

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of William Steven Gandee, D.C., and)	Case No. 09-51-TP-CSS
)	
In the Matter of Brian Longworth, D.C.,)	Case No. 09-52-TP-CSS
)	
Complainants,)	
)	
v.)	
)	
Choice One Communications of Ohio, Inc. dba One Communications,)	
)	
Respondent.)	

ENTRY

The Commission finds:

- (1) On January 22, 2009, counsel for William Steven Gandee, D.C. (Dr. Gandee) and Brian Longworth, D.C. (Dr. Longworth) (collectively, Complainants) filed complaints against Choice One Communications of Ohio, Inc. dba One Communications (One Communications or Respondent). Complainants allege that they began sharing an office with Dr. Keith Ungar (Dr. Ungar), a One Communications customer, early in 2006, and that in September 2006, One Communications unlawfully ported Complainants' telephone numbers from AT&T to Dr. Ungar's One Communications account. Complainants further allege that One Communications refused Complainants' March 2008 request to remove their telephone numbers from Dr. Ungar's account when Complainants moved from the shared office to a new location.
- (2) One Communications answered both complaints on February 11, 2009, by contending that it had obtained a verified letter of agency (LOA) from Dr. Ungar before submitting a port request to AT&T in November 2006. One Communications also argues that Complainants were not listed as authorized to make changes to Dr. Ungar's account; therefore, no such changes were made.

- (3) By entry issued February 13, 2009, the attorney examiner scheduled both complaints for a prehearing conference on February 24, 2009. The parties met at that day and time but did not resolve matters.
- (4) One Communications filed a motion to dismiss and an accompanying memorandum in support on April 9, 2010.

One Communications asserts that it properly relied on the LOA when it submitted the port request to AT&T in November 2006. One Communications further contends that when it was contacted by Dr. Ungar, he provided an LOA in compliance with 47 C.F.R. 64.1130, verifying his authority for a change in service.

One Communications observes that an actual-authorization requirement, as argued by Complainants, and under which One Communications would have to verify whether Dr. Ungar was the subscriber for the ported telephone numbers, was rejected by the D.C. Circuit Court in *AT&T Corp. v. Federal Communications Comm'n*, 323 F. 3d 1081 (D.C. Cir. 2003) (*AT&T Corp.*) and has been applied by the FCC in numerous subsequent decisions, including *Sprint Communications Company*, 18 FCC Rcd 24137, 24138-39 (2003), *ACN Communications Company*, 19 FCC Rcd 9324, 9325-26 (2004), *Communicate Technological Systems LLC*, 20 FCC Rcd 15553, 15555 (2005), and *Communicate Technological Systems LLC*, 21 FCC Rcd 3409, 3411 (2006).

- (5) In their May 3, 2010, response to the motion to dismiss, Complainants restate their contentions from the complaint.
- (6) By its April 9, 2010, motion to dismiss, One Communications is asking the Commission to summarily dismiss this case without proceeding to hearing in this matter. Summary judgment is appropriate only if the undisputed facts and the laws make it clear that it is impossible for one party to prevail should the matter proceed to hearing. When considering a summary judgment motion, the adjudicator must consider all materials in the light most favorable to the party opposing the motion. Upon review of the assertions made by both parties, the Commission concludes that summary judgment is not appropriate and, therefore, One Communications' motion to dismiss shall be denied. Accordingly, the attorney examiner is directed to schedule a date for hearing in a subsequent entry.

It is, therefore,

ORDERED, That One Communications' motion to dismiss be denied. It is, further,

ORDERED, That the attorney examiner schedule Case Nos. 09-51-TP-CSS and 09-52-TP-CSS for hearing. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella

Valerie A. Lemmie



Steven D. Lesser

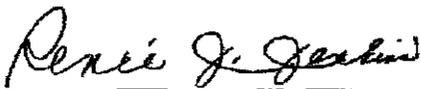


Cheryl L. Roberto

JML/dah

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Renee J. Jenkins
Secretary