

ECONOMIC AND RURAL DEVELOPMENT
AND
TELECOMMUNICATIONS
COMMITTEE

FINAL REPORT
2004 INTERIM



Legislative Council Service
December 2004

2004 APPROVED WORK PLAN
for the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE

Committee Membership

Rep. Mary Helen Garcia, Chair
Sen. Roman M. Maes, III, Vice Chair
Rep. Jose A. Campos
Rep. Richard Cheney
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell
Rep. Patricia A. Lundstrom
Rep. Andy Nunez
Sen. John Pinto
Sen. William E. Sharer
Rep. Richard D. Vigil

Advisory Members

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. Dianne Miller Hamilton
Rep. John A. Heaton
Rep. Ted Hobbs
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Rep. Pauline J. Ponce
Rep. Debbie A. Rodella
Rep. Harriet Ruiz
Rep. Nick L. Salazar
Sen. Leonard Tsosie

Approved Work Plan

The legislative council has appointed an interim committee to address economic development and telecommunications issues and opportunities each year for at least the past decade. The committee proposes to focus this year on the status of implementing legislation enacted in recent years, especially in rural development and telecommunications. Several initiatives in recent years have been funded or bills enacted on which the committee wants to receive progress reports. They include:

- (1) workforce development and in-plant training;
- (2) business incubators in New Mexico;
- (3) marketing efforts by New Mexico;
- (4) the E-government MAGPortal of the taxation and revenue department;
- (5) individual development accounts; and
- (6) alternative financing (payday lending).

Additionally, the committee proposes to receive progress reports on reform of the public capital funding process and its input on economic development.

The committee also wants to receive testimony on conditions in various business sectors, such as the arts, mining, dairies, nuclear energy and small business. On rural affairs, the committee anticipates hearing testimony on the impact of new septic tank regulations that may affect rural communities. Finally, some members of the committee are concerned about the potential effect in New Mexico of outsourcing jobs to Asia.

APPROVED 2004 BUDGET AND MEETING SCHEDULE
for the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE

July 15-16, Santa Fe
August 5-6, Roswell
September 23-24, Grants
October 14-15, Las Cruces
November 18-19, Santa Fe

TOTAL	\$21,593.00
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MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE
June 17, 2004
Room 322, State Capitol

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order by Representative Mary Helen Garcia, chair, at 10:10 a.m. on June 17, 2004.

PRESENT

Rep. Mary Helen Garcia, chair
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Rep. Patricia A. Lundstrom
Rep. Andy Nunez

ABSENT

Sen. Roman M. Maes, III, vice chair
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Rep. Nick L. Salazar

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. Dianne Miller Hamilton
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Rep. Thomas E. Swisstack
Sen. Leonard Tsosie

Staff

Gordon Meeks
Rachel Ray
Larry Matlock

Guests

The guest list is in the meeting file.

ECONOMIC DEVELOPMENT DEPARTMENT STATUS REPORT

Rick Homans, secretary of economic development, introduced members of his staff, including Deputy Secretary Debbie Fleischaker, Director of Administrative Services Frank Marquez, Rorie Hanrahan and Christopher Lee, deputy director of the film office. Secretary Homans told the committee that the department has 58 business leads that the department is actively responding to in efforts to recruit businesses to New Mexico. He said department staff is on the road 90 percent of the time, which includes trade shows. He said the marketing effort is very aggressive.

He cited the Office of Mexican Affairs and Trade as an example of the department's new assertiveness. The maquiladora supply program is a key component of these efforts. The objective is to attract midwest suppliers of the automobile manufacturers in Chihuahua to New Mexico. The border region is more competitive with Asia, and the objective is to convince the auto suppliers to take advantage of New Mexico's proximity to Mexico. He cited Eclipse Aviation as an example of suppliers moving to New Mexico to be close to their manufacturing market.

He thanked the committee for the legislature's support of the Office of Space Commercialization and its efforts to attract the X-Prize and mentioned the Burt Rutan, the first privately funded ship to go to space last month over the Mojave Desert.

He went on to summarize several department initiatives, including the assistance program for cooperative advertising, funded this year at \$200,000. The money is distributed on a competitive basis to communities that submit the best proposals for their marketing campaigns.

In discussing the job training incentive program, he said that there is some confusion over eligibility. The department is trying to encourage higher wage jobs and, therefore, challenging the status quo of the conventional training expenditures for \$8.00 to \$9.00 an hour jobs.

He told the committee that there are eight new communities participating in the certified communities program this year.

He announced the appointment of Lisa Strout as the new director of the film office. He also said that New Mexico may be cooperating with California in trying to hold more motion picture productions in the United States to prevent them from going to Canada. Having California working with New Mexico may provide some additional clout in attracting filmmakers.

He completed his prepared remarks with references to the department's support for business incubators, cooperation with other state agencies and the Main Street program.

Questions and comments from the committee addressed:

- the status of the Main Street program;
- the work force development program;
- the capital outlay process;
- state parks as tourism attractors and rural economic development generators;
- the film training institute;
- "secured manufacturing" and a seamless and secure corridor from the border to avoid additional inspections along the way;
- the Verdi Group, which made a large investment in Santa Teresa;

- the aerospace engineering program at NMSU, the spaceport and the potential need for more money for the X-Prize;
- how many out-of-state companies have been recruited by the department;
- to emphasize or not emphasize high-wage jobs;
- small business development and the Axion Corporation;
- Los Alamos National Laboratory and the Hydrogen Research Institute;
- a center of excellence for hazardous materials handling;
- how many new jobs have been created in New Mexico since the administration has taken over;
- loss of revenue from oil and gas due to the governor's support for wilderness designation for Otero Mesa;
- loss of capital outlay in the Roswell area; and
- how Silver City copper mines are picking up again, hiring 300 employees up from 90; yet, the president of a mining company said that New Mexico is the worst state in the union with which to do business because of the remediation expense of \$120 million — the additional catch being the gross receipts tax. Otherwise, the company could have doubled its employment.

ECLIPSE AVIATION

Jack Harrington, vice president of business affairs at Eclipse Aviation, told the committee that Eclipse is changing the value proposition in aviation. He said the company's market is the owner-operators of "air taxi" or "air limo" services, corporate flight departments, package delivery companies and flight training businesses. The company currently has 320 employees with a total payroll this year of \$19 million.

Eclipse is in the business of manufacturing five-passenger, twin-engine jet aircraft that will be priced at \$1 million apiece. The lowest priced aircraft in this market today is \$4 million. Operating costs of an Eclipse aircraft will be half the cost of today's fleet average. These planes will open the 10,000 airports in North America not currently served by commercial airlines to commercial passenger traffic. Eclipse expects Federal Aviation Administration certification of its aircraft by March 2006. Mr. Harrington said that the company has orders for 2,100 aircraft with deposits of \$97,000 per aircraft already in the bank.

He described the aircraft's construction attributes, including the new technology of friction welding, that company suppliers Fuji Industries and Pratt and Whitney provide. Also, these suppliers plan major expansion in New Mexico once Eclipse reaches full production. Eclipse expects to have 1,500 employees and its suppliers expect to hire another 1,000 people in New Mexico at full production, with a total payroll of \$76 million. More New Mexicans are expected to be in its employee base as production and training are ramped up. He said the primary attractions to New Mexico for the company are the flying climate, the in-plant training program, the attitude of New Mexico's leaders in wanting the company to come, and the industrial revenue bonds made available for the company's manufacturing facilities and capital infrastructure.

The company will pay higher salaries to its employees than the average in New Mexico by a factor of two, he testified. He said Eclipse has built two buildings at the Sunport as part of a \$3 million investment that the company will leave behind for the city when it moves into a new building at the Double Eagle Airport.

Questions and comments from the committee addressed:

- public education; Mr. Harrington said that employees have master's degrees and doctorates and they want better schools for their kids. These employees do not like what they hear about New Mexico's public education system;
- runway requirements for the aircraft are 2,040 feet;
- the flying ceiling of 41,000 feet;
- the number of locals hired;
- work with New Mexico universities and community colleges in work force training;
- out-sourcing and percentage of New Mexico people for public relations, supplies, insurance, etc.;
- planned competition from Honda;
- the difficulty of travel to small cities like Roswell and the need for and advantage of aircraft such as Eclipse for those cities; and
- the role of the Economic Development Department in Eclipse's efforts.

WORK PLAN FOR 2004

The committee set the following itinerary for the interim:

July 15 and 16 in Santa Fe;
August 5 and 6 in Roswell;
September 23 and 24 in Grants;
October 14 and 15 in Las Cruces; and
November 18 and 19 in Santa Fe.

The committee discussed and developed a work plan to focus on the status of implementing legislation enacted in recent years, especially in rural development and telecommunications. Several initiatives in recent years have been funded and bills enacted on which the committee will receive progress reports. They include:

- (1) work force development and in-plant training;
- (2) business incubators in New Mexico;
- (3) marketing efforts by New Mexico;
- (4) the E-government MAGPortal of the Taxation and Revenue Department;
- (5) individual development accounts; and
- (6) reform of the public capital funding process.

The committee will also receive testimony on conditions in various business sectors, such as the arts, mining, dairies, nuclear energy and small business. On rural affairs, the committee anticipates hearing testimony on the impact of new septic tank regulations that may affect rural communities. Finally, some members of the committee are concerned about the potential effect in New Mexico of outsourcing jobs to Asia.

The committee adjourned at 3:00 p.m.

MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE

July 15-16, 2004
Room 322, State Capitol

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order by Representative Mary Helen Garcia, chair, at 10:10 a.m. on July 15, 2004.

PRESENT

Rep. Mary Helen Garcia, chair
Rep. Jose A. Campos
Rep. Richard Cheney (7/16)
Sen. Mary Jane M. Garcia (7/16)
Sen. Clinton D. Harden, Jr.
Rep. Patricia A. Lundstrom
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Rep. Richard D. Vigil

ABSENT

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Sen. Leonard Tsosie (7/16)

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Rep. Debbie A. Rodella
Rep. Harriet Ruiz

Staff

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Guests

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Thursday, July 15, 2004

PUBLIC EDUCATION AND GOVERNMENT ACCESS ON CABLE TELEVISION

Ronda Orchard, New Mexico Coalition for Community Access Television, and Steve Ranieri, manager of public access Channel 27 in Albuquerque, told the committee that federal policy requires that cable television companies provide public access. However, they said that the federal law leaves it to local government franchise agreements to decide how the requirement

is implemented, and in New Mexico, little public access is actually available. It is a consumer rights issue as well as one of media democracy. They asserted that deregulation has "run amok" and that cable franchises have violated the public trust given to them. They asked the committee to support state legislation to require some minimum public access provisions in all cable television franchise contracts with local government. They said there is urgency in that cable television, Internet and telephone services are converging and most laws are written to regulate one or the other, leaving gaps in public interest assurances as hybrid services proliferate and public access gets overlooked.

Questions and discussion by the committee focused on:

- the role of the Public Regulation Commission (PRC) (cable television is specifically exempted from PRC authority);
- the franchise approval process by local governments;
- Native American access to cable television;
- easements and rights of way for cable;
- the level of public demand for access;
- public access through satellite television and the need for a level playing field for cable and satellite service providers;
- lifetime of franchise contracts;
- ownership of equipment and capital resources for public access; and
- federal preemption over state regulation of telecommunications.

The committee directed staff to compose a letter to the PRC requesting an administrative rule review of its authority to require cable television providers to include public access in their services.

Ray Davenport, lobbyist for the New Mexico Cable Communications Association, asked to address the committee and said that there was a lot of confusion in the previous presentation. He said that public access is already adequately provided for, and that the New Mexico Telecommunications Act specifically exempts cable television services from regulation by the PRC.

SMALL BUSINESS CONCERNS

Al Gallegos, designer and chairman of the board of Z-Coil Shoes, told the committee that when he requested assistance from the University of New Mexico business school, he was told his idea would never succeed. Mr. Gallegos said he now has 250 dealers worldwide with revenues of \$12 million a year. The company is growing rapidly. He did his own patent research after receiving help from a University of New Mexico (UNM) librarian, but that he received no assistance in locating a manufacturer for the spring in his shoe or the molding and sewing of the shoe, now contracted to a manufacturer in Korea. After receiving a grant to perform research, he said he contracted with the business school, which spent most of the money writing for more grants and provided little encouragement or technical assistance from UNM.

Questions and discussion by the committee included:

- general lack of help from UNM for small business;
- outsourcing manufacturing overseas;
- competition;
- entrepreneurship education instead of corporate business management curricula; and
- the capability of small business development centers to assist business startups.

SMALL BUSINESS CONCERNS — ART GALLERIES

Joyce Robins, Joyce Robins Gallery, and Michael Carroll, Turner Carroll Gallery and president of the Santa Fe Gallery Association, told the committee that the art business in New Mexico is directly related to the investment markets. In a survey sponsored by the McCune Foundation and conducted by the UNM Bureau of Business and Economic Research, Santa Fe was second to New York in the volume of art sold in the United States. The study showed that art and culture in Santa Fe generate \$1 billion a year to the economy. One out of six jobs in Santa Fe County is dependent on the art business, and with the multiplier effect considered, art accounts for 40 percent of the local economy. For every dollar spent by tourists on art, \$5.00 are generated throughout the local economy and \$1.40 across the state's economy. They said that there are more artists and art dealers per capita in Santa Fe than in any other community. The economic impact for the state ranks with Intel and is 70 percent of that of Los Alamos National Laboratory. However, they said that since September 11, 2001, New Mexico has slid precipitously in visitations and in its share of the art market. They said that the state gives little support to the art component when it markets the attractions of New Mexico. They would like to see an art festival developed. To date, the state has only contributed \$1,500 to art promotion, despite the importance and the significance of art business to the state's economy. They told the committee that cultural tourism is the fastest growing economic sector, and the state should take advantage of this potential.

Questions and discussion by the committee covered:

- lack of Tourism Department support for the art economy;
- one percent of severance tax revenues dedicated to the arts;
- what the lodger's tax is dedicated to;
- the next step that would generate big appeal for the arts in New Mexico;
- impact of the gross receipts tax on art dealers and the potential benefits to the state for art gross receipts tax revenues;
- lack of tax incentives for the art industry;
- potential art auction house; and
- arts in education.

The committee directed staff to prepare a memorial for committee endorsement that requests more attention to the arts in the state's marketing program and designating an art day.

WORKFORCE DEVELOPMENT PROGRAM

Reese Fullerton, director of the Office of Workforce Training and Development (OWTD) in the Governor's Office, explained Governor Richardson's Executive Order creating the program office to the committee. He told the committee that the goal of the program can only be achieved through coordination, accountability and no duplication of services. Studies of workforce training have all concluded that there is need for coordination, for accountability through common performance measures, for emphasis on serving business needs, for elimination of duplication, for independent evaluation of the administrative organizations, for a fiscal and program management information system, for integration of services at the local level and for integrating economic development and education. He said that the state workforce training effort has to have a service attitude, not a program mind set. He called for consolidation of programs and funding into a single agency at the state level in order to achieve integrated oversight and seamless services at the local level.

Questions and comments from the committee addressed:

- administrative costs of the OWTD;
- flow of information to rural areas;
- the size of workforce development regions and how it affects on-the-ground results according to the LFC audit;
- criteria for monitoring the effectiveness of training implementation in the different regions and on the state level;
- legislation needed to create a super agency;
- the need for service provision at the local level and state level oversight;
- services specific to veterans;
- office closures in rural areas;
- the Carl Perkins Program;
- the respective roles of the Labor Department, contractors, community colleges, universities and the new office;
- the Workforce Investment Act budget;
- the office's relationship with the federal Department of Labor; and
- the potential combination of TANF and workforce training at the community college level.

SMALL BUSINESS INVESTMENT CORPORATION

Chuck Wellborn, president of the Small Business Investment Board, and Paul Goblet, financial advisor to the board, explained to the committee the purpose of the legislation that created the Small Business Investment Corporation (SBIC), i.e., "to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico." The board has chosen to make investments through organizations with demonstrated capability to provide capital and business assistance to new and emerging businesses. They told the committee that \$6,040,000 has been committed to entities such as ACCION and seed capital funds as follows:

- \$2,500,000 ACCION, NM for a loan participation fund for a portfolio of over 500 loans (over half outside the Albuquerque market);
- \$970,000 in Flywheel 1 LP to focus on very early stage technology companies in a four-state region, including New Mexico;
- \$1,500,000 in New Mexico Growth Fund 1, a non-technology investment partnership that will focus on traditional businesses, such as manufacturing or service businesses, on a statewide basis;
- \$970,000 in Verge Fund LP 1 concentrating in early stage technology companies exclusively in New Mexico; and
- \$100,000 in Santa Fe Window and Door to purchase and expand its warehouse facilities and sales office and to hire additional sales and service personnel.

They said that potential commitments include:

- New Mexico Community Development Loan Fund;
- WESST Corp.; and
- Community Development Venture Capital Fund, a special kind of investment fund that shuns high-technology start-ups, focusing instead on manufacturing and service companies that not only have a hard time finding money, but are also more likely to employ low-income workers or to be located in poorer neighborhoods.

One question from the committee addressed the potential for a match of SBIC money from the federal Small Business Administration.

Mary Beth Schubert, Community College Association, asked to be recognized from the audience and told the committee about the Ford Foundation grant received by the state for the Bridges to Opportunity Project. She said her organization supports the Workforce Coordination Council but is opposed to a super agency that would consolidate all labor training programs under one organization. She said there has been a lack of strategic vision and interagency coordination and communication. The community colleges already have the infrastructure and resources in place for workforce training. The discussion focused on the need for work ethic training and work place readiness certification.

The committee recessed at 4:23 p.m.

Friday, July 16, 2004

ECONOMIC DEVELOPMENT ON THE SANTA TERESA BORDER AREA AND DONA ANA COUNTY

Robert M. Strumor, Hughes and Strumor Ltd., gave the committee a status report on private sector development, financing and growth of the Santa Teresa Real Estate Development Corporation (STRED). It has added 1.5 million square feet of commercial space to the Santa Teresa area industrial parks, approximately 750,000 sq. ft. of manufacturing and 750,000 sq. ft. of warehouse space. The development has added approximately 1,100 jobs to Santa Teresa with a total investment of \$60 million in Santa Teresa since 1997. Federal and state governmental

spending has meant an additional \$40 million during that time. Verde Realty Master Limited Partnership, a Delaware limited partnership, has purchased large tracts of land near Santa Teresa and a portion of the commercial properties that were developed by STRED. The University of Phoenix has established a Santa Teresa Campus with approximately 70,000 square feet of commercial space for the Santa Teresa Campus. He described the recent move of Monarch Litho, Inc. to Dona Ana County, enticed by \$41 million of Dona Ana County industrial revenue bonds for a 75,000 sq. ft. manufacturing facility that is projected to increase to 225,000 sq. ft in 15 years. Monarch Litho, Inc. plans to create 79 new jobs in its first three years and 180 new jobs within 10 years. Monarch Litho, Inc. will receive a 50 percent real and property tax abatement for 10 years as incentive to locate in Santa Teresa. Mr. Strumor said that in addition to private sector investments, Dona Ana County began the construction of a \$10 million water system designed to serve the commercial and residential needs of southern Dona Ana County. The county issued \$6 million of gross receipts tax bonds and received approximately \$4.8 million in federal grant funds to complete the project. The county also created two county improvement districts in Santa Teresa to build new roads and install utilities. Other improvements include an intermodal industrial park, getting federal dollars for border crossing infrastructure, a new highway to the border from I-10, a Dona Ana County water system grant of \$5 million and proposed improvements to the Dona Ana County airport.

Randy Lichtenfeld, University of New Mexico (UNM) campus director, described for the committee the university's activities in the Santa Teresa area. The campus at Santa Teresa was established in 1994. Currently there are 2,678 students enrolled there, with 245 working professionals as faculty. The university paid almost \$2 million to the state in taxes in 2003.

Questions and discussion addressed:

- the IRS investigation of the Santa Teresa Water and Sanitation District;
- purchase of the water system by the private developer;
- the overdevelopment of Las Cruces;
- legislative options to help the middle class;
- the range of salaries for Monarch Litho, Inc.;
- size of the full-time staff at the University of Phoenix;
- on-line degrees available through the university;
- the transfer of the land the water sits on from state ownership to the county;
- the tuition of the University of Phoenix;
- public transportation availability for its students; and
- requirements for graduation eligibility for admission and eligibility for lottery scholarships.

The committee approved the June minutes, without objection.

ON-SITE LIQUID WASTE DISPOSAL RULES

Ron Curry, secretary of environment, Ana Marie Ortiz, field operations division director for the Department of Environment (NMED), Charles Lundstrom, director of the water and waste management division, and Dennis McQuillan, liquid waste program manager, addressed the committee about proposed revisions to on-site liquid waste systems and septic tanks. Two kinds of contamination are of concern, nitrates and anoxic wastes, which include neurotoxins like iron and manganese. One or the other of these contaminants have been found in ground water in Bernalillo County's north and south valley, the West Mesa area of Albuquerque, Espanola and San Juan County. Septic tanks have contaminated more acre-feet of water than any other single source type in New Mexico. Surface water contamination from septic tanks is found mainly in mountainous areas. The lot size is the most important factor in determining attenuation and contamination levels. In critical areas, where the geology lends itself to easy contamination, there may need to be a limit of one septic tank per two to two and a half acres. Three quarters of an acre is generally adequate to attenuate septic tank contamination in most other areas. There are estimated to be 250,000 on-site liquid waste systems in New Mexico. One half of these are accounted for through some kind of permit or licensing. They said that summer interns have been hired to map aquifers in order to help identify areas where septic tanks may present potential contamination problems. The department is negotiating with stakeholders on the proposed rule revisions, and most issues have been resolved with a consensus. Other minor issues will continue to be negotiated with the objective of finding some acceptable rules.

Questions and comments included:

- work in Dona Ana County to address contaminants there;
- the need for additional legislation or not;
- the frequency of well inspections for contaminants;
- what is tested for in testing samples;
- the status of the Dona Ana wastewater treatment plant;
- the state's loss of primacy for enforcing the federal Clean Water Act;
- the number of outhouses and cesspools in New Mexico;
- availability of money to assist indigents in upgrading their wastewater disposal systems to reduce contamination;
- expectations of land purchasers for compliance with existing laws as opposed to prospective changes in the law;
- the ability to discriminate between different sources of nitrate contamination;
- proposed new rules for annual inspections or only upon transfer of the property with a septic tank;
- hoe-specific locations of septic tanks can be identified;
- intergovernmental agreements with Native American governments;
- provisions for granting variances to the rules;
- the status of the Clayton landfill;
- criteria for selecting 600 feet in depth to ground water as the threshold for exempting some septic systems from the minimum lot size requirements;
- an amnesty program for cataloging undocumented septic systems;
- misuse of the NMED's police authority to clean up the environment;

- holding subdividers responsible rather than individual home owners;
- retrospective or prospective application of the new regulations;
- the cost of "advanced" septic systems compared to conventional systems; and
- enforcement provisions.

PUBLIC COMMENT

Randy Traynor, representing the New Mexico Home Builders Association, was recognized and invited to address the committee. He said that the process of adopting new regulations has been underway for five years. He said that the real problem is what is in the ground now. The new rules are appropriate for being applicable at the time of the transfer of the property. Infrastructure is the key, he said. Progress is being made on the new rules, and his organization appreciates the effort of the department and hopefully progress will continue.

Link Summers said that the government's role has shifted to on-site system management. It is hard for realtors to achieve full disclosure and the discovery of the legal status of a given property. There may be a need for changes to the Uniform Property Code, he said. He explained to the committee the history of the septic tank, a device first patented in 1890, and said that a one-hundred-year-old technology does not meet the needs of today's circumstances.

MAGPORTAL FOR E-GOVERNMENT

Noemi DeBodisco, chief information officer, described the planned MAGPortal as a single site for constituents to access state services and information. It will simplify access, clarify processes and organize information logically, she said. It is expected that information technology costs will be reduced through establishing common infrastructure components across agencies. A little more than \$2 million was budgeted for the project and somewhat less than that has been spent to date. The Office of the Chief Information Officer was transferred to the Taxation and Revenue Department, which will act as the lead agency for the MAGPortal, from the General Services Department. She said that a white paper will be published September 1 that will include a technology review, options for completing the MAGPortal and funding models.

Questions and dialogue by the committee addressed:

- the need for a better portal for business development in the state;
- the total estimated cost by completion;
- whether the state or a contractor would be better to minimize costs;
- whether the money spent so far has been well spent;
- request for the white paper to be made available to the committee;
- security of the new system;
- life expectations of these systems and their costs over time; and
- the \$160 million of costs for IT systems by the state that have been said to have been wasted.

The committee adjourned at 1:20 p.m.

**MINUTES
of the**

**ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE
August 5-6, 2004
Roswell**

The Economic and Rural Development and Telecommunications Committee met on August 5 and 6, 2004 at the Anderson Museum of Contemporary Arts in Roswell.

PRESENT

Rep. Mary Helen Garcia, Chair
Rep. Jose A. Campos
Rep. Daniel R. Foley
Sen. Clinton D. Harden, Jr. (8/5)
Sen. Carroll H. Leavell
Rep. Andy Nunez
Rep. Pauline J. Ponce

ABSENT

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Sen. Leonard Tsosie

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Gordon Meeks
Larry Matlock

Guests

The list of guests is in the master file.

Thursday, August 5

Representative Mary Helen Garcia called the meeting to order and turned the chair over to Representative Pauline J. Ponce to preside.

WELCOME

Roswell Mayor Bill Owen welcomed the committee to Roswell. He briefly summarized some of the community's attractions and economic drivers, including aliens and the Robert Goddard rocketry experiments. The area is the center of the dairy industry in New Mexico and has a great deal of aviation-related economic activity and international law enforcement training. The area has experienced many boom and bust cycles, but enjoys a healthy economic outlook as

a result of cooperation. He listed several economic losses in the recent past and several successes. Committee members shared with him a discussion about the city's experiences trying to fund business expansion or attraction efforts using local option gross receipts taxes. They asked about the re-use of the old Walker Air Force Base facilities for pilot training, aircraft storage and how Roswell became a storybook of recovery after the air force base closure in the early 1960s.

CHAVES COUNTY DEVELOPMENT FOUNDATION

Robert Darnell, director of the Chaves County Development Foundation, began his presentation by elaborating on a question to the previous speaker about Millenium Corporation, a vehicle manufacturer expected to locate in Roswell. He said that partnerships are critical to economic development. He said that the Economic Development Department (EDD) has provided significant support to the Roswell community, unlike the Texas economic development department, which he had experienced while he held a similar position in Breckenridge, Texas. He asked the committee to support an appropriation to the EDD to open a regional office in Roswell. He said the main focus needed in southeast New Mexico is solving water problems and work force development. He told how the community has been trying to market itself to contract site selectors through trade shows, video and CD presentations and telephone follow-ups. He provided the committee with a detailed list of business recruitment successes, the level of their prospective employment and their schedule for business hirings. He said that without a lot of money or big incentives to put on the table, Roswell has to rely mainly on its personality to attract business.

Committee questions and discussion focused on the:

- housing needed for Roswell to attract a major military contractor;
- need for venture capital;
- need to expedite expansion and startup of local businesses instead of attracting out-of-state businesses;
- potential for free foreign trade zones;
- most significant obstacles to economic development in New Mexico (public relations, transportation, trained work force, education system and regional airport);
- retention of work force after training at state expense;
- integration of various economic development programs;
- partnership between Eastern New Mexico University and the aircraft maintenance training program at the airfield; and
- unemployment rate.

HORSE RACING INDUSTRY

Bruce Rimbo described the current condition of the horse racing industry in New Mexico. He said there are five racetracks in business and a sixth is planned in Hobbs. He told the committee that 60 percent of the gaming revenue at the tracks is from out-of-state residents. Since 1998, the racing industry has turned around: 30 percent of the training farms in New Mexico have been established since then. He gave a summary of economic data relative to the industry since gaming machines were approved. There has been a 200 percent increase in horses; 74 percent increase in horse farms; 225 percent increase in personnel; 380 percent increase in payroll; 300 percent increase in alfalfa sales; 350 percent increase in grain sales; 305 percent increase in veterinarians; and similar increases in vaccinations, farriers, training fees, horse trailer sales and sales in pickup trucks.

He told the committee that the industry would be seeking legislative approval for an increase in the number of hours that the tracks can be open for gaming from 12 hours per day to 18. He said that a 50 percent increase in hours of business at the tracks would translate into a 20 percent increase in tax revenues to the state.

During the question period, committee members discussed:

- whether Indian gaming compacts impose limits on hours of horse track gaming;
- the potential for pooling the total number of hours allowed among the existing tracks not to exceed the existing total allowed;
- the hours Indian gaming establishments are limited to;
- alcohol service in tribal or pueblo casinos;
- the limits on total numbers of gaming machines at horse tracks;
- the problems of the central control system over gaming machines at the tracks;
- need for an additional appropriation for the state to improve the central control system;
- the gross receipts tax increase to the state paid by the horse tracks (25 percent) and indirect economic benefits to the communities and the state;
- philanthropic activities of the horse racing industry;
- the prospect for new tracks at Raton and Tucumcari and for the re-opening of Santa Fe Downs;
- the potential for saturation of the market for both racing gaming and Indian gaming;
- the total number of racing days allowed under current law or Indian compacts; and
- the potential for a "time-out" or moratorium on legislation of any kind to change existing gaming laws.

The chair asked staff to work with Mr. Rimbo on legislation the committee might consider endorsing at its last meeting in November. There was no objection.

TELECOMMUNICATIONS COMPETITION

John Badal, president of Qwest New Mexico, told the committee that Qwest's second quarter earnings were dismal, a loss of well over \$700 million. Over \$400 million of that was operating costs. This was all caused by a total decrease in revenues of 7.9 percent, one-half from

loss of customers. He emphasized that the company does not expect to get customers back any time soon. Qwest has been losing 1,000 lines per month; 3.9 percent of the 7.9 percent revenue decrease was based on losses of customers to wholesale providers. Qwest gets 25 to 50 percent of the revenues for a customer line.

He told the committee that Qwest is currently regulated as a monopoly, but it does not have a monopoly, since it is in a very competitive market and is losing customers to wireless, Internet and cable businesses. He said the company will be seeking reform of the law to provide for a more level playing field with its new competition. He said that he has always been pro-competitive. He said that a company today that is a competitive winner, with the changes happening in technology, can be dead in six months. He said that incumbent companies cannot make enough on the retail level when losing so much on the wholesale level. He said that for every 1,000 access lines the company loses, seven employees are let go. Qwest is losing revenue, customers and employees. He asked the committee if the current policy benefits New Mexico. He pointed out that two competitors, AT&T and Verizon, are out-of-state businesses that have no employees in New Mexico, do not pay payroll or income taxes to New Mexico and have no infrastructure in New Mexico on which they pay property taxes, unlike Qwest, and yet are not subject to New Mexico regulation. He said that even AT&T and Verizon are having a hard time due to competition from wireless companies and changes in technology. Closure of Qwest facilities will not benefit New Mexico. He said Qwest has sought changes in the law for the last two sessions. If the law is not changed in the 2005 session, it will be very difficult for Qwest to survive through 2006.

He explained the contribution of Qwest to New Mexico's economy through its employment, investments and taxes. He said that the company is asking for the same regulations that rural telephone companies have in areas where there is competition. He said the company wants the legislature to allow Qwest to offer customers the same prices and services of its competitors and to be able to respond quickly to a changing market. Qwest needs pricing flexibility regulation, he testified.

The committee members discussed:

- the authority the Public Regulation Commission (PRC) has over regulating wireless (the PRC spokesman, Michael Rippenger, told the committee it has no authority);
- a statewide local calling area;
- a disagreement with the presentation that Qwest did not agree with the PRC regulatory plan, it was not imposed, it was agreed;
- federal pre-emption of cable television regulation;
- a "win-back" tariff;
- how David King, a PRC commissioner, told the committee that "we can't bankrupt Qwest, we want them to succeed, but we must be fair to the small businessmen";
- comparison of phone rates with other states;
- agreed reduction in rates;
- "held orders" rule imposed on Qwest that no other utility has to comply with essentially requiring Qwest to lose money on customers;

- the federal universal service fund;
- Qwest's mandated \$788 million investment in New Mexico;
- eligibility of the other 14 "incumbent" telecommunications companies for receiving the universal service fund money;
- history of telephone regulation;
- the provider of last resort status of Qwest and the potential for stranded investments;
- geographical area of competition;
- the future of telephone communications, including voice-over Internet, WIFI and WIMAX technologies;
- right-of-way issues;
- 20,000 lost customers in the last year; and
- annual revenue losses of \$60 to \$70 million in the last few years.

Marianne Granoff of the Association of Internet Access Providers was recognized from the floor. She disputed John Badal's presentation and opposed his legislative request.

Staff was instructed to put Qwest's legislative proposal on the agenda for the October meeting.

ECONOMIC STATUS OF THE DAIRY INDUSTRY

Sharon Lombardi, director of the Dairy Producers of New Mexico, told the committee that there are now 180 dairies in New Mexico with a total of 316,000 milk cows. New Mexico is ranked seventh in the nation in milk production and Chaves County is the top milk producing county in New Mexico, and ranks as the eleventh most productive county in the nation. She said that Chaves County alone accounted for \$522 million in 2003, and the state dairy production impact is almost \$2 billion to the state. New Mexico produces the best quality milk in the country. She said that many dairies relocated from California and other states because New Mexico has a lower cost for land, higher quality alfalfa feed and a healthier, dry-lot farming climate. New Mexico is eighth in the nation in cheese production with the largest cheddar cheese plant in the nation soon to open in Curry County. She said the dairies are the largest customer for agricultural crops, alfalfa and hay. The industry is regulated by the Department of Environment, all the water used by dairies is recycled, the animal wastes are recycled for fertilizer of crops and dairies use less than two percent of the total ground water use in the state.

The committee discussed:

- the 2003 price of milk — \$14.25 for 100 pounds of milk with a break-even point of \$11.50;
- strictness of environmental regulations;
- milk production levels compared to consumption;
- the effect of the national policy of the "war on obesity" on milk and cheese markets;
- support for studies at New Mexico State University for alfalfa that has higher protein and uses less water and the use of extension officers to be environmental officers in every county;
- water consumption by dairies;

- flies;
- waste recycling and potential for ethanol production; and
- community involvement by dairies.

Representative Nick Salazar asked for recognition and said he thought the interruption of Marianne Granoff's comments by John Badal was inappropriate. "To call on the public to make comment, and then let the public be interrupted," he said, "is against the purpose of this meeting. She should not have been interrupted no matter what she said."

SANDIA NATIONAL LABORATORIES

Lenny Martinez, vice president of Sandia National Laboratories (SNL), and Vic Chavez, manager of the Small Business Assistance and Partnering Program at SNL, testified that 95 businesses have been created and 75 have been retained as a result of SNL's technical assistance under the tax credit provided for under the Laboratory Partnership with Small Business Tax Credit Act. For every dollar the state has forgone in taxes, a dollar has been returned to the state's economy, they said. The credit is achieving the goals set out for it. They said that the program at SNL would like to focus on biomedical, biotechnological and microsystems technology businesses. They introduced several business people who have received SNL technical assistance under the program.

Jim Manatt, Jr., president and CEO of Focus Energy Corporation, said his company is a new startup venture that resulted from SNL work. Focus Energy Corporation will apply new modeling technology to find oil and gas fields bypassed by previous exploration projects. SNL assistance has enabled Focus to compete on a technology basis with the world majors. Marketing meetings have been held with British Petroleum and Shell. Focus Energy has invested \$11 million and the state has invested \$300,000. The company has registered with the Securities Exchange Commission for a private placement to raise \$6.5 million. The startup would employ 12 highly compensated oil and gas professionals. The company will use this technology in addressing a very strategic target and complex geological reef called the Central Basin Platform, which straddles the New Mexico-Texas state line. The University of Texas estimates a target volume of oil from this region of about 5 billion barrels. It is estimated that one-fourth of this volume is on the New Mexico side and amounts to 1.25 billion barrels of movable oil, for which New Mexico gets a 17 percent share of that revenue amounting to about \$6 billion. He urged the committee to consider SNL's request for additional funding. He believes the cap on the tax credit should be raised to \$4.2 million.

Greg Duggar from Otero Mesa and the Last Chance Water Development Company said that SNL has been "Prince Charming" in assisting southern Otero County in developing technology to define water parameters in the Salt Basin. He asked for continued and expanded support of SNL's program.

David Chase, the principal investigator for SNL in Carlsbad, said he is directing the Salt Basin Project. He stated that the investigation has been going on for two years at a total cost of over \$300,000 over three years.

Tom Davis, Carlsbad Irrigation District, said the benefits of the Small Business Assistance Program helped two individual farmers in the district show the United States Fish and Wildlife Service that endangered species habitat would not be affected by farm irrigation as much as the original biological report had indicated.

He said that SNL also studied sediment loading caused by salt cedar removal. The information collected by SNL on this project can be used throughout the southwest.

The committee discussed:

- the need to increase the cap on the total value of the allowable tax credit to \$4 million and to \$20,000 for any individual recipient in Albuquerque and \$10,000 for recipients in rural areas;
- the technology transfer program of the 1990s;
- the Regional Development Corporation;
- availability of capital;
- relationship of the Sandia Small Business Assistance Program with Sherman McCorkle and the Venture Capital Corporation; and
- frustration with the State Investment Council.

The committee recessed at 5:37 p.m.

Friday, August 6

RURAL TELECOMMUNICATIONS

Steven Metts, New Mexico Exchange Carrier Group, and Scott McIntyre, Qwest, explained the history of access charges, which are charges applied to long distance companies by originating local telephone companies for originating and terminating long distance calls. They said that the predecessor to the PRC established state access charges in 1988. At that time, access charges were set at a level that basically subsidized local service so that local service could be afforded by most customers, therefore maintaining "universal service". This structure ended up creating a system wherein intrastate long distance service was more expensive than interstate, but changes in the telecommunications industry and increased competition have made this old rate structure and regulatory scheme obsolete and unfair. The Federal Communications Commission (FCC) and many states have begun to change regulations to reflect new economic realities. New Mexico has not, and its access rates are among the highest in the country. Additionally, companies competing in the same markets are regulated differently based on how they were historically structured under pre-competitive monopolistic paradigms, which creates disparity and artificially favors some companies at others' expense and harms the consumer. The industry has been trying to get regulations reformed since 1997. Discussions are continuing between stakeholders and the PRC and legislation is anticipated for the 2005 session. In summary, land line companies are regulated by the state, but wireless, cable and satellite telecommunications companies are regulated by the FCC and the state is pre-empted by federal law from regulating those rates. Nevertheless, these companies are out-competing the traditional

land line telephone companies that are at a disadvantage because of current state law and state regulations.

PUBLIC COMMENT

Warren Salomon, American Association of Retired People, was recognized and said that rate cases before the PRC might be the right approach to dealing with disparity issues.

Representatives of PRC staff expressed appreciation for the diligent work by the stakeholders to find a solution.

The committee discussed:

- how some companies cheat by basing charges on originating or terminating the call depending on which rate might be higher for a given call and that changing the regulatory scheme would reduce the ability to cheat;
- how other states have reformed telecommunications regulations;
- unwillingness of companies to invest in improved services because of antiquated regulations;
- service territories and customer base differences among service providers;
- the need for legislative changes to Sections 63-9H-2 and 63-9H-6 NMSA 1978;
- lack of authority of the PRC over wireless service providers; and
- comparison of the telecommunications industry with the pharmaceutical industry.

Ed Mahr, representing T-Mobile New Mexico, told the committee that T-Mobile employs 1,500 people in New Mexico, and introduced Russell Sarazin, public affairs director for New Mexico, and David Kahn, national director for state government affairs. They said that T-Mobile has 100,000 customers in New Mexico and is the fastest growing wireless company with 15 million customers nationwide. They said that the state law is vague as it relates to wireless telephone services.

Questions from the committee dealt with:

- T-Mobile's service area;
- FCC rules on scope of service;
- local zoning ordinances as they affect tower siting;
- lack of right of ways for wireless; and
- comparison of telecommunications to the railroads at the turn of the twentieth century.

POTENTIAL ECONOMIC EFFECTS OF RAIN ENHANCEMENT

Sig Silber, chairman of the Jemez y Sangre Regional Water Planning District Subcommittee on Technology, told the committee that there is a need for a better way to estimate the way water prices affect the state's economy. He said cloud seeding is not a panacea for the state's water problems but that it offers a way to enhance water supplies and indirectly moderate potentially radical swings in water markets. He said there are 64 cloud seeding projects around the country. There is a need for more studies of their collective effects, including research of cloud chambers and precipitation gauging. New technologies are being developed and this is a growth industry worldwide. New Mexico could become a leader in technology development and in services. South Dakota is home to one company that flies cloud seeding aircraft throughout

the country. Their 40 airplanes provide a significant stimulus to the local airport's economic impact. Computer modeling is another enterprise supported by cloud seeding.

The committee asked about the potential for cloud seeding to cause floods or other environmental impacts.

BIOMASS ELECTRIC POWER

Ed Elliott, Tierra Verde Energy, LLC, told the committee that his company is attempting to raise financing for a \$40 million plant to generate electricity from the burning of manure from dairies and other biomass fuels. This endeavor would employ 36 people with a payroll of \$4 million in addition to the 100 construction jobs for two years. A.G. Edwards will make a private offer to raise the financing, and Forerunner Corporation of Denver will construct the bonded facility. The plant will have very low emission based on a burn technology designed by Foster-Wheeler. Burning dairy cow waste will relieve many dairies of a regulatory problem they now have with the Department of Environment. The plant will rely on the 1 million tons of cow waste generated in the Pecos Valley every year. The power generated will be about 33 megawatts. He asked the committee to support tax incentives for the purchase of electric power from renewable energy sources and \$500,000 for the environmental permitting process of the plant development.

The committee discussed the advisability of supporting projects such as this as opposed to investments by the state in interstate gas pipelines. A question was raised concerning the comparability of cost of wind power generators with biomass-fueled power plants.

The committee toured Leprino Foods, a cheese plant, and Dean Baldwin, an aircraft painting company.

The committee adjourned at 2:00 p.m.

MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE
September 23-24, 2004
Cibola County Convention Center
Grants

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order as a special subcommittee by Representative Patricia A. Lundstrom at 10:36 a.m. on September 23, 2004.

PRESENT

Rep. Jose A. Campos (9/23)
Rep. Patricia A. Lundstrom
Rep. Andy Nunez
Sen. William E. Sharer (9/23)

ABSENT

Rep. Mary Helen Garcia, chair
Rep. Richard Cheney
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell
Sen. John Pinto
Rep. Richard D. Vigil

Advisory Members

Rep. Dianne Miller Hamilton
Rep. Pauline J. Ponce
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. Leonard Tsosie

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. John A. Heaton
Rep. Ted Hobbs
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Rep. Harriet Ruiz

(Attendance dates are noted for those members not present for the entire meeting.)

Guest Legislators

Sen. Joseph A. Fidel
Rep. George J. Hanosh
Rep. W. Ken Martinez

Staff

Rachel Ray
Larry Matlock

Thursday, September 23

Representative Lundstrom recognized people in attendance and invited them to introduce themselves.

NORTHWEST NEW MEXICO ECONOMIC STATUS

Jeff Keily, Northwest New Mexico Council of Governments, said that the region has a diverse and robust economy now, but has experienced a boom-and-bust economy due to the fortunes of the mining industry. He said that Gallup and Farmington rank high for the western states in per capita income and gross receipts tax revenues, but low on the scale for household income and employment rates. He said that one has to be wary of aggregation of statistics and data. A bird's eye view would say the region is not worse off than anywhere else in New Mexico, he said, but you go a few miles from the urban centers, and unemployment jumps to 50 percent and 70 percent. He said the same anomalies occur in housing — there is a high level of poverty away from the commercial centers. He explained that the Northwest Council of Governments focuses on how to address those structural issues.

In terms of economic development, he said the governor's emphasis is on small business incubators, one of which is in Farmington. He also referred to one in Representative Salazar's district. He suggested that legislators might want to develop a strategy to encourage incubators in their districts. In other sectors of the country where small business already thrives, incubators are not needed but if the support systems do not exist, they have to be built. These incubators should be uniquely customized for the communities they serve, he added.

Community encouragement is the key to the success of many businesses, he said. Many businesses would not have settled here if it were not for the community. If one can balance investment among giving money to the groups that are working, then one can invest in good planning work at low levels and regional levels and then invest in strategic investment. The educational organizations in each community can tell what is strategic. He explained that his office has been working with the state and the Navajo Nation. They have had a hard time getting matching funds and hammering out agreements.

He concluded his remarks by saying the Navajo Nation is in the midst of major capital outlay reform. It is working with Pacific Western Technologies to track its projects.

The committee asked questions and made comments about:

- New Mexico Finance Authority plans to rationalize capital outlay by imposing a process of planning to ensure that projects are ready, funds identified and the project is realistic;
- whether the administration is "sweeping" money appropriated for certain projects into financing other projects than the ones identified in the legislation;
- the potential for the governor to take 50 percent of the total capital outlay expenditures;
- the October 15 deadline for applying for capital outlay financing;
- assertions of unfairness of the proposed changes to capital outlay;

- jurisdictional responsibility and accountability for managing projects and getting the right information to the legislature and the governor;
- how the governor needs to present his plan of capital outlay to the appropriation committees;
- projects getting stalled because state agencies drag their feet or they do not have enough help;
- legislators being criticized because nothing is moving;
- Wal-Mart's tax breaks, rate of return and the wages of its employees;
- criticism of and proposal to do away with the education department;
- balancing rural and urban education to help smooth the boom-and-bust cycle;
- subsidization of Wal-Mart's employee health care;
- vetoes of capital appropriations by the governor and the resulting harm to communities;
- the legislature's allocation of one-third of capital outlay money and the need to maintain control;
- reversion of capital appropriations when projects cannot be fully financed; and
- capital project prioritization.

INDIVIDUAL DEVELOPMENT ACCOUNTS

Ernesto Ramos, state program director for AmeriCorp Vista, and Mike Case, executive director for the Northwest New Mexico Community Development Corporation, told the committee that there were over 1,000 participants in an individual development account between Cupertino and San Mateo (near San Francisco). Mr. Case said that since the war on poverty, people have tried to find a way to extend a helping hand or handouts to those in poverty. It is not an empowerment process, it is a dependency process. Recipients have been penalized if they come back, so they get stuck in a loop of poverty. The purpose of an individual development account is to draw on funds for purchasing a home, starting a business or for educational goals. This kind of program has a multi-generational rippling effect. These programs work best when partnered with other programs, he said.

Mr. Ramos said he was present to confirm support for 10 VISTA volunteers to help with this initiative. It can help hundreds of low-income families throughout the state. He said that rural areas seldom get the resources they need from the feds to help their lives; however, the assignment of these volunteers will result in obtaining some resources. Mr. Ramos said he is delighted to support this program. Mary Lundstrom, who is Representative Lundstrom's mom, will be the coordinator for the program.

Questions and discussion by the committee addressed:

- the need for a bill next session;
- a book on financial literacy circulated among the members;
- fixed or variable rates for individual development accounts;
- predatory lending;
- BOOST (business ownership opportunities in support of tourism);
- incubator without walls structure;

- tourism market access;
- event promotion access;
- REez Road Tours;
- downtown retail services co-location project;
- Native Hands;
- long-term training programs;
- Entrepreneur Club Advisory Team role; and
- legislation to look at benchmarks dealing with poverty issues.

Senator Sharer asked for recognition to discuss predatory lending and said that Oklahoma passed a bill several years ago that stopped predatory lenders without harming the "legitimate" lenders. He said he would like for the legislature to assess whether New Mexico could benefit from the same approach.

MCKINLEY COUNTY AND NAVAJO NATION CHAPTERS ECONOMIC DEVELOPMENT

Ernest Becenti, Jr., county commissioner for McKinley County, described the county as very rural. He said that McKinley County has developed a comprehensive plan that entails all of the information that covers the city of Gallup and rural communities. A few Navajo chapter houses have been selected to be part of a major effort. The Navajo Nation is entirely responsible to those individuals, and the goal is to develop the total county to provide jobs. Road improvements will continue to be a significant portion of the dialogue.

Questions and comments from the committee included:

- the possibility to get matching funds from the county and the state for Navajo Nation capital projects;
- the community of Red Springs having 180 acres set aside for development; and
- a letter from the committee to UNM requesting its assistance using 100 search engines for funding sources.

MCKINLEY DEVELOPMENT FOUNDATION AND GALLUP CHAMBER OF COMMERCE

Herb Mosher, executive director of the McKinley Development Foundation, told the committee his organization has a short-range and long-range plan but has not gone too deeply into strategic planning. The foundation has had focus forums with the business community. Then he referred to Project ECHO, which lets doctors and pharmacists manage hepatitis C. He said \$3 million was secured from UNM. One hundred thirty-two patients with hepatitis C were involved in a pilot program to get world-class expertise to people far from Albuquerque.

The discussion addressed:

- how Project ECHO is a great model for rural health care;
- replicating Project ECHO in Hatch, Silver City and statewide;
- a letter from the committee to Dr. Bill Heaton at UNM to replicate what is being done in Gallup;

- the need for the city and county to move beyond a love-hate relationship; and
- getting cars to stop for more than gas and food, promoting events and evaluating success in attracting more tourists.

GALLUP DEVELOPMENT CORPORATION

Mike Enfield, executive director, Gallup Development Commission, catalogued several initiatives of organizations such as the Red Rock Museum, the El Morro Theatre and a grant to purchase a building to use for a business incubator. In describing the incubator, he said that 80 percent of entrepreneurs starting a business on their own fail in the first five years. If that same person bought a franchise, they do not fail because franchises have an incubation system for those in their franchise system. They teach their franchise owners how to provide the product or service. They do not know how to manage the business of business. He said he has looked at other incubators, and Farmington is above other incubators. If the state could put together a small committee to look at the requirements and needs of rural New Mexico and figure out how to fund those things, it would be important. Most small towns in New Mexico are not going to get Ford Motor Company to open a plant, he said. They are going to have to rely on entrepreneurship. Incubation will be important for the state to maintain its rural culture. With incubation of small businesses to keep money rolling in that community, there would be a chance for survival.

Discussion among committee members included:

- a proposal by the Economic Development Department (EDD) to investigate incubators;
- how everything at the EDD is focusing on the I-25 corridor;
- dilemmas of small rural communities such as transportation, telecommunications and population;
- the language in a bill that requires a good portion of the money to go to rural New Mexico; and
- a rural incubator bill.

STATE INVESTMENT COUNCIL PROCEDURES

Phil Jesse, a consultant involved in rehabilitating a restaurant, The Plaza Café, in Gallup, said he wants to build two restaurants in Gallup and move forward in other rural communities, including Aztec and Bloomfield. He described the proposed business as an in-house kitchen shipping food out, employing 65 people full-time and 10 to 15 part-time employees. He said he looked for venture and startup capital. The State Investment Council is required by law to invest in New Mexico. It has never invested a dime, he said, and it does not care, he said. He testified that he sent out dozens of letters to the EDD and the State Investment Council to get information on the grant money available with limited success until Representative Lundstrom got involved. He said the responses from state agencies were very short or nonexistent. He testified that state agencies will not give any information on rejected businesses. He said that Deborah Gallegos, deputy state investment officer, told him that her office was willing to look at the proposal. However, after Representative Lundstrom's office sent the proposal, there was never any response. He said that Carol Selleck responded to Representative Lundstrom in January 2004 and he received a letter in November 2003 turning down the project, with no information on why it

was turned down. When Representative Lundstrom wrote a letter requesting information on why it was turned down, she was notified that:

- the recipient must have a majority of employees in New Mexico (Mr. Jesse lives in Gallup);
- it must meet a minimum threshold of jobs — a requirement not in the legislation passed; and
- a co-investment must be in writing and immediately verifiable — Global Strategies was interested in investing, but only if it could come up with additional capital.

Mr. Jesse asserted that the state sat on the fence for over a year and he could not get the state to look at his business proposals or his plan. He criticized the State Investment Council for exceeding its authority in making regulations as to whom it would consider for financing, such as 65 percent of the product has to be sold outside the state of New Mexico. Of the \$300 million available, the council has invested around \$40 million, he said. By making up these rules, the council has eliminated 95 percent of the businesses in New Mexico. He said that TCI cannot get funding in Carlsbad to build a building, so TCI is going to rent a building in Albuquerque. The council will not make a commitment for rural development, he testified.

Representative Lundstrom added that she did write, starting with a letter to the secretary asking for a review of all funding sources on December 10, 2003, and she has still received no answer.

Discussion among committee members included:

- having the State Investment Council staff provide rules and regulations and giving a presentation at the November meeting in Santa Fe; and
- legislation designating that a portion of the State Investment Council funds be designated for the rural areas.

The committee recessed at 4:24 p.m.

Friday, September 24

Representative Lundstrom invited the attendees to introduce themselves.

CIBOLA COUNTY COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY

The committee heard that tourism is a key component of economic development prospects in Cibola County. Other important aspects include retiree infrastructure and workforce development, i.e., investing in human capital. Examples of continuing efforts include the Pueblo of Acoma's partnering to develop a business administration line of study at Acoma, which is the kind of training and educational support that fits this area. Other critical strategies are capital improvements such as curbs and sidewalks to help encourage people to move to Milan.

Dave Ulibarri, Cibola County manager, said that most roads interconnect with the reservation. The county is losing its tax base. There are only 200,000 acres generating property tax revenue. He said that other counties that have casinos should benefit from some of that

revenue going to the county's infrastructure. Cibola County needs help from the legislature. He testified that the Pueblo of Zuni has bought two ranches, big parcels of land that are going off the tax books because Indian land is exempt from property taxes. He said Representative Martinez introduced a bill to get some of that revenue back, but it died in committee.

Representative Salazar asked for recognition and said that the averaging of property tax revenue should be initiated by the counties. They are supposed to be looking out for the interests of all the counties. It would have to be a joint effort by the legislature, Representative Salazar suggested, because it is tough going before the tax committee; unless one is a member, one does not have any influence. He said the Municipal League and the Association of Counties have some influence and are trying to get more revenue from the state to replenish what has been lost. That is what happened when he went to bat for the city of Espanola, he said.

Discussion among committee members included:

- a constitutional amendment to open the state up to gambling;
- Pueblo of Jemez casino operation near Las Cruces;
- the saturation of any more casinos;
- the governor's plan for another tax cut benefit, which means services will be cut;
- the difficulty of getting bills through the tax committees;
- tax breaks for casinos;
- the need to change the Indian gaming compacts;
- the New Mexico Community Assistance Act;
- a bill to address funds going back to counties affected by casino land purchases; and
- McKinley schools and Zuni schools are the precedent for trying to get that.

Lawrence Sanchez, president of Cibola Communities Economic Development Foundation, said the foundation is going through reorganization at this time. It needs an executive director, he said.

Discussion among committee members included:

- a request for staff to ask UNM to provide a list of funding sources, which could help Cibola County's needs; and
- the casino revenue issue to be discussed by the Indian Affairs Committee.

James E. Covell, consultant to the village of Milan, told the committee that Milan wants to get people off the highway. Milan needs to find a motel company and another restaurant, probably a fast food, high-turnover, high-dollar facility. The goal is to increase the community's money, and attract some more retail establishments, such as a hardware store or movie theater, and improve the retail outlets. He referred to a piece of industrial property that has 800 acres and 800+ acre-feet of water. With these resources, he said, Milan should be able to attract substantial industry, especially because nobody else has that much water. However, the community needs an entity who will not waste it. He said the governor has the best economic development people he has seen in a long time. He encouraged the committee to support them. He further testified that the governor issued a challenge in his speech in Carlsbad regarding rural economic development.

Mr. Covell cited the plant in Carlsbad, CCI Medical, the operators of which say they cannot build the plant and cannot get financing. That is a problem, how to finance development.

Discussion among committee members included:

- individual development account legislation;
- predatory lending;
- the population of Milan;
- the cost of construction of buildings in Hatch because of concrete and lumber going to Iraq;
- a pool, community center and multi-purpose center; and
- a letter to Secretary Faught about the railroad crossing problem in Milan.

NEW MEXICO RURAL DEVELOPMENT RESPONSE COUNCIL

Renee Julien, executive director, New Mexico Rural Development Response Council (NMRDRC), told the committee that health and communication are important to growing communities. She listed a number of local initiatives around the state as examples of "grow your own" economic development strategies, including T or C's development of a hot water waterfall behind its museum and spa packages, and Cuba working on a small diameter wood industry. She talked about hooking up funders and communities and the work of the NMRDRC on a mapping project for the resources available by county/region. She said that with the communities on board right now, 330 new jobs could be generated. She said the NMRDRC plans to help expand the health clinic, which is one of the area's bigger employers with new wages of \$2.6 million. The council finds it hard to keep going on grants. Most of its resources are dedicated to the small communities, and they have been a good investment, she testified. She asked the committee for support.

Discussion among committee members included:

- appropriation;
- how communities take part in the council's services;
- the need for something like this for the whole state; something that could be updated and follows the same format;
- rights of way on state roads for telecommunications and water;
- digital telephone towers;
- Wal-Mart;
- language barriers; and
- RDIC bill and perpetual right of way over state highways.

BUSINESS INCUBATORS

Marie Longserre, president and CEO, and Don Garcia, chairman, both of the Santa Fe Business Incubator, talked about the three-legged stool. She said business expansion and entrepreneurship are different for every community. Policies for business incubation need to be very flexible, where each community's strengths, desires and goals are reflected in the programs. The three components of business incubators are physical place, training workshops and building a community network and tying together those services.

Discussion among committee members included:

- the need for her group to work with the committee, Mike Case and Mike Enfield;
- making sure the legislature does not give its rulemaking authority away;
- the status of Roswell, Carlsbad, Clovis, Las Vegas, Las Cruces and Gallup incubators;
- where the money is going to go; and
- capital outlay versus operational funds.

LAGUNA INDUSTRIES

Chris Omni, president and CEO of Laguna Industries, told the committee that he was not there to ask for anything. He said that Laguna Industries is concerned about rights of ways, telecommunications and fiberoptic lines along state roads. He said the pueblo is using the test range, which is the old testing facility. Laguna Industries operates a radio frequency test range, which is not possible if the tribe cannot get fiberoptic lines from Qwest. He asked the legislature not to forget the tribes' ability to negotiate favorably. He said Laguna Industries brought \$16 million worth of funds into that facility. It will be staffed with high-end technological jobs. It is a manufacturing facility that contributes between \$28 million and \$30 million per year. It is staffed at a stable, profitable level, and has over 200 workers. He said the company needs assistance in the educational process, especially in high technology training. Available educational resources cannot teach kids what they need to know to get those high-end positions. The business is in building satellite communications shelters for the Department of Defense. Its equipment is in Iraq. It is designing new equipment and as its business cycle increases, it will look at Grants to be its outsource potential. The Laguna community does not like the company to staff people and then lay them off. It has \$16 million in material sales.

Discussion among committee members included:

- the research component of the company;
- signal communications arena;
- New Mexico Tech relations with the company; and
- NMSU-Grants capacity to meet training needs.

The committee adjourned at 12:15 p.m.

**MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE**

**October 14-15, 2004
New Mexico State University Regents Room
Las Cruces**

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order as a special subcommittee by Representative Mary Helen Garcia, chair, at 10:15 a.m. on October 14, 2004.

PRESENT

Rep. Mary Helen Garcia, chair
Rep. Jose A. Campos (10/14)
Sen. Mary Jane M. Garcia
Rep. Andy Nunez

ABSENT

Rep. Richard Cheney
Rep. Daniel R. Foley
Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell
Rep. Patricia A. Lundstrom
Sen. John Pinto
Sen. William E. Sharer
Rep. Richard D. Vigil

Advisory Members

Rep. Dianne Miller Hamilton
Rep. Debbie A. Rodella (10/14)
Rep. Harriet Ruiz

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. John A. Heaton
Rep. Ted Hobbs
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Rep. Pauline J. Ponce
Rep. Nick L. Salazar
Sen. Leonard Tsosie

(Attendance dates are noted for those members not present for the entire meeting.)

Guest Legislator

Sen. Mary Kay Papen (10/15)

Guests

The guest list is in the meeting file.

Staff

Gordon Meeks

Larry Matlock

Thursday, October 14

ECONOMIC DEVELOPMENT DEPARTMENT INITIATIVES

Secretary of Economic Development Rick Homans outlined the department's legislative agenda for the next session and introduced his accompanying staff. Secretary Homans said that current statistics show that as the national economy is picking up, New Mexico is holding its own. He said New Mexico is in the top 10 states for job growth and that personal income is growing. New Mexico tends to stay ahead of the national averages in these statistics when the economy is down and tends to lag behind the national economy in up years. The current statistics seem to indicate that this trend is changing, he said. He said that the factors that may be causing this change are increased aviation manufacturing jobs, film productions and technology.

The governor's legislative initiatives this year will include:

- \$2 million dollars for the Main Street programs;
- \$600,000 for the enterprise development program in disadvantaged communities such as those in Grant, Luna and Taos counties;
- repealing the sunset date of and to make permanent the rural jobs tax credit;
- amending the job training incentive program to allow it to be used for training film and digital media professionals;
- amending existing tax credits for film producers to encourage the location of pre- and post-production work for filmmakers;
- providing a three-year tax holiday for research and development phases of companies;
- providing a gross receipts deduction for companies that refurbish airplanes of 16,600 pounds or more;
- exempting from gross receipts tax liabilities those companies involved in airplane maintenance when the product is delivered in New Mexico;
- capital outlay of perhaps \$100 million for construction of the spaceport in Dona Ana County; and
- creation of the spaceport authority.

He also testified that the department is developing an internal spreadsheet with a more precise forecast for the appropriation request for the job training incentive program. The budget for that program needs to make sense and be based on real assumptions, he said. It will probably be between \$3 million and \$6 million.

He told the committee that the Economic Development Department (EDD) is a significant tool for rural New Mexico. It is essential for rural communities to be incorporated in the effort to recruit businesses to their communities.

Finally, he said, efforts to bring alternative business financing into rural communities are being made because it is difficult to attract conventional financing. He said that in 2003, the

legislature passed the Statewide Economic Development Finance Act, which gives the New Mexico Finance Authority the ability to bridge gaps in financing businesses in rural areas. However, it was not funded in 2003, and the act needs to be funded now, he said.

Questions and comments from the committee dealt with:

- the cost to the state budget of tax incentives;
- whether companies that receive tax incentives stay in New Mexico;
- aviation manufacturing infrastructure needed to keep a company here;
- competition for business investment between Dona Ana County and Albuquerque;
- the state's emerging space industry;
- creation of an aerospace engineering program at New Mexico State University;
- criteria for the Main Street program money;
- the Taos entrepreneurial development program;
- retirees coming in to a community that they do not want to change while the people that have lived there for years want it to get better and grow;
- the number of jobs created by the rural jobs tax credit;
- the EDD's plan for basic infrastructure;
- the need for unincorporated communities to be eligible for the Main Street program;
- a media center and a high-tech science center in the Santa Fe area to exhibit products invented in New Mexico to small business people who come to New Mexico;
- whether rural communities can compete and beat the metro areas for companies that require high-speed internet access and other communications abilities; and
- the educational system.

BORDER DEVELOPMENT

Rudy Garcia, director of the Mexican Affairs and Trade Division of the EDD, said that main streets are different in Mexico. He said that business with Mexico is based on relationships. There are new leaders at the municipal and state levels in Mexico. The goal of his office is to increase trade, and to accomplish that, he said relationships need to be established in order to raise the awareness of New Mexico within Mexico. The ad campaign, "Borders Not Barriers", therefore, is an example of the effort, he said.

Jaime Campos, director of the New Mexico Border Authority, gave the committee a report on commercial activity with Mexico this year. Trade amounted to more than \$1 billion in commerce between Mexico and New Mexico. Most exports are in used vehicles and most imports are automotive parts. He said that Santa Teresa has become a popular alternative crossing to El Paso because of highway improvements. The recent U.S. Department of Agriculture restrictions created a problem but the long-term trend is for more business. For example, one morning in Columbus, there were 40 trucks loaded with chile that could not cross into the U.S. Fortunately, that morning everyone was in the monthly meeting and afterwards went back to their offices to call the secretary of agriculture, the Border Authority of Mexico City, Mexican affairs and the Mexican consulate, he said. In less than 24 hours, the efforts paid off, particularly through the influence of New Mexico's senators and Secretary Homans, and the U.S. Department of Agriculture rescinded its decision and opened the border.

He gave a summary of border business, telling the committee that Columbus has declining trade because of cattle. He went over some of the conditions that contributed to the loss of cattle business there, mostly prices and fears of mad cow disease.

He said his office is working to try to improve rail crossings. Two hundred million dollars to \$300 million is needed to make the improvements in downtown El Paso and Juarez. He explained that security issues have caused delays in El Paso, which helps New Mexico.

Secretary Homans commended Mr. Campos and his staff and said trade is up to \$244 million in 2003 and, halfway through 2004, it is already at \$200 million. He concluded by saying the railyard relocation is a priority.

Questions and comments from the committee included:

- cost of the railyard relocation;
- the balance of trade with Mexico and status of New Mexico's markets; and
- how to ease border crossings for vacationers.

TELECOMMUNICATIONS COMPETITION UPDATE

Leo Baca, Charlie Marquez and John Badal of Qwest Communications addressed the committee about Qwest's legislative request this year. Mr. Badal said he is retiring from Qwest. He will be providing basic telephone services to the Navajo people. He said he enjoyed his brief stay of four years at Qwest, and gave the committee a parting view of Qwest and its issues. The telecommunications industry is one of the fastest-changing industries in the world, he said. Regulation that is slow to change is harmful to this industry because it cannot keep up. He said that the state needs permissive regulation that is broad enough to allow companies to respond to change.

Mr. Badal provided the following example of what does not work. The federal Telecommunications Act of 1996 assumed that competition would be established in a certain manner and was built on the premise that one form of company needed access to Qwest's system. Qwest spent \$3 billion on hardware, software and labor, only to find out that the most viable competition for Qwest's services was from companies that do not need the central switches where Qwest spent most of its money, these being wireless services and cable television companies. Cox Cable TV has captured 50 percent of the local business in Omaha, Nebraska, Phoenix and Tucson.

Congress and the FCC got it wrong, he said, because wireless and cable TV companies are not regulated at all. Cable TV companies are developing voice-over Internet capabilities. Companies now can get into local and long-distance services with very little investment. Voice-over Internet is not regulated like Qwest, he said. Qwest hires technicians and back office support people to install and maintain the network. When a cell phone goes dead, one calls an 800 number, or goes to a retail store and gets a new phone. When one calls customer service, it

could be in New Delhi. Qwest employs New Mexicans and invests in property it owns in New Mexico. He noted that competitors have no stake in New Mexico's economy while Qwest does.

He went on to speak about his new position, saying that the Navajos have only a 40 percent rate of service. The federal government has established a Universal Service Fund for the benefit of rural telephone companies, and the rural states are encouraged to establish their own funds to compliment it. The rural western states all have rural service funds, except New Mexico. Mr. Badal said his team has been advocates of improvement to the telephone network and will be working diligently to get the Navajo Nation and adjacent rural communities reliable phone service. He then turned the discussion over to Leo Baca, director of external affairs for Qwest, Nita Taylor, director of regulatory affairs, and Charlie Marquez.

Mr. Baca said this is the first time Qwest has provided information on legislation this early before a session. Qwest has communicated with the Attorney General's Office, the Public Regulation Commission and others. He said that some folks think they are being progressive by trying to change the regulations. He hopes the commission can keep an open mind in this new environment. He described some of the competing technologies that Qwest is dealing with, such as voice-over Internet and cable TV, and that it has made extensive inroads into other telephone markets. By 2005, voice-over Internet and cable companies will be entering the market in New Mexico. He said Qwest needs regulation that provides for a level playing field because the consumer will benefit. The National Conference of State Legislatures and the American Legislative Exchange Council advocate for less regulation in the telecommunications industry.

Questions and comments included:

- the balance in the State Universal Fund;
- the Rural Extension Fund;
- the cap on eligible expenditures per customer;
- the old rate of return regulation compared to the alternative rate of return regulation; and
- the degree of consensus among affected stakeholders.

Public Regulation Commissioner E. Shirley Baca asked for recognition and made a statement. She said that Qwest has initiated discussions with the commission and the commission is reviewing statutory recommendations. As the commission reviews the situation, she said, it needs to maintain balance in the treatment of companies and consumers to ensure availability of affordable services. She said that the "equal playing field" concept really does not apply to Qwest, but she appreciated the opportunity to learn of the proposal early and to say a few words to the committee.

Mike Ripperger, the PRC Telecommunications Bureau chief, was recognized and said that he appreciates Qwest's early communications with the PRC and that staff and commissioners have been in touch with other states' regulators. He said that all states are seeking ways to accommodate regulatory changes for those areas experiencing competition while maintaining some available affordable services.

Warren Soloman, American Association of Retired People, said he also appreciated Qwest's coming to the public early with this request.

Cindy West, MCI, said her company has had an opportunity to briefly look at these recommendations and requested the committee to allow MCI to respond to this legislation at the next meeting.

Mr. Marquez told the committee that it is Qwest's intent to continue to work with the other players to accommodate changes and have an ample comment period for anything that might be disagreeable. Hopefully, MCI will be in support of Qwest, he said. He said if there is not an agreement, Qwest will continue to pursue their changes.

Patsy Duran, Association for Commerce and Industry, said her organization supports reduction or elimination of regulation to promote fair competition.

Sam Ray, New Mexico Exchange Carrier Group, said his organization will be happy to work with them.

EMERCADO

Phil Castillo, CEO, Albuquerque Hispano Chamber of Commerce, introduced Adam Roberts. He thanked the committee for supporting the Hispano Chamber, eMercado and New Mexico Tech in the last session, during which the governor appropriated \$500,000 to build the eMercado program. It is a statewide effort impacting all communities and an advocate for small businesses to retain and stimulate job creation.

Mr. Roberts provided examples of the program's work. It is a database that houses New Mexico businesses. The program has surveyed companies for their online needs and found that employment, access to capital, e-commerce connections, the public procurement process and adequate facilities and space are the top needs of small businesses. The goal of eMercado is to engage small businesses into partnering with public and private buying agencies across the state, since a lot of those dollars are not making it to small businesses. This program will help to address technology barriers and the digital divide in order to bring New Mexico small businesses up to speed on participating in e-commerce. He distributed examples of businesses that have been helped within each committee member's district.

When a business returns a survey to eMercado, if that business is seeking new employees, eMercado will connect them with the Labor Department. A lot of small businesses need access to capital, so eMercado can hook them up with micro-lenders. The survey also asks if small businesses can process credit cards, if they are interested in city, county, federal and state procurement and if the company has adequate space. With the database, if an RFP is coming out, such as a construction bidding process, eMercado can contact businesses in the database through fax or email and automatically get out those leads to them.

He read one testimonial from Angel Fire.

The program can be used to expand opportunities in the international marketplace. The program was able to form an international agreement and memorandum of understanding to connect with a sister city in Spain to provide the city with opportunities in New Mexico. The survey revealed 83 companies that want to do business with Spain.

Some of the statewide and national trends impacting small businesses that eMercado can help businesses respond to are: cooperative purchasing, contract bundling and use of an economic impact calculator. The latter is basically a tool for buyers to reference when making a purchasing award. The calculator can help predict how many jobs will be created, the average salary and the amount of tax revenue in the county or state that the contract will generate. It computes the community multiplier effect. The eMercado software is a tool to evaluate those benefits.

The key, he said, is to use this as an intelligence network. This program is a balance for the little guys to compete with the big national ones. Through New Mexico Tech, the program received a capital outlay appropriation last session that allowed it to build the engine. Now, eMercado is asking for money for an operating budget.

Questions and comments addressed:

- economic impact calculator availability to businesses;
- minority business participation;
- certification as a minority or women's business;
- international ISO 9000 certification;
- applicability to service businesses rather than goods;
- criteria for selection of the people that received the survey;
- the number or companies that need health benefits;
- information on anyone from Mesilla requesting help; and
- that New Mexico Tech is the fiscal agent for eMercado.

ON-SITE LIQUID WASTE REGULATIONS

Ryan Smith, Las Cruces Environmental Systems, Inc., talked to the committee about alternatives to septic tanks and the effect of environmental regulations on sales of water treatment systems. His company distributes aerobic treatment units used in place of a septic tank. These systems treat wastewater to a brown water quality to be used for irrigation and even food plants. The New Mexico Department of Environment is in the process of rewriting its regulations on water treatment systems to include alternative systems to septic tanks. Septic tanks are responsible for more pollution of ground water than all other sources combined. About 250,000 septic tanks in New Mexico are putting sewage in the ground. Ninety percent of New Mexicans get their drinking water from ground water, and New Mexico is in the worst drought in 500 years, he said. These systems can draw economic development to rural areas, because they are used where there is no infrastructure.

Questions and discussion included:

- the cost of septic systems compared to aerobic treatment systems — \$1,000 or \$2,000 more than a septic tank;
- private systems;
- the process to break down sewage;
- capacity of the system — 500 gallons per day up to millions of gallons per day;
- amount of electricity it uses — about that of a refrigerator, or around \$9.00 per month;
- regulations for use in a garden; and
- the feasibility of having aerobic systems on lots smaller than three-fourths of an acre.

Friday, October 15

BUSINESS INCUBATORS

Nancy Mahoney, WESSTCorp, and Jennifer Craig, manager of the Las Cruces regional office of WESSTCorp, described WESSTCorp as a statewide economic development corporation aiding women and minorities. It assists small businesses to get loans and provides technical assistance. Offices are maintained in Albuquerque, Farmington, Las Cruces, Roswell and Santa Fe and an office will soon be in Gallup. She said there had been an office in Taos until federal budget cuts forced the closure of that office. The organization is presently trying to establish a mixed-use business incubator in Albuquerque to house as many as 30 companies to create jobs for low-income residents in the pockets of high poverty. The endeavor is a partnership with the city of Albuquerque. She testified that small business incubators are a proven economic development tool. Twenty years of research by the Small Business Development Association shows that:

1. for every firm in an incubator, 3.7 jobs are created per firm per year;
2. 87 percent of the firms in an incubator maintain their enterprise for five years or more;
3. 84 percent of the incubator employees stay in the community;
4. there is a 30 to one return on the investment of public money; and
5. business incubators create two more jobs for each employee hired by an enterprise in the incubator.

The same research found that the key factors to incubators' success are:

- appropriate space provided at reduced or no cost;
- the availability of comprehensive business services; and
- the development of a solid business plan to make sure that the incubator can cover the costs while providing affordable services.

Ms. Craig said that the biggest advantage of a business incubator is the support of a group.

Ms. Mahoney asked the committee to support a capital outlay appropriation for several incubators across the state and for operational funds of 25 percent of the total operating costs if the incubator has a plan and can cover the other 75 percent of its costs.

Questions and comments addressed:

- how any money for capital outlay can comply with the anti-donation clause;

- how much money is being asked for exactly and for what specific purpose — is it several million dollars?;
- the difference between capital and operational appropriations;
- the types of businesses typically housed in incubators;
- cooperation with secretary of economic development;
- cooperation with small business development programs;
- do incubators pay rent and, if so, how much?;
- transportation aspects;
- space availability at the intercultural center in Anthony;
- cooperation with Accion;
- partnering with NMSU and community colleges;
- partnering with the Commission on the Status of Women; and
- the incubator in Farmington at San Juan College.

INFORMATION OUTREACH FOR LOW-INCOME COMMUNITIES

Carmen Gutierrez, Dona Ana Advocates for Children and Families, told the committee that her organization has installed Internet-connected information kiosks in the communities of Garfield, Hatch, Rincon, Placitas and Radium Springs to bring a variety of information on public services to low-income people in need of these services.

Questions and comments included:

- the details of setting up a kiosk;
- the availability of information in Spanish;
- the locations of the kiosks; and
- the percentage of people using the kiosks.

OPPORTUNITIES AND OBSTACLES TO ECONOMIC DEVELOPMENT IN THE MESILLA VALLEY

Steve Vierck, president and CEO, Mesilla Valley Economic Development Alliance (MVEDA), told the committee that the alliance is a public-private partnership dedicated to marketing the region. He said that the alliance emphasizes relationship marketing by dealing directly with corporations and businesses. The wage trend in Dona Ana County is down, and MVEDA hopes to make improvement of that trend a priority goal. The business clusters MVEDA is targeting for recruitment are high technology, Maquila suppliers (mostly auto parts), aerospace, business and financial services and food processing. He said that the proposed Pueblo of Jemez-owned casino is driving publicity about Dona Ana County economic development right now, but that Dona Ana County has been recognized nationally as a great climate for business. *Forbes Magazine* recently identified Las Cruces as the best small metropolitan area for business, and *Money Magazine* gave recognition to Las Cruces as a top area to locate in.

In MVEDA's efforts to assist businesses, relationships are cultivated with site selection consultants, Fortune 500 corporations, rapidly growing companies, local industries, NMSU alumni and White Sands Missile Range. The primary attributes of the region that MVEDA emphasizes are the border and climate. He said there is a significant benefit from assistance for

the New Mexico Economic Development Partnership created last year by the legislature to shift economic development from the EDD to the private sector. He asked that that initiative continue to receive funding from the legislature. He also asked the legislature to support Maquila supplier recruitment, creation of the NMSU aerospace engineering department, continued funding for the spaceport and to link education with economic development. Challenges faced by economic developers are jobs going overseas and the brain drain of New Mexico graduates. Policy changes that could help improve the state's situation relative to these challenges are: reduction of the gross receipts taxes on research; development and testing activities; exemption of border residents from income taxes; increased hours at the Santa Teresa port of entry; and NMSU technology commercialization.

Questions and comments included:

- the status of Arrowhead Park Industrial Park on the NMSU campus;
- role of the Dona Ana branch campus of NMSU;
- Verde Group's joint authority with Dona Ana County and Sunland Park;
- Rio Grande natural gas;
- requiring employee benefits such as health insurance in order for companies to qualify for state work force training money;
- the federal government's responsibility for hours at the Santa Teresa port of entry;
- a cheese plant in Dona Ana County;
- weak links between laboratories and business; and
- health care insurance coverage of businesses receiving assistance from MVEDA.

Representative Garcia recommended that the committee send a letter to NMSU to see what the other universities are doing to promote economic development of Institute Park.

ENTREPRENEURIAL INFRASTRUCTURE

Webb Johnson, Next Generation Economy, told the committee that Next Generation fosters industry clusters in order to establish supply trains that generate expanding economies. The clusters Next Generation is targeting for New Mexico are: biological sciences, artisan enterprises, microsystems, government services, aerospace, digital media, agricultural technology, energy, information technology and optics. He showed a model flow chart of the typical profile of a rapidly growing company. Next Generation is partnering with private equity venture capitalists, regional development corporations, councils of governments, universities, small business development centers and regional economic development organizations.

He finished his presentation by asking the committee to support an appropriation of \$85,000 for an entrepreneurial resource mapping project and the Next Connect Entrepreneurial Forum. This money will be matched by a federal grant of \$130,000.

The committee asked if providing money to Next Generation would raise anti-donation clause constitutional issues.

The chair recognized Mike Hite of NMSU, who asked the committee to support appropriations of more than \$8 million for distance learning resources. The committee asked him if other universities are participating in the effort and if high schools are being equipped for participation.

The chair said she would sponsor a letter to the Commission on Higher Education to support the request.

The committee meeting adjourned at 12:45 p.m.

**MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE**

**November 18-19, 2004
Room 307, State Capitol**

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order by Representative Mary Helen Garcia, chair, at 9:15 a.m. on November 18, 2004 in Room 307, State Capitol.

PRESENT

Rep. Mary Helen Garcia, Chair
Rep. Jose A. Campos
Rep. Daniel R. Foley (11/18)
Sen. Mary Jane M. Garcia
Sen. Phill A. Griego (11/18)
Sen. Clinton D. Harden, Jr.
Rep. Patricia A. Lundstrom
Rep. Richard D. Vigil

ABSENT

Rep. Richard Cheney
Sen. Carroll H. Leavell
Rep. Andy Nunez
Sen. John Pinto
Sen. William E. Sharer

Advisory Members

Rep. Diane Miller Hamilton
Rep. John A. Heaton (11/18)
Rep. Ted Hobbs
Rep. Pauline J. Ponce
Rep. Debbie A. Rodella
Rep. Harriet Ruiz
Rep. Nick L. Salazar (11/18)

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond Kysar
Sen. Leonard Tsosie

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Gordon Meeks
Larry Matlock

RESPONSE TO QWEST—PROPOSED LEGISLATION

Lyle Williamson, regional government affairs director for MCI Communications, told the committee that MCI is not dead. He said his company still has 65 percent of the Fortune 500 companies as clients for telephone services. He testified that economic growth will come from a continuation of productivity increases based on knowledgeable workers. He referred to rapid technological changes that offer tremendous promise. He said that there are extensive jurisdictional issues over what roles Congress, the Federal Communications Commission (FCC) and the states should respectively play, and that these are broader questions than just one

company asking for regulatory reform on its own situation. He said that Qwest's proposed changes would raise the regulatory burden on other companies. He said that regulatory reform needs to be addressed for the whole industry, not just for Qwest.

Questions and comments addressed:

- the service area of MCI;
- the cost of MCI service;
- MCI's business plan relative to combining local and long-distance service;
- MCI's business customers;
- lighter regulation on MCI than on Qwest; and
- MCI's \$38 million investment in its global network.

Ed Lopez, secretary of general services, told the committee that the state's telephone network is Qwest's single largest customer in the state. He said that as a customer of Qwest, the state government has an immense interest in any proposed regulatory reform that could affect the rates the state pays for these services. He said that the state's greatest goal is investment in economic development infrastructure, especially telecommunications. He referred to Governor Richardson's program, "Wire New Mexico". Revising Qwest's regulatory framework might affect investment in the state's telecommunications infrastructure. He said the administration is working hard to use state resources; for example, the media initiative.

Secretary Lopez told the committee that he has received a copy of the draft Qwest bill and acknowledged that the most recent one has some changes from the version he reviewed previously. He has not had enough time to look at those changes and is not prepared to address the specifics. He continued speaking to the generalities. He said that the wireless arena is robust and thriving, and a distinction must be made between wireless and competition in the wireline market. His concern is the investment component of the phone company's legislation, because, he said, if the state is going to wire rural medical clinics, rural public schools and connect libraries, the state needs connectivity on broadband lines. Public policy needs to encourage investment, he said. His concern with the discussion draft is that it appears to be the end of incentives for investment by Qwest.

He said Qwest's argument is that investment requirements should apply to all companies doing business in the state, which at first sounds reasonable. However, if one is trying to stimulate investment, one may find that if the Qwest legislation becomes law, there would be no additional investment because the withering wireline phone companies will not be able to match the levels of investment Qwest has already made, and Qwest will not be required to invest any more, especially in the rural communities.

The second indication that policy would discourage additional investment is the second draft bill on rural extension funds, which were created as a trust account in the 1980s to settle overearnings. Millions of dollars were placed in a pot to extend rural telecommunications services. That money was paid to avoid a rate reduction in the 1980s, and that fund is a strategic asset for rural communities. The third indication that this proposed policy may signal an end to

wireline investment in New Mexico is the ongoing investigation at the Public Regulation Commission (PRC) of the alternative regulation plan that Qwest agreed to in 2001. That agreement provided for an investment of \$788 million to avoid a rate reduction. That was a good deal, he said. However, the PRC is now investigating whether Qwest has invested what it promised, and whether it should be forgiven for \$200 million of additional investment.

He concluded by saying that these two bills proposed by Qwest are not the signs of a company that wants to invest more in the state. He warned that the federal Department of Defense (DOD) is watching these regulatory developments closely because DOD has tentative plans for closure of military bases in New Mexico and further investment in wireline networks is a consideration. Enacting these bills could compromise the attractiveness of New Mexico's bases and labs. To build a redundant network will require millions of dollars, which is a grave concern. The draft says that if all the other wireline companies do not invest at the same level, Qwest is not required to invest, either.

He said he concurs with the wireless companies assertion that they can improve their contributions to the state in terms of access charges, and that he thinks this is a fine opportunity to reform access charges. The state could provide an access charge bill to save some money. Secretary Lopez stated that he is committed to finding ways to reduce the state's telecommunications bill by 50 percent before he leaves as secretary. A way to accomplish this is to aggregate the state's purchases of wireless phones, but wireline savings will still be important. Reducing the amount of access charges the state pays would be a positive outcome.

Secretary Lopez continued, saying that the wireless companies are investing well, but they could be challenged to contribute. He said there is a misconception that wireline competition has improved since the 1996 federal reform act. The act that Congress passed was intended to stimulate competition among wireline phone companies, but it failed. There are firms leading the charge, but AT&T is not participating in this debate, citing an example of dramatic changes in the industry. Competition in the wireline arena is in trouble, he said. Wireline customers have decreased in the larger cities by about 50,000 customers. Of that 50,000, a fair number have gone away because of DSL, a Qwest product. It does not require extra lines, which is a positive feature. But it was Qwest's Wireless, a wholly owned subsidiary, that had been aggressively marketing wireless phones. The argument that a wireless phone is a substitute is difficult to justify, unless the customer is a single-person household. Wireless phones are being held out as a substitute in marketing campaigns, but they are not substitutes.

He concluded that it would be a mistake for the committee to endorse this bill.

Questions and comments included:

- competition improving telephone service in Roswell;
- how does this legislation do away with investment in New Mexico;
- the legislation's effect on business;
- the state's contract with Qwest and the state's bargaining leverage as the largest customer; and

- the public letter from the secretary of general services dated October 30 opposing the legislation.

The chair recognized Leo Baca, a lobbyist for Qwest, to make a few comments. He handed out some charts and a map to illustrate Qwest's position. He said that Qwest will not stop investing. He pointed out that the company has lots of employees and invests in New Mexico every day. The biggest bucket Qwest draws from has to do with growth, he said. The Qwest network is not growing. The trends are down, he said.

A quorum being present, the committee approved all minutes of the four previous meetings without objection.

TELECOMMUNICATIONS ACCESS REFORM

Steve Metts, New Mexico Exchange Carrier Group, summarized his presentation to the committee when it met in Roswell. He said that access charges approved under existing regulations have been set high in order to reduce service charges for local telephone service, an implicit subsidy. The FCC made subsidies illegal when it reformed regulations. He distributed the proposed draft bill again and said that the stakeholders had met in a workshop to address the contents of the bill. He identified the workshop participants, but said that they did not arrive at a consensus. He said some will speak against this bill, but it is a good product, and the critical decision will be before the PRC. He summarized the bill, which provides for a rural universal service fund similar to a federal fund and supports affordable rates for telecommunications services. It gives authority to the PRC to establish an intrastate surcharge on public telecommunications services to finance the fund. An eligible telecommunications carrier can then draw from the fund, pursuant to PRC rules, to provide access. Federal universal service funds are also available through PRC oversight as a separate fund. A neutral third-party administrator is to be selected by the PRC to collect and disperse the money pursuant to PRC supervision. This fund will offset a phased reduction in intrastate switched access charges to make them equal to interstate switched access charges established under federal law by May 2008.

Public Regulation Commissioner Linda Lovejoy told the committee that the PRC staff has worked on this bill for over two years. She said it is a very technical issue that is legalistic in nature and hard to understand. A bill like this presented to this committee in one sitting is not enough, she said. Over the session, it is hoped that legislators will embrace this legislation and understand it. She said that the work groups put lots of work into this legislation, they feel it may work. She said she did not support the legislation when it was introduced last year because of the surcharge that would be tacked on, which would have to be paid by rural customers. It would be paid by fixed-income citizens and senior citizens who do not have long-distance service but need local service for medical and health reasons. These people would be negatively impacted.

She said this bill will be presented to the PRC at its meeting on December 2. She said she is one commissioner who has come before an interim committee time and again. She asked, What does the legislature want? How do they want telecommunications regulated? She said that last

year the legislature amended the PRC laws governing telecommunications to create three tiers of regulations and now all the companies that asked for those changes last year want to be deregulated this year. She said there must be balance between the companies and the consumers.

Questions and comments included:

- problems with the three-tiered approach;
- schedules and agendas of forthcoming PRC meetings;
- the need for balance between business and consumer interests;
- the PRC's deliberation of the elements and the various trade-offs for new rules;
- does the current system afford a level playing field for the telecommunications industry fairly;
- non-transitive, fixed costs; and
- recouping the cost of investment by the company to connect customers.

Ed Mahr, representing T-Mobile Wireless, said that if this bill passes, it will affect everyone who carries a cell phone. It is a tax on everyone. His client opposes the legislation.

Russel Sarazen, also of T-Mobile, said that the chart does not show the other side of the equation. He said on the surface it looks like wireless companies get an advantage, but they do not. There are significant problems with the system, but the federal government is in the process of reviewing the situation to solve this problem. He said if New Mexico moves forward without the federal framework, the state will be out of step. He asked the committee not to rush forward with the new tax, but to wait for a national solution.

Michael Bagley, Verizon Wireless, told the committee that Verizon is the largest carrier in New Mexico. He said this bill imposes a new tax on wireless customers. It does not serve their interests.

A conversation ensued regarding that what the wireline companies pay for, the wireless do not pay for, and vice versa.

Lisa Dator, government affairs representative for Sprint, also spoke against the proposal.

Warren Salomon, AARP, said that with this bill, rural users will have an increase, large users will decrease and the rate increase would be as high as 10 percent in some cases.

Jay Gurley, Plateau, a company that has landline and wireless services, said his company supports the bill.

Sam Ray, lobbyist for the Exchange Carrier Group, said there are a lot of people here in favor of the bill.

BUSINESS INCUBATORS

Marie Longsere, Santa Fe Business Incubator, and Nancy Mahoney, WESTCorp, told the committee that the governor supports the business incubator concept. They said that they wanted to have the proposed legislation ready, but that Secretary Homans and Secretary Jimenez are

putting it together and it has not been finalized yet. They summarized the operations of the Santa Fe Business Incubator as a model for the rest of the state and the key ingredients of the anticipated bill, which are: capital funding for facilities; three-year launch funding for initial operations of several incubators statewide; a certification program for incubator operators; and appropriations to enhance the existing incubators. There is a desire for business incubation in Farmington, Clovis, Gallup, Albuquerque, Alamogordo, Las Cruces and Roswell and for expansion efforts in Carlsbad. They introduced supporters in attendance, who included: John Marquez, Agnes Noonan, Carol Radosevich and Julian Brown, who is an entrepreneur and grew her successful business, the Brown Adobe and Mexican Connection salsas. She now has 40 products.

ECONOMIC DEVELOPMENT DEPARTMENT LEGISLATIVE INITIATIVES

Frank Marquez and Carol Selek from the Economic Development Department (EDD) reiterated the same list of proposed legislation from the October meeting in Las Cruces.

Questions and discussion focused on:

- fiscal impacts of tax credit bills;
- an explanation of a compensating tax;
- the competitive disadvantage for military research in New Mexico because of the applicable gross receipts tax of the state;
- removal of the sunset provision on the rural jobs tax credit;
- film training;
- definition of "rural jobs"; and
- the need for analysis of business losses to offset the negative fiscal impact reports that are typical Taxation and Revenue Department analyses of tax credits for economic development.

ALTERNATIVE LENDING

Bill Verant, director of the Financial Institutions Division of the Regulation and Licensing Department, explained the bill introduced last year and supported this year by Representative Lundstrom and others. It is intended to address egregious lending activities by the so-called "payday loan industry". The small loan industry has been an explosion nationwide — it is like the fast-cash version of fast food. There are 650 businesses in New Mexico that make car title loans or payday loans. These financing schemes provide a billion dollars per year to New Mexicans. They have emerged in recent years in part because of the increased costliness of bounced checks. The total charges among the bank, the merchant and the collection agency for bounced checks can exceed the amount that payday lenders provide. Their loans are high-cost but are intended to be short-term. As the amount of float time in check processing has decreased (processed now in hours rather than days), the environment has fostered these closed loans.

Questions and comments included:

- that limiting it too much may result in potential harm to customers, constituents and businesses;
- that the intention is not to kill the industry but to regulate it;

- other hearings by other committees;
- the industry input in development of the bill; and
- the use of garnishment laws for collateral by the industry and the burden on small businesses.

A member of the Navajo Nation Tribal Council spoke in support of the legislation.

A quorum being present, a motion to adopt the Qwest-sponsored bill was made and approved. The alternative lending bill was also approved over the opposition of Representative Foley, who also opposed the telecommunications access reform bill, which was approved.

STATE INVESTMENT COUNCIL

Gary Bland, state investment officer, and Greg Kulka from the State Investment Council talked about the difficulties in assisting and aiding rural areas, and quickly summarized the banking structure and how it presents an obstacle to financing small, risky businesses. The legislature started authorizing investments of the state's permanent funds in the early 1990s. The money invested tends to be in the Rio Grande corridor. Mr. Kulka said the private equity program started investing in 1988. Currently, the state has six percent of its national private equity program invested, which is almost \$210 million. The experience has been pretty good, he said, with a 13 percent annualized return, which is 300 basis points over the S&P 500 Index. Details were provided on some of those specific investments. They told the committee that the state's investment paradigm cannot be analyzed in isolation because it affects the choices banks may make. Investments by the state might bring in banking investments, but these investments may also lead to competition for the state's resident banks. They cited the experience of Los Alamos National Bank, which lost the payroll contract for the Los Alamos National Laboratory to an out-of-state bank.

Comments included:

- the names of companies that the state invested in;
- film company;
- "rural Albuquerque";
- Cyclotron in Carlsbad;
- Representative Foley's compliment of the State Investment Council for its efforts in rural New Mexico;
- a way to capture some of the dollars from the oil and gas industry;
- the potential increase in revenue from higher gas prices;
- the Community Reinvestment Act;
- the collateralization of personal property for small businesses;
- conditioning investments on the majority of employees being New Mexicans;
- the need for aircraft hangars;
- politicizing investment decisions;
- banking standards;
- the inadequate response to business in Grants;
- how New Mexico is the third-fastest growing economy in the country;

- the Community Redevelopment Act;
- options to dilute risk that do not harm banking interests;
- the status on Eclipse Aviation;
- the locations of most companies that the State Investment Council has invested in; and
- federal banking regulations.

Paul Bouchelle, New Mexico Bankers Association (NMBA), said that making loans has been difficult because of the rates. Smaller community banks do not have the wherewithal to make sizeable loans. There are federal regulations that are obstacles, and smaller communities do not have cash-flow projections, which leads federal examiners to say, "You can't make the loan". Because of the failure of the savings and loans and the banks in Texas, the lending rules have gotten much more restrictive. He said cash-flow projections are necessary because money cannot be given without them. The federal Fair Lending Act requires banks to prove that they are making loans to all parts of the community, but this law does not solve the problem of small banks in rural areas. The NMBA is willing to spend time to work this out.

Several people in the audience wanted to speak on the alternative lending bill and were recognized for that purpose. John L. Rabenold, vice president of government affairs for Check 'n Go, seemed to be in support, but Ray Prushnok, New Mexico Public Interest Research Group (PIRG), opposed the bill because it does not go far enough. PIRG wants interest rate caps.

NEW MEXICO FINANCE AUTHORITY

Bill Sisneros, director of the New Mexico Finance Authority (NMFA), and Marquita Russell and Mark Valenzuela appeared before the committee to provide a status report on the capital project funding reform effort. Mr. Sisneros said that NMFA is essentially a \$2 billion bond bank. He discussed the effectiveness of the Statewide Economic Development Finance Act (SEDFA) and the Local Economic Development Act (LEDA). He said the governor's Smart Money Initiative is intended to improve the way SEDFA and LEDA are implemented. The state needs capitalization. To that end, the Smart Money Initiative is a partnership with state banks to finance enterprises from a \$35 million nonrecurring appropriation to create capacity throughout the state. This will go into a revolving loan program.

Questions and comments included:

- the EDD's funding needs;
- the option for the State Investment Council to put the \$35 million into the LEDA and SEDFA;
- the change in statutory language;
- the definition of "project eligibility" or "investment eligibility";
- constraints of the Public Project Revolving Loan Act;
- the role of the Small Business Investment Corporation;
- elaboration on the state version of the federal Community Development Enterprise Act;
- analysis of the potential job creation by tax credit initiatives to fairly compare tax generation to revenue loss;

- the prospective share of the rural areas portion of the \$35 million investment; and
- the legislature's approval of all the projects financed with this each year.

FILM AND DIGITAL MEDIA PRODUCTION

Lisa Strout, State Film Office director, and Eric Witt, film policy advisor to the governor, testified that 25 films were produced in New Mexico during the last 24 months. One film employed 200 local people, with some New Mexico employees making \$5,000 per week. That film spent more than \$400,000 for lumber in one week. The governor's Film Incentive Program has influenced federal efforts to support the film industry. New Mexico is shaping the national dialogue, they said. The state's policy is driven by the investments by the State Investment Council in film and media productions. The legislature should be credited with this accomplishment.

Ms. Strout said that her office attended two events in Los Angeles to promote New Mexico as a destination for film producers. California and New Mexico are the two leading states trying to keep filmmakers in the United States. But in order for New Mexico to keep its competitive advantage, it needs to stay ahead of states like Pennsylvania and Illinois, which are also trying to attract filmmakers with tax incentives and investment schemes. New Mexico has the cleanest program so far, with fewer complicated conditions. The film office is now reviewing 175 scripts, with 10 per week being submitted. Television producers are not showing interest in New Mexico.

The state has three-and-a-half crews of New Mexico resident film professionals. The state needs five in order to accommodate the growing business. There are currently three productions preparing to shoot in New Mexico. For 10 years, the U.S. has been losing film production to Canada. New Mexico is now competing with Canada.

Questions and comments included:

- the definition of "New Mexico resident" for qualifying for film investment dollars;
- the need for auditing movie payroll records to ensure that employees are residents;
- the New Mexico State University film training program, "on-demand media department" and union-certifiable curriculum at community colleges and branch campuses;
- the New Mexico filmmakers program and the governor's "cup";
- the need for cooperation with the Workforce Development Board;
- the need for filmmaking in rural New Mexico;
- digital media and opportunities to tap into national laboratories in New Mexico; and
- the state strategic media plan.

CAPITAL FINANCING

Secretary of Finance and Administration James Jimenez and Robert Apodaca, capital projects director for the Department of Finance and Administration (DFA), testified that the administration is going to be recommending the creation of a water technical infrastructure team. Secretary Jimenez said that this is incumbent on his agency to make sure there is accountability.

During Governor Richardson's travels around the state, he encountered information that indicates a significant need for reform of the capital appropriation process. Secretary Jimenez said that problems that were conveyed to the governor included: piecemeal planning, little prioritization, inadequate financing and weak project management and oversight. The secretary said that the governor has appointed a finance council to develop an "invest in New Mexico" finance plan with six priorities. Water is the number one priority. The governor wants a water infrastructure technical team, chaired by Anne Watkins, special assistant to the state engineer, to act as a single point of entry for submitting water-related capital projects for consideration by the executive. The team will develop a uniform funding application process that will put together public and private partnerships and encourage regional approaches to water delivery systems and services.

The governor will be requesting a total of \$44 million of investments in water projects this year, which will include water conservation, regional delivery systems, metering, desalination, reverse osmosis and aquifer re-injection. Governor Richardson is looking for funding from the Water Trust Fund, severance tax revenues and the general fund.

The total capital capacity for the forthcoming session may be as high as \$350 million. So far, the total capital requests based on a survey of the top three priorities of political subdivisions amount to \$484,294,000.

Questions and comments included:

- using the Dona Ana Mutual Domestic Water Consumers' Association regional water system as a model for the rest of the state;
- the source of the estimate of capital requests and revenue;
- the relation to the ICIP process;
- legislative opposition to the governor's reform plans and the governor's plans for dialogue;
- the idea of a minimum threshold for capital funding and what is an appropriate level;
- the disposition of unspent money for previously approved capital projects;
- funding for the Water Trust Fund;
- estimated nonrecurring revenue;
- the adjudication of water rights;
- the need for NMFA to educate communities;
- tax credits and the governor's strategic plan for tax incentives;
- politically motivated vetoes;
- the need to improve the capital planning process;
- the number of communities that responded to the survey: 99 municipalities, 41 tribal governments and about 70 special districts responded; and
- the importance of funding small projects because state money is used to leverage federal money.

Secretary Jimenez introduced Dave Hanna, retiring DFA staff coordinator of the E-911 program. Mr. Hanna explained the need for a proposed fee increase for all telecommunications services to pay for the emergency 911 system for a seamless dispatch system.

Questions and comments included:

- the purpose of the fees;
- review by the PRC;
- the status of rural addressing;
- caller identification of cell phones originating calls on the system; and
- geographic coverage of existing facilities.

PROPOSED LEGISLATION (the bills were heard but failed to be endorsed by the committee for lack of a quorum):

Local option gross receipts tax for quality-of-life projects: Cricket Apple and Cissy McDandrews spoke in favor of the bill.

Rural Extension Fund discontinuance: Leo Baca, Charlie Marquez and J.D. Bullington spoke in favor of the bill. Questions addressed service to remote customers, the cost of running lines, comparison of costs for trenching in soft dirt versus hard rock, held orders on Navajo land and assurance that the money is spent properly. Public Regulation Commissioner Jerome Block opposed the bill.

Small business assistance tax credit: Lenny Martinez and Vic Chavez from Sandia National Laboratories, Marianne Johnston, Carol Sanchez and Vince Murphy spoke in favor of the bill.

Cable television public access: Ronda Orchard and Steve Ranieri spoke in favor of the bill. They want the state to require no less than two percent of the annual revenues of cable television providers to be given to public access management organizations statewide. They call it media democracy. Ken Schultz spoke against it.

Rural Development Response Council: Bob Coppedge, Pam Galbraith and Renee Julien spoke in favor of funding the council.

Utilities rights of way: John Gillis of PNM asked the committee to support a bill to amend a 1909 law to allow utilities to condemn enough land for related facilities as well as transmission lines when eminent domain is exercised.

Enterprise facilitation: a bill to appropriate money for Earnesto Sciroli, a business consultant, to provide technical advice to business enterprises in select communities.

Individual development accounts: a bill sponsored by Representative Lundstrom two years ago that would provide for an advisory committee to oversee the implementation of legislation previously enacted.

Technical research collaborative: Roman Maes described the research collaborative as an approach to spin-off businesses from academic and laboratory research projects. An

appropriation to New Mexico Tech would provide a fiscal manager for coordination of six centers of research excellence at the various institutions.

INDIAN GAMING

Charlie Dorame, president of the Indian Gaming Association, told the committee that 12,000 jobs have been created from Indian gaming without any taxpayer subsidies. He said this is home-grown economic development. Thirty-two million dollars in revenue has been shared with the state so far. He said the Indian casinos are a major tourist attraction for the state, and he invited the committee to meet at one of the casinos for its next meeting.

Drew Setter, director of the association, said that the non-Indian gaming organizations, the race tracks, have been discussing a mutual strategy for improving the gaming business.

Questions and comments included:

- the settlement of disputed revenue sharing with the Mescalero Apache Tribe;
- ramifications of out-of-state tribes opening casinos in New Mexico;
- the status of the Pueblo of Pojoaque's litigation;
- the state's role in tribal trust lands;
- whether video gaming machines are outside the scope of gaming compacts;
- the annual gross revenue from Indian gaming that stays in New Mexico compared to the amount that goes out of state;
- the use of gaming revenues to offset the loss of federal appropriations;
- the hesitation of banks to finance Pueblo of Tesuque ventures because of the compacts and competition;
- Indian gaming revenues to the state compared to the state's appropriations to the gaming tribes and pueblos;
- funds for non-gaming tribes and pueblos from Indian gaming;
- the capacity of the state to sustain more gaming; and
- the potential for class 2 gaming machines to circumvent the spirit of the gaming compacts.

NATIONAL GUARD EFFECTS ON THE STATE'S ECONOMY

Delano Garcia, Colonel Barry Stout and John Early told the committee that every dollar invested by the state in the National Guard is matched on a three-to-one ratio by the federal government. They said the National Guard has a combined (air and army) impact on the state of almost \$220 million. The guard has more than 4,000 members. The federal money depends on state appropriations for a match. The guard has facilities in 29 locations throughout the state. One thousand five hundred New Mexico guardsmen are deployed in Iraq, which is a 46 percent deployment rate. The guard is involved in charitable activities and helping kids stay out of trouble. The budget has been reduced in recent years, and consequently, facilities are not being maintained adequately and soldiers are less well-equipped than they should be going into combat situations.

Comments included:

- members of legislators' families serving in the guard;
- the military-style charter school in Espanola that is serving as a model for others;
- recruitment incentives;
- service by legislators;
- hardships for deployed families and the need for assistance;
- capital outlay needs of \$3.3 million;
- compliments to Colonel Stout;
- vehicle maintenance, operations and deployment status;
- programs to help wounded guard members in Iraq;
- potential youth academies in Roswell and Las Cruces; and
- all legislators contributing a small share of their capital outlay to the guard.

The committee adjourned at 3:30 p.m.

MINUTES
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE
December 8, 2004
Room 322, State Capitol

The meeting of the Economic and Rural Development and Telecommunications Committee was called to order by Representative Mary Helen Garcia, chair, at 1:35 p.m. on December 8, 2004.

PRESENT

Rep. Mary Helen Garcia, Chair
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Rep. Debbie Rodella
Rep. Nick L. Salazar
Sen. Leonard Tsosie
Rep. Richard D. Vigil

ABSENT

Rep. Jose A. Campos
Rep. Richard P. Cheney
Sen. Phil A. Griego
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell
Rep. Patricia A. Lundstrom
Sen. John Pinto
Sen. William E. Sharer

Advisory Members

Rep. Ted Hobbs
Rep. Harriett Ruiz

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. Dianne Miller Hamilton
Rep. John A. Heaton
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Raymond L. Kysar
Rep. Andy Nunez
Rep. Pauline J. Ponce

Staff

Gordon Meeks
Larry Matlock

The committee held a special meeting to consider bills proposed for endorsement that were presented during the November meeting and at earlier meetings of the committee during the 2004 interim. The committee had a quorum as a result of special appointments made for Representative Rodella, Representative Salazar and Senator Tsosie to participate as voting members.

The committee heard abbreviated descriptions of and endorsed and assigned sponsors for the following bills:

1. local option gross receipts for quality-of-life projects (Picraux);

2. rural extension fund discontinuance (Nunez);
3. cable television access (Carraro);
4. rural development response council (Campos);
5. utility rights-of-way widths (Griego);
6. manufacturing extension program (Saavedra);
7. enterprise facilitation (Heaton);
8. individual development accounts amendments (Lundstrom); and
9. technical research collaborative (Cisneros/Heaton).

The meeting adjourned at 2:45 p.m.

APPENDIX

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE ECONOMIC DEVELOPMENT DEPARTMENT
FOR A COMPETITIVE GRANTS PROGRAM IN THREE LOCAL PUBLIC BODIES
TO DEMONSTRATE ENTERPRISE FACILITATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Six hundred thousand dollars
(\$600,000) is appropriated from the general fund to the
economic development department for expenditure in fiscal year
2006 for a competitive grants program in three local public
bodies to demonstrate the efficacy of enterprise facilitation.
The grants made under this appropriation shall require a fifty
percent match from the recipient local public bodies for their
eligibility. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2006 shall revert to the general
fund.

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO FINANCIAL INSTITUTIONS AND REGULATIONS; AMENDING
THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT TO INCREASE THE
MEMBERSHIP OF THE ADVISORY COMMITTEE; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-30-6 NMSA 1978 (being Laws 2003,
Chapter 362, Section 6) is amended to read:

"58-30-6. ADVISORY COMMITTEE.--

A. An advisory committee shall be created to
provide oversight of the administration of individual
development account programs and to suggest possible changes
that benefit account owners or improve the effectiveness of the
individual development account programs throughout the state.

B. The advisory committee shall meet at least two
times in a calendar year to review the implementation of the

underscored material = new
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1 Individual Development Account Act.

2 C. The advisory committee shall consist of the
3 lieutenant governor [~~and eight members appointed by the~~
4 ~~governor to represent the state geographically. The director~~
5 ~~or his designee shall serve as an ex-officio member of the~~
6 ~~advisory committee~~], the director or the director's designee,
7 eight members appointed by the governor to represent the
8 state's geographic regions and nine representatives from the
9 following interests:

- 10 (1) the New Mexico mortgage finance authority;
11 (2) the public education department;
12 (3) the human services department;
13 (4) the economic development department;
14 (5) the office of workforce development;
15 (6) the bureau of business and economic
16 research at the university of New Mexico;
17 (7) the New Mexico small business investment
18 corporation;
19 (8) the health care industry; and
20 (9) nonprofit organizations that promote asset
21 building with low-income populations.

22 D. Members of the advisory committee who are
23 account owners shall receive per diem and mileage pursuant to
24 the Per Diem and Mileage Act and shall receive no other
25 compensation, perquisite or allowance for their participation

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1 on the advisory committee.

2 E. The division shall provide adequate staff
3 support and administrative services for the advisory
4 committee."

5 Section 2. APPROPRIATIONS.--

6 A. One hundred thousand dollars (\$100,000) is
7 appropriated from the general fund to the local government
8 division of the department of finance and administration for
9 expenditure in fiscal year 2006 to pay for the expenses of the
10 individual development account advisory committee pursuant to
11 the Individual Development Account Act. Any unexpended or
12 unencumbered balance remaining at the end of fiscal year 2006
13 shall revert to the general fund.

14 B. One hundred fifty thousand dollars (\$150,000) is
15 appropriated from the general fund to the local government
16 division of the department of finance and administration for
17 expenditure in fiscal year 2006 to carry out the purposes of
18 the Individual Development Account Act. Any unexpended or
19 unencumbered balance remaining at the end of fiscal year 2006
20 shall revert to the general fund.

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE ECONOMIC DEVELOPMENT DEPARTMENT
FOR MANUFACTURING EXTENSION SERVICES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--

A. Five hundred thousand dollars (\$500,000) is appropriated from the general fund to the economic development department for expenditure in fiscal years 2005 and 2006 to contract for manufacturing extension services. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

B. Expenditure of any of the money appropriated in Subsection A of this section is contingent upon the receipt of money from the national institute of standards and technology to operate a manufacturing center in New Mexico that is

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1 approved by the national institute of standards and technology.

2 Section 2. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE TECHNOLOGY RESEARCH
COLLABORATIVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. TECHNOLOGY RESEARCH COLLABORATIVE CREATED--
PURPOSE.--

A. The "technology research collaborative" is
created. The New Mexico institute of mining and technology
shall be the fiscal agent for the collaborative.

B. Participating institutions associated with the
collaborative shall include national laboratories, other major
research institutes and all the post-secondary institutions of
New Mexico.

C. The purposes of the collaborative are to:

(1) establish advanced technology centers

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1 based on the wealth of scientific and technical talent that
2 exist in the member institutions;

3 (2) develop and create new intellectual
4 property for the state and encourage new opportunities for
5 business and increased jobs;

6 (3) commercialize the intellectual property;
7 and

8 (4) create a work force to support enterprises
9 based on the intellectual property.

10 D. The board of regents of the New Mexico institute
11 of mining and technology shall contract with an organization to
12 provide management oversight of and continuity in funding of
13 the advanced technology centers.

14 E. The technology research collaborative shall
15 prepare reports showing the progress and condition of the
16 collaborative as the board of regents of the New Mexico
17 institute of mining and technology deems necessary. The
18 reports of the collaborative may be printed and distributed by
19 the collaborative as appropriate.

20 F. The collaborative may receive appropriations
21 from the legislature through the board of regents of the New
22 Mexico institute of mining and technology and may receive any
23 other items of value from public or private sources.

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO PUBLIC UTILITIES; REMOVING A REQUIREMENT FOR
DETERMINATION OF RIGHT-OF-WAY WIDTH FOR ASSOCIATED FACILITIES;
AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-1-4 NMSA 1978 (being Laws 1909,
Chapter 141, Section 4, as amended) is amended to read:

"62-1-4. EMINENT DOMAIN--SURVEYS--ENTRY ON PROPERTY--
CROSSING RIGHT OF WAY OF ANOTHER CORPORATION.--

A. Corporations organized pursuant to Section
62-1-1 NMSA 1978 are authorized to enter upon any property
belonging to the state or to persons, firms or corporations for
the purpose of making surveys and from time to time to
appropriate so much of such property not exceeding [~~a strip one
hundred feet wide~~] seven acres in any one place as may be

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1 necessary for their purpose. The corporations have the right
2 of access to such property to construct and place their lines,
3 pipes, poles, cables, conduits, towers, stations, fixtures,
4 appliances and other structures and to repair them. If a
5 corporation cannot agree with the owners as to a right of way
6 or the compensation for a right of way, the corporation may
7 proceed to obtain the right of way in the manner provided by
8 law for condemnation of such property. Where it is necessary
9 to cross the right of way of another corporation, the crossing
10 shall be effected either by mutual agreement or in the manner
11 now provided by law for the crossing of one railroad by another
12 railroad; provided that the construction of any electric
13 transmission lines crossing the right of way of a railroad
14 shall comply with the minimum standards of the national
15 electric safety code. When it is necessary for a corporation
16 to construct any transmission line [~~and associated facilities~~]
17 for the transmission of electrical power requiring a width for
18 right of way of greater than one hundred feet, unless that
19 width is agreed to by the parties, the applicant for the right
20 of way shall apply to the [~~New Mexico public utility~~]
21 commission as provided in Section 62-9-3.2 NMSA 1978 for a
22 determination of the width necessary for the right of way for
23 the transmission line.

24 B. For the purposes of this section, "corporation"
25 means individuals, firms, partnerships, companies,

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1 municipalities, rural electric cooperatives organized under
2 Laws 1937, Chapter 100 or the Rural Electric Cooperative Act,
3 lessees, trustees or receivers appointed by any court."

4 Section 2. Section 62-9-3.2 NMSA 1978 (being Laws 1980,
5 Chapter 20, Section 18, as amended) is amended to read:

6 "62-9-3.2. APPLICATION FOR DETERMINATION OF RIGHT-OF-WAY
7 WIDTH.--

8 A. Unless otherwise agreed to by the parties, ~~[no]~~
9 a person shall not begin the construction of any transmission
10 line requiring a width for right-of-way of greater than one
11 hundred feet without first obtaining from the commission a
12 determination of the necessary right-of-way width to construct
13 and maintain the transmission line. For the purposes of this
14 subsection, "construction" does not include acquisition of
15 rights of way, preparation of surveys or ordering of equipment.

16 B. For the purposes of this section, "transmission
17 line" means any electric transmission line ~~[and associated~~
18 ~~facilities]~~ requiring a width for right of way of greater than
19 one hundred feet.

20 C. Application for the right-of-way width
21 determination shall contain all information required by the
22 commission to make its determination, be made in writing,
23 setting forth the facts involved, and be filed with the
24 commission.

25 D. The applicant shall cause notice of the time and

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1 place of hearing on the application for the right-of-way
2 determination to be given to any owner of property proposed to
3 be taken and, if applicable, to the person in actual occupancy
4 of the property. Notice shall be given by mailing a copy by
5 ordinary first class mail at least twenty days before the time
6 set for hearing. Proof of the giving of notice shall be made
7 on or before the hearing and filed in the proceeding.

8 E. The commission shall, after public hearing, act
9 upon the application.

10 F. The commission shall issue its order granting or
11 denying the application within six months from the date the
12 application is filed with the commission. Failure to issue its
13 order within six months is deemed to be approval of the
14 application."

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1 SENATE BILL

2 **47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

3 INTRODUCED BY

4
5 DISCUSSION DRAFT

6
7 FOR THE

8 ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

9
10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; AMENDING, REPEALING AND
12 ENACTING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT TO
13 PROVIDE FOR COMPETITION BETWEEN INCUMBENT LOCAL EXCHANGE
14 CARRIERS AND ALTERNATIVE TELECOMMUNICATIONS PROVIDERS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 63-9A-2 NMSA 1978 (being Laws 1985,
18 Chapter 242, Section 2, as amended by Laws 2000, Chapter 100,
19 Section 3 and also by Laws 2000, Chapter 102, Section 3) is
20 amended to read:

21 "63-9A-2. PURPOSE.--The legislature declares that it
22 remains the policy of the state of New Mexico to maintain the
23 availability of access to telecommunications services at
24 affordable rates. Furthermore, it is the policy of this state
25 to have comparable telecommunications service rates, as

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1 established by the commission, for comparable markets or market
2 areas. To the extent that it is consistent with maintaining
3 availability of access to service at affordable rates and
4 comparable telecommunications service rates, it is further the
5 policy of this state to encourage competition in the provision
6 of public telecommunications services, thereby allowing access
7 by the public to resulting rapid advances in telecommunications
8 technology. It is the purpose of the New Mexico
9 Telecommunications Act to permit a regulatory framework that
10 will ~~[allow an orderly transition from a regulated~~
11 ~~telecommunications industry to a competitive market~~
12 ~~environment]~~ acknowledge competitive business and residential
13 market environments and allow incumbent telecommunications
14 carriers to respond to competition. It is further the intent
15 of the legislature that the encouragement of competition in the
16 provision of public telecommunications services will result in
17 greater investment in the telecommunications infrastructure in
18 the state, improved service quality and operations and lower
19 prices for such services."

20 Section 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,
21 Chapter 242, Section 3, as amended) is amended to read:

22 "63-9A-3. DEFINITIONS.--As used in the New Mexico
23 Telecommunications Act:

24 A. "affordable rates" means local exchange service
25 rates that promote universal service within a local exchange

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1 service area, giving consideration to the economic conditions
2 and costs to provide service in such area;

3 B. "alternative form of regulation" means a
4 streamlined form of regulation that is an alternative to rate
5 of return regulation and establishes reasonable service quality
6 standards and flexible pricing for telecommunications services;

7 C. "alternative telecommunications provider" means
8 a company or carrier that competes with an incumbent local
9 exchange carrier and may include a competitive local exchange
10 carrier, a wireless carrier, a broadband provider company or
11 any affiliate who provides voice, information or data
12 telecommunications services;

13 [~~B.~~] D. "cable television service" means the one-
14 way transmission to subscribers of video programming or other
15 programming service and subscriber interaction, if any, that is
16 required for the selection of such video programming or other
17 programming service;

18 [~~G.~~] E. "commission" means the public regulation
19 commission;

20 [~~D.~~] ~~"competitive telecommunications service" means~~
21 ~~a service that has been determined to be subject to effective~~
22 ~~competition pursuant to Section 63-9A-8 NMSA 1978;~~

23 ~~E. "effective competition" means that the customers~~
24 ~~of the service have reasonably available and comparable~~
25 ~~alternatives to the service;]~~

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1 F. "fund" means the state rural universal service
2 fund;

3 G. "incumbent local exchange carrier" means a
4 person or an affiliate of a person that:

5 (1) was authorized to provide local exchange
6 service on February 8, 1996 or a successor or assignee of the
7 person or affiliate; or

8 (2) a carrier that will be treated as an
9 incumbent local exchange carrier if the federal communications
10 commission determines that the provider or class or category of
11 carrier shall be treated as an incumbent local exchange carrier
12 pursuant to 47 U.S.C. 251(H)(2);

13 ~~[G.]~~ H. "local exchange area" means a geographic
14 area encompassing one or more local communities, as described
15 in maps, tariffs or rate schedules filed with the commission,
16 where local exchange rates apply;

17 ~~[H.]~~ I. "local exchange service" means the
18 transmission of two-way interactive switched voice
19 communications furnished by a telecommunications company within
20 a local exchange area;

21 ~~[I.]~~ J. "message telecommunications service" means
22 telecommunications service between local exchange areas within
23 the state for which charges are made on a per-unit basis, not
24 including wide-area telecommunications service, or its
25 equivalent, or individually negotiated contracts for

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1 telecommunications services;

2 [~~J.~~] K. "mid-size carrier" means a
3 telecommunications company with more than fifty thousand but
4 less than three hundred seventy-five thousand access lines in
5 the state;

6 [~~K. "noncompetitive telecommunications service"~~
7 ~~means a service that has not been determined to be subject to~~
8 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978;~~]

9 L. "private telecommunications service" means a
10 system, including the construction, maintenance or operation
11 thereof, for the provision of telecommunications service, or
12 any portion of that service, by a person for the sole and
13 exclusive use of that person and not for resale, directly or
14 indirectly. For purposes of this definition, the person that
15 may use such service includes any affiliates of the person if
16 at least eighty percent of the assets or voting stock of the
17 affiliates is owned by the person. If any other person uses
18 the telecommunications service, whether for hire or not, the
19 private telecommunications service is a public
20 telecommunications service;

21 M. "public telecommunications service" means the
22 transmission of signs, signals, writings, images, sounds,
23 messages, data or other information of any nature by wire,
24 radio, lightwaves or other electromagnetic means originating
25 and terminating in this state regardless of actual call

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1 routing. "Public telecommunications service" does not include
2 the provision of terminal equipment used to originate or
3 terminate such service; private telecommunications service;
4 broadcast transmissions by radio, television and satellite
5 broadcast stations regulated by the federal communications
6 commission; radio common carrier services, including mobile
7 telephone service and radio paging; or one-way cable television
8 service; and

9 N. "telecommunications company" means a person that
10 provides public telecommunications service."

11 Section 3. A new section of the New Mexico
12 Telecommunications Act is enacted to read:

13 "[NEW MATERIAL] RATES FOR TELECOMMUNICATIONS SERVICES--
14 PUBLIC NOTICE.--

15 A. Rates for retail public telecommunications
16 services provided by a telecommunications company shall be
17 subject to regulation by the commission only in the manner and
18 to the extent authorized by this section.

19 B. A telecommunications company shall provide price
20 lists that shall be effective for all retail public
21 telecommunications services:

22 (1) ten days after they are provided to the
23 commission for all business services; or

24 (2) ten days after provision to the commission
25 and posting to the telecommunications company's public web site

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1 for residential local exchange service in areas where there are
2 two or more alternative telecommunications providers.

3 C. Where two or more alternative telecommunications
4 providers do not exist, rates for residential local exchange
5 service may be increased by an incumbent local exchange carrier
6 only after forty-five days notice to all affected subscribers.
7 The notice of increase shall include:

8 (1) the reasons for the rate increase;
9 (2) a description of the affected service;
10 (3) an explanation of the right of the
11 subscriber to petition the commission for a public hearing on
12 the rate increase;

13 (4) a list of local exchange areas that are
14 affected by the proposed rate increase; and

15 (5) the dates, times and places for the public
16 informational meetings required by this section.

17 D. An incumbent local exchange carrier that proposes
18 to increase its rates for residential local exchange service
19 pursuant to Subsection C of this section shall hold at least
20 one public informational meeting in each public regulation
21 commissioner's district as established by the Public Regulation
22 Commission Apportionment Act in which there is a local exchange
23 area affected by the rate increase.

24 E. Residential local exchange service rates increased
25 by a telecommunications company pursuant to Subsection C of

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1 this section shall be reviewed by the commission only upon
2 written protest signed by two and one-half percent of all
3 affected subscribers. The protest shall set forth the
4 particular rate or charge as to which review is requested, the
5 reasons for the requested review and the relief that the
6 persons protesting desire. If a proper protest is presented to
7 the commission within sixty days from the date the notice of
8 the rate change was sent to affected subscribers of a
9 telecommunications company, the commission may accept and file
10 the complaint and, upon proper notice, may suspend the rates at
11 issue during the pendency of the proceedings and reinstate the
12 rates previously in effect and shall hold and complete a
13 hearing within ninety days after filing to determine if the
14 rates as proposed are fair, just and reasonable. The
15 commission may, within sixty days after close of the hearing,
16 enter an order adjusting the proposed rates. In the order, the
17 commission may order a refund of amounts collected in excess of
18 the rates and charges approved at the hearing, which may be
19 paid as a credit against billings for future services. If the
20 complaint is denied, the commission shall enter within forty-
21 five days after the close of the hearing an order denying the
22 complaint, and the rates shall be deemed approved.

23 F. Rates for local exchange, vertical and long
24 distance service to retail end-user customers may be reduced to
25 a level where prices or rates charged for such a service shall

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1 cover the average variable cost for the provision of the
2 service.

3 G. A telecommunications company operating pursuant to
4 this section shall have the ability to offer or discontinue
5 offering special incentives, discounts, packaged offerings,
6 temporary rate waivers or other promotions or to offer
7 individual contracts."

8 Section 4. Section 63-9A-8.2 NMSA 1978 (being Laws 2000,
9 Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4,
10 as amended) is amended to read:

11 "63-9A-8.2. IDENTIFYING SUBSIDIES--RULES--PRICE CAPS.--

12 A. No later than December 31, 2000, the commission
13 shall review existing rates for public telecommunications
14 services offered by incumbent local exchange carriers with more
15 than fifty thousand access lines and identify all subsidies
16 that are included in the rates. The commission shall issue
17 rules requiring that the identified subsidies appear on
18 customer bills and establish a schedule not later than April 1,
19 2001 whereby implicit subsidies be eliminated through
20 implementation of the state rural universal service fund or
21 through revenue-neutral rate rebalancing or any other method
22 consistent with the intent of the New Mexico Telecommunications
23 Act.

24 B. No later than [~~January 1, 2001~~] July 1, 2005, the
25 commission shall adopt rules uniformly applicable to all

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1 telecommunications companies that:

2 (1) establish consumer protection and quality-
3 of-service standards;

4 (2) ensure adequate investment in the
5 telecommunications infrastructure in both urban and rural areas
6 of the state;

7 (3) promote availability and deployment of high-
8 speed data services in both urban and rural areas of the state;

9 (4) ensure the accessibility of interconnection
10 by competitive local exchange carriers in both urban and rural
11 areas of the state; and

12 (5) establish an expedited regulatory process
13 for considering matters related to telecommunications services
14 that are pending before the commission.

15 C. No later than April 1, 2001, but in no case prior
16 to the adoption of the rules required in Subsection B of this
17 section, the commission shall eliminate rate of return
18 regulation of incumbent telecommunications carriers with more
19 than fifty thousand access lines and implement an alternative
20 form of regulation that includes reasonable price caps for
21 basic residence and business local exchange services.

22 D. Rules adopted pursuant to this section shall not
23 be applied to incumbent rural telecommunications carriers as
24 that term is defined in Subsection I of Section 63-9H-3 NMSA
25 1978.

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E. The provisions of this section do not apply to a mid-size carrier."

Section 5. REPEAL.--Section 63-9A-8 NMSA 1978 (being Laws 1985, Chapter 242, Section 8, as amended) is repealed.

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SENATE BILL
47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

DISCUSSION DRAFT

FOR THE ECONOMIC AND RURAL
DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE RURAL TELECOMMUNICATIONS ACT OF NEW
MEXICO TO PROVIDE FOR THE STATE RURAL UNIVERSAL SERVICE FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Rural Telecommunications
Act of New Mexico is enacted to read:

"[NEW MATERIAL] STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT--BOARD.--

A. The "state rural universal service fund" is
created and shall be administered pursuant to this section.
Money in the fund shall be used to maintain and support, at
affordable rates, public telecommunications services to be
determined by the commission.

B. The fund shall be financed by a surcharge on
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1 certain intrastate retail public telecommunications services to
2 be determined by the commission, excluding services provided
3 pursuant to a low-income telephone assistance plan billed to
4 end-user customers by a telecommunications carrier, and
5 excluding all amounts from surcharges, gross receipts taxes,
6 excise taxes, franchise fees and similar charges. For the
7 purpose of financing the fund, the commission has the authority
8 to apply the surcharge on intrastate retail public
9 telecommunications services provided by telecommunications
10 carriers and to comparable retail alternative services provided
11 by telecommunications carriers, including commercial mobile
12 radio services at a competitively and technologically neutral
13 rate or rates to be determined by the commission. In
14 prescribing competitively and technologically neutral surcharge
15 rates, the commission may make distinctions between services
16 subject to a surcharge, but it shall require all carriers
17 subject to the surcharge to apply uniform surcharge rates for
18 the same or comparable services. Money deposited in the fund
19 is not public money, and the administration of the fund is not
20 subject to the provisions of laws regulating public funds. The
21 commission shall not apply surcharges to a private
22 telecommunications network.

23 C. The fund shall be competitively and
24 technologically neutral, equitable and nondiscriminatory in its
25 collection and distribution of funds, shall be portable between

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1 eligible telecommunications carriers and shall provide a
2 specific, predictable and sufficient support mechanism as
3 determined by the commission that reduces intrastate switched
4 access charges to interstate switched access charge levels in a
5 revenue-neutral manner and ensures universal service in the
6 state.

7 D. The commission shall:

8 (1) establish eligibility criteria for
9 participation in the fund, consistent with federal law, that
10 ensure the availability of service at affordable rates and that
11 shall not restrict or limit an eligible telecommunications
12 carrier from receiving federal universal service support;

13 (2) provide for the collection of the surcharge
14 created pursuant to this section on a competitively neutral
15 basis and for the administration and disbursement of money from
16 the fund;

17 (3) determine those services requiring support
18 from the fund;

19 (4) provide for the separate administration and
20 disbursement of federal universal service funds consistent with
21 federal law; and

22 (5) establish affordability benchmark rates for
23 local residential and business services that shall be utilized
24 in determining the level of support from the fund. The initial
25 benchmark for residence service shall be the weighted statewide

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1 average basic exchange rate adjusted for offsets to intrastate
2 switched access charge reductions. The process for determining
3 subsequent adjustments to the benchmark shall be established
4 through rulemaking.

5 E. All incumbent rural telecommunications carriers
6 and competitive carriers already designated as eligible
7 telecommunications carriers for the fund shall be eligible for
8 participation in the fund. All other carriers that choose to
9 become eligible to receive support from the fund may petition
10 the commission to be designated as an eligible
11 telecommunications carrier for the fund. The commission may
12 grant eligible carrier status to a competitive carrier in a
13 rural area upon a finding that granting the application is in
14 the public interest. In making a public interest finding, the
15 commission shall consider at least the following items:

16 (1) whether granting eligible carrier status to
17 multiple carriers in a designated area is likely to result in
18 more customer choice;

19 (2) the impact of designation of an additional
20 eligible carrier on the size of the fund;

21 (3) the unique advantages and disadvantages of
22 the competitor's service offering;

23 (4) any commitments made regarding the quality
24 of telephone service; and

25 (5) the competitive carrier's willingness and

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1 ability to offer service throughout the designated service
2 areas within a reasonable time frame.

3 F. The commission shall adopt rules for the
4 implementation and administration of the fund in accordance
5 with the provisions of this section and for variances from the
6 provisions no later than November 1, 2005.

7 G. The commission shall, upon implementation of the
8 fund, select a neutral third-party administrator to collect,
9 administer and disburse money from the fund under the
10 supervision and control of the commission pursuant to rules
11 adopted by the commission. The fund administrator may be
12 reasonably compensated for the specified services from the
13 surcharge proceeds to be received by the fund pursuant to
14 Subsection B of this section. For purposes of this subsection,
15 the commission shall not be a neutral third-party
16 administrator.

17 H. The fund administrator shall ensure the
18 availability of local telecommunications service as determined
19 by the commission at affordable rates in rural high cost areas
20 of the state.

21 I. Beginning April 1, 2006, the commission shall
22 commence the phase-in of reductions in intrastate switched
23 access charges. By May 1, 2008, the commission shall ensure
24 that intrastate switched access charges are equal to interstate
25 switched access charges established by the federal

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1 communications commission as of January 1, 2006. Nothing in
2 this section shall preclude the commission from considering
3 further adjustments to intrastate switched access charges based
4 on changes to interstate switched access charges after May 1,
5 2008.

6 J. To ensure that providers of intrastate retail
7 telecommunications service contribute to the fund and to
8 further ensure that the surcharge to be paid by the end-user
9 customer will be held to a minimum, no later than November 1,
10 2005, the commission shall adopt rules, or take other
11 appropriate action, to require all such providers to
12 participate in a plan to ensure accurate reporting.

13 K. The commission shall authorize payments from the
14 fund to incumbent local exchange carriers in combination with
15 revenue-neutral rate rebalancing up to the affordability
16 benchmark rates, in an amount equal to the reduction in
17 revenues that occurs as a result of reduced intrastate switched
18 access charges. The commission shall determine the methodology
19 to be used to authorize payments to all other carriers that
20 apply for and receive eligible carrier status. Any reductions
21 in charges for access services resulting from compliance with
22 this section shall be passed on for the benefit of consumers in
23 New Mexico.

24 L. In a rate proceeding filed pursuant to Subsection
25 F of Section 63-9H-7 NMSA 1978, the commission may also

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1 authorize payments from the fund to incumbent rural
2 telecommunications carriers serving in high-cost areas of the
3 state that have reduced access charges upon a finding by the
4 commission that such payments are needed to ensure the
5 widespread availability and affordability of residential local
6 exchange service.

7 M. By December 1, 2008, the fund administrator shall
8 make a report to the commission and the legislature. The
9 report shall include the effects of access reductions. The
10 report shall also make recommendations for any changes to the
11 structure, size or purposes of the fund."

12 Section 2. Section 63-9H-7 NMSA 1978 (being Laws 1999,
13 Chapter 295, Section 7) is amended to read:

14 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL
15 TELECOMMUNICATIONS CARRIER.--

16 A. Rates for retail rural public telecommunications
17 services provided by an incumbent rural telecommunications
18 carrier shall be subject to regulation by the commission only
19 in the manner and to the extent authorized by this section.

20 B. An incumbent rural telecommunications carrier
21 shall file tariffs for all retail public telecommunications
22 services, other than residential local exchange service, which
23 shall be effective after ten days' notice to the commission and
24 publication in a local newspaper in the incumbent service area.
25 An incumbent rural telecommunications carrier shall remain

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1 subject to complaint by an interested party subject to Section
2 [~~10 of the Rural Telecommunications Act of New Mexico~~] 63-9H-10
3 NMSA 1978.

4 C. Rates for residential local exchange service may
5 be increased by an incumbent rural telecommunications carrier
6 only after sixty days' notice to all affected subscribers. The
7 notice of increase shall include:

8 (1) the reasons for the rate increase;
9 (2) a description of the affected service;
10 (3) an explanation of the right of the
11 subscriber to petition the commission for a public hearing on
12 the rate increase;

13 (4) a list of local exchange areas that are
14 affected by the proposed rate increase; and

15 (5) the dates, times and places for the public
16 informational meetings required by this section.

17 D. An incumbent rural telecommunications carrier may
18 increase its rates for residential local exchange service in
19 the manner otherwise provided in this section as necessary to
20 recover a reasonable allocation of costs incurred due to
21 requirements imposed by any federal or state law or rule. An
22 incumbent rural telecommunications carrier that proposes to
23 increase its rates for residential local exchange service shall
24 hold at least one public informational meeting in each public
25 regulation commissioner's district as established by the Public

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1 Regulation Commission Apportionment Act in which there is a
2 local exchange area affected by the rate change.

3 E. Residential local exchange service rates increased
4 by [⌘] an incumbent rural telecommunications carrier pursuant
5 to Subsection D of this section shall be reviewed by the
6 commission only upon written protest signed by two and one-half
7 percent of all affected subscribers or upon the commission
8 staff's own motion for good cause. The protest shall
9 specifically set forth the particular rate or charge as to
10 which review is requested, the reasons for the requested review
11 and the relief that the persons protesting desire. If a proper
12 protest is presented to the commission within sixty days from
13 the date notice of the rate change was sent to affected
14 subscribers of an incumbent rural telecommunications carrier,
15 the commission may accept and file the complaint and, upon
16 proper notice, may suspend the rates at issue during the
17 pendency of the proceedings and reinstate the rates previously
18 in effect and shall hold and complete a hearing thereon within
19 ninety days after filing to determine if the rates as proposed
20 are fair, just and reasonable. The commission may, within
21 sixty days after close of the hearing, enter an order adjusting
22 the rates at issue, except that the commission shall not set
23 any rate below the intrastate cost of providing the service
24 [~~that will include cost and rate of return in accordance with~~
25 ~~Subsection E of Section 6 of the Rural Telecommunications Act~~

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1 ~~of New Mexico~~]. The commission may adjust the rates at issue
2 using the cost methodology and return authorized by the federal
3 communications commission. In the order, the commission may
4 order a refund of amounts collected in excess of the rates and
5 charges as approved at the hearing, which may be paid as a
6 credit against billings for future services. If the complaint
7 is denied, the commission shall enter an order denying the
8 complaint within sixty days after the close of the hearing, and
9 the rates shall be deemed approved. For purposes of this
10 section, cost shall also include a reasonable amount of joint
11 and common costs incurred by the telecommunications carrier in
12 its operations and may include other accounting adjustments
13 authorized by the commission.

14 F. [A] An incumbent rural telecommunications carrier
15 that serves less than five percent of the state's aggregate
16 statewide subscriber lines may at any time elect to file an
17 application with the commission requesting the commission to
18 prescribe fair, just and reasonable rates for the carrier based
19 on the carrier's revenue, expenses and investment in accordance
20 with traditional rate-making principles.

21 G. Rates for local exchange, vertical and long
22 distance service to retail end-user customers may be reduced to
23 a level equal to, but not below, the intrastate cost, which
24 shall include ~~[cost and rate of return pursuant to Subsection E~~
25 ~~of Section 6 of the Rural Telecommunications Act of New Mexico]~~

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1 the cost methodology and rate of return authorized by the
2 federal communications commission. If an incumbent rural
3 telecommunications carrier loses its exemption pursuant to
4 Section 251 of the federal act, the rate for a service,
5 excluding basic service, must cover the cost of the service,
6 including the imputed rate of wholesale service elements as may
7 be required by the commission. The cost of long distance
8 service must also include any interexchange access rates
9 charged to another telecommunications carrier for the service.

10 H. An incumbent rural telecommunications carrier
11 operating pursuant to this section shall have the ability to
12 offer or discontinue offering special incentives, discounts,
13 packaged offerings, temporary rate waivers or other promotions,
14 or to offer individual contracts."

15 Section 3. REPEAL.--Section 63-9H-6 NMSA 1978 (being Laws
16 1999, Chapter 295, Section 6) is repealed.

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE NEW MEXICO
TELECOMMUNICATIONS ACT TO TERMINATE RURAL EXTENSION FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico
Telecommunications Act is enacted to read:

"[NEW MATERIAL] TERMINATION OF RURAL EXTENSION FUNDS.--

A. After June 30, 2005, the commission shall not
require a telecommunications company to establish or continue
to accrue money to a rural extension fund. The obligation of a
single telecommunications company to accrue additional money to
an existing rural extension fund shall terminate on July 1,
2005.

B. A telecommunications company with an accrued,
unspent balance in a rural extension fund as of July 1, 2005

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1 shall apply the balance to extend local exchange
2 telecommunications service to qualifying rural customers. If
3 an unspent balance remains after all qualifying rural customers
4 are served, the telecommunications company shall apply the
5 unspent balance to the installation of telecommunications
6 infrastructure for digital subscriber lines or broadband or
7 other advanced services such as telemedicine networks or
8 distance learning networks in that telecommunications company's
9 certificated service area. A residential or commercial real
10 estate developer shall not benefit directly from
11 telecommunications projects funded pursuant to this section.

12 C. As used in this section, "rural extension fund"
13 means a fund reserved, set aside or in any other manner accrued
14 by a telecommunications company pursuant to an order, rule,
15 tariff or other requirement of the commission for the purpose
16 of supporting or subsidizing the extension of lines or
17 facilities by the telecommunications company to serve customers
18 in rural or other low-density service areas."

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT
MAKING AN APPROPRIATION TO NEW MEXICO INSTITUTE OF MINING AND
TECHNOLOGY FOR THE TECHNOLOGY RESEARCH COLLABORATIVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Seven million nine hundred
thousand dollars (\$7,900,000) is appropriated from the general
fund to the board of regents of New Mexico institute of mining
and technology for expenditure in fiscal year 2006 for the
technology research collaborative to establish advanced
technology centers based on the wealth of scientific and
technical talent that exists in the member institutions and to
create new intellectual property, commercialize the
intellectual property and create a work force to support the
enterprises based on the intellectual property. Any unexpended

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1 or unencumbered balance remaining at the end of fiscal year
2 2006 shall not revert to the general fund.

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE COMMUNITY ACCESS
TO MEDIA AND INFORMATION ACT; PROVIDING FOR COMMUNITIES WITH A
POPULATION OF TEN THOUSAND OR MORE TO ENSURE PUBLIC,
EDUCATIONAL AND GOVERNMENT ACCESS TO CABLE TELEVISION FRANCHISE
AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Community Access to Media and Information Act."

Section 2. DEFINITIONS.--As used in the Community Access
to Media and Information Act:

A. "access management organization" means an entity
contracted to provide the services of public, educational and
government access;

B. "political subdivision" means a unit of state

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1 government with a population of three thousand five hundred or
2 more;

3 C. "public, educational and government access" means
4 either combined or separate noncommercial channels that are
5 given to communities in exchange for the use of public rights
6 of way and that provide the general public with access to media
7 programming, training and equipment to facilitate the use of
8 bandwidth and spectrum; and

9 D. "service provider" means a corporation that offers
10 communications, information and digital services to a consumer
11 for remuneration.

12 Section 3. COMMUNICATIONS AND INFORMATION SERVICES--
13 FRANCHISE AGREEMENT--TEN PERCENT FOR PUBLIC USE.--

14 A. A political subdivision that enters into a
15 franchise agreement with a service provider shall require as a
16 term under the franchise agreement that no less than ten
17 percent of the bandwidth and spectrum or channels, whichever
18 may be greater, be made available for public use. The
19 franchise agreement shall include methods for the use of the
20 bandwidth or spectrum by noncommercial agencies, organizations
21 and institutions to provide communications and information
22 services in the public interest.

23 B. A telecommunications franchise agreement pursuant
24 to this section shall provide compensation of no less than
25 three percent and no more than five percent of the gross

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1 revenues of the service provider as determined by a transparent
2 audit mechanism.

3 Section 4. PUBLIC ACCESS NEEDS ASSESSMENT PRIOR TO
4 FRANCHISE AGREEMENT.--

5 A. Prior to execution of a franchise agreement, the
6 political subdivision and the service provider shall conduct an
7 assessment of the communications and information needs of the
8 community. The needs assessment shall be published as a matter
9 of public record and a public hearing conducted to review its
10 results. The hearing shall be conducted within ninety days of
11 completion of the needs assessment. A needs assessment shall
12 be conducted at least every five years during the course of a
13 franchise agreement to ascertain changes in the needs of the
14 community. The needs assessment shall be the basis for the
15 political subdivision and service provider to negotiate the
16 services to be provided.

17 B. If the needs assessment determines that public,
18 educational and government access is needed and requested by
19 the community, it shall be the responsibility of both the
20 service provider and the political subdivision to provide for
21 public access to cable communications and information services
22 through a franchise agreement that will set the obligations and
23 limits of the services.

24 C. On the expiration of an existing franchise in a
25 political subdivision and the beginning of re-franchising

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1 negotiations, the service provider and the political
2 subdivision shall conduct a needs assessment pursuant to
3 Subsections A and B of this section.

4 D. If during the term of an existing franchise
5 agreement the service provider changes ownership, a needs
6 assessment shall be conducted to determine the community's need
7 and demand for the establishment of public, educational and
8 government access, if these services are not already in
9 operation. If the needs assessment finds a community need and
10 demand for these services, the political subdivision and the
11 new service provider shall enter into negotiations to amend the
12 existing franchise agreement to include these services.

13 E. Minimum requirements of franchise agreements
14 executed pursuant to this section for public, educational and
15 government access shall include that:

16 (1) no less than two percent of the annual gross
17 revenues of the service provider shall be passed through to an
18 access management organization for general operations; and

19 (2) no less than an additional one percent of
20 gross revenues above franchise fees of the service provider
21 shall be set aside for the provision of facilities and
22 equipment to be collected by the political subdivision and
23 passed through to the public, educational and government access
24 operation, and the distribution of funds shall be determined by
25 contract between the political subdivision and the access

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1 management organization.

2 F. If the service provider also operates as the
3 access management organization, the provider shall establish
4 clear administrative procedures to make equipment and channel
5 time available to the community and shall state on screen that
6 the public is watching an access channel. These requirements
7 shall be specifically described in the franchise agreement.

8 G. If a nonprofit organization operates as the access
9 management organization, the obligations in this section shall
10 be included in the contractual agreement between the political
11 subdivision and the nonprofit organization.

12 H. Nothing in this section prohibits political
13 subdivisions from obtaining additional funding, bandwidth and
14 spectrum or services from service providers other than the
15 limitations as provided by federal law.

16 Section 5. CABLE AND SATELLITE SERVICE.--Cable and
17 satellite service providers shall carry public, educational and
18 government access channels and services in those designated
19 market areas where they currently carry local commercial
20 channels on their systems.

21 Section 6. EMERGENCY ALERT CAPACITY.--A communications
22 and information service provider shall have the capacity for
23 broadcasting emergency alerts via their systems.

24 Section 7. ABANDONED FRANCHISE.--A cable system shall be
25 deemed abandoned if a renewed franchise agreement has not been

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1 completed by the termination date of the existing franchise
2 agreement unless a mutually agreed extension between the
3 political subdivision and the service provider for continuation
4 of negotiations has been reached.

5 Section 8. DIVERSITY IN PROGRAMMING--DISCRIMINATION
6 PROHIBITED.--

7 A. Service providers and political subdivisions shall
8 act to provide the greatest possible range of diversity in
9 programming and delivery of services to the public.

10 B. No service provider or political subdivision
11 covered under this section may discriminate against an
12 individual organization or corporate entity in regard to
13 service or the granting of contracts and franchises for reasons
14 of race, religion, ethnicity, age or sexual orientation.

15 Section 9. PUBLIC REGULATION COMMISSION--COMPLIANCE.--The
16 political subdivision and the service provider shall file a
17 report each year with the public regulation commission
18 certifying compliance with the provisions of this section.

19 Section 10. SUBSCRIBER--ACTION FOR COMPLIANCE.--A
20 subscriber to the services included in this section may bring
21 action to enforce compliance with the Community Access to Media
22 and Information Act.

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR THE NEW MEXICO RURAL DEVELOPMENT
RESPONSE COUNCIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Five hundred thousand dollars
(\$500,000) is appropriated from the general fund to the local
government division of the department of finance and
administration for expenditure in fiscal year 2006 to match
federal funds and foundation grants and to make grants to rural
communities through the New Mexico rural development response
council program under the national rural development
partnership. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2006 shall not revert to the general
fund.

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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

DISCUSSION DRAFT

FOR THE ECONOMIC AND RURAL
DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE RURAL TELECOMMUNICATIONS ACT OF NEW
MEXICO TO PROVIDE FOR THE STATE RURAL UNIVERSAL SERVICE FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Rural Telecommunications
Act of New Mexico is enacted to read:

"[NEW MATERIAL] STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT--BOARD.--

A. The "state rural universal service fund" is
created and shall be administered pursuant to this section.
Money in the fund shall be used to maintain and support, at
affordable rates, public telecommunications services to be
determined by the commission.

B. The fund shall be financed by a surcharge on
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1 certain intrastate retail public telecommunications services to
2 be determined by the commission, excluding services provided
3 pursuant to a low-income telephone assistance plan billed to
4 end-user customers by a telecommunications carrier, and
5 excluding all amounts from surcharges, gross receipts taxes,
6 excise taxes, franchise fees and similar charges. For the
7 purpose of financing the fund, the commission has the authority
8 to apply the surcharge on intrastate retail public
9 telecommunications services provided by telecommunications
10 carriers and to comparable retail alternative services provided
11 by telecommunications carriers, including commercial mobile
12 radio services at a competitively and technologically neutral
13 rate or rates to be determined by the commission. In
14 prescribing competitively and technologically neutral surcharge
15 rates, the commission may make distinctions between services
16 subject to a surcharge, but it shall require all carriers
17 subject to the surcharge to apply uniform surcharge rates for
18 the same or comparable services. Money deposited in the fund
19 is not public money, and the administration of the fund is not
20 subject to the provisions of laws regulating public funds. The
21 commission shall not apply surcharges to a private
22 telecommunications network.

23 C. The fund shall be competitively and
24 technologically neutral, equitable and nondiscriminatory in its
25 collection and distribution of funds, shall be portable between

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underscoring material = new
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1 eligible telecommunications carriers and shall provide a
2 specific, predictable and sufficient support mechanism as
3 determined by the commission that reduces intrastate switched
4 access charges to interstate switched access charge levels in a
5 revenue-neutral manner and ensures universal service in the
6 state.

7 D. The commission shall:

8 (1) establish eligibility criteria for
9 participation in the fund, consistent with federal law, that
10 ensure the availability of service at affordable rates and that
11 shall not restrict or limit an eligible telecommunications
12 carrier from receiving federal universal service support;

13 (2) provide for the collection of the surcharge
14 created pursuant to this section on a competitively neutral
15 basis and for the administration and disbursement of money from
16 the fund;

17 (3) determine those services requiring support
18 from the fund;

19 (4) provide for the separate administration and
20 disbursement of federal universal service funds consistent with
21 federal law; and

22 (5) establish affordability benchmark rates for
23 local residential and business services that shall be utilized
24 in determining the level of support from the fund. The initial
25 benchmark for residence service shall be the weighted statewide

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1 average basic exchange rate adjusted for offsets to intrastate
2 switched access charge reductions. The process for determining
3 subsequent adjustments to the benchmark shall be established
4 through rulemaking.

5 E. All incumbent rural telecommunications carriers
6 and competitive carriers already designated as eligible
7 telecommunications carriers for the fund shall be eligible for
8 participation in the fund. All other carriers that choose to
9 become eligible to receive support from the fund may petition
10 the commission to be designated as an eligible
11 telecommunications carrier for the fund. The commission may
12 grant eligible carrier status to a competitive carrier in a
13 rural area upon a finding that granting the application is in
14 the public interest. In making a public interest finding, the
15 commission shall consider at least the following items:

16 (1) whether granting eligible carrier status to
17 multiple carriers in a designated area is likely to result in
18 more customer choice;

19 (2) the impact of designation of an additional
20 eligible carrier on the size of the fund;

21 (3) the unique advantages and disadvantages of
22 the competitor's service offering;

23 (4) any commitments made regarding the quality
24 of telephone service; and

25 (5) the competitive carrier's willingness and

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1 ability to offer service throughout the designated service
2 areas within a reasonable time frame.

3 F. The commission shall adopt rules for the
4 implementation and administration of the fund in accordance
5 with the provisions of this section and for variances from the
6 provisions no later than November 1, 2005.

7 G. The commission shall, upon implementation of the
8 fund, select a neutral third-party administrator to collect,
9 administer and disburse money from the fund under the
10 supervision and control of the commission pursuant to rules
11 adopted by the commission. The fund administrator may be
12 reasonably compensated for the specified services from the
13 surcharge proceeds to be received by the fund pursuant to
14 Subsection B of this section. For purposes of this subsection,
15 the commission shall not be a neutral third-party
16 administrator.

17 H. The fund administrator shall ensure the
18 availability of local telecommunications service as determined
19 by the commission at affordable rates in rural high cost areas
20 of the state.

21 I. Beginning April 1, 2006, the commission shall
22 commence the phase-in of reductions in intrastate switched
23 access charges. By May 1, 2008, the commission shall ensure
24 that intrastate switched access charges are equal to interstate
25 switched access charges established by the federal

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underscoring material = new
~~[bracketed material] = delete~~

1 communications commission as of January 1, 2006. Nothing in
2 this section shall preclude the commission from considering
3 further adjustments to intrastate switched access charges based
4 on changes to interstate switched access charges after May 1,
5 2008.

6 J. To ensure that providers of intrastate retail
7 telecommunications service contribute to the fund and to
8 further ensure that the surcharge to be paid by the end-user
9 customer will be held to a minimum, no later than November 1,
10 2005, the commission shall adopt rules, or take other
11 appropriate action, to require all such providers to
12 participate in a plan to ensure accurate reporting.

13 K. The commission shall authorize payments from the
14 fund to incumbent local exchange carriers in combination with
15 revenue-neutral rate rebalancing up to the affordability
16 benchmark rates, in an amount equal to the reduction in
17 revenues that occurs as a result of reduced intrastate switched
18 access charges. The commission shall determine the methodology
19 to be used to authorize payments to all other carriers that
20 apply for and receive eligible carrier status. Any reductions
21 in charges for access services resulting from compliance with
22 this section shall be passed on for the benefit of consumers in
23 New Mexico.

24 L. In a rate proceeding filed pursuant to Subsection
25 F of Section 63-9H-7 NMSA 1978, the commission may also

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underscored material = new
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1 authorize payments from the fund to incumbent rural
2 telecommunications carriers serving in high-cost areas of the
3 state that have reduced access charges upon a finding by the
4 commission that such payments are needed to ensure the
5 widespread availability and affordability of residential local
6 exchange service.

7 M. By December 1, 2008, the fund administrator shall
8 make a report to the commission and the legislature. The
9 report shall include the effects of access reductions. The
10 report shall also make recommendations for any changes to the
11 structure, size or purposes of the fund."

12 Section 2. Section 63-9H-7 NMSA 1978 (being Laws 1999,
13 Chapter 295, Section 7) is amended to read:

14 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL
15 TELECOMMUNICATIONS CARRIER.--

16 A. Rates for retail rural public telecommunications
17 services provided by an incumbent rural telecommunications
18 carrier shall be subject to regulation by the commission only
19 in the manner and to the extent authorized by this section.

20 B. An incumbent rural telecommunications carrier
21 shall file tariffs for all retail public telecommunications
22 services, other than residential local exchange service, which
23 shall be effective after ten days' notice to the commission and
24 publication in a local newspaper in the incumbent service area.
25 An incumbent rural telecommunications carrier shall remain

.152930.1

underscored material = new
[bracketed material] = delete

1 subject to complaint by an interested party subject to Section
2 [~~10 of the Rural Telecommunications Act of New Mexico~~] 63-9H-10
3 NMSA 1978.

4 C. Rates for residential local exchange service may
5 be increased by an incumbent rural telecommunications carrier
6 only after sixty days' notice to all affected subscribers. The
7 notice of increase shall include:

8 (1) the reasons for the rate increase;
9 (2) a description of the affected service;
10 (3) an explanation of the right of the
11 subscriber to petition the commission for a public hearing on
12 the rate increase;

13 (4) a list of local exchange areas that are
14 affected by the proposed rate increase; and

15 (5) the dates, times and places for the public
16 informational meetings required by this section.

17 D. An incumbent rural telecommunications carrier may
18 increase its rates for residential local exchange service in
19 the manner otherwise provided in this section as necessary to
20 recover a reasonable allocation of costs incurred due to
21 requirements imposed by any federal or state law or rule. An
22 incumbent rural telecommunications carrier that proposes to
23 increase its rates for residential local exchange service shall
24 hold at least one public informational meeting in each public
25 regulation commissioner's district as established by the Public

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1 Regulation Commission Apportionment Act in which there is a
2 local exchange area affected by the rate change.

3 E. Residential local exchange service rates increased
4 by [⌘] an incumbent rural telecommunications carrier pursuant
5 to Subsection D of this section shall be reviewed by the
6 commission only upon written protest signed by two and one-half
7 percent of all affected subscribers or upon the commission
8 staff's own motion for good cause. The protest shall
9 specifically set forth the particular rate or charge as to
10 which review is requested, the reasons for the requested review
11 and the relief that the persons protesting desire. If a proper
12 protest is presented to the commission within sixty days from
13 the date notice of the rate change was sent to affected
14 subscribers of an incumbent rural telecommunications carrier,
15 the commission may accept and file the complaint and, upon
16 proper notice, may suspend the rates at issue during the
17 pendency of the proceedings and reinstate the rates previously
18 in effect and shall hold and complete a hearing thereon within
19 ninety days after filing to determine if the rates as proposed
20 are fair, just and reasonable. The commission may, within
21 sixty days after close of the hearing, enter an order adjusting
22 the rates at issue, except that the commission shall not set
23 any rate below the intrastate cost of providing the service
24 [~~that will include cost and rate of return in accordance with~~
25 ~~Subsection E of Section 6 of the Rural Telecommunications Act~~

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1 ~~of New Mexico]~~. The commission may adjust the rates at issue
2 using the cost methodology and return authorized by the federal
3 communications commission. In the order, the commission may
4 order a refund of amounts collected in excess of the rates and
5 charges as approved at the hearing, which may be paid as a
6 credit against billings for future services. If the complaint
7 is denied, the commission shall enter an order denying the
8 complaint within sixty days after the close of the hearing, and
9 the rates shall be deemed approved. For purposes of this
10 section, cost shall also include a reasonable amount of joint
11 and common costs incurred by the telecommunications carrier in
12 its operations and may include other accounting adjustments
13 authorized by the commission.

14 F. [A] An incumbent rural telecommunications carrier
15 that serves less than five percent of the state's aggregate
16 statewide subscriber lines may at any time elect to file an
17 application with the commission requesting the commission to
18 prescribe fair, just and reasonable rates for the carrier based
19 on the carrier's revenue, expenses and investment in accordance
20 with traditional rate-making principles.

21 G. Rates for local exchange, vertical and long
22 distance service to retail end-user customers may be reduced to
23 a level equal to, but not below, the intrastate cost, which
24 shall include ~~[cost and rate of return pursuant to Subsection E~~
25 ~~of Section 6 of the Rural Telecommunications Act of New Mexico]~~

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underscoring material = new
~~[bracketed material] = delete~~

1 the cost methodology and rate of return authorized by the
2 federal communications commission. If an incumbent rural
3 telecommunications carrier loses its exemption pursuant to
4 Section 251 of the federal act, the rate for a service,
5 excluding basic service, must cover the cost of the service,
6 including the imputed rate of wholesale service elements as may
7 be required by the commission. The cost of long distance
8 service must also include any interexchange access rates
9 charged to another telecommunications carrier for the service.

10 H. An incumbent rural telecommunications carrier
11 operating pursuant to this section shall have the ability to
12 offer or discontinue offering special incentives, discounts,
13 packaged offerings, temporary rate waivers or other promotions,
14 or to offer individual contracts."

15 Section 3. REPEAL.--Section 63-9H-6 NMSA 1978 (being Laws
16 1999, Chapter 295, Section 6) is repealed.

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