practice.

8 And you are indicating that while
9 you had your own practice prior to joining
10 the combined practice, when you had your own
11 practice you paid the bills.

12 A. Yes.

13 Q. But when you joined the combined
14 practice you no longer actually saw the bills
15 that came in for that telephone number.

16 A. That's correct.

17 Q. And when you did leave the combined
18 practice and you went back to another physical
19 location and you attempted to get that number
20 transferred to your new location, the final
21 location, who did you contact again to try and
22 get that number back?

23 A. AT&T first.

24 Q. You tried AT&T. Then apparently
25 they informed you --

1 A. They no longer had control of it.

2 Q. And how did you find it was a Choice
3 One number? Do you recall?

4 A. They told me.

5 Q. Choice One?

6 A. No. The guy at AT&T.

7 Q. Okay. When you contacted Choice One
8 then that was just by telephone; correct?

9 A. Right.

10 Q. Did you make more than one call to
11 them? Do you recall?

12 A. I called the local office, then I
13 think I called an 800 number.

14 Q. And the answer they gave you was?

15 A. I had no authority over that number.

16 Q. You had no authority. Okay. You
17 eventually then because of that Magistrate's
18 decision and the local court adopting that
19 decision in Summit County, you obtained a
20 number, a new location again with AT&T and it
21 was through faxing a copy of that court decision
22 to AT&T.

23 A. Correct.

24 Q. But you never actually sent a copy
25 of that court decision to Choice One?

1 A. I talked to people from Choice One.

2 Q. Do you remember when you talked to
3 them?

4 A. That wasn't -- I think -- I am not
5 positive.

6 Q. Mr. Skidmore indicated the time
7 line.

8 A. That particular time, May, early
9 June, you know, Choice One was contacted and I
10 believe they said you have to contact AT&T or
11 whatever. And it was kind of a back and forth
12 thing. A lot of phone calls were made, lots of
13 this and that. I can't recall specifically.

14 Q. I understand. Whatever you can
15 remember.

16 MR. SKIDMORE: Your Honor, to
17 clarify the point, Choice One was a party to the
18 case in Summit County, so attorney Dortch would
19 have received a copy of the Court finding as
20 being an attorney of record in that case.

21 And in addition to that, I can
22 supplement the record later with e-mails that I
23 sent to attorney Dortch requesting the number
24 be transferred.

25 ATTORNEY EXAMINER: Thank you. Let

1 me see if I have anymore questions. I have no
2 further questions. Thank you for your
3 testimony. Let's go off the record for a
4 minute.

5 (DISCUSSION OFF THE RECORD)

6 (RECESS TAKEN)

7 (WITNESS SWORN)

8 MR. SKIDMORE: We call Steven
9 Gandee.

10 - - -

11 WILLIAM S. GANDEE

12 called as a witness on behalf of the
13 Complainants, being first duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 By Mr. Skidmore:

17 Q. Dr. Gandee, if you could state your
18 full name and introduce yourself to the parties
19 here.

20 A. My name is William s. Gandee, I have
21 been a chiropractor for 30 years in the Akron,
22 Ohio area.

23 Q. And you have been a chiropractor
24 licensed here in the State Ohio for 30 years?

25 A. Yes.

1 Q. And, Dr. Gandee, could you tell us
2 the if name of the chiropractic practice that
3 you have had is incorporated.

4 A. Gandee Chiropractic Life Center
5 Incorporated.

6 Q. And how long has that company been
7 in existence?

8 A. About 30 years.

9 Q. And that company operated under
10 the telephone number what?

11 A. 724-5521.

12 Q. Area code 330?

13 A. Yes. Back in them days we didn't
14 say area code.

15 Q. And you had that phone number for
16 how long?

17 A. From the beginning.

18 Q. Okay. Besides the time frame
19 involved in this case you had it for
20 approximately 30 years?

21 A. Yes.

22 Q. Any other telephone numbers
23 associated with your practice let's say up until
24 the spring of 2006?

25 A. Gandee Chiropractic Practice?

1 Q. Right.

2 A. I had a fax machine line.

3 Q. But that was the primary telephone
4 number for that business?

5 A. That was the only phone number, yes.
6 I have other numbers, but they all rolled into
7 that number.

8 Q. Dr. Gandee, where was Gandee
9 Chiropractic Life Center located?

10 A. 2050 South Arlington Road.

11 Q. And throughout the history of Gandee
12 Chiropractic Life, the corporate entity, have
13 you been the only sole shareholder of that
14 corporation?

15 A. Yes.

16 Q. And in the spring of 2008, you heard
17 the testimony Dr. Longworth, and try to condense
18 some of the testimony, you moved the location of
19 your practice; is that right?

20 A. '06, yes.

21 Q. And you moved in '06 and moved into
22 common space with who?

23 A. Dr. Longworth and Dr. Ungar.

24 Q. And at the time that you moved your
25 space your telephone number was with what

1 telecommunications provider?

2 A. AT&T.

3 Q. And how long had you --

4 A. The entire time.

5 Q. All right. So you had AT&T for the
6 entire time that you were Gandee Chiropractic
7 Life?

8 A. Yes.

9 Q. And when you moved locations from
10 250 South Arlington to 2028 South Arlington what
11 did you do with your phone number?

12 A. Very simply just rolled it over to
13 that office address.

14 Q. When you say simply rolled it over,
15 tell us -- first of all, are you the one, the
16 administrator at your office that would have
17 taken care of that?

18 A. Yes.

19 Q. And tell us how you do that. You
20 call AT&T?

21 A. AT&T, called them and asked them
22 to -- any calls that come into my 724-5521, let
23 it ring at the other new location.

24 Q. Did at that time you ever grant
25 authority to any other individual to make

1 changes to your directives to AT&T on your
2 phone?

3 A. No. I didn't do that.

4 Q. So in the spring of 2006 when you
5 moved you contacted AT&T, you had the phone
6 number rolled to the new location?

7 A. Yes.

8 Q. All right. And then I think your
9 testimony was that some 22 months later
10 the practices separated again, and tell me what
11 happened with your telephone number.

12 A. I learned that I no longer
13 controlled or managed that phone number.

14 Q. Tell me how you learned that.

15 A. I called AT&T and told them we were
16 going to a new location. They said that I no
17 longer managed that phone number. They didn't
18 even have it anymore.

19 Q. And then what did you do after that?

20 A. After I got off the floor I tried to
21 find out what happened. They told me who it was
22 with and I made some phone calls.

23 Q. So, did you make the calls to Choice
24 One Communications?

25 A. Brian did most of that.

1 Q. And when you say that -- I am sorry.
2 I don't mean to put words in your mouth, but I
3 can't remember exactly what you said, but you
4 said that to your understanding you no longer
5 had the authority over your telephone number.

6 A. Correct.

7 Q. And do you know at the time that
8 they informed you of that did you even know what
9 that meant or why --

10 A. No.

11 Q. Do you know why you didn't?

12 A. The only thing AT&T told me was
13 previous that the phone number had been
14 transferred to Choice One Communications.

15 Q. Did you have any idea why you no
16 longer controlled your telephone number in the
17 spring of 2008?

18 A. No.

19 Q. So 22 months later your are leaving
20 the space, did you make any direct
21 communications with Choice One Communications to
22 have your telephone number transferred?

23 A. Initially I called.

24 Q. And what were you informed by Choice
25 One?

1 A. That my name was no longer
2 the person that needed to make the decisions.
3 I was off my own phone number. I had no control
4 over my phone number.

5 Q. And you made this initial request in
6 the spring of 2008?

7 A. Yes.

8 Q. And when is the next time that
9 the telephone rings at 330-724-5521 and it comes
10 to you?

11 A. I believe it was in September of
12 '09.

13 Q. So February and March 2008 to
14 September 2009 where were the phone calls going
15 to 330-724-5521?

16 A. They were still going to the
17 previous location.

18 Q. And do you know who was making and
19 receiving those calls?

20 A. I actually do know. Dr. Ungar's
21 office took the phone calls and made
22 the appointments and said they didn't know where
23 we were, and kept the business.

24 Q. And do you recall how you reobtained
25 or reacquired that telephone number?

1 A. Only going through the court system
2 we were able to get back our phone numbers.

3 Q. And was there ever a time that you
4 are aware of that Choice One Communications
5 voluntarily transferred the phone number prior
6 to that court order?

7 MR. DORTCH: Objection. Same
8 objection as earlier, Your Honor. I recognize
9 it, but I don't see how Dr. Gandee can testify
10 as to the subjective intent of my client whether
11 it was voluntary or involuntary.

12 ATTORNEY EXAMINER: Mr. Skidmore.

13 MR. SKIDMORE: I will rephrase it.

14 Q. Prior to the court order in
15 the first of May by the Magistrate's decision
16 and the judgment entry documenting that decision
17 in June of 2009 had Choice One Communications
18 ever allowed the transfer of your phone number
19 back to your possession?

20 A. Your Honor, they went out of their
21 way not to help us.

22 MR. DORTCH: Objection.

23 A. That is strictly my opinion.

24 MR. DORTCH: Objection. First of
25 all, let me finish my objection. I don't

1 believe that is responsive to the question that
2 was asked initially.

3 Secondly, again Dr. Gandee is,
4 focusing on getting the doctor's name correct,
5 Dr. Gandee again can't possibly testify to
6 subjective matters regarding a corporate entity.

7 ATTORNEY EXAMINER: Mr. Skidmore,
8 your question was, to Dr. Gandee, whether prior
9 to the court order, you are referring to this
10 action in the Summit County Court, whether
11 Choice One had relinquished the telephone number
12 that you are seeking. Is that your question?

13 MR. SKIDMORE: That's correct.

14 A. No.

15 ATTORNEY EXAMINER: The answer is
16 no. Okay.

17 Q. Did Choice One Communications ever
18 provide you a communication of some sort as to
19 why they were not relinquishing your request to
20 have the phone number transferred?

21 A. No.

22 MR. SKIDMORE: Nothing further.

23 ATTORNEY EXAMINER: All right. Mr.
24 Dortch.

25 MR. DORTCH: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 By Mr. Dortch:

3 Q. Dr. Gandee, I will try to be fairly
4 brief here as well and not tread over ground
5 that I think has been gone over before. But I
6 do need to ask, you were doing business as
7 Gandee Chiropractic before you relocated your
8 business to the same location as Drs. Ungar and
9 Longworth; correct?

10 A. Yes.

11 Q. And while at that location you too
12 were doing business as Advanced Wellness and
13 Chiropractic. Is that the correct name?
14 Advanced Pain and Wellness Center, correct?

15 A. Yes.

16 Q. And all three of you advertised and
17 put yourself out to the public as Advanced Pain
18 and Wellness Center?

19 A. Yes.

20 Q. If fact, you used the telephone
21 numbers in your advertising that are at issue in
22 these proceedings; correct?

23 A. Yes.

24 Q. Now, when you called AT&T in
25 February of 2008 and AT&T said that you no

1 longer managed or controlled the phone number I
2 think your language was, do you recall
3 testifying to that a moment ago?

4 A. Yes.

5 Q. How long did it take you before you
6 understood that Keith Ungar had arranged for a
7 transfer of those numbers to himself?

8 A. You are asking after I talked with
9 AT&T and realized what AT&T had just told me?

10 Q. No. I don't know what AT&T told
11 you, so did AT&T tell you that Keith Ungar
12 transferred those numbers to One Communications?

13 A. I can't remember they said that
14 exactly, but they said that they couldn't talk
15 to me about that number any longer because my
16 name wasn't on -- they didn't have that number
17 and couldn't talk to me about it because they
18 transferred it to somebody elses name.

19 Q. So you knew it had been transferred
20 to someone elses name?

21 A. Basically it was very much a shock,
22 yes.

23 Q. And again did you recognize right
24 away that it was Keith Ungar?

25 A. I called I believe then Choice One

1 and tried to get back control of my number.

2 Q. Did Choice One tell you that its
3 customer's name was Keith Ungar or any of his
4 business entities?

5 A. I don't remember exactly.

6 Q. But this occurred if I recall
7 correctly approximately February 2008?

8 A. Around that area.

9 Q. And Dr. Ungar sued you and Dr.
10 Longworth in February 2008 to try to keep you
11 from moving?

12 A. When he found out that he were going
13 to do this, yes.

14 Q. Do you recall when precisely you
15 learned that Dr. Ungar had transferred your
16 number to his own service? Was it at the same
17 time as you are learning you don't control
18 the number? Was it years later?

19 A. It was all within that day.

20 Q. So effectively the same day that you
21 learned you don't control the number you do
22 learn Dr. Ungar does control the number?

23 A. We determined that, yes, that is
24 what happened

25 Q. Did you ask Dr. Ungar to release

1 the number?

2 A. Yes.

3 Q. And what did he say?

4 A. He didn't give me a specific answer.

5 Q. Are you aware of him ever doing
6 anything to release the number?

7 A. I am not aware of anything.

8 Q. And are you aware that in the court
9 proceeding that occurred more than a year later
10 Dr. Ungar was still taking the position that he
11 had the right to control that number; wasn't he?

12 MR. SKIDMORE: Objection. He is
13 characterizing Dr. Ungar's position which I
14 don't think is an accurate characterization
15 without Dr. Ungar here to testify as to that.

16 Q. Well, the purpose of that court
17 proceeding was to determine who controlled the
18 number; correct?

19 A. Because we were trying to get
20 the number back.

21 Q. By that point in time, by the time
22 of that court proceeding, that hearing, you had
23 sued One Communications in this forum before
24 the PUCO; correct?

25 MR. SKIDMORE: I am not sure. The

1 dates are available by the records. By May of
2 2009 I think we can take administrative notice
3 that this action had been filed. In fact, I
4 will give you the date this action was filed. I
5 guess I won't give you the date this action was
6 filed. I apologize. I can tell you that the
7 answer was filed on February 11th, 2009. The
8 formal complaint was filed on January 20, 2009.

9 MR. DORTCH: January 20th.

10 ATTORNEY EXAMINER: The formal
11 complaints were filed prior to the decision of
12 the Summit County Court.

13 MR. DORTCH: Well, prior to the
14 decision -- well, prior to the hearing that we
15 are discussing.

16 ATTORNEY EXAMINER: Okay. Prior to
17 the hearing.

18 MR. DORTCH: It is confusing.
19 Multiple proceedings, Your Honor. The hearing
20 that I was discussing is the hearing conducted
21 by the Summit County Court of Common Pleas in
22 May of 2009.

23 Q. So, in fact, by the date of that
24 hearing you had sued One Communications here
25 before the Public Utilities Commission of Ohio.

1 And in fact by the date of that hearing you were
2 suing One Communications in the action pending
3 in Summit County as well were you not, Dr.
4 Gandee?

5 A. We were trying to do whatever it
6 took to get my 30 years of the same phone number
7 back. Whatever it would take that is what we
8 were trying to do.

9 Q. You didn't have a contractual
10 relationship with One Communications?

11 A. No.

12 Q. Ever?

13 A. Never heard of them.

14 Q. You did have a contractual
15 relationship with AT&T?

16 A. I thought so.

17 Q. For 30 years. Why didn't you sue
18 AT&T for improperly transferring your number?

19 A. I was --

20 MR. SKIDMORE: Objection.

21 Q. For the same thing.

22 MR. SKIDMORE: Objection. It calls
23 for a legal conclusion which he is certainly not
24 qualified to give on that particular topic.

25 ATTORNEY EXAMINER: I am not sure

1 that is an issue in this particular case. I
2 agree with that objection.

3 MR. DORTCH: No further questions,
4 Your Honor.

5 ATTORNEY EXAMINER: Thank you, Mr.
6 Dortch. Mr. Skidmore, any additional
7 questions?

8 REDIRECT EXAMINATION

9 By Mr. Skidmore:

10 Q. Dr. Gandee, this particular issue
11 with Choice One, I mean, the issue of
12 the transfer, can you tell what your believe is
13 as to why you were not given your telephone
14 number back by Choice One Communications?

15 MR. DORTCH: Objection. Relevance.

16 ATTORNEY EXAMINER: I agree with
17 that objection. If you have a different way to
18 state that question or some other question.

19 MR. SKIDMORE: Well, I mean, I
20 think it's relevant certainly as to what his
21 belief is as to why he was never able to
22 reobtain his phone number that he had for 27
23 years.

24 MR. DORTCH: I believe it isn't
25 relevant, Tom.

1 MR. SKIDMORE: Why wouldn't it be
2 relevant?

3 MR. DORTCH: Because the transfer
4 occurred and it was either compliant with the
5 law or it wasn't compliant with the law. Why he
6 wasn't able to reobtain the number is irrelevant
7 to the claim before this Commission.

8 ATTORNEY EXAMINER: I think having a
9 witness give his opinion on why he didn't obtain
10 the number is different from having him explain
11 his attempts to get the number back. So --

12 MR. SKIDMORE: I will withdraw it.
13 I have nothing further.

14 ATTORNEY EXAMINER: All right. I
15 have a few questions for Dr. Gandee.

16 EXAMINATION

17 By the Attorney Examiner:

18 Q. So your situation then was similar
19 to Dr. Longworth that you were not aware that
20 the telephone number which you had for many
21 years had been switched from AT&T to One
22 Communications, you were not aware of that until
23 you actually left what we are calling the
24 combined practice?

25 A. That is my understanding, Your

1 Honor, that went there in February of '06 and
2 this wasn't done until at least six, maybe eight
3 months after we were there when people didn't
4 personally look so closely at what was
5 happening. So, firstly, that is why you trust
6 entities to help you. I am small business and I
7 don't know -- I know I don't know everything.

8 Q. When you say personally not looking
9 closely at matters, you are saying that once you
10 got into the practice with the other two doctors
11 you weren't really -- you weren't seeing the
12 bills?

13 A. We weren't expecting anything to
14 happen, Your Honor.

15 Q. I am sorry?

16 A. We weren't even expecting anything
17 to happen.

18 Q. Okay.

19 A. Because of the trust-type
20 relationship that was going on.

21 Q. When you did learn that the number
22 was no longer being provided by AT&T, again you
23 learned that and you tried to go back to having
24 your own practice, you indicated that you did
25 contact Choice One, or I thought you said that

1 most of the calls were made by Dr. Longworth.

2 A. I talked to AT&T so that then we
3 could just transfer the number.

4 Q. You spoke to AT&T?

5 A. They said they no longer -- I was no
6 longer part of them, they were not with me any
7 longer. I asked who has it. They said Choice
8 One. Then I contacted them.

9 Q. You contacted them by telephone?

10 A. Immediately.

11 Q. And then they told you -- Choice One
12 told you --

13 A. They wouldn't even talk to me.

14 Q. They --

15 A. They said I am not the person on
16 record and can't give out information. We
17 wouldn't even be here. All we wanted was
18 the phone number, Your Honor. If we had
19 the phone number we wouldn't be here right this
20 second. We were just getting killed by what was
21 happening.

22 Q. Let's see. The point in time where
23 you were able to reobtain the number again, get
24 the number back with AT&T, what is your
25 recollection when that occurred again?

1 A. September of '09, I believe.

2 Q. Okay. And prior to that time was it
3 your knowledge that Dr. Ungar still had claim to
4 the number again for lack of a better
5 description?

6 A. I believe so. I don't think he is
7 going to admit anything wrong. Your Honor, by
8 the time I got the phone number back the damage
9 had been severely done. If we had gotten the
10 phone number right when we left, no problems.

11 Q. And how did it come about that you
12 actually did get the phone back with AT&T? Dr.
13 Longworth was faxing AT&T a copy of the Summit
14 County Court decision. Do you recall how --

15 A. I believe that was the same. It was
16 tied together.

17 Q. I have an additional question.
18 Prior to filing the formal complaint at the
19 Commission, or having your counsel file the
20 formal complaint for you, did you get in touch
21 with the Commission at all? Do you recall
22 talking to us by telephone, or by mail prior to
23 filing the formal complaint?

24 A. One of the things I do, Your Honor,
25 when I have a problem, because I ask myself

1 questions what can I do, and I go to other
2 people and ask them questions, what are my
3 options.

4 If I was told that would be one of
5 my options then I would have tried it. But I
6 don't know and I don't remember doing so.

7 Q. You don't remember contacting the
8 Commission before filing the formal complaint?

9 A. Not directly. I don't remember.

10 ATTORNEY EXAMINER: I have no
11 further questions at this time. Thank you very
12 much for your testimony. And if you would like
13 to take your seat.

14 And actually I have a question for
15 Dr. Longworth as well. And I will remind you
16 that you are still under oath.

17 - - -

18 BRIAN LONGWORTH
19 called as a witness on behalf of the
20 Complainants, being previously duly sworn,
21 testified as follows:

22 EXAMINATION

23 By the Attorney Examiner:

24 Q. Prior to having your counsel file
25 the formal complaint here at the Commission did

1 you contact the Commission at all?

2 A. I did make an attempt to contact
3 them because I think, I don't know, some
4 communication I had said try to contact. But I
5 couldn't get through.

6 Q. So you couldn't get through?

7 A. I did call the Utilities Commission,
8 but I didn't have any luck as far as getting
9 through to somebody. I didn't.

10 Q. In other words, you ended up not
11 speaking with anyone here?

12 A. I don't believe so, no. But I did
13 in fact call.

14 ATTORNEY EXAMINER: Thank you. At
15 this point in time, Mr. Skidmore, do you want to
16 move for admission of your Exhibits 1 through I
17 believe you have 6 exhibits actually?

18 MR. SKIDMORE: We would, Your Honor.

19 ATTORNEY EXAMINER: So we will call
20 this Gandee-Longworth Exhibits 1 through 6.
21 They will apply to both of your clients; am I
22 correct?

23 MR. SKIDMORE: That's correct, Your
24 Honor.

25 ATTORNEY EXAMINER: And any

1 objection, Mr. Dortch?

2 MR. DORTCH: Exhibit 1, no
3 objection, Your Honor. Exhibit 2, no objection.
4 Exhibit 3 and 4, Your Honor, I do object to.
5 Neither witness was asked any questions
6 regarding either of these exhibits.

7 MR. SKIDMORE: That is fine, Your
8 Honor. We withdraw the two exhibits.

9 ATTORNEY EXAMINER: Withdraw 3 and 4
10 then.

11 MR. DORTCH: And I have no
12 objections to Exhibit 5 or 6.

13 ATTORNEY EXAMINER: Okay. And both
14 parties are willing to admit Gandee-Longworth
15 Exhibit 1, 2. Three is objected to and 4.

16 MR. DORTCH: 3 and 4, Your Honor.

17 ATTORNEY EXAMINER: 1, 2. We will
18 not admit 3 and 4 then. We will admit 5 and 6.

19 (EXHIBITS ADMITTED INTO EVIDENCE)

20 ATTORNEY EXAMINER: Thank you. All
21 right. Thank you for your testimony of your
22 witnesses, Mr. Skidmore. Mr. Dortch, we will
23 move on to you.

24 MR. DORTCH: Thank you, Your Honor.
25 One Communications or Choice One Communications

1 dba One Communications would call Richard
2 Wheeler as its witness. Your Honor, may I
3 approach?

4 ATTORNEY EXAMINER: Sure.

5 (WITNESS SWORN)

6 - - -

7 RICHARD WHEELER
8 called as a witness on behalf of the Respondent,
9 being first duly sworn, testified as follows:

10 ATTORNEY EXAMINER: If you would
11 please take your seat. Mr. Dortch.

12 MR. DORTCH: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 By Mr. Dortch:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Would you state your name and
18 business address, please?

19 A. My name is Richard Wheeler. My
20 business address is One Communications, 5 Wall
21 Street, Burlington, Massachusetts 018 -- I don't
22 remember the zip code. Choice One doing
23 business as One Communications.

24 ATTORNEY EXAMINER: I think that is
25 adequate.

1 Q. By whom are you employed and in what
2 capacity?

3 A. I am employed by Choice One
4 Communications doing business as One
5 Communications. I am the -- my official title
6 is Strategic Compliance Implementation Manager.

7 Q. Mr. Wheeler, do you have in front of
8 you a copy of One Communications Exhibit No. 1?

9 A. Yes, I do.

10 Q. And is the One Communications
11 Exhibit No. 1 a copy of your direct prefiled
12 testimony filed January 13, 2011 in these
13 proceedings?

14 A. Yes, it is.

15 Q. Do you have any changes or
16 corrections to your direct prefiled testimony?

17 A. No, I don't.

18 Q. If I asked you the questions set
19 forth in One Communications Exhibit 1 would your
20 answers be the same today as they are within
21 the prefiled testimony?

22 A. Yes.

23 MR. DORTCH: Your Honor, I will
24 tender the witness for cross-examination.

25 ATTORNEY EXAMINER: Thank you. Mr.

1 Skidmore, questions for the witness?

2 MR. SKIDMORE: Yes.

3 CROSS-EXAMINATION

4 By Mr. Skidmore:

5 Q. Mr. Wheeler, we have never met
6 before but we have spoken before; correct?

7 A. I believe we have spoken, yes.

8 Q. And do you recall when we spoke?

9 A. I don't recall a specific date when
10 we spoke, but I do recall it was a couple years
11 ago. I am sure it was contemporaneous with the
12 dates of this.

13 Q. Do you know, Mr. Wheeler, whether or
14 not I had made a request upon you and Choice One
15 Communications when we spoke to return the
16 telephone numbers of Brian Longworth and Steven
17 Gandee?

18 A. I believe, I recall, my recollection
19 is that you did make such a request.

20 Q. And did you learn at that time or
21 during that period of time that there was some
22 question as to whether or not Dr. Ungar, Keith
23 Ungar, had had the legal authority from Brian
24 Longworth or Steve Gandee to sign a letter of
25 authority?

1 A. I believe you made that allegation
2 verbally and possibly in e-mail, but there was
3 no evidence of that beyond your allegation.

4 Q. Okay. So, you don't disagree with
5 Dr. Longworth and Dr. Gandee's testimony that in
6 I guess the spring of 2008, or February-March of
7 2008 that they had made a communication to
8 Choice One requesting the two telephone numbers
9 be transferred to their possession?

10 A. I know that I spoke with you. I
11 don't believe I ever spoke with either Dr.
12 Longworth or Dr. Gandee. So I can't speak to
13 what communication they had with anybody. I can
14 only speak to the communication that I had.

15 Q. And at that time those telephone
16 numbers of Choice One Communications were
17 showing that only Keith Ungar had the authority
18 to discuss those accounts with Choice One; is
19 that correct?

20 A. I believe those numbers were on Dr.
21 Ungar's accounts, but he, maybe his office
22 manager, would be authorized to speak.

23 Q. Now, in your prefiled testimony at
24 page 3 you stated that in September of 2006 --

25 MR. DORTCH: I am sorry.

1 MR. SKIDMORE: Page 3, line 14.

2 MR. DORTCH: Thank you, Tom.

3 Q. That "In September of 2006, Dr.
4 Ungar had asked One Communications to obtain
5 transfers of the telephone numbers 896-8500 and
6 330-724-5521, which the Ohio Bell Telephone
7 Company, dba AT&T, had previously assigned to
8 complainants' AT&T account to One Communications
9 under Dr. Ungar's One Communications account."

10 And you go on to say "In response to
11 Dr. Ungar's request, One Communications informed
12 him that he would have to verify his authority
13 to request the transfer by executing a letter of
14 agency."

15 A. That's correct. Yes.

16 Q. So, to establish a time line here,
17 in September of 2006 Dr. Ungar made a porting
18 request of sorts to port the telephone numbers
19 in question in this case to Choice One
20 Communications?

21 A. Yes.

22 Q. And One Communications asked that he
23 would have to sign a letter of agency saying he
24 had the authority to do that.

25 A. Yes.

1 Q. So there was a question as to the
2 ownership of those, I am sorry, the control or
3 authorization of those phone numbers in
4 September of 2006; true?

5 A. I wouldn't characterize it as it was
6 a question. There is a legal process that we
7 have to follow in order to establish someone's
8 authority to do it. It wasn't a case there was
9 a question. We were following our process to
10 establish that Dr. Ungar had the legal
11 authority.

12 Q. Now, if Dr. Ungar was attempting to
13 obtain a phone number that was already in his
14 name he wouldn't need a letter of agency; right?

15 A. If Dr. Ungar -- I am not sure I
16 understand your question.

17 Q. Let's say, for instance, Dr. Ungar
18 was trying to port over his own personal
19 residence telephone number into this account,
20 Advanced Pain Wellness. If he is the
21 authoritative figure on both accounts he doesn't
22 need a letter of agency; is that right?

23 A. We would still require a written,
24 some form of written documentation, written
25 letters of agency, yes, for any number.

1 Q. Isn't it true, Mr. Wheeler, that
2 part of the problem here in September of 2006 is
3 that Dr. Ungar is requesting the porting of
4 phone numbers that were not in his name?

5 A. Dr. Ungar contacted us requesting
6 that we transfer the number. We explained our
7 process requiring a letter of agency, and Dr.
8 Ungar produced a letter of agency.

9 Q. Okay. Now, I am going to give you a
10 hypothetical.

11 A. Okay.

12 Q. Key Bank across the street from me
13 in downtown Akron is moving down the street. If
14 I come to you and say -- or come to Choice One
15 Communications and say I need telephone numbers
16 for Key Bank ported over to my law office, and
17 here is a letter of agency, what is the response
18 from Choice One Communications?

19 A. Again I am not sure I understand the
20 premise of the question.

21 Q. My understanding in this case that
22 Choice One Communications is taking the position
23 that they do not have to ever verify with the
24 prior party that the phone numbers are in fact
25 theirs. Right?

1 A. It's not our position. That is the
2 law of the land in case law AT&T versus FCC.
3 This issue was litigated and the Court in that
4 area said that actual authority wasn't required.
5 Dr. Ungar had apparent authority, he provided
6 the LOA that conformed with the standards
7 required by FCC, and we switched the phone
8 number based on that authority.

9 Q. When you say Dr. Ungar had apparent
10 authority, you mean Dr. Ungar signed the letter
11 of agency?

12 A. Yes.

13 Q. You would agree with me that no one
14 from Choice One Communications ever communicated
15 with Dr. Longworth about this transfer of the
16 phone number; is that correct?

17 A. We didn't know that Dr. Longworth
18 existed.

19 Q. Okay. Well, when you do a porting
20 request to AT&T Choice One would have to ask
21 AT&T to port the phone number over; right?

22 A. We would submit a porting request to
23 AT&T, yes.

24 Q. And AT&T would show who the actual
25 owner -- the actual authoritative figure is with

1 the phone number; right?

2 MR. DORTCH: Objection, Your Honor.

3 I think Mr. Skidmore is confused. AT&T may know
4 who is authorized to speak for that account,
5 but AT&T would not disclose that to One
6 Communications.

7 MR. SKIDMORE: That is great
8 testimony, but I am asking him whether he knows
9 how that works.

10 ATTORNEY EXAMINER: I will let the
11 question stand.

12 A. We don't have records of AT&T's
13 bills. In fact, AT&T probably would not
14 disclose who their customer was to us, for the
15 same reasons that we would not disclose it to
16 them because of the privacy rules that we are --
17 all telecommunications carriers are bound to.

18 Q. So, if I came to Choice One
19 Communications with a porting request for Key
20 Bank, Key National Bank's phone numbers to be
21 ported to my office and I signed a letter of
22 authority, you are saying Choice One
23 Communications should honor that; is that right?

24 MR. DORTCH: Objection, Your Honor.
25 I am going to ask Mr. Skidmore to restate the

1 question, and that may be why I am confused
 2 about his earlier question. You are using Key
 3 Bank as an example, Mr. Skidmore, and, Your
 4 Honor, if Mr. Skidmore is stating to or is Mr.
 5 Skidmore's hypothetical that he is coming to One
 6 Communications and saying I have Key Bank's
 7 phone numbers, or is he saying that he has
 8 specific phone numbers, please port them, and as
 9 it turns out they belong to Key Bank?

10 MR. SKIDMORE: I will be more
 11 specific.

12 MR. DORTCH: Thank you.

13 ATTORNEY EXAMINER: If you can
 14 clarify the question.

15 Q. Let's say I have a specific
 16 different number which is a directory phone
 17 number for Key Bank. And I come in to Choice
 18 One and say here is the phone number, I want it
 19 ported to my office. And here is a letter of
 20 agency saying I have the authority to do that.

21 A. If you gave us a specific phone
 22 number and that is all you gave us, and you said
 23 I wanted that number switched over, and you had
 24 the letter of authorization, we would look at it
 25 and process the port request assuming there was

1 nothing irregular about it.

2 Q. So no representative of Key Bank is
3 required to sign anything for you to honor that
4 request; is that right?

5 ATTORNEY EXAMINER: Before
6 the witness answers I will ask this question.
7 It might at least help to clarify in my mind and
8 for the record. Mr. Wheeler, when Choice One
9 receives a porting request and you will tell
10 whoever makes that request we need a letter of
11 agency, and the letter of agency is submitted to
12 Choice One and it contains numbers on there
13 which are asked to be ported, you are indicating
14 then that Choice One would call back AT&T and
15 basically say here are the numbers I want
16 ported, and you are indicating that you have no
17 further contact, or no further information from
18 AT&T than that. That is, AT&T confirms that,
19 yes, we have those numbers, we will port them
20 over.

21 THE WITNESS: I believe that
22 process involves us submitting the LOA to --
23 submitting the port order request to AT&T who
24 does whatever it does on its end. I have no way
25 of knowing what they are doing.

1 ATTORNEY EXAMINER: So, letter of
2 agency comes to Choice One?

3 THE WITNESS: Yes.

4 ATTORNEY EXAMINER: And then your
5 request to AT&T, you send the letter of agency
6 to them, or you actually contact them and say --

7 THE WITNESS: Yes. I don't
8 specifically do it, but we have a department
9 that processes these orders, and they would
10 submit the port order request, I mean, it's
11 automated, electronic, and then AT&T would then,
12 you know, assuming that we have the proper
13 documentation, AT&T would port the order and we
14 would become the carrier of record.

15 ATTORNEY EXAMINER: So to your
16 knowledge then during that whole transaction
17 with AT&T, Choice One would not really know to
18 whom those numbers previously had been
19 assigned, the names of the persons?

20 THE WITNESS: I am not sure how, I
21 mean, we wouldn't have the records of the prior
22 carrier. So I don't know how we would know.

23 ATTORNEY EXAMINER: I know you
24 wouldn't have the records, but when you have
25 your contact with AT&T and they port the number

1 over to you, if you are able to answer this
 2 question if you would please do so, is there any
 3 sort of information submitted with those numbers
 4 like these have been Dr. Gandee's or Dr.
 5 Longworth's numbers?

6 THE WITNESS: I don't know the
 7 answer to that question.

8 ATTORNEY EXAMINER: Okay.

9 THE WITNESS: But, I will tell you
 10 that, again, I don't know that -- we wouldn't
 11 give out the information, but our customer, when
 12 they are switching over, I don't know that other
 13 carriers, largely for the same privacy rules
 14 that we all have to follow we wouldn't tell
 15 them.

16 Q. So, Mr. Wheeler, to establish a
 17 couple things, one, Dr. Longworth and Dr. Gandee
 18 according to your records that you filed in your
 19 statement in the records attached, were never
 20 authorized to make any determinations with
 21 telephone numbers that are at issue in this
 22 hearing; is that right? Again if they called
 23 you or they called Choice One they wouldn't talk
 24 to them; is that right?

25 A. If they were not listed as people

1 designated to be authorized to speak on behalf
2 of the account we could not speak with them.

3 Q. So, if they called Choice One
4 Communications and said I want this telephone
5 number sent back Choice One Communications
6 wouldn't even speak to them because they were
7 not the authorized agent of the account?

8 A. Correct. And we do that because of
9 the privacy rules and to protect our customers.

10 Q. Let's take a look at this particular
11 account that the telephone numbers were ported
12 to.

13 A. Okay.

14 Q. What kind of account it is? Is it
15 local service, is it long distance service?

16 A. I believe it was local service.
17 I am not familiar with what products
18 and services they have on their account.

19 Q. I believe it's local telephone
20 numbers.

21 A. Okay.

22 Q. And Dr. Ungar made a porting request
23 to move the telephone numbers. Do you know
24 whether or not this account was a local
25 telephone account?

1 A. Not specifically. I will take your
2 word.

3 Q. I don't know. I am asking you
4 the question.

5 A. I believe that was a local telephone
6 number. I don't know specifically. I
7 believe --

8 MR. DORTCH: May I ask Mr. Skidmore
9 to define local telephone number? Do you
10 understand what your are saying there, Tom,
11 because --

12 MR. SKIDMORE: I am just asking him
13 if he knows what kind of account -- Dr. Ungar's
14 was with Choice One.

15 A. As I said a moment ago, I don't
16 specifically know products and services that
17 either Dr. Ungar, Dr. Longworth or Dr. Gandee
18 had.

19 Q. Do you know what the name of
20 the account is?

21 A. I believe the name was something
22 like Advanced Health and Wellness, something
23 along those lines, whatever.

24 MR. SKIDMORE: Your Honor, I don't
25 believe the witness has a copy of the exhibits

1 that I submitted to you this morning for our
2 portion of the case. I would like to approach
3 and maybe I could have him take a look at this.

4 MR. DORTCH: Your Honor,
5 alternatively, I don't think the witness
6 realizes that its contract with Dr. Keith Ungar,
7 Choice One's contract with Dr. Keith Ungar, is
8 within your exhibits, and I don't think --

9 THE WITNESS: Okay.

10 ATTORNEY EXAMINER: Where is that
11 exactly, Mr. Dortch? Do you remember?

12 MR. DORTCH: Your Honor, it's
13 essentially the second item within Exhibit RW 1.

14 MR. SKIDMORE: Your Honor, may I
15 approach the witness?

16 ATTORNEY EXAMINER: Yes.

17 Q. Mr. Wheeler, handing you what has
18 been previously marked as Exhibit 1 submitted on
19 behalf of complainants is documentation that I
20 received originally from subpoena issued to
21 Choice One Communications.

22 A. Okay.

23 Q. And from the documentation it
24 appears that this account was opened, and
25 referring to -- if you look at the top

1 right-hand corner there appears to be some
2 numbering, maybe fax numbers, but page 5.

3 A. It says at the top data services?
4 Date services, yes.

5 Q. It says No. 5266, page 5.

6 A. Okay.

7 Q. And following that page it says the
8 company name is Center for Natural Medicine.
9 Do you see that?

10 A. Yes, I do.

11 Q. And it appears that President Keith
12 Ungar signed this June of 2002. Do you see
13 that?

14 A. Yes.

15 Q. So is it fair to presume that this
16 is approximately when this account was opened?

17 A. That is fair to presume.

18 ATTORNEY EXAMINER: I want to
19 clarify for the record, this is Gandee-Longworth
20 Exhibit 1, and it's on the page that says data
21 services No. 5266 page 5 on the upper right.
22 Please go ahead.

23 Q. If you turn a couple of pages back
24 from that on page 3, page entitled Application
25 for Service Letter of Agency and Agreement.

1 Do you see that page?

2 A. Yes, I do.

3 Q. And it says client billing name is
4 Center for Natural Medicine.

5 A. Yes.

6 Q. And am I to understand then
7 the contractual relationship is between Choice
8 One Communications and the Center for Natural
9 Medicine?

10 A. As he originally signed up for it,
11 yes.

12 Q. Now, contained within these
13 documents, and unfortunately they are not marked
14 or there is not a reference to page numbering
15 for quite a bit of it, but I would like to
16 review a few of the notations. Well, first of
17 all let me ask you this.

18 This appears to be very similar to
19 the document which was attached to your
20 testimony which begins account 003, and I am
21 sorry, appear to be some kind of diary of phone
22 calls or communications on this particular
23 account.

24 A. Are you referring from your exhibit
25 or my testimony?

1 Q. If you go to the exhibit page 7, the
2 next page appears to be a, I am sorry, page 7 of
3 Exhibit 1. If you go to the next page.

4 A. It says 5266 on page 7.

5 Q. Yes. Very next page. It appears to
6 be a list or diary of -- I guess let me ask what
7 is this document?

8 A. I believe these are copies of notes
9 from our customer service system.

10 ATTORNEY EXAMINER: Just to clarify
11 for the record, Mr. Skidmore is saying is under
12 RW 1 at least in part, not in total, contained
13 within Gandee-Longworth Exhibit 1.

14 MR. SKIDMORE: That's correct. And
15 I think they are the same document. I haven't
16 had a chance to review it.

17 A. Yes, they are.

18 Q. Okay. Well, I am not even going to
19 hold you to that testimony because --

20 A. I believe that they are.

21 Q. Okay. And this is a -- how did you
22 describe this document?

23 A. I believe these are a printout of
24 notes from our customer service system.

25 Q. So when the actual transfer or

1 porting of these two phone numbers occurred it
2 would actually or potentially be contained
3 within this document; is that right?

4 A. I would presume so. I haven't
5 looked through it in detail in some time.

6 Q. Well, let's take a look at a couple
7 of the entries. We don't have page numbers,
8 it's apparently in date order, chronological
9 order by date. And let's take a look at
10 the entry on September 18th, 2006.

11 A. Okay. I am on the page that has
12 September 18, 2006.

13 Q. And the notation identifies the
14 caller's name Keith. Do you see that?

15 A. Yes.

16 Q. And the remark is "Dr. Ungar called
17 about porting over some numbers and pricing.
18 I connected him to Andy's voice mail."

19 A. Okay.

20 Q. You don't have any personal
21 knowledge as to what is being referred to there;
22 do you?

23 A. I do not have personal knowledge of
24 any of those except what I am reading.

25 ATTORNEY EXAMINER: Mr. Skidmore, I

1 just want to make sure, where are you reading?
 2 Oh, you are talking about the very bottom of the
 3 page?

4 MR. DORTCH: The one dated September
 5 18th, 2006.

6 MR. SKIDMORE: In the middle of
 7 the page in a darkened box and short description
 8 says correspondence and there is an arrow that
 9 says product/service. That is where I was
 10 reading. Underneath it it says remarks 9-18,
 11 4:36 P.M.

12 ATTORNEY EXAMINER: Go off the
 13 record for a minute.

14 (DISCUSSION OFF THE RECORD)

15 Q. Then if we turn to the next page at
 16 September 20th, 2006, bottom one-third of
 17 the page. This would be a telephone
 18 communication between Choice One Communications
 19 and the caller's name is listed as Keith. Do
 20 you see that on 9-20-2006 1:26 P.M?

21 A. Yes, I see that.

22 Q. This would be a notation that a
 23 person at Choice One Communications made in
 24 accordance with this account based on a call
 25 they received from Keith?

1 A. Correct.

2 Q. That communication is kept in the
3 ordinary course of business of Choice One?

4 A. Correct.

5 Q. And it says that he wants two lines
6 ported from AT&T. 330-724-5521 and
7 330-896-8500. And swapped with numbers that are
8 not being used. Do you see where it says that?

9 A. I do

10 Q. Do you know what that means?

11 A. I don't know what that means beyond
12 what is here. I don't have any details about
13 this.

14 Q. That would be September 20th, 2006.
15 So is it fair to assume that the numbers had not
16 been ported over to Choice One Communications as
17 of the date of this notation?

18 A. I don't know the specific date when
19 those numbers were ported over to Choice One
20 Communications.

21 Q. And the next page there is a
22 notation at the very middle of the page there
23 October 19th of 2006. On the screen again the
24 caller's name is Keith. And it says 11:28 A.M.
25 And it says "Faxed over revised SA and LOA."

1 What does SA stand for?

2 A. I believe that would be service
3 agreement.

4 Q. "Need to check account in three
5 months to review usage." Do you know whether or
6 not that the letter of authority, or, I am
7 sorry, the LOA, letter of authority, was being
8 faxed at approximately the same time?

9 A. I don't know, but I believe the LOA
10 that we had been provided as part of my
11 testimony is the LOA that was provided. If
12 the note says on that date then --

13 Q. Now, connected to your testimony, at
14 the very last page of your exhibit connected to
15 your testimony is the LOA. This is my Exhibit
16 2.

17 A. Okay.

18 Q. And it appears that there is some
19 fax information at the top of that document
20 indicating there is a fax on October 30th, 2006,
21 this letter of agency?

22 A. Yes. Okay

23 Q. There is another fax number above
24 that, October 31st with reference to the top of
25 the page to Center for Natural Medicine. Do you

1 see that?

2 A. Yes.

3 ATTORNEY EXAMINER: For the record
4 Mr. Skidmore is referring to the October 30th,
5 2006 date on Exhibit RW2, and next to the date
6 October 30, 2006 it lists 3:04 P.M. Choice One.
7 And above that is presumably the date when the
8 document was faxed back to Choice One October
9 30th, 2006.

10 MR. SKIDMORE: That is correct.

11 ATTORNEY EXAMINER: Center for
12 Natural Medicine.

13 Q. So, is it fair to say, Mr. Wheeler,
14 that until Choice One Communications would have
15 received this letter of authority that the
16 numbers that are at issue in this hearing would
17 not have been ported over from AT&T to Choice
18 One Communications?

19 A. As I testified we would require a
20 letter of authorization in order to make the
21 switch.

22 Q. So is it fair to assume then that
23 between spring of 2006 and October of 2006 that
24 the phone numbers at issue here would have
25 remained at AT&T?

1 A. I can't speak for them. According
2 to their testimony that seems to be the case.
3 But, I have no knowledge of that. I only know
4 what they have said.

5 Q. So is it fair to assume Choice One
6 didn't actually acquire these phone numbers from
7 the porting request until after the date of this
8 letter of authority?

9 A. It is fair to assume that.

10 Q. Okay. Now, this letter of agency
11 that we are talking about indicates existing
12 numbers and then it says at line No. 3 "Each
13 telephone number to be covered by the preferred
14 carrier change order. List all the numbers."

15 Two numbers listed below. Item 3
16 are the two numbers listed that are in issue in
17 this case. Do you see that?

18 A. I am sorry.

19 Q. I get long winded, so --

20 A. The letter of agency?

21 Q. I am sorry. The letter of agency
22 account, item No. No. 3.

23 A. Yes.

24 Q. It says "Each telephone number to be
25 covered by the preferred carrier change order."

1 And the two numbers that appear below are
2 the two numbers that appear to be at issue
3 today.

4 A. Yes.

5 Q. Now, I happened to notice that after
6 October 19th of 2006 it was switched back to
7 the, what I am calling your diary for --

8 A. Customer service record.

9 Q. Customer service record. I don't
10 see a notation again until November 16th of
11 2006. So the letter of agency and faxed
12 communication may not appear on the customer
13 service records.

14 A. That appears to be the case.
15 I can't speak to that except what I see in front
16 of me. But, there is a notation October 19th
17 and the next notation on the customer service
18 record is 11-16.

19 Q. Now, again back to the customer
20 service record. Notation of November 17th of
21 2006 indicates the internal notation that says
22 caller's name internal. I am assuming that is
23 an internal communication that is noted on the
24 customer service record. Do you see that?

25 A. Yes.

1 Q. And it says "I had to resubmit
2 orders to port line because they are existing FF
3 numbers." What is FF number?

4 A. I don't know what the FF number
5 stands for.

6 Q. And it says "I submitted two MAC
7 orders." Do you know what that is?

8 A. A MAC order is an internal order
9 that we use within the company for correcting
10 technical problems. We submit it to our IT
11 department.

12 Q. Then let's go to 11-29-06 on the
13 following page. It appears to be a
14 communication between Keith Ungar and it says
15 "Keith was transferred to me." It says assigned
16 to Grenkens. Do you see that?

17 A. I do see a couple of dates. Do you
18 have a specific time?

19 Q. Yes, I am sorry. It's 10:15 A.M.

20 A. Okay.

21 Q. Notation. It says "Keith was
22 transferred to me, very upset, regarding pons"
23 and it gives two numbers. A pons is a what?

24 A. To be honest I am not familiar with
25 what these two numbers stand for in connection

1 with this account.

2 Q. It says "These are to port two ff
3 tns to us." Does that mean two phone numbers to
4 us, if you know?

5 A. I see --

6 MR. DORTCH: Objection. I don't
7 think we can assume what tns means.

8 Q. It will stand for itself. If you
9 don't know what it means --

10 A. I assume -- I mean, I can make an
11 inference that it stands for telephone number,
12 but I don't know what the writer's shorthand
13 was. A lot of customer service representatives
14 use their own shorthand. I don't know what he
15 was thinking.

16 Q. Okay. It says "Keith received a
17 letter advising these tns were to be added to
18 his residence address, not his business address.
19 He said he was very clear with Andy Fagan that
20 these two ff tns were to port to us and be
21 physically installed at his business address.
22 He requested Andy call him back to straighten
23 this out."

24 Do you know if that notation is
25 talking about telephone numbers that we are here

1 about today?

2 A. I have no knowledge that this
3 notation is any way related to the telephone
4 numbers that we are talking about here today.

5 Q. Now, you are the representative for
6 Choice One Communications here today. Can you
7 tell us when exactly Brian Longworth and Dr.
8 Gandee's telephone numbers were ported from AT&T
9 to Choice One Communications?

10 A. From AT&T to Choice One
11 Communications?

12 Q. Right.

13 A. I believe it was sometime in the
14 fall of '06 in the October-November time frame.
15 I don't have a specific date.

16 Q. And is it my understanding based on
17 your testimony in your filing that it's the
18 position of Choice One Communications that that
19 porting request was allowed on a letter of
20 agency that was signed by Keith Ungar?

21 A. Yes.

22 Q. And you would agree with me that
23 Choice One Communications prior to fulfilling
24 that porting request never had any communication
25 with Brian Longworth?

1 A. To my knowledge we never had any
2 communications prior to.

3 Q. You will agree with me that prior to
4 honoring that porting request from Dr. Ungar
5 that Choice One Communications never had any
6 communications directly with William Gandee?

7 A. To my knowledge we never had any
8 communications with Dr. Gandee.

9 Q. Does Choice One Communications have
10 an internal investigative mechanism that is
11 triggered if someone makes a complaint such as
12 Drs. Longworth and Dr. Gandee made in this case?

13 A. Well, we would contact I believe --
14 my contact was through you. I don't recall ever
15 speaking to them. We had no knowledge of Dr.
16 Gandee or Dr. Longworth.

17 We had the documentations that I
18 believe I provided to you at the time which
19 showed Dr. Ungar had submitted a letter of
20 agency that conformed with the FCC's rules. And
21 it was based on that valid letter of
22 authorization that we made the switch

23 Q. But when someone makes a complaint
24 to Choice One Communications and says your
25 letter of agency lacked our authority, that

1 someone has falsified our records, does Choice
2 One Communications have an internal mechanism to
3 review and conduct an investigation such as this
4 allegation?

5 MR. DORTCH: Objection. Relevance.
6 Once again, Your Honor, the numbers were ported,
7 and we all understand that the numbers were
8 ported based upon the letter of agency submitted
9 by Dr. Keith Ungar.

10 Now, investigations eight months
11 later when Drs. Gandee and Longworth learned
12 that the numbers had been ported really aren't
13 relevant to the scope of this proceeding.

14 ATTORNEY EXAMINER: Mr. Skidmore,
15 are you asking when Drs. Gandee and Longworth
16 learned that their telephone numbers were no
17 longer with AT&T? Is your question then when
18 they learned the numbers were no longer with
19 AT&T and they contacted Choice One, what were
20 Choice One's procedures to handle that? Is that
21 what you are asking?

22 MR. SKIDMORE: That is basically my
23 question, yes.

24 ATTORNEY EXAMINER: Okay. Well, I
25 will allow that question. And, Mr. Wheeler?

1 A. So, our procedure was to review
2 the account, we looked at the notes on the
3 account, we looked at the letter of
4 authorization, and we determined that there was
5 a valid letter of authorization from Dr. Ungar
6 authorizing us to make this switch.

7 We understand that we had an
8 allegation from two people that we had no
9 knowledge of prior to the time they contacted
10 us, but that is all it was was an allegation.
11 We had no way to verify.

12 We had documentation from our
13 customer, Dr. Ungar, that the switch was valid,
14 and no relationship with Drs. Gandee or
15 Longworth. And so all we had was an allegation
16 that was made, but nothing more than an
17 allegation that we had.

18 And so we investigated, found the
19 proper LOA and determined that the switch was
20 valid based on the information we had at the
21 time.

22 Q. Okay. Now, so I guess the answer to
23 the specific question is there any internal
24 investigation committee that conducts an
25 investigation with regards to talking to all

1 the parties, that is the question.

2 ATTORNEY EXAMINER: I will let that
3 question stand. Go ahead. Again just answer to
4 the best of your ability.

5 A. There were no internal investigative
6 committee to talk to all the parties.

7 Q. And it's Choice One's position that
8 we have a letter of agency signed by Dr. Ungar,
9 that is all we need?

10 A. That is what is required under the
11 law by the FCC and established in the AT&T
12 versus FCC case that was cited in my testimony,
13 yes.

14 Q. Now, again going to your testimony,
15 second to the last page, is a document that you
16 have submitted --

17 MR. DORTCH: Tom, you are referring
18 to the exhibits, not the testimony itself?

19 Q. I am sorry. The second to the last
20 page of the exhibits.

21 A. Okay.

22 Q. It is attachment and it says page 2
23 of 2 at the top.

24 A. Yes.

25 Q. It's communication from the

1 compliance investigator, investigation and audit
2 division. I assume that is Choice One
3 Communications.

4 ATTORNEY EXAMINER: Go off the
5 record. I want to make sure where you are
6 looking.

7 (DISCUSSION OFF THE RECORD)

8 A. Are you asking about Stephen Watson?

9 Q. Yes.

10 A. If I am looking at this I believe
11 Stephen Watson is an investigator for the PUCO,
12 I believe. I don't know, but it looks like he's
13 got -- it looks like looking at page 1 of 2 at
14 the top I see an e-mail from Theresa Morey to
15 contact the PUCO, and the PUCO's response.

16 Q. Okay. On that page it says in the
17 second paragraph under Description of
18 Issue/Concern it says "Mr. Gandee alleges that
19 he had the number for 30 years and it was in his
20 name. He had it through AT&T. He recently
21 learned that One Communications became
22 the provider of it in February of 2007." Do you
23 see that?

24 A. I do.

25 Q. So, is that then approximately --

1 can we assume that that is approximately when
2 the number was ported from AT&T to Choice One
3 Communications?

4 A. I can't assume anything. This is
5 something from a PUC investigator based on -- I
6 can't use this to verify certain dates.

7 Q. So we don't know as we sit here
8 today, is that fair to assume, we don't know
9 when the porting request was actually finalized?

10 A. I can't give you a specific date.

11 Q. Mr. Wheeler, you became aware of
12 the court order from Summit County that we
13 discussed, when was the first time you became
14 aware of that Court initiated order in May of
15 2009?

16 MR. DORTCH: I am going to object
17 just on a technicality, Your Honor. Mr.
18 Skidmore represented the Court issued an order
19 in May of 2009. Technically speaking the Court
20 order that would bind One Communications or
21 anyone else in this case is not the Magistrate's
22 order, it is the Judge's order that was entered
23 in June of 2009. That is my only objection

24 ATTORNEY EXAMINER: Mr. Skidmore,
25 can you rephrase the question?

1 Q. You have seen a copy of the
2 Magistrate's decision from May 19th, 2009?

3 A. Yes, I have.

4 Q. And do you know the first time when
5 you saw the Magistrate's decision was?

6 A. Me specifically, I don't recall the
7 date, but I specifically saw the Magistrate's
8 order.

9 Q. And you also at some point received
10 the ultimate judgement entry that was issued
11 June 9th of 2009 which totally adopted the
12 Magistrate's decision?

13 A. I have seen the Judge's order, yes.

14 Q. In response to the Court ordered
15 transfer of these phone numbers back to Dr.
16 Longworth and Dr. Gandee, can you tell me what
17 Choice One Communications did to be in
18 compliance with that Court order?

19 A. Upon receipt of a port order from
20 AT&T One Communications transferred -- and I
21 think this is important to understand from a
22 technical standpoint because -- so I would like
23 to explain this a little bit.

24 The Court order was issued in May
25 of -- or the Magistrate's order was issued in

1 May. We got the Court order in June, and then I
2 believe that the two numbers were switched at
3 various times after that. And --

4 ATTORNEY EXAMINER: You are
5 referring to 2009 again?

6 THE WITNESS: Yes. So, and so I
7 have sort of lost track of the numbers. One
8 number was switched sometime in July and
9 the other number was switched sometime in
10 September, both upon receipt of valid port
11 orders from AT&T. And what I would like to do
12 is just try to explain technically why that is
13 important.

14 MR. SKIDMORE: Let me ask a
15 question. I mean, he is kind of giving
16 testimony which he has a right to do through his
17 attorney, but I have specific questions with
18 regard --

19 THE WITNESS: And I am trying to
20 answer it.

21 ATTORNEY EXAMINER: What is the
22 question and answer though?

23 MR. DORTCH: You asked specifically
24 what One Communications did in response to
25 the Court order and he is trying to explain what

1 was done and why.

2 MR. SKIDMORE: I was specifically
3 asking the question in response to the Court's
4 directive and order what did Choice One
5 Communications do.

6 ATTORNEY EXAMINER: I will let the
7 witness answer.

8 THE WITNESS: In response to the
9 Court order, upon receipt we returned the
10 numbers to Dr. Gandee and Longworth upon receipt
11 of a port order from AT&T. And the reason it's
12 important that you understand why we needed the
13 port order from AT&T is because if we didn't get
14 a port order from AT&T or any other carrier and
15 just released the number it would go back into
16 the general pool.

17 ATTORNEY EXAMINER: Just to clarify
18 for the court reporter, you are using the terms
19 Court order and port order, I believe. People
20 will be reading the record, including me, in the
21 future and will need to sort that out.

22 THE WITNESS: I would like to
23 explain it this way. It's like a trapeze. Over
24 here you have One Communications. We are on the
25 trapeze. We want to release the number. We

1 don't get a port order from somebody, there is
2 nobody on the other trapeze, we can throw the
3 number, but that number then goes into the pool
4 and anybody can take it.

5 ATTORNEY EXAMINER: You are
6 referring to port, P-O-R-T?

7 THE WITNESS: Yes. Because
8 the reason we need the port order from AT&T is
9 to make sure that number gets back to the person
10 that -- to the company that the party wants it
11 to. So, we needed that port order. We did not
12 get port orders from AT&T. My recollection is
13 that one of the numbers, the number that was
14 received in July that we -- the Judge's order
15 was issued in June, and we got a port order
16 within 30 days, and upon receipt of that port
17 order so we could get it back to where the
18 party, whether it was Dr. Gandee or Longworth, I
19 don't remember which one had the July number.

20 We got that port order, so then we
21 made sure it got back to him. If we had not
22 done that and just released the number it would
23 have gone back into the general pool and
24 anybody, any carrier, could have taken it and
25 reassigning it to that number, which is why we

1 only release the numbers upon a port order.

2 Again, with the number in September
3 we released it in compliance with the order upon
4 receipt of the port order from AT&T so AT&T
5 would be ready to accept it and provision it.

6 ATTORNEY EXAMINER: Mr. Skidmore, so
7 I think what you were asking was once AT&T would
8 have learned of the Summit County Court order
9 what did Choice One, what was their response.
10 And Mr. Wheeler, I believe your response was we
11 did not release these numbers back to AT&T until
12 we received a port order from AT&T.

13 THE WITNESS: Correct.

14 ATTORNEY EXAMINER: Okay.

15 Q. So that we are clear, which is kind
16 of funny in law, some things don't seem to be so
17 clear sometimes, but the Court order, the
18 Magistrate's decision comes out in May. I want
19 to read specifically the section in the order
20 then I want to be specific with regards to what
21 happened.

22 On page 5, this is from the
23 Magistrate's decision, May 19th, 2009 in
24 paragraph No. 4 at page 5 about halfway through
25 the paragraph it says "As a result the party

1 known as Choice One Communications, Inc., the
2 phone carrier in this matter, is ordered and
3 otherwise directed to forthwith transfer the
4 ownership on the records of such entity and to
5 physically allow the change of such phone
6 numbers, that is being 330-896-8500, into the
7 name of Brian Longworth and to ensure that the
8 corporate records of such business entity show
9 that Keith S. Ungar or any other aforementioned
10 business entities have no ownership interest in
11 such name." Okay?

12 A. Okay.

13 ATTORNEY EXAMINER: That is
14 referring to Dr. Longworth's telephone number?

15 MR. SKIDMORE: Yes. What had
16 actually happened for this Court's knowledge is
17 Dr. Gandee's phone number had been disconnected
18 by Dr. Ungar just prior to this hearing. And I
19 can't remember why Dr. Ungar -- or Dr. Gandee's
20 phone number did not become an issue because we
21 had an agreement that that number would be
22 returned.

23 ATTORNEY EXAMINER: So you cannot
24 remember -- what was the rest of it?

25 MR. SKIDMORE: I think we had an

1 agreement, and I think it's explained somewhat
2 in the Court order, that there was an agreement
3 by Dr. Ungar to go ahead and relinquish
4 the phone number back to Dr. Gandee. Because I
5 don't want to misrepresent that. It's contained
6 within --

7 ATTORNEY EXAMINER: Within the
8 Magistrate's decision?

9 MR. SKIDMORE: Right.

10 MR. DORTCH: On behalf of One
11 Communications, I am not aware of any agreement
12 between Dr. Ungar and Dr. Gandee. What I do
13 know is that Dr. Gandee or, I am sorry, Dr.
14 Ungar released any claim to the telephone
15 number. I believe he may have announced that
16 while I was at the hearing. I don't recall.

17 ATTORNEY EXAMINER: You mean at the
18 Summit County --

19 MR. DORTCH: At the Summit County
20 Court proceeding, yes, Your Honor.

21 ATTORNEY EXAMINER: That was after
22 the Magistrate's decision?

23 MR. DORTCH: No. That would be in
24 the proceeding that led to the Magistrate's
25 decision. But in any event, Your Honor, the

1 fact of the matter is is that only Dr.
2 Longworth's number was submitted to the
3 Magistrate for determination.

4 ATTORNEY EXAMINER: I think that is
5 an important point for the record.

6 MR. SKIDMORE: I believe Dr. Ungar
7 stated on the record prior to the hearing
8 beginning that he no longer claimed any
9 ownership to Dr. Gandee's phone number.

10 ATTORNEY EXAMINER: All right.

11 Q. Based upon the Court's order to
12 transfer the phone number forthwith am I to
13 understand that Choice One Communication's
14 position is that they didn't comply with that
15 order forthwith --

16 MR. DORTCH: Objection.

17 MR. SKIDMORE: Let me finish my
18 question

19 MR. DORTCH: I am going to object to
20 the characterization anyway. But, go ahead.

21 Q. Because Choice One felt that it
22 needed a porting order to do that?

23 ATTORNEY EXAMINER: All right. Mr.
24 Dortch, your objection.

25 MR. DORTCH: Your Honor, Mr.

1 Skidmore just stated in his question that One
2 Communications did not comply with the Court's
3 order. There is no evidence that One
4 Communications did not comply with the Court's
5 order. In fact, the only evidence before you,
6 Your Honor, is that the Court Magistrate ordered
7 that the number be, I won't read the specific
8 language, but essentially that the number be --
9 Dr. Longworth obtain the benefit of that number;
10 that the Court several weeks later issued a
11 decision confirming the Magistrate's report that
12 within 30 days approximately One Communications
13 comply with the Court's order.

14 And as Mr. Wheeler has already said,
15 it's necessary in order to comply with
16 the Court's order for there to be a port
17 request. One Communications cannot unilaterally
18 transfer the number anywhere except to the pool.
19 The other carrier has to be prepared to accept
20 that transfer, thus the port request procedure.

21 My objection in this case, Your
22 Honor, is that Mr. Skidmore is stating in his
23 question that One Communications had not
24 complied with the Court's order. And that is
25 not a fair characterization.

1 ATTORNEY EXAMINER: I agree with the
2 objection. Do you want to restate the question
3 or just withdraw it?

4 Q. Well, I am not -- and I don't mean
5 to say or allege that Choice One did not comply
6 with the Court order. What I am saying based on
7 what I am hearing from your testimony is that
8 without a porting request you couldn't comply
9 with this language as specified by the
10 Magistrate in this case. Is that what I am
11 getting?

12 A. I don't think I would characterize
13 it the way you are characterizing it. As I said
14 previously, we need a port order in order to
15 make sure that the party's wishes are carried
16 out and it gets to the proper place.

17 Q. So once this Court order comes
18 out -- the Court order is not a porting order;
19 right?

20 A. A Court order is not a porting
21 request.

22 Q. Not a porting request. So what did
23 Choice One Communications do in order to make
24 this happen?

25 A. When we received the request from

1 AT&T we complied with the port order and
2 switched the number back.

3 Q. But did Choice One send a letter to
4 me, send a letter to Dr. Longworth, send a
5 letter to Dr. Gandee saying we have the court
6 order but we need a porting request? Did anyone
7 ever do that?

8 A. I have no knowledge of anything
9 along those lines.

10 Q. Now, there is one difference between
11 these two telephone numbers in this case. Do
12 you know prior to the number being ported over,
13 Dr. Gandee's number, what the status of that
14 phone number was prior to receiving a porting
15 request in September of 2009?

16 A. I don't know personally. I
17 understand from records that Dr. Ungar had at
18 the hearing had relinquished the number and that
19 it had been -- was no longer -- was no longer in
20 it when we received the court order -- was
21 longer connected, it had been disconnected.

22 And when we received the port order
23 we switched it over to AT&T.

24 Q. When was the number disconnected?

25 A. I don't know the specific date.

1 Q. So that phone number that is at
2 issue in these proceeding, is at issue in the
3 Summit County proceeding and it's been
4 disconnected. What did Choice One
5 Communications do to communicate to either
6 myself or Dr. Gandee how to obtain the phone
7 number back?

8 A. I am not familiar with any
9 communications with Drs. Gandee or Longworth as
10 to the steps that they may or may not need to
11 take.

12 MR. SKIDMORE: If I could have just
13 one second.

14 ATTORNEY EXAMINER: Yes. Off the
15 record for a minute, please.

16 (DISCUSSION OFF THE
17 RECORD)

18 MR. SKIDMORE: I have no further
19 questions.

20 ATTORNEY EXAMINER: Go off the
21 record and we will take a short break. Thank
22 you.

23 (RECESS TAKEN)

24 ATTORNEY EXAMINER: Back on the
25 record, please. Mr. Skidmore, you have no

1 further questions for the witness?

2 MR. SKIDMORE: That's correct, Your
3 Honor.

4 ATTORNEY EXAMINER: Mr. Dortch, any
5 questions?

6 MR. DORTCH: Very limited redirect,
7 Your Honor. I just want to clean up a couple of
8 items for the purposes of the record.

9 REDIRECT EXAMINATION

10 By Mr. Dortch:

11 Q. Mr. Wheeler, do you recall Mr.
12 Skidmore questioning you about the nature of
13 the services that Dr. Ungar was receiving,
14 whether local or --

15 A. Yes. I do recall the question.

16 Q. Could you look at Exhibit RW 1 to
17 your testimony and approximately halfway
18 through?

19 A. If you are asking about the one
20 dated June 27th, 2002 at 11:09 A.M.

21 Q. I am talking about the document that
22 is dated June 27, 2002 11:09 A.M. Yes. The
23 document actually begins on the page before.

24 MR. DORTCH: And, Your Honor, it's
25 about halfway through the package.

1 ATTORNEY EXAMINER: Just a second.

2 Let me find that.

3 Q. And we are referring to what is
4 easiest perhaps to simply use the fax identifier
5 at the top of the page. So turn to page 3.

6 A. Yes.

7 Q. And if you look actually at the
8 bottom you will notice this is actually page 6
9 of 10 of an agreement.

10 A. Yes.

11 Q. Okay. Focusing your attention on
12 the box in the middle --

13 A. Yes.

14 Q. -- of the page. Can you determine
15 what services were being provided to Dr. Ungar?

16 A. Yes.

17 Q. Pursuant to his contract?

18 A. Yes. According to the boxes check
19 marked Dr. Ungar signed up for ChoiceXchange
20 Local Dial Tone, Choice One Plus long distance
21 interlata, Choice One Plus 1 long distance
22 intralata and ChoiceNetJet Digital Subscriber
23 Line internet access.

24 Q. So local interstate -- well,
25 interlata, intralata long distance, and DSL

1 internet access; correct?

2 A. Yes.

3 Q. And that is what is identified on
4 that page?

5 A. Yes.

6 Q. You may also remember, if you would
7 turn through the fax pages to the last fax page
8 that seems to be part of that group. It ends
9 with page 7.

10 A. Yes.

11 Q. Do you see that at the top?

12 A. Yes. It says June 27, 2002 11:11
13 A.M.

14 Q. Correct. Turn to the next page.
15 You will see a fax cover sheet that is dated
16 10-31-2006 at the top.

17 A. Yes. I see that.

18 Q. It is a Center for Natural Medicine
19 cover sheet; correct?

20 A. Yes.

21 Q. We will come back to that in a
22 minute. If you will turn to the next page.

23 A. Yes.

24 Q. You see the One Communications fax
25 cover sheet; correct?

1 A. Yes, I do.

2 Q. And can you give the date that is
3 handwritten on the One Communications fax cover
4 sheet?

5 A. The date that is handwritten is
6 October 19th, 2006.

7 Q. Do you recall Mr. Skidmore asked you
8 questions regarding notes in the -- customer
9 service notes for October 19, 2006 in which it
10 is stated that a copy of a -- I believe it was
11 SA --

12 A. Yes. I recall.

13 Q. And if you recall the notation was
14 indicating that a copy of the service agreement
15 and letter of agency was in fact faxed to the
16 client on October 19th, 2006?

17 A. Yes. I recall that question.

18 Q. If you would turn now back to the
19 prior page which is the fax cover sheet from --
20 I can assume from the Center for Natural
21 Medicine dated 10-31-2006. It appears that the
22 customer sent this back on October 31, 2006.

23 A. That appears to be the case, yes.

24 Q. All right. Finally, if you will
25 turn forward a couple pages. You will find a

1 copy of the letter of agency.

2 A. Yes.

3 Q. Within RW 1 and even separately
4 attached as RW 2. If you would compare the fax
5 notations at the top of those several pages.
6 Can you confirm that in fact the letter of
7 agency was faxed back to One Communications from
8 the Center for Natural Medicine on October 31,
9 2006?

10 A. That appears to be the case, yes.

11 Q. Mr. Wheeler, is a providing carrier
12 permitted to simply port its numbers away from
13 itself to other carriers?

14 A. I am not sure I understand.

15 Q. Let me re-ask or frame that question
16 again. Are providing telephone carriers
17 permitted by law to simply transfer their
18 customers to other providers without receiving
19 permission from either the customer or from some
20 regulatory body?

21 A. No.

22 MR. SKIDMORE: Objection. First of
23 all it's framed as a question of law-type
24 question which requires expert foundation to be
25 laid. He can rephrase it or at lease ask it not

1 to be asked as an expert-type question.

2 ATTORNEY EXAMINER: I agree.

3 MR. DORTCH: Well, in Mr. Wheeler's
4 direct testimony he states that he is an
5 attorney. He is well versed in
6 telecommunications law and he is an expert on
7 telecommunications law.

8 ATTORNEY EXAMINER: Mr. Skidmore, do
9 you have a response to that?

10 MR. SKIDMORE: I don't remember what
11 the question was, but I think the question
12 was -- I mean, I don't have a problem with him
13 testifying, and I believe what he is saying is
14 another telecommunications carrier unless they
15 receive a porting request, they cannot transfer,
16 voluntarily port a number.

17 ATTORNEY EXAMINER: Is that the
18 question, Mr. Dortch?

19 MR. DORTCH: That is what my
20 question is, Your Honor.

21 ATTORNEY EXAMINER: Fine.

22 Q. Without the authority of a customer
23 or the authority of a regulatory body can you
24 simply transfer a customer away?

25 A. No.

1 Q. So why did you need a port request
2 then?

3 A. Because both for legal and technical
4 reasons. A port request is really important for
5 technical reasons so that we can get information
6 to make sure we have all the service numbers
7 properly ordered. It's important for the
8 technical to get a valid letter of
9 authorization, but the port order is really the
10 technical sort of mechanism that starts
11 the process.

12 Q. If you turn a number off on your
13 switches, One Communications' switches, without
14 coordinating with another carrier what happens?

15 A. The number would stay with us, but
16 would be inactive.

17 Q. So it could be released and go back
18 into the pool and anybody could then get that
19 number. Is that fair?

20 A. Yes, that is fair.

21 MR. DORTCH: I have no further
22 questions.

23 ATTORNEY EXAMINER: Thank you. Mr.
24 Skidmore.

25 MR. SKIDMORE: Just a couple.

RECROSS-EXAMINATION

By Mr. Skidmore:

Q. Mr. Wheeler, Dr. Gandee's phone number actually was disconnected, actually did go back into the general pool; didn't it?

A. I don't believe that to be the case because we continued a hold on that number so that when we got the port order we were able to make the switch.

Q. So, when Dr. Ungar cancelled the phone number and it was disconnected you are saying that the number would go in the general pool unless you received a porting request sometime later?

MR. DORTCH: Objection. That is not his testimony, but go ahead and answer.

A. My understanding is that the number was disconnected and that upon receipt of a -- had two choices. It could have been returned back to the general pool. My recollection is that we had the court order and Dr. Gandee wanted the number back.

ATTORNEY EXAMINER: Court order?

A. From the Summit County Court.

Q. So you had the ability to set

1 the number aside even though Dr. Ungar had
2 disconnected the phone number?

3 A. I believe, yes.

4 Q. Just some last questions I have
5 regarding the facsimile transmission that you
6 discussed with the attorney Dortch and contained
7 within that I think RW 1 Exhibit. You had
8 discussed the fax transmission of October 31,
9 2006. And one of the pages that you had not
10 discussed was page 3 which is entitled "Loyalty
11 has its rewards. Here's how to get yours."

12 A. Okay.

13 MR. SKIDMORE: Your Honor, the page
14 looks like this, for the record.

15 ATTORNEY EXAMINER: Still on Exhibit
16 RW 1?

17 MR. SKIDMORE: RW-2 facsimile, page
18 No. 3.

19 ATTORNEY EXAMINER: Just a minute,
20 please

21 Q. Am I to understand that this
22 document purports to be a subscription renewal
23 by Dr. Ungar of his account?

24 A. This form is entitled Loyalty Bonus
25 Account Renewal Form.

1 ATTORNEY EXAMINER: Just a minute.
2 Please go ahead.

3 Q. This appears to be a -- he also at
4 the time of this faxing back the letter of
5 agency Dr. Ungar apparently is also renewing his
6 account with Choice One Communications. Is that
7 true?

8 A. He returned this Loyalty Bonus
9 Account renewal form, yes.

10 Q. So he ports over or is making a
11 porting request to have these two numbers ported
12 over and also renewed his account with some
13 incentives at the time?

14 A. He checked off the box "One month
15 free with 12 months of extended service
16 and savings." Yes.

17 Q. All right. The hypothetical or the
18 question Mr. Dortch asked you that it's not in
19 the normal course of business for Choice One to
20 just port out phone numbers without requests,
21 that obviously would not be a very good
22 financial policy; would it? I mean, as long as
23 the line is attached to that account the
24 customer pays for it; is that right?

25 A. I am not sure I understand your

1 question.

2 Q. Mr. Dortch asked without a porting
3 request it would not be the policy of
4 the company to just turn over a phone number to
5 people; correct?

6 MR. DORTCH: Objection. I didn't
7 say policy. I said they couldn't do it
8 lawfully.

9 Q. You said you don't do that. The
10 company wouldn't do that, but it would be in
11 your financial interest in keeping these phone
12 numbers with Choice One Communications; isn't
13 that true?

14 A. I am not -- again I am not sure I
15 understand the question.

16 MR. SKIDMORE: I will withdraw it.
17 Thank you. Your Honor, I have nothing further.

18 ATTORNEY EXAMINER: Go off the
19 record for a minute.

20 (DISCUSSION OFF THE RECORD)

21 ATTORNEY EXAMINER: Back on the
22 record.

23 EXAMINATION

24 By the Attorney Examiner:

25 Q. Mr. Wheeler, just to clarify in my

1 own mind, when Dr. Gandee or Longworth contacted
2 Choice One in the spring of 2008 after leaving
3 the combined practice and wanted their numbers
4 returned to AT&T, Choice One checked into this
5 or determined that Drs. Gandee and Longworth had
6 no authority to make the change for those
7 numbers?

8 A. Right.

9 Q. Okay. After that request from the
10 Complainants there is in Exhibit RW 1, the last
11 couple pages, there looks to be some contact
12 from the Commission to Choice One about Dr.
13 Gandee's allegation anyway.

14 A. I believe there is an e-mail. I
15 believe the last two pages are correspondence
16 between somebody at the Commission.

17 Q. Correct.

18 A. And someone at One Communications,
19 Theresa Morey, Service Analyst.

20 Q. And it says One Communications is
21 basically saying there is a signed service
22 agreement from Dr. Ungar and that really is the
23 extent of --

24 A. That was the extent of the response
25 and this e-mail. I don't know of --

1 Q. Anymore correspondence?

2 A. I don't.

3 Q. Okay. Let's see. All right. And
4 you also indicated that although there was a
5 decision by Summit County Court indicating that
6 Dr. Longworth's number had to be returned to
7 him, and you are saying that Choice One really
8 would not take action to port the number back to
9 AT&T until you get a porting request from AT&T?

10 A. We held the number until we got a
11 valid port order to make sure that Dr. Gandee
12 got the number that he wanted back to him.

13 Q. And for Dr. Longworth you also
14 waited for a porting request from AT&T?

15 A. Dr. Longworth received his
16 Magistrate's decision on May 19th, which was
17 adopted by the Judge on June 9th. We received a
18 port order from -- port request from AT&T at
19 which point we switched the number back to AT&T.

20 Q. This is all during 2009?

21 A. Yes.

22 Q. All right. When Dr. Ungar initially
23 contacted Choice One to have the numbers ported
24 from AT&T to Choice One, then it's my
25 understanding Choice One faxed Dr. Ungar a

1 letter of agency, blank letter of agency that he
2 filled out and sent back to you. Signed and
3 sent back.

4 A. Yes. We obviously couldn't send him
5 a completed one. So, yes, we sent a blank one
6 and he signed and returned it, yes.

7 Q. When that is done it's just assumed
8 that that person has the right to request that
9 porting of numbers?

10 A. Under the decision AT&T versus FCC,
11 which said we don't have -- we can take the
12 letter of authorization as sufficient evidence
13 of authority.

14 Q. At face value?

15 A. We comply with the law which says we
16 take it at face value.

17 ATTORNEY EXAMINER: I have no
18 further questions. I appreciate your testimony.
19 Thank you for answering. I am sure it's a lot
20 of detail to remember.

21 Mr. Skidmore, would you like to move
22 admission of your exhibits? I am sorry. Mr.
23 Dortch.

24 MR. DORTCH: Thank you, Your Honor.
25 Yes, Your Honor. At this time I would move for

1 admission of Mr. Wheeler's testimony and
2 attached exhibits which is One Communications
3 Exhibit No. 1.

4 ATTORNEY EXAMINER: Okay. And, Mr.
5 Skidmore, any objections to that?

6 MR. SKIDMORE: Just for the record I
7 don't believe I have any objections to that.
8 It does appear to be a series of documents that
9 probably are cumulative to my materials also.

10 ATTORNEY EXAMINER: All right.

11 MR. SKIDMORE: No objection.

12 ATTORNEY EXAMINER: All right. That
13 will be admitted then for Exhibit 1 of Choice
14 One Communications.

15 (EXHIBIT ADMITTED INTO EVIDENCE)

16 ATTORNEY EXAMINER: Go off the
17 record for just a minute.

18 (DISCUSSION OFF THE RECORD)

19 ATTORNEY EXAMINER: We have
20 discussed the filing of briefs. Mr. Skidmore
21 though wants to just make a closing argument in
22 lieu of filing a brief.

23 MR. SKIDMORE: Well, you know, if
24 the other side wants to file briefs then we will
25 file a brief and waive closing argument. You

1 know, I guess I wish to do that too.

2 ATTORNEY EXAMINER: It takes a
3 couple weeks to get a transcript. Off the
4 record.

5 (DISCUSSION OFF THE RECORD)

6 ATTORNEY EXAMINER: The parties have
7 agreed that counsel for Dr. Gandee and Dr.
8 Longworth will submit a brief on March 2, and
9 counsel for Choice One will submit a reply brief
10 on the 16th of March.

11 And I don't believe there are any
12 further matters to take care of today, so thank
13 everyone for attending and all your time. And
14 the hearing is adjourned.

15 - - -

16 (At 4:00 P.M. the hearing was
17 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
January 20, 2011, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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