

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 51506 / April 7, 2005

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2227 / April 7, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-11887

In the Matter of

**EASYLINK SERVICES
CORPORATION, f.k.a.
MAIL.COM, INC.
and DEBRA McCLISTER, CPA,**

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against EasyLink Services Corporation, f.k.a. Mail.com, Inc. ("EasyLink") and pursuant to Section 21C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice¹ against Debra L. McClister, CPA ("McClister") (collectively, the "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings,

¹ Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may ... deny, temporarily or permanently, the privilege of appearing or practicing before it ... to any person who is found...to have engaged in ... improper professional conduct.

Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offers, the Commission finds that:

A. RESPONDENTS

1. **EasyLink Services Corporation, f.k.a. Mail.com, Inc.** during the relevant period was a Delaware corporation headquartered in New York City. The company's consumer messaging division provided free Internet email accounts and generated revenue by selling advertising. In October 2000, EasyLink announced its intention to sell the consumer messaging division and focus on business messaging; in March 2001, EasyLink completed the sale of its consumer messaging division. In April 2001, the company changed its name from Mail.com to EasyLink and relocated its headquarters to New Jersey. EasyLink's stock is registered under Section 12(g) of the Exchange Act and trades on the Nasdaq National Market.

2. **Debra L. McClister**, age 50, was Executive Vice President and Chief Financial Officer of EasyLink from 1998 to March 2004. McClister received her undergraduate degree in accounting. In the 22 years prior to joining EasyLink, McClister worked for three years at a large public accounting firm, and then held various senior accounting positions at several private and public companies. McClister is, and at all relevant times was, licensed in New Jersey as a certified public accountant.

B. SUMMARY

In 2000, EasyLink improperly recognized and reported advertising revenue from barter transactions because it failed to comply with Generally Accepted Accounting Principles ("GAAP"), as set forth in Emerging Issues Task Force Issue No. 99-17, "Accounting for Advertising Barter Transactions" ("EITF 99-17"), which became effective on January 20, 2000. EITF 99-17 generally permits recognition of revenue and expense from barter transactions only if the fair value of advertising surrendered in a barter transaction can be determined based on a company's comparable cash transactions in the prior six months. In 2000, McClister was unaware of EITF 99-17, and thus failed to apply it to the company's barter transactions. By failing to comply with EITF 99-17, EasyLink overstated its revenue for fiscal 2000 by \$4.85 million, or 8.6% of total revenue. EasyLink also overstated its revenue for the third quarter of 2000 by 16.1%. (Expenses were also overstated by the same amount, resulting in no impact to net income during these periods.) EasyLink reported its overstated revenue figures in its 2000 Form 10-K and its Form 10-Q for the third quarter of 2000.

Because of its overstated barter revenue, EasyLink was able to tout in press releases its increasing advertising revenue and the fact that the company met or exceeded analysts' revenue

expectations during the third quarter and fiscal 2000. For example, in one press release, EasyLink claimed that third quarter advertising revenue was up 47% from the second quarter. In fact, third quarter advertising revenue adjusted for the improper recognition of barter revenue had actually declined 32.8% compared with the second quarter.

McClister participated in the payment arrangements for some of the barter transactions, and failed to account for the barter deals properly. She prepared and/or signed EasyLink's Form 10-K and Form 10-Q that included the overstated barter revenue.

C. FACTS

During 2000, EasyLink engaged in two types of barter transactions with other Internet-related advertising companies – (i) *cash barter*, in which EasyLink and a counterparty agreed to sell each other advertising on websites they respectively owned or operated, and exchanged invoices, and payment on these invoices, of identical or similar amounts, and (ii) *trade barter*, in which EasyLink and a counterparty simply exchanged advertising but not invoices or payments. In the cash barter deals, EasyLink recognized 100% of the stated value of cash barter deals as revenue. In the trade barter deals, EasyLink used a formula provided by its auditor and typically recognized 60% of the stated value of the deal.

1. Trade Barter

Trade barter is the only type of barter deal that EasyLink treated as barter during 2000. Prior to the January 20, 2000 effective date of EITF 99-17, EasyLink's auditor advised the company to estimate the fair market value of trade barter based on the lower of 60% of the face value of the barter deal or the historical average price for comparable cash deals (the "60% Rule") to determine how much revenue to recognize on trade barter deals. The 60% Rule is not in conformity with GAAP.

In 2000, EasyLink improperly recognized \$1.58 million in trade barter revenue, which was 2.7% of the company's total revenue for the year, by applying the 60% Rule rather than EITF 99-17. EasyLink publicly disclosed its purported revenue from reported "barter transactions" (which consisted only of trade barter) in each Form 10-Q and Form 10-K reporting results for 2000.

2. Cash Barter

During 2000, EasyLink engaged in approximately 42 cash barter transactions with third parties and recognized \$3.27 million in revenue from these transactions. For example, on September 27, 2000, EasyLink and another Internet advertising company each signed orders to purchase \$500,000 of advertising from the other. The next day, the companies swapped checks for \$500,000. In the third quarter of 2000, EasyLink recognized \$500,000 in total revenue (and an equal amount of expense) from these transactions. Because EasyLink regarded cash barter transactions as no different from other cash transactions, the nature and volume of cash barter

transactions were never publicly disclosed, and were accounted for improperly in its books and records, including in its financial statements.

McClister was aware of the nature and extent of EasyLink's cash barter deals. For example, she received emails referencing "check swaps," signed some of the checks that were swapped, authorized her staff to exchange checks in certain deals, and received several emails analyzing and comparing the revenue effects of check swaps and trade barter deals. McClister knew that check swap deals in some ways "resembled" trade barter. McClister also received emails quantifying the total volume of check swaps for various periods of 2000, which revealed that revenue from check swaps was a significant component of EasyLink's overall revenue for the year.

McClister never informed EasyLink's auditor that EasyLink was engaged in these transactions, and never disclosed to the auditor the volume of revenue generated by these transactions. During 2000, she caused EasyLink to recognize revenue on the cash barter transactions based on the face value of the transactions. McClister did not become aware of EITF 99-17 until 2003.

3. EasyLink Reported Inflated Revenue from the Barter Deals

EasyLink's recognition of revenue from its trade and cash barter transactions was not in conformity with GAAP, and EITF 99-17 in particular. For the third quarter of 2000, EasyLink improperly recognized \$2.58 million in barter revenue, which was a 69.17% overstatement of advertising revenue for the quarter and a 16.14% overstatement of total revenue for the quarter. For fiscal 2000, EasyLink improperly recognized \$4.85 million in barter revenue, which was a 27.61% overstatement of advertising revenue for the year and an 8.6% overstatement of total revenue for the year.

EasyLink reported the overstated revenue in its third quarter 2000 Form 10-Q, filed on November 14, 2000, and its 2000 Form 10-K, filed on February 16, 2001 (as well as in eight registration statements filed from November 15, 2000 to February 20, 2002 and in its quarterly earning releases on October 26, 2000 and February 15, 2001.) Neither the Form 10-K nor the Form 10-Q, both of which McClister signed, disclosed the scope of EasyLink's barter transactions or the amounts of barter revenue and barter expense, as required by EITF 99-17.

D. VIOLATIONS

1. Reporting Violations: Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered pursuant to Section 12 of the Exchange Act to file, respectively, annual reports on Form 10-K and quarterly reports on Form 10-Q. Inherent in these provisions is the requirement that such filings be accurate. United States v. Bilzerian, 926 F.2d 1285, 1298 (2d Cir.

1991). Rule 12b-20 under the Exchange Act similarly requires that these reports contain any material information necessary to make the required statements made in the reports not misleading.

By filing periodic reports with the Commission that improperly included material amounts of revenue from barter for 2000, EasyLink violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder. McClister caused EasyLink's violations of Section 13(a) and Rules 12b-20, 13a-1, and 13a-13 by participating in preparing and signing the periodic filings listed above and supervising the revenue recognition process for the barter deals.

2. Record-Keeping Provisions: Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 Thereunder

Section 13(b)(2)(A) of the Exchange Act requires every issuer that has securities registered pursuant to Section 12 of the Exchange Act to "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions . . . of the issuer." This provision requires issuers to employ and supervise reliable personnel, to ensure that transactions are executed as authorized, to segregate accounting functions, and to have procedures designed to prevent errors and irregularities. SEC v. World Wide Coin Inv. Ltd., 567 F. Supp. 724, 750 (N.D. Ga. 1983). In addition, Rule 13b2-1 provides that "no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A)."

EasyLink violated Section 13(b)(2)(A) of the Exchange Act because its books and records for 2000 inaccurately reflected revenue from barter transactions. McClister violated Rule 13b2-1 and caused EasyLink's violation of Section 13(b)(2)(A). As set forth above, McClister supervised the recording of revenue for all of the trade barter and cash barter deals, resulting in materially inaccurate books, records and accounts.

3. Internal Controls Provision: Section 13(b)(2)(B) of the Exchange Act

Section 13(b)(2)(B) of the Exchange Act requires issuers with securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to reasonably assure, among other things, that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

EasyLink violated Section 13(b)(2)(B) because it lacked the required internal accounting controls in 2000 necessary to properly record revenue from barter transactions in its books and records and prepare its financial statements in conformity with GAAP. As discussed above, throughout 2000, EasyLink recorded revenue in its books and records for barter transactions that lacked support under EITF 99-17. As a result, EasyLink's financial statements were not prepared in accordance with GAAP.

McClister caused EasyLink's violation of Section 13(b)(2)(B). As EasyLink's Chief Financial Officer, McClister was ultimately responsible for ensuring that the company had an adequate system of internal controls in place and that those controls were maintained and properly

utilized. McClister failed to assure that EasyLink maintained an adequate system of internal accounting controls to properly account for revenue from barter transactions.

4. Improper Professional Conduct

As EasyLink's Chief Financial Officer, McClister was responsible for internal accounting, including implementing applicable accounting pronouncements and maintaining the books and records; communications with the company's outside auditors; and financial reporting. McClister failed to properly account for barter transactions, failed to implement EITF 99-17, failed to inform the outside auditors that EasyLink was engaged in cash barter transactions, and failed to ensure that the company's financial statements were accurate. These repeated instances of unreasonable conduct constitute improper professional conduct.

E. Findings

1. Based on the foregoing, the Commission finds that EasyLink violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

2. Based on the foregoing, the Commission finds that McClister caused EasyLink's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and violated Rule 13b2-1 of the Exchange Act.

3. Based on the foregoing, the Commission finds that McClister engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. EasyLink shall cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. McClister shall cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and from committing or causing any violations and any future violations of Rule 13b2-1 of the Exchange Act.

C. McClister is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After two years from the date of this Order, McClister may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that McClister's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) McClister, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) McClister, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in McClister's or the firm's quality control system that would indicate that McClister will not receive appropriate supervision or, if the Board has not conducted an inspection, has received an unqualified report relating to her, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

(c) McClister has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) McClister acknowledges her responsibility, as long as McClister appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

E. The Commission will consider an application by McClister to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to McClister's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jonathan G. Katz
Secretary