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June 15, 2011

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 Motion to Strike Objection of XO Communications Services, Inc. to the Admission of Exhibit BLM-25 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 Motion to Strike Objection of XO Communications Services, Inc. to the Admission of Exhibit BLM-25 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

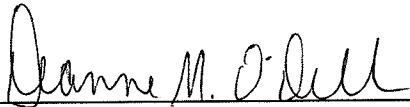
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Dated: June 15, 2011



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

To:

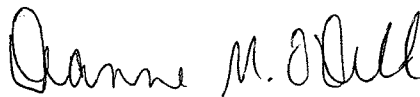
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Attorneys for XO Communications, Inc.

Pursuant to 52 Pa. Code § 5.103(b) you are hereby notified to file a written response to the enclosed Motion within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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Dated: June 15, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF CORE COMMUNICATIONS, INC.
TO STRIKE OBJECTION OF XO COMMUNICATIONS SERVICES, INC.
TO THE ADMISSION OF EXHIBIT BLM-25**

Pursuant to 52 Pa. Code §§ 5.103, Core Communications, Inc. (“Core”) respectfully requests that Administrative Law Judge (“ALJ”) Kandace F. Melillo strike the May 31, 2011 objection of XO Communications Services, Inc. (“XO”) to the admission of Exhibit BLM-25. XO’s objection and alternate request for a period of 30 days for additional discovery is nothing more than a self-serving procedural maneuver calculated to delay resolution of this matter while XO continues to send Core its traffic – which to date exceeds a total of 9,000,000 minutes – for termination while refusing to pay anything.

As explained further below, BLM-25 was provided consistent with the request of ALJ Melillo. While XO claims that “Exhibit BLM-25 is so full of inaccuracies, inconsistencies and contradictions that it is essentially useless,” these arguments – even if based in reality – go to the probative weight that the ALJ (as the trier of fact) may attach to such evidence once admitted but they do not preclude the admission of Exhibit BLM-25 pursuant to 52 Pa. Code §§ 5.401-5.403. However, a further analysis of the underlying basis for XO’s claims – which is very limited in nature – does not support XO’s objection to the admission of BLM-25. The data presented in Exhibit BLM-25 has been in XO’s possession for years in the form of invoices as well as the Call Detail Records (“CDRs”) that Core provides to XO on a monthly basis and XO chose not to

perform its own audit of these records or to challenge Core's information prior to filing this objection. For these reasons, XO's objection and alternate request for a period of 30 days for additional discovery in response to Core's Motion for Admission of Exhibit should be stricken and Core's proposed Exhibit BLM-25 should be admitted into the record.

In support, Core states as follows:

1. Paragraphs 1-5 of Core's Motion for Admission of Exhibits set forth the background leading to Core's Motion.
2. XO filed a Response and Objection to Core's Motion on May 31, 2011. XO does not object to the admission of Core Cross Examination Exhibit No. 5, BLM-23 or BLM-24. XO only objects to the admission of proposed Exhibit BLM-25. In the alternative, XO requests that the ALJ permit an additional "30 days for additional discovery on the information provided in Exhibit BLM-25, to address the concerns discussed herein, and to provide an opportunity for XO to respond." XO Objection at 7. As explained further below, Core requests that XO's objection be stricken and that BLM-25 be admitted into the record of this proceeding.
3. In response to the ALJ's request for updated information and further analysis of the calls at issue in this case, XO was given the opportunity to submit its own information. Tr. 63. XO did not submit its own proposed exhibit even though XO testified that it maintains its own "switch records" which allegedly permit XO itself to track minutes of use ("MOUs") and rate calls properly *without Core's assistance*. Tr., at 88, lines 10-21 ("[W]e took a sample of the billing records that Core provided with the CIC code and we matched them to our switch records, and our switch records were AMACAL (ph.) Call Code 001. It went out over our local interconnection trunk and on AMACAL Code 001 is a local call. It's an outbound local call and

we matched that up, which is the record that you bill with the CIC code.”); *and*, Tr., at 106, lines 15-25.

4. The information presented by Core in proposed Exhibit BLM-25 contains the much of the same information included with BLM-14 which was submitted as an exhibit to Core St. No. 1 which was served on XO on January 5, 2011 and admitted into the record on May 3, without objection. An inventory of Core’s invoices to XO from June 2004 through July 2009 was provided in Exhibit A attached to Core’s September 23, 2009 complaint. Importantly, XO has never challenged the presentation of these invoices in submitted testimony or evidence nor sought discovery about them. XO did not object to the admission of BLM-14 and chose not to cross-examine Core’s witness at the hearing on May 3, 2011. TR. at 31. XO has had ample opportunity through the billing dispute process, discovery, testimony, and cross-examination to verify or seek further clarification of the data as presented by Core underlying this proceeding. Nevertheless, XO failed to avail itself of these opportunities or to submit its own information or calculations, even though it claims (for the first time on cross examination) to possess its own “switch records.”

5. Despite this, XO was still given an opportunity to object to the admission of Exhibit BLM-25. Tr. 63. Importantly, though, XO never contends that the Exhibit BLM-25 does not meet evidentiary standards for admission into evidence. *See* 52 Pa. Code §§ 5.401-5.403.

6. Rather, XO identifies (alleged) errors in Exhibit BLM-25 and claims that these errors justify denying Core’s request to admit this exhibit into the record. XO Objection, at 3, 5. However, these (alleged) errors do not preclude the admission of Exhibit BLM-25. Rather, they go to the probative weight that the ALJ (as the trier of fact) may attach to such evidence once it

is admitted. It is well settled that the mere admission of evidence into the record does not mean that the evidence will ultimately be found credible or probative. *Re Evansburg Water Co.*, 81 Pa. PUC 152 (1994); *Pennsylvania Public Utility Commission v. Lemick, Inc.*, 67 Pa. PUC 491 (1988). On this basis alone, XO's objection should be stricken.

7. However, as explained further below, to the extent any consideration is given to the alleged discrepancies, XO still has not presented anything to justify its objection.

BLM-25 Updates Core's Claim And XO Failed Before Now To Raise Any Challenges To This Information Which Has Been In Its Possession For Years

8. During the May 3, 2011 hearing, ALJ Melillo made an on-the-record data request for updated claim amounts from Core. Tr. 36-45, 61-62. BLM-25 responds to ALJ Melillo's request by providing an updated listing of all the invoices submitted by Core to XO through March 2011. As explained in Core's Motion for Admission, pages one through three of the exhibit update the information for XO carrier identification code ("CIC") 5119 and pages six through seven update the information for XO CIC 5607. Core Motion for Admission at ¶¶ 22, 24. For all the reasons set forth in Core's Motion for Admission, Core has satisfied all the requirements to admit this evidence into the record. *Id.* at ¶¶ 27-29.

9. XO's objection presents no basis upon which to deny the admission of proposed Exhibit BLM-25. As explained above in paragraphs 3-4, the identification of the invoices sent by Core to XO through December 12, 2010 has already been admitted into evidence as Exhibit BLM-14 and XO has had ample opportunity to seek discovery or cross examine Core's witness about the information. Pages one through three and six through seven merely provide updated information – as requested by ALJ Melillo – of Core's claim and, notably, XO states that "it appears for the most recent months in 2011, the MOUs on the spreadsheet appear to match to the invoices." Motion at n. 4. As the objection XO now presents – for the first time – regarding the

information contained in the proposed exhibit could have and should have been raised earlier in this proceeding, XO's objection should be stricken.

10. Even a deeper analysis of the claimed "errors" set forth by XO does not support XO's objections. Despite all previous opportunities to analyze and dispute Core's data, XO states that it just now decided to do a "limited sampling" of the data. The sampling consists of analyzing the data from the following time periods: January 2005, November 2006 and January 2008 usage periods for CIC 5119; and, November 2009, December 2009, and January 2010 usage periods for CIC 5607. Notably, XO did not choose the *same* sampling period for both CICs, indicating that its "sampling" technique was not random, but selective for each CIC. Based on this "limited sampling," XO claims to have found inconsistencies in the MOUs billed between BLM-25 and Core's actual invoices to XO, for CIC 5119, XO Objection at 3 and 5, and discrepancies between BLM-25 and XO's own "switch records" for CIC 5607, *id.*, at 4-5.

11. XO's alleged 11th hour "discrepancies," however, are limited to just three billing periods out of 79-80 total billing periods for each CIC. Despite this limited nature, XO makes broad and repeated allegations concerning both (a) the accuracy of BLM-25 and (b) the consistency of BLM-25 with BLM-14 while admitting that "for the most recent months in 2011, the MOUs on [Exhibit BLM-25] appear to match the invoices." XO Response and Objection, p. 3, n4.

12. These claims do not justify denying the admission of Exhibit BLM-25. As an initial point, one should not dismiss all of the data and information in Exhibit BLM-25 based on these limited and few alleged errors claimed by XO. But, beyond this, the fact is that XO has (and always has had) access to the underlying invoices, the CDRs generated by the Verizon tandems and forwarded by Core to XO, and the ability to audit the invoices against its own

switch records. XO could have audited the invoices as they were received, but chose not to, ironically, because the amount billed was too small. Tr., at 107, lines 19-23 (“Any invoice that’s below \$10,000 we do not formally audit.”) Only now – despite the two years this case has been pending – has XO chosen to make “just a preliminary analysis of a few invoices” to support its claim that Core’s evidence should not be admitted into the record. XO’s objection is nothing more than a transparent effort to slow this matter to serve XO’s self-serving interests to continue to receive service without paying for it. This “objection” is not appropriate or compelling to warrant a denial of the admission of BLM-25 and should be stricken.

BLM-25 Does Not Include “Inconsistent” Rates Per MOU

13. XO is mistaken in claiming that “the rate per MOU on the invoices is inconsistent with Core’s claims in Exhibit BLM-25.” XO Objection at 3-4. Core has invoiced XO consistent with its tariffed intrastate access rates for all intrastate traffic sent by XO to Core for termination. Over the years, Core has adjusted its intrastate rate for traffic terminated in Verizon Pennsylvania, Inc. (“Verizon”) territory from \$0.029/MOU to \$0.014/MOU to comply with the Chapter 30 CLEC access charge mirroring requirement, and subsequent changes to the Verizon rate.

14. Further, Core has provided service in additional service territories in Pennsylvania beyond Verizon and, therefore, tariffs and charges access rates that are consistent with the incumbent rates in those service territories. Thus, XO traffic terminated in the service territory of Windstream Pennsylvania, for example, will be charged consistent with the access charges assessed by Windstream. XO has been fully aware of these rural rates for years. Indeed, XO’s own Exhibit No. 2 (a Core invoice for October, 2009) usage clearly indicates that Core charges different rates for different traffic, depending on the applicable incumbent local exchange carrier.

XO has never disputed this standard billing practice. XO's attempts to simply "add up" and then divide all the amounts charged to calculate the one "rate" applicable to all the traffic, therefore, is meaningless and does not provide an appropriate objection to the admission of BLM-25 into the record.

Core Has Explained That Its Rating Of The CIC 5607 Is Based On The Fact That The Call Data Record Is Stripped

15. XO states that "Core has presented nothing to validate its claim that all of the CIC 5607 traffic should be rated as intrastate toll traffic and has presented no plausible explanation of why it should." XO Objection at 5. This wild claim is completely undercut by the clear testimony of Core witness Mingo explaining the situation with CIC 5607 and the way Core addresses the problem:

Unlike the CIC 5119 traffic, the CIC 5607 traffic comes into Core's network without any CPN. This makes it impossible for Core to distinguish between interstate and intrastate calls. We do not know whether XO intentionally strips out the CPN when it delivers its traffic to Verizon's tandem, or whether the CPN is somehow lost as it passes through the tandem. In any event, the lack of CPN has the effect of making billing and collection more difficult for the terminating carrier. Even assuming XO takes no affirmative steps to create the problem, XO benefits from the resulting confusion, and XO to our knowledge has taken no steps to correct the problem. Indeed, the CIC 5607 traffic is a classic example of the infamous "phantom traffic," a phenomenon that has plagued the intercarrier compensation system for years.

...

Of course, for the CIC 5607 traffic it is impossible to determine whether the traffic is intrastate or interstate based on the telephone numbers. Unless and until XO steps forward with credible evidence to the contrary, Core will treat the CIC 5607 traffic as intrastate.

Core St. No. 1 at 5.

16. XO has never challenged this testimony or provided any explanation as to why its sends CDR-stripped traffic to Core. Moreover, XO has never disputed that without this data Core does not have the information necessary to properly rate the calls. Only now, for the first time, has XO bothered to actually look at its switch records for CIC 5607 and offer any type of analysis. XO Objection at 5. XO has had ample opportunity to address this issue prior to now and the ALJ has the discretion to determine the probative weight to give the undisputed testimony of Core. Therefore, XO's efforts to address – for the first time – a claim that it has never disputed before in the context of objecting to the admission of an exhibit should be rejected.

BLM-25 Is Consistent With Core's Theory Of This Case

17. XO's claims that proposed Exhibit BLM-25 adds "new demands" for late charges and/or "an alternate statement of the case" are not factually correct. Contrary to XO's allegations, the analysis provided in BLM-25 showing the claim if calculated pursuant to the Total Element Long Run Incremental Cost ("TELRIC") rate represents Core's alternative claim for relief. *See* Part VI of Core's Complaint Against XO; Tr. 54-55. Core's primary claim is set forth in Part V of Core's Complaint. Core St. No. 1 at 21-22, 25. This analysis was provided in direct response to ALJ Melillo's request.

18. Likewise, BLM-25's calculation of Core's claim to include late fees is consistent with Core's request for an order directing XO to pay Core "all outstanding charges, plus interest as set forth in the Tariff." Core St. No. 1 at 25. Late charges have been calculated in accordance with Core's tariff and set forth in Exhibit BLM-25 per the ALJ's request for an updated claim amount. XO's objections on this point are nonsensical and should be stricken.

Admitting BLM-25 Does Not Change The Burden Of Production And Persuasion In This Proceeding

19. XO seems to argue that proposed Exhibit BLM-25 should not be admitted because doing so would somehow “shift the burden of production and persuasion in this proceeding.” XO Objection at 6. This argument makes no sense. The ALJ is required to determine whether both parties have met their evidentiary burdens in this proceeding. Likewise, both parties have an obligation to present their evidence in support of their positions and to show why the evidence of the other party does not satisfy that party’s burden. Core submits that XO has done nothing in this case to challenge the evidence presented by Core though it has had more than enough opportunity to do so. Indeed, XO never mentioned the “switch records” upon which it now seeks to rely for its objections to BLM-25 in its Rebuttal Testimony, or at any time prior to cross-examination of its witnesses. Its “last ditch” efforts now to attack the evidence of Core at this point in the proceeding do not present a valid justification for denying the admission of Exhibit BLM-25 into the record.

XO Should Not Be Granted Additional Time To Delay The Timely Adjudication Of Core’s Complaint

20. XO repeatedly alleges that it has not had sufficient time to verify all of the data shown on Exhibit BLM-25. XO Objection, p. 3, n4 and n5 and p. 4. Based on these allegations, XO requests “a period of 30 days for additional discovery on the information provided in Exhibit BLM-25 [to address XO’s concerns] and to provide an opportunity for XO to respond.” XO Objection, p. 7. Such allegations and requests should be rejected. XO has had sufficient time to review Exhibit BLM-25, and Exhibit BLM-25 should not be subject to multiple objections or additional discovery from XO. Moreover, as explained above, all the underlying data and information contained in BLM-25 has been provided to XO or in XO’s possession giving XO

ample opportunity through discovery, its testimony and/or cross-examination, to verify or seek further clarification of the facts underlying this proceeding. For these reasons, XO's request for additional time to review should be rejected.

XO's Claim That Core's Complaint Should Be Dismissed Should Be Stricken

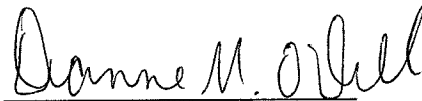
21. XO uses the (alleged) errors in Exhibit BLM-25 to make a claim for dismissal of this proceeding for failure to carry the burden of proof. XO Objection, p. 6. Such claims should be rejected. Contrary to the claim of XO, Core has satisfied its burden of proof. Core has presented credible testimony and evidence that (a) XO has failed to pay Core for services provided by Core and (b) such failure violates Core's Switched Access Tariff, 47 U.S.C. 251(b)(5), and the Public Utility Code.

Exhibit BLM-25 Should Be Admitted Into The Record

22. Admitting Exhibit BLM-25 into evidence (a) will ensure that the record in this proceeding is complete and (b) will not prejudice XO. Good cause is shown for admission of Exhibit BLM-25 because it serves to clarify inquiries made by ALJ Melillo as to Core's positions. XO is free to agree or disagree with Core's positions, but XO's disagreement is not a sound basis for denying the admission of Exhibit BLM-25 into evidence.

WHEREFORE, for all the foregoing reasons and the reasons set forth in Core's Motion for Admission of Exhibits, Core respectfully requests that this Motion be granted, that XO's objections to the admission of Exhibit BLM-25 be stricken, that XO's request for additional discovery on information provided in Exhibit BLM-25 be denied, and that Exhibit BLM-25 be admitted into the record of this proceeding and placed into the exhibit folder.

Respectfully submitted,



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Dated: June 15, 2010

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