

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

IN RE: )  
)  
CHARTER COMMUNICATIONS, INC. )  
Subpoena Enforcement Matter )  
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)  
)

RECORDING INDUSTRY )  
ASSOCIATION OF AMERICA )  
1330 Connecticut Avenue, N.W., Ste. 300 )  
Washington, D.C. 20001 )  
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Miscellaneous Action  
Case No. 4:03MC00273CEJ

CHARTER COMMUNICATIONS, INC. )  
12405 Powerscourt Drive, Suite 100 )  
St. Louis, MO 63131 )  
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**CHARTER COMMUNICATIONS'  
MOTION TO QUASH SUBPOENA SERVED BY  
RECORDING INDUSTRY ASSOCIATION OF AMERICA**

Charter Communications, Inc. ("Charter") moves to quash the subpoena served on it on September 23, 2003 ("the Subpoena") by the Recording Industry Association of America ("RIAA") on the following grounds:

1. The Subpoena fails to allow "reasonable time for compliance," as required by Fed. R. Civ. P. 45(c)(3)(A)(i). Compliance within seven calendar days from the date of service, as purportedly required by the Subpoena, is neither reasonable nor feasible. In particular, this abbreviated time period does not afford Charter the opportunity to provide advance notice to its cable subscribers, as required by the Cable Communications Act of 1984 (the "CCA"). See 47 U.S.C. § 551.

2. The Subpoena is invalid under Federal Rule of Civil Procedure 45(c)(3)(A)(iv), as it subjects Charter to undue burden, given the volume of information requested. Charter is also subjected to undue burden due to the number of other subpoenas served and “re-served” upon Charter by the RIAA in the past two and a half months.

3. The Subpoena, as served, does not comply with the Digital Millennium Copyright Act, under which it was purportedly served, because it failed to provide “[i]dentification of the copyrighted work claimed to have been infringed ....” 17 U.S.C. § 512(c)(3).

4. The Subpoena does not comply with the DMCA on the further ground that it purports to require identifying information about 93 allegedly infringing subscribers. The DMCA does not allow for this procedure, but instead requires a single subpoena for each alleged infringer about which the RIAA requests information. *See, e.g.*, 17 U.S.C. § 512(h)(2)(C) and 17 U.S.C. § 512(h)(3) (referring to “infringer” in the singular).

5. The documents and information requested by the Subpoena are overly broad and beyond the scope of the limited “information sufficient to identify the alleged infringer” as permitted by the DMCA. In particular, the name and address of the alleged infringer are “sufficient to identify” the alleged infringer, which is all that is required by Section 512(h)(3). The RIAA’s additional demand for telephone numbers and e-mail addresses is not necessary to identify the allegedly infringing subscribers, and represents an unwarranted intrusion into the privacy of those subscribers.

6. Charter’s cost of compliance with the Subpoena will exceed several thousand dollars. Charter’s cost of compliance with additional subpoenas may exceed several hundred thousand dollars per annum. Pursuant to Fed. R. Civ. P. 45(c)(2)(B), any order compelling compliance must protect Charter from the significant costs of compliance. Accordingly, absent a

commitment from the RIAA for compensation to Charter for the reasonable expenses of Charter's compliance with the Subpoena, the Subpoena should be quashed on the basis that it subjects Charter to undue burden and expense.

Each of these grounds for quashing the Subpoena is addressed in further detail, with citation to supporting authorities and evidence, in the accompanying Memorandum.

Charter additionally moves to quash the Subpoena on the grounds raised against similar subpoenas in *In re Verizon Internet Services, Inc.*, pending in the U.S. Court of Appeals for the District of Columbia Circuit (Case Nos. 03-7015, 03-7053), and *Pacific Bell Internet Services v. Recording Indus. Assoc. Amer., Inc.*, Case No. C 03 3560 (N.D. Cal.) (Complaint filed July 30, 2003), including the grounds (a) that federal district courts are without statutory jurisdiction or Article III authority to issue or enforce such subpoenas; (b) that the subpoena authority in the DMCA violates the First and Fifth Amendment rights of Internet users; and (c) that the DMCA does not authorize issuance of subpoenas to service providers where the service providers are involved solely in the transmission of peer-to-peer communications. Because the grounds 1 through 6 set forth above are sufficient to quash the Subpoena, it may not be necessary to address these additional grounds, and accordingly Charter does not address them in its Memorandum but fully reserves them.

Finally, because RIAA and its attorneys have failed to take reasonable steps to avoid imposing undue burden on Charter, Charter requests that the Court award Charter its expenses and reasonable attorney's fees incurred herein.

A proposed Order accompanies this Motion.

Dated: 10/3/2003

Respectfully submitted,

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**COUNSEL FOR CHARTER  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on this the 3<sup>rd</sup> day of October, 2003, in the manner and upon the persons indicated below.

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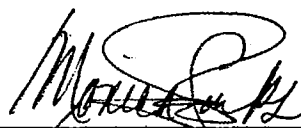
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**ORDER GRANTING MOTION TO QUASH**

CAME ON TO BE CONSIDERED the Motion of Charter Communications, Inc. to Quash the Recording Industry Association's Subpoena served September 23, 2003. The Court, having considered the arguments and authorities of the parties, is of the opinion that the motion is well-taken, and should be GRANTED.

IT IS THEREFORE ORDERED that the Subpoena is hereby QUASHED.

IT IS FURTHER ORDERED that Charter be awarded its reasonable attorneys' fees and expenses incurred in prosecuting this Motion.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE