

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

Rep. Richard Cheney
Sen. Mary Jane M. Garcia
Sen. Phil A. Griego
Rep. Patricia A. Lundstrom
Sen. John Pinto
Sen. William E. Sharer
Rep. Richard D. Vigil

Advisory Members

Rep. John A. Heaton
Sen. Timothy Z. Jennings
Rep. Harriet Ruiz (8/5)
Rep. Nick L. Salazar

Sen. Ben D. Altamirano
Sen. Dianna J. Duran
Rep. Diane Miller Hamilton
Rep. Ted Hobbs
Sen. Stuart Ingle
Sen. Raymond Kysar
Rep. Debbie A. Rodella
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.