

**Earthlink, LLC v Charter Communications
Operating, LLC**

2023 NY Slip Op 30168(U)

January 12, 2023

Supreme Court, New York County

Docket Number: Index No. 654332/2020

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X	
EARTHLINK, LLC,	INDEX NO. <u>654332/2020</u>
Plaintiff,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>005</u>
CHARTER COMMUNICATIONS OPERATING, LLC,	
Defendant.	DECISION + ORDER ON MOTION
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 241, 263

were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence number 005, plaintiff Earthlink, LLC moves under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause (OSC), to seal NYSCEF Doc. Nos. (NYSCEF) 192-222 on the grounds that these documents contain non-public information of customers. The OSC provides that “pending a hearing and determination of this Order to Show Cause . . . information in [plaintiff’s] Reply Papers [on motion sequence number 004] quoting therefrom will remain in redacted form.” (NYSCEF 223 at 3¹.) Subsequent to the filing of motion sequence number 005, plaintiff filed its reply papers in motion sequence number 004, which include temporarily sealed and publicly redacted copies of plaintiff’s affidavit and memorandum of law in reply, as well as temporarily sealed copies of ten of the transcripts at issue in motion sequence

¹ References to page numbers are to the NYSCEF generated page numbers.
654332/2020 EARTHLINK, LLC vs. CHARTER COMMUNICATIONS Page 1 of 5
Motion No. 005

number 005. (NYSCEF 224-237.) Plaintiff also filed under temporary seal copies of thirteen of the documents at issue on October 14, 2022. (NYSCEF 244-256².)

Plaintiff's motion is unopposed. There is no indication that the press or public have an interest in this action.

NYSCEF 192 is a slipsheet referencing an excel file containing "metadata and text of approximately 104,000 transcripts" of calls with customers, produced by defendant. (NYSCEF 191, Noble aff ¶ 3.) The court permitted plaintiff to provide NYSCEF 192 on a USB device, due to the purported infeasibility of electronically filing its contents. Plaintiff seeks to seal the entire excel file.

NYSCEF 193 through 222 are copies of 30 transcripts of calls with customers produced by Charter. (See *id.* ¶ 6.) Plaintiff seeks to seal each of these documents in their entirety.

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

"(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard."

"Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records." (*Mosallem v Berenson*, 76 AD3d

² The court notes that plaintiff includes a chart on the first page of each of NYSCEF 244-256. Since plaintiff has not demonstrated good cause for sealing these charts and did not move to seal these at any point, they will be unsealed along with the transcripts, as set forth below.

345, 348 [1st Dept 2010] [citations omitted].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosallem*, 76 AD3d at 350 [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information.” (*D'Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Plaintiff asserts that the documents at issue should be sealed in their entirety because they contain “customer information of a non-public nature, such as their login and password information, account security information, and payment information.” (NYSCEF 189, memorandum of law at 8.) Plaintiff also notes that defendant “has designated the transcripts highly confidential pursuant to the parties’ confidentiality stipulation and “requested that [plaintiff] file them under seal, to which [plaintiff] does not object.” (*Id.* at 4.) Plaintiff notes that defendant redacted some information in the documents prior to producing them, including names and addresses of customers. (*Id.*)

Plaintiff also asserts that, in the event the court denies the motion to seal these documents, defendant should bear the burden of “identifying and applying any redactions of information that Charter contends is inappropriate for public filing.” (*Id.* at 9.)

Plaintiff has not demonstrated good cause to seal the excel file or the transcripts in their entirety. While the documents may contain some confidential information of customers, this does not warrant sealing of the entire documents. (*Mosallem v. Berenson*, 76 AD3d at 350 [“This Court has generally been reluctant to allow the sealing of court records and has authorized sealing only in strictly limited circumstances.”].) Nor is defendant’s designation of the documents as confidential a basis for sealing. (*Id.*, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ ‘is not controlling on the court’s determination whether there is good cause to seal the record.’”].)

Moreover, it is clear that some of the documents do not contain any confidential information, because, subsequent to the filing of motion sequence number 005, defendant publicly filed thirteen documents, purportedly containing the transcripts that were produced, and at issue here, and informed the court that “[defendant] has not filed these particular transcripts under seal because they have been reviewed and contain no sensitive information that would require sealing.” (NYSCEF 264, Letter to Court, attaching NYSCEF 265-277.) Moreover, because plaintiff has failed to demonstrate good cause to seal the transcripts, there is no good cause to keep plaintiff’s reply papers under seal. Upon review of those papers, the court finds that none of the proposed redactions contain confidential information, nor are they confidential merely

because they include information quoted from the transcripts. To the extent plaintiff seeks to redact any information in its reply papers, it must file an OSC and demonstrate good cause.

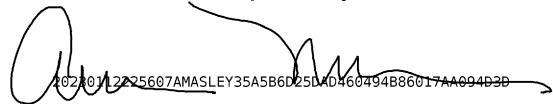
Finally, the court declines to shift the burden of redaction to defendant, as plaintiff has not made clear what the precise burden of redaction is or that there is not a reasonable method by which the parties may file the documents while protecting any confidential information at issue. To the extent plaintiff, or defendant, seeks to protect particular information in these documents, they must file a motion by OSC identifying the particular information they seek to redact.

Accordingly, it is hereby

ORDERED that the motion is denied without prejudice; and it is further

ORDERED that the County Clerk, upon service to him of this order by movant, shall lift the temporary seal on NYSCEF 192-222, 224, 226-235, 236, and 244-256; and it is further

ORDERED that either party shall e-file NYSCEF 192 within 20 days of this order, unless either party files a motion by OSC to redact NYSCEF 192 before then. The parties should consider whether there is a more feasible method of filing this document or portions of this document with any necessary redactions, but to the extent either party relies on any portion of NYSCEF 192 in this action, it must be publicly filed.



1/12/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE