

**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**

**Concurring Opinion of Commissioner Steve Gaw**

I concur in the result of this case but not in the rationale of the decision. This Commission should safeguard its ability to protect Missourians regarding the sale or transfer of regulated companies and the assets that serve them. In this case, the transfer of the upstream ownership of a competitive company does not appear problematic. Because the transfer remotely involves a Competitive Local Exchange Company (CLEC) there is less reason for scrutinizing this transaction. The Commission does not undergo a formal ratemaking process with such a company and thus has no obvious need for access to data from the upstream owners which can sometimes be important in determining rates of fully regulated companies. Furthermore, customers of a CLEC normally have the ability to change carriers if they are not satisfied with the service they receive. However, this Commissioner believes it a better course of action for the Commission to exercise its jurisdiction over this transaction because oversight may be important in another fact situation. The Commission would establish a better long-term policy and procedure if it declined jurisdiction in this specific fact situation or simply exercised its jurisdiction and approved the transfer.

Respectfully submitted,

  
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Steve Gaw  
Commissioner

Dated at Jefferson City, Missouri,  
on this 8<sup>th</sup> day of March, 2006.