

Presentment Date: August 20, 2019, at 12:00 p.m. (prevailing Eastern Time)

Objection Deadline: August 13, 2019, at 4:00 p.m. (prevailing Eastern Time)

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*Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
	)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF PRESENTMENT OF THE DEBTORS' MOTION  
FOR ENTRY OF AN ORDER APPROVING THE  
SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE NEW YORK  
STATE DEPARTMENT OF TAXATION AND FINANCE**

PLEASE TAKE NOTICE that on July 30, 2019, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Motion for Entry of an Order Approving the Settlement Agreement Between the Debtors and the New York State Department of Taxation and Finance* (the "Motion").

PLEASE TAKE FURTHER NOTICE that an order, substantially in the form attached to the Motion at **Exhibit A** (the "Proposed Order"), will be presented for signature by the

<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kcellc.net/windstream>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



Honorable Robert D. Drain of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), in Room 248, 300 Quarropas St., White Plains, New York, 10601, on **August 20, 2019, at 12:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the *Final Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 392] (the “Case Management Order”) approved by the Court; (c) be filed electronically with the Court on the docket of *In re Windstream Holdings, Inc.*, Case 19-22312 (RDD) by registered users of the Court’s electronic filing system and in accordance with the General Order M-399 (which is available on the Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **August 13, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors’ case website at <http://www.kcellc.net/windstream>) and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, the Debtors shall, on or after the Objection Deadline, submit to the Court an order substantially in the form annexed as **Exhibit A** to the Motion, which order the Court may enter without further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that, if an Objection is timely filed and served, a hearing (the “Hearing”) will be held to consider the Motion on **August 20, 2019, at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Robert D. Drain, United States Bankruptcy

Judge for the Southern District of New York, in Room 248, 300 Quarropas St., White Plains, New York, 10601.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/windstream>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: July 30, 2019  
New York, New York

/s/ Stephen E. Hessler, P.C.

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
	)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DEBTORS' MOTION, FOR ENTRY OF AN ORDER APPROVING THE  
SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE NEW YORK  
STATE DEPARTMENT OF TAXATION AND FINANCE**

Windstream Holdings, Inc. and its debtor affiliates as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully state the following in support of this motion:

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), approving the proposed settlement agreement, annexed to the Order as

<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

**Exhibit 1** (the “Settlement Agreement”), between the Debtors and the New York State Department of Taxation and Finance (the “Department”). Additionally, the Debtors seek authority to effectuate a setoff between an additional liability (the “Additional NY Tax Claim”), annexed to the Order as **Exhibit 2** and a refund (the “NY Refund”), annexed to the Order as **Exhibit 3**, issued and agreed to by the Department.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

### **Background**

5. The Debtors are a leading provider of advanced network communications and technology solutions for businesses across the United States. The Debtors also offer broadband, entertainment and security solutions to consumers and small businesses primarily in rural areas in 18 states. Additionally, the Debtors supply core transport solutions on a local and long-haul fiber network spanning approximately 150,000 miles and have over 11,000 employees.

6. On February 25, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of certain facts and circumstances surrounding these chapter 11 cases is set forth in the *Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* [Docket No. 27] (the “First Day Declaration”), filed on the Petition Date.

7. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 56]. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 12, 2019, the United States Trustee for the Southern District of New York appointed the creditors’ committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 136].

### **The Settlement Background**

8. The Department has asserted that Earthlink, Inc. and certain of its affiliates owe approximately \$1,275,000 of state and local income tax claims for the period beginning in 2011 and ending in 2013 (and associated interest and penalties with respect thereto). The claims primarily relate to a dispute regarding the application of state net operating loss (“NOL”) rules arising from the New York franchise tax on general business corporations, imposed pursuant to Article 9A of the Tax Law (the “NY Franchise Tax Claims”), and the Metropolitan Transportation Business Tax (the “MT Business Tax Claims,” and, together with the NY Franchise Tax Claims, the “NY Tax Claims”).

9. Although not free from doubt, the Debtors have determined that it is likely that each of the NY Tax Claims would constitute priority tax claims pursuant to section 507(a)(8)(A) of the Bankruptcy Code.<sup>2</sup>

10. After carefully evaluating the substantive arguments, costs associated with contesting the proposed amounts, and potential ability to subject the claim to the deferred payment provisions of Section 1129(a)(9)(C), the Debtors negotiated the proposed settlement with the Department, which provides for a single \$725,000 payment to be made within 20 days of a court order approving the Settlement Agreement.

11. If the Settlement Agreement is not approved, the Debtors anticipate that the Department will submit claims totaling approximately \$1,270,000.<sup>3</sup> Given the uncertainty and expense of potential litigation of the NY Tax Claims (whether in this Court or pursuant to applicable state procedures), the Settlement Agreement is advantageous for the Debtors and is in the best interests of their estates under the Debtors' sound business judgment.

12. In light of the Debtors significant ongoing business operations and complex chapter 11 cases, the Debtors believe it is in the best interest of all stakeholders to enter into the Settlement Agreement. The Debtors and the Department have negotiated in good faith on resolving the NY Tax Claims for purposes of maximizing the value of the Debtors' estates and minimizing disruption to the Debtors' operations and progression through chapter 11.

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<sup>2</sup> Under applicable state law, the period of assessment with respect to the NY Tax Claims remained open by virtue of an agreement to extend the assessment period. *See* Section 507(a)(8)(A)(iii). Nothing contained herein shall be deemed an admission that such claims constitute priority tax claims (including on the basis that some or all of such or prejudice the Debtors or any party in interest from later disputing the validity and amount of such claims in the event that the relief requested pursuant to this Motion is not granted.

<sup>3</sup> The Settlement Agreement does not address certain other outstanding tax claims and refund amounts which are still being discussed.

13. The Settlement Agreement provides the Debtors with a number of important benefits, including the full and final settlement of all matters related to the NY Tax Claims. Simply stated, the Settlement Agreement enables the Debtors to avoid the uncertainty, delay and costs of potentially protracted litigation regarding the NY Tax Claims. The Debtors submit that approval of the Settlement Agreement is in the best interest of its estates.

14. In addition to the NY Tax Claims described above, in an effort to generally resolve outstanding issues with the New York taxing authorities, pursuant to this Motion, the Debtors are also seeking the authority to resolve two smaller issues. The Additional NY Tax Claim is a claim asserted against EarthLink Holdings Corp. for the 2014-2017 tax years, in an amount of approximately \$34,000. The NY Refund is a refund asserted by One Communications Corp. for the 2011-2012 tax year in an amount of approximately \$30,600. There are no contested issues with respect to either the Additional NY Tax Claim or the NY Refund. However, the New York taxing authorities have agreed that, if they are permitted to promptly offset the NY Refund against the Additional NY Tax Claim (the “NY Setoff”), they will forgive the excess amount of the Additional NY Tax Claim. Therefore, in order to minimize expenses and capture a nearly 10% discount with respect to the Additional NY Tax Claim, the Debtors seek the authority to effectuate the NY Setoff.

### **Basis for Relief**

#### **I. The Settlement Agreement Represents a Favorable Resolution of the NY Tax Claims Between the Parties and Reflects The Debtors’ Sound Business Judgment.**

15. Bankruptcy Rule 9019(a) provides that, “after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). In determining whether to approve a settlement as fair and equitable under Bankrupt Rule 9019, courts in the Second Circuit consider what is often referred to as the “Iridium” factors: (a) the balance between the litigation’s



possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation, with its attendant expense, inconveniences, and delay; (c) the paramount interest of the creditors; (d) whether other parties in interest affirmatively support the proposed settlement; (e) the nature and breadth of releases to be obtained by officers and directors; (f) whether the competency and experience of counsel support the settlement; and (g) the extent to which the settlement is the produce of arm's-length bargaining. *See In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007); *see also Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 292 (2d Cir. 1992); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 428 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994).

16. A settlement under Bankruptcy Rule 9019 need not result in the best possible outcome for the debtors, but must not "fall below the lowest point in the range of reasonableness." *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 595 (Bankr. S.D.N.Y. 1991). In determining the range of reasonableness, the bankruptcy court need not decide the numerous issues of law and fact raised by the settlement. *See Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (citing *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). In other words, the court does not need to conduct a "mini-trial" of the underlying facts and merits; it needs only to evaluate those facts that are necessary to allow it to assess the settlement and to make an independent judgment about the settlement. *See In re Charter Commc'ns*, 419 B.R. 221, 252 (Bankr. S.D.N.Y. 2009) ("The standard does not require that the settlement be the best the debtor could have obtained nor does it require the court to conduct a mini-trial of the questions of law and fact.").

17. Ultimately, the decision to accept or reject a compromise or settlement is within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) ("Although a judge must consider the fairness of the settlement to the estate and its creditors, the

judge is not required to assess the minutia of each and every claim.”); *Drexel Burnham*, 134 B.R. at 505; *see also Abeles v. Infotechnology (In re Infotechnology)*, 1995 U.S. App. LEXIS 39883, at \*4–5 (2d Cir. Nov. 9, 1995) (noting that in determining whether to approve a debtor’s motion to settle a controversy, a court does not substitute its judgment for that of the debtor).

18. A court should exercise its discretion in favor of a settlement wherever possible, as settlements are generally favored in bankruptcy. *In re Adelphia Commc’ns Corp.*, 368 B.R. 140, 226 (Bankr. S.D.N.Y. 2007) (“As a general matter, settlements or compromises are favored in bankruptcy and, in fact, encouraged.”); *see also In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (“The decision to grant or deny a settlement or compromise lies squarely within the discretion of the bankruptcy court [and such] discretion should be exercised in light of the general public policy favoring settlements.”) (citing *Nellis v. Shugrue*, 165 B.R. 115, 121 (S.D.N.Y. 1994); *In re Michael Milken & Assocs. Secs. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y. 1993) (noting the paramount public policy for settlements)).<sup>4</sup>

19. The Settlement Agreement represents a fair and equitable compromise, falls well within the range of reasonableness, and satisfies each of the *Iridium* factors. More specifically, the exercise by the Department of their statutory remedies under applicable tax law in these chapter 11 cases could lead to litigation, which would consume significant estate resources at this critical juncture, and the Debtors would face a meaningful possibility of an adverse outcome in any such litigation. In contrast, the Settlement Agreement immediately resolves the NY Tax Claims in a

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<sup>4</sup> Further, under Section 105(a) of the Bankruptcy Code, the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Authorizing the Debtors to proceed with the Settlement Agreement falls squarely within the spirit of Bankruptcy Rule 9019 as well as the Bankruptcy Code’s predilection for compromise. Thus, to the extent necessary, Section 105(a) relief is appropriate in this instance and would best harmonize the settlement processes contemplated by the Bankruptcy Code.

consensual manner through the settlement payment, thereby reducing uncertainty and distraction to the estates.

20. With respect to the third *Iridium* factor, the Settlement Agreement will also allow the Debtors to continue business operations in the ordinary course and without distraction of unnecessary litigation in their chapter 11 cases. This, in turn, reduces any possible credit risk with respect to the Debtors.

21. Finally, the Debtors are hopeful that the Settlement Motion will not be opposed by the creditors committee, prepetition agents, ad hoc group of first lien lenders, ad hoc group of second lien lenders, ad hoc group of Midwest noteholders, or indenture trustees. Thus, the terms of the Settlement Agreement satisfy the Bankruptcy Rule 9019 factors applied in this jurisdiction and the Debtors respectfully request that the Court approve the Settlement Agreement and authorize the Debtors to perform thereunder.

22. Likewise, the NY Setoff allows the Debtors to capture a nearly 10% claim discount with respect to an otherwise-uncontested liability, while also minimizing expenses, which plainly maximizes the Debtors' value for all stakeholders.

### **Reservation of Rights**

23. Nothing contained in this motion or any actions taken pursuant to any order granting the relief requested by this motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law,

or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

24. To successfully implement the foregoing, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Motion Practice**

25. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Notice**

26. The Debtors have provided notice of this motion to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at [www.kccllc.net/windstream](http://www.kccllc.net/windstream)) and (b) any person or entity with a particularized interest in the subject matter of this motion. The Debtors respectfully submit that no other or further notice is necessary.

**No Prior Request**

27. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully requests that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: July 30, 2019  
New York, New York

/s/ Stephen E. Hessler, P.C.

Stephen E. Hessler, P.C.

Marc Kieselstein, P.C.

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*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-22312 (RDD)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER APPROVING THE SETTLEMENT  
AGREEMENT BETWEEN THE DEBTORS AND THE  
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) approving the Settlement Agreement, annexed hereto as Exhibit 1, and the NY Setoff of the Additional NY Tax Claim, annexed hereto as Exhibit 2, and the NY Refund, annexed hereto as Exhibit 3, between the Debtors and the Department; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this

<sup>1</sup> The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccellc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to Bankruptcy Rule 9019, the Debtors are authorized to enter into and perform under the Settlement Agreement, and perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the Settlement Agreement in accordance with the terms, conditions, and agreements set forth or provided for therein, all of which are approved.
3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
4. For the avoidance of doubt, the automatic stay will be lifted for the limited purpose to allow for setoff of any amounts owing to the Debtors against amounts to be paid pursuant to the Settlement Agreement to the extent necessary to effectuate the terms of the Settlement Agreement.
5. The Debtors are authorized to effectuate the NY Setoff and to execute any closing agreement or other written agreement with the relevant taxing authorities necessary in furtherance thereof.



6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. This Order shall bind the Debtors, their estates and any successors or assigns, including without limitation any trustee, liquidating trustee, or other estate representative.

8. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

White Plains, New York

Dated: \_\_\_\_\_, 2019

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Settlement Agreement**

**IN THE MATTER OF  
Earthlink, Inc. and Combined Affiliates**

**EIN: 58-2511877**

**Audit Case: X-477366445**

**For a Corporation Tax Audit under Articles 9-A  
and 27 of the New York State Tax Law for the  
Audit Period January 1, 2011 through  
December 31, 2013.**



**CLOSING AGREEMENT**

Pursuant to subsection Eighteenth of Section 171 of the New York State Tax Law, Earthlink Inc. and Combined Affiliates as listed in the attached Exhibits A and B, hereinafter collectively referred to as the (“Taxpayer”) and the Commissioner of Taxation and Finance (“Commissioner”) as head of the New York State Department of Taxation and Finance, Division of Taxation (“Department”) hereby enter into this Closing Agreement (“Agreement”) regarding the taxes for the period January 1, 2011 through December 31, 2013 (“Audit Period”).

**WHEREAS**, the Taxpayer is currently under audit by the Department with respect to its franchise tax liability for the Audit Period and the Taxpayer and the Commissioner seek to resolve their differences and enter into this Agreement giving due regard to the previously unresolved issues of fact and law regarding the liabilities of or refund due the Taxpayer for the subject taxes, interest and penalties for the Audit Period under the provisions of Articles 9-A and 27 of the New York State Tax Law, and regarding any other matters or periods expressly provided for within this Agreement.

**WHEREAS**, on February 25, 2019, Earthlink Inc. and Combined Affiliates, et al, filed a case under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”), case No. 19-22312, et al (the “Chapter 11 Proceedings”).

**WHEREAS**, this agreement is subject to approval by the Bankruptcy Court.

**NOW, THEREFORE,** the Taxpayer and the Commissioner hereby mutually agree as follows:

**FIRST,** the Taxpayer shall remit to the Commissioner the sum of \$725,000 representing additional tax in the amount of \$448,145, penalty in the amount of 0, and applicable interest in the amount of \$276,855 for the Audit Period as determined per Schedules “A” through “J”. Such remittance shall be in full payment and satisfaction of the additional franchise taxes under Article 9-A and corresponding penalties and interest due for the Audit Period except as otherwise specifically provided for within this Agreement.

**SECOND,** the Taxpayer shall submit a motion for approval of the Closing Agreement to the Bankruptcy Court and agrees to make full payment to the Department within twenty (20) business days of approval of the Bankruptcy Court. After payment is received, the Commissioner agrees to withdraw the proofs of claim for the tax liability under Article 9-A and corresponding liability under Article 27 listed on the claims register in the Chapter 11 Proceedings related to this agreement within twenty (20) business days.

**THIRD,** the Taxpayer agrees to waive the restrictions provided for in New York State Tax Law Section 1081(c) and hereby grants consent to the assessment and collection of the amounts due.

**FOURTH,** the Commissioner agrees not to impose any penalties under Article 27 of the New York State Tax Law against the Taxpayer for the issues at hand with regard to taxes imposed under Article 9-A for the Audit Period except as specifically provided herein.

**FIFTH,** this Agreement is valid for the Audit Period and has no impact on franchise tax liabilities or filing positions of other periods, except as set forth below and as otherwise specifically provided for in this Agreement. The Net Operating Loss carryforward into periods subsequent to the Audit Period is \$61,526,174 per Schedule J and \$416,840,611 of Net Operating Loss limited by Section 382 of the Federal Tax Law per schedules J-1 and J-2. New York State Tax Law Section 210.1(a)(ix).

**SIXTH,** the Taxpayer agrees to waive any rights to protest, agrees to withdraw all pending protests and agrees they are not entitled to any additional refund of the tax paid under Articles 9-A and 27 of the New York State Tax Law for the Audit Period and agrees not to file any future claims for refund related to the Audit Period.

**SEVENTH**, this Agreement is strictly confidential between the Department and the Taxpayer, and shall not be made known to any other party except (i) taxing jurisdictions with whom the Department has entered into a lawful information exchange agreement, (ii) with the prior consent of the other party hereto, (iii) or otherwise required by law, including the Administrative Code of the City of New York, which requires the Taxpayer to report its final New York State audit adjustments, described on Schedules "A" through "J", to the New York City Department of Finance or (iv) as required or necessary in connection with the Chapter 11 Proceedings.

**EIGHT**, this Agreement sets forth the entire understanding between the Taxpayer and the Commissioner with respect to Article 9-A for the Audit Period and the subject matter hereof and supersedes any prior negotiations, agreements, understandings or arrangements between them with respect to the Audit Period and the subject matter hereof. Except as otherwise provided for within this Agreement, this Agreement shall be final, conclusive and irrevocable for the liabilities of the Taxpayer for the subject taxes, penalties, interest and Audit Period, and except upon a showing of fraud, malfeasance or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the Agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, this Agreement, or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance herewith, shall not be annulled, modified, set aside or disregarded.

**NINTH**, nothing in this Agreement shall preclude the Department from investigating and pursuing additional tax, interest and penalty due with respect to a "reportable transaction" or a "New York reportable transaction" referenced in New York State Tax Law Section 25 or an "abusive tax avoidance transaction" referenced in New York State Tax Law Section 1083 (c)(11).

**TENTH**, this Agreement shall be binding on New York State, the Taxpayer and the Taxpayer's respective successors and assigns. The parties represent that the individuals signing this Agreement are duly authorized by the respective parties to execute this Agreement on their behalf.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates shown below.

Date: \_\_\_\_\_

**Earthlink, Inc. and Combined Affiliates**  
**EIN: 58-2511877**

By: \_\_\_\_\_

Signature of Taxpayer or Authorized Representative

\_\_\_\_\_  
\_\_\_\_\_

Print Name and Title of Taxpayer or  
Authorized Representative

Date: \_\_\_\_\_

**New York State Department of  
Taxation and Finance**

\_\_\_\_\_  
Commissioner of Taxation and Finance,  
by Director of Tax Audits

**Exhibit 2**

**Additional NY Tax Claim**

New York State Department of  
**Taxation and Finance**

Pg 24 of 54

www.tax.ny.gov  
Income/Franchise Tax Field Audit Bureau  
Capital Region Office - Bldg 9 Room 380  
Income Franchise Tax Section, Albany, NY 12227  
Phone: (518)389-4892 Fax: (518)435-8639

July 09, 2019

Mr. Martin I. Eisenstein  
Brann & Isaacson  
P.O. Box 3070  
Lewiston, ME 04243-3070

RE: Earthlink Holdings Corporation  
EIN: 46-4228084  
Article(s): 9A  
Audit Period: 01/01/2014 - 02/27/2017  
Case ID: X777191247

Dear Mr. Eisenstein:

An audit of the New York State tax returns for the tax period and article(s) noted above has resulted in an increase to the tax liability in the amount of \$30,556. Please note that, per a resolution met, a credit will be allocated in the full amount of the tax due from a related filer, One Communications Corp. (X466146877), and therefore no payment is required for the case listed above. The enclosed schedules reflect the details of the proposed audit adjustments.

You may accept the changes to the tax liability by returning two signed copies of the enclosed Form DO-356, *Consent to Field Audit Adjustment*.

To make payment:


- Use your Online Services account and pay online by choosing Pay an Open Audit Case from the Make a Payment section. If you do not have an online services account with NY State, you can easily set one up at [www.tax.ny.gov](http://www.tax.ny.gov). (Please note that non-U.S. taxpayers must have a U.S. bank account to make an electronic payment through an Online Services account.)
- If you prefer to write a check, make it payable to the Commissioner of Tax and Finance and mail it to the above address.

If you disagree with the findings and would like the opportunity to discuss them in greater detail, please contact the auditor by August 04, 2019. At this time, you may submit evidence to substantiate your position. If penalties have been imposed, you may request waiver of those which you believe and are able to establish that reasonable cause exists for abatement.

Not responding to this letter will result in the issuance of a statutory notice of deficiency. This deficiency will become a statutory assessment unless a request for a conciliation conference or a petition for a Tax Appeals hearing is filed within 90 days. In such an event, interest will accrue on the deficiency to the date of payment. If an attorney or agent represents you, a formal power of attorney must be on file. Enclosed is Publication 130, *The New York State Tax Audit – Your Rights and Responsibilities*, which explains the protest procedures.

A response indicating your agreement or disagreement is requested by August 04, 2019. Please direct all return correspondence to William McDonald at the address shown above. Your prompt cooperation would be greatly appreciated.

Sincerely,

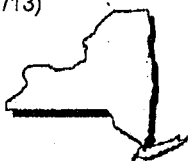
  
\_\_\_\_\_  
Scott Remkus  
Corporation Tax Auditor II  
(518)389-4869

Enclosure(s): Publication 130  
Form DO-356  
Schedule(s) A-H



New York State Department of Taxation and Finance

**Publication 130-F**  
(11/13)



## The New York State Tax Audit — Your Rights and Responsibilities

The Department of Taxation and Finance's purpose in conducting an audit is to verify that you paid the correct tax. During the audit, you may be required to provide the auditor with whatever records are necessary to verify the information you provided on your return. Depending on the type of return being audited, this may entail a review of your income, receipts, expenses, credits, and other business records.

### Professional audit standards

The examination must be conducted in accordance with professional auditing standards by an auditor who is familiar with generally accepted accounting procedures and auditing techniques.

To avoid any conflicts of interest, the auditor cannot have any personal relationships with the taxpayer, the taxpayer's family, or the taxpayer's employees (in the case of a business audit). Additionally, the auditor may not have any personal or financial interest in a business being audited.

Throughout the course of an audit, you are entitled to receive fair, courteous, and professional treatment. If at any time during the course of an audit you feel these standards or any other of your rights are being violated, you should immediately contact the auditor's supervisor.

To report allegations of fraudulent employee misconduct, contact the Office of Internal Affairs via telephone at (518) 485-8698 or by mail to:

NYS TAX DEPARTMENT  
OFFICE OF INTERNAL  
AFFAIRS WA HARRIMAN  
CAMPUS ALBANY NY 12227

### Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on tax audits, beyond which the Tax Department may not audit without your written consent. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report federal changes, or filed a false or fraudulent return to evade tax.

### Privacy/confidentiality

You have the right to know why we are requesting certain information, how we will use such information, and the consequences of your failure to submit the information. The Tax Law prohibits the disclosure of information obtained from a tax return, or during the course of an audit, to any unauthorized person. The Tax Law, however, does permit us to share your tax information with the Internal Revenue Service and other tax agencies, under defined standards of secrecy and reciprocity.

### Representation

You may retain representation at any time during the audit, and have the right to suspend a meeting or interview at any time in order to retain such representation. Any person representing you must have the proper written authorization (power of attorney) to act on your behalf in your absence. Former employees of the Department of Taxation and Finance are restricted from representing taxpayer before the department for a period of two years after they leave the department. (Subject to some restrictions, former employees may represent taxpayers before the Independent Division of Tax Appeals during the two year period.) Former employees are permanently prohibited from representing taxpayers in matters in which they were directly involved during the period of their employment.

### Audio recording

Upon reasonable advance notice to the Tax Department, you are permitted to make an audio recording of any in-person interview. You must make the recording at your own expense and with your own equipment. The Tax Department also reserves the right to record any in-person interview which the taxpayer has requested permission to record.

### The field audit

We schedule field audits in advance to give you enough time to assemble the required records. When we select you for a field audit, an auditor will usually contact you by letter, although you may be contacted by phone to set up the initial appointment. We will then send you a letter confirming the appointment and describing the books and records you must make available. For a business audit, most appointments will be at your place of business.

If you need a longer period of time to gather the necessary records, you can usually request an extension of up to 30 days; for delays longer than 30 days, you must make a written request that explains your reason for the request.

### Preliminary conference

At your initial meeting (called the *preliminary conference*), the auditor will explain the audit approach and procedures, describe the audit process, and outline your protest rights and appeal procedures. You should use this meeting to ask any questions you might have about your rights and responsibilities during the audit.

### Audit techniques

There are several different techniques used for conducting audits. The method an auditor chooses will depend on a number of variables, such as the type of tax, the accuracy and availability of records, and the size and complexity of a business.

We may conduct a detailed audit, an audit involving the test period method, or, in some instances, an audit involving a statistical sampling method. In addition, the scope of an audit may be expanded and completed as a multi-tax audit.

If preliminary audit findings result in a material effect on the reporting of another tax, the findings may be referred to another tax specialty at any time during the audit process. Audit adjustments of one tax specialty may be used as a basis for recalculation of tax in another, depending on the facts and circumstances of the case.

### Audit duration

An audit generally covers a three-year period, and can take anywhere from several days to several months to complete. The duration of the audit will depend on the complexity of the returns being audited and on the timely availability, completeness, and accuracy of your records.

### Audit findings

If there are no changes recommended by the auditor, you will be sent a letter acknowledging this and thanking you for your cooperation.

If there are changes, the auditor will meet with you to explain the findings, and to present copies of audit workpapers and schedules. The auditor will explain the audit findings, as well as the audit methods and procedures, in simple, nontechnical terms. Findings may include recommended changes in recordkeeping practices to correct accounting errors found during the audit, an explanation of the proper interpretation of the Tax Law in areas where errors were made, a notice of additional taxes due, or a notice of a refund due.

We then give you a reasonable period of time to disprove any of the audit findings. The auditor will then analyze any additional information submitted and, if appropriate, revise and resubmit the workpapers with a *Statement of Proposed Audit Changes*.

If the audit results in a refund, the auditor will provide any assistance you may require.

### If you agree . . .

If you agree with the audit findings, you will be asked to acknowledge your consent by signing the *Statement of Proposed Audit Changes*. If you owe money but cannot pay in full at this time, you can usually make a down payment and work out an installment payment agreement for the rest. You should be aware, though, that interest (and possible penalties) will continue to accrue on the unpaid balance.

**If you disagree . . .**

If you do not agree with the audit findings, you should indicate your disagreement on the *Statement of Proposed Audit Changes* and return the form to the auditor. Supervisory personnel review all audit reports carefully, so you may hold additional conferences with the auditor's supervisors to discuss any disagreements with the audit findings.

If you still disagree with the audit findings, we will send you a *Notice of Determination* or *Notice of Deficiency* for the taxes due. At this point, you may formally appeal the audit findings through either the Tax Department's Bureau of Conciliation and Mediation Services or through the Independent Division of Tax Appeals. For estate tax cases, see Publication 130-D, *The New York State Tax Audit - Your Rights and Responsibilities*. Generally, you must file your appeal within 90 days of the date the notice was issued. **To determine your time limit, refer to the *Notice* you received.** You must submit a written appeal even if you have previously written to the department and objected to the position taken in the *Statement of Proposed Audit Changes*.

**Penalties and interest**

The three most common reasons for tax penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. You can avoid penalties and interest by filing your tax returns and paying the correct amount of taxes on time.

Penalties for late filing and delinquent taxes are generally based on the amount of tax that is overdue. However, there are various penalties for late filing whether or not you owe any taxes.

Whether you agree or disagree with the tax, interest, or penalties, both interest and penalties continue to be added to the amount due until we receive payment.

**Claims for refund**

Most taxpayers normally associate refunds of tax with an overpayment of withholding or estimated tax. However, after filing an original return, a taxpayer may discover the omission of a credit, deduction, or exemption. Generally, you may claim refunds by filing an amended return within the statutory time limits for claiming a refund. See *Need help?* If you need to contact the department for the appropriate forms and for time limits and for any further instructions specific to the tax type for which you are making the claim for refund.

If the amount of your refund is adjusted or denied in full, we will send you an explanation of the changes or a letter of disallowance. If you disagree with the adjustment or disallowance of your refund, you should submit to us a complete explanation of why you disagree, along with any supporting documentation. If you still disagree after our review, you may protest at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals. (See *Your right to protest an action taken by the Tax Department* section.) However, note that if you have received a document specifying the time period in which to protest our determination at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, further correspondence or contact with us will not extend that time period.

**Your right to protest an action taken by the Tax Department**

If you disagree with an action taken by the Tax Department (the issuance of a tax deficiency/determination, the denial of a refund claim, or the denial or revocation of a license, registration, or exemption certificate), you may protest by filing a *Request for Conciliation Conference* or by filing a *Petition* for a tax appeals hearing. If the disputed amount is within certain monetary limits, you may elect to have your hearing held in the Small Claims Unit.

You must file the request or petition within a certain period from the date the Tax Department mailed you notice of its action. **Please refer to the notice you received to determine your time limit.** These time limits are established by the Tax Law and cannot be extended. We recommend you use certified or registered mail.

You may appear on your own behalf or you may have an authorized representative present your case for review. An authorized representative must have a power of attorney from you.

There are no formal prepayment hearing rights where tax, interest, or penalty is owed because of (1) mathematical or clerical errors on a return, (2) changes made to the taxpayer's federal return by the IRS or other competent federal authority (federal changes), or (3) failure of the taxpayer to pay all or part of the amount of tax due that is shown as due on the

**Conciliation conference**

A conciliation conference is a rapid and inexpensive way to resolve protests without a formal hearing. The conference is conducted informally by a conciliation conferee, who will review all of the evidence presented to determine a fair result. After the conference, the conferee will issue a conciliation order. The conciliation order is binding **unless** you file a petition with the Division of Tax Appeals. Refer to the information you receive with the order to determine your time limit to file.

Conferences are not available to distributors, importing transporters, terminal operators, or petroleum businesses where the issue is an increase in the amount of a bond or other security. These situations may be handled by the Tax Appeals Division only.

**Tax appeals hearing**

The tax appeals hearing procedure begins when you file a petition with the Division of Tax Appeals. You must indicate in writing the specific actions of the Tax Department you are protesting.

The hearing is an adversary proceeding before an impartial administrative law judge. The hearing will be stenographically reported. After the hearing, the administrative law judge will issue a determination which will finally decide the matter(s) in dispute **unless** you or the Tax Department request a review of the decision made by the Tax Appeals Tribunal. If such a review is requested, the record of the hearing and any additional oral or written arguments will be considered. After this review, the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or referring the matter back to the administrative law judge for further hearing.

**Court review:** If you do not agree with the Tax Appeals Tribunal's decision, you may seek court review. You must file an application for court review within the specified time limits. For some taxes, you must pay the tax, interest, and penalty, or post a bond for this amount, plus court costs, when you file an application for court review.

**Small claims option:** You may elect to have your hearing held in the Small Claims Unit if the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure of the Tax Appeals Tribunal* (a copy is included with the petition forms). The hearing is conducted as informally as possible by an impartial presiding officer. The presiding officer's determination is conclusive and is not subject to review by any other unit in the Division of Tax Appeals, the Tax Appeals Tribunal, or by any court in the state.

You may request petition forms and the *Rules of Practice and Procedure of the Tax Appeals Tribunal* by writing to:

DIVISION OF TAX APPEALS  
AGENCY BUILDING 1  
EMPIRE STATE  
PLAZA ALBANY NY  
12223

A request for petition forms and the rules is not considered the filing of a petition for hearing for purposes of the time limits, and does not extend the time limits for filing a petition.

**Need help?**

Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance**

**Business Tax Information Center:** (518) 457-5342

**Personal Income Tax Information Center:** (518) 457-5181

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



New York State Department of  
**Taxation and Finance**  
 www.tax.ny.gov  
 Income/Franchise Tax Field Audit Bureau  
 Capital Region Office - Bldg 9 Room 380  
 Income Franchise Tax Section, Albany, NY 12227  
 Phone: (518)389-4892 Fax: (518)435-8639

## Consent to Field Audit Adjustment

Earthlink Holdings Corporation  
 C/O Windstream, Inc.  
 4001 Rodney Parham Road  
 Little Rock, AR 72212

Date: July 09, 2019 |  
 Payment Due Date: August 04, 2019 |  
 Taxpayer ID: 46-4228084  
 Tax Article(s): 9A 27  
 Audit ID: X777191247  
 Auditor: William McDonald

### SUMMARY OF TAXES

Audit Period Ended	Additional Tax (Tax Reduction)	Penalties	Interest	Total
12/31/2014 9A	\$0	\$0	\$0	\$0
12/31/2014 9A MCTD	\$0	\$0	\$0	\$0
12/31/2015 9A	\$0	\$0	\$0	\$0
12/31/2015 9A MCTD	\$0	\$0	\$0	\$0
12/31/2016 9A	\$0	\$0	\$0	\$0
12/31/2016 9A MCTD	\$0	\$0	\$0	\$0
02/27/2017 9A	\$0	\$0	\$0	\$0
02/27/2017 9A MCTD	\$0	\$0	\$0	\$0
Total	\$0	\$0		\$0

If you agree with this Consent to Field Audit Adjustment ("Consent"), please sign and return two copies, with payment if applicable, by August 04, 2019.

I agree with the amount due and consent to the assessment of the tax and penalties, if any, and accept the determination of any amount to be credited or refunded as shown above, plus any interest provided by law. By signing this Consent, I understand that:

- o the restrictions provided in Section 1081(c) of the Tax Law are waived and consent is given to the assessment and collection of any amount due;
- o if a refund or credit is listed for any of the audited periods for which a claim has not been previously filed, this Consent shall represent the disclosure of overpayment to a taxpayer required by Section 3004-a of the Tax Law;
- o for any period(s) in which an overpayment exists and a claim was not previously made, this form shall be deemed to be a claim for credit or refund with interest calculated according to Section 1088(a)(3) of the Tax Law, provided this form is signed by a corporate officer or an authorized person; and
- o that the signing of this Consent does not preclude the State from issuing additional billing notices as the result of any pending or future Federal audit change or any subsequent State audit of other issues.

**Make your check or money order payable to the COMMISSIONER OF TAXATION AND FINANCE. Include your Audit ID number as shown above on your payment.**

SIGN →  
 HERE

\_\_\_\_\_  
 Signature of Authorized Person

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**Note:** If any audit period has resulted in an overpayment, the signature of a Corporate Officer or a person authorized to sign a tax return is required.

If you do not agree with this Consent to Field Audit Adjustment and any of the audited periods has resulted in a refund that was not previously requested, this form shall represent a disclosure of overpayment to taxpayer as required by Sec. 3004-a of the Tax Law. You must file a claim for refund or credit of any disclosed amounts by the later of 120 days from the date of this notice or the last day a refund or credit may be claimed pursuant to any other provision of applicable law or you will lose the right to apply for the refund or credit.



New York State Department of  
**Taxation and Finance**

www.tax.ny.gov

Income/Franchise Tax Field Audit Bureau

Capital Region Office - Bldg 9 Room 380

Income Franchise Tax Section, Albany, NY 12227

Phone: (518)389-4892 Fax: (518)435-8639

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Earthlink Holdings Corporation  
C/O Windstream, Inc.  
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### SUMMARY OF TAXES

Audit Period Ended	Additional Tax (Tax Reduction)	Penalties	Interest	Total
12/31/2014 9A	\$0	\$0	\$0	\$0
12/31/2014 9A MCTD	\$0	\$0	\$0	\$0
12/31/2015 9A	\$0	\$0	\$0	\$0
12/31/2015 9A MCTD	\$0	\$0	\$0	\$0
12/31/2016 9A	\$0	\$0	\$0	\$0
12/31/2016 9A MCTD	\$0	\$0	\$0	\$0
02/27/2017 9A	\$0	\$0	\$0	\$0
02/27/2017 9A MCTD	\$0	\$0	\$0	\$0
Total	\$0	\$0		\$0

If you agree with this Consent to Field Audit Adjustment ("Consent"), please sign and return two copies, with payment if applicable, by August 04, 2019.

I agree with the amount due and consent to the assessment of the tax and penalties, if any, and accept the determination of any amount to be credited or refunded as shown above, plus any interest provided by law. By signing this Consent, I understand that:

- the restrictions provided in Section 1081(c) of the Tax Law are waived and consent is given to the assessment and collection of any amount due;
- if a refund or credit is listed for any of the audited periods for which a claim has not been previously filed, this Consent shall represent the disclosure of overpayment to a taxpayer required by Section 3004-a of the Tax Law;
- for any period(s) in which an overpayment exists and a claim was not previously made, this form shall be deemed to be a claim for credit or refund with interest calculated according to Section 1088(a)(3) of the Tax Law, provided this form is signed by a corporate officer or an authorized person; and
- that the signing of this Consent does not preclude the State from issuing additional billing notices as the result of any pending or future Federal audit change or any subsequent State audit of other issues.

**Make your check or money order payable to the COMMISSIONER OF TAXATION AND FINANCE. Include your Audit ID number as shown above on your payment.**

SIGN →  
HERE

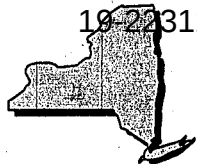
\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Note:** If any audit period has resulted in an overpayment, the signature of a Corporate Officer or a person authorized to sign a tax return is required.

If you do not agree with this Consent to Field Audit Adjustment and any of the audited periods has resulted in a refund that was not previously requested, this form shall represent a disclosure of overpayment to taxpayer as required by Sec. 3004-a of the Tax Law. You must file a claim for refund or credit of any disclosed amounts by the later of 120 days from the date of this notice or the last day a refund or credit may be claimed pursuant to any other provision of applicable law or you will lose the right to apply for the refund or credit.



## New York State Department of Taxation &amp; Finance

## Summary of Additional Tax, Interest, and Penalty Due

## Schedule A

Taxpayer Name: Earthlink Holdings Corporation

Taxpayer ID: 46-4228084

Case Number: X777191247

Prepared by: W M

Approved by:

Sub Type	Period Ending	Other Taxes And Fees	Addl. Tax (Refund) Due	Penalty Article 27	Interest Computed To / /	Total Amount Due
15	12/31/2014		0	0	0	0
19	12/31/2014	MCTD	0	0	0	0
15	12/31/2015		0	0	0	0
19	12/31/2015	MCTD	0	0	0	0
15	12/31/2016		0	0	0	0
19	12/31/2016	MCTD	0	0	0	0
15	02/27/2017		0	0	0	0
19	02/27/2017	MCTD	0	0	0	0
Totals:			0	0	0	0

Notes and References:

Earthlink Holdings Corporation					Prepared by: W M				
46-4228084					Approved by: _____				
Computation of Additional Tax (Refund) Due					7/9/2019				
Schedule B									
	Period Ended		Period Ended		Period Ended		Period Ended		
	REF	12/31/2014	REF	12/31/2015	REF	12/31/2016	REF	12/31/2017	
Tax on entire net income base/Business Income Base	Sch. C	0	Sch. C-1	14,520	Sch. C-1	13,473	Sch. C-1	0	
Tax on capital base	Sch. D	34,725	Sch. D-1	14,520	Sch. D-1	13,743	Sch. D-1	2,724	
Tax on minimum taxable income base	Sch. E	0	N/A	0	N/A	0	N/A	0	
Fixed dollar minimum tax	CT-3-A	5,000	CT-3-A	5,000	CT-3-A	5,000	Note 2	1,750	
Highest tax computed		34,725		14,520		13,743		2,724	
Subsidiary capital base tax		0		0		0		0	
Tax due before credits		34,725		14,520		13,743		2,724	
Less tax credits:		0		0		0		0	
Total tax credits		0		0		0		0	
Balance		34,725		14,520		13,743		2,724	
Larger of minimum taxable income base tax or fixed dollar minimum		5,000		5,000		5,000		1,750	
Highest tax		34,725		14,520		13,743		2,724	
Sum of Fixed Dollar Minimum taxes from subsidiaries	Note 1	0	Note 1	0	Note 1	0	Note 1	0	
Total tax due		34,725		14,520		13,743		2,724	
Tax previously paid:									
Tax paid with return		18,801		10,000		10,000		5,000	
Resolution Adjustment		775						(2,276)	
Allocation of Refund from One Communications Corp. (X466146877)		15,149		4,520		3,743			
Refundable credits									
Total taxes previously paid		34,725		14,520		13,743		2,724	
Additional tax (refund) due Schedule A		0		0		0		0	
Notes:					Note 2:				
Note 1: Since the receipts of Earthlink Shared Services, LLC were removed from the BAP, no receipts were determined for the subsidiary and no fixed dollar minimum was computed.					FDM (\$5,191,086) 3,500 reduction for short period 50% FDM per audit 1,750				

Earthlink Holdings Corporation

46-4228084

Computation of Additional MTA Surcharge (Refund) Due

Schedule B-1

Prepared by: W M

Approved by: \_\_\_\_\_

7/9/2019

	REF	Period Ended 12/31/2014	REF	Period Ended 12/31/2015	REF	Period Ended 12/31/2016	REF	Period Ended 2/27/2017
<b>Recomputation of tax:</b>								
NY State Tax base	Sch. D	23,150,142	Sch. B	14,520	Sch. B	13,743	Sch. B	2,724
Tax rate without regard to tax rate reduction		0.1780%		100.0000%		100.0000%		100.0000%
NY State tax without regard to tax rate reduction		41,207		14,520		13,743		2,724
Tax on subsidiary capital		0		0		0		0
Fixed dollar minimum tax on combined NY State taxpayers	Sch. B	0	Sch. B	0	Sch. B	0		0
Total adjusted NY State franchise tax		41,207		14,520		13,743		2,724
Tax credits		0		0		0		0
Net NY State franchise tax		41,207		14,520		13,743		2,724
<b>Computation of MTA surcharge:</b>								
Net NY State franchise tax		41,207		14,520		13,743		2,724
MCTD allocation percentage	CT-3M	39.9892%	CT-3M	38.4893%	CT-3M	40.1139%		42.1415%
Allocated NY State franchise tax		16,478		5,589		5,513		1,148
MTA surcharge rate		17%		25.6%		28%		28%
MTA surcharge		2,801		1,431		1,544		321
MTA surcharge, as reported	CT-3M	1,516	CT-3M	985	CT-3M	1,123	CT-3M	596
Application of money in 2011 account of One Comm. Corp.		23						(275)
Allocation of Refund from One Communications Corp. (X466146877)		1,262		446		421		
Total MTA surcharge previously paid		2,801		1,431		1,544		321
Additional MTA surcharge (refund) due to Schedule A		0		(0)		(0)		0
Notes:								
New York State Tax Law Article 9A, Section 209-B								

Earthlink Holdings Corporation 46-4228084 Computation of Tax on Combined Entire Net Income Base Schedule C						Prepared by: W M Approved by: 4/15/2019	
Period Ended 12/31/2014	Earthlink Holdings 46-4228084 REF	EL Shared Serv. 51-0553722 REF	Subtotal	Intercompany Eliminations	Combined Total		
FTI before NOL and Special deductions	Note 1	CT-3-A	(35,004,001)	0	(35,004,001)		
ADD:							
Interest on Federal, State & Muni Oblig.			0	0	0		
Interest paid to stockholders			0	0	0		
Int deductions directly attrib. Sub Cap			0	0	0		
Non-int deductions directly attrib. Sub Cap			0	0	0		
Int deductions indirectly attrib. Sub Cap	Sch. C-2		10,144,620	0	10,144,620		
Non-int deductions indirectly attrib. Sub Cap			0	0	0		
NYS & other state and local taxes	CT-3-A	CT-3-A	(361,166)	0	(361,166)		
ACRS Deduction			0	0	0		
Other additions			0	0	0		
Subtotal			(25,220,547)	0	(25,220,547)		
LESS:							
Income from subsidiary capital			0	0	0		
50% of dividends from non-subidiaries			0	0	0		
Foreign dividends gross-up			0	0	0		
New York operating loss deductions			0	0	0		
Allowable New York depreciation			0	0	0		
Other subtractions			0	0	0		
Combined entire net income			(25,220,547)	0	(25,220,547)		
Combined investment income for allocation			0	0	0		
Combined business income for allocation			0	0	0		
Combined IAP per schedule			0	0	0		
Combined BAP per schedule F			0	0	0		
Allocated combined investment income			0	0	0		
Allocated combined business income			0	0	0		
Total combined allocated income			0	0	0		
Optional depreciation adjustment			0	0	0		
Combined entire net income base			0	0	0		
Tax Rate					7.1000%		
Combined ENI base tax to sch. B					0		
Notes:							
Note 1: Computation of FTI for EL Hold. Corp. (This modification was also made by the taxpayer)							
FTI of EL Holdings Corp.							
add: Charitable Deduction							
FTI as adjusted							



Earthlink Holdings Corporation EIN: 46-4228084 Computation of Tax on Business Income Base Schedule C-1		Prepared by: Approved by: 4/15/2019				
	REF	Period Ended 12/31/2015	REF	Period Ended 12/31/2016	REF	Period Ended 2/27/2017
Business Income as reported	CT-3-A	9,376,489	CT-3-A	19,748,387	CT-3-A	(21,783,535)
Adjustments:						
Business Income as adjusted		9,376,489		19,748,387		(21,783,535)
Addback of income previously reported as Inv Inc						
Business Income after addback		9,376,489		19,748,387		(21,783,535)
Business apportionment factor per schedule F-1		4.1900%		3.8685%		4.5224%
Apportioned business income after addback		392,875		763,966		(985,147)
Prior net operating loss conversion subtraction	Sch. H-3	188,368	Sch. H-3	552,535	Sch. H-3	(985,147)
Subtotal		204,507		211,431		(985,147)
NOL deduction						
Business income base		204,507		211,431		(985,147)
Tax Rate		7.1000%		6.5000%		6.5000%
Business Income base tax per audit to schedule B		14,520		13,743		0
Notes:						

Earthlink Holdings Corporation		Prepared by: W M
46-4228084		Approved by: _____
Interest Deductions Indirectly Attributable to Subsidiary Capital		4/15/2019
Schedule C-2		
	REF	Period Ended 12/31/2014
Federal interest deductions shown on federal Form 1120, line 18	1120	52,747,010
Less: Interest deductions required to be added back to ENI:		
Add: Interest deductions required to be subtracted from ENI:		
Total NY interest deductions included in Entire Net Income		52,747,010
Interest directly attributed to subsidiary capital		
Interest directly attributed to investment capital		
Interest directly attributed to business capital		
Subtotal		0
Interest deductions subject to attribution		52,747,010
Total subsidiary capital	Sch. G	385,700,357
Adjusted total assets	Sch. D	2,005,451,278
Percentage		19.2326%
<b>Interest deductions indirectly attributed to subsidiary capital to sch. C</b>		<b>10,144,620</b>
Notes:		

Earthlink Holdings Corporation 46-4228084 Computation of Tax on Allocated Combined Capital Schedule D					Prepared by: W M Approved by: 4/15/2019	
Average Values	Period Ended 12/31/2014	Earthlink Holdings 46-4228084 REF	EL Shared Serv 51-0553722 REF	Subtotal	Intercompany Eliminations	Combined Total
Total assets		CT-3-A 2,005,451,278	CT-3-A 16,050,370	2,021,501,648	0	2,021,501,648
Real property and marketable securities				0	0	0
Subtract line 27 from line 26		2,005,451,278	16,050,370	2,021,501,648		2,021,501,648
FMV real property and marketable securities				0		0
Adjusted total assets		2,005,451,278	16,050,370	2,021,501,648		2,021,501,648
Total liabilities		CT-3-A 1,278,228,925	CT-3-A 44,267,013	1,322,495,938	0	1,322,495,938
Total combined capital		727,222,353	(28,216,643)	699,005,710	0	699,005,710
Combined subsidiary capital		Sch. G 154,155,466		154,155,466	0	154,155,466
Combined bus and inv capital		573,066,887	0	544,850,244	0	544,850,244
Combined investment capital						
Combined business capital		573,066,887	0	544,850,244	0	544,850,244
Combined IAP per schedule						0.0000%
Combined BAP per schedule F						4.2489%
Allocated combined inv capital						0
Allocated combined bus capital						23,150,142
Combined capital base						23,150,142
Tax Rate						0.1500%
Combined capital base tax to Sch. B						34,725
Notes:						

Earthlink Holdings Corporation EIN: 46-4228084 Computation of Tax on Capital Base Schedule D-1				Prepared by: Approved by: 4/15/2019		
	REF	Period Ended 12/31/2015	REF	Period Ended 12/31/2016	REF	Period Ended 2/27/2017
Total Net Assets as reported	CT-3-A	(123,010,536)	CT-3-A	(111,765,327)	Note 1	40,160,058
Adjustments:						
	Note 1	354,189,796	Note 1	348,596,148		
Total Net Assets as adjusted		231,179,260		236,830,821		40,160,058
Less Investment capital for current year		0		0		0
Addback of capital previously reported as Investment capital						
Total Business Capital		231,179,260		236,830,821		40,160,058
Business apportionment factor per schedule F-1		4.1871%		3.8685%		4.5224%
Apportioned business capital		9,679,746		9,161,889		1,816,214
Tax Rate		0.1500%		0.1500%		0.1500%
Capital base tax to schedule B		14,520		13,743		2,724
Notes:						
Note 1: The amount reported for eliminations appears to be the consolidated Federal amounts for the entire group. No eliminations were reported for tax 2014, which was determined to be correct. The eliminations were reversed in order to remain consistent.						
Asset Elimination		653,237,432		624,704,590		481,708,247
Liability Elimination		299,047,636		276,108,442		133,214,879
Net Elimination to Total Net Assets Reported		354,189,796		348,596,148		348,493,368
Total Net Assets Reported (2/27/2017)						(107,533,020)
Net Elimination (2/27/2017)						348,493,368
Total Net Assets per audit (2/27/2017)						240,960,348
Number of months in Calendar Year						12
Number of months in short period						2
Pro-rated Total Net Assets per audit (2/27/2017)						40,160,058

Earthlink Holdings Corporation 46-4228084 Computation of Tax on Minimum Taxable Income Base Schedule E						Prepared by: W M Approved by: 4/15/2019	
Period Ended 12/31/2014	Earthlink Holdings 46-4228084 REF	EL Shared Serv. 51-0553722 REF	Subtotal	Intercompany Eliminations	Combined Total		
Entire Net Income	Sch. C (25,217,254)	Sch. C (3,293)	(25,220,547)	0	(25,220,547)		
Depreciation post 1986 tangible property	5,529,975		5,529,975	0	5,529,975		
Amortization post 1986 mining expl and dev costs			0	0	0		
Amortization post 1986 circulation expenditures			0	0	0		
Basis adj gain/loss from property sale or exchange	(157,294)		(157,294)	0	(157,294)		
Long term contracts post Feb 1986			0	0	0		
Installment sales of certain property			0	0	0		
Merchant marines capital construction funds			0	0	0		
Passive activity loss			0	0	0		
Subtotal	(19,844,573)	(3,293)	(19,847,866)	0	(19,847,866)		
Depletion			0	0	0		
Appreciated property charitable deduction			0	0	0		
Intangible drilling costs			0	0	0		
Subtotal and tax preference items	(19,844,573)	(3,293)	(19,847,866)	0	(19,847,866)		
Net operating loss deduction			0	0	0		
Subtotal, tax preference items and NOLD	(19,844,573)	(3,293)	(19,847,866)	0	(19,847,866)		
Alternative net operating loss deduction	0	0	0	0	0		
Minimum taxable income	(19,844,573)	(3,293)	(19,847,866)	0	(19,847,866)		
Inv inc before apportioned ANOLD	0	0	0	0	0		
Inv inc not in ENI but in MTI	0	0	0	0	0		
Inv inc before ANOLD	0	0	0	0	0		
Apportioned NY ANOLD	0	0	0	0	0		
Alternative inv inc before allocation	0	0	0	0	0		
Alternative bus income before allocation	(19,844,573)	(3,293)	(19,847,866)	0	(19,847,866)		
Combined Alternative BAP					4.2489%		
Combined alternative IAP					0.0000%		
Allocated combined alternative bus income					(843,316)		
Allocated combined alternative inv income					0		
Allocated combined MTI					(843,316)		
Optional depreciation adjustment	0	0	0		0		
Combined MTI base					0		
Tax rate					1.5000%		
Tax on combined MTI base					0		
Notes:							

Earthlink Holdings Corporation 46-4228084 Computation of Combined Business Allocation Percentage Schedule F				Prepared by: W M Approved by: _____ 4/15/2019	
Period Ended 12/31/2014	Earthlink Holdings 46-4228084	Subtotal	Intercompany Elimination	Combined Total	
<b>Receipts factor:</b>	REF				
New York sales of TPP	Note 1 35,246,803	35,246,803		35,246,803	
Total sales of TPP	CT-3-A 829,552,783	829,552,783		829,552,783	
New York services performed		0		0	
Total services performed		0		0	
New York rentals of property		0		0	
Total rentals of property		-0		0	
New York royalties		0		0	
Total royalties		0		0	
Other NY business receipts		0		0	
Total other business receipts		0		0	
Total New York receipts		35,246,803	0	35,246,803	
Total receipts everywhere		829,552,783	0	829,552,783	
<b>Combined BAP</b>					<b>4.2489%</b>
<b>to Schedules C, D, &amp; E</b>					
Notes:					
Note 1: This represents the amount of New York Revenue reported on the allocation workpapers provided by the taxpayer.					
Note 2: The receipts reported by Earthlink Shared Services, LLC were management fees for reimbursement of employee costs. These were not determined to be business receipts earned in the regular course of business and removed from the BAP.					

Earthlink Holdings Corporation EIN: 46-4228084 Business Apportionment Factor Schedule F-1		<div>Prepared by:</div> <div>Approved by:</div> <div>4/15/2019</div>			
	REF	<div>Period Ended</div> <div>12/31/2015</div>	<div>Period Ended</div> <div>12/31/2016</div>	<div>Period Ended</div> <div>2/27/2017</div>	
Receipts, as reported	CT-3-A	NYS 34,228,749	NYS 28,383,925	NYS 5,191,086	Everywhere 114,785,133
Adjustments:					
Receipts, as adjusted		34,228,749	28,383,925	5,191,086	114,785,133
BAF to Sch. B-1/D-1		4.1871%	3.8685%		4.5224%
Notes:					
The receipts reported by Earthlink Shared Services, LLC were Management Fees for reimbursement of employee costs. These were not determined to be business receipts earned in the regular course of business and removed from the BAF.					

Earthlink Holdings Corporation  
46-4228084  
Computation of Subsidiary Capital  
Schedule G

Prepared by: W M  
Approved by: \_\_\_\_\_  
4/15/2019

Period Ended 12/31/2014 Subsidiary Name	REF	Average Value	Liabilities Attributable to Sub. Capital	Net Average Value	Issuer's Allocation Percentage	Value Allocated to NYS
BT of Va.	Sch. G-1	0	0	0		
CH. 1 of CT.	Sch. G-1	14,557,613	9,278,691	5,278,922		
CH. 1 of ME	Sch. G-1	10,644,777	6,784,738	3,860,039		
Ch. 1 of MA.	Sch. G-1	15,997,918	10,196,708	5,801,210		
Ch. 1 of NH	Sch. G-1	3,135,442	1,998,459	1,136,983		
Ch. 1 of NY	Sch. G-1	0	0	0		
Ch. 1 of OH	Sch. G-1	4,224,878	2,692,841	1,532,037		
Ch. 1 of PA	Sch. G-1	9,079,941	5,787,347	3,292,594		
Ch. 1 of RI	Sch. G-1	2,861,543	1,823,882	1,037,661		
Ch. 1 of VT	Sch. G-1	1,611,664	1,027,238	584,426		
CT Tele. & Comm.	Sch. G-1	3,748,333	2,389,102	1,359,231		
Conv. Of MA	Sch. G-1	203,653,536	129,804,121	73,849,415		
CTC Comm.	Sch. G-1	64,168,353	40,899,445	23,268,908		
CTC of VA.	Sch. G-1	0	0	0		
US Exchange	Sch. G-1	52,016,359	18,862,318	33,154,041		
Total		385,700,357	231,544,891	154,155,466		0
Average subsidiary capital, to Sch. D				154,155,466		
Tax rate						0.0000
Subsidiary capital tax, to Sch. B						0
Notes:						



Eternit Holdings Corporation		Period Ended		12/31/2014		12/31/2013		12/31/2012		12/31/2011		12/31/2010		12/31/2009		12/31/2008		12/31/2007		12/31/2006		12/31/2005		12/31/2004		12/31/2003		12/31/2002		12/31/2001		12/31/2000		12/31/1999		12/31/1998		12/31/1997		12/31/1996		12/31/1995		12/31/1994		12/31/1993		12/31/1992		12/31/1991		12/31/1990		12/31/1989		12/31/1988		12/31/1987		12/31/1986		12/31/1985		12/31/1984		12/31/1983		12/31/1982		12/31/1981		12/31/1980		12/31/1979		12/31/1978		12/31/1977		12/31/1976		12/31/1975		12/31/1974		12/31/1973		12/31/1972		12/31/1971		12/31/1970		12/31/1969		12/31/1968		12/31/1967		12/31/1966		12/31/1965		12/31/1964		12/31/1963		12/31/1962		12/31/1961		12/31/1960		12/31/1959		12/31/1958		12/31/1957		12/31/1956		12/31/1955		12/31/1954		12/31/1953		12/31/1952		12/31/1951		12/31/1950		12/31/1949		12/31/1948		12/31/1947		12/31/1946		12/31/1945		12/31/1944		12/31/1943		12/31/1942		12/31/1941		12/31/1940		12/31/1939		12/31/1938		12/31/1937		12/31/1936		12/31/1935		12/31/1934		12/31/1933		12/31/1932		12/31/1931		12/31/1930		12/31/1929		12/31/1928		12/31/1927		12/31/1926		12/31/1925		12/31/1924		12/31/1923		12/31/1922		12/31/1921		12/31/1920		12/31/1919		12/31/1918		12/31/1917		12/31/1916		12/31/1915		12/31/1914		12/31/1913		12/31/1912		12/31/1911		12/31/1910		12/31/1909		12/31/1908		12/31/1907		12/31/1906		12/31/1905		12/31/1904		12/31/1903		12/31/1902		12/31/1901		12/31/1900		12/31/1899		12/31/1898		12/31/1897		12/31/1896		12/31/1895		12/31/1894		12/31/1893		12/31/1892		12/31/1891		12/31/1890		12/31/1889		12/31/1888		12/31/1887		12/31/1886		12/31/1885		12/31/1884		12/31/1883		12/31/1882		12/31/1881		12/31/1880		12/31/1879		12/31/1878		12/31/1877		12/31/1876		12/31/1875		12/31/1874		12/31/1873		12/31/1872		12/31/1871		12/31/1870		12/31/1869		12/31/1868		12/31/1867		12/31/1866		12/31/1865		12/31/1864		12/31/1863		12/31/1862		12/31/1861		12/31/1860		12/31/1859		12/31/1858		12/31/1857		12/31/1856		12/31/1855		12/31/1854		12/31/1853		12/31/1852		12/31/1851		12/31/1850		12/31/1849		12/31/1848		12/31/1847		12/31/1846		12/31/1845		12/31/1844		12/31/1843		12/31/1842		12/31/1841		12/31/1840		12/31/1839		12/31/1838		12/31/1837		12/31/1836		12/31/1835		12/31/1834		12/31/1833		12/31/1832		12/31/1831		12/31/1830		12/31/1829		12/31/1828		12/31/1827		12/31/1826		12/31/1825		12/31/1824		12/31/1823		12/31/1822		12/31/1821		12/31/1820		12/31/1819		12/31/1818		12/31/1817		12/31/1816		12/31/1815		12/31/1814		12/31/1813		12/31/1812		12/31/1811		12/31/1810		12/31/1809		12/31/1808		12/31/1807		12/31/1806		12/31/1805		12/31/1804		12/31/1803		12/31/1802		12/31/1801		12/31/1800		12/31/1799		12/31/1798		12/31/1797		12/31/1796		12/31/1795		12/31/1794		12/31/1793		12/31/1792		12/31/1791		12/31/1790		12/31/1789		12/31/1788		12/31/1787		12/31/1786		12/31/1785		12/31/1784		12/31/1783		12/31/1782		12/31/1781		12/31/1780		12/31/1779		12/31/1778		12/31/1777		12/31/1776		12/31/1775		12/31/1774		12/31/1773		12/31/1772		12/31/1771		12/31/1770		12/31/1769		12/31/1768		12/31/1767		12/31/1766		12/31/1765		12/31/1764		12/31/1763		12/31/1762		12/31/1761		12/31/1760		12/31/1759		12/31/1758		12/31/1757		12/31/1756		12/31/1755		12/31/1754		12/31/1753		12/31/1752		12/31/1751		12/31/1750		12/31/1749		12/31/1748		12/31/1747		12/31/1746		12/31/1745		12/31/1744		12/31/1743		12/31/1742		12/31/1741		12/31/1740		12/31/1739		12/31/1738		12/31/1737		12/31/1736		12/31/1735		12/31/1734		12/31/1733		12/31/1732		12/31/1731		12/31/1730		12/31/1729		12/31/1728		12/31/1727		12/31/1726		12/31/1725		12/31/1724		12/31/1723		12/31/1722		12/31/1721		12/31/1720		12/31/1719		12/31/1718		12/31/1717		12/31/1716		12/31/1715		12/31/1714		12/31/1713		12/31/1712		12/31/1711		12/31/1710		12/31/1709		12/31/1708		12/31/1707		12/31/1706		12/31/1705		12/31/1704		12/31/1703		12/31/1702		12/31/1701		12/31/1700		12/31/1699		12/31/1698		12/31/1697		12/31/1696		12/31/1695		12/31/1694		12/31/1693		12/31/1692		12/31/1691		12/31/1690		12/31/1689		12/31/1688		12/31/1687		12/31/1686		12/31/1685		12/31/1684		12/31/1683		12/31/1682		12/31/1681		12/31/1680		12/31/1679		12/31/1678		12/31/1677		12/31/1676		12/31/1675		12/31/1674		12/31/1673		12/31/1672		12/31/1671		12/31/1670		12/31/1669		12/31/1668		12/31/1667		12/31/1666		12/31/1665		12/31/1664		12/31/1663		12/31/1662		12/31/1661		12/31/1660		12/31/1659		12/31/1658		12/31/1657		12/31/1656		12/31/1655		12/31/1654		12/31/1653		12/31/1652		12/31/1651		12/31/1650		12/31/1649		12/31/1648		12/31/1647		12/31/1646		12/31/1645		12/31/1644		12/31/1643		12/31/1642		12/31/1641		12/31/1640		12/31/1639		12/31/1638		12/31/1637		12/31/1636		12/31/1635		12/31/1634		12/31/1633		12/31/1632		12/31/1631		12/31/1630		12/31/1629		12/31/1628		12/31/1627		12/31/1626		12/31/1625		12/31/1624		12/31/1623		12/31/1622		12/31/1621		12/31/1620		12/31/1619		12/31/1618		12/31/1617		12/31/1616		12/31/1615		12/31/1614		12/31/1613		12/31/1612		12/31/1611		12/31/1610		12/31/1609		12/31/1608		12/31/1607		12/31/1606		12/31/1605		12/31/1604		12/31/1603		12/31/1602		12/31/1601		12/31/1600		12/31/1599		1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Earthlink Holdings Corporation 46-4228084 Computation of New York Prior Net Operating Conversion Pool Schedule H											Prepared by: W/M Approved by: _____ 4/15/2019	
	REF	Period Ended 12/31/2013	REF	Period Ended 12/31/2014	REF	Cidco totals to 1/1/2015	REF	People PC totals to 1/1/2015	REF	New Edge Totals to 1/1/2015	REF	Totals to 1/1/2015
<b>Federal NOLD</b>												
Federal taxable income before NOLD & special deductions	PA	(76,481,597)	Sch. C	(35,004,001)	Note 2	(149,755,551)	Note 2	(266,672,264)		(50,358,789)		
Less: Special deductions												
FTI after special deductions		(76,481,597)		(35,004,001)		(149,755,551)		(266,672,264)		(50,358,789)		0
Federal taxable income after NOLD & special deductions		(76,481,597)		(35,004,001)		(149,755,551)		(266,672,264)		(50,358,789)		(578,272,202)
<b>New York NOLD</b>												
Entire net income before NOLD	PA	(82,274,359)	Sch. C	(25,220,547)	Note 2	(105,996,202)	Note 2	(266,667,403)		(50,358,790)		
ENI after NOLD (NOLD available for carryover)		(82,274,359)		(25,220,547)		(105,996,202)		(266,667,403)		(50,358,790)		(510,517,301)
NOLD allowed		0		0		0		0		0		0
<b>Notes:</b> PA = Prior Audit (Earthlink, Inc. & Combined Subsidiaries; X477386445)  <b>Note 1: Computation of the PNOLC pool</b> Aggregate of the lesser of Federal or NY Unabsorbed Net Operating Losses Base Year Business Allocation Percentage (2014)  Base year tax rate (7.1%)  PNOLC division factor Prior Net Operating Loss Deduction Pool  <b>Note 2: Computation of 382 limited NOL's per period earned:</b> (Taken from schedule J-1 & J-2 for the old parent, Earthlink, Inc. (X477386445)) Cidco Federal losses from 1998 (58,081,734) Cidco Federal losses from 1999 (17,244,553) Cidco Federal losses from 2000 (50,839,760) Cidco Federal losses from 2001 (23,809,504) Total Cidco Federal losses (149,755,551)  People PC Federal losses from 2000 (131,453,088) People PC Federal losses from 2001 (112,080,106) People PC Federal losses from 2002 (23,158,690) Total People PC Federal losses (266,672,264)  Earthlink Business, LLC Federal losses (New Edge) 2003 (26,916,066) Earthlink Business, LLC Federal losses (New Edge) 2004 (11,889,983) Earthlink Business, LLC Federal losses (New Edge) 2005 (8,930,145) Earthlink Business, LLC Federal losses (New Edge) 4/2006 (2,612,595) EL Business, LLC Federal losses total (50,358,789)  Cidco NY losses from 1998 (54,833,139) Cidco NY losses from 1999 (1,180,784) Cidco NY losses from 2000 (48,982,279) Total Cidco NY losses (105,996,202)  People PC NY losses from 2000 (131,452,308) People PC NY losses from 2001 (112,058,105) People PC NY losses from 2002 (23,158,690) Total People PC NY losses (266,667,403)  Earthlink Business, LLC NY losses (New Edge) 2003 (26,916,066) Earthlink Business, LLC NY losses (New Edge) 2004 (11,889,983) Earthlink Business, LLC NY losses (New Edge) 2005 (8,930,145) Earthlink Business, LLC NY losses (New Edge) 4/2006 (2,612,595) EL Business LLC NY losses total (50,358,790)												

Please note that only periods with NOL carryforward available were included in the current schedule.

Earthlink Business, LLC (New Edge Networks)													
94-3331274													
Computation of New York Net Operating Loss Deduction (NOLD)													
Schedule H-2													
	Period Ended REF 12/31/1999	Period Ended REF 12/31/2000	Period Ended REF 12/31/2001	Period Ended REF 12/31/2002	Period Ended REF 12/31/2003	Period Ended REF 12/31/2004	Period Ended REF 12/31/2005	Period Ended REF 4/30/2006	Period Ended REF 12/31/2006	Period Ended REF 12/31/2006	Period Ended REF 12/31/2006	Period Ended REF 12/31/2006	Period Ended REF 4/11/2019
Federal NOLD													
Federal taxable income before NOLD & special deductions	Note 1 (2,642,179)	Note 1 (111,770,614)	Note 1 (117,114,552)	Note 1 (57,615,519)	Note 1 (26,916,066)	Note 1 (11,899,983)	Note 1 (8,930,145)	Note 1 (2,612,595)	Note 1 (23,193,314)	Note 1 (23,193,314)	Note 1 (23,193,314)	Note 1 (23,193,314)	
Less: Special deductions	(2,642,179)	(111,770,614)	(117,114,552)	(57,615,519)	(26,916,066)	(11,899,983)	(8,930,145)	(2,612,595)	(23,193,314)	(23,193,314)	(23,193,314)	(23,193,314)	
FTI after special deductions													
Discharge of indebtedness per prior audit schedule G	2,642,179	65,399,109		57,615,519									
Aggregate to 12/31/2008 per prior audit schedule		Note 1 1,269,498											
Aggregate to 12/31/2009 per prior audit schedule		Note 1 1,269,498											
Aggregate to 12/31/2010 per prior audit schedule		Note 1 1,269,498											
Total Aggregate to 12/31/2009 (EL, Inc.)		Note 1 3,805,494											
382 Loss to 12/31/2009 (EL, Inc.)		Note 1 1,269,498											
382 Loss to 12/31/2010 (EL, Inc.)		Note 1 1,269,498											
383 Loss to 12/31/2011 (EL, Inc.)		Note 1 1,269,498											
Losses													
Aggregate to 12/31/2009 per prior audit schedule			Note 1 3,885,522										
Aggregate to 12/31/2009 per prior audit schedule			Note 1 3,885,522										
Aggregate to 12/31/2009 per prior audit schedule			Note 1 3,885,522										
Aggregate to 12/31/2009 per prior audit schedule			Note 1 3,885,522										
Total Aggregate to 12/31/2009 (EL, Inc.)			Note 1 15,542,088										
382 Loss to 12/31/2010 (EL, Inc.)			Note 1 3,885,522										
383 Loss to 12/31/2011 (EL, Inc.)			Note 1 3,885,522										
Carry Forward to 12/31/2010 per prior audit													
Federal taxable income after NOLD & special deductions	0	(38,254,517)	(63,801,420)	0	(26,916,066)	(11,899,983)	(8,930,145)	(2,612,595)	23,193,314	23,193,314	23,193,314	23,193,314	0
New York NOLD													
Entire net income before NOLD	Note 1 0	Note 1 0	Note 1 0	Note 1 (57,615,519)	Note 1 (26,916,066)	Note 1 (11,899,983)	Note 1 (8,930,145)	Note 1 (2,612,595)	Note 1 (23,191,702)	Note 1 (23,191,702)	Note 1 (23,191,702)	Note 1 (23,191,702)	
Section 382 losses from Cdnco, Inc.													
Section 382 losses from People PC, Inc.													
NOL from 12/31/2007; EL, Inc. & Comb. AML													
ENI after NOLD (NOLD available for carryover)													
NOLD allowed	0	0	0	0	(26,916,066)	(11,899,983)	(8,930,145)	(2,612,595)	0	0	0	0	0
Notes:													
Note 1: These amounts were taken from Schedule G of the prior audit cycle for New Edge Networks (EL Business, LLC)													
Note 2: These amounts were taken from the prior audit schedule G for Earthlink, Inc.													

Prepared by: WM  
Approved by:  
4/11/2019

Earthlink Holdings Corporation EIN: 46-4228084 Computation of Prior Net Operating Loss Conversion (PNOLC) Subtraction Schedule H-3		Prepared by: Approved by: 04/15/19		
	Period Ended 12/31/2015	Period Ended 12/31/2016	Period Ended 12/31/2017	
<b>Schedule A - PNOLC subtraction pool detail &amp; tax period allotment</b>				
Small business? Y or N				
50% PNOLC sub election made? Y or N				
UNOL	510,517,301	510,517,301	510,517,301	
Base year business allocation percentage (BAP)	Sch. F 4.2489%	4.2489%	4.2489%	
Base year tax rate	7.1%	7.1%	7.1%	
Tax value of UNOL	1,540,087	1,540,087	1,540,087	
PNOLC subtraction pool	23,693,646	23,693,646	23,693,646	
Base year end date				
Tax period count	1	2	3	
PNOLC subtraction allotment %	10%	10%	10%	
Tax period PNOLC subtraction allotment	2,369,365	2,369,365	2,369,365	
Remaining PNOLC subtraction pool	21,324,281	18,954,916	16,585,551	
<b>Schedule B - Overall limitation on PNOLC subtraction</b>				
Apportioned business income after addback for the current tax period	392,875	763,966		
Tax Rate	7.1%	6.5%	7.1%	
Business income base tax	27,894	49,658	0	
Greater of Capital base tax or the fix \$ min for the current period	14,520	13,743	2,724	
Difference (limited to 0)	13,374	35,915	0	
Maximum amount of PNOLC subtraction to be deducted in the current period	188,368	552,535	0	
<b>Schedule C - Computation of PNOLC subtraction used and unused amount carried forward</b>				
Tax period PNOLC subtraction allotment	2,369,365	2,369,365	2,369,365	
Unused PNOLC subtraction carried forward from prior tax period	0	2,180,997	3,997,827	
Amount included that is carried forward from entities using 50% election; if none, enter 0				
PNOLC subtraction available for use this tax period	2,369,365	4,550,362	6,367,192	
Amount included that is carried forward from entities using 50% election; if none, enter 0				
PNOLC subtraction used in the current tax period	188,368	552,535	0	
Amount included that is carried forward from entities using 50% election; if none, enter 0				
Unused PNOLC subtraction to be carried forward	2,180,997	3,997,827	6,367,192	
Amount included that is carried forward from entities using 50% election; if none, enter 0				
Total remaining PNOLC subtraction pool	21,324,281	18,954,916	16,585,551	
Unexhausted PNOLC subtraction pool	23,505,278	22,952,743	22,952,743	
Notes:				

Earthlink Holdings Corporation EIN: 46-4228084 Computation and Application of Net Operating Loss Deduction (NOLD) Schedule H-4		Prepared by: Approved by: 4/15/2019	
	Period Ended 12/31/2015	Period Ended 12/31/2016	Period Ended 12/31/2017
Business Income Base	0	0	(985,147)
Business Income base tax rate current year	7.10%	6.50%	6.50%
Business Income base before Net Operating Loss Deduction	0	0	(64,035)
Greater of capital base or fixed dollar minimum tax for the current year			2,724
Difference	0	0	(66,759)
Max NOLD current year (divide the difference by the tax rate above)	0	0	0
Business Income base before NOLD - Gain(Loss)	0	0	(985,147)
Net Operating Losses incurred but not utilized or Expired	0	0	0
Total Net Operating Losses available	0	0	(985,147)
Net Operating Loss utilized	0	0	0
Unused NOLD available for carryforward	0	0	(985,147)
Notes:			

**Exhibit 3**

**NY Refund**



New York State Department of  
**Taxation and Finance**

Pg 48 of 54

www.tax.ny.gov

Income/Franchise Tax Field Audit Bureau

Capital Region Office - Bldg 9 Room 380

Income Franchise Tax Section, Albany, NY 12227

Phone: (518)389-4892 Fax: (518)435-8639

July 09, 2019

Mr. Martin I. Eisenstein  
Brann & Isaacson  
P.O. Box 3070  
Lewiston, ME 04240

RE: One Communications Corp.  
EIN: 16-1550742  
Article(s): 9A  
Audit Period: 01/01/2011 - 12/31/2012  
Case ID: X466146877

Dear Mr. Eisenstein:

An audit of the New York State tax returns for the tax period and article(s) noted above has resulted in a reduction of the tax liability in the amount of \$30,556. Please note that the full amount of the refund is to be allocated as a credit to the related case for EarthLink Holdings Corporation (X777191247). The enclosed schedules reflect the details of the proposed audit adjustments:

You may accept the changes to the tax liability by returning two signed copies of the enclosed Form DO-356, *Consent to Field Audit Adjustment* ("Consent"), to the above address by August 4, 2019. Be aware that in accordance with NY State Tax Law, in order for a refund to be issued, a claim must be made. If you have not previously made a claim, returning a signed Consent shall constitute such.

If you disagree with the findings and would like the opportunity to discuss them in greater detail, please contact the auditor by August 4, 2019. At this time, you may submit evidence to substantiate your position. If penalties have been imposed, you may request waiver of those which you believe and are able to establish that reasonable cause exists for abatement.

If you have filed a claim for refund which has been disallowed in full or part, you will receive a Notice of Disallowance. Under Section 1089(c) of Article 27 of the Tax Law, a petition for recovery of tax, penalty or other sum which is part of the claim for which a Notice of Disallowance is issued may not be filed more than two years after the date the notice was mailed. If an attorney or agent represents you, a Power of Attorney must be on file. Enclosed is Publication 130, *The New York State Tax Audit - Your Rights and Responsibilities*, which explains the protest procedures.

Interest will be computed on the refund as finally determined in accordance with statutory requirements. A response indicating your agreement or disagreement is requested by August 04, 2019. Please direct all return correspondence to William McDonald at the address shown above. Your prompt cooperation would be greatly appreciated.

Sincerely,

Scott Remkus  
Corporation Tax Auditor II  
(518)389-4869

Enclosures: Publication 130  
Form DO-356  
Schedule(s) A-B

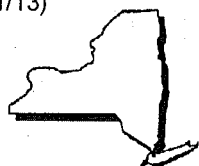


New York State Department of Taxation and Finance

Pg 49 of 54 Audio recording

**Publication 130-F**

(11/13)



## The New York State Tax Audit — Your Rights and Responsibilities

The Department of Taxation and Finance's purpose in conducting an audit is to verify that you paid the correct tax. During the audit, you may be required to provide the auditor with whatever records are necessary to verify the information you provided on your return. Depending on the type of return being audited, this may entail a review of your income, receipts, expenses, credits, and other business records.

### Professional audit standards

The examination must be conducted in accordance with professional auditing standards by an auditor who is familiar with generally accepted accounting procedures and auditing techniques.

To avoid any conflicts of interest, the auditor cannot have any personal relationships with the taxpayer, the taxpayer's family, or the taxpayer's employees (in the case of a business audit). Additionally, the auditor may not have any personal or financial interest in a business being audited.

Throughout the course of an audit, you are entitled to receive fair, courteous, and professional treatment. If at any time during the course of an audit you feel these standards or any other of your rights are being violated, you should immediately contact the auditor's supervisor.

To report allegations of fraudulent employee misconduct, contact the Office of Internal Affairs via telephone at (518) 485-8698 or by mail to:

NYS TAX DEPARTMENT  
OFFICE OF INTERNAL  
AFFAIRS W A HARRIMAN  
CAMPUS ALBANY NY 12227

### Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on tax audits, beyond which the Tax Department may not audit without your written consent. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report federal changes, or filed a false or fraudulent return to evade tax.

### Privacy/confidentiality

You have the right to know why we are requesting certain information, how we will use such information, and the consequences of your failure to submit the information. The Tax Law prohibits the disclosure of information obtained from a tax return, or during the course of an audit, to any unauthorized person. The Tax Law, however, does permit us to share your tax information with the Internal Revenue Service and other tax agencies, under defined standards of secrecy and reciprocity.

### Representation

You may retain representation at any time during the audit, and have the right to suspend a meeting or interview at any time in order to retain such representation. Any person representing you must have the proper written authorization (power of attorney) to act on your behalf in your absence. Former employees of the Department of Taxation and Finance are restricted from representing taxpayer before the department for a period of two years after they leave the department. (Subject to some restrictions, former employees may represent taxpayers before the Independent Division of Tax Appeals during the two year period.) Former employees are permanently prohibited from representing taxpayers in matters in which they were directly involved during the period of their employment.

Upon reasonable advance notice to the Tax Department, you are permitted to make an audio recording of any in-person interview. You must make the recording at your own expense and with your own equipment. The Tax Department also reserves the right to record any in-person interview which the taxpayer has requested permission to record.

### The field audit

We schedule field audits in advance to give you enough time to assemble the required records. When we select you for a field audit, an auditor will usually contact you by letter, although you may be contacted by phone to set up the initial appointment. We will then send you a letter confirming the appointment and describing the books and records you must make available. For a business audit, most appointments will be at your place of business.

If you need a longer period of time to gather the necessary records, you can usually request an extension of up to 30 days; for delays longer than 30 days, you must make a written request that explains your reason for the request.

### Preliminary conference

At your initial meeting (called the *preliminary conference*), the auditor will explain the audit approach and procedures, describe the audit process, and outline your protest rights and appeal procedures. You should use this meeting to ask any questions you might have about your rights and responsibilities during the audit.

### Audit techniques

There are several different techniques used for conducting audits. The method an auditor chooses will depend on a number of variables, such as the type of tax, the accuracy and availability of records, and the size and complexity of a business.

We may conduct a detailed audit, an audit involving the test period method, or, in some instances, an audit involving a statistical sampling method. In addition, the scope of an audit may be expanded and completed as a multi-tax audit.

If preliminary audit findings result in a material effect on the reporting of another tax, the findings may be referred to another tax specialty at any time during the audit process. Audit adjustments of one tax specialty may be used as a basis for recalculation of tax in another, depending on the facts and circumstances of the case.

### Audit duration

An audit generally covers a three-year period, and can take anywhere from several days to several months to complete. The duration of the audit will depend on the complexity of the returns being audited and on the timely availability, completeness, and accuracy of your records.

### Audit findings

If there are no changes recommended by the auditor, you will be sent a letter acknowledging this and thanking you for your cooperation.

If there are changes, the auditor will meet with you to explain the findings, and to present copies of audit workpapers and schedules. The auditor will explain the audit findings, as well as the audit methods and procedures, in simple, nontechnical terms. Findings may include recommended changes in recordkeeping practices to correct accounting errors found during the audit, an explanation of the proper interpretation of the Tax Law in areas where errors were made, a notice of additional taxes due, or a notice of a refund due.

We then give you a reasonable period of time to disprove any of the audit findings. The auditor will then analyze any additional information submitted and, if appropriate, revise and resubmit the workpapers with a *Statement of Proposed Audit Changes*.

If the audit results in a refund, the auditor will provide any assistance you may require.

### If you agree . . .

If you agree with the audit findings, you will be asked to acknowledge your consent by signing the *Statement of Proposed Audit Changes*. If you owe money but cannot pay in full at this time, you can usually make a down payment and work out an installment payment agreement for the rest. You should be aware, though, that interest (and possible penalties) will continue to accrue on the unpaid balance.

## If you disagree . . .

If you do not agree with the audit findings, you should indicate your disagreement on the *Statement of Proposed Audit Changes* and return the form to the auditor. Supervisory personnel review all audit reports carefully, so you may hold additional conferences with the auditor's supervisors to discuss any disagreements with the audit findings.

If you still disagree with the audit findings, we will send you a *Notice of Determination* or *Notice of Deficiency* for the taxes due. At this point, you may formally appeal the audit findings through either the Tax Department's Bureau of Conciliation and Mediation Services or through the independent Division of Tax Appeals. For estate tax cases, see Publication 130-D, *The New York State Tax Audit - Your Rights and Responsibilities*. Generally, you must file your appeal within 90 days of the date the notice was issued. **To determine your time limit, refer to the Notice you received.** You must submit a written appeal even if you have previously written to the department and objected to the position taken in the *Statement of Proposed Audit Changes*.

## Penalties and interest

The three most common reasons for tax penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. You can avoid penalties and interest by filing your tax returns and paying the correct amount of taxes on time.

Penalties for late filing and delinquent taxes are generally based on the amount of tax that is overdue. However, there are various penalties for late filing whether or not you owe any taxes.

Whether you agree or disagree with the tax, interest, or penalties, both interest and penalties continue to be added to the amount due until we receive payment.

## Claims for refund

Most taxpayers normally associate refunds of tax with an overpayment of withholding or estimated tax. However, after filing an original return, a taxpayer may discover the omission of a credit, deduction, or exemption. Generally, you may claim refunds by filing an amended return within the statutory time limits for claiming a refund. See *Need help?* if you need to contact the department for the appropriate forms and for time limits and for any further instructions specific to the tax type for which you are making the claim for refund.

If the amount of your refund is adjusted or denied in full, we will send you an explanation of the changes or a letter of disallowance. If you disagree with the adjustment or disallowance of your refund, you should submit to us a complete explanation of why you disagree, along with any supporting documentation. If you still disagree after our review, you may protest at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals. (See *Your right to protest an action taken by the Tax Department* section.) However, note that if you have received a document specifying the time period in which to protest our determination at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, further correspondence or contact with us will not extend that time period.

## Your right to protest an action taken by the Tax Department

If you disagree with an action taken by the Tax Department (the issuance of a tax deficiency/determination, the denial of a refund claim, or the denial or revocation of a license, registration, or exemption certificate), you may protest by filing a *Request for Conciliation Conference* or by filing a *Petition* for a tax appeals hearing. If the disputed amount is within certain monetary limits, you may elect to have your hearing held in the Small Claims Unit.

You **must** file the request or petition within a certain period from the date the Tax Department mailed you notice of its action. **Please refer to the notice you received to determine your time limit.** These time limits are established by the Tax Law and cannot be extended. We recommend you use certified or registered mail.

You may appear on your own behalf or you may have an authorized representative present your case for review. An authorized representative must have a power of attorney from you.

There are no formal prepayment hearing rights where tax, interest, or penalty is owed because of (1) mathematical or clerical errors on a return, (2) changes made to the taxpayer's federal return by the IRS or other competent federal authority (federal changes), or (3) failure of the taxpayer to pay all or part of the amount of tax due that is shown as due on the

## Conciliation conference

A conciliation conference is a rapid and inexpensive way to resolve protests without a formal hearing. The conference is conducted informally by a conciliation conferee, who will review all of the evidence presented to determine a fair result. After the conference, the conferee will issue a conciliation order. The conciliation order is binding **unless** you file a petition with the Division of Tax Appeals. Refer to the information you receive with the order to determine your time limit to file.

Conferences are not available to distributors, importing transporters, terminal operators, or petroleum businesses where the issue is an increase in the amount of a bond or other security. These situations may be handled by the Tax Appeals Division only.

## Tax appeals hearing

The tax appeals hearing procedure begins when you file a petition with the Division of Tax Appeals. You must indicate in writing the specific actions of the Tax Department you are protesting.

The hearing is an adversary proceeding before an impartial administrative law judge. The hearing will be stenographically reported. After the hearing, the administrative law judge will issue a determination which will finally decide the matter(s) in dispute **unless** you or the Tax Department request a review of the decision made by the Tax Appeals Tribunal. If such a review is requested, the record of the hearing and any additional oral or written arguments will be considered. After this review, the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or referring the matter back to the administrative law judge for further hearing.

**Court review:** If you do not agree with the Tax Appeals Tribunal's decision, you may seek court review. You must file an application for court review within the specified time limits. For some taxes, you must pay the tax, interest, and penalty, or post a bond for this amount, plus court costs, when you file an application for court review.

**Small claims option:** You may elect to have your hearing held in the Small Claims Unit if the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure of the Tax Appeals Tribunal* (a copy is included with the petition forms). The hearing is conducted as informally as possible by an impartial presiding officer. The presiding officer's determination is conclusive and is not subject to review by any other unit in the Division of Tax Appeals, the Tax Appeals Tribunal, or by any court in the state.

You may request petition forms and the *Rules of Practice and Procedure of the Tax Appeals Tribunal* by writing to:

DIVISION OF TAX APPEALS  
AGENCY BUILDING 1  
EMPIRE STATE  
PLAZA ALBANY NY  
12223

A request for petition forms and the rules is not considered the filing of a petition for hearing for purposes of the time limits, and does not extend the time limits for filing a petition.

## Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



### Telephone assistance

**Business Tax Information Center:** (518) 457-5342

**Personal Income Tax Information Center:** (518) 457-5181

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



New York State Department of  
**Taxation and Finance**  
 www.tax.ny.gov  
 Income/Franchise Tax Field Audit Bureau  
 Capital Region Office - Bldg 9 Room 380  
 Income Franchise Tax Section, Albany, NY 12227  
 Phone: (518)389-4892 Fax: (518)435-8639

Pg 51 of 54

### Consent to Field Audit Adjustment

One Communications Corp.  
 1170 Peachtree Street, Suite 900  
 Atlanta, GA 30309

Date: July 09, 2019 |  
 Response Date: August 4, 2019 |  
 Taxpayer ID: 16-1550742  
 Tax Article(s): 9A 27  
 Audit ID: X466146877  
 Auditor: William McDonald

### SUMMARY OF TAXES

Audit Period Ended	Additional Tax (Tax Reduction)	Penalties	Interest	Total
04/01/2011 9A	\$0	\$0	\$0	\$0
12/31/2011 9A	( \$30,556)	\$0	\$0	( \$30,556)
12/31/2012 9A	\$0	\$0	\$0	\$0
Total	( \$30,556)	\$0		( \$30,556)

If you agree with this Consent to Field Audit Adjustment ("Consent"), please sign and return two copies, with payment if applicable, by August 4, 2019.

I agree with the amount due and consent to the assessment of the tax and penalties, if any, and accept the determination of any amount to be credited or refunded as shown above, plus any interest provided by law. By signing this Consent, I understand that:

- o the restrictions provided in Section 1081(c) of the Tax Law are waived and consent is given to the assessment and collection of any amount due;
- o if a refund or credit is listed for any of the audited periods for which a claim has not been previously filed, this Consent shall represent the disclosure of overpayment to a taxpayer required by Section 3004-a of the Tax Law;
- o for any period(s) in which an overpayment exists and a claim was not previously made, this form shall be deemed to be a claim for credit or refund with interest calculated according to Section 1088(a)(3) of the Tax Law, provided this form is signed by a corporate officer or an authorized person; and
- o that the signing of this Consent does not preclude the State from issuing additional billing notices as the result of any pending or future Federal audit change or any subsequent State audit of other issues.

#### NOTES:

The refund, \$30,556 was allocated in full to the related case for Earthlink, Inc. (X477366445).

SIGN →

HERE

Signature of Authorized Person

Title

Date

**Note:** If any audit period has resulted in an overpayment, the signature of a Corporate Officer or a person authorized to sign a tax return is required.

If you do not agree with this Consent to Field Audit Adjustment and any of the audited periods has resulted in a refund that was not previously requested, this form shall represent a disclosure of overpayment to taxpayer as required by Sec. 3004-a of the Tax Law. You must file a claim for refund or credit of any disclosed amounts by the later of 120 days from the date of this notice or the last day a refund or credit may be claimed pursuant to any other provision of applicable law or you will lose the right to apply for the refund or credit.



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SIGN →  
 HERE

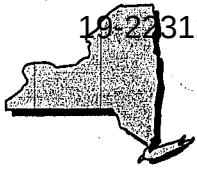
\_\_\_\_\_  
 Signature of Authorized Person

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

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Summary of Additional Tax, Interest and Penalty Due  
Schedule A

Taxpayer Name: One Communications Corp.

Taxpayer ID: 16-1550742

Case Number: X466146877

Prepared by: W M

Approved by:

Sub Type	Period Ending	Other Taxes And Fees	Addl. Tax (Refund) Due	Penalty Article 27	Interest Computed To / /	Total Amount Due
15	04/01/2011		0	0	0	0
15	12/31/2011		-30,556	0	0	-30,556
15	12/31/2012		0	0	0	0
Totals:			-30,556	0	0	-30,556

Notes and References:

One Communications Corp.

16-1550742

Prepared by: W M

Approved by: \_\_\_\_\_

Computation of Additional Tax (Refund) Due

7/9/2019

Schedule B

	REF	Period Ended 4/1/2011	REF	Period Ended 12/31/2011	REF	Period Ended 12/31/2012
Tax on entire net income base	CT-3	0	CT-3	0	CT-3	0
Tax on capital base	CT-3	0	CT-3	0	CT-3	0
Tax on minimum taxable income base	CT-3	0	CT-3	0	CT-3	0
Fixed dollar minimum tax	Note 1	135	Note 1	165		300
Highest tax computed		135		165		300
Subsidiary capital base tax		0	Note 2	0		0
Tax due before credits		135		165		300
Less tax credits:		0		0		0
Total tax credits		0		0		0
Balance		135		165		300
Larger of minimum taxable income base tax or fixed dollar minimum		135		165		300
Highest tax		135		165		300
Sum of Fixed Dollar Minimum taxes from subsidiaries		0		0		0
Total tax due		135		165		300
Tax previously paid:						
Tax paid with return		135		30,721		300
Amount allocated to Earthlink Holdings Corporation (X777191247)				0		
Refundable credits						
Total taxes previously paid		135		30,721		300
<b>Additional tax (refund) due</b>		<b>0</b>		<b>(30,556)</b>		<b>0</b>

## Notes:

Note 1: The taxpayer was subject to the Maintenance Fee, CT-245.

The amount shown is a pro-rated amount for the short period, as re-calculated at the time of filing.

Maintenance Fee for full year	300
Maintenance Fee paid for first short period	135
Maintenance Fee fee for second short period	165

Note 2: The taxpayer calculated and paid the Subsidiary Capital Base Tax on subsidiaries taxable in NY. However, all of the subsidiaries file under Article 9 in NYS, and therefore are not subject to the Subsidiary Capital Base Tax.