

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

April 19, 2006

IN RE:)	
)	
JOINT PETITION OF EARTHLINK, INC. AND)	DOCKET NO.
NEW EDGE NETWORK, INC. FOR APPROVAL)	06-00012
OF INDIRECT TRANSFER OF CONTROL)	

ORDER APPROVING TRANSFER OF CONTROL

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 21, 2006 for consideration of the *Joint Petition* filed by New Edge Network, Inc. d/b/a New Edge Networks ("New Edge") and EarthLink, Inc. ("EarthLink" and together with New Edge, "Petitioners") for approval pursuant to the provisions of Tenn. Code Ann. § 65-4-113 (2004) of a transfer of control of New Edge from New Edge Holding Company ("New Edge Holding") to EarthLink.

The Joint Petition

New Edge is a national provider of secure multi-site managed data networks and dedicated Internet access. According to the *Joint Petition*, it has one of the nation's largest network footprints, with more that 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 with major ILECs, as well as many smaller independent local exchange carriers. New Edge customers include telecommunications carriers, small to midsize businesses, large

corporations, and telecommuters. In Tennessee, New Edge currently has no employees and approximately 80 business customers. It does not serve residential customers in Tennessee. New Edge was authorized to provide resold and facilities-based local exchange and interexchange services pursuant to an order issued on May 22, 2000 in Docket No. 99-00714.

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. EarthLink does not own telecommunications network facilities and does not hold an authorization to provide telecom services in Tennessee or any other state.

On January 12, 2006, the Petitioners filed the *Joint Petition* seeking Authority approval of the indirect transfer of control of New Edge to EarthLink. Pursuant to an Agreement and Plan of Merger executed on December 12, 2005, by New Edge Holding, New Edge Merger Corporation ("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 previously. The *Joint Petition* states that 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 Petitioners have filed an Application for the Transfer of Control of New Edge's Domestic and International Section 214 Authorization to EarthLink with the Federal Communications Commission ("FCC").

The *Joint Petition* states that upon consummation of the transaction, New Edge will continue to provide the same services at the same terms, rates, and conditions to its customers in Tennessee. All services will continue to be provided to New Edge customers without interruption. Because this 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. In addition, the *Joint Petition* asserts that EarthLink has the technical, managerial, and financial qualifications to acquire control of New Edge, and the proposed transactions will not have any negative effect on the Tennessee customers of New Edge, to whom it will be essentially transparent.

February 21, 2006 Authority Conference

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:


Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and

the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on February 21, 2006, the voting panel assigned to this docket considered the transfer requested in the *Joint Petition*. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-113 (2004), the panel determined that the transfer furthers the public interest and voted unanimously to grant approval of the *Joint Petition* contingent upon FCC approval.

IT IS THEREFORE ORDERED THAT:

The *Joint Petition* filed by New Edge Network, Inc. d/b/a New Edge Networks and EarthLink, Inc. is approved, contingent upon the FCC's approval of the Application for the Transfer of Control of New Edge's Domestic and International Section 214 Authorization to EarthLink.


Ron Jones, Chairman


Pat Miller, Director


Sara Kyle, Director