

transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. These delegations of authority shall be made in writing and copies retained to permit monitoring of the system. These records of delegations of authority shall be available for examination by GSA auditors.

(2) To justify the use of cash in excess of \$100 instead of GTR's when procuring passenger transportation services, both the Government agency head, or his or her designated representative, and the traveler shall certify on the travel voucher the reasons for this use.

(3) Subsequent to traveler reimbursement, copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF 1170's, Redemption of Unused Tickets, must be forwarded for audit to the General Services Administration (BWAA/C), Attention: Code E, Washington, D.C. 20405.

(4) Travel vouchers shall be maintained in the agency to be available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see § 101-11.404-2), provides instructions for the disposal of these travel vouchers.

(5) In the absence of written authorization or approval, travel shall be purchased in accordance with policies and procedures prescribed in applicable Government travel regulations. The traveler shall be responsible for all additional costs involved for this travel, such as the use of foreign-flag carriers, first-class travel, or more costly modes. The traveler should be aware that the use of a GTR may be required to obtain certain discount fares and to comply with the mandatory provisions of FPMR Temporary Regulations (A Series) governing the use of contract airline service between designated city-pairs. Cash shall not be used to circumvent the regulations governing airline city-air contracts.

(c) Under non-emergency circumstances, where use of a GTR is possible, heads of agencies, or their designated representatives, may request an exemption from the Administrator of General Services.

(1) Requests must be made in writing, may only be for individual travel itineraries, and must fully explain why an exemption should be granted. Simple traveler convenience will not be cause for GSA approval. For the purpose of performing a fare audit, requests must also include copies of travel authorizations, ticket coupons, and any

ticket refund applications, or SF 1170's associated with the travel in question.

(2) Travelers may not be reimbursed for non-emergency use of cash to procure passenger transportation services costing more than \$100 unless written approval is granted by GSA.

(d) Suspected travel management errors and/or misroutings which result in higher travel costs to the U.S. Government will be reported to the appropriate military or civil agency travel manager for corrective action with the violating agency.

(e) Agencies shall not impose a financial hardship on travelers by requiring their use of personal funds to purchase the services set forth in paragraph (a) of this section but shall provide the funds through travel advances.

(f) Travelers using cash to purchase individual passenger transportation services shall procure such services directly from carriers and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment is preprinted on the travel voucher and shall be initialed by the traveler.

(g) Travelers using cash to procure passenger transportation services shall be made aware of the provisions of § 101-41.209-4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers. (See § 101-41.203-1(b).)

Ray Kline,
Acting Administrator of General Services.

[FR Doc. 83-12736 Filed 5-11-83; 8:45 am]

BILLING CODE 6820-34-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-4

Workshop Responsibilities

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped

ACTION: Final rule.

SUMMARY: The Committee amends its regulations (a) to require workshops to comply with the applicable compensation and employment

standards prescribed by the Secretary of Labor and (b) to clarify the requirement that workshops must pay to their central nonprofit agencies the fee specified in § 51-3.5.

EFFECTIVE DATE: May 12, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 15, 1983, the Committee published a proposed rule (48 FR 6728) to amend § 51-4.3 of 41 CFR 51-4. The background and reasons for the changes were described in the notice announcing the proposed rule.

One comment was received on the proposed rule indicating that it was an attempt to impose regulations retroactively. The commenter recommended a number of additional amendments in Parts 2 and 3 of the Committee's regulations. As indicated in the background discussion on the proposed rule relating to the payment of the central nonprofit agency fee, the purpose of the proposed change was to clarify the long-standing requirement that participating workshops must pay to their central nonprofit agencies the fee specified in § 51-3.5, and, therefore, the requirement to pay the fee already exists. The additional changes recommended by the commenter, while related to the subject of the central nonprofit agency fee, are not appropriate for consideration in connection with these proposed changes. They may be appropriate for consideration as separate actions at a later time.

Another commenter stated that the proposed change pertaining to the requirement for workshops to pay a central nonprofit agency fee was not a "clarification" but a new provision of the regulations. As indicated in the discussion on the proposed rule, the requirement regarding the payment of central nonprofit agency fees has been in effect for participating workshops since 1938.

A third commenter questioned the proposed changes on the basis that there are no statutory provisions in the Committee's Act (41 U.S.C. 46-48c) which specifically address compliance with employment and compensation standards or payment of central nonprofit agency fees. As indicated in the discussion of the proposed rule, workshops participating in the Committee's program are required by

other statutes to meet the compensation and employment standards prescribed by the Secretary of Labor. Under the proposed rule, when the Department of Labor notifies the Committee that a workshop is not in compliance with the employment or compensation standards established by the Secretary of Labor, the Committee will have the authority to limit or withdraw that workshop's authorization to produce commodities or provide services under its Act. This change would preclude the incongruous situation of a workshop's being permitted to continue receiving benefits under the Committee's program while failing to comply with the standards prescribed by the Secretary of Labor regarding the pay or working conditions of its blind or other severely handicapped employees. The Committee's Act (41 U.S.C. 47(c)) requires the Committee to designate one or more central nonprofit agencies. The Act also authorizes the Committee to "make rules and regulations regarding . . . such matters as may be necessary to carry out the purpose" of the Act (41 U.S.C. 47(d)(1)). The change regarding payment of central nonprofit agency fees ensures the continued financial support the central nonprofit agencies require in order for them to carry out their functions as defined by statute and regulation. Both of the proposed changes are clearly necessary to carry out the purposes of the Act.

Two comments were received endorsing the changes and one inquiry was received regarding the Committee's role in enforcing compliance with compensation and employment standards set by the Secretary of Labor. The correspondent was informed that the Committee would not be involved in enforcing compensation and employment standards, since, by law, such enforcement is the responsibility of the Secretary of Labor.

I certify that this is not a major rule under Executive Order 12291 and would not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 41 CFR Part 51-4

Government procurement.

Accordingly 41 CFR Part 51-4 is amended as follows:

PART 51-4 —[AMENDED]

1. Section 51-4.3 is amended by revising (a)(5) and adding a new paragraph (a)(8) to read:

§ 51-4.3 Responsibilities.

(a) . . .

(5) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor.

(8) Upon receipt of payment by the Government for commodities produced or services provided under the Act, pay to the central nonprofit agency the fee specified by § 51-3.5.

(41 U.S.C. 46-48c)

C. W. Fletcher,

Executive Director.

[FR Doc. 83-12750 Filed 5-11-83; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 83-146]

Allocation of Spectrum in 928/941 MHz Band and Establishment of Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has issued its *Memorandum Opinion and Order on Reconsideration* (Part 2), of its *Report and Order*, in General Docket 80-183, 89 FCC 2d 1337, 47 FR 24557 (1982), which allocated 3 MHz of spectrum for private and common carrier one-way paging stations. The non-network paging issues were resolved in the *Memorandum Opinion and Order on Reconsideration* (Part 1), FCC 82-503, released November 16, 1982. This Order adopts the rules and policies for the implementation of network paging in the 900 MHz band. On reconsideration, the Commission has allocated all three frequencies for nationwide paging and it has adopted a two-step regulatory process in which one carrier or group of carriers will be licensed on each network frequency with the responsibility for organizing the network and then local carriers can affiliate with a network organizer by adhering to its proposal. In addition, the Commission has preempted state authority over technical standards, entry, and rate regulations for the three network frequencies.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Lisa Wershaw, Common Carrier Bureau, (202) 632-6450.

List of Subjects in 47 CFR Part 22

Communications common carriers, Mobile radio service.

Memorandum Opinion and Order on Reconsideration (Part 2)

In the matter of amendment of Parts 2 and 22 of the Commission's rules to allocate spectrum in the 928-941 MHz band and to establish other rules, policies, and procedures for one-way paging stations in the Domestic Public Land Mobile Radio Service; General Docket No. 80-183; RM-2365, RM-2750, RM-3047, RM-3068.

Adopted April 7, 1983.

Released: May 4, 1983.

By the Commission. Commissioner Jones concurring in the result; Commissioner Fogarty absent.

I. Preliminary Statement

1. We have before us informal comments and four petitions for reconsideration¹ of our *First Report and Order* (the *Order*) in General Docket 80-183, allocating three MHz of spectrum from 929 to 932 MHz for private radio and common carrier one-way paging systems.²

2. On November 16, 1982, we released a *Memorandum Opinion and Order on Reconsideration* (Part 1), FCC 82-503, resolving issues pertaining to the local, non-network frequencies and deferring reconsideration of network (regional or nationwide) issues to a subsequent Order. With respect to the non-network frequencies, we affirmed the requirement of need showings for existing carriers requesting an additional paging frequency, and we adopted a fixed forty-mile separation criterion for purposes of determining whether an applicant is entitled to an initial or additional paging frequency without demonstrating need. We also waived the submissions of topographic maps and profile graphs with 900 MHz paging applications.

3. We now address issues which pertain to the network frequencies. All four petitioners request that we change the network policies and procedures adopted in the *First Report and Order*. Page America and UTS also request that we preempt state authority over

¹ Petitions were filed by Telocator Network of America (Telocator); Mobile Communications Corporation of America (MCCA); Page America Communications, Inc. (Page America); and Beep-Beep Page, Inc. (Beep-Beep Page). Informal comments were filed by American Telephone and Telegraph Company (AT&T) and United Telephone System, Inc. (UTS).

² 89 FCC 2d 1337.

technical, entry, exit and rate regulations for the three network frequencies. We agree with the petitioners that certain changes are necessary and will better serve the public interest. Therefore, as discussed below, we have decided to alter the regulatory framework for network paging and preempt state authority for the three network frequencies.

II. Background

A. Current Network Paging Policy and Procedures

4. In our *First Report and Order*, we allocated three frequencies for common carriers to use to provide inter-city network paging.³ An inter-city network paging system would enable a subscriber to receive pages when outside his local service area. If the subscriber travels to an area that is part of an inter-city system, he could be paged through the radio common carrier (RCC) or wireline carrier in that area.

5. Of the three network frequencies, one was restricted to nationwide use and the other two were designated for either nationwide and/or regional paging. Extended cut-off procedures (six months from public notice of the first filing on a channel) were adopted for all three channels, with a single date applicable to the nationwide-channel and different dates applicable for each region on the regional channels.

6. In addition, because of the limited frequencies devoted to network paging, we decided to require network licensees to share these frequencies instead of licensing only one applicant on a frequency. In an effort to encourage sharing agreements, we determined that applicants must reach unanimous agreement as to the method of interference-free use and technical operation of the frequencies within one year, or all applications would be rejected and those applicants would be barred from reapplying for those frequencies for one year. We also decided to prohibit local paging on the network frequencies. However, if after a three-year period the non-network frequencies were exhausted, any nonassigned network frequencies could be applied for and use for local paging.

B. Pleadings

7. The petitioners request numerous changes in the regulatory framework for network paging. MCCA and Telocator argue that all three frequencies should be designated for nationwide use, since

a nationwide network has the capacity to service both nationwide and regional demand. Telocator and MCCA claim that under our present allocation, the Commission will simultaneously receive both regional and nationwide applications for each frequency. They argue that this will create severe practical and regulatory problems and will only complicate the applicants' task of reaching unanimous agreement as to interference-free sharing of the frequencies. Moreover, MCCA asserts that with the Commission's recent lowband frequency allocations, licensees have already assembled many regional paging systems and do not need frequencies exclusively for that purpose.

8. All four petitioners reject the unanimity concept as unrealistic and unworkable. They argue that it is unrealistic to assume that applicants will voluntarily resolve the complex technical, financial and managerial problems associated with network paging. MCCA, Telocator and Page America emphasize the distinctions between licensing considerations and the technical decisions involving signaling format and network protocol. They argue that it is unreasonable to expect applicants with differing goals and interests to agree unanimously to all aspects of network paging operation. Moreover, the petitioners claim that the unanimity requirement will encourage obstructionists or applicants wishing to obtain unwarranted concessions from those seriously interested in providing network paging to the public.

9. Telocator and MCCA also object to the cut-off procedures adopted in the *First Report and Order*. They argue that the 180 day cut-off period gives applicants who are seriously interested in providing network paging a short period to prepare applications, while "me too" applicants or obstructionists are given twice as long to prepare mutually exclusive applications. Further, MCCA claims that the cut-off procedures will result in smaller cities receiving network service on a much delayed schedule because time and economics will force applicants to first file applications for network paging authority in major markets. Thus, applicants who fail to file for the smaller cities and towns initially will be precluded from doing so for the entire year that the applicants negotiate organization of the network.

10. Further, MCCA and Page America assert that the cut-off period coupled with a three year reversion for local paging will be the death knell of network paging. MCCA claims that at least one year-and-a-half will be

required to complete one cycle of network paging applications: 180-day cut-off period, followed by one year of negotiation. Since MCCA believes that network paging will be provided first to major markets and will progressively spread to smaller communities, it is concerned that it might take two cycles, or more than three years, for smaller communities to obtain network paging. Therefore, since petitioners believe that allowing local paging on network frequencies would frustrate this service, they are concerned that smaller communities might never obtain nationwide paging.

11. All four petitioners propose alternative regulatory schemes for the network frequencies. Beep-Beep Page, Inc. suggests that we adopt a plurality proposal similar to that implemented in Docket 21039, 77 FCC 2d 212, 215 (1980).⁴ Page America suggests a two level approach. It claims that on one level the local licensees of nationwide paging frequencies should agree upon a method of coordinating interference-free sharing of the frequencies, and on a second level agreement should be reached among the managers of the network services.⁵ It proposes that we issue construction permits to qualified applicants soon after the cut-off date and condition the permits on the establishment of a frequency sharing plan. With respect to the network managers, Page America suggests that we not require them to cooperate with one another, or file any applications with the Commission since the network plan will be included with the affiliate's applications. It also recommends that the carriers licensed on the nationwide paging frequency be allowed to affiliate with more than one manager.

12. Telocator recommends a "hybrid" form of rulemaking. It suggests that all applicants desiring to operate inter-city networks submit applications pursuant to Section 214 of the Act,⁶ containing

³ Under a plurality plan, if unanimous agreement as to technical coordination is not reached by a certain deadline, the plan supported by the largest group of applicants that reach an agreement would be placed on public notice and opened to comments. Subsequently, the Commission can adopt the plurality plan if it is found to be reasonable and non-discriminatory. All pending applications could then be amended to comply with the accepted form of technical coordination.

⁴ Page America's proposal is vague. It does not explain who the "Managers" are, or what they should agree to and why.

⁵ Although AT&T concurs with Telocator's hybrid rulemaking approach, it states that Section 214 applications are not necessary because the radio license granted under Title III of the Communications Act carries with it Section 214 authority if the lines constructed and operated are the same as those that would be the subject of a Section 214 application. Communications Satellite

⁶ The three common carrier frequencies allocated for network paging service are 931.8875, 931.9125 and 931.9325 MHz. See revised 47 CFR 22.501(p)(1), in Appendix A of this Order.

information including applicant's legal, technical and financial qualifications; its sharing concept; its ability to initially serve 30 metropolitan areas and expand nationwide; and its ability to accommodate both nationwide and regional service on one frequency. The Commission would then issue a public notice listing qualified applicants. The public notice would trigger 30-day periods for comments and reply comments, which would culminate in the Commission's adoption of rules and policies for initiation of inter-city service and licensing of network stations. Telocator states further, that if a negotiated settlement is not reached for operating on the three network channels, the Commission should select the plurality proposal which best serves the public interest, convenience and necessity.

13. MCCA proposes a two-step regulatory process, in which the problem of organizing each channel is solved initially and then the processing of applications for individual stations becomes routine. MCCA suggests that we distinguish between two types of network paging entities, the network organizer and the network operator. The network organizer for each channel would be an RCC or affiliated group of RCC's and would be responsible for defining the signaling format and network protocol for its channel. On the other hand, the network operator would be licensed on one of the three network channels, would interconnect with the existing network and would conform its application to the technical standards established by the network organizer.

14. In the first step, MCCA proposes that the Commission accept applications on a date certain, 90 days after adoption of the Reconsideration Order, only from applicants seeking to organize a network channel. MCCA details the information which should be included in the application. This list is similar to the information requested by Telocator in its proposal; however, it also includes the mode of operation for the network channel, types of service offered, signaling format and network interconnection scheme, and the method by which the applicant would provide open and nondiscriminatory access to the network. MCCA further suggests that if fewer than three network applications are filed, the excess channels could either revert to local use or be held in reserve. If more than three network applications are filed, and if the applicants are unable to align

themselves into three groups, MCCA proposes that we conduct written hearings to select the three superior proposals. Further, approximately ninety days after selection of the three network organizers, the Commission should accept applications for the local network paging stations. Each local applicant would be free to select the network with which it wishes to affiliate.

III. Discussion

15. We have decided to modify our network paging rules with respect to the channel designations and licensing policies and procedures. When we adopted the network policies in our *First Report and Order*, we were aware of the demand for inter-city paging, but we were unpersuaded by the proposals before us. The petitioners have outlined network proposals which differ significantly from the plan adopted in our *First Report and Order*. Moreover, two groups of experienced carriers have publicly announced proposals to establish nationwide paging systems significantly different from what was contemplated at the time of the *First Report and Order*.⁷ Based upon the proposals now before us, we find that certain revisions to the regulatory framework will result in less burdensome procedures, and will lead to the establishment of more economic and efficient network paging systems. We turn first to channel designations and licensing policies, and then to application and authorization procedures.

A. Channel Designations and Licensing Policies

16. We agree with Telocator and MCCA that all three frequencies should be designated as nationwide channels.⁸

⁷One group consists of MCI Communications, Metromedia, Communications Industries and American Express. They propose to offer "national electronic message delivery service," primarily over MCI's long distance network and the local distribution facilities of the partners. The other group consists of MCCA and National Public Radio (NPR), which would use excess capacity in NPR's earth stations and satellite transponders for intercity distribution, with local distribution handled by any local paging company that wished to join the network. Our mention of these proposals in no way indicates our approval of them. No action has or will be taken on these proposals until they are submitted in conjunction with the procedures articulated in this Order.

⁸Local paging was prohibited on the three network frequencies in the *First Report and Order*, at para. 29. None of the petitioners requested that we allow local paging on the network frequencies and we continue to believe that local use of these frequencies could stifle their development for network use at least in the initial period of development. But see para. 25, *infra*. Nevertheless, once the network frequencies are licensed and in operation, economic or operational efficiency may

In the *First Report and Order* we designated two of the three channels for nationwide or regional use in the belief that we would thereby "offer users a greater choice of service." We also expressed the view that many potential users might desire service just within a particular geographic region, such as Washington/Baltimore, rather than between regions or nationwide. However, after reviewing the petitions for reconsideration, we are persuaded that regional service can be provided on the nationwide networks and that separate regional systems on two of the channels will result in less efficient use of the spectrum and will engender difficult licensing and frequency coordination problems.

17. The regional systems we envisioned were modest expansions of the wide-area systems in existence today throughout the Northeast Corridor and other parts of the country. It is quite possible to construct a new regional system by interconnecting transmitters on a single frequency in the newly allocated 35, 43 or 900 MHz channels. In fact, a number of the hundreds of applicants for the lowband and 900 MHz channels have proposed exactly that. Our substantive requirements for network applicants, discussed below, assure that regional paging will be available to augment existing wide area service on local paging channels. Therefore, we find no need to set aside channels specifically for regional paging on the ground that such demand as may exist can readily be satisfied by both wide-area and network systems.

18. A second major change we will adopt is MCCA's proposal to license the three network channels to three common carrier "network organizers" whose services will be distributed through local "network operators" in each community. The "network organizer" will be a common carrier or group of common carriers who will organize the network, *i.e.*, determine among other things, the mode of operation, signaling format, interconnection and interference-free sharing schemes, and who will be licensed by the Commission. The "network operator" will be a local common carrier who agrees to coordinate with the technical parameters of a network organizer, and who will provide network services to its subscribers.

mitigate in favor of loosening the absolute prohibition against local service. We will entertain requests from the three network licensees to provide local paging as long as it can be offered without displacing or otherwise reducing the quality of service to nationwide customers.

19. We believe, based on the information before us at this time, that this "carrier's carrier" approach is the easiest and most effective way to implement network paging. Unlike the plan adopted in our *First Report and Order* or the proposal submitted by Telocator, Page America and Beep-Beep Page, MCCA's plan no longer relies on interference-free sharing arrangements among potential competitors (whether by unanimity or plurality agreement) as prerequisites to network implementation. This eliminates the complicated and time-consuming cut-off procedures and negotiation periods associated with sharing arrangements. One licensee will be responsible for organizing each network and detailing the legal and financial arrangements and technical parameters of the system. We are hopeful that licensing three separate network organizers—as opposed to requiring sharing among all or a plurality of applicants—will foster technically diverse, competitive networks to the benefit of the public.

20. Under this structure, we tentatively find that the "network operators" should be afforded open and nondiscriminatory access to the network paging systems. In essence, there will be three intercity network systems whose services will be retailed through local outlets. Under our previous plan, the issue of nondiscriminatory access was insignificant because anyone who wanted to participate in nationwide service had an opportunity to share a frequency. Now that we will choose only three network licensees from a potentially large number of mutually exclusive applicants, there appears to be justification for ensuring the right of local operators to feed traffic into the networks and to participate in the distribution of traffic originating outside their service areas to the extent that it is technically feasible. If we do not, the network organizers will theoretically be able to select individual local operators, to exclude all local participants except those already affiliated with the network organizers, or to give their affiliates and subsidiaries favored treatment. We tentatively find that ceding such comprehensive control over local operation to the three organizers would not be in the public interest.

21. On the other hand, affording local carriers open and nondiscriminatory access, provided they agree to abide by the network organizer's technical specifications, will encourage competition at the local level and will increase the diversity of user choices. We also foresee benefits to paging subscribers in smaller cities and towns

who will be able to obtain access to a network through a local paging company which might not otherwise have chosen to participate in the network under our previous plan for sharing. In sum, we believe the plan advanced by MCCA, with some modifications, is preferable to any other plan we have considered in terms of expediting service to the public, fostering competition in the provision of network services, and reducing the administrative burdens on the applicants and the Commission.

22. Our network licensing policies are only tentative at this time because we want to solicit further comment on the nondiscriminatory access feature in our companion Further Notice of Proposed Rulemaking. There may be significant operational or economic reasons, of which we are not now aware, militating against the nondiscriminatory access requirement. It may also be that nondiscriminatory access is not necessary to assure a competitive environment for nationwide paging because substitutable services will be available to consumers. These substitutes could influence the three network licensees to offer and price their services competitively in the absence of nondiscriminatory access, which is, after all, nothing more than unrestricted resale of network service. We do not, however, want to delay the licensing process while we continue to consider the access question. Accordingly, applicants should prepare their applications based on the assumption that the policies stated here will become final. Should we later decide not to require nondiscriminatory access, we will allow those who have filed timely applications an opportunity to amend. No new applications will be accepted after the cut-off date established here regardless of our disposition of the issues in the Further Notice.

B. How the System Works

23. As presently conceived, nationwide paging works fairly simply. The nationwide subscriber has a telephone number assigned to him in his home area by the local carrier (network operator) from whom he takes service. When he travels, he leaves the number with persons who need to reach him, for example, his employer. The employer initiates the page by dialing the local number. The network operator recognizes the number as a nationwide paging number and sends it through terrestrial facilities to the network licensee (network organizer) at the network control center. At that point the signal is routed over the network to terminal points in every city in which

the network organizer operates. (The page can also be sent to selected cities, depending upon the configuration of the network.) From there, the page is transmitted over terrestrial links to the transmitters of participating network operators and then over the air to the subscriber's paging receiver. Because nationwide and local paging do not share the same frequency, the subscriber initially has to have two pagers for local and network service. However, dual frequency pagers are now under development and should soon obviate the need for two pagers.

C. Application and Authorization Procedures

24. To effectuate the revised plan for network paging, we will adopt MCCA's two-step process, with some minor modifications. First, we will accept applications from, and license, the common carrier network organizers as set forth below. The organizers will control the use of the frequencies and will have all the rights and responsibilities under the Act and the Commission's Rules associated with such control. Second, we will accept abbreviated applications from, and authorize, the local paging companies who have chosen to participate in a network. These companies will have no right to use the frequency other than in the manner specified by the organizer. As explained below, the application form for local operators will be abbreviated, and only a minimum amount of technical information will be required.*

25. Those seeking to organize a network must submit their applications no later than 90 days after publication of this Order in the *Federal Register*. At the close of the 90 day period, we will review the applications to determine their acceptability for filing, and we will then issue a Public Notice announcing any mutually exclusive applications and beginning the thirty day pleading period.¹⁰ If fewer than three applications are received, we will hold the remaining channels in reserve to revert to local use if they are not used for network paging within three years as provided in the *First Report and Order*. If more than three applications are received, as expected, and if the applicants do not align themselves into three groups under the procedures in Section 22.29 of the

* See para. 25, *infra*.

¹⁰ Applicants should not designate a specific channel in their applications. All applications filed for the three network channels will be deemed mutually exclusive because we consider the channels to be fungible. *Contrast* Digital Electronic Message Service, 88 FCC 2d 1716 (1982).

Rules, the three licensees will be selected by whatever comparative selection process is in effect at the time.¹¹

26. Because only three network licenses are available, we agree with MCCA that the network organizers ought to submit something more than bare-bones applications on Form 401.¹² These networks are likely to be complex and expensive to organize and construct, so it is important for us to examine financial and technical ability in evaluating the applications. Furthermore, to insure that the networks are truly nationwide in scope, we find that there should be a minimum number of communities served from the initiation of service. Telecor suggested 30 cities, but we believe that may be too many considering this is a new service with which no one has any experience. We find instead that it is reasonable to require each applicant initially to propose to serve at least fifteen metropolitan areas of its choice, and to submit its plans demonstrating how it will expand service nationwide¹³ within two years of the start of service. We will define "metropolitan areas" as the Standard Metropolitan Statistical Areas (SMSAs) listed in the U.S. Department of Commerce's Statistical Abstract of the United States—1981 (102 Ed.) at pp. 920-925. We do not anticipate updating this SMSA list or accepting markets from any other source.¹⁴ The following is a summary of the information that must be filed as part of the application:

(a) The applicant's projected costs of organizing and constructing the network and its technical and financial ability to start up and operate the network;

(b) The proposed mode of operation and technical plan for implementing the network channel, including but not limited to the types of services offered, signaling format and network interconnection plan;¹⁵

(c) The method and extent to which the proposed network would provide for interference-free operation on the channel in each local area;

(d) The method by which the applicant would provide open and nondiscriminatory access to its network;

(e) The initial service proposal for at least fifteen Standard Metropolitan statistical Areas;

(f) The applicant's plans for expanding network service from its initial markets to nationwide coverage within two years from the initiation of service;

(g) A model tariff showing, among other things, how it intends to provide nondiscriminatory access to network operators;¹⁶ and

(h) How the public interest, convenience and necessity would be served by a grant of the particular application.

27. The second stage of processing will be the licensing of the local operators on the network organizer's frequencies. Immediately after selection of the network organizers, we will begin taking applications from the local participants, the network operators.¹⁷ We contemplate issuing a Public Notice formally establishing the opening application date; there will be no cut-off date because there is no mutual exclusivity. This licensing requirement is only necessary to insure compliance with our technical rules for transmitters and antenna structures. Accordingly, from carriers who already hold FCC licenses for paging or two-way mobile service, we will require only that pages 1 through 3 and the signature on page 6 of the Form 401 be submitted. These applicants may also omit answers to items 12, 13, 14, 15, 24, 25, 27, and 28, unless answers are needed to correct out-of-date information on file with the Commission. However, new entrants must complete the entire form to enable us to assess all of their qualifications to be Commission Licensees. One additional requirement for all applicants

will be a statement on the Form 401, asserting their willingness to comply with the network organizer's technical specifications. We anticipate that this type of *pro forma* licensing will speed service to the public with a minimum of paperwork for the Commission and the applicants.¹⁸

D. Federal Preemption

28. In our *First Report and Order*, we decided not to preempt state authority for the 900 MHz frequencies. We concluded that since paging systems are basically local in nature, the states should not be preempted from decisions concerning entry, technical and rate regulations for paging common carriers.

29. In their petitions, Page America and UTS urge the Commission to preempt state authority with respect to entry, technical, and rate regulation for the three network frequencies.¹⁹ Page America argues that by prohibiting local service on these frequencies we have created a new interstate communications service, and the states should be prohibited from regulating the operations on these three frequencies. It claims that without federal preemption, the development of an effective and feasible nationwide paging service will be delayed and its growth may be prevented. We believe Page America and UTS have raised valid concerns.

30. Federal preemption may occur in two instances. First, Congress may either expressly order preemption in a statute or implicitly command preemption by the statute's structure and purpose. Second, valid federal regulation may preempt state law or regulation whenever the state action creates an obstacle to the implementation of the purpose of the federal regulation. *Fidelity Federal Saving and Loan Association v. de la Cuesta*, —U.S.—, 73 L.Ed. 2d 664, 675 (1982). See also, *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963), *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The second situation exists in this proceeding. We have created a new nationwide communications service pursuant to our statutory authority. Because state regulation over the technical standards,

¹¹ We do not rule out random selection at this time; however, we anticipate receiving disparate proposals, which may militate in favor of traditional or modified comparative procedures.

¹² It is not necessary for applicants to demonstrate need for network service because we found such need when we allocated three channels in our *First Report and Order*.

¹³ By "nationwide" we do not mean literally everywhere in the country. We leave it to the applicants to forecast demand for service; however, we anticipate that the scope of the network service proposed by each applicant could be a comparative criterion in awarding licenses.

¹⁴ There are no minimum coverage areas or any similar requirements as there are in the cellular radio rules. 47 CFR § 22.901 *et seq.* Applicants need only propose at least one nationwide transmit/receive point within their chosen SMSAs.

¹⁵ As part of the proposal, each applicant is expected to describe how it will achieve efficient use of its channel.

¹⁶ Our approach to rate regulation is still under consideration. See paras. 29 and 36, *infra*. Consequently, applicants may not be able to formulate comprehensive tariff proposals by the filing deadline. We will accept model tariffs after the filing deadline as amendments to applications if we have not decided upon the method of rate regulations before then.

¹⁷ Since our ultimate decision on access requirements will affect the licensing of local operators, we will not accept stage two applications until that question is resolved. However, if we retain the open access requirement, the network operator would be free to affiliate with any or all of the network organizers licensed, as long as it agrees to adhere to the specifics of each carrier's network paging proposal. Furthermore, there would be no requirement's as to the number of markets an individual operator may serve.

¹⁸ These applications will be granted without a formal comparative hearing pursuant to § 22.32(b) because the applications are not mutually exclusive, nor subject to comparative consideration. The accepted applications will be listed in an informative public notice and will be subject to petitions to deny under Section 22.30 of the rules.

¹⁹ The method and extent of our rate regulation is discussed in an accompanying Further Notice of Proposed Rulemaking. This Notice requests comments on various tariff procedures for both the network organizers and operators.

entry, and rate regulation could seriously impede the development of this service, we believe such state regulation must give way to the paramount federal interest.

31. This new nationwide paging service is being authorized pursuant to both Title III and Title II of the Communications Act of 1934, as amended. Under Title III of the Act, the Commission has broad authority to regulate all communications by radio. That authority includes the power to "classify radio stations," to "prescribe the nature of the service to be provided by each class of licensed stations," to "study new uses for radio," and to "encourage the larger and more effective use of radio in the public interest." 47 U.S.C. 303 (a), (b), and (g). Furthermore, Section 301 of the Act explicitly grants this Commission sole authority to license radio facilities.²⁰ Under Title II of the Act, the Commission has broad authority to regulate interstate common carriers, whether or not they use radio facilities. Pursuant to Title II, the Commission regulates: (1) Entry into and exit from interstate service, (2) rates and regulations governing the offering of interstate service, and (3) interconnection between carriers for the provision of joint or "through" interstate service. 47 U.S.C. 201-105, 214. The courts have recognized a broad discretion in the Commission with respect to the manner in which it exercises its Title II powers to achieve statutory objectives.²¹ Of course, the Commission's Title II authority over interstate common carriers does not extend so far as to extinguish legitimate state regulation of purely intrastate common carrier communications. 47 U.S.C. 152(b).²² The Commission's authority over interstate common carriage, however, is comprehensive and does extend to facilities and services that might be located wholly

within a single state if those facilities and services are essential or integral parts of interstate communications.²³

32. In accordance with this statutory authority, we are creating the subject nationwide paging service. Because paging services have historically been local in nature, the states have traditionally regulated paging common carriers. Network paging, however, will be predominantly an interstate service, which may also address intrastate demands. In an effort to assure nationwide service, we have imposed two significant requirements upon any entity proposing to offer nationwide service. First, we have initially prohibited local paging on these frequencies. Although network organizers will be permitted to request permission to offer local paging on a secondary basis, such service offerings will not be the ordinary situation and will not be permitted to displace nationwide service. Second, and possibly more important, we are requiring that the three network licensees demonstrate the capability both to serve 15 SMSAs initially and to expand paging service nationwide within two years. Furthermore, in an effort to increase competition in this new market, we are tentatively requiring that the network operators be afforded open and nondiscriminate access to any or all nationwide channels. Regardless of whether that requirement is retained, it is essential to the interstate development of nationwide paging that the network organizer and its operators be afforded access to all cities and states it desires to serve. To achieve the rapid implementation of nationwide service and these policy objectives, we believe our regulation of the service must preempt state regulation with respect to entry, technical standards, and rate regulation for the three network frequencies.²⁴

33. Preemption of state entry regulation is necessary for several reasons. Initially, as noted above, access for paging operators to every city and state is crucial to our network scheme. If the states restrict entry, implementation of this service will be frustrated. Depending upon how the network is organized, full nationwide

coverage might be thwarted if carriers in particular cities are denied entry. State entry regulation also could delay the implementation of this new service as well as increase the carrier's expense of providing it. We realize that because this service has some intrastate characteristics the states may have an interest in how it is provided. The states, like other interested parties, may raise their concerns with this Commission whenever these entities apply for licenses.

34. We are also asserting federal primacy over technical standards for the network paging service. Nationwide operators will be required to comply with the technical parameter specified by the network organizer, including but not limited to the mode of operation, signaling format, network interconnection and method of interference free sharing. The assurance of compatible operation of equipment on an interstate and nationwide basis for the three frequencies is essential to the success of this service. State licensing requirements could add additional and possibly conflicting network technical specifications that would defeat the nationwide plan.

35. Finally, our action cannot coexist with state rate regulations of the three network organizers. The nationwide systems can be used for both interstate and intrastate communications.²⁵ Although the states generally regulate intrastate communications, they must stand aside when, as here, it is technically and practicably impossible to separate the two types of communications for tariff purposes.²⁶ Furthermore, we have issued an accompanying Further Notice of Proposed Rulemaking which solicits comments on the extent and method of rate regulation for the network operators. The scope of any preemption vis-a-vis the network operators' rates will be resolved in that proceeding.

36. We note that our preemption of state regulation in this instance is consistent with precedent. The preemptive effect of valid Commission actions over state regulation when it could interfere with interstate communications has consistently been recognized by the Courts. *Orth-Vision*, 69 FCC 2d 657 (1978), *aff'd sub nom.*

²⁰ In particular, Section 301 provides that "no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license on that behalf granted under the provisions of the Act." 47 U.S.C. § 301.

²¹ E.g., *AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978); *Philadelphia Television Broadcasting Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966); *Cf. Computer & Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982). Additionally Section 221(b) reserves to the states jurisdiction over telephone exchanges which serve single multi-state areas. *North Carolina Utilities Commission v. FCC* *supra* at 1045.

²² See *National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II) (Opinion of Wilkey, J.).

²³ *Computer & Communications Industry Association v. FCC*, *supra*; *People of California v. FCC*, 567 F.2d 84 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1010 (1978); *Puerto Rico Telephone Co. v. FCC*, 553 F.2d 694 (1st Cir. 1977); *North Carolina Utility Commission v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (NCUC II). See also *New York Telephone Co. v. FCC*, 631 F.2d 1059 (2d Cir. 1980); *General Telephone Co. of the Southwest v. FCC*, 449 F.2d 846 (5th Cir. 1971).

²⁴ See *n. 18 supra*.

²⁵ For example, a nationwide system can be used to communicate intrastate from San Francisco to Los Angeles, as readily as it can be used interstate from San Francisco to New York.

²⁶ See *Computer & Communications Industry Association v. FCC*, *supra* at 215; *North Carolina Utility Commission v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976); *North Carolina Utility Commission v. FCC*, 552 F.2d (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

New York State Commission on Cable Television v. FCC & USA, 669 F.2d 58 (2d Cir. 1982); *Telerent Leasing Corp.*, 45 FCC 2d 204 (1974), *aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir.) *cert. denied*, 429 U.S. 1027 (1976). Further it is well established that the Commission may assert jurisdiction over facilities that are wholly within a single state if local services cannot be easily and practicably separated from interstate services supplied through the same facilities. *People of State of California v. FCC*, 567 F.2d 84 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1010 (1978); *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036 (4th Cir.) *cert. denied*, 434 U.S. 874 (1977).

37. In conclusion, we find that federal preemption in this case is necessary if our policies are to succeed. State regulation could impede the development and provision of this new, innovative, and primarily interstate telecommunications service.

E. Other Matters

38. In the *Memorandum Opinion and Order on Reconsideration (Part 1)*, we waived the submissions of § 22.15(j)(8) topographic maps and § 22.115 profile graphs, and we added the requirement that maps on a scale of 1:250,000 be submitted. For the sake of clarity, we have rewritten the applicable rules to reflect these changes. See Appendix A.

IV. Conclusion

39. This is the first time that common carrier frequencies have been devoted exclusively to nationwide inter-city paging systems. We decided to reject the burdensome and time-consuming extended cut-off procedures and unanimity sharing agreements adopted in the *First Report and Order*. We also reject the complex licensing and coordination problems associated with authorizing separate regional and nationwide networks. One network organizer will be licensed on each frequency. This licensee will have thoroughly devised a method for technical interconnection and interference-free coordination among carriers. Then any local common carrier who wishes to provide network services will be authorized to affiliate with one or more network organizers by adhering to the licensee's proposal. We believe that this two-step regulatory process is workable and will promote the Commission's goals of competition and diversification. We are confident that it will implement nationwide paging in the most efficient and expeditious manner possible.

V. Ordering Clauses

40. Accordingly, it is ordered, that the petitions for reconsideration are granted to the extent set forth herein, and are otherwise denied.

41. It is further ordered, that pursuant to the authority found in Section 154(i), 301 and 303(r) of the Communications Act of 1934, as amended, Part 22 of the Commission's Rules and Regulations are amended as specified in Appendix A. These amendments shall become effective June 13, 1983.

42. It is further ordered, that applications by the applicants desiring to organize a network frequency will be accepted 90 days after this Order is published in the Federal Register.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 22—[AMENDED]

47 CFR Part 22 is amended as follows:

1. 47 CFR 22.501(p) (1) and (2) are revised to read as follows:

§ 22.501 Frequencies.

(p)(1) For assignment to based stations of communication common carriers for use exclusively in providing a one-way signaling service (center frequency of 25 khz band).

931.0125 MHz	931.5125 MHz
931.0375 MHz	931.5375 MHz
931.0625 MHz	931.5625 MHz
931.0875 MHz	931.5875 MHz
931.1125 MHz	931.6125 MHz
931.1375 MHz	931.6375 MHz
931.1625 MHz	931.6625 MHz
931.1875 MHz	931.6875 MHz
931.2125 MHz	931.7125 MHz
931.2375 MHz	931.7375 MHz
931.2625 MHz	931.7625 MHz
931.2875 MHz	931.7875 MHz
931.3125 MHz	931.8125 MHz
931.3375 MHz	931.8375 MHz
931.3625 MHz	931.8625 MHz
931.3875 MHz	931.8875 MHz ¹
931.4125 MHz	931.9125 MHz ¹
931.4375 MHz	931.9375 MHz ¹
931.4625 MHz	931.9625 MHz ¹
931.4875 MHz	931.9875 MHz

¹ Reserved for stations engaged in providing nationwide network paging service; as provided for in § 22.527.

(2) Specification of frequency in application. (i) *Non-network*: An applicant for a new, non-network frequency in the band 929–932 MHz will not specify a frequency in its application. It may specify its non-network frequency preference, but the Commission is not bound by such requests. (ii) *Network*: An applicant wishing to organize a network frequency

will not specify a frequency preference in its application but must make the showings required by § 22.527. The subsequent applications filed by the affiliating, local common carriers should specify the specific network channel it desires.

2. Part 22 is amended by adding new § 22.527 to read as follows:

§ 22.527 Channel assignment policies for 900 MHz one-way signaling channels reserved for stations engaged in providing network signaling service.

(a) An applicant wishing to organize a network signaling channel should not specify a particular channel in its application.

(b) The applicant shall submit to the Commission copies of agreements, if any, and system diagrams and plans illustrating how applicant proposes to utilize the desired network signaling channel. Applications filed pursuant to this paragraph must contain at a minimum the following:

(1) Technical standards describing the types of one-way communications to be provided, the signaling format under which individual receivers may be selectively signaled, and the network protocol under which all stations licensed or subsequently licensed on the desired network signaling channel may be connected or interconnected for the purposes of exchanging or delivering signaling messages for transmission by such stations.

(2) Description of how the proposed system and the technical standards described in paragraph (b)(1) of this section will not discriminate as to access, cost, or otherwise between applicant and the local operators for the desired network paging channel.

(3) Description of how the proposed network would provide for interference-free operation on the channel in each local area.

(4) Description of applicant's technical and financial qualifications to construct the proposed system and to develop and implement the technical standards described in paragraph (b)(1) of this section. Such financial qualifications shall satisfy the requirements of § 22.917.

(5) Description of how applicant with others, will provide network signaling service to at least fifteen standard metropolitan statistical areas initially and to how it will expand network services to the entire nation within two years.

(6) A model tariff showing, among other things, how it intends to provide nondiscriminatory access to network operators; and

(7) Description of how the public interest, convenience and necessity will be served by a grant of the application.

3. 47 CFR 22.15 is amended by revising (j)(8) and (j)(10) to read as follows:

§ 22.15 Technical content of applications

(j) * * *

(8) Topographic maps (see also § 22.216) showing the information set forth in paragraphs (j)(8) (i) and (ii) of this section are required in all Part 22 services except for 900 MHz one-way paging applications which is governed by paragraph (j)(8) (iii) of this section.

(i) Exact station location,

(ii) Location of radials used in determining elevation of average terrain,

(iii) Exact station location should be plotted on a map with a scale of 1:250,000 and the reliable service area should be depicted by a 20-mile radius for each base station.

(9) * * *

(10) For 900 MHz one-way applications, the profile graphs referred to in § 22.116 are not required.

[FR Doc. 83-12715 Filed 5-11-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 30408-54]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 4 to the fishery management plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Amendment 4 is necessary to provide sufficient amounts of fish to

U.S. fishermen fishing commercially in groundfish fisheries, to take advantage of harvestable Pacific cod while they are available, and to allow foreign groundfish fleets access to narrow fishing grounds along the Aleutian Islands where fishing is more practicable. This action is intended to support U.S. fishermen harvesting underutilized groundfish stocks and to provide for fuller utilization of any harvestable groundfish by U.S. and foreign fishermen.

EFFECTIVE DATE: May 9, 1983.

ADDRESS: A copy of the final regulatory flexibility analysis for this rule is available from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, 907-586-7230

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island Area (FMP) was partially approved by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), on October 28, 1982. Proposed rules to implement the approved parts of this amendment were published in the *Federal Register* on December 6, 1982, and comments were invited until January 20, 1983. No comments were received. The approved parts: (1) Adjust the domestic annual harvest (DAH), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF) amounts for pollock, yellowfin sole, "other flatfishes," Atka mackerel, and "other species;" (2) increase the acceptable biological catch (ABC), optimum yield (OY), and reserve amounts for Pacific cod and for the "other species" category and increase the TALFF for Pacific cod; and (3) expand the area in which foreign fishing may be conducted in the fishery conservation zone.

One part that was disapproved would have authorized the Secretary to issue field orders adjusting fishing seasons and areas for conservation and management reasons. This part was disapproved because the amendment failed to specify adequately the procedures, limits, and types of responses that could be made in issuing such orders.

The principal aspects of Amendment 4 are described fully in the proposed rule. In addition, Amendment 4 makes the following technical changes to the FMP: (a) Consolidates the description of areas closed to foreign fishing, designates and depicts those areas, and reformats the rationale for such areas; (b) corrects or clarifies the geographical coordinates for two of the management areas; (c) adds a description of the four fishing areas and clarifies the depiction thereof; (d) clarifies the description of the fishery management area; (e) clarifies the substance of Amendment 1a and depicts the salmon savings area; (f) clarifies the specifications of domestic annual processing (DAP), domestic non-processed fish, and JVP amounts; (g) deletes references to halibut in various tables; (h) corrects the base optimum yield (OY) for "other species" that should have been increased by 1,000 metric tons (mt) (to 75,249 mt), or five percent of the 20,000 mt increase in Pacific cod OY, by virtue of Amendment 2; and (i) amends the coordinates for one area closed to foreign fishing.

The changes in OY, DAH, JVP, reserve, and TALFF for the species affected by Amendment 4 are summarized in the table below. The specifications are the same as those contained in the proposed rule as corrected on December 23, 1982 (47 FR 57306). This table will serve as notice of the changes to be effected by Amendment 4 in lieu of an amendment to the "TALFF table" which formerly was codified as Appendix 1 to 50 CFR 611.20, but which was removed by a final rule appearing at 47 FR 44264 (October 7, 1982).

Species	Species code	Areas	OY	DAH*	DAP	JVP	DNP	Reserve	TALFF
Pollock	701	Bering Sea ¹	1,000,000	74,500	10,000	64,000	500	50,000	875,500
Yellowfin sole	720		117,000	31,200	1,000	30,000	200	5,850	79,950
Other flat fish	129		61,000	11,200	1,000	10,000	200	3,050	46,750
Pacific cod	702		120,000	43,265	26,000	17,065	200	6,000	70,735
Atka mackerel	207		24,800	14,500	0	14,500		1,240	9,060
Other species ²	499		77,314	7,800	1,400	6,000	400	3,866	65,548

*DAH = DAP + JVP + DNP.

¹ Bering Sea means fishing areas I, II, and III in Figure 2, Appendix II of 50 CFR 611.9.

² The category "other species" includes sculpins, sharks, skates, eulachon, amelts, capelin octopus, and all other finfish and marine invertebrates except those listed in the table and "unallocated species." See 611.93(b)(1)(iv) for the definition of "unallocated species."

The continental shelf between 170°00'W. longitude and 172°00'W.

longitude is very narrow, making it impracticable to fish for groundfish in

this area seaward of 12 nautical miles from the baseline used to measure the

U.S. territorial sea. For this reason, Amendment 4 allows both foreign trawling and longlining between three and 12 nautical miles from the baseline in the area: (1) Bounded by 170°00'W. longitude and 172°00'W. longitude on the south side of the Aleutian Islands, and (2) bounded by 170°30'W. longitude and 172°00'W. longitude on the north side of the Aleutian Islands. In addition, Amendment 4 allows foreign longlining between three and 12 nautical miles from the baseline in the area bounded by 170°00'W. longitude and 170°30'W. longitude on the north side of the Aleutian Islands. Foreign trawling is prohibited in the latter area to avoid gear conflicts and grounds-preemption problems between U.S. crab fishermen who fish this area and foreign trawl fleets.

Finally, one set of coordinates for the Winter Halibut Savings area is modified to conform with coordinates specified for that area in the preliminary fishery management plan for this fishery.

Classification

The Assistant Administrator has determined that the approved parts of this amendment to the FMP are necessary and appropriate for the conservation and management of fishery resources in the Bering Sea and Aleutian Islands area, and that the action is consistent with the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act), other provisions of the Magnuson Act, and other applicable law. He has, therefore, under sections 304 and 305 of the Magnuson Act given final approval to Amendment 4 except for that part relating to the field order authority.

The Assistant Administrator has determined that the final regulations implementing Amendment 4 will not significantly affect the quality of the human environment. This determination was based on an environmental assessment that was filed with the Environmental Protection Agency on March 3, 1982. Accordingly, a supplement to the FEIS for the FMP is not required.

The Assistant Administrator also has determined that implementation of this amendment will be carried out in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program, as required by section 307(c) of the Coastal Zone Management Act of 1972 and its implementing regulations at 15 CFR Part 930, Subpart C.

The Administrator of NOAA has determined that this final rulemaking is not a "major rule" requiring a regulatory impact analysis under Executive Order

12291, since the sector of the U.S. fishing industry concerned with groundfish from the Bering Sea and Aleutian Islands is too small for these measures to have a significant effect on the economy. By providing additional amounts of groundfish for domestic harvest, Amendment 4 benefits the domestic groundfish fishery and encourages its development.

The Administrator has determined that the final regulations implementing Amendment 4 will have a significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The following is a summary of the final regulatory flexibility analysis.

The increase in JVP amounts for pollock, yellowfin sole, "other flatfishes," Atka mackerel, and "other species" results in an 87,150 mt increase in the total JVP available to domestic fishermen. The mean exvessel value of these species to domestic fishermen fishing for joint venture operations had recently been about \$141 per mt. The additional total gross revenues to about 30 U.S. vessels that may deliver groundfish to foreign processors in 1983 could approach \$12.3 million.

The increases in JVP amounts for pollock, yellowfin sole, "other flatfishes," Atka mackerel, and "other species" result in corresponding decreases in the TALFF amounts for these species. If all of the 87,150 mt total decrease in the TALFF were harvested by foreign fishermen, the revenue to the U.S. Treasury through foreign fishing fees in 1983 could be about \$3.8 million. A comparison with actual total foreign catches in 1982, however, shows that for each of the individual species' TALFFs being decreased, the adjusted TALFFs would have been sufficient to provide for the 1982 catches, except for pollock. The 1982 total foreign pollock catch exceeded the adjusted TALFF by about 28,000 mt. If the same amount of foreign effort and capacity is applied in 1983 as in 1982, and if availability of stocks allow for a similar fishery, the total foreign catch in 1983 could be short by about 28,000 mt of pollock. The U.S. Government would lose only about \$868,000 in foreign fees that it would have charged for pollock, instead of \$3.8 million. This potential loss, however, could be offset by the proposed 39,235 mt increase in TALFF for Pacific cod, a higher value species for which the 1983 poundage fee is \$60 per mt. The loss of revenue to the U.S. Government from the reduced pollock TALFF would be compensated for if foreign nations were to harvest only about 15,000 mt of the Pacific cod TALFF increase. Any

additional harvest of Pacific cod would yield a net increase in revenue.

The Assistant Administrator finds good cause not to delay the effective date of this final rule under 5 U.S.C. 553(d) for the following reasons: (1) The intended effects of this rule are to support U.S. fishermen harvesting underutilized groundfish stocks and to provide for fuller utilization of certain harvestable groundfish by foreign fishermen; (2) the increases in DAH for pollock, yellowfin sole, "other flatfish", atka mackerel, and "other species" are necessary in view of expected 1983 harvests by U.S. fishermen; (3) the increase in the OY for Pacific cod is necessary for full utilization of a stock while it is available; (4) ample opportunity for involvement was accorded the public during public hearings and the 45-day public comment period; and (5) both the U.S. and foreign fishing sectors are aware of and expect these changes, and (6) immediate relief of a current foreign fishing restriction is necessary to promote fuller utilization of available fishery resources.

This final rulemaking does not contain a collection of information requirement or involve any collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 675

Fish, Fisheries, Reporting requirement.

Dated: May 6, 1983.

Roland F. Smith,

Acting Director, Office of Data and Information Management, National Marine Fishery Service.

For the reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation of Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.93 is amended by revising paragraphs (c)(2)(i) and (c)(3)(i) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

- (c) * * *
- (2) * * *
- (i) Trawling by foreign vessels between 3 and 12 nautical miles from

the baseline used to measure the territorial sea is allowed (A) at all times in the areas bounded by 170°00' W. longitude and 172°00' W. longitude south of the Aleutian Islands and by 170°30' W. longitude and 172°00' W. longitude north of the Aleutian Islands; (B) from July 1 through December 31 on Petrel Bank; and (C) from May 1 through December 31 in other areas west of 178°30' W. longitude. Petrel Bank is bordered by straight lines connecting the following coordinates in the order listed:

Latitude	Longitude
52°51' N.	178°30' W.
52°51' N.	179°00' E.
51°15' N.	179°00' E.
51°15' N.	178°30' W.
52°51' N.	178°30' W.

(3) ***

(i) Longlining by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed west of 170°00' W. longitude.

3. In addition to the amendments set forth above, § 611.93 is amended by removing the second set of coordinates, "52°40' N. latitude, 170°00' W.

longitude," in paragraphs (c)(2)(ii)(C) and (c)(3)(ii), and inserting in their place "52°48' N. latitude, 170°00' W. longitude."

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for Part 675 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 675.20(a) is amended by revising Table 1 to read as follows:

§ 675.20 General limitations

* * *

TABLE 1.—BERING SEA AND ALEUTIAN ISLANDS FISHERY OPTIMUM YIELDS AND INITIAL DAHS, TALFFS, AND RESERVES

[In metric tons]

Reference: Species group and subarea ¹	OY	Reserve	Initial DAH	Initial TALFF
Pollock: Bering Sea	1,000,000	50,000	74,500	875,500
Aleutians	100,000			100,000
Yellowfin sole	117,000	5,850	31,200	79,950
Turbots	90,000	4,500	1,075	84,425

TABLE 1.—BERING SEA AND ALEUTIAN ISLANDS FISHERY OPTIMUM YIELDS AND INITIAL DAHS, TALFFS, AND RESERVES—Continued

[In metric tons]

Reference: Species group and subarea ¹	OY	Reserve	Initial DAH	Initial TALFF
Other flatfishes	61,000	3,050	11,200	46,750
Pacific cod	120,000	6,000	43,265	70,735
Pacific ocean perch: Bering Sea	3,250	162	1,380	1,708
Aleutians	7,500	375	1,380	5,745
Other rockfish	7,727	500	1,550	5,677
Sablefish: Bering Sea	3,500	350	700	2,450
Aleutians	1,500	150	700	650
Atka Mackerel	24,800	1,240	14,500	9,060
Squid	10,000	500	50	9,450
Other species	77,314	3,866	7,800	65,648
Total	1,623,591	76,543	189,300	1,357,748

¹ Bering Sea—Fishing Areas I, II, and III combined. Aleutians—Fishing Area IV. Includes territorial waters.

[FR Doc. 83-12730 Filed 5-9-83; 2:17 pm]

BILLING CODE 3510-22-M