

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

EARTHLINK, LLC

Index No. 654332/2020

Plaintiff,

-against-

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

**AFFIRMATION OF DAVID HEATH SMITH**

David Heath Smith affirms pursuant to CPLR § 2106 that the following is true:

1. I am employed by Charter Communications Operating, LLC (“Charter”) as Senior Director, Customer Intelligence and Insight. I have been employed by Charter since May 2018. I submit this affidavit in Opposition to Plaintiff’s Motion for Order to Show Cause for Spoliation Sanctions.

2. As Senior Director of Customer Intelligence and Insight, I am responsible for establishing and administering processes around customer reporting and management. These responsibilities include managing the work conducted by a third-party software company, NICE Technology (“NICE”), which uses the Nexidia platform to transcribe customer phone calls to Charter’s Customer call centers (“call centers”).

3. Charter records all inbound calls received by the call center. Approximately two-thirds of the call recordings are transmitted to NICE for transcription. The selection process is entirely random. To transcribe the calls, NICE runs the recordings through an automated speech

recognition program (“ASR”). Calls are transcribed in order to assist Charter employees training call center representatives.

4. Approximately 54,500 hours of recordings are transcribed each day.<sup>1</sup>

5. These sampling and transcription processes are fully automated. While certain categories of calls, such as field service and enterprise calls, are filtered out prior to sampling, this process does not distinguish between Charter and Earthlink service subscribers. Accordingly, I would expect the sampling process to capture and transcribe recordings from calls with Earthlink service subscribers at the same rate as Charter service subscribers.

6. Charter has retained all call transcripts created between March 2020 and October 2020.<sup>2</sup>

7. Transcripts associated with specific customers can be identified by searching for customer account numbers. Once selected and downloaded, the transcripts are available as text or CSV files and have text-searchable functionality.

8. I and employees working under my supervision, have identified approximately 104,000 transcripts of call recordings with EarthLink customers that took place between November 2019 and October 31, 2020.

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<sup>1</sup> Under the contractual terms of their storage agreement, for these audio files, Charter is limited to an average of 54,500 hours of storage per day.

<sup>2</sup> Before March 2020, transcripts were created as a function of NICE’s application processes, but those transcripts were not always transmitted to Charter or systematically retained. Charter has produced approximately 17,600 transcripts for recordings of calls placed between November 2019 and February 2020.

Dated: August 29, 2022

August 29, 2022

(s) /s/ Jacob Heath Smith

Heath Smith

Signed before me, Jacob Allen LePage, this 29<sup>th</sup> day of August 2022  
by Heath Smith.

  
Notary Public  
State of Colorado

