

**EarthLink, LLC v Charter Communications  
Operating, LLC**

2024 NY Slip Op 32592(U)

July 12, 2024

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 --

MOTION SEQ. NO. 017 021 022  
024

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 017) 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 529, 531, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 707

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 021) 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 660, 663, 664, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 653, 654, 655, 656, 657, 658, 659, 673

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 735, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746

were read on this motion to/for SEAL.

In motion sequence 017, defendant moves pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts (22 NYCRR § 216.1) to seal 14 exhibits that defendant filed in support of its motion for an issuance of an open commission (seq. 016), specifically,

- (i) November 6, 2023 Special Master Maas's Order No. 6 issued in this case regarding privilege review (NYSCEF Doc. Nos. [NYSCEF] 483, 508),
- (ii) August 11, 2020 memorandum by King & Spalding LLP prepared for plaintiff (NYSCEF 484, 509),
- (iii) December 21, 2023 letter request by defendant to Hon. Frank Maas at JAMS (NYSCEF 485, 510),
- (iv) March 31, 2020 email chain between Glen Goad, plaintiff's CEO, and Shravan Thadani (NYSCEF 487, 511),
- (v) November 12, 2019 email by Michael Borellis, plaintiff's CFO, to Shravan Thadani, Andrew Frank, and Joseph Trahan (NYSCEF 488, 512),
- (vi) April 14, 2020 email by Mike Toplisek, plaintiff's president, to Michael Locke of defendant, and June 2-3, 2020 emails between Toplisek and Thadani which are partially redacted for privilege (NYSCEF 489, 513),
- (vii) August 11, 2020 email by Damien Marshall, Partner at King & Spalding LLP, to Goad, Toplisek, Thadani, and Trevor Johnston (NYSCEF 490, 514),
- (viii) September 29, 2020 email exchange between Toplisek, Thadani and others, and October 5, 2020 email from Colin Reed to Toplisek, Thadani and others (NYSCEF 491, 515),
- (ix) September 12-14, 2020 email exchange between Reed and Thadani (NYSCEF 492, 516),

- (x) September 30-October 13, 2020 email exchange between J.C. Boggs and Rafi Martina, and subsequent October 13-14, 2020 email exchange that was redacted for privilege (NYSCEF 493, 517),
- (xi) September 9, 2020 email exchange with multiple participants, including Thadani, Boggs, and Marshall (NYSCEF 494, 518),
- (xii) April 29, 2022 email exchange with multiple participants, including Marshall, which is partially reacted for privilege (NYSCEF 495, 519),
- (xiii) December 19-21, 2020 email exchange between Brian McLaughlin, plaintiff's COO, and Thadani (NYSCEF 496, 520), and
- (xiv) January 13-27, 2022 email exchange with multiple participants, including Michael Morrison, plaintiff's CFO, Toplisek, McLaughlin, and Goad (NYSCEF 497, 521), and

to redact an attorney affirmation (NYSCEF 482, 506, 522, 526<sup>1</sup>) and defendant's memorandum of law (NYSCEF 504, 507, 525, 527<sup>2</sup>) submitted in support of the same motion (seq. 016). Plaintiff filed papers in support of sealing item (ii) and redacting items (i), (iii), (iv), (v), (iv), (xiv), and the memorandum of law; otherwise plaintiff does not object to sealing or redacting.<sup>3</sup>

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<sup>1</sup> NYSCEF 482, 506, and 522 are filed publicly with proposed redactions. NYSCEF 526 is a Confidential Chamber's Copy. (See Part 48 Procedure 12 [B] [1] ["[e]very document sought to be sealed or redacted shall be filed on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy), with all proposed redactions highlighted yellow".])

<sup>2</sup> NYSCEF 504 and 507 are filed publicly with proposed redactions. NYSCEF 525 and 527 are identical Confidential Chamber's Copies.

<sup>3</sup> Plaintiff refiled certain documents subject to this motion at NYSCEF 536 through 550.  
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 Motion No. 017 021 022 024

In motion sequence 021, defendant moves pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts (22 NYCRR § 216.1) to seal 17 exhibits it filed in connection with its motion for clarification and other relief (seq. 020), specifically,

- (i) March 15-21, 2017 email exchange among multiple employees of plaintiff and defendant, including Gary Vanghan, plaintiff's Senior Product Manager, and Krista Clark, defendant's eCommerce Sales Support Coordinator (NYSCEF 587, 628),
- (ii) August 11, 2020 memorandum by King & Spalding LLP prepared for plaintiff (NYSCEF 589, 629),
- (iii) September 21, 2017 email from Meghan Michaud of defendant to defendant's employees (NYSCEF 593, 630),
- (iv) One-page document entitled EarthLink Account Care Handling Procedures (NYSCEF 594, 631),
- (v) Nine-page document entitled Legacy EarthLink Service - BHN/TWC (NYSCEF 595, 632),
- (vi) Transcript of deposition of Christopher R. Douglass (NYSCEF 597, 633),
- (vii) One-page document entitled Offer Approval | Earthlink Transition Plan and signed on August 14, 2020 (NYSCEF 600, 634),
- (viii) April 14, 2020 email by Toplisek to Locke, and June 2-3, 2020 emails between Toplisek and Thadani (NYSCEF 603, 635),
- (ix) Eight-page slide deck regarding customers of "Charter file" (NYSCEF 604, 636),

- (x) Eight-page slide deck regarding customers of “Charter file” (NYSCEF 605, 637),
- (xi) Printout of an appointment record for May 28, 2020 appointment sent from Michael G. Locke of Charter for Toplisek (NYSCEF 606, 638),
- (xii) June 8, 2020 email exchange between Locke and Toplisek (NYSCEF 607, 639),
- (xiii) Slide entitled Spectrum / TWC Update (NYSCEF 608, 640),
- (xiv) June 20-22, 2020 email exchange among plaintiff’s employees, including Toplisek, McLaughlin, and Goad (NYSCEF 609, 641),
- (xv) June 25, 2020 email by Toplisek to Locke, with the same being forwarded to others (NYSCEF 610, 642),
- (xvi) September 9, 2020 email exchange with multiple participants, including Reed and Marshall (NYSCEF 611, 643),
- (xvii) September 9, 2020 email exchange with multiple participants, including Boggs and Marshall (NYSCEF 613, 645), and

to redact defendant’s memorandum of law in support of the same motion (seq. 020) (NYSCEF 621, 622, 627<sup>4</sup>) and January 22, 2024 letter request by defendant to Hon. Frank Maas at JAMS (NYSCEF 612, 644<sup>5</sup>). Plaintiff filed papers in support of sealing

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<sup>4</sup> NYSCEF 621 is filed publicly with proposed redactions. NYSCEF 622 and 627 is a Confidential Chambers Copy.

<sup>5</sup> NYSCEF 612 is filed publicly with proposed redactions. NYSCEF 644 is a Confidential Chambers Copy.

items (ix), (x) and (xiii) and redacting items (ii), (viii), and (xvii); otherwise plaintiff does not object to sealing or redacting.<sup>6</sup>

In motion sequence 022, plaintiff moves pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts (22 NYCRR § 216.1) to seal two exhibits it filed in connection with its opposition to defendant's motion for clarification and other relief (seq. 020), specifically

- (i) 78 pages of email communications between plaintiff and its customers (NYSCEF 650, 565), and
- (ii) twenty-four-page excerpt from transcript of Greta Kim's deposition (651, 657);  
and

to redact the opposition memorandum to the same motion (seq. 020) (NYSCEF 658, 661<sup>7</sup>). Defendant filed no opposition papers.

In motion sequence 024, defendant moves pursuant to section 216.1 of the Uniform Rules for New York State Trial Courts (22 NYCRR § 216.1) to seal four exhibits filed in connection with defendant's opposition to plaintiff's motion to sustain its objection to special master's order (seq. 023), specifically,

- (i) Four-page excerpt from transcript of deposition of Toplisek (NYSCEF 710, 727),
- (ii) Eighteen-page excerpt from transcript of deposition of Goad (NYSCEF 711, 728),

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<sup>6</sup> Plaintiff refiled documents subject to this motion at NYSCEF 676 through 693.

<sup>7</sup> NYSCEF 661 is filed publicly with proposed redactions. NYSCEF 658 is a Confidential Chambers Copy.

- (iii) September 12, 2020 email by Reed to plaintiff's employees with a two-page privileged and confidential slide attached (NYSCEF 718, 729),
- (iv) The above item (iii) forwarded to several additional recipients (NYSCEF 719, 730), and

to redact defendant's opposition memorandum to the same motion (seq. 023) (NYSCEF 722, 723, 726<sup>8</sup>). Plaintiff filed papers in support of redacting item (ii) and defendant's opposition memorandum; otherwise plaintiff does not object to redacting or sealing.<sup>9</sup> There is no indication that the press or public have an interest in this matter.

### Discussion

"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 public's right to access is, however, not absolute, and under certain circumstances, "public inspection of court records has been limited by numerous statutes." (*Id.* at 349.) One of those statutes is section 216.1(a) of the Uniform Rules for Trial Courts, which empowers courts to seal documents upon a written finding of good cause. It provides:

"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." (22 NYCRR § 216.1.)

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<sup>8</sup> NYSCEF 722 is filed publicly with proposed redactions. NYSCEF 723 and 726 are identical Confidential Chambers Copies.

<sup>9</sup> Plaintiff refiled documents subject to this motion at NYSCEF 740 through 746.

The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Mosallem*, 76 AD3d 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 quotation marks omitted].)

Further, 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].)

Additionally, 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].)

Mot. Seq. No. 017

Good cause has been demonstrated to seal the 14 exhibits (NYSCEF 483-485, 487-497, 508-521) and to redact the attorney affirmation (NYSCEF 482, 506, 522, 526) and defendant’s memorandum of law (NYSCEF 504, 507, 525, 527). The proposed

sealing and redactions are tailored to protect sensitive non-public information, such as information about plaintiff's business strategy and deals, as well as plaintiff's financial information, disclosure of which may threaten plaintiff's competitive advantage.

Mot. Seq. No. 021

Good cause has been demonstrated to seal 16 exhibits (NYSCEF 587, 589, 593-595, 597, 600, 603-605, 607-611, 613, 628-637, 639-643, 645) and to redact defendant's memorandum of law (NYSCEF 621, 622, 627) and letter request to Hon. Frank Maas at JAMS (NYSCEF 612, 644). The proposed sealing and redactions are tailored to protect plaintiff's sensitive business information, e.g. information about pricing and marketing strategy, as well as plaintiff's financial information whose disclosure may threaten plaintiff's competitive advantage.

Good cause has not been shown to seal a one-page printout of an appointment record for May 28, 2020 appointment sent from Michael G. Locke of Charter for Toplisek (NYSCEF 606, 638), which shall be unsealed.

Mot. Seq. No. 022

Good cause has been demonstrated to seal two exhibits (NYSCEF 650, 651, 656, 657) and to redact plaintiff's opposition memorandum (NYSCEF 658, 661). The proposed sealing and redactions are tailored to protect confidential or proprietary information, disclosure of which may threaten plaintiff's competitive advantage, as well as personal information of third parties.

Mot. Seq. No. 024

Good cause has been demonstrated to seal four exhibits (NYSCEF 710, 711, 718, 719, 727-730) and to redact defendant's opposition memorandum (NYSCEF 722,

723, 726) as proposed by both plaintiff and defendant. The proposed sealing and redactions are tailored to protect plaintiff's sensitive commercial and litigation strategies, the disclosure of which could harm plaintiff's business relations.

As to the opposition memorandum, however, the parties' proposed redactions are not identical. Defendant shall file publicly a copy of the opposition memorandum with both parties' proposed redactions.

As to the remaining documents that the parties seek to redact in these four motions, redacted public copies have been filed, and thus the parties need not refile the same.

Accordingly, it is

ORDERED that motion sequence 017 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal exhibits: NYSCEF 483, 484, 485, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 548, and 550; an unredacted copy of the attorney affirmation: NYSCEF 526; and unredacted copies of defendant's memorandum of law: NYSCEF 525, 527, 536; and it is further

ORDERED that motion 021 is granted, in part, and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal exhibits: 587, 589, 593, 594, 595, 597, 600, 603, 604, 605, 606, 607, 608, 609, 610, 611, 613, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 645, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690,

691, 692, and 693; defendant's memorandum of law: NYSCEF 622 and 627; and letter request to Hon. Frank Maas at JAMS: NYSCEF 644; and it is further

ORDERED that 021 is denied, in part, and the County Clerk, upon service to him of this order, shall unseal NYSCEF 606 and 638; and it is further

ORDERED that motion sequence 022 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal exhibits: NYSCEF 650, 651, 656, and 657; and the unredacted copy of plaintiff's opposition memorandum: NYSCEF 658; and it is further

ORDERED that motion sequence 024 is granted; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal exhibits: NYSCEF 710, 711, 718, 719, 727, 728, 729, 730, 741, 743, 744, 745, 746; and the unredacted copies and copies with competing proposed redactions of defendant's opposition memorandum: NYSCEF 722, 723, 726, 740 and 742; and it is further

ORDERED that defendant shall file its opposition memorandum publicly incorporating both parties' proposed redactions within five days of this decision; and it is further

ORDERED the 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

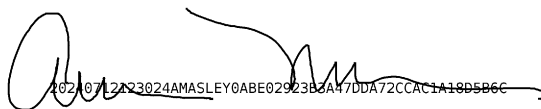
ORDERED that defendant shall serve a copy of this order on the County Clerk in accordance with the procedures set forth in the *Protocol on Courthouse County Clerk*

Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh)]; 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; and it is further

ORDERED that parties shall refrain from filing copies of documents already filed on NYSCEF in connection with seal motions, unless filing is needed to provide Confidential Chamber’s Copies or redacted public copies. If filing of multiple copies takes place, movant shall specify in the sealing chart NYSCEF numbers of all the copies filed as to each document, with a description as to what each copy represents (e.g. a Confidential Chambers Copy or redacted public copy). Failure to follow Part 48 procedures on sealing and the instructions provided herein may result in denial of a seal motion.



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7/12/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

CHECK IF APPROPRIATE: