

W. G. L.

AGENDA COVER MEMO

DATE: August 21, 2007 (Date of Memo)
September 12, 2007 (Date of Meeting)

TO: Board of County Commissioners

FROM: LCOG, Milo Mecham, Principal Planner

TITLE: Ordinance No ____ IN THE MATTER OF AMENDING
CHAPTER 8 OF LANE CODE TO ADOPT A NEW
INTERGOVERNMENTAL AGREEMENT COMBINING FIBER SOUTH
CONSORTIUM AND THE REGIONAL FIBER CONSORTIUM (LC
8.600, 8.700)

I. MOTION

MOVE TO ADOPT ORDINANCE NO. ____ IN THE MATTER OF
AMENDING CHAPTER 8 OF LANE CODE TO ADOPT A NEW
INTERGOVERNMENTAL AGREEMENT COMBINING FIBER SOUTH
CONSORTIUM AND THE REGIONAL FIBER CONSORTIUM (LC
8.600, 8.700)

II. ISSUE OR PROBLEM

Lane County is a member of two fiber Consortia. The Consortia are intergovernmental entities, created in accordance with ORS 190.030. the Boards of the Consortia have decided that the shared goals of the two Consortia could better be achieved if the consortia were merged into one. To accomplish this each member of the Consortia must adopt a new Intergovernmental Agreement. The attached Intergovernmental Agreement merges the two Consortia into one.

III. DISCUSSION

- A. Regional Fiber Consortium was created in 1999 by Lane County, Coburg, Springfield, Lowell, Westfir, Oakridge, Klamath Falls, Merrill and Klamath County. Its members formed along the route of a fiber backbone construction project running from California to Seattle. In return for the cities foregoing

franchise fee charges and all the members providing assistance to speed construction, the Consortium was provided with fiber optic cable and access to the fiber along the route.

Fiber South Consortium was formed a few months later, based on the construction of a fiber backbone from the coast north of Bandon to Eugene. Members of the Fiber South Consortium include Bandon, Coquille, Myrtle Point, Coos Bay, North Bend, Coos County, Reedsport, Roseburg, Sutherlin, Yoncalla, Drain, Cottage Grove, Creswell, Springfield, Eugene, Veneta, Florence and Lane County and Lincoln County. The primary route runs from the coast to Coos Bay, then east to near Roseburg and then north to Eugene. Fiber South also had an opportunity to lease fiber from the Bonneville Power Administration. This completed a loop and offered the potential of connecting Reedsport, Florence, Veneta and Lincoln County.

About one year after the two consortium were formed they were able to jointly acquire additional fiber from Springfield through Eugene and Junction City on to Portland.

The two Consortia decided to act jointly because of the value of combining the populations. They conducted a national solicitation for a private company to lease the fiber and establish service to all the communities along the fiber routes. A company operating along the coast in the Coos Bay area was selected, PCINW.

Almost immediately PCINW ran into trouble. This was the same time of the recession now called the dot.com crash, and funding for operations such as the Consortium hoped to start dried up.

Relying on a little support from PCINW and grant support from Lane County, the City of Eugene and a few other sources, and leases to the University of Oregon and ODOT, the Consortia were able to pay operating costs and the lease payments to the BPA for a time. Finally, in 2005, PCINW completely failed, and other sources of funds were no longer available. The Consortia declared PCINW in default and terminated the contract. Fiber south also canceled the lease with BPA. However, because of the structure of the lease with BPA (payments at the end of the lease year rather than at the beginning), Fiber South Consortium was left owing the BPA approximately \$100,000.

The situation is nearly the same at this time. Fiber South has a large debt and lacks the resources to pay it. Currently the only fiber leased and in use are the strands that run from Eugene to Salem and Portland. The consortia do, however, have serious prospects. The city of Cottage Grove has negotiated a lease of fibers from Cottage Grove to Eugene. When signed by the Fiber South Chair, there will be an active leaseholder on portions of the fiber. The two consortia are also in serious negotiations with a private company, LS Networks to lease portions of the fiber connecting Oakridge, Cottage Grove and Junction City and Halsey to

Eugene. There are also serious discussions with Douglas Fast Net to connect portions of Douglas County and with the state of Oregon to connect Eugene and Klamath Falls.

The proposal is to merge the two Consortium, to form a single entity with a new governing structure. As with any change there are advantages and disadvantages. The advantages are clear. The two consortia have always operated as one entity, but being actually two entities has resulted in some increased costs and some awkwardness in administration. It has been difficult to have meetings of the full membership to make decisions. Currently Regional Fiber has more reserves than Fiber South, but that has not always been the case. For the first several years of operation, Fiber South had the resources and supported the operation of Regional Fiber. Combining the two entities should help smooth out the variations in resources. The Regional Fiber path does not come into Eugene, where the major telecommunications assets of the region are located. The jointly owned path does go through Eugene, but it has more limited access to important points in Eugene than does the Fiber South path (one of the companies that has inquired about leasing fibers from Fiber South is the company that built the Regional Fiber path.)

What might be seen as the major disadvantage of a merger is perhaps for Regional Fiber. Once merged Regional Fiber would take on the \$100,000 debt of Fiber South. There are actually, however, reasons why such an action would be good for Regional Fiber. Combined, the new entity would have more resources to deal with the debt. As long as the debt exists without even a plan for payment, all of the system is under a cloud, and especially the very important Eugene connections. There will be no opportunities to seek grant funding. In essence, as long as the debt exists unpaid, Regional Fiber is effectively hampered by it as is Fiber South.

The logic of the merger is what prompted the Boards of the two consortia to decide to merge. Regional Fiber Consortium was selected as the surviving entity because both boards thought that the name Regional Fiber Consortium better reflected the character of the group than did Fiber South Consortium.

For the governing structure of the new consortium a regional representation, or republican, form was created. It is expected that this will deal with the major problem of the governance in the past, that of getting a quorum of all the members for a meeting. Using the regional representation will allow the truly interested members to operate the consortium for the benefit of all the members. No member would be barred from attending and participating in the meetings, but a meeting would not have to depend on uninterested members attending to operate.

B. Alternatives/Options

The options before the Board are as follows:

1. The Board may take no action. This would result in a later request that the Board adopt ordinances withdrawing from the two Consortia.
2. The Board may choose to approve the Ordinance. Other members have already adopted the Ordinance and the IGA. The County adopting the IGA will allow if continue its leadership role in the Consortium.

D. Recommendation

Staff recommends that the Board adopt the proposed Ordinance.

IV. IMPLEMENTATION/FOLLOW-UP

If the Board adopts the Ordinance and the Order directing the Administrator to sign the IGA, staff will obtain a signed copy of the IGA, and communicate the lane county's adoption to other members of the Consortia, and to the Secretary of State.

V. ATTACHMENTS

1. Ordinance No. 11-07 In The Matter Of Amending Chapter 8 Of Lane Code To Adopt A New Intergovernmental Agreement Combining Fiber South Consortium And The Regional Fiber Consortium (LC 8.600, 8.700)
2. Proposed amended version of LC 8.600.
3. Legislative version of LC 8.600 and 8.700, showing proposed changes.
4. The proposed Intergovernmental Agreement creating a new Regional Fiber Consortium
5. Draft bylaws for the Consortium

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 11-07

IN THE MATTER OF AMENDING CHAPTER 8 OF
LANE CODE TO ADOPT A NEW
INTERGOVERNMENTAL AGREEMENT COMBINING
FIBER SOUTH CONSORTIUM AND THE REGIONAL
FIBER CONSORTIUM (LC 8.600, 8.700)

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

Chapter 8 of Lane Code is hereby amended by deleting, substituting, and adding new sections as follows:

DELETE THESE SECTION(S)

8.600
Located on pages 8-2 through 8-3
(A total of 2 pages)

8.700
Located on pages 8-3 through 8-4
(A total of 2 pages)

INSERT THESE SECTION(S)

8.600
Located on pages 8-2 through 8-3
(A total of 2 pages)

None

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to amend Lane Code to provide for the combining of Fiber South Consortium and of the Regional Fiber Consortium (LC 8.600, 8.700). These provisions declare the intent of the Board of County Commissioners to enter into an intergovernmental agreement effective upon execution by the Lane County Administrator and subject to the public purposes, powers, duties and functions described in LC 8.600.

ENACTED this _____ day of _____ 2007.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 8-30-07 Lane County


OFFICE OF LEGAL COUNSEL

regulation of a system, or franchises therefor, notwithstanding the fact that the system extends beyond the jurisdiction of the County.

(3) To purchase, hire, construct, own, maintain or operate or lease a system and to acquire property necessary for any such purpose.

(4) To regulate and supervise all facets of a system, including but not limited to:

- (a) Consumer complaints.
- (b) Disputes among the County franchisees and consumers.
- (c) Fair employment practices.
- (d) The development, management and control of a government access channel as well as development of other access channels.
- (e) Rates and review of finances for rate adjustments.
- (f) Construction timetables and standards.
- (g) Modernization of technical aspects.
- (h) Ensuring adherence to federal and state regulations.
- (i) Franchise transfer and transfer of control of ownership.
- (j) Franchise renewal and/or franchise revocation.
- (k) Enforcement of buy-back, lease-back or option-to-purchase provisions.

(l) Receivership and foreclosure procedures.

(m) Compliance with County standards for use of the public right-of-way. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

8.520 Franchise Requirements.

Prior to entering into any franchise agreement, the Board will establish and follow an open and fair process that provides for public input to determine the area to be served, the minimum standards for service, public benefits, including fees, to be provided by the applicants for a franchise or operator of the cable system, and the procedures to be used to select an operator or operators to serve the areas in question. In addition to whatever terms the Board finds to be in the public interest, any franchise agreement shall, at a minimum, provide the following:

- (1) Any franchise agreement entered into shall be nonexclusive.
- (2) Any franchise agreement shall be nontransferable nor may a change of control or ownership of the operator occur without the consent of the Board.
- (3) Any franchise agreement shall be revocable for cause. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

8.525 Intergovernmental Agreements.

The Board may approve intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the joint regulation and control of any cable communications system operated on a unified basis in more than one jurisdiction. Such agreement may provide for the delegation of any and all powers of the Board authorized in this sub-chapter to a commission provided for in the intergovernmental agreement, except for the powers to enter into or revoke franchise agreement. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

COMMUNICATIONS FIBER CONSORTIUM AGREEMENT

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 comprised of a combination of the prior Regional Fiber Consortium and the Fiber South Consortium, by an agreement to be 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.

(3) The public purposes for which the Regional Fiber Consortium shall operate 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 work to develop a fiber optic system, or components thereof, that 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 information regarding the potential for broadband development;

(d) To operate as an independent entity, taking appropriate actions to facilitate the development of improved telecommunications within the region for the benefit of residents of the region;

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

(f) To combine the assets of the Regional Fiber Consortium and the Fiber South Consortium, and thereafter use those assets to make the greatest possible advances to telecommunication services within the region comprised by the jurisdictional territories of the members of the former Fiber South Consortium and the Regional Fiber 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 for the Consortium.

(c) Carry out further responsibilities and functions approved by the Consortium governing body to fulfill the purposes of the Consortium, 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) and (b). *(Revised by Ordinance No. 8-99, Effective 12.3.99)*

regulation of a system, or franchises therefor, notwithstanding the fact that the system extends beyond the jurisdiction of the County.

(3) To purchase, hire, construct, own, maintain or operate or lease a system and to acquire property necessary for any such purpose.

(4) To regulate and supervise all facets of a system, including but not limited to:

- (a) Consumer complaints.
- (b) Disputes among the County franchisees and consumers.
- (c) Fair employment practices.
- (d) The development, management and control of a government access channel as well as development of other access channels.
- (e) Rates and review of finances for rate adjustments.
- (f) Construction timetables and standards.
- (g) Modernization of technical aspects.
- (h) Ensuring adherence to federal and state regulations.
- (i) Franchise transfer and transfer of control of ownership.
- (j) Franchise renewal and/or franchise revocation.
- (k) Enforcement of buy-back, lease-back or option-to-purchase provisions.
- (l) Receivership and foreclosure procedures.
- (m) Compliance with County standards for use of the public right-of-way. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

8.520 Franchise Requirements.

Prior to entering into any franchise agreement, the Board will establish and follow an open and fair process that provides for public input to determine the area to be served, the minimum standards for service, public benefits, including fees, to be provided by the applicants for a franchise or operator of the cable system, and the procedures to be used to select an operator or operators to serve the areas in question. In addition to whatever terms the Board finds to be in the public interest, any franchise agreement shall, at a minimum, provide the following:

- (1) Any franchise agreement entered into shall be nonexclusive.
- (2) Any franchise agreement shall be nontransferable nor may a change of control or ownership of the operator occur without the consent of the Board.
- (3) Any franchise agreement shall be revocable for cause. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

8.525 Intergovernmental Agreements.

The Board may approve intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the joint regulation and control of any cable communications system operated on a unified basis in more than one jurisdiction. Such agreement may provide for the delegation of any and all powers of the Board authorized in this sub-chapter to a commission provided for in the intergovernmental agreement, except for the powers to enter into or revoke franchise agreement. *(Revised by Ordinance No. 15-90; Effective 12.7.90)*

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 comprised of a combination of the Lane/Klamath prior Regional Fiber Consortium); and the Fiber South Consortium,~~ by an agreement to be 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 ~~operate be created~~ shall be:

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

(b) To ~~provide for the members work to develop~~ 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 **information regarding the potential for broadband development;**

(d) To operate as an independent entity, taking appropriate actions to facilitate the development of improved telecommunications within the region for the benefit of residents of the region; ~~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 eConsortium; **and**

(f) To combine the assets of the Regional Fiber Consortium and the Fiber South Consortium, and thereafter use those assets to make the greatest possible advances to telecommunication services within the region comprised by the jurisdictional territories of the members of the former Fiber South Consortium and the Regional Fiber 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 eConsortium.

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

(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~~ **approved** by the Consortium governing body to fulfill the purposes of the Consortium, ~~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) and (b). ~~(e).~~ *(Revised by Ordinance No. 8-99, Effective 12.3.99)*

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)-~~

~~(e). (Revised by Ordinance No. 8-99, Effective 12.3.99)~~

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 some or all of the following: the Cities of Oakridge, Westfir, Lowell, Springfield, Coburg, Klamath Falls, Merrill, Bandon, Myrtle Point, Coquille, Coos Bay, North Bend, Reedsport, Roseburg, Sutherlin, Yoncalla, Drain, Cottage Grove, Creswell, Eugene, Veneta and Florence, all of which are Oregon municipal corporations, and Lane County, Klamath County; Coos County and Lincoln 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 Regional Fiber Consortium and Fiber South Consortium have developed a close working relationship, including joint control of fiber assets so that it makes operational and fiscal sense to merge the two entities, with Regional Fiber Consortium becoming the successor to both entities.

AGREEMENT

Now therefore it is agreed:

Section 1. MERGER

Fiber South Consortium is by this agreement, merged with and subsumed into the Regional Fiber Consortium. All the assets, property and liabilities of Fiber South Consortium are by the effect of this agreement, absorbed by and become the possession of Regional Fiber Consortium.

Section 2. 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 work to develop a fiber optic system, or components thereof, that 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 information regarding the potential for broadband development;
- D. To operate as an independent entity, taking appropriate actions to facilitate the development of improved telecommunications within the region for the benefit of residents of the region
- E. To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the other purposes of the Consortium; and
- F. To combine the assets of the Regional Fiber Consortium and the Fiber South Consortium, and thereafter operate in the interests of both Consortia, using those assets to make the greatest possible advances to telecommunications services within the region comprised by the jurisdictional territories of the members of the former Fiber South Consortium and the Regional Fiber Consortium.

Section 3. MEMBERSHIP

- A. Membership in the Consortium is, subject to the approval of the then existing 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. The addition of a new member shall not be considered an amendment to this intergovernmental agreement. The addition of an additional member may be accomplished by the new member taking the actions necessary under ORS 190 and signing a copy of this agreement, after approval of the additional membership by a majority vote of the member representatives then forming the Consortium. The signature of the then chair of the Consortium on an amendment adding a new member shall be an indication that the new member of the Consortium has been accepted.
- B. Membership by an entity not listed in the initial paragraph of this intergovernmental agreement shall be subject to the approval of the Executive Board of the Consortium. The Board 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. A member of the Consortium may withdraw from membership at any time by a reversal of the process of joining the Consortium. It is in the interests of the members, including the withdrawing member, that any assets acquired by the Consortium as a result of a withdrawing member's earlier participation in the

development and operation of the Consortium be retained by the Consortium and used with the maximum degree of flexibility to advance the interests of the region, including the interests of the withdrawing member. Withdrawing members and the Consortium should, therefore, make arrangements, formal or informal, to cooperate in the continued protection of those assets for the Consortium's continued use.

Section 4. EXECUTIVE BOARD OF THE CONSORTIUM

- A. The governing body of the Consortium shall be the Executive Board, selected from members representatives in a manner to maintain geographic representation of the breadth of the Consortium. Service on the Executive Board shall be voluntary, the Executive Board membership shall be selected by the existing Executive Committee or Executive Board. A member may withdraw from the Executive Board at any time without thereby withdrawing from membership of the Consortium. The Executive Board shall consist of nine members, or fewer if insufficient members are willing to serve. The Executive Board may not take action if there are fewer than five members serving on the Executive Board, except that an Executive Board with fewer than five members may take action to appoint new members of the Executive Board. Any time there is a vacancy on the Executive Board, the Board shall seek to appoint additional members to achieve the geographical balance and the optimal number of nine serving Board members.
- B. The Executive Board should be balanced for geographical representation by having one member serving on the Board from the Klamath County area (Klamath County, Klamath Falls and Merrill); two members from the Coos County area (Coos County, Bandon, Coos Bay, Coquille, Myrtle Point and North Bend; two members from the Douglas and Lincoln County areas (Drain, Reedsport, Roseburg, Sutherlin, Yoncalla and Lincoln County) and four members from the Lane County area (Lane County, Coburg, Cottage Grove, Creswell, Eugene, Florence, Lowell, Oakridge, Springfield, Veneta and Westfir). If insufficient members are willing to serve on the Executive Board from an area to achieve this geographic balance, the Executive Board may appoint willing members from another area.
- C. An appointment to the Executive Board shall be for a one year term, ending in June of each calendar year. Members serving on the Executive Board may serve more than one term consecutively. If members from a particular region who are not serving express an interest in serving on the Executive Board, the Board should give special consideration to their request at the time of the next selection of Board members.
- D. All member representatives shall receive notice of every Executive Board meeting and shall be entitled to attend the meeting and participate fully in the discussion of matters before the Executive Board.

Section 5. 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 for the Consortium.
- C. Carry out further responsibilities and functions approved by the Consortium governing body to fulfill the purposes of the Consortium.

Section 6. AUTHORITY

- A. Consortium Authority. Except as provided in Article B of this section, the Consortium shall have authority to act in the interests of the region created by membership in the Consortium 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 means of acquisition by the Consortium or its members for the Consortium, 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 for the purposes of improving telecommunications services in the area, 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 Consortium's work, 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 that might affect the Consortium's assets or operations.
 - 2. Notice 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. Notice can be given through the attendance of a member representative when such an agreement is discussed or approved. In the absence of a member representatives' attendance, notice can be given by electronic or regular mail notice to the member representative.
 - 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.

Section 7. 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 Executive Board of 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 Consortium meetings.
- E. Provide for the operation of the Consortium through a representative Executive Board of the Consortium, which initially shall consist of nine members, that a quorum for any meeting shall consist of a majority of the members of the Executive Board. The original rules of procedure shall provide that a decision of the Consortium to amend the rules of procedure, may be made only upon the affirmative vote of at least two thirds of the Executive Board of the Consortium. The rules of procedure may provide for meetings to be conducted by telephone or for the attendance of some member's representatives by telephone or other electronic means.

Section 8. 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, which is intended to include leases of a portion of the Consortium's assets for the purposes of improving telecommunications services.
- 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, acting pursuant to the authority granted under this agreement and the Consortium rules.

Section 9. COST OF OPERATION

- A. The cost of operation of the Consortium shall be determined by its governing body, and shall not thereby create an obligation of the members. In accordance with and subject to Oregon 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 Consortium 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 10. 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 11. 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 12. 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 13. 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 amended 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 14. 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 Mecham
Lane Council of Governments
125 E 8th Ave.
Eugene, OR 97401
541-6824023
fax 541- 682-2635

Section 15. COUNTERPART SIGNATURES

This agreement may be executed in one or more counterparts. The execution of a counterpart agreement by a member will be effective for all members who have previously signed or will thereafter sign the same or a separate counterpart of the agreement.

Section 16. 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. **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

Signature (Title)

Date

_____ COUNTY

Signature (Title)

Date

_____ COUNTY

Signature (Title)

Date

THE CITY OF

Signature (Title)

Date

THE CITY OF

Signature (Title)

Date

THE CITY OF

Signature (Title)

Date

Attachment 5

Regional Fiber Consortium

DRAFT Bylaws

The Regional Fiber Consortium is a membership association of governments, established by agreement of the participating entities under the authority of the State of Oregon's Intergovernmental Cooperation statutes, ORS 190.003 to 190.110, and formalized by an Intergovernmental Agreement adopted by the participating member governments. These bylaws are the Rules of Procedure called for and authorized by Section 7 of the Intergovernmental Agreement.

1. Purpose and Objectives

The Fiber Consortium is established and supported by its member units of government to:

- 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 work to develop a fiber optic system, or components thereof, that 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 information regarding the potential for broadband development;
- D. To operate as an independent entity, taking appropriate actions to facilitate the development of improved telecommunications within the region for the benefit of residents of the region
- E. To acquire such additional tangible and intangible assets as are deemed necessary to fulfill the other purposes of the Consortium; and
- F. To combine the assets of the Regional Fiber Consortium and the Fiber South Consortium, and thereafter operate in the interests of both Consortia, using those assets to make the greatest possible advances to telecommunications services within the region comprised by the jurisdictional territories of the members of the former Fiber South Consortium and the Regional Fiber Consortium.

The Fiber Consortium shall not assume a function or activity beyond those listed here without an amendment to the Intergovernmental Agreement, requiring the approval of all members of the Consortium.

2. Geographic Area Served and Location of Principal Office

The membership of the Fiber Consortium is drawn from the geographical area of Lane County, Klamath County, Douglas County, Coos County and Lincoln County. The Fiber Consortium's operations and services are primarily directed toward those members and to their constituents.

The principal office of the Fiber Consortium is located in Springfield, Oregon.

3. Membership

The requirements for membership in the Fiber Consortium are set forth in the Intergovernmental Agreement.

A. General Membership General Members must be local governments capable of ratifying the Intergovernmental Agreement. Governmental entities, eligible for membership, must ratify the Fiber Consortium Intergovernmental Agreement before becoming members. Governmental entities not listed by name in the Intergovernmental Agreement must be approved for membership by the existing General Members in the manner set forth in the Intergovernmental Agreement.

General Members shall be entitled to all the rights and privileges of any member.

B. Representation of Members Each member shall be entitled to designate one representative and one alternate as the member's representative. Vacancies in the position of representative or alternate shall not constitute a withdrawal from active membership. All members are requested to appoint delegates and alternates to the Consortium annually, and to communicate to the Board Chair the names, addresses and other contact information of such appointees.

4. Governing Authority

The governing authority of the Fiber Consortium shall be held by the Consortium Executive Board.

A. Composition and Number: The Fiber Consortium Executive Board shall be comprised of designated representatives from members. As provided in the Intergovernmental Agreement and these Bylaws, the Executive Board shall be comprised of nine member representatives, or fewer if for any reason the Executive Board cannot fill one or more positions. The first Executive Board shall be composed of the Executive Committees of the Regional Fiber Consortium and the Fiber South Consortium. The first action of this newly constituted Board shall be the solicitation of members to fill the vacant positions on the board.

B. Powers: It is the role and responsibility of the Executive Board to establish the policies of the Fiber Consortium. Specific functions and powers, assigned by the membership to the Fiber Consortium are set forth in the Intergovernmental Agreement. Except as specifically provided in the Intergovernmental Agreement or in these Bylaws, all functions and powers assigned to the Fiber Consortium are held by the Executive Board. Included are the power to: Adopt plans, policies and position statements on behalf of the Consortium; annually adopt a Work Program, prescribing the activities of the Fiber Consortium; annually adopt a Budget, setting forth the fiscal expectations and limitations for a twelve month period; and establish and charge advisory committees or councils to assist in the performance of Work Program tasks.

C. Meetings: The Executive Board will meet at least twice a year, in April or May and October. The Board may also meet at other times at the call of the Chair or by four members, provided that notice of such a meeting is provided to all members no less than 48 hours in advance. All meetings of the Fiber Consortium Executive Board are to be conducted in compliance with the Public Meeting Law of the State of Oregon (ORS 192.610 - 192.695) and under the general provisions of *Robert's Rules of Order, Revised*. The locations of regular or special meetings of the Board are established by action of the Board or Chair, but such locations in all cases shall comply with State law with regard to non-discrimination and accessibility. Proper public notice, as specified by State law, is to be provided for all meetings of the Fiber Consortium Executive Board.

D. Published Agenda: At least one week in advance of any regular meeting of the Executive Board, an agenda; indicating the issues and topics for the Board's consideration and recommended actions, if any, shall be published and distributed to all Consortia members. Deliberative action by the Board can be taken only on the issues and topics included on the published agenda, unless the following authorizing procedure is employed. Any member of the Executive Board may move to consider a specific action item not included on the published agenda. If such a motion is duly seconded and passed by the Board, substantive action on such an item can then be taken.

E. Quorum: At all meetings of the Executive Board, the presence of delegates or alternates in a number sufficient to constitute a majority (fifty percent or more) of the number of Board members currently holding an appointment will constitute a quorum for the transaction of business. At any meeting in which this prescribed quorum requirement is initially met, the Executive Board may continue to transact business, notwithstanding the subsequent withdrawal of Board members from the meeting, provided that any action taken is approved by at least a majority of the Board members required to constitute a quorum, or such number as is required by the Intergovernmental Agreement and these Bylaws for the adoption of certain actions. For the purposes of selecting additional members of the Executive Board, as described in subsection G, the vote of a majority of the members eligible to vote shall constitute a quorum.

F. Electronic Meetings: The Executive Board may meet by means of a telephone conference or other means of electronic communication. Individual representatives of any Member may attend any meeting of the Executive Board by electronic means. Such

a representative shall be entitled to participate fully, including voting, as long as the electronically attending representative feels that she or he is capable of adequate understanding and participation in the meeting. All electronic meetings shall be subject to the notice requirements for meetings of the Executive Board. Members of the Consortium currently not serving on the Executive Board may also attend the meetings electronically. These members shall be allowed to participate in discussions, except for voting.

G. Board Membership Selection: The first step in the selection of a new Executive Board shall be a written inquiry to all Member governments who have ratified the intergovernmental Agreement. This inquiry shall include a description of the Consortium and its activities, and shall encourage Members to volunteer to serve on the Executive Board. This inquiry must be sent with sufficient time to allow all members the opportunity to respond before the selection of a new Executive Board. The Executive Board should keep in mind the importance of providing all members who are interested with opportunities to serve on the Consortium Executive Board, including by replacement of members who have already served. Candidates for the Chair and Vice Chair and all other positions on the Executive Board shall be selected from all Members who respond indicating an interest in serving. The first regular item on the Board's April or May meeting shall be the determination of the composition of the Executive Board for the year beginning July 1. The Board shall observe the geographical composition guidelines of the IGA. If insufficient members from any one geographical area are willing to serve, the Board may select willing members from other areas of the Consortium. Existing Board members may continue in their membership from year to year. In the event that more members from a geographical area wish to serve on the Board than are allocated in the IGA, and there are no vacancies, or insufficient vacancies from other geographical areas, the Executive Board members from other geographical areas will elect the member or members from the geographical area being contested.

5. Officers

A. Nomination and Election: At the regular annual meeting of the Executive Board (April or May), the Board shall elect a Chair and a Vice Chair, whose terms shall begin with the next fiscal year (July 1). All duly designated voting members of the Fiber Consortium Executive Board, including present and past office holders, are eligible to be nominated and elected to office.

B. Duties: The Chair of the Executive Board shall preside at all meetings of the Board, and shall be entitled to vote on all matters before the Board; shall speak on behalf of the Board; shall make and present to the Board for confirmation appointments of Board members to various advisory committees, associations and councils; and shall execute agreements on behalf of the Fiber Consortium. The Vice Chair shall assume the duties of the Chair in his/her absence.

6. Administrative Authority

The Executive Board is responsible for overseeing the administrative actions of the Fiber Consortium. The Board Chair shall serve as the chief administrative officer of the organization, and shall be responsible for the preparation and presentation to the Board of an annual proposed Budget, for the execution of a Work Program within the constraints of the adopted Budget; for the appointment and removal of any Fiber Consortium employees; and for the administration of the business of the organization under the policies established by the Executive Board.

7. Fiscal Process

A. Fiscal Year: Fiber Consortium's fiscal year is a twelve month period, beginning July 1 and ending June 30.

B. Annual Financial Statements and Audit: After the close of the fiscal year, the Fiber Consortium Board Chair provides for the preparation of comprehensive Financial Statements, reflecting the transactions of the fiscal period. When requested by the Executive Committee, those Financial Statements shall be reviewed by a qualified, independent accounting firm, retained by the Fiber Consortium for that purpose. The Financial Statements, along with any report of the agency's auditor, shall be presented to the Executive Board. The Executive Committee will review the Financial Statement and, if appropriate, to accept the Financial Statements and other reports and to authorize their submission to the State, as required by law.

C. Expenditures: Expenditures of agency funds are approved under the authority of the Board Chair, as prescribed and constrained by the Board-adopted Budget. Disbursement registers are approved by the Board Chair or designated management staff. Continual monitoring of expenditures in comparison to revenues on hand and budget authorization is conducted by fiscal staff; and quarterly financial reports, summarizing transactional experience, are prepared and submitted to the Executive Committee.

E. Contract Authority: The Fiber Consortium Executive Committee serves as the "contract review board" for the Fiber Consortium, and exercises the powers and duties established for such boards under State law (ORS 279.055). By resolution, the Executive Committee will establish procedures for entering into public contracts. Within those procedures, the Board Chair or his/her designee serves as the contracting and purchasing agent for the agency and is authorized to enter into contracts.

F. Execution of Documents: The Board Chair is authorized to execute documents binding the agency, provided such commitments are consistent with agency policy.

G. Contract Terms: In accordance with the limitations on liability in the Intergovernmental Agreement, each contract of the Fiber Consortium shall contain the following statement: "Notice: The undertakings, debts and obligations of the Regional Fiber Consortium are not an undertaking, debt or obligation of any Member of the Fiber Consortium. No Member of the Regional Fiber Consortium is obligated by actions of the Regional Fiber Consortium except as provided for in the Intergovernmental Agreement

creating the Regional Fiber Consortium. For contractual purposes such an obligation by a Member will be evidenced only by the authorized signature of a representative of the member, affixed after appropriate action by the Member. All debts and obligations of the Regional Fiber Consortium are subject to prior appropriation of funds pursuant to the applicable Oregon Budget laws.”

9. Employment of Staff

A. Basis and Authority: The Intergovernmental Agreement provides authority to the Fiber Consortium to take action necessary to fulfil its purposes. This authority includes the authority to employ staff for the Fiber Consortium. If such staff are directly employed by the Consortium, the Board Chair is charged at the time of initial employment with developing, administering, maintaining and implementing personnel procedures applicable to the Fiber Consortium staff; and he/she is vested with authority to appoint, promote, transfer, demote, suspend and separate personnel. The Board Chair may, as an alternative to directly contracting with employees, obtain personnel services by persons whose services are obtained as a result of a contract with another entity, Member or non-member.

B. Personnel Policies: At such time as it becomes necessary, the Executive Board will establish and publish policy statements which govern the agency’s personnel system. Included will be the Board’s commitment to the application of the principles of affirmative action to all personnel transactions; its commitment to the establishment of a standard of conduct which stresses professional ethics; its commitment to a compensation system which promotes fairness and attracts and retains the best employees possible; its commitment to the maintenance of a classification system to assure fair and equitable treatment of agency personnel; and its commitment to a process by which complaints or grievances can be resolved.

10. Advocacy

The Executive Board is responsible for establishing and communicating Fiber Consortium policies and policy recommendations. Advisory committees, established by Fiber Consortium, and members of the agency’s staff are precluded from directly advocating legislative positions to state or federal lawmakers without policy level approval. When time constraints make formal approval of advocacy positions by the Board impossible, the Chair is empowered to establish and communicate an agency position to legislative bodies. Communication of recommendations to state or federal executive agencies need not be formally approved by the Board, but does require the approval of the Board Chair or his/her designee.

11. Amendment of Bylaws

These Bylaws shall be adopted as a part of the adoption of a new Intergovernmental Agreement. Having been prepared and provided to the members at the same time as the

adoption of the Intergovernmental Agreement, adoption of the Intergovernmental Agreement shall be sufficient evidence of acceptance of the bylaws.

These Bylaws may be amended or repealed and new Bylaws may be adopted by an affirmative vote of two thirds (2/3) of Board members present at a regular meeting of the Executive Board, provided (1) that a quorum is present and (2) that written notice of such meeting, setting forth the proposed Bylaw revisions, is given to all Consortium members not less than thirty (30) days prior to such meeting and (3) that the motion to amend the Bylaws is adopted by an actual majority of the Members eligible to vote (whether in attendance or not). Except that the requirement for a thirty day advance notice of a proposed amendment, repeal or replacement of these Bylaws may be waived by the declaration of an emergency, approved by an affirmative vote of three quarters (3/4) of the Board members present and voting at a regular Executive Board meeting.