

that is needed for users to access the Commission's licensing databases (although as discussed *supra*, FCC WAN users will be charged \$2.30 per minute for actually accessing the Commission's licensing database). We base our \$175.00 price on the BIN bidding software which was made available to bidders in previous Commission auctions for a \$200.00 charge. We will reduce this fee by \$25.00, however, because our system does not include a communications component that was provided as part of the BIN software package. Specifically, the \$25.00 reduction represents the cost of certain technical protocols that are necessary for remote electronic bidders and other interested parties to access the Commission's remote electronic system.<sup>9</sup>

18. AirTouch argues that computer software programs such as Procomm, Telix, Crosstalk and SLIP PPP are appropriate comparisons to the FCC remote bidding software and should be used in determining the market price of our bidding software. For two reasons, we do not believe these software packages are "price comparable" to the bidding software we plan to offer. First, the programs cited by AirTouch are produced for large numbers of users whereas our software is targeted to a small group of users. Second, these programs are more limited in scope and function than the FCC's software. Specifically, the cited programs are communications and technical protocols only whereas the FCC's software package is a more sophisticated logic-based program that will enable users to submit and withdraw bids electronically.

#### C. Bidder's Information Package

19. *Comments.* None of the commenting parties challenge the methodology used to calculate the \$16.00 cost for each additional bidder information package. AirTouch nevertheless opposes a charge for additional bidder information packages, and claims it will be difficult to enforce the policy. KWI, on the other hand, states the Commission should charge \$50.00 to \$100.00 for bidder information packages to ensure they are distributed to persons with a serious interest in the auction process.

20. *Decision.* We conclude that it is both fair and reasonable to provide one complimentary bidder information package to each person or entity, and to

charge \$16.00 for each additional package (including postage) requested by the same person or entity. The \$16.00 charge is based on the average direct costs incurred by the Commission to duplicate, bind and mail such packages.

21. We observe that nothing prevents a recipient of a complimentary bidder information package from making additional copies at his or her own expense. We are unpersuaded that charging for additional bidder information packages violates the public interest or will be unduly burdensome to enforce, as AirTouch suggests. We also reject KWI's suggestion that we charge \$50.00 to \$100.00 for bidder information packages since we think such charges would not be consistent with OMB guidelines.

#### D. Payment of Fees Methodology

22. *Comments.* None of the commenting parties object to the proposed inclusion of the FCC WAN on-line access charges on the user's long distance telephone bill. Moreover, none of the commenters express any opposition to having the fees for the bidding software and the bidder information packages collected by credit card or cashier checks. KWI suggests expanding the payment method to include personal and corporate checks.

23. *Decision.* Charges for on-line access to the FCC WAN system will be included in the form of 900 number service charges on each user's long distance telephone bill. Each user will pay its long distance telephone company directly for these charges. As for bidding software and additional bidder information packages, we will permit payment by credit card and cashier's check. Further, we agree that personal or corporate checks should be permitted and will permit payment in this manner as long as such checks sufficiently identify the payor. All checks should be made payable to the "Federal Communications Commission" or "FCC." The Commission contracts with an auctioneer for each auction, and it is the auction contractor that will be responsible for administering payments of the bidding software and additional bidder information packages. Bidders may obtain the FCC's bidding software and bidder information packages from the FCC's auction contractor. Specific instructions for purchasing the software and bidder information packages will be made available by Public Notice prior to the start of each auction.

#### IV. Procedural Matters

24. Pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, Stat. 1165, 5 U.S.C. 601, *et seq.* (1981)), the

Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the Notice in WT Docket No. 95-69. Written comments on the IRFA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. Need and Purpose of the Action. This rulemaking proceeding is taken to implement the Commission's establishment and collection of fees for the Commission's proprietary remote software packages, on-line communications service charges, and bidder's information packages in connection with auctionable services. The rules specifically set forth the amounts that are to be paid in connection with bidding for auctionable services. The objective of this proceeding is to collect the necessary amounts through the fees being adopted, with the funds going to the U.S. Treasury.

B. Issues Raised in Response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered and Rejected. All significant alternatives have been addressed in this Report and Order.

D. Description, Potential Impact, and Number of Small Entities Involved. Because the Commission will provide proprietary remote software packages, on-line communications services, and bidder's information packages directly, the fees assessed and collected will recover the Government's costs. While the number of small entities impacted by these fees is unknown, any such impact is likely to be insubstantial. Moreover, the Commission has provided alternative remote access options free of charge.

25. For further information on the assessment and collection of the charges established by the rules adopted herein, contact Bert Weintraub, Wireless Telecommunications Bureau, Auctions Division, at (202) 418-1316.

#### V. Ordering Clause

26. Accordingly, *it is ordered* That pursuant to the authority of Sections 4(i) and (j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 303(r), and 309(j), as well as the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, Part 1 of the Commission's Rules, 47 C.F.R. Part 1, is amended to assess and collect fees in connection with auctionable services as set forth below, effective upon publication in the **Federal Register**. Pursuant to 5 U.S.C.

<sup>9</sup> Such technical protocols are available "off the shelf" and can be purchased for approximately \$25.00. Examples of these protocols are Trumpet, NetManage Chameleon and Wollongong Pathway Access.