

Rebuttal Testimony of David A. Kunde
ATTI/U S WEST Interconnection Arbitration
Docket No. UT-990385

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

2

3 A: My name is David A. Kunde. I am employed by Advanced Telecommunications, Inc.
4 ("ATI"), of which American Telephone Technology, Inc. ("ATTI") is a wholly owned
5 operating subsidiary. I am Vice President of Technical Planning, Operations, and
6 Administration for ATI. My business address is 720 Second Avenue South, Suite 1220,
7 Minneapolis, MN 55402.

8

9 **Q: Have you previously testified in this proceeding?**

10

11 A: Yes.

12

13 **Q: What is the purpose of your testimony today?**

14

15 A: I am responding to the direct testimony provided by Mr. Mark S. Reynolds on behalf of U
16 S WEST. Mr. Reynolds defends U S WEST's proposals for each of the disputes listed on
17 the factual issues list submitted by U S WEST in this proceeding. I believe that a number
18 of Mr. Reynolds' representations warrant a response from ATTI. In my testimony, I will
19 address these representations in the context of the issues and corresponding issue
20 numbers used by Mr. Reynolds in his testimony.

21

22 **Q: Issue #1: Which company will specify cross-connect devices and circuit locations?**
23 **(2.1.1, 2.1.2, 2.1.3)**

24

25 A: From Mr. Reynolds' testimony, it would seem, at the outset, that ATTI and U S WEST do
26 not have vastly different views on the answer to this question. Mr. Reynolds
27 acknowledges the right conferred by the FCC's Advanced Services Order that ATTI is
28 empowered to choose not to use a U S WEST cross-connection device at all in cross-
29 connecting with other collocated providers. According to the FCC's order, ATTI may use
30 its own cross-connect facilities. Later in Mr. Reynolds' testimony, he also acknowledges
31 the portion of the FCC's Advanced Services Order which prohibits U S WEST from
32 requiring ATTI to use an intermediate U S WEST interconnection device in lieu of direct
33 interconnection with U S WEST's network. In sum, ATTI retains the choice of which
34 U S WEST cross-connect device it uses, and indeed, even if it wants to use a U S WEST
35 cross-connect device at all.

36

37 Where Mr. Reynolds and I part ways, however, is on the extent to which U S WEST's
38 proposed language adequately reflects this allocation of cross-connection choices. U S
39 WEST's proposed language in section 2.1.1 reads that "ATTI . . . will be granted access to
40 the appropriate point on the cross-connect device specified by U S WEST for making any
41 cross-connections it may require for access to U S WEST UNEs and for cross-

1 connections to other collocated parties." U S WEST's proposed sections 2.1.2 and 2.1.3
2 echo this language by referring to "the appropriate point on the cross-connect device
3 specified by U S WEST."
4

5 Mr. Reynolds states that this language "is intended to apply to the situation where *a U S*
6 *WEST cross-connect facility* is being used by ATTI for access to UNEs or other parties'
7 collocated equipment." (Italics in original). He also explains that U S WEST's proposed
8 language is "not intended to limit ATTI's rights under the [FCC's Advanced Services
9 Order]." U S WEST's intended meaning is clearly not conveyed by the language U S
10 WEST proposes. On its face, U S WEST's proposal appears to give U S WEST the
11 decision on *both* the cross-connection device to be used by ATTI and where on that
12 device ATTI may interconnect. This is not the law under the FCC's Advanced Services
13 Order.
14

15 In conclusion, Mr. Reynolds simply reiterates U S WEST's belief that it may select the
16 points on its cross-connect devices where ATTI may interconnect when such devices are
17 used by ATTI. He testifies that this discretion flows from FCC rule 51.232(h) which
18 states that an incumbent LEC is not required to allow CLEC placement of connecting
19 transmission facilities outside of the CLEC's collocation space. Whether this rule
20 supports U S WEST's discretion on selecting the point of interconnection on its cross-
21 connection devices, it does not change ATTI's clear choice to select which, if any, of U S
22 WEST's cross-connection devices it may use before U S WEST's choice of points on
23 those devices is even invoked. Indeed, paragraph 33 of the FCC's Advanced Services
24 Order explicitly revises rule 51.323(h) to recognize a CLEC's right to use its own cross-
25 connect facilities to connect with other collocated CLECs. Diagram 1 attached to my
26 testimony illustrates the types of cross-connection that ATTI may want to have at any
27 collocation site.
28

29 **Q: Issue #2: Will U S WEST be allowed to direct the routing of cables to access UNEs**
30 **in its network? (2.1.2, 3.20-ATTI, 3.21-U S WEST)**
31

- 32 A. The heart of this issue is whether U S WEST can force ATTI to use U S WEST's ICDF
33 device to connect ATTI's collocated equipment with U S WEST's network. On this issue,
34 Mr. Reynolds acknowledges the FCC's finding in paragraph 42 of the Advanced Services
35 Order that incumbent LECs cannot require CLECs to use an "intermediate
36 interconnection arrangement in lieu of direct connection to the incumbent's network." A
37 number of state commissions, including Minnesota, have rejected U S WEST's insistence
38 on an intermediate interconnection device as well. In response to this finding, Mr.
39 Reynolds does not testify that the ICDF is not an intermediate interconnection
40 arrangement, only that the ICDF may, in U S WEST's view, be a better alternative for
41 ATTI than direct interconnection to U S WEST's network.

1
2 This view, however, does not eliminate ATTI's demonstrated right to make that
3 determination on a case-by-case basis. It is important to ATTI that it retain the flexibility
4 it has under the FCC's Advanced Services Order to evaluate and decide the best method
5 of interconnection for the services it plans to provide, be it intermediate or direct
6 connection. The FCC's only limit on this flexibility is technical feasibility, not U S
7 WEST's assessment of the advantages of a particular form of interconnection or the
8 extent to which U S WEST chooses to use ICDF collocation for its own purposes. U S
9 WEST's proposal arbitrarily locks ATTI into an interconnection option that ATTI has no
10 obligation to accept.

11
12 **Q: Issue #4: Is there a requirement for co-providers seeking UNE combinations to**
13 **collocate in order to combine UNEs? (2.1.5)**

14
15 A: ATTI largely agrees with Mr. Reynolds that the answer to this question turns on legal
16 issues that will be addressed in ATTI's and U S WEST's briefs. However, U S WEST
17 suggests that ICDF collocation is beneficial to CLECs because it permits them to access
18 facilities to combine UNEs without collocating equipment. Use of the ICDF frame
19 means that CLECs will not be able to obtain already combined UNE circuits. ATTI does
20 not concede that its rights to obtain combined UNE circuits are contingent upon ICDF
21 collocation.

22
23 **Q: Issue #5: Should the requirement for adjacent collocation extent to "nearby**
24 **locations" where U S WEST does not own property? (2.1.7)**

25
26 A: Mr. Reynolds alleges that in authorizing adjacent collocation, the FCC only envisioned
27 collocation on U S WEST's contiguous real property surrounding a wire center and that
28 adjacent collocation outside of these premises would involve extraordinary administration
29 and costs. As an initial matter, there is no express indication in the FCC's Advanced
30 Services Order that its concept of adjacent collocation was limited to U S WEST wire
31 center property. Indeed, the FCC makes references to municipal zoning influencing
32 adjacent arrangements, a concept which implies a reach beyond the border of a wire
33 center already zoned for telecommunications use.

34
35 Mr. Reynolds' focus on extraordinary administration and costs would also seem to be
36 misplaced. Most of the cost and administrative burden in acquiring adjacent property,
37 obtaining permits, and constructing facilities will be ATTI's, not U S WEST's. Indeed,
38 since U S WEST is not burdened with constructing a collocation space, the administrative
39 and cost burden on it in an adjacent collocation arrangement is arguably less than other
40 collocation arrangements.

1 Finally, the administrative and cost burden, even if it impacts U S WEST, will clearly
2 vary by location and circumstance. It may be that in some office locations, extensions of
3 collocation to nearby locations may be prohibitively expensive. Other locations may
4 offer more economical alternatives. U S WEST should not be permitted to obtain blanket
5 denials of all nearby collocation possibilities simply by alleging extraordinary
6 administration or costs.
7

8 **Q: Issue #6: What should be the audit capabilities for ILECs to determine if co-**
9 **provider collocation equipment is "used or useful" for either interconnection or**
10 **access to UNEs? (3.2-ATTI, 3.3 & 3.4-U S WEST)**
11

12 A: Mr. Reynolds asserts that U S WEST's proposed language giving it the "right to audit
13 [ATTI's collocated equipment] to assure that it is being utilized for local interconnection"
14 is justified by its obligation in paragraph 28 of the FCC's Advanced Services Order to
15 prove that such equipment will not actually be used for interconnection or access to
16 UNEs. At the outset, U S WEST's proposed audit rights to "assure that [ATTI's
17 equipment] is being utilized" does not coincide with the "used or useful" standard that the
18 FCC has adopted (and ATTI has expressly proposed). Under both ATTI's and U S
19 WEST's proposals, ATTI is obligated to identify to U S WEST what telecommunications
20 equipment it is installing. This listing provides U S WEST with ample insight into
21 whether ATTI is collocating equipment that is "used or useful" for interconnection or
22 access to UNEs.
23

24 In this highly competitive industry, ATTI cannot accept the proposed language heralded
25 by Mr. Reynolds which essentially gives U S WEST unqualified discretion to access
26 ATTI's collocation equipment at any time and in any circumstances. If any audit rights
27 are warranted by the FCC's Advanced Services Order, the scope of those rights should be
28 expressly limited and delineated with precision in the contract so that ATTI will not be
29 subject to unreasonable demands for access or on ATTI's personnel. U S WEST should
30 not have an open invitation through an audit to objecting to ATTI's collocation.
31

32 Finally, it should be noted that U S WEST's proposed audit rights are accompanied in the
33 same section by restrictions on collocation of ATM equipment, including a minimum
34 power feed, that ATM equipment be mounted in cabinetized bays, and that the equipment
35 be vented through the roof. Not all ATM equipment, however, has these requirements.
36 For example, Nortel Networks offers a variety of ATM based equipment (including
37 DSLAMs) which are fully NEBS compliant and commonly deployed in collocation cages.
38 In terms of thermal characteristics, many of these products are similar to DSL equipment
39 and do not require cabinetization or special cooling/venting. New equipment is being
40 developed at a rapid pace. ATTI should not be limited in its collocation equipment
41 configurations by stale or arbitrary technical standards.

1
2 Similarly, section 3.4, U S WEST seeks the right to require ATTI to remove any
3 equipment used for switching if "U S WEST is successful in its appeal." ATTI objects to
4 such a vague condition precedent which allows U S WEST to unilaterally take dramatic
5 action based on its interpretation of a change in law. The AT&T contract contains
6 provisions for regulatory and legal changes. Those provisions should govern the
7 circumstance U S WEST refers to here.
8

9 **Q: Issue #7: Should U S WEST's technical publication on collocation, #77386, be**
10 **included in a list of technical publications relevant to the technical specifications for**
11 **collocation? (3.4-ATTI, 3.6-U S WEST)**
12

13 A: Mr. Reynolds alleges that "U S WEST's provisioning of collocation requires adherence to
14 technical standards," and that ATTI has rejected U S WEST's technical publication
15 without offering any technical standards in its place. There is no obligation in the FCC's
16 Advanced Services Order for ATTI to comply with technical standards devised by U S
17 WEST. Indeed, Mr. Reynolds offers no reason for why U S WEST's technical standards
18 are necessary in light of the other standards for which ATTI is accountable and to which
19 ATTI has agreed. The only substantive limitations or guidelines imposed by the FCC on
20 the equipment that ATTI may collocate are whether the equipment is "used or useful" for
21 interconnection or access to UNEs and whether the equipment complies with reasonable
22 safety standards with which U S WEST itself complies. The FCC specifically rejected
23 the imposition of performance or reliability standards or any other requirements beyond
24 *safety* as a criteria for acceptance of CLEC provisioning and equipment.
25

26 **Q: Issue #9: Should Commission review be a part of the contractual requirements for**
27 **identified contract provisions? (4.6, 5.11, 5.12, 6.2, 6.3, 7.1; 3.5-ATTI, 3.7-U S**
28 **WEST; 3.15-ATTI, 3.17-U S WEST)**
29

30 A: On this issue, Mr. Reynolds simply asserts that U S WEST does not believe that
31 Commission review of the specific actions and costs identified in ATTI's contract
32 proposals are appropriate. As stated in my direct testimony in this proceeding, however,
33 ATTI's proposals simply acknowledge ATTI's right to seek the aid of the Commission
34 when faced with egregious or unreasonable rates or actions by U S WEST, a
35 circumstance that ATTI has unfortunately faced with U S WEST in the recent past.
36

37 **Q: Issue #11: Should there be a separate (expedited) dispute resolution clause for**
38 **collocation in addition to the standard dispute resolution clause already contained**
39 **in the contract? (3.6.3, 3.10, 3.19-ATTI; 3.8.3, 3.12, 3.20-U S WEST; 17, 22, 21.4)**
40

1 A: Mr. Reynolds alleges that there is no need for an expedited dispute resolution mechanism
2 for collocation because there is already a dispute mechanism in the AT&T contract that
3 ATTI seeks to adopt. ATTI does not dispute that the AT&T contract includes a
4 mechanism for dispute resolution. ATTI's point, however, is that collocation is an
5 activity in which time is critical. Delays in collocation inevitably affect the quality and
6 availability of service to ATTI's customers and, in turn, wall off a much needed stream of
7 capital to fuel a successful service roll out. Indeed, ATTI's desire for an expedited
8 remedy for problems in this threshold activity is driven by actual collocation roadblocks
9 and insufficient remedies to address them already experienced with U S WEST. ATTI's
10 request for an answer to these problems is in no way "superfluous" as Mr. Reynolds
11 claims. Interconnection and other telecommunications contracts and arrangements have
12 historically differentiated between disputes that affect provisioning of service and other
13 kinds of disputes. Service provisioning affecting disputes traditionally receive expedited
14 treatment. ATTI submits that any dispute involving the timely provisioning and
15 completion of its collocation facilities is a service provisioning affecting dispute and
16 should receive expedited treatment to the extent available. Moreover, simply shortening
17 a mandatory waiting period prior to the availability of dispute resolution remedies is not
18 all that ATTI seeks. ATTI seeks the availability of expedited dispute resolution
19 mechanisms themselves to resolve collocation issues.
20

21 **Q: Issue #17: Should final payment for installation of collocation equipment be based**
22 **on completion of the job or on ATTI's reasonable satisfaction with the job, resulting**
23 **in their acceptance of the space? (14.1)**
24

25 A: Mr. Reynolds has misrepresented ATTI's proposal for conditioning final payment for
26 installation of collocation equipment on ATTI's reasonable satisfaction with the job. Mr.
27 Reynolds states that "ATTI's language is not definitive and results in payments for work
28 rendered being totally at their discretion." Under ATTI's proposal, ATTI's discretion is
29 not unlimited; it is expressly metered by commercial reasonableness. Just as U S WEST
30 should not be stuck with a bill for an acceptable collocation space requested by ATTI,
31 ATTI should not have to pay for or accept a collocation space which does not reasonably
32 satisfy its collocation request. In either event, the problem will probably make its way to
33 dispute resolution. This fact, however, should not keep ATTI from having the express
34 protection of paying for only reasonably acceptable collocation facilities.
35

36 **Q: Issue #21: Should U S WEST be required to provide "bundling" or UNE**
37 **combination service to ATTI in conjunction with ICDF collocation? (21.4)**
38

39 A: Mr. Reynolds defer this issue to U S WEST's brief, stating that it is "inextricably tied to
40 the UNE combination issues." While ATTI largely agrees that UNE combinations is a
41 largely legal issue, it should not be lost that ICDF collocation becomes irrelevant in the

1 context of UNE combinations provided by U S WEST. If U S WEST is obligated to
2 provide currently connected UNEs, as currently connected, or other UNE combinations,
3 ATTI has no obligation whatsoever to collocate equipment to complete those
4 connections, via the ICDF or otherwise. That is essentially the whole purpose behind U S
5 WEST provided combinations. ATTI disagrees with Mr. Reynolds' contention that a
6 contract provision on maintenance and repair of the ICDF is inextricably tied to UNE
7 combination issues.
8

9 **Q: Mr. Kunde, does this conclude your testimony?**

10
11 A: Yes, it does.
12

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 1999, a copy of the Rebuttal Testimony of David A. Kunde in Docket No. UT-990385 was sent to the following individual by fascimile and federal express:

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