



0000053453

**ORIGINAL**  
BERLIN SHEREFF FRIEDMAN, LLP

**ORIGINAL**

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

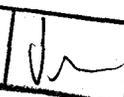
RECEIVED

2000 OCT 11 P 12:40

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

October 10, 2000  
ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL  
Arizona Corporation Commission  
**DOCKETED**

OCT 11 2000

DOCKETED BY 

**VIA OVERNIGHT DELIVERY**

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Re: Comments of ReFlex Communications, Inc., Docket RT-00000D-00-0694

Enclosed please find an original and ten copies of the comments of ReFlex Communications, Inc. in the above-referenced docket, filed pursuant to the Commission's Procedural Order issued September 18, 2000 therein. Please date stamp the enclosed extra copy of this application and return it in the self-addressed, postage-paid envelope provided.

Should you have any questions concerning this filing, please do not hesitate to contact me at 202-945-6940.

Very truly yours,

Paul B. Hudson  
Counsel for ReFlex Communications, Inc.

Enclosures

cc: Robert Kaye  
Service List

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

2000 OCT 11 P 12:40

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE GENERIC REVIEW )  
OF PROCEDURES FOR COMPETITIVE )  
TELECOMMUNICATIONS. )  
\_\_\_\_\_ )

DOCKET NO. RT-00000D-00-0694

COMMENTS OF REFLEX COMMUNICATIONS, INC.

ReFlex Communications, Inc., ("ReFlex") by undersigned counsel, offers the following comments in response to the Procedural Order issued in this docket on September 18, 2000. ReFlex has a pending application for a Certificate of Convenience and Necessity to provide facilities-based and resold local exchange and interexchange services in Arizona in Docket No. T-03768A-99-0443, and respectfully submits that it has satisfied all of the requirements for grant of said authority.

ReFlex steadfastly submits that rate regulation of competitive carriers ("CLECs") is not only unnecessary and unduly burdensome, but also contrary to the central premises of the federal Telecommunications Act of 1996. ReFlex recognizes that these issues are subject to consideration in other forums and will not attempt to address them here.

**I. New Regulations Should Not Take Effect While the Propriety of Rate-based Regulation of Competitive Carriers is Subject to Question in Pending Litigation and the November 2000 Election.**

Implementation of fair-value rate-based regulations for competitive carriers would impose an extraordinary burden on competitive carriers and, to say the least, should not be undertaken lightly. Fair value rate regulation is so inapposite to ReFlex's competitive services

that it could delay or even preclude ReFlex's competitive entry into the Arizona market. For that very reason, among others, the Commission has previously declined to apply rate-based regulation on competitive carriers, and it should continue to do so until such time that it may be unquestionably clear that it must change its regulations. Although the Commission has initiated this docket to consider regulations that could be developed in the event that it is at a future date required to implement them, ReFlex submits these comments to emphasize that no new regulations are necessary or appropriate, if ever, until a final mandate is issued by the Arizona Court of Appeals in Cause No. 1-CA-CV 98-0672. Furthermore, ReFlex understands that this controversy may be rendered moot by a proposed constitutional amendment on the Arizona ballot next month. It would be counterproductive to subject competitive carriers to onerous and nonsensical regulation at this time, as there is a reasonable probability that such regulation will not be required under Arizona and federal law. In the meantime, the Commission should continue to follow the certification and tariff regulations that are currently in effect.

**II. If Rate Regulations for Competitive Carriers Are Adopted, They Should Apply to Tariff Approval, Not Certification.**

Fair-value regulation is relevant, if at all, only in the calculation of intrastate tariff rates. Therefore, new regulation, if any, should be applied to tariff approval, rather than to the certification process. Fair value calculations bear no relevance to the competitive carrier certification process, in which the Commission must determine only whether the applicant possesses the financial, technical and managerial qualifications to offer its proposed services. Furthermore, it is crucial that certification not be deferred until completion of fair value review. Even though a CLEC may be prohibited from offering intrastate telecommunications services to end-users until it receives fair value approval, it should not be precluded from other necessary and time-sensitive activities not subject to rate regulation but which may require certification. In

particular, certification may be needed to enable the CLEC to complete interconnection and the construction of its network, prior to the provision of any intrastate regulated services to Arizona consumers. These activities should not be delayed pending fair value review; in fact, as explained below, they may often be a necessary prerequisite to perform fair value calculations.

The preparation of fair-value information is likely to be time consuming and may not be able to be completely accurately within thirty days of a certification order. Many details may not yet be available to a competitive carrier as it finalizes interconnection negotiations with the incumbent carrier(s) and continues to construct its network. Because fair value rate information may not be available on a particular schedule, ReFlex proposes that the Commission no longer require an initial tariff within 30 days of a certification order, but instead require that the carrier propose an initial tariff, and, if necessary, fair-value information, within a specified number of days *before offering regulated intrastate telecommunications services in Arizona*. This requirement would satisfy any Commission obligation to determine fair value rate base prior to a CLEC's provision of regulated services within the state, while at the same time would enable CLECs to prepare complete and accurate information for the Commission on an achievable and appropriate schedule.

Respectfully submitted,



Paul B. Hudson  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007-5116  
Telephone: (202) 945-6940  
Facsimile: (202) 424-7645  
Email: pbhudson@swidlaw.com

Counsel for ReFlex Communications, Inc.