

# EARTHLINK INC

## FORM 10-K405

(Annual Report (Regulation S-K, item 405))

Filed 3/9/2001 For Period Ending 12/31/2000

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CIK	0001102541
Industry	Computer Services
Sector	Technology
Fiscal Year	12/31

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**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 10-K**

FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTIONS 13 OR  
15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

/X/ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED  
DECEMBER 31, 2000

**COMMISSION FILE NUMBER 001-15605**

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**EARTHLINK, INC.**

(Exact name of Registrant as specified in its charter)

DELAWARE  
(State of Incorporation)

58-2511877  
(I.R.S. Employer Identification Number)

**1375 PEACHTREE ST., ATLANTA, GEORGIA 30309**  
(Address of principal executive offices, including zip code)

(404) 815-0770  
(Registrant's telephone, including area code)

**Securities registered pursuant to Section 12(b) of the Act: NONE**

**Securities registered pursuant to Section 12(g) of the Act: Common Stock, \$.01**  
par value

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Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes /X/ No //

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. /X/

The aggregate market value of the Registrant's outstanding Common Stock held by non-affiliates of the Registrant on January 31, 2001 was \$924.4 million. There were 130,293,541 shares of Common Stock outstanding as of January 31, 2001.

Portions of the Proxy Statement to be filed with the Securities and Exchange Commission on or prior to March 12, 2001 and to be used in connection with the Annual Meeting of Shareholders expected to be held on May 24, 2001 are incorporated by reference in Part III of this Form 10-K.

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**EARTHLINK, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
**FOR THE YEAR ENDED DECEMBER 31, 2000**

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THIS REPORT ON FORM 10-K CONTAINS FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS AND UNCERTAINTIES. ACTUAL EVENTS AND RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THESE FORWARD-LOOKING STATEMENTS AS A RESULT OF CERTAIN FACTORS. SEE ITEM 7, "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS--SAFE HARBOR STATEMENT".

## **PART I**

### **ITEM 1. BUSINESS.**

#### **OVERVIEW**

EarthLink, Inc. (the "Company"), is a leading Internet service provider ("ISP"), providing reliable nationwide Internet access and related value-added services to our individual and business customers. The Company was formed in February 2000 as a result of the merger of EarthLink Network, Inc. ("EarthLink Network"), and MindSpring Enterprises, Inc. ("MindSpring"). The word "Network" was dropped from the name of the combined company to differentiate it from the former EarthLink Network, Inc. By combining the two companies, we formed the second largest ISP in the United States. Our objective is to provide directly to consumers the highest quality access to the real Internet and related Internet-based services, which together make the Internet not only relevant but indispensable in the daily lives of our customers. Success in achieving this objective will be measured by achieving the highest customer ratings for quality and the highest customer loyalty in the industry, steady growth in customers and revenues, and high rates of profitability as measured by return on sales and return on equity. This performance will deliver meaningful rewards to our three stakeholders: customers, employees, and stockholders. We are intensely focused on improving profitability by capitalizing on the continuing decline in telecommunications costs, the decline in the number of calls to our call centers due to the quality of our software and reliability of our services, benefits of scale, and streamlining of our internal processes and operations.

Our customer base grew from approximately 3.1 million paying customers on December 31, 1999 to approximately 4.7 million paying customers on December 31, 2000. Our growth has resulted primarily from strategic acquisitions such as the purchase of OneMain.com, Inc. ("OneMain") in September 2000, as well as traditional marketing channels and alliances. We believe we have a high customer retention rate for our industry. Our retention rate is a product of our efforts to enhance our customers' Internet experience through (1) simple, rapid and reliable access to the Internet, (2) superior customer service and technical support, and (3) customer education and support.

Our corporate offices are located at 1375 Peachtree St., Atlanta, Georgia 30309 and our telephone number at that address is (404) 815-0770.

#### **AMENDED RELATIONSHIP WITH SPRINT**

Since June 1998, our most important strategic alliance has been with Sprint Corporation. As a part of this alliance, Sprint transferred approximately 130,000 customers to us and committed to generating at least 150,000 new customers for us during each of the succeeding five years through their channels. Additionally, we were co-branded as Sprint's exclusive consumer Internet access provider, and we had exclusive access to certain dial-up modem ports in Sprint's network. We also had access to Sprint's marketing and distribution channels and the right to use Sprint's widely recognized brand name.

In February of 2001, we renegotiated our commercial and governance arrangements with Sprint to reflect the evolution of both our relationship and the telecommunications-Internet market. While we continue to have a close relationship with Sprint, the following highlights the changes we made:

## **COMMERCIAL RELATIONSHIP**

EarthLink continues to support a variety of Sprint-branded retail Internet services, such as Sprint's broadband services, and some of its web hosting services. EarthLink does this through a wholesale arrangement with Sprint. Sprint continues to sell EarthLink-branded dial up Internet access service, though Sprint may now, at its election create a Sprint-branded dial-up service, using EarthLink or competitive components on a wholesale basis. Although Sprint may continue to use the EarthLink brand in these wholesale services, it is not required to do so. EarthLink is likewise released from any obligation to co-brand any of its services with the Sprint brand.

Both companies have removed all exclusivity provisions from the relationship. Sprint is free to pursue relationships with other ISPs, and we are free to enter into commercial relationships with other telecommunications service providers.

As Sprint had already delivered nearly three quarters of the subscribers required under their five year, 750,000 subscriber guarantee, EarthLink released Sprint from the remainder of its guarantee. We are comfortable that the remainder of the original guarantee levels will be met by Sprint regardless.

## **GOVERNANCE RELATIONSHIP**

Among changes in the governance relationship commencing in September of 2001, Sprint no longer has the contractual right to acquire EarthLink through an unsolicited bid in September of 2001. Sprint will continue to have the right to maintain its percentage of our fully diluted equity ownership by purchasing shares on the market or from third parties in the event that we dilute Sprint's interest by issuing voting securities in a financing, in an acquisition, or by the exercise of options or warrants or the conversion of convertible securities into voting stock. However, Sprint will have no other contractual rights to acquire EarthLink securities from the Company. Sprint will retain the ability to make a counteroffer to buy all, but not less than all, of our equity in the event a third-party seeks to acquire a controlling interest in EarthLink. In that case, our Board is not contractually obligated to accept Sprint's counter offer, but will analyze it in exercising their fiduciary duties to our stockholders.

Sprint has also relinquished its right to appoint two members to our board of directors and Messrs. Esrey and Lauer, Sprint's prior representatives on our board, have resigned from their positions on our board. This new governance arrangement terminates in the event that EarthLink consummates a change in control transaction with a third party, or if Sprint acquires all of the equity of EarthLink pursuant to a counter offer that our board of directors accepts, or if Sprint's ownership of our common and preferred equity falls below 10% of our total voting equity.

## **OTHER STRATEGIC ALLIANCES AND ACQUISITIONS**

In January 2000, we entered into a strategic alliance with Apple Computer Corporation. In connection with this alliance, we expanded our existing commercial relationship with Apple so that we will serve as the default ISP for Apple's Macintosh line of computers for a minimum of two years and our overall commercial relationship has been extended through January 4, 2005. In addition, Apple purchased \$200 million of our newly created Series C convertible preferred stock.

In September 2000, we acquired OneMain including approximately 732,000 individual access accounts, approximately 20,000 web hosting accounts and approximately 6,000 broadband accounts. The aggregate of acquisition price and costs incurred to acquire OneMain was approximately \$315.0 million. The aggregate purchase price consisted of (i) \$155.4 million in cash, (ii) \$200,000 in estimated cash

payments in lieu of fractional shares, and (iii) 9,278,298 shares of EarthLink common stock valued at \$106.7 million. In addition, EarthLink assumed capital lease liabilities of \$22.1 million and other net liabilities of \$1.8 million. Transaction charges incurred in the acquisition totaled approximately \$28.8 million.

In November 2000, we signed a definitive agreement with Time Warner Cable, a company that serves 12.6 million U.S. cable customers, for EarthLink to offer its broadband Internet services over Time Warner Cable systems. Under this agreement, EarthLink's full package of high-speed Internet access, content, applications and functionality will be made available to the approximately 20 million homes passed by Time Warner Cable's broadband-capable cable networks. This agreement to offer EarthLink's broadband Internet services over Time Warner Cable's systems was an important advance in bringing the benefits of open access to our subscribers and all Internet users. We expect that by building on our alliances with DSL, satellite, fixed wireless, and other cable operators, this arrangement will significantly expand our ability to provide subscribers with always-on, high-speed Internet access.

## **MARKETING CHANNELS**

Our sales and marketing efforts consist of the following programs:

**ADVERTISING.** We advertise our services in print, billboards, electronic and broadcast media. We participate in national trade shows such as MacWorld, as well as some local and regional trade shows. During the fourth quarter, EarthLink initiated a major visually distinct advertising campaign aimed at raising brand awareness.

**DIRECT MARKETING.** EarthLink promotes its services directly to customers in the form of disk and coupon distribution through the mail, and through promotional inserts in packages, periodicals and newspapers.

**ORIGINAL EQUIPMENT MANUFACTURER CHANNELS.** EarthLink has marketing arrangements with a number of leading hardware and software manufacturers to include our Internet access software pre-installed on or included with their products. Our OEM partners include, among others, Apple Computer Corporation, and Hewlett Packard.

**APPLE ALLIANCE.** Our alliance with Apple makes us the default ISP in Apple's setup software on its Macintosh branded line of computers through January 4, 2005. We are the exclusive default ISP for dial-up, ISDN and DSL services on Macintosh computers sold in the United States.

**AFFINITY MARKETING PROGRAM.** Affinity marketing partners such as Discover Card and AAA of Southern California typically bundle our Internet access software with their own goods or services to create a package that promotes EarthLink to potential customers.

**MEMBER REFERRAL PROGRAM.** We believe that our existing customers are among our most important marketing tools. We currently waive one month of standard access service fees for each customer who refers a new customer to our service.

## **KEY BUSINESS AREAS**

### **NARROWBAND ACCESS REVENUES**

Narrowband access revenues consist of monthly fees charged to customers for dial-up Internet access and one time set up fees. We have approximately 4.3 million narrowband customers. Narrowband revenues were \$833.4 million in 2000, which represented 84% of total revenues for the year.

## **WEB HOSTING**

We lease server space and provide web services to companies and individuals wishing to have a web or e-commerce presence. EarthLink's web hosting revenues were \$65.8 million in 2000, which represented 7% of total revenues for the year. As of December 31, 2000, the Company hosted approximately 169,000 Web sites compared to approximately 109,000 in 1999, representing a 55% increase.

## **BROADBAND**

Broadband access revenues consist of fees charged for high-speed, high-capacity access services including DSL, cable, fixed wireless and dedicated circuit services. Broadband has emerged as a meaningful business line and we are a leading provider in the broadband market. At the end of 1999, we serviced approximately 25,000 broadband customers in 12 major cities. At the end of 2000, we serviced approximately 215,000 broadband customers in 86 markets nationwide. Many of our broadband customers have upgraded from our dial up service. We continue to expand our broadband service so all of our dial up customers will have the option to upgrade to an EarthLink Broadband service rather than use a competing provider elsewhere. EarthLink's broadband revenues were \$57.8 million or 6% of total revenues in 2000.

## **CONTENT, COMMERCE AND ADVERTISING**

We generate content, commerce and advertising revenues by leveraging the value of our customer base and user traffic. The principal component of our strategy is our Premier Partnership Program, through which we offer and sell promotional packages that provide advertisers with access to the multiple points of contact we have with our customers. The Premier Partnership Program focuses on third parties having a natural affinity to and benefit for our customer base. The program generates revenues through (1) sales of online ads; (2) fees generated through revenue sharing arrangements with online retailers who are accessed through our properties; and (3) payments for placing links from our properties to third-party content. We also sell advertising and content space on our various online properties, such as the Personal Start Page, the Mall and our online magazine eLink, and through our news magazine, bLink. We generally charge transaction fees on electronic commerce activities we facilitate.

## **SERVICES**

We currently support the pre-merger products and services of both the former EarthLink Network and MindSpring through approximately 6,500 dial-up points of presence, or POPs, as well as through our broadband access alternatives. Our primary service offerings include:

- Dial-up Internet access,
- High speed access via DSL, cable modem, fixed wireless or dedicated circuits,
- Web hosting, and
- Content, commerce and advertising.

These services are offered in various competitively priced plans designed to meet the needs of our customers. Our Internet access software incorporates a telephone dialer and email program with several leading third-party Internet access tools, including our own proprietary browser as well as the latest browsers from Netscape and Microsoft. This software provides a functional, easy-to-use Internet access solution for Windows and Macintosh platforms. The software automatically installs these and other software applications on customer computers. The simple point-and-click functionality of our software, combined with its easy-to-use multimedia registration and installation system, permits online credit card

registration, allowing both our novice and experienced customers to quickly set up access to the Internet.

Our business services consist of:

- Web hosting, the business of maintaining a customer's Internet Web site,
- Web page design,
- domain name registration, and
- e-commerce solutions.

In December 1999, we debuted our new access software and online interface, EarthLink 5.0. EarthLink 5.0 is designed to provide customers with an intuitive, all-in-one Internet environment. It allows for customization and personalization, letting EarthLink customers take advantage of the power, speed and scope of a direct Internet connection through one fully-integrated user interface. Customers need only click a button to access the Web, email, chat or other Internet applications. In addition to a one-stop Internet environment, EarthLink 5.0's robust feature set includes an intuitive multimedia-aided account setup process, full management of user profiles and locations, seamless setup and use of broadband connections, and multiple personalization and productivity options.

In December 2000, we introduced the "EarthLink Everywhere" initiative in which we focus on enabling customers to access the Internet no matter where they are; through both wired and wireless non-pc devices and appliances. Under the EarthLink Everywhere program we research and select the most promising new technologies, and bring those access technologies to market.

## **CUSTOMER SERVICE AND TECHNICAL SUPPORT**

We believe that reliable customer service and technical support are critical to retaining existing customers and attracting new ones. We provide the following services:

- toll-free, live telephone assistance available seven days a week, 24 hours a day,
- email-based assistance available seven days a week, 24 hours a day,
- live chat support 5 days a week from 9 AM to 5 PM PST
- help sites and Internet guide files on the EarthLink Web site, and
- printed reference material.

We also provide support for businesses with dedicated access connections and web sites. In addition, we maintain newsgroups on the Internet where subscribers can post requests for help and other subscribers, as well as our own support personnel, can respond.

We currently handle an average of over 55,000 customer service and technical support calls a day through our call centers located in Pasadena, California; Sacramento, California; Rocklin, California; Atlanta, Georgia; Harrisburg, Pennsylvania; Phoenix, Arizona; Seattle, Washington; San Jose, California; and Dallas, Texas. We also contract with call center services vendors whose EarthLink-trained employees provide additional technical support assistance. We believe the call centers' technology and systems are scaleable to accommodate call volume growth. We actively evaluate our call center facilities in order to deliver more effective and efficient services to our customers.



## **TECHNICAL DEVELOPMENT AND SERVICE ENHANCEMENT**

We place significant emphasis on expanding and refining our services to enhance our customer's Internet experience. Our technical staff is engaged in a variety of technical development and service enhancement activities and continuously reviews new third-party software products and technology for potential incorporation into our systems and services. EarthLink 5.0 is a recent product of these efforts. The most recent release of EarthLink 5.0, version 5.03, in December 2000 was a significant event for us. Now every EarthLink customer can use the same software to connect to EarthLink. Whether they are a former MindSpring, EarthLink Network, Sprynet, Netcom, or Sprintmail customer, this version of EarthLink 5.0 will get them connected. We also regularly update and expand the online services provided through the EarthLink Web site, organize Web content and develop online guides, help screens and other user services and resources.

## **POPS AND NETWORK INFRASTRUCTURE**

We provide our customers with Internet access primarily through both Company managed network and third-party network points of presence, ("POPs"). Over 90% of the U.S. population can access our Internet service through a local telephone call. We have access to third-party provider POPs through network services agreements with UUNet, PSINet, Level 3, Sprint, GTE Internetworking Incorporated (formerly BBN Planet Corporation) and ICG Netahead.

We believe that using a combination of EarthLink-owned POPs and leased third-party POPs enables us to provide Internet access services on a nationwide basis while managing the timing and magnitude of its capital expenditures. We employ a strategy of leasing POPs from third-party providers in locations where it is more economical to do so. These are typically geographic areas where we have lower market penetration than areas we serve through EarthLink-owned POPs. We periodically reevaluate the economics of this strategy and, if warranted, may install a EarthLink POP to replace or overlap with a third-party POP. Customers located in a geographic area not currently serviced by a local POP can access the Internet through an 800 service.

We have invested in measures to minimize the effects of damage from fire, earthquake, power loss, telecommunications failure, computer viruses, security breaches and similar events using backup Internet services or backbone facilities or other redundant computing or telecommunications facilities.

## **COMPETITION**

We operate in the Internet services market, which is extremely competitive. Our current and prospective competitors include many large companies that have substantially greater market presence, financial, technical, marketing and other resources than we have. We compete directly or indirectly with the following categories of companies:

- established online services, such as America Online, the Microsoft Network and Prodigy,
- local, regional and national ISPs, such as Internet America,
- national telecommunications companies, such as AT&T and Verizon,
- regional Bell operating companies, such as BellSouth and SBC Communications Corp,
- online cable services, such as @Home and Roadrunner,
- free ISPs such as Netzero and Juno, and
- broadband providers such as cable television, utility and local and long distance telephone companies.

Our competition is likely to increase. We believe this will probably happen as large diversified telecommunications and media companies acquire ISPs and otherwise provide ISP services and as ISPs consolidate into larger, more competitive companies. Diversified competitors may bundle other services and products with Internet connectivity services, potentially placing us at a significant competitive disadvantage. In addition, competitors may charge less than we do for Internet services, causing us to reduce (or preventing us from raising) our fees. As a result, our business may suffer.

## **PROPRIETARY RIGHTS**

**GENERAL.** We rely on a combination of copyright, trademark, patent and trade secret laws and contractual restrictions to establish and protect our technology and proprietary rights and information. We require employees and consultants and, when possible, suppliers and distributors, to sign confidentiality agreements. However, we cannot assure you that our steps will be sufficient to prevent misappropriation of our technology and proprietary rights and information or that our competitors will not independently develop technologies that are substantially equivalent or superior to ours. From time to time, third parties have alleged that certain of our trademarks infringe their trademarks. None of these claims has had an adverse effect on our ability to market and sell our services. However, we cannot ensure that those claims will not have an adverse effect in the future or that others will not assert infringement claims against us in the future.

**LICENSES.** We have licenses to distribute and/or use third-party software incorporated in our software. Significant applications which we license for distribution include Netscape Communicator (this license automatically renews each December for additional one-year terms unless either party terminates the license on 120 days notice), Microsoft Internet Explorer (this license expires in August 2001 and thereafter automatically renews for additional one-year terms, although either party may terminate the license at any time on 30 days notice), and MacTCP software from Apple (this license renews each year). We acquired some software, trademarks and other proprietary technology from Spry and Netcom which we may continue to use in support of the customers we acquired from those companies. We have an agreement with America Online (AOL) under which we distribute a co-branded EarthLink version of AOL Instant Messenger. We intend to maintain or negotiate renewals of existing software licenses and authorizations as necessary. We may also want or need to license other applications in the future. Our inability to renew existing software licenses or to license additional applications could have a material adverse effect on us.

## **EMPLOYEES**

As of December 31, 2000, we employed 7,377 individuals, including 1,149 sales and marketing personnel, 5,782 operations and customer support personnel and 446 administrative personnel. We believe we have good relations with our employees. None of our employees are represented by a labor union, and we have no collective bargaining agreement.

## **ITEM 2. PROPERTIES.**

The Company maintains facilities and offices at various locations throughout the United States for general corporate purposes, including technology centers, customer call centers, office space and our corporate headquarters.

Our principal executive offices are in Atlanta, Georgia. We lease approximately 323,000 square feet in our headquarters building at a current monthly rent of \$222,000. We purchased land and a building in Atlanta, Georgia for \$5 million to house an equipment and technology center. We also lease a 110,000 square foot facility in Pasadena, California to house an equipment and technology center. Current monthly rent on the facility is \$147,000.

In addition, we maintain leased space for customer support call centers and office purposes in Atlanta, Georgia, Harrisburg, Pennsylvania, Pasadena, California, Phoenix, Arizona, Sacramento, California, San Jose, California, Rocklin, California, and Dallas, Texas.

All of the above leases include scheduled base rent increases over the respective lease terms. The total amount of base rent payments is being charged to expense on the straight-line method over the terms of the leases. In addition to the base rent payments, the Company generally pays a monthly allocation of the buildings' operating expenses. We believe we have adequate facilities and plan to acquire additional space to meet our future growth needs.

**ITEM 3. LEGAL PROCEEDINGS.**

We are not currently involved in any legal proceedings that we believe could have, individually or in the aggregate, a material adverse effect on our business or financial condition. There are proceedings pending before the Federal Communications Commission and other governmental legislative and regulatory authorities that could adversely affect the ISP industry and the means by which ISPs conduct business and the cost structure for ISP services. Other than limited lobbying efforts, we are not parties to these proceedings.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.**

None.

## PART II

### ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Prior to the merger of the two companies in February 2000, EarthLink Network common stock was listed and traded on the Nasdaq National Market under the symbol "ELNK," and MindSpring common stock was listed and traded on the Nasdaq National Market under the symbol "MSPG". This table sets forth for the indicated periods the high and low sales prices per share, as reported as composite transactions in THE WALL STREET JOURNAL. Neither EarthLink Network nor MindSpring has ever paid dividends to its common stockholders. The data given for EarthLink Network has been adjusted for the 1.615 exchange ratio of its common stock in the merger with MindSpring.

	EARTHLINK NETWORK, INC. COMMON STOCK		MINDSPRING ENTERPRISES, INC. COMMON STOCK	
	HIGH	LOW	HIGH	LOW
YEAR ENDED DECEMBER 31, 1999				
First Quarter.....	\$55.26	\$35.49	\$62.50	\$31.25
Second Quarter.....	56.04	23.07	66.50	27.94
Third Quarter.....	43.65	22.95	54.88	23.00
Fourth Quarter.....	39.01	24.15	40.44	23.88
YEAR ENDED DECEMBER 31, 2000				
First Quarter (through February 4, 2000)....	\$30.15	\$25.39	\$30.15	\$26.00
EARTHLINK, INC.				
-----				
HIGH                      LOW				
-----				
YEAR ENDED DECEMBER 31, 2000				
February 7 through March 31, 2000.....			\$31.88	\$18.81
Second Quarter.....			22.19	10.56
Third Quarter.....			17.50	8.91
Fourth Quarter.....			9.69	4.75
YEAR ENDING DECEMBER 31, 2001				
First Quarter (through February 23, 2001).....			\$10.88	\$ 5.06

The last reported sale price of the Company's common stock on the Nasdaq National Market on March 8, 2001 was \$9.95 per share. There were approximately 1,708 holders of record of the Company's common stock. Our common stock is listed and traded on the Nasdaq National Market under the symbol "ELNK".

### RECENT SALES OF UNREGISTERED SECURITIES

In January 2000, Apple purchased 7.1 million shares of Series C convertible preferred stock in connection with a multi-year partnership with EarthLink. In February 2000, Sprint exercised its preemptive rights to maintain its level of ownership in the Company after the purchase of shares by Apple. Sprint purchased 2.7 million shares of which 682,000 were common stock and 2.0 million were Series B convertible preferred stock. In May 2000, Sprint exercised its preemptive rights to maintain its level of ownership in the Company after the merger of EarthLink Network and MindSpring. Sprint purchased approximately 26.0 million shares consisting of approximately 6.0 million shares of common stock and approximately 20.0 million shares of Series B convertible preferred stock. Each of these issuances was done pursuant to an exemption from registration based on Section 4(2) of the Securities Act of 1933. The proceeds of the stock issuances were used principally for working capital purposes.

**ITEM 6. SELECTED FINANCIAL DATA.**

The following selected consolidated financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and Notes thereto included elsewhere in this Report.

**SELECTED CONSOLIDATED FINANCIAL INFORMATION**

	YEAR ENDED DECEMBER 31,				
	1996	1997	1998	1999	2000
<b>STATEMENT OF OPERATIONS DATA:</b>					
Revenues.....	\$ 51,362	\$133,444	\$290,614	\$ 670,433	\$ 986,630
Operating costs and expenses.....	89,142	165,641	345,069	866,113	1,381,431
Loss from operations.....	(37,780)	(32,197)	(54,455)	(195,680)	(394,801)
Net loss.....	(38,761)	(33,997)	(53,178)	(173,694)	(345,922)
Deductions for accretion dividends(1).....	--	--	(7,601)	(14,106)	(23,730)
Net loss attributable to common stockholders.....	\$(38,761)	\$(33,997)	\$(60,779)	\$(187,800)	\$(369,652)
Basic and diluted net loss per share(2).....	\$ (0.76)	\$ (0.44)	\$ (0.66)	\$ (1.65)	\$ (2.99)
Weighted average shares(2).....	51,119	77,387	91,466	113,637	123,592
<b>OTHER OPERATING DATA:</b>					
EBITDA(3).....	\$(30,342)	\$(14,127)	\$ 15,498	\$ (6,157)	\$ (189,249)
Cash flows from					
Operating activities.....	(18,227)	(9,936)	62,098	44,211	(127,162)
Investing activities.....	(39,697)	(25,097)	(56,886)	(339,749)	(351,731)
Financing activities.....	70,855	47,223	277,559	672,684	467,886
<b>BALANCE SHEET DATA:</b>					
Cash and cash equivalents.....	\$ 13,646	\$ 25,836	\$ 308,607	\$ 685,753	\$ 674,746
Total assets.....	62,351	91,175	510,002	1,109,147	1,486,137
Long-term debt.....	8,813	13,308	10,125	188,367	13,472
Total liabilities.....	44,192	63,685	109,515	350,694	303,886
Accumulated deficit.....	(45,802)	(79,799)	(140,578)	(328,378)	(698,030)
Stockholders' equity.....	18,159	27,490	400,487	758,453	1,182,251

(1) Reflects the accretion of liquidation dividends on Series A and B convertible preferred stock at 3% compounded quarterly and the accretion of a dividend related to the beneficial conversion feature in accordance with EITF 98-5.

(2) Each outstanding share of then existing EarthLink Network, Inc. common stock was exchanged for 1.615 shares of the common stock of EarthLink and each outstanding share of then existing MindSpring Enterprises, Inc. common stock was exchanged for one share of the common stock of EarthLink. See note 1 of the Notes to Consolidated Financial Statements for an explanation of the determination of the number of weighted average shares outstanding in the net loss per share computation.

(3) Represents earnings (loss) before depreciation and amortization, interest income and expense and income tax expense. EBITDA is not determined in accordance with accounting principles generally accepted in the United States, is not indicative of cash used by operating activities and should not be considered in isolation from, as an alternative to, or more meaningful than measures of performance determined in accordance with accounting principles generally accepted in the United States.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

The following discusses the financial condition and results of operations of EarthLink, Inc. for 2000 and the consolidated results of EarthLink Network, Inc. and MindSpring Enterprises, Inc. for 1998 and 1999. The following should be read in conjunction with the consolidated financial statements and notes thereto included elsewhere in this Report.

### **SAFE HARBOR STATEMENT**

The Management's Discussion and Analysis of Financial Condition and Results of Operations and other portions of this report include "forward looking" statements (rather than historical facts) that are subject to risks and uncertainties that could cause actual results to differ materially from those described. With respect to such forward-looking statements, the Company seeks the protections afforded by the Private Securities Litigation Reform Act of 1995. These risks include, without limitation, (1) that the Company may fail to be competitive with existing and new competitors, (2) that the Company may not retain or grow its member base, (3) our arrangement with Apple may not be as beneficial to the Company as management anticipates, (4) that demand for and availability and implementation of the Company's broadband services may not continue to grow and improve as expected, (5) that prices which the Company may charge for its services or which are charged generally in the market may decline, (6) that our customer churn may not improve to expected levels, (7) that the expected level of advertising, content and commerce revenues may not be achieved, (8) that prices charged to the Company by its telecommunications providers may not continue to decline as expected, (9) that the Company may not adequately respond to technological developments impacting the Internet, (10) that needed financing may not be available to the Company if and as needed, (11) that a significant change in the growth rate of the overall U.S. economy may occur, such that consumer and corporate spending are materially impacted, (12) that a significant reversal in the trend toward increased usage of the Internet may occur, and (13) that some other unforeseen difficulties may occur. This list is intended to identify certain of the principal factors that could cause actual results to differ materially from those described in the forward-looking statements included elsewhere herein. These factors are not intended to represent a complete list of all risks and uncertainties inherent in the Company's business, and should be read in conjunction with the more detailed cautionary statements included elsewhere in the Company's most recent filings with the SEC.

### **OVERVIEW**

EarthLink, Inc. is a leading Internet service provider, ("ISP"), providing reliable nationwide Internet access and related value-added services to our individual and business customers. The Company was formed in February 2000 by the merger of EarthLink Network and MindSpring. The word "Network" was dropped from the name of the combined company to differentiate it from the former EarthLink Network. By combining the two companies, we formed the second largest Internet service provider in the United States. The combined company is expected to achieve significant revenue, expense and capital synergies through economies of scale, the elimination of duplicative expenditures and the combined skills of the two companies management teams. The combined company will also be able to take advantage of the complementary blend of assets and capabilities contributed by the two companies to improve and expand service offerings and accelerate its customer growth rate.

Our customer base grew from approximately 3.1 million paying customers on December 31, 1999 to approximately 4.7 million paying customers on December 31, 2000, making us one of the world's leading ISPs. Our growth has resulted from strategic acquisitions as well as traditional marketing channels and alliances. Our organic growth is a product of our efforts to enhance our customers' Internet experience through (1) simple, rapid and reliable access to the Internet, (2) superior customer service and technical support, and (3) customer education and support. As a result, we believe we have a better than average customer retention rate for our industry.

The Company continues to pursue revenue growth in four key business areas:

- NARROWBAND ACCESS REVENUES which consist of monthly fees charged to customers for dial up Internet access and one time set up fees;
- WEB HOSTING REVENUES which we earn by providing web services to companies and individuals wishing to have a web or e-Commerce presence
- BROADBAND ACCESS REVENUES which consists of fees charged for high-speed, high capacity access services including DSL, cable, fixed wireless and dedicated circuits
- CONTENT, COMMERCE AND ADVERTISING REVENUES which represent (1) sales of banner and other online ads; (2) fees generated through revenue sharing arrangements with online retailers who are accessed through our properties; and, (3) payments for placing links from our properties to third-party content. We also sell advertising and content space on our various online properties, such as the Personal Start Page, the Mall and our online magazine eLink, and through our bi-monthly magazine, bLink.

In June 1998, we entered into a strategic alliance with Sprint. As a part of this alliance, Sprint transferred approximately 130,000 customers to us and committed to generating at least 150,000 new customers for us during each of the succeeding five years through their channels. Additionally, we were co-branded as Sprint's exclusive consumer Internet access provider with exclusive access to certain dial-up modem ports in Sprint's network. In February 2001, we amended our arrangements with Sprint. While we continue to have a close relationship with Sprint we agreed to release Sprint from its minimum commitment to provide us with 150,000 new subscribers per year. Consequently, we wrote off approximately \$11.3 million in related unamortized intangible assets in February 2001. However, we will continue to provide both co-branded and private labeled internet access services to Sprint for sale to its customers. Sprint exceeded the minimum number of new customers in each year during our original arrangement, and we anticipate that they will continue to meet or exceed this level during the foreseeable future.

In February 1999, we purchased substantially all of NETCOM On-Line Communication Services, Inc.'s subscriber accounts in the U.S., including approximately 408,000 individual access accounts, approximately 25,000 dedicated Internet access accounts and approximately 3,000 Web hosting accounts. NETCOM, now known as ICG Netahead, Inc., is a wholly-owned subsidiary of ICG Communications, Inc. We also acquired assets used in serving those customers, including leased operations facilities in San Jose, California and Dallas, Texas and ICG Netahead's rights to the "NETCOM" name, except in Canada, the United Kingdom and Brazil. ICG Netahead retained all of its assets used in connection with its network operations. Under a separate network services agreement with ICG Netahead, EarthLink purchases access to ICG Netahead's network. EarthLink paid \$245 million for the NETCOM assets, consisting of \$215 million in cash and \$30 million in common stock.

In January 2000, we entered into a strategic alliance with Apple Computer. Our alliance with Apple makes us the default ISP in Apple's setup software on its Macintosh branded line of computers through January 4, 2005. We are the exclusive default ISP for dial-up, ISDN and DSL services on Macintosh computers sold in the United States.

In September 2000, we acquired OneMain, including approximately 732,000 individual access accounts, approximately 20,000 web hosting accounts and approximately 6,000 broadband accounts. The aggregate of acquisition price and costs incurred to acquire OneMain was approximately \$315.0 million. The aggregate purchase price consisted of (i) \$155.4 million in cash, (ii) approximately \$200,000 in cash payments in lieu of fractional shares, and (iii) 9,278,298 shares of EarthLink common stock valued at \$106.7 million. In addition, EarthLink assumed capital lease liabilities of \$22.1 million and other net liabilities of \$1.8 million. Transaction charges incurred in the acquisition totaled approximately \$28.8 million.

## RESULTS OF OPERATIONS

The following table sets forth the percentage of total revenues represented by certain items in our consolidated statements of operations for the periods indicated:

	YEAR ENDED DECEMBER 31, 1998		YEAR ENDED DECEMBER 31, 1999		YEAR ENDED DECEMBER 31, 2000	
	(000 'S)	% OF REVENUE	(000 'S)	% OF REVENUE	(000 'S)	% OF REVENUE
STATEMENT OF OPERATIONS DATA:						
Revenues:						
Narrowband access.....	\$ 260,229	90%	\$ 582,883	87%	\$ 833,415	84%
Web hosting.....	22,007	7	47,435	7	65,756	7
Broadband access.....	3,321	1	23,540	4	57,753	6
Content, commerce and advertising.....	5,057	2	16,575	2	29,706	3
Total revenues.....	290,614	100	670,433	100	986,630	100
Operating costs and expenses:						
Cost of revenues.....	115,529	40	248,487	37	368,133	37
Sales and marketing.....	65,037	22	219,349	33	443,708	45
Operations and member support.....	80,244	28	182,134	27	297,027	30
General and administrative.....	34,575	12	67,876	10	106,148	11
Merger-related charges(1).....	--	--	--	--	33,967	4
Acquistion-related costs(2).....	49,684	17	148,267	22	132,448	13
Total operating costs and expenses.....	345,069	119	866,113	129	1,381,431	140
Loss from operations.....	(54,455)	(19)	(195,680)	(29)	(394,801)	(40)
Net interest income (expense).....	3,671	1	21,986	3	46,485	5
Income tax (provision) benefit.....	(2,394)	--	--	--	2,394	--
Net loss.....	(53,178)	(18)	(173,694)	(26)	(345,922)	(35)
Deductions for accretion dividends.....	(7,601)	(3)	(14,106)	(2)	(23,730)	(2)
Net loss attributable to common stockholders.....	\$ (60,779)	(21)%	\$ (187,800)	(28)%	\$ (369,652)	(37)%
OTHER OPERATING DATA:						
Number of members at year end.....	1,640,000		3,122,000		4,690,000	
Number of employees at year end.....	2,320		4,828		7,377	
EBITDA(3).....	\$ 15,498	5%	\$ (6,157)	(1)%	\$ (189,249)	(19)%
CASH FLOW DATA:						
Cash flow from (used in) operations.....	\$ 62,098		\$ 44,211		\$ (127,162)	
Cash flow used in investing activities.....	(56,886)		(339,749)		(351,731)	
Cash flow from financing activities.....	277,559		672,684		467,886	

(1) Represents merger and restructuring costs incurred during the three months ended March 31, 2000. These costs were primarily attributable to fees associated with investment banking, legal and accounting services, the acceleration of unamortized costs associated with a line of credit and convertible debt, severance costs and non-cash accelerated compensation expense resulting from the merger.

(2) Represent the amortization of intangible assets acquired in the acquisition of other companies and groups of subscribers, and a one-time transaction cost, in June 1999, of \$1,397,000 resulting from the strategic alliance with Sprint.

(3) Represents earnings (loss) before depreciation and amortization, interest income and expense and income tax expense. EBITDA is not determined in accordance with accounting principles generally accepted in the United States, is not indicative of cash used by operating activities and should not be considered in isolation from, as an alternative to, or more meaningful than measures of performance determined in accordance with accounting principles generally accepted in the United States.



## **NARROWBAND ACCESS REVENUES**

Narrowband access revenues consist of monthly fees charged to customers for dial up Internet access. Narrowband revenues increased 43% from \$582.9 million during 1999 to \$833.4 million during 2000. The substantial growth in narrowband revenues was primarily due to an increase in the Company's narrowband customer base from 3.0 million at December 31, 1999 to 4.3 million at December 31, 2000. The growth in our customer base was primarily due to acquisitions and our efforts in sales and marketing. We acquired approximately 408,000 customers from Netcom in February 1999, approximately 732,000 customers were acquired from OneMain in September 2000, and approximately 190,000 were acquired in various smaller subscriber acquisitions from June through December 2000.

## **WEB HOSTING REVENUES**

Web hosting revenues are earned by leasing server space and providing web services to companies and individuals wishing to present a web or e-commerce presence. Web hosting revenues increased 39% from \$47.4 million during 1999 to \$65.8 million during 2000. As of December 31, 2000, and including the approximately 20,000 Web sites acquired from OneMain, the Company hosted approximately 169,000 Web sites, compared to approximately 109,000 as of December 31, 1999.

## **BROADBAND ACCESS REVENUES**

Broadband access revenues represent fees charged for high-speed, high-capacity access services including digital subscriber line (DSL), cable, dedicated circuits and fixed wireless services. Broadband revenues increased 146% from \$23.5 million during 1999 to \$57.8 million during 2000. The substantial growth in broadband revenues was primarily due to an increase in the Company's broadband customer base from 25,000 at December 31, 1999 to 215,000 at December 31, 2000, including 6,000 subscribers acquired from OneMain. We serviced 86 broadband markets nationwide as of December 31, 2000.

## **CONTENT, COMMERCE AND ADVERTISING REVENUES**

Content, commerce and advertising revenues primarily represent revenues from Premier Partnerships, which are promotional arrangements with advertisers, retailers, service providers, and content providers. Revenues are earned through: (i) fixed payments for placing links from our properties to third party sites; (ii) variable payments based on the volume of traffic delivered to our partners in the form of customers, page views, or e-commerce revenues;

(iii) payments for ads in our various on-line properties and our quarterly magazine, bLink, and (iv) the sale of selected consumer products to the Company's subscribers. The principal component of our content, commerce and advertising strategy is our Premier Partnership Program, through which we offer and sell promotional packages that provide advertisers, retailers, and content providers with access to the multiple points of contact we have with our customers. We also sell advertising and content space on our various online properties, such as the Personal Start Page and the Mall and through our news magazine, bLink. Content, commerce and advertising revenues increased 79% from \$16.6 million in 1999 to \$29.7 million during 2000. However, content, commerce and advertising revenues declined 19% from the second quarter to the third quarter and 12% from the third quarter to the fourth quarter. In the current soft environment for "dot.com" advertising, renegotiation or termination of contracts with smaller or niche "dot.com" companies, who could not achieve attractive customer acquisition costs, more than offset growth in revenues from larger, established partners, for whom EarthLink is an effective advertising or content partner. Our decline in revenue also resulted from the absence of special promotional opportunities such as the second quarter's EarthLink-sponsored Wheel of Fortune week and the loss of the last of the former MindSpring advertising and commerce partners where EarthLink Network already had competitive relationships.

## **COST OF REVENUES**

Cost of revenues increased 48% from \$248.5 million during 1999 to \$368.1 million during 2000. The increase was primarily due to the increase in our customer base. Cost of revenues as a percentage of revenues was unchanged at 37% year to year. However, cost of revenues, as a percentage of revenues, has increased approximately 2% during the fourth quarter as compared to the third quarter. This increase is primarily due to (i) the increasing percentage of our business in DSL broadband services, which has a higher percentage cost of revenues compared to narrowband access, and (ii) the inclusion of \$24.3 million in costs of revenue from OneMain. OneMain had a higher cost of revenues as a percent of revenues due to its participation in smaller, more rural markets where lower customer density and less competition among telecommunications infrastructure providers leads to higher communications costs per customer.

## **SALES AND MARKETING**

Sales and marketing expenses consist primarily of advertising, direct response mailings, sales compensation, bounties, communications costs related to trial customers, salaries, promotional material, and the cost of consumer premise equipment and installation for broadband customers, net of reimbursements from our providers. Sales and marketing increased 102% from \$219.3 million during 1999 to \$443.7 million during 2000. The increase was primarily due to the costs of growing our customer base from 3.1 million at December 31, 1999 to 3.9 million at December 31, 2000, prior to the inclusion of OneMain subscribers. This subscriber growth is in accordance with management's efforts to achieve organic growth and increasing market share through marketing strategies. These efforts include the implementation of an advertising program to create brand awareness, expansion of direct mail marketing programs, the development of new marketing channels, increased third party bounties and increased marketing personnel headcount. The increase is also a result of the cost of modems given to subscribers to the Company's DSL service for free or significantly below EarthLink's costs. Growth in sales and marketing expenses slowed to 3% from the third quarter to the fourth quarter of 2000. The reduction in the growth of sales and marketing expense is a result of management's focus on achieving profitability. This includes reduced spending on the less cost effective channels, particularly in narrowband. Sales, marketing and other direct costs associated with the acquisition of customers are generally expensed as incurred.

## **OPERATIONS AND CUSTOMER SUPPORT**

Operations and customer support expenses consist primarily of costs associated with technical support and customer service, as well as customer information systems, software development, and network operations. Operations and customer support increased 63% from \$182.1 million during 1999 to \$297.0 million during 2000. The increase principally reflects (1) the increase in customers from 3.1 million at December 31, 1999 to 3.9 million at December 31, 2000, prior to the acquisition of OneMain subscribers, (2) the inclusion of OneMain, which has historically had higher expense ratios, (3) the opening of additional call centers, and (4) management's focus on retaining existing customers by providing superior service and devoting significant resources to expanding technical support capabilities.

## **GENERAL AND ADMINISTRATIVE**

General and administrative expenses consist primarily of costs associated with the finance, legal and human resources departments, outside professional services, and payment processing, collections and bad debt expenses. General and administrative expense increased 56% from \$67.9 million during 1999 to \$106.1 million during 2000. The increase was primarily due to increases in salaries and wages, depreciation, credit card processing fees, bad debt and the inclusion of OneMain, which has historically had higher expense ratios. The rise in salaries and wages was primarily due to growth in headcount. The increase in depreciation expense was due to the acquisition of office equipment and the build-out

of leasehold improvements. The increases in credit card processing fees and bad debt were primarily due to the increase in our customer base.

## MERGER AND RELATED CHARGES

During the three months ended March 31, 2000, the Company recorded a charge of \$34.0 million related to the merger of EarthLink Network and MindSpring. Substantially all of this amount has been paid as of December 31, 2000.

On September 12, 2000, EarthLink assumed OneMain's restructuring liabilities of \$5.4 million. OneMain had acquired 27 Internet service providers and was working to consolidate the operating, general and administrative functions of the ISPs. OneMain recognized a restructuring charge related to employee termination benefits and certain real estate contracts. The plan called for the net reduction of over 650 positions in operations and customer support, sales and marketing and general and administrative departments. As of December 31, 2000, approximately 418 employees have been terminated as a result of this plan. No additional adjustments have been made to the reserve. The following table summarizes the activity in the accruals during the year ended December 31, 2000. The balance of the restructuring accrual at December 31, 2000 is expected to be paid within 12 months.

	MERGER AND RELATED COSTS	NON-CASH ITEMS	PAYMENTS	BALANCE AT DECEMBER 31, 2000
	(IN THOUSANDS)			
Costs incurred to effect the merger of EarthLink Network and MindSpring:				
Investment banking fees.....	\$16,411	\$ --	\$(16,411)	\$ --
Printing, filing, mailing, proxy solicitation, legal, accounting and advisory fees.....	6,118	--	(6,118)	--
Acceleration of unamortized costs associated with line of credit and convertible debt.....	6,792	--	(6,792)	--
Severance costs and accelerated compensation expense.....	2,716	(1,076)	(1,640)	--
Other.....	1,930	--	(1,930)	--
Subtotal.....	33,967	(1,076)	(32,891)	--
OneMain restructuring liabilities assumed by EarthLink:				
Severance costs.....	4,502	--	(776)	3,726
Non-cancellable leases.....	942	--	(43)	899
Subtotal.....	5,444	--	(819)	4,625
Exit costs included in OneMain purchase price:				
Severance costs.....	6,443	--	(2,000)	4,443
Write-off of duplicative assets.....	4,322	(4,322)	--	--
Non-cancellable leases.....	1,000	--	--	1,000
Subtotal.....	11,765	(4,322)	(2,000)	5,443
	\$51,176	\$(5,398)	\$(35,710)	\$10,068
	=====	=====	=====	=====

## ACQUISITION RELATED COSTS

Intangible assets acquired in connection with our transaction with Sprint that was closed in September of 1998 have been amortized on a straight-line basis over their estimated useful lives. The customer base and goodwill associated with the Sprint Internet Passport business that we acquired in that transaction, which represents the excess of consideration over the fair value of net assets acquired, were fully amortized as of December 31, 1999. The Marketing and Distribution Agreements, which we also entered into with Sprint, have been amortized over 5 and 10 years, which represented the lives of the original portion of the contracts related to Sprint's provision of additional customers and the overall contract life relative to the co-branding feature, respectively (see note 16 of the Consolidated Financial Statements). The customer bases acquired from Spry, NETCOM, InfiNet and OneMain are being amortized over three years from the date of their respective acquisitions.

The decrease in acquisition related costs from \$148.3 million 1999 to \$132.4 million during 2000 is primarily due to the fact that the customer base and the goodwill acquired in connection with the Sprint transaction were fully amortized by December 31, 1999. Note that the remaining Sprint intangibles of \$11.3 million, as of February 2001, will be written off in 2001 due to the aforementioned change in the terms of our agreement with Sprint. See note 16 of the Consolidated Financial Statements.

#### **NET INTEREST INCOME (EXPENSE)**

Net interest income (expense) increased 111% from \$22.0 million during 1999 to \$46.5 million in 2000. The increase was primarily due to an increase in average cash balances available for investment as a result of our public stock offerings completed in 1999 as well as investments in the Company made by Apple and Sprint during 2000. Interest expense decreased due to the repayment of \$180.0 million in convertible debt in early April 2000.

#### **1999 COMPARED TO 1998**

#### **NARROWBAND ACCESS REVENUES**

EarthLink's narrowband revenues increased from \$260.2 million in 1998 to \$582.9 million in 1999, a 124% increase. The substantial growth in narrowband revenues was primarily due to an increase in the Company's customer base from 1.6 million at December 31, 1998 to 3.1 million at December 31, 1999. We acquired approximately 408,000 customers from NETCOM in February 1999, 130,000 were acquired from Spry in October 1998, and approximately 130,000 customers were acquired in June 1998 from Sprint.

#### **WEB HOSTING**

EarthLink's Web hosting revenues increased from \$22.0 million in 1998 to \$47.4 million in 1999, a 116% increase. As of December 31, 1999, the combined company hosted 109,000 Web sites compared to 36,000 in 1998, a 203% increase.

#### **BROADBAND ACCESS**

EarthLink's broadband revenues increased from \$3.3 million in 1998 to \$23.5 million in 1999, a 612% increase. In 1999, our main broadband focus became DSL. In the fourth quarter of 1999, we began service to 12 major cities giving us access to 15 markets nationwide. As of December 31, 1999, the combined company had 25,000 broadband customers.

#### **CONTENT, COMMERCE AND ADVERTISING**

Content, commerce and advertising revenues increased from \$5.1 million in 1998 to \$16.6 million in 1999, a 225% increase. This increase resulted from the increase in the number of our Premier Partners and the increase in the EarthLink customer base, which makes us more attractive to our partners.

#### **COST OF REVENUES**

Cost of revenues increased 115% during 1999 as compared 1998, primarily due to the increase in our customer base. However, cost of revenues as a percentage of revenues decreased from 40% to 37%. This is attributable to: (a) more effective management of our network, (b) the addition of lower cost POP providers such as Sprint and Level 3, and (c) our increasing ability to negotiate more favorable commercial arrangements with our telecommunications service providers as we leveraged our growing customer base.

## **SALES AND MARKETING**

Sales and marketing expenses increased 237% from \$65.0 million in 1998 to \$219.3 million during 1999. The increase was primarily due to the costs of growing our customer base from 1.6 million customers to 3.1 million customers and was in accordance with management's increased emphasis on organic growth through marketing strategies. This increased emphasis included the implementation of an ambitious advertising program to create brand awareness, the development of new marketing channels, the expansion of sales and marketing efforts, increased sales commissions and increased marketing personnel headcount. Sales, marketing and other direct costs associated with the acquisition of customers are generally expensed as incurred.

## **OPERATIONS AND CUSTOMER SUPPORT**

Operations and customer support expenses increased from \$80.2 million or 28% of revenue for the year ended December 31, 1998 to \$182.1 million or 27% of revenue for the year ended December 31, 1999. These increases reflect (1) the increase in customers from 1.6 million to 3.1 million, (2) the opening of additional call centers in 1999 and (3) management's focus on retaining existing customers by providing superior service and devoting significant resources to expanding technical support capabilities.

## **GENERAL AND ADMINISTRATIVE**

General and administrative expenses increased 96% from \$34.6 million in 1998 to \$67.9 million in 1999. The increase was primarily due to increases in payroll, depreciation, credit card processing fees and bad debt. The rise in payroll costs was primarily due to growth in headcount. The increase in depreciation expense was due to the acquisition of office equipment and the build-out of leasehold improvements. The increases in credit card processing fees and bad debt were due to the increase in our customer base. As a percentage of total revenues, general and administrative expenses decreased from 12% in 1998 to 10% in 1999.

## **ACQUISITION RELATED COSTS**

The increase in acquisition related costs from \$49.7 million 1998 to \$148.3 million during 1999 is primarily due to the fact that the Company amortized the customer bases and goodwill acquired from Sprint, acquired in June 1998, and Spry, acquired in September 1998, for a full year 1999. In addition, the Company acquired the customer base of NETCOM in February 1999.

## **INTEREST INCOME AND EXPENSE, NET**

Net interest income increased from \$3.7 million in 1998 to \$22.0 million 1999. The increase was primarily due to an increase in average cash balances available for investment as a result of our public offerings of common stock completed in 1998 and 1999. Interest expense increased due to borrowings of \$80 million under the credit facility to finance the NETCOM acquisition and \$179.9 million in 5% convertible subordinated notes. This increase in interest expense was partially offset by aging of lease obligations and a general reduction in interest rates paid on capital leases entered into during 1999.

## **LIQUIDITY AND CAPITAL RESOURCES**

Our operating activities provided approximately \$62.1 million, and \$44.2 million during the years ended December 31, 1998 and 1999, respectively, and used approximately \$127.2 million in cash during the year ended December 31, 2000. Our net losses of \$53.2 million, \$173.7 million and \$345.9 million were the primary components of cash used in operating activities in the three years ended December 31, 2000 respectively. Our net losses were offset by significant non-cash depreciation and amortization expenses relating to the Company's network and intangible assets of \$70.0 million,

\$190.5 million and \$205.6 million during the three years ended December 31, 2000, respectively. In 1998 and 1999, the Company's net losses were further offset by significant increases in deferred revenues and accounts payable and accrued expenses.

Our investing activities used cash of approximately \$56.9 million, \$339.7 million and \$351.7 million in 1998, 1999 and 2000, respectively. Capital equipment purchases were \$44.5 million, \$109.8 million and \$139.4 million during the three years then ended. Net cash received in the Sprint transaction of \$23.8 million was partially offset by Sprint transaction costs of \$9.9 million for the year ended December 31, 1998. MindSpring acquired the subscriber base of Spry, Inc. effective October 1998 with an initial cash payment of \$25 million followed by a final payment of \$7 million in the first quarter of 1999. In 1999, MindSpring acquired the customer base of NETCOM and approximately \$13.2 million of capital equipment for consideration of \$245 million, consisting of \$215 million in cash and common stock valued at \$30 million, (752,232 shares, at a price per share of \$39.88). During 1999 and 2000, EarthLink invested \$4.0 million and \$6.0 million, respectively, in a limited partnership. In September 2000, EarthLink acquired OneMain for approximately \$315.0 million. The aggregate purchase price consisted of (i) \$155.4 million in cash, (ii) \$200,000 in estimated cash payments in lieu of fractional shares, and (iii) 9,278,298 shares of EarthLink common stock valued at \$106.7 million at a closing price of \$11.50 on September 11, 2000. In addition, EarthLink assumed capital lease liabilities of \$22.1 million and other net liabilities of \$1.8 million. Transaction charges incurred in the acquisition totaled approximately \$28.8 million. We purchased the subscriber bases of other small ISPs for an aggregate amount of approximately \$40.2 million.

Financing activities provided approximately \$277.6 million, \$672.7 million and \$467.9 million in cash during 1998, 1999 and 2000, respectively. In May 1998, MindSpring completed a follow on public offering of 6.0 million shares of its common stock at \$8.84 per share. Net proceeds from the offering were approximately \$49.8 million. In June 1998, EarthLink Network completed a follow on public offering of 6.1 million shares of its common stock at \$18.58 per share. The offering consisted of 4.9 million shares, including 791,000 shares sold to Sprint in accordance with its preemptive rights under the Sprint Alliance, and an underwriter's over-allotment of 1.2 million shares. Net proceeds were approximately \$106.3 million. In December 1998, MindSpring completed a follow on public offering of 4.6 million of its common stock at \$28.50 per share. Net proceeds from the offering were approximately \$124.8 million. In January 1999, EarthLink Network completed a follow on public offering of 3.9 million shares of its common stock at \$45.59 per share. The offering consisted of 3.7 million shares and an underwriter's over-allotment of 160,000 shares exercised in February 1999. Net proceeds to EarthLink Network were approximately \$170 million. In conjunction with the aforementioned January 1999 offering, Sprint exercised its preemptive rights to maintain its existing ownership level in EarthLink Network. Accordingly, Sprint purchased 1.2 million shares of which 310,000 were common stock and 932,000 were Series B convertible preferred stock. Proceeds from the sale of shares to Sprint were \$54.1 million. In February 1999, Sprint exercised its preemptive rights the exercise of the underwriter's over-allotment granted in connection with the aforementioned follow on public offering. Sprint purchased 62,000 shares of which 15,000 were common stock and 47,000 were Series B convertible preferred stock. Proceeds from the sale of stock to Sprint were \$2.7 million. In April 1999, MindSpring completed a follow on public offering of 5.5 million shares of its common stock. Net proceeds were approximately \$263.5 million. MindSpring also sold \$180.0 million aggregate principal amount of 5% Convertible Subordinated Notes due 2006, raising net proceeds of approximately \$174.1 million. In January 2000, EarthLink Network entered into a multi-year partnership to deliver services to customers of Apple in the U.S. Under the terms of the partnership, Apple purchased 7.1 million shares of EarthLink's Series C convertible preferred stock. Net proceeds were \$199.5 million. In February 2000, Sprint exercised its preemptive rights to maintain its ownership level in the Company after the purchase of shares by Apple. Accordingly, Sprint purchased 2.7 million shares, of which 682,000 were common stock and 2.0 million were Series B convertible preferred stock. Proceeds from the sale of common and preferred stock to Sprint were approximately \$76.9 million. In

April 2000, the Company repurchased approximately \$180.0 million in aggregate principal amount of its 5% Convertible Subordinated Notes. In May 2000, Sprint exercised its preemptive rights to maintain its ownership level in the Company after the merger of EarthLink Network and MindSpring. Accordingly, Sprint purchased approximately 26.0 million shares consisting of approximately 6.0 million shares of common stock and approximately 20.0 million shares of Series B convertible preferred stock. Proceeds from this sale of common and preferred stock to Sprint were approximately \$431.4 million. The Company repurchased 5 million shares of its common stock for approximately \$56.7 million. Proceeds from the exercise of stock options and warrants were \$7.4 million during 2000. During 1998, 1999 and 2000 we financed the acquisition of data processing and office equipment amounting to approximately \$9.3 million, \$13.5 million and \$5.6 million respectively, through equipment leases and sale leaseback agreements. We record sale leaseback transactions at cost, which approximates the fair market value of the property, and, therefore, no gains or losses are recorded. We continue to depreciate the property and record a financing obligation representing the proceeds based upon payments under the lease agreement.

On December 31, 2000, we had approximately \$674.7 million in cash and cash equivalents. We believe our available cash is sufficient to meet our operating expenses and capital requirements for more than the next 12 months. Our capital requirements depend on numerous factors, including the rate of market acceptance of our services, our ability to maintain and expand our customer base, the rate of expansion of our network infrastructure, the size and types of acquisitions in which we may engage and the level of resources required to expand our marketing and sales programs. We cannot accurately predict the timing and amount of capital requirements. We may require additional financing sooner than anticipated if capital requirements vary materially from those currently planned. We have no commitments for any additional financing and have no lines of credit or similar sources of financing, and we cannot be sure that we can obtain additional commitments on favorable terms, if at all. Additional equity financing may dilute our stockholders, and debt financing, if available, may restrict our ability to declare and pay dividends and raise future capital. If we are unable to obtain additional needed financing, we may be required to reduce the scope of operations or anticipated expansion, which could materially and adversely affect us.

## **BUSINESS OUTLOOK**

The following statements are based on current expectations. These statements are forward-looking, and actual results may differ materially. See comments under "Safe Harbor Statement" above. The Company undertakes no obligations to update these statements.

In 2001, the Company's principal operating objectives are to continue growing the broadband business rapidly while significantly improving profitability, demonstrating the ability to generate cash from operations. The Company is targeting achieving EBITDA-positive operation in the fourth quarter of 2001.

Based on current trends and operating plans now in place for the year, we expect to end 2001 with over 5 million paying customers. Most of that growth will come from the broadband product line. We will capitalize on strong market demand, our national footprint, and our ability to deploy DSL, cable, fixed wireless and satellite broadband solutions to grow our broadband base to over 500,000 subscribers by year-end. We expect the number of our narrowband subscribers to be relatively flat year over year. Revenues for the year are expected to be between \$1.2 and \$1.3 billion.

We expect to improve operating margins in 2001 compared to 2000 by continuing to reduce telecommunications costs for both our narrowband and broadband services; consolidating the former OneMain ISPs onto a single operating platform during the first half of the year; reducing broadband installation costs by making the installation process more efficient, particularly through widespread adoption of self-installation; and growing all other operational expenses more slowly than revenues,

increasing operating leverage as a result. Sales and marketing expenses are expected to grow slightly year over year as investment in broadband growth and continued brand advertising should more than offset elimination of marketing efforts in less cost-effective channels, particularly in the narrowband product line.

As a result of revenue growth, improving operating contribution margins before sales and marketing, and the modest increase in marketing expense to fund rapid broadband growth, EBITDA is expected to improve sequentially in each quarter of 2001 and to go positive in the fourth quarter. For the year, EBITDA is expected to be in the range of negative \$35-\$60 million. Net loss before merger and acquisition-related costs is expected to be in the range of \$110-\$135 million, and net loss per share, on the same basis, is expected to be in the range of (\$0.85)-(\$1.05).

In the first quarter of 2001, total subscribers are expected to grow to approximately 4.8 million. Revenues should increase to approximately \$295-\$300 million, and EBITDA loss before merger and acquisition related costs should narrow to a negative \$31-\$36 million. Net loss, before merger and acquisition related costs, is expected to be in the range of (\$0.37)-(\$0.41) per share.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**

**INTEREST RATE SENSITIVITY**

The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. Some of the securities that we have invested in may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the principal amount of our investment will probably decline. To minimize this risk, we maintain our portfolio of cash equivalents in a variety of securities, including commercial paper, other non-government debt securities and money market funds. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. In addition, we invest in relatively short-term securities. As of December 31, 2000, all of our investments mature in less than 3 months.

The following table presents the amounts of our cash equivalents and short-term investments that are subject to market risk by range of expected maturity and weighted-average interest rates as of December 31, 2000. This table does not include money market funds because those funds are not subject to market risk.

	MATURING IN THREE MONTHS OR LESS	FAIR VALUE
	(DOLLARS IN THOUSANDS)	
Included in cash and cash equivalents.....	\$540,706	\$540,706
Weighted-average interest rates.....	6.73%	

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

The information required by this item appears in a subsequent section of this Report. (See Item 14(a)(1) and (2)).

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

On June 29, 2000, EarthLink dismissed PricewaterhouseCoopers LLP as the Company's independent accountants and engaged Ernst & Young LLP as its new independent auditors. The decision to change the Company's accounting firm was recommended by the Audit Committee of the Board of Directors and approved by the entire Board of Directors.



PricewaterhouseCoopers LLP's report on our financial statements for 1998 and 1999 did not contain an adverse opinion or a disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles. During the Company's last two fiscal years and the subsequent interim period to the date hereof, there were no disagreements between the Company and PricewaterhouseCoopers LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of PricewaterhouseCoopers LLP, would have caused them to make reference to the subject matter of the disagreements in connection with their report on the financial statements for such years.

None of the "reportable events" described in Item 304(a)(1)(v) of Regulation S-K under the Securities Act of 1933 occurred with respect to the Company within the last two fiscal years and the subsequent interim period to the date hereof. During the last two fiscal years and the subsequent interim period to the date hereof, the Company did not consult Ernst & Young LLP regarding any of the matters or events set forth in Item 304(a)(2) of Regulation S-K.

## **PART III**

### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

Information relating to management's nominees for directors of the Company will be set forth under the captions "Proposal 1--Election of Directors--Nominees" and "Proposal 1--Election of Directors--Information Regarding Nominees for Director" in the Company's Proxy Statement for its 2001 Annual Meeting of Stockholders or in a subsequent amendment to this Report. Such information is incorporated herein by reference. Information relating to the executive officers of the Company will be set forth under the caption "Executive Officers" in the above-referenced Proxy Statement or amendment. Such information is incorporated herein by reference. Information regarding compliance by directors and executive officers of the Company and owners of more than 10% of the Company's common stock with the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934, as amended, will be set forth under the caption "Compliance with Section 16(a) of the Securities Exchange Act of 1934" in the above-referenced Proxy Statement or amendment.

### **ITEM 11. EXECUTIVE COMPENSATION**

Information relating to management compensation will be set forth under the captions "Proposal 1 --Election of Directors--Director Compensation" and "Executive Compensation" in the Company's Proxy Statement referred to in Item 10 above or in a subsequent amendment to this Report. Such information is incorporated herein by reference, except for the information set forth under the captions "Executive Compensation--Audit and Compensation Committee Report on Executive Compensation" and "Stock Performance Graph," which specifically is not so incorporated by reference.

### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

Information regarding ownership of the Company's securities by certain persons is set forth under the captions "Beneficial Ownership of common stock" in the Company's Proxy statement referred to in Item 10 above or in a subsequent amendment to this Report. Such information is incorporated herein by reference.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

Information regarding certain relationships and transactions between the Company and certain of its affiliates is set forth under the caption "Compensation Committee Interlocks and Insider Participation" in the Company's Proxy Statement referred to in Item 10 above or in a subsequent amendment to this Report. Such information is incorporated herein by reference.

## PART IV

### ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K.

#### (A) (1) AND (2) DOCUMENTS FILED AS PART OF THIS REPORT.

1. Financial Statements of EarthLink, Inc.
2. Report of Ernst & Young LLP, Independent Auditors
3. Report of PricewaterhouseCoopers LLP, Independent Accountants
4. Report of Arthur Andersen LLP, Independent Public Accountants
5. Consolidated Balance Sheets as of December 31, 1999 and 2000
6. Consolidated Statements of Operations for the three years ended December 31, 2000
7. Consolidated Statements of Stockholders' Equity for the three years ended December 31, 2000
8. Consolidated Statements of Cash Flows for the three years ended December 31, 2000
9. Notes to Consolidated Financial Statements

#### (3) LISTING OF EXHIBITS

EXHIBIT NO. -----	DESCRIPTION -----
2.1	-- Investor Rights Agreement dated January 4, 2000, between EarthLink Network, Inc. and Apple Computer, Inc. Limited (incorporated by reference to Exhibit 2.7 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.1	-- Amended and Restated Certificate of Incorporation of EarthLink, Inc. (incorporated by reference to Exhibit 3.2 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.2	-- By-laws of EarthLink, Inc. (incorporated by reference to Exhibit 3.3 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.3	-- Amended and Restated Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock.
3.4	-- Amended and Restated Certificate of Designation, Preferences and Rights of Series B Convertible Preferred Stock.
3.5	-- Certificate of Designation, Preferences and Rights of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.6 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
4.1	-- Specimen Common Stock Certificate (incorporated by reference to Exhibit 3.7 to the Registration Statement on Form S-4 of WWW Holdings, Inc. (predecessor to EarthLink, Inc.)--File No. 333-94177).
4.2	-- Subordinated Debt Indenture (incorporated by reference to Exhibit 4.3 to MindSpring's Form S-3/A--File No. 333-74151).
4.3	-- First Supplemental Indenture (incorporated by reference to Exhibit 4.4 to MindSpring's Form S-3/A--File No. 333-74151).
4.4	-- Second Supplemental Indenture (incorporated by reference to Exhibit 4.3 to EarthLink, Inc.'s Form S-4--File No. 333-41064).
10.1	-- Stock Incentive Plan (incorporated by reference to



EXHIBIT NO. -----	DESCRIPTION -----
10.2	-- Stock Option Plan for Non-Employee Directors (incorporated by reference to Exhibit 4.5 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-39456).
10.3	-- 1995 Stock Option Plan and Form of Stock Option Agreement (incorporated by reference to Exhibit 4.4 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).
10.4	-- MindSpring Enterprises, Inc. 1995 Stock Option Plan, as amended (incorporated by reference to Exhibit 4.5 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).
10.5	-- MindSpring Enterprises, Inc. 1995 Directors Stock Option Plan, as amended (incorporated by reference to Exhibit 4.6 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).
10.6	-- (a) Netscape Communications Corporation Internet Service Provider Navigator Distribution Agreement, dated May 31, 1996, between EarthLink Network, Inc. and Netscape Communications Corporation (incorporated by reference to Exhibit 10.6 to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).  (b) Amendment No. 1 to Netscape Communications Corporation Internet Service Provider Agreement (incorporated by reference to Exhibit 10.6(a) to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).  (c) Amendment No. 2 to Netscape Communications Corporation Internet Service Provider Agreement (incorporated by reference to Exhibit 10.6(b) to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).
10.7	-- Amended and Restated Employment Agreement (incorporated by reference to Exhibit 10.9 to EarthLink Network's amended Report on Form 10-K/A for the fiscal year ended December 31, 1997--File No. 000-20799).
10.8	-- Internet Wizard Sign-Up Agreement, between EarthLink Network, Inc. and Microsoft Corporation, dated August 16, 1996 (incorporated by reference to Exhibit 10.19 to EarthLink Network's Registration Statement on Form S-1--File No. 333-15781).
10.9	-- Amended and Restated Registration Rights Agreement, dated as of February 8, 2001, with Sprint Corporation and Sprint Communications Company L.P.
16.1	-- Letter re: Change in Certifying Accountant (incorporated by reference to Exhibit 99 of EarthLink, Inc.'s Report on Form 8-K, date July 6, 2000--File No. 001-15605).
21.1	-- Subsidiaries of the Registrant.
23.1	-- Consent of Ernst & Young LLP.
23.2	-- Consent of PricewaterhouseCoopers LLP.
23.3	-- Consent of Arthur Andersen LLP.
24.1	-- Power of Attorney (see the Power of Attorney in the signature page hereto).

(B) REPORTS ON FORM 8-K FILED IN FOURTH QUARTER OF 2000:

None

(C) EXHIBITS--The response to this portion of Item 14 is submitted as a separate section of this report.

(D) FINANCIAL STATEMENT SCHEDULE

The Financial Statement Schedule(s) described in Regulation S-X are omitted from this Report because they are either not required under the

related instructions or are inapplicable.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

EARTHLINK, INC.

By: /s/ CHARLES G. BETTY

-----  
Charles G. Betty,  
CHIEF EXECUTIVE OFFICER  
Date: March 8, 2001

Each person whose signature appears below hereby constitutes and appoints Charles G. Betty and Lee Adrean, the true and lawful attorneys-in-fact and agents of the undersigned, with full power of substitution and resubstitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments to this Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, and hereby grants to such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----
Date: March 8, 2001	/s/ CHARLES G. BETTY ----- Charles G. Betty, Chief Executive Officer and Director (principal executive officer)
Date: March 8, 2001	/s/ LEE ADREAN ----- Lee Adrean, Executive Vice President--Finance and Administration and Chief Financial Officer (principal financial officer)
Date: March 8, 2001	/s/ D. CARY SMITH ----- D. Cary Smith, Vice President--Corporate Controller (principal accounting officer)
Date: March 8, 2001	/s/ SKY D. DAYTON ----- Sky D. Dayton, Chairman of the Board

SIGNATURE -----	TITLE -----
Date: March 8, 2001	/s/ ROBERT M. KAVNER ----- Robert M. Kavner, Director
Date: March 8, 2001	/s/ LINWOOD A. LACY, JR. ----- Linwood A. Lacy Jr., Director
Date: March 8, 2001	/s/ MICHAEL S. MCQUARY ----- Michael S. McQuary, President, Director
Date: March 8, 2001	/s/ PHILIP W. SCHILLER ----- Philip W. Schiller, Director
Date: March 8, 2001	/s/ REED E. SLATKIN ----- Reed E. Slatkin, Director



**EARTHLINK, INC.**  
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## REPORT OF INDEPENDENT AUDITORS

To The Board of Directors and Stockholders of EarthLink, Inc.:

We have audited the accompanying consolidated balance sheet of EarthLink, Inc. as of December 31, 2000, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of EarthLink, Inc. at December 31, 2000, and the consolidated results of their operations and their cash flows for the year ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

*/s/ Ernst & Young LLP*

*Atlanta, Georgia  
January 29, 2001*

## REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders of EarthLink, Inc.

In our opinion, based on our audits and the report of other auditors, the accompanying consolidated balance sheet and the related consolidated statements of operations, of stockholders' equity and of cash flows present fairly, in all material respects, the financial position of EarthLink, Inc. at December 31, 1999, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We did not audit the financial statements of MindSpring Enterprises, Inc., which statements reflect total assets of \$714.9 million as of December 31, 1999 and total revenues of \$52.6 million and \$114.7 million for the years ended December 31, 1998 and 1999, respectively. Those statements were audited by other auditors whose report thereon has been furnished to us, and our opinion expressed herein, insofar as it relates to the amounts included for MindSpring Enterprises, Inc., is based solely on the report of the other auditors. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits and the report of other auditors provide a reasonable basis for our opinion.

### **PRICEWATERHOUSECOOPERS LLP**

Century City, California  
March 28, 2000

## REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

### To EarthLink, Inc.:

We have audited the balance sheet of MINDSPRING ENTERPRISES, INC. (a Delaware corporation) as of December 31, 1999 and the related statements of operations, stockholders equity, and cash flows for the two years ended December 31, 1998 and 1999. These financial statements are the responsibility of MindSpring's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of MindSpring Enterprises, Inc. as of December 31, 1999 and the results of its operations and its cash flows for the two years ended December 31, 1998 and 1999 in conformity with accounting principles generally accepted in the United States.

### ARTHUR ANDERSEN LLP

Atlanta, Georgia  
February 7, 2000

**EARTHLINK, INC.**

**CONSOLIDATED BALANCE SHEETS**

	DECEMBER 31,	
	1999	2000
	(IN THOUSANDS)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents.....	\$ 685,753	\$ 674,746
Accounts receivable, net of allowance of \$3,933 and \$9,643 at December 31, 1999 and 2000, respectively.....	16,367	49,568
Prepaid expenses.....	19,596	17,923
Other assets.....	13,672	26,841
	735,388	769,078
Investments in other companies.....	4,400	9,600
Other long-term assets.....	12,536	1,437
Property and equipment, net.....	151,435	277,399
Intangibles:		
Customer base.....	334,695	515,211
Marketing and distribution agreement.....	20,000	20,000
Goodwill.....	36,164	114,664
Other.....	16,898	11,934
	407,757	661,809
Less accumulated amortization.....	(202,369)	(233,186)
	205,388	428,623
	\$1,109,147	\$1,486,137
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Trade accounts payable.....	\$ 47,074	\$ 44,717
Accrued payroll and related expenses.....	15,850	21,983
Other accounts payable and accrued liabilities.....	58,947	136,150
Current portion of capital lease obligations.....	11,724	18,617
Deferred revenue.....	28,732	68,947
	162,327	290,414
Long-term liabilities:		
Convertible notes.....	179,975	--
Long-term portion of capital lease obligations.....	8,392	13,472
	350,694	303,886
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.01 par value, 100,000 shares authorized, Series A convertible, 6,626 shares issued and outstanding at December 31, 1999 and 2000, respectively.....	66	66
Series B convertible, 979 and 23,051 shares issued and outstanding at December 31, 1999 and 2000, respectively.....	10	231
Series C convertible, nil and 7,083 shares issued and outstanding at December 31, 1999 and 2000, respectively.....	--	71
Common stock, \$0.01 par value, 300,000 shares authorized, 116,865 and 130,064 shares issued and outstanding at December 31, 1999 and 2000, respectively.....	1,169	1,301
Additional paid-in capital.....	1,085,109	1,877,200
Warrants to purchase common stock.....	477	1,412
Accumulated deficit.....	(328,378)	(698,030)
	758,453	1,182,251
	\$1,109,147	\$1,486,137
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements



**EARTHLINK, INC.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	-----		
	(IN THOUSANDS, EXCEPT PER SHARE DATA)		
Revenues:			
Narrowband access.....	\$260,229	\$ 582,883	\$ 833,415
Web hosting.....	22,007	47,435	65,756
Broadband access.....	3,321	23,540	57,753
Content, commerce and advertising.....	5,057	16,575	29,706
	-----	-----	-----
Total revenues.....	290,614	670,433	986,630
Operating costs and expenses:			
Cost of revenues.....	115,529	248,487	368,133
Sales and marketing.....	65,037	219,349	443,708
Operations and customer support.....	80,244	182,134	297,027
General and administrative.....	34,575	67,876	106,148
Merger-related charges.....	--	--	33,967
Acquisition-related costs.....	49,684	148,267	132,448
	-----	-----	-----
Total operating costs and expenses.....	345,069	866,113	1,381,431
Loss from operations.....	(54,455)	(195,680)	(394,801)
Interest income, net.....	3,671	21,986	46,485
Income tax (provision) benefit.....	(2,394)	--	2,394
	-----	-----	-----
Net loss.....	(53,178)	(173,694)	(345,922)
Deductions for accretion dividends.....	(7,601)	(14,106)	(23,730)
	-----	-----	-----
Net loss attributable to common stockholders.....	\$(60,779)	\$(187,800)	\$ (369,652)
	=====	=====	=====
Basic and diluted net loss per share attributable to common stockholders.....	\$ (0.66)	\$ (1.65)	\$ (2.99)
	=====	=====	=====
Weighted average shares.....	91,466	113,637	123,592
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements

**EARTHLINK, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

	PREFERRED STOCK		COMMON STOCK		STOCK SUBSCRIPTIONS RECEIVABLE	ADDITIONAL PAID-IN CAPITAL	TREASURY STOCK
	SHARES	AMOUNT	SHARES	AMOUNT			
				(IN THOUSANDS)			
Balance at December 31, 1997.....	--	\$ --	81,545	\$ 816	\$ --	\$ 105,380	\$ --
Issuance of Series A convertible preferred stock.....	6,626	66	--	--	--	134,934	--
Accretion of convertible preferred stock.....	--	--	--	--	--	7,601	--
Follow on offerings, net of expenses.....	--	--	16,677	167	--	280,682	--
Conversion of debt to common stock.....	--	--	1,265	13	--	5,030	--
Issuance of common stock for services.....	--	--	32	--	--	130	--
Issuance of common stock pursuant to exercise of stock options.....	--	--	2,739	27	--	4,216	--
Issuance of common stock pursuant to exercise of warrants.....	--	--	1,229	12	--	1,394	--
Warrants issued in conjunction with marketing agreement.....	--	--	--	--	--	--	--
Warrants issued in exchange for services.....	--	--	--	--	--	--	--
Issuance of notes receivable from stock sales.....	--	--	28	--	(1,041)	1,041	--
Net loss.....	--	--	--	--	--	--	--
Balance at December 31, 1998.....	6,626	66	103,515	1,035	(1,041)	540,408	--
Issuance of Series B convertible preferred stock.....	979	10	--	--	--	42,612	--
Accretion of convertible preferred stock.....	--	--	--	--	--	14,106	--
Follow on offering, net of expenses.....	--	--	9,744	98	--	446,540	--
Issuance of common stock pursuant to customer base acquisition.....	--	--	752	7	--	29,993	--
Issuance of common stock pursuant to exercise of stock options.....	--	--	2,307	23	--	10,929	--
Issuance of common stock pursuant to exercise of warrants.....	--	--	547	6	--	521	--
Collection of notes receivable from stock sales.....	--	--	--	--	1,041	--	--
Net loss.....	--	--	--	--	--	--	--
Balance at December 31, 1999.....	7,605	76	116,865	1,169	--	1,085,109	--
Issuance of Series B convertible preferred stock.....	22,072	221	--	--	--	389,556	--
Issuance of Series C convertible preferred stock.....	7,083	71	--	--	--	199,457	--
Accretion of convertible preferred stock.....	--	--	--	--	--	23,730	--
Repurchase of common stock.....	--	--	--	--	--	--	(56,691)
Issuance of common stock in OneMain acquisition.....	--	--	4,278	43	--	49,964	56,691
Issuance of common stock pursuant to top-up agreement with Sprint.....	--	--	6,680	67	--	118,395	--
Issuance of common stock pursuant to exercise of stock options.....	--	--	1,917	19	--	6,913	--
Issuance of common stock pursuant to exercise of warrants.....	--	--	324	3	--	537	--
Issuance of options and warrants in OneMain acquisition.....	--	--	--	--	--	3,539	--
Net loss.....	--	--	--	--	--	--	--
Balance at December 31, 2000.....	36,760	\$368	130,064	\$1,301	\$ --	\$1,877,200	\$ --

	WARRANTS TO PURCHASE COMMON STOCK	ACCUMULATED DEFICIT	TOTAL STOCKHOLDERS' EQUITY
			(IN THOUSANDS)
Balance at December 31, 1997.....	\$1,093	\$ (79,799)	\$ 27,490
Issuance of Series A convertible preferred stock.....	--	--	135,000



Accretion of convertible preferred stock.....	--	(7,601)	--
Follow on offerings, net of expenses.....	--	--	280,849
Conversion of debt to common stock.....	--	--	5,043
Issuance of common stock for services.....	--	--	130
Issuance of common stock pursuant to exercise of stock options.....	--	--	4,243
Issuance of common stock pursuant to exercise of warrants.....	(647)	--	759
Warrants issued in conjunction with marketing agreement.....	91	--	91
Warrants issued in exchange for services.....	60	--	60
Issuance of notes receivable from stock sales.....	--	--	--
Net loss.....	--	(53,178)	(53,178)
	-----	-----	-----
Balance at December 31, 1998.....	597	(140,578)	400,487
Issuance of Series B convertible preferred stock.....	--	--	42,622
Accretion of convertible preferred stock.....	--	(14,106)	--
Follow on offering, net of expenses.....	--	--	446,638
Issuance of common stock pursuant to customer base acquisition.....	--	--	30,000
Issuance of common stock pursuant to exercise of stock options.....	--	--	10,952
Issuance of common stock pursuant to exercise of warrants.....	(120)	--	407
Collection of notes receivable from stock sales.....	--	--	1,041
Net loss.....	--	(173,694)	(173,694)
	-----	-----	-----
Balance at December 31, 1999.....	477	(328,378)	758,453
Issuance of Series B convertible preferred stock.....	--	--	389,777
Issuance of Series C convertible preferred stock.....	--	--	199,528
Accretion of convertible preferred stock.....	--	(23,730)	--
Repurchase of common stock.....	--	--	(56,691)
Issuance of common stock in OneMain acquisition.....	--	--	106,698
Issuance of common stock pursuant to top-up agreement with Sprint.....	--	--	118,462
Issuance of common stock pursuant to exercise of stock options.....	--	--	6,932
Issuance of common stock pursuant to exercise of warrants.....	(29)	--	511
Issuance of options and warrants in OneMain acquisition.....	964	--	4,503
Net loss.....	--	(345,922)	(345,922)
	-----	-----	-----
Balance at December 31, 2000.....	\$1,412	\$(698,030)	\$ 1,182,251
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

**EARTHLINK, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	(IN THOUSANDS)		
Cash flows from operating activities:			
Net loss.....	\$ (53,178)	\$(173,694)	\$(345,922)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities, net of effect from acquisition:			
Depreciation and amortization.....	69,953	190,504	205,552
Loss on investments in other companies.....	--	--	3,900
Loss on sale of assets.....	--	31	--
Issuance of common stock in exchange for professional services.....	130	--	--
Issuance of warrants in exchange for professional services.....	60	--	--
Increase in net accounts receivable.....	(3,536)	(9,801)	(20,611)
(Increase) decrease in prepaid expenses and other assets.....	(3,496)	(32,077)	7,824
Increase in accounts payable and accrued liabilities....	41,679	56,790	9,053
Increase in deferred revenue.....	10,486	12,458	13,042
	62,098	44,211	(127,162)
Net cash provided by (used in) operating activities.....			
Cash flows from investing activities:			
Purchase of property and equipment.....	(44,492)	(109,819)	(139,414)
Sale of property and equipment.....	--	1,416	--
Purchase of intangible assets.....	(27,321)	(227,494)	(37,304)
Acquisition of business, net of cash acquired.....	--	--	(155,561)
Transaction costs.....	(9,914)	--	(12,477)
Cash acquired from acquisition.....	23,750	--	2,125
Investments in other companies.....	--	(4,000)	(9,100)
Liquidation of restricted short-term investment.....	1,250	--	--
Other.....	(159)	148	--
	(56,886)	(339,749)	(351,731)
Net cash used in investing activities.....			
Cash flows from financing activities:			
Proceeds from issuance of notes payable.....	200	174,082	--
Repayment of notes payable.....	(6,626)	--	(179,975)
Proceeds from line of credit.....	--	77,987	--
Repayment of line of credit.....	--	(80,000)	--
Proceeds from sale and leaseback transactions.....	9,275	13,456	5,619
Principal payments under capital lease obligations.....	(11,141)	(14,501)	(16,277)
Proceeds from public stock offerings.....	280,849	489,260	--
Proceeds from sale of common stock.....	--	--	118,462
Proceeds from issuance of preferred stock.....	--	--	589,305
Proceeds from exercise of stock options.....	4,243	10,952	6,932
Proceeds from exercise of warrants.....	759	407	511
Proceeds from liquidation of stock subscription receivable.....	--	1,041	--
Repurchase of common stock.....	--	--	(56,691)
	277,559	672,684	467,886
Net cash provided by financing activities.....			
Net increase (decrease) in cash and cash equivalents.....	282,771	377,146	(11,007)
Cash and cash equivalents, beginning of year.....	25,836	308,607	685,753
	\$ 308,607	\$ 685,753	\$ 674,746
	=====	=====	=====
Acquisition, net of cash acquired:			
Issuance of convertible preferred stock.....	\$ 135,000		\$ --
Issuance of common stock.....	--		106,698
Acquisition of business.....	--		155,561
Transaction costs.....	9,914		28,839
Net liabilities assumed.....	--		26,025
Intangible assets.....	(121,164)		(314,998)
	\$ 23,750		\$ 2,125
	=====		=====

The accompanying notes are an integral part of these consolidated financial statements

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**ORGANIZATION**

EarthLink, Inc. (or the "Company"), is a leading Internet service provider, or ISP, providing reliable nationwide Internet access and related value-added services to our individual and business customers. The Company was formed in February 2000 by way of the merger of EarthLink Network, Inc. ("EarthLink Network"), and MindSpring Enterprises Inc. ("MindSpring") in a transaction accounted for as a "pooling of interests". The word "Network" was dropped from the name of the combined company to differentiate it from the former EarthLink Network. By combining the two companies, the Company formed the second largest ISP in the United States. Each outstanding share of EarthLink Network securities was exchanged for 1.615 shares of the equivalent security of the new Company and each outstanding share of MindSpring common stock was exchanged for one share of the common stock of the new Company. Other outstanding securities of the companies were converted on the same basis. The Company issued the following as a result of the pooling of interests.

	TO THE FORMER STOCKHOLDERS OF	
	EARTHLINK NETWORK	MINDSPRING
Common shares.....	53,265,920	63,719,035
Preferred Series A (convertible into 13,252,499 shares).....	6,626,250	--
Preferred Series B.....	978,940	--
Preferred Series C.....	7,083,333	--
Options and warrants.....	7,924,887	5,626,890
Total.....	75,879,330	69,345,925
	=====	=====

**BASIS OF CONSOLIDATION**

The consolidated financial statements have been prepared to give retroactive effect to the merger of EarthLink Network and MindSpring in a transaction accounted for as a pooling of interests. The financial statements also include the accounts of EarthLink Operations, Inc. a wholly-owned subsidiary of the Company. All intercompany transactions and balances have been eliminated. Separate results of EarthLink Network and MindSpring for the periods prior to the merger were as follows:

	YEAR ENDED DECEMBER 31,		MONTH ENDED
	1998	1999	JANUARY 31, 2000
			(UNAUDITED)
			(IN THOUSANDS)
Revenue:			
EarthLink Network, Inc.....	\$175,941	\$ 342,288	\$ 38,677
MindSpring Enterprises, Inc.....	114,673	328,145	32,075
	-----	-----	-----
	\$290,614	\$ 670,433	\$ 70,752
	=====	=====	=====
Net loss attributable to common stockholders:			
EarthLink Network, Inc.....	\$(59,782)	\$(108,248)	\$(24,721)
MindSpring Enterprises, Inc.....	10,544	(40,131)	(4,647)
Adjustment to reflect establishment of tax valuation allowance.....	(3,940)	(25,315)	--
	-----	-----	-----
	\$(53,178)	\$(173,694)	\$(29,368)
	=====	=====	=====

## **EARTHLINK, INC.**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

1. **SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)** In 1998, MindSpring's management reviewed its net deferred tax asset, consisting primarily of net operating loss carryforwards and based on the net income generated in 1998, as well as the projections of future income, determined that it was more likely than not that the deferred tax assets would be realized. Accordingly, MindSpring reversed its valuation allowance in 1998 and did not record one in 1999. In the course of the reorganization discussions, management of MindSpring and EarthLink Network reviewed the combined net deferred tax assets and concluded that sufficient uncertainty now exists on a combined basis regarding realizability of the net deferred tax asset. The financial statements of the combined Company include adjustments of \$3.9 million and \$25.3 million for 1998 and 1999, respectively, to give effect to the reestablishment of a valuation allowance on the MindSpring net deferred tax assets. There were no intercompany transactions between the two companies or significant conforming accounting adjustments.

#### **REVENUES**

Narrowband access revenues consist of monthly fees charged to customers for dial-up Internet access and one-time set-up fees. Web hosting revenues consist of fees earned by leasing server space and providing web services to companies and individuals wishing to present a web or e-commerce presence. Broadband access revenues consist of fees charged for high-speed, high-capacity access services including DSL, cable and ISDN services. Advertising, content and electronic commerce revenues are generated by leveraging the value of the Company's customer base and user traffic. All revenues are recorded as earned.

#### **CASH AND CASH EQUIVALENTS**

All short-term, highly liquid investments with an original maturity of three months or less at the date of acquisition are classified as cash equivalents.

#### **ACCOUNTS RECEIVABLE AND DEFERRED REVENUES**

The Company generally bills for Internet service one month in advance. Accordingly, these non-cancelable advanced billings are included in both accounts receivable and deferred revenue. Deferred revenues are recognized into revenue as services are delivered.

The Company has recorded an allowance for doubtful accounts of \$3.9 million and \$9.6 million at December 31, 1999 and 2000, respectively. The Company recorded bad debt expense of \$6.8 million, \$9.9 million and \$17.2 million and write-offs of \$6.1 million, \$7.6 million and \$11.5 million during 1998, 1999 and 2000, respectively.

#### **CONCENTRATIONS OF CREDIT RISK**

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash, cash equivalents, trade receivables and investments in other companies. The Company's cash investment policies limit investments to short-term, investment grade instruments. Concentrations of credit risk with respect to trade receivables are limited due to the large number of customers comprising the Company's customer base. The carrying values reported in the balance sheets for cash, cash equivalents, trade receivables and investments in other companies approximate their fair values.

# EARTHLINK, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED) PROPERTY AND EQUIPMENT

Property and equipment is stated at cost and depreciated using the straight-line method over the estimated useful life of the assets, which is generally three to five years for computers and computer related equipment and five years for other non-computer furniture and equipment. Leasehold improvements are amortized using the straight-line method over the shorter of their estimated lives or the term of the lease, ranging from one to ten years.

#### EQUIPMENT UNDER CAPITAL LEASE

The Company leases certain of its data communications and other equipment under capital lease agreements. The assets and liabilities under capital lease are recorded at the lesser of the present value of aggregate future minimum lease payments, including estimated bargain purchase options, or the fair value of the assets under lease. Assets under capital lease are amortized over the lesser of their estimated useful lives of three to five years or the term of the lease.

#### INTANGIBLES

Intangible assets consist primarily of acquired customer bases, long-term marketing agreements, goodwill, and other items. Customer bases acquired directly are valued at cost, which approximates fair value at the time of purchase. When intangible assets, such as customer bases and goodwill are acquired in conjunction with the purchase of a company, EarthLink undertakes a study by an independent third party to determine the allocation of the total purchase price to the various assets acquired and the liabilities assumed. The costs assigned to intangible assets are being amortized on a straight-line basis over the estimated useful lives of the assets, which range from three to ten years. Intangible assets acquired in the acquisition of the Sprint Internet Passport business are being amortized on a straight-line basis over the estimated useful lives. The Marketing and Distribution Agreement is being amortized over 5 and 10 years, which represents the life of the portion of the contract related to Sprint's provision of additional customers and the overall contract life relative to the co-branding feature, respectively. (See note 16 for discussion of changes to the Sprint Agreements.) Substantially all acquired customer bases are being amortized over three years. If indicators of impairment exist, the Company reviews the recoverability of intangible assets based on estimated undiscounted future cash flows from operating activities compared with the carrying values of the intangibles.

#### ADVERTISING

Advertising costs are included in sales and marketing. Such costs are expensed as incurred. Advertising expenses were \$18.9 million, \$98.4 million and \$182.0 million in 1998, 1999 and 2000, respectively.

#### INCOME TAXES

Income taxes are accounted for under the liability method. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting basis and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse.

# EARTHLINK, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED) NET LOSS PER SHARE

Net loss per share has been computed according to SFAS No. 128, EARNINGS PER SHARE ("SFAS 128"), which requires disclosure of basic and diluted earnings per share. Basic earnings per share excludes any dilutive effects of options, shares subject to repurchase, warrants, and convertible securities. Diluted earnings per share include the impact of potentially dilutive securities. The Company's potentially dilutive securities are antidilutive and, therefore, are not included in the computation of weighted-average shares used in computing diluted loss per share. Such potentially dilutive securities consist of the following:

	DECEMBER 31,		
	1998	1999	2000
Convertible (at two common shares for one preferred share) preferred stock.....	6,626	6,626	6,626
Convertible (at one common share for one preferred share) preferred stock.....	--	979	30,134
Options.....	10,424	12,485	21,537
Warrants.....	1,520	980	629
Total.....	18,570	21,070	58,926
	=====	=====	=====

### USE OF ESTIMATES IN PREPARATION OF FINANCIAL STATEMENTS

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### STOCK-BASED COMPENSATION

SFAS No. 123, ACCOUNTING FOR STOCK-BASED COMPENSATION ("SFAS 123"), sets forth accounting and reporting standards for stock-based employee compensation plans. As permitted by SFAS 123, the Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, ACCOUNTING FOR STOCK ISSUED TO EMPLOYEES ("APB 25"), and related interpretations. Under APB 25, no compensation expense is recognized for stock or stock options issued to employees at fair market value.

### LONG-LIVED ASSETS

Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of," requires that long-lived assets and certain identifiable intangible assets to be held and used by an entity be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The carrying value of long-lived assets is periodically reviewed by management, and impairment losses if any, are recognized when the expected undiscounted future operating cash flow derived from such assets are less than their carrying value. Management believes that no such impairments have occurred during the years ended December 31, 1999 and 2000. If an impairment exists, the amount of such impairment would be calculated based on the estimated fair value of the asset.

# EARTHLINK, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### RECLASSIFICATION

Certain amounts in the prior year financial statements have been reclassified to conform to current year presentation.

#### RECENT ACCOUNTING PRONOUNCEMENTS

In June 1998, the Financial Accounting Standards Board issued SFAS 133, Accounting for Derivative Investments and Hedging Activities. SFAS 133 establishes a new model for accounting for derivatives and hedging activities and supersedes several existing standards. SFAS 133, as amended by SFAS 137 and SFAS 138, is effective for all fiscal quarters of fiscal years beginning after June 15, 2000. The Company does not expect that the adoption of SFAS 133 will have a material impact on its financial statements.

In December 1999, the SEC staff issued Staff Accounting Bulletin No. 101 ("SAB 101"), Revenue Recognition in Financial Statements. SAB 101 explains how the SEC staff applies by analogy the existing rules on revenue recognition to other transactions not covered by such rules. In March 2000, the SEC issued SAB 101A that delayed the original effective date of SAB 101 until the second quarter of 2000 for calendar year companies. In June 2000, the SEC issued SAB 101B that further delayed the effective date of SAB 101 until no later than the fourth fiscal quarter of fiscal years beginning after December 15, 1999. The Company adopted SAB 101 in the fourth quarter of 2000. The adoption did not have a material impact on its financial statements.

### 2. STRATEGIC ALLIANCES AND ACQUISITIONS

On February 10, 1998, EarthLink Network entered into certain agreements to establish a broad strategic relationship (the "Strategic Alliance") with Sprint Corporation ("Sprint") in the area of consumer Internet access and related services. In connection with the Strategic Alliance, on June 5, 1998, Sprint consummated a tender offer for 4.0 million shares of EarthLink Network's common stock at a price per share of \$13.94 in cash to each tendering stockholder (the "Offer"). Immediately following the closing of the Offer, Sprint received approximately 6.6 million shares of the EarthLink Network's Series A convertible preferred stock which was valued at \$135 million, in exchange for (i) transfer to the EarthLink Network of Sprint's approximately 130,000 Sprint Internet Passport subscribers, (ii) aggregate cash consideration of approximately \$24 million and (iii) the exclusive right to use certain ports within Sprint's high-speed data network for four years. EarthLink Network and Sprint also entered into a Marketing and Distribution Agreement, which included a commitment by Sprint to deliver a minimum of 150,000 new subscribers per year for five years through its own channels, EarthLink Network's right to be Sprint's exclusive provider of consumer Internet access services for at least ten years and the right to use Sprint's brand and distribution network for at least ten years. Sprint also provided EarthLink Network with a credit facility of up to \$50 million (increasing to \$100 million over three years) in the form of convertible senior debt. Collectively, the above is referenced to as the "Sprint Transaction".

In connection with the Sprint Transaction, a newly-formed company, "EarthLink Operations, Inc.," was formed and became a wholly-owned subsidiary of the EarthLink Network, Inc. All references in these financial statements to EarthLink Network relate, collectively, to both EarthLink Network and EarthLink Operations, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

2. STRATEGIC ALLIANCES AND ACQUISITIONS (CONTINUED) In September 1998, MindSpring entered into an Asset Purchase Agreement with America Online, Inc. ("AOL") and Spry, Inc. ("Spry"), a wholly-owned subsidiary of AOL, to purchase certain assets used in connection with the consumer dial-up Internet access business operated by Spry (the "Spry Agreement"). Pursuant to the Spry Agreement, MindSpring acquired Spry's subscriber base of approximately 130,000 individual Internet access customers in the United States and Canada as well as various assets used in serving those customers, including a customer support facility and a network operations facility in Seattle, Washington. MindSpring also acquired all rights held by Spry to the "Spry" name. The acquisition was closed in October 1998 and in accordance with the agreement, MindSpring paid the initial payment of \$25 million in cash to AOL. The ultimate purchase price for these assets was \$32 million.

In February 1999, MindSpring completed its acquisition of certain assets used in connection with the United States Internet access and Web hosting business operated by NETCOM On-Line Communication Services Inc., which subsequently changed its name to ICG Netahead, Inc. and is a wholly owned subsidiary of ICG Communications, Inc. In this transaction, MindSpring acquired NETCOM's subscriber base of approximately 408,000 individual Internet access accounts, 25,000 Web hosting accounts, 3,000 dedicated Internet access accounts in the United States and property and equipment valued at \$13.2 million. MindSpring paid NETCOM approximately \$245 million, consisting of \$215 million in cash and \$30 million in MindSpring common stock (752,232 shares, at a price per share of \$39.88). MindSpring incurred additional expenses of approximately \$4.2 million in connection with this acquisition.

In January 2000, the Company entered into a multi-year partnership to deliver services to customers of Apple Computer Corporation in the U.S. Under the terms of the partnership, EarthLink will become the exclusive default ISP in Apple's Internet Setup Software included with all Apple Macintosh-Registered Trademark- computers sold in the U.S. In addition, Apple purchased 7,083,333 shares of Series C convertible preferred stock for \$200 million. Apple has the right to appoint a member to EarthLink's Board of Directors.

On September 12, 2000, EarthLink completed its acquisition of OneMain.com, Inc. ("OneMain"). The aggregate of acquisition price and costs incurred to acquire OneMain was approximately \$315.0 million. The aggregate purchase price consisted of (i) \$155.4 million in cash, (ii) \$200,000 in estimated cash payments in lieu of fractional shares, and (iii) 9,278,298 shares of EarthLink common stock valued at \$106.7 million at a closing price of \$11.50 on September 11, 2000. In addition, EarthLink assumed capital lease liabilities of \$22.1 million and other net liabilities of \$1.8 million. Transaction charges incurred in the acquisition totaled approximately \$28.8 million.

The OneMain acquisition was accounted for under the purchase method. Accordingly, the results of OneMain have been included in the financial results of EarthLink since the date of acquisition. Assets acquired and liabilities assumed have been recorded at their estimated fair values, and are subject to adjustment when additional information concerning asset and liability valuations is finalized. OneMain's accounting policies have been conformed to those of EarthLink. Based on an independent appraisal, \$189.5 million of the purchase price was attributed to the approximately 758,000 customers acquired from OneMain. Approximately \$5.2 million and \$6.3 million of the \$315.0 million purchase price were attributed to the value of the OneMain technologies and assembled work force, respectively. The excess of cost over the estimated fair value of net assets acquired was \$114.0 million and has been allocated to goodwill. All intangible assets acquired in the transaction, including goodwill, will be



**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

2. STRATEGIC ALLIANCES AND ACQUISITIONS (CONTINUED) amortized on a straight-line basis over 36 months. Management may refine the allocation of the purchase price in future periods as the related fair value appraisals of certain assets and liabilities are finalized.

The following unaudited pro forma results of operations for the two years ended December 31, 2000, assume the acquisitions of Netcom and OneMain occurred on January 1, 1999. These unaudited pro forma results have been prepared for comparative purposes only and do not purport to be indicative of the results of operations that actually would have resulted had the acquisitions occurred on the date indicated, or which may result in the future.

	YEAR ENDED DECEMBER 31,	
	1999	2000
	-----	
	(IN THOUSANDS, EXCEPT PER SHARE DATA) (UNAUDITED)	
STATEMENT OF OPERATIONS DATA:		
Total revenues.....	\$ 791,556	\$1,098,768
Net loss.....	(317,674)	(514,755)
Deductions for accretion dividends.....	(14,106)	(23,730)
	-----	
Net loss attributable to common stockholders.....	\$(331,780)	\$(538,485)
	=====	
Basic and diluted net loss per share.....	\$ (2.63)	\$ (4.06)
	=====	
Weighted-average shares.....	126,387	132,519
	=====	

During the three months ended March 31, 2000, the Company recorded a charge of \$34.0 million related to the merger of EarthLink Network and MindSpring. Substantially all of this amount has been paid as of December 31, 2000.

On September 12, 2000, EarthLink assumed OneMain's restructuring liabilities of \$5.4 million. OneMain had acquired 27 Internet service providers and was working to consolidate the operating, general and administrative functions of the ISPs. OneMain recognized a restructuring charge related to employee termination benefits and certain real estate contracts. The plan called for the net reduction of over 650 positions in operations and customer support, sales and marketing and general and administrative departments. As of December 31, 2000, approximately 418 employees have been terminated as a result of this plan. No additional adjustments have been made to the reserve. The

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

2. STRATEGIC ALLIANCES AND ACQUISITIONS (CONTINUED) following table summarizes the activity in the accruals during the year ended December 31, 2000. The balance of the restructuring accrual at December 31, 2000 is expected to be paid within 12 months.

	MERGER AND RELATED COSTS	NON-CASH ITEMS	PAYMENTS	BALANCE AT DECEMBER 31, 2000
(IN THOUSANDS)				
Costs incurred to effect the merger of EarthLink Network and MindSpring:				
Investment banking fees.....	\$16,411	\$ --	\$(16,411)	\$ --
Printing, filing, mailing, proxy solicitation, legal, accounting and advisory fees.....	6,118	--	(6,118)	--
Acceleration of unamortized costs associated with line of credit and convertible debt.....	6,792	--	(6,792)	--
Severance costs and accelerated compensation expense.....	2,716	(1,076)	(1,640)	--
Other.....	1,930	--	(1,930)	--
	-----	-----	-----	-----
Subtotal.....	33,967	(1,076)	(32,891)	--
OneMain restructuring liabilities assumed by EarthLink:				
Severance costs.....	4,502	--	(776)	3,726
Non-cancellable leases.....	942	--	(43)	899
	-----	-----	-----	-----
Subtotal.....	5,444	--	(819)	4,625
Exit costs included in OneMain purchase price:				
Severance costs.....	6,443	--	(2,000)	4,443
Write off of duplicative assets.....	4,322	(4,322)	--	--
Non-cancellable leases.....	1,000	--	--	1,000
	-----	-----	-----	-----
Subtotal.....	11,765	(4,322)	(2,000)	5,443
	-----	-----	-----	-----
	\$51,176	\$(5,398)	\$(35,710)	\$10,068
	=====	=====	=====	=====

3. INVESTMENTS IN OTHER COMPANIES

EarthLink's investments in other companies consist of:

	DECEMBER 31,	
	1999	2000
(IN THOUSANDS)		
eCompanies Venture Group, LP.....	\$4,000	\$7,500
Open Access Broadband Networks.....	400	100
Ceiva Logic, Inc.....	--	2,000
	-----	-----
	\$4,400	\$9,600
	=====	=====

EarthLink founder and Chairman of the Board of Directors, Sky Dayton is a founding partner in eCompanies Venture Group, LP ("EVG"), a limited partnership formed to invest in domestic emerging growth companies. The investments are accounted for under the cost method, as the Company does

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

3. INVESTMENTS IN OTHER COMPANIES (CONTINUED) not have the ability to exercise significant influence over EVG's operating or financial policies. Any distributions of earnings from the partnership will be recorded as income when declared.

4. PROPERTY AND EQUIPMENT

Property and equipment consist of:

	DECEMBER 31,	
	1999	2000
	( IN THOUSANDS )	
Data center equipment.....	\$150,424	\$ 189,401
Office and other equipment.....	58,165	151,024
Land and buildings.....	--	5,706
Leasehold improvements.....	12,488	43,050
Construction-in-progress.....	4,526	33,803
	225,603	422,984
Less accumulated depreciation and amortization.....	(74,168)	(145,585)
	\$151,435	\$ 277,399
	=====	=====

Property under capital lease, primarily data communications equipment included above, aggregated \$41.4 million and \$62.1 million at December 31, 1999 and 2000, respectively. Included in accumulated depreciation and amortization are amounts related to property under capital lease of \$25.3 million and \$25.7 million at December 31, 1999 and 2000, respectively. Depreciation expense charged to operations was \$20.5 million, \$41.0 million and \$73.6 million in 1998, 1999 and 2000, respectively.

5. OTHER ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Other accounts payable and accrued liabilities consists of the following:

	DECEMBER 31,	
	1999	2000
	( IN THOUSANDS )	
Accrued communications costs.....	\$16,119	\$ 41,152
Accrued advertising.....	13,249	24,499
Fixed asset purchases.....	--	17,474
Accrued property tax.....	343	7,109
Accrued Bounties.....	4,462	6,853
Accrued severance.....	--	4,443
Accrued integration costs.....	--	3,000
Other.....	24,774	31,620
	\$58,947	\$136,150
	=====	=====

## EARTHLINK, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

#### 6. DEBT

##### **CREDIT FACILITY**

On February 17, 1999, in conjunction with the NETCOM transaction, MindSpring entered into a credit agreement with First Union National Bank and several other lenders. In February 1999, the Company borrowed approximately \$80 million under the credit facility to finance the NETCOM acquisition. The Company repaid all amounts outstanding under the credit facility using a portion of the net proceeds from the offering of common stock completed in April 1999. As a consequence of MindSpring's merger with EarthLink Network, Inc. the credit facility was terminated which resulted in an extraordinary loss of \$1.5 million, which has been recorded as merger-related cost.

##### **CONVERTIBLE NOTES**

In March 1999, MindSpring filed a universal shelf registration statement with the Securities and Exchange Commission for the public offering from time to time of up to \$800 million of debt and equity securities. In April 1999, MindSpring sold \$180.0 million aggregate principal amount of 5% Convertible Subordinated Notes due 2006, raising net proceeds of approximately \$174.1 million. The notes were convertible into shares of the common stock of MindSpring at any time prior to their maturity or their redemption by the Company at a rate of 16 shares per each \$1,000 principal amount of notes, or \$62.50 per share, subject to adjustment in certain circumstances.

Upon completion of the merger of EarthLink Network and MindSpring, EarthLink adopted the indentures and the notes became convertible into shares of EarthLink common stock. Completion of the merger constituted a "change in control" of MindSpring under the indentures. Thus, each holder of notes had the right to demand payment equal to 100% of the principal amount of the notes, plus accrued interest. Accordingly, in February 2000, the Company offered to purchase for cash all of its 5% Convertible Subordinated Notes. On March 31, 2000, approximately \$179.1 million of the \$180.0 million aggregate principal amount of the notes outstanding were tendered to the Company for repurchase. The total payment of \$183.4 million including interest was paid in April 2000. The untendered notes will continue to be subject to the Indenture Agreement. The repurchase resulted in an extraordinary loss of \$5.3 million, which has been recorded as merger-related costs.

#### 7. COMMON STOCK ISSUED

##### **FOLLOW-ON OFFERINGS**

In May 1998, MindSpring completed a follow on public offering of 6.0 million shares of its common stock at \$8.84 per share. Net proceeds from the offering were approximately \$49.8 million.

In June 1998, EarthLink Network completed a follow on public offering of 6.1 million shares of its common stock at \$18.58 per share. The offering consisted of 4.9 million shares, including 791,000 shares sold to Sprint in accordance with its preemptive rights under the Sprint Alliance, and an underwriter's over-allotment of 1.2 million shares. Net proceeds to the Company were approximately \$106.3 million.

In December 1998, MindSpring completed a follow on public offering of 4.6 million of its common stock at \$28.50 per share. Net proceeds from the offering were approximately \$124.8 million.

In January 1999, EarthLink Network completed a follow on public offering of 3.9 million shares of its common stock at \$45.59 per share. The offering consisted of 3.7 million shares and an underwriter's

## EARTHLINK, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

7. COMMON STOCK ISSUED (CONTINUED) over-allotment of 160,000 shares exercised in February 1999. Net proceeds to EarthLink Network were approximately \$170 million.

In April 1999, MindSpring completed a follow on public offering of \$5.5 million shares of its common stock. Net proceeds were approximately \$263.5 million.

#### SHARES SOLD UNDER PREEMPTIVE RIGHTS AGREEMENTS

In conjunction with the aforementioned January 1999 offering, Sprint exercised its preemptive rights to maintain its existing ownership level in EarthLink Network of approximately 27%, of which 10% is voting common stock. Accordingly, Sprint purchased 1.2 million shares of which 310,000 were common stock and 932,000 were Series B convertible preferred stock. Proceeds from the sale of shares to Sprint were \$54.1 million.

In February 1999, Sprint exercised its preemptive rights to maintain its ownership in EarthLink Network after the exercise of the underwriter's over-allotment granted in connection with the aforementioned follow on public offering. Accordingly, Sprint purchased 62,000 shares of which 15,000 were common stock and 47,000 were Series B convertible preferred stock. Series A and Series B convertible preferred stock have the same rights and privileges with the exception of the ultimate conversion terms in June 2003. At such date, Series A will be convertible into two shares of common stock while Series B is convertible into one share of common stock. Proceeds from the sale of stock to Sprint were \$2.7 million.

In February 2000, Sprint exercised its preemptive rights to maintain its ownership in the Company after the purchase of shares by Apple Computer Corporation. Accordingly, Sprint purchased 2.7 million shares of which 682,000 were common stock and 2.0 million were Series B convertible preferred stock.

In May 2000, Sprint exercised its preemptive rights to maintain its level of ownership in the Company after the merger of EarthLink Network and MindSpring. Accordingly, Sprint purchased approximately 26.0 million shares consisting of approximately 6.0 million shares of common stock and approximately 20.0 million shares of Series B convertible preferred stock for approximately \$431.4 million.

#### COMMON STOCK ISSUANCES FOR OTHER THAN CASH

In January 1998, EarthLink Network issued 32,000 shares of its common stock to a consultant in lieu of cash for services provided pursuant to a consulting agreement. The fair value of the shares was recorded as prepaid professional services and amortized ratably over the term of the contract. Under this agreement EarthLink Network issued 32,000 additional shares of its common stock in January 1999.

#### 8. CONVERTIBLE PREFERRED STOCK

All issued and outstanding shares of Series A and B convertible preferred stock are held by Sprint (note 2).

Sprint receives dividends on Series A and B convertible preferred stock at a rate per annum of 3% of the Liquidation Value (as defined below), compounded quarterly. For a period of five years from June 1999, such dividends are payable "in kind" by way of an increase in the Liquidation Value of the

## EARTHLINK, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

8. CONVERTIBLE PREFERRED STOCK (CONTINUED) shares. Beginning in June 2003, holders of Series A convertible preferred stock will receive cumulative quarterly cash dividends of 3% annually. Beginning in June 2018, holders of the Series A convertible preferred stock are entitled to cumulative quarterly cash dividends at an 8% annual rate of the Liquidation Value per share, increasing annually to a maximum rate of 12%.

Upon voluntary or involuntary liquidation or winding up of the Company, the holders of Series A and B convertible preferred stock will receive, prior to any payment or distribution in respect of other shares of the Company's capital stock, an amount per share equal to the average market value of the common stock measured over the thirty day period ended on June 5, 1998 (the "Average Stock Price"), plus all accrued and unpaid dividends on such shares, whether in cash or in kind (such amount, the "Liquidation Value").

Prior to June 2003, the shares of Series A and B convertible preferred stock are convertible into such number of shares of common stock as is determined by dividing the Liquidation Value by the respective Conversion Price in effect at such time. For the five year period following June 1998, the Conversion price for Series B convertible preferred stock is equal to the average stock price multiplied by 116.118%. The Series A convertible preferred stock Conversion Price will be half that of Series B convertible preferred stock.

Each share of Series A and B convertible preferred stock is convertible into such number of shares of common stock as is determined by dividing the Liquidation Value by the "Conversion Price" in effect at such time. For the five year period following June 1998, the Conversion Price is equal to the Average Stock Price multiplied by 116.118%. Thereafter, the Conversion Price is increased annually by 6%, accruable quarterly. The Conversion Price is also subject to adjustment based on changes in capitalization of the common stock. Although conversion of the Series A and B convertible preferred stock is at the holder's option, conversion is required in the event the Company consummates certain business combination transactions.

Beginning in June 2001, the Company may elect to redeem the outstanding shares of Series A and B convertible preferred stock at a redemption price per share equal to the Liquidation Value of such shares, including the acceleration of certain dividends, multiplied by a specified percentage. The specified percentage is initially equal to 103%, and will be reduced by 1% annually in each of the subsequent three years, and thereafter will be equal to 100%.

The Series A and B convertible preferred stockholders do not possess general voting rights together with holders of common stock. However, the Series A and B convertible preferred stockholders are separately entitled to elect two of the Company's directors. This right terminates as to one of the directors if Sprint fails to maintain at least a 20% equity interest in EarthLink (on a fully diluted basis, subject to adjustment) for any three consecutive months, and will terminate as to both of the directors if Sprint fails to maintain at least a 10% equity interest over the same period. A separate vote of 66.67% of the then-outstanding shares of Series A and B convertible preferred stock is required in certain limited situations, including liquidation, dissolution or winding up of the Company, or taking certain actions which would adversely affect the rights of the holders of the Series A and B convertible preferred stock as a class.

In conjunction with its multi-year partnership with Apple Computer Corporation, EarthLink issued 7,083,333 shares of Series C convertible preferred stock to Apple for \$200 million in January 2000. EarthLink has not declared nor paid dividends in cash or in kind on the Series C convertible preferred

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

8. CONVERTIBLE PREFERRED STOCK (CONTINUED) stock held by Apple. Pursuant to the terms of the Company's Series C convertible preferred stock issued to Apple and our strategic alliance with Apple, Apple has the right to name a member to the Company's Board of Directors. Apple's director designation rights exist generally for so long as Apple maintains a certain percentage of its ownership in EarthLink and EarthLink is Apple's exclusive default Internet Service Provider in the setup software of certain Apple computers.

9. DEDUCTIONS FOR DIVIDENDS ON CONVERTIBLE PREFERRED STOCK

Dividends on Series A and B convertible preferred stock are reflected as an increase to net loss attributable to common stockholders. This adjustment reflects the liquidation dividend of \$16.3 million based on a 3% dividend (note 8) and the accretion of a \$7.4 million dividend related to the beneficial conversion feature of the Series A and Series B convertible preferred stock in accordance with Emerging Issues Task Force Topic No. 98-5 based upon the rate at which the preferred stock becomes convertible.

10. STOCK OPTIONS AND WARRANTS

**OPTION PLANS**

Options to purchase the Company's common stock under various plans have been granted to employees and directors. All Plans are administered by a committee appointed by the Board of Directors, which determines the terms of the options granted, including the exercise price, the number of shares subject to option, and the option vesting period. The exercise price of all options granted under the plan must be at least 100% of the fair market value on the date of grant. Options generally have a maximum term of ten years and vest over terms of four to five years. Certain options granted to executives will vest when the Company achieves specific performance goals. If the performance goals are not met, the options vest six years from the date of grant.

**VALUE OF OPTIONS GRANTED TO EMPLOYEES**

For disclosure purposes, the fair value of all stock options granted is estimated using the Black-Scholes option-pricing model. The following weighted average assumptions were used for stock options granted by EarthLink:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
Annual dividends.....	zero	zero	zero
Expected volatility.....	87%	89%	92%
Risk-free interest rate.....	5.29%	5.42%	5.96%
Expected life (in years).....	5.5	5.34	6.6

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

10. STOCK OPTIONS AND WARRANTS (CONTINUED) Had compensation cost been determined on the basis of fair value pursuant to SFAS No. 123, net loss attributable to common stockholders and net loss per share attributable to common stockholders would have been increased as follows:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	-----		
	(IN THOUSANDS, EXCEPT PER SHARE DATA)		
Net loss attributable to common stockholders:			
As reported.....	\$(60,779)	\$(187,800)	\$(369,652)
	=====	=====	=====
Pro forma.....	\$(73,460)	\$(227,772)	\$(432,428)
	=====	=====	=====
Basic and diluted net loss per share:			
As reported.....	\$ (0.66)	\$ (1.65)	\$ (2.99)
	=====	=====	=====
Pro forma.....	\$ (0.80)	\$ (2.00)	\$ (3.50)
	=====	=====	=====

**WARRANTS**

The Company has issued to certain Board members, customers, consultants, lessors, creditors and others warrants to purchase shares of the Company's common stock.

In connection with the acquisition of OneMain, the Company issued two warrants to purchase a total of 164,388 shares of the Company's common stock. The warrants have an exercise price of \$18.25 per share and expire on September 12, 2005. The value of the warrants was estimated at \$5.86 each under the Black-Scholes method assuming volatility of 93%, a risk-free interest rate of 6.11%, an expected life of three years and an annual dividend rate of zero.



**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

10. STOCK OPTIONS AND WARRANTS (CONTINUED) Following is a summary of stock option and warrant activity during the three years ended December 31, 2000:

	NUMBER OF SHARES OF COMMON STOCK		WEIGHTED-AVERAGE EXERCISE PRICE
	STOCK OPTIONS	WARRANTS	
	----- (IN THOUSANDS)		
Balance at December 31, 1997.....	9,138	2,899	\$ 2.05
Granted.....	4,657	12	\$17.22
Exercised.....	(2,813)	(1,151)	\$ 1.56
Forfeited.....	(545)	--	\$ 5.29
Surrendered in cashless exercise.....	(13)	(240)	\$ 5.43
	-----		
Balance at December 31, 1998.....	10,424	1,520	\$ 7.71
Granted.....	5,801	--	\$37.04
Exercised.....	(2,290)	(538)	\$ 2.47
Forfeited.....	(1,450)	--	\$27.61
Surrendered in cashless exercise.....	--	(2)	\$ 2.51
	-----		
Balance at December 31, 1999.....	12,485	980	\$14.72
Granted.....	14,850	164	\$12.90
Exercised.....	(1,917)	(324)	\$ 3.31
Forfeited.....	(3,881)	(162)	\$24.55
Surrendered in cashless exercise.....	--	(29)	\$ 3.41
	-----		
Balance at December 31, 2000.....	21,537	629	\$15.07
	=====	=====	
Exercisable at December 31, 1998.....	2,251	1,412	
	=====	=====	
Exercisable at December 31, 1999.....	2,505	913	
	=====	=====	
Exercisable at December 31, 2000.....	4,827	589	
	=====	=====	

The weighted-average fair values of the options granted by the Company, during the three years ended December 31, 2000, were \$16.31, \$25.76 and \$8.74, respectively. The weighted-average fair values of warrants granted by the Company during 1998 and 2000 were \$13.97 and \$5.86, respectively. There were no warrants granted in 1999.

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

**10. STOCK OPTIONS AND WARRANTS (CONTINUED)**

Following is a summary of stock options and warrants outstanding as of December 31, 2000:

RANGE OF EXERCISE PRICES	OPTIONS AND WARRANTS OUTSTANDING			OPTIONS AND WARRANTS	
	NUMBER OUTSTANDING	WEIGHTED-AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED-AVERAGE EXERCISE PRICE	EXERCISABLE NUMBER EXERCISABLE	WEIGHTED-AVERAGE EXERCISE PRICE
	(IN THOUSANDS)			(IN THOUSANDS)	
\$ 0.26 -- \$ 6.63	4,473	6.37	\$ 3.51	2,716	\$ 1.95
6.72 -- 9.95	925	7.77	8.40	673	8.19
10.06 -- 10.06	7,351	9.66	10.06	3	10.06
10.38 -- 22.56	3,252	8.80	14.77	814	16.37
22.69 -- 26.32	3,226	8.82	25.13	382	24.93
26.41 -- 48.61	2,931	8.37	37.18	828	38.68
51.44 -- 51.44	8	8.07	51.44	--	--
	-----			-----	
\$ 0.26 -- \$51.44	22,166	8.51	\$15.07	5,416	\$11.84
	=====			=====	

**11. INCOME TAXES**

The provision (benefit) for income taxes is comprised of the following:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	(IN THOUSANDS)		
Current.....	\$3,000	\$ 3,654	\$(6,654)
Deferred.....	(606)	(3,654)	4,260
	-----	-----	-----
Income tax provision (benefit).....	\$2,394	\$ --	\$(2,394)
	=====	=====	=====

The following table summarizes the significant differences between the U.S. Federal statutory tax rate and the Company's effective tax rate for financial statement purposes:

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	(IN THOUSANDS)		
Federal income tax (benefit) at statutory rate.....	\$(17,774)	\$(60,793)	\$(121,911)
State income taxes, net of federal benefit....	(3,064)	(8,915)	(13,842)
Non-deductible goodwill and acquisition costs.....	4,922	7,735	12,905
Net change to valuation allowance.....	18,085	62,083	119,908
Other.....	225	(110)	546
	-----	-----	-----
	\$ 2,394	\$ --	\$(2,394)
	=====	=====	=====

As a result of the tax-free merger with OneMain in September 2000, the Company acquired \$32.9 million of additional deferred tax liabilities primarily related to the customer base and related intangibles. These additional deferred tax liabilities impact the net change to the valuation allowance.

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

11. INCOME TAXES (CONTINUED) Deferred tax assets and liabilities include the following:

	DECEMBER 31,	
	1999	2000
	(IN THOUSANDS)	
Deferred tax assets:		
Net operating losses.....	\$ 67,531	\$ 179,140
Accrued liabilities and reserves.....	10,168	10,188
Member base and other intangibles.....	31,315	--
	109,014	189,328
Gross deferred tax assets.....		
Valuation allowance.....	(95,977)	(187,222)
	13,037	2,106
Net deferred tax assets.....		
Deferred tax liabilities:		
Member base and other intangibles.....	(6,512)	(476)
Depreciation and amortization.....	(2,025)	--
Other.....	(240)	(1,630)
	(8,777)	(2,106)
Total deferred tax liabilities.....		
Net deferred taxes.....	\$ 4,260	\$ --
	=====	=====

At December 31, 1999 and 2000, the Company had net operating loss carryforwards for federal income tax purposes totaling approximately \$177.7 million and \$439.7 million, respectively, which begin to expire in 2010. At December 31, 1999 and 2000, the Company had net operating loss carryforwards for state income tax purposes totaling approximately \$90.4 million and \$360.4 million, respectively, which begin to expire in 2001. The Internal Revenue Code of 1986, as amended, includes provisions which may limit the net operating loss carryforwards available for use in any given year if certain events occur, including significant changes in ownership. Due to the Company's merger, acquisition, and other issuances of common stock and common stock equivalents, utilization of the Company's net operating loss carryforwards to offset future income may be limited. At December 31, 1999 and 2000, the net operating loss includes \$64.0 million and \$65.3 million related to the exercise of employee stock options and warrants. Any benefit resulting from the utilization of this portion of the net operating loss will be credited directly to equity.

In 1999, the Company recorded a net deferred tax asset to the extent that its current deferred taxes will reverse within the two-year federal net operating loss carryback period.

12. COMMITMENTS AND CONTINGENCIES

**LEASES**

The Company leases certain of its facilities and certain equipment under non-cancelable operating leases expiring in various years through 2008. Total rent expense in 1998, 1999 and 2000 for all operating leases amounted to \$4.4 million, \$12.8 million and \$19.8 million, respectively. The Company also leases equipment, primarily data communications equipment, under non-cancelable capital leases. Most of the Company's capital leases include purchase options at the end of the lease term.

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

12. COMMITMENTS AND CONTINGENCIES (CONTINUED) During the three years ended December 31, 2000, the Company financed the acquisition of data processing and office equipment amounting to approximately \$9.3 million, \$13.5 million and \$5.6 million, respectively, by entering into a number of leases and agreements for the sale and leaseback of equipment. The sale and leaseback transactions are recorded at cost, which approximates the fair market value of the property and, therefore, no gains or losses have been recorded. The property remains on the books and continues to be depreciated. A financing obligation representing the proceeds is recorded and reduced based upon payments under the lease agreement.

Minimum lease commitments under non-cancelable leases at December 31, 2000 are as follows:

YEAR ENDING DECEMBER 31, -----	CAPITAL LEASES	OPERATING LEASES
	( IN THOUSANDS )	
2001.....	\$ 20,444	\$ 25,418
2002.....	10,718	26,678
2003.....	3,824	26,430
2004.....	--	25,185
2005.....	--	19,609
Thereafter.....	--	44,719
	-----	-----
Total minimum lease payments.....	34,986	168,039
Less aggregate sublease income.....	--	(3,176)
Less amount representing interest.....	(2,897)	
	-----	-----
Present value of future lease payments.....	32,089	
Less current portion.....	(18,617)	
	-----	-----
	\$ 13,472	\$164,863
	=====	=====

**SIGNIFICANT AGREEMENTS**

Access to the Internet for customers outside of the Company's California regional base is provided through points of presence ("POP") capacity leased from a number of third party providers such as UUNET, PSINet, Level 3, Sprint, GTE Internetworking Incorporated and ICG Netahead, among others. EarthLink is, in effect, buying this capacity in bulk at a discount, and providing access to EarthLink's customer base at EarthLink's normal rates. Amounts payable under such agreements are included under "Accrued Communications Costs" in note 5.

Minimum commitments under non-cancelable network service agreements are as follows:

YEAR ENDING DECEMBER 31, -----	IN MILLIONS
2001.....	\$247.1
2002.....	193.0
2003.....	59.9
2004.....	24.2
	-----
Total.....	\$524.2
	=====

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

12. COMMITMENTS AND CONTINGENCIES (CONTINUED) Cost of revenue from these non-cancelable network service agreements totaled \$67.9 million, \$150.7 million and \$179.5 million for 1998, 1999 and 2000, respectively.

EarthLink licenses Netscape Communicator software ("Netscape Communicator") from Netscape Communications Corporation, and Microsoft Internet Explorer software ("Internet Explorer") from Microsoft Corporation. These licenses permit the Company to distribute Netscape Communicator and Internet Explorer in the EarthLink Network TotalAccess software package.

13. PROFIT SHARING PLANS

The Company has two savings plan (the "Savings Plans") that qualified as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Savings Plan, participating employees may defer a portion of their pretax earnings, up to the Internal Revenue Service annual contribution limit. Under both plans the Company makes a discretionary matching contribution of up to 25% up to a maximum of 6% of the participant's total eligible compensation. The Company's matching contributions vest over four years from the participant's date of hire. Total contributions for 1998, 1999 and 2000 were \$285,000, \$375,000 and \$818,000, respectively.

14. SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

	YEAR ENDED DECEMBER 31,		
	1998	1999	2000
	-----		
	(IN THOUSANDS)		
Cash paid during the year for interest.....	\$2,991	\$ 7,776	\$ 2,942
Cash paid during the year for income taxes.....	435	6,581	--
Non cash transactions related to the conversion of notes payable to equity.....	5,043	--	--
Common stock subscription.....	1,041	--	--
Non cash adjustments related to accretion dividends.....	7,601	14,106	23,730
Common stock issued in conjunction with acquisition.....	--	30,000	106,698
Options issued in conjunction with acquisition.....	--	--	3,539
Warrants issued in conjunction with acquisition.....	--	--	964
Noncash accrual for acquired subscriber base.....	\$7,000	\$ --	\$ --

15. OTHER RELATED PARTY TRANSACTIONS

The Company has entered into certain business relationships with several subsidiaries and affiliates of ITC Holding Company, Inc. ("ITC Holding"). Except as noted below, none of these transactions were material for the periods presented.

The Company purchases long-distance telephone services and wide area network transport service from ITC DeltaCom, Inc. ("ITC DeltaCom"), a related party through relationships with ITC Holding. Long-distance charges from ITC DeltaCom totaled approximately \$3.7 million, \$9.5 million and \$9.6 million for the years ended December 31, 1998, 1999 and 2000, respectively.

The Company has notes receivable from two officers, who are also members of the Board of Directors, aggregating \$3.5 million at December 31, 2000. Such amount is included in other assets.

## EARTHLINK, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

15. OTHER RELATED PARTY TRANSACTIONS (CONTINUED) In connection with its multi-year partnership with Apple, EarthLink paid Apple approximately nil, \$3.6 million and \$34.3 million during 1998, 1999 and 2000. The amount due to Apple under the multi-year partnership was \$3.5 million at December 31, 2000.

Under the network services agreement that was implemented in connection with the Sprint alliance, EarthLink paid Sprint approximately \$3.2 million, \$29.8 million and \$53.6 million during 1998, 1999 and 2000, respectively. The aggregate amount due to Sprint under the network services agreement was \$5.0 million at December 31, 2000.

#### 16. SUBSEQUENT EVENTS (UNAUDITED)

In February of 2001, the Company renegotiated its commercial and governance arrangements with Sprint Corporation. The Company continues to provide dial-up Internet, web hosting and other Internet services to Sprint for resell to their customers. However, the Company's exclusive marketing and co-branding arrangements with Sprint have been terminated. Accordingly, management plans on taking a non-cash charge of approximately \$11.3 million to write off unamortized assets related to the marketing and co-branding agreements with Sprint. Sprint is free to pursue relationships with other Internet providers and EarthLink is free to enter into commercial arrangements with other telecommunications services providers. EarthLink released Sprint from its minimum commitment to provide EarthLink with 150,000 new subscribers per year and Sprint's absolute right to acquire EarthLink commencing in September of 2001 has been terminated. Sprint may maintain its percentage of EarthLink's voting equity by purchasing shares on the market or from third parties in the event that we dilute Sprint's interest by issuing voting securities in a financing, in a transaction or by the exercise of options or warrants or the conversion of convertible equities into voting stock. However, Sprint will have no other rights to acquire EarthLink securities. Sprint will retain the ability to make a counteroffer to buy all, but not less than all, of the Company's equity in the event that the Company proceeds forward for a third-party to acquire controlling interest in EarthLink. In that case, EarthLink's Board is not contractually obligated to accept Sprint's counter offer, but will analyze and weigh it in exercising their fiduciary duties to stockholders.

Sprint has relinquished its right to appoint two members to the EarthLink Board of Directors. Messrs. Esrey and Lauer, Sprint's prior representatives on our board, have resigned from their positions on our board. This new governance arrangement terminates in the event that EarthLink consummates a change in control transaction with a third party, that Sprint acquires all of the equity of EarthLink pursuant to a counter offer that our board of directors accepts, or Sprint's ownership of our voting equity falls below 10% of our total voting equity.

#### 17. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following table sets forth certain unaudited quarterly consolidated financial data for the eight quarters ended December 31, 2000. In the opinion of the Company's management, this unaudited information has been prepared on the same basis as the audited consolidated financial statements contained herein and includes all adjustments (consisting of normal recurring adjustments) necessary to present fairly the information set forth therein when read in conjunction with the consolidated financial

**EARTHLINK, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

17. QUARTERLY FINANCIAL DATA (UNAUDITED) (CONTINUED) statements and notes thereto. The operating results for any quarter are not necessarily indicative of results for any future period.

	MAR. 31 1999	JUN. 30 1999	SEPT. 30 1999	DEC. 31 1999	MAR. 31 2000	JUN. 30 2000	SEPT. 30 2000	DEC. 31 2000
(IN THOUSANDS, EXCEPT PER SHARE DATA)								
CONSOLIDATED STATEMENT OF OPERATIONS DATA:								
Revenues:.....	\$129,871	\$163,664	\$177,753	\$199,145	\$ 219,705	\$230,861	\$249,300	\$ 286,764
Operating costs and expenses:.....	161,493	204,859	232,980	266,781	337,952	303,929	337,030	402,520
Loss from operations.....	(31,622)	(41,195)	(55,227)	(67,636)	(118,247)	(73,068)	(87,730)	(115,756)
Interest income (expense), net.....	3,865	5,137	6,102	6,882	9,733	13,678	15,200	7,874
Income tax benefit.....	--	--	--	--	--	--	--	2,394
Net loss.....	(27,757)	(36,058)	(49,125)	(60,754)	(108,514)	(59,390)	(72,530)	(105,488)
Deductions for accretion dividends(1)...	(3,646)	(3,627)	(3,404)	(3,429)	(3,331)	(4,280)	(8,035)	(8,084)
Net loss attributable to common stockholders.....	\$(31,403)	\$(39,685)	\$(52,529)	\$(64,183)	\$(111,845)	\$(63,670)	\$(80,565)	\$(113,572)
Basic and diluted net loss per share....	\$ (0.29)	\$ (0.35)	\$ (0.45)	\$ (0.55)	\$ (0.95)	\$ (0.52)	\$ (0.65)	\$ (0.87)
Weighted average shares(2).....	107,902	114,258	115,774	116,494	117,426	122,851	123,996	129,999

(1) Reflects the accretion of Liquidation Dividends on Series A and B convertible preferred stock at 3% compounded quarterly and the accretion of a dividend related to the beneficial conversion feature in accordance with EITF 98-5.

(2) Each outstanding share of EarthLink Network common stock was exchanged for 1.615 shares of the common stock of EarthLink and each outstanding share of MindSpring common stock was exchanged for one share of the common stock of the EarthLink. See note 1 of Notes to Consolidated Financial Statements for an explanation of the determination of the number of weighted average shares outstanding in the net loss per share computation.

## EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----
2.1	-- Investor Rights Agreement dated January 4, 2000, between EarthLink Network, Inc. and Apple Computer, Inc. Limited (incorporated by reference to Exhibit 2.7 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.1	-- Amended and Restated Certificate of Incorporation of EarthLink, Inc. (incorporated by reference to Exhibit 3.2 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.2	-- By-laws of EarthLink, Inc. (incorporated by reference to Exhibit 3.3 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
3.3	-- Amended and Restated Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock.
3.4	-- Amended and Restated Certificate of Designation, Preferences and Rights of Series B Convertible Preferred Stock.
3.5	-- Certificate of Designation, Preferences and Rights of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.6 of EarthLink, Inc.'s Report on Form 10-K for the fiscal year ended December 31, 1999--File No. 001-15605).
4.1	-- Specimen Common Stock Certificate (incorporated by reference to Exhibit 3.7 to the Registration Statement on Form S-4 of WWW Holdings, Inc. (predecessor to EarthLink, Inc.)--File No. 333-94177).
4.2	-- Subordinated Debt Indenture (incorporated by reference to Exhibit 4.3 to MindSpring's Form S-3/A--File No. 333-74151).
4.3	-- First Supplemental Indenture (incorporated by reference to Exhibit 4.4 to MindSpring's Form S-3/A--File No. 333-74151).
4.4	-- Second Supplemental Indenture (incorporated by reference to Exhibit 4.3 to EarthLink, Inc.'s Form S-4--File No. 333-41064).
10.1	-- Stock Incentive Plan (incorporated by reference to Exhibit 4.4 of EarthLink, Inc.'s Registration Statement on Form S-8--No. 333-39456).
10.2	-- Stock Option Plan for Non-Employee Directors (incorporated by reference to Exhibit 4.5 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-39456).
10.3	-- 1995 Stock Option Plan and Form of Stock Option Agreement (incorporated by reference to Exhibit 4.4 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).
10.4	-- MindSpring Enterprises, Inc. 1995 Stock Option Plan, as amended (incorporated by reference to Exhibit 4.5 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).
10.5	-- MindSpring Enterprises, Inc. 1995 Directors Stock Option Plan, as amended (incorporated by reference to Exhibit 4.6 of EarthLink, Inc.'s Registration Statement on Form S-8--File No. 333-30024).



EXHIBIT  
NO.

DESCRIPTION

EXHIBIT NO.		DESCRIPTION
10.6	--	(a) Netscape Communications Corporation Internet Service Provider Navigator Distribution Agreement, dated May 31, 1996, between EarthLink Network, Inc. and Netscape Communications Corporation (incorporated by reference to Exhibit 10.6 to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).  (b) Amendment No. 1 to Netscape Communications Corporation Internet Service Provider Agreement (incorporated by reference to Exhibit 10.6(a) to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).  (c) Amendment No. 2 to Netscape Communications Corporation Internet Service Provider Agreement (incorporated by reference to Exhibit 10.6(b) to EarthLink Network's Registration Statement on Form S-1--File No. 333-05055).
10.7	--	Amended and Restated Employment Agreement (incorporated by reference to Exhibit 10.9 to EarthLink Network's amended Report on Form 10-K/A for the fiscal year ended December 31, 1997--File No. 000-20799).
10.8	--	Internet Wizard Sign-Up Agreement, between EarthLink Network, Inc. and Microsoft Corporation, dated August 16, 1996 (incorporated by reference to Exhibit 10.19 to EarthLink Network's Registration Statement on Form S-1--File No. 333-15781).
10.9	--	Amended and Restated Registration Rights Agreement, dated as of February 8, 2001, with Sprint Corporation and Sprint Communications Company L.P.
16.1	--	Letter re: Change in Certifying Accountant (incorporated by reference to Exhibit 99 of EarthLink, Inc.'s Report on Form 8-K, date July 6, 2000--File No. 001-15605).
21.1	--	Subsidiaries of the Registrant.
23.1	--	Consent of Ernst & Young LLP.
23.2	--	Consent of PricewaterhouseCoopers LLP.
23.3	--	Consent of Arthur Andersen LLP.
24.1	--	Power of Attorney (see the Power of Attorney in the signature page hereto).

**EXHIBIT 3.3**

**EARTHLINK, INC.**

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF  
SERIES A CONVERTIBLE PREFERRED STOCK**

EarthLink, Inc. (the "CORPORATION"), a corporation organized and existing under and pursuant to the Delaware General Corporation Law ("DGCL"), does hereby certify:

**FIRST:** That the resolutions duly adopted by the Board of Directors of the Corporation set forth a proposed amendment to the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of the Corporation (the "CERTIFICATE OF A DESIGNATIONS"), declaring said amendment to be advisable and recommending such change to the sole stockholder of the Series A Convertible Preferred Stock issued pursuant to the Certificate of A Designations (the "SERIES A STOCK"). The resolution pertaining to the amendment is as follows:

That in compliance with and furtherance of the existing terms of the Certificate of A Designations, and not to amend any substantive provisions thereof, the Corporation's Certificate of A Designations filed with the Delaware Secretary of State on February 4, 2000 shall be amended, to provide for a change in voting rights and certain additional protective provisions for the benefit of holders of the Series A Stock, in accordance with the terms of the Certificate of A Designations attached hereto.

**SECOND:** That the Certificate of A Designations of the Corporation, as filed with the Delaware Secretary of State on February 4, 2000, shall be replaced in its entirety with the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock, attached hereto as EXHIBIT A.

**THIRD:** That the sole stockholder of the Series A Stock duly adopted and gave its written consent to said amendment to the Certificate of A Designations, in accordance with Sections 242 and 228 of the DGCL.

**FOURTH:** That the Board of Directors of the Corporation duly adopted and gave its written consent to said amendment to the Certificate of A Designations, in accordance with the provisions of Section 242 of the DGCL.

**FIFTH:** That the Corporation hereby certifies that this Certificate was duly executed and acknowledged in accordance with Section 103 of the DGCL.

IN WITNESS WHEREOF, the Corporation executed this Certificate of Amendment as of the \_\_\_\_\_ day of February, 2001.

**EARTHLINK, INC.**

By: /s/ CHARLES G. BETTY

-----  
Charles G. Betty  
Chief Executive Officer

**EXHIBIT A**

**EARTHLINK, INC.**

**CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS OF  
SERIES A CONVERTIBLE PREFERRED STOCK**

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**PURSUANT TO SECTION 151 OF THE  
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE**

EarthLink, Inc. (the "Corporation"), certifies that pursuant to the authority contained in Article IV of its Amended and Restated Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, its Board of Directors has adopted the following resolution creating a series of the Preferred Stock, \$.01 par value, designated as Series A Convertible Preferred Stock:

RESOLVED, that a series of the class of Preferred Stock, \$.01 par value, of the Corporation be hereby created, and that the designation and amount thereof and the voting powers, preferences, and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are set forth in this Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock (the "Certificate of Designation") as follows:

1. DESIGNATION AND AMOUNT. Preferred Stock of the Corporation created and authorized for issuance hereby shall be designated as "Series A Convertible Preferred Stock" (herein referred to as "Series A Preferred Stock"), having a par value per share equal to \$.01, and the number of shares constituting such series shall be 13,252,499. The Corporation shall only originally issue shares of Series A Preferred Stock to Sprint Corporation, a Kansas corporation ("Sprint"), and its successors and Affiliates.
2. RANK. The Series A Preferred Stock shall, with respect to dividend rights and rights upon liquidation, winding up or dissolution, whether voluntary or involuntary, rank prior to the Common Stock (as defined in Section 10 hereof) and all classes or series of preferred stock, preference stock or any other capital stock or Equity Securities of the Corporation, whether now issued or hereafter created. All Equity Securities of the Corporation to which the Series A Preferred Stock ranks prior, including the Common Stock, are collectively referred to herein as the "Junior Securities."

### 3. DIVIDEND PROVISIONS.

#### (a) DIVIDENDS.

(i) LIQUIDATION ACCRETION DIVIDENDS. On and before June 5, 2003, the Corporation shall pay, and the holders of outstanding shares of Series A Preferred Stock ("Holders") shall be entitled to receive on each Dividend Payment Date, a dividend on each share of Series A Preferred Stock at a rate per annum equal to three percent (3.00%) of the Liquidation Value (as then increased, as provided in Section 4(a)) per share of Series A Preferred Stock, accruable and compounded quarterly on each of the Dividend Accrual Dates, which dividend shall be in the form of an increase in the Liquidation Value in such amount (each such increase is referred to as a "Liquidation Accretion Dividend"). All dividends shall accrue quarterly in arrears and shall compound on each Dividend Accrual Date, commencing on the first Dividend Accrual Date after the date of issuance of the applicable shares of Series A Preferred Stock. The Board of Directors shall declare and pay such accrued dividends on each Dividend Payment Date and the Corporation shall take all further actions necessary to cause such dividend to be paid to the Holders in the form and manner prescribed herein. Notwithstanding the foregoing, upon the first date of the consummation of a Business Combination, or an Optional Redemption by the Corporation pursuant to Section 6(a), the Corporation shall pay, and the Holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, a dividend on each share of Series A Preferred Stock in the form of an aggregate increase in the Liquidation Value in an amount equal to the amount by which the Liquidation Value would have increased pursuant to this Section 3(a)(i) if such Holder had held such shares of Series A Preferred Stock, until the first Dividend Payment Date on or following June 5, 2003.

(ii) CASH DIVIDENDS. After June 5, 2003, the Corporation shall pay, and the Holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, cumulative dividends on each share of Series A Preferred Stock at a rate per annum equal to three percent (3.00%) of the Liquidation Value per share of Series A Preferred Stock, accruable quarterly on each of the Dividend Accrual Dates, payable only in cash; provided, however, that after June 5, 2018, the Corporation shall pay, and the Holders of outstanding shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, cumulative dividends on each share of Series A Preferred Stock at a rate per annum equal to 8% of the Liquidation Value per share of Series A Preferred Stock, accruable quarterly on each of the Dividend Accrual Dates, payable only in cash, which rate shall increase by 200 basis points on each June 5 thereafter, but not to exceed a maximum rate of 12%. All cash dividends shall be cumulative, whether or not declared, on a daily basis from June 5, 2003 or the date of issuance, whichever is later, and shall accrue quarterly in arrears on each Dividend Accrual Date, commencing on the first Dividend Accrual Date after June 5, 2003 or the date of issuance, whichever is

later. The Board of Directors shall declare and pay such accrued dividends at such time and to the extent permitted by law.

(iii) **GENERAL PROVISIONS.** Each distribution in the form of a cash dividend shall be payable to Holders of record as they appear on the stock books of the Corporation on such record date, not less than 10 nor more than 60 days preceding the relevant Dividend Payment Date, as shall be fixed by the Board of Directors of the Corporation. For any period during which any share of Series A Preferred Stock is outstanding less than a full quarterly dividend period ending on a Dividend Accrual Date, the dividends payable shall be computed on the basis of a 360 day year consisting of twelve 30-day months and the actual number of days elapsed in the period for which the dividends are payable. If any Dividend Payment Date for a dividend payable in cash occurs on a day that is not a Business Day, any accrued dividends otherwise payable on such Dividend Payment Date shall be paid on the next succeeding Business Day.

(b) **CERTAIN OTHER NON-CASH DISTRIBUTIONS.** If the Corporation shall at any time, or from time to time, after the Issue Date, declare, order, pay or make a dividend or other distribution (including, without limitation, any distribution or issuance of stock or other securities or property or rights or warrants to subscribe for securities of the Corporation or any of its Subsidiaries by way of dividend or spinoff or rights to purchase Common Stock or other Junior Securities) on its Common Stock, other than (i) dividends payable in cash in an aggregate amount in any fiscal year which, when declared, are not expected to exceed the net income of the Corporation during such year from continuing operations before extraordinary items, as determined in accordance with generally accepted accounting principles consistently applied in accordance with past practice, or (ii) any dividend or distribution described in Section 5(c)(i), Section 5(c)(ii) or Section 5(c)(iii), then, and in each such case (a "Triggering Distribution"), each Holder of shares of Series A Preferred Stock shall be entitled to receive from the Corporation, with respect to the shares of Series A Preferred Stock held by such Holder, the same dividend or distribution that such Holder would have received if immediately prior to the earlier of such Triggering Distribution or any record date therefor (i) a Business Combination had occurred causing the last sentence of Section 3(a)(i) to be effected, and (ii) such Holder converted all of such Holder's shares of Series A Preferred Stock into shares of Common Stock. Any such dividend, distribution or issuance shall be declared, ordered, paid or made on the Series A Preferred Stock at the same time such dividend, distribution or issuance is declared, ordered, paid or made on the Common Stock.

(c) **LIMITATION ON DIVIDENDS AND OTHER DISTRIBUTIONS.** Unless full cumulative dividends, if any, accrued on all outstanding shares of the Series A Preferred Stock have been or contemporaneously are declared and paid for all periods prior to and ending on the most recent Dividend Accrual Date, no dividend shall be declared or paid or set aside for payment or other distribution declared or made upon the Junior Securities (other than

a dividend or distribution paid solely in shares of, or warrants, rights or options solely exercisable for or convertible into, Junior Securities), nor shall any Junior Securities be redeemed, purchased or otherwise acquired for any consideration, nor may any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such securities, by the Corporation (other than redemptions and purchases pursuant to or in accordance with agreements between the Corporation and its or its subsidiaries' directors, officers and key employees), except by conversion into or exchange for Junior Securities.

#### 4. LIQUIDATION PREFERENCE.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation ("Liquidation Event"), the Holders of Series A Preferred Stock then outstanding shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock and other Junior Securities by reason of their ownership thereof, an amount per share equal to the sum of

(i) \$260,837,114, (ii) the amount of all Liquidation Accretion Dividends that have been paid pursuant to Section 3(a)(i) (including an amount equal to a prorated dividend pursuant to Section 3(a)(i) for the period from the Dividend Accrual Date immediately preceding the date of the Liquidation Event through the date of the Liquidation Event), and (iii) all accumulations of accrued but unpaid dividends payable in cash pursuant to Section 3(a)(ii) on each share of Series A Preferred Stock (including an amount equal to a prorated dividend pursuant to Section 3(a)(ii) for the period from the Dividend Accrual Date immediately prior to the receipt of such sum to the date of receipt of such sum), with the sum of the amounts referred to in clauses (i), (ii) and (iii) referred to herein as the "Liquidation Value". The schedule of (i) the amount of the applicable Liquidation Accretion Dividend for each Share of Series A Preferred Stock for each Dividend Payment Date therefor, and (ii) the cumulative amount of the Liquidation Value for each Share of Series A Preferred Stock, as of each Dividend Payment Date, is as follows:

DIVIDEND ACCRUAL DATE FOR QUARTER ENDING	AMOUNT OF APPLICABLE QUARTERLY LIQUIDATION ACCRETION DIVIDEND FOR EACH SHARE OF SERIES A PREFERRED STOCK	CUMULATIVE LIQUIDATION VALUE FOR EACH SHARE OF SERIES A PREFERRED STOCK
3-5-00	\$0.15	\$19.73
6-5-00	\$0.15	\$19.88
9-5-00	\$0.15	\$20.03
12-5-00	\$0.15	\$20.18
3-5-01	\$0.15	\$20.33
6-5-01	\$0.15	\$20.48
9-5-01	\$0.15	\$20.63
12-5-01	\$0.15	\$20.79
3-5-02	\$0.16	\$20.94
6-5-02	\$0.16	\$21.10
9-5-02	\$0.16	\$21.26
12-5-02	\$0.16	\$21.42
3-5-03	\$0.16	\$21.58
6-5-03	\$0.16	\$21.74

If upon the occurrence of such Liquidation Event, the assets and funds are not sufficient to pay in full the liquidation payments payable to the Holders of the Series A Preferred Stock, then the Holders of outstanding shares of Series A Preferred Stock shall share ratably in such distribution of assets. Except as provided in this Section 4(a), Holders of Series A Preferred Stock shall not be entitled to any additional distribution upon the occurrence of a Liquidation Event.

(b) After the distribution described in Section 4 (a) has been paid, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Junior Securities in accordance with their respective rights thereto.

(c) Neither the consolidation, merger, Business Combination or any other form of business combination of the Corporation with or into any other Person or entity, nor the sale, lease, exchange, conveyance or disposition of all or substantially all of the assets of the Corporation to Persons or entities other than the holders of Junior Securities shall be deemed to be a Liquidation Event for purposes of this Section 4.

5. CONVERSION. The Holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) OPTIONAL CONVERSION RIGHTS AND AUTOMATIC CONVERSION.

(i) Each share of Series A Preferred Stock shall be convertible, at the option of the Holder thereof, at any time, at the office of the Corporation or any transfer agent for the Series A Preferred Stock, into such number of validly



issued, fully paid and nonassessable shares of Common Stock, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever, as is determined by dividing the Liquidation Value by the Conversion Price at the time in effect for such share; provided, however, that, notwithstanding any other provision hereof to the contrary, conversion of all outstanding shares of Series A Preferred Stock shall be required in the event of consummation of a Business Combination. The Conversion Price per share for shares of Series A Preferred Stock shall be (i) prior to the Dividend Accrual Date immediately after June 5, 2003, the product of (A) \$260,837,114, times (B) 116.118%, and (ii) thereafter, the Conversion Price then in effect shall be increased at a rate per annum equal to six percent (6%) thereof, accruable quarterly, and in each case the Conversion Price shall be subject to adjustment, from time to time as set forth in Section 5(c).

(ii) Upon conversion of any Series A Preferred Stock, payment shall be made for (A) dividends under Section 3(a)(i) on each converted share of Series A Preferred Stock in an amount equal to a prorated Liquidation Accretion Dividend for the period from the Dividend Accrual Date immediately prior to the date of conversion to such conversion date, and (B) unpaid dividends under Section 3(b) resulting from events described therein and occurring prior to the date of conversion.

(b) MECHANICS OF CONVERSION. If the Holder of shares of Series A Preferred Stock desires to exercise such right of conversion, such Holder shall give written notice to the Corporation (the "Conversion Notice") of that Holder's election to convert a stated whole number of shares of Series A Preferred Stock (the "Conversion Shares") into shares of Common Stock, and surrender to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for such purpose, such Holder's certificate or certificates evidencing such Conversion Shares. The Conversion Notice shall also contain a statement of the name or names (with addresses) in which the certificate or certificates for Common Stock shall be issued. Notwithstanding the foregoing, the Corporation shall not be required to issue any certificates to any Person other than the Holder thereof unless the Corporation has obtained reasonable assurance that such transaction is exempt from the registration requirements of, or is covered by an effective registration statement under, the Securities Act of 1933, as amended (the "Act"), and all applicable state securities laws, including, if necessary in the reasonable judgment of the Corporation or its legal counsel, receipt of an opinion to such effect from counsel reasonably satisfactory to the Corporation. In no event would such opinion be required if the shares of Common Stock could, upon conversion, be resold pursuant to Rule 144 or Rule 144A under the Act. As promptly as practicable, and in any event within five business days, after the receipt of the Conversion Notice and the surrender of the certificate or certificates representing the Conversion Shares, the Corporation shall issue and deliver, or cause to be delivered, to the Holder of the Conversion Shares or his nominee or nominees, (i) a certificate or certificates for the number of shares of Common Stock issuable upon the conversion of such Conversion Shares and (ii) if less than the full

number of shares of Series A Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates, of like tenor, evidencing the number of shares evidenced by such surrendered certificate or certificates less the number of Conversion Shares. Such conversion shall be deemed to have been effected as of the close of business on the date the Corporation received the Conversion Notice and the certificate or certificates representing the Conversion Shares, and the Person or Persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the holder or holders of record of such shares of Common Stock as of the close of business on such date, provided, however, that if such conversion by a Holder of Series A Preferred Stock would give rise to the waiting period of the HSR Act, such conversion shall not be effective and shall be contingent upon (i) the expiration or termination of such waiting period, and (ii) the absence of any action taken or instituted by the Department of Justice, the Federal Trade Commission or any other governmental entity by the expiration or termination of such waiting period to delay, enjoin or place conditions on such conversion.

(c) CONVERSION PRICE ADJUSTMENTS OF PREFERRED STOCK.

(i) If the Corporation should at any time or from time to time after the Issue Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then, as of such record date (or, if no record date is fixed, as of the close of business on the date on which the Board of Directors adopts the resolution relating to such dividend, distribution, split or subdivision), the Conversion Price shall be decreased to equal the product of the Conversion Price in effect immediately prior to such date multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior thereto and the denominator of which shall be the number of shares of Common Stock outstanding immediately thereafter.

(ii) If the number of shares of Common Stock outstanding at any time or from time to time after the Issue Date is decreased by a combination of the outstanding shares of Common Stock, then following such combination, the Conversion Price shall be increased to equal the product of the Conversion Price in effect immediately prior thereto multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior thereto and the denominator of which shall be the number of shares of Common Stock outstanding immediately thereafter. So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not combine any shares of Common Stock unless it likewise combines all shares of Common Stock.

(iii) If the Corporation shall at any time and from time to time after the Issue Date issue rights or warrants to all holders of the Common Stock entitling

such holders to subscribe for or purchase Common Stock at a price per share less than the Current Market Price per share of the Common Stock on the record date for the determination of stockholders entitled to receive such rights or warrants, then, and in each such case, the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible shall be adjusted so that the holder of each share thereof shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying the number of shares of Common Stock into which such share was convertible on the day immediately prior to such record date by a fraction, (A) the numerator of which is the sum of (1) the number of shares of Common Stock outstanding on such record date and (2) the number of additional shares of Common Stock which such rights or warrants entitle holders of Common Stock to subscribe for or purchase ("Offered Shares"), and (B) the denominator of which is the sum of (1)

the number of shares of Common Stock outstanding on the record date and (2) a fraction, (x) the numerator of which is the product of the number of Offered Shares multiplied by the subscription or purchase price of the Offered Shares and (y) the denominator of which is the Current Market Price per share of Common Stock on such record date. Such adjustment shall become effective immediately after such record date.

(iv) If the Corporation shall be a party to any transaction, including any capital reorganization, reclassification or recapitalization involving the Common Stock of the Corporation (other than (A) a transaction described in clauses (i) and (ii) of this Section 5(c) or in Section 3(b) or (B) a consummated Business Combination), or some other form of transaction (other than a consummated Business Combination) in which the previously outstanding shares of Common Stock shall be changed into or, pursuant to the operation of law or the terms of the transaction to which the Corporation is a party, exchanged, or would have been changed or exchanged as required by the Certificate of Incorporation if such Common Stock were outstanding, for different securities of the Corporation or common stock or other securities of another corporation or interests in a non-corporate entity (such other corporation or non-corporate entity is referred to herein as the "Surviving Entity") or other property (including cash) or any combination of the foregoing, then, as a condition to the consummation of such transaction, lawful and adequate provision shall be made whereby the Holders of the Series A Preferred Stock shall thereafter have the right to receive, in lieu of the shares of Common Stock of the Corporation immediately theretofore receivable with respect to the conversion of such shares of Series A Preferred Stock, such shares of stock or securities (such stock and securities are referred to herein as the "Surviving Entity Securities") or assets as would have been issued or payable with respect to or in exchange for the shares of Common Stock which such holders would have held had the shares of Series A Preferred Stock been converted immediately prior to such transaction. In any such case, appropriate provisions shall be made with respect to the rights and interests of the Holders of the Series A Preferred Stock to the end that such conversion rights (including,

without limitation, provisions for adjustment of the Conversion Price) shall thereafter be applicable, as nearly as may be practicable in relation to any shares of Surviving Entity Securities or assets thereafter deliverable upon the exercise thereof.

(d) STOCK TRANSFER TAXES. The issuance of stock certificates upon the conversion of the Series A Preferred Stock shall be made without charge to the converting Holder for any tax in respect of such issuance. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares in any name other than that of the Holder of such shares of Series A Preferred Stock converted, and the Corporation shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax, if any.

(e) NO FRACTIONAL SHARES: CERTIFICATE AS TO ADJUSTMENTS.

(i) No fractional shares shall be issued upon conversion of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any Holder of Series A Preferred Stock, furnish or cause to be furnished to such Holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock.

(f) NOTICES OF RECORD DATE. In the event of any taking by the Corporation of a record of the Holders of any class of securities for the purpose of determining the Holders thereof who are entitled to receive any dividend (other than a cash dividend or a Liquidation Accretion Dividend) or other distribution, any right or warrant to subscribe for, purchase or otherwise acquire any shares of stock or any class of any other securities or property, or to receive any other right (including, without limitation, making a dividend or other distribution of any rights under a stockholder rights plan (sometimes known as a "poison pill" plan), whether now existing or hereafter created), the Corporation shall mail to each Holder of Series A Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, right or warrant, and the amount

and character of such dividend, distribution, right or warrant. The Corporation shall not issue such dividend, distribution, right or warrant described herein or in Section 5(c)(iii), or consummate any Business Combination, or any reorganization, reclassification or recapitalization described in Section 5(c)(iv), unless it provides the Holders of the Series A Preferred Stock at least 20 days advance written notice thereof.

(g) **RESERVATION OF SECURITIES ISSUABLE UPON CONVERSION.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, free from any preemptive right or other obligation, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as shall be available to the Holder of such Series A Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes. The Corporation shall prepare and shall use commercially reasonable efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all requirements as to registration, qualification or listing of the Common Stock in order to enable the Corporation to lawfully issue and deliver to each Holder of record of Series A Preferred Stock such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all Series A Preferred Stock then outstanding and convertible into shares of Common Stock, including, without limitation, compliance with the filing and waiting period requirements of the HSR Act.

(h) **NOTICES.** Any notice required by the provisions of this Section 5 to be given to the Holders of shares of Series A Preferred Stock shall only be effective upon receipt and may be given by personal delivery, U.S. certified mail, return receipt requested, or by a nationally recognized overnight delivery service (e.g., United Parcel Service or Federal Express), delivery or postage prepaid and addressed to each Holder of record at his address appearing on the books of this Corporation (and, in the case of any Holder that is a corporation or other entity, to the attention of the President).

## 6. REDEMPTION.

(a) **OPTIONAL REDEMPTION.** The Series A Preferred Stock may be redeemed (subject to (i) the right of any or all shares of Series A Preferred Stock to be converted into Common Stock at any time prior to the Redemption Date (as defined in Section 6(b)), and (ii) subject to the restrictions described in this Section 6(a) and the legal availability of funds therefor) at any time after June 5, 2001, at the Corporation's option, in whole or in part, in the manner provided in Section 6(b), at a redemption price per share of Series A Preferred Stock (expressed as a percentage of the Liquidation Value, which includes the full accelerated amount of the Liquidation Accretion Dividends

as prescribed by Section 3(a)(i) set forth above), if redeemed during the 12-month periods set forth below:

YEAR	PERCENTAGE
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June 5, 2001 to June 4, 2002	103%
June 5, 2002 to June 4, 2003	102%
June 5, 2003 to June 4, 2004	101%
June 5, 2004 and Thereafter	100%

In the event a redemption of less than all of the outstanding shares of Series A Preferred Stock pursuant to this Section 6(a), the Corporation shall effect such redemption either prorata according to the number of shares held by each Holder of shares of Series A Preferred Stock, or by lot, in each case, as may be determined by the Corporation in its sole discretion.

(b) PROCEDURES FOR REDEMPTION.

(i) At least 30 days and not more than 60 days prior to the date fixed for any redemption of the Series A Preferred Stock, written notice (the "Redemption Notice") shall be given by first-class mail, postage prepaid, to each Holder of record on the record date fixed for such redemption (the "Redemption Date") of the Series A Preferred Stock at such Holder's address as the same appears on the stock register of the Corporation, provided that no failure to give such notice nor any deficiency therein shall affect the validity of the procedure for the redemption of any shares of Series A Preferred Stock to be redeemed except as to the Holder or Holders to whom the Corporation has failed to give said notice or except as to the Holder or Holders whose notice was defective; provided, further, that the Corporation may withdraw such Redemption Notice and thereby have no obligation to consummate the redemption described therein at any time prior to the third day prior to the Redemption Date set forth therein by providing written notice of such withdrawal to each Holder who received such Redemption Notice. The Redemption Notice shall state:

(1) the redemption price;

(2) whether all or less than all the outstanding shares of the Series A Preferred Stock are to be redeemed and the total number of shares of the Series A Preferred Stock being redeemed;

(3) the number of shares of Series A Preferred stock held, as of the appropriate record date, by the Holder that the Corporation intends to redeem;

(4) the Redemption Date;

(5) that the Holder is to surrender to the Corporation, at the place or places where certificates for shares of Series A Preferred Stock are to be surrendered for redemption, in the manner and at the price designated, Holder's certificate or certificates representing the shares of Series A Preferred Stock to be redeemed; and

(6) that cash dividends on the shares of the Series A Preferred Stock to be redeemed shall cease to accrue on such Redemption Date unless the Corporation defaults in the payment of the redemption price.

(ii) Each Holder of Series A Preferred Stock shall surrender the certificate or certificates representing such shares of Series A Preferred Stock to the Corporation, duly endorsed, in the manner and at the place designated in the Redemption Notice and on the Redemption Date. The full redemption price for such shares of Series A Preferred Stock shall be payable in cash to the Person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) Unless the Corporation defaults in the payment in full of the applicable redemption price, cash dividends on the shares of Series A Preferred Stock called for redemption shall cease to accrue and accumulate on the Redemption Date, and the Holders of such redeemed shares shall cease to have any further rights with respect thereto from and after the Redemption Date, other than the right to receive the redemption price on the Redemption Date, without interest.

7. VOTING RIGHTS. The Holders of shares of Series A Preferred Stock shall not be entitled to any voting rights, except as hereinafter provided in Section 8 or as otherwise provided by law or by that certain Amended and Restated Governance Agreement between the Corporation, Sprint and Sprint L.P., dated February 8, 2001 (the "Governance Agreement"). Notwithstanding any other provision of this Section 7 or Section 8, the Holders of shares of Series A Preferred Stock shall not be entitled to any voting rights hereunder with respect to a Business Combination which is not a Discriminatory Transaction.

#### 8. PROTECTIVE PROVISIONS.

(a) CLASS VOTING. So long as shares of Series A Preferred Stock are outstanding, this Corporation shall not, without first obtaining the approval (by vote or written consent) of the Holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock (voting as a class):

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares;

(ii) increase the number of authorized shares of Series A Preferred Stock, or create any new series of stock or any other securities convertible into Equity Securities of the Corporation having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, dividends, distribution of assets upon liquidation, dissolution, winding up or otherwise or conversion rights;

(iii) amend the Certificate of Incorporation, Bylaws or other organizational documents of the Corporation or take any action or enter into any other agreements which, prohibit or materially conflict with the Corporation's obligations hereunder with respect to the Holders of Series A Preferred Stock; or

(iv) engage in a Liquidation Event.

(b) **NO IMPAIRMENT.** The Corporation will not, by amendment of its Certificate of Incorporation, Bylaws or other organizational documents or through any reorganization, reclassification, recapitalization, Liquidation Event, issue or sale of securities or any other voluntary action by the Corporation, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Certificate of Designation, and in the taking of all such action as may be necessary or appropriate in order to protect the conversion and other rights of the Holders of the Series A Preferred Stock against impairment; provided, however, that the protection provided by this Section 8(b) shall not apply to a Business Combination in which (i) neither the Liquidation Value nor the Conversion Price of the Series A Preferred Stock is changed, and (ii) the Holders of Series A Preferred Stock shall be entitled to receive consideration at the same time, and in the same amount and in the same form per share, as if each share of Series A Preferred Stock had been converted into Common Stock immediately prior to such Business Combination, after giving effect to the acceleration of the full amount of all of the Liquidation Accretion Dividends as contemplated by the last sentence of Section 3(a)(i). Without limiting the foregoing, but subject to the proviso in the immediately preceding sentence, the Corporation will not effect any transaction described in this Section 8(b), the result of which is to adversely affect any of the rights of Holders of Common Stock relative to the rights of Holders of any other securities other than the Series A Preferred Stock.

(c) **TOLLING OF AUTOMATIC CONVERSION AND OTHER TIME PERIODS FOR HSR COMPLIANCE.** Notwithstanding any other provision of this Certificate of Designation, until such time as the filing and waiting period requirements of the HSR Act relating to the conversion of any of the shares of Series A Preferred Stock pursuant to Section 5 shall have been complied with, if any, and there shall be no action taken or instituted by the United States Department of Justice or the United States Federal Trade Commission to delay, enjoin or impose conditions on such conversion, and such waiting period applicable under the HSR Act shall have expired or received early termination: (i) there shall be no automatic conversion of the Series A Preferred Stock into Common Stock,



(ii) the Redemption Date shall be automatically extended for a period of five Business Days beyond the latest date contemplated by the first sentence of Section 6(b)(i) (as so extended, the "Extended Redemption Date") and each Holder of shares of Series A Preferred Stock shall be entitled to convert any or all of such shares into Common Stock prior to the Extended Redemption Date, and (iii) each other date or event that would otherwise impair any right to convert the Series A Preferred Stock into Common Stock or otherwise impair the rights of the Series A Preferred Stock shall be tolled until 10 days after the expiration or early termination of all waiting periods under the HSR Act; provided, however, that no cash dividends shall accrue during the period after the date originally set for redemption pursuant to Section 6. Any Holder who is required to comply with the filing and waiting period requirements of the HSR Act with respect to the conversion of any shares of Series A Preferred Stock shall use commercially reasonable efforts to cause such filing to be made as soon as practicable after such Holder has provided notice of its intention to convert such shares of Series A Preferred Stock and to diligently and in good faith pursue expiration or termination of the waiting period of the HSR Act.

(d) DISCRIMINATORY TRANSACTIONS. Until the date the Governance Agreement is terminated in accordance with Section 7.01 thereof, the Corporation shall not authorize or perform any Discriminatory Transaction without first obtaining the approval (by vote or written consent) of the Holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock that are held by Affiliated Equity Holders (as defined in the Governance Agreement) (voting as a class), PROVIDED that this Section 8(d) shall not be effective for any holders or beneficial owners of any shares of the Series A Preferred Stock other than the Affiliated Equity Holders.

9. STOCKHOLDER RIGHTS PLAN. Notwithstanding any other provision of this Certificate of Designation to the contrary, if the Corporation shall adopt a stockholders rights plan (sometimes known as a "poison pill" plan), and shall declare, order, pay or make a dividend or other distribution of rights thereunder with respect to the Common Stock (whether or not separate from the Common Stock), each Holder of shares of Series A Preferred Stock shall be entitled to receive from the Corporation, upon conversion of such shares of Series A Preferred Stock into Common Stock pursuant to Section 5, all of the rights distributed under such plan (but without any limitation or restriction or the exercise of such rights that are not also applicable to holders of Common Stock) fully and to the same extent as if immediately prior to the earlier of such distribution or any record date therefor (i) the Liquidation Value of such shares of Series A Preferred Stock had then increased by the full amount of all Liquidation Accretion Dividends payable as if such shares of Series A Preferred Stock had been held through and including the first Dividend Payment Date on or following June 5, 2003, and (ii) such Holder had then converted all of such Holder's shares of Series A Preferred Stock into shares of Common Stock. The preceding sentence shall provide the exclusive protection under this Certificate of Designation to the Holders of the Series A Preferred Stock (including any adjustments that would otherwise be required by Section 5(c)) with respect to the subject matter of the immediately preceding sentence.

10. STATUS OF CONVERTED STOCK. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be canceled and thereupon restored to the status of authorized but unissued Preferred Stock undesignated as to class or series.

11. CERTAIN DEFINITIONS. For purposes of this Certificate of Designation, Preferences and Rights of Series A Preferred Stock, unless the context otherwise requires:

(i) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Exchange Act as such Rule is in effect on the Issue Date.

(ii) "Affiliated Equity Holder" shall have the meaning set forth in the Governance Agreement.

(iii) "Business Combination" shall have the meaning set forth in the Governance Agreement.

(iv) "Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(v) "Closing Price" per share of Common Stock on any date shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, if such shares of Common Stock are not listed or admitted to trading on such exchange, as reported on the Nasdaq National Market, or if not quoted on the Nasdaq National Market, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use, or, if on any such date the Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board of Directors. If the Common Stock is not publicly held or so listed or publicly traded, "Closing Price" shall mean the Fair Market Value per share as determined in good faith by the Board of Directors of the Corporation.

(vi) "Common Stock" shall mean the Corporation's authorized Common Stock, \$.01 par value, as constituted on the Issue Date, and any stock into which such Common Stock may thereafter be changed or reclassified, including, without limitation, any Surviving Entity Securities; provided, however, that if Common Stock is changed or reclassified into more than one class or series of Equity Securities, the term "Common Stock" shall refer to the class or series of such Equity Securities having the greatest general voting power in the election of directors of the Corporation as compared to the other classes or series of Equity Securities.

(vii) "Corporation" means EarthLink, Inc., a Delaware corporation, together with any successors of the Corporation, whether by merger, consolidation or otherwise, including without limitation a Surviving Entity.

(viii) "Current Market Price" per share of Common Stock on any date shall be deemed to be the Closing Price per share of Common Stock on the Trading Day immediately prior to such date.

(ix) "Discriminatory Transaction" shall mean any transaction or other corporate action (other than those specifically contemplated by the express terms of the Governance Agreement and other than those imposed, without the happening of a contingency, on each other stockholder on an equal basis) which would (i) impose limitations in the legal rights of any Affiliated Equity Holder as a stockholder of the Corporation, including without limitation, any action which would impose restrictions based upon the size of the security holding, the business in which a security holder is engaged or other considerations applicable to any Affiliated Equity Holder and not to stockholders generally, (ii) deny any benefit to any Affiliated Equity Holder, proportionately as a holder of any class of Voting Equity Securities, that is made available to other holders of Voting Equity Securities, or (iii) otherwise materially adversely discriminate against any such Affiliated Equity Holders as stockholders of the Corporation; PROVIDED, however, that (a) under no circumstances shall the adoption and implementation of the corporation of a stockholders' right plan (commonly known as a "poison pill") be deemed to be a Discriminatory Transaction if such plan would be permitted under Section 4.03 of the Governance Agreement; (b) under no circumstances shall a Business Combination be deemed a Discriminatory Transaction if in such Business Combination (A) neither the Liquidation Value nor the Conversion Price of the Series A Stock is changed, and (B) upon consummation of such Business Combination, the automatic conversion of all outstanding shares of Series A Stock into shares of Common Stock thereupon and, if applicable, the acceleration of the full amount of the Liquidation Accretion Dividends as contemplated by the last sentence of Section 3(a)(i) of this Certificate of Designation, the holders of Series A Stock shall be offered the right to receive consideration at the same times (except for any differences in the times at which such holders receive such consideration that occur because of the application of the HSR Act (or any

applicable waiting periods thereunder) to the conversion of the Series A Stock into Common Stock), and in the same amount and the same form per share as all holders of Common Stock; (C) it shall not be a Discriminatory Transaction for the Corporation to take action or omit to take action having any of the consequences identified under (i),

(ii) and (iii) above to the extent that such consequence occurs as a result of a material breach or violation by any Affiliated Equity Holder of the Governance Agreement; and (c) the execution by the Corporation of a definitive agreement with respect to a Business Combination, which agreement is consistent with the requirements of

Section 4.02 of the Governance Agreement, shall not be a Discriminatory Transaction.

(x) "Dividend Accrual Date" shall mean each March 5, June 5, September 5 and December 5 after the Issue Date, beginning on March 5, 2000 and ending on June 5, 2003.

(xi) "Dividend Payment Date" shall mean with respect to dividends under Section 3(a)(i), the Dividend Accrual Date, and with respect to dividends under Section 3(a)(ii), the date established by the Board of Directors for the payment of all or part of the accrued dividends on the Series A Preferred Stock.

(xii) "Equity Security" or "Equity Securities" means (i) any Common Stock, (ii) any debt or Equity Securities of the Corporation convertible into or exchangeable for Common Stock or other Equity Securities of the Corporation that grant the right to vote generally in the election of directors ("Voting Equity Securities"), (iii) any options, rights or warrants (or any other similar securities) issued by the Corporation to acquire Common Stock or other Voting Equity Securities or (iv) any security issuable in connection with any stock split, stock dividend, recapitalization or other similar transaction in which securities are issued on a proportionate basis to all holders of a class of Equity Securities.

(xiii) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended and in effect on the Issue Date.

(xiv) "Fair Market Value" means the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

(xv) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(xvi) "Issue Date" means February 4, 2000.

(xvii) "Person" means any individual, firm, corporation, partnership, limited liability company or other entity, and shall include any successor (by merger or otherwise) of such entity.

(xviii) "Subsidiary" of any Person means any corporation or other entity of which a majority of the voting power of the voting Equity Securities or equity interest is owned, directly or indirectly, by such Person.

(xix) "Trading Day" means a day on which the principal national securities exchange Nasdaq or other securities market on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

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**EXIHIBIT 3.4**

**EARTHLINK, INC.**

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF  
SERIES B CONVERTIBLE PREFERRED STOCK**

EarthLink, Inc. (the "CORPORATION"), a corporation organized and existing under and pursuant to the Delaware General Corporation Law ("DGCL"), does hereby certify:

**FIRST:** That the resolutions duly adopted by the Board of Directors of the Corporation set forth a proposed amendment to the Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock of the Corporation (the "CERTIFICATE OF B DESIGNATIONS"), declaring said amendment to be advisable and recommending such change to the sole stockholder of the Series B Convertible Preferred Stock issued pursuant to the Certificate of B Designations (the "SERIES B STOCK"). The resolution pertaining to the amendment is as follows:

That in compliance with and furtherance of the existing terms of the Certificate of B Designations, and not to amend any substantive provisions thereof, the Corporation's Certificate of B Designations filed with the Delaware Secretary of State on February 4, 2000 and amended on February 28, 2000 shall be further amended, to provide for certain additional protective provisions for the benefit of the holders of Series B Stock, in accordance with the terms of the Certificate of B Designations attached hereto.

**SECOND:** That the Certificate of B Designations of the Corporation, as filed with the Delaware Secretary of State on February 4, 2000 and amended on February 28, 2000, shall be replaced in its entirety with the Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock, attached hereto as EXHIBIT A.

**THIRD:** That the sole stockholder of the Series B Stock duly adopted and gave its written consent to said amendment to the Certificate of B Designations, in accordance with Sections 242 and 228 of the DGCL.

**FOURTH:** That the Board of Directors of the Corporation duly adopted and gave its written consent to said amendment to the Certificate of B Designations, in accordance with the provisions of Section 242 of the DGCL.

**FIFTH:** That the Corporation hereby certifies that this Certificate was duly executed and acknowledged in accordance with Section 103 of the DGCL.

In Witness Whereof, the Corporation executed this Certificate of Amendment as of the \_\_\_\_\_ day of February, 2001.

**EARTHLINK, INC.**

By: /s/ CHARLES G. BETTY  
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Charles G. Betty  
Chief Executive Officer

**EXHIBIT A**

**EARTHLINK, INC.**

**CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS OF  
SERIES B CONVERTIBLE PREFERRED STOCK**

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**PURSUANT TO SECTION 151 OF THE  
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE**

EarthLink, Inc. (the "Corporation"), certifies that pursuant to the authority contained in Article IV of its Amended and Restated Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, its Board of Directors has adopted the following resolution creating a series of the Preferred Stock, \$.01 par value, designated as Series B Convertible Preferred Stock:

RESOLVED, that the Board hereby authorizes and establishes Series B Convertible Preferred Stock, \$.01 par value, with the terms, preferences and designations set forth in its Certificate of Designation, Preferences and Rights of Series B Convertible Preferred Stock (the "Certificate of Designation"), and hereby authorizes, adopts, approves and such Certificate of Designation, and further authorizes and directs the Company's officers to execute and file same with the Secretary of State of Delaware, as follows:

1. DESIGNATION AND AMOUNT. The Preferred Stock of the Corporation created and authorized for issuance hereby shall be designated as "Series B Convertible Preferred Stock" (herein referred to as "Series B Preferred Stock"), having a par value per share equal to \$.01, and the number of shares constituting such series shall be 50,000,000. The Corporation shall only originally issue shares of Series B Preferred Stock to Sprint Corporation, a Kansas corporation ("Sprint"), and its successors and Affiliates.
2. RANK. The Series B Preferred Stock shall, with respect to any and all rights and preferences set forth herein, including without limitation, dividend rights and rights upon liquidation, winding up or dissolution, whether voluntary or involuntary, rank immediately junior to that certain series of preferred stock of the Corporation designated as Series A Convertible Preferred Stock (the "Series A Stock") established by the Certificate of Designation, Preferences and Rights of the Series A Stock which was filed with the Secretary of State of the State of Delaware on February 4, 2000 and amended on February 9, 2001. The Series B Preferred Stock will rank junior only to the Series A Stock, and shall, with respect to dividend rights and rights upon liquidation, winding up or dissolution, whether voluntary or involuntary, rank prior to (a) the Common Stock (as defined in Section 10 hereof), (b) the Corporation's Class C Convertible Preferred Stock (the "Series C Stock") as established pursuant to the Certificate of Designation, Preferences and Rights of the Series C Convertible Preferred Stock which was filed with the Secretary of State of the State of Delaware on February 14, 2000, and (c) and all classes or series



of preferred stock, preference stock or any other capital stock or Equity Securities of the Corporation, whether now issued or hereafter created, other than the Series A Stock; PROVIDED, HOWEVER, that the Corporation may hereafter issue additional shares of the Series B Preferred Stock to Sprint. All Equity Securities of the Corporation to which the Series B Preferred Stock ranks prior, including the Common Stock, are collectively referred to herein as the "Junior Securities."

### 3. DIVIDEND PROVISIONS.

#### (a) DIVIDENDS.

(i) LIQUIDATION ACCRETION DIVIDENDS. On and before June 5, 2003, the Corporation shall pay, and the holders of outstanding shares of Series B Preferred Stock ("Holders") shall be entitled to receive on each Dividend Payment Date, a dividend on each share of Series B Preferred Stock at a rate per annum equal to three percent (3.00%) of the Liquidation Value (as then increased, as provided in Section 4(a)) per share of Series B Preferred Stock, accruable and compounded quarterly on each of the Dividend Accrual Dates, which dividend shall be in the form of an increase in the Liquidation Value in such amount (each such increase is referred to as a "Liquidation Accretion Dividend"). All dividends shall accrue quarterly in arrears and shall compound on each Dividend Accrual Date, commencing on the first Dividend Accrual Date after the Issue Date of the applicable shares of Series B Preferred Stock. The Board of Directors shall declare and pay such accrued dividends on each Dividend Payment Date and the Corporation shall take all further actions necessary to cause such dividend to be paid to the Holders in the form and manner prescribed herein. Notwithstanding the foregoing, upon the first date of the consummation of a Business Combination, or an Optional Redemption by the Corporation pursuant to Section 6(a), the Corporation shall pay, and the Holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, a dividend on each share of Series B Preferred Stock in the form of an aggregate increase in the Liquidation Value in an amount equal to the amount by which the Liquidation Value would have increased pursuant to this Section 3(a)(i) if such Holder had held such shares of Series B Preferred Stock, until the first Dividend Payment Date on or following June 5, 2003.

(ii) CASH DIVIDENDS. After June 5, 2003, the Corporation shall pay, and the Holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available therefor, cumulative dividends on each share of Series B Preferred Stock at a rate per annum equal to three percent (3.00%) of the Liquidation Value per share of Series B Preferred Stock, accruable quarterly on each of the Dividend Accrual Dates, payable only in cash; PROVIDED, however, that after June 5, 2018, the Corporation shall pay, and the Holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board

of Directors, out of funds legally available therefor, cumulative dividends on each share of Series B Preferred Stock at a rate per annum equal to 8% of the Liquidation Value per share of Series B Preferred Stock, accruable quarterly on each of the Dividend Accrual Dates, payable only in cash, which rate shall increase by 200 basis points on each June 5 thereafter, but not to exceed a maximum rate of 12%. All cash dividends shall be cumulative, whether or not declared, on a daily basis from June 5, 2003 or the date of issuance, whichever is later, and shall accrue quarterly in arrears on each Dividend Accrual Date, commencing on the first Dividend Accrual Date after June 5, 2003 or the date of issuance, whichever is later. The Board of Directors shall declare and pay such accrued dividends at such time and to the extent permitted by law.

(iii) GENERAL PROVISIONS. Each distribution in the form of a cash dividend shall be payable to Holders of record as they appear on the stock books of the Corporation on such record date, not less than 10 nor more than 60 days preceding the relevant Dividend Payment Date, as shall be fixed by the Board of Directors of the Corporation. For any period during which any share of Series B Preferred Stock is outstanding less than a full quarterly dividend period ending on a Dividend Accrual Date, the dividends payable shall be computed on the basis of a 360 day year consisting of twelve 30-day months and the actual number of days elapsed in the period for which the dividends are payable. If any Dividend Payment Date for a dividend payable in cash occurs on a day that is not a Business Day, any accrued dividends otherwise payable on such Dividend Payment Date shall be paid on the next succeeding Business Day.

(b) CERTAIN OTHER NON-CASH DISTRIBUTIONS. If the Corporation shall at any time, or from time to time, after the Issue Date, declare, order, pay or make a dividend or other distribution (including, without limitation, any distribution or issuance of stock or other securities or property or rights or warrants to subscribe for securities of the Corporation or any of its Subsidiaries by way of dividend or spinoff or rights to purchase Common Stock or other Junior Securities) on its Common Stock, other than (i) dividends payable in cash in an aggregate amount in any fiscal year which, when declared, are not expected to exceed the net income of the Corporation during such year from continuing operations before extraordinary items, as determined in accordance with generally accepted accounting principles consistently applied in accordance with past practice, or (ii) any dividend or distribution described in Section 5(c)(i), Section 5(c)(ii) or Section 5(c)(iii), then, and in each such case (a "Triggering Distribution"), each Holder of shares of Series B Preferred Stock shall be entitled to receive from the Corporation, with respect to the shares of Series B Preferred Stock held by such Holder, the same dividend or distribution that such Holder would have received if immediately prior to the earlier of such Triggering Distribution or any record date therefor (i) a Business Combination had occurred causing the last sentence of Section 3(a)(i) to be effected, and (ii) such Holder converted all of such Holder's shares of Series B Preferred Stock into shares of Common Stock. Any such dividend, distribution or issuance shall be declared, ordered, paid or

made on the Series B Preferred Stock at the same time such dividend, distribution or issuance is declared, ordered, paid or made on the Common Stock.

(c) **LIMITATION ON DIVIDENDS AND OTHER DISTRIBUTIONS.** Unless full cumulative dividends, if any, accrued on all outstanding shares of the Series B Preferred Stock have been or contemporaneously are declared and paid for all periods prior to and ending on the most recent Dividend Accrual Date, no dividend shall be declared or paid or set aside for payment or other distribution declared or made upon the Junior Securities (other than a dividend or distribution paid solely in shares of, or warrants, rights or options solely exercisable for or convertible into, Junior Securities), nor shall any Junior Securities be redeemed, purchased or otherwise acquired for any consideration, nor may any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such securities, by the Corporation (other than redemptions and purchases pursuant to or in accordance with agreements between the Corporation and its or its subsidiaries' directors, officers and key employees), except by conversion into or exchange for Junior Securities.

#### 4. LIQUIDATION PREFERENCE.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation ("Liquidation Event"), the Holders of Series B Preferred Stock then outstanding shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock and other Junior Securities by reason of their ownership thereof, an amount for each share of Series B Preferred Stock equal to the sum of (i) the Purchase Consideration of such share of Series B Preferred Stock, (ii) the amount of all Liquidation Accretion Dividends that have been paid pursuant to Section 3(a)(i) with respect to such share of Series B Preferred Stock (including an amount equal to a prorated dividend pursuant to Section 3(a)(i) for the period from the Dividend Accrual Date immediately preceding the date of the Liquidation Event through the date of the Liquidation Event), and (iii) all accumulations of accrued but unpaid dividends payable in cash pursuant to Section 3(a)(ii) with respect to such share of Series B Preferred Stock (including an amount equal to a prorated dividend pursuant to Section 3(a)(ii) for the period from the Dividend Accrual Date immediately prior to the receipt of such sum to the date of receipt of such sum), with the sum of the amounts referred to in clauses (i), (ii) and (iii) referred to herein as the "Liquidation Value". Immediately prior to each issuance of Series B Preferred Stock and the payment of the Purchase Consideration therefor, the Corporation shall deliver to Sprint a schedule of (i) the Purchase Consideration for such shares of Series B Preferred Stock, (ii) the amount of the applicable Liquidation Accretion Dividend for each share of Series B Preferred Stock for each Dividend Payment Date therefor, (iii) the cumulative amount of the Liquidation Value for each share of Series B Preferred Stock, as of each Dividend Payment Date, and (iv) the Conversion Price for each share of Series B Preferred Stock. The schedule of (i) the amount of the applicable Liquidation Accretion Dividend for each share of Series B Preferred Stock issued on February 4, 2000, for each Dividend Payment Date therefor, and (ii) the cumulative amount of the Liquidation Value

for each share of Series B Preferred Stock issued on February 4, 2000, as of each Dividend Payment Date, is as follows:

DIVIDEND ACCRUAL DATE FOR QUARTER ENDING	AMOUNT OF APPLICABLE QUARTERLY LIQUIDATION ACCRETION DIVIDEND FOR EACH SHARE OF SERIES B PREFERRED STOCK	CUMULATIVE LIQUIDATION VALUE FOR EACH SHARE OF SERIES B PREFERRED STOCK
3-5-00	\$0.32	\$43.59
6-5-00	\$0.33	\$43.92
9-5-00	\$0.33	\$44.25
12-5-00	\$0.33	\$44.58
3-5-01	\$0.33	\$44.91
6-5-01	\$0.34	\$45.25
9-5-01	\$0.34	\$45.59
12-5-01	\$0.34	\$45.93
3-5-02	\$0.34	\$46.27
6-5-02	\$0.35	\$46.62
9-5-02	\$0.35	\$46.97
12-5-02	\$0.35	\$47.32
3-5-03	\$0.35	\$47.68
6-5-03	\$0.36	\$48.04

If upon the occurrence of a Liquidation Event, the assets and funds are not sufficient to pay in full the liquidation payments payable to the Holders of the Series B Preferred Stock, then the Holders of outstanding shares of Series B Preferred Stock shall share ratably in such distribution of assets. Except as provided in this Section 4(a), Holders of Series B Preferred Stock shall not be entitled to any additional distribution upon the occurrence of a Liquidation Event.

(b) After the distribution described in Section 4(a) has been paid, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Junior Securities in accordance with their respective rights thereto.

(c) Neither the consolidation, merger, Business Combination or any other form of business combination of the Corporation with or into any other Person or entity, nor the sale, lease, exchange, conveyance or disposition of all or substantially all of the assets of the Corporation to Persons or entities other than the holders of Junior Securities shall be deemed to be a Liquidation Event for purposes of this Section 4.

5. CONVERSION. The Holders of the Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) OPTIONAL CONVERSION RIGHTS AND AUTOMATIC CONVERSION.

(i) Each share of Series B Preferred Stock shall be convertible, at the

option of the Holder thereof, at any time, at the office of the Corporation or any transfer agent for the Series B Preferred Stock, into such number of validly issued, fully paid and nonassessable shares of Common Stock, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever, as is determined by dividing the Liquidation Value by the Conversion Price at the time in effect for such share; provided, however, that, notwithstanding any other provision hereof to the contrary, conversion of all outstanding shares of Series B Preferred Stock shall be required in the event of consummation of a Business Combination. The Conversion Price per share of Series B Preferred Stock shall be (i) prior to the Dividend Accrual Date immediately after June 5, 2003, an amount equal to the Liquidation Value of such share of Series B Preferred Stock that would be in effect on June 5, 2003, after taking into account all of Liquidation Accretion Dividends that would accrue on and before June 5, 2003, and (ii) thereafter, the Conversion Price then in effect shall be increased at a rate per annum equal to six percent (6%) thereof, accruable quarterly, and in each case the Conversion Price shall be subject to adjustment, from time to time as set forth in Section 5(c).

(ii) Upon conversion of any Series B Preferred Stock, payment shall be made for (A) dividends under Section 3(a)(i) on each converted share of Series B Preferred Stock in an amount equal to a prorated Liquidation Accretion Dividend per share for the period from the Dividend Accrual Date immediately prior to the date of conversion to such conversion date, and (B) unpaid dividends per share under Section 3(b) resulting from events described therein and occurring prior to the date of conversion.

(b) MECHANICS OF CONVERSION. If the Holder of shares of Series B Preferred Stock desires to exercise such right of conversion, such Holder shall give written notice to the Corporation (the "Conversion Notice") of that Holder's election to convert a stated whole number of shares of Series B Preferred Stock (the "Conversion Shares") into shares of Common Stock, and surrender to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for such purpose, such Holder's certificate or certificates evidencing such Conversion Shares. The Conversion Notice shall also contain a statement of the name or names (with addresses) in which the certificate or certificates for Common Stock shall be issued. Notwithstanding the foregoing, the Corporation shall not be required to issue any certificates to any Person other than the Holder thereof unless the Corporation has obtained reasonable assurance that such transaction is exempt from the registration requirements of, or is covered by an effective registration statement under, the Securities Act of 1933, as amended (the "Act"), and all applicable state securities laws, including, if necessary in the reasonable judgment of the Corporation or its legal counsel, receipt of an opinion to such effect from counsel reasonably satisfactory to the Corporation. In no event would such opinion be required if the shares of Common Stock could, upon conversion, be resold pursuant to Rule 144 or Rule 144A under the Act. As promptly as practicable, and in any event within five business days, after the receipt of the Conversion Notice and the surrender of the

certificate or certificates representing the Conversion Shares, the Corporation shall issue and deliver, or cause to be delivered, to the Holder of the Conversion Shares or his nominee or nominees, (i) a certificate or certificates for the number of shares of Common Stock issuable upon the conversion of such Conversion Shares and (ii) if less than the full number of shares of Series B Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates, of like tenor, evidencing the number of shares evidenced by such surrendered certificate or certificates less the number of Conversion Shares. Such conversion shall be deemed to have been effected as of the close of business on the date the Corporation received the Conversion Notice and the certificate or certificates representing the Conversion Shares, and the Person or Persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the holder or holders of record of such shares of Common Stock as of the close of business on such date, provided, however, that if such conversion by a Holder of Series B Preferred Stock would give rise to the waiting period of the HSR Act, such conversion shall not be effective and shall be contingent upon (i) the expiration or termination of such waiting period, and (ii) the absence of any action taken or instituted by the Department of Justice, the Federal Trade Commission or any other governmental entity by the expiration or termination of such waiting period to delay, enjoin or place conditions on such conversion.

(c) CONVERSION PRICE ADJUSTMENTS OF PREFERRED STOCK.

(i) If the Corporation should at any time or from time to time after the Issue Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then, as of such record date (or, if no record date is fixed, as of the close of business on the date on which the Board of Directors adopts the resolution relating to such dividend, distribution, split or subdivision), the Conversion Price shall be decreased to equal the product of the Conversion Price in effect immediately prior to such date multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior thereto and the denominator of which shall be the number of shares of Common Stock outstanding immediately thereafter.

(ii) If the number of shares of Common Stock outstanding at any time or from time to time after the Issue Date is decreased by a combination of the outstanding shares of Common Stock, then following such combination, the Conversion Price shall be increased to equal the product of the Conversion Price in effect immediately prior thereto multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior thereto and the denominator of which shall be the number of shares of Common Stock outstanding immediately thereafter. So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not combine any shares of Common Stock unless it likewise combines all shares of Common

## Stock.

(iii) If the Corporation shall at any time and from time to time after the Issue Date issue rights or warrants to all holders of the Common Stock entitling such holders to subscribe for or purchase Common Stock at a price per share less than the Current Market Price per share of the Common Stock on the record date for the determination of stockholders entitled to receive such rights or warrants, then, and in each such case, the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible shall be adjusted so that the holder of each share thereof shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying the number of shares of Common Stock into which such share was convertible on the day immediately prior to such record date by a fraction, (A) the numerator of which is the sum of (1) the number of shares of Common Stock outstanding on such record date and (2) the number of additional shares of Common Stock which such rights or warrants entitle holders of Common Stock to subscribe for or purchase ("Offered Shares"), and (B) the denominator of which is the sum of (1) the number of shares of Common Stock outstanding on the record date and (2) a fraction, (x) the numerator of which is the product of the number of Offered Shares multiplied by the subscription or purchase price of the Offered Shares and (y) the denominator of which is the Current Market Price per share of Common Stock on such record date. Such adjustment shall become effective immediately after such record date.

(iv) If the Corporation shall be a party to any transaction, including any capital reorganization, reclassification or recapitalization involving the Common Stock of the Corporation (other than (A) a transaction described in clauses (i) and (ii) of this Section 5(c) or in Section 3(b) or (B) a consummated Business Combination), or some other form of transaction (other than a consummated Business Combination) in which the previously outstanding shares of Common Stock shall be changed into or, pursuant to the operation of law or the terms of the transaction to which the Corporation is a party, exchanged, or would have been changed or exchanged as required by the Certificate of Incorporation if such Common Stock were outstanding, for different securities of the Corporation or common stock or other securities of another corporation or interests in a non-corporate entity (such other corporation or non-corporate entity is referred to herein as the "Surviving Entity") or other property (including cash) or any combination of the foregoing, then, as a condition to the consummation of such transaction, lawful and adequate provision shall be made whereby the Holders of the Series B Preferred Stock shall thereafter have the right to receive, in lieu of the shares of Common Stock of the Corporation immediately theretofore receivable with respect to the conversion of such shares of Series B Preferred Stock, such shares of stock or securities (such stock and securities are referred to herein as the "Surviving Entity Securities") or assets as would have been issued or payable with respect to or in exchange for the shares of Common Stock which such holders

would have held had the shares of Series B Preferred Stock been converted immediately prior to such transaction. In any such case, appropriate provisions shall be made with respect to the rights and interests of the Holders of the Series B Preferred Stock to the end that such conversion rights (including, without limitation, provisions for adjustment of the Conversion Price) shall thereafter be applicable, as nearly as may be practicable in relation to any shares of Surviving Entity Securities or assets thereafter deliverable upon the exercise thereof.

(d) **STOCK TRANSFER TAXES.** The issuance of stock certificates upon the conversion of the Series B Preferred Stock shall be made without charge to the converting Holder for any tax in respect of such issuance. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares in any name other than that of the Holder of such shares of Series B Preferred Stock converted, and the Corporation shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax, if any.

(e) **NO FRACTIONAL SHARES: CERTIFICATE AS TO ADJUSTMENTS.**

(i) No fractional shares shall be issued upon conversion of the Series B Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series B Preferred Stock pursuant to this Section 5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any Holder of Series B Preferred Stock, furnish or cause to be furnished to such Holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Preferred Stock.

(f) **NOTICES OF RECORD DATE.** In the event of any taking by the Corporation of a record of the Holders of any class of securities for the purpose of determining the Holders thereof who are entitled to receive any dividend (other than a cash dividend or a Liquidation Accretion Dividend) or other distribution, any right or warrant to subscribe for, purchase or otherwise acquire any shares of stock or any class of any other securities or property, or to receive any other right (including, without limitation, making a dividend or other distribution of any rights under a stockholder rights plan (sometimes known as a "poison pill" plan), whether now existing or hereafter created), the Corporation shall mail to each Holder of Series B Preferred Stock, at least 20 days prior



to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, right or warrant, and the amount and character of such dividend, distribution, right or warrant. The Corporation shall not issue such dividend, distribution, right or warrant described herein or in Section

5(c)(iii), or consummate any Business Combination, or any reorganization, reclassification or recapitalization described in Section 5(c)(iv), unless it provides the Holders of the Series B Preferred Stock at least 20 days advance written notice thereof.

(g) **RESERVATION OF SECURITIES ISSUABLE UPON CONVERSION.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock, free from any preemptive right or other obligation, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, in addition to such other remedies as shall be available to the Holder of such Series B Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes. The Corporation shall prepare and shall use commercially reasonable efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all requirements as to registration, qualification or listing of the Common Stock in order to enable the Corporation to lawfully issue and deliver to each Holder of record of Series B Preferred Stock such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all Series B Preferred Stock then outstanding and convertible into shares of Common Stock, including, without limitation, compliance with the filing and waiting period requirements of the HSR Act.

(h) **NOTICES.** Any notice required by the provisions of this Section 5 to be given to the Holders of shares of Series B Preferred Stock shall only be effective upon receipt and may be given by personal delivery, U.S. certified mail, return receipt requested, or by a nationally recognized overnight delivery service (e.g., United Parcel Service or Federal Express), delivery or postage prepaid and addressed to each Holder of record at his address appearing on the books of this Corporation (and, in the case of any Holder that is a corporation or other entity, to the attention of the Chief Executive Officer).

## 6. REDEMPTION.

(a) **OPTIONAL REDEMPTION.** The Series B Preferred Stock may be redeemed (subject to (i) the right of any or all shares of Series B Preferred Stock to be converted into Common Stock at any time prior to the Redemption Date (as defined in Section 6(b)), and (ii) subject to the restrictions described in this Section 6(a) and the legal availability of funds therefor) at any time after June 5, 2001, at the Corporation's

option, in whole or in part, in the manner provided in Section 6(b), at a redemption price per share of Series B Preferred Stock (expressed as a percentage of the Liquidation Value, which includes the full accelerated amount of the Liquidation Accretion Dividends as prescribed by Section 3(a)(i) set forth above), if redeemed during the 12-month periods set forth below:

YEAR	PERCENTAGE
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June 5, 2001 to June 4, 2002	103%
June 5, 2002 to June 4, 2003	102%
June 5, 2003 to June 4, 2004	101%
June 5, 2004 and thereafter	100%

In the event a redemption of less than all of the outstanding shares of Series B Preferred Stock pursuant to this Section 6(a), the Corporation shall effect such redemption either pro rata according to the number of shares held by each Holder of shares of Series B Preferred Stock, or by lot, in each case, as may be determined by the Corporation in its sole discretion.

(b) PROCEDURES FOR REDEMPTION.

(i) At least 30 days and not more than 60 days prior to the date fixed for any redemption of the Series B Preferred Stock, written notice (the "Redemption Notice") shall be given by first-class mail, postage prepaid, to each Holder of record on the record date fixed for such redemption (the "Redemption Date") of the Series B Preferred Stock at such Holder's address as the same appears on the stock register of the Corporation, provided that no failure to give such notice nor any deficiency therein shall affect the validity of the procedure for the redemption of any shares of Series B Preferred Stock to be redeemed except as to the Holder or Holders to whom the Corporation has failed to give said notice or except as to the Holder or Holders whose notice was defective; provided, further, that the Corporation may withdraw such Redemption Notice and thereby have no obligation to consummate the redemption described therein at any time prior to the third day prior to the Redemption Date set forth therein by providing written notice of such withdrawal to each Holder who received such Redemption Notice. The Redemption Notice shall state:

(1) the redemption price;

(2) whether all or less than all the outstanding shares of the Series B Preferred Stock are to be redeemed and the total number of shares of the Series B Preferred Stock being redeemed;

(3) the number of shares of Series B Preferred stock held, as of the appropriate record date, by the Holder that the Corporation intends to redeem;

(4) the Redemption Date;

(5) that the Holder is to surrender to the Corporation, at the place or places where certificates for shares of Series B Preferred Stock are to be surrendered for redemption, in the manner and at the price designated, Holder's certificate or certificates representing the shares of Series B Preferred Stock to be redeemed; and

(6) that cash dividends on the shares of the Series B Preferred Stock to be redeemed shall cease to accrue on such Redemption Date unless the Corporation defaults in the payment of the redemption price.

(ii) Each Holder of Series B Preferred Stock shall surrender the certificate or certificates representing such shares of Series B Preferred Stock to the Corporation, duly endorsed, in the manner and at the place designated in the Redemption Notice and on the Redemption Date. The full redemption price for such shares of Series B Preferred Stock shall be payable in cash to the Person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) Unless the Corporation defaults in the payment in full of the applicable redemption price, cash dividends on the shares of Series B Preferred Stock called for redemption shall cease to accrue and accumulate on the Redemption Date, and the Holders of such redeemed shares shall cease to have any further rights with respect thereto from and after the Redemption Date, other than the right to receive the redemption price on the Redemption Date, without interest.

7. VOTING RIGHTS. The Holders of shares of Series B Preferred Stock shall not be entitled to any voting rights, except as hereinafter provided in Section 8 or as otherwise provided by law or by that certain Amended and Restated Governance Agreement between the Corporation, Sprint and Sprint L.P., dated February 8, 2001 (the "Governance Agreement").

#### 8. PROTECTIVE PROVISIONS.

(a) CLASS VOTING. So long as shares of Series B Preferred Stock are outstanding, this Corporation shall not, without first obtaining the approval (by vote or written consent) of the Holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series B Preferred Stock (voting as a class):

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares;

(ii) increase the number of authorized shares of Series B Preferred Stock, or create any new series of stock or any other securities convertible into Equity Securities of the Corporation having a preference over, or being on a parity with, the Series B Preferred Stock with respect to, dividends, distribution of assets upon liquidation, dissolution, winding up or otherwise or conversion rights;

(iii) amend the Certificate of Incorporation, Bylaws or other organizational documents of the Corporation or take any action or enter into any other agreements which, prohibit or materially conflict with the Corporation's obligations hereunder with respect to the Holders of Series B Preferred Stock; or

(iv) engage in a Liquidation Event.

(b) **NO IMPAIRMENT.** The Corporation will not, by amendment of its Certificate of Incorporation, Bylaws or other organizational documents or through any reorganization, reclassification, recapitalization, Liquidation Event, issue or sale of securities or any other voluntary action by the Corporation, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Certificate of Designation, and in the taking of all such action as may be necessary or appropriate in order to protect the conversion and other rights of the Holders of the Series B Preferred Stock against impairment; provided, however, that the protection provided by this Section 8(b) shall not apply to a Business Combination in which (i) neither the Liquidation Value nor the Conversion Price of the Series B Preferred Stock is changed, and (ii) the Holders of Series B Preferred Stock shall be entitled to receive consideration at the same time, and in the same amount and in the same form per share, as if each share of Series B Preferred Stock had been converted into Common Stock immediately prior to such Business Combination, after giving effect to the acceleration of the full amount of all of the Liquidation Accretion Dividends as contemplated by the last sentence of Section 3(a)(i). Without limiting the foregoing, but subject to the proviso in the immediately preceding sentence, the Corporation will not effect any transaction described in this Section 8(b), the result of which is to adversely affect any of the rights of holders of Common Stock relative to the rights of holders of any other securities other than the Series B Preferred Stock.

(c) **TOLLING OF AUTOMATIC CONVERSION AND OTHER TIME PERIODS FOR HSR COMPLIANCE.** Notwithstanding any other provision of this Certificate of Designation, until such time as the filing and waiting period requirements of the HSR Act relating to the conversion of any of the shares of Series B Preferred Stock pursuant to Section 5 shall have been complied with, if any, and there shall be no action taken or instituted by the United States Department of Justice or the United States Federal Trade Commission to delay, enjoin or impose conditions on such conversion, and such waiting period applicable under the HSR Act shall have expired or received early termination: (i) there shall be no automatic conversion of the Series B Preferred Stock into Common Stock,

(ii) the Redemption Date shall be automatically extended for a period of five Business Days beyond the latest date contemplated by the first sentence of Section 6(b)(i) (as so extended, the "Extended Redemption Date") and each Holder of shares of Series B Preferred Stock shall be entitled to convert any or all of such shares into Common Stock prior to the Extended Redemption Date, and (iii) each other date or event that would otherwise impair any right to convert the Series B Preferred Stock into Common Stock or otherwise impair the rights of the Series B Preferred Stock shall be tolled until 10 days after the expiration or early termination of all waiting periods under the HSR Act; provided, however, that no cash dividends shall accrue during the period after the date originally set for redemption pursuant to Section 6. Any Holder who is required to comply with the filing and waiting period requirements of the HSR Act with respect to the conversion of any shares of Series B Preferred Stock shall use commercially reasonable efforts to cause such filing to be made as soon as practicable after such Holder has provided notice of its intention to convert such shares of Series B Preferred Stock and to diligently and in good faith pursue expiration or termination of the waiting period of the HSR Act.

(d) **DISCRIMINATORY TRANSACTIONS.** Until the date the Governance Agreement is terminated in accordance with Section 7.01 thereof, the Corporation shall not authorize or perform any Discriminatory Transaction without first obtaining the approval (by vote or written consent) of the Holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series B Preferred Stock that are held by Affiliated Equity Holders (as defined in the Governance Agreement) (voting as a class), PROVIDED that this Section 8(d) shall not be effective for any holders or beneficial owners of any shares of the Series B Preferred Stock other than the Affiliated Equity Holders.

9. **STOCKHOLDER RIGHTS PLAN.** Notwithstanding any other provision of this Certificate of Designation to the contrary, if the Corporation shall adopt a stockholders rights plan (sometimes known as a "poison pill" plan), and shall declare, order, pay or make a dividend or other distribution of rights thereunder with respect to the Common Stock (whether or not separate from the Common Stock), each Holder of shares of Series B Preferred Stock shall be entitled to receive from the Corporation, upon conversion of such shares of Series B Preferred Stock into Common Stock pursuant to Section 5, all of the rights distributed under such plan (but without any limitation or restriction or the exercise of such rights that are not also applicable to holders of Common Stock) fully and to the same extent as if immediately prior to the earlier of such distribution or any record date therefor (i) the Liquidation Value of such shares of Series B Preferred Stock had then increased by the full amount of all Liquidation Accretion Dividends payable as if such shares of Series B Preferred Stock had been held through and including the first Dividend Payment Date on or following June 5, 2003, and (ii) such Holder had then converted all of such Holder's shares of Series B Preferred Stock into shares of Common Stock. The preceding sentence shall provide the exclusive protection under this Certificate of Designation to the Holders of the Series B Preferred Stock (including any adjustments that would otherwise be required by Section 5(c)) with respect to the subject matter of the immediately preceding sentence.

10. STATUS OF CONVERTED STOCK. In the event any shares of Series B Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be canceled and thereupon restored to the status of authorized but unissued Preferred Stock undesignated as to class or series.

11. CERTAIN DEFINITIONS. For purposes of this Certificate of Designation, Preferences and Rights of Series B Preferred Stock, unless the context otherwise requires:

(i) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Exchange Act as such Rule is in effect on the Issue Date.

(ii) "Business Combination" shall have the meaning set forth in the Governance Agreement.

(iii) "Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(iv) "Closing Price" per share of Common Stock on any date shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, if such shares of Common Stock are not listed or admitted to trading on such exchange, as reported on the Nasdaq National Market, or if not quoted on the Nasdaq National Market, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use, or, if on any such date the Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board of Directors. If the Common Stock is not publicly held or so listed or publicly traded, "Closing Price" shall mean the Fair Market Value per share as determined in good faith by the Board of Directors of the Corporation.

(v) "Common Stock" shall mean the Corporation's authorized Common Stock, \$.01 par value, as constituted on the Issue Date, and any stock into which such Common Stock may thereafter be changed or reclassified, including, without limitation, any Surviving Entity Securities; provided, however,

that if Common Stock is changed or reclassified into more than one class or series of Equity Securities, the term "Common Stock" shall refer to the class or series of such Equity Securities having the greatest general voting power in the election of directors of the Corporation as compared to the other classes or series of Equity Securities.

(vi) "Corporation" means EarthLink, Inc., a Delaware corporation, together with any successors of the Corporation, whether by merger, consolidation or otherwise, including without limitation a Surviving Entity.

(vii) "Current Market Price" per share of Common Stock on any date shall be deemed to be the Closing Price per share of Common Stock on the Trading Day immediately prior to such date.

(viii) "Discriminatory Transaction" shall mean any transaction or other corporate action (other than those specifically contemplated by the express terms of the Governance Agreement and other than those imposed, without the happening of a contingency, on each other stockholder on an equal basis) which would (i) impose limitations in the legal rights of any Affiliated Equity Holder as a stockholder of the Corporation, including without limitation, any action which would impose restrictions based upon the size of the security holding, the business in which a security holder is engaged or other considerations applicable to any Affiliated Equity Holder and not to stockholders generally, (ii) deny any benefit to any Affiliated Equity Holder, proportionately as a holder of any class of Voting Equity Securities, that is made available to other holders of Voting Equity Securities, or (iii) otherwise materially adversely discriminate against any such Affiliated Equity Holders as stockholders of the Corporation; PROVIDED, however, that (a) under no circumstances shall the adoption and implementation of the corporation of a stockholders' right plan (commonly known as a "poison pill") be deemed to be a Discriminatory Transaction if such plan would be permitted under

Section 4.03 of the Governance Agreement; (b) under no circumstances shall a Business Combination be deemed a Discriminatory Transaction if in such Business Combination (A) neither the Liquidation Value nor the Conversion Price of the Series B Stock is changed, and (B) upon consummation of such Business Combination, the automatic conversion of all outstanding shares of Series B Stock into shares of Common Stock thereupon and, if applicable, the acceleration of the full amount of the Liquidation Accretion Dividends as contemplated by the last sentence of Section 3(a)(i) of this Certificate of Designation, the holders of Series B Stock shall be offered the right to receive consideration at the same times (except for any differences in the times at which such holders receive such consideration that occur because of the application of the HSR Act (or any applicable waiting periods thereunder) to the conversion of the Series B Stock into Common Stock), and in the same amount and the same form per share as all holders of Common Stock; (C) it shall not be a Discriminatory Transaction for the Corporation to take action or omit to take action having any of the consequences

identified under (i), (ii) and (iii) above to the extent that such consequence occurs as a result of a material breach or violation by any Affiliated Equity Holder of the Governance Agreement; and (c) the execution by the Corporation of a definitive agreement with respect to a Business Combination, which agreement is consistent with the requirements of Section 4.02 of the Governance Agreement, shall not be a Discriminatory Transaction.

(ix) "Dividend Accrual Date" shall mean each March 5, June 5, September 5 and December 5 after the Issue Date, beginning on March 5, 2000 and ending pursuant to the terms of this Certificate of Designation.

(x) "Dividend Payment Date" shall mean with respect to dividends under Section 3(a)(i), the Dividend Accrual Date, and with respect to dividends under Section 3(a)(ii), the date established by the Board of Directors for the payment of all or part of the accrued dividends on the Series B Preferred Stock.

(xi) "Equity Security" and "Equity Securities" means (i) any Common Stock, (ii) any debt or equity securities of the Corporation convertible into or exchangeable for Common Stock or other Equity Securities of the Corporation that grant the right to vote generally in the election of directors ("Voting Equity Securities"), (iii) any options, rights or warrants (or any other similar securities) issued by the Corporation to acquire Common Stock or other Voting Equity Securities or (iv) any security issuable in connection with any stock split, stock dividend, recapitalization or other similar transaction in which securities are issued on a proportionate basis to all holders of a class of Equity Securities.

(xii) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended and in effect on the Issue Date.

(xiii) "Fair Market Value" means the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

(xiv) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(xv) "Issue Date" shall mean, with respect to each issuance of Series B Preferred Stock, each date of original issuance of such stock.

(xvi) "Person" means any individual, firm, corporation, partnership, limited liability company or other entity, and shall include any successor (by merger or otherwise) of such entity.

(xvii) "Purchase Consideration" means, with respect to each issuance of Series B Preferred Stock, the per share amount of consideration that the Corporation received for each such issuance of Series B Preferred Stock.



(xviii) "Subsidiary" of any Person means any corporation or other entity of which a majority of the voting power of the voting Equity Securities or equity interest is owned, directly or indirectly, by such Person.

(xix) "Trading Day" means a day on which the principal national securities exchange, Nasdaq or other securities market on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

\* \* \* \* \*

## EXHIBIT 10.9

### AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (the "Agreement"), dated as of February 8, 2001 (the "Effective Date"), is entered into by and among EarthLink, Inc., a Delaware corporation, (the "Company"), Sprint Corporation, a Kansas corporation ("Sprint") and Sprint Communications Company L.P., a Delaware limited partnership ("Sprint L.P.").

WHEREAS, the Company (as successor in interest to Dolphin, Inc.), Sprint and Sprint L.P. are parties to a Registration Rights Agreement dated February 10, 1998 (the "Registration Rights Agreement");

WHEREAS, the Company, Sprint and Sprint L.P. (for the purposes of this Agreement, Sprint and Sprint L.P. shall hereafter be collectively referred to as "Sprint") desire to amend and restate the Registration Rights Agreement, as set forth herein;

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Registration Rights Agreement shall be superseded and replaced in its entirety by this Agreement as set forth herein, and further agree as follows:

#### ARTICLE 1.

##### DEFINITIONS AND CONSTRUCTION

Section 1.1. CERTAIN DEFINITIONS. As used in this Agreement, the following terms shall have the meanings specified below:

"AFFILIATE" means, with respect to any Person, any other Person controlling, controlled by, or under common control with such Person. For purposes of this Agreement, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with" as used with respect to any Person) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person through ownership of securities.

"ANCILLARY AGREEMENT" shall mean any and all of the following documents to which Sprint and EarthLink are a party: (i) the Governance Agreement, (ii) the Certificates of Designation (as defined in the Governance Agreement), (iii) the Master Services Agreement (as defined in the Governance Agreement), (iv) the Termination Mutual Release and Waiver Agreement (as defined in the Governance Agreement), (v) the Network Services Agreement, dated February 10, 1998 and as amended, by and among the Company and Sprint, and (vi) the Sprint Custom Network Services Arrangement, dated May 11, 2000 and as amended, by and

between the Company and Sprint.

"CHANGE OF ENTITY TRANSACTION" means a transaction or series of related transactions with a third party, other than an Affiliate of Sprint or Sprint L.P., or third parties, other than Affiliates of Sprint or Sprint L.P., who are acting as a group (as defined in Rule 13d-5 of the Exchange Act), undertaken in any form whatsoever, involving a merger, consolidation, combination, share exchange, reorganization or other extraordinary transaction with respect to the Company, in which the Common Stock is converted into or exchanged for securities of a third party (the "Successor Entity").

"COMMON STOCK" shall mean (i) the common stock, par value \$.01 per share, of the Company and (ii) any other class of common equity of the Company into which the shares defined in (i) may hereafter have been changed or reclassified.

"CONVERTIBLE PREFERRED STOCK" means shares of Series A Convertible Preferred Stock, par value \$.01 per share, and Series B Convertible Preferred Stock, par value \$.01 per share, of the Company.

"EFFECTIVE DATE" shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder as in effect at the time.

"GOVERNANCE AGREEMENT" means the Amended and Restated Governance Agreement, dated as of February 8, 2001, by and between Sprint, Sprint L.P., the Company and the Company's wholly owned subsidiary EarthLink Operations, Inc., a Delaware corporation.

"HOLDER" means Sprint, so long as it holds any Registrable Securities, and any Person owning Registrable Securities who is a permitted transferee or assignee of rights under Article 11 of this Agreement.

"INITIAL SHELF REGISTRATION" shall have the meaning given to it in Section 2.1 of this Agreement.

"INITIATING HOLDER" shall have the meaning given to it in Section 3.1.

"PARTY" means any Person that is a signatory to this Agreement.

"PERSON" means any natural person, corporation, partnership, limited liability company, trust, unincorporated organization or other entity.

"PRIMARY SECURITIES" means, in an offering of Company securities initiated by the Company, the securities to be issued and sold by the Company, and in an offering initiated or done pursuant to the request of any security holder of the Company other than any Holder, the securities of such other security holder or holders.

"REGISTER" and the terms "register," "registered," and "registration" refer to (i) a registration effected by the preparation and filing of a Registration Statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such Registration Statement by the SEC, or (ii) the filing of a Rule 424 Prospectus with the SEC and other actions to be taken pursuant thereto in connection with any Takedown pursuant to Section 3.4 hereof.

"REGISTRABLE SECURITIES" means at any time: (i) the Registration Common Shares then owned or held by the Holders, and (ii) the Registration Common Shares then issuable upon conversion of any and all Convertible Preferred Stock then owned or held by the Holders, and, in each case, all shares of capital stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend, stock split or other distribution including as a result of any merger, consolidation or other reorganization involving the Company with respect to, in exchange for, or in replacement of such Registration Common Shares then owned or held by such Holder or Holders or Registration Common Shares then issuable upon conversion of any and all Convertible Preferred Stock then owned or held by the Holders, as the case may be, including as a result of any merger, consolidation or other reorganization involving the Company. The term "Registrable Securities" excludes, however, any security (i) the sale by a Holder of which has been effectively registered under the Securities Act and which has been disposed of by a Holder in accordance with a Registration Statement, (ii) that has been sold by a Holder in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(1) thereof (including transactions pursuant to Rules 144 and 144A) such that the further disposition of such securities by the transferee or assignee is not restricted under the Securities Act, (iii) that has been sold by a Holder in a transaction in which such Holder's rights under this Agreement are not, or cannot be, assigned, or (iv) for which the registration rights provided under this Agreement have expired pursuant to Article 14 of this Agreement.

"REGISTRATION COMMON SHARES" shall mean all shares of Common Stock owned or acquired by Sprint or by any permitted assignee or transferee as of the date hereof or any time subsequent thereto.

"REGISTRATION EXPENSES" means all fees and expenses relating to a Registration Statement incident to the performance of or compliance with this Agreement by the Company, including without limitation: (i) registration, qualification and filing fees; (ii) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel in connection with blue sky qualifications or registration of any Registrable Securities being registered under the Securities Act or any applicable state securities or blue sky laws); (iii) printing expenses; (iv) fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses of any comfort letters or costs associated with the delivery by independent certified public accountants of comfort letters customarily requested by underwriters); and (v) fees and expenses of listing any Registrable Securities on any securities exchange or automated quotation system on which the Common Stock is then listed or quoted, but in all events excluding the compensation of regular employees of the Company and excluding underwriter's fees, discounts and commissions.

"REGISTRATION STATEMENT" means any registration statement or similar document under the Securities Act or any successor thereto that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the prospectus or preliminary prospectus included therein, all amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits to such Registration Statement and all material incorporated by reference or deemed to be incorporated by reference in such Registration Statement.

"RULE 144" means Rule 144 promulgated under the Securities Act or any successor rule thereto.

"RULE 144A" means Rule 144A promulgated under the Securities Act or any successor rule thereto.

"RULE 424 PROSPECTUS" means a prospectus or a prospectus supplement and base prospectus prepared pursuant to a Takedown in connection with the Initial Shelf Registration Statement and/or the Subsequent Shelf Registration Statement, as filed upon request by the Initiating Holders with the SEC pursuant to Rule 424 under the Securities Act.

"SEC" means the Securities and Exchange Commission.

"SECURITIES ACT" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder as in effect at the time.

"SHELF REGISTRATION STATEMENTS" shall have the meaning given to it in Section 2.1 of this Agreement.

"SUBSEQUENT REGISTRATION STATEMENT" shall have the meaning given to in Section 2.1 of this Agreement.

"Successor Entity" is defined in the definition of "Change of Entity Transaction."

"TAKEDOWN" shall have the meaning given to it in Section 3.4 of this Agreement.

Section 1.2. CONSTRUCTION. The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." All references to Articles and Sections shall be deemed to be references to Articles and Sections of this Agreement unless the context otherwise requires. The headings of the Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context otherwise requires or provides, any reference to any agreement or other instrument or statute or regulation is to such agreement, instrument, statute or regulation as amended and supplemented from time to time (and, in the case of a statute or regulation, to any successor provision).

## **ARTICLE 2.**

### **SHELF REGISTRATION**

Section 2.1. **SHELF REGISTRATION STATEMENTS.** (a) As soon as reasonably practicable after the date hereof, the Company shall prepare and file, or cause to be filed, with the SEC a Registration Statement pursuant to Rule 415 of the Securities Act for the number of Registrable Securities specified in a notice to be provided to the Company by Sprint (the "Initial Shelf Registration").

(b) If specified in a written Demand request by the Holders pursuant to Article 3 and otherwise permitted by this Agreement (including without limitation Section 3.3), as soon as practicable after receipt of such Demand request (but in no event more than forty-five (45) days), the Company shall prepare and file, or cause to be filed, with the SEC a second Registration Statement pursuant to Rule 415 of the Securities Act for the number of Registrable Securities specified in such notice (the "Subsequent Shelf Registration," and together with the Initial Shelf Registration, the "Shelf Registration Statements") and shall otherwise comply with the provisions of Article 3, as applicable, PROVIDED, that the Subsequent Shelf Registration shall not be required to become effective prior to the expiration of the effective period of the Initial Shelf Registration. The Shelf Registration Statements shall be on Form S-3 (or any equivalent form if such form is replaced or modified by the SEC) (except that if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, such registration shall be on another appropriate form in accordance herewith).

Section 2.2. **TERMINATION OF SHELF REGISTRATIONS.** Termination of the Company's obligations pursuant to Section 2.1 hereof, including with respect to the Company's ability to terminate either of the Shelf Registration Statements prior to the end of the applicable Effectiveness Period, shall be as set forth in Article 14 hereof.

## **ARTICLE 3.**

### **DEMAND REGISTRATION**

Section 3.1. **DEMAND RIGHTS.** Subject to the other provisions of this Agreement (including without limitation Section 3.3 hereof), if the Company receives a written request from Sprint, or if Sprint is not a Holder at such time, from Holder(s) who in the aggregate hold a majority of the Registrable Securities (in either case, collectively, the "Initiating Holders") that the Company (a) file a Registration Statement under the Securities Act covering the registration of any or all of such Holder's Registrable Securities not previously registered, (b) file the Subsequent Shelf Registration Statement, or (c) effect a Takedown (each, a "Demand"), then the Company shall: (A) if the Demand relates to establishment of the Subsequent Shelf Registration pursuant to Section 3.1(b) hereof, comply with the provisions of Section 2.1(b) hereof, (B) if the Demand relates to a Takedown pursuant to Section 3.1(c) hereof, comply with the provisions of Section 3.4 hereof; and (C) if the Demand relates to a registration pursuant to Section 3.1(a) hereof, shall take the following actions: (i) within ten (10) calendar days of the receipt of such notice, give written notice of such request to all Holders of outstanding Registrable Securities

known to the Company and to any additional addressees provided to the Company by any transferee of any Holder, and (ii) subject to the limitations contained in this Article 3, as soon as practicable and in any event within forty-five (45) calendar days of the receipt of such request, file the Registration Statement to effect such registration under the Securities Act covering all Registrable Securities for which the Company receives a request from the Holders and transferees thereof within 30 days of the delivery of the notice by the Company as required in clause (i) above. The Company, however, shall not be required to file a Registration Statement pursuant to this Article 3 unless the aggregate number of Registrable Securities requested to be registered is greater than 750,000 (as adjusted to reflect stock splits, reverse stock splits, stock dividends and similar actions). The written request delivered pursuant to this Section 3.1 shall specify in detail the type of requested registration (Subsequent Shelf Registration, a Takedown or otherwise) and the number of shares, requested schedule and other applicable information.

Section 3.2. UNDERWRITING AGREEMENT. If an Initiating Holder intends to distribute the Registrable Securities covered by its Demand request by means of an underwriting, it shall so advise the Company as a part of its Demand request made pursuant to Section 3.1 hereof and the Company shall include such information in the written notice to the Holders referred to in such section. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in the underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to sell Registrable Securities through such underwriting (together with the Company as provided in Section 5.1(ix) of this Agreement and any other holder of shares of Common Stock permitted to participate in such Demand registration pursuant to this Section 3.2) shall, upon the terms and conditions agreed upon among the Company, the Initiating Holder(s) and such underwriter(s), enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Initiating Holder(s), PROVIDED that the same are underwriters of recognized national standing; FURTHER PROVIDED that such selection is subject to the approval of the Company, which shall not be unreasonably withheld). Notwithstanding any other provision of this Article 3, if the underwriter(s) advise the Initiating Holder(s) and the Company in writing that marketing or other factors require a limitation of the number of Registrable Securities to be underwritten, then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among all Holders thereof, including the Initiating Holder(s), in proportion (as nearly as practicable) to the number of Registrable Securities which each Holder requested to be included in such registration; PROVIDED, that there shall be no reduction in the number of shares included in such Demand registration by Holders of Registrable Securities until all shares (including (i) shares proposed to be sold by other holders of Shares of capital stock of the Company who have rights to or are otherwise permitted to participate in the registration and (ii) shares proposed to be sold by the Company) other than Shares of Registrable Securities proposed to be sold by Holders of Registrable Securities have been excluded from such registration. If the number of Registrable Securities to be underwritten has not been so limited, the Company may include shares of Common Stock for its own account (or for the account of other shareholders) in such registration if the underwriter(s) so agree and to the extent that, in the opinion of such underwriter(s), the inclusion of such additional shares will not adversely affect

the offering and successful marketing of the Registrable Securities included in such registration and if the number of Registrable Securities that would otherwise have been included in such registration and underwriting will not thereby be limited.

Section 3.3. LIMIT ON DEMAND RIGHTS; EFFECTIVENESS. The Company shall not be obligated to: (a) effect a total of more than four (4) Demand registrations upon the Holders' request, including without limitation the Demand used to require the Company to establish the Subsequent Shelf Registration (which Demand shall constitute one (1) of the four (4) Demand rights hereunder), and (b) cause any registration pursuant to this Article 3 to be declared effective unless at least nine (9) months have elapsed since the later of (as applicable): (i) the date on which the prior Registration Statement (other than any Shelf Registration Statement) ceased to be effective, and (ii) the date on which the prior Takedown securities offering was completed. The Company's obligations to effect any registration pursuant to this Article 3 shall be subject to Section 5.2 hereof.

Section 3.4. SHELF TAKEDOWN RIGHTS. (a) Subject to the other provisions of this Agreement (including without limitation Section 3.3 hereof), if the Company receives a Demand request that the Company prepare, in connection with an underwritten offering, a prospectus supplement to the prospectus contained in a Shelf Registration Statement pursuant to Section 3.1(c) hereof (a "Takedown Request") from Sprint (or if Sprint is not a Holder at such time, from Holder(s) who in the aggregate hold a majority of the Registrable Securities registered on such Shelf Registration) (in either case, collectively, the "Initiating Holders"), the Company shall take the actions as set forth in Section 3.4(b) below (a "Takedown").

(b) In connection with each Takedown Request, the Company shall (i) within five (5) calendar days of the receipt thereof, give written notice of such request to all Holders of outstanding Registrable Securities registered on a Shelf Registration Statement then known to the Company, (ii) subject to the limitations contained in this Article 3, as soon as reasonably practicable and in any event within fifteen (15) calendar days of the receipt of such Takedown Request, prepare a Rule 424 Prospectus (initially in preliminary form if specified in the Takedown Request) covering all Registrable Securities described in the Takedown Request and any other Registrable Securities described in responses from other Holders, and (iii) after receiving instructions to file from the Initiating Holders, file such preliminary Rule 424 Prospectus, if requested, and file the final Rule 424 Prospectus with the SEC, in each case within two (2) business days following receipt of such instructions. The Company, however, shall not be required to prepare or file a Rule 424 Prospectus pursuant to this Section 3.4 unless the aggregate number of Registrable Securities to be offered is greater than 750,000 (as adjusted to reflect stock splits, reverse stock splits, stock dividends and similar actions).

#### **ARTICLE 4.**

##### **INCIDENTAL REGISTRATION**

If at any time (but without obligation to do so) the Company proposes to register (including a registration effected by the Company for shareholders other than the Holders) any shares of Common Stock under the Securities Act in connection with the public offering of such



shares solely for cash on any form of Registration Statement that would permit the registration of Registrable Securities (other than a registration:

(i) relating solely to the sale of securities to participants in a the Company stock or stock option plan, (ii) pursuant to a Registration Statement on Form S-8 (or any successor forms) or any form that does not include substantially the same information, other than information relating to the selling shareholders or their plan of distribution, as would be required to be included in a Registration Statement covering the sale of Registrable Securities, (iii) in connection with any dividend reinvestment or similar plan, or (iv) for the sole purpose of offering securities to another entity or its security holders in connection with the acquisition of assets or securities of such entity or any similar business combinations transaction), the Company shall promptly give each Holder written notice of each such registration at least ten (10) days before the anticipated filing date of any such Registration Statement. Such notice shall describe fully the proposed method of distribution of the securities being registered. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise each of the Holders as a part of the written notice given pursuant to this Article. Upon the written request of any Holder (the "Requesting Holders") given within ten

(10) calendar days after the delivery of such notice by the Company, the Company shall cause to be registered in such registration under the Securities Act all of the Registrable Securities that such Requesting Holder has so requested to be registered. The Company may decline to file a Registration Statement after giving notice to the Requesting Holders, or withdraw a Registration Statement after filing and after such notice, but prior to the effectiveness thereof, provided that the Company shall promptly notify each Requesting Holder in writing of any such action and provided further that the Company shall bear all out-of-pocket expenses incurred by each Requesting Holder or otherwise in connection with such declined or withdrawn Registration Statement. Further, any such declination or withdrawal shall be without prejudice to the rights (if any) of the Requesting Holders immediately to request that such registration be effected as a Demand registration under Article 3. The right of any Holder to have Registrable Securities included in such Registration Statement shall be conditioned upon participation in any underwriting to the extent provided herein. The Company shall not be required to include any Registrable Securities in such underwriting unless the Holders thereof agree to enter into an underwriting agreement in customary form, and upon terms and conditions agreed upon among such Holders, the Company and the underwriter(s), with the underwriter(s) selected by the Company. In the event that the underwriter(s) shall advise the Company that marketing or other factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto. If the underwriters so advise the Company, then, subject to the following sentence, the underwriter(s) may subsequent to such notification exclude some or all of the Registrable Securities from such underwriting and the number of Registrable Securities, if any, that may be included in the underwriting shall be allocated among all Holders thereof in proportion (as nearly as practicable) to the number of Registrable Securities which each Holder requested be included in such registration (an "Underwriter Cutback"). No Registrable Securities of any Holder shall be excluded from such underwriting pursuant to an Underwriter Cutback unless all securities proposed to be included in such underwriting (other than the Primary Securities) are similarly excluded on a pro rata basis from such underwriting. Nothing in this Article 4 is intended to diminish the number of shares to be sold by the Company in such underwriting if its a Company-initiated underwriting. The Company and the underwriter(s)

selected by the Company shall make all determinations with respect to the timing, pricing and other matters related to the offering, provided that no Holder shall be obligated to sell any Registrable Securities in such offering and may be withdrawn at any time for any reason, including a disagreement with respect to the timing, pricing and other matters related to the offering.

## **ARTICLE 5.**

### **REGISTRATION PROCEDURE**

Section 5.1. Whenever required under this Agreement to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably practicable:

(i) Prepare and file with the SEC as soon as practicable the requisite Registration Statement with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become effective as promptly as practicable, and keep such Registration Statement continuously effective for at least (x) in the case of a Shelf Registration Statement, two (2) years (subject to the following proviso) from the date such Shelf Registration is declared effective by the SEC (the "Shelf Effectiveness Period"); PROVIDED, HOWEVER, that such two

(2) year time period shall be extended for a period of time equal to the length of any Blackout or Demand Prohibition pursuant to Section 5.2 hereof or any Holder Lockup Period pursuant to Section 13.2 hereof or any discontinuance period pursuant to Section 6.2 hereof, and (y) in the case of a registration pursuant to Section 3.1 hereof, one hundred twenty (120) calendar days; PROVIDED, however, that no Registration Statement need remain effective after all Registrable Securities covered thereby have been sold and the confirmation of sale and prospectus delivery requirements of the Securities Act and applicable state securities or blue sky laws have been effected.

(ii) Furnish to each Holder and to any underwriter, before filing with the SEC, copies of any Registration Statement (including all exhibits) and any prospectus forming a part thereof and any amendments and supplements thereto (including all documents incorporated or deemed incorporated by reference therein prior to the effectiveness of such Registration Statement and including each preliminary prospectus, any summary prospectus or any term sheet (as such term is used in Rule 434(e) under the Securities Act)) and any other Rule 424 Prospectus, which documents, other than documents incorporated or deemed incorporated by reference, will be subject to the review of the Holders and any such underwriter for a period of at least two business days. The Company shall not file any such Registration Statement or such prospectus or any amendment or supplement to such Registration Statement or prospectus to which any Holder or any such underwriter shall reasonably object within two business days after the receipt thereof. A Holder or such underwriters, if any, may only object to such filing if the Registration Statement, amendment, prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission.

(iii) Prepare and file with the SEC such amendments and supplements to the applicable Registration Statement, prospectus, prospectus supplement and/or the Rule 424 Prospectus used in connection with such Registration Statement and/or Takedown, as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement or to be disposed of in such Takedown.

(iv) Furnish to the Holders of Registrable Securities to be registered and to any underwriter, without charge, such number of copies of a prospectus, including each preliminary prospectus, summary prospectus or term sheet, and any amendment or supplement thereto as they may, from time to time, reasonably request and a reasonable number of copies of the then-effective Registration Statement and any post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference).

(v) To the extent practicable, promptly prior to the filing of any document that is to be incorporated by reference into any Registration Statement or prospectus forming a part thereof subsequent to the effectiveness thereof, and in any event no later than the date such document is filed with the SEC, provide copies of such document to the Holders of Registrable Securities covered thereby and any underwriter and make representatives of the Company available for discussion of such document and other customary due diligence matters, and include in such document prior to the filing thereof such information as any Holder or any such underwriter may reasonably request.

(vi) Use its reasonable best efforts (x) to register and qualify the securities covered by such Registration Statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders, (y) to keep such registration or qualification in effect for so long as the applicable Registration Statement remains in effect, and (z) to take any other action which may be reasonably necessary or advisable to enable such Holders to consummate the disposition in such jurisdictions of the securities to be sold by such Holders; PROVIDED, however, that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions where it would not otherwise be required to so qualify to do business or consent to service of process or subject itself to taxation in any such jurisdiction.

(vii) Use its reasonable best efforts to cause all Registrable Securities covered by such Registration Statement to be registered with or approved by such other federal or state governmental agencies or authorities as may be necessary in the opinion of counsel to the Company and counsel to the Holders of Registrable Securities to enable the Holders thereof to consummate the disposition of such Registrable Securities.

(viii) Cooperate with the Holders of Registrable Securities and each underwriter participating in the disposition of such Registrable Securities and their respective counsel

in connection with any filings required to be made with the National Association of Securities Dealers, Inc.

(ix) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering, with such terms and conditions as the Company, the Holders and the underwriter(s) may reasonably agree, including customary indemnification and contribution obligations of the type contemplated by Article 9 hereof. The Company agrees to cause the participation by senior management of the Company in such meetings with and presentations (including the provision of all customary information in connection therewith) to investors, analysts, investment banking firms and other institutions as are usual and customary in connection with the public offering of registered securities by companies similar to the Company. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement; provided, that no Holder shall be required to make any representation concerning information in a Registration Statement that is more broad than the information for which such Holder has agreed to provide indemnity under Section 9.2.

(x) Promptly notify each Holder of Registrable Securities covered by a Registration Statement (A) upon discovery that, or upon the happening of any event as a result of which, the prospectus forming a part of such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, (B) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or the initiation of proceedings for that purpose, (C) of any request by the SEC for (1) amendments to such Registration Statement or any document incorporated or deemed to be incorporated by reference in any such Registration Statement, (2) supplements to any prospectus forming a part of such Registration Statement or (3) additional information, or (D) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, and at the request of any such Holder promptly prepare, file with the SEC and other required agency, and furnish to it a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary or take other action so that, as applicable, (a) as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (b) such stop order is lifted at the earliest possible time, or the proceedings that might otherwise lead to a stop order are terminated at the earliest practicable time, (c) such request by the SEC is satisfied, or (d) such suspension is lifted at the earliest possible time.

(xi) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of any such registration, or the lifting of any suspension of

the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction.

(xii) If requested by any Initiating Holder, or any underwriter, promptly incorporate in such Registration Statement or prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as the Initiating Holder and any underwriter may reasonably request to have included therein, including information relating to the "plan of distribution" of the Registrable Securities, information with respect to the principal amount or number of shares of Registrable Securities being sold to such underwriter, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering and make all required filings of any such prospectus supplement or post-effective amendment as soon as practicable after the Company is notified of the matters to be incorporated in such prospectus supplement or post-effective amendment.

(xiii) Otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least 12 months, but not more than 18 months, beginning after the effective date of such Registration Statement, which earnings statement shall satisfy the provision of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder.

(xiv) Provide promptly to the Holders upon request any document filed by the Company with the SEC pursuant to the requirements of Section 13 and Section 15 of the Exchange Act.

(xv) Cause all Registrable Securities covered by the Registration Statement to be listed on each securities exchange or automated quotation system on which shares of the Common Stock is then listed. If any of such shares are not so listed, the Company shall cause such shares to be listed on the securities exchange or automated quotation system as may be reasonably requested by the Holders of a majority of the Registrable Securities being registered.

(xvi) Furnish to the Holders, at the request of any Holder participating in a registration pursuant to this Agreement, (A) an opinion of counsel representing the Company for the purposes of such registration addressed to such Holder and dated the date of the closing under the underwriting agreement, if any, or the date of effectiveness of the Registration Statement if such registration is not an underwritten offering, and (B) if such accountant will render such letter to such Holders, a "comfort" letter from independent certified public accountants of the Company who have certified the Company's financial statements included in such registration with respect to events included in and subsequent to the date of such financial statements, in each case to be dated such date and to be in form and substance as is customarily given by counsel or independent certified public accountants, as the case may be, to underwriters in an underwritten public offering, addressed to the underwriters.

(xvii) Permit a representative of any Holder of Registrable Securities, any underwriter participating in any disposition pursuant to such registration, and any attorney or accountant retained by such Holder or underwriter, to participate, at each Person's own expense, in the preparation of the Registration Statement or Rule 424 Prospectus, as applicable, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, underwriter, attorney or accountant in connection with such registration; PROVIDED, HOWEVER, that such representatives, underwriters, attorneys or accountants enter into a confidentiality agreement, in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information.

(xviii) Promptly notify the Holders and any underwriter when any Registration Statement filed pursuant to this Agreement is declared effective.

Section 5.2. Notwithstanding anything to the contrary in this Agreement, upon the receipt of a Demand request pursuant to Section 3.1 (or, if any such registration transaction is pending, at any time prior to the actual commencement of the 'road show' for such offering, and if a road show is not to be utilized, at any time prior to the printing of preliminary prospectuses for such offering, and if no preliminary prospectuses are to be utilized, then prior to the pricing of such offering), the Company may delay or suspend any Demand registration (or withdraw any pending Demand registration, if such a withdrawal is required by the SEC, provided, that if a registration is withdrawn, then at the end of the applicable Blackout period, the Company shall effect a new Demand Registration pursuant to the terms of this Agreement for such offering, which shall not be deemed to utilize a Demand right), and at any time during the effectiveness of such Shelf Registration the Company may suspend sales under such Shelf Registration Statement, in either case for a period not exceeding one hundred and twenty (120) calendar days (each, a "Blackout") if: (i) the Company intends in good faith to raise capital or commence the process to raise capital in the capital markets within such Blackout period; PROVIDED that this basis for a Blackout may be utilized only during the period of five (5) business days or seven (7) calendar days (whichever is longer) after the Company receives the applicable Demand request pursuant to Section 3.1, or (ii) if the Company in its good faith judgment determines that such registration would adversely affect any other contemplated material corporate event (including without limitation, requiring the premature disclosure of such event); PROVIDED that there shall be no more than three (3) Blackouts during any two (2) year period. In addition to the above Blackout rights, no request for a Demand may be submitted to the Company (and if so submitted, such Demand shall be rejected by the Company) during each and any of the following periods: (i) beginning on the date of filing with the SEC by the Company of any registration statement under the Securities Act covering Common Stock (including without limitation registrations on Form S-4 related to business combinations, but excluding registrations on Form S-8 and registrations pursuant to Rule 415, including without limitation those relating to dividend reinvestment programs), and ending at the closing or termination of the offering or other transaction contemplated by such registration statement (each such period, a "Demand Prohibition").

## **ARTICLE 6.**

### **CERTAIN HOLDER OBLIGATIONS**

Section 6.1. **INFORMATION FROM HOLDERS.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Agreement with respect to any Registrable Securities that the Holder of such securities furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

Section 6.2. **DISCONTINUANCE.** Each Holder agrees that, upon receipt of any notice from the Company pursuant to Section 5.1(x) hereof (other than Section 5.1(x)(C)(3), such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the then current prospectus until (i) such Holder is advised in writing by the Company that a new Registration Statement covering the reoffer of Registrable Securities has become effective under the Securities Act, or (ii) such Holder receives copies of a supplemented or amended prospectus contemplated by Article 5 which addresses any additional information, including material nonpublic information, required to be disclosed therein, or until such Holder is advised in writing by the Company that the use of the prospectus may be resumed. The Company shall use its reasonable best efforts to limit the duration of any discontinuance of disposition of Registrable Securities pursuant to this paragraph.

## **ARTICLE 7.**

### **REGISTRATION EXPENSES**

In the case of any Demand registration or any offering pursuant to a Takedown, each pursuant to Article 3, or any incidental registration pursuant to Article 4, the Company shall pay all Registration Expenses. Notwithstanding the foregoing, if as a result of the withdrawal of a request for registration pursuant to Article 3 by any of the Holders, as applicable, the Registration Statement does not become effective, the Holders and the other stockholders requesting registration may elect to bear the Registration Expenses (pro rata on the basis of the number of their shares included in the registration request, or on such other basis as such Holders and other stockholders may agree), in which case such registration shall not be counted as a registration requested under Section 3.3.

## **ARTICLE 8.**

### **EFFECTIVENESS OF REGISTRATION**

A registration requested pursuant to Article 3 will not be deemed to have been effected if (i) the Registration Statement has not been kept effective for the period required under Section 5.1(i) of this Agreement, (ii) the offering of Registrable Securities pursuant to such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other

governmental agency or court, (iii) the conditions to the closing of any such registration that is underwritten are not satisfied, unless such conditions have not been satisfied by the Holders participating in the underwriting, or (iv) the Company has not complied with the terms of this Agreement, including Article 5.

## ARTICLE 9.

### INDEMNIFICATION AND CONTRIBUTION

Section 9.1. In the event any Registrable Securities are included in a Registration Statement pursuant to this Agreement, the Company will indemnify and hold harmless each Holder, each Person, if any, who "controls" such Holder (within the meaning of the Securities Act or the Exchange Act) and their respective directors, officers, employees and agents against all losses, claims, damages, or liabilities, joint or several, or actions in respect thereof to which such Holder or other Person entitled to indemnification hereunder may become subject under the Securities Act, the Exchange Act, state securities or blue sky law, common law or otherwise, insofar as such losses, claims, damages, liabilities or actions in respect thereof arise out of, or are based upon, any untrue statement or alleged untrue statement of any material fact contained in such Registration Statement, any related preliminary prospectus, or any related prospectus or any amendment or supplement thereto, offering circular or other document (including any related notification or the like) incident to any such registration, qualification or compliance, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of the Securities Act, the Exchange Act, state securities or blue sky law, common law or otherwise and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, and the Company will reimburse each such Holder or other Person entitled to indemnification hereunder for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; PROVIDED, however, that the Company will not be so liable to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, an untrue statement or alleged untrue statement of a material fact or an omission or alleged omission to state a material fact in such Registration Statement, such preliminary prospectus, or such prospectus, or any such amendment or supplement thereto, offering circular or other document (including any related notification or the like) incident to any registration, qualification or compliance, in reliance upon, and in conformity with, written information furnished to the Company by the Holder specifically for use therein. The Company will also indemnify underwriters and dealer managers participating in the distribution, each Person who "controls" such Persons (within the meaning of the Securities Act or the Exchange Act), and their respective officers, directors, employees and agents to the same extent as provided above with respect to the indemnification of the Holders, if so requested, except (i) with respect to information furnished in writing specifically for use in any prospectus or Registration Statement by any selling Holders or any such underwriters, or (ii) to the extent that any such loss, claim, damage, liability or action is solely attributable to such underwriter's failure to deliver a final prospectus (or amendment or supplement thereto) that corrects a material misstatement or omission contained in the preliminary prospectus (or final prospectus).



Section 9.2. With respect to written information furnished to the Company by a Holder specifically for use in a Registration Statement, any related preliminary prospectus, or any related prospectus or any supplement or amendment thereto, offering circular or other document (including any related notification or the like) incident to any registration, qualification or compliance, if Registrable Securities held by it are included in the securities as to which such registration, qualification or compliance is being effected, such Holder will severally indemnify and hold harmless the Company and its directors, officers, employees, agents and each Person, if any, who "controls" the Company (within the meaning of the Securities Act or the Exchange Act) and any other Holder against any losses, claims, damages or liabilities, joint or several, or actions in respect thereof, to which the Company or such other Person entitled to indemnification hereunder may become subject under the Securities Act, the Exchange Act, state securities or blue sky laws, common law or otherwise, insofar as such losses, claims, damages, liabilities or actions in respect thereof arise out of, or are based upon, any untrue statement or alleged untrue statement of any material fact contained in such Registration Statement, such preliminary prospectus, or such prospectus, or any such amendment or supplement thereto, offering circular or other document (including any related notification or the like) incident to any registration, qualification or compliance, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; and such Holder will reimburse the Company and such other Persons for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action, in each case to the extent, but only to the extent, that the same arises out of or is based upon, an untrue statement or alleged untrue statement of material fact or an omission or alleged omission to state a material fact in such Registration Statement, such preliminary prospectus, or such prospectus or any such amendment or supplement thereto in reliance upon, and in conformity with, such written information; provided, however, that the obligations of each of the Holders hereunder shall be limited to an amount equal to the net proceeds to such Holder of Registrable Securities sold as contemplated herein. The Company shall be entitled to receive indemnities from underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, to the same extent as provided above with respect to the information so furnished in writing by such Persons specifically for inclusion in any prospectus or Registration Statement. The Holder will also indemnify underwriters and dealer managers participating in the distribution and each Person who "controls" such Persons (within the meaning of the Securities Act or the Exchange Act), their officers, directors, employees and agents to the same extent as provided herein with respect to the indemnification of the Company, if so requested.

Section 9.3. Promptly after receipt by an indemnified Party of notice of any claim or the commencement of any action or proceeding involving a claim referred to in Sections 9.1 and 9.2, the indemnified Party will, if a claim in respect thereof is to be made against the indemnifying Party, notify the indemnifying Party in writing of the claim or the commencement of that action; PROVIDED, however, that the failure to notify the indemnifying Party will not relieve it from any liability that it may have to the indemnified Party except to the extent it was actually damaged or suffered any loss or incurred any additional expense as a result thereof. If any such claim or action is brought against an indemnified Party, and it notifies the indemnifying Party thereof, the indemnifying Party will be entitled to assume the defense thereof with counsel

selected by the indemnifying Party and reasonably satisfactory to the indemnified Party. After notice from the indemnifying Party to the indemnified Party of its election to assume the defense of such claim or action, (i) the indemnifying Party will not be liable to the indemnified Party for any legal or other expense subsequently incurred by the indemnified Party in connection with the defense thereof, (ii) the indemnifying Party will not be liable for the costs and expenses of any settlement of such claim or action unless such settlement was effected with the written consent of the indemnifying Party or the indemnified Party waived any rights to indemnification hereunder in writing, in which case the indemnified Party may effect a settlement without such consent, and (iii) the indemnified Party will be obligated to cooperate with the indemnifying Party in the investigation of such claim or action; PROVIDED, however, that the indemnified Party who may be subject to liability arising out of any claim in respect of which indemnity may be sought by such indemnified Party against the Company may employ its own counsel if such indemnified Party has been advised by counsel in writing that, in the reasonable judgment of such counsel, it is advisable for such indemnified Party to be represented by separate counsel due to the presence of actual or potential conflicts of interest, and in that event the fees and expenses of such separate counsel will also be paid by the Company; provided that the Company shall not be liable for the reasonable fees and expenses of more than one separate counsel at any time for all such indemnified parties. An indemnifying Party shall not, without the prior written consent of the indemnified parties, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes a release of such indemnified Party reasonably acceptable to such indemnified Party from all liability arising out of such claim, action, suit or proceeding and unless the indemnifying Party shall confirm in a written agreement reasonably acceptable to such indemnified Party, that notwithstanding any federal, state or common law, such settlement, compromise or consent shall not adversely affect the right of any indemnified Party to indemnification or contribution as provided in this Agreement.

Section 9.4. If for any reason the indemnification provided for in Sections 9.1 or 9.2 is unavailable to an indemnified Party or is insufficient to hold such indemnified Party harmless as contemplated therein, then the indemnifying Party shall contribute to the amount paid or payable by the indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the indemnifying Party and the indemnified Party, but also the relative fault of the indemnifying Party and the indemnified Party, as well as any other relevant equitable considerations. The relative fault of the indemnifying Party and of the indemnified Party shall be determined by reference to, among other things, whether the untrue (or alleged untrue) statement of a material fact or the omission (or alleged omission) to state a material fact relates to information supplied by the indemnifying Party or by the indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission, PROVIDED, however, that the obligations of each of the Holders hereunder shall be limited to an amount equal to the net proceeds to such Holder of Registrable Securities sold as contemplated herein. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall

be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 9.5. The obligations under this Article 9 shall survive the completion of any offering of Registrable Securities in a Registration Statement pursuant to this Agreement, and otherwise.

Section 9.6. Notwithstanding the foregoing provisions of this Article 9, to the extent that the provisions regarding indemnification and contribution contained in the underwriting agreement entered into in connection with any underwritten public offering contemplated by this Agreement are in conflict with the foregoing provisions, the provisions in such underwriting agreement shall be controlling, provided that each Holder, each Person, if any, who controls such Holder (within the meaning of the Securities Act or the Exchange Act) and their respective directors, officers, employees and agents receive protection at least as extensively and are subject to obligations that are no more extensive, than those set forth in this Article 9.

## **ARTICLE 10.**

### **REPORTS UNDER EXCHANGE ACT**

With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration, the Company agrees that so long as the Company is subject to the reporting requirements of the Exchange Act, to:

(i) Make and keep public information available, as those terms are understood and defined in Rule 144;

(ii) File with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(iii) Furnish to any Holder, so long as the Holder owns any Registrable Securities, upon request (a) a written statement by the Company as to its compliance with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (b) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (c) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

## **ARTICLE 11.**

### **ASSIGNMENT OF REGISTRATION RIGHTS**

The Holders' rights pursuant to this Agreement may not be assigned or transferred by any Holder without the consent of the Company, PROVIDED, that (i) such consent is not required for assignments or transfers to Affiliates of Sprint or any transfer pursuant to any merger or sale of

all or substantially all of the assets of Sprint or any such Affiliate, (ii) that as a condition to any such assignment or transfer, Sprint shall cause such Affiliate or other appropriate Person to execute a signature page to, and become bound by, this Agreement, and (iii) a Holder transferring less than all of its Registrable Securities (or Securities convertible into Registrable Securities) hereunder shall retain registration rights as to its remaining shares. Such an assignment or transfer shall be in accordance with all applicable securities laws. Notwithstanding any permitted assignments pursuant to this Article 11 or otherwise, the Company's registration obligations under this Agreement (including without limitation the provisions of Article 2, Article 3 and Article 4) shall not be extended, increased or modified in any manner as a result of any such assignment, which obligations shall remain collectively as set forth in this Agreement.

## **ARTICLE 12.**

### **AMENDMENT OF REGISTRATION RIGHTS**

Any provision of this Agreement may be amended or the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of a majority of Registrable Securities then outstanding. Notwithstanding the foregoing, a waiver of or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a registration and that does not directly or indirectly affect the rights of other Holders of Registrable Securities may be given by Holders of a majority of the Registrable Securities being sold by such Holders; PROVIDED, HOWEVER, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. Any amendment or waiver effected in accordance with this Section shall be binding upon each Holder of any Registrable Securities, each future Holder of such Registrable Securities and the Company.

## **ARTICLE 13.**

### **LOCKUP AGREEMENTS**

Section 13.1. COMPANY LOCKUP. If a Demand registration effected for a Holder hereunder involves an underwritten offering, then if requested by the lead underwriters for such offering, the Company agrees that it shall not, directly or indirectly, offer, sell or otherwise transfer or dispose of, or file a registration statement under the Securities Act relating to any offer to sell, any of its Common Stock or securities convertible or exercisable for its Common Stock (other than such registration for Holder), and shall not publicly announce any intention to do any of the foregoing, for a period of up to five (5) calendar days prior to and up to ninety (90) calendar days after (a) the effective date of such Registration Statement, in the case of a Demand pursuant to Section 3.1, and (b) the date of the Rule 424 Prospectus, in the case of a Demand pursuant to Section 3.4.

Section 13.2. **HOLDER LOCKUP.** Each Holder, if requested by the lead underwriters of an underwritten public offering pursuant to Article 2 or Article 3 or in which such Holder participates pursuant to Article 4, agrees not to, directly or indirectly, offer, sell or otherwise transfer or dispose of any Common Stock held by such Holder or securities convertible into or exercisable for such Common Stock (other than Registrable Securities included in such registration) without the prior written consent of the Company or such lead underwriter, during a period of up to five (5) calendar days prior to the pricing of such public offering and up to ninety (90) days after the effective date of any underwritten registration of the Company's securities effected pursuant to Articles 2, 3 or 4 (a "Holder Lockup Period"). Such agreement shall be in writing in form satisfactory to the Company and such underwriter, and may be included in the underwriting agreement. The Company may impose stop-transfer instructions with respect to the securities subject to the foregoing restriction until the end of the required lock up period. If, in any underwritten offering in which a Holder exercises its incidental registration rights pursuant to Article 4 hereof, the number of such Holder's shares of Registrable Securities allowed to be included in such registration is reduced by an Underwriter Cutback as permitted thereunder (an "Underwriter Reduced Registration") resulting in (i) the reduction of the total number of Holder's Registrable Securities to be registered by fifty percent (50%) or more and (ii) the number of Registrable Securities included in the Registration Statement held by the Holders is less than 12.5% of the total amount of Registrable Securities included in such Registration Statement, then such Holder shall be exempted from the provisions of this Section 13.2 for purposes of such offering.

#### **ARTICLE 14.**

#### **TERMINATION OF REGISTRATION RIGHTS**

If the number of shares of Registrable Securities owned by the Holders, including shares of Common Stock the Holders have the right to receive upon conversion of all the Convertible Preferred Stock and after the expiration of any applicable "top up rights" as set forth in Section 3.01 of the Governance Agreement, represents less than three percent (3%) of the Company's total issued and outstanding shares of Common Stock at such time, then all of such Holder's registration rights under this Agreement relating to such Registrable Securities shall terminate immediately, and shall not be reinstated under any circumstances, including without limitation if the Holders subsequently acquire additional securities that raise the Holders over such 3% threshold.

#### **ARTICLE 15.**

#### **MISCELLANEOUS**

Section 15.1. **CONFIDENTIAL INFORMATION.** No Holder may use any confidential information received by it pursuant to this Agreement in violation of applicable law or reproduce, disclose, or disseminate such information to any other Person (other than its employees or agents having a need to know the contents of such information and its accountants and attorneys), except to the extent reasonably related to the exercise of rights under this Agreement, unless (i) such information has been made available to the public generally (other than by such recipient

in violation of this Section 15.1), or (ii) such recipient is required to disclose such information by a governmental body, regulatory agency or subpoena or by law in connection with a transaction that is not otherwise prohibited hereby and, to the extent possible, the Company is given a reasonable opportunity to obtain injunctive relief or a protective order to maintain the confidentiality of such information.

Section 15.2. NOTICES. Unless otherwise provided herein, any notice, request, waiver, instruction, consent or document or other communication required or permitted to be given by this Agreement shall be effective only if it is in writing and (a) delivered by hand or sent by certified mail, return receipt requested, (b) if sent by a nationally-recognized overnight delivery service with delivery confirmed, or (c) if telexed or telecopied, with receipt confirmed as follows:

Company:	EarthLink, Inc. 1430 West Peachtree St. Atlanta, GA 30309 Attn: Chief Executive Officer Telecopy No.: (404) 287-4908
with a copy to	Hunton & Williams Bank of America Plaza, Suite 4100 600 Peachtree Street, N.E. Atlanta, Georgia 30308-2216 Attn: Scott M. Hobby, Esq. Telecopy No.: (404) 888-4190
Sprint:	Sprint Corporation 2330 Shawnee Mission Parkway Westwood, Kansas 66205 Attn: Chief Financial Officer Telecopy No.: (913) 624-8426
with a copy to:	Sprint Corporation 2330 Shawnee Mission Parkway Westwood, Kansas 66205 Attn: Corporate Secretary Telecopy No.: (913) 624-2256
with an additional copy to:	King & Spalding 191 Peachtree Street Atlanta, Georgia 30303 Attn: Michael J. Egan III Telecopy No.: (404) 572-5100

The Parties shall promptly notify each other of any change in their respective addresses or facsimile numbers or of the Person or office to receive notices, requests or other communications

under this Section 15.2. Notice shall be deemed to have been given as of the date when so personally delivered, when physically delivered by the U.S. Postal Service at the proper address, the next day when delivered during business hours to an overnight delivery service properly addressed or when receipt of a telex or telecopy is confirmed, as the case may be, unless the sending Party has actual "knowledge" that such notice was not received by the intended recipient. "Knowledge", for purposes hereof, shall mean the actual knowledge of any of the executive officers and directors of a Party without any duty to inquire or attribution of knowledge from any other person to the person in such capacity.

Section 15.3. ENTIRE AGREEMENT. This Agreement embodies the entire agreement and understanding of the Parties in respect to the matter contemplated hereby and supersedes and renders null and void all other prior agreements and understandings, written and oral, with respect to the subject matter hereof, PROVIDED that this provision shall not abrogate any other written agreement executed simultaneously with this Agreement by one or more of the Parties to the Governance Agreement with respect to the Parties signing such other agreement. No Party shall be liable or bound to any other Party in any manner by any promises, conditions, representations, warranties, covenants, agreements and understandings, except as specifically set forth herein.

Section 15.4. WAIVER. Except as otherwise permitted in this Agreement, the terms or conditions of this Agreement may not be waived unless set forth in a writing signed by the Party entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of such provision at any time in the future or a waiver of any other provision hereof. The rights and remedies of the Parties are cumulative and not alternative. Except as otherwise provided in this Agreement, neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement, or any of the Ancillary Agreements or the documents referred to in this Agreement or therein will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

Section 15.5. SUCCESSORS AND ASSIGNS. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned or transferred, in whole or in part, by any of the Parties without the prior written consent of the other Parties except as set forth in Article

11. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns; provided, that in connection with any Change of Entity Transaction, the Company will cause the Successor Entity, at or prior to the consummation of the Change of Entity Transaction, to assume and agree to be bound by all of the Company's obligations under this Agreement, and the Company shall deliver to Sprint an agreement executed by a duly authorized officer of the Successor Entity to such effect. In such event, all references to the Company in this Agreement shall be deemed to be references to the Successor Entity.

Section 15.6. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Delaware, without regard to conflict of laws principles.

Section 15.7. SEVERABILITY. If any term or provision of this Agreement or the application thereof to either Party or set of circumstances shall, in any jurisdiction and to any extent, be finally held invalid or unenforceable, such term or provision shall only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms or provisions of this Agreement or under any other circumstances, and the Parties shall negotiate in good faith a substitute provision which comes as close as possible to the invalidated or unenforceable term or provision, and which puts each Party in a position as nearly comparable as possible to the position it would have been in but for the finding of invalidity or unenforceability, while remaining valid and enforceable.

Section 15.8. NO INCONSISTENT AGREEMENTS. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement.

Section 15.9. REMEDIES. The Parties hereto recognize and agree that immediate irreparable damages for which there is no adequate remedy at law would occur in the event that any provision of this Agreement is not performed in accordance with the specific terms hereof or is otherwise breached. It is accordingly agreed that in the event of a failure by a Party to perform its obligations under this Agreement, the non-breaching Party shall be entitled to specific performance through injunctive relief to prevent breaches of the provisions of this Agreement and to enforce specifically the provisions of this Agreement in any action instituted in any court having subject matter jurisdiction, in addition to any other remedy to which such Party may be entitled, at law or in equity.

Section 15.10. COUNTERPARTS. This Agreement may be executed in one or more counterparts each of which when so executed and delivered shall for all purposes be deemed to be an original but all of which, when taken together, shall constitute one and the same Agreement.

Section 15.11. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, shall create or confer upon any Person (including but not limited to any employees), other than the Parties or their respective successors and permitted assigns, any legal or equitable rights, remedies, obligations, liabilities or claims under or with respect to this Agreement, except as expressly provided herein.

Section 15.12. INTERPRETATION. Each Party is a sophisticated legal entity that was advised by experienced counsel and, to the extent it deemed necessary, other advisors in connection with this Agreement. Accordingly, each Party hereby acknowledges that no Party has relied or will rely in respect of this Agreement or the transactions contemplated hereby upon any document or written or oral information previously furnished to or discovered by it or its representatives, other than this Agreement.

(a) No provision of this Agreement shall be interpreted in favor of or against either of the Parties by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.



Section 15.13. EXCLUSIVE JURISDICTION AND CONSENT TO SERVICE OF PROCESS. The Parties agree that any Action arising out of or relating to this Agreement, shall be brought by the Parties and held and determined only in a Delaware state court or a federal court sitting in that State which shall be the exclusive venue of any such Action. Each Party waives any objection which such Party may now or hereafter have to the laying of venue of any such Action, and irrevocably consents and submits to the jurisdiction of any such court (and the appropriate appellate courts) in any such Action. Any and all service of process and any other notice in any such Action shall be effective against such Party when transmitted in accordance with Section 15.02. Nothing contained herein shall be deemed to affect the right of any Party to serve process in any manner permitted by Law. "Action," for purposes hereof, shall mean any action, suit, arbitration, inquiry, proceeding or investigation by or before any federal, state, foreign or local government, any of its subdivisions, administrative agencies, authorities, commissions, boards or bureaus, or any federal, state, foreign or local court or tribunal, or any arbitrator.

Section 15.14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR ANY OTHER ANCILLARY AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER OR THEREUNDER.

IN WITNESS WHEREOF, the parties have caused their respective duly authorized officers to execute this Agreement as of the day and year first above written.

**EARTHLINK, INC.**

By: /s/  
-----  
Name: -----  
Title: -----

**SPRINT CORPORATION**

By: /s/  
-----  
Name: -----  
Title: -----

**SPRINT COMMUNICATIONS COMPANY L.P.**

By: U. S. Telecom, Inc., General Partner

By: /s/  
-----  
Name: -----  
Title: -----

**[SIGNATURE PAGE FOR AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT]**

## **Exhibit 21.1**

### **Subsidiaries of the Registrant**

- 1) EarthLink Operations, Inc., a Delaware corporation.
- 2) EarthLink/OneMain, Inc., a Delaware corporation.

**EXHIBIT 23.1**

**CONSENT OF INDEPENDENT AUDITORS**

We consent to the incorporation by reference in the Registration Statements on Form S-3 No. 333-48100, dated October 17, 2000, Form S-8 No. 333-39456, dated June 16, 2000, Form S-8 No. 333-34810, dated April 14, 2000 and Form S-8 No. 333-30024, dated February 10, 2000 of EarthLink, Inc. and in the related Prospectuses of our report dated January 29, 2001, with respect to the consolidated financial statements of EarthLink, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2000.

*/s/ Ernst & Young LLP*

*Atlanta, Georgia*

*March 8, 2001*

**EXHIBIT 23.2**

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-48100) and Form S-8 (Nos. 333-34810, 333-39456, and 333-30024) of EarthLink, Inc. and its subsidiary of our report dated March 28, 2000 relating to the consolidated financial statements as of December 31, 1999 and each of the two years in the period ended December 31, 1999, which appears in this Form 10-K.

**PricewaterhouseCoopers LLP**

Century City, California

March 5, 2001

**EXHIBIT 23.3**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation by reference of our reports dated February 7, 2000 on the financial statements of MindSpring Enterprises, Inc. included in this Form 10-K of EarthLink, Inc.'s into EarthLink Inc.'s previously filed Registration Statements (No. 333-39456, 333-48100, 333-30024, and 333-34810).

*/s/ Arthur Andersen LLP*

*Atlanta, Georgia*

*March 5, 2001*

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