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March 1, 2010

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Core Communications, Inc. v. XO Communications Services, Inc.;
Docket No. C-2009-2133609

Dear Secretary McNulty:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and three (3) copies of the Prehearing Memorandum of XO Communications Services, Inc. in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Prehearing Memorandum, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek
Shelby A. Linton-Keddie

Counsel to XO Communications Services, Inc.

SLK/lmc

c: Administrative Law Judge Kandace F. Melillo (via E-mail and Hand Delivery)
Certificate of Service

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CERTIFICATE OF SERVICE

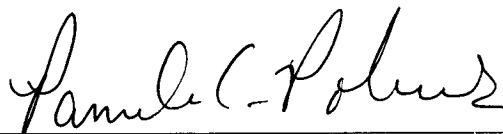
I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Pamela C. Polacek

Counsel to XO Communications Services Inc.

Dated this 1st day of March, 2010, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.	:	
Complainant	:	
v.	:	Docket No. C-2009-2133609
	:	
XO Communications, Inc. [<i>sic</i>]	:	
Respondent	:	
	:	
	:	
	:	
	:	

PREHEARING MEMORANDUM OF XO COMMUNICATIONS SERVICES, INC.

Pursuant to the 52 Pa. Code §5.222(d) and the Prehearing Order issued in this matter, XO Communications Services, Inc. ("XO") provides the following information concerning its participation in the above-captioned proceeding.

I. INTRODUCTION

Core Communications, Inc. ("Core") initiated this case with a complaint against XO.¹ In its Complaint, Core demanded that XO pay Core intrastate switched access charges (applicable to long distance or toll traffic) for the termination of *non-toll* traffic transmitted to Core by XO. Core admits that it did not bill XO for four years for the traffic that XO transmitted to Core. Once Core did bill XO, XO mistakenly made payments to Core for the termination of what Core represented was long distance traffic. Subsequently, XO learned that the traffic was non-toll traffic and has since refused to pay these charges. The parties have been unable to resolve their disputes regarding the amount owed, if anything, for the termination of non-toll traffic, which ultimately led to Core filing the Complaints. The non-toll traffic at issue is primarily, if not exclusively, calls made by XO retail customers to Internet Service Providers ("ISPs") that are customers of Core. In other words, the traffic is ISP-bound.

¹ Core's Complaint was filed against "XO Communications, Inc." The proper corporate name for XO is "XO Communications Services, Inc."

The parties did not have a contract for traffic exchanged between them, and Core has no grounds for charging *any* amount for the termination of non-toll traffic. In such situations, the industry standard is to exchange traffic on a "bill and keep" basis. Consequently, , Core resorted to filing the Complaint in an attempt to enlist the Pennsylvania Public Utility Commission's ("PUC" or "Commission") authority to (1) permit Core to charge inapplicable rates intended for the termination of toll traffic or (2) establish retroactive rates for termination of non-toll traffic.

Core also has similar complaints pending against other Competitive Local Exchange Carriers ("CLECs"). In one of those cases, Presiding Administrative Law Judge ("ALJ") Angela T. Jones issued a recent Order granting, in part, a Motion to Dismiss filed by AT&T Communications of PA, LLC and TCG Pittsburgh, Inc. (collectively, "AT&T").² Specifically, ALJ Jones found that the Commission lacked subject matter jurisdiction over ISP-bound traffic. XO reserves the right to request dismissal of the instant complaint, in whole or part, on similar grounds.

II. ISSUES AND WITNESSES

The case involves three issues:

1. Whether the Commission has subject matter jurisdiction over the traffic at issue; and
2. To the extent that any of the traffic at issue is not ISP-bound traffic, whether, in the absence an agreement between the parties, the parties were properly and legitimately operating under a bill-and-keep arrangement for the termination of non-toll traffic.

XO has never disputed that intrastate access charges apply to intrastate long-distance, or toll, calls, properly billed, at lawful rates. XO has always been, and remains willing to pay such lawful access charges. As to the exchange of local traffic and other types of traffic, XO's position is that, in the absence of either a written contract between the parties or an effective, applicable tariffed rate, the parties could only have operated under a bill-and-keep arrangement for the exchange of traffic,

² *Core Communications, Inc. v. AT&T Communications of PA, LLC, and TCG Pittsburgh, Inc.*; Docket Nos. C-2009-2108186 and C-2009-2108239.

which is an industry standard practice.

III. WITNESSES

At the present time, XO anticipates presenting the following witnesses in this proceeding:

Richard Jackson, Director
National Telco Audit
XO Communications Services, Inc.

The need for different and/or additional witnesses may be identified as the proceeding progresses.

IV. SCHEDULE AND SERVICE OF DOCUMENTS

The Commission currently has before it the case of Core v. AT&T in which the issues and factual basis are essentially identical to those of this case. As previously discussed, the ALJ in the AT&T case has granted, in part, the Motion to Dismiss due to lack of subject matter jurisdiction over ISP-bound traffic. It is expected that one or both of the parties will request further review by the Commission. Given that the ultimate disposition of the AT&T Motion will bear directly on this proceeding, Core and XO have conferred and agree that the schedule in this case be suspended pending the final decision on the AT&T Motion.

XO recommends that service of documents is deemed served when sent to the parties by electronic mail so long as they are sent before 5:00 PM EST. Service should then be followed up with a hard copy. XO is also agreeable to an arrangement whereby the parties will, within five days of service of a discovery request, provide oral notice of any objections to that request so that the parties will have the opportunity to resolve those objections short of a formal objection.

IV. SERVICE ON XO

XO will be represented in this case by the following counsel, who should be served with copies of all documents in this proceeding:

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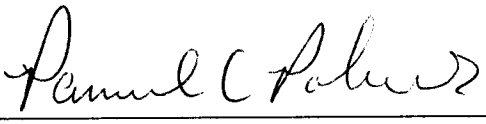
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V. SETTLEMENT DISCUSSIONS

The parties have had several discussions regarding discovery and other matters related to the issues in this case. It is highly unlikely that the parties will amicably resolve all issues in this case — in particular the compensation scheme for non-toll traffic. However, the parties will promptly notify the ALJ if they are able to resolve any issues.

Respectfully submitted,

XO Communications Services, Inc.

By 
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Dated: March 1, 2010