

1 **Testimony of David A. Kunde**  
2 **Docket No. UT-990385**  
3

4 **Q. Please state your name, position, employer, and business address for the record.**

5  
6 A. My name is David Kunde. I am employed by Advanced Telecommunications, Inc.  
7 (“ATI”) as Vice President of Technical Planning, Operations, and Administration. My  
8 business address is 720 Second Avenue South, Suite 1220, Minneapolis, MN 55402.  
9

10 **Q. What is the business relationship between ATI and American Telephone**  
11 **Technologies, Inc. (“ATTI”)?**  
12

13 A. ATTI is a fully owned operating subsidiary of ATI. ATTI has been certified by the  
14 Washington Utilities and Transportation Commission (“WUTC”) as a facilities-based  
15 competitive local exchange carrier (“CLEC”).  
16

17 **Q. Please review your work experience and present responsibilities for ATI and ATTI.**  
18

19 A. I have 15 years of telecommunications engineering and technical expertise. I have been  
20 employed by Frontier Communications as Manager of Customer Equipment Services in  
21 Rochester, New York and as Director of Network Engineering for Frontier  
22 Communications in Minneapolis, Minnesota. Prior to joining ATI, I was Vice President  
23 and Director of Network Engineering/Operations with Citizens Communications in  
24 Dallas, Texas. My current responsibilities include day to day operations of the ATI  
25 network and planning technical deployment. Additionally, I am responsible for the costs  
26 incurred by ATI for collocation and interconnection.  
27

28 **Q. Have you previously testified before regulatory commissions?**  
29

30 A. No.  
31

32 **Q. What is the purpose of your testimony today?**  
33

34 A. I am addressing collocation issues that are in dispute between ATTI and U S West  
35 Communications (“USWC”) and explaining why ATTI’s proposed collocation contract  
36 language should be adopted by the WUTC, rather than what has been proposed by  
37 USWC. I will address a number of these disputed points in my testimony.  
38

39 **Q. What are ATTI’s general concerns with USWC’s collocation proposals?**  
40

41 A. ATTI has three fundamental concerns with USWC’s collocation proposals. First, as with  
42 most CLECs, ATTI is concerned about USWC’s general lack of cooperation with  
43 interconnection requirements and the development of local competition. Second, we are

1 concerned that USWC may attempt to charge us excessive rates for collocation or to  
2 impose costs on ATTI that are simply a cost of USWC doing business. Third, we are  
3 concerned that USWC's service quality problems could have a negative affect on our  
4 ability to provide high quality service to our customers.  
5

6 **Q. Why does ATTI have these concerns?**  
7

8 A. Unfortunately, ATTI has experienced problems regarding implementation of collocation  
9 with USWC in Minnesota, and, therefore, has proposed specific contract terms to avoid  
10 or at least minimize these problems.  
11

12 In addition, USWC has attempted to impose higher rates for interconnection based upon  
13 cost study methodologies that would recover far more than long-run incremental costs.  
14 Accordingly, ATTI wants an opportunity to be able to challenge any rate or charge  
15 proposed by USWC with the WUTC unless this agency has already reviewed and  
16 accepted the rate or charge in question.  
17

18 ATTI is well aware of USWC's general service quality problems. Many state regulatory  
19 commissions have investigated or are investigating USWC service quality problems.  
20

21 **Q. What proposals have you made because of these concerns?**  
22

23 A. ATTI, for example, has proposed that it should be allowed to specify cross-connect  
24 devices and circuit locations in USWC's network, while USWC insists that it should  
25 totally control the situation. This situation raises two key sets of issues.  
26

27 The first such set has to do with ATTI's connections to the network. Normally, a  
28 collocated CLEC would, for purposes of interconnection and access to the ILEC's UNES,  
29 interconnect through a direct connection with the incumbent LEC's main distribution  
30 frame ("MDF"). Indeed, that is how I believe such interconnection is done with other  
31 incumbent LECs. USW has, however, promoted (and indeed attempted to require) in  
32 recent years the use of an "intermediate" frame device, formerly known as the "SPOT"  
33 frame and now called the "ICDF." The ICDF may, in some circumstances, be  
34 appropriate for our business needs, based on network planning, costs, testing capabilities,  
35 and other factors. In other circumstances, it may not. I understand that many CLECs  
36 have raised concerns at the FCC and state commissions that the ICDF can serve to,  
37 among other things, unnecessarily increase the costs of collocation and relegate the  
38 CLECs to in essence a form of "second class citizenship" by forcing them onto a  
39 designated alternate frame. Moreover, the ICDF does not appear to serve any other  
40 specific network or technical function. Consequently, the FCC stated at Paragraph 42 in  
41 its recent collocation Order that "[i]ncumbent LECs may *not require* competitors to use  
42 an intermediate interconnection arrangement in lieu of direct connection to the

1 incumbent's network if technically feasible, because such intermediate points of  
2 interconnection simply increase collocation costs with a concomitant benefit to  
3 incumbents." Several state commissions have similarly rejected the requirement to use  
4 the ICDF. Accordingly, the bottom line from a regulatory standpoint is that a CLEC  
5 should have the right to *choose* between ICDF and direct connection to the network, with  
6 the only precondition to such choice being *technical feasibility*. From a business and  
7 network perspective, we simply want our collocation agreement with USWC to reflect the  
8 ability to make such a choice.  
9

10 ATTI does not want to leave much decision-making over its facilities and  
11 interconnections in the hands of USWC. ATTI will be responsible for providing high  
12 quality service to its customers and the company requires the ability to determine where  
13 its cross-connections should be made and the devices that should be used.  
14

15 **Q. What is the other cross-connect issue about which you are concerned?**

16  
17 A. There may be a number of circumstances where ATTI chooses to obtain trunking or other  
18 facilities through another collocated carrier. In that situation, we would need to cross-  
19 connect our facilities to that other carrier. Such cross connection is for the most part a  
20 network and business arrangement between ATTI and a third party, which does not  
21 require the substantial involvement of USW. The collocated parties can accomplish the  
22 cross connection by and large on their own. And, such cross connects are usually part of  
23 a fast paced deployment plan which requires the coordination of various parties and the  
24 maintenance of a timetable. We do not want to have to utilize the incumbent LEC to  
25 provide this cross connect if we don't need or want to do so. Moreover, we do not want  
26 to otherwise suffer any delay by having to obtain any unnecessary approvals or  
27 arrangements with the incumbent LEC. Indeed, the collocated parties should be free to  
28 make these cross-connects as they see fit, in accordance of course with reasonable  
29 industry standards for safety and related concerns. USWC has in Minnesota sought to  
30 require us to provision these cross connects through the ICDF facility, in a situation  
31 where we otherwise did not need or desire to do so. This attempted requirement only  
32 foists cost and delay on ATTI with no attendant benefit. We believe such a requirement  
33 is technically unnecessary and contrary to applicable regulatory requirements.  
34

35 In sum, ATTI believes that it must have the ability to direct the routing of cables used to  
36 serve ATTI, rather than allow a competitor that has a less-than-stellar commitment to  
37 local competition and service quality, even for its own retail customers, have full control.  
38 Any other approach simply invites too much risk of network problems.  
39

40 **Q. Do you have an understanding as to whether this issue has been addressed under**  
41 **applicable regulation?**  
42

1 A: I noted above the fact that the ICDF generally has been rejected. In addition, the FCC has  
2 been emphatic and specific as to a CLEC's rights regarding cross-connects to other  
3 collocated parties. Paragraph 33 of the FCC's Collocation Order provides in pertinent  
4 part that "[s]everal competitive LECs raise the issue of delay and cost associated with  
5 incumbent LEC provision of cross-connect facilities, which are often as simple as a  
6 transmission facility running from one collocation rack to an adjacent rack."  
7 Accordingly, the FCC ordered that incumbent LECs are required to "permit collocating  
8 carriers to construct their own cross-connect facilities between collocated equipment  
9 located on the incumbent's premises..."

10  
11 **Q. What kind of clarification does ATTI seek regarding the relationship between**  
12 **combined UNE platforms and collocation?**  
13

14 A: We simply want our collocation contract to be clear that physical collocation is not a  
15 condition precedent to obtaining UNE combinations, and that there should not be any  
16 inference of such based on provisions in the contract for the ICDF or anything else.  
17

18 **Q. Why do you require this clarification?**  
19

20 A. USWC has in the past apparently taken the position that a CLEC has to physically  
21 connect at the ICDF in order to obtain UNE combinations. Moreover, there are various  
22 provisions in our contract which refer to the use of the ICDF. We do not want any  
23 misunderstanding that somehow ATTI is conceding that USWC's position on this point is  
24 appropriate.  
25

26 **Q. Are you, in your proposed contract language, seeking to determine or expand ATTI's**  
27 **substantive UNE combinations rights?**  
28

29 A. No. We are simply saying that to the extent those rights exist, and in whatever form they  
30 may take, they are not contingent on physical collocation.  
31

32 **Q. Why is it reasonable for ATTI to insist that USWC extend the requirement for**  
33 **adjacent collocation to "Nearby Locations" where USWC does not own the**  
34 **property?**  
35

36 A. Adjacent collocation at locations that are close to existing USWC wire centers should be  
37 permitted. It would enable better use of scarce wire center space. There is no technical  
38 reason why collocation facilities could not be located across the street or alley from a  
39 USWC central office. Under our proposal, USWC's only requirement would be to  
40 provide connectivity to ATTI. Indeed, the requirements for USWC would be even less  
41 than for adjacent collocation where USWC owns the space, since ATTI would be  
42 required to provide its own power, HVAC, and build what ever physical support facilities

1 are needed. Paragraph 44 of the FCC's March 31 1999, Collocation Order (FCC 99-48)  
2 clearly leaves open the possibility for CLECs to collocate in a location that is adjacent to  
3 an ILEC's wire center. The FCC decided to allow state commissions to determine when  
4 this approach should be taken.  
5

6 **Q. Why does ATTI oppose USWC's proposal to permit it to audit ATTI's use of its**  
7 **collocated equipment?**  
8

9 A. As a network engineer, I am always concerned about managing the ability of *any* other  
10 parties to come into my space and have access to my equipment. USWC of course makes  
11 its own concern on this score very clear through its requests for numerous and strict  
12 security and access requirements. In addition to the obvious safety and security issues,  
13 USWC has no greater right to "audit" my compliance with applicable legal requirements  
14 than presumably I do to monitor theirs. And, providing the incumbent LEC "audit" rights  
15 is, in my view, only an invitation to potential disputes or problems down the road, when  
16 USWC's "interpretation" of my use of equipment or compliance with law would result in  
17 their purported grounds to terminate my collocation.  
18

19 **Q. Are you saying that USW should never have any right of access to your facilities?**  
20

21 A. No. In the case of demonstrated emergencies which threaten the safety of the wire center,  
22 its occupants, or the network, obviously access as necessary and appropriate under the  
23 circumstances should be available. However, these rights of access should be carefully  
24 crafted and limited to reflect reasonable and necessary requirements.  
25

26 We believe that, under the Communications Act of 1934 and the laws of the state of  
27 Washington, we have the right to use our collocated equipment for any and all lawful  
28 purposes, not just the ones that USWC permits. Telecommunications law is not based on  
29 feudal relationships with ILECs as lords and CLECs as vassals. USWC does not have  
30 any right to police ATTI's operations through the audit process.  
31

32 **Q. Can you discuss some of the provisions that ATTI has proposed to protect itself**  
33 **against overcharges by USWC?**  
34

35 A. One of our major proposals is the reservation of a right for ATTI to challenge any USWC  
36 price related to collocation that has not been approved by the WUTC.  
37

38 **Q. Please elaborate, why is this approach reasonable?**  
39

40 A. ATTI, as a small CLEC, needs contract provisions that permit it to seek subsequent state  
41 commission review of prices where such prices have not already been reviewed and  
42 approved by the commission. As a small company, ATTI is not in a position to

1 meaningfully evaluate or challenge the rates proposed by USWC. USWC has a cadre of  
2 cost study and pricing experts backed by sophisticated computer models. Moreover, its  
3 models are generally undisclosed and not publicly documented. For example, the  
4 Minnesota PUC criticized and rejected USWC's cost and pricing models in its May 3  
5 order on UNE pricing. Faced with this situation, ATTI needs access to the WUTC's  
6 statutory authority to set rates for USWC. Our proposed provision takes nothing from  
7 USWC, while giving us the basic right to obtain subsequent review by the WUTC in the  
8 event that a particular rate seems particularly egregious to ATTI.  
9

10 **Q. Is ATTI seeking to reserve the right to have any other pricing issues reviewed by the**  
11 **WUTC?**

12  
13 A. Yes, for the same reasons, we have proposed that we be given a right to seek subsequent  
14 review by the Commission of USWC's charges for "direct training" of its employees for  
15 the installation and operation of ATTI's virtually collocated equipment; USWC's charges  
16 for reimbursement of its reasonable expenses for meeting standard safety requirements  
17 and other technical standards; USWC's price quotes for the provision of adjacent space  
18 for cageless collocation; and USWC's charges for costs incurred in providing agreed-  
19 upon collocation services for which USWC does not have an existing rate or charge.  
20

21 USWC executives have made public statements as long ago as 1996 in which they  
22 proclaimed that their network is a valuable asset that competitors must pay for in order to  
23 use. While ATTI does not disagree with the need to reimburse USWC for its legitimate  
24 expenses in connection with collocation, we fear that, if left unchecked by regulators,  
25 USWC will seek to set prices that pay for costs not caused by ATTI, such as obsolete  
26 plant or items not properly on USWC's books of account as were identified by the FCC  
27 in its report on its continuing property records audit of USWC. In addition, we are fearful  
28 that USWC may be setting prices to discourage competition. WUTC review of USWC's  
29 proposed prices could prevent these problems from occurring.  
30

31 **Q. ATTI has proposed true-up mechanisms for several issues, including disagreements**  
32 **over the reasonableness of USWC price quotes for collocation and temporary rates**  
33 **for collocation. Why is a true-up process necessary?**

34  
35 A. ATTI has proposed this mechanism to balance its need to protect itself from excessive  
36 charges from USWC and the need to collocate our equipment promptly to facilitate  
37 market entry. If we pay a rate that is later found to be unreasonably high or even  
38 unreasonably low, for that matter, we propose a true-up process to hold each party  
39 harmless financially. This proposal is not unlike the one embodied in many state  
40 regulatory statutes that permit an ILEC, such as USWC, to place rate increases into effect  
41 subject to refund while the PUC is determining fair rates in hearings. In view of  
42 familiarity of this concept to USWC, ATTI is surprised that USWC has opposed our plan.

1 Similarly, in the event that the parties disagree on a price quote for collocation, we have  
2 proposed that USWC should be required to proceed to process the request for collocation  
3 while the disputed charges are referred for dispute resolution under the agreement, with a  
4 true-up, if necessary. This proposal also would protect both parties, while fostering local  
5 competition. This approach makes more sense than one that would permit USWC to  
6 make an unreasonably high price quote and to cease all work on ATTI's collocation space  
7 until the parties dispute is finally decided.  
8

9 **Q. Are there any other disputes for which ATTI seeks prompt resolution by the**  
10 **WUTC?**

11  
12 A. Yes, we have proposed (and USWC has opposed) that ATTI be permitted to obtain  
13 prompt WUTC review of disputes involving various contract provisions including: 1)  
14 USWC's demonstration that a request for an alternative form of collocation is not  
15 technically feasible; and 2) USWC's denial of access to its premises for an ATTI  
16 employee based on USWC's claim that such employee has repeatedly violated security  
17 requirements. USWC may well have a credible case that a particular, alternative form of  
18 collocation is not technically feasible, or it may not. USWC may have compelling  
19 evidence that an ATTI employee has not followed reasonable building security rules, or it  
20 may not. If USWC has strong evidence, ATTI is likely to accept USWC's response,  
21 rather than spend the time and resources to challenge USWC. However, we simply want  
22 the ability to challenge USWC's position when it is not supported by credible facts.  
23

24 **Q. Why has ATTI proposed that the parties use a separate and expedited dispute**  
25 **resolution for collocation issues in addition to the standard dispute resolution**  
26 **process?**

27  
28 A. Time is critical for ATTI. We have limited financial resources as compared with large  
29 CLECs, such as MCI or AT&T, or the ILECs, such as USWC or GTE. We must enter  
30 our target markets quickly in order to start some inflow of cash to begin to balance our  
31 larger outflow of cash and to meet the requirements of our equity and debt investors.  
32 Much of our market entry strategy is, therefore, dependent on our ability to collocate our  
33 equipment quickly. Expedited dispute resolution is key for collocation-type disputes,  
34 where virtually every issue can cause delay. Delay is the key factor where facilities are  
35 ready and a timetable for deployment is set. Our experience with USWC in Minnesota  
36 already has been a litany of USWC roadblocks and delays to prompt collocation, all of  
37 which USWC has ultimately capitulated. Yet, a legal victory down the road does not  
38 address our need to begin operations quickly. For a new CLEC the old and tired maxim  
39 rings true, "justice delayed is justice denied." This experience underscores the need for  
40 prompt efficient dispute resolution remedies to be available to ATTI.  
41

1 **Q. Should the costs for joint testing of collocation components be ratably split between**  
2 **the parties, rather than charged to ATTI under the interconnection contract?**  
3

4 A. Both USWC and ATTI have responsibilities as carriers, under the Communications Act  
5 of 1934, and as telecommunications companies, under Section 80.36.080 of the Revised  
6 Code of Washington, to provide reasonably adequate service to customers. In order to  
7 comply with these requirements and to meet the needs of customers in competitive  
8 markets, ATTI is committed and USWC should be committed to ensuring that their  
9 networks are fully interoperable. Interoperability requires joint testing, at times. If both  
10 carriers need to work cooperatively to test and maintain interoperability between their  
11 networks, both carriers should be required to bear the costs for this testing on a fair and  
12 ratable basis. There are no reasons why USWC should be allowed to foist its normal  
13 operating costs on ATTI.  
14

15 **Q. USWC wants to require ATTI to pay all charges for a collocation project upon**  
16 **completion of the job, irrespective of ATTI's satisfaction with the work. Why**  
17 **should ATTI's payment to USWC be conditioned upon its reasonable satisfaction**  
18 **with the work and acceptance of the collocation space?**  
19

20 A. Under the circumstances, ATTI could take no other position. We simply do not have  
21 sufficient confidence in USWC just to assume that we will be reasonably satisfied with  
22 USWC's collocation project work efforts. It seems only commercially reasonable for  
23 ATTI to be able to condition payment to USWC on receiving an acceptable collocation  
24 arrangement.  
25

26 **Q. What does ATTI seek with respect to identification of shorter intervals available for**  
27 **collocation space?**  
28

29 A. In our discussions with USWC, we have pressed very hard to shorten the 90-day interval  
30 for provisioning the cage. We have noted that we don't think it should take that long, and  
31 time is of the essence for ATTI. USWC has responded by declining to agree to any  
32 shorter intervals, but stating that in reality they believe that the interval will in fact be  
33 shorter in many instances. In particular, they have stated that conditions in certain wire  
34 centers where ATTI seeks to collocate may be such as to easily accommodate shorter  
35 intervals. Accordingly, we simply have requested a contractual commitment that they tell  
36 us specifically, when we identify a wire center in which we seek to collocate, whether in  
37 fact a shorter interval would be available.  
38

39 **Q. What notice should USWC be required to provide to ATTI regarding any "special**  
40 **circumstances" that may delay collocation implementation?**  
41



1 A. In any normal construction business relationship, the purchaser expects that either the  
2 project will be completed by the due date or the builder will, at least, inform the  
3 purchaser about any possible delays. For example, assume that a merchant has contracted  
4 with the owner of a shopping mall to renovate some space for the merchant with an  
5 intended completion date of November 1. The merchant is planning on opening for  
6 business in the new location, during November, in time for the Holiday Sales Season and  
7 may have placed large orders for merchandise to be delivered. If the contractor  
8 determines that the construction project cannot be completed until mid-December, the  
9 merchant needs to know this, as well as the cause for the delay as soon as possible, in  
10 order make contingency plans. The contractor cannot just leave the merchant in the dark  
11 until she or he shows up on November 1 to begin preparation for a grand opening sale  
12 only to find the retail space is not available. Yet, this is the very position that USWC  
13 demands to maintain. It is not commercially reasonable and should not be permitted by  
14 the WUTC.

15  
16 **Q. Why should USWC be required to provide UNE combinations to ATTI without**  
17 **ICDF collocation?**

18  
19 A. Nothing in the FCC's rules requires collocation as a condition precedent to UNE  
20 combinations. Indeed, ATTI's use of UNE platforms would be for those USWC central  
21 office locations where ATTI is not collocated. USWC has in the past asserted that  
22 collocation at the SPOT frame would be required, and specific contract language is  
23 needed to ensure that ATTI is not required to use a SPOT frame that is not even needed.  
24

25 **Q. Mr. Kunde, does this conclude your direct testimony?**

26  
27 A. Yes, it does.  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 1999, a copy of the Testimony of David A. Kunde in Docket No. UT-990385 was sent to the following individual by facsimile and federal express:

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