

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
January 4, 2011**

TIME: 9:30 a. m.

PLACE:

**PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fé, New Mexico 87501**

A quorum was present as follows:

Members Present:

Commissioner Vice-Chairman Jerome D. Block
Commissioner Jason A. Marks
Commissioner Theresa Becenti-Aguilar
Commissioner Ben L. Hall
Commissioner Patrick H. Lyons

Members Excused:

Staff Present

Michael Rivera, Chief of Staff
Robert Hirasuna, General Counsel
Mary Howells, Associate General Counsel
William Herrmann, Chief Hearing Examiner
Mark Cessarich, Telecommunications Bureau
Roy Stephenson, Utility Division Director
Jack Sidler, Utility Division
Larry Luján, Transportation Division Director
Sheila Shaffer, Acting CRD Director
Charmaine Jackson, Native American Liaison
Rocke Johnson, Executive Administrator for Chief of Staff
Charlotte Durán, District 3 Executive Administrator
J. C. McCray, District 5 Executive Administrator
Johnny Montoya, Insurance Division
Carol Rising, Legal Division Director
Michael Ripperger, Telecommunications Bureau Chief
Gerald Garner, PIO

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Regular Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(C), and the Commission's Open Meeting Policy. Commission Vice Chairman Jerome Block called the Regular Open meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, New Mexico. Vice Chairman Block welcomed the two new Commissioners and Commissioner Becenti-Aguilar as newly elected Commissioner.

A copy of the sign-in sheet for the Regular Open Meeting is incorporated herewith to these minutes as Exhibit 1.

A copy of the Agenda for the Regular Open meeting is incorporated herewith to these minutes as Exhibit 2.

1. PLEDGE OF ALLEGIANCE

2. INTRODUCTIONS

There were no introductions.

3. ELECTION OF NEW PRC CHAIRPERSON AND VICE CHAIRPERSON

Vice Chairman Block clarified that the Chairperson and Vice Chairperson would serve for the year 2011. All were all here to serve New Mexico. Although they were elected by districts as Democrats or Republicans but here they served in a nonpartisan manner.

Commissioner Hall moved to elect Patrick Lyons as Chairman and Jerome Block as Vice Chairman. Commissioner Lyons seconded the nomination.

Commissioner Becenti-Aguilar moved to elect Jason Marks as Chairman. Commissioner Marks seconded the nomination (considered a substitute motion). This motion failed on a 2-3 voice vote.

The original motion passed on a majority (3-2) voice vote with Commissioner Marks and Commissioner Becenti-Aguilar voting against.

Commissioner Lyons asked that Vice Chairman Block continue chairing the meeting today.

4. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

5. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Lyons moved to approve the agenda as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous voice vote.

6. CONSIDERATION AND APPROVAL OF MINUTES

- Minutes of the Regular Open Meeting of December 14, 2010
- Minutes of the Regular Open Meeting of December 16, 2010

Commissioner Becenti-Aguilar moved to approve the minutes of December 14, 2010 and December 16, 2010 as presented. Commissioner Marks seconded the motion and it passed by unanimous voice vote.

7. PUBLIC COMMENT

There were no comments from the public.

8. REGULAR ACTION ITEMS

A. Utility Division Cases

Undocketed IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR
A CERTIFICATE OF REGISTRATION TO PROVIDE COMPETITIVE LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF
NEW MEXICO.
(Margaret Caffey-Moquin, Mark Cessarich) Order

Neither Mr. Cessarich nor Ms. Caffey-Moquin was present.

Commissioner Marks moved to table this case temporarily. Commissioner Hall seconded the motion and it passed by unanimous voice vote.

10-00389-UT IN THE MATTER OF AMENDING THE COMMISSION'S PROCEDURAL RULE
ON WHEN A PARTY MAY BE REPRESENTED BY A NON-ATTORNEY.
10-00390-TRP (Mary Howells) Notice of Proposed Rulemaking

Ms. Howells presented information to the Commission regarding this matter. This was brought before and came before the Commission now on a motion by Commissioner Marks to amend the rule regarding

non-attorneys representing parties before the Commission.

There was nothing in the rule that formalized this. But in a prior case she cited there were four principles set out to provide guidance in such circumstances.

His proposed rule would codify that portion of the order by including those four principles as factors to consider. She made very minor changes to the rule to make it consistent within itself regarding terminology. She recommended publication of this NOPR. It would not have the different colors in the text when it was sent out.

Commissioner Marks explained that there were rulemaking proceedings in which it was a comment record and any person could give comment on the record without benefit of attorney representation. The Commission also had adjudicatory cases like rate cases where they talked about remedies. In those, if the entity was a corporation, the entity needed an attorney. Sole proprietors or self employed persons could appear on their own behalf. Small businesses would also like to appear without the cost of an attorney. They might ask for a variance but didn't have resources and sometimes didn't understand they could get a variance. So this would include in the administrative code that they could use a non-attorney representative and not have the expense of an attorney. It could also be an advocacy group that wanted to participate in a rate case or other matter. This would set out the criteria under which they could participate.

Commissioner Hall asked who would authorize the exception to the rule.

Commissioner Marks clarified that if this rule were adopted - and today it was just being considered for publishing for public comment - if this were adopted, whoever was the presiding officer in the case would get the petition or motion from a party to represent themselves. It usually was a HE who would make the determination. If one or more parties disagreed on an interlocutory basis could appeal to the Commission.

Commissioner Lyons thought it was a very good rule change. He was glad to see it go through the rule making process.

Commissioner Marks asked Ms. Howells if the dates were okay.

Ms. Howells thought they were okay if they could get it out right away.

Commissioner Marks proposed adding a couple of weeks to them. He asked what the original hearing date was.

Ms. Howells said it was set for April 27.

Commissioner Marks suggested May 12th to have the hearing.

Commissioner Becenti-Aguilar thought that was a good date. Commissioner Lyons agreed.

Ms. Howells said she would change the comment period accordingly.

Commissioner Marks moved to approve the order with new dates. Commissioner Hall seconded the motion and it passed by unanimous (4-0) voice vote. Vice Chairman Block was not present for the vote. So Ordered.

Undocketed IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR
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(Margaret Caffey-Moquin, Mark Cessarich) Order

Mr. Hirasuna reported that Ms. Caffey-Moquin had asked to have this tabled until Thursday. He said it was not a time-sensitive case.

9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

Mr. Hirasuna clarified that the Kit Carson hearing scheduled for Monday was listed as a comment hearing but it was evidentiary in a sense and he was not sure how to phrase it.

Commissioner Marks said it was evidentiary to determine if the protests were valid.

Ms. Howells agreed. She said it would be held here in the hearing room at 9:30 a.m. The rates were suspended, pending this hearing and she anticipated witnesses to testify.

She said she had been asked several times if people could participate by telephone and that was allowed in the rule. She asked for the Commission to respond.

Commissioner Marks said the problem was that they could take public comment or an attorney's statement over the phone but the witness either had to be personally known by the presiding officer or sworn there in order for the testimony to be accepted into the record.

Mr. Hirasuna agreed.

Commissioner Marks said Kit Carson could waive or make an objection to it. They had made a prima facie case that there were insufficient protests.

Ms. Howells agreed and the protesters had not had a chance to protest it. Their reasons needed to be made. She asked what the Commission wanted.

It included the advice notice, the order suspending rates and the Commissioners should have the sworn evidence from two witnesses. They had two representatives from Kit Carson which included spreadsheets. Each Commissioner that attended the hearing would have the advice notice, the rule, the response from Kit Carson and the protest exhibits.

Vice Chairman Block asked that she just make her copy of the protests available if any Commissioner wanted to look at them.

Ms. Howells agreed and said she would have it ready. She said people from the newspapers had asked who would get to speak. The Commission might want to wait and see how many showed up before making that decision at the hearing.

Vice Chairman Block announced he was having a meeting in Taos on Saturday - not primarily to hear people's concerns on this case but it might be an item more people would come out for. If any protesters came he wanted to make sure he could not discuss it because it could put his vote in jeopardy.

Commissioner Becenti-Aguilar asked if they needed to announce a possible quorum for it.

Vice Chairman Block invited any of the Commissioners to come and a notice might be needed if more than three were there.

Commissioner Becenti-Aguilar was concerned about hearing a lot of repetition.

Ms. Howells said Kit Carson had broken out the protests by reasons. The Commission could limit the speakers by those categories.

Commissioner Marks thought Commissioner Becenti-Aguilar was talking more about people getting into a debate.

Vice Chairman Block thought he could keep order on that day and would like to chair that hearing.

Commissioner Marks announced on a related issue that there would be a hearing on Thursday afternoon at 1:00 regarding the gas utility disconnection rule (on Jan 6).

**Undocketed IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR
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(Margaret Caffey-Moquin, Mark Cessarich) Order**

Commissioner Marks moved to take this case off the table. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

Mr. Cessarich handed out his affidavit to the "Commissioners and presented information regarding this matter to the Commission. He said Trillion was applying for CLEC status. He explained how these were handled by the Commission. He shared what the application must contain and verified that the application was complete.

Vice Chairman Block asked how many applications he got each year.

Mr. Cessarich said it was about 12-18 per year.

Commissioner Becenti-Aguilar asked how many CLEC providers were here now.

Mr. Cessarich said there were a little more than a hundred but not all of them actually were doing business in New Mexico. If inactive, they might need to go through the process again.

Commissioner Becenti-Aguilar asked how many cellular companies were in New Mexico.

Mr. Cessarich didn't know off hand since they were not regulated by the PRC. But he added that the Commission had a right under public interest to address them.

Mr. Cessarich reviewed this application and pointed out on page 4 that they would use their own point to point broadband wireless facilities. They didn't plan to provide residential retail service but only to provide on behalf of State of New Mexico to PSAPs for 911 service as well as data networks and PBX for school districts. Trillion was largest school communication provider in the nation.

He explained that they were not seeking ETC designation under RUSF.

Commissioner Lyons said they would put this on the Thursday agenda for action.

9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA

Mr. Hirasuna briefly explained the procedure in the moratorium issue prohibiting shut off of gas customers during winter heating.

Under the PRC Act, the Commission had 18 months, once a NOPR was issued. Because of vacancies in OGC they had to let that one go. Under the statute, the Commission had to start over again so they had a new case and prior comments were carried over but, by law, the Commission had to have another public hearing. It was clear that those who submitted before didn't have to submit again so he didn't know how many comments they would have. The record was huge.

The rule would change with four exceptions on things not resolved. He would share those four with Commissioners by making the record available but wouldn't copy them. He clarified that they would just receive public comment.

Chairman Lyons asked if he would not roll that into regular meeting.

Mr. Hirasuna agreed. It would be at 1:00

10. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA

Mr. Rivera welcomed the new commissioners and had no communications.

- **Legislative Matters**

There were no legislative matters.

11. COMMUNICATIONS WITH COMMISSIONERS

Chairman Lyons said he would put together a task force to be more pro business in New Mexico and look at relaxing some regulations. He would like the task force to include utilities, transportation and telecommunications to find out what they could do to help get out of the half billion deficit.

Commissioner Block liked that idea and felt they should move on it quickly.

Mr. Rivera was glad to work with the Commission on it.

Commissioner Hall thought perhaps they could look at taxes that were not beneficial to businesses in New Mexico. Maybe they could change those that were not helping businesses prosper - things they could do to make it better for companies so they could invite more businesses in New Mexico to generate more income for everyone.

Chairman Lyons said they had a national audit of the Insurance Division that put it on probation. He wanted to discuss how to get off probation on Tuesday's agenda. Commissioner Block agreed.

Commissioner Marks asked regarding the task force if he was thinking of legislative changes for 2011.

Chairman Lyons said no. He said he wanted to consider in-house ideas to be ready for 2012. Unless they got something moving very quickly it was too late for 2011.

Commissioner Marks encouraged Chairman Lyons and Commissioner Hall to understand how each part functioned first before starting to change things. If it was not possible to make the changes for 2011 it would not have urgency. Most of the impediments to business were statutory and not regulatory such as all the fees. He didn't think they would find all that much the Commission could change on its own and he encouraged them to figure out what was here. They would bring a new perspective.

Commissioner Hall was sure they would spend a lot of time doing that and he didn't mention a specific division. He just wanted the Commission to find places that might be changed and if statutory, then work for future legislation. There was a time limit to their terms on the PRC. There might not be anything that could be changed but the Commission should determine that. If needed, they could go to the legislature. Chairman Lyons and he had both been in the legislature and were not tied to this side of the street.

He realized a lot of things were statutory but also lots were regulatory. He knew it would take time and couldn't be done overnight so they needed to get on with it as fast as possible. The legislature had proposed to do away with elected commissioners at the PRC. The Commission needs to turn around our image so people respect the PRC. Ninety five percent of New Mexico people don't even know the PRC exists and only 1% know what it does.

Commissioner Block thanked Commissioner Hall. All the Commissioners were elected and each has a right to come and explore ideas and work to benefit New Mexicans.

Commissioner Becenti-Aguilar also welcomed Chairman Lyons and Commissioner Hall. She agreed they were welcome to voice their opinions because they were elected by their district. She support his ideas and thought they could work with this agency and organization - There would be many discussions and they would not always agree but they could work together for the citizens of New Mexico and the employees.

Chairman Lyons noted they were being asked to cut another 10% off the budget. He enjoyed a zero general fund budget at the Land Office and thought perhaps the Commission should consider that here at the PRC. It was something to look at and it might be helpful to keep this agency going in the future. It would take some legislation to do that.

12. CLOSED EXECUTIVE SESSION Pursuant to NMSA 1978, Section 10-15-1.H (2) to discuss limited personnel matters.

Commissioner Hall moved to go into closed executive session pursuant to NMSA 1978, Section 10-15-1.H (2) to discuss limited personnel matters. Chairman Lyons seconded the motion and it passed by unanimous roll call vote with Commissioners Becenti-Aguilar, Hall, Lyons, Block and Marks voting in the affirmative and none voting against.

The Commission went into executive session at 10:35 a.m.

Commissioner Hall moved to return to Open Session. Chairman Lyons seconded the motion and it passed by unanimous voice vote.

13. RETURN TO OPEN SESSION

The Commission returned to open session at 10:52 a.m. Chairman Lyons announced to the public that no actions were taken during the closed session and the only matters discussed were limited personnel matters.

Commissioner Hall moved to appoint Mr. Jim Williamson as the temporary Acting Director of the Consumer Relations Division. Commissioner Lyons seconded the motion and it passed by majority (3-2) voice vote with Commissioner Marks and Commissioner Becenti-Aguilar voting against.

Commissioner Marks stated that appointing a new person to be the Acting Director, rather than allowing the current Acting Director to continue in that position was a waste of taxpayer dollars.

Commissioner Hall moved to appoint Mr. Nick Guillen as the temporary Acting Chief of the Records Bureau. Chairman Lyons seconded the motion and it passed by majority (3-2) voice vote

with Commissioner Marks and Commissioner Becenti-Aguilar voting against.

Chairman Lyons brought forth a draft resolution that provided that no Commission employee should be paid a base salary of greater than \$99,000 in light of the budget deficits faced by the State.

Mr. Hirasuna said if the Commission wanted to move forward on the draft resolution, Ms. Hughanne Maxwell-Loux should be instructed to develop a list of all Commission employees making more than \$99,000 and indicate which employees were classified and which were exempt. Ms. Maxwell-Loux and Ms. Carol Rising should be requested to be present at a future Commission meeting to discuss any legal issues that would need to be addressed to implement the resolution.

The Commission instructed Mr. Hirasuna to have Ms. Maxwell-Loux prepare his recommended list, to have the matter added to the agenda of the January 13, 2011 Regular Open Meeting as both a closed session item and a Regular Action Item and to have Ms. Maxwell-Loux and Ms. Rising available at that meeting.

Commissioner Block announced that the State Personnel Office was going to commence holding Tribal Competency Training courses in the near future.

Commissioner Becenti-Aguilar encouraged all Commission employees to attend those courses.

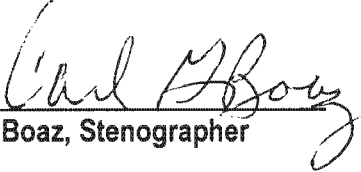
Mr. Rivera said that it should be mandatory that all Bureau Chiefs and Division Directors attend those courses.

13. ADJOURNMENT

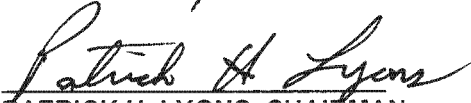
Commissioner Hall moved to adjourn the meeting. Chairman Lyons seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 11:07 a.m.

ATTEST:


Carl Boaz, Stenographer

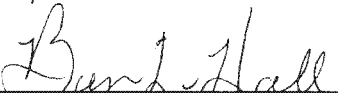
APPROVED: 01/25/2011


PATRICK H. LYONS, CHAIRMAN


JEROME D. BLOCK, VICE CHAIRMAN


THERESA BECENTI-AGUILAR, COMMISSIONER


JASON MARKS, COMMISSIONER


BEN L. HALL, COMMISSIONER



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Tuesday, January 4, 2011

9:30 A.M.

**PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501**

AGENDA

- 1. PLEDGE OF ALLEGIANCE**
- 2. INTRODUCTIONS**
- 3. ELECTION OF NEW PRC CHAIRPERSON AND VICE CHAIRPERSON**
- 4. MISCELLANEOUS ANNOUNCEMENTS**
- 5. CONSIDERATION AND APPROVAL OF THE AGENDA**
- 6. CONSIDERATION AND APPROVAL OF MINUTES**
 - **Minutes of the Regular Open Meeting of December 14, 2010**
 - **Minutes of the Regular Open Meeting of December 16, 2010**
- 7. PUBLIC COMMENT**
- 8. REGULAR ACTION ITEMS**

A. Utility Division Cases

Undocketed Margaret Caffey- Moquin Mark Cessarich	IN THE MATTER OF THE APPLICATION OF TRILLION PARTNERS, INC. FOR A CERTIFICATE OF REGISTRATION TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW MEXICO. <u>Order</u>
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10-00389-UT
10-00390-TRP
Mary Howells

IN THE MATTER OF AMENDING THE COMMISSION'S
PROCEDURAL RULE ON WHEN A PARTY MAY BE
REPRESENTED BY A NON-ATTORNEY.

Notice of Proposed Rulemaking

9. COMMUNICATIONS WITH GENERAL COUNSEL, ROBERT HIRASUNA
10. COMMUNICATIONS WITH CHIEF OF STAFF, MICHAEL RIVERA
 - Legislative matters
11. COMMUNICATIONS WITH COMMISSIONERS
12. CLOSED EXECUTIVE SESSION
Pursuant to NMSA 1978, Section 10-15-1.H(2) to discuss limited
personnel matters.
13. ADJOURNMENT

The Commission will make reasonable efforts to post the agenda on the Commission's website 24 hours before the open meeting but the inability to do so within the 24 hours prior will not require the Commission to delay the meeting or to refrain from taking action on any agenda item on which it otherwise could act.

At any time during the Open Meeting the Commission may close the meeting to the public to discuss matters not subject to the New Mexico Open Meetings Act. The Commission may revise the order of the agenda items considered at this Open Meeting.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE IN ORDER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION (827-4084) AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.

SIGN-IN SHEET

DATE:

January 4, 2011

[illegible]

Thank you for attending this meeting.