

At I.A.S. Part 48 of the Supreme Court of the State of New York, Commercial Division, held in and for the County of New York at the Courthouse located at 60 Centre Street, New York, New York, on the 21 day of July 2022.

PRESENT:

Hon. **HON. ANDREA MASLEY**  
Justice of the Supreme Court

EARTHLINK, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No.: 654332/2020

Hon. Andrea Masley

Mot. Sequence # 004

~~PROPOSED~~ ORDER TO  
SHOW CAUSE FOR  
SPOILIATION SANCTIONS  
AGAINST DEFENDANT

UPON the reading and filing of the annexed Affirmation of Alexander Noble and exhibits thereto, Affirmation of Damien Marshall and exhibits thereto, Plaintiff's Memorandum of Law in Support of Order to Show Cause for Spoliation Sanctions against Defendant, and all other papers and proceedings heretofore filed and had herein, and sufficient cause thereon appearing,

LET defendant Charter Communications Operating, LLC ("Charter") show cause before this Court, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007 on the 12<sup>th</sup> day of Sept 2022, at 10 a.m. of that day,

pursuant to, *inter alia*, CPLR 3126, finding that Charter spoliated evidence and issuing the following sanctions:

(1) providing for adverse inferences on summary judgment and/or trial that (a) Charter destroyed its audio recordings of customer service calls with Plaintiff EarthLink's Service Subscribers in deliberate disregard of EarthLink's request to preserve and Charter's legal obligation to preserve those recordings, and (b) these recordings, had they not been deleted by Charter, would have provided evidence demonstrating Charter's misstatements and improper targeting of EarthLink's customers as alleged in the Amended Complaint in support of Counts I, II, IV, V, VII and VIII;

(2) precluding Charter from offering any evidence contrary to EarthLink's evidence showing Charter's misstatements and improper targeting of EarthLink customers in support of Counts I, II, IV, V, VII and VIII;

(3) requiring Charter to pay EarthLink's attorneys' fees and costs associated with this application; and

(4) for any further or other relief that the Court deems just and appropriate.

*by August 5, 2022*  
ORDERED that service of this Order to Show Cause and the papers upon which it is based be served on Charter's counsel of record by via email and e-filing using the NYSCEF system and that such shall be good and sufficient service; and it is further

ORDERED that answering papers, if any, shall be served upon counsel of record for EarthLink by serving via email and e-filing so as to be received on or before the *29* day of *August*, 2022; and it is further

ORDERED that the reply papers, if any, shall be served upon the Charter's counsel by email and e-filing so as to be received on or before the *9* day of *Sept*, 2022.

ADDENDUM TO ALL ORDERS TO SHOW CAUSE FOR PART 48  
AS OF MARCH 1, 2022

1. All appearances will be virtual using TEAMS which will be arranged by the Court. Participants in TEAMS are encouraged to download the application, instead of using a browser, and test it to ensure the highest quality appearance. Please email SFC-Part48@nycourts.gov if you would like to participate or listen. DO NOT COME TO COURT.
2. If there is no opposition, there will be no argument unless the court orders otherwise. However, applications to withdraw as counsel shall proceed even in the absence of opposition and the client must appear unless new counsel has been engaged.
3. Do not deliver paper copies to the court. All papers shall be filed in NYSCEF.
4. For the public, members of the press, and student interns, please email SFC-Part48@nycourts.gov to indicate your interest in listening to the proceedings. Such requests must be made at least 48 hours before the proceeding.
5. For orders to show cause for withdrawal of counsel, counsel shall file in NYSCEF proof of service on the client. The client is referred to the New York City Bar Association, Legal Referral Service for assistance in engaging a new attorney, 212-626-7373. Individual parties may represent themselves. Business entities, e.g. corporations, must appear by counsel.
6. Affidavits of service of the OSC shall be filed in NYSCEF at least 24 hours before the argument.
7. Parties shall read Part 48 rules and use NYSCEF numbers to reference documents filed in the docket.  
[http://ww2.nycourts.gov/courts/comdiv/ny/newyork\\_judges\\_links.shtml#masley](http://ww2.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley)
8. FOR ALL ORDERS TO SHOW CAUSE WHERE THE CASE IS NEWLY INITIATED AND PROCESS HAS YET TO BE SERVED, SERVICE OF PROCESS IS TO BE MADE OR ATTEMPTED IMMEDIATELY CONSISTENT WITH THE CPLR, BCL OR ANY AND ALL AGREEMENTS. SERVICE OF PROCESS IS NECESSARY FOR THE COURT TO OBTAIN JURISDICTION TO HEAR THIS CASE.