

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

EARTHLINK, LLC

Plaintiff,

-against-

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No. 654332/2020

**AFFIRMATION OF DAVID HOSEIN**

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

1. I am employed by Charter Communications Operating, LLC (“Charter”) as Vice President, Information Technology (“IT”) Operations, Customer Care Technology. I have worked at Charter since December 1998. I submit this affidavit in Opposition to Plaintiff’s Order to Show Cause for Spoliation Sanctions.

2. As Vice President of IT Operations, I am responsible for operational management of the IT Department, including the Help Desk, Infrastructure, Telecommunications, Data/Network Communications, and Application Development. Prior to this role, I worked on developing customer technologies.

3. In these positions, I helped to develop Charter’s system and processes to retain recordings of calls placed into Charter’s call center (“call center”). These recordings are created and saved for training and quality control purposes.

4. Before Charter's contractual relationship with EarthLink terminated on October 31, 2020, all inbound customer calls, whether from Charter/Spectrum service subscribers, or from EarthLink customers, were recorded.

5. Each recording was saved as a ".wav" file and exported to a Charter shared media storage server. Recordings of Charter service subscriber calls were not segregated from recordings of EarthLink customer calls. The only way to identify calls from EarthLink subscribers was to manually identify .wav files by searching for the subscriber account numbers associated with EarthLink customers.

6. On average, the call center receives more than twenty million inbound telephone calls every month. The average call time is approximately seven to eight minutes.<sup>1</sup> Accordingly, recordings for a single month consist of more 2,333,333 hours. Seven months of recordings would consist of roughly 16 million hours of recordings (i.e., more than 1,800 years).

7. Under Charter's standard business practice, every call is recorded and stored for 120 days. Because of the volume of calls, storing a single day's worth of recordings requires approximately 10 terabytes or 10,000 gigabytes of memory.

8. Expanding the number of saved recordings is not just a matter of increasing Charter's storage capacity. Charter's database is robust, but has limits as to the volume of recordings that can be saved. To expand the number of calls saved from 120 days (approximately four months of calls) to more than seven months of calls, Charter would have needed to develop an entirely new storage system — a process that itself would have cost millions of dollars and taken months to design and implement, if not longer. If Charter had

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<sup>1</sup> These recordings capture the interactions between callers and call center representatives, as well as the periods during which callers are placed on hold.

attempted to preserve more than 120 days' worth of recordings with the existing system, there was a genuine risk that the additional volume would have caused the database to crash, and Charter would have temporarily lost the ability to preserve call recordings.

9. The database has no ability to automatically identify or retain recordings from Earthlink service subscribers (as opposed to Charter subscribers). In order to identify specific recordings, Charter has to manually search the system for either (i) a service subscriber account number or (2) unique identifying information on a specific call (such as time, date, or telephone number). The technology also only allows for Charter employees to search for one account or recording at a time. The process of identifying and downloading a single recording takes several minutes.

10. I understand that between March 1, 2020 and October 31, 2020, Charters had more than 40,000 EarthLink service subscribers. Therefore, in order to identify recordings received in the prior 120 days, Charter would have needed to manually identify each recording. Additionally, in order to identify and preserve incoming recordings from all Earthlink service subscribers, Charter would have needed to run tens of thousands of service subscriber account numbers across the recordings on a monthly basis, in order to pull out those recordings for preservation.

Dated: August 29, 2022

LINDA H CRAWFORD  
Notary Public, North Carolina  
Mecklenburg County  
My Commission Expires  
February 26, 2027

August 29, 2022

Mecklenburg County North Carolina

13824018

Notary: Linda H. Crawford Linda H. Crawford

/s/ [Signature]

David Hosein