

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of) DOCKET NO. 06-2287-01
EarthLink, Inc. and New Edge Networks,)
Inc., for Approval of an Indirect Transfer)
of Control) ORDER APPROVING INDIRECT
) TRANSFER OF CONTROL
)

SYNOPSIS

The Commission finds the proposed indirect transfer of control of New Edge Networks to EarthLink, Inc. to be in the public interest and approves the same.

ISSUED: March 2, 2006

By The Commission:

PROCEDURAL HISTORY

On January 11, 2006, EarthLink, Inc. ("EarthLink") and New Edge Network, Inc., d/b/a New Edge Networks ("New Edge") (together hereinafter referred to as the "Parties") filed a Joint Application requesting Commission approval of an indirect transfer of control of New Edge to EarthLink pursuant to *Utah Code Ann.* §§ 54-4-28 and 54-4-29. The Parties request the Commission expeditiously grant the request to enable consummation of the proposed transfer by March 31, 2006.

On January 30, 2006, the Division of Public Utilities ("Division") filed a memorandum of its investigation of the proposed transfer recommending approval of the same.

DISCUSSION, FINDINGS, AND CONCLUSIONS

New Edge is a national provider of secure multi-site managed data networks and dedicated Internet access. It claims to have one 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 country. New Edge’s customers include telecommunications carriers, small to mid-size businesses, large corporations, and their telecommuters anywhere. It currently has two employees, 14 ILEC collocation sites, one carrier hotel collocation and approximately 131 business customers in the state. It does not service residential customers in Utah. New Edge, then called Access 21 Corp., received its Certificate of Public Convenience and Necessity on December 22, 1999 in Docket No. 99-2287-01, authorizing it to provide resold and facilities-based local exchange and interexchange services.

EarthLink is a publicly traded Delaware corporation primarily doing business as an Internet service provider, supplying 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, advertising and related services. It claims to provide 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 telecommunications services in Utah. According to 10–K financial statements filed with the Securities and Exchange Commission and audited by the CPA firm of Ernst & Young, EarthLink has a positive net worth and has sufficient working capital.

Pursuant to the proposed transaction, a subsidiary of EarthLink, New Edge Merger Corporation will merge with New Edge Holding Company (“New Edge Holding”), the

parent of New Edge, with New Edge Holding continuing as the surviving corporation. This transaction does not involve any transfer of certificates, assets or customers; New Edge will retain its authorizations to provide telecommunications services in Utah. After the transaction is completed, New Edge will continue to operate in substantially the same manner, as an independent company and a wholly-owned subsidiary of New Edge Holding, which, in turn, will be a wholly-owned subsidiary of EarthLink.

The Parties assert the proposed transaction will be essentially transparent to Utah customers of New Edge which will continue to provide the same services at the same rates, terms and conditions as at present. New Edge operations will continue to be supervised by the same management, technical and customer service supervisors. All services will continue to New Edge customers without interruption; the transaction will not result in discontinuance of service for any Utah customer.

The Parties and the Division identify a number of benefits they believe will arise from the proposed transfer of control, including promotion of much-needed competition in the broadband marketplace in Utah and enhanced ability of the merged company to compete in the telecommunications marketplace due to the combination of New Edge's facilities-based network and expertise in small and medium enterprise and carrier sales with EarthLink's marketing staff, corporate resources, and strength in providing consumer-friendly Internet services.

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission "determines that the matter can reasonably be expected to be unopposed and uncontested." We note that more than a month has passed since the Parties filed their Joint Application yet no party has sought intervention in this matter. We therefore view this matter as unopposed and

uncontested and conclude it is in the public interest to proceed informally without hearing.

Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by the Parties and the Division's recommendation, and pursuant to *Utah Code Ann.* § 54-4-28, we find and conclude that the proposed indirect transfer of control will not harm and can provide benefits to the State of Utah, its citizens, or the Utah customers of New Edge and is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The proposed indirect transfer of control of New Edge Networks to EarthLink, Inc., is approved.
3. The transfer herein effected be, and it is, effective the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court

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within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 2nd day of March, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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