

# **Exhibit 8**

# KING & SPALDING

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June 23, 2022

## VIA E-MAIL

Saul B. Shapiro  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036

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

Dear Saul:

I write on behalf of EarthLink LLC (“EarthLink”) regarding EarthLink’s First and Second Document Requests to Charter (dated September 15, 2020 and May 27, 2022, respectively) and First Set of Interrogatories (dated May 27, 2022) (collectively, the “Discovery Requests”). Given that the Court has ordered document production completed no later than July 15, 2022, we are providing the attached proposed search terms, for Charter’s document collection, review and production. While Charter’s responses to the Discovery Requests are not due until June 24, 2022, given the compressed timeline, it is our hope the parties can work cooperatively to negotiate search terms and custodians in order to facilitate efficient and timely review of responsive documents. While we ask that you identify additional custodians you believe have information responsive to the Discovery Requests, we are also providing an initial list of custodians who should be included in the broader set of custodians identified by Charter. EarthLink’s proposed search terms and custodians for Charter’s document collection and review are attached as **Exhibits A and B**, respectively.

Of course, EarthLink reserves the right to modify the proposed custodians and search terms after receiving and reviewing Charter’s responses to the Discovery Requests on June 24, 2022.

We ask that Charter provide proposed search terms and custodians to EarthLink as well. We also propose the parties each take the time to run initial searches and discuss hit counts / propose narrowed searches at a meet and confer on July 1, 2022. If Charter is not available at that time, please propose dates and times you are available.

Separately, we attach hereto EarthLink’s document preservation notice to Richard Dykhouse, Charter’s Executive Vice President, General Counsel and Corporate Secretary, dated July 27, 2020 (the “Document Preservation Notice”) as **Exhibit C**. Pursuant to the Document Preservation Notice, please confirm that no materials relating to the allegations and issues in this

June 23, 2022

Page 2

case have been deleted or lost, including any audio files or recordings, after the July 27, 2020 date. If any such materials have been deleted, lost, or otherwise not preserved, please identify them by description and file type in order to expedite negotiation of the ESI protocol and Confidentiality Agreement.

Please confirm no later than June 24, 2022 the general description and file formats of any potentially sources of data that may contain information responsive to the Requests that Charter has deleted (or otherwise cannot locate) after its receipt of the Document Preservation Notice (e.g., audio tapes in .wav format; emails in .msg format). Please also confirm specifically whether Charter is able to locate audio files of customer service calls with EarthLink subscribers for the requested time period, including the time period after Charter's receipt of the Document Preservation Notice.

Please confirm the format of Charter's audio files and any other file formats that are not currently addressed in the parties' ESI protocol (*see* Section 1(b)(3) of ESI Protocol). Please confirm the file formats and general volume of the data so that the parties can begin to work on an ESI protocol related to the files, including the audio files. Marked up versions in response to Charter's last set of edits to the Confidentiality Agreement and ESI protocol are attached hereto as **Exhibits D and E**. It is EarthLink's desire that the parties begin production quickly and we will need the ESI protocol in place in order to do so.

Lastly, as you know, pursuant to the Court's Preliminary Conference Order, the parties must report to the Court concerning their compliance with the Preliminary Conference Order on June 30, 2022. To that end, we propose that the parties meet and confer on or before June 28, 2022 at 9:30 a.m. to determine whether a joint report can be made and if not, meet and confer in an effort to resolve or otherwise join issue on any potential discovery disputes prior to reporting to the Court.

Sincerely,



Shaila R. Diwan

**EXHIBIT A****Preliminary List of Custodians from EarthLink to Charter as of June 23, 2022**

No.	Custodian Name
1.	David E. O'Hayre
2.	Michael G. Locke
3.	Chris Czekaj
4.	Jonathan Hargis
5.	Cody J. Harrison
6.	Kathleen Griffin
7.	Richard Dykhouse
8.	Happy Marino

**EXHIBIT B****Proposed List of Search Terms from EarthLink to Charter as of June 23, 2022**

EarthLink proposes both general search terms and more targeted search terms in the event the general search terms are voluminous. Please run all terms and the parties can meet and confer regarding whether the general terms or the more targeted search terms are most appropriate.

No.	Proposed Search Term
1.	EarthLink OR EL OR earthlink OR "Earth Link" OR "ELNK" OR @elnk.com
2.	Windstream OR "Wind Stream" OR @windstream.com OR WIN OR WIND
3.	"EarthLink High-Speed Service"
4.	"ATD Network"
5.	("High-Speed Service Agreement" OR HSAA OR Agreement OR contract OR "Service Agreement" OR "High-Speed Agreement") AND (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
6.	Address! w/15 (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
7.	(Transfer! OR supp! OR Prov! OR convey! OR furnish! OR grant! OR equip! OR purchas!) w/15 (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
8.	("ARIN" OR "American Registry for Internet Numbers") AND (registration OR ticketing OR transfer OR EarthLink OR earthlink OR "Earth Link" OR EL OR el OR "ELNK" OR @elnk.com)
9.	Network Architecture AND (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
10.	(Subscribe! OR customer!) w/15 (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
11.	(Customer OR offer OR mov! OR new OR transfer OR report) AND (EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)
12.	Bankruptcy AND (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
13.	claim w/15 (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
14.	Address! w/15 (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
15.	Insurer AND (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)
16.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (Windstream OR "Wind Stream" or @windstream.com OR WIN OR WIND)

No.	Proposed Search Term
17.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) w/15 (sav! OR promotion! OR advertis!)
18.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) w/30 defin!
19.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (system facilit! OR component part!)
20.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (diligence OR title OR own OR interest)
21.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND IP servic!
22.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) w/5 software
23.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) w/5 deliverable!
24.	(IP Address!) AND (polic! OR proced! OR ownership)
25.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (misappropriate OR sale OR sell OR sold OR block)
26.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (polic! OR proc!)
27.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND (terminat! OR cancel! OR unsubscribe!)
28.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND ("Call Center" OR training)
29.	"Call Center" AND (compensation OR bonus OR payment)
30.	(EarthLink OR EL OR earthlink OR EarthLink OR "Earth Link" OR el OR "ELNK" OR @elnk.com) AND "Transition Services Agreement"
31.	Retent! Preserv! Hold! Retain! Delet! AND (EarthLink OR EL OR earthlink OR "Earth Link" OR el OR "ELNK" OR @elnk.com)

**EXHIBIT C**

**July 27, 2020 Document Preservation Notice**

**From:** [Evan Ennis \(recovered\)](#)  
**To:** [Rick.Dykhouse@charter.com](mailto:Rick.Dykhouse@charter.com)  
**Cc:** [Damien Marshall](#); [Larry Slovensky](#)  
**Subject:** EarthLink Document Preservation Notice  
**Date:** Monday, July 27, 2020 10:31:48 AM  
**Attachments:** [image001.png](#)  
[7.27.20 Letter.pdf](#)

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Mr. Dykhouse,

Please see the attached correspondence on behalf of EarthLink, LLC.

Regards,

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**Evan Claire Ennis**

*Senior Associate*

T: +1 212 556 2262 | E: [eennis@kslaw.com](mailto:eennis@kslaw.com) | [www.kslaw.com](http://www.kslaw.com)

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[dmarshall@kslaw.com](mailto:dmarshall@kslaw.com)

July 27, 2020

**VIA E-MAIL**

Richard R. Dykhouse  
Charter Communications Operating, LLC  
400 Atlantic Street, 10th Flr.  
Stamford, CT 06901

Re: Document Preservation Notice

Dear Mr. Dykhouse:

We represent EarthLink, LLC (“EarthLink”) and are writing to notify you that we are investigating potential claims on behalf of EarthLink against Charter Communications Operating, LLC, as successor to Time Warner Cable Inc. (“Spectrum”) concerning breaches of certain provisions of the High-Speed Service Agreement, as amended (the “Agreement”). In that regard, we hereby notify Spectrum of its obligation to preserve information, documents, and electronically stored information potentially relevant to the aforementioned misconduct.

As used in this letter, the term “Documents” is broad and includes all forms of recorded information, including without limitation: hard copies and all forms of electronic files, final and draft correspondence, reports, memoranda, notes, graphs, presentations, photographs, calendars, emails, recordings, and any data compilations from which information can be obtained, such as email, spreadsheets, databases, PDA files, videos, CDs, electronic calendars, archives, floppy disks, computer drives, PSTs, shared drives, data sites, online and cloud based databases, and any other electronic media and/or electronic data storage platforms whatsoever. The term “Communications” means all communications between Spectrum, its directors, managers, agents, employees, and/or any other person or persons including, without limitation, communications with Spectrum’s legal counsel, and any third parties.

To fulfill Spectrum’s preservation obligations, it must preserve all forms of Documents and Communications that relate in any way to the potential litigation referenced above. This includes, without limitation, all Documents and Communications related to the Agreement. This also includes all currently existing recordings of Spectrum’s sales and service calls with EarthLink Service Subscribers; all Documents evidencing Communications between Spectrum’s call center employees and agents and EarthLink Service Subscribers referencing or relating to EarthLink’s service offerings or business; all Documents relating to Spectrum’s sales efforts with

respect to EarthLink Service Subscribers; all Documents relating to Spectrum's marketing efforts with respect to EarthLink Service Subscribers; all Documents referencing the Transition Period in the Agreement; and all Documents otherwise referencing or relating to the termination of the Agreement (collectively, the "Relevant Documents").

Until further notice, all Relevant Documents must be preserved and may not be discarded, deleted, altered, or destroyed. Regardless of any document retention/destruction policies that may otherwise be applicable, Spectrum must not discard, destroy, alter or delete any Relevant Documents until further notice. To preserve emails and information contained therein, Spectrum should immediately review every Inbox, Sent Items, Deleted Items, and other folders for all email addresses within its access and/or control. Spectrum also should preserve any relevant materials stored on its hard drives, relevant shared drives, and any online and/or cloud-based data storage platforms, including any and all storage systems on which Spectrum maintains call center recordings. This letter applies to any materials that relate to the above categories of documents that may be found on personal and laptop computers, as well as in personal email accounts, and personal digital devices such as iPhones, Android phones, or Blackberries.

Spectrum is responsible for ensuring that its document preservation obligations are communicated to every person, employee, and/or agent of Spectrum who may discard or destroy documents, records, or information, and/or the responsible person at any "off-site" repositories of such materials.

This letter is not intended to state all the facts or legal issues relating to the foregoing, and EarthLink shall not be deemed to waive any of its rights or remedies, in law or in equity, all of which are expressly reserved.

Sincerely,

/s/ Damien Marshall  
Damien Marshall

**EXHIBIT D**

**EarthLink Proposed Revisions to ESI Protocol**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, COMMERCIAL PART 48

EARTHLINK, LLC,  
Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING,  
LLC,

Defendant.

Index No. 654332/2020

**STIPULATION FOR THE  
EXCHANGE OF  
ELECTRONICALLY-  
STORED INFORMATION**

It is stipulated and agreed by EarthLink LLC and Charter Communications Operating, LLC, through their counsel (each singularly, Party; together, Parties), to comply with the procedures and obligations for the exchange and production of electronically stored information (ESI) set forth below. If a provision of this agreement (ESI Stipulation) conflicts with the terms of the Stipulation and Order for the Production and Exchange of Confidential Information (Confidentiality Stipulation) previously entered in this action, the Confidentiality Stipulation will control absent further order of the court. The Parties agree:

1. Format of Files for Production

(a) Digitized Paper Documents:

(i) Documents originally in paper/physical form will be digitized into single-page, group IV (G4) format, black and white TIFF files at 300 into single-page TIFF images, group IV format, 300 dots per inch (dpi).

(ii) Every filename will match the document's Bates number, and be zero padded with no blank spaces; i.e., D000000001 (Defendant's Date Stamp Page 1, P000820009 (Plaintiff's Date Stamp Page 000820009);

(iii) The Parties will include with each production delivery an archival image link file as agreed (i.e., an Opticon (.OPT) file or similar).

(iv) The Parties will include standard Concordance default delimited text files as agreed in .DAT or similar format, and will include all available fielding data, including but not limited to beginning and ending Bates numbers, beginning and ending attachment numbers, and number of pages except where otherwise agreed.

(v) The parties will apply Optical Character Recognition (OCR) software to all applicable documents and create OCR-searchable files in .TXT format for each page digitized as in (i) above; filenames for .TXT files will synchronize with/be identical to the filename for the corresponding TIFF file (see [i] above). Delivery TIFF files will be accompanied by the corresponding full text .TXT files.

(b) Documents Originating Electronically: Standard electronic documents, emails, and presentations will be produced as TIFF images in the manner described above in (a) (i); however, all attachments, addendums, enclosures, and/or exhibits to a parent documents will be produced and identified as they relate to the respective parent document

(i) Digital documents will be produced with corresponding .TXT files as outlined above in section (a), as well as extracted metadata fields (where available), as agreed and set forth in the Metadata Table contained in the endnote below.<sup>1</sup>

(ii) Extracted text, as opposed to OCR text, delivered with production and formatted in .TXT file as above with OCR text files.

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<sup>1</sup> Pursuant to Provision 1 (B) (i) above, the Parties agree to include the information set forth and explained in the following Metadata Table:

(iii) All spreadsheets, audio, video, multi-media, or other types of files that cannot reasonably be produced as .tiff images, will be produced in native format and order of storage in native, ordinary course of business manner. For instance, emails with attached spreadsheets will be identified and linked per ATTACH\_RANGE field above. To avoid unnecessary duplications, placeholder TIFF files will be produced to preserve the native location of files; placeholder will identify the document by associated Bates number, the original file name, and state that the document was natively produced. For all natively produced documents, the .DAT file should include a field with the original file name. Other aAvailable metadata and text will be produced in the same manner as other documents.

(iv) The Parties will produce, upon request, documents or databases in native format if produced in TIFF or other static format (PDF, etc.) if inadequate in the form produced. Producing Party will provide native files with delimited TXT file containing BEGPROD, ENDPROD, ATTACH\_RANGE, Path to Native File, and MD5/Hash value.

## 2. Deduplication (Global)

The Parties will endeavor to deduplicate ESI. Documents will be deduplicated as against the entire population for all custodians and deduplicated custodians listed as above in Section 1. The Parties will retain all deduplicated documents for the duration of the action or as agreed and may request production of deduplicated documents for particular custodians by identifying the applicable Bates numbers in writing.

3. Clawback Mechanisms for Inadvertent ESI Disclosure

The Parties agree that inadvertent disclosure of privileged or protected documents/information will not constitute a waiver of any such privilege or protection and will apply the following procedures:

(a) Notice

Within ten business days from the date on which a disclosing Party discovers an inadvertent disclosure of ESI, it will notify the receiving Party by written Clawback Notice identifying the inadvertent disclosure(s) and directing the receiving Party to promptly return, destroy, and/or make inaccessible the inadvertently- disclosed information/documents and all copies.

(b) Parties' Obligations

Within three days of receipt of the Notice, the receiving Party will inform the disclosing Party that compliance will be effectuated or challenge the Notice in a formal responsive writing. If the Notice is not challenged, the receiving Party will destroy, return, and/or disable all access to the specified documents/information within ten days or as agreed by the Parties.

- (i) Where the inadvertent disclosure is in the form of a disc or access to a password-protected server, the producing Party must replace, upon receipt of intent to comply with the Notice, a replacement of the production containing all documents/information but for those identified in the Notice.
- (ii) The receiving Party will endeavor in good faith to retrieve any copies of the identified documents/information to return, destroy, or otherwise dispose of the materials, and take all steps necessary to prevent further sharing of those materials. The receiving Party will identify, in writing responsive to the Notice, the persons or entities that have received copies of the information/documents, identify the facts surrounding the sharing of those materials, and describe its best efforts to retrieve those materials in its affirmation of compliance.
- (iii) Any use of the identified inadvertent disclosures prior to receipt of the Notice is not a violation of this ESI Stipulation but may be subject to the provisions of the Confidentiality Stipulation.
- (iv) If the receiving Party challenges the Notice, it will return, destroy, or disable all copies of the documents/information, but may retain one copy for the purpose of challenging the designation of privilege/protection or inadvertency of the disclosure.
- (v) The Parties will meet and confer within two days to resolve the dispute if the Notice is challenged, and, if not resolved, the Parties will request an immediate discovery conference pursuant to the Part 48 Part Rules.
- (vi) Under all circumstances, the disclosing Party must preserve all documents/information subject to the Notice until any dispute has been resolved by the Parties' agreement or court order.

(c) Receiving Party's Affirmative Obligation

A receiving Party that discovers privileged or protected documents/information it will inform the disclosing Party in writing within five business days regardless whether a challenge to such privilege or protection is anticipated.

4. Confidentiality Designations and ESI From Other Individuals/Entities:

The Parties will designate documents as confidential or otherwise according to the terms of the Confidentiality Stipulation.

This ESI Stipulation may be re-executed and/or modified by agreement of the Parties; for instance, to allow non-signatory parties to this action or nonparties producing ESI to join this agreement.

Date: \_\_\_\_\_ [Executed Signature Blocks for the Parties]

Field Name	Sample Data	Description
PRODBEG	P000000222	First Bates number of native file document/email
PRODEND	P000000222	Last Bates Number of native file document/email (single-page documents will list beginning and ending Bates number)
PRODBEG_ATTACH	P000000222	First production bates number in a family range
PRODEND_ATTACH	P000000229	Last production bates number in a family range
CUSTODIAN	Adams, John	Email: Individual who originated the document, unless name is not available and then field will display available identifying information.. Native: Individual who originated the document
DUPLICATE CUSTODIAN	Franklin, Ben; Hancock, John, Whipple, William	When global deduplicating has been employed, the custodians who had duplicates of the identical document
FROM	Adams, John	Email author/sender
TO	Hancock, John [mailto:HANCOCK@JOHNHANCOCK.co m]	Recipient(s) of email separated by semicolon
CC	Franklin, Ben [mailto:bennyf@1776.com]	Carbon copy recipient(s) of email
BCC	NA	Blind carbon copy recipient(s) of email
SUBJECT	Declaration w/ edits	Email: subject line Native: document title
DATE_SENT	7/3/1776	Email: date the email was sent

TIME_SENT	12:59 AM	Email: time at which email was sent on date in date field
NATIVE_LINK	D:\1969\P000000222.MSG	Hyperlink to web address, named uniformly with first bates of parent document
FILE_EXTEN	i.e., MSG, DOCX, PDF, etc.	File extension of email or native document
AUTHOR	Jefferson, Thomas	Author of native document (MS Word, etc.)
DATE_CREATED	6/1/2009	Date native document was created
DATE_MOD	10/12/2010	Date native document was last modified
PGCOUNT	1	Total pages of each original document/email
Full Text Path	D:\1969\P000000222.txt	UNC path to text files of extracted/OCR text (unless redacted)
MD5/SHA1	E4d909c290d0fb1ca068ffaddf22cbd0	Hash code created for file in connection with deduplication

5. Audio, Video, Multimedia Files/Structured Data/Database:

The parties shall produce structured data or other types of data not already contemplated in this stipulation in a reasonably usable format or meet and confer to determine a mutually agreeable format ~~and protocol for producing audio, video, multimedia, or other forms of data / files not already contemplated in this stipulation.~~

KING & SPALDING LLP

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eshane@pbwt.com

*Attorneys for Defendant Charter  
Communications Operating, LLC*

SO ORDERED:

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Hon. Andrea Masley, J.S.C.

**EXHIBIT E**

**EarthLink Proposed Revisions to Confidentiality Stipulation and Order**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, COMMERCIAL PART 48

EARTHLINK, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No. 654332/2020

STIPULATION AND ORDER FOR  
THE PRODUCTION AND  
EXCHANGE OF CONFIDENTIAL  
INFORMATION

This matter, having come before the Court by stipulation of plaintiff, EarthLink and defendant, Charter Communications (collectively, the “Parties”), for the entry of a protective order pursuant to CPLR 3103 (a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms of this stipulation;

It is ORDERED that:

1. This stipulation is entered to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (“Documents” or “Testimony”).

2. Any Party or, as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action as “Confidential” or “Highly Confidential,” either by designating by notation each page of the Document, a statement on the record of a deposition, written notice to the respective undersigned counsel for the Parties, or other appropriate means.

(a) In the case of documents, designation shall be made prior to production by

stamping or writing the word "Confidential" or "Highly Confidential," as the case may be, on each page of any such document.

(b) Documents may be produced for inspection prior to their designation as Confidential or Highly Confidential but shall be designated as "Confidential" or "Highly Confidential," as the case may be, prior to the transmission of a physical copy of the document to the party requesting the document. The contents of such documents shall be treated as Confidential or Highly Confidential during their inspection and in the interim prior to their designation upon production of said physical copy.

(c) In the case of interrogatory answers, designation shall be made by stamping or writing the word "Confidential" or "Highly Confidential," as the case may be, on each page containing such answers, with the relevant portion of any such answer bracketed.

(d) In the case of depositions, designation of the portion of the transcript (including exhibits) which contains "Confidential" or "Highly Confidential" Information shall be made either (1) by a statement to such effect on the record during the course of the deposition or (2) within thirty (30) days of receipt of the transcript of the deposition by counsel for the party claiming confidentiality. If the designation is made during the course of a deposition, the reporter attending such deposition shall thereafter bind the transcript thereof in separate portions containing the non-confidential Information and Confidential or Highly Confidential Information, and the reporter shall write or stamp the word "Confidential" or "Highly Confidential," as the case may be, on the cover of the relevant portions of the transcript. If the designation is made following review of the transcript, the party so designating shall do so by identifying the page and line numbers corresponding to the portions of testimony the

party wishes to designate Confidential or Highly Confidential. Between the date of the deposition and (30) thirty days after the transcript has been received by the parties, the entire transcript is to be treated as if designated Highly Confidential. If no party has designated any portion of a deposition transcript Confidential or Highly Confidential thirty days after receipt of the transcript, the entire transcript will be treated as non-confidential. The parties may modify this procedure for any particular deposition through agreement on the record at such deposition, or after the deposition and in writing, without further court order.

(e) All briefs, pleadings or other filings with the Court which incorporate or disclose Confidential or Highly Confidential Information shall be appropriately labeled on the cover page and filed under seal.

3. Definitions of terms used in this stipulation:

(a) "Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients.

(b) "Highly Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as highly confidential, that counsel in good faith believes contains or constitutes that party's extremely sensitive confidential information or other such proprietary information such that disclosure of such information could be

expected to result in injury to the producing party.

(c) "Producing Party" shall mean the Parties to this action and any non-parties producing "Confidential or Highly Information" in connection with depositions, document production or otherwise, or the Party or non-party designating a Document or Testimony as Confidential or Highly Confidential, as the case may be.

(d) "Receiving Party" shall mean the Parties to this action and/or any non-party receiving "Confidential or Highly Confidential Information" in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential or Highly Confidential Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential or Highly Confidential Information. Notwithstanding anything to the contrary in this stipulation, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential or Highly Confidential Information. All depositions shall presumptively be treated as Highly Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen-day period, the deposition shall be classified appropriately.

5. Except with the prior written consent of the Producing Party or by order of the Court, Confidential Information shall not be furnished, shown, or disclosed to any person or entity except:

- (a) personnel of the Parties who are engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;
  - (b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;
  - (c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 8 below;
  - (d) the Court and court personnel;
  - (e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;
  - (f) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 10 and 11, respectively, below; and
  - (g) any other persons who may be specifically designated by advanced written consent of all attorneys of record or pursuant to Court Order, but only after such persons have executed the Confidentiality Agreement attached hereto as Exhibit 1.
6. Except with the prior written consent of the Producing Party or by order of the

Court, Highly Confidential Information must be maintained and kept at all times in a secure place in the offices of outside counsel for the parties (except as necessary for use in court or at depositions in a manner consistent with this Stipulation and Order), and shall be not furnished, shown, or disclosed to any person or entity except:

- (a) Attorneys of Record for a party in the above-captioned action;
- (b) Persons regularly members of, employed by or associated with the law firms retained by a party, or lawyers or paralegals engaged in whole or in part to assist the law firms of record, when the assistance of such persons is required by said attorneys in the preparation for or trial of the above-captioned action;
- (c) Expert witnesses and consultants retained in connection with the above-captioned action, to the extent such disclosure is necessary for the preparation for trial or trial of the action, but only after such persons have executed the Confidentiality Agreement contained at Exhibit 1;
- (d) The Court (including court reporters, stenographic reporters and court personnel). Disclosure of any Highly Confidential Information at trial or in any other proceeding herein shall be made in camera unless the Court orders otherwise or the parties otherwise agree. Other than as specifically set forth above, Highly Confidential Information cannot be disclosed in any way to any other individuals or entities, specifically including the parties in the above-captioned matter;
- (e) Any person or persons who have prepared the particular documents produced; or
- (f) Any person or persons to whom copies of any documents were addressed or delivered.

7. Confidential or Highly Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes.

8. Any person who is to be given access to Confidential or Highly Confidential discovery material pursuant to paragraphs 5(c) and 6(c) shall read this order and sign the Confidentiality Agreement attached as Exhibit 1, indicating that he/she had read this order and will abide by its terms. A copy of the signed Confidentiality Agreement shall be served on opposing counsel, along with a resume or *curriculum vitae* for the person who is to be given the material, by facsimile and first-class mail at least five (5) business days prior to the disclosure of the Material. If an objection is made and served by facsimile and first-class mail within the five (5) day period, disclosure is not permitted until the matter is resolved by the parties or the Court.

9. All depositions shall presumptively be treated as Confidential or Highly Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen-day period, the deposition shall be classified appropriately.

10. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential or Highly Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, that Party or, as appropriate, nonparty, may do so only after taking such steps, if any, that the Court, following a motion by the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.

11. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as "Confidential or Highly Confidential Information" under the terms hereof. If a Party seeks to give access to Confidential or Highly Confidential Information to a deposition witness, the Party shall provide the witness with a copy of this Stipulation and request that the witness execute a written agreement, in the form of Exhibit 1 attached below, to comply with and be bound by its

terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other Parties and, as appropriate, a non-party that is a Producing Party. In the event that a witness refuses to execute the agreement to be bound by this Stipulation, the Court may, upon the Party's application, enter an order directing the witness's compliance with the Stipulation, or directing such other steps as the Court may deem necessary under the circumstances.

12. A Party may designate as Confidential or Highly Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion of such materials or information. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality designation. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

- (a) Any Receiving or Producing Party who seeks to file any material—including but not limited to pleadings, motion/application papers, affidavits, memoranda, briefs, and exhibits—to the Court using Documents or Testimony which have previously been designated as comprising or containing Confidential or Highly Confidential Information, and/or which reproduces, paraphrases, or discloses Confidential or Highly Confidential Information (the Filing Party), shall, fourteen (14) days prior to filing such material, provide all Parties with written notice of its intent to file such material with the Court such that any Party may file, by Order to Show

Cause, a motion to redact and/or seal the Confidential or Highly Confidential Information pursuant to the Part Rules; such motion to redact and/or seal must be filed seven (7) days prior to the Filing Party's submission of such material in conformance with the Court's decision and order resolving the redact/seal motion or, if undecided, by filing such material to NYSCEF under temporary seal until the Court renders its decision.

(b) If the motion to seal or redact is granted in whole or in part, or denied, the Parties shall ensure that all documents that are the subject of the order to seal or redact are properly filed in accordance with the procedures that govern the filing of sealed or redacted documents on the NYSCEF system and the Part Rules within three (3) business days (i.e., if the motion to seal/redact is denied, the documents filed under temporary seal must be replaced with unsealed and unredacted publicly-available copies).

(c) All pleadings, briefs, memoranda or other documents which reproduce, paraphrase or disclose any document or content of a document which has previously been designated by a party as comprising or containing Confidential or Highly Confidential Information shall identify each designated document by the production number ascribed to it at the time of production.

13. Any person receiving Confidential or Highly Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms of this Stipulation and shall use reasonable measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

14. Any document or information that may contain Confidential or Highly Confidential Information that has been inadvertently produced without identification as to its

“confidential” or “highly confidential” nature as provided in paragraphs 2 and/or 12 of this Stipulation may be so designated by the party asserting the confidentiality designation by written notice to the undersigned counsel for the Receiving Party identifying the document or information as “confidential” or “highly confidential” within a reasonable time following the production from which the document or information was disclosed without such designation.

15. Extracts and summaries of Confidential or Highly Confidential Information shall also be treated as confidential or highly confidential as the case may be, in accordance with the provisions of this Stipulation.

16. The production or disclosure of Confidential or Highly Confidential Information shall in no way constitute a waiver of each Producing Party’s right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential or Highly Confidential designation Prior to showing the Material to the witness, the party’s counsel shall show the Material to the opposing counsel (i.e., counsel for the party designating the document as “Confidential” or “Highly Confidential”).

17. This Stipulation is entered without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any of its provisions by properly-noticed motion to the Court, or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

18. This Stipulation shall continue to be binding after the conclusion of this litigation; however, there shall be no restriction on documents that are used as exhibits in Court unless, and only insofar as, such exhibits were sealed or redacted pursuant to an order of the Court). Further, nothing in this Stipulation prevents a Receiving Party from seeking the written permission of the Producing Party, or further order of the Court, to dissolve or modify the Stipulation. The

provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action; however, documents sealed or redacted by order of the Court prior to, or for a purpose other than, trial shall not remain sealed or redacted for use as trial exhibits absent further order of the Court extending the sealed or redacted status of such documents for use at trial.

19. Nothing in this Stipulation shall be deemed to waive any privilege recognized by law or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

20. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential or Highly Confidential Information produced or designated, and all reproductions of such materials, shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, that Receiving Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts, and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter. Any materials produced to the Court at any stage of the action will be handled pursuant to the Part Rules.

21. ~~The inadvertent production or disclosure of any documents or other information~~

~~or materials shall not be deemed a waiver or impairment of any claim or privilege or protection, including but not limited to the attorney client privilege, the protection afforded to work product materials, or the subject matter thereof, or the confidential nature of any such information, provided that the producing party shall immediately notify the receiving party in writing when inadvertent production or disclosure is discovered. Upon receiving written notice from the producing party that privileged information or work product material has been inadvertently produced or disclosed, all such information, and all copies thereof, shall be kept by counsel for the receiving party and counsel shall not use such information for any purpose until further order of the Court. Any analyses, memoranda, or notes which were generated based upon such inadvertently produced or disclosed information shall also be kept by counsel for the receiving party and counsel shall not use such information for any purpose until further order of the Court.~~

21. The Parties agree that inadvertent disclosure of privileged or protected documents/information will not constitute a waiver of any such privilege or protection and will apply the following procedures:

- (a) Notice Within ten business days from the date on which a disclosing Party discovers an inadvertent disclosure of any privileged or protected documents/information, it will notify the receiving Party by written Clawback Notice identifying the inadvertent disclosure(s) and directing the receiving Party to promptly return, destroy, and/or make inaccessible the inadvertently disclosed information/documents and all copies.
- (b) Within three days of receipt of the Notice, the receiving Party will inform the disclosing Party that compliance will be effectuated or challenge the Notice in a formal responsive writing. If the Notice is not challenged, the receiving Party will destroy, return, and/or disable all access to the specified documents/information within ten days or as agreed by the Parties.

- (i) Where the inadvertent disclosure is in the form of a disc or access to a password-protected server, the producing Party must replace, upon receipt of intent to comply with the Notice, a replacement of the production containing all documents/information but for those identified in the Notice.
- (ii) The receiving Party will endeavor in good faith to retrieve any copies of the identified documents/information to return, destroy, or otherwise dispose of the materials, and take all steps necessary to prevent further sharing of those materials. The receiving Party will identify, in writing responsive to the Notice, the persons or entities that have received copies of the information/documents, identify the facts surrounding the sharing of those materials, and describe its best efforts to retrieve those materials in its affirmation of compliance.
- (iii) Any use of the identified inadvertent disclosures prior to receipt of the Notice is not a violation of this ESI Stipulation but may be subject to the provisions of the Confidentiality Stipulation.
- (iv) If the receiving Party challenges the Notice, it will return, destroy, or disable all copies of the documents/information, but may retain one copy for the purpose of challenging the designation of privilege/protection or inadvertency of the disclosure.
- (v) The Parties will meet and confer within two days to resolve the dispute if the Notice is challenged, and, if not resolved, the Parties will request an immediate discovery conference pursuant to the Part 48 Part Rules.
- (vi) Under all circumstances, the disclosing Party must preserve all documents/information subject to the Notice until any dispute has been

resolved by the Parties' agreement or court order.

A receiving Party that discovers privileged or protected documents/information it will inform the disclosing Party in writing within five business days regardless whether a challenge to such privilege or protection is anticipated.

(c)

22. If Material or information designated "Confidential" or "Highly Confidential" is disclosed by a receiving party to any person other than in the manner authorized by this Stipulation and Order, the receiving party responsible for the disclosures must immediately bring all facts relating to such disclosure to the attention of the designating party, and without prejudice to the rights and remedies of the designating party, make every effort to prevent further unauthorized disclosure on its own part or on the part of such information or material.

23. If a Receiving Party is called upon to produce Confidential or Highly Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential or Highly Confidential Information is sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential or Highly Confidential Information, if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.

24. This Stipulation may be changed by further order of this Court and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

25. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original document, and electronic signatures of counsel of record shall be deemed original signatures.

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*Attorneys for Defendant Charter  
Communications Operating, LLC*

SO ORDERED:

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Hon. Andrea Masley, J.S.C.

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, COMMERCIAL PART 48

EARTHLINK, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No. 654332/2020

STIPULATION AND ORDER FOR  
THE PRODUCTION AND  
EXCHANGE OF CONFIDENTIAL  
INFORMATION

I, \_\_\_\_\_, state that:

1. My address is \_\_\_\_\_.
2. My present occupation or job description is \_\_\_\_\_.
3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the “**Stipulation**”) entered in the above-entitled action on \_\_\_\_\_.
4. I have carefully read and understand the provisions of the Stipulation.
5. I will comply with all of the provisions of the Stipulation, will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential or Highly Confidential Information that is disclosed to me.
6. I will return all Confidential or Highly Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential or Highly Confidential Information.
7. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_