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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

COMCAST CABLE
COMMUNICATIONS MANAGEMENT,
LLC; COMCAST CABLE
COMMUNICATIONS, LLC; and
COMCAST OF
COLORADO/FLORIDA/MICHIGAN/
NEW MEXICO/PENNSYLVANIA/
WASHINGTON, LLC,

Defendants.

NO. 16-2-18224-1 SEA
~~[PROPOSED] ORDER GRANTING~~
STATE'S MOTION FOR
SANCTIONS

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JB

THIS MATTER, having come before the Court on Plaintiff's Motion for Sanctions, and the Court having reviewed the foregoing Motion, Declaration of Jeffrey G. Rupert, and responses and other supporting declarations, ~~if any~~, and being familiar with the records and files herein, the Court hereby enters the following **FINDINGS OF FACT and CONCLUSIONS OF LAW:**

1. On June 10, 2015, the State requested all communications, including audio recordings, in which Defendants ("Comcast") advertised or discussed the scope of Comcast's Service Protection Plan. The State's request was made in a Civil Investigative Demand issued in accordance with RCW 19.86.110.

1 2. Comcast possessed audio recordings in which it advertised and sold the Service
2 Protection Plan to Washington consumers for the June 2014 - February 28, 2016 time period.

3 3. Comcast ~~destroyed~~ all of the relevant call recordings from October 1, 2015 -
4 February 28, 2016, that it possessed.

5 4. Comcast also ~~destroyed~~ all relevant call recordings from June 2014 - September
6 30, 2015; except for recordings from its Billing and Retention departments. The Billing and
7 Retention departments account for 13 percent of Comcast's telephone sales of the Service
8 Protection Plan.

9 ~~5. As of June 10, 2015, Comcast had a duty to preserve all audio recordings of~~
10 ~~Service Protection Plan sales in its custody or control. Comcast violated this duty by~~
11 ~~destroying approximately 36,700 recordings of Service Protection Plan sales that occurred~~
12 ~~between April 2015 and February 28, 2016.~~

13 ~~5.6.~~ Audio recordings of Service Protection Plan sales are ^{potentially} relevant in this litigation.
14 Their degree of importance may vary depending on how facts unfold in the case.

15 ~~6.7.~~ Comcast did not tell the State it had ~~destroyed~~ call recordings it requested
16 before the State filed its Motion to Compel Production of Telephone Recordings on March 27,
17 2017 (Dkt. 77). Comcast did not affirmatively state that it had ~~destroyed~~ any call recordings in
18 its Response in Opposition to Plaintiff's Motion to Compel Production of Telephone
19 Recordings filed on March 31, 2017 (Dkt. 80).

20 ~~7.8.~~ In its Response in Opposition to Plaintiff's Motion to Compel, Comcast asserted
21 the following Issue Statement:

22 Whether, considering the substantial burden and expense associated
23 with the collection, redaction, and production of approximately
24 10,000 call recordings, and their minimal relevance, Comcast
25 should be ordered to collect, redact, and produce "Washington SPP
26 sales recordings" for four days every month from June 2014 to
March 2016?

Response (Dkt. _), 7:2-5.

Handwritten marks on the right margin: a large 'R' at the top, another 'R' below it, and a vertical line with a '1' at the bottom.

1 **8.** Comcast further made the following representations to the Court:

2 Over the period in question, approximately 90,000 Comcast
3 customers in Washington signed up for the SPP service, mostly via
4 telephone. Assuming a relatively even distribution of SPP sign-ups,
5 there would be a pool of approximately 12,000 SPP sign ups on the
6 days the Attorney General has proposed. If 80 percent of those
7 customers subscribed to the SPP by phone—a reasonable
8 assumption—that would leave a pool of about 10,000 call recordings
9 for production.

10 Opp. 8:13-18.

11 At approximately 17 minutes per call, for nearly 10,000 calls, the
12 time and expense of production adds up quickly. Estimates from
13 these vendors suggest that the Attorney General's proposed sample
14 would require approximately 8,500 reviewer hours at a cost of
15 \$445,000-\$637,000.

16 Opp. 9:8-17.

17 **9.** Comcast also told the Court “[a]ccording to an estimate from a third party
18 vendor, complying with the Attorney General’s demand would require over 8,000 hours of
19 listening time and cost more than \$600,000.” Opp. 2:22-23.

20 ~~11. The representations identified in paragraphs 6 through 10 above were false
21 and/or misleading.~~

22 ~~12. Comcast knew, or should have known, the representations identified in
23 paragraphs 6 through 10 were false and/or misleading when it filed its Response in Opposition
24 to Plaintiff’s Motion to Compel Production of Telephone Recordings. Comcast had over two
25 months after the State provided it with its proposed call recording production sample to
26 determine whether any recordings had been destroyed. Comcast also filed a Declaration of
Arthur Abend III in support of its Opposition to the State’s Motion to Compel that indicated
Comcast knew it had destroyed relevant call recordings.~~

~~13. Comcast’s Response in Opposition to Plaintiff’s Motion to Compel Telephone
Recordings was not well grounded in fact and/or included statements that were interposed for
an improper purpose in violation of Civil Rule 11.~~

1
2
3 Having entered the above FINDINGS AND CONCLUSIONS, it is hereby
4 ORDERED, ADJUDGED, and DECREED that ~~the State's Motion for Sanctions is~~
5 ~~Granted.~~

6 Comcast engaged in spoliation when it destroyed audio recordings of customers
7 purchasing the Service Protection Plan from Comcast after receiving the State's Civil
8 Investigative Demand dated June 10, 2015.

9 The Court shall apply an adverse inference that recordings of Service Protection Plan
10 sales destroyed by Comcast after it received the State's Civil Investigative Demand corroborate
11 the State's case and discredits Comcast's case.

12 ~~OR~~

13 The Court reserves ruling on the form of ~~sanctions~~ ^{penalties may} it will impose ~~for Comcast's~~
14 ~~spoliation pending further discovery.~~ The State ~~shall~~ ^{may} submit a memorandum on proposed
15 spoliation sanctions by the close of discovery, ^{it warranted.}

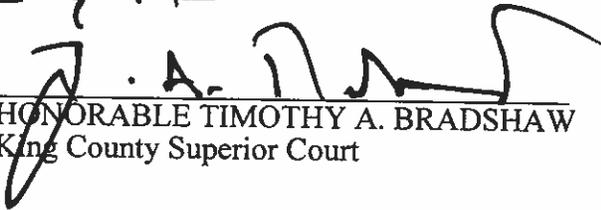
16 Pursuant to ~~CR 11 and/or~~ ^{terms of} the Court's inherent power to award ~~sanctions for~~ ^{penalties} discovery
17 ~~misconduct,~~ the Court enters the following ~~sanctions~~ ^{penalties} against Comcast ~~for its false and/or~~
18 ~~misleading representations to the Court in its Response in Opposition to Plaintiff's Motion to~~
19 ~~Compel Telephone Recordings and lack of candor to the State regarding its destruction of~~
20 ~~relevant telephone recordings requested by the State.~~

21 • Defendants shall pay the State its attorneys' fees and costs incurred in connection with
22 filing the Motion to Compel Production of Telephone Recordings (Dkt. 77) and related
23 pleadings, including fees and costs incurred during pre-filing communications with
24 Comcast regarding the production of telephone recordings.

- 25 • Defendants shall pay the State its attorneys' fees and costs incurred in connection with
26 filing its Motion for Sanctions and related pleadings ^{within 30 days.}

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DATED this 29th day of August, 2017.


HONORABLE TIMOTHY A. BRADSHAW
King County Superior Court

Presented by:

ROBERT W. FERGUSON
Attorney General



JEFFREY G. RUPERT, WSBA #45037
DANIEL T. DAVIES, WSBA #41793
JOEL J. DELMAN, WSBA #16688
Assistant Attorneys General
Attorneys for the State of Washington

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing on the following party/parties via the following methods:

<p>Ross Siler Mark N. Bartlett Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 Email: ross.siler@dwt.com markbartlett@dwt.com</p>	<p><input type="checkbox"/> Legal Messenger <input type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk</p>
<p>David Gringer Ariel E. Hopkins Matthew T. Martens Howard M. Shapiro Matthew Thome Wilmer Cutler Pickering Hale and Dorr LLP 1875 Pennsylvania Ave. NW Washington, DC 20006 Email: david.gringer@wilmerhale.com ariel.hopkins@wilmerhale.com matthew.martens@wilmerhale.com howard.shapiro@wilmerhale.com matthew.thome@wilmerhale.com</p>	<p><input type="checkbox"/> Legal Messenger <input type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk</p>
<p>Gregory Boden Wilmer Cutler Pickering Hale and Dorr LLP 350 South Grand Ave., Ste. 2100 Los Angeles, CA 90071 Email: gregory.boden@wilmerhale.com</p>	<p><input type="checkbox"/> Legal Messenger <input type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk</p>

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 22nd day of June, 2017, at Seattle, Washington.



MICHELLE BACZKOWSKI
Legal Assistant