

# BYLAWS

## Five Area Telephone Cooperative, Inc.

### Muleshoe, Texas

Effective 2/26/2019

#### ARTICLE I

#### MEMBERSHIP

##### SECTION 1. REQUIREMENTS FOR MEMBERSHIP

Any person, firm, association, corporation, or body politic or subdivision thereof may become a member of Five Area Telephone Cooperative (hereinafter called the "Cooperative") upon receipt of telecommunications services (hereinafter referred to simply as "services") from the Cooperative. Membership is automatic and instantaneous upon receipt of service; however, each member shall:

- a. make a written application for membership therein;
- b. agree to purchase services from the Cooperative in accordance with established tariffs, as well as pay other charges for services that the member uses and Cooperative is obligated by law or contract to collect;
- c. agree to comply with, and be bound by, the articles of incorporation and bylaws of the Cooperative and any rules and regulations adopted by the Board of Directors (hereinafter called the "Board").

The status of all memberships shall be as reflected upon the books of the Cooperative and no membership certificates will be issued, nor will any membership fee be charged or collected.

##### SECTION 2. DEFINITION AND CLASSIFICATION

- a. Membership in the Cooperative is effected by:
  1. Procuring the Cooperative's central office dial tone.
  2. Procuring such other telecommunications services from the Cooperative which the Board of Directors determined may be required or allowed for membership and patronage.
  3. Providing a continuing telecommunications revenue stream for the cooperative.
- b. The Cooperative may have one or more classes of members to accommodate the various types of services. If the Cooperative has more than one class of membership, the definitions, the types, the qualifications and rights of each class shall be determined by the Board and set forth in these bylaws.

- c. Exchange and interexchange carriers who participate with the Cooperative in the provision of telecommunications services to members are neither members nor patrons by virtue of division of revenue contracts.
- d. Memberships in the Cooperative are extended only to individual persons (natural or corporate) who meet the requirements. Memberships formerly issued to husbands and wives, previously referred to as joint memberships, will be allowed to continue; however, from the date of adoption of these bylaws, no new joint memberships will be established.

### **SECTION 3. EFFECT OF MEMBERSHIPS**

Individual memberships will be freely transferable on the books of the Cooperative between any persons in the same household or corporation upon request in writing. Thus, the term “member” as used in these bylaws shall refer to an individual, but can, on a grandfathered basis, be deemed to include husband and wife still holding a joint membership. The prospective effect of a grandfathered 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 joint vote.
- c. Notice to either shall constitute notice to both.
- d. Expulsion of either shall terminate the joint membership.
- e. Withdrawal of either shall terminate the joint membership.
- f. Either, but not both, may be elected or appointed as an officer or Board member if individually qualified.
- g. Upon the death of either spouse who is a party to the joint membership, such membership shall automatically convert to an individual membership. However, the estate of the deceased shall not be released from any debts due the Cooperative.

### **SECTION 4. PURCHASE OF TELECOMMUNICATIONS SERVICE**

Each person who applies for service shall, as soon as service is available, take telecommunication services from the Cooperative to be used on the premises specified in his application for membership and shall pay therefore monthly at rates in accordance with the 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 carrier. It is expressly understood that amounts paid for all service in excess of the cost of service 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. Each member shall pay the above amounts owed by him to the Cooperative as and when the same shall become due and payable.

### **SECTION 5. TERMINATION OF MEMBERSHIP**

- a. Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board may prescribe. The Board may, by 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 Cooperative that such failure makes him liable to expulsion and such failure shall have continued for at least ten days after such notice was given.

- b. Upon the withdrawal, death, cessation of existence, or expulsion of a member, the membership of such member shall thereupon terminate and will be so recorded on the books of the Cooperative. Termination of membership in any manner shall not release a member or his estate from any debts due the Cooperative nor do unpaid bills release members from their obligations under these bylaws or rules and regulations approved by the Board.

## **ARTICLE II**

### **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 member.

### **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 communications lines, overhead or underground, including all conduit, cables, wires, surface testing terminals, markers and other purtenances 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 services to said member, at no cost to the Cooperative.

## **ARTICLE III**

### **RIGHTS AND LIABILITIES OF MEMBERS**

#### **SECTION 1. PROPERTY INTEREST OF MEMBERS**

Upon dissolution, after (a) all debts and liabilities of the Cooperative shall have been paid, (b) all capital furnished through patronage shall have been retired as provided in these bylaws, and the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage for this period of each member and former member bears to the total patronage for such period of all such members and such former members on the date of dissolution. The distributions shall be made to members and former members for the last 10 years proceeding the date of dissolution unless otherwise provided by law; provided however, that, if in the judgment of the Board the amount of such surplus is too small to justify the expense of making such distribution, the Board may, in lieu thereof, donate or provide for

the donation of, such surplus to one or more non-profit, charitable or educational organizations that are exempt from federal income taxation.

## **SECTION 2. NON-LIABILITY 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 IV**

### **MEETING OF MEMBERS**

#### **SECTION 1. ANNUAL MEETING**

The annual meeting of the members shall be held in the first four months of the calendar year, at such place in the area served by the Cooperative in the Counties of Bailey, Cochran, Castro, Lamb, or Parmer, State of Texas, as shall be designated 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. If the day fixed for the annual meeting shall fall on a Sunday or legal holiday, such meeting shall be held on the next succeeding business day. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

#### **SECTION 2. SPECIAL MEETINGS**

Special meetings of the members may be called by resolution of the Board, or upon a written request signed by any three directors, by the President, or by not less than 200 members or 10% of all the members, whichever shall be the lesser, 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 one of the counties served by the Cooperative as designated by the Board and shall be specified in the Notice of the special meeting.

#### **SECTION 3. NOTICE OF MEMBERS' MEETINGS**

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 delivered not less than ten days nor more than twenty days before the date of the meeting, by the persons authorized to call the meeting, to each member. Such notice may be delivered in person, by mail, or electronically if the member consents. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his 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 4. QUORUM**

Business may be transacted, as long as the total number of members does not exceed five hundred, ten per centum of the total number of members present in person shall constitute a quorum. In case the total number of members shall exceed five hundred, fifty members or two per centum of the members present in person, whichever shall be larger, shall constitute as a quorum. 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 without further notice. The minutes of each meeting shall contain a list of members present in person. If voting by the members for a particular meeting or question is allowed either by mail or electronically, the total number of members voting by such methods shall be counted for purposes of establishing a quorum.

#### **SECTION 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.

#### **SECTION 6. ORDER OF BUSINESS**

The order of business at the annual meeting of the members, and, so far as possible, at all other meetings of the members, shall be conducted under policies established by the Board or the presiding officer for such meeting.

### **ARTICLE V**

#### **DIRECTORS**

##### **SECTION 1. GENERAL POWERS**

The business and affairs of the Cooperative shall be managed by a Board of seven directors which shall exercise all 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 2. ELECTION AND TENURE OF OFFICE**

Beginning with the year 1969, the directors of the Cooperative shall be divided into three (3) classes, one class consisting of three (3) members, one class consisting of two (2) members and a third and final class consisting of two (2) members. At the annual meeting in 1969, three directors shall be elected by secret ballot, by and from the members, as directors of the first class from districts 5, 6 and 7 to serve until the annual meeting in 1972 or until their successors have been elected, and shall have qualified. At the annual meeting in 1970, two directors shall be elected by secret ballot, by and from the members, as directors of the second class from districts 2 and 4 to serve until the annual meeting in 1973 or until their successors have been elected and shall have qualified. At the annual meeting in 1971, two directors shall be elected by secret ballot, by and from the members, as directors of the third and final class from districts 1 and 3, to serve until the annual meeting in 1974 or until their

successors have been elected and shall have qualified. If an election of directors shall not be held on the day designated herein for the annual meeting, or at any adjournment thereof a special meeting of the members shall be held for the purpose of electing directors within a reasonable time thereafter. Directors may be elected by a plurality vote of the members.

### **ELECTION OF DIRECTORS**

Contested elections of Directors shall be by a form of printed ballot. The ballot shall list the names of the candidates nominated and by petition with such names arranged by districts.

Each member of the Cooperative present in person at the meeting, or if participating by mail or electronically, shall be entitled to vote for 1 candidate from each district from which a Director is to be elected or on any issue before the meeting. The candidate from each district from which a Director is to be elected receiving a plurality of votes cast for that office at such meeting shall be declared elected as Director.

### **SECTION 3. QUALIFICATIONS**

No person shall be eligible to become or remain a director of the Cooperative who:

- a. is not a member and is not presently residing in the area served or to be served by the Cooperative; or
- b. is in any way employed by, or financially interested in, a competing enterprise or a business engaged in selling telephone service or supplies or constructing or maintaining telephone facilities other than a business operating on a cooperative non-profit basis for the purpose of furthering rural telephony.

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. NOMINATIONS**

It shall be the duty of the Board to establish a policy and procedures for the qualifications, nomination, and election of directors, including a nomination process which includes the allowance of individual nominations by member petition. Any fifteen (15) or more members acting together, from the district they reside in, may make other nominations by petition no less than twenty (20) days prior to any member voting period, and if qualified, such individuals so nominated shall be included on the ballot. No nominations shall be taken from the floor during the meeting except as may be provided in Sections 5 and 6.

### **SECTION 5. REMOVAL OF DIRECTORS BY MEMBERS**

Any member may bring charges against a director and, by filing with the Secretary such charges in writing together with a petition signed by at least ten (10%) per centum of the members or two hundred members, whichever is the lesser, may request the removal of such director by reason thereof. Such director shall be informed in writing of the charges at least ten (10) 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 and to present evidence in respect to the charges; and the person or persons bringing the charges against him shall have the same opportunity. The question of the removal of such director shall be considered and voted upon at the meeting of the members and 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.

#### **SECTION 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 (60) 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.

#### **SECTION 7. COMPENSATION**

Directors shall not receive any salary for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each meeting of the Board of Directors or any other meeting authorized by the Board of Directors, and personal and/or corporate insurance as allowed by Texas law. Except in emergencies, no Director shall receive compensation for serving the Cooperative in any other capacity nor shall any close relative of a Director receive compensation for serving the Cooperative unless such compensation shall be specifically authorized by a vote of the members.

### **ARTICLE VI**

#### **MEETINGS OF DIRECTORS**

##### **SECTION 1. REGULAR MEETINGS**

A regular meeting of the Board shall be held without notice, immediately after, and at the same place as, the annual meeting of the members if this is deemed convenient by a majority of the Board as constituted after 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 such resolution fixing the time and place thereof.

##### **SECTION 2. SPECIAL MEETINGS**

Special meetings of the Board may be called by the President or by any three (3) directors and it shall, thereupon, be the duty of the Secretary 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 (which shall be in Bailey County, Texas) for the holding of the meeting.

### **SECTION 3. NOTICE OF DIRECTORS' MEETINGS**

Notice of the time, place, (or telecommunications conference event) and purpose of any meeting of the Board, unless affirmatively waived by the Director, shall be delivered to each director personally or by mail, or electronically, or at the direction of the secretary, or upon default in duty by the secretary, by the President or one of the directors calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears on the records of the Coop, with first-class postage thereon prepaid, at least five (5) business days before the date set for the meeting.

### **SECTION 4. QUORUM**

A majority of the Board shall constitute a quorum, provided that, if less than such majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time; and provided further, that the secretary shall notify any absent directors of the time and place of such adjourned meeting. The act of a majority of the directors present and voting at a meeting at which a quorum is present shall be the act of the Board.

## **ARTICLE VII**

### **OFFICERS**

#### **SECTION 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. The office of Secretary and of Treasurer may be held by the same person.

#### **SECTION 2. ELECTION AND TERM OF OFFICE**

The officers shall be elected by ballot annually, by and from the Board, at the meeting of the Board held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the Board following the next succeeding annual meeting of the members or until his successor shall have been elected and shall have qualified. Except as otherwise provided in these bylaws, a vacancy in any office shall be filled by the Board for the unexpired portion of the term.

#### **SECTION 3. REMOVAL OF OFFICERS AND AGENTS BY DIRECTORS**

Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Coop will be served thereby. In addition, any member of the Coop may bring charges against any officer and, by filing with the Secretary such charges in writing together with a petition signed by ten (10%) per centum of the members or two hundred members, whichever is the lesser, may request the removal of such officer. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten (10) 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 against him shall have the same opportunity. In the event the Board does not remove such officer, the question of his removal shall be considered and voted upon at the next meeting of the members.

#### **SECTION 4. PRESIDENT**

The President shall:

- a. 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;
- b. sign, with the Secretary, and may 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
- c. 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 5. VICE PRESIDENT**

In the absence of the President, or in the event of his 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 to him by the Board.

#### **SECTION 6. SECRETARY**

The secretary shall be responsible for:

- a. supervision of the making and keeping of the minutes of the meetings of the members and of the Board of Directors in books prepared for that purpose;
- b. seeing that all notices are duly given in accordance with these bylaws or as required by law;
- c. supervision of the custody of the corporate books and records and the Seal of the Cooperative and assuring the affixing of 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;
- d. supervision of the making and keeping of a register of the names and post office addresses of all members;
- e. supervision of the making and 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; and

- f. in general, performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

### **SECTION 7. TREASURER**

The Treasurer shall be responsible for:

- a. supervision of the custody of all funds and securities of the Cooperative;
- b. supervision of 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, banks, or financial institutions as well as be selected in accordance with the provisions of these bylaws; provided, however, that the Treasurer shall have authority, with the approval of the Board of Directors, to delegate to the General Manager the authority to appoint employees of the Cooperative to actually carry out the responsibilities set forth in this Section; and
- c. the general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by Board of Directors; provided, however, with respect to the duties and responsibilities of the Treasurer, the Cooperative shall indemnify and hold the Treasurer harmless against any and all losses, claims, and/or damages which may be asserted against the Treasurer, in the official capacity, unless such claim is a result of an act personally committed or omitted by the Treasurer resulting in loss to the Cooperative.

### **SECTION 8. MANAGER**

The Board may appoint a manager who may be, but shall not be required to be, a member of the Cooperative. The Manager shall perform such duties as the Board may from time to time require and shall have authority as the Board may from time to time vest in him.

### **SECTION 9. BONDS**

The Board shall require the 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 costs of all such bonds shall be borne by the Cooperative.

### **SECTION 10. COMPENSATION**

The powers, duties, and compensation of officers, agents, and employees shall be fixed by the Board, subject to the provisions of these bylaws with respect to compensation for directors and close relative of Directors.

## **SECTION 11. 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 the fiscal year.

## **ARTICLE VIII**

### **NON-PROFIT OPERATION**

#### **SECTION 1. CAPITAL CREDITS**

The Cooperative shall allocate and pay Capital Credits as provided in this Article.

#### **SECTION 2. 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 Patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its Patrons.

#### **SECTION 3. PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING TELECOMMUNICATIONS AND INFORMATION SERVICES**

a. **ACCOUNTING FOR CAPITAL**

In the furnishing of telecommunications and information services, the Cooperative's operations shall be so conducted that all Patrons will, through their patronage, furnish capital for the Cooperative. In order to induce Patrons 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 Patrons, Members, and Non-Members alike, 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 Patrons as capital.

b. **ALLOCATION OF CAPITAL CREDITS**

The Cooperative is obligated to pay by credits to a capital account for each 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 manner that at the end of each fiscal year the amount of capital, if any, so furnished by the Patron for telecommunications and information services is clearly reflected and credited in an appropriate record to the capital account of each Patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each Patron of the amount of capital so credited to the Patron's account. All such amounts credited to the capital account of any Patron shall have the same status

as though it had been paid to the Patron in cash in pursuance of a legal obligation to do so and the Patron had then furnished the Cooperative corresponding amounts for capital. Any operating losses of the Cooperative shall be offset by subsequent year's margins prior to allocation.

c. **ALLOCATING NON-OPERATING MARGINS**

All non-operating margins except those derived from furnishing goods and services from members other than telecommunications and information services, 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:

1. Allocated to its Patron 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 various classes of members in an equitable manner as approved by the Board, or
2. Used to establish and maintain a non-operating margin reserve not assignable to Patrons prior to dissolution of the Cooperative.

d. **PAYMENTS BY BOARD DISCRETION**

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 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; and whether such retirement are in full, part or subject to general discounts.

e. **PAYMENTS UPON DISSOLUTION**

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 Patrons. The Cooperative may order use of remaining funds in support of charitable, community and/or local rural development.

f. **CAPITAL ASSIGNMENT**

Capital credited to the account of each Patron shall be assignable only on the books of the Cooperative, pursuant to written instruction from the assignor and only to successors in interest, or successors in occupancy, in all or in a part of such Patrons' premises served by the Cooperative, unless the Board, acting under policies of general application, shall authorize other types of assignments. 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 patrons.

Any attempt to assign or transfer the capital credited to the account of a Patron pursuant to state or federal law is subject to a right of first refusal vested in the Cooperative for a period of sixty (60) days following notice to the Cooperative of a proposed transfer of

such capital to the extent the Cooperative meets any compensation terms of the proposed transfer.

g. **PAYMENT UPON DEATH**

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 Patron, if the legal representative of his estate shall request in writing, that the capital credited to any such 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 Patron immediately upon such terms and conditions as the Board, acting under policies of general application, and the legal representative of such Patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

h. **MINIMUM ACCOUNTS**

When the capital credits of any 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 shall be retired in full with such retirements made only when and at the same time that a general retirement to other Patrons is made. 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 exceeds that amount set by the Board, including the amount carried over.

i. **TAX REFUNDS**

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.

j. **DEBTS OFFSET**

Regardless of statute of limitations or other time limitation, the Cooperative may recoup, offset, or set off any amount owed to the Cooperative by a Patron prior to payment of capital credits to the patron or Patron. Amounts so offset shall be together with interest thereon at the Texas legal rate on judgments in effect when such amount becomes past due, compounded annually.

**SECTION 4. PATRONAGE CAPITAL POLICIES**

a. **POLICY REVIEW**

The Board of Directors shall establish annually all policies with regard to the allocation of patronage capital to the members. The Board of Directors shall not allocate non-operating earnings or margins to Patrons, except in the event of dissolution of the

Cooperative or when distributions or dividends are received by the Cooperative for a subsidiary corporation for the express purpose of allocating patronage to the Patrons.

b. **ALLOCATION FROM SUBSIDIARIES**

The Board of Directors may allocate patronage capital to eligible Cooperative members for dividends or distribution from the Cooperative's subsidiaries.

c. **ALLOCATION ELIGIBILITY**

The Board of Directors may establish categories of membership that are not eligible for the allocation of patronage, and the Board shall not allocate any patronage capital on the basis of:

1. purchase of telecommunication equipment;
2. purchase of local access or toll services;
3. purchase of any and services for resale;
4. payment of access charges, universal service fund support payments, any regulatory or legislative assessments; or
5. payment of interconnection fee and charges.

Nothing herein shall prevent the Cooperative from establishing subsidiaries that are wholly-owned by the Cooperative and operated as a separate cooperative or corporation, and whose margins or dividends shall be eligible for patronage allocation to the Cooperative's members in a reasonable, fair and equitable manner.

**SECTION 5. PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING OTHER SERVICES**

In the event that the Cooperative should engage in the business of furnishing goods or services other than traditional telecommunications and information services, all amounts received and receivable there from which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be prorated annually on a patronage basis and returned to those Patrons from whom such amounts were obtained at such time and in such order of priority as the Board shall determine. Any margins received by the Cooperative from subsidiaries or affiliates may be allocated or determined within the discretion of the Board of Directors as patronage credit or as permanent equity of the Cooperative.

**ARTICLE IX**

**DISPOSITION OF PROPERTY**

The Cooperative may not sell, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, lease or other disposition is authorized by a vote of not less than two-thirds of all of the members of the Cooperative and unless the notice of such proposed sale,

lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, the Board of Directors, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages of a deed or deeds of trust upon, or the pledging of, any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the Cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board shall determine, to secure any indebtedness of the Cooperative to United States of America or any instrumentality of agency thereof, or to any bank or other lending institution licensed by the federal government or a state; provided further that the Board may, upon the authorization of a majority of those members, sell, lease, or otherwise dispose of all or a substantial portion of its property to another Cooperative or foreign corporation doing business in that State pursuant to the Act under which this Cooperative is incorporated.

## **ARTICLE X**

### **SEAL**

The Corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal Texas".

## **ARTICLE XI**

### **FINANCIAL TRANSACTIONS**

#### **SECTION 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 deliver any instrument in the name and on behalf of the Cooperative and such authority may be general or confined to specific instances.

#### **SECTION 2. CHECK, DRAFTS, ETC**

All checks, drafts, or other orders for the payment of money and all notes, bonds of other evidences or 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 resolution of the Board.

#### **SECTION 3. DEPOSITS**

All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the Board may select.

#### **SECTION 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.

#### **SECTION 5. ASSIGNMENT AND GIFT BY FAILURE TO CLAIM**

- a. Notwithstanding any other provisions of the bylaws, if any patron or former patron, member or former member, fails to claim any cash retirement of capital credits or other payment from the Cooperative within three (3) years after payment of the same has been made available by check mailed to him (her) at the last address furnished to the Cooperative, such failure shall be and constitutes an irrevocable assignment and gift by such patron or member of such capital credit or other payment to the Cooperative.
- b. Failure to claim any such payment within the meaning of this section shall include the failure of such patron or former patron, member or former member, to cash any check mailed by the Cooperative at the last address furnished to the Cooperative.
- c. The assignment and gift provided for under this section shall become effective only upon the expiration of three (3) years from the date when such payment was made available to such patron or former patron, member or former member, without claim therefore and only after the further expiration of sixty (60) days following the giving of a notice by mail or publication that unless such payment is claimed within sixty (60) days, such gift to the Cooperative shall become effective.
- d. The notice by mail herein provided shall be one mailed by the Cooperative to such patron or former patron, member or former member, at last known address. If notice by publication is given, such publication shall be one insertion in a newspaper circulated in the service area of the Cooperative. The sixty (60) day period following the giving of such notice, either by mail or publication, of such notice shall apply.

#### **SECTION 6. TRANSFER OF MEMBER ACCOUNTS**

Any attempt to assign or transfer the capital credited to the account of a patron pursuant to state or federal law is subject to a right of first refusal vested in the Cooperative for a period of sixty (60) days following notice to the Cooperative of a proposed transfer of such capital to the extent the Cooperative meets any compensation terms of the proposed transfer.

### **ARTICLE XII**

#### **MISCELLANEOUS**

#### **SECTION 1. MEMBERSHIP IN OTHER ORGANIZATIONS**

The Cooperative may, upon the authorization of the Board, purchase stock in, or become a member of any other profit or non-profit organization, associations, partnerships or joint ventures when the Board finds that the general or long-term interests of its membership will be served by such investments or participation.

## **SECTION 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 transactions of any business on the ground that the meeting has not been lawfully called or convened.

## **SECTION 3. RULES AND REGULATIONS**

The Board shall have power to make and adopt such rules and regulations as not inconsistent with law, the articles of incorporation, or these bylaws, it may deem advisable for the management of the business and affairs of the Cooperative.

## **SECTION 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 account system as may from time to time be designated by law. 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**

## **INDEMNIFICATION OF DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES**

### **SECTION 1. A. SCOPE OF INDEMNIFICATIONS**

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed actions, 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 pleas 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 interest 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 2. INDEMNIFICATION FOR GOOD FAITH ACTION**

The Cooperative shall indemnify 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, such person is fairly and reasonably entitled to indemnity of such expenses as the court shall deem proper.

## **SECTION 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 Section 1 and Section 2, in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

## **SECTION 4. AMOUNT OF INDEMNIFICATION**

Any indemnification under Article XIII, Section 1 and Section 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 Section 1 and Section 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 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 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 he is entitled to be indemnified by the Cooperative as authorized in this article.

#### **SECTION 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 or disinterested Board members, or otherwise, both as to action in his 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 7. POWER TO PURCHASE INSURANCE**

The Cooperative shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, agent or employee of the Cooperative, or is or was serving at the request of the Cooperative as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Cooperative would have the power to indemnify him against such liability under the provision of this article.

### **ARTICLE XIV**

#### **AMENDMENTS**

These bylaws may be altered, amended or repealed by the members at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal.