STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 10-137

Northern New England Telephone Operations, LLC
d/b/a FairPoint Communications-NNE
Petition for Authority to Disconnect Global NAPs

REPLY BRIEF OF NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC D/B/A FAIRPOINT COMMUNICATIONS-NNE

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") with its Brief in Reply to the Initial Post-Hearing Brief of Global NAPs, Inc. ("GNAPs Brief"). Consistent with arguments that GNAPs presented in previous pleadings, correspondence, and the Technical Session, the GNAPs Brief focuses on the issues of whether GNAPs' traffic is appropriately "Internet Traffic" for purposes of the ICA and, as such, the extent to which the ICA and/or FairPoint's tariffs govern the compensation to be paid for such traffic. FairPoint addressed these issues in its Brief and will not elaborate on them any further in this Reply.

However, in addition to its arguments regarding how its traffic "touches the Internet," GNAPs revived the argument that it enjoys the "ESP exemption" for the traffic it delivers to FairPoint. It also referenced certain FCC statements that purport to support its position, and further asserted that the ICA must be construed against FairPoint. This Reply discusses the "ESP exemption" at some length, and briefly touches on the other arguments. In addition, it distinguishes two federal district court cases on which GNAPs relies.

I. THE ESP EXEMPTION DOES NOT APPLY TO GNAPS' TRAFFIC.

Near the end of the GNAPs Brief, GNAPs claims that its traffic is an "enhanced service" and therefore exempt from access charges in accordance with the FCC's longstanding "ESP exemption" by which enhanced service providers are exempted from certain access charges. Citing the testimony of its expert at the Technical Session, GNAPs asserts that its traffic is an enhanced service because of how the traffic is manipulated by its customers in the upstream transmission path. According to its expert, GNAPs' customers remove background noise, replace lost packets, recognize short codes and inject "comfort noise"[1] into the signal, and that this processing transforms the traffic into an "information service" as defined by the Telecommunications Act.[2] Consequently, the traffic is exempt from access charges.

GNAPs is mincing words here, arguing that by subjectively "enhancing" a transmission, its customers are transforming it into a statutory "enhanced service," *i.e.* an information service. This is preposterous.

The Telecommunications Act defines an information service as:

> "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, . . . *but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.*"[3]

In light of this definition, it is clear that the functions described in the testimony are simply grooming functions that fit the latter part of the definition, not the first, and are merely incidents of a basic telecommunications service. The FCC described this distinction in detail in its *Computer II Order*:

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[1] Technical Session Tr. PM 18:1-19.

[2] GNAPS Brief at 15.

[3] 47 U.S.C. § 153(20) (emphasis supplied).

> Accordingly, we believe that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs and subject only to the technical parameters of *fidelity or distortion criteria, or other conditioning*. Use internal to the carrier's facility of companding techniques, bandwidth compression techniques, circuit switching, message or packet switching, *error control techniques*, *etc.* that facilitate economical, reliable movement of information does not alter the nature of the basic service.[4]

The noise reduction/insertion, error correction, and signal processing described in the GNAPs testimony fit comfortably within the features the FCC has described as a basic service. GNAPs' traffic is nothing but basic telecommunications.

Even assuming, for the sake of argument, that the upstream traffic constitutes an "enhanced service" at some point, the ESP exemption is still not applicable to GNAPs. Contrary to what GNAPs implies,[5] the FCC's exemption does not apply to traffic that is delivered *from* ESPs. Rather, it applies to ESPs themselves, exempting ESPs from certain *originating* interstate access charges, but not *other* appropriate charges. As the FCC explained in the *ISP Remand Order*, the ESP exemption is

> "a long-standing Commission policy that affords one class of entities using interstate access – information service providers – *the option* of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs," such that ESPs may "choos[e] . . . to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay."[6]

It is important to note that the exemption is only an option, and that "ESPs, including ISPs, are treated as end-users for the purpose of applying access charges," and hence "*pay local business*

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[4] *Second Computer Inquiry*, Final Decision, 77 F.C.C. 2d 384 ¶ 95 (1980) (emphasis supplied).

[5] GNAPs Brief at 15-16.

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 ¶ 27 (2001) (emphasis in original).

rates."[7]

It cannot be overemphasized that the ESP exemption is not an exemption from *all charges* -- it is only an exemption from one type of charge in favor of another type. *It is not a free ride.* Furthermore, the exemption is *unidirectional*, given that it is an exemption in favor of charges on local exchange business lines that receive the ISP/ESP bound calls. As the California Public Utility Commission described it under the same facts as this case, "the only relevant exemption from the access charge regime under Federal law is for *ISP-bound* traffic rather than *ISP-originated* traffic . . . "[8]

In addition, nothing about the ESP exemption establishes that the carrier from whom an ESP purchases service to terminate its subscribers' traffic also is suddenly exempt from paying other carriers for intercarrier services, such as terminating access charges. As the Commission

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[7] *See id.* ¶ 11 (emphasis supplied).

[8] Cox California Telecom, LLC v. Global NAPs California, Inc., CPUC Docket No. 06-04-026, Decision No. 07-01-004, Opinion Granting Complainant's Motion for Summary Judgment at 5 (Jan. 11, 2007) (emphasis original). *See also* AT&T California v. Global NAPs California, Inc., Ca. P.U.C. Case 07-11-018, Decision 09-01-038 on Motion for Rehearing, at 12 (January 29, 2009) (following Cox). "The ESP exemption is inapplicable to traffic that is not ISP-bound, regardless of the traffic's transport mode."

See also Illinois Bell Telephone Co. v. Global NAPs Illinois, Inc., Ill. C.C. Docket No. 08-0105, Order at 44 (February 11, 2009). "Once again, Global causes a mismatch of fact to law by asserting that, since 1983, the FCC has held that interstate access charges may not be applied to traffic that is delivered from ESPs. . . . In any event, it is well established on record, and to more than a reasonable degree of certainty, that the FCC's ESP exemption applies only to ESPs themselves, and is only an exemption from certain (i.e., originating) 'interstate access charges.' . . . Even more to the point, the FCC's exemption does not apply 'to traffic that is delivered from ESPs.' Rather, it applies to ESPs *themselves*, exempting *ESPs* from certain interstate access charges. Global is a carrier, not an ESP, and hence the ESP exemption does not apply to Global, even if the customers of Global's affiliates (and Global itself has no customers) were in fact ESPs. Thus, the ESP exemption offers Global no relief. . . . Global asserts that the FCC also has exempted IP-enabled traffic delivered to the PSTN from access charges, but there is nothing specific on which Global can rely upon for this proposition. Nothing on record shows the FCC to have ever held that IP-enabled traffic or enhanced service traffic delivered to the PSTN is exempt from access charges (or local reciprocal compensation or other charges)."

has already found, GNAPs is not an ESP.[9] Rather, it is an underlying carrier for an ESP (assuming that any ESP actually operates in the transmission chain.) The FCC has made it clear that the underlying telecommunications service is just that -- a telecommunications service -- and that its use as a component of an information service does not necessarily transform it into an information service/enhanced service. "[W]e clarify that the provision of transmission capacity to Internet access providers and Internet backbone providers is appropriately viewed as 'telecommunications service' or 'telecommunications' rather than 'information service' . . . ."[10] "This underlying telecommunications service is, however, distinguishable from the IP telephony functionality for the same reason it is distinguishable from the Internet access services offered by Internet service providers."[11] Further, "the ESP exemption applies to interactive computer services, not to telecommunications services."[12]

In the smoke surrounding all of its arguments about IP-enabled traffic and enhanced services, GNAPs has lost sight of the fact that this is a billing dispute between GNAPs and FairPoint *only*, for services that FairPoint provided to GNAPs *only*. The end-to-end service that the originating end user may have purchased from the first carrier in the chain of carriers is not the issue. FairPoint is not a party to that arrangement. Accordingly, any conversion and/or enhancement of the traffic is only significant to the party that is being offered that service.

The central question is what service is FairPoint offering and providing GNAPs? FairPoint is not providing service to Vonage, Transcom, Broadvoice, CommPartners, Reynwood,

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[9] DT 08-028, Order No. 25,043 at 14 (Nov. 10, 2009).

[10] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 ¶ 15 (1998) ("*Stevens Report*").

[11] *Id.* n. 187.

[12] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 n. 74 (2004) ("*AT&T IP-in-the-Middle Order*").

or any originating end user. Its customer is GNAPs and GNAPs alone. By its own admission, GNAPs is delivering a TDM bit stream to FairPoint at the interconnection point, and FairPoint is terminating that to a FairPoint end user as a TDM bit stream without altering the form, content or protocol. From the perspective of the originating user, far upstream, there may be a transformation at some point in the transmission chain, but this is a service offered by the originating carrier, not FairPoint, which is not in privity with the originating end user. By the time that the traffic reaches FairPoint, FairPoint is only offering a pure transmission capability. FairPoint does not offer GNAPs a "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information;" therefore, its service is not an information service under section 153(20) of the Act. FairPoint is offering a pure telecommunications service to GNAPs, and that traffic is subject to applicable access charges.

In summary, it is important to remember what the FCC stated as its policy on intercarrier compensation in its *IP-Enabled Services NPRM*:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[13]

In other words, cost causers should pay the costs thus caused, regardless of the manner in which traffic is delivered.

II. THE METTEL AND COMMPARTNERS DECISIONS ARE NOT PERSUASIVE IN THIS CASE.

GNAPs places a great deal of faith in two cases, *MetTel*[14] and *PAETEC*,[15] which it claims

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[13] *IP-Enabled Services,* WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 ¶ 33 (2004).

[14] Manhattan Telecommunications Corp. (MetTel) v. Global NAPs Inc., Civ. Action No. 08-3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010) ("*MetTel*").

were "won" by the defendant VoIP carriers and which support its defense in this case.[16] However, the facts of both cases are distinguishable from this case, and neither case provides analysis that is instructive. Both cases differ from this case in that neither plaintiff had an interconnection agreement with GNAPs that clarified the treatment of Internet traffic. Rather, both cases were filed rate doctrine cases, grounded exclusively in the plaintiff's tariffs.

In *MetTel*, the court found that GNAPs had, unlike in this case, successfully shown that a significant amount of its traffic was VoIP.[17] However, the MetTel court decided that:

> "against [the] backdrop . . . of conflicting court and state regulatory rulings that have held, *inter alia,* that access charges are not applicable to VoIP calls and that access charges may be assessed for termination of VoIP calls. . . the Court declines to enter the melee and attempt to apply the filed rate doctrine to the facts of this case."[18]

Instead, the Court found for plaintiff MetTel on equitable grounds and, on July 16, 2010, entered a judgment against GNAPs in an amount of slightly over $200,000.[19] (Considering this result, it is debatable as to whether GNAPs really "won" the *MetTel* case.)

In *PAETEC*, the court determined that defendant CommPartners was an information service provider, unlike GNAPs here, and that some of CommPartners' traffic was IP-originated, a fact that GNAPs has not established for its traffic in this case. The court also held that plaintiff PAETEC's access tariff, while applicable to CommPartners' traffic, conflicted with the federal regime exempting information service providers from access charges. Thus, the court found

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[15] PAETEC Communications Inc. v. CommPartners, LLC, Civ. Action No. 08-0397, 2010 WL 1767193 (D.D.C. Feb. 18, 2010) ("*PAETEC*").

[16] GNAPs Brief at 6.

[17] *MetTel*, 2010 WL 1326095 at 2.

[18] *Id.*

[19] Manhattan Telecommunications Corp. (MetTel) v. Global NAPs Inc., Civ. Action No. 08-3829, Entry of Judgment (Doc. # 55) (S.D.N.Y. Jul. 16, 2010).

CommPartners liable only for traffic that did not originate as IP.[20]

With due respect to the *PAETEC* court, FairPoint submits that the court's analysis was so meager that the decision cannot be relied on for guidance on the issues of this case. The court's decision was rooted in its blanket determination that "[i]nformation services are not subject to the access charge regime."[21] This statement was not supported by any analysis on the court's part. Its sole support was found in a citation to four introductory paragraphs of the *AT&T IP-in-the-Middle Order*.[22] Unfortunately, these four paragraphs do not even discuss the issue of access charges on information services traffic, let alone decide it. They are *non sequitur*, and therefore raise questions regarding the actual level of scrutiny that the court gave to the parties' arguments.

Furthermore, the court did not consider, nor did PAETEC brief:

- the issue that the access charge exemption is unidirectional;[23]
- the distinction between an information service and the basic telecommunications service underlying it;[24]
- the fact that the access charge exemption assumes that compensation of another type is being paid;[25] or
- the fact that the very FCC order that the court used to support its determination actually found that at least some VoIP traffic is indisputably subject to access charges.[26]

Indeed, other than to dispute CommPartners' claim to be an information services provider, PAETEC did not aggressively pursue any arguments beyond those related to the filed

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[20] PAETEC, 2010 WL 1767193 at 1, 5.

[21] *Id. at* 2.

[22] *AT&T IP-in-the-Middle Order* ¶¶ 4-7.

[23] *See supra* at 3.

[24] *See supra* at 4-5.

[25] *See supra* at 3-4.

[26] *AT&T IP-in-the-Middle Order* ¶ 15.

rate doctrine.[27] Consequently, it is difficult to see how *PAETEC* provides a solid and persuasive analysis of this issue at all.

The issue of how access charges apply to information services is a complicated one going back through thirty years of legal evolution and technological revolution. While the FCC and state public utilities commission are steeped in the lore of this issue, few federal district courts seem to be. It is easy to see how a federal district court would either throw up its hands, like the *MetTel* court did, or slide over the issue, like the *PAETEC* court did.[28] Therefore, any weight that the Commission assigns to these cases should be given with these considerations in mind.

Rather than the cases that GNAPs relies on, FairPoint suggests that steadier guidance can be found in the Commission's own prior decisions in DT 08-028 and the decisions of other state commissions like those of California,[29] Illinois,[30] and Ohio,[31] all of which, with a more nuanced understanding of the issues, have found GNAPs liable for access charges under circumstances similar or identical to those in this case.

III. THERE IS NO SUPPORT FOR GNAPS IN THE FCC ORDERS IT REFERENCES.

As it has been known to do in the past, GNAPs recites footnote 92 of the *AT&T IP-in-the-Middle Order* for the proposition that "[t]he FCC has ruled that toll charges should not apply

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[27] PAETEC Communications Inc. v. CommPartners, LLC, Civ. Action No. 08-0397, PAETEC's Reply Memorandum of Points and Authorities In Support of its Motion for Summary Judgment on the Issues of Liability and Opposition to Defendant CommPartners' Cross Motion for Summary Judgment at 9-10 (Doc. # 40) (May 20, 2009).

[28] Both courts bemoaned the lack of guidance from the FCC. *See* PAETEC, 2010 WL *1767193* at 3, 4; MetTel, 2010 WL 1326095 at 1.

[29] Pacific Bell Telephone Co. d/b/a/ AT&T California v. Global NAPs California, Inc., Ca. P.U.C. Case 07-11-018.

[30] Illinois Bell Telephone Co. v. Global NAPs Illinois, Inc., Ill. C.C. Docket No. 08-0105.

[31] Complaint of AT&T Ohio v. Global NAPs Ohio, Inc, P.U.C. Ohio Case No. 08-690-TP-CSS.

to intermediate carriers such as Global unless such applicability is specifically stated."[32] This assertion exhibits the lack of precision that is common to many GNAPs arguments. What the FCC really said is that:

> To the extent terminating LECs seek application of access charges, these charges should be assessed against interexchange carriers and not against any intermediate ***LECs*** that may hand off the traffic to the terminating LECs, unless the terms of any relevant contracts or tariffs provide otherwise.[33]

Note that the FCC specified intermediate *LEC*, not intermediate *carrier*. GNAPs has made it abundantly clear that it serves as an intermediate carrier and not a CLEC.[34] There is no doubt that this is true in this situation, where GNAPs is terminating non-local traffic for other carriers. Because GNAPs is not acting as a LEC, footnote 92 does not apply, and GNAPs is liable for access charges.

GNAPs has also found a supportive line in another FCC release and is fond of quoting it. GNAPS reports that the FCC has stated that "[IP] telephony . . . is exempt from the access charges that traditional long distance carriers must pay,"[35] and leaves it to the Commission to infer that this is a holding of the *AT&T IP-in-the-Middle Order*. This is incorrect. While this phrase does appear in that Order, it is intended to illustrate the problem that the FCC means to address in the Order itself. This phrase actually originated as an observation, nestled in the regulatory flexibility analysis attached to the end of an FCC NPRM from 2001, illustrating the

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[32] GNAPS Brief at 4.

[33] *AT&T IP-in-the-Middle Order* n. 92 (emphasis supplied). It should also be noted that this footnote is virtually without context. It appears at the end of the Order, in a discussion of the potential for retroactive application of the rules, and may allude to a nagging side issue regarding LEC-to-LEC meet point billing arrangements used in terminating traffic from VoIP providers or to CMRS providers.

[34] *See e.g.* PHC Tr. 29:8-12 ("Global never gets any traffic directly from anyone; Global is a "subforward", if you want the name for our business. We are a subwholesaler. So, we forward for forwarders. *That's all we do.*") (emphasis supplied).

[35] GNAPs Brief at 7.

problems with the intercarrier compensation regime at that time.[36] It was relatively unauthoritative even at that time, and intercarrier compensation rules have evolved considerably since then. Most notably, for example, the *AT&T IP-in-the-Middle Order* itself has since established that some IP telephony is decidedly *not* exempt from access charges.

IV. THE ICA CANNOT BE CONSTRUED AGAINST FAIRPOINT.

GNAPS maintains that its interpretation of the ICA should prevail because Verizon drafted the agreement and thus the agreement must be construed against it. "[A]ll ambiguities are construed against the drafter, and thus against the drafter's successor in interest, FairPoint."[37] This is a frivolous argument. Unless "drafter" means "typist," Verizon was not the drafter of the ICA. The ICA is the result of heavily contested arbitration in which GNAPs was an active participant.[38] Furthermore, GNAPs is an experienced litigator that has arbitrated interconnection agreements in numerous states and rarely, if ever, adopts the terms of another carrier's agreement under Section 252(i) or simply accepts a standard model agreement.[39] Thus, any argument that GNAPs did not participate in negotiating every word of its ICA fails the straight-face test. The Commission should hold GNAPs to knowledge of every aspect of the ICA that GNAPs arbitrated and executed.

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[36] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 ¶ 133 (2001).

[37] GNAPs Brief at 5.

[38] DT 02-107.

[39] *See, e.g.*, Global NAPs, Inc. Request for Arbitration to Establish an Interconnection Agreement with Verizon – Maine; Me. PUC Case No. 2002-421 (filed Jul. 22, 2002); Petition of Global NAPs, Inc. for Arbitration with Verizon New England, Inc., Ma. DTE Docket No. 02-45 (filed Jul. 30, 2002); Petition of Global NAPs, Inc. for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc., N.Y. PSC Case No. 02-C-0006 (filed Jan. 4, 2002).

IV. CONCLUSION

For the reasons explained herein and in FairPoint's Brief, the traffic that GNAPs terminates to FairPoint is switched access traffic subject to the rates contained in FairPoint's applicable tariffs. FairPoint respectfully requests that, absent payment of all past due charges for this traffic, that the Commission grant FairPoint's request to disconnect GNAPs.

Respectfully submitted,

Northern New England Telephone Operations LLC
By its Attorneys,

Dated: July 26, 2010 By: _____

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Exhibit 1

DEVINE MILLIMET

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December 17, 2008

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VIA E-MAIL AND
HAND DELIVERY

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: segTEL, Inc. Application for Certification

Dear Ms. Howland:

This letter is written on behalf of certain rural telephone company members of the New Hampshire Telephone Association, namely, Granite State Telephone, Inc., Merrimack County Telephone Company, Kearsarge Telephone Company, Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc., Northland Telephone Company of Maine, Inc. and Dixville Telephone Company (the "NHTA Companies").

The NHTA Companies have become aware of a filing by segTEL, Inc. ("segTEL") seeking to conduct business as a telephone utility throughout the state, including in the exchange service territories served by the NHTA Companies. This letter is being submitted in order to preserve the legal position of the NHTA Companies. The Commission has not, as of yet, opened a docket in this matter, and there is, therefore, no formal proceeding within which to intervene. The NHTA Companies reserve all of their rights to assert the issues raised herein in future proceedings, and to respond to additional issues that might arise in any such proceedings. Pursuant to RSA 374:26, the NHTA Companies respectfully assert that they are not in agreement with the application and request a hearing thereon.

In the 2008 legislative session, the New Hampshire Legislature enacted Senate Bill 386, which became Laws 2008, Chapter 350. This law repealed RSA 374:22-f, which related to the service territories of telephone utilities serving fewer than 25,000 access lines.

At the same time, the Legislature amended RSA 374:22-g to delete provisions limiting its application to companies serving more than 25,000 access lines. The statute as amended reads as follows:

> "I. To the extent consistent with federal law and notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service, subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good unless prohibited by federal law.
>
> II. In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.
>
> III. The commission shall adopt rules, pursuant to RSA 541-A, relative to the enforcement of this section."

The effect of this legislative change is to create a new regulatory process for competitive entry into the service territories of rural telephone companies. The statute contemplates specifically a finding of public good and prescribes factors to be considered by the Commission in determining whether entry is consistent with the public good. This statute should be read in conjunction with RSA 374:22, which is the statute of general applicability with regard to authorization to engage in business as a public utility, and RSA 374:26, which requires a hearing for ruling on such applications unless interested parties are in agreement. It is well settled law in New Hampshire that a statute must be interpreted in the overall context of the applicable statutory scheme and not in isolation. *See State v. Langill,* 157 N.H. 77, 84 (2008) citing *Bendetson v. Killarney, Inc.,* 154 N.H. 637, 641 (2006).

The NHTA Companies believe that the Commission's existing simplified registration process in the Commission's Part 431 rules is not applicable to this filing. Puc 431.01(d) expressly provides that the authorization granted through such a registration extends to the service territories of "non-exempt ILECs". The NHTA Companies are exempt ILECs, and this process does not apply.

The factors involved in serving and providing universal service to rural telephone company service territories are materially different from those of the large ILECs. This difference was expressly contemplated in the rulemaking process relating to the PUC's Part 431 rules. To the extent that the PUC Part 431 process is consistent with the statutory framework as it relates to large ILECs (a matter as to which the NHTA Companies express no opinion), it is not applicable to the NHTA Companies, which have small, rural service territories. We note that the Commission has commenced a rulemaking proceeding to amend its Part 431 rules.

The NHTA Companies respectfully request that, prior to the granting of the requested authorization, the Commission conduct a hearing at which the NHTA Companies may present evidence regarding the public good standard as it relates to this application.

Very truly yours,

Frederick J. Coolbroth

FJC:kaa

cc: Office of Consumer Advocate
Kath Mullholand

Exhibit 2

AUTHORIZATION TO PROVIDE LOCAL EXCHANGE SERVICE

segTEL, Inc.

is authorized to provide local exchange service in the State of New Hampshire in all New Hampshire exchanges.

Debra A. Howland
Executive Director

Date: March 3, 2009

Authorization No. **DT 99-048 and Order No. 23,208**

This authorization is non-transferable
Pursuant to Puc 451.01(g)