

Exhibit 1

Shaila Rahman Diwan

From: Shaila Rahman Diwan
Sent: Thursday, July 28, 2022 7:28 PM
To: Baker, H. Gregory (x2871); Damien Marshall
Cc: Lauren Devendorf; Alexander Noble; _wg Charter
Subject: RE: EarthLink LLC v. Charter Communications Operating, LLC, 654332/2020

Greg,

EarthLink will not withdraw its order to show cause. Nothing in your email below alters the conduct EarthLink seeks sanctions for—Charter’s destruction of recorded calls. The parties are not in the “midst” of conferral on this point. You confirmed Charter did not have these calls for the first time on July 13, 2022. While we have continued to seek information from Charter seeking to understand **why** Charter chose to delete those calls after repeatedly being put on notice to retain them, none of that changes the fact that there can be no further conferral concerning Charter’s failure to preserve the calls.

To the extent you now raise transcripts may exist, I note this contradicts numerous statements made by Charter, including in its verified responses. *See* Charter’s June 24, 2022 Verified Interrogatory Responses; Charter’s June 24, 2022 RFP Response No. 8; July 13, 2022 conferral with H. G. Baker (“You asked for transcriptions, there are none.”)

Additionally, there are significant hurdles to the reliability and admissibility of that evidence where: (1) it is unclear the context in which they were made or how reliable they are, given Charter’s prior responses (*see supra*); (2) if Charter does not know how many calls from Service Subscribers existed during this period of time, it is unclear how the transcripts can reflect a “significant percentage” of those calls; (3) the time period for the transcripts you identify would still only reflect a **fraction** of the time Charter should have preserved its calls.

Regardless, your representation below does not change the fact Charter destroyed the calls. To the extent you now claim Charter has located some fraction of (alleged) secondary evidence related to the best evidence Charter admits it has destroyed, these are issues Charter can raise in its opposition and EarthLink will reply to accordingly.

Shaila Rahman Diwan

Partner

T: +1 212 790 5346 | E: sdiwan@kslaw.com | [Bio](#) | [vCard](#)

King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036



kslaw.com

From: Baker, H. Gregory (x2871) <hbaker@pbwt.com>
Sent: Thursday, July 28, 2022 6:00 PM
To: Shaila Rahman Diwan <sdiwan@kslaw.com>; Damien Marshall <dmarshall@kslaw.com>
Cc: Lauren Devendorf <LDevendorf@KSLAW.com>; Alexander Noble <ANoble@KSLAW.com>; _wg Charter <Charter@pbwt.com>
Subject: RE: EarthLink LLC v. Charter Communications Operating, LLC, 654332/2020

CAUTION: MAIL FROM OUTSIDE THE FIRM

Damien, Shaila,

We are surprised to receive your order to show cause given that we are in the midst of the meet and confer process, and given that the deadline to produce documents is not until next Friday, August 5th. We fail to see why EarthLink felt the need to seek emergency relief from the Court before any documents have been exchanged.

Moreover, and significantly, we were just in the process of drafting a letter informing you that Charter recently identified transcripts of a significant percentage of customer calls dating back to March 2020. Charter is collecting those transcripts, and segregating the Charter customers from the EarthLink customers, which is a laborious task, given that there were 40,000 plus EarthLink customers from March 2020 to October 2020. Our letter to you would have proposed a meeting next week to provide an update on the transcripts. As we have previously informed you, the volume of calls was such that any meaningful review of the calls would have been impossible. However, the existence of these transcripts means that the substance of these calls may be subject to a meaningful review by both parties.

In light of this, the only appropriate action for you is to withdraw the order to show cause. If EarthLink does not withdraw the order to show cause, we will seek costs associated with Charter's response. Please let us know this evening if intend to withdraw the order to show cause.

We are available to discuss at your earliest convenience.

H. Gregory Baker

Partner

Patterson Belknap Webb & Tyler LLP

T: 212.336.2871 | F: 212.336.7986

hbaker@pbwt.com | www.pbwt.com

From: Shaila Rahman Diwan <sdiwan@kslaw.com>

Sent: Thursday, July 28, 2022 4:27 PM

To: Shane, Beth (x2659) <eshane@pbwt.com>; wg Charter <Charter@pbwt.com>; Baker, H. Gregory (x2871) <hbaker@pbwt.com>; Shapiro, Saul B. (x2163) <sbshapiro@pbwt.com>

Cc: SFCPart48@nycourts.gov; SFC-Part48@nycourts.gov; Damien Marshall <dmarshall@kslaw.com>; Lauren Devendorf <LDevendorf@KSLAW.com>; Alexander Noble <ANoble@KSLAW.com>

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

Caution: External Email!

Counsel, please be advised that we are filing an order to show cause this afternoon seeking spoliation sanctions against Charter in connection with its destruction of audio recordings in this matter.

The proposed order to show cause will request that the Court set a date and time for EarthLink to be heard on this application and for the parties to submit answering and reply papers in advance thereof. In accordance with the Court's Temporary Part Rules for Part 48 Nos. VI and XVI, we intend to circulate as-filed copies of EarthLink's papers via email, copying Part 48 at SFCPart48@nycourts.gov, once these papers are filed, as well as an emailed Microsoft Word version of the proposed Order to Show Cause to Part 48.

Shaila Rahman Diwan*Partner*T: +1 212 790 5346 | E: sdiwan@kslaw.com | [Bio](#) | [vCard](#)

King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036

kslaw.com**King & Spalding Confidentiality Notice:**

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message. [Click here to view our Privacy Notice.](#)

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply email. Please advise immediately if you or your employer do not consent to receiving email messages of this kind.
