

# **Exhibit 13**

# Patterson Belknap Webb & Tyler LLP

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July 19, 2022

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**Re: *EarthLink, LLC v. Charter Communications Operating, LLC*, No. 654332/2020**

Dear Alex:

I write on behalf of Charter Communications Operating, LLC (“Charter”) concerning certain deficiencies in EarthLink, LLC’s (“EarthLink”) responses to Charter’s interrogatories, and in response to your letters to us, dated June 29, 2022 (“June 29 EarthLink Letter”), July 12, 2022 (“July 12 EarthLink Letter”) and July 15, 2022 (“July 15 EarthLink Letter”), relating to certain discovery disputes in this matter.

## **I. EarthLink’s Deficient Responses to Charter’s First Set of Interrogatories**

### **A. Charter’s Interrogatory No. 4**

Charter reiterates its position that EarthLink has failed to sufficiently respond to this Interrogatory, which seeks the “dates and times when each of the alleged misstatements” from Charter customer service representatives took place. EarthLink attempts escape its obligation by suggesting erroneously that Charter has “withdrawn” its objection to EarthLink’s improper response to Charter’s Interrogatory. (See July 15 EarthLink Letter at 11.) Further, Charter rejects EarthLink’s proposal to “identify dates and times . . . upon review of Charter’s production.” (See July 12 EarthLink Letter at 9.) Charter once again requests that EarthLink provide the dates and times when the comments set forth in Interrogatory No. 3 were made to Service Subscribers. If EarthLink does not know the dates and times, Charter requests that EarthLink confirm that fact to Charter explicitly.

### **B. Charter’s Interrogatories Nos. 13 and 14**

Charter reiterates its position that EarthLink has failed to sufficiently respond to Interrogatories Nos. 13 and 14, which seek identifying information concerning the alleged EarthLink Service Subscribers identified in paragraphs 76 and 77 of the Amended Complaint. Charter likewise rejects EarthLink’s baseless contention that Charter has “withdrawn” its objection to EarthLink’s deficient response. (See July 15 EarthLink Letter at 11.) Charter rejects EarthLink’s position that the obligation is on Charter to verify the identity of the two Reddit users whose usernames EarthLink disclosed in response to this Interrogatory. Furthermore, EarthLink’s proposal for Charter to “search its employees [sic] emails for the verbatim text of

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the solicitation” (*See* July 12 EarthLink Letter at 9) is nonsensical because Charter has no way of matching generic promotional material allegedly from Charter with specific recipients *who remain anonymous*.

The notion that the purpose of this request is to have EarthLink “marshal . . . evidence for Charter” is absurd. (*Id.*) As EarthLink admits, EarthLink relies on these allegations “to illustrate the use of formal marketing by Charter.” (*Id.*) EarthLink cannot shirk its obligation to provide the bases for its allegations simply by stating they are made “[u]pon information and belief.” (*Id.* (citing Am. Compl. ¶ 78).) Charter is entitled to know what steps, if any, EarthLink took to verify the veracity of these anonymous statements posted on Reddit.com, upon which EarthLink purports to rely in support of its claims. If EarthLink does not have further information about these individuals—either because EarthLink failed to investigate or because, after a reasonable investigation, EarthLink was unable to uncover their identities—Charter is entitled to know. Indeed, by stating that it objects “on the grounds that [this information is] outside EarthLink’s possession, custody, or control” (*id.* at 9), EarthLink tacitly acknowledges that it was either unwilling to investigate or unable to uncover these individuals’ identities.

Charter reiterates its request for EarthLink to verify the identities of these two Reddit users or confirm explicitly that EarthLink does not know their identities (including name, address, phone number, email address and service agreements).

## II. Clarification of EarthLink’s Responses to Charter’s Discovery Requests

In its responses and objections to Charter’s First Set of Document Requests, EarthLink agreed to produce documents responsive to Document Request No. 40, which sought documents and communications concerning call recordings that EarthLink made and reviewed between EarthLink and Service Subscribers. During the July 13, 2022 meet and confer, Charter inquired as to whether EarthLink would produce its own call recording that it made of calls with Service Subscribers. EarthLink indicated that it would produce those recordings but did not explain the surrounding context around the recordings to which EarthLink has access. Charter seeks clarification in order to properly evaluate EarthLink’s response. Please include answers to the following questions in your response to this letter:

1. How many recordings were made of phone calls between Service Subscribers and EarthLink call center representatives over the period of January 1, 2017 through October 31, 2020?
2. Describe whether EarthLink’s policy was to record every single such phone call or only a subset thereof. If the latter, please describe how EarthLink determined which calls to record.
3. How many of the recordings referenced in Question 1, above, are still in existence as of today?

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4. Please describe EarthLink's policy regarding preservation of the call recordings referenced in Question 1, above, including any automatic deletion policies?
5. What is the data system and file format that EarthLink used during the relevant time period to preserve recorded calls?
6. How many of the recordings referenced in Question 1, above, have been transcribed?
7. How many of the transcripts referenced in Question 6, above, are still in existence as of today?
8. Please confirm whether the recordings of a "small subset of customer service calls" referenced in paragraph 57 of the Amended Complaint were recorded as part of EarthLink's standard practice of recording all phone calls between EarthLink call center representatives and Service Subscribers or whether such recordings were made for the purpose of the present dispute.
9. Please confirm (a) whether and when EarthLink issued a legal hold notice in connection with this litigation, and (b) whether such legal hold notice expressly covered recordings of phone calls between EarthLink call center representatives and Service Subscribers. Please also confirm that you intend to produce such legal hold notices.

We ask that you provide a response to these questions by no later than July 22, 2022.

### III. Customer Call Recordings

Your July 15 Letter omits several key facts concerning Charter's customer call recordings, many of which were explained to you during our July 13, 2022 meet and confer. During the period at issue, from roughly March 27, 2020<sup>1</sup> to October 31, 2020, Charter received an average of approximately 20 million phone calls from EarthLink and Charter customers each month, for a total of approximately **140 million calls** during this seven-month period. Per Charter's standard document preservation policy, given the extraordinary volume of calls and attendant amount of cost required in retaining that volume of data indefinitely, Charter's standard and longstanding practice is to retain recordings of a given customer phone call for 120 days, after which time calls are automatically overwritten so as to make room to store recordings of subsequent calls.

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<sup>1</sup> Because Charter's customer recording preservation system automatically overwrites phone calls every 120 days, at the time your preservation notice was sent on July 27, 2020, Charter would have already overwritten any customer calls that pre-dated March 27, 2020.

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The July 15 EarthLink Letter references a July 27, 2020 document preservation notice (“Notice”) sent to Charter’s General Counsel, Richard Dykhouse. Although at the time you sent the Notice you were apparently aware of the identity of certain EarthLink customers whom you allege in the Complaint as having received certain comments from Charter’s customer service representatives, you did not disclose the identities of any such individuals in the Notice; in the Complaint filed on September 9, 2020; in your Amended Complaint filed on March 18, 2021; in any of your Requests for Production of Documents issued to Charter, or in any interrogatories issued to Charter. You only disclosed the identities of 16 EarthLink customers—out of the 40,000+ EarthLink customers—on June 24, 2022, in response to Charter’s interrogatories requesting that information. Instead of identifying in your Notice the 16 EarthLink customers whom you allege took part in phone calls that are relevant to EarthLink’s claims in this suit, you sent a Notice demanding that Charter preserve all customer communications.

Furthermore, *even to this day*, you have been unable to provide Charter with any specifics concerning the dates when such calls allegedly took place, other than to respond that the calls took place “on or before July 10, 2020.” (Responses and Objections of Plaintiff EarthLink, LLC to Defendant Charter Communications Operating, LLC’s First Set of Interrogatories at Response No. 4.) When confronted with this glaring lack of detail, your response was effectively that you’ll let us know when the calls took place after you see Charter’s production. (*See* July 12 EarthLink Letter at 9 (“EarthLink adheres to its proposal to identify dates and times when Charter’s representatives made the at issue statements upon review of Charter’s production.”)).

Charter further vehemently rejects your assertion that it has not been candid about the call recordings. The truth is precisely the opposite: Charter never confirmed that the call recordings were preserved, and given the size of the organization—which comprises more than 93,000 employees—and the complexities of its servers and data storage, Charter had to verify that it no longer had the customer recordings before confirming that fact to EarthLink. We confirmed that fact for you during our meet and confer on July 13, 2022. We suggest that EarthLink re-read Charter’s discovery responses and correspondence more carefully prior to making such accusations against fellow members of the Bar of this State. Your insinuation that we have been anything less than candid is completely and utterly baseless. These types of accusations are completely unproductive: they do not help resolve our disputes or promote the efficient administration of justice.

#### **IV. Charter’s On-Going Reasonable Efforts to Meet the August 5, 2022, Production Deadline**

Charter must also correct your assertions regarding Charter’s document collection and review. EarthLink’s characterization of Charter’s efforts as “[l]ong-delayed” and “[n]on-[c]ommittal” (*see* July 15 EarthLink Letter at 3) flagrantly ignores the facts. To the extent there has been any delay, it can only fairly be characterized as the result of EarthLink’s efforts to overwhelm Charter with document requests and informal requests for information outside of the

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formal discovery process, and EarthLink's efforts to dictate which search terms Charter must use, and for which custodians.

As EarthLink is aware, discovery in this matter was stayed for more than a year and a half while the Court considered Charter's motion to dismiss EarthLink's Amended Complaint. (*See* Commercial Division Part 48 Rules and Procedures, Hon. Andrea Masley, J.S.C. at § 9(A).) After the Court's decision on April 6, 2022, the parties commenced discovery, with EarthLink serving fifty-one separate document requests on Charter, divided between two separate requests for production. EarthLink's First Set of Document Requests to Defendant ("First RFPs") was issued on April 8, 2022. The First RFP was an amendment to the initial request for production issued by EarthLink to Charter on September 9, 2020, the responses to which were stayed during the pendency of the motion to dismiss. Any suggestion that Charter's response has been "long delayed" by virtue of the September 9, 2020 request for production is disingenuous at best. EarthLink then issued a Second Set of Document Requests to Charter on May 27, 2022 ("Second RFPs"). Charter timely submitted its objections and responses to EarthLink's First and Second Requests for Production on June 24, 2022.

Immediately upon receiving the First RFPs in April, Charter commenced the laborious task of identifying sources of responsive data, including relevant custodians, in a company of more than 93,000 employees. Those efforts were disrupted by the receipt of the Second RFPs, which expanded both the scope of subjects requested by EarthLink, as well as the relevant custodians.

Upon identifying the universe of potential custodians, Charter proceeded to commence custodial interviews to ensure the proper documents were collected. Charter migrated the custodial data to its data and processing vendor and also engaged in document collection from more targeted sources, including its official guidance and policies for call center representatives concerning how to communicate with Service Subscribers, which were pulled from a database referred to as Co-Pilot. Charter believes that these guidance and policy documents are among the most relevant documents in this case, and they were collected independent of Charter's use of search terms across custodians.

Furthermore, as discussed earlier, Charter conducted an inquiry to determine what, if any communications with EarthLink service subscribers had been preserved. While Charter ultimately determined that call recordings with customers from the relevant period had been overwritten, Charter also confirmed that it had retained customer notes in its billing platforms, referred to as ICOMS East and CSG.

These efforts were well under way when, from out of the blue, on June 23, 2022, EarthLink sent a letter to Charter proposing search terms "for Charter's document collection, review and production," and also proposing a list of custodians. (*See* Ltr. from Shaila Diwan to Saul Shapiro dated June 23, 2022 at 1.) This was not a formal request made under the CPLR, Justice Masley's rules, or under any other applicable rules that Charter is aware of. It was

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request made purely based on EarthLink's own volition and one with which Charter was under no obligation to comply. Nevertheless, in an effort to reach a compromise over the extensive discovery sought by EarthLink, Charter proceeded to collect documents from the list of custodians identified by EarthLink (excluding Richard Dykhouse) and run EarthLink's proposed search terms.<sup>2</sup>

Given that Charter only received EarthLink's list of custodians on June 23, 2022, in an effort to accommodate EarthLink's requests to apply its proposed search terms and review documents from the custodians designated by EarthLink, on July 7, 2022, Charter informed the Court that it would not be able to meet the July 15, 2022 production deadline, as set forth in the parties' Preliminary Conference Order ("PCO"). (*See Email from Greg Baker to Victoria Corbo dated July 7, 2022.*) Charter requested a six-week extension to the production deadline given the volume of data involved and the anticipated disputes between the parties over the scope of production. (*Id.*) In an email dated July 8, 2022, Charter further explained to the Court that EarthLink's requests required Charter to collect and process millions of documents from numerous custodians—all of which needed to occur before Charter could begin to run search terms and undertake a document review. (*See Email from Greg Baker to Victoria Corbo dated July 8, 2022 re: RE: Joint Status Update – EarthLink, LLC v. Charter, 654332/2020.*) The Court subsequently granted a three-week extension of the PCO, setting the deadline for production at August 5, 2022. (*See Email from Victoria Corbo to Counsel for EarthLink and Counsel for Charter dated July 11, 2022 re: RE: Joint Status Update - EarthLink, LLC v. Charter, 654332/2020.*) EarthLink, for its part, declined to consent to a longer production deadline, suggesting that if one was to be granted, it should only be "brief." (*See Email from Shaila Diwan to Victoria Corbo dated July 7, 2022 re: RE: Joint Status Update – EarthLink, LLC v. Charter, 654332/2020.*) EarthLink then indicated it would *consider* consenting to a longer extension, but only conditioned on Charter answering a list of questions posed by EarthLink. (*See Email from Shaila Diwan to Greg Baker dated July 8, 2022 re: RE:Call*)

On July 13, 2022, in advance of the parties meet and confer, Charter shared its initial hit counts based on EarthLink's search terms. This yielded 102,601 documents (with families, the number was 235,440). In addition, in the meet and confer, Charter explained that it was not willing to review and produce Windstream-related documents because Charter's internal analysis showed that the searches, in large measure, were yielding documents that were not relevant to

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<sup>2</sup> EarthLink's list of custodians included five additional custodians beyond those who Charter had already identified: David E. O'Hayre, Chris Czekaj, Kathleen Griffin, Richard Dykhouse, and Happy Marino. (*See Ltr. from Shaila Diwan to Saul Shapiro dated June 23, 2022 at Ex. A.*) Charter had already included Michael G. Locke, Jonathan Hargis and Cody Harrison as custodians, and added four additional individuals, Patricia Eliason, Charlotte Field, David Gray and Sharon Peters. For reasons previously discussed, Charter has not agreed to collect documents from or search the documents of Richard Dykhouse, Charter's General Counsel.

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this litigation and instead concerned a separate litigation that previously occurred between Charter and Windstream. Charter agreed to, and subsequently did, share the Windstream hit counts with EarthLink, which exceeded 150,000 documents (more than 280,000 with families).

At the meet and confer, Charter reiterated that because it was committed to meeting the August 5, 2022 production deadline, it would need to narrow EarthLink's search terms to make the review feasible. Charter informed EarthLink that, as an example, searching the term "el" or "EL" yielded tens of thousands of irrelevant documents (hundreds of thousands with families).<sup>3</sup> Charter also stated that EarthLink's search term related to call center compensation and bonus/payment without qualification yielded around 26,000 documents (around 100,000 with families), many of them simply irrelevant to EarthLink's document requests or the issues in this litigation. Consequently, at the meet and confer, Charter requested that EarthLink propose additional search term limitations to narrow the universe of documents that Charter would need to review by the August 5 deadline, which was just over three weeks away. EarthLink refused and suggested that Charter come back to EarthLink with its own proposed limitations. Charter responded that it was running out of time to commence its review: the documents collected from custodians had not been processed into Charter's vendor's review platform, which could only occur after Charter had settled on search terms.

Given the limited time to conduct and complete its review, after the July 13 meet confer, Charter made modifications to EarthLink's list of search terms, and proceeded to run those terms across the list of custodians identified by EarthLink, plus the additional custodians identified by Charter. That list includes:

- Sharon Peters
- David O'Hayre
- Happy Marino
- Michael Locke
- Cody Harrison
- Jonathan Hargis
- Kathleen Griffin
- David Gray
- Charlotte Field
- Patricia Eliason
- Chris Czekaj
- Zachary Reming
- Steve Lottman

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<sup>3</sup> These search terms were bringing up unrelated places names such as "El Segundo" and "El Paso."

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The only omission from this list was Richard Dykhouse, Charter's General Counsel. And, as discussed, we have agreed to review only the third party communications of Cody Harrison, who is also an attorney.

In a letter sent to EarthLink dated July 15, 2022, Charter provided EarthLink with a modified list of search terms that it planned to run in order to generate documents that would be reviewed. (*See Ltr. from Greg Baker to Alex Noble dated July 15, 2022 (the "July 15 Charter Letter").*) With respect to the search terms, Charter's modifications were made with the competing objectives of narrowing the universe of documents to be reviewed and produced in a three-week time period, against the need to target documents responsive to EarthLink's requests. To meet that August 5 deadline, however, which the Court has indicated it is not willing to extend further without good cause, Charter cannot continue to have a back and forth debate with EarthLink about which search terms should be applied.

## V. Other Issues Raised by EarthLink Related to Search Terms and Custodians

### A. Search Terms Related to Windstream

The July 15 EarthLink Letter mistakenly suggests that Charter has "not provided us the hit counts for" Windstream related documents to evaluate whether they represent a "substantial" volume. (*See July 15 EarthLink Letter at 5.*) In fact, the email from Greg Margolis to you, dated July 15, 2022, includes an excel spreadsheet attachment with hit counts for Windstream-related documents. (*See Email from Greg Margolis to Alex Noble dated July 15, 2022 re: EarthLink v. Charter – correspondence from G. Baker to A. Noble 7.15.22 with attachments.*)

EarthLink issued only two Requests for Production that concern documents related to Windstream: Request No. 18 from EarthLink's First RFPs, and Request No. 3 from EarthLink's Second RFPs. In its objections and responses to both of these requests, Charter expressly objected on the grounds that the requests were "overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, and disproportionate to the needs of the case." (*See Charter's Responses and Objections to EarthLink's First RFPs at Request No. 18 and Second RFPs at Request No. 3.*) Charter submits that its objection to reviewing 282,030 Windstream related documents, which were generated from EarthLink's Windstream related search terms, falls squarely within these objections.

You also mistakenly assert that Charter has "already conceded the relevancy of Windstream documents in the Discovery Responses when [Charter] agreed to search for and produce these documents." (*See July 15 EarthLink Letter at 4-5.*) You plainly ignore Charter's objections and responses to both the First RFP and Second RFP, where Charter writes that "[i]n providing these responses and asserting these objections, Charter does not intend to waive any objections as to *relevancy*, materiality, or admissibility of evidence in this matter or any other matter or proceeding." (*Charter's Responses and Objections to EarthLink's First RFPs at at 3*

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(emphasis added); Charter' Responses and Objections to EarthLink's Second RFPs at 3  
(emphasis added).)

Request No. 3 from EarthLink's Second RFPs expressly seeks: "All documents and communications concerning potential claims by Charter and/or Spectrum against Windstream Holdings, Inc. and/or Windstream Services, LLC (collectively, Windstream), in connection with the EarthLink IP Addresses, including, without limitation, proofs of claim against Windstream and/or its bankruptcy estate and/or claims to any potential insurers." This request, by its express terms, plainly seeks Charter's internal legal analysis concerning claims or potential claims. Charter objected to each request to the extent that "they seek documents and information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privileged that makes such information non-discoverable." (Charter's Responses and Objections to First RFPs at 1; Charter's Responses and Objections to Second RFPs at 1.) This objection serves as further grounds on which Charter refuses to review and log some 280,000 documents that likely contain internal legal communications.

B. Custodian Cody Harrison

The July 15 EarthLink Letter requests information concerning the number of hits that would be excluded from the review of Mr. Harrison's emails, if Charter only reviews his third party communications. The total number of hits for Mr. Harrison, based on our latest search, is 4,379 (including families), which includes 1,153 third-party communications (including families) and 3,226 internal communications (including families). We are proposing that, for purposes of responding to EarthLink's document requests, we would only produce the relevant, non-privileged documents resulting from a review of the 1,153 hits of Mr. Harrison's that concern third parties.

C. Sources of Custodial Data

In response to the question in the July 15 EarthLink Letter concerning the sources of Charter's custodial data, Charter confirms that the search terms run over Charter's email data were also run over Charter's instant messaging system and hard drive data.

Charter adds that it collected documents from the custodians from places where relevant documents would reasonably be expected to be found. EarthLink has no basis to demand additional information from Charter on the specific locations of this data within Charter's internal systems, and Charter refuses to provide additional information beyond what it has already stated. If EarthLink is relying on specific authorities which show that a party may compel—through a series of informal letters—a detailed explanation of custodial data sources, prior to the actual production of any documents, we ask that you share those authorities with us immediately. Such requests by EarthLink are plainly beyond the proper scope of the parties' meet and confer.

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**D. Cable Act Disclosures**

Your July 15 Letter mistakenly suggests that Charter failed to raise an objection to providing Service Subscriber information to EarthLink based on the Cable Act, 47 U.S.C. § 551. Charter objected to all requests to the extent they seek information protected from disclosure by “any other applicable privilege that makes such information non-discoverable.” (Charter Responses and Objections to First RFPs at 1; Charter Responses and Objections to Second RFPs at 1.) Moreover, Charter is prevented *by law* from violating the Cable Act.<sup>4</sup>

Absent an order from the Court requiring Charter to disclose subscribers’ personally identifiable information, Charter will not disclose such information. And if EarthLink requests such an order from the Court, Charter will insist that EarthLink bear the cost of providing notice to the service subscribers, as required under the Cable Act.

**VI. Charter’s Further Responses to Open Issues Regarding EarthLink’s First and Second RFPs**

Charter addresses below the open issues stemming from its Responses and Objections to EarthLink’s First and Second FRPs and the parties’ subsequent correspondence: the June 29 EarthLink Letter; the letter from Greg Baker to Shaila Diwan dated July 7, 2022 (the “July 7 Charter Letter”); the July 12 EarthLink Letter; the July 15 Charter Letter; and the July 15 EarthLink Letter.

Charter notes for the record that EarthLink sent its July 15 Letter at 11:17 pm on a Friday night, and that you have demanded answers to several questions by Monday, July 18, 2022. Charter has endeavored to respond to as many questions as possible by the date of this letter, but notes that will require additional time to respond to other questions. If EarthLink proceeds to raise certain discovery issues with the Court without providing Charter an adequate time to respond, we will make sure the Court is aware of that fact.

**A. First RFPs No. 1**

As previously indicated in the July 7 Charter Letter, subject to its general and specific objections, Charter agrees to produce copies of responsive and non-privileged documents and communications, if any exist, concerning “policies and procedures” related to “the Agreement and/or Service Subscribers” and “policies and procedures” related to “communications with

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<sup>4</sup> The fact that Charter previously may have disclosed subscriber information to EarthLink during the pendency of the HSSA does not *ipso facto* mean that Charter may now disclose personally identifiable information of these customers—most of whom are now former EarthLink customers—to EarthLink.

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Service Subscribers.” (*See* July 7 Charter Letter at 1-2.) Charter does not see this as an actual dispute between the parties.

B. First RFPs No. 8

In this Request, EarthLink seeks documents and communications between Charter’s call center representatives and Service Subscribers. In your July 12 Letter, EarthLink asks what systems and file formats Charter used to store its communications with Service Subscribers and whether Charter was able to run search terms over those data locations. (*See* July 12 EarthLink Letter at 3.) Charter refers EarthLink to the July 15 Charter Letter, in which Charter identified the systems in which Charter maintains communications between Service Subscribers and Charter. (*See* July 15 Charter Letter at 3.) In addition, Charter is running the following searches across the customer notes referenced during the meet and confer, and will report the hit counts to EarthLink:

- EarthLink
- Earth Link
- EL
- ELNK
- @elnk.com

C. First RFPs Nos. 9 and 11

First RFPs No. 9 seeks “document and communications relating to any instructions or guidance provided to the Call Centers and their employees concerning communications with Service Subscribers.” Likewise, First RFPs No. 11 seeks “documents and communications relating to any feedback” provided by Charter to call center representatives concerning Service Subscribers.

In your July 15 Letter, EarthLink states that it had “requested that Charter specifically identify the sources of data to be searched for document and communications responsive to these requests.” (*See* July 15 EarthLink Letter at 9; *see also* June 29 EarthLink Letter at 2-3; July 12 EarthLink Letter at 3-4.) EarthLink further seeks details “concerning how Charter’s employees self-selected their non-email documents from their data drives.” (*See* July 15 EarthLink Letter at 9; *see also* June 29 EarthLink Letter at 2-3; July 12 EarthLink Letter at 3-4.)

As it stated in its responses and objections and in the July 7 Charter Letter, Charter reiterates that, subject to its general and specific objections, it will produce documents responsive to these Requests, if any. Charter will undertake reasonably diligent efforts to search readily accessible files where responsive documents would reasonably be expected to be found. Charter will apply search terms across the relevant custodians. Furthermore, as previously discussed, Charter is producing relevant documents from its Co-Pilot database.

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EarthLink has no basis to seek additional information, such as the sources of data, and Charter does not intend to provide it.

**D. First RFPs No. 21 and Second RFPs Nos. 2**

First RFPs No. 21 seeks documents and communications “identifying which of the 1,000,000 EarthLink IP addresses were used by Charter, the dates on which they were first and last used, and the purposes they were used for at any and all applicable times.” Second RFPs No. 2 seeks all “documents and communications concerning all Network Architecture and the usage of EarthLink IP addresses during the term of the Agreement.”

Charter stands by its objections and responses to these requests, and further refers EarthLink to page three of the July 7 Charter Letter.<sup>5</sup>

**E. Second RFPs No. 6**

This Request seeks all “agreements transferring registration of IP Addresses or conveying rights, title or interest in IP Addresses to any Person.” Charter reiterates its objections to this Request, which seeks documents related to IP addresses having nothing whatsoever to do with this lawsuit or the IP addresses at issue here (the “IP Addresses”). In the July 12 Letter, EarthLink states that it “merely seeks, as the request states, a targeted collection” of certain documents related to IP addresses. (*See* July 12 EarthLink Letter at 5.) To the contrary, there is nothing targeted about this Request. EarthLink is not entitled to unhindered discovery into Charter’s practices related to IP addresses. Charter states that it has agreed to produce documents responsive to other Requests more appropriately tied to the IP Addresses and the issues relevant to this case. (*See*, e.g., Charter’s responses to First RFPs Nos. 18, 19, 20, and 22, and Second RFPs Nos. 1, 10, and 19.)

**F. Second RFPs No. 7**

This Request seeks “[a]ll documents or communications defining the term ‘IP Addresses.’” Charter reiterates its objections to this Request, as set forth out in its Responses and Objections to EarthLink’s Second RFPs, and as further explained in the July 7 Charter Letter. (*See* July 7 Charter Letter at 4.) Charter stands by its refusal to produce documents responsive to this Request.

**VII. EarthLink’s First Set of Interrogatories**

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<sup>5</sup> Subject to our objections, we are still investigating whether it is even *possible* to provide this information.

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A. Individuals Identified in Response to Interrogatories 4-9, 11, 15, and 22

EarthLink seeks additional information about individuals Charter has identified in response to Interrogatories 4-9, 11, 15, at 22, including whether they are current or former employees and whether Charter has possession, custody, or control over their documents and communications. (*See* June 29 EarthLink Letter at 5; *see also* July 12 EarthLink Letter at 5-6; July 15 EarthLink Letter at 10.) EarthLink also inquires whether Charter will accept service of notices of depositions for its current and former employees. (*See* July 12 EarthLink Letter at 5.)

As Charter stated in the meet and confer, Charter has possession, custody, or control over documents and communications of the individuals identified in response to these Interrogatories, subject to Charter's document retention and destruction policies.

Charter further states that the employment status of these individuals is as follows:

<u>Current Employees</u>	<u>Former Employees</u>
Zachary Reming	Jeffrey Mollett
Loretta Rhoades	Christopher Kidwell
Kim Grose	Krista Clark
Christopher Squeri	Aurora Provencher
Dexter Crapps	Lawrence Clermont

Charter agrees to accept service of deposition notices for its current employees. With respect to former employees, Charter will need to confer with those employees as to whether it is authorized to accept service on their behalf.

B. Interrogatory No. 2

EarthLink requests that Charter identify documents and other materials detailing which IP addresses Charter alleges were conveyed pursuant to Section 1.5 of the HSSA. In its Responses and Objections to this Interrogatory, Charter states that it will produce documents responsive to overlapping Requests from EarthLink's First and Second RFPs. In the July 15 EarthLink Letter, EarthLink reiterates a request from the meet and confer for "sources of custodial data [that Charter] is searching so EarthLink can evaluate the reasonableness of Charter's proposal to search for and produce documents" responsive to this Interrogatory. (*See* July 15 EarthLink Letter at 11.) EarthLink further states that Charter has "omit[ted] key details" concerning Charter's data collection process. (*Id.*) Charter stands by its responses and objections to this request. Charter will undertake reasonably diligent efforts to search readily accessible files where responsive documents would reasonably be expected to be found. Charter will apply search terms across the relevant custodians. EarthLink has no basis to seek additional information, such as the sources of data, and Charter does not intend to provide it.

C. Interrogatory No. 19

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EarthLink raises a number of separate follow-up questions concerning Charter's response to Interrogatory No. 19.<sup>6</sup> That interrogatory asked "If any insurance agreements related to the EarthLink IP Addresses or TWC's representations to Charter Concerning the Agreement, state the name(s) of the insurer(s) that provide such coverage, the coverage limits, and the amounts paid or payable thereunder."

Charter stands by its response to Interrogatory No. 19, and further relies on its statement in the July 7 Charter concerning this issue. (*See* July 7 Charter Letter at 11.) Furthermore, Charter considers the questions in your July 15 Letter to be untimely, separate interrogatories for which no response is required.

Sincerely,



H. Gregory Baker

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<sup>6</sup> Your July 15 Letter poses the following follow-up questions to Charter: Are there now, or were there ever, any insurance agreements that related to the HSSA? Are there now, or were there ever, any insurance agreements that relate to the 1,000,000 block of IP addresses, or any portion thereof, that Charter purports EarthLink "convey[ed]" to it pursuant to the word "supply" in the HSSA? Did TWC ever represent or warrant to Charter at the time of your merger that it owned the 1,000,000 block of IP addresses, or any portion thereof? Did TWC ever represent or warrant to Charter at the time of your merger that it owned the 1,000,000 block of IP addresses, or any portion thereof? If yes, was that property assigned to Charter upon assignment of TWC's rights and obligations under the HSSA? If yes, is there any insurance agreement that would cover the breach of TWC's representation or warranty? (*See* July 15 EarthLink Letter at 11.)