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January 11, 2006

Tax 202/887-6231

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Via Overnight Delivery

Sharla Dillon Docket Room Manager Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505

Re:

Joint Petition of EarthLink, Inc., and New Edge Network, Inc.

for Approval of Indirect Transfer of Control 0600012

Dear Ms. Dillon:

On behalf of EarthLink, Inc. and New Edge Network, Inc., enclosed please find an original and thirteen (13) copies of the above-referenced Joint Petition for filing Also enclosed is a check in the amount of twenty-five dollars (\$25) payable to the Tennessee Regulatory Authority. Check No 3474 serves as the Joint Petition filing fee.

Please date-stamp the stamp-and-return copy and return it in the self-addressed envelope. Should you have any questions with respect to this filing, please do not hesitate to contact the undersigned at (202) 887-6230.

Respectfully submitted,

Mark J Ö'Connor

Counsel for EarthLink, Inc.

Enclosures

PAID T.R.A.

Before the Tennessee Regulatory Authority Telecommunications Division Nashville, Tennessee

In the Matter of) Joint Petition
Joint Petition of)
EARTHLINK, INC. and NEW EDGE)
NETWORK, INC., d/b/a NEW EDGE) Docket No
NETWORKS,)
)
for Approval of the Indirect Transfer of)
Control of New Edge Network, Inc.)

EARTHLINK, INC.

Samuel R. DeSimone, Jr. EVP, General Counsel 1375 Peachtree Street, Level A Atlanta, GA 30309 (404) 748-6634 tel (404) 287-4905 fax

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January 11, 2006

NEW EDGE NETWORK, INC., d/b/a NEW EDGE NETWORKS

Penny H. Bewick Vice President – External Affairs 3000 Columbia House Boulevard, Suite 106 Vancouver, WA 98661-2969 (360) 693-9009 tel (360) 693-9997 fax

Before the Tennessee Regulatory Authority Telecommunications Division Nashville, Tennessee

In the Matter of)
) Joint Petition
Joint Petition of)
EARTHLINK, INC. and NEW EDGE)
NETWORK, INC., d/b/a NEW EDGE) Docket No.
NETWORKS,)
)
for Approval of the Indirect Transfer of)
Control of New Edge Network, Inc.)

JOINT PETITION

I. INTRODUCTION

New Edge Network, Inc. ("New Edge"), d/b/a New Edge Networks and EarthLink, Inc ("EarthLink" and, together with New Edge, "Petitioners"), file this Petition with the Tennessee Regulatory Authority (the "Authority") pursuant to Tenn. Code Ann § 65-4-112 et seq. The Petitioners request the approval of the transfer of control of New Edge from New Edge Holding Company ("New Edge Holding") to EarthLink.

As described more fully below, in this Transaction a subsidiary of EarthLink, New Edge Merger Corporation ("MergerCo"), will merge with New Edge Holding, the parent of New Edge, with New Edge Holding continuing as the surviving corporation. After the Transaction is effected, New Edge will continue to operate in substantially the same manner, as a separate company and a wholly-owned subsidiary of New Edge Holding, which in turn will be a wholly-owned subsidiary of EarthLink. Upon consummation of the Transaction, New Edge will continue to serve its customers in

Tennessee on the same terms, rates and conditions that it currently provides its services in the state.

II. DESCRIPTION OF THE PETITIONERS

- NEW EDGE: New Edge is a national provider of secure multi-site managed data networks and dedicated Internet access. It has one of the nation's largest network footprints, with more than 850 carrier-class switches and Internet routers. As part of this network, New Edge has collocated multi-service switches in more than 580 incumbent local exchange carrier ("ILEC") central offices, and in many independent "carrier hotels," throughout the United States. New Edge has interconnection agreements ("ICAs") with the major ILECs (including BellSouth in Tennessee), as well as many smaller independent local exchange carriers. These ICAs enable New Edge to collocate its multi-service switches in the ILEC central offices and provision services using unbundled network elements ("UNEs"). Where UNEs are not available, New Edge purchases underlying network services from the ILECs' access tariffs, or through commercial agreements and special contracts with the ILECs and competitive carriers.
- 2. New Edge has a strong presence in small and midsize (i.e., Tier 2 and 3) markets in the U.S. and the capability of serving 100 percent of U.S. business addresses. It operates a carrier-class national backbone network based on Internet protocol ("IP") and Asynchronous Transfer Mode ("ATM") technology. New Edge is access technology agnostic. It provides its products and services by seamlessly integrating a wide variety of last-mile broadband access services available through multiple carriers, technologies, and geographic regions. Technologies

- used to provide these services include DSL, frame relay, ATM, cable Internet access, and satellite.
- 3. New Edge's customers include telecommunications carriers, small to midsize businesses, large corporations, and their telecommuters anywhere. These customers buy a variety of wide area networking ("WAN") products from New Edge, including Managed Network Services, virtual private networks ("VPNs"), private networks, Managed VPN, frame relay, frame over DSL, ATM and private line. New Edge's Internet access solutions include xDSL services, DS1, DS3, OCx and Ethernet products. New Edge also offers wholesale xDSL, DS1 and IP transit solutions for ISPs and other data communications providers.
- 4. New Edge was authorized to provide resold and facilities-based local exchange and interexchange services in Tennessee on May 22, 2000, pursuant to authority granted by order in Docket No.99-00714. New Edge has authorizations in all states in the United States where such authorization is required. New Edge has Section 214 domestic and international authorization from the Federal Communications Commission.
- 5. New Edge currently has no employees and approximately 80 business customers in Tennessee. New Edge does not serve residential customers in Tennessee, nor does it have any collocated facilities in the state.
- 6. EARTHLINK: EarthLink is a publicly-traded Delaware corporation. It is primarily an Internet service provider, providing nationwide Internet access and related value-added services to individual and small business customers. Its major service offerings are narrowband, broadband or high-speed, and wireless

Internet access and IP-enabled services; web hosting; and advertising and related services. EarthLink provides its broad range of services to more than five million customers through a nationwide network of dial-up points of presence, a nationwide broadband footprint and wireless technologies.

- 7. EarthLink's business strategy is to sustain and build upon its strong position in the U.S. Internet services market by focusing on high-growth opportunities such as broadband and value-priced narrowband access to generate organic subscriber growth; marketing high quality, differentiated products and services; improving operating margins to fund growth; and expanding into new growth markets. A copy of EarthLink's Annual Report for the year ended December 31, 2004, is available through the "About Us" portion of EarthLink's web site, at www.earthlink.net, or at http://phx corporate-ir net/phoenix.zhtml?e=77594&p=irol-sec.
- 8. EarthLink does not own telecommunications network facilities and does not hold an authorization to provide telecom services in Tennessee or any other state.

CONTACT INFORMATION FOR THE PETITIONERS

9. Correspondence concerning this Petition should be sent to.

For EarthLink:

Donna N. Lampert Mark J. O'Connor LAMPERT & O'CONNOR, P.C. 1750 K Street NW Suite 600 Washington, DC 20006 (202) 887-6230 tel

For New Edge:

Penny H. Bewick Vice President - External Affairs New Edge Networks 3000 Columbia House Boulevard Suite 106 Vancouver, WA 98661-2969 (360) 693-9009 tel (360) 693-9997 fax With a copy to:

Samuel R. DeSimone, Jr. EVP, General Counsel EarthLink, Inc. 1375 Peachtree Street, Level A Atlanta, GA 30309 (404) 748-6634 tel (404) 287-4905 fax

REQUEST FOR APPROVAL OF TRANSFER OF CONTROL

- 10. DESCRIPTION OF THE TRANSACTION: Pursuant to an Agreement and Plan of Merger executed on December 12, 2005, by New Edge Holding, MergerCo and EarthLink, MergerCo, a wholly-owned subsidiary of EarthLink, will merge with New Edge Holding, the parent of New Edge, with New Edge Holding continuing as the surviving corporation. After the Transaction is effected, New Edge will still be a separate company and a wholly-owned subsidiary of New Edge Holding, which in turn will be a wholly-owned subsidiary of EarthLink. New Edge will continue to operate as a separate company under its current name as a wholly-owned indirect subsidiary of EarthLink, in substantially the same manner as it has in the past. Upon completion of the merger, EarthLink will control New Edge through the ownership of 100% of the outstanding common stock of New Edge Holding. Thus, after the Transaction, New Edge will have a different capital structure and a new controlling stockholder. The structure of the Transaction is shown in the diagram in Exhibit 1
- 11. EARTHLINK'S QUALIFICATIONS: EarthLink has the technical, managerial, and financial qualifications to acquire control of New Edge. EarthLink is operated by a highly qualified management team, all of whom have extensive backgrounds in

providing nationwide Internet access and related value-added services to individual and business customers, and many of whom also have extensive experience in managing telecommunications businesses. In 2004, EarthLink had revenues of approximately \$1.38 billion. Information concerning the technical, managerial and financial qualifications of EarthLink's management team can be found in its most recent SEC Form 10-K

- 12. PUBLIC INTEREST STATEMENT: The proposed Transaction is undoubtedly in the public interest. The acquisition of New Edge by EarthLink will result in significant benefits for Tennessee consumers, and will advance important state public policy goals. Most importantly, it will promote much-needed competition in the broadband marketplace in Tennessee
- 13. The Petitioners' assets and businesses are almost entirely complementary. The combination of New Edge's facilities-based network and its expertise in small and medium enterprise ("SME") and carrier sales with EarthLink's marketing staff and expertise, its corporate resources, and its strength in providing consumer-friendly Internet services, will create a stronger competitor in the residential and SME broadband market in Tennessee. In particular, the Transaction will increase competition in Tier 2 and 3 SME and residential markets, areas where competition has to date lagged behind that found in the state's larger urban centers.
- 14. The Petitioners expect that the Transaction will result in several additional synergies and benefits:

- The Transaction provides both companies with significant new customer relationships and creates an opportunity for both companies to offer additional products and services to each other's customers.
- The Transaction provides both companies with greater capabilities to market and offer solutions to businesses and to differentiate themselves significantly in the marketplace.
- The merged company will be able to bring new services and products to the marketplace more quickly than either could do separately.
- 15. There are no potential harms to competition from the Transaction. There is no horizontal overlap between the Petitioners' major lines of business, since EarthLink does not own any telecommunications network facilities. There is therefore no loss of actual or potential competition in any Tennessee markets and no inconsistency with the state's pro-competitive goals. To the extent that there is any overlap between the Petitioners' businesses, it could only possibly be in the provision of Internet access to SMEs. This is a market with literally thousands of competitors, and EarthLink and New Edge combined have a market share between 2 and 3 percent. Therefore, the merged company would have no incentive, and certainly no ability, to raise prices or restrict output. There is no possible vertical anti-competitive effect, either. There is no existing vertical relationship between EarthLink's and New Edge's businesses, and there is no appreciable prospect of any competitive harm resulting from the vertical integration of those businesses. Thus, there is no possible competitive harm of any type.
- 16. EFFECT AND NOTICE TO CUSTOMERS: The Transaction will not have any negative effect on the Tennessee customers of New Edge, to whom it will be essentially transparent. After consummation of the Transaction, New Edge will

continue to provide the same services to those customers at the same rates, terms and conditions as at present. The operations of New Edge will continue to be supervised by the same management, technical and customer service supervisors as at present. All services will continue to be provided to New Edge's customers without interruption; the Transaction will not result in discontinuance of the service of any customer in Tennessee.

- 17. Because it is a stock transaction at the holding company level, the transfer of control of New Edge will not result in a change of carrier for any of New Edge's customers in Tennessee. There will be no negative impact on service to Tennessee customers.
- 18. New Edge's Existing Managerial, Technical and Financial Resources

 Will Be Augmented After the Transaction: The proposed Transaction

 will also have no negative impact on the provision of safe, adequate and proper

 service to Tennessee customers. The proposed transfer of control and related

 Transaction are expected to provide New Edge with access to additional capital

 that will enable it not only to ensure that its customers will continue to receive

 quality service on an uninterrupted basis, but to improve the quality of those

 services going forward. The Petitioners anticipate that New Edge's cost of capital

 will decline after the Transaction.
- 19. Additionally, the expertise of EarthLink's management, marketing and customer service personnel will be available to improve New Edge's business services after the Transaction closes. This will enable New Edge to provide better service to its customers and to become a stronger competitor in the Tennessee marketplace.

The combination of EarthLink's expertise and resources with New Edge's existing resources guarantees that after the Transaction New Edge will have augmented managerial, technical and financial resources that will allow it to provide improved and advanced service in Tennessee.

20. <u>EFFECT ON EMPLOYEES</u>: Finally, the Transaction will have no impact on employment in the state. As noted, New Edge presently has no employees in Tennessee.

21. <u>CONCLUSION</u>. The Authority should find that the proposed Transaction is in accordance with law and will serve the public interest in promoting competition among telecommunications carriers in Tennessee. Petitioners therefore request that the Authority approve the Transaction expeditiously. Assuming approval is granted, Petitioners will notify the Authority in writing of the closing of the Transaction and the consummation of the transfer of control.

Respectfully submitted,

Donna Lampert

Mark O'Connor

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VERIFICATION OF SAMUEL R. DESIMONE. JR.

- I, Samuel R DeSimone, Jr, hereby certify that:
 - 1. I have reviewed the attached Petition for approval of transfer of control of New Edge Network, Inc. to EarthLink, Inc., and that all statements made therein are true and correct to the best of my belief; and

Samuel R. DeSimone, Jr.

VERICATION OF PENNY H. BEWICK

I, Penny Bewick, hereby certify that:

- I have reviewed the attached Petition for approval of transfer of control of New Edge Networks, Inc. to EarthLink, Inc., and that all statements made therein are true and correct to the best of my belief; and
- 2. I am the Vice President of External Affairs for New Edge Networks, Inc. and, as such, I am fully authorized by New Edge Network to attest to the veracity of the statements made in the attached Petition.

Penny H. Bewick

Penny H Buck

EXHIBIT 1

PRE-TRANSACTION NEW EDGE HOLDING COMPANY 100% NEW EDGE NETWORK, INC. d/b/a NEW EDGE NETWORKS (Certificated Carrier) NEW EDGE ACCORPORATION

