

RECEIVED

OCT - 6 2003

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

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

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

RECORDING INDUSTRY)
ASSOCIATION OF AMERICA)
1330 Connecticut Avenue, N.W., Ste. 300)
Washington, D.C. 20001)

Miscellaneous Action
Case No. 4:03MC00273CEJ

CHARTER COMMUNICATIONS, INC.)
12405 Powerscourt Drive, Suite 100)
St. Louis, MO 63131)
)
_____)

**CHARTER COMMUNICATIONS’
MOTION FOR PROTECTIVE ORDER REGARDING
DUPLICATIVE SUBPOENAS SERVED BY
RECORDING INDUSTRY ASSOCIATION OF AMERICA**

Pursuant to Fed. R. Civ. P. 26(c), Charter Communications, Inc. (“Charter”) moves this Court for entry of a Protective Order prohibiting the Recording Industry Association of America (“RIAA”) from enforcing or attempting to enforce 93 duplicative subpoenas issued out of the United States District Court for the District of Columbia (“the D.C. Subpoenas”), for the following reasons:

1. The D.C. Subpoenas have been superseded by the Subpoena now before this Court, which (according to the RIAA’s own counsel) “is a multiple IP address subpoena that covers the IP addresses in the subpoenas issued by the Washington

D.C. court and previously served on Charter.” [See Cover Letter to Subpoena Issued September 23, 2003, Exh. 1 to accompanying Memorandum] As such, any attempt to enforce these superseded subpoenas would seek duplicative and burdensome discovery from Charter, in violation of Fed. R. Civ. P. 26.

2. In addition, allowing the RIAA to enforce the duplicative D.C. Subpoenas would exacerbate an already confusing situation, by subjecting the affected subscribers to multiple subpoenas and possibly inconsistent rulings. It also would deprive Charter of the ability to give meaningful and accurate notice to the affected subscribers, as required by the Cable Communications Act of 1984 (the “CCA”). See 47 U.S.C. § 551.
3. By the same token, the RIAA should not be permitted to flaunt its invocation of the jurisdiction of this Court by attempting to resurrect clearly superseded subpoenas from a distant forum. The validity of the RIAA’s subpoena effort against the 93 affected subscribers has been placed squarely before this Court, and this Court should protect its jurisdiction over these issues by precluding the RIAA from returning to the D.C. District Court to enforce subpoenas that it has admitted are duplicative and, as such, must be superseded.
4. In addition, the 93 D.C. Subpoenas are also defective on their own for a number of reasons – all in addition to the defects raised against the re-served omnibus Subpoena by Charter’s Motion To Quash, filed October 3, 2003.
5. The D.C. Subpoenas offend traditional notions of due process, fair play, and substantial justice, as they are issued from a court that does not have personal jurisdiction over the respondent, Charter. Charter does no business in the District

of Columbia, maintains no property or facilities in the District of Columbia, does not maintain a network in the District of Columbia, and has no subscribers or customers in the District of Columbia.

6. The purported service of process of the D.C. Subpoenas on Charter is defective at least because Fed. R. Civ. P. 45(a)(2) and (b)(2) “do not permit a subpoena for production issued in Washington, D.C. to be validly served in [Missouri]” because service was not made within 100 miles of the place of production or inspection specified in the Subpoenas. At least one court has summarily quashed a similar subpoena on this ground. *See Massachusetts Institute of Technology v. Recording Industry Association of America*, Misc. Act. No. 1:03-MC-10209-JLT (Order dated August 7, 2003) (allowing MIT’s motion to quash RIAA’s subpoena issued from D.C. District Court and served on MIT over 100 miles away in Massachusetts) [Exh. 4.H to accompanying Memorandum]
7. Any attempted “re-service” of the D.C. Subpoenas on an entity related to Charter in Maryland is also defective because Charter Communications, Inc. itself – the corporation to which the subpoenas are directed – does not maintain a registered agent for service of process in Maryland.
8. The District of Columbia is not the proper venue for the miscellaneous actions filed in connection with each of the Subpoenas.
9. The Subpoenas are deficient under Fed. R. Civ. P. 45 (a)(2) in that they were not issued from the court for the district in which the production or inspection is to be made. Charter maintains no records in the District of Columbia relating to or reflecting the identity of any of its subscribers or customers.

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

As set forth in the Declaration of Jeffrey R. Bragalone, Exh. 3 to the accompanying Memorandum, counsel for Charter hereby certifies, as required by Rule 26(c), that counsel for Charter has conferred in good faith with counsel for the RIAA in an attempt to resolve this dispute without requiring intervention by this Court, as explained in more detail in the accompanying Memorandum. The bottom line is that the RIAA's heavy-handed tactics and ongoing harassment warrant the intervention of this Court to protect Charter from burdensome and duplicative discovery.

Finally, Charter requests that the Court award Charter appropriate its expenses and reasonable attorney's fees incurred in bringing the present motion, pursuant to Fed. R. Civ. P. 37(a)(4).

A proposed Order accompanies this Motion.

Dated: Oct. 6, 2003

Respectfully submitted,

THOMPSON COBURN LLP

By: 

Stephen B. Higgins

E.D. Mo. Bar No. 10499

Mark Sableman

E.D. Mo. Bar No. 4244

One US Bank Plaza

St. Louis, Missouri 63101-1611

Tel.: 314-552-6000

Fax: 314-552-7000

McKOOOL SMITH P.C.

Jeffrey R. Bragalone

Texas State Bar No. 02855775

Matthew P. Harper

Texas State Bar No. 24037777

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Tel.: 214-978-4000

Fax: 214-978-4044

Amber H. Rovner

Texas State Bar No. 09223750

300 W. 6th Street, Suite 1700

Austin, Texas 78701

Tel.: 214-692-8700

Fax: 512-692-8744

**COUNSEL FOR CHARTER
COMMUNICATIONS, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on this the 6 day of October, 2003, in the manner and upon the persons indicated below.

K. Lee Marshall, Esq.
Bryan Cave, LLP
One Metropolitan Square
211 North Broadway
Suite 3600
St. Louis, MO 63102-2750

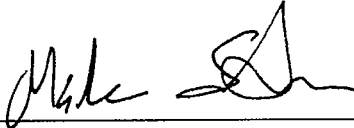
VIA HAND DELIVERY

Yvette Molinaro, Esq.
Patricia H. Benson, Esq.
Mitchell Silberberg & Knupp LLP
Trident Center
11977 West Olympic Blvd.
Los Angeles, CA 90064-1883

VIA FEDERAL EXPRESS

Thomas J. Perrelli, Esq.
Steven B. Fabrizio, Esq.
Jenner & Block, LLC
601 Thirteenth Street, N.W.
Suite 1200 South
Washington, DC 20005-3823

VIA FEDERAL EXPRESS



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

IN RE:)
)
CHARTER COMMUNICATIONS, INC.)
Subpoena Enforcement Matter)
_____)
)
RECORDING INDUSTRY)
ASSOCIATION OF AMERICA)
1330 Connecticut Avenue, N.W., Ste. 300)
Washington, D.C. 20001)
)
)
v.)
)
CHARTER COMMUNICATIONS, INC.)
12405 Powerscourt Drive, Suite 100)
St. Louis, MO 63131)
_____)

Miscellaneous Action
Case No. 4:03MC00273CEJ

PROTECTIVE ORDER

This matter was heard on the Motion of Charter Communications, Inc. (“Charter”) for a Protective Order Against Duplicative Subpoenas Served by the Recording Industry Association of America (“RIAA”), filed pursuant to Fed. R. Civ. P. 26(c). 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 RIAA is prohibited from enforcing or seeking to enforce the 93 subpoenas previously issued out of the United States District Court for the District of Columbia, which have been superseded by the Subpoena now before this Court.

IT IS FURTHER ORDERED that Charter is awarded its reasonable attorneys’ fees incurred in prosecuting its motion, pursuant to Fed. R. Civ. P. 37.

SIGNED THIS _____ DAY OF _____, 2003.

UNITED STATES DISTRICT JUDGE