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May 5, 2011

Via Electronic Filing

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

Re: Core Communications, Inc. v. Choice One Communications of Pennsylvania, Inc. d/b/a
One Communications, Docket No. C-2009-2130379

Core Communications, Inc. v. CTC Communications Corp. d/b/a One Communications,
Docket No. C-2009-2131838

Dear Secretary Chiavetta:

On behalf of Core Communications, Inc., ("Core") enclosed for filing please find the original of its Petition for a Protective Order Governing Production of Confidential Material with the electronic filing confirmation page with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/jls

Enclosure

cc: Hon. Wayne L. Weismandel (w/enc)
Cert. of Service, w/enc.

CERTIFICATE OF SERVICE

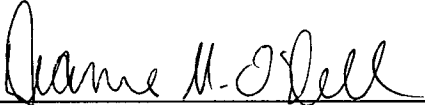
I hereby certify that this day I served a copy of Core Communication's Petition for Protective Order upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

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Dated: May 5, 2011



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.	:	
	:	
v.	:	C-2009-2130379
	:	
Choice One Communications of Pennsylvania, Inc.,	:	
d/b/a One Communications	:	

Core Communications, Inc.	:	
	:	
v.	:	C-2009-2131838
	:	
CTC Communications Corp.,	:	
d/b/a One Communications	:	

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

In accordance with 52 Pa. Code § 5.423, Core Communications, Inc. (“Core”) hereby files this Petition For a Protective Order Governing Production of Confidential Material. In support of this Petition, Core avers as follows:

1. In connection with this proceeding, the parties anticipate that they may be required to file with the Commission and/or furnish to the parties through formal and informal discovery non-public, proprietary information and documents that contain sensitive information, including but not limited to information that is either specified as confidential by its terms or pertains to business practices, operations, or financial matters that are commercially sensitive or that are ordinarily considered and treated as confidential by the producing party.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

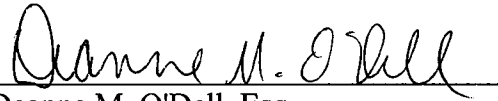
8. The proposed restrictions for "Highly Confidential" information are narrowly tailored and do provide a process whereby the requesting party can seek to have persons other than counsel of record have access to highly confidential information and, if agreement is not reached, enable the issue to be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

9. 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 and the Protective Order dated November 1, 2010 addressing another similar complaint by Core against XO Communications Services, Inc. at Docket No. C-2009-2133609..

10. 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 hereto be entered.

Respectfully submitted,

A handwritten signature in black ink, reading "Deanne M. O'Dell", written over a horizontal line.

Deanne M. O'Dell, Esq.

Attorney ID No. 81064

Eckert Seamans Cherin & Mellott, LLC

213 Market Street 8th Fl.

PO Box 1248

Harrisburg, PA 17108-1248

717.255.3744

Dated: May 5, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.	:	
	:	
v.	:	C-2009-2130379
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Choice One Communications of Pennsylvania, Inc.,	:	
d/b/a One Communications	:	

Core Communications, Inc.	:	
	:	
v.	:	C-2009-2131838
	:	
CTC Communications Corp.,	:	
d/b/a One Communications	:	

PROTECTIVE ORDER

1. This Protective Order is hereby granted with respect to all materials and information identified at Ordering Paragraphs 2 and 3 which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate or any other party, which are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY" (hereinafter collectively referred to as "Proprietary Information").

3. In addition, parties may designate extremely sensitive Proprietary Information as "HIGHLY CONFIDENTIAL" (hereinafter referred to as "Highly Confidential

Information") and thus secure the additional protections set forth in this Order pertaining to such material. Highly Confidential Information shall be only such Proprietary Information that constitutes or describes 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.

4. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information or Highly Confidential Information shall be permitted only in accordance with this Order.

5. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by another party (the "Producing Party") to the party's expert(s), subject to the following restrictions:

i. Such expert(s) may not hold any of the following positions with any competitor of the Producing Party: (a) an officer, board member, stockholder, partner, owner other than stock or employee who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the Producing Party; or (b) an officer, board member, stockholder, partner, owner other than stock of

any affiliate of a competitor of the Producing Party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner or owner unless his/her interest in the business constitutes a significant potential for violations of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at less than \$100,000 and/or constituting less than a 2% interest in a business does not, in itself, establish a significant potential for violation.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the Producing Party, said independent expert must: (1) advise the Producing Party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor of the Producing Party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the Producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Producing Party. The Producing Party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

b. Highly Confidential Information. Information designated as Highly Confidential shall be provided only to counsel of record. If the counsel of record desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the Producing Party's counsel. If the requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge for resolution.

c. No other persons may have access to Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any

purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in ordering paragraph 5, counsel for a party of record shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as "Appendix A". Counsel shall promptly deliver to the Producing Party a copy of this executed acknowledgment form.

7. A Producing Party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the Producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.

8. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. §552(b)(4) until such time as the information is found to be non-proprietary.

9. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. §66.1(2) until such time as the information is found to be non-proprietary.

10. Any public reference to Proprietary Information or Highly Confidential Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

11. Part of any record of this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in ordering paragraph 10 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to an Order of an Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 12 shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa. Code §5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent such guidance is available.

12. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the admissibility of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

13. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed. This provision shall not apply to the Commission, its Staff, the Office of Trial Staff, the Office of Consumer Advocate, or the Office of Small Business Advocate.

Date:

Administrative Law Judge

**APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc. :
 :
 v. : C-2009-2130379
 :
 Choice One Communications of Pennsylvania, Inc., :
 d/b/a One Communications :

Core Communications, Inc. :
 :
 v. : C-2009-2131838
 :
 CTC Communications Corp., :
 d/b/a One Communications :

The undersigned is the expert officer, member, employee or counsel
of _____ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary and Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

Signature

Print Name

Address

Employer

Date: _____