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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: Special Access for Price Cap Local Exchange Carriers
Docket No. 05-25 and RM-10593
Ex Parte Submission
Unlawful Conditions Imposed on Backhaul Customers

Dear Ms. Dortch:

NTCH, Inc. ("NTCH") feels constrained to add to the already voluminous record of this proceeding to ensure that the Commission is aware of a growing problem with access to special access backhaul facilities. NTCH or its affiliated entities are both FCC licensees and tower constructors in many parts of the United States. A key element of the construction of any wireless communications system is the backhaul network that ties the cell sites together and to the internet and the broader national and international communications network. Because of the capacity requirements of a cell site designed for normal traffic volume, a rural cell site will typically need at least 10 Mbps capacity delivered over a fiber landline facility. Such facilities must usually be procured from the local telco on a special access basis.

Recently, NTCH through a consolidator sought to order AT&T's Metro E service to link its cell sites in South Carolina to a central switch location. This service provides the required capacity and quality of service guarantees needed for carrier grade service. Metro E has been available at relatively reasonable prices which justify the use of special access facilities rather than construction of one's own microwave hop, which is typically the only – and a far more expensive – alternative. When the facility was ordered,

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however, we were advised that the service is not available if the customer wants to terminate the link at its own cabinet at the base of the cell site. Rather, a customer must instead shift to a different AT&T service (AT&T Switched Ethernet or ASE service) that is much more costly but includes an AT&T-supplied cabinet.

No tariff (this service has been de-tariffed by AT&T's LEC subsidiaries) and no condition of the published terms of Metro E service state this requirement that Metro E may not be terminated at a customer-supplied cabinet. On the contrary, the terms proffered by AT&T merely stated that the terminating cabinet must be compliant with the specifications adopted under the Telecordia GR487 standards. (See attached term sheet) NTCH had accordingly bought its own industry-standard, Telecordia GR487-compliant cabinets from an independent supplier to install at the cell sites to house its transmitters. The imposition of this needless and costly requirement to use only AT&T-supplied equipment came as a complete surprise. We have spent the last six months trying without success to learn from various AT&T personnel on what basis this seemingly irrational and self-serving condition has been imposed. All AT&T will indicate is that use of its equipment ensures that the quality of the terminating facility is up to their standards and there will be no question of which entity is responsible for any failure.

AT&T's claims in this regard harken directly back to the very same claims that were made by the old Ma Bell AT&T in the middle of the 20th Century. At that time, Bell insisted that only its own equipment could be connected to the network to ensure that the network would not be damaged by shoddy, malfunctioning equipment. Of course, this stance also guaranteed AT&T a true and highly lucrative monopoly over the huge market for customer premises equipment.

In 1959, a pioneering manufacturer of a phone device, Tom Carter, challenged AT&T's prohibition on the connection of independently owned and manufactured equipment to the phone network. The FCC eventually agreed. In its landmark *Carterfone* decision, following directly from the D.C. Circuit's similar ruling in *Hush-a-Phone Corp. v. United States*, 238 F. 2d. 266 (DC Cir. 1956), the FCC ruled that phone companies had to permit connection of independently owned devices to their networks. It was unreasonable to interfere with a subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental."¹ It was also discriminatory to erect such barriers when the carrier's own affiliate manufactured the only permitted equipment. These now fundamentally accepted principle have since become enshrined in Part 68 of the Commission's rules, which expressly permits privately owned terminal equipment to be connected to the public switched network, as long as it meets industry-established standards. After the *Carterfone* decision, the market for telecommunications equipment took off, with cheaper, higher quality and more innovative devices competing to better meet customer needs. It is not an exaggeration to state that today's iPhone4 and other smartphones are direct descendants of the *Carterfone* and the innovation that it spawned.

¹ *In the Matter of Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420 (1968).

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AT&T's position on customer-supplied cabinets is déjà vu all over again. Having forgotten the lesson of *Carterfone*, AT&T is again trying to stifle cheaper but equally useful facilities from being connected to its network. It has dragged out the same phony concerns for network integrity that the Commission correctly and soundly rejected a half century ago. The cabinets which NTCH plans to use as its termination points are fully accredited by Telecordia and thus meet every reasonable requirement for such a facility (air conditioning, electrical grounding, etc.). There is simply no valid or just reason to preclude customers from using their own cabinets at their cell sites. In considering the serious abuses in the Special Access market that have been identified in this Docket, the Commission should add unjustified limitations on terminating facilities to its list of abuses needing prompt amelioration. The Commission should make it plain in this proceeding that the *Carterfone* principle applies equally to terminating facilities as to terminating equipment itself and that restrictions of the type imposed by AT&T here will not be countenanced.

Respectfully submitted,

NTCH, Inc.

/s/

By: Donald J. Evans

Its Attorney