

# **Exhibit 5**

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

EARTHLINK, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No. 654332/2020

**PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT**

PLEASE TAKE NOTICE that, pursuant to Article 31 of the New York Civil Practice Law and Rules ("CPLR"), and particularly Rules 3120 and 3122, Plaintiff EarthLink, LLC ("EarthLink") requests that Defendant Charter Communications Operating, LLC ("Charter") respond to the following requests and produce for inspection and copying the documents and things identified below at the offices of EarthLink's attorneys King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036, on or before October 6, 2020.

**DEFINITIONS**

The following definitions apply to the Document Requests:

1. "Agreement" means the High-Speed Services Agreement dated June 30, 2006, and all amendments thereto.
2. "Call Center" means any call center that is operated by Charter or with which Charter contracts.
3. "Charter" means Charter Communications Operating, LLC and its predecessors, successors, parents, subsidiaries, divisions, affiliates, or anyone acting or purporting to act on their

behalf, including any of their respective directors, officers, managing agents, agents, employees, attorneys, accountants, or other representatives or committees thereof.

4. “Communication” is used in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among members of a group, whether face-to-face, by telephone, whether oral or in writing, or by means of electronic or other medium.

5. “Concerning” means constituting, relating to, referring to, reflecting, describing, commenting on, discussing, or evidencing.

6. “Document” is used in the broadest sense permissible under CPLR 3120 and includes each and every written, recorded, or graphic matter of any kind, type, nature or description that is or has been in your possession, custody, or control, including but not limited to, computer files, computer databases, computer printouts, correspondence, electronic mail, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, drafts of documents, exhibits, work papers, schedules, forms, audits, charts, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, data compilations of any kind, teletypes, telexes, facsimiles, invoices, checks, statements, receipts, summaries, books, ledgers, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced and also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found in the original documents or that are otherwise not identical to the original documents.

7. “EarthLink” means EarthLink, LLC and its predecessors, successors, parents, subsidiaries, divisions, affiliates, or anyone acting or purporting to act on their behalf, including

any of their respective directors, officers, managing agents, agents, employees, attorneys, accountants, or other representatives or committees thereof.

8. “EarthLink High-Speed Service” means the wholesale version of Charter’s high-speed data service that EarthLink brands, markets and resells over Charter’s cable systems to consumers/residential customers.

9. “June 25 Email” means the email from Mike Toplisek of EarthLink to Michael Locke of Charter dated June 25, 2020 titled “Follow up / re-cap.”

10. “Person” means any individual, corporation, partnership, firm, association, government agency, or other organization recognizable at law, and its agents and employees.

11. “Relate to” or “relating to” means analyzing, containing, concerning, dealing with, constituting, defining, describing, discussing, embodying, evidencing, explaining, identifying, mentioning, reflecting, referring to, setting forth, showing, stating, summarizing, supporting, or in any way pertaining to the subject matter of the relevant request.

12. “Service Subscribers” means the consumers/residential customers who subscribe to EarthLink High-Speed Service pursuant to the Agreement.

13. “Spectrum” means Charter’s trade name used to market consumer and commercial cable television, Internet, telephone and wireless services.

14. “Transition Period” means the three-year period following the expiration of the Agreement, which will terminate on October 31, 2020.

15. “You” or “your” means Charter and all divisions, departments, area or regional offices, managing general agents, parents (whether whole or part owners), subsidiaries (whether wholly or partly owned), affiliates, predecessors, successors, each and every other person within

their control, and each officer, employee, agent, director, representative, attorney, investigator, contractor, subcontractor, expert, and consultant of any of them.

### **INSTRUCTIONS**

1. Each Document Request is to be read, construed, and responded to separately and independently without reference to, or being limited by, any other Document Request.

2. These instructions and definitions should be construed to require an answer based upon the knowledge of, and information available to, the responding party as well as its agents and representatives.

3. The Document Requests are continuing in nature so as to require supplemental answers to be served in a timely manner if further or different information is obtained with respect to any Document Request.

4. Each Document Request includes all documents that are within your possession, custody, or control, including all documents held by your employees or representatives that exist either in hard-copy files, whether centrally or individually maintained, or in electronic form, whether maintained on your servers, cloud services, or individually maintained on company-owned or employee-owned personal computers, laptop computers, tablets, mobile phones, or other computing devices of all individuals in whose files you search for responsive documents.

5. Each document should be produced with all of its attachments, appendices, schedules, and exhibits.

6. To the extent responsive documents or data are maintained in an electronic format, including but not limited to on a disk, tape, or other magnetic or machine-readable format, please produce the electronic version along with manual and all other documents sufficient to operate, display, read, and interpret the programs, documents, or data.

7. Documents should be produced either (a) as they are kept in the usual course of business, complete with the original file folders, binders, or other containers in which they are stored (or legible copies of the labels from those folders, binders, or containers), and should be stapled, clipped, or otherwise unitized as they are kept in the usual course of business, or (b) organized according to the request or requests to which they are responsive. If you elect the latter mode of production, each document or set of documents from a particular file, binder, or other container should be accompanied by a legible copy of the label from that container or some other reliable indicator of the file from which it was taken, and documents should be stapled, clipped, or otherwise unitized as they are kept in the usual course of business.

8. If a claim of privilege is asserted with respect to any Document Request, in whole or in part, or you refuse to answer any Document Request on any other ground, specify the exact basis for your claim that such Document Request need not be answered with sufficient specificity to permit the Court to determine the validity of your objection or position. In the event you serve a proper and timely objection to a portion of a Document Request, please respond to all portions of the Document Request that do not fall within the ambit of your objection. For example, if you object to a Document Request on the ground that it is too broad insofar as it covers time periods that you contend are not relevant to this litigation, you should answer as to all time periods that you contend are relevant.

9. In answering these Document Requests, if you claim an ambiguity in interpreting a Document Request, or any definition, instruction or request, that claim shall not be used as a basis for refusing to respond, but there shall be set forth as a part of the response the language deemed to be ambiguous and the interpretation chosen or used in responding to the Document Request.

10. If more than one copy of a responsive document exists, produce each copy that includes (a) any notations or markings not on other copies, including handwritten notations or routing or filing instructions; and/or (b) attachments not included as part of other copies.

11. In the event that any requested document has been destroyed, lost, discarded, or is otherwise not capable of being produced at the time that documents are produced pursuant to these Document Requests; identify any such document; identify the person who previously or currently has possession, control, or custody of the document; indicate the request(s) to which such document is responsive; and set forth the circumstances under which the document was destroyed or discarded or an explanation of why the document is not capable of being produced.

12. Unless otherwise defined herein, all words and phrases used in these Document Requests are to be given their plain, customary, and usual meaning.

13. All uses of the conjunctive include the disjunctive (and vice versa). All words in the singular include the plural (and vice versa). All uses of the word “all” include “any” (and vice versa). All uses of the word “each” include “every” (and vice versa). The use of a verb in any tense encompasses the use of the verb in all tenses.

14. Unless otherwise indicated, each Document Request seeks documents and/or communications concerning the period from January 1, 2017 to the present.

15. If any document is withheld under any claim of privilege, including without limitation, the work product doctrine, attorney-client privilege and/or any joint defense or common interest privilege, consistent with the Commercial Division Rule 11-b, provide a privilege log.

16. EarthLink reserves the right to serve supplemental Document Requests.

**FORMAT OF PRODUCTION**

1. Please produce documents on hard drive, DVD or zip disk in standard black-and-white, single page TIFF format with Opticon image cross reference and Concordance.DAT load files that contain corresponding extracted text and related metadata fields. Format black and white images as 300 DPI Group IV single-page TIFF that contain a unique bates number filename. Please endorse images with sequential Bates numbers in the lower right corner of each page and produce non-redacted spreadsheet files (such as Microsoft Excel (.xls) files) and non-redacted presentation files (such as Microsoft Powerpoint (.ppt) files) in native format with a corresponding placeholder TIFF image named by the Bates number associated with the file. The format should be searchable and compatible with the Kcura Relativity hosting platform.

2. Please supply the following metadata for the production: Bates Begin, Bates End, Attachment Begin, Attachment End, Attachment Range, Parent ID, Attachment IDs, Number of Attachments, Custodian, Duplicate Custodians, From, To, CC, BCC, Author, Subject, Title, Date Sent, Date Received, Date Created, Date Last Modified, Time Sent, Time Received, Tim Created, Time Last Modified, IntMSGID, Conversation Index, Time Zone, File Extension, File Name, File Size, Original File Path, Number of Pages.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents and communications concerning your policies and procedures relating to the Agreement with EarthLink and/or communications with the Service Subscribers.

2. All documents and communications concerning your efforts to “save” Service Subscribers who indicate that they wish to terminate their EarthLink High-Speed Service.

3. All documents and communications concerning any efforts by you to market Spectrum Internet service to the Service Subscribers.



4. All documents and communications relating to your decision to no longer provide EarthLink with customer level reporting.

5. All documents and communications concerning Service Subscribers who terminated their EarthLink High-Speed Service, including Service Subscribers who became Charter customers.

6. All documents and communications concerning training provided to the Call Center employees who communicate with Service Subscribers, including copies of any training materials.

7. All documents pertaining to Call Center employee compensation plans

8. All documents relating to communications between Call Center employees and Service Subscribers, including all recordings or transcriptions of those communications.

9. All documents and communications relating to any instructions provided to the Call Centers and their employees concerning communications with the Service Subscribers.

10. All documents and communications relating to your monitoring of communications between the Call Centers and the Service Subscribers.

11. All documents and communications relating to any feedback provided by you to the Call Centers concerning communications between Call Center employees and the Service Subscribers.

12. All documents and communications concerning your plans to market Spectrum Internet to the Service Subscribers after the Transition Period, including documents and communications relating to your ability to provide email and broadband Internet service to the Service Subscribers.

13. All documents and communications concerning the value ascribed by you to the Service Subscribers.

14. All documents and communications concerning negotiations with EarthLink regarding the status of the Service Subscribers after the Transition Period.

15. All documents and communications concerning the July 22, 2020 meeting between representatives of Charter and EarthLink.

16. All documents and communications concerning the proposed EarthLink Transition Services Agreement dated July 24, 2020.

17. All documents and communications concerning the June 25 Email, including documents concerning any investigation or remedial action undertaken by you as a result.

18. Copies of any insurance policy that may provide full or partial coverage for any of the claims asserted in the instant litigation.

19. Copies of your document retention or destruction policies, including, but not limited to, the destruction of electronic mail and computer hard drives and disks.

20. Documents sufficient to identify any experts you have retained or with whom you have consulted in connection with this litigation that you intend to call to testify at any hearing or trial in this litigation.

21. Documents sufficient to identify the qualifications and experience of any expert witness that you intend to call to testify at any hearing or trial in this litigation, including, without limitation, the most recent *curriculum vitae* and/or resumes for each person.

22. All documents that you have provided to or received from any expert that you may call as a witness at trial of this action.

23. All documents that you intend to introduce or rely upon at any trial or any hearing in this litigation.

Dated: New York, New York  
September 15, 2020

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