

Order, the Court found that Plaintiffs' declaratory judgment action was essentially a challenge to the FCC's opinion.

Under 28 U.S.C. § 2342 ("the Hobbs Act") and section 402 of the Telecommunications Act, codified at 47 U.S.C. § 402, only courts of appeal have jurisdiction to review the findings of the FCC in this context. The Court stated, "To find in favor of T-Mobile on the claims raised in its complaint would be in conflict with the FCC's order. This would be in violation of the Hobbs Act and section 402 of the Telecommunications Act [], because any dissatisfaction that T-Mobile had with the FCC decision had to be raised before the Court of Appeals, not this Court." *See* Order [Doc. # 30] at pp. 11-12. Accordingly, the Court found it lacked subject matter jurisdiction to hear Plaintiffs' case and dismissed the action.

II. Discussion

In its pending Motion, T-Mobile requests that the Court transfer this case to the United States Court of Appeals for the Eighth Circuit in accordance with 28 U.S.C. § 1631. Section 1631 provides:

Whenever a civil action is filed in a court . . . or an appeal, including a petition for a review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

28 U.S.C. § 1631. The purpose of section 1631 is to "aid parties who might be confused

about which court has subject matter jurisdiction, and to preserve their opportunity to present the merits of the claim, which if dismissed for filing in the wrong court might subsequently be barred by a statute of limitations.” *Lopez v. Heinauer*, 332 F.3d 507, 511 (8th Cir. 2003). In *Lopez*, the court found that transfer under section 1631 was appropriate where the petitioner’s claim would be time-barred by the applicable statute of limitations if it had not been transferred. Similarly, in *Hyun Min Park v. Heston*, the court considered a transfer motion under section 1631 in the context of whether the claim would be time-barred if it had to be re-filed in the correct court. 245 F.3d 665 (8th Cir. 2001).

Thus, it appears that section 1631 is employed to aid those parties who initially file their claim in the incorrect court but whose claims would be time-barred if they had to re-file their claim in the correct court. Such an interpretation of section 1631 is consistent with the statutory language, which provides a cure for statute of limitations defects when a case is transferred. *See* 28 U.S.C. § 1631 (“[T]he [transferred] action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.”).

T-Mobile asserts that the language of section 1631 is mandatory because it employs the term “shall.” The Court acknowledges that dicta in previous cases states that section 1631 is a mandatory statute, but those cases concern situations where the claim would be time-barred if it were not transferred. Alternatively, in *Gunn v. United States*

Dept. of Agriculture, the court held that section 1631 is *not* mandatory where the dismissed claim could be timely re-filed in the appropriate forum. 118 F.3d 1233 (8th Cir. 1997) (refusing to invoke section 1631 where moving party failed to show his claim would be time-barred if not transferred). Thus, section 1631 is mandatory only where the moving party has satisfied the requisite showing that the party's claim would be time-barred if the court does not grant the transfer.

In this Court's opinion, it would not be in the interest of justice to have this matter litigated in yet another court. T-Mobile has filed an appeal in the Ninth Circuit and sought relief before the FCC, and there has already been an unreasonable delay in the resolution of this matter because of T-Mobile's transparent litigation strategy. More importantly, however, T-Mobile has not offered any evidence that its claim would be time-barred if it is dismissed and then re-filed in the Court of Appeals for the Eighth Circuit, or that it would have been timely if it were filed originally in the Eighth Circuit and not in this Court. Therefore, T-Mobile has failed to demonstrate that it can invoke section 1631 and the Court will deny its Motion. The Eighth Circuit will, of course, make its own decision about the propriety of giving T-Mobile an appeal, under these circumstances.

III. Conclusion

Accordingly, it is hereby

ORDERED that T-Mobile's Motion to Alter or Amend Judgment [Doc. # 32] is DENIED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

DATE: November 10, 2005
Jefferson City, Missouri