

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

TOUCHSTREAM TECHNOLOGIES,  
INC.,

*Plaintiff,*

v.

CHARTER COMMUNICATIONS, INC.,  
et al.,

*Defendants.*

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CIVIL ACTION NO. 2:23-CV-00059-JRG-RSP  
(Lead Case)

**ORDER**

Before the Court is Plaintiff Touchstream Technologies, Inc.’s Motion to Compel Additional Discovery on Comcast’s Supplemental Disclosures. **Dkt. No. 312**. Touchstream moves the Court to order Comcast to supplement document production and witness testimony regarding Comcast’s decision to discontinue its accused Xfinity TV Remote App. *Id.* at 1. The motion also seeks leave to present these new documents at trial and serve a short supplemental expert report on the topic. *Id.*

According to Touchstream, Comcast supplemented its interrogatory response indicating that it decided to discontinue the app. *Id.* at 2. Then Comcast produced engineering documents and offered a witness for deposition. *Id.* Touchstream now argues that Comcast has reinstated the app and thus seeks relief from the Court to supplement the record. Touchstream posits that Comcast reinstated the app “apparently due to consumer outrage over that app’s discontinuation.” *Id.* at 1. Touchstream speaks of public outcry over the cancelation of the app but provides no evidence of this. *See id.* at 3. Instead, it only cites an email sent from counsel for Touchstream to counsel for Comcast. *Id.* at n.6 (citing Dkt. No. 312-3).

Comcast responds that it is not reinstating the app, but rather that it “temporarily paused[d] the backend decommission” to allow an update of certain documentation. It further responds that Touchstream had adequate opportunity to explore the facts concerning the discontinuance of the application in the deposition of Mr. Cohen. Dkt. No. 323 at 4. Comcast argues that Mr. Cohen explained the discontinuance process and why they needed to update the documentation prior to severing all access. Comcast represents that it will not refer to the discontinuance unless Touchstream is permitted to do so. *Id.* Comcast also argues that Touchstream was not diligent in pursuing this discovery. *Id.* at 5. Touchstream waited more than a month to begin scheduling the deposition of Mr. Cohen. *Id.* Finally, Comcast highlights the prejudice of granting Touchstream’s requested relief, focusing particularly on how close the trial date is now. *Id.*

The Court finds that Touchstream is not entitled to the relief it seeks. First, this case is set to begin trial on March 3, 2025. Touchstream only filed its Motion on February 6. Touchstream had the opportunity to question Comcast’s witness about the interrogatory response. Touchstream provides no evidence that contradicts the representation that the app was deprecated due to its unpopularity and low usage. Instead, Touchstream relies on attorney argument and cites to an email from its counsel. This is not enough to justify reopening discovery and expert reports. Further, Touchstream does not justify nor explain the parameters of its proposed supplemental expert report. Additionally, Touchstream does not adequately explain the prejudice it suffers and does not sufficiently rebut the prejudice of granting its Motion so close to trial. However, the Court will hold Comcast to its representation that “it will not refer to the discontinuance unless Touchstream is permitted to raise the issue.” Dkt. No. 323 at 5.

**SIGNED this 26th day of February, 2025.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE