

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 8-99) IN THE MATTER OF AMENDING CHAPTER 8 OF LANE CODE
) TO ADD PROVISIONS THAT RATIFY THE CREATION OF THE
) REGIONAL FIBER CONSORTIUM (LANE AND KLAMATH
) COUNTIES) AND THE FIBER SOUTH CONSORTIUM
) (LANE, DOUGLAS, AND COOS COUNTIES) (LC 8.600 and 8.700)

Whereas, by Resolution/Order 98-12-2-13 the Lane County Board of Commissioners adopted a Resolution of Cooperation with other cities and counties to improve broadband fiber optics infrastructure access for rural communities, and

Whereas, the Board of County Commissioners has determined it is in the public interest to formalize this working relationship by creation of intergovernmental entities under ORS Chapter 190,

NOW, THEREFORE, the Board of County Commissioners of Lane County ordains as follows:

The Board of County Commissioners of Lane County ordains as follows:

Chapter 8 of Lane Code is hereby amended by adding the following pages:

REMOVE THESE PAGES

None

INSERT THESE PAGES

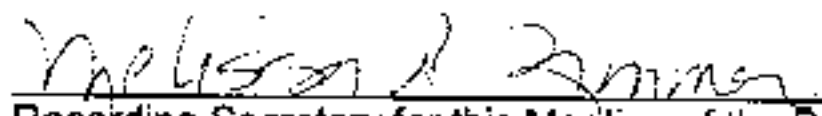
8.600 – 8.600(4) to 8.700 – 8.700(4)
i.e. 8-4 to 8-5
(a total of two pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these additions is to amend Lane Code Chapter 8 to add provisions that ratify the creation of the Regional Fiber Consortium (Lane and Klamath Counties) and the Fiber South Consortium (Lane, Douglas, and Coos Counties) to improve broadband fiber optics infrastructure access for rural communities, (LC 8.600 and 8.700). These new provisions declare the intent of the Board of County Commissioners to form intergovernmental entities by intergovernmental agreements effective upon execution by the Lane County Administrator and subject to the public purposes, powers, duties and functions described in LC 8.600 and 8.700.

ENACTED this 5th day of November 1999.



Chair, Board of County Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 9-24-99, Lane County



OFFICE OF LEGAL COUNSEL

COMMUNICATIONS
FIBER CONSORTIUM AGREEMENTS

8.600 Regional Fiber Consortium.

(1) It is the intent of the Lane County Board of Commissioners to join in the creation of an intergovernmental entity, to be known as the Regional Fiber Consortium (also known as the Lane/Klamath Fiber Consortium), by an agreement entered into by Lane County and other units of local government pursuant to the provisions of ORS 190.003 *et seq.*

(2) The effective date of such intergovernmental agreement shall be the date of execution by Lane County following Board adoption of an ordinance ratifying the creation of the Regional Fiber Consortium.

(3) The public purposes for which the Regional Fiber Consortium shall be created shall be:

(a) To assume ownership and control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium;

(b) To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;

(c) To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government;

(d) If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions; and

(e) To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the purposes of the consortium.

(4) The powers, duties and functions of the Regional Fiber Consortium consistent with the purposes listed in LC 8.600(3) above shall be:

(a) Plan for fiber optic system development for the consortium.

(b) Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.

(c) When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems. No agreement shall bind Lane County without express approval of that agreement by the Lane County Board of Commissioners.

(d) Carry out further responsibilities and functions as provided by the members, provided action to amend the intergovernmental agreement shall be taken for those responsibilities or functions that are different than those listed in LC 8.600(4)(a)-(c).

8.700 Fiber South Consortium.

(1) It is the intent of the Lane County Board of Commissioners to join in the creation of an intergovernmental entity, to be known as the Fiber South Consortium, by an agreement entered into by Lane County and other units of local government pursuant to the provisions of ORS 190.003 *et seq.*

(2) The effective date of such intergovernmental agreement shall be the date of execution by Lane County following Board adoption of an ordinance ratifying the creation of the Fiber South Consortium.

(3) The public purposes for which the Fiber South Consortium shall be created shall be:

(a) To assume ownership and control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium;

(b) To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;

(c) To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government;

(d) If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions; and

(e) To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the purposes of the consortium.

(4) The powers, duties and functions of the Fiber South Consortium consistent with the purposes listed in LC 8.700(3) above shall be:

(a) Plan for fiber optic system development for the consortium.

(b) Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.

(c) When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems. No agreement shall bind Lane County without express approval of that agreement by the Lane County Board of Commissioners.

(d) Carry out further responsibilities and functions as provided by the members, provided action to amend the intergovernmental agreement shall be taken for those responsibilities or functions that are different than those listed in LC 8.700(4)(a)-(c).

COMMUNICATIONS
FIBER CONSORTIUM AGREEMENTS

8.600 Regional Fiber Consortium

(1) It is the intent of the Lane County Board of Commissioners to join in the creation of an intergovernmental entity, to be known as the Regional Fiber Consortium (also known as the Lane/Klamath Fiber Consortium), by an agreement entered into by Lane County and other units of local government pursuant to the provisions of ORS 190.003 *et seq.*

(2) The effective date of such intergovernmental agreement shall be the date of execution by Lane County following Board adoption of an ordinance ratifying the creation of the Regional Fiber Consortium.

(3) The public purposes for which the Regional Fiber Consortium shall be created shall be:

(a) To assume ownership and control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium;

(b) To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;

(c) To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government;

(d) If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions; and

(e) To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the purposes of the consortium.

(4) The powers, duties and functions of the Regional Fiber Consortium consistent with the purposes listed in ORS 8.600(3) above shall be:

(a) Plan for fiber optic system development for the consortium.

(b) Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.

(c) When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems. No agreement shall bind Lane County without express approval of that agreement by the Lane County Board of Commissioners.

(d) Carry out the responsibilities and functions as provided by the members, provided action to amend the intergovernmental agreement shall be taken for those responsibilities or functions that are different than those listed in ORS 8.600(4)(a)-(c).

8.700 ~~Proposed by: [REDACTED] Lane Code: [REDACTED] [REDACTED] 8:700(4)~~

8.700 Fiber South Consortium.

(1) ~~It is the intent of the Lane County Board of Commissioners to join in the creation of an intergovernmental entity, to be known as the Fiber South Consortium, by an agreement entered into by Lane County and other units of local government pursuant to the provisions of ORS 190.003, et seq.~~

(2) ~~The effective date of such intergovernmental agreement shall be the date of execution by Lane County following Board adoption of an ordinance ratifying the creation of the Fiber South Consortium.~~

(3) ~~The public purposes for which the Fiber South Consortium shall be created shall be:~~

(a) ~~To assume ownership and control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium;~~

(b) ~~To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;~~

(c) ~~To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government;~~

(d) ~~If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions; and~~

(e) ~~To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the purposes of the consortium.~~

(4) ~~The powers, duties and functions of the Fiber South Consortium consistent with the purposes listed in ORS 700(3) above shall be:~~

(a) ~~Plan for fiber optic system development for the consortium.~~

(b) ~~Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.~~

(c) ~~When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems. No agreement shall bind Lane County without the express approval of that agreement by the Lane County Board of Commissioners.~~

(d) ~~Carry out further responsibilities and functions as provided by the members, provided that action to amend the intergovernmental agreement shall be taken for those responsibilities or functions that are different than those listed in ORS 700(4)(a)-(c).~~

INTERGOVERNMENTAL AGREEMENT

TO ESTABLISH A REGIONAL FIBER CONSORTIUM FOR THE OWNERSHIP AND OPERATION OF A FIBER OPTIC SYSTEM

AN AGREEMENT, entered into by and between the City of Oakridge, the City of Westfir, the City of Lowell, the City of Springfield, the City of Coburg, the City of Klamath Falls, the City of Chiloquin and the City of Merrill, all of which are Oregon municipal corporations, and Lane County, a political subdivision of the State of Oregon, and Klamath County; a political subdivision of the State of Oregon.

RECITALS

WHEREAS, ORS 190.010 provides that units of local government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform.

AGREEMENT

Now therefore it is agreed:

Section 1. GENERAL PURPOSE

To form a joint entity (hereafter the Regional Fiber Consortium, or "the consortium") consisting of representatives from certain units of local government to carry out the following purposes:

- A. To assume ownership and control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium;
- B. To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;
- C. To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government;
- D. If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions; and
- E. To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the other purposes of the consortium.

Section 2. MEMBERSHIP

- A. Membership in the consortium is, subject to the approval of the original members of the consortium, open to any local government and other governmental entities with a contribution to make to the fulfillment of the purposes of the consortium. Any local government listed in the first paragraph of this agreement may become a member of the consortium at any time by appropriate action.
- B. Membership by an entity not listed in the initial paragraph of this intergovernmental agreement shall be subject to the approval of the existing membership of the consortium. The existing members of the consortium shall consider any application for membership and may approve the application whenever the additional membership will further contribute to the efficient achievement of the purposes of the consortium. Such approval shall be a prerequisite for the adoption of any necessary ordinances. The governing body of any local government may attain membership by adopting an ordinance enacting the intergovernmental agreement. Any other entity may obtain membership in the consortium when such membership is consistent with applicable law and is initiated pursuant to such applicable law.
- C. Associate membership may be available for any other entity whom the members of the consortium recognize as appropriately able to contribute to the purposes of the consortium. Associate members shall be able to participate in all meetings and discussions, but may not participate in any recorded final vote that creates an obligation for any member. The consortium shall develop appropriate standards and procedures for admission of associate members.

Section 3 FUNCTIONS

The basic functions of the consortium are:

- A. Plan for fiber optic system development for the consortium.
- B. Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.
- C. When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems.
- D. Carry out further responsibilities and functions as provided by the members.

Section 4. AUTHORITY

- A. Consortium Authority. Except as provided in Article B of this section, the Consortium shall have authority to act on behalf of the members to oversee and direct the operation of any consortium fiber optic system created or enhanced pursuant to the right of way permit agreements, or other similar agreements entered into by the consortium or its members, and such other responsibilities as may be assigned by the members. The Consortium shall have authority to carry out all functions and duties possessed by the members, either as reserved in the right of way agreements or as otherwise provided by law relating to such agreements, subject to the specific provisions of this agreement.
- B. Powers Retained by Governing Bodies of Members. In the following areas members reserve the authority to act on their own behalf. Each member agrees to make a good faith effort to weigh the impact of such actions on the overall operation and continuity of the system, and each member agrees to take no action in those areas without prior notice to the consortium. The matters subject to this retained authority are:
1. Revocation, termination, extension, amendment or renewal of a right-of-way permit, license or franchise for any actions within the member's right of way.
 2. Notice and an opportunity to review prior to the execution of any agreement by the consortium concerning the use, management, control, or operation of any part of the consortium's fiber optic system within the jurisdictional area of the member. All such agreements shall be subject to any applicable ordinances or regulations of the member.
 3. Any action requiring the adoption of any legislation by the governing bodies, the amendment of this agreement, or the granting or denying of any additional right of way permit, license or franchise.
 4. Any decision concerning a change of ownership or control of a system subject to a right of way permit, license or franchise.
- C. Discretionary Review. No action of the consortium in regard to the following matters shall become final before a period of 30 days has expired from the adoption thereof by the consortium. These actions shall be subject to review by each member during the 30 day period in accordance with procedures established by the member. The purpose of this review is to permit governing bodies of members to understand the consortium's intended actions in matters of particular concern, and to allow the consortium to reconsider such actions, if necessary. The matters subject to this discretionary review are:

1. Any sanctions to be imposed on any user of the fiber optic system for failure to comply with the terms of an agreement with the consortium.
2. Adoption, amendment or repeal of regulations governing the operation of the system.

Section 5. RULES OF PROCEDURE

The consortium shall adopt rules of procedure. The rules shall:

- A. Establish times and places of meetings.
- B. Establish a central office for the consortium, which shall have a mailing address, a telephone, and appropriate records of the consortium.
- C. Prescribe officers of the consortium to be elected by the consortium from among its members.
- D. Provide for the organization and operation of the meetings of the consortium, wherein each member shall be entitled to select one representative to attend and vote at consortium meetings, that a quorum for any meeting shall consist of a majority of the members having delegated representatives. The original rules of procedure shall provide that a decision of the consortium, including a decision to amend the rules of procedure, may be made only upon the affirmative vote of at least half of the members of the consortium. The rules of procedure may be amended to provide that decisions may be made by less than a majority of the members, except that no amendment of the rules of procedure may ever be made by less than a majority of the members. The rules of procedure may provide for meetings to be conducted by telephone or for the attendance of some member's representatives by telephone.

Section 6. CONTRACTS

The consortium is authorized by the members to enter into contracts for:

- A. Technical and professional services.
- B. Construction and installation of any facilities necessary to achieve the objectives of this agreement.
- C. Provision of any form of telecommunications services to the consortium area, or any part thereof.
- D. The purchase and ownership of real and personal property.

The Consortium's contracts shall be valid when signed by the presiding officer of the consortium, after authorization of such signature by the members of the consortium.

Section 7 COST OF OPERATION

- A. The cost of operation of the consortium shall be determined by its members. In accordance with and subject to the Oregon Local Budget Law, the consortium may make expenditures for the purchase of materials, services, supplies and equipment. Expenditures shall not exceed the funds appropriated for the purpose by the members or acquired through the operations of the consortium. No member shall be obligated for any payments except as previously approved by the member. All obligations of the consortium shall be subject to prior appropriation of funds.
- B. Any revenues received in excess of the budgeted cost of operation may be reinvested in the provision of additional services by the consortium, or held in a reserve account for future needs, or otherwise used as determined by the consortium. Revenues in excess of operational costs may also be returned to the members when such action is made a part of the consortium's adopted budget. The consortium recognizes that some members have made greater contributions to the establishment of the consortium than other members, when measured in terms of goods and services donated, forbearance in the collection of right-of-way fees, or other financial contributions. This difference in contributions shall have no effect on membership rights, except that it may be reflected in return payments to members, which shall be roughly proportional to the value of each member's contribution.

Section 8. TERMINATION

The duration of this agreement shall be perpetual. Any member may terminate its participation in the agreement and withdraw from the consortium upon 90 days written notice of withdrawal to the consortium and other members. However, expenditures contracted for by the consortium after the date of notice of intent to withdraw shall not constitute an obligation on the part of the member providing notice of withdrawal. Where a member has the right to collect fees for the use of the right of way, and where the consortium occupies the right of way within the jurisdiction of the member, in the event that a member withdraws from the consortium, the consortium shall become responsible for the payment of right of way fees or for franchise fees or other like charges, in the same manner and to the same degree as would be true for any private entity, unless other arrangements are made at the time of withdrawal.

Section 9. MEDIATION

In the event of a dispute or disagreement regarding the performance, terms or conditions of this agreement, unless otherwise provided, the dispute shall be submitted to mediation.

Section 10. INDEMNITY

The Consortium, and each of the parties agrees to defend, indemnify and save the other harmless from any claim, liability or damage resulting including attorney fees from any error, omission or act of negligence on the part of the indemnifying party, its officers or employees in the performance of its responsibilities under this agreement. The parties indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, as applicable.

In providing the services specified in this agreement (and any associated services) all the parties are public bodies and maintain their public body status as specified in ORS 30.260. All the parties understand and acknowledge that all parties retain all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.

Section 11. EFFECTIVE DATE

As required by ORS 190.085, prior to becoming effective, each of the parties to the intergovernmental agreement shall enact an ordinance ratifying the creation of the intergovernmental entity, declaring that it is the intent of the governing body enacting the ordinance to create an intergovernmental entity by intergovernmental agreement, specifying the effective date of the agreement, setting forth the public purposes of the intergovernmental entity and describing the powers, duties and functions of the intergovernmental entity. Not later than 30 days after the effective date of the intergovernmental agreement, each member, upon joining, must file with the Secretary of State copies of the enacting ordinance and copies of this intergovernmental agreement.

This agreement shall become effective for the first and second member of the consortium upon the adoption of an enacting ordinance by the second member adopting such an enacting ordinance, and shall thereafter become effective for each additional member of the consortium upon adoption of an enacting ordinance.

Section 12. NOTICE

Until notice of a change is provided to all then current members of the consortium, all notice to the consortium shall be directed to:

Milo Meham
Lane Council of Governments
125 E 8th Ave.
Eugene, OR 97401
541-6824023
fax 541- 6824099

DEFINITIONS

For purposes of this agreement the following terms shall mean:

- A. Member. A local government that has accepted the terms of this intergovernmental agreement and has been accepted as a member of the consortium. The original members shall be Coburg, Lane County, Lowell, Oakridge, Springfield and Westfir; Klamath County, Klamath Falls, Chiloquin and Merrill.
- B. Consortium. A local government formed as an organization of governments by an intergovernmental agreement having the power to own property, enter into agreements and such other powers as described in this agreement.
- C. Right-of-way permit. A permit or license granted by a member government to an entity, such permit allowing the entity to install telecommunications facilities within the public right-of-way within the jurisdiction of a member government.
- D. Associate Member. A nonvoting member of the association who may attend all meetings and participate in the activities of the consortium to the extent allowed by law or by agreement between the consortium and the associate member.
- E. Fiber Optic System. A system for telecommunications consisting of the physical fiber optic cable, the electronic systems necessary to communicate signals along the fiber cable, such other equipment to facilitate the introduction and transmission of a communication signal, and a means of connection to the source and destination for a communications signal.

SIGNED:

THE CITY OF CHILOQUIN

Signature (Title)

Date

KLAMATH COUNTY

Signature (Title)

Date

LANE COUNTY

Signature (Title)

THE CITY OF COBURG

Signature (Title)

Date

THE CITY OF KLAMATH FALLS

Signature (Title)

Date

THE CITY OF LOWELL

Signature (Title)

Date

THE CITY OF MERRILL

Signature (Title)

Date

THE CITY OF SPRINGFIELD

Signature (Title)

Date

Date

THE CITY OF OAKRIDGE

Signature (Title)

Date

THE CITY OF WESTFIR

Signature (Title)

Date

INTERGOVERNMENTAL AGREEMENT

TO ESTABLISH A CONSORTIUM OF LOCAL GOVERNMENTS FOR THE OWNERSHIP AND OPERATION OF A FIBER OPTIC SYSTEM

AN AGREEMENT, entered into by and between some or all of the following: the Cities of Springfield; Veneta; Florence; Dunes City; Reedsport; Lakeside; Coos Bay; North Bend; Bandon; Coquille; Roseburg; Sutherlin; Drain; Yoncalla; Cottage Grove and Creswell, all of which are Oregon municipal corporations, and Lane County; Douglas County and Coos County, all of which are political subdivisions of the State of Oregon.

RECITALS

WHEREAS, ORS 190.010 provides that units of local government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform, and

WHEREAS it is the intent of the parties to create an intergovernmental entity for the purposes provided in this agreement.

AGREEMENT

Now therefore it is agreed:

Section 1. GENERAL PURPOSE

To form a joint entity (hereafter the Fiber South Consortium, or "the consortium") consisting of representatives from certain units of local government to carry out the following purposes:

- A. To assume control of fiber optic cable obtained by the consortium, or by any member government, that the government, in its discretion, deems it is appropriate to contribute to the consortium by an assignment of rights or other transfer of control;
- B. To provide for the members a fiber optic system, or components thereof, that, consistent with available resources, best serves the public interest in an efficient manner;
- C. To provide a forum for communication and consultation among members and to provide an opportunity for a cooperative and equitable sharing of the expenses, data, expertise, experience and plans of each unit of local government; and
- D. If feasible for and agreeable to some or all of the members, take joint or common action to provide the appropriate level of communication services to the citizens of the various jurisdictions.

- E. To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the other purposes of the consortium.

Section 2. MEMBERSHIP

- A. Membership in the consortium is, subject to the approval of the original members of the consortium, open to any local government and other governmental entities with a contribution to make to the fulfillment of the purposes of the consortium. Any local government listed in the first paragraph of this agreement may become a member of the consortium at any time by appropriate action.
- B. Membership by an entity not listed in the initial paragraph of this intergovernmental agreement shall be subject to the approval of the existing membership of the consortium. The existing members of the consortium shall consider any application for membership and may approve the application whenever the additional membership will further contribute to the efficient achievement of the purposes of the consortium. Such approval shall be a prerequisite for the adoption of any necessary ordinances. The governing body of any local government may attain membership by adopting an ordinance enacting the intergovernmental agreement. Any other entity may obtain membership in the consortium when such membership is consistent with applicable law and is initiated pursuant to such applicable law.
- C. Associate membership may be available for any other entity whom the members of the consortium recognize as appropriately able to contribute to the purposes of the consortium. Associate members shall be able to participate in all meetings and discussions, but may not participate in any recorded final vote that creates an obligation for any member. The consortium shall develop appropriate standards and procedures for admission of associate members.

Section 3 FUNCTIONS

The basic functions of the consortium are:

- A. Plan for fiber optic system development for the consortium.
- B. Direct and manage the use of a fiber optic system or systems obtained by the consortium or its members.
- C. When requested, act as the agent of the members in the preparation and negotiation of agreements concerning the acquisition, management and use of the consortium's fiber optic systems.
- D. Carry out further responsibilities and functions as provided by the members.

Section 4. AUTHORITY

- A. Consortium Authority. Except as provided in Article B of this section, the Consortium shall have authority to act on behalf of the members to oversee and direct the operation of any consortium fiber optic system created or enhanced pursuant to the right of way permit agreements, or other similar agreements entered into by the consortium or its members, and such other responsibilities as may be assigned by the members. The Consortium shall have authority to carry out all functions and duties possessed by the members, either as reserved in the right of way agreements or as otherwise provided by law, subject to the specific provisions of reservation provided in this agreement.
- B. Powers Retained by Governing Bodies of Members. In the following areas members reserve the authority to act on their own behalf. Each member agrees to make a good faith effort to weigh the impact of such actions on the overall operation and continuity of the system, and each member agrees to take no action in those areas without prior notice to the consortium. The matters subject to this retained authority are:
1. Revocation, termination, extension, amendment or renewal of a right-of-way permit, license or franchise for any actions within the member's right of way.
 2. Notice and an opportunity to review prior to the execution of any agreement by the consortium concerning the use, management, control, or operation of any part of the consortium's fiber optic system within the jurisdictional area of the member. All such agreements shall be subject to any applicable ordinances or regulations of the member.
 3. Any action requiring the adoption of any legislation by the governing bodies, the amendment of this agreement, or the granting or denying of any additional right of way permit, license or franchise.
 4. Any decision concerning a change of ownership or control of a system subject to a right of way permit, license or franchise.
- C. Discretionary Review. No action of the consortium in regard to the following matters shall become final before a period of 30 days has expired from the adoption thereof by the consortium. These actions shall be subject to review by each member during the 30 day period in accordance with procedures established by the member. The purpose of this review is to permit governing bodies of members to understand the consortium's intended actions in matters of particular concern, and to allow the consortium to reconsider such actions, if necessary. The matters subject to this discretionary review are:

1. Any sanctions to be imposed on any user of the fiber optic system for failure to comply with the terms of an agreement with the consortium.
2. Adoption, amendment or repeal of regulations governing the operation of the system.

Section 5. RULES OF PROCEDURE

The consortium shall adopt rules of procedure. The rules shall:

- A. Establish times and places of meetings.
- B. Establish a central office for the consortium, which shall have a mailing address, a telephone, and appropriate records of the consortium.
- C. Prescribe officers of the consortium to be elected by the consortium from among its members.
- D. Provide for the organization and operation of the meetings of the consortium, wherein each member shall be entitled to select one representative to attend and vote at consortium meetings, that a quorum for any meeting shall consist of a majority of the members having delegated representatives. The original rules of procedure shall provide that a decision of the consortium, including a decision to amend the rules of procedure, may be made only upon the affirmative vote of at least half of the members of the consortium. The rules of procedure may be amended to provide that decisions may be made by less than a majority of the members, except that no amendment of the rules of procedure may ever be made by less than a majority of the members. The rules of procedure may provide for meetings to be conducted by telephone or for the attendance of some member's representatives by telephone.

Section 6. CONTRACTS

The consortium is authorized by the members to enter into contracts for:

- A. Technical and professional services.
- B. Construction and installation of any facilities necessary to achieve the objectives of this agreement.
- C. Provision of any form of telecommunications services to the consortium area, or any part thereof.
- D. The purchase and ownership of real and personal property.

The Consortium's contracts shall be valid when signed by the presiding officer of the consortium, after authorization of such signature by the members of the consortium.

Section 7 COST OF OPERATION

- A. The cost of operation of the consortium shall be determined by its members. In accordance with and subject to the Oregon Local Budget Law, the consortium may make expenditures for the purchase of materials, services, supplies and equipment. Expenditures shall not exceed the funds appropriated for the purpose by the members or acquired through the operations of the consortium. No member shall be obligated for any payments except as previously approved by the member. All obligations of the consortium shall be subject to prior appropriation of funds.
- B. Any revenues received in excess of the budgeted cost of operation may be reinvested in the provision of additional services by the consortium, or held in a reserve account for future needs, or otherwise used as determined by the consortium. Revenues in excess of operational costs may also be returned to the members when such action is made a part of the consortium's adopted budget. The consortium recognizes that some members have made greater contributions to the establishment of the consortium than other members, when measured in terms of goods and services donated, forbearance in the collection of right-of-way fees, or other financial contributions. This difference in contributions shall have no effect on membership rights, except that it may be reflected in return payments to members, which shall be roughly proportional to the value of each member's contribution.

Section 8. TERMINATION

The duration of this agreement shall be perpetual. Any member may terminate its participation in the agreement and withdraw from the consortium upon 90 days written notice of withdrawal to the consortium and other members. However, expenditures contracted for by the consortium after the date of notice of intent to withdraw shall not constitute an obligation on the part of the member providing notice of withdrawal. Any fiber, or right of use of fiber, as well as other rights, including ownership of equipment or other goods acquired by the consortium or contributed to the consortium by the withdrawing member shall remain with the consortium. Where a member has the right to collect fees for the use of the right of way, and where the consortium occupies the right of way within the jurisdiction of the member, in the event that a member withdraws from the consortium, the consortium shall become responsible for the payment of right of way fees or for franchise fees or other like charges, in the same manner and to the same degree as would be true for any private entity, unless other arrangements are made at the time of withdrawal.

Section 9. MEDIATION

In the event of a dispute or disagreement regarding the performance, terms or conditions of this agreement, unless otherwise provided, the dispute shall be submitted to mediation.

Section 10. INDEMNITY

The Consortium and each of the parties agrees to defend, indemnify and save the other harmless from any claim, liability or damage, including attorney fees, resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers or employees in the performance of its responsibilities under this agreement. The parties indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, as applicable.

In providing the services specified in this agreement (and any associated services) all the parties are public bodies and maintain their public body status as specified in ORS 30.260. All the parties understand and acknowledge that all parties retain all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.

Section 11. EFFECTIVE DATE

As required by ORS 190.085, prior to becoming effective, each of the parties to the intergovernmental agreement shall enact an ordinance ratifying the creation of the intergovernmental entity, declaring that it is the intent of the governing body enacting the ordinance to create an intergovernmental entity by intergovernmental agreement, specifying the effective date of the agreement, setting forth the public purposes of the intergovernmental entity and describing the powers, duties and functions of the intergovernmental entity. Not later than 30 days after the effective date of the intergovernmental agreement, each member, upon joining, must file with the Secretary of State copies of the enacting ordinance and copies of this intergovernmental agreement.

This agreement shall become effective for the first and second member of the consortium upon the adoption of an enacting ordinance by the second member adopting such an enacting ordinance, and shall thereafter become effective for each additional member of the consortium upon adoption of an enacting ordinance.

Section 12. NOTICE

Until notice of a change is provided to all then current members of the consortium, all notice to the consortium shall be directed to:

Milo Meham
Lane Council of Governments
125 E 8th Ave.
Eugene, OR 97401
541-6824023
fax 541- 6824099

DEFINITIONS

For purposes of this agreement the following terms shall mean:

- A. Member. A local government that has accepted the terms of this intergovernmental agreement and has been accepted as a member of the consortium.
- B. Consortium. A local government formed as an organization of governments by an intergovernmental agreement having the power to own property, enter into agreements and such other powers as described in this agreement.
- C. Right-of-way permit. A permit or license granted by a member government to an entity, such permit allowing the entity to install telecommunications facilities within the public right-of-way within the jurisdiction of a member government.
- D. Associate Member. A nonvoting member of the association who may attend all meetings and participate in the activities of the consortium to the extent allowed by law or by agreement between the consortium and the associate member.
- E. Fiber Optic System. A system for telecommunications consisting of the physical fiber optic cable, the electronic systems necessary to communicate signals along the fiber cable, such other equipment to facilitate the introduction and transmission of a communication signal, and a means of connection to the source and destination for a communications signal.

SIGNED:

Jurisdiction

Signature (Title)

Date

Jurisdiction

Signature (Title)

Date

Jurisdiction

Signature (Title)

Date

Jurisdiction

Signature (Title)

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IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER) In the Matter of Committing Staff Time to Fiber Optic Consortium
99-6-9-2) Facilitation and Authorizing Signing of Intergovernmental Agreements for
) Lane County to Become a Member of Regional Fiber Consortiums
) Comprised of Public/ Municipal Organizations Working Together to
) Facilitate Coordinated Broadband Fiber Optics and Telecommunications
) Systems Access

Whereas, rural areas are not benefiting from privately developed broad-band telecommunication facilities on an equal basis with urban areas, and

Whereas, Lane County has established a policy of assisting distressed communities to become competitive and viable in the global economy, and

Whereas, rural areas must have equal access to global telecommunications systems to be productive participants in the Lane County community, and

Whereas, the 1996 federal Telecommunications Act provides for public agencies to help remove barriers to access to broadband fiber optic facilities in a competitively neutral manner, and

Whereas, two consortiums of public agencies have formed to consolidate and aggregate their common public interest and needs for equal access to broadband telecommunications by acquiring and facilitating the use of fiber optic and other broadband telecommunications facilities, and

Whereas, after due consideration of roles, risks and responsibilities, the Lane County Board of Commissioners has determined it to be in the public interests to join with other public agencies in Regional Fiber Consortiums to provide equal access for all citizens of Lane County to broadband fiber optic facilities that provide a full range of telecommunications services through private sector participation and contracting,
NOW, THEREFORE, IT IS HEREBY:

ORDERED that Lane County shall join the Regional Fiber Consortium consisting of public agencies, including Klamath County, City of Lowell, City of Oakridge, City of Westfir, City of Coburg, City of Springfield, and others, and

FURTHER ORDERED that Lane County shall join the Regional Fiber Consortium consisting of public agencies, including: Douglas County, Coos County, and the cities of Cottage Grove, Creswell, Reedsport, Drain, Bandon, and others, and

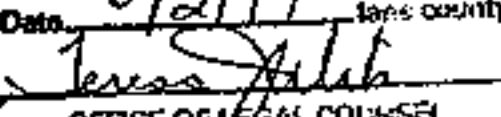
FURTHER ORDERED that an Ordinance process shall be initiated to formalize the formation of the Consortiums described above, including readings and public hearing, as required in Oregon Revises Statutes Chapter 190.

FURTHER ORDERED that the County Administrator is authorized to sign an Intergovernmental Agreement with each consortium, subject to legal counsel review, and

FURTHER ORDERED that staff time for fiber optics Consortium development will be for Development and Coordination at an estimated .5FTE level in FY2000.

Signed this 9th day of June, 1999.


Chair, Board of County Commissioners

APPROVED AS TO FORM
Date 6/2/99 Lane County

OFFICE OF LEGAL COUNSEL

