AN ORDINANCE AMENDING THE LINCOLN COUNTY ZONING ORDINANCE TO INCLUDE PROVISIONS FOR THE PROPER SITING AND REGULATION OF TELECOMMUNICATIONS TOWERS, ANTENNA SUPPORT STRUCTURES AND WIRELESS COMMUNICATIONS FACILITIES.

Section 1. That Section 1112 of the Lincoln County Zoning Ordinance is hereby amended to read as follows:

A. Intent and Purpose

The unique and diverse landscapes of Lincoln County are among its most valuable assets. Destroying these assets risks undermining the very characteristics responsible for our economic vitality and future potential. Protecting these assets will require that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics of Lincoln County. This section will provide standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development.

The purpose of this section is to provide predictable and balanced standards for the siting and screening of tower facilities on both public and private property within the jurisdiction of Lincoln County. These standards will protect the health, safety and general welfare of persons in the area(s) surrounding such tower facilities from possible adverse aesthetics related to the placement, construction or modification of such tower facilities.

Leasing of public buildings, publicly owned structures, and/or public rights-of-way for the purposes of locating wireless telecommunication services facilities and/or equipment is encouraged. In cases where a facility is proposed on County property, specific location and compensation to the County shall be negotiated in lease agreements between the County and the provider on a case-by-case basis, and would be subject to all of the review criteria contained in this section. Such agreements would not provide exclusive arrangements that could tie up access to the negotiated site(s) or limit competition, and must allow for the possibility of “co-locating” (sharing of facilities) with other providers.

Regulations regarding development of telecommunications towers, antenna support structures and wireless communications facilities are intended to encourage development of a competitive wireless communications market place while protecting the health, safety and welfare of the public and maintaining the aesthetic integrity of the County. The regulations cover placement, construction and modification of telecommunications towers, antenna support structures and wireless communications facilities. The intent of this section includes the following:

(1.) To regulate the location of telecommunication towers, antenna support structures and wireless communication facilities.
(2.) To protect residential areas and land uses from potential adverse impact of telecommunications towers, antenna support structures and wireless communication facilities.

(3.) To minimize adverse visual impact of tower sites through design, siting, landscaping and innovate camouflaging techniques.

(4.) To promote shared use and co-locations of sites.

(5.) To insure telecommunications towers, antenna support structures and wireless communication facilities are compatible with surrounding land uses.

(6.) To facilitate the provision of services to residents and businesses in an orderly fashion.

(7.) To promote the location of telecommunications towers, antenna support structures and wireless communication facilities in non-residential areas.

(8.) To avoid potential damage to property caused by telecommunications towers, antenna support structures and wireless communication facilities by insuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound.

Specifically, the Telecommunication Act of 1996 affirms the local government’s right to control the siting, construction and modification of cellular and other wireless telecommunication facilities. The permitting process of this article will not discriminate among providers of functionally equivalent services and will not prohibit the provisions of personal wireless services.

B. Applicability

It shall be unlawful for any person, firm, or corporation to erect, construct in place, or place any tower facility without first receiving a permit(s) from the Lincoln County Planning and Zoning Office. Nor may any person, firm, or corporation alter, modify, transform, add to or change in any way an existing tower facility without first receiving a permit(s) from the Lincoln County Planning and Zoning Office.

C. Co-Location Requirements for New Tower Facilities

New tower facilities shall be designed and constructed to permit the future co-location of other commercial wireless telecommunications services, according to the following criteria:

<table>
<thead>
<tr>
<th>Height of Structure</th>
<th>Additional Users Facility Must Accommodate</th>
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<tr>
<td>Less that 100’</td>
<td>No co-location required</td>
</tr>
<tr>
<td>Between 100 and 130’</td>
<td>1 additional user accommodated</td>
</tr>
<tr>
<td>Between 130’ and 160’</td>
<td>2 additional users accommodated</td>
</tr>
<tr>
<td>161’ and greater</td>
<td>3 additional users accommodated</td>
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</table>

In satisfying co-location requirements, the owner of the tower must provide adequate access to the tower site and space within the owned or leased area to accommodate co-location user’s equipment. Nothing in these regulations shall prevent the owner of the tower from requiring remuneration from a co-location user, provided that such
remuneration is rate reasonable. The owner of the tower may also establish reasonable technical requirements for co-location to protect the owner’s investment and guarantee effective telecommunication service. The owner of the tower shall have the authority to review all plans for co-location uses and require reasonable modifications for such plans to ensure safe and efficient operations of the communication services and protect the owner’s investment.

D. General Standards

Conditional Use Permit: All proposed tower facilities, as defined in this ordinance, shall obtain a conditional use permit through the County. New tower facilities shall be allowed as conditional uses under the following zoning districts:

Agriculture-Public Use, Commercial-Service and Industrial.

Setback: There shall be a minimum setback of 600’ from the tower base to any existing residence or proposed residential development area based on the land use plan except the farmstead residence on the proposed site. Building structures must meet County setback requirements. Towers shall be no more than 200’ in height. Towers exceeding 200’ may be considered if FCC and FAA approval is received.

Fencing: The tower facility shall be protected by a security fence from six (6) feet to eight (8) feet in height around the perimeter of the site.

Signage: The owner’s name, telephone number and site ID number shall be posted on the gate of a perimeter fence. No other advertising or identification sign of any kind is permitted on the tower facility, except applicable warning and equipment information as required by the manufacturer or by federal, state or local authorities.

Lighting: The light source for any necessary security lighting shall feature down-directional, sharp cut-off luminaries that insure there is no spillage of illumination off the parcel or easement boundary.

Screening: Trees and large shrubs, native to the area, are to be planted twenty (20) feet apart in two (2) staggered rows which are ten (10) feet apart. The two staggered rows are to be located adjacent to the fencing. These trees and large shrubs shall be a minimum height of 6 feet by the end of the second growing season and must be maintained for the life of the tower facility.

Towers shall be of a monopole design unless it is determined that an alternative design would be appropriate for the particular site or circumstance. All towers shall be painted in a color best determined by the County to blend into the particular environment unless alternating red and white colors are required by federal agencies.

All sites and equipment shall be maintained in good condition, order and repair so they shall not endanger the life or property of any person.
E. Application Requirements

1. Lincoln County Planning and Zoning Office may contract with an independent technical expert to review technical materials submitted by the applicant, and/or to determine if additional information is necessary. The tower facility applicant shall pay the cost of such review and/or independent analysis.

2. Name and address of the tower facility owner, record landowner of parcel and any duly appointed agents of the parties.

3. A visual study depicting where, within a one (1) mile radius, any portion of the proposed tower facility will be visible.

4. Site plan(s) drawn to a scale of one (1) inch equals twenty (20) feet or less, specifying the location of the tower facility, support structures, transmission buildings and/or other accessory uses, access, parking, fences, signs, lighting, landscaped areas and all adjacent land uses within two hundred forty (240) feet of the base.

5. A landscape plan designed to screen the base of the tower facility and fencing shall be submitted. The plan shall show the location, size, quantity, and type of screening materials and shall be drawn to a scale of one (1) inch equals twenty (20) feet or less, including “before” and “after”. Simulations indicating size, spacing and type of plantings, and indicating steps to be taken to provide screening as required by the general standards of this section shall be included as part of the landscape plan. The landscape plan(s) shall also indicate the size, location and species of all existing vegetation and whether each of those indicated are proposed for removal (indicate proposed mitigation), relocation (indicate from and to), or preservation.

6. Elevation drawings of “before” and “after”, simulating and specifying ground levels, the location and height of antenna(s), support structures, equipment buildings and/or other accessory uses, fences and signs of the tower facility.

7. Map showing the search radius for the antenna location and the proposed broadcast coverage obtained by the tower facility, including a narrative describing a search radius of not less than one (1) mile for the requested site, clearly explaining why the site was selected, identifying and locating landing and takeoff areas of aircraft within the search radius, locating all existing tower facilities, and identifying all other structures that may be potential co-location sites.

8. Description of the tower facility design. (e.g. monopole)

9. An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to obtain permission for installation at a co-location facility.
10. Written, technical evidence from an engineer(s) that the proposed tower or communication facility cannot be co-located to other tower sites.

11. Written, technical evidence that an engineer registered in the State of South Dakota has provided the design for this specific tower facility and site ensuring the proper standards for design.

F. Other Requirements

The County may require additional information from the applicant and impose additional standards, regulations or requirements as deemed necessary to protect the public health, safety and welfare. If the Planning Commission considers the information provided inadequate, or if the applicant fails to supply required information, the Planning Commission may deny the application on this basis. Other requirements include, but are not limited to, the following:

A letter that requires the tower facility owner and successors to allow the shared use of the tower facility if an additional user(s) agrees, in writing, to meet reasonable industry terms and conditions for shared use.

A copy of the FAA determination or a signed statement that the proposed tower facility has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or that no compliance with Part 77 is required, and the reasons therefor.

A copy of the FCC’s license or a signed statement from the proposed operator of the tower facility attesting to the fact that the tower facility complies with current FCC regulations, including compliance with the regulations of the FCC with regard to maximum radio frequency and electromagnetic frequency emissions, or a statement from the applicant that no such compliance is necessary, and the reasons therefor.

A copy of a certificate of insurance for liability and workers compensation insurance that requires notification to Lincoln County Planning and Zoning Office prior to cancellation will be furnished.

Documentation demonstrating that the tower facility has been designed to conform to applicable state structural building standards and accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code and a sworn statement that following completion of construction, the tower facility will be inspected at the applicant’s expense by a qualified engineer licensed by the State of South Dakota.

The applicant shall submit proof, in the form of a signed affidavit, demonstrating a good faith effort to lease or purchase space on an adjacent existing tower facility. The affidavit shall state why space is not available, such as:
1. The planned tower facility would exceed the structural capacity of the tower facility and the structural capacity cannot reasonable be increased;

2. The planned tower facility would cause interference with the usability of other existing or planned equipment at the tower facility; and/or

3. An existing tower facility cannot accommodate the planned antenna at a height necessary to function reasonably.

G. Exemptions

Towers exempt from the permitting process include the following:

1. Residential use no more than 10’ above average existing tree canopy or roof line.

2. Additions to existing towers which meet the standards of this section and do not increase the tower height.

3. Normal maintenance to existing tower facilities.

H. Annual Notification - Failure to Comply Deemed Abandonment

The owner of the facility shall file an annual notification in writing to the Planning and Zoning Office as to the current operation of the tower facility. This annual report due on or before January 15th of each year shall include, but not be limited to, the following information:

1. Tower usage - type of usage, tower in service or out of service.

2. Documentation of antenna - number of co-locates.

3. Certification by owner of compliance with this section - signage, landscaping, lighting.

4. Annual maintenance performed.

5. Any changes from the original conditional use permit.

Failure to comply with this section will deem the tower facility abandoned.

I. Abandonment

Tower facilities that are not in use for one hundred eighty (180) consecutive days shall be considered abandoned and shall be removed by the owner within one hundred eighty (180) days. The applicant must furnish a copy of the relevant portion of an executed
lease, which identifies the applicant’s obligation to remove abandoned or unused towers, concrete footing, anchors, supporting equipment and antennae prior to the issuance of a conditional use permit to erect a tower.

Removal includes the complete tower facility including related infrastructures, footings and other underground improvements to a depth of thirty-six (36) inches below existing grade, and restoration to pre-existing vegetative cover. Failure to do so shall be just cause for Lincoln County to seek legal avenues that will remove the tower facility and restore the site.

The County shall require financial assurances including bonds in an amount sufficient to cover costs of removal of towers, buildings, concrete footings, anchors, supporting equipment, and antennae. Said financial assurances shall be submitted with the conditional use permit application. An engineer’s cost estimate is to assist the County in determining the amount of financial assurance necessary to cover removal costs of said towers, buildings, concrete footings, anchors, supporting equipment and antennae.

In the event any towers, buildings, concrete footings, anchors, supporting equipment and antennae have not been removed within one hundred eighty (180) days written notice by the County after abandonment, the County shall have the right to remove the towers, buildings, concrete footings, anchors, supporting equipment and antennae and assess the property.

J. Existing Tower Facilities

Existing tower facilities may continue in use and perform routine maintenance for the purpose now used and may not alter, convert, modify, transform, vary, add to or change in any way the form without complying with Section 1112. Existing tower facilities shall be considered for the co-location of other antenna(s). The owner of an existing tower facility shall file an annual notification in writing to the Planning and Zoning Office as to the continuing operation of every tower facility constructed (see subsection H - Annual Notification). Failure to do so shall be determined to mean that the tower facility is no longer in use and considered abandoned.

K. Maintenance

All tower facilities shall be maintained in a safe and clean manner. The tower facility owner shall be responsible for maintaining a graffiti, debris and litter free site. The landscape plan shall be maintained for the life of the tower facility.

Trimming the tops of trees on site shall be allowed, only to maintain the average height of the canopy use to establish tower facility height. All tower facilities shall be subject to periodic inspection to ensure continuing compliance with all conditions of the application submitted and approval requirements.
Telecommunications tower, antenna support structures and wireless communications facilities shall be maintained in compliance with Electronic Industries Association/Telecommunications Industries Associations Standards (latest revision), all applicable laws and so as not to interfere with the use of other property.

Upon the County Communications Director’s determination that a tower site is a hazard to public safety, the owner shall be required to perform an inspection by a registered professional engineer and make all recommended corrections at the owner’s expense.

L. Time Limit on Tower Facility Construction

Construction of an approved tower facility must be completed within two years following the date of the approval.

Landscaping must be installed within the first growing season immediately following construction.

M. Definitions

<table>
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<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Antenna</td>
<td>Any structure or device used for the purpose of collecting or radiating electromagnetic waves including, but not limited to, directional antennas such as panels, microwave dishes, satellite dishes, and omnidirectional antenna such as whip-antenna.</td>
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<tr>
<td>Antenna Support</td>
<td>Any existing structure that supports wireless communications facilities, such as, but not restricted to, telecommunications and broadcast towers, buildings, clock towers, steeples, Structure and light poles.</td>
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<tr>
<td>Broadcast</td>
<td>To convey, generate, transmit or receive electromagnetic signals regardless of frequency, power level or communications use.</td>
</tr>
<tr>
<td>Camouflage</td>
<td>A covering or disguise of any kind to hide or conceal.</td>
</tr>
<tr>
<td>Tower Facility(ies)</td>
<td>Structures thirty-five feet (35’) or more in height and that may include a tower, antenna(s), equipment building(s), anchor points and other related equipment used by broadcast services and/or wireless telecommunications services.</td>
</tr>
<tr>
<td>Tower, Monopole</td>
<td>A tower consisting of a single pole, constructed without any guy wires and ground anchors.</td>
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Tower, Height

The height of the tower is the vertical distance from the point of contact with the ground to the highest point of the tower including all antenna or other attachments.

Wireless Telecommunication

Any ground or roof mounted structure of more than 35 feet in height above average ground level built for the purposes of supporting, elevating or attaching antenna(s) for broadcasting of cellular, personal communications, specialized mobilized radio, enhanced specialized mobilized radio, paging, and similar services. For all sections of this ordinance, wireless telecommunication shall not be considered a public utility.

Section 2. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after its approval, adoption and publication as provided by law.

First Reading: March 19, 2002
Second Reading: March 26, 2002
Publication: March 26, 2002
Effective Date:

___________________________________
Chairman, Lincoln County Commissioners

ATTEST:

______________________________
Auditor, Lincoln County