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June 18, 2012

Via Electronic Filing

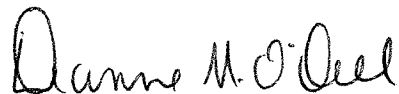
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of Core Communications, Inc. enclosed is the original of its Reply to Exceptions 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)
Office of Special Assistants (CD only)

CERTIFICATE OF SERVICE

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

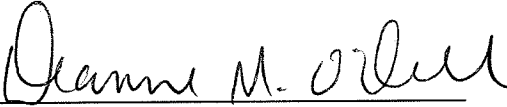
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Dated: June 18, 2012


Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Core Communications, Inc.

v.

XO Communications, Inc.

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Docket No. C-2009-2133609

**CORE COMMUNICATIONS, INC.
REPLY TO EXCEPTIONS**

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Dated: June 18, 2012

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.535, Core Communications, Inc. hereby submits its replies to the June 7, 2012 exceptions filed by XO Communications, Inc. (“XO”) to the May 11, 2012 Initial Decision (“I.D”) of ALJ Kandace F. Melillo in this case.

II. REPLY TO XO’S EXCEPTIONS

A. Reply to Section “A.” of XO’s Exceptions.

The Commission should disregard the discussion contained within section “A.” of XO’s Exceptions, pp. 2-5, because that discussion is simply not cognizable as an exception under the Commission’s rules. Those rules require that:

Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. 52 Pa. Code § 5.533

Flouting this rule, XO’s section A is a rambling, disorganized discourse on what XO perceives as the I.D.’s failure to “remedy [] arbitrage opportunities.” XO Exceptions, at 3. Although it broadly claims that the I.D. “is not consistent with federal law,” XO Exceptions, at 4, XO fails to either “identify the finding of fact or conclusion of law to which exception is taken” or “cite relevant pages of the decision.” Yet, XO was required to do both. Accordingly, the Commission should strike this section of XO’s Exceptions.

To the extent a response is necessary or desired, Core states that XO follows the same extra-legal path followed by FCC staff in its *amicus* brief to the Ninth Circuit. As discussed in Core’s Exceptions, pp. 13-14, it is not sufficient to argue that the *ISP Remand Order* applies to every conceivable subset of ISP-bound traffic simply because, in 2001, the FCC had a policy of restricting compensation in connection with the termination of ISP-bound traffic. The FCC’s policy is embodied in the four corners of the *ISP Remand Order* itself, and that policy can be

neither enlarged nor diminished in subsequent cases by interested litigants such as XO or indeed FCC staff. As Core demonstrated in its Exceptions, pp. 4-17, the *ISP Remand Order* simply does not cover CLEC-CLEC traffic. Resorting to public policy arguments does not change that fact.

B. Reply to Section “B.” of XO’s Exceptions

As Core demonstrated in its Exceptions, pp. 4-17, the *ISP Remand Order* simply does not cover CLEC-CLEC traffic, ISP-bound or otherwise. In fact, as noted in Core’s Exceptions, p. 12, the 2001 FCC (the same FCC that released the *ISP Remand Order*) acknowledged that it had never regulated CLEC-CLEC traffic, and had no intention of doing so. Notice of Proposed Rulemaking, *In Re Developing A Unified Intercarrier Comp. Regime*, 16 F.C.C.R. 9610, 9679 and n1 (2001)(noting the absence of any “symptoms of market failure,” the FCC concluded that “we do not contemplate a need to adopt new rules governing CLEC-to-CLEC... arrangements.”). Given the FCC’s abstaining from regulating CLEC-CLEC traffic, XO’s argument regarding CLEC-CLEC interstate and switched access traffic is irrelevant.

C. Reply to Section “C.” of XO’s Exceptions

XO requests that the I.D. “should [] be modified to state that XO is required to pay a rate of \$0.014, Verizon Pennsylvania Inc.’s [] switched access rate.” Yet, similar to section A. of its exceptions, XO identifies no finding of fact or conclusion of law to which it is making an exception pursuant to Commission rules. Indeed, XO states the I.D. “appropriately found that all of Core’s billing is based on Verizon calling records that Verizon provides.” XO Exceptions, at 8. Further, XO fails to identify any section of its briefs or testimony in this matter to support its apparently brand new request that “the only applicable rates to the traffic at issues are Verizon’s switched access rates.” XO Exceptions, at 8. Exceptions are not a forum to raise each and every

conceivable issue a party may have. If XO wanted to dispute the particular rates applicable to its traffic, it has had ample opportunity (both prior to and after commencement of this case) to do so.

With respect to XO's objection to possible imposition of "late payment or interest charges" on grounds of unfair surprise, XO Exceptions, at 9, Core states that its initial Complaint in this case requested that the Commission grant "all amounts outstanding for intrastate switched access services provided, plus late payment charges and interest as specified in Core's Switched Access Service Tariff..." Complaint, at 16-17 (Relief Requested ¶ 1)(filed Sept. 23, 2009).

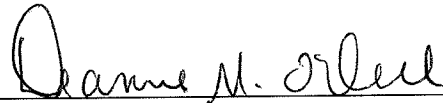
With respect to XO's exception to Finding of Fact # 12, relative to the bills Core has sent XO over the years, Core states that XO sets forth no specific reason for the Commission to question Core's bills. Instead, XO resort to vague formulations such as "Core's tariff rates were irrelevant, unlawful and artificially high," XO Exceptions, at 9, and "Core had assessed much higher rates for VNXXs associated with ILEC territories outside of Verizon's." *Id.*, at 10. This type of heated rhetoric does not provide a reasoned factual or legal basis to undermine Core's invoices. XO has had Core's bills in its possession since 2008, yet it has never lodged any specific dispute other than its argument that the *ISP Remand Order* and/or an implied bill-and-keep arrangement applies to all of its traffic. In fact, XO's witness Mr. Jackson admitted at the hearing in this case that, even though XO had the ability to audit Core's bills against XO's own switch records, Tr., at 106, lines 15-25, XO did not even bother to audit Core's bills because each individual invoice contained less than \$10,000.00 in charges. Tr., at 107, lines 19-23. Nor did XO bother to raise specific, quantifiable objections to Core's bills either in its testimony, or in its briefs.

Finally, with respect to XO's exception to Finding of Fact # 15, Core states that it has proven with certainty that XO's CIC 5607 traffic enters Core's network without calling party number ("CPN"). In its exceptions, Core provided citations to extensive testimony on this issue. Core Exceptions, at 31-32. Whether or not Verizon could have, or should have, forwarded XO's CPN to Core, there is no question that XO took no affirmative steps to rectify the issue, either before or after Core began to invoice XO. *Id.* Accordingly, XO cannot be heard to complain if Core takes appropriate action to account for the lack of CPN, such as billing XO's phantom traffic at intrastate switched access rates.

III. CONCLUSION

For all the reasons set forth herein, Core respectfully requests that the Commission deny XO's exceptions and grant the exceptions of Core.

Respectfully submitted,



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