

Exhibit 15

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003
Tel: +1 212 556 2100
Fax: +1 212 556 2222
www.kslaw.com

Shaila Rahman Diwan
Partner
Direct Dial: 212-790-5346
sdiwan@kslaw.com

July 25, 2022

VIA E-MAIL

H. Gregory Baker
Saul S. Shapiro
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
hbaker@pbwtlaw.com

Re: *EarthLink LLC v. Charter Communications Operating, LLC*, 654332/2020

Dear Greg:

I write on behalf of EarthLink in response to your letter dated July 19, 2022 (the “July 19, 2022 Letter”) relating to certain discovery disputes in this matter.

I. Charter’s Deletion of Call Recordings.

In EarthLink’s July 15, 2022 letter to Charter, EarthLink asked Charter to provide the following information related to Charter’s destruction of documents:

- The earliest date on which you were aware Charter destroyed the call recordings between Charter and EarthLink subscribers.
- What date, if any, Charter issued a written litigation hold to its employees after receiving EarthLink’s hold notice on July 27, 2020, and 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.
- Alternatively, EarthLink requested that Charter confirm when Charter assessed: (1) the burden of turning off the call recording auto-deletion; (2) the burden of searching for and saving EarthLink customers’ calls; and (3) whether to communicate any of the above to EarthLink or the Court.

In the ensuing week, EarthLink has received multiple communications from Charter, but it has not received a response to the questions above.

We reiterate our request for this basic information. The repeated attempts to gather this information exacerbates the expense and prejudice to EarthLink.

Additionally, at the parties' July 13 meet and confer, you informed us that the calls between Charter and the Service Subscribers were "not saved," but your July 19, 2022 Letter, stated that the calls were "automatically overwritten." Please state what efforts, if any, Charter has made to forensically recover the calls and the outcome of that investigation.

II. Purported Deficiencies in EarthLink's Responses to Charter's First Set of Interrogatories.

A. Charter Interrogatory No. 4.

EarthLink maintains its position that it is not in possession, custody, or control of information related to when Charter's representatives made misstatements to the Service Subscribers. As a result, EarthLink confirms that it is unable to identify the dates and times of the at issue statements by searching documents in its possession, custody, or control. EarthLink remains willing to identify the dates and times when Charter's made the at-issue misstatements upon review of Charter's production. To the extent Charter has not answered the basic questions above concerning its attempts to preserve or restore its calls, EarthLink will seek the Court's guidance on this issue. Forcing EarthLink to spend further time and expense on discovery letters in response to Charter's requests to information regarding its own employees from records *Charter has destroyed* is absurd.

B. Charter Interrogatories Nos. 13 and 14.

EarthLink maintains its position that the information Charter seeks in interrogatories Nos. 13 and 14 is outside EarthLink's possession, custody, or control. EarthLink cannot provide further information beyond the contact information it has already provided from documents in its possession, custody, or control. Moreover, EarthLink maintains that Charter's requests for additional information related to EarthLink's litigation strategy and efforts far exceed the limited scope of interrogatory topics under Commercial Division Rule 11-a. To the extent Charter can provide any legal authority to support such an obligation, EarthLink is willing to consider it and further confer.

III. Charter's Request for Information Related to EarthLink's Audio Recordings of EarthLink Calls with Service Subscribers.

EarthLink is under no obligation to provide this information to Charter, where EarthLink has stated in its responses to your discovery requests that, subject to its objections, EarthLink will produce all non-privileged, responsive audio recordings. EarthLink will certainly not provide this information without some explanation of the basis for Charter's requests. Particularly where Charter gave conflicting statements as to whether the calls EarthLink requested *exist* while simultaneously refusing to produce those calls, purposely destroyed that evidence, and now refuses to provide even basic information to EarthLink regarding its preservation efforts.

IV. Charter's Failure to Begin Reviewing Hits.

On May 17, 2022, the Court ordered the parties to complete all requests for production by May 27, 2022 and complete their respective productions in full by July 15, 2022. On July 11, 2022, Charter received a three-week extension from the court. Charter's contention that EarthLink caused Charter's inability to meet the original court-ordered deadline or has in any way caused Charter to delay its ability to timely begin its review of documents is meritless.

V. Other Issues Raised by EarthLink Related to Search Terms and Custodians.

A. Hits produced by EarthLink's Original String.

To date, Charter has not explained why it believes and how it determined that the original search string proposed by EarthLink disproportionately produced non-responsive hits. Please confirm that Charter does not agree to provide this explanation. EarthLink reserves all rights pending a review of Charter's document production.

B. 10 Employees Listed in EarthLink's July 12, 2022 Letter.

On July 13 and July 15, 2022, EarthLink asked Charter to confirm whether Charter had custodial documents for the following ten Charter employees: Zachary Remming, Lorretta Rhoades, Jeffrey Mollett, Christopher Kidwell, Krista Clark, Kim Grose, Aurora Provencher, Lawrence Clermont, Christopher Squeri, and Dexter Crapps. To date, EarthLink has not received confirmation whether Charter will produce custodial documents for any of these custodians except Zachary Remming. Please confirm whether Charter is willing to provide EarthLink with this information.

1. Windstream-Related Documents in EarthLink Requests No. 3 and No. 18.

EarthLink maintains its position that the Windstream-related documents EarthLink asked Charter to produce in EarthLink's Requests No. 3 and No. 18 are relevant to this case because they are relevant to EarthLink's ownership of the IP Addresses. EarthLink considers this issue joined.

2. Custodian Cody Harrison.

EarthLink accepts Charter's offer to produce relevant, non-privileged documents resulting from a review of the 1,153 hits of Mr. Harrison's communications with any parties external to Charter. However, EarthLink maintains its objections that all responsive, non-privileged documents should be produced as well as from the remaining 3,226 internal communications and the remainder logged. Please confirm Charter is doing so.

3. Custodian Richard Dykhouse.

In EarthLink's July 15, 2022 letter to Charter, EarthLink requested that Charter provide EarthLink with hit counts for Mr. Dykhouse so EarthLink can properly evaluate Charter's proposed exclusion of Mr. Dykhouse as a custodian. To date, EarthLink has not received these hit counts. Charter fails to respond to the issue and once again demurs that it will provide Cody Harrison's communications with "third parties." Please confirm whether Charter will provide Mr. Dykhouse's hit counts to EarthLink. We will interpret your repeated failure to respond as issue being joined.

4. Cable Act Disclosures.

EarthLink maintains its position that the Cable Act, 47 U.S.C. § 551, does not preclude Charter from collecting, searching for or producing documents that identify the Service Subscribers in the context of this litigation where a confidentiality order is in place. EarthLink considers this issue joined and will seek the Court's intervention.

VI. EarthLink's Responses to Charter's Further Responses to Open Issues Regarding EarthLink's First and Second RFPs.

EarthLink considers issues joined as to First RFPs No. 21 and Second RFPs No. 2

A. First RFP No. 8.

Charter has yet to provide the hit counts it offered to gather on the terms identified in its July 19, 2020 Letter at 11. Please provide the date on which those results will be provided.

B. Second RFP No. 6.

EarthLink maintains its position that Charter is obligated to produce the information EarthLink requests in its Second RFP No. 6. We are willing to collect a sampling of agreements sufficient to show Charter's "agreements transferring registration of IP Addresses or conveying rights, title or interest in IP Addresses to any Person" including IP transfer agreements with third parties, IP address brokers, and RSA agreements. The relevance is clear, as Charter's course of conduct and standard IP transfer agreements for an ARIN registrant are highly probative in this case. EarthLink is willing to meet and confer regarding this RFP and reserves its right to seek court intervention to compel Charter's response to this request.

C. Second RFP No. 7.

EarthLink maintains its position that Charter is obligated to produce the information EarthLink requests in its Second RFP No. 7. EarthLink is willing to meet and confer regarding narrowing this RFP (*e.g.*, agreements with third parties defining IP addresses, internal and external policies and procedures defining IP Addresses) but this requires Charter provide examples of the data it has available. EarthLink and reserves its right to seek court intervention to compel Charter's response to this request.

VII. EarthLink's First Set of Interrogatories.

A. Individuals Identified in Response to Interrogatories 4-9, 11, 15, and 22.

Charter stated in the meet and confer that "Charter has possession, custody, or control over documents and communications of the individuals identified in response to these Interrogatories, *subject to Charter's document retention and destruction policies.*" Given Charter's recent admission it did not cease autodeletion of its calls, please confirm Charter *currently has*

possession, custody, or control over documents and communications of the individuals identified in response to these Interrogatories.

With respect to former employees, please either confirm Charter will accept service or provide their contact information no later than August 5, given the upcoming deposition notice deadlines.

B. Interrogatory No. 2.

EarthLink considers issues joined, particularly where Charter is flatly refusing to search for documents detailing the 1,000,000 IP Addresses it alleges were conveyed to it by EarthLink and now refuses to identify those documents.

C. Interrogatory No. 19.

Your position that Charter now “considers the questions in [EarthLink’s] July 15 Letter to be untimely, separate interrogatories for which on response is required” is puzzling. EarthLink provided these questions in response to *your request* for clarification in your July 7 letter, where you stated it was “unclear” what information EarthLink was requesting in Interrogatory No. 19. We obliged, providing you detailed questions to clarify the information EarthLink seeks through its timely served Interrogatory No. 19. We consider this issue joined.

VIII. Privilege Logs.

We are in receipt of Charter’s proposed fields for the parties’ metadata privilege logs. Please confirm that Charter agrees to include subject lines as a required field in its metadata privilege log.

Sincerely,

