

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of William Steven Gandee, D.C.,	)	Case No. 09-51-TP-CSS
	)	
and	)	
	)	
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 ON REHEARING

The Commission finds:

- (1) On May 25, 2011, the Commission issued an Opinion and Order, in which it found that William Steven Gandee and Brian Longworth (Complainants) failed to sustain their burden of proof that Choice One Communications of Ohio, Inc. dba One Communications (One Communications) had acted unreasonably, or in violation of the Commission's rules and regulations, state laws, or accepted standards and practices of the telecommunications industry, (a) when it ported Complainants' telephone numbers from AT&T Ohio (AT&T) after receipt of a letter of agency (LOA) from Dr. Keith Ungar (Dr. Ungar), (b) upon being contacted by Complainants and their counsel, who were attempting to re-obtain their numbers and transfer the numbers back to AT&T, (c) when Dr. Ungar released claim to Dr. Gandee's number in May 2009, and (d) following a June 2009 judgment entry in *Ungar v. Longworth, et. al.*, No. CV-2008-02-1528 (C.P. Summit County, June 9, 2009) (judgment entry) (*Ungar*), which ordered One Communications to transfer Dr. Longworth's telephone number back to him.
- (2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to

any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

- (3) On June 24, 2011, Complainants filed an application for rehearing, asserting two assignments of error. On July 5, 2011, One Communications filed its memorandum contra Complainants' application for rehearing.
- (4) Complainants' first assignment of error is the Commission's finding in the May 25, 2011, Opinion and Order that "while a carrier must follow FCC verification procedures, establishing actual authorization of the subscriber is not required." Complainants argue that such a finding is "unreasonable and unlawful" because "it does not require any verification procedure to the telecommunications provider, even after notice of an unauthorized act." Complainants once again argue that they contacted One Communications and asserted that they never authorized anyone *to transfer their telephone numbers. Further, Complainants add, One Communications admitted to conducting little, if any, investigation after being contacted by Complainants, nor engaging in much discussion with Complainants. In sum, contend Complainants, "although the telecommunications carrier continues to receive financial benefit from the unauthorized user, the consumer is left essentially without remedy."*

Complainants state that when they received little assistance from One Communications, they filed a separate action in *Ungar*. Complainants observe that on May 19, 2009, the Magistrate in *Ungar* concluded that Dr. Ungar had no authority to transfer into his name and control Dr. Longworth's telephone number. Complainants further note that the Magistrate ordered One Communications to transfer Dr. Longworth's number back to him. Finally, Complainants assert, the trial court adopted the Magistrate's decision.

- (5) In response to the first assignment of error, One Communications contends that, pursuant to *AT&T Corp. v. Federal Communications Comm'n.*, 323 F3d 1081 (D.C. Cir. 2003) (*AT&T Corp.*), the Commission correctly stated that a submitting carrier has no duty to investigate or establish whether a subscriber has actual authorization to execute an LOA requesting the porting of a telephone number. One Communications observes that

Complainants do not contend that the Commission incorrectly applied Federal Communications Commission (FCC) carrier change regulations or "*AT&T Corp.* and its progeny." One Communications adds that if the Commission were to adopt new customer care standards, a consumer complaint case is not the forum in which to do so. One Communications also asserts that Complainants' opportunity to recover alleged damages for the transfer of their numbers occurred via their tort claim against Dr. Ungar in the *Ungar* proceeding.

- (6) Upon reviewing the arguments regarding the first assignment of error, the Commission finds that Complainants raise no new arguments that the Commission has not already considered. In its May 25, 2011, Opinion and Order, the Commission cited *AT&T Corp.* and subsequent FCC decisions in finding that, while a carrier must follow FCC verification procedures, the carrier need not establish actual authorization of the subscriber. The Commission agrees with One Communications that Complainants make no reference to *AT&T Corp.* in their argument. Rehearing on this assignment of error is, therefore, denied.
- (7) In the second assignment of error, Complainants assert that the Commission erroneously found that Richard Wheeler (Mr. Wheeler), One Communications' witness, had informed Complainants' counsel that an AT&T port order was needed for Dr. Gandee to re-obtain his telephone number. Complainants state that there is nothing in the transcript pages referenced by the Commission to support this conclusion. Further, Complainants add, Mr. Wheeler testified at hearing that, after the June 2009 court order in *Unger*, he had no knowledge of One Communications sending a letter to Dr. Longworth or Dr. Gandee indicating that an AT&T port request was needed. Complainants assert that after One Communications retained its counsel, who appeared at the *Ungar* litigation, Complainants' counsel had no communications with One Communications representatives, including Mr. Wheeler. In support of this contention, Complainants attached to the application for rehearing letters and e-mails sent to One Communications and its counsel from March 11, 2008, through August 10, 2009.

In response to the second assignment of error, One Communications notes that the May 25, 2011, Opinion and Order

cited Mr. Wheeler's direct testimony, filed on January 13, 2011, to support the finding that Mr. Wheeler had informed Complainants' counsel of the need for an AT&T port request to transfer Dr. Gandee's telephone number back to him. Regarding the new evidence offered by Complainants, One Communications contends that Complainants generated the documents more than a year prior to hearing and provide no explanation why such evidence was not offered at hearing. Referring to Section 4903.10, Revised Code, which states that the Commission shall not take any additional evidence on rehearing that could have been offered at the initial hearing, One Communications concludes that Complainants cannot introduce any such evidence now.


- (9) Upon reviewing the arguments regarding the second assignment of error, the Commission again finds that Complainants raise no new arguments that the Commission has not already considered. The Commission's May 25, 2011, Opinion and Order indeed cites Mr. Wheeler's direct testimony filed prior to hearing, in which he states that he contacted Complainants' counsel to indicate that an AT&T port request was needed to return Dr. Gandee's number to him. Complainants did not question or challenge this aspect of Mr. Wheeler's direct testimony at hearing. Regarding Complainants' additional evidence, the Commission agrees with One Communications that Complainants provide no explanation why such evidence, dated from March 2008 through August 2009, was not offered at the January 20, 2011, hearing to rebut Mr. Wheeler's prefiled testimony. Thus, the Commission cannot consider such evidence now. Rehearing on this assignment of error is, therefore, denied.


It is, therefore,


ORDERED, That Complainants' application for rehearing be denied. It is, further,

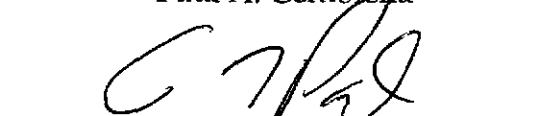
ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

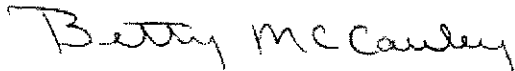
  
Andre T. Porter

  
Cheryl L. Roberto

JML/dah

Entered in the Journal

**JUL 15 2011**

  
Betty McCauley  
Secretary