

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

2025 NY Slip Op 30573(U)

February 16, 2025

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 12/20/2024,  
01/14/2025

MOTION SEQ. NO. 033 035

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 033) 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1082, 1083, 1084, 1085, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096

were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 035) 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1142, 1143, 1144, 1145, 1146

were read on this motion to/for SEAL.

In motion sequence 033, plaintiff Earthlink, LLC (Earthlink) moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to seal/redact the following documents filed in opposition to summary judgment motion sequence 031:

- 1) Earthlink’s opposition brief (NYSCEF 1071, 1076),
- 2) email dated August 11, 2016, from M. Locke to J. Hargis and D. Andreski (NYSCEF 1022, 1088; CHARTER00003906),
- 3) email chain spanning February 24, 2017, through March 2, 2017, involving M. Guberman and T. Beauchamp (NYSCEF 1023, 1089; CHARTER00052427),

- 4) email chain spanning May 9, 2017, through July 28, 2017, involving M. Locke, M. Greely and others (NYSCEF 1024; CHARTER00006996),
- 5) email chain spanning November 3, 2015, through November 6, 2015, involving M. Adams, B. Mills, W. Delaney, M. Locke and others (NYSCEF 1026, 1090; CHARTER00050330),
- 6) transcript of a phone call between defendant Charter Communications Operating, Inc.'s (Charter) representative and an EarthLink customer (NYSCEF 1027; CHARTER00304675),
- 7) transcript of a phone call between a Charter representative and an EarthLink customer (NYSCEF 1028; CHARTER00389563),
- 8) transcript of a phone call between a Charter representative and an EarthLink customer (NYSCEF 1029; CHARTER00223474),
- 9) transcript of a phone call between a Charter representative and an EarthLink customer (NYSCEF 1030; CHARTER00196865),
- 10) transcript of a phone call between a Charter representative and an EarthLink customer (NYSCEF 1031; CHARTER00195046),
- 11) transcript of Greta Kim's deposition (NYSCEF 1032),
- 12) transcript of Steven Turner's deposition (NYSCEF 1033, 1091),
- 13) email chain spanning October 28, 2019, through April 27, 2020, involving Z. Remming., M. Locke and others (NYSCEF 1034; CHARTER00058716),
- 14) email chain dated April 13, 2020, involving M. Locke, S. Lottmann and others (NYSCEF 1036; CHARTER00032300),

- 15) email chain spanning June 25, 2020, through July 7, 2020, involving M. Locke, M. Toplisek, D. Gray and others (NYSCEF 1037; CHARTER00032429),
- 16) exhibit to Maria Garibotti's expert report titled "VOL007 Data from All Transcripts" (NYSCEF 1039, 1040),
- 17) expert report of William Edward Woodcock (NYSCEF 1041),
- 18) email chain spanning March 7, 2018, through April 5, 2018, involving M. Locke, C. Liu and others (NYSCEF 1043; CHARTER00008131),
- 19) email chain dated August 14, 2018, involving M. Locke and S. Routon (NYSCEF 1044; CHARTER00011188),
- 20) letter dated November 13, 2018, from C. Harrison to C. Keith (NYSCEF 1045; CHARTER00430440),
- 21) transcript of Charlie Liu's deposition (NYSCEF 1046, 1092),
- 22) email chain dated January 19, 2021, involving C. Liu, J. Hendrickson and others (NYSCEF 1047; CHARTER00042220),
- 23) email dated November 5, 2020, from S. Shapiro to D. Marshall and C. Harrison (NYSCEF 1048; CHARTER00042165),
- 24) email dated July 16, 2020, from T. Zhou to C. Liu (NYSCEF 1049; CHARTER00414049),
- 25) email chain spanning May 12, 2020, through May 14, 2020, involving R. Rui and C. Liu (NYSCEF 1050; CHARTER00401483),
- 26) email chain dated December 23, 2020, involving M. Toplisek, M. Locke and others (NYSCEF 1051; CHARTER00430382),

- 27) email chain spanning June 23, 2022, through June 24, 2022, involving K. Fronda, B. McLaughlin and others (NYSCEF 1052; ELINK0018755),
- 28) Garibotti's summary expert report (NYSCEF 1055),
- 29) email chain dated October 16, 2020, involving an EarthLink customer, K. Griffin, M. Toplisek and others (NYSCEF 1056; CHARTER00041822),
- 30) document entitled "Upcoming Changes to Existing Earthlink Customers" (NYSCEF 1057; CHARTER00432556),
- 31) email chain dated October 17, 2018, involving S. Routon and M. Locke (NYSCEF 1058, 1093; CHARTER00020290),
- 32) email dated July 23, 2020, from M. Toplisek to T. Johnston, S. Thadani, G. Goad and others (NYSCEF 1059, 1074; ELINK0101562),
- 33) meeting invite sent on July 16, 2018, from S. Lottmann to M. Locke (NYSCEF 1061; CHARTER00009275),
- 34) transcript of Glenn Goad's deposition (NYSCEF 1112, 1065, 864, 940),
- 35) EarthLink customer survey responses (NYSCEF 1066, 1075; ELINK0007444), and
- 36) email chain spanning June 23, 2017, through June 28, 2017, involving M. Greeley, M. Locke and others (NYSCEF 1067, 1094; CHARTER00052918).

Specifically, Earthlink seeks to redact items 1, 32, and 35. (NYSCEF 1073, Prachee Sawant<sup>1</sup> aff ¶¶ 4-5.) Wholesale sealing is sought as to the remaining documents. (*Id.* ¶ 3.) In its responsive submission, Charter seeks to redact items 2, 3, 5, 12, 21, 31, and 36. (NYSCEF 1095, Charter's Brief at 2-5/7.) It supports Earthlink's

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<sup>1</sup> Sawant is Earthlink's counsel. (NYSCEF 1073, Sawant aff ¶1.)  
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Motion No. 033 035

proposed redactions to items 32 and 35. Charter consents to public filing of items 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, and 33. (*Id.* at 2/7.)

In morion sequence 035, Earthlink moves pursuant to the Uniform Rules of the New York State Trial Courts (22 NYCRR) § 216.1 to redact:

- i. transcript of John C. Jarosz's deposition (NYSCEF 1102, 825, 837),
- ii. Jarosz's supplemental declaration (NYSCEF 1103, 827, 839),
- iii. Steven E. Turner's rebuttal report (NYSCEF 1104, 990, 924, 841, 831),
- iv. transcript of Locke's deposition (NYSCEF 1105, 857, 933),
- v. transcript of Gray's deposition (NYSCEF 1106, 858, 934),
- vi. transcript of Lottmann's deposition (NYSCEF 1107, 859, 935),
- vii. transcript Christopher R. Douglass's deposition of (NYSCEF 1108, 860, 936),
- viii. transcript of McLaughlin's deposition (NYSCEF 1109, 861, 937),
- ix. transcript of Hendrickson's deposition (NYSCEF 1110, 862, 938),
- x. transcript of Toplisek' deposition (NYSCEF 1111, 863, 939),
- xi. transcript of Goad's deposition (NYSCEF 1112, 1065, 864, 940),
- xii. transcript of Thadani's deposition (NYSCEF 1113, 865, 941), and
- xiii. transcript of Woodcock's deposition (NYSCEF 1114, 866, 942).<sup>2</sup>

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

### **Legal Standard**

“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

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<sup>2</sup> The court has denied the motion to seal in the entirety items i through xiii. (NYSCEF 1079, Decision and Order at 1-2, 9-10, 12 [mot. seq. nos. 028, 029].)

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." (Uniform Rules for Trial Ct [22 NYCRR] § 216.1.)

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], 2023 NY Slip Op 50027[U], \*2 [Sup Ct, NY County 2023].)

A confidentiality agreement entered for purposes of exchanging information does not constitute good cause to seal. Rather, it demonstrates the steps taken to protect confidential information and can lend support to an argument for redacting. (See *Linkable Networks, v Mastercard Inc.*, 75 Misc 3d 1231[A], 2022 NY Slip Op 50706[U], \*11-12 [Sup Ct, NY County 2022].) Parties may designate information as confidential, but it is another matter whether the information can be shielded from the public. In sum, a confidentiality agreement does not excuse the parties "from making a showing of good cause why certain information should be redacted." (See *Eccles v Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 32730[U], \*5 [Sup Ct, NY County 2023].)

## **Discussion**

### **Mot. Seq. No. 033**

As a preliminary matter, the motion is denied as to items 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, and 33 as Earthlink has failed to demonstrate good cause to seal these documents. Charter's designation of these documents as confidential or highly confidential is insufficient. Moreover, Charter

consents to the public filing of these documents. (See NYSCEF 1095, Charter's Brief at 2/7.)

### *Wholesale Sealing*

Earthlink articulates the following grounds in support of wholesale sealing: item 17 contains information about "EarthLink's valuation and sale of IP Addresses, tens of thousands of which EarthLink retains and may sell in the future" (NYSCEF 1077, Trevor Johnston<sup>3</sup> aff ¶ 3), item 34 contains sensitive proprietary and business information (*id.* ¶ 4[a]), item 27 contains sensitive proprietary and business information and nonparties' personally identifiable information (*id.* ¶ 5), and items 16 and 28 contain sensitive information about Earthlink's customers and Charter's customer service agents. (*Id.* ¶ 6[a]-[b].)

Earthlink fails to demonstrate good cause to seal item 17, Woodcock's report, or item 28, Garibotti's report. Besides business sensitive information about Earthlink's IP addresses or personal information of nonparties, the reports are replete with information that on their face are not sensitive or confidential so as to warrant wholesale sealing, such as experts' experience, qualifications, publications, compensation, and what IP addresses are in general. Moreover, wholesale sealing is generally disfavored. (See *Applehead Pictures LLC v Perelman*, 80 AD3d 181, 192 [1st Dept 2010] [citation omitted].)<sup>4</sup> The denial is without prejudice to move for limited reactions, if so advised.

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<sup>3</sup> Johnston is the General Counsel of Trive Capital Management LLC, a private-equity firm that manages the private equity fund that owns Earthlink. (NYSCEF 1077, Johnston aff ¶ 1.)

<sup>4</sup> Indeed, wholesale sealing of expert reports has been denied for a similar reason before in this case. (NYSCEF 1079, Decision and Order at 10 [mot. seq. nos. 028, 029].)

As to item 34, Goad's deposition, the motion to seal this document is denied for the same reason it was denied before – the transcript is replete with information not warranting sealing.<sup>5</sup> (NYSCEF 1079, Decision and Order at 12 [mot. seq. nos. 028, 029] [dining wholesale selling of item 11, Goad's deposition].)

Earthlink fails to show good cause to seal item 16, exhibit to Garriott's report, which is replete with information that on its face is not sensitive or confidential. Good cause exists, however, to redact agent names as disclosure could imping upon the privacy rights of these nonparties. Earthlink shall file the redacted version within five days of the date of this decision and order.

However, good cause has been shown to seal item 27, an email chain, in the entirety, as it contains sensitive business information and nonparties' personally identifiable information. Moreover, this court has already permitted wholesale sealing of a related email chain. (*Id.* at 13 [permitting wholesale sealing of item 54].)

### *Redacting*

Earthlink articulates the following grounds in support of redacting: item 32 contains "sensitive information about the churn of EarthLink's customers to its competitors" (NYSCEF 1077, Johnston aff ¶ 4 [a]), item 35 contains Earthlink customers' personally identifiable information (*id.* ¶ 6[c]), and item 1 references the documents that Earthlink seeks to seal/redact in this motion. (NYSCEF 1073, Sawant aff ¶ 5.) As stated, Charter supports reactions to these documents.

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<sup>5</sup> In motion 035, Earthlink seeks to redact Goad's deposition transcript. As discussed *infra*, the court grants the motion to redact this document.

The motion to redact item 32, email chain, and item 35, EarthLink customer survey responses, is granted. The redactions are limited to the sensitive information about Earthlink's business and names and contact information of its customers. Redaction of such information is warranted.

Finally, Earthlink shall file item 1, its opposition brief, with redactions to the extent the brief references the documents that the court is permitting to seal or redact herein within five days of the day of this decision and order.

### *Responsive Submission*

Earthlink fails to show good cause to seal items 2, 3, 5, 12, 21, 31, and 36. In its responsive submission, Charter seeks to redact these items. The court agrees that the redactions are warranted as the redactions are limited to Charter's sensitive business information, such as financial information and pricing discussions. Charter shall file these items with its proposed redactions publicly within five days of the date of this decision and order.

### Mot. Seq. No. 035

Earthlink seeks to redact documents on the grounds that the documents contain "EarthLink's sensitive proprietary, financial, and business information" that "is not public, and [whose] dissemination could harm EarthLink and its owners, including by impairing EarthLink's ability to execute similar strategies or target communications to specific individuals or audiences in the future or by allowing competitors with similar business models to access this information" (NYSCEF 1115, Johnston aff ¶ 3 [discussing items i, ii, iii, iv, v, vi, ix, xii, xiii]), (B) "EarthLink's sensitive proprietary, financial, and business information, as well as personally identifiable information of non-parties" (*id.* ¶ 4

[discussing items vii, viii]), and (C) “EarthLink’s sensitive proprietary, financial, and business information, as well as Trive’s sensitive proprietary, financial, and business information.” (*Id.* ¶ 5 [discussing items x, xi, xii].)

As to item (i), transcript of Jarosz’s deposition, the court previously granted the motion to redact this document. (NYSCEF 1079, Decision and Order at 9 [mot. seq. nos. 028, 029].) Earthlink now proposes additional redactions.

Earthlink has met its burden of showing that its proposed limited redactions are warranted to protect its sensitive business information, such as financial information, revenue numbers, pricing information, business structure, as well as nonparties’ names and personally identifiable information. Disclosure of such information would harm Earthlink’s competitive advantage and may imping upon nonparties’ privacy interests. The motion is granted. Earthlink shall file items (i) through (xiii) with its proposed redactions publicly within five days of the date of this decision and order. The public redacted version of item (i) shall also include the redactions previously authorized by this court. (See NYSCEF 1079, Decision and Order at 9 [mot. seq. nos. 028, 029].)

#### Letter Application to Redact

Finally, Charter submits letter application to redact its reply memorandum (NYSCEF 1153, 1154) filed in connection with its summary judgment motion on the grounds that the memorandum references (a) documents that the court has previously permitted to be redacted in the decision on motions sequence 028 and 029 and (b) documents that have been filed under temporary seal in connection with the two

motions at issue – sequence 033 and 035, as well as motion sequence 036. (NYSCEF 1150, Morrison<sup>6</sup> aff ¶ 2; NYSCEF 1155, Proposed Sealing Order.)

The application is properly addressed after motion sequence 036 is fully submitted decided. In the meantime, the reply memorandum shall be maintained under temporary seal.

Accordingly, it is

ORDERED that motion sequence 033 is granted, in part, as to items 1, 2, 3, 5, 12, 21, 27, 31, 32, 35, and 36.<sup>7</sup> Earthlink shall file item 1 with redactions to the extent this item references the documents that the court is permitting to seal or redact herein within five days of the day of this decision and order. Charter shall file items 2, 3, 5, 12, 21, 31, and 36 with its proposed redactions publicly within five days of the date of this decision and order; and it is further

ORDERED that sequence 033 is denied, in part, to the extent that items 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, and 33 shall be unsealed. The motion is denied as to items 17, 28, and 34 (NYSCEF 1041, 1055, 1112, 1065, 864, 940), which shall remain under temporary seal. Any party may move to redact items 17, 28, and 34, if so advised, within ten days of the date of this decision and order; if no such motion is filed, these documents will be unsealed. The motion is denied as to item 16 (NYSCEF 1039, 1040), which shall be redacted. Earthlink shall file the redacted version of item 16 within five days of the date of this decision and order; and it is further

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<sup>6</sup> Clinton W. Morrison is Charter's counsel. (NYSCEF 1050, Morrison aff ¶ 1.)

<sup>7</sup> Redacted public copies for items 1, 32, and 35 are filed at NYSCEF 1074, 1075, and 1076.

ORDERED that the County Clerk is directed to unseal NYSCEF 1024, 1027 through 1034, 1036, 1037, 1043 through 1045, 1047 through 1051, 1056, 1057, and 1061; and it is further

ORDERED that the County Clerk is directed to seal NYSCEF 1022, 1023, 1026, 1033, 1039, 1040, 1046, 1058, 1059, 1066, 1067 1071, and 1088 through 1094; and it is further

ORDERED that motion sequence 035 is granted in its entirety; and it is

ORDERED that the County Clerk is directed to seal 825, 827, 831, 837, 839, 841, 857 through 866, 924, 933 through 942, 990, 1102 through 1114, and 1065; and it is further

ORDERED that Earthlink shall file items (i) through( xiii) with its proposed redactions publicly within five days of the date of this decision and order. The public redacted version of item (i) shall also include the redactions previously authorized by this court in the past (see NYSCEF 1079, Decision and Order at 9 [mot. seq. nos. 028, 029]); and it is further

ORDERED that the letter application to redact NYSCEF 1153 & 1154 is held in abeyance until motion sequence 036 is decided; and it is further

ORDERED that the County Clerk is directed to maintain NYSCEF 864, 940, 1041, 1055, 1065, 1112, 1153, and 1154 under temporary seal; and it is further

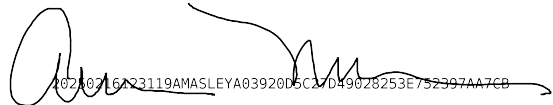
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in this action, and any representative of a party or of counsel of record

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 or other court proceedings on the record, e.g., arguments on motions.



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2/16/2025

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

APPLICATION:

CHECK IF APPROPRIATE: