

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application for )  
Approval of the Transfer of Control of )  
New Edge Network, Inc., d/b/a New Edge )  
Networks, to Earthlink Inc. )

Case No. TM-2006-0307

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

1. New Edge Network, Inc., d/b/a New Edge Networks, is certificated by the Commission to provide telecommunications service in Missouri. New Edge Holding Company, the parent company of New Edge Networks, is not a telecommunications company.

2. Pursuant to an Agreement and Plan of Merger, New Edge Merger Corporation will merge with New Edge Holding Company. New Edge Holding Company will survive the merger. New Edge Merger Corporation is a wholly-owned subsidiary of Earthlink, Inc. Neither New Edge Merger Corporation nor Earthlink, Inc., is a certificated telecommunications company in Missouri.

3. In Case No. TM-99-76, *In the Matter of the Merger of SBC Communications, Inc. and Ameritech*, 7 Mo. PSC 3d 528, 532, the Commission “determine[d] 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.”

4. In summary, the Application proposes the merger of a non-regulated parent company (New Edge Holding Company) with a non-regulated company (New Edge Merger Corporation).

WHEREFORE, the Staff moves the Commission to dismiss the Application for lack of jurisdiction.

Respectfully submitted,

/s/ William K. Haas  
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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 8<sup>th</sup> day of February 2006.

/s/ William K. Haas  
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