DOCKET FILE COPY ORIGINAL
RECEIVED
JUL 10 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

REPLY COMMENTS OF
FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation ("Focal") submits these reply comments in the above captioned proceeding pursuant to the Public Notice released by the Federal Communications Commission ("Commission") on May 24, 2000.[1] Focal continues its support for ALTS' request and urges the Commission to address the issues raised in its Petition. As in its Comments, Focal's Reply Comments will concentrate on the issues relating to the provisioning of special access services. Several ILECs deny the general premise that there is a problem with the provisioning of special access services and oppose any Commission action to promote better

[1] *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning*, Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, Public Notice, DA 00-1141 (rel. May 24, 2000).

provisioning for special access services.[2] Focal submits that there is abundant data illustrating that the provisioning of special access services is poor and getting worse and attaches relevant data from the Commission's ARMIS web site.[3] Accordingly, Focal urges the Commission to take action to improve the provisioning of special access services by adopting more detailed reporting requirements, creating explicit provisioning metrics, and imposing self-executing penalties.[4]

I. The Commission Has Authority to Act

Despite assertions to the contrary, the Commission clearly has the authority to act to improve the provisioning of special access services.[5] As Focal noted in its initial Comments, the Commission regulates interstate special access service pursuant to its authority under Sections 201-205 of the Act.[6] The Commission retains this authority and may certainly use it to address the special access provisioning issues. Thus, the proper question is not whether the Commission may act on this issue, but whether it should. As Focal has demonstrated in its Comments and below in these Reply Comments, the difficulties experienced in obtaining special access services are substantial, systemic, and well documented.[7] Accordingly, these problems warrant immediate action by the Commission.

---

[2] Comments of Bell Atlantic at 17; Comments of BellSouth at 4; Comments of GTE at 6, 12; Comments of SBC at 15.

[3] *See, e.g., Retrieved Data from ARMIS Report 45-05: Table Ia. Installation and Repair Intervals (Interexchange Acc.) - Annual*, attached as Exhibit I (data available at: http://gullfoss.fcc.gov:8080/cgi-bin/websql/prod/ccb/armis1/forms/armis.hts); *see also Installation Intervals for Service to IXCs*, attached as Exhibit II (available at: http://www.fcc.gov/ccb/armis/sq/documents/10.pdf); *see also Installation Commitments for Service to IXCs*, attached as Exhibit III (available at: http://www.fcc.gov/ccb/armis/sq/documents/8.pdf).

[4] Focal would support the Commission addressing these issue in a rulemaking proceeding, if it deems this to be more appropriate.

[5] Comments of BellSouth at 4.

[6] Comments of Focal at 6, 8; 47 U.S.C. §§ 201-205.

[7] *See* Exhibits, *Supra* n. 3.

II. The Current Reporting Requirements Are Insufficient

Focal agrees with Bell Atlantic that the data available through the current reporting mechanisms is not useful in documenting whether special access is being provisioned by ILECs in a discriminatory manner.[8] This lack of data is a significant problem that Focal urges the Commission to address. While the ARMIS system discussed by SBC contains sufficient information to provide a picture of a troubling five year trend of increasingly poor provisioning for special access services,[9] it does not provide a breakdown of data by customer so that comparisons can be made to determine whether discrimination is occurring.

In addition, there is ample opportunity for the ILECs to game this system so as to manipulate the numbers provided in the ARMIS reports and little opportunity for the customers that experience problems to determine whether their troubles have been correctly categorized. For example, if an ILEC unilaterally moves a FOC date for a large order, that data may be counted in the "% Commitments Met," even though the initial date was missed. Also, in many instances ILEC technicians do not have a system in place for alerting CLECs and their customers that they are having difficulty accessing a customer's premises even though the customer is available to provide access. In such cases, the number reported as "Missed for Customer Reasons" may be significantly inflated.

Thus, the fact that there is so little useful data available on the quality and parity of special access provisioning is not an indication that there is no problem, rather it indicates that there is not an adequate mechanism in place to measure, let alone *correct* the difficulties faced by those ordering special access services.

---

[8] Comments of Bell Atlantic at 15-17.

[9] Comments of SBC at 16. *See, e.g., Installation Intervals for Service to IXCs*, attached as Exhibit II (illustrating a five year trend of increasing installation intervals for special access services); *see also Installation Commitments for Service to IXCs*, attached as Exhibit III (illustrating a five year trend of decreasing % commitments met).

III. The Market for High Capacity Loops Are Not Competitive

Several ILECs contend that there is sufficient competition in the market for special access services to counter any need for remedying any existing provisioning problems.[10] These assertions, however, are contrary to the Commission's findings. The Commission has recently ruled that the lack of access to the ILEC's ubiquitous loop plant, including high capacity loop facilities, impair competitors' ability to provide services to end users.[11] The Commission also has recognized self provisioning and obtaining high capacity loops from third parties are not adequate replacements for obtaining these loops from ILECs due to associated cost and delay of these alternatives.[12] Many of the facilities used for special access services are the very same facilities that are required to be made available as UNEs. However, many CLECs, including Focal, do not have access to these facilities as UNEs due to restrictions on the conversion of special access circuits to enhanced extended loops that are wholly unrelated to the competitive nature of the facilities.[13] As a result, these CLECs are reliant upon special access services to meet their high capacity loop requirements.

SBC also argues that the FCC granted pricing flexibility for special access because the service is becoming increasingly competitive.[14] A complete reading of the *Special Access Order* indicates that the Commission was acting to create a mechanism granting ILECs increasing pricing flexibility as competition develops, without permitting ILECs to use their control of the

---

[10] Comments of BellSouth at 4; Comments of SBC at 15.

[11] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Doc. No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 at ¶¶ 181, 184 (1999).

[12] *Id.* at ¶ 184.

[13] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Doc. No. 96-98, Supplemental Order Clarification, FCC 99-370 at ¶ 21 (rel. June 2, 2000). In fact, these facilities can be converted to UNEs in some circumstances. *Id.*

[14] Comments of SBC at 15.

bottleneck facilities to abuse their competitive advantage.[15] This was also the aim in the *Access Charge Reform Order* cited by SBC.[16] However, the ILECs have not been granted price cap flexibility on a universal basis because not all markets for special access services are even minimally competitive. The Commission has recognized that there are markets that are subject to greater competition than others.[17] Indeed, the experience of Focal and other CLECs in obtaining special access indicates that competition is not yet robust enough to ensure that ILECs will provide quality services without Commission action.

Furthermore, in the prior proceedings relating to special access services the Commission has focused almost exclusively on the potential anticompetitive uses of pricing by ILECs and has not addressed provisioning and service quality as a means of competitive abuse by ILECs. However, Focal submits that new standards and an enforcement mechanism governing service quality and timely provisioning are as necessary for the success of special access services as are the rules governing pricing previously created by the Commission. The ILECs are equally able to engage in competitive abuses through the provisioning process as they are through pricing. In fact, such provisioning abuses are easier to commit and more difficult to detect. Focal believes that it's experience and the available data make clear that such abuse is now occurring.[18] Moreover, competition in special access markets does not give ILECs a license to discriminate in the provisioning of special access when purchased by CLECs. Accordingly, Focal urges the Commission to address the special access provisioning issues raised in this proceeding.

---

[15] *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, ¶¶ 172, 177 (1992) ("*Special Access Order*").

[16] Comments of SBC at 15 (citing *Access Charge Reform*, CC Docket 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221, ¶¶ 187-88 (1999) ("*Access Charge Reform Order*")).

[17] *See Special Access Order* at ¶ 172; *see also Access Charge Reform Order* at 3.

[18] *See* Exhibits I, II & III.

IV. The Need For Loop Make-Up Information

Several ILECs argue that because CLECs do not design, build or control special access circuits there is no need for them to have access to loop make-up information similar to that made available for UNEs.[19] Focal submits that access to loop make-up information is as important to CLECs that order special access as it is for those that order UNEs. While it is true that CLECs do not design, own or control special access circuits, this fact is largely irrelevant to the issue at hand. SBC claims that CLECs do not "bear any kind of risk in terms of whether or how [a special access circuit] is used."[20] In fact, the exact opposite is true. The CLECs are the ones that are contracting with the end customers for the provision of services over special access circuits. As such, the CLECs bear all of the competitive risks associated with their use, such as high customer dissatisfaction, loss of customers, lost revenues, and damage to corporate good-will. The ILECs do not face these competitive repercussions if the provisioning and quality of these services are poor because they control the bottleneck facilities and do not have to answer to end users. In fact, they have an incentive to see their potential competitors fair poorly in the eyes of their customers.

Furthermore, the reason CLECs such as Focal need access to loop make-up information is because they need to know the capacity, quality and availability for a particular purpose of special access lines *prior* to ordering these circuits. In many instances the data that the ILECs provide regarding the availability of special access lines is unreliable because even though the ILECs report that the circuits are available, the circuits often prove to be unsuitable for high capacity transmissions because certain components of the circuits either do not have the capacity, or are in need of extensive maintenance or rebuilding. In these situations the special access lines

[19] Comments of GTE at 12 - 13; Comments of SBC at 17.
[20] Comments of SBC at 17.

are functionally unavailable, even though the ILEC lists them as available. Providing CLECs with loop make-up information will permit CLECs to determine whether a given special access circuit is a available as a practical matter, without having to waste substantial amounts of time in the ordering process only to find the circuit is unsuitable for its intended use.

V. Conclusion

For the foregoing reasons, Focal urges the Commission to adopt federal provisioning standards and penalties for application to special access services as described herein.

Respectfully submitted,

Patrick J. Donovan
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Counsel for Focal Communications Corporation

Richard Metzger
Vice President, Regulatory Affairs
and Public Policy
7799 Leesburg Pike
Suite 850 North
Falls Church, VA 22043
(703)637-8778

Dated: July 10, 2000

339978

EXHIBIT I

Retrieved Data from ARMIS Report 45-05: Table Ia. Installation and Repair Intervals (Interexchange Acc.) – Annual

43-05: Table Ia. Installation and Repair Intervals (Interexchange Acc.) - Annual

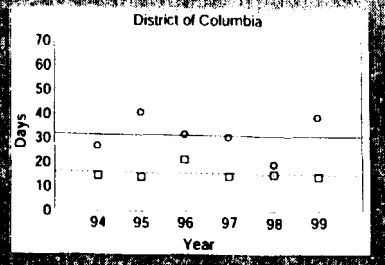
Year	Quarter	COSA	Company Name	Sub_ #	Row_ #	Row_Title	All_Special_Access_ac
1999	-	NYNY	Bell Atlantic - New York Telephone	01	112	% Commitments Met	81.88
1999	-	SBGA	BellSouth-Georgia	01	112	% Commitments Met	78.45
1999	-	MBMI	Michigan Bell	02	112	% Commitments Met	90.05
1999	-	PNWA	U S WEST-Washington	01	112	% Commitments Met	79.98
1999	-	GNCA	GTE NW-West Coast California	01	112	% Commitments Met	83.33

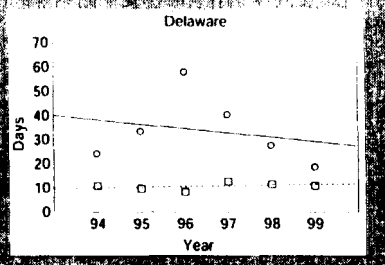
EXHIBIT II

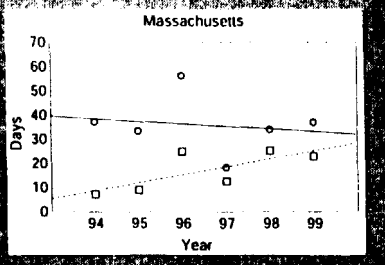
Installation Intervals for Service to IXCs

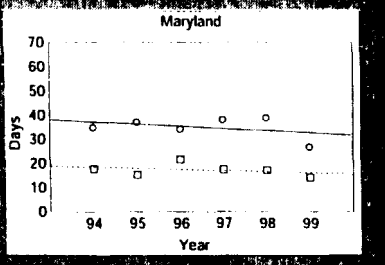
Bell Atlantic Service Quality

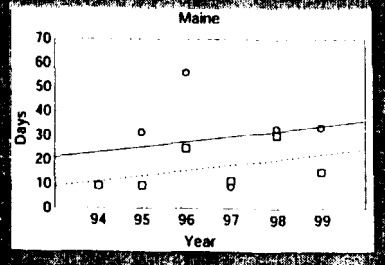
Installation Intervals for Service to IXCs

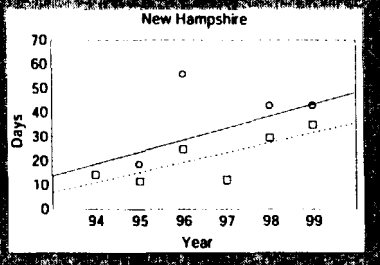


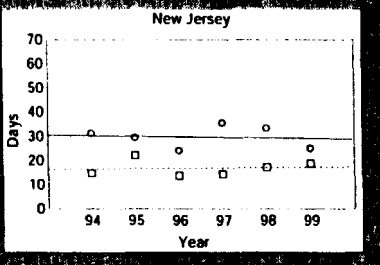


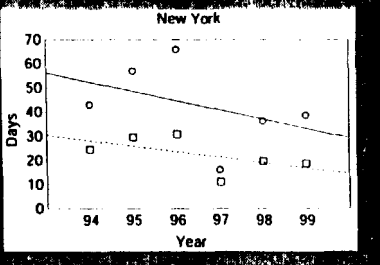


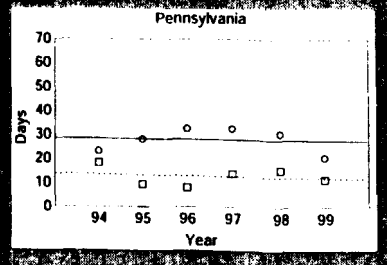


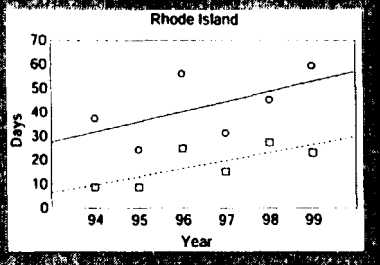


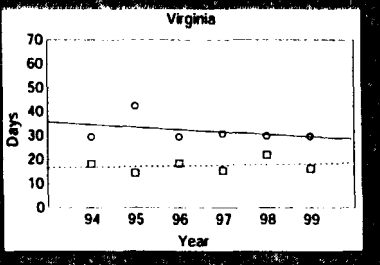


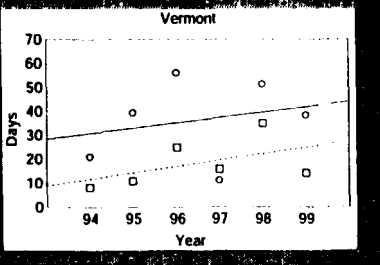


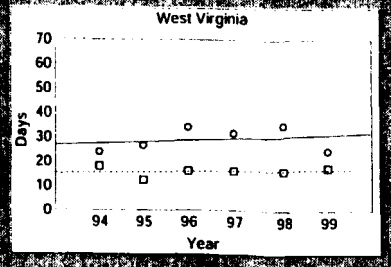








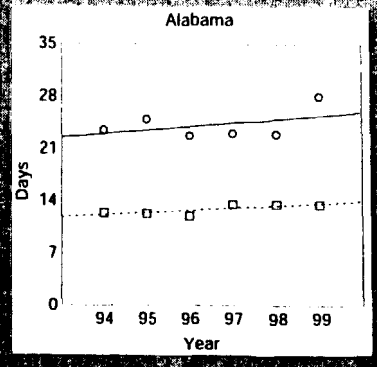


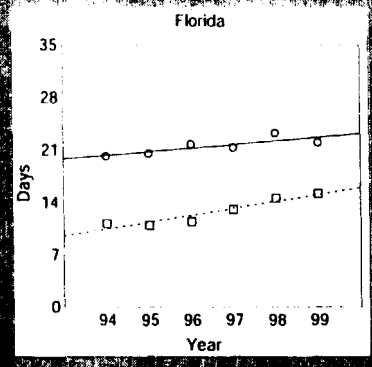


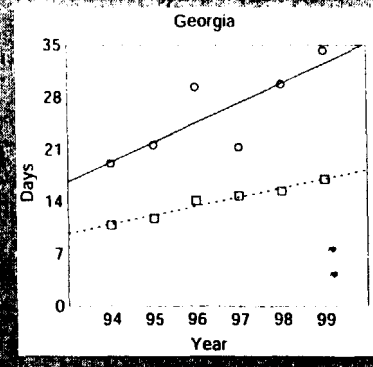
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
Low is Better

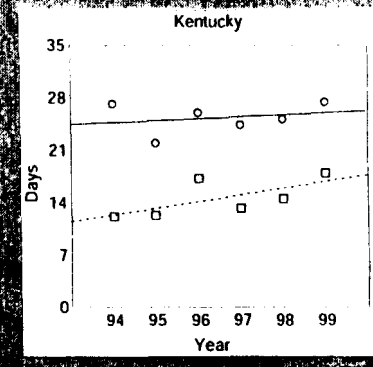
BellSouth Service Quality

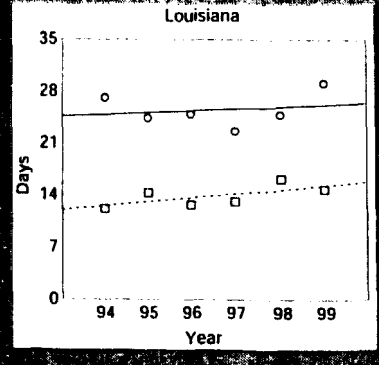
Installation Intervals for Service to IXCs

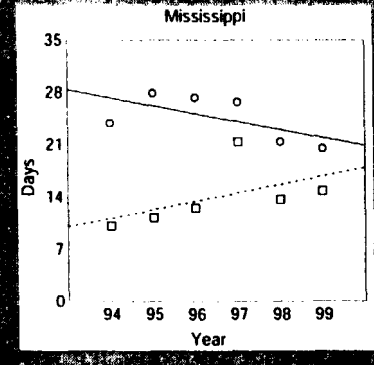


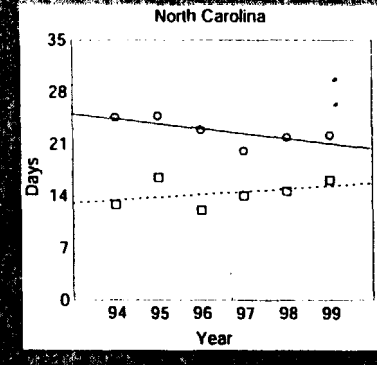


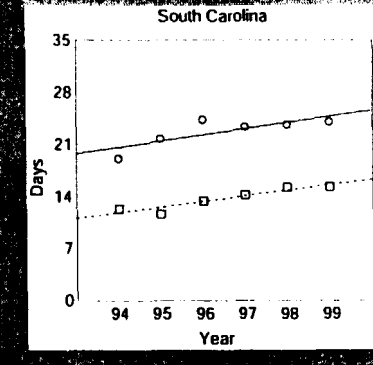


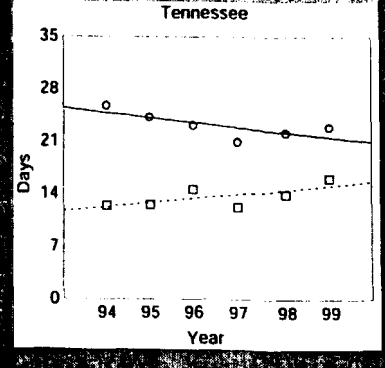








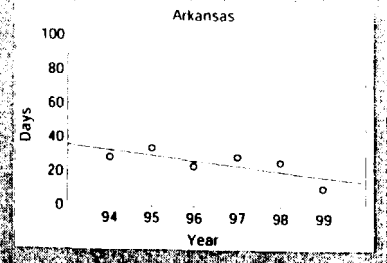


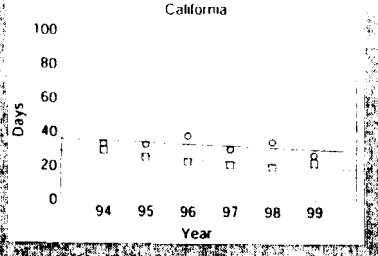


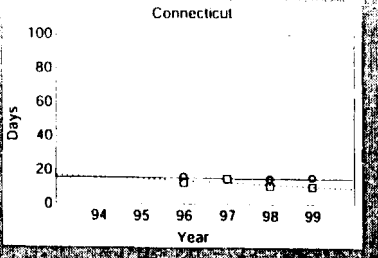
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
Low is Better

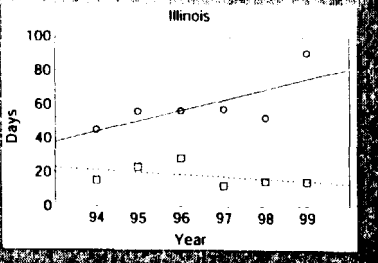
SBC Service Quality

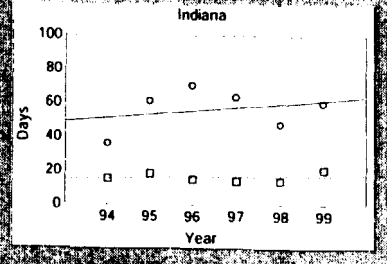
Installation Intervals for Service to IXCs

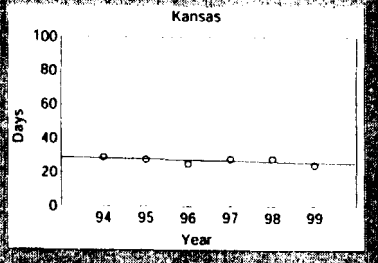


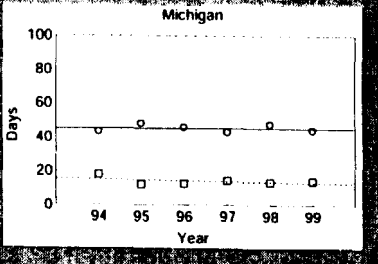


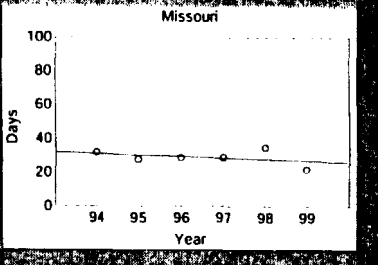


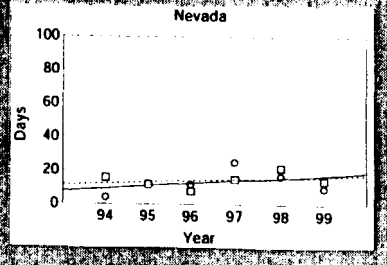


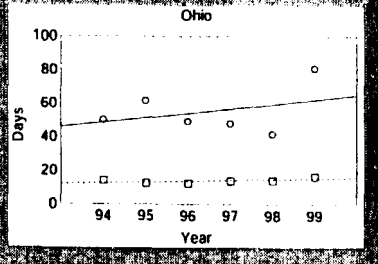


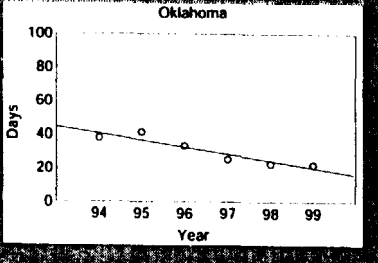


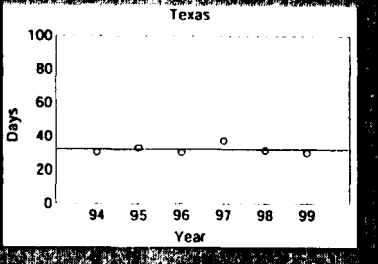


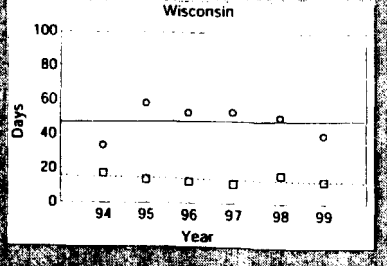








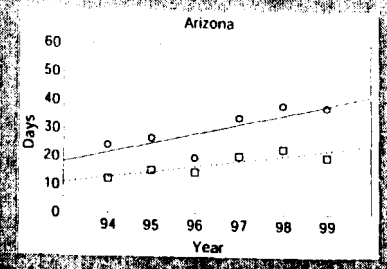


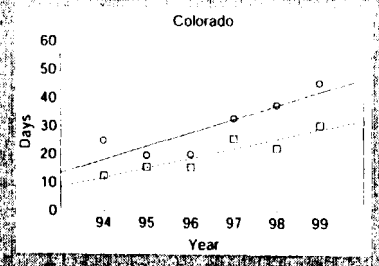


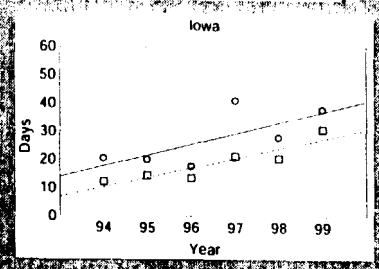
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
Low is Better

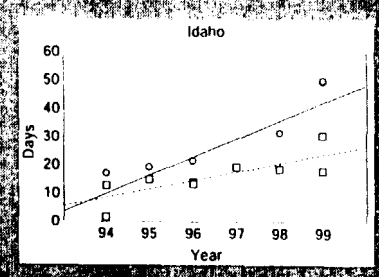
US West Service Quality

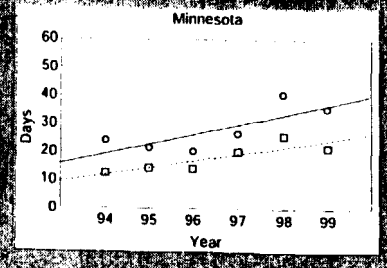
Installation Intervals for Service to IXCs

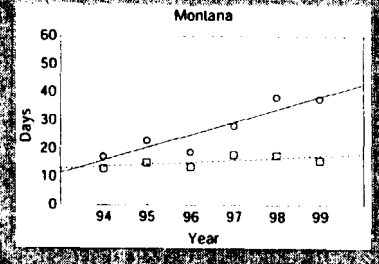


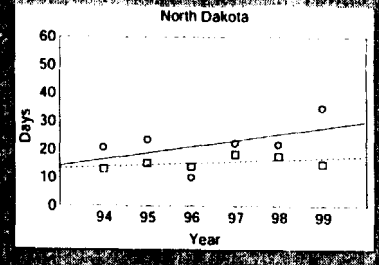


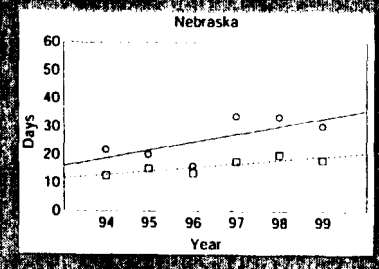


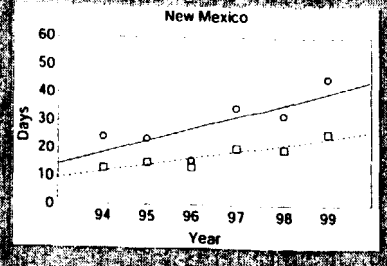


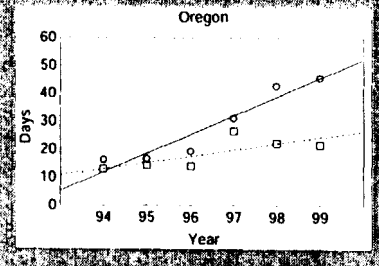


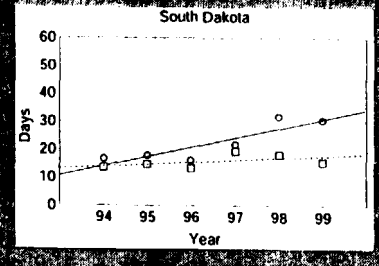


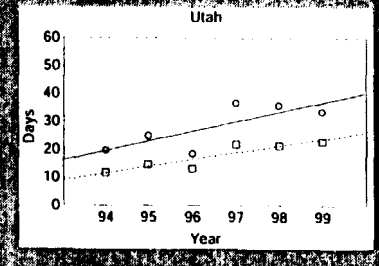


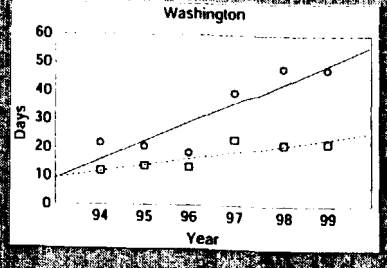


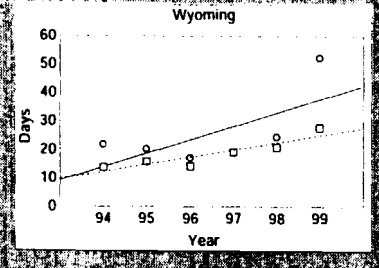












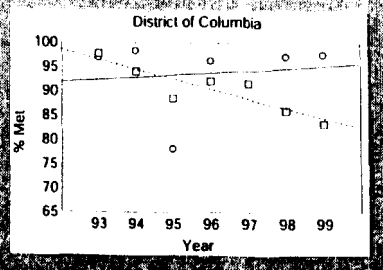
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
Low is Better

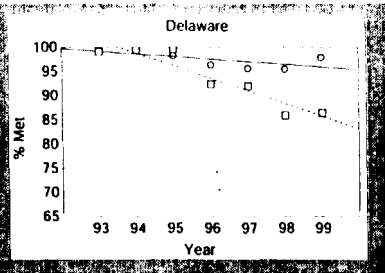
EXHIBIT III

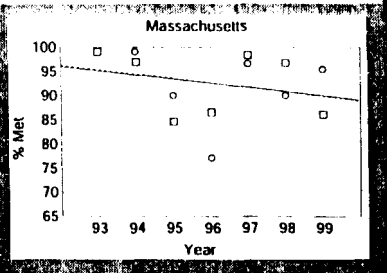
Installation Commitments for Service to IXCs

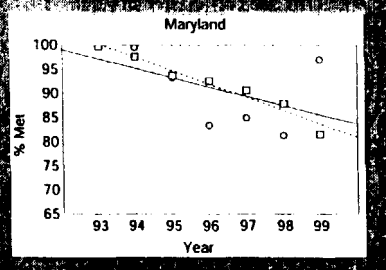
Bell Atlantic Service Quality

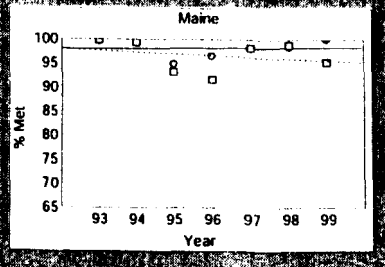
Installation Commitments for Service to IXCs

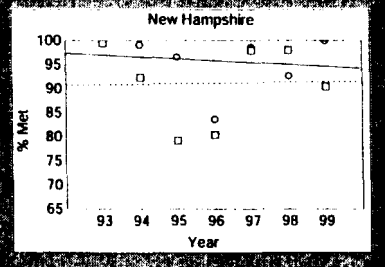


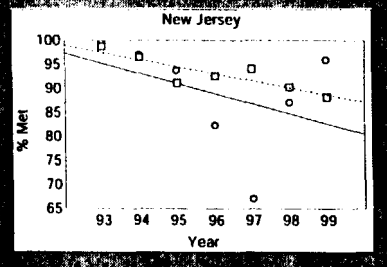


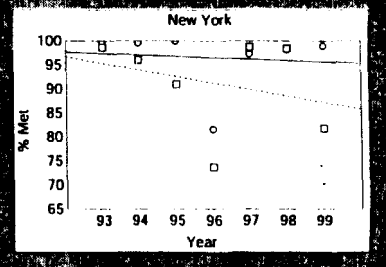


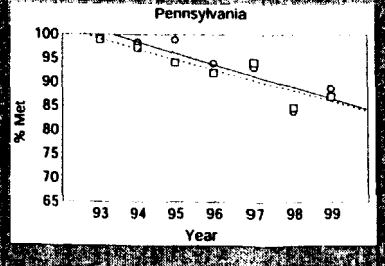


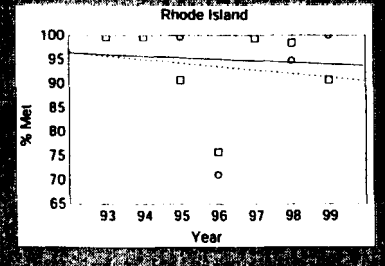


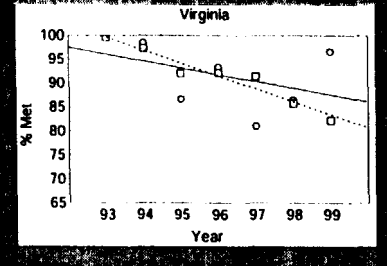


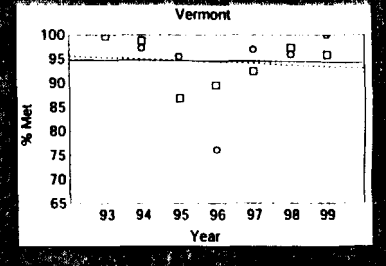


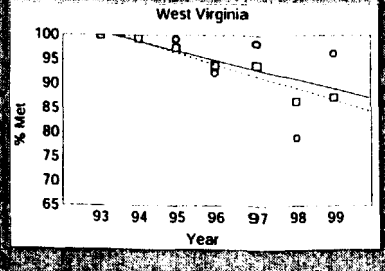








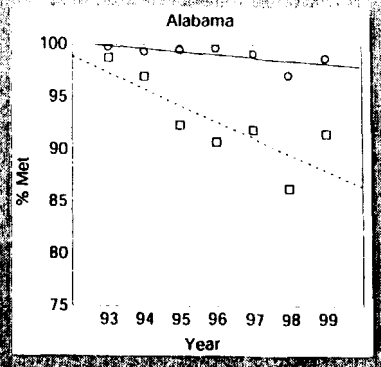


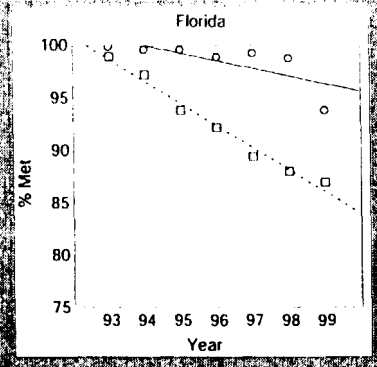


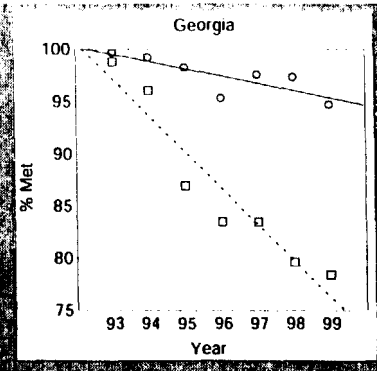
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
High is Better

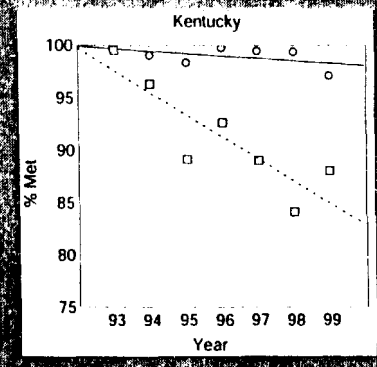
BellSouth Service Quality

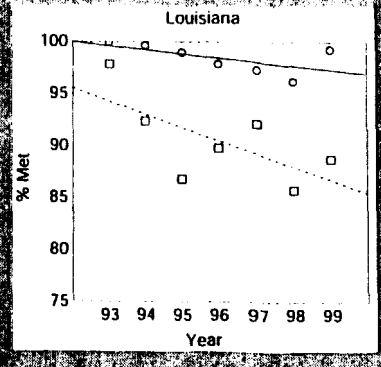
Installation Commitments for Service to IXCs

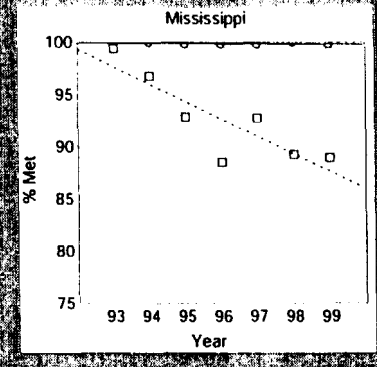


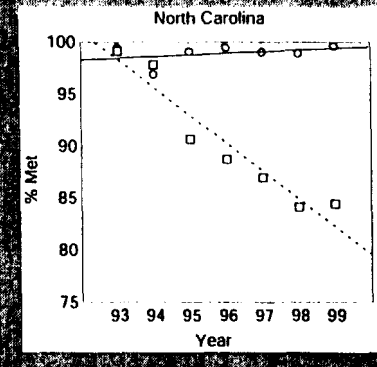


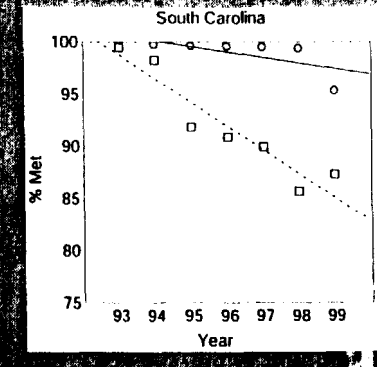


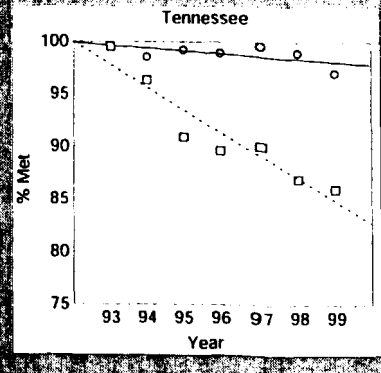








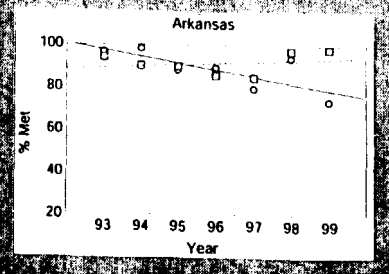


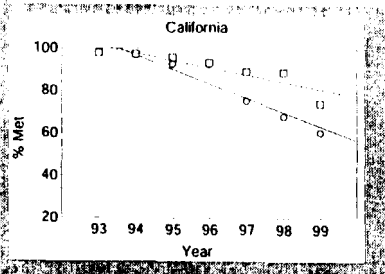


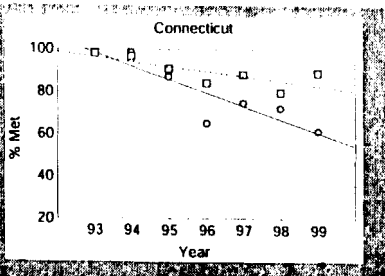
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
High is Better

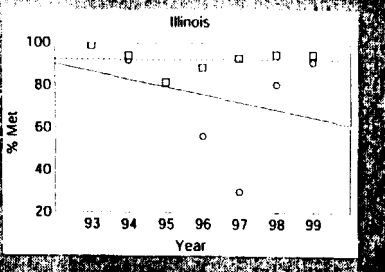
SBC Service Quality

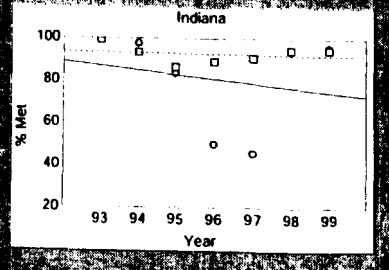
Installation Commitments for Service to IXCs

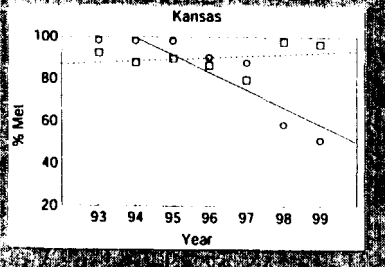


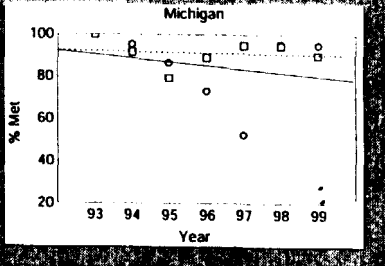


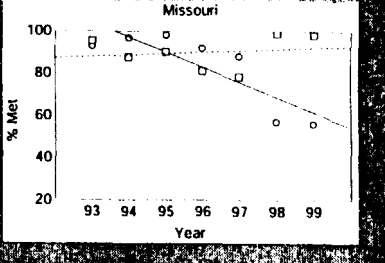


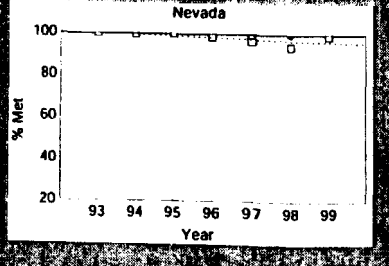


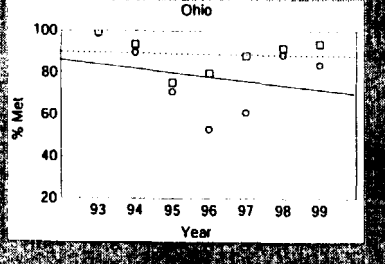


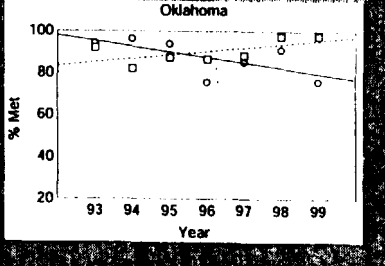


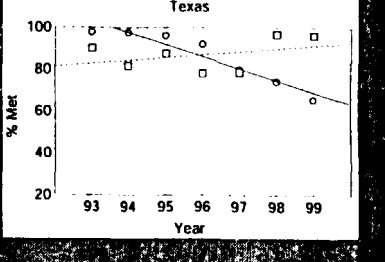


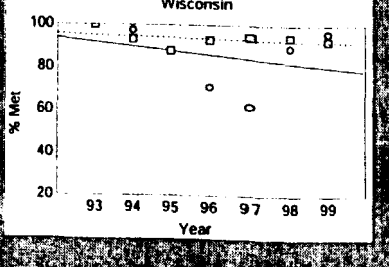








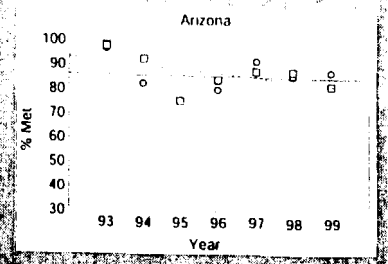


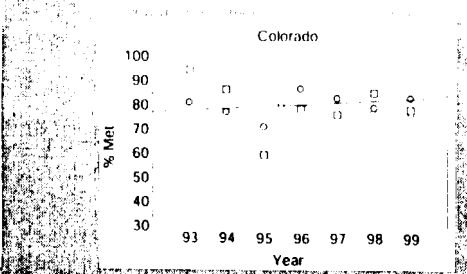


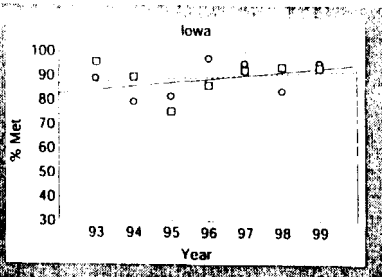
Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
High is Better

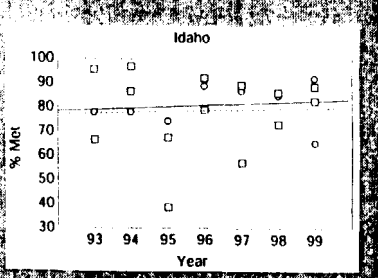
US West Service Quality

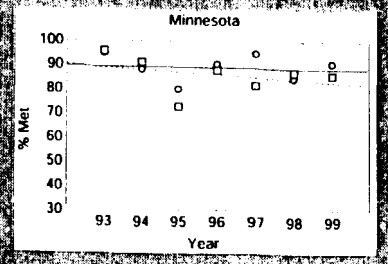
Installation Commitments for Service to IXCs

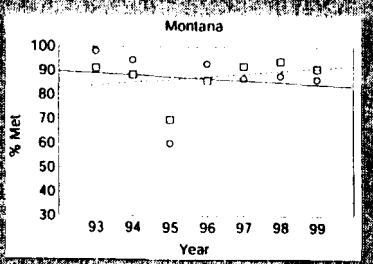


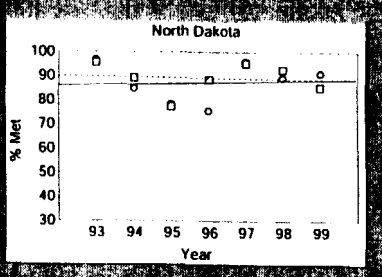


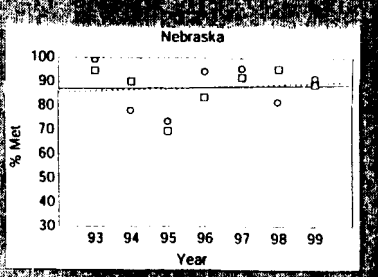


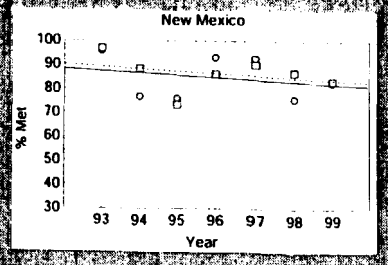


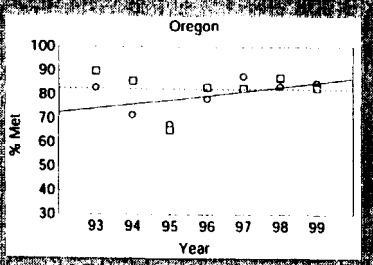


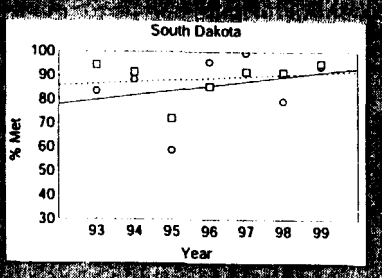


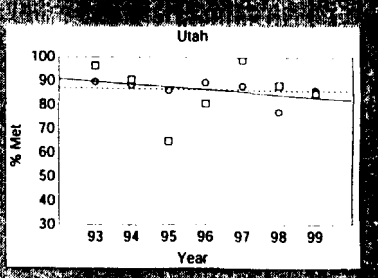


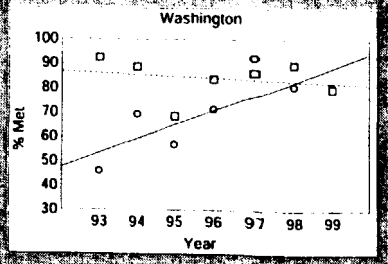


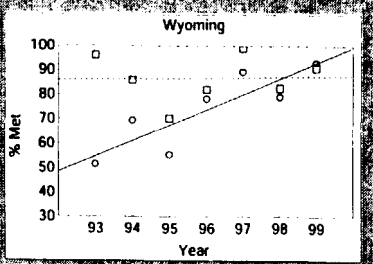












Blue ○ = Switched, Red □ = Special
Source: ARMIS 43-05, Table I as of 5/24/2000
High is Better

CERTIFICATE OF SERVICE

I, Ivonne J. Diaz, hereby certify that on this 10th day of July 2000, copies of the foregoing Reply Comments of Focal Communications Corporation ("Focal") were delivered by hand or First Class Mail to the persons listed on the attached list.

Ivonne J. Diaz

338238.1

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, SW
Washington, DC

VIA HAND DELIVERY

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW - Room 5-C327
Washington, DC 20554

VIA HAND DELIVERY

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

VIA HAND DELIVERY

Glen B. Manishin
Stephanie A. Joyce
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037

VIA HAND DELIVERY

Jonathan Askin
General Counsel
Association for Local Telecommunications Services
888 17th Street, NW - Suite 900
Washington, DC

VIA HAND DELIVERY

Brian Conboy
Thomas Jones
Christi Shewman
Willkie Farr & Gallagher
Three lafayette Centre
1155 21st Street, NW
Washington, DC

VIA HAND DELIVERY

Randall B. Lowe
Chief Legal Officer
Julie A. Kaminski
Chief Counsel Telecommunications
Prism Communications Services, Inc.
1667 K Street, NW - Suite 200
Washington, DC 20006

VIA FIRST CLASS MAIL

Richard Metzger
Vice President, Regulatory Affairs and
Public Policy
Focal Communications Corporation
7799 Leesburg Pike - Suite 850 North
Falls Church, Virginia 22043

VIA HAND DELIVERY

Rodney L. Joyce
Shook, Hardy & Bacon, LLP
600 14th Street, N.W. - Suite 800
Washington, DC 20005

VIA FIRST CLASS MAIL

Donald H. Sussman
Director of Regulatory Affairs
Network Access Solutions Corporation
100 Carpenter Drive
Sterling, Virginia 20164

VIA HAND DELIVERY

WorldCom, Inc.
Chuck Goldfarb
Richard S. Whitt
Cristin L. Flynn
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

VIA HAND DELIVERY

Christy C. Kunin
Kristin L. Smith
Blumenfeld & Cohen
Technology Law Group
1625 Massachusetts Avenue - Suite 300
Washington, DC 20036

VIA FIRST CLASS MAIL

Laurence E. Harris
David S. Turetsky
Terri B. Natoli
Edward B. Krachmer
Teligent, Inc
8065 Leesburg Pike - Suite 400
Vienna, Virginia 22182

VIA FIRST CLASS MAIL

Norton Cutler
Vice President Regulatory and
General Counsel
801 Crescent Centre Drive - Suite 600
Franklin, TN 37067

VIA HAND DELIVERY

Brad E. Mutschelknaus
Ross A. Buntrock
Michael Engel
Kelley Drye & Warren LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036

VIA FIRST CLASS MAIL

Jeffrey Blumenfeld
Chief Legal Officer and General Counsel
Rythms NetConnections Inc
6933 South Revere Parkway
Englewood, Colorado 80112

VIA HAND DELIVERY

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
1401 H Street, NW - Suite 600
Washington, DC 20005

VIA HAND DELIVERY

Steven A. Augustino
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036

VIA HAND DELIVERY

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W. - Suite 701
Washington, DC 20006

VIA HAND DELIVERY

Ruth Milkman
Richard D. Mallen
Lawler, Metzger & Milkman LLC
1909 K Street, NW - Suite 820
Washington, DC 20006

VIA HAND DELIVERY

Mary C. Albert
Regulatory Counsel
Allegiance Telecom, Inc
1150 Connecticut Avenue, NW - Suite 205
Washington, DC 20036

VIA FIRST CLASS MAIL

Robert W. McCausland
Vice President, Regulatory & Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207-3118

VIA HAND DELIVERY

Roger K. Toppins
Gary L. Phillips
SBC Communications Inc.
1401 I Street, NW - Suite 1100
Washington, DC 20005

VIA FIRST CLASS MAIL

David R. Conn
Associate General Counsel and
Vice President - Product & Policy
McLeodUSA Telecommunications Services, Inc
6400 C Street, SW
Cedar Rapids, Iowa 52406-3177

VIA FIRST CLASS MAIL

Donna M. Epps
1320 North Court House Road - 8th Floor
Arlington, Virginia 22201

VIA FIRST CLASS MAIL

Jonathan B. Banks
Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, NE
Atlanta, Georgia 30309-3610

VIA HAND DELIVERY

Gail Polivy
GTE Service Corporation
1850 M Street, NW - Suite 1200
Washington, DC 20036

VIA FIRST CLASS MAIL

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge MS HQ-E03J43
Irving, Texas 75015-2092

VIA HAND DELIVERY

Jeffrey S. Linder
Melissa A. Reed
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

VIA HAND DELIVERY

Blair A. Rosenthal
Robert B. McKenna
1020 19th Street, NW - Suite 700
Washington, DC 20036

VIA HAND DELIVERY

Jonathan Lee
Vice President Regulatory Affairs
Competitive Telecommunications Association
CompTel
1900 M Street, NW - Suite 800
Washington, DC 20036