

# **Exhibit 14**

## KING &amp; SPALDING

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July 15, 2022

**VIA E-MAIL**

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**Re: *EarthLink LLC v. Charter Communications Operating, LLC*, No. 654332/2020,  
Plaintiff's Responses to EarthLink's First and Second Document Requests and  
First Set of Interrogatories**

Counsel:

I write on behalf of EarthLink LLC ("EarthLink" or "Plaintiff") to memorialize our meet and confer discussion on Wednesday July 13, 2022 concerning deficiencies in Charter Communication Operating, LLC's ("Charter" or "Defendant") Responses ("Responses") to EarthLink's First and Second Document Requests to Charter (dated April 8, 2022 and May 27, 2022, respectively) and First Set of Interrogatories (dated May 27, 2022) (collectively, the "Discovery Requests").

**I. Charter's Destruction of Documents**

During our call, counsel to Charter disclosed that Charter has failed to preserve *any* audio recordings of calls between Charter and the EarthLink Service Subscribers. As you are aware, this is a gravely serious issue. *See Warner Recs. Inc. v. Charter Commc'ns, Inc.*, No. 19-CV-00874-RBJ-MEH, 2022 WL 1567142, at \*3 (D. Colo. May 18, 2022) (holding that Charter's failure to implement a litigation hold, resulting in deletion of relevant custodial data and documents, precluded Charter from disputing the numerosity of copyright notices in infringement action). Charter's destruction of relevant documents is particularly troubling given the fact that Charter has been on notice of these claims and the relevance of the calls for years. For example:

- In August 2019, EarthLink employees directly communicated concerns to Charter management related to Charter's efforts to poach EarthLink's Service Subscribers through call center conduct;

July 15, 2022

Page 2

- On July 27, 2020, Charter's General Counsel received EarthLink's Document Preservation Notice ("Notice"), which specifically states that "recordings of Spectrum's sales and service calls with EarthLink Service Subscribers" are at issue and must be preserved, (Notice at 1);
- On September 9, 2020, EarthLink filed the Complaint in this action, which clearly put the contents of the calls at issue;
- On September 15, 2020, EarthLink served its First Requests for Production of Documents, which specifically requested, "[a]ll documents relating to communications between Call Center employees and Service Subscribers, including all recordings or transcriptions of those communications." (EarthLink Sept. 15, 2020 Requests No. 8).

Despite this fulsome notice, you informed us that Charter did not preserve a single audio recording of calls between Charter and the EarthLink Service Subscribers. Indeed, it is not the case that recordings of these calls never existed. You have confirmed that the calls were in fact recorded. Instead, rather than preserving these recordings, Charter deleted evidence that is directly relevant to the claims and defenses in this litigation.

Just as concerning as the destruction of the recordings is the lack of candor regarding this conduct that has been displayed.

- In our June 23, 2022 letter, which attached the Notice, we asked you to "please confirm that no materials relating to the allegations and issues in this case have been deleted or lost, including any audio files or recordings, after the July 27, 2020 date." In your June 24, 2022 letter, you responded, "Charter confirms that a legal hold was implemented shortly after the receipt of the letter from Mr. Dykhouse. Charter's document collection and review is ongoing. If we learn that any documents, including audio files, were deleted or lost, we will update EarthLink accordingly." Your June 24 letter states the hold was implemented and gave no indication that you knew or had reason to know recordings of Charter's audio calls had been deleted.
- Charter's discovery responses indicate not only that recordings of the calls exist, but that Charter would not respond to the discovery requests because of the volume of information and the burden associated with the collection and search of the recordings. Indeed, rather than stating that the information requested was not available because Charter had destroyed the call recordings, Charter's *verified* interrogatory response to EarthLink Interrogatory No. 13 states:

Charter is unable to respond to this Interrogatory on the grounds that a response is neither practical nor feasible. Charter employs or works with third-party contractors to staff its call centers. Depending on the nature of their issues, EarthLink Service Subscribers may have been routed to Charter's Inbound Sales and Retention ("IBS&R") group, or to its Customer Service representatives. IBS&R had 6,883 employees as of year-end 2019, and 7,892 employees as of year-end 2020. In addition, there were 18,674 customer service agents as of year-end 2019 and 20,044 customer service

July 15, 2022

Page 3

agents as of year-end 2020. During the period of January 1, 2019 to January 1, 2021, those call centers fielded an average of around 20 million calls per month. Accordingly, Charter cannot respond to this Interrogatory.<sup>1</sup>

- In our June 29 letter, EarthLink attempted to address your burden objections, stating, “Charter has confirmed it has not deleted these calls and these calls are easily searchable for metadata as well as search terms. For this reason, please detail how many calls from Service Subscribers Charter has during the time period of this interrogatory.” Given our understanding at that time, we were surprised to receive your July 7 letter stating that Charter had not, in fact, confirmed it had not deleted the audio calls. However, the letter also suggested precisely the opposite when you offered to search for communications between Charter and the sixteen Service Subscribers identified in EarthLink’s responses to Charter’s interrogatories. We are bewildered that Charter would make such an offer knowing that these call recordings were destroyed.

Given the above, please confirm the earliest date on which you were aware Charter destroyed these call recordings. We also ask that Charter identify what date, if any, it issued a written litigation hold to its employees after receiving EarthLink’s Notice on July 27, 2020, and to provide a copy of any such hold to determine what documents specifically Charter instructed its employees to preserve and what steps Charter instructed them to take to carry out preservation. Or, alternatively, after being put on notice of litigation, please confirm when Charter: (1) assessed the burden of turning off the call recording auto-deletion; (2) assessed the burden of searching for and saving EarthLink customers’ calls; and (3) assessed whether to communicate any of the above to EarthLink.

We are currently evaluating what relief to seek to redress Charter’s destruction of evidence. Your transparency at this juncture is appreciated.

## **II. Charter’s Long-Delayed and Non-Committal Provision of Hit Counts and Custodians**

Despite EarthLink providing proposed search terms and custodians for Charter’s documents on June 23, 2022 and making multiple requests for hit counts to be provided meaningfully in advance of the parties’ meet and confer, we received Charter’s hit count report for the first time on July 13, 2022. Moreover, despite having nearly three weeks to evaluate and run

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<sup>1</sup> See also Charter’s responses to Interrogatories 15, 16, 17, 18. Similarly, Charter’s responses to EarthLink’s Document Requests misleadingly indicated that the audio calls had not been deleted. For example, in response to EarthLink’s First Set of Document Requests No. 8 seeking “[a]ll documents relating to communications between Call Center employees and Service Subscribers, including all recordings or transcriptions of those communications” (emphasis added), Charter stated that “transcriptions” of the requested recordings “have not been created or do not currently exist,” but did not similarly deny the existence of the call recordings or give any indication whatsoever they had been deleted. And Charter even bolstered its suggestion that the audio recordings existed when, in concluding its responses to First Request for Documents No. 8, Charter “add[ed] that during the period requested, from January 1, 2017 to present, Charter’s call centers received hundreds of millions of calls from subscribers, including both EarthLink and non-EarthLink subscribers.” This was clearly calculated to reinforce the misleading impression that its audio recordings had not been deleted.

July 15, 2022

Page 4

these hit counts, we were disappointed to learn on the call that Charter had not run the complete searches and custodians EarthLink requested in the first instance on June 23, 2022.

**A. Charter's Willful Failure to Run Hit Counts on Search Strings and Custodian**

**1. Charter's Failure to Run Hits for Windstream Related Search Terms**

Although neither the hit count report itself nor the cover correspondence contains any indication of this, Charter excluded the following search term strings in EarthLink's June 23, 2022 request:

Search Term No. in EarthLink June 23, 2022 Letter	Proposed Search Term
12	Bankruptcy AND (Windstream OR "Wind Stream" or windstream.com OR WIN OR WIND)
13	claim w/15 (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
14	Address! w/15 (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
15	Insurer AND (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
16	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elink.com) AND (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)

Charter does not and cannot contest that Windstream is a key player in this litigation whose course of dealing with Charter is critical to, among other things, the parties' respective claims and counterclaims of ownership over the IP addresses. EarthLink propounded two requests for documents concerning Windstream, for which Charter agreed to search for and produce documents responsive to these requests:

- First Set of Document Requests No. 18: "All documents and communications concerning Charter's alleged 'ownership' of the EarthLink IP Addresses, including without limitation any communications with Windstream Holdings, Inc. and Windstream Services, LLC, at any time, regarding the EarthLink IP Addresses."
- Second Set of Document Requests No. 3: "All documents and communications concerning potential claims by Charter and/or Spectrum against ... Windstream, in connection with the EarthLink IP Addresses."

Despite agreeing to search for and produce these documents, you stated during the call that Charter did not run any of EarthLink's Windstream-related searches based on your belief that (1) the searches would yield irrelevant hits, (2) the volume of hits is substantial, and (3) you do not believe sufficient time exists to review these hits before the August 5 production deadline. None of these are valid grounds to exclude Windstream documents from your search. You (a) have already conceded the relevancy of Windstream documents in the Discovery Responses when you

July 15, 2022

Page 5

agreed to search for and produce these documents, (b) have not provided us the hit counts for these documents to evaluate whether they represent a “substantial” volume, and (c) have ample time and resources to conduct document review between now and the August 5 deadline. On the call, we requested that you provide Charter’s hit counts for these excluded Windstream search strings. Today, we received your July 15, 2022 letter providing these hit counts and stating that Charter refuses to review any amount of them. EarthLink believes that all hit counts in the report attached to your July 15, 2022 letter should be reviewed, and reiterates its request for Charter to review these documents.

We also note that Charter’s revised hit count report provided today showing hits for the rest of the search terms does not include hits for the Windstream searches, which prevents EarthLink from seeing how many of the hits in the Windstream report are already included in the rest of the document hits. No later than Monday, July 18, please provide us the number of unique documents generated from the Windstream related strings in comparison to the rest of the search strings.

2. Charter’s Failure to Run Hit Counts for Custodian Richard Dykhouse.

During the call, you advised us that Charter had, again deliberately and unilaterally, decided to exclude EarthLink’s proposed custodian Richard Dykhouse from its hit count report. While we understand Mr. Dykhouse’s seniority, given Charter’s destruction of documents, he is a key custodian as he is the initial recipient of the Notice. On the call, while reserving all rights to include Mr. Dykhouse as a custodian, we requested that you provide us hit counts for Mr. Dykhouse no later than today so we evaluate Charter’s proposed exclusion. We received your letter today stating that you will not agree to even provide a hit count report for Mr. Dykhouse’s documents. This refusal is unreasonable, and deprives EarthLink of any ability to assess whether Mr. Dykhouse’s hits on EarthLink’s search terms are reasonable and proportional to review.

3. Charter’s Proposal to Severely Restrict Scope of Documents Reviewed for Custodian Cody Harrison

During the call, you proposed for Charter to exclude from review all hits for custodian Cody Harrison except for communications with parties external to Charter. While we are cognizant of Charter’s desire to reduce its review population and potentially avoid having to log privileged communications to which Mr. Harrison is party, Charter has not provided the number of Mr. Harrison’s hits that would be excluded from review as a result of Charter’s proposal. We received your letter indicating that Charter’s proposal would reduce Mr. Harrison’s hits to “1,153.” However, you did not clarify whether this refers to hits or hits with families. Please clarify this no later than Monday, July 18 so we can evaluate the reasonableness of your proposal.

**B. Charter’s Failure to Commit to Begin Reviewing Hits**

We were further surprised to learn on the call that, in addition to failing to run all of the search terms and custodians EarthLink proposed on June 23, 2022 and delaying providing a hit report until July 13, 2022, Charter refused to commit to beginning its review any of the hits identified in its July 13, 2022 report. Moreover, when we requested during the call that Charter begin reviewing hits immediately, you informed us that Charter had not, and would not, begin

July 15, 2022

Page 6

reviewing until these hits were further reduced, although you refused to identify what number of hit counts you would consider reasonable.

During the call, we expressed that Charter's total hit counts set forth in its July 13 report (102,601 documents and 235,440 families) was not unreasonable or disproportional to this case. Among the 35 individuals Charter identified in its responses to EarthLink's Interrogatories, Charter has proposed to review 11 of these individuals' custodial documents. Charter's total hits in the July 13 report for these 11 individuals average approximately 21,400 documents per custodian—that is far below any unreasonable or disproportionate number given the size of Charter's company, the quantum of EarthLink's damages, and the scope of the factual issues involved in this litigation.

On the call, you asked EarthLink to modify several search strings in the July 13 report to reduce the overall number of hits. As we informed you during the call, however, we have no visibility into Charter's documents producing these hit counts, and therefore only Charter was in a position to sample and propose any modifications to the searches. On the call, we requested that, if Charter does not agree to review the full number of hits identified in the July 13 report, that Charter provide any proposed modifications and resulting changes in hit counts no later than today. However, we have not received them at the time of this letter. Accordingly, request that you provide this information no later than this Monday, July 18.

We also asked whether Charter had applied software that automatically excludes lesser-included email chains from its production as suggested in our July 13, 2022 email to you attaching the proposed ESI Stipulation, which typically results in a 15% reduction in hit counts. You represented you were unsure whether this exclusion had been applied to the hits in the July 13 report, and agreed to ascertain and advise us of this information by today.

We received your letter today attaching a revised hit count report that would reduce Charter's hits to 39,179 documents and 102,623 families. We note that you have excluded the following search strings set forth in EarthLink's June 23 proposal:

- "Call Center" AND (compensation OR bonus OR payment)
- EarthLink OR earthlink OR "Earth Link" OR "ELNK" OR @elnk.com
- (Customer OR offer OR mov\* OR new OR transfer OR report) AND (EarthLink OR earthlink OR EarthLink OR "Earth Link" OR "ELNK" OR @elnk.com)

Charter has failed to provide any details to justify these exclusions. For example, your letter does not identify what sampling, if any, Charter conducted to determine that the hit counts produced by these search strings were producing non-responsive hits. To evaluate your proposed exclusion of these terms, please provide details concerning how you determined to exclude these search strings.

Additionally, we note that with respect to the following search strings, you proposed to replace the AND connector with a w/25 limiter:

July 15, 2022

Page 7

- (“High-Speed Service Agreement” OR HSAA OR Agreement OR contract OR “Service Agreement” OR “High-Speed Agreement”) AND (EarthLink OR earthlink OR EarthLink OR “Earth Link” OR “ELNK” OR @elink.com)
- (EarthLink OR earthlink OR EarthLink OR “Earth Link” OR “ELNK” OR @elink.com) AND (diligence OR title OR own OR interest)
- EarthLink OR earthlink OR EarthLink OR “Earth Link” OR “ELNK” OR @elink.com) AND (misappropriate OR sale OR sell OR sold OR block)
- (EarthLink OR earthlink OR EarthLink OR “Earth Link” OR “ELNK” OR @elink.com) AND (polic\* OR proc\*)
- (IP Address\*) AND (polic\* OR proced\* OR ownership)
- (Retent\* OR Preserv\* OR Hold\* OR Retain\* OR Delet\*) AND (EarthLink OR earthlink OR “Earth Link” OR “ELNK” OR @elink.com)

Charter provides no explanation for why the hits produced by EarthLink’s original string were unreasonable, particularly given the string is highly specific to EarthLink and the name of the parties’ relevant contractual agreement. EarthLink request that, no later than July 18, Charter explain why it believes and how it determined that the original search string disproportionately produced non-responsive hits.

### **C. EarthLink Inquiries as to Existing and Additional Potential Charter Custodians**

As we noted on the call, Charter’s hit count report identified several additional custodians: Patricia Eliason, Charlotte Field, David Gray, and Sharon Peters. We asked how and why you selected these individuals as Charter document custodians, to which you responded that you believed these individuals were the primary Charter employees involved in the events at issue in this action. With respect to the dozens of other individuals Charter identified in its responses to EarthLink’s Interrogatories as having knowledge of the issues involved in this case, you confirmed that Charter has possession, custody, or control of their custodial documents. As stated during the call, we reserve all rights to add these individuals as Charter custodians pending a review of Charter’s document production of the custodians identified in the July 13 hit count report.

Additionally, with respect to the 10 other Charter employees listed in our July 12 letter who were not identified in Charter’s responses to EarthLink’s Interrogatories, you represented that Charter is investigating whether it has custodial documents for these individuals. On the call, we requested that you confirm no later than today whether Charter has custodial documents for Zachary Remming, Lorretta Rhoades, Jeffrey Mollett, Christopher Kidwell, Krista Clark, Kim Grose, Aurora Provencher, Lawrence Clermont, Christopher Squeri and Dexter Crapps, but we have not received your confirmation at the time of this letter. Accordingly, request that you provide this information no later than this Monday, July 18.



July 15, 2022

Page 8

#### **D. Sources of Custodial Data**

During the call, we asked you to identify, with specificity, what sources of custodial data were collected to generate the hits in Charter's July 12 hit count report. You stated that you believed "all" sources of each custodian's email and non-email documents were included in the collection producing these hits, but needed to confirm this understanding with your client. Accordingly, we requested that Charter specifically identify all sources of data from which Charter collected documents and communications for its custodians no later than today. We received your July 15, 2022 letter stating that your custodial data "contain[s] email messages and instant messages." Your July 15 letter further states that, "[t]he collection also includes relevant documents identified by custodians that have been collected from the custodians' hard drives."

This is not a sufficiently detailed explanation of Charter's custodial data sources. For instance, Charter has failed to clarify whether the search terms run over Charter's email data were also run over Charter's instant messages. Additionally, Charter provides no detail concerning how its custodians purported to identify "relevant documents" from their "hard drives." EarthLink requests detail concerning how its custodians determined which documents were "relevant," and identification of which issues Charter's custodians considered "relevant." Please further clarify whether Charter ran EarthLink's search terms over its custodians hard drive data, and if not, why Charter failed to run search terms to locate responsive documents in its custodians non-email data.

#### **E. Charter's Request to Avoid Human Review of Documents Using Technology Assist Review ("TAR")**

During the call, you asked whether EarthLink would permit Charter to use TAR. We responded that we believe TAR is inappropriate for the volume of documents in Charter's hit counts, which are not near the millions of documents for which TAR is typically permitted. We further advised that EarthLink is completing all of its document review without the use of TAR.

Still, as we stated on the call, EarthLink is willing to consider Charter's proposed use of TAR if Charter provides a TAR protocol that gives EarthLink sufficient confidence that Charter's use of TAR will not result in the exclusion of responsive materials from its productions. We requested, and you agreed to provide, a proposed TAR protocol that sets forth the specific protocols Charter will use to apply TAR in its document review. We reiterate our position on the call that EarthLink will only consider Charter's use of TAR 1.0, not TAR 2.0, and that any proposed TAR protocol will provide a recall percentage of at least 85%. On the call, we requested that you provide us with this proposed TAR protocol by today so that the parties can finalize and execute the ESI Stipulation by your proposed date of July 20. We received your proposed TAR protocol this evening and are currently reviewing.

### **III. Categories of Relevant Documents**

Despite Charter agreeing to a meet and confer to discuss the deficiencies EarthLink identified in Charter's Discovery Responses beginning on June 29, 2022, you informed us that you were not prepared to discuss numerous Document Requests and Interrogatories and would not engage in oral meet and confer on these topics, even though you have had our deficiency letter since June 29, 2022. You advised us that Charter's positions on the deficiencies identified by

July 15, 2022

Page 9

EarthLink would be provided in a forthcoming letter. We ask that Charter provide this letter with its final positions on any of the requests remaining in dispute below no later than this Monday, July 18, as we intend to move for relief expediently.

**A. First Set of Document Requests No. 1**

During the call, you clarified that Charter intends to search for and produce both (1) Charter's policies and procedures relating to the High-Speed Services Agreement and/or Service Subscribers; and (2) Charter's policies and procedures relating to Charter's communications with the Service Subscribers.

**B. First Set of Document Requests No. 8**

As noted above, you shared with us for the first time that Charter deleted its audio calls with the Service Subscribers pursuant to a 120-day auto-deletion policy, despite receiving EarthLink's Document Preservation Notice on July 27, 2020. If Charter had properly implemented the Document Preservation Notice, Charter should have audio calls going back at least as far as March 29, 2020. However, Charter failed to preserve any such calls, preventing EarthLink from obtaining this discovery.

You further stated during the call that Charter maintains additional records of its communications with the Service Subscribers in the form of "customer notes." We asked you to identify (1) on what systems and in what file format are these customer notes maintained, and (2) is Charter able to run search terms over the data location where the customer notes are stored? You were not able to identify the systems and file types requested, but agreed to find this information and endeavor to provide it to us by today. You further advised us that Charter is able to run search terms over the customer note files to isolate customer notes hitting on the search terms, and agreed to confirm with us by today whether you would agree to run the search term "EarthLink" over the customer note files to identify responsive communications. We received your July 15, 2022 letter proposed search terms to run over Charter's customer notes and are currently reviewing your proposal.

Lastly, we note that you did not raise objection to provider Service Subscriber information to EarthLink based on the Cable Act, 47 U.S.C. § 551. Accordingly, we consider Charter's meritless objections against providing documents that identify the Service Subscribers, who identities Charter has already routinely disclosed to EarthLink, withdrawn.

**C. First Set of Document Requests Nos. 9 and 11**

We requested that Charter specifically identify the sources of data to be searched for documents and communications responsive to these requests. You agreed that Charter would identify the same by today, but your July 15 letter omits key details concerning how Charter's employees self-selected their non-email documents from their data drives. Accordingly, request that you provide this information no later than this Monday, July 18.

July 15, 2022

Page 10

**D. First Set of Document Requests No. 21 and Second Set of Document Requests Nos. 2, 6, and 7**

During the call, you stated that you were not prepared to discuss these requests, and that Charter would set forth its positions in a forthcoming letter responding to our July 12 letter. While your July 15 letter addresses a number of issues as noted herein, it does not provide Charter's positions on the bulk of issues, which are outlined below. We expect to receive Charter's positions on the remaining issues no later than Monday, July 18 to evaluate whether Court intervention is necessary to compel Charter's responses to these requests.

**IV. Charter's Deficient Responses to EarthLink's First Set of Interrogatories**

**A. Charter's Identification of Current and Former Employees in Response to Interrogatories Nos. 4-9, 11, 15 and 22.**

As discussed above, you stated during the call that Charter is continuing to investigate whether it has custodial data for the following Charter employees:

- Charter accounting personal who corresponded with EarthLink concerning revenue generated from the Service Subscribers (Zachary Remming, Lorretta Rhoades, Jeffrey Mollett, and Christopher Kidwell);
- Charter customer service personnel who managed communications with the Service Subscribers (Krista Clark, Kim Grose, Aurora Provencher, and Lawrence Clermont);
- Charter customer billing personal who handled billing issues with the Service Subscribers (Christopher Squeri and Dexter Crapps).

We received your July 15, 2022 letter stating you will run Zachary Remming as a custodian. Charter's letter also states it will run Steve Lottman as a custodian. However, Charter has failed to identify whether it has custodial data for any of the other individuals identified in its Interrogatory responses or herein.

Further, Charter did not answer the question raised in our July 12 letter whether Charter will accept service of notices of deposition for both its current and former employees. Please confirm the same no later than this Monday, July 18.

**B. Charter Must Search for and Produce Communications with Service Subscribers, including in Response to Interrogatories Nos. 13 and 17.**

As discussed above in Section I, please advise us when you first became aware that Charter failed to preserve its audio calls with the Service Subscribers so we can evaluate the appropriate relief from the Court to redress this spoliation issue.

July 15, 2022

Page 11

1. Interrogatory No. 2

As discussed on the call, we asked that Charter identify the sources of custodial data it is searching so EarthLink can evaluate the reasonableness of Charter's proposal to search for and produce documents providing information responsive to this Interrogatory. Your July 15 letter omits key details concerning how Charter's employees self-selected their non-email documents from their data drives. Please provide this information by Monday, July 18.

2. Interrogatory No. 19

During the call, you stated that you were not prepared to discuss this Interrogatory, but would address it in a forthcoming letter setting forth Charter's position. Please provide the same no later than Monday, July 18, including answers to the following questions set forth in EarthLink's July 12 letter:

- Are there now, or were there ever, any insurance agreements that relate to the HSSA?
- Are there now, or were there ever, any insurance agreements that relate to the 1,000,000 block of IP addresses, or any portion thereof, that Charter purports EarthLink "convey[ed]" to it pursuant to the word "supply" in the HSSA?
- Did TWC ever represent or warrant to Charter at the time of your merger that it owned the 1,000,000 block of IP addresses, or any portion thereof?
  - If yes, was that property assigned to Charter upon assignment of TWC's rights and obligations under the HSSA?
  - If yes, is there any insurance agreement that would cover the breach of TWC's representation or warranty?

**V. Privilege Log**

During the call, we agreed that the parties will follow Commercial Division guidance favoring categorical privilege logs over traditional document-by-document logs. We proposed that the parties provide metadata privilege logs, which we believe will be the most efficient means of logging in this case. We received your July 15, 2022 letter agreeing to the provision of metadata privilege logs with proposed fields and are currently reviewing.

**VI. Charter's July 12, 2022 Letter Purporting to Identify Deficiencies in EarthLink's Interrogatory Responses.**

During the call, you made no mention or attempt to follow-up in response to our July 12 letter demonstrating that Charter's purported "deficiencies" in EarthLink's Interrogatory responses were baseless. Accordingly, we consider these purported issues raised in Charter's July 12 letter withdrawn.

July 15, 2022

Page 12

**VII. Date to Seek Court Intervention**

Finally, on the call you asked whether we would like to set a date for Court intervention if EarthLink determines that Charter's deficiencies herein are not sufficiently addressed. This is a premature request, as Charter has failed to provide the basic information we requested concerning hits and search terms and could not even promise to provide that basic information by today. Suffice it to say that given Charter's delay and egregious conduct to date, we intend to move quickly on all issues. If Charter fails to respond to any outstanding issues after Monday, July 18, given the narrow discovery window, we will consider the issue joined. We further reserve all rights to seek additional relief from the Court, including with respect to spoliation sanctions relating to Charter's deletion of the audio calls responsive to the Discovery Requests.

Sincerely,

/s/ Alexander M. Noble

Alexander M. Noble