

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 23rd day of  
February, 2006.

In the Matter of the Application for Approval	)	
of the Transfer of Control of New Edge	)	
Network, Inc., d/b/a New Edge Networks,	)	<b><u>Case No. TM-2006-0307</u></b>
to Earthlink, Inc.	)	

**ORDER DISMISSING APPLICATION FOR LACK OF JURISDICTION**

Issue Date: February 23, 2006

Effective Date: March 5, 2006

On January 24, 2006, New Edge Network, Inc., and Earthlink, Inc., filed a joint application requesting that the Commission grant them authority to consummate a transaction involving the transfer of control of New Edge Network, Inc., from its parent company, New Edge Holding Company, to Earthlink. New Edge Network, Inc., holds a certificate to provide local exchange and interexchange telecommunications service in Missouri.

As part of the transaction, a subsidiary of Earthlink, New Edge Merger Corporation, will merge with New Edge Holding Company. When the transactions are consummated, New Edge Network, Inc., will continue to operate as a wholly-owned subsidiary of New Edge Holding Company, which will become a wholly-owned subsidiary of Earthlink. New Edge Network, Inc., will continue to serve its Missouri customers under the same terms, rates, and conditions. Neither New Edge Holding Company nor Earthlink are certificated to provide service in Missouri.

The Staff of the Missouri Public Service Commission filed a Motion to Dismiss for Lack of Jurisdiction on February 8, 2006. The Applicants filed a response in agreement with the Staff's motion on February 14, 2006. Staff contends that the transaction at issue in this case is simply the purchase of the stock of one unregulated holding company by another unregulated holding company. After the transaction is complete, New Edge Holding Company will have new ownership. But, New Edge Network, Inc., the only affected company that is regulated by the Missouri Commission, will still be owned by New Edge Holding Company.

Section 392.300, RSMo 2000, requires Commission approval of a transaction involving the sale of the "franchise, facilities or system" of a regulated telecommunications company, or, the acquisition of more than ten percent of the stock of a Missouri incorporated telecommunications company by other than a telecommunications company. This statute does not apply to the proposed transaction in this case because neither the assets nor the stock of the regulated entity, New Edge Networks, Inc., will be transferred. Instead, the proposed transaction will take place entirely at the level of the unregulated parent companies.

The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level. For example, in a case involving the merger of SBC Communications and Ameritech Corporation, the Commission found that "there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own

Missouri-regulated telecommunications companies.”<sup>1</sup> On that basis, the Commission will again find that it has no jurisdiction over the proposed transaction.

Since the Commission does not have jurisdiction over the transaction described in the application, that application will be dismissed.

**IT IS ORDERED THAT:**

1. The Application of New Edge Network, Inc., and Earthlink, Inc., is dismissed.
2. This order shall become effective on March 5, 2006.
3. This case shall be closed on March 6, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton and Appling, CC., concur  
Gaw, C., concurs, concurring opinion to follow

Dippell, Deputy Chief Regulatory Law Judge

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<sup>1</sup> *In the Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation*, 7 Mo. P.S.C. 3d 528, 532 (1998).