

At I.A.S. Part 48 of the Supreme Court of the State of New York, Commercial Division, held in and for the County of New York at the Courthouse located at 60 Centre Street, New York, New York, on the \_\_\_\_ day of \_\_\_\_\_ 2022.

P R E S E N T:

Hon. \_\_\_\_\_  
Justice of the Supreme Court

EARTHLINK, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

Index No.: 654332/2020

Hon. Andrea Masley

Mot. Sequence # 004

**[PROPOSED] ORDER TO  
SHOW CAUSE FOR  
SPOLIATION SANCTIONS  
AGAINST DEFENDANT**

UPON the reading and filing of the annexed Affirmation of Alexander Noble and exhibits thereto, Affirmation of Damien Marshall and exhibits thereto, Plaintiff's Memorandum of Law in Support of Order to Show Cause for Spoliation Sanctions against Defendant, and all other papers and proceedings heretofore filed and had herein, and sufficient cause thereon appearing,

LET defendant Charter Communications Operating, LLC ("Charter") show cause before this Court, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007 on the \_\_\_\_ day of \_\_\_\_\_ 2022, at \_\_\_\_\_.m. of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein

pursuant to, *inter alia*, CPLR 3126, finding that Charter spoliated evidence and issuing the following sanctions:

- (1) providing for adverse inferences on summary judgment and/or trial that (a) Charter destroyed its audio recordings of customer service calls with Plaintiff EarthLink's Service Subscribers in deliberate disregard of EarthLink's request to preserve and Charter's legal obligation to preserve those recordings, and (b) these recordings, had they not been deleted by Charter, would have provided evidence demonstrating Charter's misstatements and improper targeting of EarthLink's customers as alleged in the Amended Complaint in support of Counts I, II, IV, V, VII and VIII;
- (2) precluding Charter from offering any evidence contrary to EarthLink's evidence showing Charter's misstatements and improper targeting of EarthLink customers in support of Counts I, II, IV, V, VII and VIII;
- (3) requiring Charter to pay EarthLink's attorneys' fees and costs associated with this application; and
- (4) for any further or other relief that the Court deems just and appropriate.

ORDERED that service of this Order to Show Cause and the papers upon which it is based be served on Charter's counsel of record by via email and e-filing using the NYSCEF system and that such shall be good and sufficient service; and it is further

ORDERED that answering papers, if any, shall be served upon counsel of record for EarthLink by serving via email and e-filing so as to be received on or before the \_\_ day of \_\_\_\_\_, 2022; and it is further

ORDERED that the reply papers, if any, shall be served upon the Charter's counsel by email and e-filing so as to be received on or before the \_\_ day of \_\_\_\_\_, 2022.

E N T E R :

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J.S.C.