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July 29, 2022

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Hon. Andrea Masley
60 Centre Street
Room 647
New York, NY 10007

Re: EarthLink, LLC v. Charter Communications Operating, LLC, Index No. 654332/2020 (Sup. Ct. N.Y. Cnty. 2020)

Dear Justice Masley:

I write on behalf of Charter Communications Operating, LLC (“Charter”) to request that the Court either (1) summarily deny as premature the Order to Show Cause for Spoliation Sanctions Against Defendant (“OSC”) [Dkt. at 138-157] filed by Plaintiff EarthLink, LLC (“EarthLink”), or (2) in the alternative, set a motion briefing schedule that allows Charter a reasonable amount of time to fully respond to EarthLink’s grossly misleading accusations. Having not found any real proof to support its baseless allegations that Charter had a systemic policy of defaming EarthLink during phone calls to Charter’s customer service centers, the OSC seeks to manufacture a dispute where none exists.

Specifically, late yesterday afternoon, without any advance notice to Charter, EarthLink filed its OSC and supporting papers, seeking an adverse inference and preclusion of testimony at trial based on Charter’s alleged failure to preserve certain audio recordings of customer service calls between Charter’s call center representatives and EarthLink’s service subscribers. The filing of an OSC at this early juncture in the discovery process that seeks relief that is relevant **only** to issues that will be addressed at trial over a year later is highly unusual. Indeed, the OSC was filed while the parties were in the midst of exchanging meet and confer letters surrounding the issue, and **before** the deadline for the production of documents. Simply put, there was no reason for EarthLink to file its application or to do so by an order to show cause.

More importantly, at the time EarthLink filed the OSC, Charter was preparing a letter to EarthLink informing it that Charter recently identified transcriptions of a substantial percentage of the customer call recordings at issue. The volume of the call recordings—more than 140 million unsearchable calls between customers and customer service representatives—was such that reviewing the calls for relevance would have been impossible and preserving the recordings would have been unduly burdensome and would have provided no benefit to EarthLink. The **transcripts** of these calls that Charter has identified and is working to produce, on the other hand, while also voluminous, are more useful as they are searchable. Based on its current investigation

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of the issue, Charter believes that the transcripts have been preserved dating back to March 2020—*months before Charter reasonably anticipated litigation or received a document preservation notice from EarthLink*. Charter is in the process of collecting these transcripts and will then produce the relevant documents to EarthLink in short order.

We informed EarthLink of these facts yesterday evening, and requested that it withdraw the OSC, which it summarily rejected in a matter of minutes. In light of the recent discovery of Charter's call transcripts, Charter submits that EarthLink's OSC is premature at best, and at worst abusive, and should be denied as such.

Should the Court decline to deny the OSC, Charter respectfully asks that the Court set a motion schedule to allow Charter sufficient time to adequately respond to EarthLink's baseless allegations, as the dispute over the preservation of Charter's customer call recordings is not accurately represented in EarthLink's submission. More importantly, there is literally *no emergency*. The relief that EarthLink seeks relates to issues that will be addressed at trial. If a response is necessary, Charter respectfully requests that the Court allow it until August 18, 2022 to file its response to the OSC.

We are available for a conference at the Court's convenience should the Court deem it appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Muhammad Faridi".

Muhammad Faridi

cc: counsel of record