

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

**October 26, 2005
New Mexico Institute of Mining and Technology Campus
Socorro**

**October 27, 2005
State Capitol**

The fourth meeting of the Economic and Rural Development and Telecommunications Committee for the 2005 interim was called to order by Senator Bernadette M. Sanchez on October 6, 2005 at 10:10 a.m. in the Galena Room of the Macey Center at New Mexico.

PRESENT

Sen. Bernadette M. Sanchez, Chair
Rep. Mary Helen Garcia, Vice Chair
Rep. Hector H. Balderas (10/28)
Rep. Jose A. Campos (10/28)
Rep. Daniel R. Foley (10/27)
Sen. Mary Jane M. Garcia
Sen. Richard C. Martinez
Rep. Kathy A. McCoy (10/28)
Rep. Andy Nunez
Sen. John Pinto

ABSENT

Rep. Dianne Miller Hamilton
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell
Rep. Patricia A. Lundstrom
Sen. William E. Sharer
Sen. Leonard Tsosie

Advisory Members

Rep. Ernest H. Chavez
Rep. John A. Heaton
Rep. Ted Hobbs
Rep. Al Park (10/28)
Sen. Lidio G. Rainaldi
Rep. Debbie A. Rodella (10/28)
Rep. Harriet I. Ruiz (10/27)
Sen. John C. Ryan
Rep. Richard D. Vigil

Sen. Ben D. Altamirano
Rep. William "Ed" Boykin
Sen. Dianna J. Duran
Sen. Phil A. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Steven P. Neville

Staff

Lisa Barsumian
Larry Matlock

Guests

The guest list is in the meeting file.

Wednesday, October 26, Socorro

The committee members introduced themselves to the audience, and Senator Sanchez thanked Representative Don L. Tripp for attending the meeting to welcome the committee to Socorro.

Valor

The first presentation was given by Bill Garcia, vice president for regulatory and government relations and chief counsel for VALOR. Mr. Garcia was accompanied by Chris Valdez, chief operating officer of the company. He also introduced Edward Lujan, who serves on the company board of directors. Mr. Garcia provided a history of the company, which is celebrating its fifth anniversary. The company was formed by Ann Bingaman and several Hispanic investors to serve rural communities by purchasing the properties of GTE, consisting of 95,000 access lines and 77,000 customers. The company's New Mexico service areas include southeastern New Mexico, south central New Mexico, including Ruidoso and Truth or Consequences, and the Espanola valley. The company operates two call centers in Carlsbad and Espanola and five retail stores. VALOR has brought in modern technology and services; DSL is currently available to 68 percent of VALOR's customers. The company has invested \$6 million to upgrade the switch that serves Carlsbad and Hobbs.

VALOR is governed by the first Alternative Form of Regulation (AFOR) approved by the Public Regulation Commission (PRC). The 2000 Legislature allowed for the alternative form of regulation in lieu of rate of return regulation. As part of the AFOR, VALOR agreed to an \$83 million investment in New Mexico to be completed by March 2006. The company is on track for honoring this commitment and also has met its quality of service commitment. The company went public in February 2005. Mr. Garcia noted that the company is proud of its civic involvement through college scholarships and home rehabilitation projects in Artesia and Ruidoso and has been nominated for several awards for its contributions.

Mr. Garcia also pointed out that cable television is a growing competitor, by offering cable, telephony and broadband services, as is wireless communication. Landline providers such as VALOR are regulated by the state, but their competitors are not. Eighty-five percent of rural households in the United States have competitive choice about phone service.

In 2004, VALOR pursued legislation to allow the PRC to adopt rules to govern mid-sized telephone service providers, like VALOR. The final rules are scheduled for adoption January 1, 2006. The rules will govern pricing, quality of service and consumer protection. VALOR has submitted draft rules, at the request of the PRC, and hearings will follow shortly. Through the rules, VALOR is seeking to price service based on a Federal Communications Commission index. Mr. Garcia noted that customer rates for basic service have not increased since 1993. The company is seeking pricing flexibility for non-basic services using a range of pricing. The

company's draft rules also seek more efficient reporting for quality of service and consumer protection compliance.

Representative Andy Nunez asked if the company would be seeking legislation in 2006 and if the company disconnects service for nonpayment. Mr. Garcia responded that the company was not pursuing legislation in 2006 and that there are various programs that help customers who are having problems paying their phone bills. Representative Ted Hobbs inquired whether VALOR was profitable yet, to which Mr. Garcia responded that, according to the Securities and Exchange Commission, the company was paying its bills. In response to a further question on the company's relationship with the PRC, Mr. Garcia explained that he had served as chief of staff for the former New Mexico Public Utility Commission (PUC), knew the current agency staff and places a high priority on credibility which is important for maintaining a good rapport with the staff. He observed that the PRC is in transition, but needs to evolve more quickly to keep up with changes in the telecommunications industry.

Representative Hobbs asked if the PRC is giving added value to the industry or is just interested in consumer protection. Mr. Garcia replied that VALOR would like the PRC to serve a role of partner and facilitator, not just regulator. New Mexico is risk averse and the PRC could be more active in facilitating innovation. He also agreed with Representative Hobbs that the former PUC, which was composed of appointed members, was more directed and efficient.

Senator Mary Jane M. Garcia questioned whether the PRC could do anything to affect the competition in the marketplace. Senator Lidio G. Rainaldi asked for definitions of certain terms such as "new service", "central office" and "remote". Representative John A. Heaton commended VALOR as a "godsend" for his area, since previous service had been terrible. Representative Heaton also said that he supported greater regulatory flexibility.

Roy Stephenson, PRC general counsel, stated that although the PRC supports flexibility, competitors such as internet service providers, which rely on the landline companies, count on regulation to provide fair access. Representative Heaton responded that it is a better situation for the Legislature to set policy than the Governor and that, with an elected PRC, his area now has a representative on the PRC, which it never had under an appointed commission.

Senator John C. Ryan inquired if rate of return regulation would have protected VALOR profit better than the AFOR and if Comcast is pursuing the triple play of cable/telephony/broadband in New Mexico. Mr. Garcia responded that Comcast could pursue that, but is not currently doing so.

Sandia Laboratories Small Business Assistance Initiative

The presentation on the Sandia National Laboratories Small Business Assistance Initiative was led by Marianne Jackson, who introduced three small businesses that participate in the program. Steve Gomez with Controlled Agriculture Environment, which designs and constructs greenhouses, explained how his company has benefited from the program, as did Reggie Alsbrook with Diana's Homegrown. Alsbrook stated that his association with Sandia

National Laboratories helps his credibility as he pursues financing for his innovation. Gerald Olona, whose company invented a fishing reel that can be used by persons with physical disabilities, echoed the comments of the others.

Small Agricultural Producer Matching Grant Program

Ricardo Gonzales with the New Mexico Department of Agriculture, along with a colleague, briefed the committee on its 2006 request for funding for a small agricultural producer matching grant program. The requested \$250,000 would be used to set up a revolving fund to provide state grants to farmers who need matching funds to qualify for federal grants. Asked by Representative Nunez if the program would be a violation of the constitutional anti-donation provision, they responded that they had been advised that the provision would not be a barrier.

New Mexico State University Business School

During the afternoon session, former governor and dean of the business school at New Mexico State University (NMSU), Gary Carruthers, briefed the committee on the school's 2006 request for funding for the Arrowhead Center. The center is patterned after the Rice University Alliance. The center is organized as a 501(c)(3) business with five business units: intellectual property, a research park, entrepreneurship, policy analysis and workforce development. One project in which the center has been involved is a business performing DNA analysis for determining parentage. This business is one of only five nationally and is pursuing licensure to conduct forensic DNA work. The business school is developing a Ph.D. in economic development using distance learning that is intended to be an applied, rather than academic, doctorate. The center received \$75,000 in 2005 and is seeking \$375,000 in 2006, which the school hopes will be recurring.

Mr. Carruthers also briefed the committee on the new Research Technology Collaborative. The board of directors had recently been appointed by Governor Bill Richardson, and it has held its first meeting.

National Center for Genome Research

Roman Maes and Dr. Stephen Kingsmore made a presentation on a capital outlay request being made by the National Center for Genome Research in collaboration with NMIMT. The center is seeking \$1 million to purchase a genome sequencer, which would be owned by NMIMT. The center has already received \$3 million in federal funds for operations related to the sequencer.

NMSU Aerospace Engineering Program

Dr. Thomas Burton, chair of the mechanical engineering department at NMSU, made a presentation on the university's 2006 request for a \$7 million appropriation to create an aerospace engineering program at the university. The money would be spent over seven years and is a top legislative priority for the university. The university received \$275,000 in fiscal year 2005 and \$152,000 in fiscal year 2006 that has been used in planning the program. Input has been solicited from the private and national laboratories. The focus of the program will be aerospace systems engineering and non-classroom opportunities for applied learning. The

program would have graduated its first undergraduates in May 2008 and will also offer a master's degree and Ph.D. The graduate program is important to help recruit good faculty and the aerospace industry to New Mexico. Senator Garcia indicated her support for the program.

Rural Schools and Economic Development

Dr. Jim Holloway, assistant secretary for rural education at the Public Education Department (PED), provided a presentation on rural schools and their relationship to economic development. PED uses the definition of rural school contained in the federal No Child Left Behind Act of 2001, which includes approximately 45 New Mexico school districts. His goal is to enhance the vitality of rural communities through their schools. PED has been working with seven school districts, using a model of community collaboration representing a \$210,000 investment. The school districts involved are Cimarron, Jemez Valley, Jemez Mountain, Loving, Tatum, Clayton and Maxwell.

PED also works in collaboration with Future Farmers of America, Future Homemakers of America and the agricultural extension service. Representative Ruiz asked about the relevance of visiting rural Australian schools, which Dr. Holloway had mentioned. He responded that Australia was using successful approaches to integrating its rural schools and communities. He cited schools using oyster farming and vineyards and winemaking to bring students and community members together in a teaching setting where school projects are tied into the curriculum. Representative Heaton expressed his concern that this type of place-based education might have the effect of limiting the aspirations of students who have bigger dreams.

The committee recessed at 4:15 p.m.

Thursday, October 27, Santa Fe

The committee reconvened at 10:25 a.m. in Room 322 of the State Capitol.

Gaming

The Gaming Control Board, represented by board member Don E. Dutton of Santa Fe and assistant executive director Greg Saunders, provided a briefing on the status of the gaming industry in New Mexico. The five racetrack casinos in New Mexico paid out purses totaling close to \$35 million during fiscal year 2005. The state's horse racing industry is improving each year and includes 32,400 horse owners, 37,300 employees, 45,000 total jobs, a \$503 million direct economic impact and a \$759 million total economic impact. Racetrack casinos paid gaming taxes totaling \$43.5 million in fiscal year 2005. Fraternal and nonprofit gaming operators paid over \$1.2 million in gaming taxes and almost \$5.7 million since 1999. Thirteen tribal casinos operate in New Mexico pursuant to tribal-state compacts. For the first two quarters of fiscal year 2005, tribal casinos paid over \$40 million to the state. Only slot machine revenue is counted for the amount of revenue-sharing paid by tribal casinos. Sunray Park in Farmington and Sunland Park in Las Cruces are the most successful racinos. The new Zia racino in Hobbs is doing better than predicted, attracting Texans to that location. Sunland Park slot machines generate over \$300 in gaming tax per machine per quarter.

New tribal casinos are anticipated by the Navajo Nation, Nambe Pueblo and possibly a third tribe. Senator John Pinto inquired about whether Gallup or Shiprock might be the possible location of the proposed Navajo Nation casino. He questioned whether the Navajos could get rights of way to build a casino near Laguna Pueblo. He expressed his concern about the Navajo Nation going into gaming, but acknowledged that the Navajos need the money. He said that now Navajos gamble at the Sky City Casino in Acoma Pueblo. He noted that the Navajos approved gaming even though Navajo women oppose gambling.

Representative Nunez inquired about the monitoring of tribal gaming. Mo Chavez, tribal gaming liaison with the Gaming Control Board, responded that the board is connected electronically to the tribal slot machines, which allows the board to collect data from each slot machine. Furthermore, the tribes report quarterly to the board, the board can dial in for data and an audit of slot machine revenue is done annually. Representative Mary Helen Garcia asked if the board only monitored slot machines, to which Mr. Chavez replied that only slot machines, not table games, were monitored by the board.

Representative Nunez asked if the Navajo Nation casinos would be on tribal land. Mr. Chavez responded that the Navajos originally were looking at 11 casinos between Albuquerque and Gallup. Now, the tribe is considering three: one near Farmington, another near Gallup and a third near Tohatchi.

Commissioner Dutton mentioned that he was monitoring the situation in Anthony, where both the Jemez Pueblo and an Oklahoma tribe are interested in acquiring land for an off-reservation casino. Senator Ryan asked if New Mexico could adopt the model being used in Arizona, which could be more equitable and avoid the venue shopping issue like that occurring in Dona Ana County. Board representatives responded that Arizona had a model compact that gave the state the ability to actually enter the tribal casinos. Arizona tribes are able to purchase slot machines and then lease them to a gaming tribe, thereby raising revenue from the machines without operating a casino. California was mentioned, where there is a single casino and all California tribes share in the revenue.

The board representatives noted that there would be a big fight if New Mexico attempted to renegotiate the state-tribal compacts. In response to Senator Ryan's inquiry, the board representatives concurred it would be a "non-starter". Mr. Dutton noted that the Western Governors Association has expressed a view that Indian gaming was not intended to be a revenue panacea for every tribe, but to allow tribes with favorable locations to try gaming. This issue is a big debate nationally.

Senator Ryan asked if any tribal casinos were failing to make money. The board representatives responded that, while two New Mexico tribes were having some problems with the profitability of their casinos, all the casinos were making money. Mr. Dutton expressed the view that Indian gaming should be a conduit for additional economic development for the tribes. Representative Hector H. Balderas asked why non-tribal gaming revenues were rising. The

board representatives responded that 90 percent of the patrons at the new Hobbs racino were from Texas. Local fraternal and nonprofit gaming had decreased due to the new racino. Representative Balderas also asked if the board has funds for policy research. The board representatives responded that it does not.

The board interim director, India Hatch, brought to the committee's attention an American Gaming Association survey that showed that the largest increase in gaming activity was during 2003-2004 and noted that gaming is becoming a more acceptable activity by the public. Representative Balderas conveyed that his constituents have high expectations for establishing a racetrack in Raton. He was told that New Mexico horse breeders are paying for an unbiased study by NMSU on the future of the horse racing industry in the state. Representative Heaton asked about whether country clubs are included in the definition of fraternal, veterans' and nonprofit organizations for the purpose of gaming. Carla Lopez, chair of the board, responded that the Internal Revenue Service (IRS) classifications were used to define those groups and that it would not be simple for a country club to change its IRS classification.

Representative Garcia asked about the future of Santa Fe Downs and was told that Pojoaque Pueblo is considering re-opening the track.

Senator Rainaldi asked about the cost of fingerprinting license applicants. Non-tribal applicants pay the fee, but tribes pay \$100,000 annually for regulatory oversight. The board can only comment if it has questions about a tribal applicant; the National Indian Gaming Commission has the sole authority to reject applicants. Criminal records are checked back to the age of 18.

Representative Balderas asked about the legality of video gaming machines. The board representatives explained that these Class 2 machines are not legal and are hard to distinguish from Class 3 machines. Tribes are considering their use, and the United States Department of Justice is pursuing federal legislation to clarify Class 2 and Class 3 machines that would make Class 2 machines unattractive to tribes.

Asked if private companies run tribal casinos, the board representatives responded that each tribe has a management contract with a private company that is very lucrative for that company.

Representative Jose A. Campos asked a series of questions in an attempt to identify factors that have led to increases and dips in gaming revenue.

Scott Scanlon, representing Sunland Park, was given the opportunity to address some of the questions raised by committee members. He explained that Sunland Park became the first racino in 1999. The racino has approximately 750 slot machines that generate \$2 million each month for the state. With the expansion of hours of operation approved by the Legislature, an additional \$2.2 million in gaming tax revenue has been received by the state. All the state racinos generate over \$4 million per month in gaming tax revenue. Sixty percent of Sunland

Park patrons are from Texas. Scanlon believes that the proposed Anthony casino will not be approved any time soon. Senator Ryan asked if the board has a position on the Anthony casino or the power to make recommendations. The board representatives responded that it does not; it is only regulatory.

Horse Racing

In the afternoon, the State Racing Commission, represented by Executive Director Julian Luna and Commission Chair David Sanchez, briefed the committee on the status of the horse racing industry. Racing days in New Mexico have been increasing from 247 days in 2004 to a predicted 316 days in 2007. Senator Ryan asked if race purses correlate to the revenues of that racino and what happens if a track does not want as many racing days as the commission. The commission representatives responded that purses stay at the track, and that one track has filed a lawsuit seeking fewer racing days than that mandated by the commission.

Asked if the commission takes positions on issues that affect tracks, the commission representatives responded that it does not, but that casino competition is not good for the tracks.

Senator Ryan asked about the potential effect of the proposed Anthony casino on Sunland Park. Mr. Scanlon, on behalf of Sunland Park, responded that the owner of Sunland Park has said that a casino would have a devastating effect on his track; it could lose 50 percent of its revenue. The venue shopping approach being pursued would be a bad precedent. But, the decision will be made at the federal level, and the city of Las Cruces will have little say in the decision.

Senator Ryan also asked about the commission's breeding program. Horse breeders receive 4.13 percent of 20 cents of each dollar that is dedicated to the Horsemen's Association.

Representative Heaton noted that racinos have revitalized horse racing and asked if racinos would like more, if not unlimited, slot machines. Sunland Park and the Zia racetrack would like more slot machines, since there is demand for them. Representative Heaton said he opposes the existing limit on slot machines.

Representative Campos asked if the state needs more racing days. The commission representatives responded that it will conduct a study at the conclusion of the Hobbs racino's racing season, but that the state can handle more racing days. Mr. Sanchez indicated that increasing the number of racing days is his goal. Mr. Sanchez and the committee discussed the factors in scheduling racing days, such as weather and the availability of stalls at the tracks. He thinks that there is a need for overlapping racing days, even though the tracks disagree, since they prefer few live racing days and more simulcasts. A track needs to hold four racing days per week in order to qualify as a racino.

Asked about the Raton track proposal, the commission representatives responded that the track could increase racing days by 40 to 50 days. Mr. Sanchez stated that another track was desperately needed.

Representative Al Park commended the commission and observed that track owners need to see themselves as horse racing tracks instead of casinos. The commission representatives observed that an established track can run 60 to 70 racing days annually. Both Hobbs and Sunray Park could handle more racing days, and the Downs at Albuquerque could also if improvements were made.

Representative Garcia noted that she has seen the beneficial ripple effect of Sunland Park, since small farmers in her area have been selling land to horse breeders and trainers. Mr. Sanchez asked if the Legislature can help address the problem with availability of stalls. The commission representatives responded that the Legislature could not help, but it was important that the horses in stalls at tracks are actually running in races. Also, more tracks and racing days would help. Sanchez asked how stalls are allocated and if New Mexican horse owners are given preference. The commission representatives responded that each track is required to run two races each day with New Mexican horses. At Sunland Park, 53 percent of the horses have New Mexico addresses.

The committee adjourned at 3:05 p.m.