

# EXHIBIT E

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July 7, 2022

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Shaila R. Diwan  
King & Spalding LLP  
1185 Avenue of the Americas  
New York, NY 10036-4003

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

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Dear Shaila:

I write on behalf of Charter Communications Operating, LLC ("Charter") in response to your June 29, 2022, letter regarding certain alleged deficiencies in Charter's Responses and Objections to EarthLink, LLC's ("EarthLink") First Set of Document Requests ("First RFPs"), Second Set of Document Requests ("Second RFPs") (each a "Request"), and First Set of Interrogatories ("Interrogatories"). We are sending this letter to you in advance of the parties' meet and confer, in the hopes that it will help streamline the meeting. We submit this letter without waiving any objections set forth in Charter's responses to the Requests and Interrogatories, all of which are expressly reserved.

**I. EarthLink's First and Second RFPs**

**A. First RFPs No. 1**

Charter understands this Request to be seeking "documents and communications concerning your *policies and procedures* relating to the Agreement with EarthLink and/or Service Subscribers" and "documents and communications concerning your *policies and procedures* relating to . . . communications with the Service Subscribers." (Emphasis added.) In its responses and objections to this Request, Charter indicated that, subject to general and specific objections, it would produce copies of responsive, non-privileged documents and communications concerning "policies and procedures" relating to the Agreement and/or Service Subscribers, if any exist. Thus, to the extent the Request is focused on *policies and procedures*, Charter intends to search for and produce responsive documents and communications.

To the extent that EarthLink intends this Request to encompass all "communications with Service Subscribers," however, it is duplicative of other Requests, including, but not limited to, First RFPs Nos. 2, 5, 6, 8, 9, 10, 11, and 12, and Second RFPs No.

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4. Charter reiterates its responses and objections to those Requests, supplemented by any additional responses raised in this letter. Given the volume of such communications, and the burdensomeness associated with collecting and reviewing all such communications, Charter will not produce all communications with Service Subscribers.

**B. First RFPs No. 8**

Charter stands by its objections to this Request, including that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, in light of EarthLink's disclosures in its Responses and Objections to Charter's First Set of Interrogatories, Charter responds that it is searching for documents and communications with respect to the sixteen Earthlink Service Subscribers that EarthLink has identified. Subject to and without waiving Charter's general and specific objections pertaining to this Request, Charter agrees to produce responsive, non-privileged documents and communications regarding these sixteen individuals, if any exist. Charter further objects on the grounds that the Cable Act prohibits it from producing personally identifiable information. Cable Act, 47 U.S.C. § 551. Accordingly, any productions from Charter will not include personally identifiable information.

At this time, Charter does not agree to produce documents and communications concerning Service Subscribers beyond the sixteen that EarthLink has thus far identified. Charter reiterates its position that collecting documents and communications related to the remaining Service Subscribers would be a substantial and unjustified burden on Charter. To begin with, Charter has no systematic means of identifying and isolating communications with Service Subscribers across the multiple electronic platforms that Charter used to manage and track its interactions with customers during the relevant time period. Any documentation or communication related to interactions with Service Subscribers is integrated into Charter's platforms alongside Charter's own customers. Without the name of a specific Service Subscriber or account number, Charter cannot realistically locate the information that EarthLink seeks. Additionally, Charter has no systematic means of collecting and aggregating communications with customers—Service Subscribers or otherwise. Reports of communications with Service Subscribers, or any other customers, are not logged in a segregated, easily accessible location.

**C. First RFPs No. 9**

Charter does not believe there is any disagreement over this Request. EarthLink requested that Charter produce "[a]ll documents and communications relating to your monitoring of communications between the Call Centers and Service Subscribers." Subject to general and specific objections, Charter has agreed to produce documents responsive to this Request, if any exist.

**D. First RFPs No. 11**

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Likewise, Charter does not believe there is any disagreement over this Request. EarthLink requested that Charter produce “[a]ll documents and communications relating to any feedback provided by you to the Call Centers concerning communications between Call Center employees and the Service Subscribers.” Subject to general and specific objections, Charter agreed to produce documents responsive to this Request, if any exist.

**E. First RFPs No. 21 and Second RFPs No. 2**

First RFPs No. 21 seeks documents and communications “identifying which of the 1,000,000 EarthLink IP addresses were used by Charter, the dates on which they were first and last used, and the purposes they were used for at any and all applicable times.” Second RFPs No. 2 seeks all “documents and communications concerning all Network Architecture and the usage of EarthLink IP addresses during the term of the Agreement.”

Subject to its objections, Charter will investigate whether it is possible to provide this information. To the extent that EarthLink seeks this information to investigate “unauthorized use of the IP addresses” during the term of the High-Speed Services Agreement (“HSSA”), that appears to be a new theory of the case, which was not alleged in the Amended Complaint. Charter asks that EarthLink identify where, specifically, it alleged in the Amended Complaint that Charter was engaging in the unauthorized use of any of the IP Addresses during the term of the HSSA.

Your letter further suggests that EarthLink is “entitled to know exactly what property Charter is claiming ownership of” vis-à-vis Charter’s claim for conversion. As EarthLink is aware, however, Charter, in its Counterclaims, identified the blocks of IP Addresses that it claims EarthLink converted by purporting to transfer and/or sell them to third parties. (*See* Counterclaims ¶¶ 43-45.) More broadly, Charter submits that any IP addresses supplied by EarthLink to Charter under the HSSA are now the property of Charter. EarthLink is surely aware of which IP addresses or blocks of IP addresses were supplied to Charter under the HSSA. (*See, e.g.,* Am. Compl. ¶ 45.)

Your continued reliance on ARIN is misplaced. As EarthLink is aware, ARIN itself does not take a position regarding ownership of IP addresses and, specifically, does not believe that IP addresses are property. (*See* Registration Services Agreement, ARIN, at ¶ 7.) Charter contends that it owns the IP Addresses because, pursuant to the HSSA, EarthLink supplied them to Charter, transferring ownership.

**F. Second RFPs No. 6**

Charter stands by its refusal to produce documents responsive to this Request. As Charter stated in its responses and objections, this Request is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This Request is extraordinarily extensive in scope, seeking “agreements” related to IP addresses beyond those

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that EarthLink supplied to Charter pursuant to the HSSA. EarthLink is not entitled to conduct a fishing expedition into Charter's operations and the acquisition, use, and management of all of its IP addresses. In addition to the fact that such information is not relevant, it neither practical nor feasible for Charter to attempt to collect, review, and produce the documents that EarthLink purports to seek through this request.

**G. Second RFPs No. 7**

Charter stands by its refusal to produce documents responsive to this Request, which seeks "[a]ll documents or communications defining the term "IP Addresses." The Request is overbroad and unduly burdensome, and is neither properly tailored nor reasonably calculated to lead to the discovery of admissible evidence. Through this Request, EarthLink plainly seeks documents wholly unrelated to this litigation, which concerns the ownership of the IP Addresses supplied to Charter pursuant to the terms of the HSSA. Charter is under no obligation to conduct such an open-ended and untargeted inquiry and will not produce documents responsive to this Request.

**II. EarthLink's First Set of Interrogatories**

**A. Title, Contact Information, and Custodial Status of Individuals Identified in Response to Interrogatories 4-9, 11, 15, and 22.**

Charter agrees to provide the last known title for the individuals identified in its responses to Interrogatories 4-9, 11, 15, and 22. We are further providing a corporate address where any correspondence addressed to these individuals may be sent.<sup>1</sup>

<u>Name</u>	<u>Present or Last Known Title<sup>2</sup></u>	<u>Last Known Business Contact Information</u>
Rick Davies (deceased)	N/A	N/A
Michael Adams		c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Beau Coughlin		c/o Kim Steuterman Charter Communications

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<sup>1</sup> EarthLink should direct any communications with any current and/or former Charter employees, including but not limited to those listed below, to Charter's undersigned counsel.

<sup>2</sup> At present, Charter is still investigating the titles for the individuals left blank below.

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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
David Christman (former employee)	SVP, Deputy General Counsel at L-TWC	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Raj Kumar (former employee)	GVP, Chief Counsel, Commercial at L-TWC	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Howard Pfeffer	SVP, Broadband Engineering and Tech	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Jeff King		c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Mike Lajoe	EVP, Chief Tech and Net Ops Officer	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Peter Stern	EVP, Product, People and Strategy	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Robert Rusak	GVP, Finance	c/o Kim Steuterman Charter Communications

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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Charlotte Field	SVP, Application Platform Operations	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Dustin Phillips	VP, Device, Identity and Domain Name System	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Eilisa Reid	GVP, Service Delivery	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
John Hendrickson	SVP, Core and Backbone Operations	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Matt Stanek	SVP, Network Technology Operations	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
David Scott Webber (former employee)	EVP, Network Operations	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Naomi Bergman	VP (CO)	c/o Kim Steuterman Charter Communications

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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Leo Cloutier	SVP, Strategy and Business Development	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Stephen Colafrancesco	VP, Market Intelligence	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
William Erickson	GVP, Field Sales	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Edward Fallon	Senior Director, Senior Counsel	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
William Futera	Vice President, Financial Planning	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
David Gray	GVP, Market Intelligence	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Mark Guberman	Director, Marketing	c/o Kim Steuterman Charter Communications



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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Jonathan Hargis	Special Advisor to the Chief Operating Officer ("COO")	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Cody Harrison	Vice President, Associate General Counsel	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Emmanuel Jones	Senior Director, Sales and Operations	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
John Keib	Executive Vice President and COO, Residential Services	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Greta Kim	VP, Customer Service Operations Support	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Chia Liu	VP, Engineering IP Management	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Michael Locke	VP, Retail Sales	c/o Kim Steuterman Charter Communications

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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Sharon Peters	EVP, Chief Marketing Officer	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Wendy Rasmussen	VP, Marketing	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Daniel Schatte	VP, Service Design	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Patricia Eliason	SVP, Spectrum Stores and Retail	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Joseph Leonard	SVP, Marketing and Creative Strategy	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Laurence Christopher	SVP and Associate General Counsel, Litigation/Chief Compliance Officer	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Kimberly Steuterman	Director, Senior Counsel	c/o Kim Steuterman Charter Communications

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		12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555
Kathleen Griffin	VP, Marketing Communications	c/o Kim Steuterman Charter Communications 12405 Powerscourt Dr. St. Louis, MO 63131 (314) 965-0555

**B. Interrogatory No. 13**

Charter stands by its objections to this Interrogatory. As Charter explained above in response to First RFP No. 8, without Service Subscriber names or account numbers, it is neither feasible nor practical for Charter to identify and isolate every interaction between a Service Subscriber and a Charter representative concerning the subject matter of this Interrogatory. Your letter suggests erroneously that Charter “has confirmed [that] these calls are easily searchable for metadata as well as search terms.” Charter has not made such a representation.

To the extent that Charter is able to identify the interactions involving the sixteen Service Subscribers EarthLink has disclosed, and to the extent Charter can assess whether any of those interactions concerned “changing service,” subject to the general and specific objections articulated in its responses and objections to Interrogatory No. 13, Charter will endeavor to disclose the names of the representatives with whom the sixteen service subscribers spoke during the period of January 1, 2019 to January 1, 2021 concerning “changing service,” if any such conversations took place.

Your letter also states that Charter “has confirmed [that] it has not deleted these calls . . . .” This again misstates what Charter has represented. As Charter noted previously, in a letter sent June 24, 2022, a legal hold notice was implemented shortly after the receipt of EarthLink’s July 27, 2020, Document Preservation Notice. Charter’s collection of responsive documents and communications is ongoing. Charter further directs EarthLink to its response to First RFPs No. 8 above.

**C. Interrogatory No. 17**

Charter stands by its objections to this Interrogatory. For similar reasons to those Charter articulated in its response above to Interrogatory No. 13, it is neither feasible nor practical for Charter to respond to this Interrogatory. Subject to the same limitations described above in response to Interrogatory No. 13, Charter will endeavor to disclose the names of the

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representatives with whom the six New York Service Subscribers identified by EarthLink in its Responses and Objections to Charter's First Set of Interrogatories spoke.

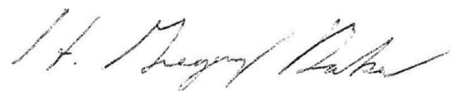
**D. Interrogatory No. 2**

Charter disagrees that its response to this Interrogatory is deficient. Your letter states that Charter's response is deficient because "Charter has not agreed to identify the IP addresses underlying Charter's alleged conversion claim." This is incorrect. In its Counterclaims, Charter identified the specific blocks of IP Addresses that EarthLink misappropriated and that form the basis of Charter's claim for conversion. (*See Counterclaims ¶¶ 43-45.*) In addition, Charter has agreed to produce responsive, non-privileged documents, if any exist, responsive to Second RFPs No. 22, which seeks documents and communications supporting Charter's allegation that EarthLink misappropriated certain blocks of the IP Addresses and purported to transfer them to third parties.

**E. Interrogatory No. 19**

Charter stands by its responses and objections to this Interrogatory. EarthLink's request for clarification "whether . . . TWC ever represented to Charter that TWC gained ownership of the IP addresses at issue from EarthLink pursuant to the HSSA" is not a proper subject of an Interrogatory. (*See Commercial Division Rule 11-a(b).*) In addition, Charter is unclear what is meant by the statement "whether Charter is aware of any insurance policy or agreement relating to such a representation."

Best regards,



H. Gregory Baker