

to prevent fraudulent use of cellular electronic serial numbers. The intent of the foregoing suspension and stay is to achieve the objectives of updating, streamlining, and expediting the procedures in its licensing process without the subsequent consequences of delay and operational, administrative burden on service providers and the Commission.

**EFFECTIVE DATE:** December 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** B.C. "Jay" Jackson, Jr., R. Barthen Gorman, Commercial Radio Division; and David H. Siehl, Policy Division, Wireless Telecommunications Bureau, (202) 418-1310.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order in CC Docket No. 92-115, FCC 94-357, adopted December 30, 1994, and released January 10, 1995.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Synopsis of Order

1. The Commission recently adopted a Report and Order in this docket, completely revising Part 22 of its Rules and providing for the new Rules to go into effect on January 1, 1995. Report and Order, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994), 59 FR 59502, Nov. 17, 1994 (Part 22 Order). The Commission has received stay requests from the Personal Communications Industry Association (PCIA) and the Mobile and Personal Communications 800 Section of the Telecommunications Industry Association (TIA) with respect to the effective date of certain aspects of the Part 22 Order. PCIA requests that the Commission stay implementation of the Part 22 Order with respect to (1) new application processing rules for 931 MHz paging, and (2) its policy prohibiting two Part 22 licensees from sharing a single transmitter. TIA requests that the Commission stay implementation of Section 22.919 of its Rules, which conditions type-acceptance of new cellular telephone equipment on use of electronic serial numbers (ESNs) that cannot be altered once they are set by the manufacturer.

### 931 MHz Paging Rules

2. In the Part 22 Order, the Commission adopted new procedures for processing of 931 MHz paging

applications, based on frequency-specific applications and use of competitive bidding to select licensees in the event of mutually exclusive applications. The Commission further stated that all 931 MHz applicants with applications pending at the time the new rules went into effect would be given 60 days to amend their applications in accordance with these procedures.

3. The Commission has decided not to address the merits of PCIA's petition at this time, but instead will temporarily suspend implementation of the new 931 MHz application procedures on its own motion. This temporary suspension of the new procedures arises directly from the discussion of 931 MHz paging in the Part 22 Order. In the Part 22 Order, the Commission observed that certain paging applications that had previously been granted, denied, or dismissed under the old rules remained before it in the form of petitions for reconsideration and applications for review. The Commission concluded that these cases should be decided, to the extent possible, under its existing paging rules before the effective date of the new rules. The Commission further stated that if all pending petitions relating to 931 MHz applications were not acted upon by January 1, 1995, it would stay the effect of new Section 22.541 of our Rules concerning 931 MHz applications and also stay the 60-day amendment procedure for all pending 931 MHz applications until the cases were resolved by order.

4. The Commission has determined that additional time is required to resolve certain of these cases, and it is, therefore, suspending Section 22.541 of the Rules and the 60-day amendment procedure for pending 931 MHz applications until further notice. This order also suspends implementation of Section 22.131, which superseded Section 22.541 as of January 2, 1995, insofar as it affects 931 MHz paging applications. See Third Report and Order. Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 94-212, adopted August 9, 1994, released September 23, 1994; 59 FR 59945, Nov. 21, 1994. Consequently, the Commission concludes that action on PCIA's request to stay the effective date of the 931 MHz application processing rules is unnecessary for the time being, and therefore, is deferring consideration of PCIA's petition until further notice.

### Sharing of Transmitters

5. In the Part 22 Order, the Commission stated that as a matter of

policy, it intended to prohibit two or more Part 22 licensees from sharing a single transmitter. The concern in establishing this policy was that shared use of the same transmitter by two different licensees could raise questions regarding the control of and responsibility for the transmitter. PCIA requests a stay of this policy on the grounds that it is inconsistent with the past Commission practice and that implementation of the policy would cause irreparable harm to existing licensees and the public.

6. The Commission concludes that a stay is justified in this case, because it has allowed dual licensing of Part 22 transmitters in the past, and continues to allow dual licensing in the private services. The Commission is concerned that reversing this policy with respect to Part 22 services could result in inconsistent treatment of similar services, in violation of the principle of regulatory parity. Among other reasons, the Commission also concludes that a stay of the new policy will not cause harm to other parties to the proceeding or the public. Therefore, the Commission concludes that implementation of its policy against dual licensing of transmitters should be stayed pending reconsideration.

### Cellular Electronic Serial Numbers

7. To combat the problem of cellular fraud, the Commission adopted a new rule in the Part 22 Order requiring cellular telephone manufacturers to install unalterable electronic serial numbers (ESNs) in all new cellular telephone equipment for which type-acceptance is sought after January 1, 1995. The new § 22.919(c) of the Rules provides that the ESN must be factory set and must not be "alterable, transferable, removable or otherwise able to be manipulated." The purpose of this requirement is to prevent the reprogramming of cellular telephones with unauthorized or "cloned" ESNs.

8. TIA requests a stay of § 22.919(c), and argues that requiring the use of unalterable or "hardened" ESNs will impose significant new costs on manufacturers and will cause customer dissatisfaction by preventing manufacturer's authorized agents from making routine repairs and upgrades of cellular equipment in the field that involve changing the ESN. TIA also contends that the requirement is effective in combating fraud. The Cellular Telecommunications Industry Association (CTIA) opposed TIA's motion for stay.

9. On review of the pleadings, the Commission concludes that TIA has not met the legal standard for granting a