

INTERGOVERNMENTAL AGREEMENT CREATING FRONTIER TELENET

THIS INTERGOVERNMENTAL AGREEMENT CREATING FRONTIER TELENET (Agreement) is entered into by and between the following parties: Gilliam County, a political subdivision of the State of Oregon formed under the Oregon Constitution and ORS Chapter 203 ("Gilliam"); Sherman County, a political subdivision of the State of Oregon formed under the Oregon Constitution and ORS Chapter 203 ("Sherman"); Wheeler County, a political subdivision of the State of Oregon formed under the Oregon Constitution and ORS Chapter 203 ("Wheeler"); and the North Central Education Service District, an education service district formed under ORS Chapter 334 ("NCESD") (each of which is referred to herein individually as a "Party" and collectively as the "Parties"). Gilliam, Sherman and Wheeler may be referred to herein collectively as "Counties".

RECITALS:

- A. WHEREAS, the Parties hereto are authorized to enter into this Agreement creating an intergovernmental agency pursuant to their respective principal acts and ORS 190.003 to 190.265;
- B. WHEREAS, Counties are engaged in the provision of general local governmental services within their respective boundaries;
- C. WHEREAS, Counties desire to establish and maintain a consolidated, highly reliable system for the provision of emergency 9-1-1 and other public health and safety communication services;
- D. WHEREAS, Counties' operations require telecommunications capabilities for the efficient provision of local governmental services;
- E. WHEREAS, Counties further desire to promote economic development within their respective jurisdictions and surrounding communities through the development of advanced telecommunications infrastructure and related programs;
- F. WHEREAS, NCESD is engaged in the provision of general support services to the educational institutions within the boundaries of Gilliam, Sherman and Wheeler;
- G. WHEREAS, NCESD and the school districts it serves require advanced telecommunications capabilities for the efficient provision of educational services;
- H. WHEREAS, the Parties intend to further the economy and efficiency of their respective units of local government by forming an intergovernmental agency;

- I. WHEREAS, pursuant to ORS 190.010, an intergovernmental agency may perform any or all functions and activities that a Party to an Agreement, or its officers or agencies, has the authority to perform;
- J. WHEREAS, the Parties anticipate that the benefits of the telecommunications network to be established by Frontier Telenet (as defined herein) will provide improved police, fire, medical aid service and educational communications within the boundaries of the Parties;
- K. WHEREAS, the Parties intend to use any authority delegated to Frontier Telenet to further the economy and efficiency of each Party by the design, construction, ownership, operation and maintenance of a telecommunications network for the benefit of the Parties and the citizens and organizations served by such parties;
- L. WHEREAS, each of the Parties has taken all actions required under applicable acts, charters and law to authorize the execution and performance of this Agreement; and,
- M. WHEREAS, the Parties intend by this Agreement to set forth the authority, terms, and conditions pursuant to which Frontier Telenet will act;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I
Frontier Telenet

1.1 Frontier Telenet. There is hereby created Frontier Telenet, an intergovernmental entity created pursuant to ORS Chapter 190. The parties to Frontier Telenet are Gilliam, Sherman, Wheeler and NCESD.

1.2 Effective Date. The effective date of this Agreement is October 11, 2001.

1.3 General Powers. Frontier Telenet shall have the following general powers:

1.3.1 To adopt, through action of its Board (as defined herein), such bylaws, rules, regulations, and policies necessary to further the purposes of this Agreement;

1.3.2 To provide for general emergency 9-1-1 and other public safety and educational communications services and all functions incidental thereto, for the purpose of communicating, dispatching, relaying and/or call transferring in the furtherance of public safety during emergencies or otherwise within the jurisdictional boundaries of the Parties.

1.3.3 To study the best method to design, construct, own, operate and maintain a telecommunications network for the benefit of the Parties and their respective constituents, other governmental entities and public and private health and safety organizations;

1.3.4 To perform and exercise, pursuant to the principal acts of the Parties or by ORS 190.003 to 190.265, all powers pursuant to applicable charter, ordinance, or state or federal law which are necessary or desirable to efficiently and effectively design, construct, own, operate and maintain a telecommunications network for the benefit of the Parties and their respective constituents;

1.3.5 To purchase, own, hold, appropriate, and condemn land, facilities, or right of way either in its own name or in the name of the individual Parties hereto in furtherance of the construction, ownership, operation or maintenance of a telecommunications network for the benefit of the Parties and their respective constituents;

1.3.6 To enter into agreements with other public or private entities for the purpose of design, construction, ownership, operation or maintenance of a telecommunications network;

1.3.7 To issue, sell or otherwise dispose of bonds, securities, or other forms of indebtedness, including the power to issue revenue bonds under ORS 288.805 to ORS 288.945;

1.3.8 To hire and discharge employees, by unanimous vote of the Board, as is necessary or desirable to economically and efficiently develop and operate Frontier Telenet; and

1.3.8 To exercise all powers pursuant to the applicable acts or law of the individual Parties which are necessary or desirable to economically and efficiently develop and operate Frontier Telenet.

1.4 Offices. The principal offices of Frontier Telenet shall be located at:
Gilliam County Courthouse
221 South Oregon Street
Condon, Oregon 97823

1.5 Budgeting. The Board shall provide for an annual work plan and an estimate of expenses for the next fiscal year. Each Party may provide in-kind services to further the purposes of Frontier Telenet as each Party deems necessary or desirable. Such in-kind services shall not be reimbursed from Frontier Telenet or other Parties, unless otherwise agreed.

1.6 Start-Up Costs. Frontier Telenet shall reimburse NCESD or any other applicable party for all reasonable third party expenses, including but not limited to legal and professional services, incurred in connection with the formation of Frontier Telenet.

1.7 Several Liability. Unless as otherwise expressly agreed in writing, there shall be no joint and several liability of the Parties either in contract or tort and all obligations of Frontier Telenet or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by Frontier Telenet or other Parties. The Party causing damage by its sole negligent act, omission or wrongful act shall be individually liable.

ARTICLE II GOVERNANCE AND MEMBERSHIP

2.1 Board of Directors. Frontier Telenet shall be governed by a Board of Directors ("Board"). The governing body of each Party shall appoint one (1) representative to the Board and one (1) alternate representative, each of which shall serve at the pleasure of the respective governing body and until replaced by such governing body. An alternate representative shall act in a Board capacity only during the absence of that Party's representative. In the event of a vacancy, the governing body of the Party that appointed the departed representative shall appoint a successor.

2.2 Officers. After the effective date of this Agreement, the Board shall elect from its membership a President, a Vice President, and a Secretary/Treasurer (collectively, the "Officers") who shall serve a term consisting of the remainder of 2001 and the following calendar year. Thereafter, annually, at the beginning of each calendar year, the Board shall elect from its membership Officers who shall serve a term of one (1) year. Officers shall serve at the pleasure of the Board or until their successors shall be appointed and take office.

2.2.1 Duties of President. The President shall preside at all meetings of Frontier Telenet and shall submit such recommendations and information as she or he may determine appropriate to discuss at Frontier Telenet meetings. The President shall perform the duties and responsibilities of Frontier Telenet in accordance with the obligations and limitations set forth in this Agreement. The President shall not otherwise hold herself or himself out to have the authority to bind the members of Frontier Telenet to any financial or other obligations.

2.2.2 Duties of Vice President. The Vice President shall perform the duties of the President in the absence or the incapacity of the President. In the case of the resignation or the death of the President, the Vice President shall perform the duties of the President until such time as the Board shall elect a new President.

2.2.3 Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes and the official records of Frontier Telenet and perform such other duties required of a Secretary/Treasurer. The Secretary/Treasurer shall be responsible for the fiscal administration of all funds of Frontier Telenet. The Secretary/Treasurer and either the President or the Vice President shall act as co-signers of checks drawn upon the accounts of Frontier Telenet. The Secretary/Treasurer may delegate the administrative functions of her or his office to another person or persons who need not be on the Board.

2.2.4 Additional Duties. The Officers of Frontier Telenet shall perform such other duties and functions as may from time to time be required by Frontier Telenet bylaws, or other rules and regulations.

2.3 Voting Rights. Except as otherwise expressly provided in this Agreement, the Board shall exercise its voting rights in the following manner:

2.3.1 Manner of Acting. A majority vote of the Board shall be necessary to decide any issue except that a unanimous vote of the Board shall be required to decide financial matters described in Section 2.3.2, for the addition of new members pursuant to Section 2.3.3, for the hiring and discharging of employees pursuant to Section 1.3.7, for the acceptance of or amendment to the scope of work pursuant to Sections 2.5.1 and 2.5.2, and for the dissolution of Frontier Telenet pursuant to Section 3.1;

2.3.2 Financial Matters. Any decision of Frontier Telenet involving the procurement of goods or services, or the incurrence of any financial obligation, including the issuance or sale of bonds, securities or other forms of indebtedness, shall require the affirmative authorization of each individual Party to be bound, such authorization to be expressed by resolution, ordinance or other binding commitment of the Party's governing body. Parties not affirmatively authorizing such actions shall in no instances be liable. The procurement of goods and services shall be performed by resolution or separate agreement which specifies (1) the apportionment of fees, costs, or revenue derived from the functions and activities; and (2) the manner in which such revenue shall be accounted for. Such resolution or separate agreement may or may not involve the participation of Frontier Telenet; however, such participation of Frontier Telenet shall not create liability for a Party that has not affirmatively authorized such action;

2.3.3 New Members. The Board may authorize a new Party to join Frontier Telenet only if approved by a unanimous vote of the Board;

2.4 Insurance. Frontier Telenet shall provide for adequate insurance to cover the directors, officers, employees, staff, agents and activities undertaken by Frontier Telenet.

2.5 Scope of Work. A scope of work shall be presented for each specific task or project to be undertaken by Frontier Telenet. The scope of work shall contain a reasonably detailed description of the activities to be undertaken by Frontier Telenet, a description of any necessary contractual arrangements, an itemization of the costs to be incurred in pursuing these activities, an allocation of costs, in-kind services and ownership interest in the Project among the participating Parties, a plan for project governance, an estimate of the expected revenues from such activities and an allocation of such revenues among the participating Parties.

2.5.1 Acceptance. Each scope of work shall be negotiated on a case-by-case basis and if approved by each Party shall be maintained by the Secretary as part of Frontier Telenet's corporate records.

2.5.2 Amendments. No change in a scope of work shall occur without each Party's written consent.

ARTICLE III TERM AND TERMINATION

3.1 **Term.** The term of this Agreement shall be perpetual unless, by a unanimous vote, the Parties act to dissolve Frontier Telenet.

3.1.1 **Dissolution.** Upon dissolution, each Party to Frontier Telenet on the date of dissolution shall remain liable solely for its individual share of any Frontier Telenet expenditure that has been specifically incurred by the Party in accordance with the terms of this Agreement or by other resolutions or separate agreements of the Party. Upon dissolution, the assets of Frontier Telenet shall be distributed to the members on the basis of the rights and obligations of each Party to the assets held as of the date of the dissolution.

3.2 **Voluntary Withdrawal by a Party.** Any Party may elect to terminate their participation in this Agreement and withdraw from Frontier Telenet by giving written notice to the President and each member of Frontier Telenet. Withdrawal shall be effective forty-five (45) days from the date of notice. The withdrawing Party shall continue to pay its apportioned share of, or be responsible for, any debt attributable to that Party incurred prior to the Party's written notice of withdrawal, and shall hold harmless the remaining Parties and Frontier Telenet for those financial responsibilities and obligations attributable solely to the withdrawing Party.

ARTICLE IV DISPUTE RESOLUTION

4.1 **Dispute Resolution.** If a dispute arises between the Parties or between Frontier Telenet and the Parties regarding breach of this Agreement or interpretation of any term of this Agreement, the Parties shall first attempt to resolve the dispute by negotiation, followed by binding arbitration if negotiation fails to resolve the dispute.

4.1.1 **Negotiation.** The Board Member or other persons designated by each of the disputing Parties will negotiate on behalf of the Parties they represent. The nature of the dispute shall be reduced to writing and shall be presented to each of the disputing Parties who shall then meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each disputing Party and ratified by Frontier Telenet which shall be binding upon the Parties.

4.1.2 **Binding Arbitration.** If the dispute cannot be resolved by negotiation within forty-five (45) days, the parties shall submit the matter to binding arbitration. The Parties shall attempt to agree on an arbitrator. If they cannot agree upon an arbitrator within ten (10) days, the Parties shall submit the matter of determining an arbitrator to the Presiding Judge of the State of Oregon District Seven Circuit Court. The common costs of the arbitration shall be borne equally by the Parties. Each Party must bear its individual costs and fees.

**ARTICLE V
AMENDMENT**

5.1 This Agreement may be amended by mutual written agreement of the Parties, signed by all of the Parties.

**ARTICLE VI
GENERAL PROVISIONS**

6.1 Merger. This Agreement embodies the entire agreement and understanding between the Parties relating to the formation of Frontier Telenet hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

6.2 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6.3 Notice. Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by certified mail, first class postage prepaid, addressed to the Parties as follows:

Laura Pryor
Gilliam County Judge
Gilliam County Courthouse
221 S. Oregon Street
Condon, Oregon 97823

Jeanne Burch
Wheeler County Judge
Wheeler County
Courthouse
701 Adams Street
Fossil, Oregon 97830

Mike McArthur
Sherman Co. Judge
Sherman County
Courthouse
500 Court Street
Moro, Oregon 97039

Anthony Lanni
Superintendent
North Central Educational Service
District
135 S. Main St.
Condon, Oregon 97823

6.4 Counterparts. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, any one of which shall constitute an agreement between and among the Parties.

6.5 IN WITNESS WHEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Laura Pryor
Laura Pryor, Gilliam County Judge
Gilliam County Board of Commissioners

Date: 10.15.01

STATE OF OREGON)
County of Belliam) ss.

SIGNED OR ATTESTED before me on this 15 day of October, 2001, by

Laura Pryor,

Susan M Cimmuyotti

Title: Notary Public
My Commission Expires: 4-12-05



Jeanne E Burch
Jeanne Burch, Wheeler County Judge
Wheeler County Board of Commissioners

Date: 10-11-2001

STATE OF OREGON)
County of Wheeler) ss.

SIGNED OR ATTESTED before me on this 11th day of Oct., 2001, by
Jeanne Burch,

Susan Snyder

Title: Notary Public
My Commission Expires: 03/15/2004

