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November 3, 2011

Rosemary Chiavetta, 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 Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and three (3) copies of the Petition for Clarification and Reconsideration of XO Communications in the above-referenced proceeding.

As indicated on 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 Petition, and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to XO Communications Services, Inc.

PCP:sar

Enclosures

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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SECRETARY'S OFFICE

**PETITION FOR CLARIFICATION AND RECONSIDERATION
OF XO COMMUNICATIONS**

Pursuant to 52 Pa. Code § 5.572, XO Communications Services, Inc. ("XO") respectfully requests clarification and reconsideration of the Order Granting, in Part, and Denying, in Part, Motion Of Core Communications, Inc., dated October 21, 2011 ("Order on Second Motion for Admission"). Specifically, XO seeks reconsideration of the ALJ's finding that XO's Exhibit 170 is "untrustworthy" and her holding that it is therefore inadmissible.

1. Reconsideration of a Commission order is merited if a petitioner raises "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission."¹ In this case, the ALJ has misconstrued certain facts in XO's Response, Objection and Motion to Partially Strike, dated September 29, 2011 ("XO Response") in such a way that clarification and reconsideration are in order.

2. Footnote 10 of the XO Response reads:

XO has not consistently received CDRs with the invoices that Core has submitted each month. For example, in calendar 2011, XO did not receive CDRs for the months of January, March, May, and June. In calendar 2010, XO did not receive CDRs for the months of February, March, August, and September. Furthermore, even in months when it has sent CDRs, Core occasionally has failed to include the

¹ *Duick v. Pa. Gas & Water*, 56 Pa. PUC 553, 559 (1982). While *Duick* references reconsideration of Commission Orders, the Commission also permits parties to request reconsideration of Orders issued by ALJs. See *Application of Artesian Water Pennsylvania*, No. A-210111F0003, 2005 WL 510831, at 2 (Pa. PUC) (Water utility filing Petition for Reconsideration of ALJ Order granting Petition to Intervene); See also, *Re Energy Cooperative Assoc. of Pa.* No. P-00021890, 2003 WL 22751018, at *1 (Pa. PUC); *Pa. P.U.C. v. T.W. Phillips Gas and Oil Company*, No. R-911889, 1991 WL 474825, at 11.

CDRs for a particular CIC. For example, Core failed to provide CDRs for CIC 5607 in June 2010, November 2010 and April 2011, and failed to provide CDRs for CIC 5119 in December and October 2010.

Through imprecise drafting, this passage was interpreted to mean that XO *never* received CDRs for the months in question.² As a result, ALJ Melillo rejected XO Exhibit 170, stating that it was contrary to the statement in Footnote 10 that CDRs were not received, and therefore, untrustworthy and inadmissible.³

3. XO did not intend to assert that CDRs were never received from Core for the months stated in Footnote 10. Rather, the footnote was meant to explain that while CDRs occasionally accompanied the monthly invoices from Core, XO did not always receive them *as a matter of course*. However, XO should have noted in Footnote 10 that it *did* eventually receive the CDRs through discovery. XO just did not receive these with the invoices, as Core claimed.⁴ Thus, this footnote did not mean that XO *never* received those CDRs, not even as part of discovery.

4. Given this clarification, XO respectfully requests that the ALJ reconsider the decision to reject XO Exhibit 170 and allow it to be admitted into the record of the proceeding. It should also be emphasized that this request is intended for purposes of clarifying the record. XO is not seeking reconsideration of the other holdings in the ALJ's Order on Second Motion for Admission.


² Order on Second Motion for Admission, p. 7.

³ Id.

⁴ A clearer version of the footnote might read "XO has not consistently received CDRs with the invoices that Core has submitted each month. For example, ~~in~~ during calendar 2011, XO did not receive CDRs with the invoices for the months of January, March, May, and June. ~~In~~ During calendar 2010, XO did not receive CDRs with the invoices for the months of February, March, August, and September. Furthermore, even in months when it has sent CDRs, Core occasionally has failed to include the CDRs for a particular CIC. For example, Core failed to provide CDRs for CIC 5607 in June 2010, November 2010 and April 2011, and failed to provide CDRs for CIC 5119 in December and October 2010. All of these CDRs were eventually received through discovery."

WHEREFORE, for all the foregoing reasons, XO respectfully requests that Your Honor issue an Order in Reconsideration of the Order on Second Motion for Admission and hold that XO Exhibit 170 is admissible evidence.

Respectfully submitted,



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Dated: November 3, 2011

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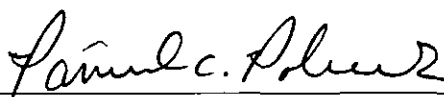
CERTIFICATE OF SERVICE

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 3rd day of November, 2011, at Harrisburg, Pennsylvania.

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