

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

Motion Sequence No. 004

Judge Andrea Masley

AFFIRMATION OF DAMIEN MARSHALL

I, Damien Marshall, an attorney admitted to the practice of law before the courts of the State of New York, affirm the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am a Partner in the law firm King & Spalding LLP, counsel for Plaintiff EarthLink, LLC (“EarthLink”). I am fully familiar with the facts and circumstances set forth herein. I submit this affirmation in support of EarthLink’s proposed order to show cause for spoliation sanctions against defendant Charter Communications Operating, LLC (“Charter”).

2. On July 27, 2020, King & Spalding sent Charter’s General Counsel a Document Preservation Notice (the “Preservation Notice”) requesting preservation of, among other things, recordings of Spectrum’s sales and service calls with EarthLink Service Subscribers.

3. On August 10, 2020, I received an email from Charter’s Associate General Counsel, Cody Harrison, in which he acknowledged receipt of the Preservation Notice and requested to have a telephone call with me to discuss preservation of the relevant materials.

4. On or about August 10, 2020, I had a call with Mr. Harrison in which Mr. Harrison asked for guidance beyond the Preservation Notice as to the scope of EarthLink’s claims. I

responded that the Preservation Notice was comprehensive as to EarthLink's potential claims and Charter should take all steps necessary to fulfill its preservation obligation.

Dated: New York, New York
July 28, 2022

KING & SPALDING LLP

By: /s/ Damien Marshall
Damien Marshall
1185 Avenue of the Americas
New York, New York 10036
Tel: (212) 556-2100
Fax: (212) 556-2222

Attorneys for Plaintiff EarthLink, LLC

CERTIFICATE OF LENGTH OF PAPERS
COMPLIANCE

The foregoing affirmation complies with Rule 17 of Section 202.70 of the Uniform Rules for the Supreme Court and County Court because it is less than 7,000 words.

Dated: July 28, 2022
New York, New York

KING & SPALDING LLP

By: /s/ Damien Marshall