

# **EARTHLINK, INC.**

## **CORPORATE GOVERNANCE AND NOMINATING COMMITTEE of the BOARD OF DIRECTORS**

### **CHARTER**

(As of January 21, 2004)

#### **I. Charter**

This document shall be the official governing Charter ("*Charter*") of the Corporate Governance and Nominating Committee (the "*Committee*") of the Board of Directors (the "*Board*") of EarthLink, Inc., a Delaware corporation (the "*Company*"), adopted by the Committee as of January 20, 2004 and the Board as of January 21, 2004. This Charter hereby replaces and supersedes all former Charters, including the Charter of the Nominating Committee of the Board adopted in February 2000 and January 2003. Definitions of certain terms used in this Charter are included in the Definitions section herein.

#### **II. Purpose and Scope**

The Committee's overall purposes are to (a) oversee the Company's corporate governance principles, guidelines and practices, including compliance with the Company's Code of Business Conduct and Ethics, and (b) identify, interview, qualify and nominate individuals to stand for election to or fill any vacant seats on the Board. In addition, the Chairman of the Committee may call a meeting of all of the Company's Independent Directors at any time upon reasonable notice to all of the Independent Directors.

#### **III. Composition; Organization**

The Committee shall consist of three (3) or more Independent Directors, which number shall be determined by the Board from time to time in its discretion.

The Board annually shall elect the members of the Committee to serve for a term of one (1) year or other length of term, in the discretion of the Board, and shall otherwise serve until their successors are duly elected and qualified. Each member of the Committee shall serve at the pleasure and discretion of the Board and may be replaced or removed by the Board at any time and from time to time in its discretion. At the time of each annual election of the Committee members, or at other times in the discretion of the Committee or the Board, the Committee shall designate one member of the Committee to be its Chairman; in the absence of such designation by the Committee, the Board shall designate the Chairman.

#### **IV. Meetings; Voting; Procedures**

The Committee shall meet as frequently as the discharge of its responsibilities shall require. The Chairman or a majority of the members of the Committee may call meetings of the Committee upon reasonable notice to all members of the Committee. The Committee shall meet at such times and places as shall be determined by the Chairman. At each meeting of the Committee, a majority of the members shall constitute a quorum, and a majority of the members present at any meeting at which a quorum is present may act on behalf of the Committee. When present, the Chairman will preside at all meetings of the Committee. The Committee may meet in person or by telephonic or video conference, and may take actions by unanimous written consent of all the members of the Committee. The Committee shall keep regular minutes of its proceedings and shall report to the Board in an appropriate and timely fashion.

#### **V. Responsibilities and Duties**

To fulfill its responsibilities and duties, the Committee shall:

##### Corporate Governance

1. Review and oversee the Company's corporate governance principles, guidelines and practices and the Company's compliance with applicable corporate governance legal requirements. The Committee shall advise the Board with respect to the charters, structure and operations of the various Committees of the Board and qualifications for membership thereon.

2. Oversee the Company's Code of Business Conduct and Ethics (the "Code").

(a) The Committee shall oversee the Company's procedures for handling the receipt, retention and treatment of complaints received by the Company regarding material violations of applicable law, unethical conduct and breaches of the Code (other than matters relating to accounting, internal accounting controls or auditing, or matters relating to the Code of Ethics for Chief Executive Officer/Senior Financial Officers, all of which shall be subject to the oversight of the Audit Committee), including procedures for the confidential, anonymous submission by employees of concerns related thereto. The Committee shall have the authority to oversee, investigate and take remedial action with respect to any and all complaints regarding material violations of applicable law, unethical conduct and breaches of the Code (other than matters relating to accounting, internal accounting controls or auditing, or matters relating to the Code of Ethics for Chief Executive Officer/Senior Financial Officers).

(b) At least quarterly, the Company's General Counsel shall report directly to the Committee as to the receipt by the Company of any complaints relating to material violations of applicable law, unethical conduct and breaches of the Code (other than matters relating to accounting, internal accounting controls or auditing, or matters relating to the Code of Ethics for Chief Executive Officer/Senior Financial Officers) of which the General Counsel is aware.

(c) At least annually, the Committee shall report to the Board as to the status of all complaints relating to material violations of applicable law, unethical conduct and breaches of the Code (other than matters relating to accounting, internal accounting controls or auditing,

or matters relating to the Code of Ethics for Chief Executive Officer/Senior Financial Officers) of which the Committee is aware.

### Nominations

3. Have sole authority and responsibility for identifying, interviewing, qualifying and recommending to the Board nominees to stand for election to or to fill any vacant seats on the Board. The Committee identifies nominees for director on its own as well as by considering recommendations from other members of the Board, officers and employees of the Company, and other sources that the Committee deems appropriate. The Committee also will consider stockholder recommendations for nominees for director subject to such recommendations being made in accordance with the Company's Second Restated Certificate of Incorporation. (the "*Certificate of Incorporation*"). The Board will be responsible for recommending prospective nominees to the stockholders for their consideration. All such nominees that become members of the Board shall serve in accordance with the Company's Amended and Restated Bylaws and Certificate of Incorporation.

4. When qualifying prospective nominees, the Committee shall consider the current composition of the Board and the characteristics of each individual under consideration, including that individual's competencies, experience, reputation, integrity, independence, potential for conflicts of interest and other appropriate qualities. When considering a director standing for re-election, in addition to the attributes described above, the Committee shall consider that individual's past contribution and future commitment to the Company. The Committee will evaluate all Board nominees, regardless of the source from which the nominee was first identified, based upon the totality of the merits of each nominee and not based upon minimum qualifications or attributes. Additionally, the Committee will seek to assure that the Board is composed of a sufficient number of independent directors to satisfy the Nasdaq listing requirements. In addition, the Committee will seek to assure that at least three of the Board's independent members satisfy the Nasdaq financial and accounting experience requirements and the heightened SEC independence standards and that at least one of such three members qualifies as an audit committee financial expert.

5. Review with the Board on an annual basis the appropriate skills and characteristics required of Board members in the context of the current composition of the Board and each of its committees.

6. Make recommendations to the Board regarding the size of the Board and the tenure and classifications of Directors.

### General

7. Annually perform an evaluation of itself.

8. Retain, in its sole discretion, experts, consultants and other advisors to aid the Committee in fulfilling its duties pursuant to this Charter and all applicable federal and state laws and stock exchange rules.

9. Review and reassess the adequacy of this Charter as frequently as the Committee deems appropriate. If any revisions to the Charter are deemed necessary or appropriate, submit such recommended changes to the Board for its consideration and approval.

10. Perform such other functions as the Board may request.

## **VI. Definitions**

In the event the applicable rules and requirements of the Securities and Exchange Commission or the Nasdaq Stock Market are amended from time to time to revise their defined terms, the corresponding definitions herein shall be automatically amended to conform to such definitions as revised by the Securities and Exchange Commission or the Nasdaq Stock Market, as applicable.

Director shall mean a duly elected and qualified individual serving on the Board of the Company.

Family Member means a person's spouse, parents, children and siblings, whether by blood, marriage (including any in-law relationships) or adoption, or anyone residing in such person's home.

Independent Director means a person other than an officer or employee of the Company or its subsidiaries or any other individual having a relationship, which, in the opinion of the Company's Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(a) a director who is, or at any time during the past three (3) years was, employed by the Company or by any subsidiary of the Company;

(b) a director who accepted or who has a Family Member who accepted any payments from the Company or any subsidiary of the Company in excess of \$60,000 during the current or any of the past three (3) fiscal years, other than the following:

- (i) compensation for Board or Board committee service;
- (ii) payments arising solely from investments in the Company's securities;
- (iii) compensation paid to a Family Member who is a non-executive employee of the Company or a subsidiary of the Company;
- (iv) benefits under a tax-qualified retirement plan, or non-discretionary compensation; or
- (v) loans permitted under Section 13(k) of the Securities Exchange Act of 1934, as amended;

(c) a director who is a Family Member of an individual who is, or at any time during the past three (3) years was, employed by the Company or by any subsidiary of the Company as an executive officer;

(d) a director who is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three (3) fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

- (i) payments arising solely from investments in the Company's securities; or
- (ii) payments under non-discretionary charitable contribution matching programs;

(e) a director of the Company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three (3) years any of the executive officers of the Company serve on the compensation committee of such other entity; or

(f) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three (3) years.

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