

Before The
U.S. DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

| | | |
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| In the Matter of |) | |
| |) | |
| American Recovery and Reinvestment |) | Docket No. |
| Act of 2009 |) | 0907141137-91375-05 |
| |) | |

COMMENTS OF EARTHLINK, INC. AND NEW EDGE NETWORK, INC.

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November 30, 2009

EXECUTIVE SUMMARY

EarthLink, Inc. (“EarthLink”) and New Edge Network, Inc. (“New Edge”) applaud the efforts of NTIA and RUS to ensure that American Recovery and Reinvestment Act of 2009 (“Recovery Act”) grant and loan applicants commit to offering wholesale access to the project facilities at reasonable rates and terms. As described in its comments to the NTIA and RUS first request for information (47 Fed. Reg. 10716 (Mar. 12, 2009)), EarthLink and New Edge believe that competitive wholesale broadband access is the best mechanism to fulfill the Recovery Act’s directives for nondiscrimination and interconnection and will help significantly to ensure “neutrality” on the Internet. (See Comments of EarthLink, Inc. and New Edge Network, Inc., RUS Dkt. 090309298-9299-01 and FCC GN Dkt. 09-40 (Apr. 13, 2009)). Indeed, the Recovery Act is grounded in the premise that broadband service competition best provides consumers unique benefits. (See Recovery Act, Title VI, § 6001(j), Division A, Title I). By requiring applicants who receive Recovery Act funds to adhere to nondiscrimination and network interconnection obligations, the NTIA and RUS have taken an important step to recognize the important role that competitive wholesale broadband access can play in meeting the nation’s goals of greater broadband service deployment and adoption.

In order to realize fully the benefits of the nondiscrimination and interconnection obligations, however, EarthLink and New Edge urge the NTIA and RUS to require providers who receive funds to provide fully functional and comprehensive operation support systems (“OSS”) and associated Application Programming Interfaces (“API”) for their wholesale services. The lack of adequate, fully functional and real-time OSS and APIs by broadband providers is a gating impediment to bringing even more consumers competitive broadband services. In these areas, competitive wholesale broadband providers such as EarthLink and New Edge are unable to pre-qualify customers efficiently (if at all) to determine broadband eligibility, are often required to fax, email or manually enter orders, and are unable to obtain ordering, status and trouble ticketing information and updates. Not only do these inadequacies result in consumer dissatisfaction, increased delays, higher error rates and increased costs, the wholesale providers’ failure to provide the automation and speedy response time that consumers require in today’s technology-driven, fast-paced environment effectively undermines competition, which is the engine of broadband deployment and uptake. Just as with every significant technological advance in our nation’s history, consumer penetration and growth are best driven by automation and the providers’ ability to leverage the efficiencies technology creates. As such, ensuring that all wholesale broadband service providers have efficient, real-time OSS and access APIs is critical for the NTIA and RUS to meet its goals of the Recovery Act.

Moreover, EarthLink and New Edge also have urged the Federal Communications Commission (“FCC”) to recognize the importance of OSS and APIs in meeting its goals of broadband deployment and adoption under the National Broadband Plan and to seek additional data for assessment of wholesale broadband service OSS. As part of the data collection exercise, NTIA and RUS should also obtain data regarding the provision of wholesale broadband service OSS by Recovery Act grantees. As comments to the Joint Request for Information (74 Fed. Reg. 58940 (Nov. 16, 2009)), EarthLink and New Edge hereby submit the attached letter, filed today with the FCC, to support its request that NTIA and RUS require providers who receive funds under the Recovery Act BTOP and BIP program to provide fully functional and comprehensive OSS and associated APIs for their services.

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Via Electronic Delivery

Ms. Marlene H. Dortch
Federal Communications Commission
The Portals, TW-A325
445 12th Street SW
Washington, DC 20554

Re: *Ex Parte* – GN Dkt. 09-51, *National Broadband Plan*; WC Dkt. 09-95, *Application of Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*

Dear Ms. Dortch:

EarthLink, Inc. (“EarthLink”) and its wholly-owned subsidiary New Edge Network, Inc. (“New Edge”) submit this letter as a follow-up to its requests for the Federal Communications Commission (“FCC”), the U.S. Department of Commerce National Telecommunications and Information Administration (“NTIA”) and the U.S. Department of Agriculture Rural Utility Service (“RUS”) to recognize the important role that competitive wholesale broadband access can play in meeting the nation’s goals of greater broadband service deployment and adoption. For Americans to enjoy the benefits of competitive broadband services, lawmakers and regulators must also ensure that our nation’s broadband infrastructure incorporates fully functional and comprehensive broadband operation support systems (“OSS”). Without this critical component that enables wholesale users to pre-qualify, order, manage and support broadband services, residential and business users will be thwarted in their ability to utilize reliable, efficient and feasible competitive broadband options. Thus, as part of the National Broadband Plan, the FCC should: make an explicit determination that up-to-date, real-time and efficient OSS for wholesale broadband services is necessary to meet the country’s broadband goals; commit to obtaining additional data for assessment of wholesale broadband services OSS; and begin an evaluation of the benefits of a standardized OSS. Further, NTIA and RUS should require providers who receive Recovery Act funds to provide fully functional and comprehensive OSS (and associated Application Programming Interfaces (“API”)) for their wholesale services as part of applicants’ nondiscrimination and network interconnection obligations.

As EarthLink and New Edge have described, wholesale broadband access services have a significant positive impact on consumer broadband adoption and broadband deployment, especially as wholesale broadband often serves homes and businesses in smaller, more rural areas, particularly those outside of the former Bell Operating Company territories.¹ In particular,

¹ See Letters from Jennifer P. Bagg, Counsel for EarthLink, Inc. and New Edge Network, Inc., (footnote continued on next page)

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when broadband network providers offer service in previously unserved (or underserved) areas, wholesale broadband access services offer a competitive alternative where building out additional infrastructure might not be economically feasible. Importantly, the ability to provide customers with a competitive broadband access choice ensures that previously unserved areas do not immediately transition into an underserved category.² Moreover, broadband network providers venturing into unserved areas that also offer wholesale broadband access means fuller utilization of the newly built broadband network and enables better, swifter realization of the network investment.³ Conversely, in newly built areas where no competitive alternatives are available because broadband network providers do not offer wholesale broadband access, the networks can remain underutilized.⁴

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to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Aug. 24, 2009, Sept. 14, 2009, Sept. 15, 2009, Sept. 25, 2009, and Sept. 28, 2009).

² See *A National Broadband Plan for Our Future*, Notice of Inquiry, 24 FCC Rcd. 4342, ¶ 49 (2009) (“National Broadband Plan”) (asking “whether multiple providers of broadband services are useful or necessary for achieving our goal of providing broadband services to unserved and underserved areas.”). See also American Recovery and Reinvestment Act of 2009, Sec. 6001, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

³ Recently, EarthLink met with a Recovery Act fund applicant seeking to build a broadband network in unserved and underserved areas. This broadband provider discussed its plans to offer wholesale services on the new broadband network to facilitate high network utilization in order to ensure a positive return on its investment. This provider agreed that fully functional OSS and APIs for prequalification, ordering, status and trouble ticketing would be necessary for viable wholesale broadband access services and committed to making such OSS and APIs available to EarthLink and other wholesale broadband service providers.

⁴ Especially where broadband network providers that receive Recovery Act funds are required to adhere to nondiscrimination and network interconnection obligations, full realization of these obligations cannot be met without fully functional and comprehensive OSS. See Recovery Act § 6001(j), 123 Stat. at 512. See also *Federal Register Notice*, Notice of Funds Availability (NOFA) and Solicitation of Applications for the Broadband Initiatives Programs and Broadband Technology Opportunities Program, 74 FR 33104 (Jul. 9, 2009) (“NOFA”) (“Additional consideration will be given to applicants that commit to offering wholesale access to the project facilities at reasonable rates and terms.”). As explained in its initial comments on the implementation of the NTIA Broadband Technologies and Opportunities Program (“BTOP”) and the RUS Broadband Initiatives Program (“BIP”) enacted in the Recovery Act, grantee and recipients subject to the wholesale broadband service access obligation should offer a “‘state-of-the-art’ automated electronic ordering, provisioning and escalation system. . . that is nondiscriminatory and effective.” Such a system benefits all broadband users, network providers and service competitors, further enhancing the sustainability of deployed broadband infrastructure. Comments of EarthLink, Inc. and New Edge Network, Inc., 7, GN Dkt. 09-40 (Apr. 13, 2009).

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In addition to the network investment benefits that wholesale broadband access brings, competitive choices enhance consumer adoption. Residential customers are often inclined to select a broadband Internet provider like EarthLink over the incumbent broadband provider due to EarthLink's name recognition, loyalty or personal recommendations, while small businesses, who perhaps require managed networks outside urban and suburban footprints, are attracted to services like those offered by New Edge, which can offer a "one-stop solution" across multiple provider territories via wholesale broadband access. Notably, EarthLink and New Edge's successful wholesale broadband service relationships have increased overall the number of consumers that enjoy the benefits of broadband services and competition.⁵

Wholesale broadband services providers also help realize the nation's broadband usage goals, by assisting in community development, wiring anchor institutions, helping schools, and increasing jobs.⁶ As described in numerous comments filed on the National Broadband Plan and as the FCC has recognized throughout the National Broadband Plan process, community anchor institutions "often serve as economic and social 'hubs' of their regions; both residential and commercial development often clusters around the school, hospital and library."⁷ Moreover, networks of anchor institutions, such as those New Edge deploys for its customers, including health, education, public safety, and government buildings "are critical to the expansion of broadband services to the unserved and underserved."⁸ For instance, New Edge connects long-

⁵ See Letter from Jennifer P. Bagg, Counsel for EarthLink, Inc. and New Edge Network, Inc., to Marlene H. Dortch, Secretary, 2-4, FCC, GN Docket No. 09-51 (Sept. 14, 2009).

⁶ See Recovery Act § 6001(b), 123 Stat. at 512-13 (stating that the goals of the BTOP is to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in state- or federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

⁷ See, e.g., Comment of the Schools Health and Libraries Broadband Coalition, GN Dkt. No. 09-51, 2 (filed Oct. 28, 2009). See also Comment Sought on Broadband Deployment and Adoption on Tribal Lands, NBP Public Notice #5, DA No. 09-2092 (Sept. 23, 2009) and *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, Report, 2009 FCC LEXIS 2637, at ¶ 111 (2009) ("Entities that can function as anchor tenants with adequate demand to both spur broadband infrastructure investment and ensure sustainability can function as an integral part of a rural broadband strategy."). NTIA has defined "community anchor institutions" as "[s]chools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and entities." NOFA, 33123.

⁸ Comments of NATOA, GN Dkt. No. 09-51, 2 (filed Oct. 28, 2009). As described by FCC Commission Copps, "[b]roadband can be the great enabler that restores America's economic well-being and opens doors of opportunity for all Americans to pass through, no matter who they are, where they live, or the particular circumstances of their individual lives. It is technology (footnote continued on next page)

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term care facilities located in seven states, an outpatient rehabilitation facility that has services in over 600 locations, and numerous medical providers located outside urban and suburban areas. New Edge also provides wholesale broadband service to schools throughout the country, including a private provider of early childhood and school-age education and care serving more than 300,000 children, a state teachers association, as well as local government authorities, such as mayor offices, fire departments, food safety inspectors, and government run housing authorities. EarthLink's customer base represents numerous small and home-based businesses. Indeed, a substantial number of home offices and small businesses utilize EarthLink services as a way to leverage broadband Internet access to expand their businesses, creating jobs and expanding economic opportunities.

In addition, the development of thriving wholesale broadband service options will promote broadband innovation and ensure that it is consumer and user choices that drive success and market evolution. Instead of being required to accept the broadband service packages and options (including price, terms, features, quality, customer service, and functions) offered solely by one (or two at best) incumbent providers, broadband users become empowered to seek the services that best meet their needs when they have competitive options from which to choose. This ability to choose a broadband provider that best fits users' preferences is precisely why the FCC has properly emphasized the importance of transparency for broadband consumers.⁹ Only by understanding their choices are broadband users in the best position to make informed broadband choices.

Practically speaking, the benefits of competitive wholesale broadband service can never be realized completely without the underpinnings of fully functional and comprehensive OSS. Unless users can turn to a competitive provider who can respond to pre-qualification inquiries, process orders, complete installation and follow-up on trouble tickets and status checks, robust wholesale broadband competition will be an unrealized objective for consumers and businesses served outside former Bell Operating Company territories. Much like viable electronic OSS was fundamental to the development of today's telephone network by making the manual processes through which a telephone network was operated more efficient, the current and future state of

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that intersects with just about every great challenge confronting our nation—whether it's jobs, education, energy, climate change and the environment, international competitiveness, health care, overcoming disabilities, equal opportunity—the list goes on.” *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, Notice of Inquiry*, Statement of Commissioner Copps, 24 FCC Rcd. 10505 (2009).

⁹ See, e.g., *Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services, Notice of Inquiry*, 24 FCC Rcd. 11380, ¶ 23 (2009) (“Consumer Information and Disclosure NOI”) (stating that, in order to use a service plan well, consumers need accurate and transparent information).

OSS development must be able to support emerging network technologies.¹⁰ We believe that, at a minimum, this requires broadband OSS to be electronic, in real-time and readily accessible by competitors. In addition, an API and access to the information necessary to implement it, must be easily obtainable by the wholesale broadband service providers. An API is a set of standards that enable two systems to integrate pre-ordering and ordering functions, essentially the functional translation of customer data. The API allows the wholesale broadband service provider to enter and submit customer data into their own corporate operating systems that interfaces with the OSS of the providing company. The need to check separate systems and utilize duplicative entries, which increases manual error, delay and complexity, is eliminated. The API is therefore a fundamental component of fully functional and comprehensive OSS as it enables the wholesale broadband service provider to access real-time pre-qualification details, place orders and issue trouble tickets, as well as access to and delivery of other information necessary to best serve consumers. Notably, while an API build-out is a joint process, the burden of implementing an API falls significantly on the wholesale broadband provider. The underlying broadband network provider need only establish the specifications and documentation for its API once, while each wholesale broadband service provider must build-out a separate API to that underlying provider, as well as for every other underlying provider it purchases wholesale broadband service from.

There are compelling reasons for regulators, policymakers and others to assess more closely the impact of a standardized broadband OSS and APIs, including potential benefits to users and spillover efficiencies. Certainly, a standardized OSS, including standardization of data fields such that they would be consistent from one provider to the next, once implemented, would result in enormous cost savings for consumers and broadband providers. Not only would broadband providers enjoy significantly reduced burdens of constant system retooling in order to communicate with the systems of other providers, the process of OSS implementation would be streamlined. Additionally, greater standardization of OSS and APIs would well serve the interests of competition and consumer choice since it would enable seamless customer switching of broadband service providers, meeting other goals of the FCC.¹¹ Indeed, competition can never really take hold if consumers are frustrated when they attempt to change broadband providers. That said, we believe there is currently insufficient focus and data regarding the costs and benefits of standardized broadband OSS. As such, EarthLink and New Edge urge the FCC to seek as part of the data-gathering focus of the National Broadband plan, more information on what standards are in use by the industry and identify standards that meet industry and consumer requirements, their costs and the potential impact on our nation's broadband goals.¹²

¹⁰ Agilent Technologies, *White Paper: Operations Support Systems*, 2007 at www.iec.org.

¹¹ See, e.g., Consumer Information and Disclosure NOI (seeking, in part, comment on how to provide consumers with better access to clear, easily understandable information they need to choose a provider or switch an existing provider or plan).

¹² See, e.g., OSS Through Java Initiative, *The Only Game in Town*, 2005, at www.ossj.com (describing the OSS through Java standard (OSS/J) as “the most mature and widely supported off-the-shelf enablers of end-to-end component-based solutions”); TM Forum, Solution (footnote continued on next page)

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At the same time, the FCC and policymakers should pursue additional approaches to increase consumer broadband options and expand user broadband choice, including more incremental OSS changes. For example, one incremental step prior to mandating standardized broadband OSS would be to require fully functioning carrier-deployed broadband OSS that facilitates efficient usage. EarthLink and New Edge recognize and agree that the cost of OSS implementation is an important consideration and acknowledge that the FCC must weigh the costs and benefits of proposed regulatory mechanisms. While we are not able to state with certainty what the costs to incumbent broadband providers would be to deploy such systems, it is EarthLink and New Edge's joint experience that industry costs have fallen substantially in the over ten years since the FCC and other regulatory authorities first explored OSS costs.¹³ Indeed, today there are off-the-shelf and innovative options available that, with modifications to the existing systems of each company, could substantially ease the burden on implementing a fully functional and comprehensive OSS.¹⁴ However, to create sound and data-driven policies, the FCC should have a clear and complete understanding of the costs of carrier deployed OSS, including specifically, the incremental cost of defining and facilitating open, workable APIs for wholesale broadband providers. As such, the National Broadband Plan should seek data on these OSS issue. Failure to do so risks overlooking a potentially important area to increase broadband usage and deployment.

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Frameworks Next Generation OSS Standards at www.tmforum.org ("TM Forum's Solution Frameworks (NGOSS) are the widely adopted set of standards and best practices for transforming your business and operations."). While EarthLink and New Edge do not necessarily endorse these solutions, they underscore there is a need for standardization.

¹³ See *In the Matter of Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 97, ¶ 13 (1992) ("at this time the benefits of requiring BOC enhanced services personnel to use the same access to OSS for [complementary network services] as independent [enhanced service providers] do are outweighed by the costs and would not be in the public interest."); *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Report and Order, 14 FCC Rcd. 20912, ¶ 143 (1999) (finding the cost of implementing modifications to incumbent LEC systems so that competitive LECs could access might range anywhere from \$3.5 million to "hundreds of millions of dollars.").

¹⁴ See, e.g., IBM, *White Paper: Improve operation efficiencies through effective managements of next-generation networks and services*, 5-6, March 2008 at <http://www.ibm.com/ibm/servicemanagement/resources-whitepapers.html> ("Out-of-the-box service assurance solutions that are easy to install, upgrade and maintain over their life can reduce ongoing operational costs, lower learning curves and improve time to productivity and value, and do not require highly skilled operators to manage."); HP, "NGOSS Solutions," at <http://h20208.www2.hp.com/cms/solutions/ngoss/index.jsp>.

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Notably, the importance of fully functional and comprehensive OSS for broadband services has been underscored in significant telecommunications transactions, including the pending Verizon/Frontier application to assign or transfer control of access lines from Verizon to Frontier.¹⁵ As EarthLink and New Edge have described, the proposed transaction will only serve the public interest if the FCC ensures that broadband services deployment will not suffer. To do so, it is vital to guarantee continued access to fully functioning OSS and APIs, so that competitive broadband service providers will be able to serve customers adequately and continue to spur on deployment and adoption of broadband across the U.S.¹⁶ EarthLink and New Edge are pleased by the responsiveness of Verizon and Frontier to the concerns raised and with the commitments made by Verizon to extend its current OSS and API to Frontier territory in all but West Virginia.¹⁷ In West Virginia, Frontier has the opportunity to greatly improve services to residential and wholesale customers by confronting the current challenges Verizon has faced and implementing a similar – or better – fully functional and comprehensive OSS as is planned for the other states involved in this transaction. This and similar transactions also present a unique opportunity for the FCC to update its knowledge base on broadband OSS issues, including costs and related implementation, technical concerns, user benefits and market issues. To promote further its broadband goals in general and the public interest in the proposed transaction, the FCC must also ensure that the commitments made by Verizon and Frontier are met. As such, the FCC should adopt a rigorous oversight process and related enforcement mechanisms post-transaction. EarthLink and New Edge have proposed no less than annual reviews of the proposed Verizon/Frontier transaction for at least three years and implementation of an easy-to-use system that will allow customers to submit information regarding the transition or any complaints of

¹⁵ See *Verizon Communications Inc. and Frontier Communications Corporation, Application for Consent to Assign and Transfer control of Authority to Provide Global Facilities-Based and Global Resale International Telecommunications Services and to Assign and Transfer Control of Domestic Common Carrier Transmission Lines, Pursuant to section 214 of the Communications Act of 1934, as amended*, WC Dkt. 09-95 (filed May 29, 2009).

¹⁶ Comments of EarthLink, Inc. and New Edge Network, Inc., 3-4, GN Dkt. 09-95 (Sept. 21, 2009).

¹⁷ “Frontier and Verizon have in place a plan for a seamless transition of OSS and operations so that neither retail nor wholesale customers should experience disruptions in service, ordering, or billing.” See *Opposition to Petitions to Deny and Reply to Comments by Frontier Communications Corporation and Verizon Communications Inc.*, 33, WC Dkt. No. 09-95 (Oct. 13, 2009). Further, Frontier and Verizon also note that in all states affected by the transaction, with the exception of West Virginia, “wholesale customers (including competitors) in these states will not have to change their existing systems interfaces to process orders, track provisioning, or manage troubles, nor otherwise have their existing OSS arrangements substantively disrupted” and that “the transaction will not result in deterioration of wholesale service quality or capabilities. . . . [T]he replicated systems will include all OSS, APIs, and applications that are used by Verizon today to provide wholesale service.” See *id.* at 35, 46.

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violations of the applicants' commitments.¹⁸ Given the industry experiences with similar transactions, these steps are the minimum needed to ensure promise meets reality.¹⁹

For these reasons, as part of the National Broadband Plan, EarthLink and New Edge urge the FCC to make an explicit determination that up-to-date, real-time and efficient OSS for wholesale broadband services is needed not only to encourage deployment and adoption of broadband generally, but also to promote broadband competition. The FCC should define baseline OSS parameters to include electronic, real-time and accessible requirements. Further, to ensure its efforts are targeted, the FCC should also commit to obtaining additional data for assessment of wholesale broadband services OSS, with an emphasis on consumer-oriented wholesale services, as well as cost data. In addition, the FCC should begin an evaluation of the benefits of a standardized OSS, which would streamline ordering and provisioning not only for broadband services, but for communication services as a whole. EarthLink and New Edge commend the FCC, NTIA and RUS in their commitment to advancing our nation's broadband future. The link between economic, social and cultural progress and broadband deployment and usage is well-recognized. To meet these goals, we respectfully submit that all Americans should have access to competitive broadband options and the ability to pursue broadband choices that best suit their needs by ensuring adequate broadband OSS.

Pursuant to the Commission's rules, one copy of this letter is being filed electronically in the above-referenced dockets for inclusion in the public record. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,



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¹⁸ Comments of EarthLink, Inc. and New Edge Network, Inc., 9, GN Dkt. 09-95 (Sept. 21, 2009).

¹⁹ See, e.g., Clarke Canfield, Daily Press, *Maine, New Hampshire and Vermont to Hold Joint Conference with FairPoint Executives* (Sept. 7, 2009) available at <http://www.dailypress.com/sns-ap-us-fairpoint-hearing,0,3867911.story> (quoting Anne Ross, general counsel for the New Hampshire Public Utilities Commission, "This level of service and operational and financial problems is unprecedented, at least in the last 20 years, especially in a company of this size. It's not unusual to have problems in smaller companies, but for a company with this size network and customer base, it's unusual to see problems of this magnitude.").