

would accrue to the benefit of the ratepayers and shareholders."²⁰

14. The court held that the Commission's valuation methodology with respect to the one-time transfer of assets mandated by industry reform was arbitrary and capricious and contrary to precedent.²¹ The court concluded that the Commission failed to recognize that the court's test in *Democratic Central*, which the Commission declined to apply, was designed to protect not only the interests of ratepayers, but also the competing interests of shareholders.²² The court found inappropriate under *Democratic Central* the Commission's valuation methodology, because the court held that the Commission was attempting to transfer the increase in the value of the payphone operations from the LECs' shareholders to ratepayers. The court held that, under *Democratic Central*, as a result of the Commission's price cap rules, investors rather than ratepayers have borne the risk of loss on payphone assets. Therefore, the court concluded that investors should reap the benefit of increases in the value of such assets.²³ The court stated that in *Southwestern Bell Corp. v. FCC*, while upholding the Commission's affiliate transactions rules, specifically "noted *Democratic Central's* continued applicability to 'one-time' transfers mandated by industry reform." The court held that the transfer of payphone assets pursuant to § 276 fell within this category.²⁴ The court rejected upon similar analysis a challenge by other petitioners to the net book valuation method required by the Commission with respect to the reclassification of payphone assets as nonregulated within the same corporate entity.²⁵

15. We seek comment on how the asset valuation requirements for the transfer of payphone assets established in the *Payphone Orders* should be revised to respond to the concerns raised by the court. The court appears to hold that net book value must be used for one-time transfers mandated by industry reform, which would apply to payphone asset transfers. If other approaches are recommended, parties should address how such approaches

²⁰ *Payphone Order*, 11 FCC Rcd at 20,623-20,625, paras. 163-66.

²¹ *Illinois Public Telecomm.*, No. 96-1394, slip op. at 28.

²² *Id.* at 26, citing *Democratic Cent. Comm. of the Dist. of Columbia v. Washington Metro. Area Transit Comm'n.*, 485 F.2d 785, 806 (D.C. Cir. 1973), cert. denied, 415 U.S. 935 (1974) (*Democratic Central*).

²³ *Id.* at 27.

²⁴ *Id.* (citing *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378, 1382 (D.C. Cir. 1990)).

²⁵ *Illinois Public Telecomm.*, No. 96-1394, slip op. at 28.

comply with the court's *Democratic Central* analysis.

III. Ex Parte Presentations

16. This Public Notice is a "permit-but-disclose proceeding and subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules, 47 CFR 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b), as well. The Commission requires all written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to be served on all parties to this proceeding.

IV. Comment Filing Dates

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M St., N.W., Washington, D.C. 20554 on or before *August 26, 1997*, and reply comments on or before *September 9, 1997* from the release of this public notice. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. In addition, parties should file two copies of any such pleadings with the Chief, Enforcement Division, Common Carrier Bureau, Stop 1600A, Room 6008, 2025 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C.

17. For further information, contact Michael Carowitz, Rose Crellin, or Greg Lipscomb, Enforcement Division, Common Carrier Bureau, 202/418-0960.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-21819 Filed 8-14-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080597F]

RIN: 0648-AK14

Amendment 34 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 34 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 34 would authorize an allocation of Atka mackerel to vessels using jig gear. Annually, up to 2 percent of the total allowable catch (TAC) specified for this species in the Eastern Aleutian Islands District (AI)/Bering Sea subarea (BS) could be allocated to the jig gear fleet fishing in this area. This action is necessary to provide an opportunity to a localized, small-vessel jig gear fleet to fish for Atka mackerel in summer months. The large-scale trawl fisheries typically harvest the available TAC for this species early in the fishing year, which does not allow the jig gear fishermen an opportunity for a summer fishery. Comments from the public are requested.

DATES: Comments on Amendment 34 must be submitted on or before October 14, 1997.

ADDRESSES: Comments on Amendment 34 should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 34 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendment are available from NMFS at the above

address, or by calling the Alaska Region, NMFS at 907-586-7228.

FOR FURTHER INFORMATION CONTACT:
Susan Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in

determining whether to approve the FMP or amendment.

Amendment 34 was adopted by the North Pacific Fishery Management Council at its June 1997 meeting and would authorize an allocation of Atka mackerel to vessels using jig gear. Annually, up to 2 percent of the annual TAC specified for Atka mackerel in the Eastern AI/BS could be allocated to vessels using jig gear as part of the annual groundfish specifications process. The percent allocation, up to the 2 percent ceiling, would be based on recent and anticipated harvest capacity of the jig gear fleet. This amendment is being proposed to respond to concerns that the developing small vessel jig gear fishery for Atka mackerel during spring and summer months routinely is precluded by the fast-paced trawl

fisheries for this species that typically harvest the available TAC in the Eastern AI/BS early in the fishing year.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 34 has been submitted for Secretarial review and approval. The proposed rule to implement this amendment is scheduled to be published within 15 days of this document.

Dated: August 11, 1997.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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