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October 27, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Core Communications, Inc. v. XO Communications, Inc.
Docket No. C-2009-2133609

Dear Secretary Chiavetta:

On behalf of Core Communications, Inc., enclosed please find the original of its Prehearing Memorandum along with the electronic filing confirmation page with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww

cc: Hon. Kandace Melillo (w/enc)
Cert. of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Core Communication's Prehearing Memo upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.


Via Email and/or First Class Mail

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Dated: October 27, 2010



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SUPPLEMENTAL PREHEARING MEMORANDUM
OF CORE COMMUNICATIONS, INC.**

Pursuant to 52 Pa. Code Section 5.222 and Prehearing Conference Order #2 of Administrative Law Judge Kandace F. Melillo dated September 23, 2010, Core Communications, Inc. (“Core”) submits this Supplemental Prehearing Conference Memorandum in the above-captioned proceeding.

I. BACKGROUND

Core filed a formal complaint against XO Communications, Inc. (“XO”) on September 23, 2009. In response, XO filed Preliminary Objections on October 26, 2009 seeking a dismissal of the Complaint. Core filed an answer to the Preliminary Objections and by order dated December 14, 2009 signed by ALJ Colwell, XO’s Preliminary Objections were denied. Subsequently on January 1, 2010, XO filed an Answer and New Matter. Core’s Reply to XO’s New Matter was filed on January 25, 2010. An initial prehearing conference was scheduled for February 2, 2010 but was subsequently rescheduled to March 4, 2010 at the request of Core due to a conflict with another pending Commission case.

In advance of the initial prehearing conference scheduled for March 4, 2010 both Core and XO filed Prehearing Memoranda on March 1, 2010. In these Prehearing Memoranda, both parties referenced the pending complaint of Core against AT&T Communications of PA, LLC (Docket No. C-2009-2108186) and TCG Pittsburgh, Inc. (Docket No. C-2009-2108239)

(combined "AT&T Complaint") and their agreement to a suspension of the procedural schedule pending resolution of Material Questions then pending in the AT&T Complaint proceeding. As a result of this, the prehearing conference scheduled for March 1, 2010 was cancelled and the parties subsequently filed a Joint Motion for Stay requesting that the matter be stayed pending the outcome of the Commission's resolution of the Material Questions pending in the AT&T Complaint case. By Order dated March 5, 2010, this proceeding was stayed and the parties were requested to provide a joint status report by May 22, 2010. In accordance with this directive, the parties' filed a Joint Status Report on May 21, 2010 informing the Presiding Officer that the Material Questions pending in the AT&T Complaint proceeding still were not resolved and requesting that the matter continue to remain stayed.

On September 8, 2010, the Commission resolved the Material Questions in the AT&T Complaint case finding that it had jurisdiction to adjudicate Core's complaint. The AT&T Complaint case is proceeding with hearings scheduled for November 18 and 19, 2010. In response to a request by Core, the stay in this matter was lifted by Order dated September 16, 2010 and an initial prehearing conference is scheduled for November 1, 2010. The parties were requested to file a Supplemental Prehearing Memorandum to update, as necessary, any information contained in their March 1, 2010 Prehearing Memoranda.

II. REPRESENTATION, ISSUES AND WITNESSES

Core's representation, issues and identification of witnesses as set forth in its March 1, 2010 remain the same.

VI. PROCEDURAL SCHEDULE

The parties attempted to reach agreement regarding the procedural schedule but were unable to do so. Core proposes the following procedural schedule:

December 3, 2010 – Core Direct Testimony
January 5, 2010 – XO Rebuttal Testimony
January 31, 2010 – Core Surrebuttal Testimony
Week of February 7 or 14, 2010 – Hearings (two days)
30 days after hearings – Main Briefs due
20 days after Main Briefs filed – Reply Briefs due

Core believes that this schedule provides both parties with an ample opportunity to develop their cases and to conduct reasonable discovery while balancing Core's interest in a timely resolution of this proceeding. Notably, while this proceeding is pending and unless the Commission directs otherwise, Core does not expect XO to pay any reasonable amount for its prior use of Core's facilities nor to pay anything for its current or future use of these facilities. Core submits that XO should not be permitted to unreasonably delay the timely resolution of Core's complaint while at the same time requiring Core to provide XO services for free.

VII. DISCOVERY

In addition to the consenting to service via email and recommending that the parties agree to provide oral notice of any objections to discovery requests within five (5) days of service, Core suggests that 52 Pa Code § 5.342(g) be modified so that Motions to Compel be due within five calendar days of service of discovery responses. Additionally, discovery began prior to the suspension of the procedural schedule and, when the schedule was suspended, each party owed the other a few remaining responses. The parties agree that these responses will be due on Monday, November 8, 2010.

VIII. PROTECTIVE ORDER

The parties have agreed to the entry of a protective order in this proceeding and, therefore, Core is simultaneously filing a Petition for Protective Order.

IX. MOTION FOR PRO HAC VICE

Core is also submitting a Motion for the *Pro Hac Vice* admission of Chris Van de Verg.

Respectfully submitted,



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Dated: October 27, 2010