

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

2025 NY Slip Op 30687(U)

February 28, 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 _____

MOTION SEQ. NO. 036

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 036) 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1147, 1148, 1149 were read on this motion to/for SEAL.

Upon the foregoing documents, it is

In motion sequence 036, defendant Charter Communications Operating, LLC (Charter) moves pursuant to the Uniform Rules for Trial Courts (22 NYCRR) § 216.1 to redact:

- (1) transcript of John C. Jarosz’s deposition (NYSCEF Doc. No. [NYSCEF] 825, 837, 1119),
- (2) Jarosz supplemental declaration (NYSCEF 827, 839, 1120),
- (3) Steven E. Turner’s rebuttal report (NYSCEF 831, 841, 924, 990, 1121),
- (4) transcript of Michael G. Locke’s deposition (NYSCEF 857, 933, 1122),
- (5) transcript of David Gray’s deposition (NYSCEF 858, 934, 1123),
- (6) transcript of Steven Lottmann’s deposition (NYSCEF 859, 935, 1124),
- (7) transcript of Brian K. McLaughlin’s deposition (NYSCEF 861, 937, 1125),
- (8) transcript of John Hendrickson’s deposition (NYSCEF 862, 938, 1126),
- (9) transcript of Michael D. Toplisek’s deposition (NYSCEF 863, 939, 1127),

- (10) transcript of William E. Woodcock's deposition (NYSCEF 866, 942, 1128),
- (11) one exhibit to Mark Guberman's affirmation (NYSCEF 918, 985, 1130), and
- (12) High-Speed Service Agreement (NYSCEF 869, 945, 1129; ELINK0006447).

The court denied Charter's motions to seal these documents. (See NYSCEF 1079, Decision and Order [mot. seq. nos. 028, 029].) The court, however, granted motions to redact items 1 through 10. (See NYSCEF 1178, Decision and Order at 5, 10-11 [mot. seq. nos. 033, 035] [permitting redactions to items 1 through 10]; NYSCEF 1079, Decision and Order at 9 [mot. seq. nos. 028, 029] [permitting redactions to item 1].) This motion is unopposed. 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 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 numerus 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 Cts [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].)

Discussion

Mot. Seq. No. 036

Charter asserts that the proposed redactions are warranted because the documents contain sensitive business information, such as (i) customer-related internal metrics (churn rates associated with Charter’s services), (ii) pricing information for Charter products, (iii) information regarding revenue shares for Charter offerings, (iv) information about Charter business strategy and technical internal functions, and (v) the pricing structure of Charter’s relationship with Earthlink which is relevant to Charter’s proprietary business strategy and relationships with third-party internet service

providers. (See NYSCEF 1131, MOL at 5-8/11.) Additionally, several of the documents refer to tab 9 to Jarosz's report, which the court has permitted to be sealed.

The court agrees. The proposed redactions to the twelve documents are narrowly tailored to protect Charter's sensitive business information, such as pricing information, churn rates and subscriber numbers, revenue, and financial terms of the Charter-Earthlink relationship. Disclosure of such information would threaten Charter's competitive advantage. Moreover, there has been no showing of public interest in the disclosure.

Letter Application to Redact

Charter submits a 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 at the time have been filed under temporary seal in connection with motions sequence 033, 035, and 036. (NYSCEF 1150, Clinton W. Morrison¹ aff ¶ 2; NYSCEF 1155, Proposed Sealing Order.)

The letter application is granted as the proposed redactions are limited to the materials that are permitted to be redacted in its decisions on motions sequence 028, 029, 033, 035, and herein.

Accordingly, it is

ORDERED that the motion is granted, and the County Clerk is directed to seal NYSCEF 869, 918, 945, 985, and 1119 through 1130; and it is further

¹ Clinton W. Morrison is Charter's counsel. (NYSCEF 1050, Morrison aff ¶ 1.)

ORDERED that movant shall file public redacted versions of items 1 through 12 within five days of the date of this decision and order. Since the court previously granted motions to redact items 1 through 10 (*see supra* at 2), in addition to the redactions authorized herein, the public versions to be filed by movant shall incorporate the redactions that the court has authorized previously; and it is further

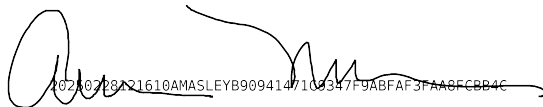
ORDERED that the letter application is granted, and the County Clerk is directed to seal NYSCEF 1153; and it is further

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 movant 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.



2/28/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE