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

**CHARTER COMMUNICATIONS' MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING DUPLICATIVE SUBPOENAS SERVED BY RECORDING INDUSTRY ASSOCIATION OF AMERICA**

Jeffrey R. Bragalone
Matthew P. Harper
McKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201

Amber H. Rovner
McKOOL SMITH, P.C.
300 W. 6th Street, Suite 1700
Austin, Texas 78701

Stephen B. Higgins
Mark Sableman
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, Missouri 63101-1611

COUNSEL FOR CHARTER COMMUNICATIONS, INC.

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## I. INTRODUCTION

Charter Communications, Inc. ("Charter") seeks a Protective Order prohibiting enforcement of duplicative subpoenas issued by the Recording Industry Association of America ("RIAA") out of the U.S. District Court for the District of Columbia ("D.C. Court'). These subpoenas request Charter to disclose the names, addresses, telephone numbers, and e-mail addresses of up to 93 different subscribers of Charter's Pipeline® Internet service – the very same information about the same IP addresses listed in the consolidated Subpoena that the RIAA issued from this Court on September 23, 2003 (and which is subject to Charter's Motion To Quash, filed October 3, 2003). Indeed, the RIAA's counsel has admitted as much. [*See* Exh. 1 (cover letter to September 23, 2003 Subpoena)]

By reissuing the 93 D.C. Subpoenas as a single Subpoena from this Court, the RIAA has in effect admitted that the D.C. Subpoenas have been superseded, and must be withdrawn. The RIAA, however, apparently wishes to "hedge its bets" on the most favorable forum, and now refuses to withdraw the D.C., Subpoenas, despite previous representations to the contrary. In order to avoid the burdens of this duplicative discovery, the concomitant confusion and prejudice to Charter's affected subscribers, and to preserve this Court's jurisdiction over the RIAA's attempted invocation of the subpoena provision of the DMCA against the same 93 Charter subscribers, Charter has been forced to file the present Motion for Protective Order.

## II. BACKGROUND

The RIAA's automated subpoena mill began issuing subpoenas under the Digital Millennium Copyright Act ("DMCA")[1] to Charter from the U.S. District Court for the District of

[1] Charter incorporates by reference from its pending Motion To Quash, filed October 3, 2003, the background on the DMCA subpoena provision and the RIAA's attempted invocation of that provision as part of its highly-publicized, nationwide campaign to sniff out individuals suspected of illegal file-sharing of copyrighted music files.

Columbia ("D.C. Court") in early July. [Exh. 2] This followed closely on the heels of the RIAA's "test case" in that court against Verizon Internet Services, Inc., wherein the RIAA successfully moved to compel Verizon to disclose subscriber records under the DMCA, over Verizon's statutory and constitutional challenges against the DMCA's subpoena provision.[2] Spurred by this victory, the RIAA began issuing hundreds of subpoenas from the D.C. Court, regardless of the location of the target. Unlike Verizon, however, Charter does no business in D.C. and has no subscribers or subscriber records there. Accordingly, Charter objected to the D.C. Subpoenas for lack of personal jurisdiction, improper service and venue, among other grounds. [Exh. 4.A] Undeterred, the RIAA continued serving wave after wave of subpoenas, in automated fashion. [Exh. 2] Charter promptly objected to each wave of subpoenas on the same grounds. [Exh. 4.A] After a district court quashed similar RIAA subpoenas due to improper service,[3] the RIAA re-served many of the D.C. Subpoenas in Maryland, albeit not upon Charter, but on a Charter affiliate that does business in Maryland. Because Charter itself maintains no presence in Maryland, Charter objected to this re-service based on, *inter alia*, lack of personal jurisdiction. [Exh. 4.B]

The RIAA has now reissued the 93 D.C. Subpoenas from this Court in a single omnibus Subpoena. [Exh. 1] Due to the potential for confusion to the Charter subscribers whose information is sought by the subpoenas, as well as the possibility for conflicting decisions from different courts on identical subpoenas, Charter immediately requested that the RIAA withdraw the superseded "D.C. versions" of the Subpoena now before this Court. [Harper Decl., Exh. 4, at

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[2] *See In re Verizon Internet Services, Inc.*, 240 F. Supp. 2d 24 (D.D.C. 2003) ("Verizon I") (addressing statutory interpretation questions); *In re Verizon Internet Services, Inc.*, 257 F. Supp. 2d 244 (D.D.C. 2003) ("*Verizon II*") addressing constitutional challenges). These matters are now pending before the D.C. Circuit in Docket Nos. 03-7015, -7053, in which the court heard oral argument on September 23, 2003.

[3] *Massachusetts Institute of Technology v. Recording Industry Association of America*, No. 1:03-MC-10209-JLT (D. Mass., Aug. 7, 2003) (quashing subpoena for improper service) [Order attached as Exh. 4.H].

Exh. I] The RIAA initially agreed to do so in exchange for Charter's agreement to withhold any objections to the St. Louis subpoenas based on jurisdiction or venue. After Charter upheld its end of the bargain, however, the RIAA reneged on its agreement, and has now refused to withdraw the superseded D.C. Subpoenas. [Bragalone Decl., Exh. 3] Although the RIAA seems to recognize that the prior subpoenas are now superseded, the RIAA is attempting to use their existence as leverage against Charter's efforts to protect its affected subscribers; incredibly, the RIAA has stated that it will not agree that the D.C. Subpoenas are withdrawn unless Charter waives all of its properly asserted objections, including those that are designed to give Charter adequate time to notify its subscribers of the RIAA's subpoenas. [Exh. 3.A] Charter cannot and should not be required to waive its rights and jeopardize the interests of its affected subscribers simply because the RIAA has now chosen to allow its duplicative subpoenas remain on file.

The RIAA's attempt to dangle the prior subpoenas over Charter and its subscribers as a "Sword of Damocles" – ready to drop if Charter doesn't give in to the RIAA's demands that Charter waive its right to assert the very objections that are pending before this Court – should not be permitted. Charter requests that this Court protect Charter from burdensome and duplicative discovery, to ensure that Charter's affected subscriber have the ability to appear before this Court to protect their rights (if they so desire), and to protect the jurisdiction of this Court to determine the viability and enforceability of the RIAA's omnibus Subpoena (as set forth in Charter's October 3, 2003 Motion to Quash). The Court should do so by precluding the RIAA from enforcing the admittedly duplicative and obviously superseded D.C. Subpoenas.

## III. ARGUMENT AND AUTHORITIES

In this Memorandum, Charter does not re-hash the arguments and objections now under review by this Court in the Motion To Quash the omnibus Subpoena now before this Court. Rather, Charter asks this Court to address the RIAA's improper attempts to use the 93 D.C.

Subpoenas to strip this Court of jurisdiction over the matters already before it. In particular, the Court should protect Charter from enforcement of the D.C. Subpoenas because:

1) Enforcement of these superseded subpoenas would seek duplicative and burdensome discovery from Charter, in violation of Rule 26 of the Federal Rules of Civil Procedure;

2) Enforcement would exacerbate an already confusing situation, by subjecting the affected Charter subscribers to multiple subpoenas from multiple courts, as well as the inherent possibly of inconsistent rulings;

3) Permitting the D.C. Subpoenas to co-exist with the consolidated Subpoena would preclude Charter from giving meaningful and accurate notice to the affected subscribers, as required by the Cable Communications Act of 1984 (the "CCA");

4) Enforcement of clearly superseded subpoenas from a distant forum would undermine the RIAA's invocation of the jurisdiction of this Court; and

5) In addition to all of the defects contained in the omnibus Subpoena before this Court (and subject to Charter's Motion To Quash, filed October 3, 2003), the D.C. Subpoenas also suffer from the following fundamental defects:

   a) The D.C. Court does not have personal jurisdiction over the respondent, Charter; and

   b) The purported service of process of the D.C. Subpoenas on Charter is defective under Fed. R. Civ. P. 45(a)(2) and (b)(2) because they were served over 100 miles from the place of production or inspection specified in the Subpoenas (D.C.)

For these reasons, this Court should protect Charter from the harassment, duplication, confusion, and burden that would necessarily result from any attempt by the RIAA to use the

superseded D.C. Subpoenas in an effort to deprive this Court of its jurisdiction to decide the issues before it.[4]

### A. The D.C. Subpoenas Have Been Superseded by the RIAA's Reissuance of the Consolidated Subpoena from this Court

By voluntarily issuing the consolidated Subpoena from this Court, the RIAA effectively withdrew the D.C. Subpoenas and rendered them moot. The RIAA cannot request two different courts at different times to issue identical subpoenas to the same party, and then choose the forum in which to litigate. The second subpoena necessarily supersedes the first.[5]

This Court has recognized a need on occasion to serve a "replacement subpoena" when a previously issued subpoena is defective and unenforceable. *See Plant Genetic Systems, N.V. v. Northrup King Co.*, 6 F. Supp. 2d. 859, 860-61 (E.D. Mo. 1998). But when a replacement subpoena is served, it is that subpoena and not the earlier, invalid and unenforceable subpoena, that remains live and at issue. *Id.* In *Plant Genetics*, the party serving the replacement subpoena apparently agreed that the earlier issued subpoena was defective, *see id.*; but even if the serving party does not concede that the first subpoena was improper, "[b]y serving the second subpoena, [that party] effectively withdrew the first subpoena." *Stewart v. Mitchell Transport*, 2002 U.S. Dist. LEXIS 12958, at *29 (D. Kan. 2002).

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[4] In seeking to preclude enforcement of the D.C. Subpoenas, while quashing the replacement Subpoena from this Court, Charter is not seeking to have it both ways. Quite the contrary, Charter is willing to "fully comply" with subpoenas issued by the RIAA – but only valid subpoenas, which comply with the law and the Federal Rules, and do not subject Charter to undue burden and expense, and which allow Charter to satisfy its obligations to its subscribers under the CCA.

[5] The RIAA may argue that the D.C. Subpoenas were not withdrawn because of the so-called "first-filed rule," and that because the D.C. Subpoenas were issued first, they should be the ones litigated. Such a rule has no application to the present situation. The first-filed rule awards priority of venue to the "party who first establishes jurisdiction." *Northwest Airlines, Inc. v. American Airlines, Inc.*, 989 F.2d 1002, 1006 (8th Cir. 1993) (emphasis added). Here, however, the RIAA has not, and cannot, establish jurisdiction over Charter in the D.C. court (*see* Section III.E.1, *infra.*). Moreover, the first-filed rule presupposes that opposing parties have instituted litigation over the same issues in separate courts. *Id.* But rather than opposing parties filing separate actions in different courts, here, it is the same party – the RIAA – that is instituting legal action in multiple forums.

When the RIAA purported to serve the D.C. Subpoenas on Charter in either Missouri or Maryland, Charter vigorously objected to, among other things, lack of personal jurisdiction, improper venue, and improper service. [Exhs. 4.A, 4.B] To avoid these objections, the RIAA voluntarily abandoned enforcement of the D.C. Subpoenas, and instead requested this Court to issue the consolidated Subpoena, which, in the words of 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." [Exh. 1]

Simply put, by serving the "replacement subpoena" from this Court, the RIAA effectively withdrew the D.C. Subpoenas. Charter should be protected from the enforcement of these withdrawn subpoenas.

### B. The D.C. Subpoenas Seek Duplicative Discovery and Place an Undue Burden on Charter, in Violation of Fed. R. Civ. P. 26

The D.C. Subpoenas are also unreasonably cumulative and duplicative, and should not be enforced. Under Rule 26, upon a motion for a protective order, a court may limit discovery if it is determined that "the discovery sought is unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(2). The application of this rule is straightforward. Where a subpoena *duces tecum* "essentially seeks the production of the same documents" that were at issue in a previous subpoena, the "twin requests constitute an abuse of discovery." *Fleet Business Credit v. Hill City Oil*, 2003 U.S. Dist. LEXIS 3354, at *10 (E.D. La.). Similarly, when "many requests in the second subpoenas correspond to requests made in the original subpoenas ... [t]hose requests are 'unreasonably cumulative or duplicative' under Fed. R. Civ. P. 26." *In re Nova Biomedical Corp.*, 182 F.R.D. 419, 423 (S.D.N.Y. 1998); *see also Frankford Hospital v. Davis*, 1985 U.S. Dist. LEXIS 20187, at *4-*5 (E.D. Pa. 1985) (a subpoena is unreasonably cumulative when identical information has been requested previously through interrogatories).

The D.C. Subpoenas do not "essentially" seek the same information as the Subpoena issued from this Court, they seek exactly the same information, and are based upon an identical allegation of copyright infringement under the DMCA. As such, the D.C. Subpoenas are unreasonably cumulative and duplicative, and any attempted enforcement of them by the RIAA would constitute an abuse of discovery.

### C. Subjecting the Affected Subscribers to Multiple Subpoenas Would Result in Confusion, Possibly Inconsistent Rulings, and Would Preclude Charter from Providing Meaningful Notice, as Required by the CCA

Although Charter is the party seeking protection from the D.C. Subpoenas, the Court should not lose sight of the fact that those most affected by the RIAA's bullying tactics are the 93 Charter subscribers whose personal identifying information is being sought. Although the RIAA may seek to portray these faceless individuals as cyber-shoplifters, the first lawsuits filed by the RIAA reveal a very different picture of the RIAA's targets – which have included a 12-year-old girl,[6] an elderly sculptor (against whom the RIAA actually dropped its suit),[7] and a young college student[8] – none of whom the RIAA bothered to contact before filing suit. What is clear is that the RIAA's stalk-and-sue campaign has resulted in rampant confusion and fear by countless individuals. Allowing the RIAA to maintain duplicate subpoenas against the same individuals, in distant forums, would only exacerbate a situation that is already so troubling that it has garnered the attention of Congress. [Exhs. 4.C, 4.D]

For example, allowing the RIAA to issue and enforce duplicate subpoenas would preclude Charter from providing meaningful and accurate notice to its subscribers, as required by the CCA. In particular, the CCA precludes Charter, as a cable operator, from disclosing any

[6] *See* article at Exh. 4.E.

[7] *See* article at Exh. 4.F.

[8] *See* Exh. 4.G.

"personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned." 47 U.S.C. § 551(c)(1) (emphasis added). The CCA provides an exception if the disclosure is ordered by a court, but only if "the subscriber is notified of such order by the person to whom the order is directed." *Id.* at § 551(c)(2)(B) (emphasis added). This exception is, in turn, further subject to the requirement that the "subject of the information [be] afforded the opportunity to appear and contest such entity's claim." *Id.* at § 551(h) (emphasis added).

The RIAA seeks to maintain and presumably enforce at least two subpoenas for each IP address about which the RIAA is seeking subscriber-identifying information. At best, subscribers would be left to guess which court may ultimately issue a ruling on the matter. Further, any subscribers who do choose to challenge the RIAA's subpoena would be forced to incur the significant expense and burden of litigation in two different courts thousands of miles apart. Moreover, the affected subscribers (and Charter) could be subjected to inconsistent rulings on the same issue by two different courts.

This untenable result can be avoided by simply holding the RIAA to its invocation of this Court's jurisdiction. In so doing, this Court protects its authority to consider and decide the issues raised by that Subpoena, as addressed in Charter's pending Motion To Quash.

### D. This Court Should Protect Its Jurisdiction over the Substantive Issues Raised by the RIAA's Attempted Invocation of the DMCA Subpoena Provisions, as Addressed in Charter's Pending Motion To Quash

In securing the issuance of the consolidated Subpoena from this Court, the RIAA voluntarily invoked this Court's jurisdiction. In doing so, it invited this Court to resolve the outstanding issues relating to the 93 IP addresses about which the RIAA seeks subscriber information. Charter requests that the Court exercise its inherent power to ensure that the

resolution of the issues the RIAA brought before this Court are addressed within this jurisdiction.[9]

As noted above, Rule 26 grants this Court the power to protect parties such as Charter from duplicative and cumulative discovery. In a like manner, 28 U.S.C. § 1651 grants the Court power "in aid of its jurisdiction" to protect its flexibility and authority to decide a controversy and bring it to a natural conclusion. *See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 295 (1970). Any attempt by the RIAA to resurrect the D.C. Subpoenas would run afoul of this Court's jurisdictional power to resolve the controversy before it. The substance of the consolidated Subpoena before this Court and those issued out of the D.C. Court are identical. The only significant differences relate to personal jurisdiction and service – indeed, it was the fundamental jurisdictional and service defects of the D.C. Subpoenas that prompted the RIAA's issuance and service of the consolidated Subpoena presently before the Court. Allowing the RIAA to proceed in any manner to enforce the D.C. Subpoenas would risk inconsistent decisions and waste judicial resources better focused in this jurisdiction – the jurisdiction chosen by the RIAA.

### E. The D.C. Subpoenas Are Subject to Additional, More Fundamental Defects, Further Mandating that They Not Be Enforced

In addition to duplicating the requests for information in the consolidated Subpoena, and suffering from many of the same procedural defects as the consolidated Subpoena (as addressed in Charter's Motion To Quash) the D.C. Subpoenas further suffer from more serious, fundamental defects – which further illustrates why they should not be enforced.

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[9] That the Court has the power to enter such an order is clear. This Court has jurisdiction over the relevant party – namely the RIAA. The RIAA secured the issuance of subpoenas from this Court upon its realization that Charter had no contacts with Washington, D.C. Moreover, both the inherent and equitable powers of the Court and the power granted by 28 U.S.C. § 1651 give this Court ample authority to move to protect its management and resolution of compliance with the subpoenas issued by the RIAA.

### 1. The D.C. Court Does Not Have Personal Jurisdiction Over Charter

The RIAA bears the burden of establishing a factual basis for the court's exercise of personal jurisdiction over Charter. *See Crane v. N.Y. Zoological Soc'y*, 894 F.2d 454, 456 (D.C. Cir. 1990). A court may exercise personal jurisdiction by finding either specific or general jurisdiction. *See ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002). The District of Columbia's long arm statute has been interpreted by the D.C. Circuit Court of Appeals as requiring the same contacts as federal due process. *See GTE New Media Servs. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000). The Due Process Clause, in turn, requires that the RIAA demonstrate minimum contacts between Charter and the District of Columbia such that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *See GTE New Media*, 199 F.3d at 1347 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).[10] These minimum contacts must be grounded in some act by which Charter "purposefully avails [itself] of the privilege of conducting activities with the forum state, thus invoking the benefits and protections of its laws." *Asahi Metal Indus. v. Super. Ct. of Cal.*, 480 U.S. 102, 109 (1988).

The D.C. Court has neither specific nor general jurisdiction over Charter. Turning first to the issue of specific jurisdiction, Charter's headquarters are here, in St. Louis, Missouri. Charter does not provide any services (Internet or otherwise) to District of Columbia residents. [Lindsey Decl., Exh. 5, at ¶ 3] Accordingly, Charter can state with certainty that none of the affected subscribers are residents within the District of Columbia. [Lindsey Decl., Exh. 5, at ¶ 6] And

[10] Personal jurisdiction over a non-party served with a subpoena *duces tecum* is obtained by a court pursuant to Rule 45(c). *See Jee v. Hanil Bank, Ltd.*, 104 B.R. 289, 293 (C.D. Cal. 1989); *Ghandi v. Police Dept. of Detroit*, 74 F.R.D. 115, 120-21 (E.D. Mich. 1977). A corporation is amenable to service in any forum within which the corporation has sufficient minimum contacts. *See Jee*, 104 B.R. at 293; *see also Ghandi*, 74 F.R.D. at 121 ("[W]here the witness named in the subpoena is a corporation, the subpoena may be served upon an officer, managing agent, or general agent of the corporation in a district within which the corporation has sufficient presence or 'contacts,' to make it amenable to service of a subpoena duces tecum.").

because Charter does not have any subscribers in the District of Columbia, the sole subject matter of the RIAA subpoenas, *i.e.,* the identification of alleged Charter subscribers under the DMCA, bears no connection to that district. Moreover, Charter does not advertise, own property, or maintain any bank accounts in this jurisdiction. [Lindsey Decl., Exh. 5, at ¶ 5] In short, the RIAA cannot establish any basis for specific jurisdiction over Charter in D.C.

Nor could the RIAA establish general jurisdiction. Under the Due Process Clause, general jurisdiction over a foreign corporation is only permissible if the defendant's business contacts with the forum district are "continuous and systematic." *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984). The only contact that Charter has with the District of Columbia relates to its activities before the United States government and its agencies. These contacts alone, however, cannot provide for this Court's jurisdiction over Charter. The "government contacts exception" precludes "the assertion of personal jurisdiction over a non-resident whose only contacts with the District of Columbia are for purposes of dealing with a federal agency or Congress." *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 50 (D.D.C. 1994) (citing *Dooley v. United Technologies Corp.*, 803 F. Supp. 428, 434 (D.D.C. 1992)).

### 2. The D.C. Subpoenas Violate Fed. R. Civ. P. 45 by Service Upon Charter Over 100 Miles from the Place of Production

The D.C. Subpoenas were also improperly served, in violation of Federal Rule of Civil Procedure 45. Rule 45 provides procedural protection to a third-party, like Charter, who receives a subpoena duces tecum, so that the recipient may avoid undue burden by having to litigate the validity of the subpoena in an inconvenient forum. Rule 45 accomplishes this by:

- First, providing that that subpoena for production of documents must issue from the court for the district in which production is to be made (Fed. R. Civ. P. 45(a)(2); and

- Second, providing that subpoenas may be served outside the district from which they issue only if that place of service is "within 100 miles of the place of the ... production specified in the subpoena." (Fed. R. Civ. P. 45(b)(2).)

In view of these territorial constraints, the RIAA subpoenas are procedurally defective, because they require Charter to produce information or records to the RIAA's designated counsel in Washington, D.C., which is more than 100 miles away from Charter's headquarters in St. Louis, Missouri. Having failed to issue subpoenas in compliance with these territorial constraints, the RIAA's D.C. Subpoenas are defective, and therefore unenforceable.

The RIAA may allege that it based the extraterritorial service of the RIAA Subpoenas on Charter on the assertion that the DMCA authorizes nationwide service of process. The DMCA, however, does no such thing. The subpoena provision of the DMCA provides that the Federal Rules of Civil Procedure govern the subpoenas:

> [u]nless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

17 U.S.C. § 512(h)(6) (emph. added).

The appropriate Federal Rule of Civil Procedure in this case is Rule 45. As discussed above, Rule 45 itself does not authorize nationwide service of process. Thus, the RIAA must rely upon the language of the DMCA to find its authorization, and cannot do so. The relevant language in the DMCA is found in section 512(h)(1): "A copyright owner . . . may request the clerk of *any United States district court* to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection." 17 U.S.C. § 512(h)(1) (emphasis added). The Supreme Court's interpretation of similar language in *Robertson v. Railroad Labor Board*, where the Court held that "any District Court of the United States"

language to mean "any such court 'of competent jurisdiction,'"[11] controls the interpretation of the similar language in the DMCA. In other words, "any district court" may issue a subpoena in accordance with section 512 provided that it has jurisdiction over the subpoenaed party.

Charter does not base its territorial argument on the notion that it would be an undue burden simply to mail the requested information into the District to the counsel designated in the subpoenas. Rather, the burden and inconvenience lies in the fact that – to challenge the many deficiencies in the D.C. Subpoenas – Charter would be forced to litigate this issue in a distant and inconvenient forum, one in which Charter is not even subject to personal jurisdiction.

At least one court has quashed the RIAA's DMCA subpoenas on this very basis. On August 7th, in response to Motions To Quash filed by the Massachusetts of Technology and Boston College in Boston, the Boston district court agreed with the universities that the RIAA improperly issued subpoenas out of the D.C. Court against entities hundreds of miles away. *Massachusetts Institute of Technology v. Recording Industry Association of America,* No. 1:03-MC-10209-JLT (D. Mass., Aug. 7, 2003); *Boston College v. Recording Industry Association of America*, No. 1:03-MC-10210-JLT (D. Mass., Aug. 7, 2003). [Orders attached as Exh. 4.H] The present situation is even more compelling, as the RIAA has already reissued a consolidated subpoena from this Court seeking the very same information sought in the 93 improperly served and issued D.C. Subpoenas.

## IV. CONCLUSION: RELIEF REQUESTED

For the foregoing reasons, Charter respectfully requests that the Court protect it from any effort by the RIAA to enforce the duplicative 93 D.C. Subpoenas.

[11] 268 U.S. 619, 627 (1925), cited in *Federal Trade Commission v. Browning,* 435 F.2d 96, 98-99 (D.C. Cir. 1970).

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

McKOOL 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