

**MINUTES OF THE
REGULAR OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
October 2, 2012**

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:

Commission Chairman Patrick H. Lyons
Commissioner Vice Chair Theresa Becenti-Aguilar
Commissioner Ben L. Hall
Commissioner Jason A. Marks
Commissioner Douglas J. Howe

Members Absent:

Staff Present

Johnny Montoya, Chief of Staff
Robert Parker, Deputy Chief of Staff for Legal Affairs
Margaret Caffey-Moquin, Associate General Counsel
Rick Blumenfeld, Associate General Counsel
Michael C. Smith, Associate General Counsel
Sefie Anaya, Pipeline Safety Bureau
Dwight Lamberson, Utility Division Director
Ken Smith, Telecommunications Bureau
Patrick López, Legal Division Director
Marc Martínez, OGC Staff
Michael Ripperger, Telecommunications Bureau Chief
Arthur Bishop, 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 Chairman Patrick Lyons 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.

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

Mr. Anaya introduced Ms. Tina Cisneros as new Office Manager.

3. MISCELLANEOUS ANNOUNCEMENTS

There were no miscellaneous announcements.

4. CONSIDERATION AND APPROVAL OF THE AGENDA

Commissioner Marks moved to approve the agenda as presented. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

5. CONSIDERATION AND APPROVAL OF MINUTES

- Minutes of the Regular Open Meeting of August 30, 2012
- Minutes of the Regular Open Meeting of September 4, 2012
- Minutes of the Regular Open Meeting of September 6, 2012

Commissioner Hall moved to approve the minutes of August 30, 2012, September 4, 2012 and September 6, 2012 as presented. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote.

6. CONSENT ACTION

A. Utility Division

12-00279-UT

MONICA STEINHOFF O'FRIEL, COMPLAINANT, V. PUBLIC SERVICE
COMPANY OF NEW MEXICO, RESPONDENT

(Rick Blumenfeld) Order

Commissioner Marks moved to approve the order. Commissioner Becenti-Aguilar seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

7. REGULAR ACTION

A. Utility Division

11-00158-UT IN THE MATTER OF THE PETITION OF VIRGIN MOBILE USA, LP FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR
LIFELINE SERVICES.
(Margaret Caffey-Moquin) Order

Ms. Caffey-Moquin presented information regarding this matter to the Commission. She recommended adoption of the RD with slightly different language. Mr. Medeiros issued an errata notice yesterday which she accepted.

There will be a generic docket opened for filing carrier issues. The HE made that as part of his recommendations last week.

Commissioner Howe noted that Ms. Caffey-Moquin said Virgin Mobile would be approved for certain areas but others deferred. He asked until when it would be deferred.

Ms. Caffey-Moquin wasn't sure and couldn't find that in her notes.

Mr. Jeff Albright (counsel for Virgin Mobile) said they had agreed that it would become effective by operation of law at the end of November. Virgin Mobile would return regarding the notice of filing but it would become moot at this Commission. He would notify the Commission that the FCC failed to act and it was effective by operation of law when that happened.

Commissioner Howe understood it was only deferred because of the FCC consideration. Mr. Albright agreed.

Commissioner Howe asked for confirmation in this case that there was no substantive difference from the order for Tracfone. Ms. Caffey-Moquin agreed.

Commissioner Marks said there were two exceptions and he was trying to understand the second one regarding tribal life-line service in New Mexico. He asked if the form identified which tribes were eligible there.

Ms. Caffey-Moquin said the form required a more exhaustive listing than what was in the exception. The RD identified by law the tribal lifeline eligible areas in New Mexico. Because the FCC determination was somewhat vague in nature the provision said the form "shall include federally recognized tribal areas

and the eastern Navajo agency.”

Commissioner Marks said that didn’t make sense to him. He asked what the purpose was of identifying that on the form.

Ms. Caffey-Moquin said the purpose was to avoid overstating the eligibility of the life-line service as a result of customers who were living on tribal lands in places that were excluded for this carrier in New Mexico.

Commissioner Marks said that was no help for him. If the Commission grants the order and the FCC does their magic and Verizon was an eligible ETC it would be anywhere in New Mexico for Life-line.

Ms. Caffey-Moquin disagreed. The tribal areas where they are licensed to serve but under the tribal designated areas were excluded from this designation.

Commissioner Marks concluded it would be everywhere except where they were eligible for tribal life-line. He asked why that would happen and whether they did not want to serve Native Americans.

Ms. Caffey-Moquin explained there was a different program.

Commissioner Marks asked if they weren’t seeking that program as well.

Mr. Albright said regarding the proceeding that Virgin Mobile has not offered the tribal discount \$1 life-line offering. If the PRC or FCC didn’t grant that authority to a carrier then they would have to go to the tribal authorities for approval. This was patterned after what was done with Tracfone and Virgin Mobile considered that to be appropriate. It was discussed on the record.

Commissioner Marks asked if there was any mention that this company provides tribal life line in other states. Mr. Albright believed so.

Commissioner Marks asked Mr. Ripperger if anything could be done with that because it was leaving folks out with this exclusion.

Mr. Ripperger said staff had thought about it a lot. In the Terracom case they had a 2 for 1 offering in tribal areas and Virgin Mobile did not. On a public interest level, staff made their recommendation. Staff looks at each case as it comes along. The HE agreed for similar reasons.

Commissioner Marks said the reason was that most would have ordinary life line so there was no incentive for tribal life line.

Mr. Ripperger said the company could come back and make that offering.

Commissioner Marks reasoned that the purpose of the form was to tell folks living in tribal areas that they were not eligible for the Virgin Mobile offering. Ms. Caffey-Moquin agreed.

Commissioner Marks hoped Virgin Mobile would come back to offer this service.

Mr. Albright explained that Virgin Mobile had agreed not to provide life-line on any tribal lands. There were other ETCs from which they could choose the service.

Commissioner Marks asked why the form didn't just say if you live on tribal lands you were not eligible for this service.

Mr. Albright agreed that could be done. That would be simpler.

Ms. Caffey-Moquin agreed to make that change to the form.

Mr. Albright clarified there were other carriers who represented that they would be able to serve them.

Commissioner Marks asked if Universal Carrier Inspection Fee (UCIF) was the same tax. Ms. Caffey-Moquin agreed.

Commissioner Marks recalled the Commission had agreed it was a question for TRD whether those ETCs were subject to that law. Ms. Caffey-Moquin agreed.

Commissioner Marks asked then what the purpose was for opening a docket to make the decision. The Commission already decided it didn't have jurisdiction on that.

Ms. Caffey-Moquin said 911 was jurisdictional here. TRD has jurisdiction on all three of them under the RD because they were all taxes. The UCIF was partly jurisdictional or maybe concurrent jurisdiction. The RD recommends that Virgin Mobile must deal with TRD on whether its practice was compliant. There was a debate over the ancillary fee issues. The Commission has jurisdiction to make a determination.

Mr. Albright said Sprint does remit those taxes to TRD but the TRS and E911 were not remitted to TRD. Regarding UCIF, Sprint LP does pay but Virgin Mobile doesn't (Sprint wireless).

UCIF was under PRC jurisdiction and that's why they were opening a new docket.

Commissioner Becenti-Aguilar asked why the HE was not here today to answer questions.

Mr. Parker agreed that would be much better. He didn't know but offered to call Mr. Medeiros.

Ms. Caffey-Moquin said this was coming today on exceptions that were addressed at the last meeting.

Mr. Parker said he would make every effort in future to have the HE present.

Commissioner Becenti-Aguilar said the OGC had plenty of time to review the case but the Commissioners had only two days. Often, the Commissioners were given a file to do a huge reading job. We need opportunity to ask questions of the HE and she didn't like it that the company's counsel was here instead because it makes it one sided.

Also the Telecommunications staff said they reviewed it thoroughly and that certain groups in New Mexico would be served. She visited with Verizon in April with the Verizon executive. He asked why he could not work directly with her and gave her his card. She didn't appreciate that. While we have CRD, etc. she wanted the relationship with local folks on it. She saw potential problems with this case and wouldn't support it today. We need to have HE here to answer questions.

Commissioner Becenti-Aguilar moved to table this matter and have the HE back to respond to further questions. Chairman Lyons seconded the motion and it passed by majority (4-1) voice vote with Commissioner Howe voting against.

Commissioner Marks asked if Mr. Medeiros was not available today.

Mr. Parker explained that he had health issues but would check on his availability.

**11-00466-UT WESTERN WATER AND POWER PRODUCTION LIMITED, LLC, WWPP. V.
PUBLIC SERVICE COMPANY OF NEW MEXICO, RESPONDENT.
(Margaret Caffey-Moquin) Order**

Ms. Caffey-Moquin presented information regarding this matter to the Commission. The order would set a briefing schedule. New briefs were needed in light of the court decision. She had mentioned the expiration of tax benefits which would expire at the end of 2013 and could be a factor with construction projects.

Commissioner Marks moved to adopt the order. Commissioner Howe seconded the motion and it passed by unanimous (5-0) voice vote. So Ordered.

Commissioner Howe said last week the Commission had a NOPR that goes to the heart of this. He asked what the schedule was on it or if this would only be heard on the basis of the existing rule.

Ms. Caffey-Moquin gave a two pronged answer. Because the complaint was filed in December 2011 there was a strong position that the former rule pertains. But as the Commission had realized, the rules have not been updated to comply with current federal law.

Commissioner Howe surmised this all went to the legal obligation for the legally enforceable rule.

Ms. Caffey-Moquin agreed.

Commissioner Howe asked if they could expedite the NOPR.

Mr. Parker said the Commission's order set the hearing date on November 30 because of publication requirements.

Commissioner Marks said it was filed before the NOPR. The Commission could end up at the same

place but the NOPR could not retroactively apply so there was no point to expediting it.

Commissioner Howe agreed but said the federal rule would determine it.

Commissioner Marks agreed.

Commissioner Marks asked if there was any objection to ask her to put in his proposed language assuming the substance stays the same - just to say if you live in the tribal area you were not eligible for this service.

Ms. Caffey-Moquin said she wrote down that language when he spoke before.

Commissioner Marks moved to take the next case from the table. Commissioner Hall seconded the motion and it passed by unanimous (5-0) voice vote.

B. State Fire Marshall

**11-00480-FM IN THE MATTER OF THE ADOPTION OF PROPOSED AMENDMENTS TO THE
RULES GOVERNING THE FIRE PROTECTION FUND, 10.25.10 NMAC,
INCLUDING THE ADDITION OF CERTAIN RULES PERTAINING TO THE
FIREFIGHTING QUALIFICATION SYSTEM CURRENTLY FOUND AT 10.25.11
NMAC, AND THE REPEAL OF THE REMAINDER OF 10.25.11 NMAC
(Michael C. Smith) NOPR**

Mr. Smith presented information regarding this matter to the Commission. With respect to changing the rules to reflect changes made by SB 11 there were questions on certain language and staff made those changes in the proposed rule to address those changes. There were general issues:

1. Language regarding municipalities and counties - to add "other government entities entitled to these funds.
2. "Protection from the elements" was the changed language for a reasonable expectation.
3. 10-25-11 d-4 regarding that it was said to be mandatory. So "certified by the academy" was changed to "should" rather than as a mandatory requirement.

Commissioner Marks moved to adopt the NOPR as presented. Commissioner Hall seconded the motion.

Chairman Lyons referred to page 8 of Exhibit A from page 7 regarding purchases of meals.

Marshal Standefer explained that it related to per diem for training attendance.

The motion passed by majority (4-1) voice vote with Commissioner Howe voting against. So

Ordered.

8. PUBLIC COMMENT

There were no public comments.

9. COMMUNICATIONS WITH CHIEF OF STAFF FOR LEGAL AFFAIRS, BOB PARKER

There were no communications with Chief of Staff for Legal Affairs.

10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTTOYA

There were no communications with Chief of Staff.

11. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Becenti-Aguilar asked Mr. Parker about a case that was opened in 2008 regarding the Senate Memorial for tax exemption of tribal members. We had a meeting with legislative interim Indian Affairs Committee in August and they suggested the case should be under TRD. So she had recommended it be closed here. She asked if that was coming to the Commission anytime soon.

Mr. Parker explained that it was not quite as easy as just closing it. OGC had to figure out what to do. He agreed to bring it in the near future.

Commissioner Marks said he would call in on Thursday for the open meeting.

12. ADJOURNMENT

Commissioner Hall moved to adjourn the meeting. Commissioner Howe seconded the motion and it passed by unanimous (5-0) voice vote.

The meeting was adjourned at 10:23 a.m.


ATTEST:


Carl Boaz, Stenographer

APPROVED: 10/30/2012


PATRICK H. LYONS, CHAIRMAN


THERESA BECENTI-AGUILAR, VICE CHAIR


JASON A. MARKS, COMMISSIONER

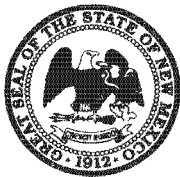

BEN L. HALL, COMMISSIONER


DOUGLAS J. HOWE, COMMISSIONER

OPEN MEETING

DATE: October 2, 2012

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

REGULAR OPEN MEETING

Tuesday, October 2nd, 2012

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. MISCELLANEOUS ANNOUNCEMENTS
4. CONSIDERATION AND APPROVAL OF THE AGENDA
5. CONSIDERATION AND APPROVAL OF MINUTES
 - Minutes of the Regular Open Meeting of August 30th, 2012
 - Minutes of the Regular Open Meeting of September 4, 2012
 - Minutes of the Regular Open Meeting of September 6, 2012
6. CONSENT ACTION

A. Utility Division

12-00279-UT Rick Blumenfeld	MONICA STEINHOFF O'FRIEL, COMPLAINANT. V. PUBLIC SERVICE COMPANY OF NEW MEXICO, RESPONDENT. Order
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7. REGULAR ACTION

A. Utility Division

11-00158-UT Margaret Caffey-Moquin	IN THE MATTER OF THE PETITION OF VIRGIN MOBILE USA, L.P. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR LIFELINE SERVICES. Order
11-00466-UT Margaret Caffey-Moquin	WESTERN WATER AND POWER PRODUCTION LIMITED, LLC, WWPP. V. PUBLIC SERVICE COMPANY OF NEW MEXICO, RESPONDENT. Order

B. State Fire Marshall

11-00480-FM Michael C. Smith	IN THE MATTER OF THE ADOPTION OF PROPOSED AMENDMENTS TO THE RULES GOVERNING THE FIRE PROTECTION FUND, 10.25.10 NMAC, INCLUDING THE ADDITION OF CERTAIN RULES PERTAINING TO THE FIREFIGHTING QUALIFICATION SYSTEM CURRENTLY FOUND AT 10.25.11 NMAC, AND THE REPEAL OF THE REMAINDER OF 10.25.11 NMAC. NOPR
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10. COMMUNICATIONS WITH CHIEF OF STAFF, JOHNNY MONTTOYA

11. COMMUNICATIONS WITH COMMISSIONERS

12. ADJOURNMENT

The Commission will make reasonable efforts to post the agenda on the Commission's website 36 hours before the open meeting, but the inability to do so within the 36 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.

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such discussion or argument to become ex-parte communications.

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.