

# EARTHLINK INC

## FORM 8-K (Current report filing)

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Address	1375 PEACHTREE STREET SUITE 400 ATLANTA, Georgia 30309
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Industry	Computer Services
Sector	Technology
Fiscal Year	12/31

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

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**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported): **August 27, 2007**

**EARTHLINK, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State of Incorporation)

**001-15605**  
(Commission File Number)

**58-2511877**  
(I.R.S. Employer Identification No.)

**1375 Peachtree St., Atlanta, Georgia 30309**  
(Address of principal executive offices) (Zip Code)

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

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(Former name, former address and former fiscal year, if changed since last report date)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 2.05 Costs Associated with Exit or Disposal Activities.**

On August 28, 2007, the Board of Directors of EarthLink, Inc. (the “Company”) approved a restructuring plan (the “Plan”). The Plan is intended to reduce operating costs and improve the efficiency of the Company’s organization. The Plan is the result of a comprehensive review of operations within and across the Company’s functions and businesses. Under the Plan, the Company will reduce its workforce by approximately 900 employees, consolidate its office facility in Atlanta, Georgia and close office facilities in Orlando, Florida; Knoxville, Tennessee; Harrisburg, Pennsylvania and San Francisco, California. The Plan will begin immediately and be phased throughout the remainder of the year.

In connection with the Plan, the Company expects to record total facility exit and restructuring costs of approximately \$60 to \$70 million, including \$30 to \$35 million for severance and personnel-related costs, \$10 to \$15 million for lease termination and facilities-related costs, \$8 to \$10 million for non-cash asset write-offs and \$8 to \$10 million for other associated costs. Cash expenditures for facility exit and restructuring costs are expected to be primarily paid during the third and fourth quarters of fiscal year 2007 and the first quarter of fiscal year 2008, but certain cash payments associated with facilities-related costs will be paid in later periods over the various remaining lease terms.

## **5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

### **Appointment of Chief Operating Officer**

On August 27, 2007, the Company appointed Joseph M. Wetzel, age 51, as the Company’s Chief Operating Officer.

Mr. Wetzel has been self-employed since 2006. Mr. Wetzel served as the president and chief operating officer of Mpower Holding Corporation from July 2001 until its merger with a subsidiary of U.S. TelePacific Holdings Corp. in 2006. Prior to that, Mr. Wetzel served as president of operations of Mpower Holding Corporation from August 2000 through July 2001. He also served on the board of directors of Mpower Holding Corporation from March 2002 until April 2003. From 1997 to 2000, Mr. Wetzel was vice president of technology with MediaOne Group and from 1993 to 1997 was vice president of technology with MediaOne’s multimedia group. From 1977 to 1993, Mr. Wetzel served in a number of technology and operational leadership positions within US West Companies.

In connection with his appointment as Chief Operating Officer, the Company entered into an employment agreement with Mr. Wetzel, dated August 27, 2007. The employment agreement has a term of one year, which will automatically be extended from year-to-year thereafter subject to termination of Mr. Wetzel’s employment as set forth in the employment agreement. The employment agreement provides for an annual base salary of \$400,000 per year. The employment agreement provides that Mr. Wetzel will receive a bonus of 65% of his earned salary for 2007. For fiscal years beginning after 2007, the employment agreement provides for a target bonus opportunity of 65% of his eligible earnings, which will be paid if the bonus criteria, as set by the Leadership and Compensation Committee (the “Committee”) of the Board of Directors of the Company, for the applicable annual period are met. As provided in the employment agreement, Mr. Wetzel has been granted 50,000 restricted stock units which will vest 50% on the second anniversary of his appointment and 25% on each annual anniversary thereafter, assuming his continued employment, and 150,000 stock options which will vest 25% on August 27, 2008 and on a pro rata quarterly basis thereafter until August 27, 2011, assuming his continued employment. The Company has also agreed to pay reasonable costs and expenses associated with moving Mr. Wetzel to Atlanta, Georgia.

In addition, if a “change in control event” as defined in the employment agreement has not occurred and Mr. Wetzel is terminated by the Company for any reason other than for “cause,” as defined in the employment agreement, or Mr. Wetzel terminates his employment for “good reason”, Mr. Wetzel will receive an amount equal to 100% of the sum of (i) his base salary and (ii) his target bonus payment for the year in which the termination occurs. If a “non-public change in control event” occurs, Mr. Wetzel will

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receive an amount equal to 150% of the sum of (i) his base salary and (ii) his target bonus payment for the year in which the “change in control event” occurs, assuming he is employed at that time. If a “public change in control event” occurs and Mr. Wetzel is subsequently terminated by the Company for any reason other than for “cause” or Mr. Wetzel terminates his employment for “good reason”, Mr. Wetzel will receive an amount equal to 150% of the sum of (i) his base salary and (ii) his target bonus payment for the year in which the termination occurs.

The employment agreement restricts Mr. Wetzel from competing, directly or indirectly, with the Company or soliciting certain employees and officers of the Company or its affiliates during the term of the employment agreement and for a period of 12 months following his termination of employment.

A copy of the employment agreement is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

### **2007 Executive Bonus Plan**

In light of the proposed Plan, on August 27, 2007, the Committee established a revised bonus plan (the “Revised 2007 Bonus Plan”) for the Company’s executive officers for the period from September 1, 2007 to December 31, 2007. The existing 2007 bonus plan (the “Prior 2007 Bonus Plan”) for executive officers will remain in effect through August 31, 2007.

As with the Prior 2007 Bonus Plan, under the Revised 2007 Bonus Plan, for each named executive officer, there is a target cash incentive bonus ranging from 50% to 60% of eligible earnings, as established in advance for such officer as a part of his or her annual arrangement. As with the Prior 2007 Bonus Plan, the Revised 2007 Bonus Plan provides for a sliding scale of bonus payouts which range between a minimum threshold level (payout of 50% of target), a target level, which is tied to the Company’s 2007 operating plan (100% payout), and a maximum level (payout of 150% of target).

The bonus payouts under the Revised 2007 Bonus Plan for our executive officers (other than the Chief Executive Officer and the Chief Operating Officer) are tied to the Company’s 2007 total Company revenue and free cash flow. (“Free cash flow” refers to income from operations before facility exit and restructuring costs, depreciation and amortization and stock-based compensation expense under Statement of Financial Accounting Standards No. 123(R), less cash used for purchases of property.)

The levels of each factor necessary to satisfy the threshold, target and maximum bonus payouts are being set taking into account the Company’s revised 2007 operating plan. The bonus plan also contains an individual performance factor to be taken into account when allocating bonuses to each of the executive officers. The final bonus amounts paid, if any, shall be determined by the Committee based on achievements of the performance measures and the individual performance factors. Any bonus payments under the executive officer bonus plan will be paid in one lump sum payment after the end of the 2007 fiscal year.

The 2007 bonus payouts for the Chief Executive Officer and the Chief Operating Officer are set forth in their respective employment agreements.

### **Departure of Named Executive Officer**

In connection with the Plan, the position of Executive Vice President and President-Municipal Networks, held by Donald B. Berryman, is being eliminated and Mr. Berryman’s employment with the Company is terminating.

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**Item 7.01 Regulation FD Disclosure.**

On August 28, 2007, the Company issued a press release announcing the Plan and Mr. Wetzel's appointment. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

In accordance with General Instruction B.2 of Form 8-K, the information in Exhibit 99.1 shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Employment Agreement, dated August 27, 2007, between EarthLink, Inc. and Joseph M. Wetzel
99.1	Press release dated August 28, 2007

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**EARTHLINK, INC.**  
(Registrant)

By: /s/ Kevin M. Dotts  
Name: Kevin M. Dotts  
Title: Chief Financial Officer

Date: August 28, 2007

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## Exhibit Index

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**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this “Agreement”) between EARTHLINK INC., a Delaware corporation (the “Company”), and JOSEPH M. WETZEL (referred to herein as “You”) was entered into on August 27, 2007.

**RECITALS**

1. The Company is engaged in the business of providing integrated communication services and related value added services to individual consumers and business customers throughout the States of the United States; and
2. The Company has determined that, in view of Your knowledge, expertise and experience in the integrated communication services and related value-added services industries, Your services as the Chief Operating Officer of the Company will be of great value to the Company, and accordingly, the Company desires to enter into this Agreement with You on the terms set forth herein in order to secure such services; and
3. You desire to serve as the Chief Operating Officer of the Company on the terms set forth herein.

**NOW, THEREFORE**, in consideration of Your employment by the Company, the above premises and the mutual agreements hereinafter set forth, You and the Company agree as follows:

**1. Definitions.**

- (a) “Affiliate” means any trade or business with whom the Company would be considered a single employer under Sections 414(b) or 414(c) of the Code.
  - (b) “Beneficial Ownership” means beneficial ownership as that term is used in Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended.
  - (c) “Business Combination” means a reorganization, merger or consolidation of the Company.
  - (d) “Business of the Company” means the business of providing integrated communication services and related value added services to individual consumers and business customers.
  - (e) “Cause” means (i) Your commission of any act of fraud or dishonesty relating to and adversely affecting the business affairs of the Company; (ii) Your conviction of any felony; or (iii) Your willful and continued failure to perform substantially your duties owed to the Company after written notice specifying the nature of such non-performance and a reasonable opportunity to cure such non-performance. No act or omission shall be considered “willful” unless it is done or omitted in bad faith or without reasonable belief that the action or omission was in the best interests of the Company.
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(f) “Change in Control Event” of the Company means the occurrence of any of the following events:

(1) The accumulation in any number of related or unrelated transactions by any Person of Beneficial Ownership of more than fifty percent (50%) of the combined voting power of the Company’s Voting Stock; provided that for purposes of this subparagraph (1), a Change in Control Event will not be deemed to have occurred if the accumulation of more than fifty percent (50%) of the voting power of the Company’s Voting Stock results from any acquisition of Voting Stock (a) by the Company, (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate, or (c) by any Person pursuant to a Business Combination that complies with clauses (a) and (b) of subparagraph (2) below; or

(2) Consummation of a Business Combination, unless, immediately following that Business Combination, (a) all or substantially all of the Persons who were the beneficial owners of Voting Stock of the Company immediately prior to that Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then outstanding shares of common stock and more than fifty percent (50%) of the combined voting power of the then outstanding Voting Stock entitled to vote generally in the election of directors of the entity resulting from that Business Combination (including, without limitation, an entity that as a result of that transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions relative to each other as their ownership, immediately prior to that Business Combination, of the common stock and Voting Stock of the Company, and (b) at least sixty percent (60%) of the members of the Board of Directors of the entity resulting from that Business Combination holding at least sixty percent (60%) of the voting power of such Board of Directors were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board of Directors providing for that Business Combination and as a result of or in connection with such Business Combination, no Person has a right to dilute either of such percentages by appointing additional members to the Board of Directors or otherwise without election or other action by the stockholders; or

(3) A sale or other disposition of all or substantially all of the assets of the Company, except pursuant to a Business Combination that complies with clauses (a) and (b) of subparagraph (2) above; or

(4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company, except pursuant to a Business Combination that complies with clauses (a) and (b) of subparagraph 2 above.

(g) “Code” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

(h) “Company” shall mean EarthLink, Inc.

(i) “Confidential Information” means any and all non-public information concerning, relating to and/or in the possession of the Company and/or its Affiliates and/or the Business of the Company treated as confidential or secret by the Company and/or its Affiliates (that is, such business information is subject to efforts by the Company and/or its Affiliates that are reasonable under the circumstances to maintain its secrecy) that does not constitute a Trade Secret, including, without limitation, information concerning the Company’s or an Affiliate’s financial position and results of operations (including revenues, assets, net income, etc.), annual and long range business plans, product and service plans, marketing plans and methods, employee lists and information, in whatever form and whether or not computer or electronically accessible.

(j) “Eligible Earnings” has the same meaning given to that term in the Company’s bonus plan and payroll policies.

(k) “Good Reason” means, with respect to Your Termination of Employment, any of the following acts or omissions that is not cured within ten (10) days after written notice of such act or omission is delivered to the Company, the Chairman of the Board of Directors and the Chairman of the Leadership and Compensation Committee of the Board of Directors:

(1) without Your express written consent (i) the assignment to You of any duties inconsistent in any respect with Your position, authority, duties or responsibilities as contemplated by Section 2, (ii) the requirement by the Company that you report to any officer or employee other than directly to the Chief Executive Officer, the President of the Company (excluding a President of any division of the Company) or the Board of Directors of the Company, (iii) any other action by the Company that results in a significant diminution in such position, authority, duties or responsibilities, provided that the Company’s no longer being a reporting company with the Securities and Exchange Commission shall not be deemed to result in such a significant diminution, or (iv) any failure by the Company to comply in any material respect with any of the provisions of Section 4 of this Agreement;

(2) any requirement that You relocate outside of, or any relocation of the Company’s principal executive office outside of, the metropolitan area of Atlanta, Georgia; or

(3) any breach by the Company of any other material provision of this Agreement.

(l) “Incumbent Board” means a Board of Directors consisting of individuals who either are (a) members of the Company’s Board of Directors on the date hereof or (b) members who become members of the Company’s Board of Directors subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least sixty percent (60%) of the directors then

comprising the Incumbent Board (either by a specific vote or by approval of the proxy statement of the Company in which that Person is named as a nominee for director, without objection to that nomination), but excluding, for that purpose, any individual whose initial assumption of office occurs as a result of an actual or threatened election contest (within the meaning of Rule 14a-11 of the Securities Exchange Act of 1934, as amended) with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors.

(m) “Non-Public Change in Control Event” means any Change in Control Event that is not a Public Change in Control Event.

(n) “Person” means any individual, entity or group within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended.

(o) “Public Change in Control Event” means any Change in Control Event as defined in clause (f) above where (i) the Person that accumulates Beneficial Ownership of more than fifty percent (50%) of the combined voting power of the Company’s Voting Stock has, or such Person is a direct or indirect subsidiary of a Person that has, a class of common stock (or depositary receipts or other certificates representing common equity interests) traded on a U.S. national securities exchange or quoted on NASDAQ or another established over-the-counter trading market in the United States or which will be so traded or quoted when issued or exchanged in connection with such Change in Control Event or (ii) upon the consummation of such Change in Control Event, the Voting Stock of the Company will remain trading on a U.S. national securities exchange or quoted on NASDAQ or another established over-the-counter trading market in the United States.

(p) “Specified Employee” means an employee who is (i) an officer of the Company or an Affiliate having annual compensation greater than \$145,000 (with certain adjustments for inflation after 2007), (ii) a five-percent owner of the Company or (iii) a one-percent owner of the Company having annual compensation greater than \$150,000. For purposes of this Section, no more than 50 employees (or, if lesser, the greater of three or 10 percent of the employees) shall be treated as officers. Employees who (i) normally work less than 17 1/2 hours per week, (ii) normally work not more than 6 months during any year, (iii) have not attained age 21, (iv) are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the Company or an Affiliate (except as otherwise provided in regulations issued under the Code) or (v) who have not completed six months of service shall be excluded for purposes of determining the number of officers for this determination. For purposes of this Section, the term “five-percent owner” (“one-percent owner”) means any person who owns more than five percent (one percent) of the outstanding stock of the Company or stock possessing more than five percent (one percent) of the total combined voting power of all stock of the Company. For purposes of determining ownership, the attribution rules of Section 318 of the Code shall be applied by substituting “five percent” for “50 percent” in Section 318(a)(2) and the rules of Sections 414(b), 414(c) and 414(m) of the Code shall not apply. For purposes of this Section, the term “compensation” has the meaning given such term by

Section 414(q)(4) of the Code. The determination of whether You are a Specified Employee will be based on a December 31 identification date such that if You satisfy the above definition of Specified Employee at any time during the 12-month period ending on December 31, You will be treated as a Specified Employee if You have a Termination of Employment during the 12-month period beginning on the first day of the fourth month following the identification date. This definition is intended to comply with the “specified employee” rules of Section 409A(a)(2)(B)(i) of the Code and shall be interpreted accordingly.

(q) “Termination of Employment” means the termination of Your employment and service with the Company and all Affiliates. You will not be considered as having had a Termination of Employment if (i) You continue to provide services to the Company or any Affiliate as an employee or independent contractor at an annual rate that is more than 20 percent of the services rendered, on average, during the immediately preceding 36 months of employment (or, if employed less than 36 months, such lesser period) or (ii) You are on military leave, sick leave or other bona fide leave of absence (such as temporary employment by the government) so long as the period of such leave does not exceed six months, or if longer, so long as Your right to reemployment with the Company or any Affiliate is provided either by statute or by contract. If the period of leave (i) ends or (ii) exceeds six months and Your right to reemployment is not provided either by statute or by contract, the Termination of Employment will be deemed to occur on the first date immediately following such six-month period if not reemployed by the Company or any Affiliate before such time and eligibility for payments and benefits hereunder will be determined as of that time.

(r) “Total Disability” means Your inability, through physical or mental illness or accident, to perform the majority of Your usual duties and responsibilities hereunder (as such duties are constituted on the date of the commencement of such disability) in the manner and to the extent required under this Agreement for a period of at least ninety (90) consecutive days. Total Disability shall be deemed to have occurred on the first day following the expiration of such ninety (90) day period.

(s) “Trade Secrets” means any and all information concerning, relating to and/or in the possession of, the Company and/or its Affiliates and/or the Business of the Company that qualifies as a trade secret as defined by the laws of the State of Georgia on the date of this Agreement and as such laws are amended from time to time thereafter.

(t) “Voting Stock” means the then outstanding securities of an entity entitled to vote generally in the election of members of that entity’s Board of Directors.

**2. Employment; Duties.**

(a) The Company agrees to employ You as Chief Operating Officer of the Company with the duties and responsibilities generally associated with such position and such other reasonable additional responsibilities and positions as may be added to Your duties from time to time by the Chief Executive Officer, the President of the Company (excluding a President of any division of the Company) or the Board of Directors consistent with Your position.

(b) During Your employment hereunder, You shall (i) diligently follow and implement all Company employee policies and all management policies and decisions communicated to You by the Chief Executive Officer, the President or the Board of Directors; and (ii) timely prepare and forward to the Chief Executive Officer, the President or the Board of Directors all reports and accountings as may be reasonably requested of You.

(c) You shall relocate to the metropolitan area of Atlanta, Georgia within 12 months following September 1, 2007, and you shall be covered by the Company's employee relocation policy in connection with such relocation. Beginning on September 1, 2007, the Company will reimburse you up to \$4,000 per month for (i) temporary housing expenses, (ii) home travel and (iii) any income taxes to be incurred by You in connection with (i) and (ii) above, for a period equal to the shorter of (1) 12 months or (2) until You acquire permanent housing in the Atlanta, Georgia metropolitan area. In addition, until You secure such temporary housing, but in no event later than September 30, 2007, the Company will reimburse you for reasonable hotel and travel expenses incurred by You during such transition period.

**3. Term.** The term hereof shall commence on August 27, 2007, shall continue for a period of one (1) year and shall be automatically extended from year-to-year thereafter unless terminated in accordance with Section 6 hereof (the "Term").

**4. Compensation.**

(a) (1) You shall be paid an annual base salary of not less than Four Hundred Thousand Dollars (\$400,000) per year (the "Base Salary") commencing on August 27, 2007. The Base Salary shall accrue and be due and payable in equal, or as nearly equal as practicable, biweekly installments and the Company may deduct from each such installment all amounts required to be deducted and withheld in accordance with applicable federal and state income, FICA and other withholding tax requirements.

(2) The Base Salary shall be reviewed by the Board of Directors at least once during each year of the Term and may be increased from time to time and at any time by the Board of Directors. The Base Salary shall in no event be reduced or decreased below the highest level attained at any time by You, unless You and the Board of Directors agree to implement a salary reduction program for cost abatement purposes.

(3) As the Term begins on other than the first business day of a calendar month and as the Term hereof shall terminate on other than the last day of a calendar

month, Your compensation for such month shall be prorated according to the number of days during such month that occur within the Term.

(b) For the fiscal year of the Company ending on December 31, 2007, You shall be paid a bonus in an amount equal to 65% of Your 2007 Eligible Earnings (the "2007 Bonus Payment"), such 2007 Bonus Payment to be paid in the first quarter of 2008 concurrently with payments to other Company executive officers under the Company's 2007 Executive Bonus Plan. Commencing with the fiscal year of the Company ending on December 31, 2008 and for each fiscal year thereafter, You shall be entitled to receive an annual target bonus opportunity in an amount equal to sixty-five percent (65%) of Your Eligible Earnings (the "Annual Target Bonus"), with the ability to earn Fifty Percent (50%) (threshold) to One Hundred Fifty Percent (150%) (maximum) of your Annual Target Bonus if the bonus criteria for such annual period, as set by the Board of Directors of the Company, are satisfied (the "Target Bonus Payment"); provided that if such bonus criteria are not satisfied, no Annual Target Bonus shall be payable. The criteria to earn Your Annual Target Bonus and other levels between the threshold and maximum for each year of the Term shall be based upon good faith negotiations between You and the Board of Directors. All Target Bonus Payments that become payable shall be paid to You in accordance with the applicable bonus plan.

(c) While You are performing the services described herein, the Company shall reimburse You for all reasonable and necessary expenses incurred by You in connection with the performance of Your duties of employment hereunder in accordance with the Company's expense reimbursement policy as applied to the Company's executive officers.

(d) Pursuant to this Section 4(d), You shall participate in the Change-In-Control Accelerated Vesting and Severance Plan amended and restated effective February 17, 2006 and any plan(s) or program(s) that supersede, replace and/or supplement such plan, as in effect from time to time (the "AV/SP"), at the second highest and second most beneficial level of participation provided under the AV/SP. With respect to each individual benefit, or category of similar benefit, provided to You under each of the AV/SP and this Agreement, the two (2) benefits shall not be cumulative, and You shall be entitled to receive each such benefit, or category of benefit, under the terms of the AV/SP or the terms of this Agreement, whichever would be the greater amount or value to You, except that the timing and manner of payment of such benefits shall be consistent with the terms of this Agreement, regardless of whether the amount or value of the benefits You are entitled to receive are determined under the AV/SP or this Agreement. The restrictions on cumulation of benefits in this Section 4(d), and the application of the terms of the AV/SP to benefits provided thereunder, shall not apply to Your right to qualify for and participate in the AV/SP at the second highest and second most beneficial level of participation.

(e) You shall receive paid vacation during each twelve (12) month period of Your employment in accordance with the Company's vacation policy. To the extent that You do not use Your accrued vacation during such twelve (12) month period, any

remaining accrued vacation shall be subject to the carryover restrictions applicable in the Company's normal vacation policies.

**5. Equity Rights.**

(a) Upon execution of this Agreement, you shall be entitled to receive 50,000 RSUs which shall vest in accordance with the terms of the EarthLink, Inc. 2006 Equity and Cash Incentive Plan, with 25,000 RSUs vesting on August 27, 2009, 12,500 RSUs vesting on August 27, 2010 and 12,500 RSUs vesting on August 27, 2011, assuming Your continued employment until each such time, or as otherwise vested pursuant to Section 6. Upon execution of this Agreement, you shall also be entitled to receive 150,000 stock options which vest over a period of four years in accordance with the terms of the EarthLink, Inc. 2006 Equity and Cash Incentive Plan and the Company's standard vesting schedule for stock options.

(b) The stock options and restricted stock units granted by the Company to You from time to time are hereinafter collectively called the "Stock Options and RSUs." You shall be given the period permitted under Your respective Stock Option agreements to exercise Your Stock Options after Your Termination of Employment.

(c) Vested Stock Options shall be exercisable for thirty (30) days following termination of employment.

**6. Termination.**

(a) A Termination of Employment shall occur only as follows:

(1) For Cause immediately by the Company; or

(2) At Your option for Good Reason; or

(3) At Your option upon thirty (30) days prior written notice of termination delivered by You to the Company;

or

(4) For any reason by the Company upon three (3) calendar months prior written notice of termination delivered to You, except during a period of Your disability that may qualify as the period for qualification for Your Termination of Employment due to Your Total Disability as set forth in Section 6(a)(6); or

(5) By the Company upon Your death; or

(6) By the Company because of Your Total Disability upon thirty (30) days prior written notice of termination delivered to You.

(b) Subject to Section 19 below, if You have a Termination of Employment that is not in connection with a Change in Control Event (i) by the Company for other than "Cause," or (ii) by You for "Good Reason," You shall be paid an amount equal to one

hundred percent (100%) of the sum of (i) Your Base Salary as of the effective date of Your Termination of Employment and (ii) Your Annual Target Bonus for the year in which your Termination of Employment occurs. Such amount shall be paid in equal, or as nearly equal as practicable, biweekly installments, starting with the first payroll payment date following Your Termination of Employment as described in this Section 6(b) and continuing thereafter for eighteen (18) months. However, You will not be entitled to any payment under this Section 6(b) if you have received payments under Section 6(c) below. In addition, in the event of such Termination of Employment as described in this Section 6(b), You shall become immediately vested in all Your outstanding Stock Options and RSUs that otherwise would have vested during the 18-month period immediately following such Termination of Employment.

(c) Subject to Section 19 below, if a Non-Public Change in Control Event occurs and you have not previously incurred a Termination of Employment, You shall be paid as soon as administratively practicable after such Change in Control Event an amount equal to one hundred and fifty percent (150%) of the sum of (i) Your Base Salary as of the effective date of the Change in Control Event and (ii) Your Annual Target Bonus for the year in which the Change in Control Event occurs. In the event You receive any payments under this Section 6(c), Your right to receive payments under Sections 6(b), 6(d) and 6(e) will be terminated.

(d) Subject to Section 19 below, if, in connection with a Public Change in Control Event, You have a Termination of Employment (i) by the Company for other than "Cause," or (ii) by You for "Good Reason," You shall be paid an amount equal to (a) one hundred and fifty percent (150%) of the sum of (i) Your Base Salary as of the effective date of Your Termination of Employment and (ii) Your Annual Target Bonus for the year in which Your Termination of Employment occurs. Such amount shall be paid in equal, or as nearly equal as practicable, biweekly installments starting with the first payroll payment date following Your Termination of Employment as described in this Section 6(d) and continuing thereafter for eighteen (18) months. However, You will not be entitled to any payment under this Section 6(d) if you have received payments under Section 6(c) above.

(e) If You have a Termination of Employment by the Company for Cause or by You for reasons other than for "Good Reason," the Company will have no obligations to pay You any amount beyond the effective date of such Termination of Employment whether as Base Salary, Annual Target Bonus or otherwise or to provide You with any benefits arising hereunder or otherwise except as required by law.

**7. Confidential Information and Trade Secrets .** You acknowledge that the nature of Your engagement by the Company is such that You shall have access to the Confidential Information and the Trade Secrets, each of which has great value to the Company, provides the Company a competitive advantage, and constitutes the foundation upon which the Business of the Company is based. You agree to hold all of the Confidential Information and the Trade Secrets in confidence and to not use, disclose, publish or otherwise disseminate any of such Confidential Information and the Trade Secrets to any other person, except to the extent such disclosure is (i) necessary to the performance of this Agreement and in furtherance of the

Company's best interests, (ii) required by applicable law, (iii) as a result of portions of the Confidential Information and/or the Trade Secrets becoming lawfully obtainable from other sources, (iv) authorized in writing by the Company, or (v) necessary to enforce this Agreement. The restrictions set forth in this Section 7 shall remain in full force and effect (a) with respect to the Confidential Information, for the three (3) year period following the effective date of Your Termination of Employment, and with respect to the Trade Secrets, until the Trade Secrets no longer retain their status or qualify as trade secrets under applicable law. Upon Your Termination of Employment, You shall deliver to the Company all documents, records, notebooks, work papers, and all similar material containing Confidential Information and Trade Secrets, whether prepared by You, the Company or anyone else.

**8. Inventions and Patents.** All inventions, designs, improvements, patents, copyrights and discoveries conceived by You during the term of this Agreement which are useful in or directly or indirectly relate to the business of the Company or to any experimental work carried on by the Company, shall be the property of the Company. You agree to promptly and fully disclose to the Company all such inventions, designs, improvements, patents, copyrights and discoveries (whether developed individually or with other persons) and at the Company's expense, to take all steps necessary and reasonably required to assure the Company's ownership thereof and to assist the Company in protecting or defending the Company's proprietary rights therein.

**9. Restrictive Covenants.**

(a) Non-Competition. You agree that during Your employment, and for a period of twelve (12) calendar months following Termination of Employment, You shall not perform within the 50 states of the United States of America any services which are in competition with the Business of the Company during Your employment, or following Your Termination of Employment any services which are in competition with a Material line of Business engaged in by the Company at the time of Your Termination of Employment, and which are the same as or similar to those services You performed for the Company under this Agreement; provided, however, if the other business competitive with the Business of the Company has multiple lines, divisions, segments or units, some of which are not competitive with the Business of the Company, nothing herein shall prevent You from being employed by or providing services to such line, division, segment or unit that is not competitive with the Business of the Company. For purposes of this Section 9(a), "Material" means a line of Business that represents 20% or more of the Company's consolidated revenues or adjusted EBITDA for the four fiscal quarters immediately preceding Your Termination of Employment.

(b) Non-Recruitment. You agree that during Your employment and for a period of twelve (12) calendar months following Termination of Employment, You will not, directly or indirectly: (1) solicit, induce, recruit, or cause a Restricted Employee to resign employment with the Company or its Affiliates, or (2) participate in making hiring decisions, encourage the hiring of, or aid in the hiring process of a Restricted Employee on behalf of any employer other than the Company and its Affiliates. As used herein, "Restricted Employee" means any employee of the Company or its Affiliates with whom You had material business-related contact while performing services under this

Agreement, and who is: (1) a member of executive management; (2) a corporate officer of the Company or any of its Affiliates; or (3) any employee of the Company or any of its Affiliates engaged in product or service development or product or service management.

(c) **Effect of Breach.** The obligation of the Company to continue to fulfill its payment and benefit obligations to You pursuant to Sections 6(b), 6(c), 6(d), 6(e) and 9(d) is conditioned upon Your compliance with the provisions of this Section 9 and Sections 7 and 8. Accordingly, in the event that You shall materially breach the provisions of this Section 9 and/or Sections 7 and/or 8 and not cure or cease (as appropriate) such material breach within ten (10) days of receipt of notice thereof from the Company, the Company's obligations under Sections 6(b), 6(c), 6(d), 6(e) and 9(d) shall terminate. Termination of the Company's obligations under Sections 6(b), 6(c), 6(d), 6(e) or 9(d) shall not be the Company's sole and exclusive remedy for a breach of this Section 9 and/or Sections 7 and/or 8. In addition to the remedy provided in this Section 9(c), the Company shall be entitled to seek damages and injunctive relief to enforce this Section 9 and Sections 7 and 8, in the event of a breach by You of this Section 9 and/or Sections 7 and/or 8. Additionally, in the event You materially breach such provisions, You shall be required to repay to the Company all such amounts paid pursuant to Sections 6(b), 6(c), 6(d), 6(e) and 9(d) that You would not have received had such amount been paid and You breached such provisions.

**10. Remedies.**

(a) The parties hereto agree that the services to be rendered by You pursuant to this Agreement, and the rights and privileges granted to the Company pursuant to this Agreement, are of a special, unique, extraordinary and intellectual character, which gives them a peculiar value; the loss of which cannot be reasonably or adequately compensated in damages in any action at law, and that a breach by You of any of the terms of this Agreement will cause the Company great and irreparable injury and damage. You hereby agree that the definition of the Business of the Company set forth in Section 1 is correct, that the Company and its Affiliates conduct business throughout the 50 states of the United States of America and beyond, and that these restrictions are reasonably necessary to protect the legitimate business interests of the Company. You hereby expressly agree that the Company shall be entitled to the remedies of injunction, specific performance and other equitable relief to prevent a breach of this Agreement by You. This Section 10 shall not be construed as a waiver of any other rights or remedies which the Company may have for damages or otherwise.

(b) In the event of any dispute over the interpretation or application of this Agreement, the Company shall reimburse you for your reasonable attorneys' fees and costs incurred in connection with that dispute unless the Company is determined, by final judgment of a court of competent jurisdiction, to be the prevailing party on all or substantially all of the issues in dispute, which reimbursement shall be made promptly following final judgment.

**11. Construction and Severability.** The parties hereto agree that the provisions of this Agreement shall be presumed to be enforceable, and any reading causing unenforceability

shall yield to a construction permitting enforcement. In the event a court should determine not to enforce a provision of this Agreement due to overbreadth, violation of public policy, or similar reasons, the parties specifically authorize such reviewing court to enforce said covenant to the maximum extent reasonable, whether said revisions be in time, territory, scope of prohibited activities, or other respects. If any single covenant, provision, word, clause or phrase in this Agreement shall be found unenforceable, it shall be severed and the remaining covenants and provisions enforced in accordance with the tenor of the Agreement.

**12. Assignment.** This Agreement and the rights and obligations of the hereunder may not be assigned by either party hereto without the prior written consent of the other party hereto.

**13. Notices.** Except as otherwise specifically provided herein, any notice required or permitted to be given to You pursuant to this Agreement shall be given in writing, and personally delivered or mailed to You by certified mail, return receipt requested, at the address set forth below Your signature on this Agreement or at such other address as You shall designate by written notice to the Company given in accordance with this Section 13, and any notice required or permitted to be given to the Company, the Chairman of the Board of Directors or the Chairman of the Leadership and Compensation Committee of the Board of Directors shall be given in writing, and personally delivered or mailed to that recipient by certified mail, return receipt requested, addressed to the appropriate recipient at the address set forth under the signature of the Chief Executive Officer of the Company or his designee on this Agreement or at such other address as the Company shall designate by written notice to You given in accordance with this Section 13. Any notice complying with this Section 13 shall be deemed received upon actual receipt by the addressee.

**14. Waiver.** The waiver by either party hereto of any breach of this Agreement by the other party hereto shall not be effective unless in writing, and no such waiver shall operate or be construed as the waiver of the same or another breach on a subsequent occasion.

**15. Governing Law.** This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Georgia.

**16. Beneficiary.** All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, executors, administrators and permitted assigns.

**17. Entire Agreement.** This Agreement embodies the entire agreement of the parties hereto relating to Your employment by the Company in the capacity herein stated and, except as specifically provided herein, no provisions of any employee manual, personnel policies, Company directives or other agreement or document shall be deemed to modify the terms of this Agreement. No amendment or modification of this Agreement shall be valid or binding upon You or the Company unless made in writing and signed by the parties hereto. All prior understandings and agreements relating to Your employment by the Company, in whatever capacity, are hereby expressly terminated.

**18. Excise Tax.**

(a) If any payment or distribution by the Company and/or any Affiliate of the Company to or for Your benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise pursuant to or by reason of any other agreement, policy, plan, program or arrangement, including without limitation any stock option, stock appreciation right or similar right, or the lapse or termination of any restriction on or the vesting or exercisability of any of the foregoing (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Code or to any similar tax imposed by state or local law, or any interest or penalties with respect to such tax (such tax or taxes, together with any such interest and penalties, being hereafter collectively referred to as the "Excise Tax"), then the payments and benefits payable or provided under this Agreement (or other Payments as described below) shall be reduced (but not below the amount of the payments or benefits provided under this Agreement) if, and only to the extent that, such reduction will allow You to receive a greater Net After Tax Amount than You would receive absent such reduction.

(b) The Accounting Firm will first determine the amount of any Parachute Payments that are payable to You. The Accounting Firm also will determine the Net After Tax Amount attributable to Your total Parachute Payments.

(c) The Accounting Firm will next determine the largest amount of Payments that may be made to You without subjecting You to the Excise Tax (the "Capped Payments"). Thereafter, the Accounting Firm will determine the Net After Tax Amount attributable to the Capped Payments.

(d) You then will receive the total Parachute Payments or the Capped Payments or such other amount less than the total Parachute Payments, whichever provides You with the higher Net After Tax Amount, but in no event will any such reduction imposed by this Section 18 be in excess of the amount of payments or benefits payable or provided under this Agreement. If You will receive the Capped Payments or some other amount lesser than the total Parachute Payments, the total Parachute Payments will be adjusted by first reducing the amount of any noncash benefits under this Agreement or any other plan, agreement or arrangement (with the source of the reduction to be directed by You) and then by reducing the amount of any cash benefits under this Agreement or any other plan, agreement or arrangement (with the source of the reduction to be directed by You). The Accounting Firm will notify You and the Company if it determines that the Parachute Payments must be reduced and will send You and the Company a copy of its detailed calculations supporting that determination.

(e) As a result of the uncertainty in the application of Code Sections 280G and 4999 at the time that the Accounting Firm makes its determinations under this Section 18, it is possible that amounts will have been paid or distributed to You that should not have been paid or distributed under this Section 18 ("Overpayments"), or that additional amounts should be paid or distributed to You under this Section 18 ("Underpayments"). If the Accounting Firm determines, based on either the assertion of a deficiency by the Internal Revenue Service against the Company or You, which assertion the Accounting

Firm believes has a high probability of success or controlling precedent or substantial authority, that an Overpayment has been made, that Overpayment will be treated for all purposes as a debt *ab initio* that You must repay to the Company together with interest at the applicable Federal rate under Code Section 7872; provided, however, that no debt will be deemed to have been incurred by You and no amount will be payable by You to the Company unless, and then only to the extent that, the deemed debt and payment would either reduce the amount on which You are subject to tax under Code Section 4999 or generate a refund of tax imposed under Code Section 4999. If the Accounting Firm determines, based upon controlling precedent or substantial authority, that an Underpayment has occurred, the Accounting Firm will notify You and the Company of that determination and the amount of that Underpayment will be paid to You promptly by the Company.

(f) For purposes of this Section 18, the following terms shall have their respective meanings:

(i) “Accounting Firm” means the independent accounting firm engaged by the Company in the Company’s sole discretion.

(ii) “Net After Tax Amount” means the amount of any Parachute Payments or Capped Payments, as applicable, net of taxes imposed under Code Sections 1, 3101(b) and 4999 and any State or local income taxes applicable to You on the date of payment. The determination of the Net After Tax Amount shall be made using the highest combined effective rate imposed by the foregoing taxes on income of the same character as the Parachute Payments or Capped Payments, as applicable, in effect on the date of payment.

(iii) “Parachute Payment” means a payment that is described in Code Section 280G(b)(2), determined in accordance with Code Section 280G and the regulations promulgated or proposed thereunder.

(g) The fees and expenses of the Accounting Firm for its services in connection with the determinations and calculations contemplated by the preceding subsections shall be borne by the Company; If such fees and expenses are initially paid by You, the Company shall reimburse You the full amount of such fees and expenses within five business days after receipt from You of a statement therefore and reasonable evidence of Your payment thereof.

(h) The Company and You shall each provide the Accounting Firm access to and copies of any books, records and documents in the possession of the Company or You, as the case may be, reasonably requested by the Accounting Firm, and otherwise cooperate with the Accounting Firm in connection with the preparation and issuance of the determinations and calculations contemplated by the preceding subsections. Any determination by the Accounting Firm shall be binding upon the Company and You.

(i) The federal, state and local income or other tax returns filed by You shall be prepared and filed on a consistent basis with the determination of the Accounting Firm

with respect to the Excise Tax payable by You. You, at the request of the Company, shall provide the Company true and correct copies (with any amendments) of Your federal income tax return as filed with the Internal Revenue Service and corresponding state and local tax returns, if relevant, as filed with the applicable taxing authority, and such other documents reasonably requested by the Company, evidencing such conformity.

(j) All payments to be made to You under this Section 18 must be paid by the end of Your taxable year next following the year in which the taxes that are the subject of the audit or litigation are remitted to the taxing authorities or, where no such taxes are remitted, the end of your taxable year following the year in which the audit is completed or there is a final and non-appealable settlement or the resolution of the litigation.

**19. Tax Liabilities and Code Section 409A .** Any payments or benefits that you receive pursuant to this Agreement shall be subject to reduction for any applicable employment or withholding taxes. Notwithstanding any other provision of this Plan, if You are a Specified Employee, and if the amounts that You are entitled to receive pursuant to Section 6 are not otherwise exempt from Section 409A of the Code, then to the extent necessary to comply with Section 409A, no payments for such amounts may be made under this Agreement (including, if necessary, any payments for welfare or other benefits in which case You may be required to pay for such coverage or benefits and receive reimbursement when payment is no longer prohibited) before the date which is six (6) months after Your Termination of Employment or, if earlier, Your date of death. All such amounts, which would have otherwise been required to be paid over such six (6) months after Your Termination of Employment or, if earlier, your date of death, shall be paid to you in one lump sum payment as soon as administratively feasible after the date which is six (6) months after Your Termination of Employment or, if earlier, your date of death. All such remaining payments shall be made as if they had begun as set forth in this Agreement. For purposes of this Agreement, Your rights to payments shall be treated as rights to receive a series of separate payments to the fullest extent allowable under Section 409A of the Code. This Agreement is intended to comply with the applicable requirements of Section 409A of the Code and shall be construed and interpreted in accordance therewith. The Company may at any time amend, suspend or terminate this Agreement, or any payments to be made hereunder, as necessary to be in compliance with Section 409A of the Code to avoid the imposition on You of any potential excise taxes relating to Section 409A.

IN WITNESS WHEREOF, You and the Company have executed and delivered this Agreement as of the date first shown above.

**YOU:**

**JOSEPH M. WETZEL**

/s/ Joseph M. Wetzel

Address: \_\_\_\_\_  
\_\_\_\_\_

**THE COMPANY:**

**EARTHLINK, INC. By:**

/s/ Rolla Huff

Name: Rolla Huff  
Title: Chief Executive Officer

Address: 1375 Peachtree Street  
7-North  
Atlanta, GA 30309

**Media Contacts:**

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**EARTHLINK ANNOUNCES CORPORATE RESTRUCTURING**

*First Step in Ongoing Efforts to Optimize Cost Structure and Boost Growth*

*Company also Authorizes Additional \$200 Million to Repurchase Shares*

**ATLANTA, August 28, 2007**— EarthLink, Inc. (NASDAQ: ELNK) today announced a corporate restructuring plan. This plan will reduce operating costs across the company. The restructuring will begin immediately and be completed by the end of the year.

“While we see this as an important first step in unlocking the underlying value that we believe is in our company, we are only eight weeks into the process of repositioning EarthLink for the future. These changes get our cost structure in line, but there is much more to do,” said Rolla P. Huff, EarthLink President and CEO. “We expect to announce additional steps as we continue our work over the coming weeks and months . ”

“We are extremely appreciative of our employees’ dedication and contributions, and we hope that the benefits and services we have put in place to provide assistance will help during this time of transition,” stated Huff. “While we recognize this is a difficult time for those affected individuals, this was a needed action for the company to better align our cost structure with our existing business.”

Approximately 900 jobs will be eliminated and the company will close its Orlando, FL; Knoxville, TN; Harrisburg, PA and San Francisco, CA offices and substantially reduce its presence in Pasadena, CA, and Atlanta, GA. EarthLink expects to record facility exit and restructuring costs of \$60 - \$70 million associated with the plan. These costs include \$30 - \$35 million for certain employee-related costs, \$10 - \$15

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million for lease termination costs, \$8 - \$10 million for other costs to streamline operations and \$8 - \$10 million non-cash asset write-offs. EarthLink expects that these facility exit and restructuring costs will be recognized primarily in the third and fourth quarters of fiscal year 2007.

As a result of the corporate restructuring, EarthLink expects to generate \$25 - \$35 million in cost savings through the remainder of 2007. Management believes that due to the expected savings generated, the company should receive a positive payback on the restructuring costs within six months.

Additionally, EarthLink is modifying its previously issued revenue, adjusted EBITDA and net loss guidance for the third quarter and full year 2007. For the third quarter of 2007, EarthLink now expects revenue of \$290 - \$300 million. Excluding the one-time facility exit and restructuring charges, the company now expects adjusted EBITDA (a non-GAAP measure, see definition in "Non-GAAP Measures" below) of \$30 - \$35 million and a net loss of \$(33) - \$(43) million. For the full year 2007, Earthlink now expects to end the year with approximately 3.9 million subscribers, with revenue of \$1.190 - \$1.210 billion. Excluding the one-time facility exit and restructuring charges, the company expects full year 2007 adjusted EBITDA of \$135 - \$145 million and a net loss of \$(79) - \$(109) million.

Given current trends in the Internet access industry, management expects industry-wide gross subscriber additions to decelerate in 2008. This will result in fewer gross subscriber additions for EarthLink as it will no longer add new subscribers that do not yield a positive lifetime value for our shareholders. Additionally, as subscriber growth slows, the company expects to realize fewer migrations from narrowband to broadband. This trend should result in longer tenured existing subscribers generating higher life-time cash values. EarthLink expects that as it reduces its marketing efforts aimed at acquiring new customers who have high early life churn characteristics, our overall churn will come down over time as our longer tenured existing customers become the predominant part of our base. As a result of this change in strategy, EarthLink preliminarily estimates that it will generate cash flow from operations in the low to mid \$200 million range in 2008. Management expects to further refine this preliminary estimate when the company provides its customary yearly guidance with the release of full year 2007 results.

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## **Share Repurchase**

The company also announced that its Board of Directors has expanded its existing share repurchase program, authorizing the purchase of an additional \$200 million of its outstanding shares of common stock. As a result, with this new authorization, EarthLink now has \$270 million available to purchase common stock.

“Because we believe our recent share price has not reflected the underlying value in our business, we began repurchasing our shares under our previously authorized buyback program. During the third quarter of 2007, we have purchased 3.9 million shares of our stock at an average price of \$6.35 per share,” stated Kevin Dotts, EarthLink’s Chief Financial Officer.

EarthLink may conduct its purchases in the general market, in privately negotiated transactions, through derivative transactions and through purchases made in accordance with Rule 10b5-1 under the Securities Exchange Act of 1934. The repurchase program does not require EarthLink to acquire any specific number of shares and may be terminated at any time.

## **Executive Addition**

Finally, the company also announced that effective August 27, 2007, Joe Wetzel joined EarthLink as the new chief operating officer, reporting directly to Mr. Huff.

“I would like to welcome Joe Wetzel to our executive team. He brings a wealth of operating experience to the team that will help EarthLink realize its true value potential,” said Huff.

Mr. Huff added, “EarthLink’s goal is to continue to deliver award-winning Internet tools and services to our 4 million customers, while re-positioning ourselves for long term profitable growth. Continuing to strengthen our executive operating talent is critical to delivering on that goal.”

## **Non-GAAP Measures**

Adjusted EBITDA is defined as earnings before interest income and other, net, income taxes, depreciation and amortization, stock-based compensation expense under

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SFAS No. 123(R), net losses of equity affiliate, gain on investments in other companies, and facility exit and restructuring costs. Adjusted EBITDA and net loss before facility exit and restructuring costs are non-GAAP financial performance measures. They should not be considered in isolation or as an alternative to measures determined in accordance with U.S. generally accepted accounting principles. Please refer to the reconciliation of these non-GAAP financial performance measure to the most comparable measure reported in accordance with U.S. generally accepted accounting principles and Footnote 1 of the reconciliation for a discussion of the presentation, comparability and use of such financial performance measures.

### **Conference Call for Analysts and Investors**

Investors in the U.S. and Canada interested in participating in the conference call on August 29, 2007 at 9:00 a.m. Eastern Daylight Time (EDT) may dial 1-800-706-0730 and reference the EarthLink restructuring call. Other international investors may dial 1-706-634-5173 and also reference the EarthLink restructuring call. EarthLink recommends dialing into the call approximately 10 minutes prior to the scheduled start time. Investors also will have the opportunity to listen to a live Webcast of the conference call via the Internet at the following site: <http://ir.earthlink.net>.

A taped replay will be available beginning at 12:00 p.m. EDT on August 29, 2007 through midnight on September 5, 2007 by dialing 1-800-642-1687. International callers should dial 1-706-645-9291. The replay confirmation code is 14501483.

The Webcast of this call will be archived on EarthLink's site at: <http://ir.earthlink.net/events.cfm>.

### **About EarthLink**

“EarthLink. We revolve around you™.” As the nation’s next generation Internet service provider, Atlanta-based EarthLink has earned an award-winning reputation for outstanding customer service and its suite of online products and services. EarthLink offers what every user should expect from their Internet experience: high-quality connectivity, minimal online intrusions and customizable features. Whether it’s dial-up, high-speed, voice, web hosting, wireless or “EarthLink Extras” like home networking or security, EarthLink connects people to the power and possibilities of the Internet. Learn more about EarthLink by calling (800) EARTHLINK or visiting EarthLink’s Web site at [www.EarthLink.net](http://www.EarthLink.net).

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## Cautionary Information Regarding Forward-Looking Statements

This press release includes “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. Although we believe that the expectations expressed in these forward-looking statements are reasonable, we cannot promise that our expectations will turn out to be correct. Our actual results could be materially different from and worse than our expectations. We disclaim any obligation to update any forward-looking statements contained herein, except as may be required pursuant to applicable law. With respect to forward-looking statements in this press release, the company seeks the protections afforded by the Private Securities Litigation Reform Act of 1995. These risks include, without limitation, (1) that we might not realize the benefits we are seeking from the corporate restructuring plan announced on August 28, 2007 and that our corporate restructuring plan might have a negative effect on our efforts to maintain our subscribers and our relationship with our business partners; (2) that we may not successfully enhance existing or develop new products and services in a cost-effective manner to meet customer demand in the rapidly evolving market for Internet, wireless and IP-based voice communications services, including new products and services offered in connection with our voice and municipal broadband network growth initiatives, which we do not expect to be profitable in their early stages; (3) that our service offerings may fail to be competitive with existing and new competitors; (4) that competitive product, price or marketing pressures could cause us to lose existing customers to competitors (churn), or may cause us to reduce prices for our services which could adversely impact average revenue per user; (5) that we may be unsuccessful in making and integrating acquisitions into our business, which could result in operating difficulties, losses and other adverse consequences; (6) that the continued decline of our narrowband revenues could adversely affect our profitability and adversely impact our ability to invest in growth initiatives; (7) that we may not be able to successfully manage the costs associated with delivering our wireline broadband services, which could adversely affect our ability to grow or sustain revenues and our profitability; (8) that companies may not provide last mile broadband access to us on a wholesale basis or on terms or at prices that allow us to grow and be profitable; (9) that our commercial and alliance arrangements may be terminated or may not be as beneficial as anticipated, which could adversely affect our ability to increase our subscriber base; (10) that our business may suffer if our third-parties for technical and customer support and certain billing services are unable to provide these services, cannot expand to meet our needs or terminate their relationships with us; (11) that service interruptions or impediments could harm our business; (12) that government regulations could force us to change our business practices; (13) that changes in, or interpretations of, laws regarding consumer protection could subject us to liability or cause us to change our practices; (14) that we may not be able to protect our proprietary technologies or successfully defend infringement claims and may be required to enter licensing arrangements on unfavorable terms; (15) that we may be accused of infringing upon the intellectual property rights of third parties, which is costly to defend and could limit our ability to use certain technologies in the future; (16) that we could face substantial liabilities if we are unable to successfully defend against legal actions; (17) that our business depends on the continued development of effective business support systems, processes and personnel; (18) that we may be unable to hire and retain sufficient qualified personnel, and

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the loss of any of our key executive officers could adversely affect us; (19) that we may not obtain a sufficient number of customers to generate the returns anticipated on our investments to construct and deploy municipal wireless broadband networks; (20) that municipal wireless networks may not perform as expected or may result in unanticipated costs, which could increase our churn and our cost of providing services; (21) that we may experience difficulties in constructing, upgrading and maintaining our municipal wireless networks, which could adversely affect customer satisfaction, increase subscriber churn and reduce our revenues; (22) that the market for VoIP services may not develop as anticipated, which would adversely affect our ability to execute our voice strategy; (23) that certain aspects of our VoIP service are not the same as traditional telephone service, which may limit the acceptance of our services by mainstream consumers and our potential for growth; (24) that our E911 emergency services are different from those offered by traditional wireline telephone companies and may expose us to significant liability; (25) that our ability to provide our VoIP service is dependent upon third-party facilities and equipment, the failure of which could cause delays or interruptions of our service, damage our reputation, cause us to lose customers and limit our growth; (26) that we may not realize the benefits we are seeking from our investments in the HELIO joint venture or other investment activities as a result of lower than predicted revenues or subscriber levels of the companies in which we invest, larger funding requirements for those companies or otherwise; (27) that our stock price has been volatile historically and may continue to be volatile; (28) that our indebtedness could adversely affect our financial health and limit our ability to react to changes in our industry or to implement our strategic initiatives; (29) that we may be unable to repurchase our convertible senior notes for cash when required by the holders, including following a fundamental change, or to pay the cash portion of the conversion value upon conversion of any notes by the holders; (30) that the convertible note hedge and warrant transactions may affect the value of our common stock; and (31) that some provisions of Delaware law, our second restated certificate of incorporation and amended and restated bylaws may be deemed to have an anti-takeover effect and may delay or prevent a tender offer to takeover attempt that a stockholder might consider in its best interest. These risks and uncertainties, as well as other risks and uncertainties that could cause our actual results to differ significantly from management's expectations, are not intended to represent a complete list of all risks and uncertainties inherent in our business, and should be read in conjunction with the more detailed cautionary statements and risk factors included in our Annual Report on Form 10-K for the year ended December 31, 2006, as amended.

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**EARTHLINK, INC.**  
**Reconciliation of Guidance Provided in Non-GAAP Measures (1)**  
(in millions)

	Quarter Ending September 30, 2007	Year Ending December 31, 2007
Net loss	(\$80) - (\$95)	(\$139) - (\$174)
Facility exit and restructuring costs	47 - 52	60 - 65
Net loss before facility exit and restructuring costs (1)	(\$33) - (\$43)	(\$79) - (\$109)
Depreciation	10	40
Amortization of intangible assets	4	14
Stock-based compensation expense	6	19
Net losses of equity affiliate	45 - 50	160 - 180
Interest income and other, net	3	(9)
Adjusted EBITDA (1)	<u>\$30 - \$35</u>	<u>\$135 - \$145</u>

**Footnote**

**1** Adjusted EBITDA is defined as earnings before interest income and other, net, income taxes, depreciation and amortization, stock-based compensation under SFAS No. 123(R), net losses of equity affiliate, gain on investments in other companies, and facility exit and restructuring costs. Adjusted EBITDA and net loss before facility exit and restructuring costs are non-GAAP measures and are not determined in accordance with U.S. generally accepted accounting principles. These financial performance measures are not indicative of cash provided or used by operating activities and may differ from comparable information provided by other companies, and they should not be considered in isolation, as an alternative to, or more meaningful than measures of financial performance determined in accordance with U.S. generally accepted accounting principles. These financial performance measures are commonly used in the industry and are presented because EarthLink believes they provide relevant and useful information to investors. EarthLink utilizes these financial performance measures to assess its ability to meet future capital expenditures and working capital requirements, to incur indebtedness if necessary, and to fund continued growth. EarthLink also uses these financial performance measure to evaluate the performance of its business, for budget planning purposes and as factors in its employee compensation programs. Since the elements of these financial performance measures are determined using the accrual basis of accounting and exclude the effects of certain capital, financing, acquisition-related, and facility exit and restructuring costs, investors should use these to analyze and compare companies on the basis of current period operating performance.