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October 29, 2010

**Via Electronic Filing**Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265Re: 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 Supplemental Petition for a Protective Order Governing Production of Confidential Material 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 Supplemental Petition for Protective Order upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

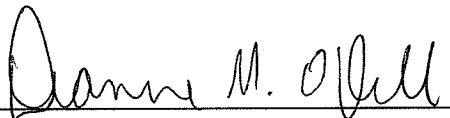
**Via Email and/or First Class Mail**

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Dated: October 29, 2010

  
Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SUPPLEMENTAL PETITION OF CORE COMMUNICATIONS INC. FOR A  
PROTECTIVE ORDER GOVERNING PRODUCTION OF CONFIDENTIAL  
MATERIAL**

On October 27, 2010, Core filed an uncontested Petition for a Protective Order to enable the parties, through formal and informal discovery, to gain access to relevant non-public, proprietary information and documents which contain sensitive information that is commercially sensitive or is ordinarily considered and treated as confidential by the producing party. The proposed Protective Order was attached to the Petition as Exhibit A. Subsequently, Presiding Administrative Law Judge Kandace F. Melillo (“ALJ Melillo”) requested additional information to support entry of the proposed Protective Order consistent with the requirements of 52 Pa. Code § 5.423. In addition to the averments set forth in the October 27, 2010 Petition, Core provides the following to support entry of the proposed Protective Order:

1. Under 52 Pa. Code §§ 5.362(7) and 5.423, a Protective Order may be entered to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public’s interest in having access to the confidential information. In evaluating whether to enter a Protective Order, the Commission must balance the potential harm to the producing party of disclosure of the information at issue with the public’s interest in free and open access to the administrative process. Additionally, the

Sunshine Act obligates the Commission to conduct its business in public meetings because “secrecy in public affairs undermines the faith of the public in government.” 65 Pa. C.S. § 702.

2. Relevant factors to be considered when addressing a request for protective order include the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant’s competitors and trade partners. 52 Pa. Code §§ 5.423(a)(1) - (3). Core submits that the degree of difficulty and cost of developing the information as referenced in 52 Pa. Code § 5.423(a)(4) would be addressed, if necessary, in the context of any objections to discovery based on 52 Pa. Code § 5.361(a). Further, regarding 52 Pa. Code § 5.423(5) and apart from what is referenced herein, Core is unaware of any other statutes or regulations dealing specifically with disclosure of the information that would be relevant in the context of this request to enter a Protective Order.

3. Consistent with the averments set forth in paragraph 2 of Core’s Petition for Protective Order, Core anticipates that the type of information that would be governed by the terms of the this Protective Order would include trade secret or other confidential business information within the meaning of 52 Pa Code § 5.362(a)(7). A “Trade Secret” is defined as “Information . . . that: (1) derives independent economic value, actual or potential, from not being generally know to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” 65 P.S. § 67.102. Consistent with the factors set forth in 52 Pa. Code § 5.423(a)(1)-(3), to the extent the parties in discovery are required to share this type of information, public disclosure of it would cause unfair economic or competitive damage to the producing party by publicly revealing marketing and business strategy. Adopting the proposed Protective Order is a reasonable way to protect the

confidentiality of such information while still permitting the parties and the Commission to use it as appropriate for purposes of the instant litigation. This limitation on the disclosure of such information will not prejudice the rights of the participants, will not frustrate the ability of the public to access information that is not publicly available in the normal course of business, and will facilitate the prompt and fair resolution of this proceeding.

4. Pursuant to 52 Pa. Code 5.423(e), the Protective Order also proposes to permit parties to designate certain information as “Highly Confidential” and limits this designation to “the producing party’s marketing plans including inter alia, costing and pricing aspects thereof, competitive strategies, market share projections, marketing materials that have not yet been used, customer-identifying information, or customer prospects for services that are subject to competition.” Exhibit A, ¶ 3.

5. For information that is designated “Highly Confidential,” the proposed Protective Order seeks to limit the disclosure of that information to counsel of record though the producing party may permit access to other persons upon request. Exhibit A at ¶ 5(b). As the parties in this matter are both Competitive Local Exchange Carriers (“CLECs”) which provide service in competition with one another, each has an interest in ensuring that highly confidential marketing plan information produced in discovery receives additional protections from disclosure. Without such an additional layer of protection, persons employed by the producing party’s competitor may gain access to information which, once known, may be difficult to dismiss or ignore in the normal course of business thus harming the ability of the producing party to conduct business. The purpose of the Protective Order’s provisions permitting the designation of “Highly Confidential” information is to prevent this from occurring.

6. Permitting the parties to designate “Highly Confidential” information is also a reasonable way to ensure that the parties and the Commission are informed about the level of sensitivity of the confidential information that is produced.

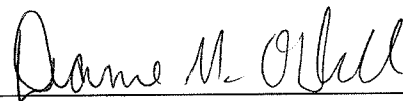
7. The proposed restrictions for “Highly Confidential” information are narrowly tailored and do provide a process whereby the requesting party can seek to have persons other than counsel of record have access to highly confidential information and, if agreement is not reached, enable the issue to be resolved by the presiding ALJ.

8. Finally, Core notes that the text of the proposed Protective Order is consistent with the Protective Order dated August 5, 2009 and adopted in the proceeding addressing a similar complaint by Core against AT&T Communications of PA, LLC and TCG Pittsburgh, Inc. at Docket Nos. C-2009-2108186 and C-2009-2108239.

9. For all these reasons, Core submits that the proposed Protective Order appropriately balances the interests of the parties, the public, and the Commission regarding the use of confidential information.

WHEREFORE, Core Communications, Inc. respectfully requests that the Protective order attached as Exhibit A to its October 27, 2010 Petition for Protective Order be entered.

Respectfully submitted,



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Dated: October 29, 2010