

**RESTATED ARTICLES OF INCORPORATION  
OF THE  
WEST RIVER TELECOMMUNICATIONS COOPERATIVE**

Article I

The name of the Corporation is West River Telecommunications Cooperative. The date of incorporation is January 12, 1953.

Article II

The purpose for which the Cooperative is organized is to furnish, improve, acquire, build, expand, develop and operate a telecommunications business and system in a manner consistent with, but not limited by, contractual agreements heretofore or hereafter made with the United States of America, acting through the Rural Electrification Administration, and for any lawful purpose determined by the Board of Directors to be necessary to provide adequate service to the members, including the right to enter into limited or general partnerships, joint ventures or other business relationships, and to purchase stock in other corporations.

Article III

The principal office of the Cooperative is located in Hazen, Mercer County, North Dakota.

Article IV

The territory to be served by the Cooperative consists of the States of North Dakota and South Dakota.

Article V

The Cooperative is organized without Capital Stock. Upon dissolution, after (a) debts and liabilities of the Cooperative shall have been paid, and (b) all capital furnished through patronage shall have been retired as provided in the Bylaws, the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all such members and former members, unless otherwise provided by law.

Article VI

The Board of Directors of West River Telecommunications Cooperative of Hazen, North Dakota, is authorized to borrow from time to time such sums of money as it may deem advisable from any source, including, without limitation, additional sums from United States of America pursuant to the provisions of the Rural Electrification Act of 1936, as amended, and to incur indebtedness from time to time by the assumption of indebtedness of third parties to United States of America as approved by the Administrator, the aggregate amount of the unpaid principal of any such loans, together with the aggregate amount of the unpaid principal of such indebtedness so assumed and the aggregate amount of the unpaid principal of loans heretofore made to the Cooperative by United States of

America not to exceed Fifty Million Dollars at any one time.

The Board of Directors of the Cooperative is authorized to mortgage, by deed of trust or by mortgage, and upon such terms as the Board of Directors shall determine, all of the property of the Cooperative now owned or hereafter acquired, in order to secure such loans heretofore or hereafter made at any time or times.

#### Article VII

The number of directors shall be determined by the Bylaws of the Cooperative. Directors shall be elected at annual meetings of the members for such terms as shall be provided in the Bylaws.

#### Article VIII

These restated Articles of Incorporation shall supersede all existing Articles of Incorporation and Amendments thereto of West River Mutual Aid Telephone Corporation.

**WEST RIVER TELECOMMUNICATIONS COOPERATIVE  
RESTATED BYLAWS  
of the  
WEST RIVER TELECOMMUNICATIONS COOPERATIVE**

Article I  
Membership

Section 1.1. **Membership.** Any adult person, organization, government, political subdivision or governmental agency, or other legal entity shall become a member of this Cooperative and membership shall be automatic on the date of receipt of retail voice or broadband service. In receiving such services from the cooperative, each member, by such action, agrees to comply with and be bound by the Articles of Incorporation and Bylaws of the Cooperative and any rules, policies and regulations adopted by the Board of Directors. No member may hold more than one membership in the Cooperative, and no membership shall be transferable except as provided in these bylaws. The status of all membership shall be as reflected upon the books of the Cooperative, and no membership certificates will be issued.

Section 1.2. **Definition and Classifications.**

- (a) A condition of membership is

Voice or broadband service from the Cooperative at a premise within its established service area.

In addition, the Board may determine certain types and amounts of patronage that give rise to the privileges and obligations of membership.

- (b) Exchange and interexchange carriers who participate with the Cooperative in the provision of telecommunications services are neither members nor patrons except as such carriers may receive voice or broadband services.

Section 1.3. **Purchase of Services.** Each person who applies for service shall, as soon as service is available, take service from the Cooperative. The member shall pay therefor monthly at rates in accordance with either established tariffs as fixed by the Board, or, for the services rendered by other carriers, at the rates which the Cooperative is obliged to bill and collect by contractual arrangements with other carriers. It is expressly understood that amounts received by the Cooperative for all services in excess of cost are furnished by members from the moment of receipt as capital, and each member shall be credited with the capital so furnished as provided in these Bylaws. However, the Cooperative is not obligated to furnish such credits for services which are not billed and collected by the Cooperative, even when such services are partially rendered over the facilities of the Cooperative. Each member shall pay the above amounts owed the Cooperative as and when the same shall become due and payable.

Section 1.4. **Joint Membership.** Any membership now or hereafter issued to either a husband or wife shall be and is the joint membership of said husband or wife, and his or her spouse. The term “**Member**”, as used in these Bylaws, shall be deemed to be the joint membership of a husband and wife and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. The effect of the hereinafter specified actions by or in respect of the holders of joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting.
- (b) The vote of either, separately or both jointly, shall constitute one vote.
- (c) A waiver of notice or any other instrument signed by either shall constitute the waiver or other instrument of both.
- (d) Notice to either shall constitute notice to both.
- (e) Expulsion of either shall terminate the joint membership.
- (f) Withdrawal of either shall terminate the joint membership.
- (g) Either, but not both, may be elected or appointed as an officer or director, if individually qualified.

Section 1.5. **Conversion of Membership.** A membership may be converted from a joint membership to a single membership upon the written request of either joint member. Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor, provided, however, that the estate of the deceased shall not be released from any debts due the Cooperative and the surviving spouse shall also be liable for such debts.

Section 1.6. **Membership Fees.** There shall be no membership fee as such, but each applicant for membership shall pay into the General Fund of the Cooperative a service connection charge as approved by the Board of Directors. Any membership fee previously paid by a member shall be considered a service connection charge.

Section 1.7. **Termination of Membership.**

- (a) Any member may withdraw from the membership upon compliance with such uniform terms and conditions as the Board may prescribe. The Board may, by the affirmative vote of not less than two-thirds of all the directors, expel any member who fails to comply with any of the provisions of the Articles of Incorporation, Bylaws, or any rules or regulations adopted by the Board, but only if such member shall have been given written notice by the Secretary that such failure makes the member liable to expulsion and such failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by vote of the Board, or by the vote of the members at any annual or special meeting.
- (b) Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member, or his/her estate, from any debts due the

Cooperative.

- (c) Membership in the Cooperative shall automatically terminate when the member ceases to purchase voice and broadband service from the Cooperative.
- (d) Any member may withdraw from membership upon filing written notice of such withdrawal with the Cooperative. The membership withdrawal of any person who has heretofore chosen to withdraw from membership shall continue after adoption of the bylaw amendments provided for herein.

## Article II

### Rights and Liabilities of the Cooperative and the Members

#### Section 2.1. **Service Obligations.**

The Cooperative will use reasonable diligence to furnish adequate and dependable services, but it cannot and does not guarantee uninterrupted services nor will it always be able to provide every service desired by each individual member.

**Section 2.2. Cooperation of the Members in the Extension of Services.** The cooperation of members of the Cooperative is imperative to the successful, efficient and economical operation of the Cooperative. Members who are receiving or who are requesting service shall be deemed to have consented to the reasonable use of their real property to construct, operate, maintain, replace or enlarge telephone and/or communication facilities, overhead or underground, including all conduit, cables, wires, surface testing terminals, markers and other appurtenances under, through, across, and upon any real property or interest therein owned or leased or controlled by said member for the furnishing of telephone or communication service to said member, or any other member, at no cost to the Cooperative. When requested by the Cooperative, the member does agree to execute any easement or right-of-way contract on a form to be furnished by the Cooperative.

**Section 2.3. Nonliability for Debts of the Cooperative.** The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

## Article III

### Meetings of Members

**Section 3.1. Annual Meeting.** The Annual Meeting of the members shall be held during the month of May or June of each year, at such time and place as the Board of Directors shall specify, and which shall be set forth in the Notice of the Meeting, for the purpose of electing directors, passing upon reports for the previous fiscal year and transacting such other business as may come before the meeting.

It shall be the responsibility of the Board to make adequate plans and preparations for the Annual Meeting. Failure to hold the Annual Meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative, and shall not affect the validity of any corporate action.

Section 3.2. **Special Meetings.** Special meetings of the Members may be called by action of the Board, by the President, or by not less than twenty per centum of all the members, and it shall thereupon be the duty of the Secretary to cause Notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the borders of the territory of West River Telecommunications Cooperative, specified in the Notice of the special meetings.

Section 3.3. **Notice of Members Meetings.** Written notice stating the place, day and hour of the meeting and, in case of a special meeting or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called shall be given not less than ten, nor more than thirty days before the date of the meeting, either personally or by mail, or electronic transmission by or at the direction of the Secretary, or upon default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be given when deposited in the United States mail, addressed to the member at the address as it appears on the records of the Cooperative with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action, which may be taken by the members at any such meeting.

Section 3.4. **Quorum.** A quorum at a member meeting shall be 50 members present in person, or in the case of members who are other than natural persons, represented by delegates. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time, provided, that the Secretary shall notify any absent members of the time, date and place of such adjourned meeting in the same manner as provided for in Section 3.3 above.

Section 3.5. **Voting.** Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by law, the Articles of Incorporation, or these Bylaws. Any member may vote for directors by mail, electronically or in-person at the annual meeting. The procedures for requesting absentee ballots shall be mailed or published with the notice of the annual meeting. The failure of a member to receive a ballot shall not invalidate any action taken by the members at a meeting. The Board of Directors shall prescribe the rules governing voting electronically and by mail. The maximum number of votes that an individual natural member may cast in behalf of a member who is other than a natural person shall be two votes in addition to the vote which such individual has as a member.

Section 3.6. **Order of Business.** The order of business at the annual meeting of the members shall be conducted under policies established by the Board.

Section 3.7. **Voting Districts.** The territory served by the Cooperative shall be divided into seven districts. Each district shall be represented by one director. The districts shall be as follows:

District No. 1:                   Parts of McLean, Sheridan, Burleigh and Kidder Counties in North Dakota including the parts of the Underwood, Turtle Lake, Mercer, McClusky and Goodrich exchanges lying within these counties.

- District No. 2: Parts of Mercer and Dunn Counties, North Dakota including the parts of the Beulah, Zap, Golden Valley, Hebron and Glen Ullin exchanges lying within Mercer or Dunn County.
- District No. 3: Parts of Oliver, Morton, McLean and Stark Counties in North Dakota including the parts of the Center, Hazen, Beulah, Hebron, Glen Ullin, New Salem and Washburn exchanges lying within those counties north of Interstate 94.
- District No. 4: Parts of Morton and Stark Counties in North Dakota including the parts of the St. Anthony, Flasher, New Salem, Glen Ullin and Hebron exchanges lying within those counties south of Interstate 94.
- District No. 5: Sioux, Grant, Hettinger and Adams Counties, North Dakota
- District No. 6: All of the area served by the Cooperative in South Dakota.
- District No. 7: Parts of Mercer County including the parts of the Hazen, Stanton, Pick City and Center exchanges lying within Mercer County.

**Section 3.8. Credentials and Election Committee.** The President shall, before any meeting of the members, appoint a Credentials and Election Committee. The Committee shall consist of not less than five nor more than nine members who are not existing Cooperative employees, agents, officers, directors or known candidates for director. In appointing the Committee, the President shall have regard for the equitable representation of the several areas served by the Cooperative. The Committee shall elect its own chairman and secretary prior to the member meeting. It shall be the responsibility of the Committee to approve, in accordance with these bylaws, the manner of conducting member registration and any ballot or other voting, to pass upon all questions that may arise with respect to the registration of members in person, to count all ballots or other votes cast in any election or in any other matter, to rule upon the effect of any ballots or other vote irregularly or indecisively marked or cast, to rule upon all other questions that may arise relating to member voting and the election of directors (including but not limited to the validity of petitions of nomination or the qualifications of candidates and the regularity of the nomination and election of directors), and to pass upon any protest or objection filed with respect to any election or to conduct affecting the results of any election. In the exercise of its responsibility, the Committee shall have available to it the advice of counsel provided by the Cooperative. In the event a protest or objection is filed concerning any election, such protest or objection must be filed during, or within three business days following the adjournment of, the meeting in which the voting is conducted. The Committee shall thereupon be reconvened, upon notice from its chairman, not less than seven days after such protest or objection is filed. The Committee shall hear such evidence as is presented by the protestor(s) or objector(s), who may be heard in person, by counsel, or both, and any opposing evidence, and the Committee, by a vote of a majority of those present and voting, shall, within a reasonable time but not later than thirty days after such hearing, render its decision, the result of which may be to affirm the election, to change the outcome thereof, or to set it aside. The Committee's decision (as reflected

by a majority of those actually present and voting) on all matters covered by this Section shall be final. The Committee may not act on any matter unless a majority of the Committee is present.

#### Article IV

##### Directors

**Section 4.1. General Powers.** The business and affairs of the Cooperative shall be managed by a Board of seven Directors which shall exercise all of the powers of the Cooperative, except such as are by law, the Articles of Incorporation, or these Bylaws, conferred upon or reserved to the members.

**Section 4.2. Election and Tenure of Office.** All directors shall be elected by secret ballot to serve for a term of three years and until their successors shall have been elected and shall have qualified. Directors are elected by a plurality vote of the votes cast.

**Section 4.3. Qualifications.** To be eligible to become and remain a director of the Cooperative:

- (a) One must be a member and presently residing in the district which such person represents.
- (b) One must disclose any financial interests of the member in conflict with the best interests of the Cooperative. In addition, one must agree to act in conformity with general fiduciary duties of a director, including duties of care, loyalty, and good faith as may be further addressed in policies adopted by the Board of Directors.
- (c) One may not have been an employee of the Cooperative during the past three years. A former employee's spouse is also disqualified during this three year period.
- (d) One shall not be an officer or an employee, (nor a close relative of such officer or employee) of any company or organization signatory to a contract with the cooperative.
- (e) Further, to remain a director, one shall not receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a Board member receive compensation for serving the Cooperative, unless the payment and amount of the compensation shall be specifically authorized by a vote of the members or the service by the Board member or any close relative shall have been certified by the Board as an emergency measure. For purpose of this section, close relative includes grandparents, parents, husband, wife, children, grandchildren, brothers, sisters, aunts, uncles, nephews and nieces, by blood, by marriage or by adoption, and spouses of any of the foregoing.

Upon establishment of the fact that a director is holding office in violation of any of the foregoing provisions, the Board shall remove such director from office. Nothing contained in this section shall affect in any manner whatsoever, the validity of any action taken at any meeting of the Board.



**Section 4.4. Nominations.** Whenever a director is to be elected at the following annual meeting of the members of the Cooperative, any 15 or more members may nominate an otherwise qualified candidate by filing at the cooperative headquarters at least 90 days prior to the date of the annual meeting a nomination petition setting forth the name of the person so nominated. Such petition shall state the name and address of the person being nominated, and the district in which such person is running. Each member signing said petition, shall enter the date, their address and their telephone number on the petition. No member may sign more than one petition for each position to be filled. If a member signs more than one petition for a single position, the first petition shall be valid, and if both are signed the same day, neither of such signatures shall be valid. The members shall elect, by secret written ballot, a director to fill each vacancy. Each member shall be entitled to vote for one director, who has been nominated by petition, for each vacancy. The director candidate receiving the most votes for the position shall be declared elected. In the event that there is no competition for a position, the director candidate nominated may be elected by voice vote.

The Secretary-Treasurer shall mail with the Notice of the meeting or separately, but at least ten days before the date of the meeting, a listing of directors to be elected and the names and addresses of the candidates.

The ballot shall arrange the names of the candidates by geographic area. In the event there is no candidate for a position at the time of election, the chairman shall invite nominations from the floor for such position and such nominations shall not be closed until at least one minute has passed during which no additional nominations have been made.

**Section 4.5. Removal of Board Member by Members And Resignations.** Any member may bring charges, relating to the duties and responsibilities of the position, against a Board member and, by filing with the secretary-treasurer such charges in writing together with a petition signed by at least ten percent of the members, or three hundred, whichever is the lesser, may request the removal of such Board member by reason thereof. Such Board member shall be informed in writing of the charges at least ten days prior to the meeting of the members at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel to present evidence in respect to the charges; and the person or persons bringing the charges against the Board member shall have the same opportunity. The question of the removal of such Board member shall be considered and voted upon at the meeting of the members. No director shall be removed from office unless by a vote of two-thirds of the members present. Any vacancy created by such removal may be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

A director may resign at any time by written notice delivered to the Board of Directors, the President or Secretary-Treasurer of the Cooperative. A resignation is effective when the notice is delivered unless the notice specifies a future date. The pending vacancy may be filled before the effective date, but the successor shall not take office until the effective date.

Section 4.6. **Vacancies.** Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by the removal of directors by the members, a vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining directors for the unexpired portion of the term, provided, however, that in the event the vacancy is not filled by the Board within sixty days after the vacancy occurs, the members shall have the right to fill such vacancy at a meeting of the members without compliance with the foregoing provisions in respect to nominations. The member appointed or elected must reside in the same district as the director to whose office he succeeds.

Section 4.7. **Directors' Vacancies - Causes Thereof.** The office of a Director shall become vacant if the incumbent shall fail to attend three successive official meetings of the Board, except when prevented from discharging their duties by reason of service in the Armed Forces of the United States, by sickness, or through other unavoidable causes.

Section 4.8. **Compensation.** Board Members shall, as determined by action of the Board, receive reasonable compensation for services rendered the Cooperative. If authorized by the Board, Board members may also be reimbursed for expenses actually and necessarily incurred in carrying out such Cooperative business or granted a reasonable per diem allowance by the Board in lieu of detailed accounting for some of these expenses. Board members who elect to participate may be extended various forms of liability and accident insurance as well as participation in benefits provided to employees, except for benefits based on salary.

## Article V

### Meetings of the Board of Directors

Section 5.1. **Regular Meetings.** A regular meeting of the Board shall be held without notice, immediately after the annual meeting of the members at the headquarters building, if the annual meeting is held at Hazen, and if not, such meeting of the Board shall be held at the place of the annual meeting. A regular meeting of the Board shall also be held monthly at such time and place as designated by the Board. Such regular monthly meetings may be held without notice other than action fixing the time and place thereof.

Section 5.2. **Special Meetings.** Special meetings of the Board may be called by the President, or by any three directors, and it shall thereupon be the duty of the Secretary-Treasurer to cause notice of such meeting to be given as hereinafter provided. The President or the directors calling the meeting shall fix the time and place for the holding of the meeting. Unless specifically prohibited by law, special meetings may be conducted through the use of conference telephone or other communications equipment by means of which all persons participating in the meetings can communicate with each other. Such participation will constitute attendance and presence in person at the meeting of the persons so participating.

Section 5.3. **Notice of Directors' Meeting.** Written notice of the time, place and purpose of any special meeting of the Board shall be given to each director not less than five days previous thereto, either personally or by mail, by or at the direction of the Secretary-Treasurer, or upon a default in duty by the Secretary-Treasurer, by the President or the directors calling the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the director

at the address of such director as it appears on the records of the Cooperative with postage thereon prepaid.

Section 5.4. **Quorum.** A majority of the Board shall constitute a quorum, provided that less than such majority of the directors present may adjourn the meeting from time to time; and, provided further, that the Secretary-Treasurer shall notify any absent directors of the time and place of such adjourned meeting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

## Article VI Officers

Section 6.1. **Number.** The officers of the Cooperative shall be a President, Vice President, Secretary-Treasurer, and such other officers as may be determined by the Board from time to time.

Section 6.2. **Election and Term of Office.** The officers shall be elected annually by the Board at the meeting of the Board held immediately after the annual meeting of the members. The Secretary-Treasurer may be elected from the members. All other officers shall be members of the Board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until the first meeting of the Board following the next succeeding annual meeting of the members and until his successor shall have been elected and shall have qualified. Except as otherwise provided in these Bylaws, the vacancy in any office shall be filled by the Board for the unexpired portion of the term.

Section 6.3. **Removal of Officers by the Board.** Any officer elected or appointed by the Board may be removed by the Board for cause related to position whenever in its judgment the best interests of the Cooperative will be served thereby. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten days prior to the Board meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect of the charges; and the person or persons bringing the charges shall have the same opportunity.

Section 6.4. **President.** The President shall:

- (1) Be the principal executive officer of the Cooperative and unless otherwise determined by the members of the Board, shall preside at all meetings of the members and the Board.
- (2) Sign any deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and
- (3) In general perform all duties incident to the Office of President and such other duties as may be prescribed by the Board from time to time.

**Section 6.5. Vice President.** In the absence of the President, or in the event of the inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as, from time to time, may be assigned by the Board.

**Section 6.6. Secretary-Treasurer.** The Secretary-Treasurer shall be responsible for:

- (1) Keeping the minutes of the meetings of the members and of the Board in books prepared for that purpose;
- (2) Seeing that all notices are duly given in accordance with these Bylaws or as required by law;
- (3) The safekeeping of the corporate books and records and Seal of the Cooperative and affixing the Seal of the Cooperative to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these Bylaws;
- (4) Keeping a register of the names and post office addresses of all members;
- (5) Keeping on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Cooperative containing all amendments thereto and at the expense of the Cooperative, furnishing a copy of these Bylaws and of all amendments thereto to each member;
- (6) Custody of all funds and securities of the Cooperative;
- (7) The receipt of and the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these Bylaws; provided, however, that the Secretary-Treasurer shall have authority, with the approval of the Board to delegate to the CEO/GM the authority to appoint employees of the Cooperative to actually carry out the responsibilities set forth in this Section; and
- (8) The general performance of all the duties incident to the Office of Secretary-Treasurer and such other duties as from time to time may be assigned by the Board; provided, however, with respect to the duties and responsibilities of the Secretary-Treasurer, the Cooperative shall indemnify and hold the Secretary-Treasurer harmless against any and all losses, claims and/or damages which may be asserted against the Secretary-Treasurer, in their official capacity, unless such claim is a result of an act personally committed or omitted by the Secretary-Treasurer resulting in loss to the Cooperative.

Section 6.7. **CEO/GM.** The Board may hire a CEO/GM who must become and remain a member of the Cooperative. The CEO/GM shall perform such duties and shall exercise such authority as the Board may, from time to time, vest in the CEO/GM.

Section 6.8. **Bonds of Officers.** The Board shall require the Secretary-Treasurer and any other officer, agent or employee of the Cooperative charged with responsibility for the custody of any of its funds or property to give bond in such sum and with such surety as the board shall determine. The Board in its discretion may also require any other officer, agent or employee of the Cooperative to give bond in such amount and with such surety as it shall determine. The cost of all such bonds shall be borne by the Cooperative.

Section 6.9. **Compensation.** The powers, duties and compensation of officers, agents and employees shall be fixed or approved by the Board, subject to the provisions of these Bylaws.

Section 6.10. **Reports.** The officers of the Cooperative shall submit at each annual meeting of the members, reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

## Article VII

### Non-Profit Operation

Section 7.1. **Interest or Dividends on Capital Prohibited.** The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its member patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its member patron.

Section 7.2. **Patronage Capital in Connection with Furnishing Telecommunications and Information Services.**

- (1) In the furnishing of telecommunications and information services, the Cooperative's operations shall be so conducted that all member patrons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to insure that the Cooperative will be operated on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its member patrons for all amounts received and receivable from the furnishing of telecommunications and information services in excess of operating costs and expenses properly chargeable against the furnishing of such services. All such amounts in excess of operating costs and expenses for telecommunications and information services at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the member patrons as capital.
- (2) The Cooperative is obligated to pay by credits to a capital account for each member patron all such amounts in excess of operating costs and expenses derived from telecommunications and information services. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by the member patron for telecommunications and information services is clearly reflected

and credited in an appropriate record to the capital account of each member patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each member patron of the amount of capital so credited to the member patron's account. All such amounts credited to the capital account of any member patron shall have the same status as though it had been paid to the member patron in cash in pursuance of a legal obligation to do so and the member patron had then furnished the Cooperative corresponding amounts for capital.

- (3) All nonoperating margins, shall, insofar as permitted by law, be used to offset any losses during the current or any prior fiscal year and, to the extent not needed for that purpose, either:
  - (a) Allocated to its member patrons on a patronage basis and any amount so allocated shall be included as part of the capital to be allocated to the accounts of the member patrons in an equitable manner as approved by the Board, or
  - (b) Used to establish and maintain a nonoperating margin reserve not assignable to member patrons prior to authorization of the Board.
- (4) If, at any time prior to dissolution or liquidation, the Board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to member patrons' accounts may be retired in full or in part. All allocations and retirements of capital shall be at the discretion and direction of the Board as to kind, timing, method and type of assignment and distribution.
- (5) In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members.
- (6) Capital credited to the account of each member patron shall be assignable only on the books of the Cooperative, pursuant to written instructions from the assignor and only to successors in interest, or successors in occupancy, in all or in part of such member patrons' premises served by the Cooperative, unless the Board, acting under policies of general application, shall authorize other types of assignments. Member patrons at any time may assign their capital credits back to the Cooperative and the Cooperative is authorized to negotiate capital credit settlement arrangements with bankrupt member patrons.
- (7) Notwithstanding any other provision of these Bylaws, the Board, at its discretion, shall have the power at any time upon the death of any natural member patron, if the legal representative of the estate shall request in writing, that the capital credited to any such member patron be retired prior to the time such capital would be retired in a general retirement under provisions of these Bylaws, to retire capital credited to any such member patron immediately upon such terms and conditions as the Board, acting under policies of

general application, and the legal representative of such member patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby, and also capital credits jointly owned by a husband and wife may at the discretion of the Board, be retired to the survivor upon death of either.

- (8) When the capital credits of any member patron no longer receiving service from the Cooperative comes to a total amount of less than a fixed sum determined by the Board of Directors, the same may be retired, and the Board may require that such persons have reached a certain age. During a general capital credit retirement, no checks shall be issued for less than a fixed amount determined by the Board, and the amount of such unretired capital credits will be retired in the first following year, when the total amount of capital credits qualifying for retirement exceed that amount set by the Board, including the amount carried over.
- (9) All tax refunds made by the United States Government or any of the states in connection with the final or true cost of service as determined by the capital credits allocation process may be held and used by the Cooperative as furnished patronage capital and shall be treated in the same manner as furnished capital set out in this section of these Bylaws.
- (10) The member patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract both between the Cooperative and each member patron, and further, between all the member patrons themselves individually. Both the Cooperative and the member patrons are bound by such contract, as fully as though each member patron had individually signed a separate instrument containing such terms and provisions with the Cooperative and each of its member patrons. The provisions of this Article of the Bylaws shall be called to the attention of each member patron of the Cooperative by posting in a conspicuous place in the Cooperative's office or by publication distributed by the Cooperative to its member patrons.
- (11) The Board of Directors may, by policy, identify the types and nature of income to be used as a basis for allocation of capital credits to member patrons.
- (12) The Cooperative, before retiring any capital credited to any capital credit account, shall deduct therefrom any amount owing by such person to the Cooperative together with interest thereon as established by the policies of the Cooperative.

#### Article VIII

##### Disposition of Property

The Cooperative shall not sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of this Cooperative, based upon the most recent audit of the books of this Cooperative, unless consent therefor shall have been obtained by a vote of not less than two-thirds of the entire membership of this Cooperative cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of this Cooperative not

less than ten nor more than thirty days prior to the date of such meeting. Nothing in this article shall prohibit the sale, transfer, conveyance or exchange of the assets of this Cooperative to another Cooperative, an agency of the State of North Dakota, or agency of the government of the United States, nor in exchange for physical plant of equal monetary value to any person or organization, public or private.

Supplementary to the foregoing paragraph and any other applicable provisions of law or these Bylaws, no sale, lease, lease-sale, exchange, transfer or other disposition within a single calendar year of physical plant of the Cooperative in excess of five percent of the Cooperative's value, based upon the most recent audit of the Cooperative, shall be authorized except in conformity with the following:

1. If the Board of Directors looks with favor upon any proposal for such sale, lease, lease-sale, exchange, transfer or other disposition, it shall first cause three independent, non-affiliated appraisers, expert in such matters, to render their individual opinions as to the value of the Cooperative with respect to such a sale, lease, lease-sale, exchange, transfer or other disposition and as to any other terms and conditions which should be considered. The three such appraisers shall be designated by a District Court Resident Judge for the Judicial District in North Dakota in which the Cooperative's headquarters are located. If such Judge refuses to make such designations, they shall be made by the Board of Directors.
2. If the Board of Directors after receiving such appraisals (and other terms and conditions which are submitted, if any) determines that the proposal should be submitted for consideration by members, it shall first give every other rural telephone cooperative corporately sited and operating in North Dakota (which has not made such an offer for such sale, lease, lease-sale, exchange, transfer or other disposition) an opportunity to submit competing proposals. Such opportunity shall be in the form of a written notice to such rural telephone cooperatives, which notice shall be attached to a copy of the proposal which the Cooperative has already received and copies of the respective reports of the three appraisers. Such rural telephone cooperatives shall be given not less than thirty days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice given to them.
3. If the Board then determines that favorable consideration should be given to the initial or any subsequent proposal, which has been submitted to it, it shall so notify the members not less than sixty days before noticing a special meeting of the members thereon or, if such be the case, the next annual member meeting, expressing in detail each of any such proposals, and shall call a special meeting of the members for consideration thereof and action thereon, which meeting shall be held not less than ten nor more than thirty days after the giving of notice thereof to the members: PROVIDED, that consideration and action by the members may be given at the next annual meeting if the Board so determines and if such annual meeting is held not less



than ten nor more than thirty days after the giving of notice of such meeting.

4. Any fifty or more members, by so petitioning the Board not less than thirty days prior to the date of such special or annual meeting, may cause the Cooperative, with the cost to be borne by the Cooperative, to mail to all members any opposing or alternative positions which they may have to the proposals that have been submitted or any recommendations that the Board has made. The provisions of this article shall not apply to a sale, lease, lease-sale, exchange, transfer or other disposition to one or more other rural telephone cooperatives if the substantive or actual legal effect thereof is to merge or consolidate with such other one or more rural telephone cooperatives.

The foregoing provisions of this Article shall not apply to prohibit or limit the Cooperative from entering into any mortgage or security agreement or other financing contracts approved by the Board of Directors.

#### Article IX

##### Corporate Seal

Section 9.1. The Cooperative may adopt a corporate seal in a form approved by the Board.

#### Article X

##### Financial Transactions

Section 10.1. **Contracts.** Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents to enter into any contract or execute and delivery any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 10.2. **Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative, and in such manner as shall, from time to time, be determined by action of the Board.

Section 10.3. **Deposits.** All funds of the Cooperative shall be deposited from time to time, to the credit of the Cooperative in such institutions as the Board may select.

Section 10.4. **Fiscal Year.** The fiscal year of the Cooperative shall begin on the first day of January of each year, and shall end on the thirty-first day of December of the same year.

#### Article XI

##### Indemnification of Officers, Board Members, Employees and Agents

Section 11.1. **Scope of Indemnification.** The Cooperative shall indemnify, to the extent not covered by insurance any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by, or in the right of the Cooperative) by reason of the fact that

such person is or was a board member, officer, employee or agent of the Cooperative or who is or was serving at the request of the Cooperative as a board member, officer, employee or agent of another cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) adjustments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding; provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of such person was unlawful.

**Section 11.2. Indemnification for Good Faith Action.** The Cooperative shall indemnify to the extent not covered by insurance any person who was or is a party, or is threatened to be made a party to, any threatened, pending or completed action or suit by, or in the right of, the Cooperative to procure a judgment in its favor by reason of the fact that such person is, or was, a board member, officer, employee or agent of the Cooperative, or is, or was, serving at the request of the Cooperative as a board member, officer, employee or agent of another Cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith, and in a manner such person reasonably believed to be in or not opposed to the best interests of the Cooperative. No indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the duty of such person to the Cooperative, unless, and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity of such expenses and the court shall deem proper.

**Section 11.3. Cost of Defense Indemnified.** To the extent that a board member, officer, employee or agent of the Cooperative has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Sections 11.1 and 11.2, in defense of any claim, issue or matter therein, such person shall be indemnified to the extent not covered by insurance against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

**Section 11.4. Amount of Indemnification.** Any indemnification under Sections 11.1 and 11.2 (unless ordered by a court) shall be made by the Cooperative only as authorized in the specific case, upon a determination that indemnification of the board member, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 11.1 and 11.2. Such determination shall be made:

- (1) By the Board by a majority vote of a quorum consisting of board members who were not parties to such action, suit or proceedings; or
- (2) If such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested board members so directs, by independent legal counsel in a written opinion; or
- (3) By the members.

Section 11.5. **Expenses Advanced.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of a firm commitment by or on behalf of the board member, officer, employee or agent to repay such amount, unless it shall ultimately be determined that they are entitled to be indemnified by the Cooperative as authorized in this Article.

Section 11.6. **Rights of Persons Indemnified.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members of disinterested board members, or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a board member, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11.7. **Insurance Coverage.** The Cooperative may purchase and maintain insurance on behalf of any person who is or was a board member, officer, employee or agent of the Cooperative, or who is or was serving at the request of the Cooperative as a board member, officer, employee or agent of another cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Cooperative would have the power to indemnify such person against such liability under the provisions of this Article.

## Article XII Miscellaneous

Section 12.1. **Membership in Other Organizations.** The Cooperative may enter into limited or general partnerships, joint ventures or other business relationships, and may purchase stock in other corporations, as the Board of Directors determines to be necessary, in furtherance of the purposes of the Cooperative, so long as such endeavors are not in violation of any contractual arrangements heretofore or hereafter made with the United States of America acting through the Rural Utilities Services or other agencies or organizations.

Section 12.2. **Waiver of Notice.** Any member or director may waive, in writing, any Notice of a Meeting required to be given by these Bylaws. The attendance of a member or director at any meeting shall constitute a waiver of notice of such meeting by such member or director, except in case a member or director shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

Section 12.3. **Rules and Regulations.** The Board shall have power to make and adopt such rules and regulations, not inconsistent with law, the Articles of Incorporation or these Bylaws as it may deem advisable for the management of the business and affairs of the Cooperative.

Section 12.4. **Accounting System and Reports.** The Board shall cause to be established and maintained a complete accounting system which, among other things and subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may, from time to time, be designated by the Administrator of Rural Utilities Services of the United States of America. The Board shall also, after the close of each fiscal year, cause to be made a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. Such audit reports shall be submitted to the members at the next following annual meeting.

### Article XIII Amendments

These Bylaws may be added to, amended or repealed by a vote of two-thirds of the Board of Directors at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed addition, amendment or repeal. Any bylaw adopted or amended by the Board shall be reported at the next regular member meeting. Any such Bylaw shall be subject to amendment or repeal by the members. A Bylaw may be amended or repealed by a majority of the members present at a meeting, provided that the members voting must be sufficient in number to constitute a quorum. No Bylaw may be altered, amended or repealed by the members unless the notice of the Member Meeting shall have contained a copy of the proposed amendment or repeal.

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