

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

2023 NY Slip Op 30815(U)

March 15, 2023

Supreme Court, New York County

Docket Number: Index No. 654332/2020

Judge: Andrea Masley

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

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EARTHLINK, LLC,

Plaintiff,

- v -

CHARTER COMMUNICATIONS OPERATING, LLC,

Defendant.

INDEX NO. 654332/2020

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 012 013 014

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 364, 365, 366, 367, 368, 369, 374, 381

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 399, 400, 401, 402, 403, 404, 405, 425, 429, 432, 433, 434

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 417, 418, 419, 420, 421, 422, 423, 424, 428, 430, 431, 446

were read on this motion to/for SEAL.

The parties in this action move pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts to redact various documents.

Specifically, in motion sequence number 012, defendant Charter Communications Operating, LLC (Charter) moves to redact NYSCEF Doc. No. (NYSCEF) 368, which is an email thread containing the name and personal email address of plaintiff Earthlink, LLC's (Earthlink) former customer. Earthlink does not oppose Charter's request and submits a memorandum of law in non-opposition.

In motion sequence number 013, Earthlink moves to redact NYSCEF 401¹ and 403. NYSCEF 403 is an email thread purportedly containing competitively sensitive information relating to the number of Earthlink customers under the High-Speed Services Agreement (HSSA).

In motion sequence number 014, Charter moves to redact NYSCEF 420 and 422.² NYSCEF 420 is an email thread from September 6, 2019, which purportedly contains Earthlink's confidential and proprietary business information—customer subscriber counts, including a breakdown of subscriber counts by product type and affiliate. Earthlink does not oppose and submits a memorandum of law in non-opposition.

There is no indication that the press or the public have an interest in this matter.

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.”

¹ At Charter's request, Earthlink moved to file NYSCEF 401 under temporary seal with proposed redactions. On February 14, 2023, Charter informed the court that it no longer opposes the public filing of NYSCEF 401. (NYSCEF 449, Feb. 14, 2023 letter to court [Letter].) Thus, Earthlink's request to redact NYSCEF 401 is moot in light of the Letter and Earthlink shall file NYSCEF 401 without any highlights or redactions.

² NYSCEF 422 is the same document as NYSCEF 403 in motion sequence number 013.

“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 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].)

Courts have recognized a compelling interest in sealing a third-party's financial or private information as disclosure could imping upon the privacy rights of these nonparties. (See *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]; *Natixis Real Estate Capital Tr. 2007-HE2 v Natixis Real Estate Capital, Inc.*, 77 Misc 3d 1224 [A] [Sup Ct, NY County 2023].)

As to NYSCEF 368, good cause exists to narrowly redact the full name and email address of Earthlink's former customer to prevent the disclosure of a nonparty's private contact information in this action. (See *Mancheski*, 39 AD3d at 502.) The targeted redaction of NYSCEF 368 to prevent the disclosure of personal contact information of a former customer balances the interests of the public and press, if any, in the matter. (See *Danco*, 274 AD2d at 9.)

Regarding NYSCEF 403 and 422³, which are the same documents, and NYSCEF 420, Earthlink contends that these emails, which reference Earthlink's customer subscriber counts and related information, reveals Earthlink's non-public specific business information and strategies. (NYSCEF 404, sealing chart.) NYSCEF 420 further reveals a breakdown of Earthlink's customer subscriber counts by specific product type or affiliate. Here, Earthlink has demonstrated good cause to permit the limited redactions revealing internal subscriber information. (*Jetblue Airways Corp. v Stephenson*, 31 Misc 3d 1241 [A], *7 [Sup Ct, NY County 2010], *affd*, 88 AD3d 567 [1st Dept 2011].) The redactions, which are tailored to prevent the disclosure of number of subscribers, effectively balances the interests of the public, if any. (*Id.*)

Accordingly, it is

ORDERED that motion sequence number 012 is granted; and it is further

ORDERED that motion sequence number 013 is granted only as to NYSCEF 403; and it is further

ORDERED that motion sequence number 014 is granted; and it is further

³ An unredacted copy of this email is also filed at NYSCEF 391.
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Motion No. 012 013 014

ORDERED that Earthlink shall file a public version of NYSCEF 401, without any highlighted proposed redactions, in connection with motion sequence number 011 (spoilation motion); and it is further

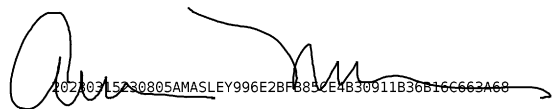
ORDERED that the County Clerk, upon service to him of this order, shall permanently seal NYSCEF 368, 391, 403, 420, and 422; and it is further

ORDERED that as redacted versions of NYSCEF 368, 403, 420, and 422 have already been filed publicly, the parties need not re-file duplicates and the County Clerk shall lift the temporary seal upon NYSCEF 356, 367, 421, and 423; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



3/15/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: