

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

November 14, 2011

Via Electronic FilingRosemary 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 is the original of its Answer in Opposition to Petition of XO Communications for Clarification and Reconsideration of the October 21, 2011 Order on Second Motion for Admission along with the electronic filing confirmation page. 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 Answer in Opposition to Petition of XO for Clarification and Reconsideration of the Oct. 21, 2011 Order on Second Motion for Admission upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

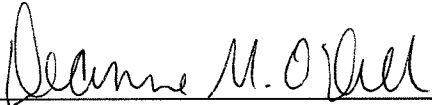
Via Email and/or First Class Mail

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Harry N. Malone, Esq.
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Karen Potkul, Esq.
Corporate Counsel
External Affairs
XO Communications
1601 Trapelo Rd.
Waltham, MA 02451
Karen.potkul@xo.com

Dated: November 14, 2011



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF CORE COMMUNICATIONS, INC.
IN OPPOSITION
TO PETITION OF XO COMMUNICATIONS
FOR CLARIFICATION AND RECONSIDERATION
OF THE OCTOBER 21, 2011 ORDER ON SECOND MOTION FOR ADMISSION**

Pursuant to 52 Pa. Code §§ 5.572(e), Core Communications, Inc. (“Core”) respectfully requests that Administrative Law Judge (“ALJ”) Kandace F. Melillo deny the November 3, 2011 Petition for Clarification and Reconsideration (“XO Petition”) of XO Communications Services, Inc. (“XO”) seeking the admission of XO’s Exhibit 170.

XO requests that the ALJ reconsider the order dated October 21, 2011 (“October 21 Order”) which rightfully concluded that XO’s proposed Exhibit 170 is “untrustworthy” and, therefore, inadmissible. According to XO, the ALJ “misconstrued certain facts in XO’s response” and granting reconsideration is “intended for purposes of clarifying the record.” XO Petition at 1 and 2. As explained further below, however, XO’s representations are blatantly false. Far from trying to “clarify the record,” the reality is that XO is seeking nothing more than to delay the timely resolution of this proceeding. This results in a significant financial benefit to XO because it continues to send traffic to Core for termination while steadfastly *refusing to compensate Core any amount*. Simply by the filing of this latest petition, XO has earned itself another delay as the previously ordered briefing schedule has been rescinded. As the XO

Petition lacks any merit, it should be summarily dismissed and a reasonably expedited briefing schedule should be implemented.

In support, Core states as follows:

1. The October 21 Order cited two reasons for the inadmissibility of XO proposed Exhibit Number 170. First, XO had never before challenged the amount of the minutes of use (“MOUs”) that it had been billed to date. *See* October 21 Order at 6. Second, the ALJ noted that while XO stated it had not received call data records (“CDRs”) for various months, it then included them with proposed XO Exhibit 170 thus rendering the exhibit “untrustworthy and therefore inadmissible.” *Id.* at 7.

Challenge to the amount of MOUs billed by Core

2. The ALJ noted that “XO did not previously dispute Core’s statement on the record that XO was not challenging the amount of MOUs for which it had been billed to date... to the extent XO is now, at this late date, challenging the billed MOUs through the date of the hearing, that challenge will be disregarded.” *See* October 21 Order, at 6. In making this ruling, the ALJ relied on statements made by counsel at the hearing in this matter and subsequently confirmed in the order dated July 13, 2011 (“July 13 Order”).

3. At the hearing, counsel for Core stated that “XO has not disputed the amount of minutes that have been sent or that they’ve sent. The question just has been what rate do you apply to it.” Tr., 56. XO did not dispute this statement at the hearing.

4. Accordingly, in the July 13 Order, the ALJ found that “Core had contended during the May 3, 2011 hearing that XO was not disputing the amount of MOUs for which it had been billed to date, a statement which XO did not challenge.” *See* July 13 Order, at 6.

5. While XO asks the ALJ to reverse her decision to reject the proposed XO Exhibit 170, it curiously does not challenge the ALJ's "other holding[]" that XO is prohibited from challenging the number of MOUs Core billed. This dichotomy is confusing because the proposed XO Exhibit 170 is clearly intended precisely to challenge the number of MOUs Core billed. As XO has already made clear that it does not challenge the number of MOUs, and the ALJ has already concluded that any such challenge will be disregarded, and XO has not challenged that conclusion, admission of this exhibit serves no probative or useful purpose and will only serve to confuse the substantive issues resulting in unfair prejudice to Core. *See* 52 Pa. Code § 5.401. Although Core is the complainant in this matter, admitting this exhibit will permit XO to sneak in a brand new exhibit that can only be used to support a brand new challenge it conjured up after the hearing. As explained further below, nothing prevented XO from raising this new theory sooner and from including it in the timely record of this proceeding which would have given Core its due process opportunity to challenge the assertions.

Core has consistently provided XO all CDRs

6. The ALJ further noted that although XO claimed, in footnote 10, that it did not receive CDRs for various months, XO nevertheless included CDR MOUs for some of those same months on its proposed XO Exhibit 170. *See*, October 21 Order, at 7. As a result, the ALJ found that XO's proposed Exhibit 170 (which challenges the number of MOUs Core billed XO) was "untrustworthy and therefore inadmissible." *Id.*

7. The centerpiece of XO's petition is the thesis that, although it did receive CDRs for most periods, "XO just did not receive [CDRs] with the invoices, as Core claimed." XO Petition, at 2. Rather, XO claims that it "*did* eventually received the CDRs through discovery. *Id.*

8. At the outset, XO's "clarification" is irrelevant. Whether XO received CDRs along with each invoice (which it absolutely did), or only later through discovery, XO had ample opportunity to demand these records and review them prior to serving its rebuttal testimony. Core's complaint was filed on September 23, 2009, and XO's rebuttal testimony was served on February 28, 2011. In fact, Core's February 9, 2010 response to XO-Core-1-7 states that:

Core previously sent XO both the call records that Verizon provided to Core, in the form of CDRs, and the CABs invoices generated by Core. To the extent XO is no longer in possession of invoices or CDRs Core previously sent, Core will produce such documents and/or records. *See* Core Response to XO-Core-1-7 attached hereto as **Exhibit A**.

9. XO did not follow-through with this invitation until after it alleged that it was missing CDR information needed to respond to Core's August 16, 2011 Motion for Admission of Exhibits. *See* XO September 13, 2011 Motion for Extension of Response Time at ¶ 16. Immediately upon reviewing this motion, counsel for Core discussed the issue directly with counsel for XO. *See*, September 15, 2011 email from Core attorney Deanne O'Dell to XO attorney Harry Malone, attached hereto as **Exhibit B**. Notably, counsel for Core specifically asked that any alleged missing CDRs be identified so that they could be immediately forwarded to XO and, *further*, sought to address any problem that may be preventing XO from receiving the CDRs that Core sends it on a monthly basis. Ultimately, counsel for XO confirmed that Core should continue to send the CDRs and invoices to the addresses it has been using previously. *See*, September 19, 2011 email from XO attorney Harry Malone to Core attorney Deanne O'Dell, attached hereto as **Exhibit C**.

10. The notion that Core failed to send XO CDRs along with each invoice is not based in reality and granting XO's Petition on this issue will not "clarify" the record as allegedly sought by XO.

11. The reality is that Core sends XO CDRs on a regular basis to support its monthly invoices for both of XO's CICs, and Core has done so since May, 2009. *See* Affidavit of Core employee Amy Abitz attached hereto as **Exhibit D**. Of course, had XO raised this issue of whether or not it receives CDRs each month at the appropriate juncture, i.e., in its rebuttal testimony, Core could have and would have supplied this proof at that time. Although Core is hesitant to introduce new proof into this case at this late stage (and risk further delay of a final resolution), Core can no longer permit XO's unfounded assertions to go uncorrected.

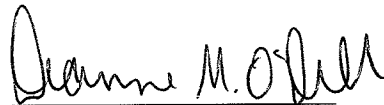
12. XO Proposed Exhibit No. 170 also falsely claims that Core never provided CDR records for CIC 5119 for the usage months of July 2004, December 2004, January 2005, June 2005, March 2006, and September 2006. This is not consistent with the record which makes clear that Core provided XO with CDRs for 2004-2006 in April, 2009, at XO's request, shortly after XO received Core's initial backbills for this period. Core's witness Bret Mingo testified that "[a]t XO's request, Core sent XO the call detail records (CDRs) associated with XO's Traffic in April, 2009." Core St. No. 1(Direct Testimony of Bret L. Mingo), at 10-11 and Exhibits BLM 4 & 5.

13. XO itself admitted receiving these CDRs in its rebuttal testimony: "[o]nce XO received the tardy back bills *and call detail records*, it sent Core an email informing Core that XO was disputing the bills." XO St. 1-R (Rebuttal Testimony of Gary Case and Richard Jackson), at 21 (emphasis added). In fact, Core Exhibit BLM-7, an email dated June 5, 2009, XO attorney Karen Potkul states "XO has determined, based on the call records, that the calls... are actually local calls." So, not only did XO receive the CDRs Core sent, XO actually analyzed the content of those records in order to generate its disputes.

14. The bottom line is that the record fully supports the result of the October 21 Order to not admit proposed XO Exhibit 170. The exhibit represents an improper and belated challenge to the quantity of MOUs Core billed and is based on XO's indisputably false claim – whether made carelessly as XO claims or disingenuously – to not have received relevant information from Core. Simply put, the ALJ correctly determined that the probative value of XO Exhibit 170 was outweighed by the danger of unfair prejudice to Core and by its potential to confuse the issues. *See* 52 Pa. Code § 5.401.

WHEREFORE, for all the foregoing reasons, Core respectfully requests that the Petition for Clarification and Reconsideration of XO dated November 3, 2011 be denied.

Respectfully submitted,



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chris@coretel.net

Dated: November 14, 2011

Attorneys for Core Communications, Inc.



Eckert Seamans Cherin & Mellott, L.L.C.
213 Market Street - 8th Floor
Harrisburg, PA 17101

Core Exhibit A

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

February 9, 2010

Via E-Mail and Federal Express

Darren H. Goldstein, Esq.
Donna T. Urban, Esq.
1810 Chapel Avenue West
Cherry Hill, NJ 08002

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

Dear Secretary McNulty:

On behalf of Core Communications, Inc., enclosed please find its Responses to XO Communications' Interrogatories, Set I Nos. 1-41 and No. 44. We are still compiling the answers for 42, 43, 45 and 46. Also enclosed are Core's Responses to XO Communication's Request for Admissions, Set I with regard to the above-referenced matter. Copies served in accordance with the attached Certificate of Service.

Sincerely yours,

Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: Cert. of Service w/enc.
James McNulty, Secretary w/cert. of service only

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Core Communications' Responses to XO Communications' Interrogatories, Set I, Nos. 1-41 and 44 and Request for Admissions, Set I upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

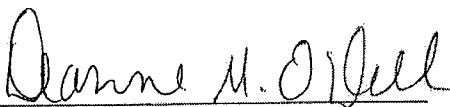
Via Email and/or First Class Mail

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XO Communications
1601 Trapelo Rd.
Waltham, MA 02451
Karen.potkul@xo.com

Dated: February 9, 2010


Deanne M. O'Dell
Deanne M. O'Dell, Esq.

**Response of Core Communications, Inc.
to the Interrogatories of XO Communications Services, Inc., Set I in
Docket No. C-2009-2133609**

XO-CORE-1-7: With respect to the allegations in paragraph 14 of the Complaint, explain how Core “generate[s] ‘Carrier Access Billing System’ (CABS) [] invoices to third party carriers such as XO, who use Verizon’s tandems to interconnect indirectly with Core.” Provide (a) the call records and any related documents that Verizon provided to Core relating to the traffic at issue in this proceeding, and (b) the CABS invoices and any related documents generated by Core relating to the traffic at issue in this proceeding.

Response: Core uses the call detail records (CDRs) it receives from Verizon to identify calls originated by XO and other carriers; then Core generates invoices for each carrier CIC based on the call data in the CDRs.

Core has previously sent XO both the call records that Verizon provided to Core, in the form of CDRs, and the CABS invoices generated by Core.

To the extent XO is no longer in possession of invoices or CDRs Core previously sent, Core will produce such documents and/or records.

Response provided by: Bret Mingo

Deanne M O'Dell/ESCM
09/15/2011 01:19 PM

To Harry Malone <hmalone@devinemillimet.com>
cc "chris@coretel.net" <chris@coretel.net>, "Potkul, Karen" <karen.potkul@xo.com>, "Polacek, Pamela" <PPolacek@mwn.com>



bcc

Subject Re: Missing CDRs

Hello Harry, thank you for identifying the CDRs that your client is missing. Core is in the process of gathering them and will send them ASAP. Should they be sent directly to you?

In an effort to figure out why XO can't locate these records even though Core sends them monthly, Chris spoke with the billing folks at Core. Once again, the billing folks have confirmed that they have sent CDRs associated with all billing periods to XO at various addresses designated by XO, addresses which XO has changed from time to time. They are at a loss to understand why XO now claims to be missing so many records. Can you please double check with XO and see if there is some problem on XO's side as to why they would not be getting these records that can be rectified going forward? Requiring Core to reproduce and resend information that has already been sent is obviously a waste of time. Hopefully, if we can identify the cause of the problem then maybe we can prevent it from continuing in the future.

Feel free to give me a call if you wish to discuss. Thanks.

Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
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dodell@eckertseamans.com

Harry Malone

Harry Malone <hmalone@devinemillimet.com>

09/15/2011 11:12:43 AM



Harry Malone
<hmalone@devinemillimet.com>

09/15/2011 11:12 AM

To Deanne M O'Dell/ESCM@ESCM, "chris@coretel.net" <chris@coretel.net>

cc "Potkul, Karen" <karen.potkul@xo.com>, "Polacek, Pamela" <PPolacek@mwn.com>

Subject Missing CDRs

Deanne,

Per our conversation yesterday, here is a table of the CDRs we are missing. We'd appreciate it if Core could please forward copies of the listed CDRs as soon as possible.

Regards,

Harry

TABLE OF MISSING CDRs

YEAR	CIC 5119	CIC 5607
2004		June – December

2005		All months
2006		All months
2007	All months except February	All months
2008	February - November	All months
2009	April - December	April - December
2010	February March August September October December	February March June August September November
2011	January March	January March April

Harry N. Malone
 Devine, Millimet & Branch
 111 Amherst Street
 Manchester, NH 03101
 603.695.8532
hmalone@devinemillimet.com

DEVINE
MILLIMET

ATTORNEYS AT LAW

*****Important Notice*****

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Harry Malone
<hmalone@devinemillimet.com>

09/19/2011 11:56 AM

To Deanne M O'Dell/ESCM@ESCM

cc "Jackson, Rich S (Richard.S.Jackson@xo.com)"
<Richard.S.Jackson@xo.com>

bcc

Subject RE: Rich Jackson address

History: This message has been replied to and forwarded.

Deanne,

Please have Core send the CDRs to Rich going forward. The invoices should still go to Teoco.

Thanks,

Harry

-----Original Message-----

From: DODell@eckertseamans.com [mailto:DODell@eckertseamans.com]

Sent: Monday, September 19, 2011 11:43 AM

To: Harry Malone

Subject: Re: Rich Jackson address

They will be fedexed today. How about going-forward? Does XO want the CDRs sent to the below address with the invoices for MD and PA to the TEOCO address of: XO c/o 12150 Monument Drive, Suite 700 Fairfax, VA 22033? I believe this is what Core is doing now.

Please let us know. Thanks.

Deanne M. O'Dell, Esquire
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Harrisburg, PA 17101
(717) 255-3744 (phone)
(717) 237-6019 (fax)
dodell@eckertseamans.com

Harry Malone
<hmalone@devinemi
llimet.com>

09/19/2011 11:37
AM

Deanne M O'Dell/ESCM@ESCM

To

cc

Subject

Rich Jackson address

Deanne,

Please send the CDRs to:

XO Communications
13865 Sunrise Valley Drive
Herndon VA 20171
Attn: Rich Jackson

Thanks,

Harry
Harry N. Malone
Devine, Millimet & Branch
111 Amherst Street
Manchester, NH 03101
603.695.8532
hmalone@devinemillimet.com

*****Important
Notice*****

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.

v.

XO Communications, Inc.

:
:
:
:
:

Docket No. C-2009-2133609

AFFIDAVIT OF AMY ABITZ

I, Amy Abitz, state as follows, under oath and upon personal knowledge:

1. I am employed by Core Communications, Inc., ("Core") as a billing specialist, and I have held that position since April 1, 2009.

2. One of my duties is to prepare and send call detail records ("CDRs") to requesting carriers, including XO Communications, Inc. ("XO"). When a carrier requests CDRs to support Core's invoices to that carrier, I prepare a compact disc containing all the records relating to a specific calendar month and carrier identification code ("CIC"). If a carrier operates under multiple CICs, like XO, I prepare a separate disc each month for each CIC.

3. In order to ensure that requesting carriers receive CDRs on a monthly basis, I keep a handwritten log to indicate that I, or another employee of Core, prepared and mailed the appropriate discs for each month and each CIC. A copy of this log, which was prepared in the ordinary course of Core's business, is attached hereto. I have redacted information identifying carriers other than XO from the log.

4. The log shows that Core prepared and mailed CDRs to XO to support invoices issued by Core for each month from May, 2009 through September, 2011. The log further shows that separate discs were prepared for XO's two CICs: 5119 and 5607.

I hereby state that the facts and representations set forth above are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities).

Dated: 11-11-11

Amy Abitz

Amy Abitz

Sworn and subscribed to before me this 11 day of November, 2011.

James R. Martin, Jr.



James R. Martin, Jr.
Notary Public Of Maryland
Anne Arundel County
My Commission Expires Nov. 30, 2013

USE THIS TO RECORD CD'S SENT

CDR requests	Jan-2010	Feb-2010	Mar-2010	Apr-2010	May-2010	June-2010	July-2010	Aug-2010	Sept-2010	Oct-2010	Nov-2010	Dec-2010
CIC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
5119 XO	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
5607 XO	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

for CARBS bills.

all data invoices
7/21/9

See attached sheet for 2011

