

File in
Ordinance
file

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 **ORDINANCE # 450**

4
5
6 **Relating to telecommunications; amending LCC 2.4000; and declaring an emergency.**
7

8
9 WHEREAS fiber optic technology permits high-speed communication, and a fiber
10 optic network enables users to quickly transmit and receive large amounts of data and
11 information; and

12 WHEREAS fiber optic networks are a critical part of the necessary infrastructure of
13 economically healthy communities; and

14 WHEREAS a key element in Lincoln County's long-range economic plan is the
15 development and redundancy of such a network in Lincoln County; and

16 WHEREAS, in the 1990s, large telephone companies were not ready to invest the
17 resources necessary to install fiber optic networks in rural areas such as Lincoln County; and

18 WHEREAS the Central Lincoln People's Utility District (the PUD) provides electric
19 power to the Central Coast, including most of Lincoln County; and

20 WHEREAS to facilitate its own internal communications and to enhance the
21 reliability of the PUD's electric power switching, the PUD installed a fiber optic network
22 along parts of the Central Coast and, due to economies of scale, the network has significant
23 amounts of excess capacity; and

24 WHEREAS the Lincoln County Economic Development Corporation DBA
25 Economic Development Alliance of Lincoln County (the Alliance) is a non-profit
26 corporation existing for the purpose of promoting economic development and employment
27 opportunities along the Central Coast, and the Alliance became aware of the PUD's excess
28 fiber capacity, and realized the network could provide significant opportunity for economic
29 development and employment in Lincoln County; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing ordinance to be omitted. New sections are in **boldfaced** type.

1 WHEREAS the Alliance and 38 other public and non-profit entities began a project
2 known as "CoastNet" and, after much discussion and analysis, the CoastNet group created a
3 three-step plan:

4 1. Arrange to lease the PUD's excess fiber capacity through an intergovernmental
5 agreement with Lincoln County;

6 2. Purchase necessary equipment to enable the excess capacity to operate as a
7 functioning network; and

8 3. Make that network available to attract new business for the purpose of facilitating
9 growth in economic development and employment opportunities; and

10 WHEREAS for the first step, the PUD and Lincoln County entered into an
11 intergovernmental agreement for lease of the PUD's excess fiber capacity and, for the
12 second step, after considerable effort, the Alliance was able to obtain substantial economic
13 development grants for the CoastNet project; and

14 WHEREAS the third step presented a bigger problem, wherein the County and the
15 Alliance asked the Oregon Public Utility Commission (the PUC) to determine that CoastNet
16 did not need a Certificate of Authority from the PUC, but the PUC disagreed; and

17 **WHEREAS the Lincoln County Board of Commissioners therefore enacted an**
18 **ordinance authorizing the County, together with the Alliance, to apply to the PUC for**
19 **a Certificate of Authority for CoastNet (1997 Ordinance # 373, codified as LCC**
20 **2.4000); and**

21 WHEREAS GTE (now known as Verizon) and US West (now known as Qwest)
22 objected, and the PUC initially refused to grant a Certificate, saying that it was not in the
23 public interest (PUC Order 97-373); and

24 WHEREAS the County and the Alliance sued to overturn the PUC's decision in both
25 state court and at the Federal Communications Commission (Marion County Circuit Court
26 case # 97C-14075, and FCC docket # CCB Pol 97-241) and, following a series of
27 negotiations, the PUC rescinded its prior order (PUC Order # 98-226) and entered an order
28 granting a Certificate of Authority for CoastNet (PUC Order # 98-343); and

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1 WHEREAS US West (Qwest) did not challenge the PUC's order, as it had become
2 the largest customer of CoastNet, using some of CoastNet's network capacity to supplement
3 its own telecommunications infrastructure, but GTE (Verizon) did file a lawsuit challenging
4 the authority of Lincoln County to hold a PUC Certificate of Authority for CoastNet
5 (Marion County Circuit Court case # 98C-19114); and

6 WHEREAS Lincoln County successfully defended against the challenge by GTE
7 (Verizon) in the trial court, in the Oregon Court of Appeals, and in the Oregon Supreme
8 Court; and

9 WHEREAS the Alliance selected a series of vendors to operate the CoastNet system
10 for the benefit of Lincoln County and the Central Oregon Coast; and

11 WHEREAS the Alliance, the County, and the PUD also worked with other entities to
12 expand the reach and redundancy of CoastNet through the use of other fiber networks and
13 excess capacity, the most notable being the Fiber South Consortium (a group of
14 governmental entities in Coos, Lane, and Douglas Counties), which acquired excess fiber
15 capacity from fiber lines that carry traffic between the Willamette Valley and the AT&T
16 trans-Pacific fiber line at Bandon, as well as excess fiber of the Bonneville Power
17 Administration (BPA) and others; and

18 **WHEREAS the Board of Commissioners therefore enacted an ordinance to**
19 **enable CoastNet participation in the Fiber South Consortium (1999 Ordinance # 393,**
20 **codified as amendments to LCC 2.4000); and**

21 WHEREAS both CoastNet and the successor to the Fiber South Consortium have
22 evolved and expanded through other redundant loops to provide service to their respective
23 communities; and

24 WHEREAS the successor to the Fiber South Consortium is now in the process of
25 dissolving and consolidating with another Consortium, and Lincoln County has determined
26 there is no need to have Lincoln County directly participate in the new Consortium, while
27 continuing to support the goals and purposes of the Consortium; therefore

1 The Lincoln County Board of Commissioners ordains as follows:

2 **SECTION 1.**

3 LCC 2.4000 is amended to read:

4 2.4000 CoastNet *[and Other]* Fiber Optic Communications Network~~[s]~~

5 (1) The Lincoln County Board of Commissioners declares that the development of a
6 high-speed fiber optic communications network in Lincoln County is vital to economic
7 development in Lincoln County, and therefore hereby specifically exercises its authority to
8 pursue the development of such a network.

9 (2) Lincoln County, the **Lincoln County Economic Development Corporation**
10 **DBA** Economic Development Alliance of Lincoln County, the Central Lincoln People's
11 Utility District, and 36 other public and non-profit organizations have proposed to
12 encourage economic development in Lincoln County by way of providing a high-speed fiber
13 optic communications network along the *[central Oregon coast]* **Central Coast** commonly
14 known as CoastNet. CoastNet would combine, by contract between the County and the
15 Alliance, an unswitched fiber optic cable system (dark fiber), owned by the Central Lincoln
16 People's Utility District and shared with the County through an ORS chapter 190
17 intergovernmental agreement, with fiber optic data transmission switches owned by the
18 Alliance and purchased with grant money *[currently being held]* for that purpose by the
19 Oregon **Economic and Community** Development Department. Under the proposed
20 CoastNet contract between the County and the Alliance, the Alliance would then offer
21 CoastNet services to *[certain businesses and]* certain resellers of CoastNet services in an
22 effort to encourage economic development in Lincoln County.

23 (3) In order to facilitate the development of the proposed CoastNet system described
24 in subsection (2) of this section, *[and in order to facilitate Lincoln County's participation*
25 *and membership in the Fiber South Consortium described in subsection (4) of this section,]*
26 the Office of Lincoln County Legal Counsel is hereby authorized to engage in all legal
27 proceedings and processes necessary to facilitate that development, *[participation and*
28 *membership,]* including, but not limited to, application for any required or appropriate

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1 licenses and certificates, and negotiation of any necessary or appropriate interconnection
2 agreements.

3 *[(4)(a) It is the intent of the Lincoln County Board of Commissioners to also join an*
4 *intergovernmental entity, to be known as the Fiber South Consortium, created by an*
5 *intergovernmental agreement entered into by a number of local governments within counties*
6 *that border along the southern Oregon coast, including, among others, Lane County and the*
7 *cities of Florence, Coos Bay, Eugene, Springfield, and Reedsport.*

8 *(b) The effective date of Lincoln County's membership in the South Fiber*
9 *Consortium shall be January 1, 2000, or such later date as necessary when all interim steps*
10 *for membership have been accomplished allowing membership in the Fiber South*
11 *Consortium.*

12 *(c) The public purposes for which the Fiber South Consortium shall be created shall*
13 *be:*

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

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

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

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

25 *(E) To acquire such additional tangible and intangible assets as are deemed*
26 *necessary to fulfill the other purposes of the consortium.*

27 *(d) The powers, duties and functions of the Fiber South Consortium shall be:*

28 *(A) Plan for fiber optic system development for the consortium.*

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

3 (C) When requested, act as the agent of the members in the preparation and
4 negotiation of agreements concerning the acquisition, management and use of the
5 consortium's fiber optic systems.

6 (D) Carry out further responsibilities and functions as provided by the members.

7 (e) The Office of Lincoln County Legal Counsel is hereby authorized and directed to
8 evidence this ratification of membership in the Fiber South Consortium by executing, on
9 behalf of Lincoln County, a copy of an "Intergovernmental Agreement to Establish a
10 Consortium of Local Governments for the Ownership and Operation of a Fiber Optic
11 System," substantially in the form of a draft dated June 1, 1999, with such changes as the
12 Office determines are not inconsistent with the provisions and intent of this ordinance, such
13 determination to be evidenced by execution of the agreement.]

14 **SECTION 2. (1) Lincoln County joined the Fiber South Consortium with the**
15 **understanding that the County would not thereby develop an ownership interest in, or**
16 **obligation for, any acts or properties owned or acquired by the Consortium. Lincoln**
17 **County reaffirms that, as of the effective date of this action of withdrawal, the County**
18 **abandons in favor of the Consortium any claim to Consortium assets that may have**
19 **been acquired by the Consortium whether or not the County's membership in the**
20 **Consortium influenced the acquisition of those assets, and further declares that the**
21 **County shall have no obligation to the Consortium or any third party arising from the**
22 **actions of the Consortium.**

23 **(2) Lincoln County continues to endorse and support the goals and activities of**
24 **the Consortium. Lincoln County pledges that it will, if possible within the constraints**
25 **of other City policies and resources, voluntarily provide support and assistance to the**
26 **Consortium to further the shared goals of improved telecommunications opportunities**
27 **for Oregon.**

1 **(3) This section is temporary and transitional, and does not need to be codified**
2 **in the Lincoln County Code.**

3 **SECTION 3.**

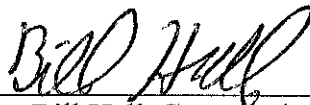
4 **This Ordinance being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist and this Ordinance shall take**
6 **effect upon its passage.**

DATED this 27th day of February, 2008.

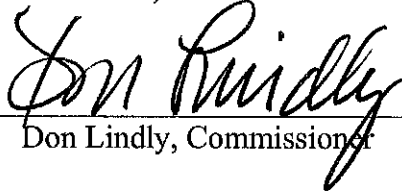
LINCOLN COUNTY BOARD OF COMMISSIONERS

EXCUSED

Terry N. Thompson, Chair



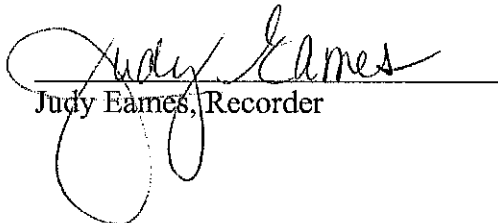
Bill Hall, Commissioner



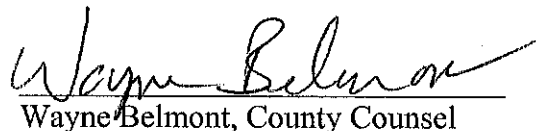
Don Lindly, Commissioner

ATTESTED TO:

APPROVED AS TO FORM:



Judy Eames, Recorder



Wayne Belmont, County Counsel