

I.

BACKGROUND

1. During the just over three-month period from May 1, 2011, through August 8, 2011, approximately 100 different telecommunications companies located in ten different states brought at least 20 separate proceedings against Halo in the public utility commissions of those states, all seeking resolution of a specific set of issues that Halo asserts are preempted by federal law and are improper for resolution by a state commission. **Exhibit A, ¶ 2.** Those issues include: (a) whether Halo's service, based upon its "Radio Service Authorization" ("RSA") issued by the Federal Communications Commission ("FCC"), is "wireless" under federal law; (b) whether Halo's service constitutes a "commercial mobile radio service" under 47 U.S.C. § 332(d), and a number of other issues based upon federal statutes and regulations. **Exhibit A, ¶ 2.** This action is one of those proceedings, and resolution of this action—like all of the others—will require resolution of the above-stated issues. **Exhibit A, ¶ 2.**

2. The proliferation of all these proceedings over a short period of time threatened to destroy Halo by running up enormous litigation costs, and also threatened to undermine Halo's entire business model by the very real danger of there being conflicting results in the different proceedings in the different states. **Exhibit A, ¶ 3.** Halo has only one federal RSA, and it cannot mean different things in different states. **Exhibit A, ¶ 3.**

3. On August 8, 2011, Halo filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in Case Number 11-42464, *In Re Halo Wireless, Inc.*, in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "Bankruptcy Case"). **Exhibit A, ¶ 4.** Immediately thereafter, Halo began removing the

state commission proceedings—including this action—to federal court pursuant to 28 U.S.C. § 1452, and by such removal, this action came before this Court, just as there are a number of similarly-removed actions before other federal courts, all raising the same federal issues discussed above. **Exhibit A, ¶ 4.**

4. On September 1, 2011, Halo filed Adversary Proceeding No. 11-04160, *Halo Wireless, Inc. v. The Livingston Telephone Company, et al.*, in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Central Adversary”). **Exhibit A, ¶ 5.** All of the telecommunications companies mentioned above, including Halo’s opposing party or parties in this action, are named as defendants in that Central Adversary. **Exhibit A, ¶ 5.** In the Central Adversary, Halo asks for declaratory judgment as to all of the federal issues raised in the various state commission proceedings which specifically relate to the extent and validity of Halo’s interest in its property, including but not limited to Halo’s RSA and the scope of Halo’s permitted activities under that RSA, to be determined in one action binding on all parties, including all of the federal issues before this Court. **Exhibit A, ¶ 5.** Instead of numerous state commission proceedings or federal court actions addressing the same issues in multiple venues, and potentially resulting in inconsistent rulings as to the extent of Halo’s property or other interest in its federal RSA and the scope of activities permissible under that RSA, the Central Adversary provides all of the parties a single, central proceeding within which to obtain final resolution of these federal issues. *See Exhibit A, ¶ 5.*

5. As it is doing in each of the other removed actions now pending in various federal courts, Halo now seeks transfer of this action to the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Bankruptcy Court”), to

become an adversary proceeding in the Bankruptcy Case, and then to be consolidated into the Central Adversary also pending in the Bankruptcy Case. All of the federal issues can thereby be resolved in one proceeding binding on all. To the extent that there are any issues which should be returned to the respective states, the court in the Central Adversary will have the best overall perspective from which to identify such issues and direct them back to the appropriate state(s) while guarding against the threat of inconsistent results on exclusively federal issues. In addition, and most importantly, transferring all such actions, including this action, to the Bankruptcy Court for consolidation into the Central Adversary will assure that issues relating to the extent and validity of the assets of the bankruptcy estate, and the extent to which those assets can be put to use for the benefit of all creditors, will be reserved for determination by the Bankruptcy Court.

II.

ANALYSIS

6. This proceeding is part of a web of ongoing litigation between numerous parties in the telecom industry and Halo. Halo has filed the Central Adversary against all relevant parties, including Halo's opposing party or parties in this proceeding, in the Bankruptcy Court. For the following reasons, this proceeding should be transferred to the Bankruptcy Court based upon 28 U.S.C. § 1412 and 28 U.S.C. § 1404(a).

A. Motion To Transfer Pursuant To 28 U.S.C. § 1412

7. Halo requests the Court to transfer the instant proceeding to the Bankruptcy Court, pursuant to section 1412, because this action arises in, arises under, or is related to the Bankruptcy Case filed in that district. Section 1412 allows a district

court to “transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. Pursuant to section 1412, “the party moving for the transfer has the burden of showing that the transfer is warranted and must do so by a preponderance of the evidence.” *In the Matter of Commonwealth Oil Refining Co., Inc.*, 596 F.2d 1239, 1241 (5th Cir. 1979). “The ‘interest of justice’ component of § 1412 is a broad and flexible standard that must be applied on a case-by-case basis. It contemplates a consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness....” *Zhang v. Rothrock*, 2006 WL 213951, (S.D. Tex. Jan. 25, 2006) (quoting *In re Manville Forest Products Corp.*, 896 F.2d 1384, 1391 (2nd Cir. 1990)). Thus, one of the most important factors for this Court to consider is whether the transfer will facilitate the economical and efficient administration of the bankruptcy estate. This factor is particularly germane here where Halo is moving to transfer this proceeding, along with a number of other similar actions, to the Bankruptcy Court for consolidation with the Central Adversary. It cannot be seriously argued that the consolidation of multiple separate lawsuits/proceedings into one adversary proceeding before one court does not serve the best interests of judicial economy and the orderly administration of justice. The consolidation would eliminate having to hold numerous hearings or trials in multiple venues and the possibility of conflicting rulings or results.

8. Also, the presumption in favor of transfer to the Bankruptcy Court applies to Halo here. “There is a strong presumption that proceedings ‘related to’ a bankruptcy should be litigated in the judicial district where the bankruptcy itself is pending.” *Zhang*, 2006 WL 213951, (quoting *AEP Energy Servs. Gas Holding Co. v. Bank of America*,

N.A., No. Civ. H-03-4973, 2004 WL 2278770, (S.D. Tex. Sept. 14, 2004)). Having all parties before one court, which will decide the overall merits of these telecom industry disputes is crucial to the development and confirmation of any plan of reorganization which Halo would propose in the Bankruptcy Case.

9. In enacting section 1412, Congress “did not intend to otherwise hamper the well settled principle that the court in which the bankruptcy case itself is pending is the proper venue for adjudicating all related litigation.” *Baker v. Muscletech Research and Development, Inc.*, 2006 WL 1663748, (E.D. Wis. June 9, 2006); *see also* COLLIER ON BANKRUPTCY, ¶ 4.04(1) (rev. 15th ed. 2006) (“Section 1412 of title 28 applies to changes of venue both of (a) cases under title 11 and (b) civil proceedings arising under title 11, or arising in or related to cases under title 11a.”); *see also A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986) (stating that for “cases related to the bankruptcy proceedings ... the general statute [i.e., section 1412] would govern”); *Zhang*, 2006 WL 213951, (transferring a case “related to” a Chapter 13 bankruptcy pursuant to section 1412).

10. Moreover, pursuant to section 1412, this Court should transfer this proceeding to the Eastern District of Texas because it serves “the interests of justice.” 28 U.S.C. § 1412. In considering the interests of justice, courts have recognized that proceedings related to a bankruptcy case should be transferred to the district where the bankruptcy proceedings are pending. *See AEP Energy Servs.*, 2004 WL 2278770, (citing *Hohl v. Bastian*, 279 B.R. 165, 177-78 (W.D. Pa. 2002) (“[T]he home court presumption provides that a court in which the bankruptcy case itself is pending is the proper venue for adjudicating all related litigation, including those suits which have been filed in other

state or federal courts.”)). “The general rule is that the court where the bankruptcy case is pending is the proper venue for all related proceedings within the court’s jurisdiction, because speedy and economic administration of cases is a paramount consideration in the bankruptcy process.” *In re Vital Link Lodi, Inc.*, 240 B.R. 15, 19 (Bankr. E.D. Mo. 1999). There is no reason not to follow that rule here. In the Bankruptcy Court, the Central Adversary will allow all of the parties, including Halo’s opposing party or parties in this proceeding, to assert all claims and defenses and have all matters heard in one action. There is no reason that all disputes cannot be adjudicated in a consolidated proceeding in the Bankruptcy Case.

11. The factors generally considered when reviewing a motion to transfer under section 1412 are (1) the proximity of creditors of every kind to the court, (2) the proximity of the debtor to the court, (3) the proximity of witnesses necessary to the administration of the estate, (4) the location of the assets, and (5) the economical and efficient administration of the estate. Halo and many of its creditors are within one hundred miles of the Bankruptcy Court. **Exhibit A**, ¶ 7. To the extent the issues are not legal ones, most of the witnesses will be Halo representatives located close to the Eastern District. *See Exhibit A*, ¶ 7. Halo has assets in the Eastern District. *See Exhibit A*, ¶ 7. It would be far more economical for Halo to litigate with the numerous parties in the Bankruptcy Court than in multiple courts or commissions spread across the nation. *See Exhibit A*, ¶ 7.

12. Other factors that have been applied include (1) the presumption in favor of the home court, (2) the ability to receive an impartial trial, and (3) the law to be

applied. All of these factors favor these matters being considered by the Bankruptcy Court.

13. Some courts have interpreted section 1412 to apply only to core proceedings. *See, e.g., Rumore v. Wamstad*, No. Civ. A. 01-2997, 2001 WL 1426680 (E.D. La. Nov. 13, 2001) (citing *Tultex Corp. v. Freeze Kids, L.L.C.*, 252 B.R. 32 (S.D.N.Y. 2000)). Other courts have applied the section to the core and non-core proceedings. *See, e.g., Dunlaps v. Friedman's, Inc.*, 331 B.R. 674, 676-77 (Bankr. S.D. W.Va. 2005).¹ In this case, the claims include alleged compensation owed by Halo and a determination of the respective classifications of the parties for regulatory purposes. Clearly, the allowance or disallowance of claims against the debtor's estate (Halo) is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Also, the relationship of the debtor to creditor, and any decision affecting such relationship, or any adjustment thereof, is a core proceeding. 28 U.S.C. § 157(b)(2)(O). Finally, the extent of Halo's interest in property of the estate, such as its RSA, under section 541 of the Bankruptcy Code, is clearly a core determination.

B. Motion To Transfer Pursuant To 28 U.S.C. § 1404(a)

14. Out of an abundance of caution, Halo further requests that the Court transfer the instant case to the Bankruptcy Court, pursuant to section 1404(a), because the private and public interest factors weigh in favor of such transfer. In determining whether transfer is warranted under section 1404(a), courts consider the private and public interest factors articulated by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, 330

¹ The majority of courts have not yet determined whether section 1412's language, "under title 11," renders the statute applicable only to core proceedings which arise under the Bankruptcy Code or whether it is also applicable to proceedings that arise in or are merely related to a bankruptcy case. Since the Central Adversary is a core proceeding for the reasons noted herein, section 1412 applies. Nonetheless, caution dictates that section 1404 be addressed as well below.

U.S. 501, (1947). The private interest factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of unwilling, and the costs of obtaining attendance of willing, witnesses; (3) the possibility of view of premises, if view would be appropriate to the action; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *See id.* at 508. The relevant public interest factors to be considered are: (1) the administrative difficulties resulting from court congestion; (2) the local interest in having localized controversies decided at home; (3) the avoidance of unnecessary problems in conflicts of laws, or in the application of foreign law; and (4) the unfairness of burdening citizens in an unrelated forum with jury duty. Courts also consider judicial economy – that is, whether a transfer would avoid duplicative litigation and prevent a waste of time and money. *See id.* at 509.

15. With respect to the private interest considerations, the first two factors are neutral and the third factor is not applicable, but the fourth factor is key. Saving on judicial and economic resources favor this proceeding being heard by the Bankruptcy Court. Similarly, the applicable public interest factors are better served with the case being considered in the Bankruptcy Court. Jurisdictional and federal law issues, including Halo's position that many of the matters sought to be litigated are within the exclusive jurisdiction of the FCC and affect Halo's interest in property of its bankruptcy estate, are particularly well-suited for resolution by the Bankruptcy Court.

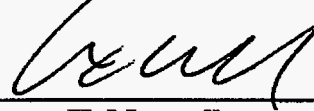
16. The Court has authority to grant the transfer now. A decision to transfer to another forum is not a decision on the merits, and therefore, does not require a finding of jurisdiction. *See Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422 (2007). Transfer under section 1404(a) is simply "a determination that the merits should

be adjudicated elsewhere” and does not invoke “substantive law-declaring power.” *In re LimitNone, LLC*, 551 F.3d 572, 576-77 (7th Cir. 2008) (quoting *Sinochem*, 549 U.S. at 432 and applying *Sinochem* to section 1404(a)). Therefore, the propriety of jurisdiction and removal and/or remand need not be addressed by the Court before transfer.

17. Halo respectfully requests that the Court transfer this proceeding to the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division.

Respectfully submitted this 20th day of September, 2011.

Respectfully submitted,



Gregory H. Maxwell
CRONIN & MAXWELL, PL
2223 Oak Street
Jacksonville, FL 32204
Telephone: 904-388-9565
Fax: 904-358-7301
**ATTORNEYS FOR HALO WIRELESS,
INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Transfer and Brief in Support of Motion to Transfer* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record on this the 20th day of September, 2011:

Tracy W. Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monore Street, Suite 400
Tallahassee, FL 32301
Telephone: 305-347-5558
**COUNSEL FOR BELL SOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA**

Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
FLORIDA PUBLIC SERVICE COMMISSION



Gregory H. Maxwell

1. “My name is Russell Wiseman. I am President of Halo Wireless, Inc. (“Halo”). I am over the age of eighteen (18) years and fully competent to make this affidavit. The facts stated in this Affidavit are true and correct, and are within my personal knowledge. This Affidavit is submitted in support of the Motion to Transfer and Brief in Support of Motion to Transfer, filed contemporaneously herewith.

2. “During the just over three-month period from May 1, 2011, through August 8, 2011, approximately 100 different telecommunications companies located in ten different states brought at least 20 separate proceedings against Halo in the public utility commissions of those states, all seeking resolution of a specific set of issues that Halo asserts are preempted by federal law and are improper for resolution by a state commission. Those issues include: (a) whether Halo’s service, based upon its “Radio Service Authorization” (“RSA”) issued by the Federal Communications Commission (“FCC”), is “wireless” under federal law; (b) whether Halo’s service constitutes a “commercial mobile radio service” under 47 U.S.C. § 332(d), and a number of other issues based upon federal statutes and regulations. This action is one of those proceedings, and it is my understanding that resolution of this action—like all of the others—will require resolution of the above-stated issues.

3. “The proliferation of all these proceedings over a short period of time threatened to destroy Halo by running up enormous litigation costs, and also as threatened to undermine Halo’s entire business model by the very real danger of there being conflicting results in the different proceedings in the different states. Halo has only one federal RSA, and I do not know how Halo could operate if its RSA was interpreted to mean different things in different states.

4. “On August 8, 2011, Halo filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in Case Number 11-42464, *In Re Halo Wireless, Inc.*, in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Bankruptcy Case”). Immediately thereafter, Halo began removing the state commission proceedings—including this action—to federal court pursuant to 28 U.S.C. § 1452, and by such removal this action came before this Court, just as there are a number of similarly-removed actions before other federal courts, all raising the same federal issues discussed above.

5. “On September 1, 2011, Halo filed Adversary Number 11-04160, *Halo Wireless, Inc. v. The Livingston Telephone Company, et al.*, in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Central Adversary”). All of the telecommunications companies mentioned above, including Halo’s opposing party or parties in this action, are named as defendants in that Central Adversary. In the Central Adversary, Halo asks for declaratory judgment as to all of the federal issues raised in the various state commission proceedings in one action binding on all parties, including all of the federal issues before this Court. Instead of numerous state commission proceedings or federal court actions addressing the same issues in multiple venues, and potentially resulting in inconsistent rulings as to the interpretation of Halo’s one federal RSA, the Central Adversary provides all of the parties a single, central proceeding within which to obtain final resolution of these federal issues.

6. “On August 9, 2011, Halo filed a list of “creditors,” which included Halo’s opposing party or parties in this action and those in all other matters in which Halo is seeking transfer.

7. "Halo has its principal place of business and corporate office at 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. Halo's corporate office is approximately 65 miles from the Eastern District of Texas, Sherman Division. All of the books and records, including transaction type records, of Halo are located at its corporate office in the Dallas-Fort Worth Metroplex ("DFW"). All of the employees or other witnesses whose testimony would appear to be relevant to this action are located in or around DFW. All servers containing electronically stored information possibly relevant to this action are located in, or accessible from, the corporate office of Halo located in DFW. It would be far more economical for Halo to litigate with the numerous parties in the Bankruptcy Court than in multiple courts or commissions spread across the nation."

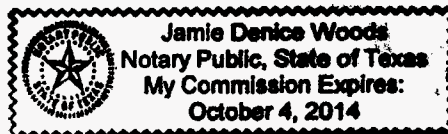
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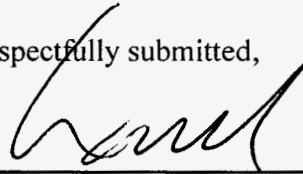
Russell Wiseman

SUBSCRIBED and SWORN to before me by Russell Wiseman, this 19 day of September, 2011.



NOTARY PUBLIC, STATE OF TEXAS

Respectfully submitted,



Gregory H. Maxwell
CRONIN & MAXWELL, PL
2223 Oak Street
Jacksonville, FL 32204
Telephone: 904-388-9565
Fax: 904-358-7301

ATTORNEYS FOR HALO WIRELESS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Corporate Disclosure Statement* was served via regular mail and/or certified mail, return receipt requested, on the following counsel of record on this the 21st day of September, 2011:

Tracy W. Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monore Street, Suite 400
Tallahassee, FL 32301
Telephone: 305-347-5558
**COUNSEL FOR BELL SOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA**

Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
FLORIDA PUBLIC SERVICE COMMISSION



Gregory H. Maxwell