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NEW YORK, NY 10174

August 2, 2000

VIA OVERNIGHT DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

001034-TX

00 AUG -3 AM 10:21
MAIL ROOM

Re: Application of ReFlex Communications, Inc. for Authority to Provide Alternative Local Exchange Telecommunications Services Within the State of Florida

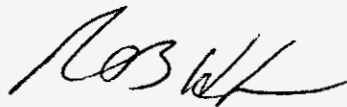
Dear Ms. Bayo:

Enclosed for filing on behalf of ReFlex Communications, Inc. ("ReFlex" or "Applicant") please find an original and seven (7) copies of ReFlex's application for authority to provide alternative local exchange telecommunications services within the State of Florida. Also enclosed is a check in the amount of \$250.00 to cover the filing fee.

Please note that the financial statements included with Exhibit 1 contain confidential and proprietary information not generally available to the public. Therefore, the financial statements are enclosed in a sealed envelope labeled "Confidential." Disclosure of this financial information would cause harm to ReFlex's business operations. Pursuant to Florida Statutes Section 364.183, ReFlex respectfully requests that the information contained in the sealed envelope be given confidential treatment and that it not be made part of the public record or otherwise disclosed to the public.

Please date-stamp the enclosed extra copies of this filing and return in the self-addressed, stamped envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact me at (202) 945-6940.

Respectfully submitted,



Paul B. Hudson

Counsel for
ReFlex Communications, Inc.

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.

Initials of person who forwarded check:



Enclosures

cc: Sherrey St. John (ReFlex)
Kelly A. Olson

This claim of confidentiality was filed by or on behalf of a "telco" for Confidential DN 09402-00. The document is in locked storage pending advice on handling. To access the material, your name must be on the CASR. If undocketed, your division director must obtain written EXD/Tech permission before you can access it.

DOCUMENT NUMBER-DATE

09401 AUG-30

FPSC-RECORDS/REPORTING

**** FLORIDA PUBLIC SERVICE COMMISSION ****

DIVISION OF TELECOMMUNICATIONS
BUREAU OF CERTIFICATION AND SERVICE EVALUATION

APPLICATION FORM
for
AUTHORITY TO PROVIDE
ALTERNATIVE LOCAL EXCHANGE SERVICE
WITHIN THE STATE OF FLORIDA

001034-TX

Instructions

- ◆ This form is used as an application for an original certificate and for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Appendix A).
- ◆ Print or type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.
- ◆ Use a separate sheet for each answer which will not fit the allotted space.
- ◆ Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of \$250.00 to:

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6770

- ◆ If you have questions about completing the form, contact:

Florida Public Service Commission
Division of Telecommunications
Bureau of Certification and Service Evaluation
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6600

APPLICATION

1. This is an application for (check one):
 - () **Original certificate** (new company).
 - () **Approval of transfer of existing certificate:** Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.
 - () **Approval of assignment of existing certificate:** Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.
 - () **Approval of transfer of control:** Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company:
ReFlex Communications, Inc. ("ReFlex" or "Applicant")_____

3. Name under which the applicant will do business (fictitious name, etc.):
ReFlex Communications, Inc._____

4. Official mailing address (including street name & number, post office box, city, state, zip code):
ReFlex Communications, Inc._____
83 South King Street, Suite 106_____
Seattle, Washington 98104_____

5. Florida address (including street name & number, post office box, city, state, zip code):
8517 South Park Circle, Suite 160, Orlando, Florida 32819_____

6. Structure of organization:

- | | |
|---|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Corporation |
| <input checked="" type="checkbox"/> Foreign Corporation | <input type="checkbox"/> Foreign Partnership |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Other _____ | |

7. **If individual**, provide:

Name: Not Applicable.

Title: _____

Address: _____

City/State/Zip: _____

Telephone No.: _____ **Fax No.:** _____

Internet E-Mail Address: _____

Internet Website Address: _____

8. **If incorporated in Florida**, provide proof of authority to operate in Florida:

(a) **The Florida Secretary of State corporate registration number:**

Not Applicable.

9. **If foreign corporation**, provide proof of authority to operate in Florida:

A copy of ReFlex's Certificate of Authority to Transact Business is attached hereto as Exhibit 4.

(a) **The Florida Secretary of State corporate registration number:**

F00000001254

10. **If using fictitious name-d/b/a**, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:

(a) **The Florida Secretary of State fictitious name registration number:**

ReFlex will not use a fictitious name or d/b/a.

11. **If a limited liability partnership**, provide proof of registration to operate in Florida:

(a) **The Florida Secretary of State registration number:**

Not Applicable.

12. **If a partnership**, provide name, title and address of all partners and a copy of the partnership agreement.

Name: Not Applicable.

Title:

Address:

City/State/Zip:

Telephone No.:

Fax No.:

Internet E-Mail Address:

Internet Website Address:

13. **If a foreign limited partnership**, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable.

(a) **The Florida registration number: Not Applicable.**

14. Provide **F.E.I. Number** (if applicable): **91-1855765**

15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. Provide explanation.

None of ReFlex's officers, directors, or any of the ten largest stockholders have previously been adjudged bankrupt, mentally incompetent, or found guilty of any felony or crime nor are any such proceedings pending.

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

Please see Exhibit 5.

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: Paul Hudson, Esq.

Title: Counsel for the Applicant; Swidler Berlin Shereff Friedman, LLP

Address: 3000 K Street, N.W., Suite 300

City/State/Zip: Washington, DC 20007-5116

Telephone No.: (202) 945-6940 Fax No.: (202) 424-7645

Internet E-Mail Address: pbhudson@swidlaw.com

Internet Website Address: <http://www.swidlaw.com>

(b) Official point of contact for the ongoing operations of the company:

Name: Danny McGinnis

Title: Vice President, Carrier Relations

Address: 83 South King Street, Suite 106

City/State/Zip: Seattle, Washington 98104

Telephone No.: (206) 652-4450 Fax No.: (206) 652-4451

Internet E-Mail Address: dmcginnis@reflexcomm.com

Internet Website Address: www.ReFlexcomm.com

(c) Complaints/Inquiries from customers:

Name: Anne Wheeler

Title: Vice President of Human Resources and Customer Care

Address: 83 South King Street, Suite 106

City/State/Zip: Seattle, Washington 98104

Telephone No.: (206) 652-4450 Fax No.: (206) 652-4451

Internet E-Mail Address: support@reflexnet.net

Internet Website Address: www.ReFlexcomm.com

17. List the states in which the applicant:

(a) has operated as an alternative local exchange company.

ReFlex has not yet operated as an alternative local exchange company in any state.

(b) has applications pending to be certificated as an alternative local exchange company.

Applicant has applications pending in Arizona and Georgia.

(c) is certificated to operate as an alternative local exchange company.

Applicant is certificated to operate as a competitive local exchange company in California, Oregon and Washington.

- (d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

No, Applicant has not been denied authority to operate as an alternate local exchange company in any state.

- (e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

No, Applicant has not had regulatory penalties imposed for violations of telecommunications statutes in any state.

- (f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

None.

18. Submit the following:

A. Financial capability.

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet;
2. income statement; and
3. statement of retained earnings.

NOTE: This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.

Further, the following (which includes supporting documentation) should be provided:

1. **written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.

Please see Exhibit 1.

2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.

Please see Exhibit 1.

3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

Please see Exhibit 1.

- B. Managerial capability: give resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.

Please see Exhibit 2.

- C. Technical capability: give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

Please see Exhibit 2.

**** APPLICANT ACKNOWLEDGMENT STATEMENT ****

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

UTILITY OFFICIAL


Signature

7-18-00
Date

Secretary / VP, General Counsel
Title

(206) 652-4450
Telephone No.

Address:

(206) 652-4451
Fax No.

83 South King Street, Suite 106

Seattle, Washington 98104

ATTACHMENTS:

- A - CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT
- B - INTRASTATE NETWORK
- C - AFFIDAVIT

CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT

**** NOT APPLICABLE. REFLEX COMMUNICATIONS, INC. IS APPLYING FOR ORIGINAL AUTHORITY.**

I, (Name) Not Applicable.

(Title) Not Applicable of _____

and current holder of Florida Public Service Commission Certificate Number # _____

have reviewed this application and join in the petitioner's request for a:

() sale

() transfer

() assignment

of the above-mentioned certificate.

UTILITY OFFICIAL:

Not Applicable.
Signature

Date

Not Applicable
Title

Telephone No.

Address: Not Applicable

Fax No.

INTRASTATE NETWORK (if available)

Chapter 25-24.825 (5), Florida Administrative Code, requires the company to make available to staff the alternative local exchange service areas only upon request.

1. POP: Addresses where located, and indicate if owned or leased.

1) <u>To be determined</u>	2) _____
_____	_____
3) _____	4) _____
_____	_____

2. SWITCHES: Address where located, by type of switch, and indicate if owned or leased.

1) <u>To be determined</u>	2) _____
_____	_____
3) _____	4) _____
_____	_____

3. TRANSMISSION FACILITIES: POP-to-POP facilities by type of facilities (microwave, fiber, copper, satellite, etc.) and indicate if owned or leased.

<u>POP-to-POP</u>	<u>OWNERSHIP</u>
1) <u>To be determined</u>	_____
2) _____	_____
3) _____	_____
4) _____	_____

AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

UTILITY OFFICIAL:

Robert G. Kaye
Signature

7-18-00
Date

Secretary / VP, General Counsel
Title

(206) 652-4450
Telephone No.

Address:

(206) 652-4451
Fax No.

83 South King Street, Suite 106
Seattle, Washington 98104

EXHIBITS

- EXHIBIT 1** Financial Qualifications, Written Explanation, and Financial Statement (**CONFIDENTIAL**)
- EXHIBIT 2** Managerial and Technical Qualifications
- EXHIBIT 3** Proposed Tariff
- EXHIBIT 4** Certificate of Qualification to Transact Business in Florida and Articles of Incorporation
- EXHIBIT 5** Officer, Director, and Significant Shareholder Affiliations

EXHIBIT 1

**FINANCIAL QUALIFICATIONS WRITTEN EXPLANATION
AND FINANCIAL STATEMENT**

(CONFIDENTIAL)

Financial Qualifications Written Explanation and Financial Statement

ReFlex has access to sufficient financial, technical and managerial resources to provide the proposed services in Florida, to maintain the requested service, and to meet any lease or ownership obligations.

This exhibit is being offered to demonstrate ReFlex's financial ability to provide the proposed services. ReFlex possesses the sound financial resources necessary to effectively procure, install, and operate the facilities and services requested in this Application.

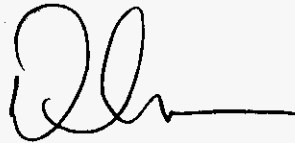
ReFlex is a privately-held company and its financial statements are confidential and commercially sensitive. ReFlex respectfully requests that its financial statements be given confidential treatment.

AFFIRMATION
Financial Qualifications

ReFlex Communications, Inc. ("ReFlex") has access to the financing and capital necessary to provide the requested service in the geographic area proposed to be served, to maintain the requested service, and to meet its lease or ownership obligations.

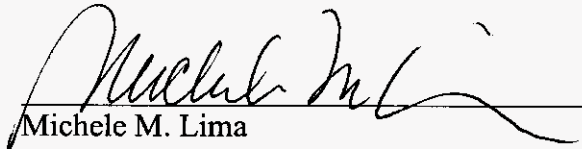
By my signature below, I attest to and affirm the accuracy of ReFlex's unaudited projected financial statements filed with ReFlex's Application for Authority to Provide Alternative Local Exchange Service within the State of Florida. I declare that to the best of my knowledge and belief the information is true and correct.

Dated: July 18, 2000



Dennis D. Muse
Chief Executive Officer
ReFlex Communications, Inc.

Dated: July 18, 2000



Michele M. Lima
Treasurer
ReFlex Communications, Inc.

EXHIBIT 2

MANAGERIAL AND TECHNICAL QUALIFICATIONS

Biographies of Key Personnel

JAMES D. MILLER CHAIRMAN, REFLEX BOARD OF DIRECTORS

Mr. Miller has over 25 years of operational experience in major corporations and as an entrepreneur. His experience includes Sales and Marketing, Senior Management, Co-founder of start-ups and Board Member.

As Senior Vice President of Sales and Marketing for Advanced Radio Telecom, Mr. Miller was responsible for developing the Marketing and Sales plans for deployment and introduction of a new Nationwide Broadband Wireless Data Network. Prior to joining ART, Mr. Miller was Senior Vice President of Sales and Marketing at US Intelco, where he increased the wireline business and expanded into the wireless sector.

Mr. Miller was cofounder and Executive Vice President of Atlas Telecom, a developer of an international enhanced services platform which was successfully installed in most of the European and Asian PTTs. His prior experience includes positions as Senior Vice President of Sales at Sidereal Corp, Sales Manager with IBM, and Marketing Analyst for Ford Motor Company.

Mr. Miller is a 1964 graduate of Wittenberg University.

DENNIS D. MUSE CEO AND REFLEX BOARD OF DIRECTORS

Mr. Muse has over 20 years of experience in the telecommunications industry. Mr. Muse has significant experience in successfully managing and growing companies through extremely high-growth phases. Prior to joining ReFlex, Mr. Muse served as President of Telecom, a commercial segment within MCI WorldCom. Promoted to the position in 1998, Muse oversaw the fastest growing commercial segment within MCI WorldCom. During Mr. Muse's leadership at Telecom, the company's annual revenue rose from \$500 million to over \$1.2 billion. Mr. Muse also led the integration of MCI WorldCom's Brooks Fiber acquisition and the management and growth of 100 local markets in the United States.

Prior to his MCI WorldCom promotion, Mr. Muse held a number of management positions at MFS Communications, which merged with MCI WorldCom in 1996. Joining MFS in 1991, Muse served as director of sales for MFS' first significant acquisition -- ICC, in Washington, DC. Mr. Muse was promoted to city vice president in 1992, with full profit and loss responsibilities. Mr. Muse was also instrumental in the building of MAE East. Mr. Muse was promoted to MFS regional vice president, general manager for the Mid-Atlantic States in 1993, where he assumed full profit and loss responsibility for seven states. In January 1995, Mr. Muse was promoted to President of MFS Telephone, where he oversaw the implementation of a phased switched service launch targeted at Internet Service Providers, cellular providers, information

service providers and carriers. Mr. Muse also held the positions of president of field sales West and president of Internet and carrier sales at MFS.

Prior to joining MFS, Mr. Muse spent 11 years at Southern Pacific Communications, which was acquired by Sprint. At Sprint, Mr. Muse held various positions, including sales management, district management, and regional management.

Mr. Muse received his B.S. from Southern Illinois University.

JAMES M. MILLER
PRESIDENT AND REFLEX BOARD OF DIRECTORS

Mr. Miller has over 10 years of professional operational experience with both public and privately held technology companies. His experience includes Sales and Marketing, Senior Management, Founder of start-ups and Board Member.

As Director of US Market Development for Advanced Radio Telecom Corp., Mr. Miller was responsible for analyzing new market opportunities, strategic market planning, real estate acquisition and network planning in support of a new Nationwide Broadband Wireless Data Network targeted towards businesses. Prior to joining ART, Mr. Miller was National Accounts Manager for NORCOM Networks Corporation, where he led sales development and secured several Fortune 1000 companies to be the first 10 customers on the NORCOM Nationwide Satellite Packet Data Network. Mr. Miller was Founder of MOM's Premium Food Company, a provider of "fresh" chilies, stews and entrees to the food service and retail industries, which was successfully distributed throughout 38 states. Mr. Miller began his career with MCI Communications as a Corporate Account Executive responsible for data and voice communications sales.

Mr. Miller attended Linfield College in McMinnville, Oregon.

MICHELE LIMA
VICE PRESIDENT, FINANCE AND ADMINISTRATION AND CORPORATE
TREASURER

Ms. Lima has over 15 years of experience in corporate finance and administration.

As Vice President & Controller for BLT Technologies, Inc., Ms. Lima was responsible for managing all financial and administrative aspects of this privately held corporation that grew rapidly from annual sales of \$10 million to over \$150 million in a four year period. In addition, Ms. Lima was a key figure in obtaining outside debt financing and assisting in the evaluation and sale of the company to WorldCom, Inc. in 1997.

As a Business Advisor with Arthur Andersen, Ms. Lima specialized in working with telecommunications and utility companies. Clients included local and long distance phone companies, cable companies, operator service providers, resellers of long distance service, cellular and other utility clients.

Ms. Lima is a graduate of the University of Washington.

ROBERT A. KAYE
VICE PRESIDENT, GENERAL COUNSEL AND CORPORATE SECRETARY

Mr. Kaye has more than ten years of legal experience in the telecommunications industry. His work includes negotiating and drafting telecommunications agreements relating to telephone, cable television, and high speed Internet services, sales contracts, real property transactions and leases, regulatory compliance, software license agreements, and mergers and acquisitions.

Prior to joining ReFlex, Mr. Kaye was counsel with Foster, Pepper & Shefelman's telecommunications practice group, where he represented a variety of telecommunications service providers.

Mr. Kaye received his J.D. from the University of Oregon School of Law and also holds an M.S. in Community & Regional Planning from the University of Texas - Austin, and a B.A. in Urban Planning from the University of Washington.

DANNY A. MCGINNIS
VICE PRESIDENT, CARRIER RELATIONS

Mr. McGinnis began his career in telecommunications as a Business Office Manager for business accounts at Pacific Northwest Bell in 1980. He remained there until a divestiture occurred at which time he left to form his own consulting company for telecommunications in Seattle.

While at The McGinnis Group, LLC, Mr. McGinnis consulted with Third World countries regarding the privatization of their communications companies and gained experience with international carrier agreements. Mr. McGinnis retired in 1997, but joined ReFlex Communications, Inc. in September 1999 as Director of Carrier Relations. In May 2000, he was promoted to Vice President, Carrier Relations.

CHRIS HEAVENS
VICE PRESIDENT, OPERATIONS AND ENGINEERING

Mr. Heavens has over 20 years of management experience in radio and telecommunications businesses. Educated to Degree level in Great Britain initially in Electrical Engineering, he then went on to specialize in Microwave and Telecommunications engineering. Additionally, Mr. Heavens attended the University of Washington, studying ISO 9000 Documentation and Financial Planning for Executive Managers. His skills are varied and include radio/microwave systems; operations management and engineering; strategic planning; and sales/marketing.

Prior to joining ReFlex, Mr. Heavens served in numerous executive management roles, most recently that of Executive VP and General Manager of Scala; VP of Operations for Innovation;

and Director, Sales and Contract Administration for Innova Corp. Additionally, Mr. Heavens has served in management roles for major worldwide communications projects, as well as over 10 years of sales and product marketing in both USA and Europe.

BILL COMERFORD
VP, EASTERN REGION

Mr. Comerford has over 25 years in Telecommunications and Real Estate management experience. In his current position as Vice President - Eastern Region for ReFlex Communications, he is responsible for all Sales, Marketing and Operations activities of this Broadband ISP in the Eastern part of the U.S. Mr. Comerford came to ReFlex from Cable & Wireless Communications where he was Vice President National Accounts, and developed a Sales and Marketing organization providing voice, data and IP solutions to Fortune 500 and U.S. Government accounts. Prior roles at Cable & Wireless include responsibility for Product Management and Marketing of Enhanced Business Solutions and worldwide responsibility for Value Added Calling Card and Voice Messaging capabilities.

Previous telecommunications experience include senior management roles at Global One (subsidiary of Sprint, Deutsche Telekom and France Telecom) where he was responsible for world wide development and deployment of value added IP and Business solutions, and in addition, acting as Chairman of their Global Intranet project, the first commercially released global intranet offering to multinational business customers. Mr. Comerford was employed by TRT Communications Inc. for 17 years, where he held a number of positions culminating in responsibilities as Vice President, Sales and Marketing.

Mr. Comerford was a Founder and Partner in Barreuta & Associates, a commercial Real Estate and Property Management firm in Washington DC. His first professional position was as a Field Sales and Marketing Representative for the IBM Corporation where he sold office automation solutions.

Mr. Comerford graduated from Pennsylvania State University with a B.S. in Marketing as well as holding an MBA from George Washington University with emphasis in Marketing and Organization Development.

EXHIBIT 3
Proposed Tariff

TITLE SHEET

FLORIDA TELECOMMUNICATIONS PRICE LIST

This price list contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for alternative local exchange telecommunications services provided by ReFlex Communications, Inc., with principal offices at 83 South King Street, Suite 106, Seattle, Washington 98104. This price list applies for services furnished within the State of Florida. This price list is on file with the Florida Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

CHECK SHEET

Sheets of this price list, as indicated below, are effective as of the date shown at the bottom of the respective sheets. Original and revised sheets, as named below, comprise all changes from the original price list and are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>
1	Original	29	Original		
2	Original	30	Original		
3	Original	31	Original		
4	Original	32	Original		
5	Original	33	Original		
6	Original	34	Original		
7	Original	35	Original		
8	Original	36	Original		
9	Original	37	Original		
10	Original	38	Original		
11	Original	39	Original		
12	Original	40	Original		
13	Original	41	Original		
14	Original	42	Original		
15	Original	43	Original		
16	Original	44	Original		
17	Original	45	Original		
18	Original	46	Original		
19	Original	47	Original		
20	Original	48	Original		
21	Original	49	Original		
22	Original	50	Original		
23	Original	51	Original		
24	Original	52	Original		
25	Original	53	Original		
26	Original	54	Original		
27	Original	55	Original		
28	Original	56	Original		

Issued: August 3, 2000

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83 South King Street, Suite 106
Seattle, Washington 98104

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Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

PRICE LIST FORMAT

- A. Check Sheets - When a price list filing is made with the FPSC, an updated check sheet accompanies the price list filing.
- B. Sheet Numbering and Revision levels - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the price list. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between existing 14 and 15 would be 14.1. Revision levels also appear in the upper right corner of each page. These levels are used to determine the most current sheet version on file with the FPSC. For example, the 4th revised sheet 14 cancels the 3rd revised sheet 14.

Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

SYMBOLS

When changes are made in any price list sheet, a revised sheet will be issued canceling the price list sheet affected. Changes will be identified on the revised sheet(s) through the use of the following symbols:

- D - Delete or Discontinue
- I - Change Resulting in an Increase to a Customer's Bill
- M - Moved from Another Price list Location
- N - New
- R - Change Resulting in a Reduction to a Customer's Bill
- T - Change in Text or Regulation But No Change in Rate or Charge

Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

APPLICATION OF PRICE LIST

This price list sets forth the service offerings, rates, terms and conditions applicable to the furnishing of alternative local exchange telecommunications services within the State of Florida by ReFlex Communications, Inc. Copies of this price list are available for inspection at the Florida Public Service Commission, 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850, or at the Company's principal offices, located at 83 South King Street, Suite 106, Seattle, Washington 98104.

Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

1.0 DEFINITIONS

For purposes of this price list, the following definitions will apply.

ACCESS LINE - An arrangement that connects the Customer's location to the Company's designated switching center or point of presence.

ADVANCE PAYMENT - The payment required before the start of service.

AUTHORIZED USER - A person, corporation or other entity who is authorized by the Company's customer to utilize service provided by the Company to the customer. The Customer is responsible for all charges incurred by an Authorized User.

COMMISSION - The Florida Public Service Commission.

COMPANY - ReFlex Communications, Inc.

CUSTOMER - The person, firm, corporation, or other entity which orders service pursuant to this price list and utilizes service provided under price list by the Company. A Customer is responsible for the payment of charges and for compliance with all terms of the Company's Price list.

CUSTOMER PREMISES EQUIPMENT ("CPE") - Equipment provided by the Customer for use with the Company's services.

DIGITAL - A method of storing, processing and transmitting information through the use of distinct electronic or optical pulses that represent the binary digits (bits) 0 and 1. Digital transmission/switching technologies employ a sequence of discrete, individually distinct pulses to represent information, as opposed to the continuously variable signal of analog technologies.

DIGITAL SUBSCRIBER LINE (xDSL) - A technology that uses a metallic copper loop to provide high speed data transmission services.

INTERRUPTION - The inoperability of the subscriber line due to Company facilities malfunction or human errors.

LATA - A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association Tariff F.C.C. No 4.

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1.0 DEFINITIONS (cont'd)

LOOPS - Segments of a line which extend from the serving central office to the originating and terminating point.

MOVE - The disconnection of existing equipment at one location and reconnection of the same equipment at a new location in the same building or in a different building on the same premises.

RECURRING CHARGES - The monthly charges billed by the Company for service, facilities and equipment, which continue for the agreed upon duration for the services.

SERVICE COMMENCEMENT DATE - The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this price list, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree to a substitute Service Commencement Date.

SERVICE ORDER - The written request for service executed by the Customer and the Company in the format devised by the Company. The execution of a Service Order by the customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this price list.

SHARED - A facility or equipment system or subsystem that can be used simultaneously by several customers.

TERMINAL EQUIPMENT - The method of physical connection between a Company-provided access line and a Customer's or User's transmission cable, inside wiring or terminal equipment. The Customer is responsible for ordering a terminal interface that is compatible with the Customer's or User's terminal equipment. All terminal interfaces will be provided by industry-standard connectors as specified in or authorized by Subpart F of Part 68, Title 47, Code of Federal Regulations.

USER - A Customer, Joint User or any other person authorized by the Customer to use service provided under this price list.

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2.0 RULES AND REGULATIONS**2.1 Undertaking of the Company****2.1.1 Scope**

The Company undertakes to furnish communications service pursuant to the terms of this price list in connection with one-way and/or two-way data transmission between points within the State of Florida.

Customers and users may use services and facilities provided under this price list to obtain access to services offered by other service providers. The Company is responsible under this price list only for the services provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own Customers. The Company will ensure an industry standard blocking rate no greater than one (1) call per 100 calls.

2.1.2 Shortage of Equipment or Facilities

- A. The furnishing of service under this price list is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company, in a non-discriminatory manner consistent with the authority granted by the Commission.
- B. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.

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2.0 RULES AND REGULATIONS (cont'd)**2.1 Undertaking of the Company (cont'd)****2.1.3 Terms and Conditions**

- A. Service is provided on the basis of a minimum period of at least one (1) month, 24-hours per day. For the purpose of computing charges in this price list, a month is considered to have thirty (30) days.
- B. Customers may be required to enter into written Service Orders which shall contain or reference a specific description of the service ordered, the price list or other approved rates to be charged, the duration of the services, and the terms and conditions in this price list. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C. Except as otherwise stated in the price list, at the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon thirty (30) days written notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the Service Order and this price list prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- D. Service may be terminated with written notice to the Customer if:
 - 1. the Customer is using the service in violation of this price list; or
 - 2. the Customer is using the service in violation of the law.
- E. This price list shall be interpreted and governed by the laws of the State of Florida without regard for its choice of laws provision.
- F. Customer Service Inquiries. The Company will comply with the Commission's rules regarding customer service inquiries and complaints. The Company's toll-free Customer Service number is 1-877- FLEXNET (1-877-353-9638).

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2.0 RULES AND REGULATIONS (cont'd)**2.1 Undertaking of the Company (cont'd)****2.1.3 Terms and Conditions (cont'd)**

- G. The Company hereby reserves its rights to establish service packages specific to a particular Customer. These contracts may or may not be associated with volume and/or term discounts. All such offerings shall be consistent with the rates and conditions specified herein, or shall require approval of the Commission.

2.1.4 Limitations on Liability

- A. The Company shall not be liable for and shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:
1. Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services provided by the Company; or (c) common carriers or warehousemen, except as contracted for by the Company;
 2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, water, earthquakes, hurricanes, or other catastrophes; explosion, vandalism, cable cut, storm or other similar occurrences; any law, order, regulation, direction, action or request of the United States government or of any other government (including state and local governments or of any department agency, board, court, bureau, corporation or other instrumentality of any one or more of said governments) or of any civil or military authority; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of power service, equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
 3. Any unlawful or unauthorized use of the Company's services;

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2.0 RULES AND REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

A. (cont'd)

4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided services; or by means of the combination of Company-provided services;
5. Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises by the Company or any Carrier or the installation or removal thereof;
6. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the facilities of any Carrier;
7. Failure of Customer to comply with the requirements of Section 2.3.1.
8. Any noncompletion of calls due to network busy conditions;
9. And any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's services.

- B. Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in Section 2.6.

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2.0 RULES AND REGULATIONS (cont'd)**2.1 Undertaking of the Company (cont'd)****2.1.4 Limitations on Liability (cont'd)**

- C. Except as specified in this price list, Company and its contractors shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages of any kind or nature arising out of or in connection with the installation, use, repair, performance or removal of the equipment, or other services in connection with the performance or failure to perform its obligations, including, but not limited to, loss of revenue or profits, regardless of the foreseeability thereof for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.
- D. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- E. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- F. THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- G. Failure by the Company to assert its rights pursuant to one provision of this price list does not preclude the Company from asserting its rights under other provisions.

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2.0 RULES AND REGULATIONS (cont'd)**2.1 Undertaking of the Company (cont'd)****2.1.4 Limitations on Liability (cont'd)**

H. If Company's failure of performance due to any of the reasons set forth in this section specified above shall be for thirty (30) days or less, then the service shall remain in effect, but an appropriate percentage of charges shall be abated and/or credited in the discretion and determination of Company; if for more than thirty (30) days, then the service may be canceled by either party without any liability, except that the Customer will incur termination liabilities as set forth in this price list if the reason for nonperformance is due to the Customer's nonperformance or failure of the Customer's equipment.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but may affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

2.1.6 Non-Routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

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2.0 RULES AND REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.7 Availability of Services

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with the regulations contained in the price lists of the Company.

- B. The Company and Customer shall negotiate a mutually agreed to installation date based on availability of services and facilities and the Customer's requested date.

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2.0 RULES AND REGULATIONS (cont'd)

2.2 Prohibited Uses

- A. The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- B. The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and the Florida Public Service Commission's regulations, policies, orders, and decisions.
- C. The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other Users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- D. A Customer, Joint User, or Authorized User may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity at the same location if the existing Customer has paid all charges owed to the Company. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this price list will apply.

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2.0 RULES AND REGULATIONS (cont'd)

2.3 Obligations of the Customer

2.3.1 General

The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this price list;
- B. providing the personnel, power and space required to operate all facilities and associated equipment installed on the premises of the Customer; and
- C. providing Company personnel and its agents access to premises of the Customer at any reasonable hour for the purpose of testing the facilities or equipment of the Company.

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2.0 RULES AND REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.2 Liability of the Customer

- A. The Customer shall not assert any claim against any other Customer or User of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this price list including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or User contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or User and not by any act or omission of the Company. Nothing in this price list is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.
- B. The Customer shall be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invitees or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- C. To the extent caused by any negligent or intentional act of the Customer, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other price list of the Company, or otherwise, for the interruption of, interference to, or other defect in any service provided by the Company to such third party.

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2.0 RULES AND REGULATIONS (cont'd)**2.4 Customer Deposits and Advance Payments****2.4.1 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services are furnished, where special construction is involved. The advance payment will not exceed an amount equal to the nonrecurring charge(s) and one (1) months charges for the service or facilities. In addition, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. Advance payments do not accrue interest. An advance payment may be required in addition to a deposit.

2.4.2 Deposits

- A. To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit may be required if the Customer fails to satisfactorily establish credit, or if Customer's financial condition cannot be ascertained from generally accepted credit reporting sources. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to two-and-one-half twelfths of the estimated charge for the service for the ensuing twelve months, or in case of seasonal service, an amount of one-half of the estimated charge for the service for the season involved.
- B. A deposit may be required in addition to an advance payment.
- C. The Company shall review accounts of Customers with deposits and shall refund deposits with interest if the accounts have been current for the preceding (12) twelve months. The Company will comply with any applicable Commission rules and procedures regarding refunds of deposits.

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2.0 RULES AND REGULATIONS (cont'd)

2.4 Customer Deposits and Advance Payments (cont'd)

2.4.2 Deposits (cont'd)

- D. Upon discontinuance of service, the Company shall automatically refund the Customer's deposit plus accrued interest, or the balance, if any, in excess of the unpaid bills including any penalties assessed for service furnished by the Company.
- E. Interest will be paid at a rate prescribed by the Commission, if any.

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2.0 RULES AND REGULATIONS (cont'd)**2.5 Payment Arrangements****2.5.1 Payment for Service**

Customer shall pay Company, monthly in advance, a monthly charge equal to the rate set forth in the Service Description or equal to the monthly charge as adjusted under the terms hereof, provided, however, that the first such payment shall be for the period from the Service Commencement Date through the end of the next full month. The non-recurring installation charges are due with such first payment. The Customer is responsible for the payment of all charges for services furnished by the Company to the Customer. Billing for service will commence on the Service Commencement Date. Customer must notify company of any errors or discrepancies in the billing statement within thirty (30) days of the date the billing statement was mailed to the Customer. The Customer will be obligated to pay all charges shown on the billing statement if the Customer fails to provide such notice.

Taxes. The Customer is responsible for the payment of federal excise taxes, state and local sales and use, excise or privilege taxes and similar taxes imposed by governmental jurisdictions, all of which shall be separately designated on the Company's invoices. Any taxes imposed by a local jurisdiction (e.g., county and municipal) will only be recovered from those Customers residing in the affected jurisdictions.

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2.0 RULES AND REGULATIONS (cont'd)**2.5 Payment Arrangements (cont'd)****2.5.2 Billing and Collection of Charges**

- A. **Non-recurring Charges.** The non-recurring charges contained in the Service Description are due with the Customer's first payment for charges, which payment shall be for the period from the start of service through the end of the next full month. Non-recurring charges not included with installation charges billed to the Customer shall be due and payable within thirty (30) days after the date the invoice is mailed to the Customer by the Company.

Customer shall be responsible for paying all of the Company's charges for time and material resulting from diagnosing problems which were caused by Customer's equipment.

- B. **Recurring Charges:** The Company shall present invoices for recurring charges monthly to the Customer, in advance of the month in which service is provided, and recurring charges shall be due and payable within thirty (30) days after the date the invoice is mailed to the Customer by the Company.
- C. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.
- D. Billing of the Customer by the Company will begin on the Service Commencement Date and accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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2.0 RULES AND REGULATIONS (cont'd)**2.5 Payment Arrangements (cont'd)****2.5.2 Billing and Collection of Charges (cont'd)**

- E. Customer bills for telephone service are due on the due date specified on the bill. A Customer is in default unless payment is made on or before the due date. If payment is not received by the Customer's next billing date, a late payment charge will be applied in the amount of the lesser of 1½% of the unpaid balance per month or the maximum lawful rate per month. Late payment charges do not apply to final accounts, or to government agencies of the State of Florida. (Such agencies are required to make payment in accordance with applicable state law.)
- F. Customer's liability for charges hereunder shall not be reduced by untimely installation or non-operation of the Customer's or a third party's facilities and equipment.
- G. The Customer should notify the Company in writing of any disputed items on an invoice within sixty (60) days of the date of mailing of the invoice, and must pay any portion of the bill that is not in dispute. The Company will comply with any Commission rules regarding disputed bills. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Company will inform the Customer of his or her right to file a complaint with the Commission in accordance with the Commission's rules of procedure.

The address of the Commission is as follows:

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL
(850) 413-6770

- H. If service is disconnected by the Company and later re-installed, re-installation of service will be subject to all applicable installation charges. If service is suspended by the Company and later restored, restoration of service will be subject to the rates in Section 4 of this price list.

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2.0 RULES AND REGULATIONS (cont'd)**2.5 Payment Arrangements (cont'd)****2.5.3 Discontinuance of Service for Cause**

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite thirty (30) days prior written notice to and attempted telephonic and/or personal contact with the Customer, on the 31st day after the due date, suspend service or terminate service until such time as Customer pays in full all arrearages, including late payment charges.
- B. Upon violation of any of the other material terms or conditions of this price list the Company may, thirty (30) days after giving notice to the Customer discontinue or suspend service without incurring any liability if such violation continues during that period. The Company reserves the option to disconnect service as soon as ten (10) days after the date that the notice of discontinuance or suspension of service was mailed to the customer.
- C. Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may, by notice to the Customer, immediately discontinue or suspend service without incurring any liability.
- D. Upon any governmental prohibition or governmental required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- E. Access to 911 will be maintained during temporary disconnection for non-payment of a residential customer's local service.

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2.0 RULES AND REGULATIONS (cont'd)

2.5 Payment Arrangements (cont'd)

2.5.3 Discontinuance of Service for Cause (cont'd)

- F. In the event of fraudulent use of the Company's network, the Company may without notice suspend or discontinue service. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.

- G. Any Customer receiving service from the Company under a contract is subject to a termination penalty when their service is discontinued pursuant to Section 2.5.3.A or 2.5.3.B of this price list. The penalty shall be equal to all charges that would have been payable by the Customer during the remainder of the term of the contract, discounted to present value at six percent. The termination penalty and any other balance due to the Company shall be immediately due and payable upon termination. Assessment of the termination penalty does not waive any other remedies that may be available to the Company at law or in equity or under any other provision of this price list.

2.5.4 Notice to Company for Cancellation of Service

Customers desiring to terminate service shall provide the Company thirty (30) days notice of desire to terminate service.

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2.0 RULES AND REGULATIONS (cont'd)**2.5 Payment Arrangements (cont'd)****2.5.5 Cancellation of Application for Service**

- A. Where the Company permits the Customer to cancel an application for service prior to the Service Commencement Date or prior to any special construction, no charges will be imposed except for those specified below.
- B. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levied against the Company that would have been chargeable to the Customer had service begun.
- C. Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, may apply. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D. The special charges described in 2.5.5.A through 2.5.5.C will be calculated and applied on a case-by-case basis.

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2.0 RULES AND REGULATIONS (cont'd)

2.5 Payment Arrangements (cont'd)

2.5.6 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

2.5.7 Bad Check Charge

A charge of \$10.00 will be assessed for any check returned by drawee bank or other financial institution for: Insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy necessitating return of the instrument at the discretion of the drawee bank or other financial institution.

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2.0 RULES AND REGULATIONS (cont'd)

2.6 Allowances for Interruptions in Service

2.6.1 General

- A. A credit allowance will be given when service is interrupted, except as specified in Section 2.6.2 following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this price list.
- B. An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C. If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for testing and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

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2.0 RULES AND REGULATIONS (cont'd)

2.6 Allowances for Interruption in Service (cont'd)

2.6.1 General (cont'd)

D. The Customer shall be responsible for the payment of service charges for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

E. A credit allowance will be given for interruptions of thirty (30) minutes or more. Two or more interruptions of fifteen (15) minutes or more during any one 24-hour period shall be combined into one cumulative interruption. For calculating credit allowances, every month is considered to have thirty (30) days.

F. Interruptions of 24 Hours or Less

<u>Length of Interruption</u>	<u>Credit</u>
30 minutes to 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/4 Day
6 hours up to but not including 8 hours	3/4 Day
8 hours to 24 hours	One Day

G. Over 24 Hours and Less Than 72 Hours. Interruptions over 24 hours and less than 72 hours will be credited one day for each 24-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

Interruptions Over 72 Hours. Interruptions of more than 72 hours will be credited two (2) days for each full 24-hour period. No more than thirty (30) days credit will be allowed for any one-month period.

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2.0 RULES AND REGULATIONS (cont'd)

2.6 Allowances for Interruption in Service (cont'd)

2.6.2 Limitations of Allowances

No credit allowance will be made for any interruption in service:

- A. Due to the negligence of or noncompliance with the provisions of this price list by any person or entity other than the Company, including but not limited to the Customer;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of such service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company, or utilize another service provider;
- F. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H. That was not reported to the Company within thirty (30) days of the date that service was affected.

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2.0 RULES AND REGULATIONS (cont'd)**2.6 Allowances for Interruption in Service (cont'd)****2.6.3 Use of Another Means of Communications**

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

2.6.4 Application of Credits for Interruptions in Service

Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one (1) month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

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2.0 RULES AND REGULATIONS (cont'd)**2.7 Cancellation of Service/Termination Liability**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason or breaches the terms in the service contract, Customer may be requested by the Company to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination.

2.7.1 Termination Liability

- A. Customer's termination liability for cancellation of service shall be equal to:
1. All unpaid non-recurring charges reasonably expended by the Company to establish service to the Customer, including any installation charges which may have been waived by the Company, provided Customer has been notified of the amount of the waived charges and of Customer's liability therefore on cancellation, plus;
 2. Any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
 3. The difference between the total actual monthly recurring charges to Customer for the Service during the entire time the Service was provided to Customer and the total monthly recurring charges which Customer would have paid or which Customer would have been required to pay if the Service had been based on a month to month term using the Company's most recent price list prices at the time of cancellation.
- B. Either party shall have the right to cancel services without liability if Company is prohibited from furnishing the Service or if any material rate or term contained herein is substantially changed by order of the Delaware Public Service Commission, the Federal Communications Commission, or highest court of competent jurisdiction to which the matter is appealed, or other local, state or federal government authority.

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2.0 RULES AND REGULATIONS (cont'd)**2.8 Customer Liability for Unauthorized Use of the Network**

Unauthorized use of the network occurs when a person or entity that does not have actual, apparent, or implied authority to use the network, obtains the Company's services provided under this price list.

2.8.1 Customer Liability for Fraud and Unauthorized Use of the Network

- A. Except as provided elsewhere in this price list, the Customer is responsible for payment of all charges for services provided under this price list furnished to the Customer or User. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees or the public.
- B. The Customer is liable for all costs incurred as a result of unauthorized use of the Network, including service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive charges.
- C. The Customer is responsible for payment of any charges related to the suspension and/or termination of service, and any charges for reconnection of service, incurred as a result of unauthorized use of the Network.
- D. The following activities constitute fraudulent use:
 - 1) Using the network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;
 - 2) Using or attempting to use the Network with the intent to avoid payment, either in whole or in part, of any of the Company's price listed charges by either rearranging, tampering with, or making connections not authorized by this price list to any service components used to furnish the Company's services or using fraudulent means or devices, tricks, schemes or false or invalid numbers, false credit devices or electronic devices.

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2.0 RULES AND REGULATIONS (cont'd)**2.9 Use of Customer's Service by Others****2.9.1 Resale and Sharing**

Any service provided under this price list may be resold to or shared with other persons at the option of Customer, subject to compliance with any applicable laws or Commission regulations governing such resale or sharing. The Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to this price list, for determining who is authorized to use its services, and for notifying the Company of any unauthorized use.

2.9.2 Joint Use Arrangements

Joint use arrangements will be permitted for all services provided under this price list. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint User shall be responsible for the payment of the charges billed to it.

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2.0 RULES AND REGULATIONS (cont'd)**2.10 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company, (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

2.11 Notices and Communications

- A. The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- B. The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- C. Except as otherwise stated in this price list, all notices or other communications required to be given pursuant to this price list will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- D. The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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3.0 DESCRIPTION OF SERVICE

3.1 Services Offered

A. ReFlex will offer the following services:

Local Exchange Service
Ancillary Services
WATS
High Speed Data Services
Operator Services
Directory Assistance

These Services are described in more detail below.

3.2 Timing of Calls

Timing of calls begins when the called station is answered, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. The company does not bill for incomplete calls.

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3.0 DESCRIPTION OF SERVICE (cont'd)**3.3 Basic Local Exchange Service****3.3.1 General**

Basic Local Exchange Service provides a residential or business customer with a connection to the Company's switching network which enables the customer to:

- A. place and receive calls from other stations on the public switched telephone network;
- B. access the Company's local calling service;
- C. access the Company's operators and business office for service related assistance; access toll-free telecommunications services such as 800 NPA; and access 911 service for emergency calling; and
- D. access the service of providers of interexchange service. A customer may presubscribe to such provider's service to originate calls on a direct dialed basis or to receive toll-free service from such provider, or may access a provider on an ad hoc basis by dialing the provider's Carrier Identification Code (5580). At the time of initial subscription, the customer shall designate a Primary Interexchange Carrier (PIC) for intra-LATA and inter-LATA toll service. If the customer does not select an intra-LATA PIC, and does not request blocking of intra-LATA toll calls, the Company shall be deemed to have been designated as the customer's intra-LATA PIC.

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3.0 DESCRIPTION OF SERVICE (cont'd)

3.3 Basic Local Exchange Service (cont'd)

3.3.2 Basic Local Exchange Service Features

The following Basic Local Exchange Service options are offered:

Measured Rate Service
Flat Rate Service

All Basic Local Exchange Service may be connected to customer-provided terminal equipment such as station sets or facsimile machines. Service may be arranged for two-way calling, inward calling only or outward calling only.

The following Custom Calling Service features are offered to Basic Local Exchange Service Subscribers at an additional charge:

Three Way Calling
Call Forward Busy
Call Forward Don't Answer
Call Forward Variable
Call Waiting/Cancel Call Waiting
Distinctive Ringing
Speed Calling (One/Two Digit)

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3.0 DESCRIPTION OF SERVICE (cont'd)

3.3 Basic Local Exchange Service (cont'd)

3.3.2 Basic Local Exchange Service Features (cont'd)

The following features are available with Basic Local Exchange Service at an additional charge:

- Call ID
- Block Call ID
- Automatic Call Back
- Automatic Recall
- Call Trace

Charges for Basic Local Exchange Service include a nonrecurring service connection charge and a monthly recurring charge for each line. Monthly recurring charges apply to optional service features. Measured charges apply to Measured Rated Service, in addition to other rate elements described above.

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3.0 DESCRIPTION OF SERVICE (cont'd)

3.3 Basic Local Exchange Service (cont'd)

3.3.3 Measured Rate Service

A. General

Measured Rate Service provides calls to points within the local exchange area are charged on the basis of call duration in addition to a base monthly charge.

B. Recurring and Nonrecurring Charges

In certain circumstances, service to customers may require the use of a link (and, or) number portability arrangements provided by the Incumbent Local Exchange Carrier. In such circumstances, the monthly recurring charge to the customer will be the greater of the company's Base Service Line charge set forth below or the charge to the company by the Incumbent Local Exchange Carrier for the link used to serve the customer. If the customer is served through a Number Portability Arrangement, the monthly charge to the customer will be increased by the applicable charge from the Incumbent Local Exchange Carrier to the company of the Number Portability arrangement.

Charges for each Measured Rate Service line include a monthly recurring Base Service Charge and usage charges for completed calls originated from the customer's line based on the total number of calls during the billing period.

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3.0 DESCRIPTION OF SERVICE (cont'd)

3.3 Basic Local Exchange Service (cont'd)

3.3.4 Flat Rate Service

A. General

With the Flat Rate Service, the customer pays a monthly rate for an unlimited number of outgoing calls within a specified local calling area.

B. Recurring and Nonrecurring Charges

In certain circumstances, service to customers may require the use of a link (and, or) number portability arrangements provided by the Incumbent Local Exchange Carrier. In such circumstances, the monthly recurring charge to the customer will be the greater of the company's Base Service Line charge set forth below or the charge to the company by the Incumbent Local Exchange Carrier for the link used to serve the customer. If the customer is served through a Number Portability Arrangement, the monthly charge to the customer will be increased by the applicable charge from the Incumbent Local Exchange Carrier to the Company of the Number Portability Arrangement.

Charges for each Flat Rate Service line include a monthly recurring Base Service Charge for an unlimited number of outgoing calls within a specified local calling area.

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3.0 DESCRIPTION OF SERVICE (cont'd)**3.4 Supplemental Services****3.4.1 Custom Calling Service****A. General**

The features in this section are made available on an individual basis or as part of multiple feature packages. All features are provided subject to availability; features may not be available with all classes of service. Transmission levels may not be sufficient in all cases.

B. Description of Features**1. Three Way Calling**

The Three Way Calling feature allows a customer to add a third party to an existing two-way call and form a three-way call. The call must have been originated from outside the station group and terminate to a station within the station group. The Call Hold feature allows a customer to put any in-progress call on hold by flashing the switchhook and dialing a code. This frees the line to allow the customer to make an outgoing call to another number. Only one call per line can be on hold at a time. The third party can then be added to the original call.

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3.0 DESCRIPTION OF SERVICE (cont'd)**3.4 Supplemental Services** (cont'd)**3.4.1 Custom Calling Service** (cont'd)**B. Description of Features** (cont'd)**2. Call Forwarding**

Call Forwarding, when activated, redirects attempted terminating calls to another customer-specific line. The customer may have to activate and deactivate the forwarding function and specify the desired terminating telephone number during each activation procedure. Call originating ability is not affected by Call Forwarding.

The calling party is billed for the call to the called number. If the forwarded leg of the call is chargeable, the customer with the Call Forwarding is billed for the forwarded leg of the call.

Call Forwarding - Busy automatically reroutes an incoming call to a customer predesignated number when the called number is busy.

Call Forwarding - Don't Answer automatically reroutes an incoming call to a customer predesignated number when the called number does not answer within the number of rings programmed by the Company.

Call Forwarding - Variable allows the customer to choose to reroute incoming calls to another specified telephone number. The customer must activate and deactivate this feature.

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3.0 DESCRIPTION OF SERVICE (cont'd)**3.4 Supplemental Services** (cont'd)**3.4.1 Custom Calling Service** (cont'd)**B. Description of Features** (cont'd)**3. Call Waiting/Cancel Call Waiting**

Call Waiting provides a tone signal to indicate to a customer already engaged in a telephone call that a second caller is attempting to dial in. It will also permit the customer to place the first call on hold, answer the second call and then alternate between both callers. Cancel Call Waiting (CCW) allows a Call Waiting (CW) customer to disable CW for the duration of an outgoing telephone call. CCW is activated (i.e., CW is disabled) by dialing a special code prior to placing a call, and is automatically deactivated when the customer disconnects from the call.

4. Distinctive Ringing

This feature enables a user to determine the source of an incoming call from a distinctive ring. The user is provided with up to two additional telephone numbers.

5. Speed Calling

This feature allows a user to dial selected numbers using one or two digits. Up to eight numbers (single digit, or thirty numbers with two digits) can be selected.

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3.0 **DESCRIPTION OF SERVICE** (cont'd)

3.4 **Supplemental Services** (cont'd)

3.4.2 **LASS Services**

A. **General**

The features in this section are made available on an individual basis or as part of multiple feature packages. All features are provided subject to availability; features may not be available with all LASS services. Transmission levels may not be sufficient in all cases.

B. **Description of Features**

1. **Call ID / Block Call ID**

The Call ID feature allows a customer to see a caller's name and number previewed on a display screen before the call is answered allowing a customer to prioritize and or screen incoming calls. Call ID records the name, number, date and time of each incoming call -- including calls that aren't answered by the customer. Call ID service requires the use of specialized customer-provided equipment not provided by the company. It is the responsibility of the customer to provide the necessary customer-provided equipment.

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3.0 DESCRIPTION OF SERVICE (cont'd)

3.4 Supplemental Services (cont'd)

3.4.2 LASS Services (cont'd)

B. Description of Features (cont'd)

2. Automatic Callback

The Automatic Callback feature allows a customer to automatically Callback the last number dialed. This is accomplished by the customer activating a code. The network periodically tests the busy/free status of the called line for up to 30 minutes until both lines are found free and then Callbacks the call for the customer.

The Automatic Callback feature also allows customers, having reached a busy number, to dial a code before hanging up. Automatic Callback feature then continues to try the busy number for up to 30 minutes until it becomes free. Once the busy line is free the call is automatically called back and the customer is notified of the connected call via a distinctive ring.

The following types of calls cannot be Automatically Called back:

- Calls to toll-free Service numbers
- Calls to 900 Service numbers
- Calls preceded by an interexchange carrier access code
- International Direct Distance Dialed calls
- Calls to Directory Assistance
- Calls to 911

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3.0 **DESCRIPTION OF SERVICE** (cont'd)

3.4 **Supplemental Services** (cont'd)

3.4.2 **LASS Services** (cont'd)

B. **Description of Features** (cont'd)

3. **Automatic Recall**

The Automatic Recall stores the number of the most recent incoming call (including unanswered incoming calls) to a customer's number. This allows a customer to dial back any missed or unanswered telephone calls.

4. **Call Trace**

Call Trace allows customers to key in a code that alerts the network to trace the last call received. The traced telephone number is automatically sent to the company for storage for a limited amount of time and is retrievable by legally constituted authorities upon proper request by them. By contacting the company the customer can use this application to combat nuisance calls.

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3.0 DESCRIPTION OF SERVICE (cont'd)**3.4 Supplemental Services** (cont'd)**3.4.3 Local Operator Service**

Local calls may be completed or billed with the live or mechanical assistance by the Company's operator center. Calls may be billed collect to the called party, to an authorized 3rd party number, to the originating line, or to a valid authorized calling card. Local calls may be placed on a station to station basis or to a specified party (see Person to Person), or designated alternate. Usage charges for local operator assisted calls are those usage charges that would normally apply to the calling party's service.

3.5 Directory Assistance Service

A customer may obtain assistance, for a charge, in determining a telephone number by dialing Directory Assistance Service. Up to two requests may be made on each call to the Directory Assistance Service. A customer can also receive assistance by writing the Company with a list of names and addresses for which telephone numbers are desired.

A Directory Assistance Charge applies for each call, regardless of whether the Directory Assistance Bureau is able to furnish the requested telephone number, except as follows:

- 1) Calls from pay telephones.
- 2) Requests for telephone numbers of non-published service.
- 3) Requests in which the Directory Assistance operator provides an incorrect number. The customer must inform the Company of the error in order to receive credit.

3.6 Location of Service

Service will be provided to and from all points in the State of Florida.

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4.0 RATE SCHEDULE

4.1 Prices and Charges

4.1.1 Basic Local Exchange Service

1) Measured Rate Service

	<u>Business</u>	<u>Residential</u>
Nonrecurring Charge	\$46.07	\$24.94
Monthly Charge	\$23.99	\$6.89

2) Flat Rate Service

	<u>Business</u>	<u>Residential</u>
Nonrecurring Charge	\$46.07	\$24.94
Monthly Charge	\$31.30	\$12.11

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4.0 RATE SCHEDULE (cont'd)

4.1 Prices and Charges (cont'd)

4.1.2 Supplemental Services

1) Custom Calling Service

	<u>Business</u>		<u>Residential</u>	
	<u>Monthly</u>	<u>Per Use</u>	<u>Monthly</u>	<u>Per Use</u>
Three Way Calling	\$5.00	\$0.90	\$4.70	\$0.90
Call Forwarding				
Call Forwarding - Busy	\$3.25	--	\$1.00	--
Call Forwarding - Don't Answer	\$3.25	--	\$1.00	--
Call Forwarding - Variable	\$5.00	--	\$4.00	--
Call Waiting/Cancel Call Waiting	\$6.25	--	\$5.15	--
Distinctive Ringing	\$4.50	--	\$4.00	--
Speed Calling				
8 Numbers	\$3.00	--	\$2.00	--
30 Numbers	\$5.00	--	\$3.00	--

2) LASS Services

	<u>Business</u>		<u>Residential</u>	
	<u>Monthly</u>	<u>Per Use</u>	<u>Monthly</u>	<u>Per Use</u>
Call ID / Block Call ID	\$10.00	--	\$7.00	--
Automatic Callback	\$5.00	\$0.90	\$4.00	\$0.90
Automatic Recall	\$6.00	\$0.90	\$5.00	\$0.90
Call Trace	\$5.00	\$3.50	\$4.00	\$3.50

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4.0 **RATE SCHEDULE** (cont'd)

4.1 **Prices and Charges** (cont'd)

4.1.2 **Supplemental Services** (cont'd)

3) **Local Operator Service**

	<u>Per Call Charges</u>
Person-to-Person	
Customer Dialed	\$0.80
Operator Dialed	\$3.25
Station-to-Station	
Customer Dialed	\$0.80
Operator Dialed	\$1.75
Collect and Bill to Third Number	
Customer Dialed	\$0.95
Operator Dialed	\$1.75

4.1.3 **Directory Assistance Service**

	<u>Charge</u>
Within the Company's local calling area for the originating line	
Per call	\$0.25
Outside the Company's local and LATA/NPA serving areas for the originating line	
Per call	\$0.95

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4.0 RATE SCHEDULE (cont'd)**4.1 Prices and Charges (cont'd)****4.1.4 Restoration Charge**

	<u>Charge</u>
Residential Service	\$23.00
Business Service	\$38.00

4.2 Telecommunications Relay Service

For calls received from the relay service, the Company will when billing relay calls discount relay service calls by 50 percent off of the otherwise applicable rate for a voice non-relay call except that where either the calling or called party indicates that either party is both hearing and visually impaired, the call shall be discounted 60 percent off of the otherwise applicable rate for a voice non-relay call.

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5.0 MISCELLANEOUS SERVICES

5.1 Restoration of Service

A restoration charge pursuant to Section 4.1.4 of this price list applies to the restoration of suspended service and facilities because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities is arranged.

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6.0 SPECIAL ARRANGEMENTS

6.1 Special Construction

6.1.1 Charges

Where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's price lists, the Customer may be charged for the following construction costs to the extent they are applicable:

- A. cost installed of the facilities to be provided including estimated costs for the rearrangements of existing facilities. Cost installed includes:
 - 1. equipment and materials provided or used,
 - 2. engineering, labor and supervision,
 - 3. transportation, and
 - 4. rights of way;
- B. cost of maintenance;
- C. depreciation on the estimated cost installed of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
- D. administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;
- E. license preparation, processing and related fees;
- F. price list preparation, processing and related fees;
- G. any other identifiable costs related to the facilities provided; and
- H. an amount for return and contingencies.

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6.0 SPECIAL ARRANGEMENTS (cont'd)

6.1 Special Construction (cont'd)

6.1.2 Termination Liability

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason or breaches the terms in the service contract, Customer may be requested by the Company to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination.

The termination liability charge is calculated as the sum of:

- A. Cost installed of the facilities provided including estimated costs for rearrangements of existing facilities and/or construction of new facilities as appropriate, less net salvage. Cost installed includes the cost of:
 - 1. equipment and materials provided or used,
 - 2. engineering, labor and supervision,
 - 3. transportation, and
 - 4. rights of way;
- B. license preparation, processing, and related fees;
- C. price list preparation, processing, and related fees;
- D. cost of removal and restoration, where appropriate; and
- E. any other identifiable costs related to the specially constructed or rearranged facilities;
- F. Less any construction costs paid by the Customer prior to termination.

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6.0 SPECIAL ARRANGEMENTS (cont'd)**6.2 Individual Case Basis (ICB) Arrangements**

For special situations, rates for services not covered under this price list will be determined on an Individual Case Basis (ICB) and specified by contract between the Company and the Customer. Such contracts will be approved by the Commission prior to the provision of such service.

6.3 Special Promotions

The Company may from time to time, upon thirty (30) days notice to the Commission, engage in special promotional trial service offerings of limited duration designed to attract new Customers or to increase Customer awareness of a particular price list offering. All promotions are offered on a non-discriminatory basis.

342330.2

Issued: August 3, 2000

Effective:

Issued By: Dennis D. Muse, Chief Executive Officer
83 South King Street, Suite 106
Seattle, Washington 98104

EXHIBIT 4

**Certificate of Qualification to Transact Business
and
Articles of Incorporation**

State of Florida



Department of State

I certify from the records of this office that REFLEX COMMUNICATIONS, INC., is a corporation organized under the laws of Washington, authorized to transact business in the State of Florida, qualified on March 6, 2000.

The document number of this corporation is F00000001254.

I further certify that said corporation has paid all fees due this office through December 31, 2000, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Eighth day of March, 2000



CR2EO22 (1-99)

Katherine Harris
Katherine Harris
Secretary of State

STATE of WASHINGTON



SECRETARY of STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,

hereby certify by this certificate that the attached is a true and correct copy of

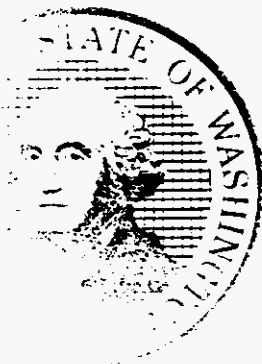
CERTIFICATE OF AMENDMENT

of

REFLEX COMMUNICATIONS, INC.

Amending and Restating Articles

as filed in this office on May 11, 1999.



Date: July 1, 1999

Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

A handwritten signature in black ink, appearing to read "Ralph Munro".

Ralph Munro, Secretary of State

STATE of WASHINGTON



SECRETARY of STATE

I, **RALPH MUNRO**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF AMENDMENT

to

REFLEX COMMUNICATIONS, INC.

a Washington Profit Corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Amending and Restating Articles

UBI Number: 601 825 165

Date: May 11, 1999



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

A handwritten signature in black ink, appearing to read "Ralph Munro".

Ralph Munro, Secretary of State

2-567679-2

MAY 11 1999

RALPH MUNRO
SECRETARY OF STATE

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

OF

REFLEX COMMUNICATIONS, INC.

Pursuant to Section 23B.10.070 of the Revised Code of Washington, the following Amended and Restated Articles of Incorporation of Reflex Communications, Inc. (the "Corporation"), are hereby submitted for filing:

ARTICLE I

The name of this corporation is Reflex Communications, Inc. (the "Corporation").

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Washington other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the Revised Code of Washington.

ARTICLE III

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is One Hundred Ten Million (110,000,000) shares, each with a par value of \$0.001 per share. Seventy Million (70,000,000) shares shall be Common Stock and Forty Million (40,000,000) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by these First Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of Forty Million (40,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article III(B).

1. **Dividend Provisions.** The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.0299 per share per annum on each outstanding share of Series A Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

Val: 05/11/1999 - 243508
\$50.00 on 05/11/1999
Check - 05/11/1999 - 1461

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$0.29902 per share for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts then, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of the Series A Preferred Stock and the Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock) until the holders of the Series A Preferred Stock shall have received an aggregate of \$0.89706 per share (including amounts paid pursuant to Section 2(a) above); thereafter, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, provided that this Section 2(c)(i) shall not apply to a merger effected solely for the purpose of changing the domicile of the Corporation.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or The Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of the Corporation.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as determined by the Board of Directors of the Corporation.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the shareholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.**

(a) **Redemption Date and Price.** At any time after May 11, 2004, but on a date (the "**Redemption Date**") within sixty (60) days after receipt by the Corporation of a written request (a "**Redemption Election**") from the holders of not less than a majority of the then outstanding Series A Preferred Stock that all or some of the shares of such series be redeemed, the Corporation shall, to the extent it may lawfully do so, redeem up to that number of shares specified in the Redemption Election in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to \$0.29902 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus 10% per annum simple interest on such amount from May 11, 1999 until the Redemption

Date (the "Redemption Price"). Any redemption effected pursuant to this Section 3(a) shall be made available on a pro rata basis among all of the holders of the Series A Preferred Stock based on the number of shares of Series A Preferred Stock held by such holders. The holders of the Series A Preferred Stock shall collectively be entitled to effect only one redemption pursuant to this Section 3.

(b) **Procedure.** Within fifteen (15) days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares eligible to be redeemed from such holder, the Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). The holders of any shares of Series A Preferred Stock may exercise such holders' redemption rights as to such shares or any part thereof, subject to the limitations set forth in Section 3(c) hereof, by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Preferred Stock or at such other place as may be designated by the Corporation in the Redemption Notice, at any time within 30 days following the date of receipt of such Redemption Notice by the holder, a written notice (each a "Holder's Notice") stating that such holder elects to have redeemed all or part of the shares of Series A Preferred Stock held by the holder which are eligible for redemption in accordance with the Redemption Notice. On or after the Redemption Date, each holder of Series A Preferred Stock that has elected to have shares of Series A Preferred Stock redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. As promptly as practicable after receipt of the surrendered certificate or certificates (and in no event more than 10 days following the Redemption Date) the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the holder, a check for cash with respect to the shares so redeemed. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) **Effect of Redemption; Insufficient Funds.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in a Holder's Notice (except the right to receive the Redemption Price without interest upon surrender of their share certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable and the total number of shares of Series A Preferred Stock for which holders

have requested redemption on such date pursuant to a Holder's Notice. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem any part of the balance of the shares which the Corporation has become obliged to redeem on the Redemption Date but which it has not redeemed, such later redemptions to be effected ratably in accordance with the above.

4. **Conversion.** The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and on or prior to the fifth day prior to the Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to the Series A Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.29902 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$0.29902. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which is not less than \$0.89706 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds to the Corporation of \$25,000,000 (net of underwriting discounts and commissions) or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in

connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date) other than

- (1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,
- (2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,
- (3) Capital stock, or options or warrants to purchase capital stock, issued to lenders or lessors in connection with commercial credit arrangements, equipment financings or similar transactions,

(4) Shares of Common Stock or Preferred Stock issuable upon exercise of warrants outstanding as of the date of these Amended and Restated Articles of Incorporation,

(5) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(6) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, and

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus

the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series A Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series A Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock,

in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights.** The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. **Protective Provisions.** So long as at least 8,000,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class:

- (a) effect a transaction described in Section 2(c)(i) above;
- (b) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares of such series;
- (c) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;
- (d) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, dividends, redemption, conversion or upon liquidation;
- (e) declare or pay any dividend on distribution with respect to shares of Common Stock;
- (f) amend or waive any provision of these Articles of Incorporation so as to adversely affect the shares of Series A Preferred Stock; or

(g) repurchase any shares of Common Stock (except repurchases of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal).

7. **Status of Redeemed or Converted Stock.** In the event any shares of Preferred Stock shall be redeemed pursuant to Section 3 or converted pursuant to Section 4 hereof, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE IV. PREEMPTIVE RIGHTS

Except as otherwise provided in that certain Investors' Rights Agreement, dated on or about May 6, 1999, as may be amended from time to time, no preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of the Corporation.

ARTICLE V. CUMULATIVE VOTING

The right to cumulate votes in the election of Directors shall not exist with respect to shares of stock of the Corporation.

ARTICLE VI. ACTION BY MAJORITY VOTE

To the extent permitted under RCW 23B, the Corporation's shareholders may take action by the affirmative vote of a simple majority of all shareholders of the Corporation entitled to vote on an action. This Article VI is specifically intended to reduce the voting requirements otherwise

prescribed under RCW 23B.10.030, 23B.11.030, and 23B.12.020, in accordance with RCW 23B.07.270.

ARTICLE VII. DIRECTORS

The number of Directors of the Corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

ARTICLE VIII. BYLAWS

The Board of Directors shall have the power to adopt, amend or repeal the Bylaws of the Corporation, subject to the power of the shareholders to amend or repeal such Bylaws. The shareholders shall also have the power to amend or repeal the Bylaws of the Corporation and to adopt new Bylaws.

ARTICLE IX. AMENDMENTS TO ARTICLES OF INCORPORATION

The Corporation reserves the right to amend or repeal any of the provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by law, and the rights of the shareholders of the Corporation are granted subject to this reservation.

ARTICLE X. ACTION BY SHAREHOLDERS WITHOUT A MEETING

Any action required or permitted to be taken at any meeting of the Corporation's shareholders may be taken without a meeting or a vote if either:

(a) the action is taken by all of the Corporation's shareholders entitled to vote on the action; or

(b) so long as the Corporation is not a public company, the action is taken by the Corporation's shareholders holding of record, or otherwise entitled to vote, in the aggregate no less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted.

To the extent prior notice is required by law, any advance notice required by statute to be given to nonconsenting shareholders of the Corporation shall be made at least one business day prior to the effectiveness of the action, or such longer period as required by law. The form of this notice shall be sufficient to appraise the nonconsenting shareholders of the Corporation of the nature of the action to be effected, in a manner approved by the directors of the Corporation or by the committee or officers to whom the Board of Directors has delegated that responsibility.

ARTICLE XI. LIMITATION OF DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director, except for:

(a) Acts or omissions involving intentional misconduct by the director or a knowing violation of law by the director;

- (b) Conduct violating RCW 23B.08.310 (which involves certain distributions by the Corporation); or
- (c) Any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled.

If the Washington Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Washington Business Corporation Act, as so amended. Any repeal or modification of the foregoing paragraph by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE XII. INDEMNIFICATION OF DIRECTORS

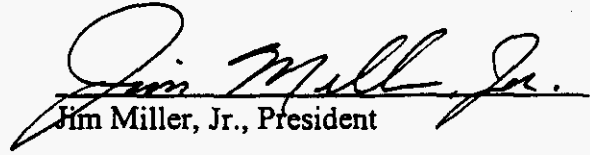
The Corporation shall indemnify its directors to the full extent permitted by the Washington Business Corporation Act now or hereafter in force. However, such indemnity shall not apply on account of:

- (a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;
- (b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or
- (c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

The Corporation shall advance expenses for such persons pursuant to the terms set forth in the Bylaws, or in a separate directors' resolution or contract. The Board of Directors may take such action as is necessary to carry out these indemnification and expense advancement provisions. It is expressly empowered to adopt, approve, and amend from time to time such Bylaws, resolutions, contracts, or further indemnification and expense advancement arrangements as may be permitted by law, implementing these provisions. Such Bylaws, resolutions, contracts or further arrangements shall include but not be limited to implementing the manner in which determinations as to any indemnity or advancement of expenses shall be made. No amendment or repeal of this Article XII shall apply to or have any effect on any right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

[Signature page follows]

The undersigned, as President of Reflex Communications Inc. executes these Amended and Restated Articles of Incorporation this 10th day of May, 1999.


Jim Miller, Jr., President

CERTIFICATE OF OFFICER

OF


REFLEX COMMUNICATIONS, INC.

Pursuant to the provisions of RCW 23B.10.070, the Amended and Restated Articles of Incorporation of Reflex Communications, Inc., a Washington corporation (the "Corporation"), are hereby submitted for filing.

1. The name of record of the Corporation is Reflex Communications, Inc.
2. The current Articles of Incorporation are amended and restated in their entirety and replaced with the Amended and Restated Articles of Incorporation of Reflex Communications, Inc. (the "Restated Articles") in the form attached hereto as Exhibit A.
3. The Restated Articles were approved by the Board of Directors on May 10, 1999 and by the shareholders of the Corporation on May 10, 1999.

IN WITNESS WHEREOF, the undersigned certifies that he is the President of the Corporation and has executed these Amended and Restated Articles of Incorporation this 10th day of May, 1999.

REFLEX COMMUNICATIONS, INC.

By: 
Jim Miller, Jr.
President

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

OF

REFLEX COMMUNICATIONS, INC.

Pursuant to Section 23B.10.070 of the Revised Code of Washington, the following Amended and Restated Articles of Incorporation of Reflex Communications, Inc. (the "Corporation"), are hereby submitted for filing:

ARTICLE I

The name of this corporation is Reflex Communications, Inc. (the "Corporation").

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Washington other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the Revised Code of Washington.

ARTICLE III

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is One Hundred Ten Million (110,000,000) shares, each with a par value of \$0.001 per share. Seventy Million (70,000,000) shares shall be Common Stock and Forty Million (40,000,000) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by these First Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of Forty Million (40,000,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock are as set forth below in this Article III(B).

1. **Dividend Provisions.** The holders of shares of Series A Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.0299 per share per annum on each outstanding share of Series A Preferred Stock, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

2. **Liquidation.**

(a) **Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$0.29902 per share for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts then, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 2(a) above, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of the Series A Preferred Stock and the Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock) until the holders of the Series A Preferred Stock shall have received an aggregate of \$0.89706 per share (including amounts paid pursuant to Section 2(a) above); thereafter, if assets remain in the Corporation, the holders of the Common Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, provided that this Section 2(c)(i) shall not apply to a merger effected solely for the purpose of changing the domicile of the Corporation.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or The Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors of the Corporation.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as determined by the Board of Directors of the Corporation.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the shareholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.**

(a) **Redemption Date and Price.** At any time after May 11, 2004, but on a date (the "**Redemption Date**") within sixty (60) days after receipt by the Corporation of a written request (a "**Redemption Election**") from the holders of not less than a majority of the then outstanding Series A Preferred Stock that all or some of the shares of such series be redeemed, the Corporation shall, to the extent it may lawfully do so, redeem up to that number of shares specified in the Redemption Election in accordance with the procedures set forth in this Section 3 by paying in cash therefor a sum per share equal to \$0.29902 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus 10% per annum simple interest on such amount from May 11, 1999 until the Redemption

Date (the "Redemption Price"). Any redemption effected pursuant to this Section 3(a) shall be made available on a pro rata basis among all of the holders of the Series A Preferred Stock based on the number of shares of Series A Preferred Stock held by such holders. The holders of the Series A Preferred Stock shall collectively be entitled to effect only one redemption pursuant to this Section 3.

(b) **Procedure.** Within fifteen (15) days following its receipt of the Redemption Election, the Corporation shall mail a written notice, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares eligible to be redeemed from such holder, the Redemption Date, the applicable Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). The holders of any shares of Series A Preferred Stock may exercise such holders' redemption rights as to such shares or any part thereof, subject to the limitations set forth in Section 3(c) hereof, by delivering to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Preferred Stock or at such other place as may be designated by the Corporation in the Redemption Notice, at any time within 30 days following the date of receipt of such Redemption Notice by the holder, a written notice (each a "Holder's Notice") stating that such holder elects to have redeemed all or part of the shares of Series A Preferred Stock held by the holder which are eligible for redemption in accordance with the Redemption Notice. On or after the Redemption Date, each holder of Series A Preferred Stock that has elected to have shares of Series A Preferred Stock redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. As promptly as practicable after receipt of the surrendered certificate or certificates (and in no event more than 10 days following the Redemption Date) the Corporation shall issue and deliver to or upon the written order of such holder, at such office or other place designated by the holder, a check for cash with respect to the shares so redeemed. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) **Effect of Redemption; Insufficient Funds.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock designated for redemption in a Holder's Notice (except the right to receive the Redemption Price without interest upon surrender of their share certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon the total Redemption Price applicable and the total number of shares of Series A Preferred Stock for which holders

have requested redemption on such date pursuant to a Holder's Notice. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem any part of the balance of the shares which the Corporation has become obliged to redeem on the Redemption Date but which it has not redeemed, such later redemptions to be effected ratably in accordance with the above.

4. **Conversion.** The holders of the Series A Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share and on or prior to the fifth day prior to the Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to the Series A Preferred Stock, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.29902 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$0.29902. Such initial Conversion Price shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), the public offering price of which is not less than \$0.89706 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds to the Corporation of \$25,000,000 (net of underwriting discounts and commissions) or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in

connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.** If the Corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Purchase Date) other than

- (1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,
- (2) Shares of Common Stock issuable or issued to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation,
- (3) Capital stock, or options or warrants to purchase capital stock, issued to lenders or lessors in connection with commercial credit arrangements, equipment financings or similar transactions,

(4) Shares of Common Stock or Preferred Stock issuable upon exercise of warrants outstanding as of the date of these Amended and Restated Articles of Incorporation,

(5) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board of Directors of the Corporation,

(6) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, and

(7) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus

the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series A Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series A Preferred Stock.

(i) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock,

in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Articles of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights.** The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. **Protective Provisions.** So long as at least 8,000,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends or recapitalizations), the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class:

- (a) effect a transaction described in Section 2(c)(i) above;
- (b) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to affect adversely the shares of such series;
- (c) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock;
- (d) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, dividends, redemption, conversion or upon liquidation;
- (e) declare or pay any dividend on distribution with respect to shares of Common Stock;
- (f) amend or waive any provision of these Articles of Incorporation so as to adversely affect the shares of Series A Preferred Stock; or

(g) repurchase any shares of Common Stock (except repurchases of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, or through the exercise of any right of first refusal).

7. **Status of Redeemed or Converted Stock.** In the event any shares of Preferred Stock shall be redeemed pursuant to Section 3 or converted pursuant to Section 4 hereof, the shares so redeemed or converted shall be cancelled and shall not be issuable by the Corporation. The Articles of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) of this Article III.

3. **Redemption.** The Common Stock is not redeemable.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE IV. PREEMPTIVE RIGHTS

Except as otherwise provided in that certain Investors' Rights Agreement, dated on or about May 6, 1999, as may be amended from time to time, no preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of the Corporation.

ARTICLE V. CUMULATIVE VOTING

The right to cumulate votes in the election of Directors shall not exist with respect to shares of stock of the Corporation.

ARTICLE VI. ACTION BY MAJORITY VOTE

To the extent permitted under RCW 23B, the Corporation's shareholders may take action by the affirmative vote of a simple majority of all shareholders of the Corporation entitled to vote on an action. This Article VI is specifically intended to reduce the voting requirements otherwise

prescribed under RCW 23B.10.030, 23B.11.030, and 23B.12.020, in accordance with RCW 23B.07.270.

ARTICLE VII. DIRECTORS

The number of Directors of the Corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

ARTICLE VIII. BYLAWS

The Board of Directors shall have the power to adopt, amend or repeal the Bylaws of the Corporation, subject to the power of the shareholders to amend or repeal such Bylaws. The shareholders shall also have the power to amend or repeal the Bylaws of the Corporation and to adopt new Bylaws.

ARTICLE IX. AMENDMENTS TO ARTICLES OF INCORPORATION

The Corporation reserves the right to amend or repeal any of the provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by law, and the rights of the shareholders of the Corporation are granted subject to this reservation.

ARTICLE X. ACTION BY SHAREHOLDERS WITHOUT A MEETING

Any action required or permitted to be taken at any meeting of the Corporation's shareholders may be taken without a meeting or a vote if either:

(a) the action is taken by all of the Corporation's shareholders entitled to vote on the action; or

(b) so long as the Corporation is not a public company, the action is taken by the Corporation's shareholders holding of record, or otherwise entitled to vote, in the aggregate no less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted.

To the extent prior notice is required by law, any advance notice required by statute to be given to nonconsenting shareholders of the Corporation shall be made at least one business day prior to the effectiveness of the action, or such longer period as required by law. The form of this notice shall be sufficient to appraise the nonconsenting shareholders of the Corporation of the nature of the action to be effected, in a manner approved by the directors of the Corporation or by the committee or officers to whom the Board of Directors has delegated that responsibility.

ARTICLE XI. LIMITATION OF DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director, except for:

(a) Acts or omissions involving intentional misconduct by the director or a knowing violation of law by the director;

- (b) Conduct violating RCW 23B.08.310 (which involves certain distributions by the Corporation); or
- (c) Any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled.

If the Washington Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Washington Business Corporation Act, as so amended. Any repeal or modification of the foregoing paragraph by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE XII. INDEMNIFICATION OF DIRECTORS

The Corporation shall indemnify its directors to the full extent permitted by the Washington Business Corporation Act now or hereafter in force. However, such indemnity shall not apply on account of:

- (a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;
- (b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or
- (c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

The Corporation shall advance expenses for such persons pursuant to the terms set forth in the Bylaws, or in a separate directors' resolution or contract. The Board of Directors may take such action as is necessary to carry out these indemnification and expense advancement provisions. It is expressly empowered to adopt, approve, and amend from time to time such Bylaws, resolutions, contracts, or further indemnification and expense advancement arrangements as may be permitted by law, implementing these provisions. Such Bylaws, resolutions, contracts or further arrangements shall include but not be limited to implementing the manner in which determinations as to any indemnity or advancement of expenses shall be made. No amendment or repeal of this Article XII shall apply to or have any effect on any right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

[Signature page follows]

The undersigned, as President of Reflex Communications Inc. executes these Amended and Restated Articles of Incorporation this 10th day of May, 1999.



Jim Miller, Jr., President

EXHIBIT 5

Officer, Director, and Significant Shareholder Affiliations

Officer, Director, and Significant Shareholder Affiliations

Allegiance Telecom of Florida, Inc.

- Dennis Muse, ReFlex CEO and Director, owns stock in Allegiance.

Allied Riser of Florida, Inc.

- Dennis Muse, ReFlex CEO and Director, owns stock in Allied Riser.

AT&T Communications of Southern States, Inc. d/b/a AT&T

- William Stensrud, a ReFlex Director, owns stock in AT&T.
- Dennis Muse, ReFlex CEO and Director, owns stock in AT&T.

GTE Communications Corporation

- Dennis Muse, ReFlex CEO and Director, owns stock in GTE.

MCI WorldCom

- Dennis Muse, ReFlex CEO and Director, owns stock in MCI
- James M. Miller, ReFlex Director and one of ReFlex's ten largest shareholders, was an employee of and owned stock.

NorthPoint Communications, Inc.

- Dennis Muse, ReFlex CEO and Director, owns stock in NorthPoint Communications.

Rhythms Links Inc.

- William Stensrud, a ReFlex Director, was President of a predecessor company of Rhythms NetConnections, the parent company of Rhythms Links. Stensrud is currently a Director of Rhythms NetConnections.
- Keith Geeslin, a ReFlex Director, is a current Director of Rhythms NetConnections.
- DLJ Capital Corporation, DLJ ESC II, LP, and Sprout Venture Capital, LP are each one of ReFlex's ten largest shareholders, and each is a shareholder of Rhythms NetConnections.
- Dennis Muse, ReFlex CEO and Director, owns stock (less than 20% ownership) in Rhythms NetConnections.

Universal Access, Inc.

- Dennis Muse, ReFlex CEO and Director, owns stock in Universal Access.
- James M. Miller, ReFlex Director and one of ReFlex's ten largest shareholders, owned stock in Universal Access.