

BIN a fee for the remote bidding software and an on-line computer access charge. The fee covered BIN's costs to develop and provide remote bidding access.

3. Due to the experience gained from these three auctions, the Commission has developed its own remote electronic access system that utilizes Wide Area Network or WAN technology. This system (FCC Wan) would allow bidders and other interested parties to file applications electronically, bid electronically, access auction round results, and query FCC licensing databases from their personal computers from remote locations. The Commission has also developed a number of proprietary software applications to support the remote electronic access system. Bidders and other interested parties would utilize a 900 number telephone service to access the FCC Wan system. The Commission has incurred significant costs in developing this remote electronic access system. Such costs include: infrastructure design and implementation; software development and testing; and other administrative/personnel costs.

4. On May 16, 1995, we adopted a Notice of Proposed Rulemaking (Notice)² seeking comment on a proposed schedule of fees to be assessed in future auctions for access to certain on-line computer services, and for obtaining proprietary bidding software as well as multiple bidder information packages. In order to recoup our costs, we proposed to charge a fee to bidders and other interested parties for access to the FCC WAN system and for obtaining the proprietary bidding software needed to make use of the system's electronic bidding functions. We also proposed recouping some of the printing and production costs associated with providing bidder information packages to prospective auction participants. Specifically, we indicated that parties would continue to receive one complimentary bidder information package, but suggested charging a fee for additional packages that are requested.

5. We also observed that under government regulations any funds received from the sale of materials, software, or services must go directly to the U.S. Treasury. See 31 U.S.C. 3302(b); 69 Comp. 260, 262(1990). We noted that the Independent Offices Appropriation Act of 1952, as amended (IOAA), 31 U.S.C. 9701, permits the government to impose fees and charges for services and things of value. The IOAA authorizes agencies to prescribe

regulations establishing charges for products and services provided by an agency. The charges must be fair and must be based on the costs to the government, the value of the service or product to the recipient, the public policy or interest served, and other relevant facts. See 31 U.S.C. 9701(b). In addition, we indicated that the Office of Management and Budget (OMB) has issued policy guidelines on use of fees in Circular A-25 (OMB Circular),³ which was recently revised. We noted that the revised OMB Circular, encourages the assessment of fees for government-provided products and services, and provides that agencies must establish fees based on either a "full-cost" or "market price" analysis.

6. More specifically, we proposed in the Notice to calculate our fees on the basis of "market price"⁴ rather than utilizing a "full cost" pricing analysis.⁵ In particular, we proposed to utilize prevailing price methodology to determine the fees for the FCC WAN system use, the proprietary bidding software, and the additional bidder information packages. We proposed the following fees: (1) \$4.00 per minute for access via a 900 number to the FCC WAN system; (2) \$200.00 for each remote bidding software package; and (3) \$16.00 for each additional bidder information package (including postage) requested beyond the one complimentary copy that is made available. We sought comments on these charges, and on comparable market prices for similar products and services that are offered to the public.

7. BellSouth Corporation (BellSouth), Rural Telecommunications Coalition (RTC) and AirTouch Paging (AirTouch) filed formal comments and National Paging & Personal Communications Association (NPPCA) and Kennedy-Wilson International (KWI) filed informal comments by letter in response to the Notice.

III. Discussion

8. BellSouth questions whether the Commission can assess fees for its auction-related services under IOAA, when Section 309(j)(8)(B) of the Communications Act already authorizes the Commission to recover the cost of conducting auctions from auction

revenues. We conclude that assessing fees for use of the Commission's FCC WAN system as described above is fully consistent with our competitive bidding obligations under the Communications Act and with other laws and regulations that govern fees. See 47 U.S.C. 309(j)(8)(B); 31 U.S.C. 9701(a).

Assessing a fee to bidders using certain on-line computer services and bidding software is a reasonable and efficient means of recovering the costs associated with developing, maintaining, enhancing, and upgrading this important system and its companion software. Indeed, our proposal supports a congressional goal set forth in the IOAA, which is that "each service or thing of value provided by an agency * * * to a person * * * be self-sustaining to the extent possible." See 31 U.S.C. 9701(a). Moreover, contrary to BellSouth's suggestion, nothing in Section 309(j)(8)(B) prohibits the Commission from imposing fees on auction participants under the IOAA.

A. On-Line Computer Access Charges

9. *Comments.* BellSouth, RTC, and AirTouch oppose the Commission's proposal to establish on-line access charges by comparing the FCC WAN system with the costs associated with access to Westlaw and Lexis-Nexis services, claiming the comparison is invalid. RTC contends that the fee for 900 service should be based upon "full cost" and not "market price." In addition, BellSouth and NPPCA assert that there is no alternative to remote electronic bidding procedures. Additionally, NPPCA claims there is already a fee to file applications electronically.

10. *Decision.* After considering the record, we will charge \$2.30 per minute for access to the FCC WAN system for purposes of bidding electronically, reviewing other applications (e.g., FCC Form 175 or FCC Form 600 applications), and obtaining available licensing database information. We emphasize, however, that we will not charge a user a fee for accessing this system for the purpose of filing a short- or long-form application electronically. There will be a clear delineation between services for which on-line access fees will be charged and services for which no on-line access fees will be charged. Users who download from the FCC's electronic bulletin board or from the Internet software specific to a service for which we intend to charge on-line access fees will receive clear notification that execution of this software will result in on-line access fees. In addition, when a caller executes software specific to a service for which

² WT Docket No. 95-69, 10 FCC Rcd 7066 (1995), 60 FR 26,860 (1995).

³ See *FPC v. New England Power Co.*, 415 U.S. 345, 349-51 (1974) (citing the OMB Circular).

⁴ "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service. See OMB Circular at 58 Fed. Reg. 38,145.

⁵ "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. See OMB Circular at 58 FR 38,145.