

# BYLAWS OF MIDSTATE COMMUNICATIONS, INC.

## ARTICLE 1 MEMBERSHIP

SECTION 1. **Requirements for Membership.** Any person, firm, association, limited liability company, partnership, corporation, or body politic or subdivision thereof may become a Member of Midstate Communications, Inc. (the “*Company*”) by complying with each of the following:

- (a) Submitting a written agreement for membership to the Board of Directors (the “*Board*”) for approval;
- (b) Agreeing to purchase from the Company, local telephone exchange service or internet access service as hereinafter specified;
- (c) Agreeing to comply with and be bound by the articles of incorporation and bylaws of the Company and any rules and regulations adopted by the Board;
- (d) No person or entity shall hold more than one (1) membership interest in the Company and no membership shall be transferable except as provided herein;
- (e) Is not significantly involved in the management or administrative affairs of a direct competitor of the Company, as determined by the Board in its sole discretion; and
- (f) Receives such local telephone exchange service or internet access service from the Company within the Incumbent Local Exchange Carrier (“*ILEC*”) certified service territory of the Company, as such certified service territory is defined by the applicable state regulatory authorities from time to time (“*ILEC Area*”), or receives such local telephone exchange service or internet access service from the Company within the CLEC Area (defined hereinafter).

For purposes of these bylaws, the term “*CLEC Area*” shall mean any area which is outside of the Company’s ILEC Area, but within the area in which the Company has received authority to operate as a Competitive Local Exchange Carrier (“*CLEC*”) and within which the Company owns facilities for the provision of retail local telephone exchange service or internet access service.

SECTION 2. **Membership Record.** Membership in the Company shall be evidenced by enrolling the name of a member upon the membership record kept and maintained in the office of the Company. Membership records shall be available for inspection by members during regular office hours as long as such inspection does not disrupt normal office business.

SECTION 3. **Joint Membership.** A husband and wife may apply for a joint membership and subject to their compliance with the requirements of Section 1 of this Article, may be accepted for such membership. The terms “member” as used in these bylaws shall be deemed to include a husband and wife holding a joint membership for any provisions relating to the rights and liabilities

of membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one (1) member and shall constitute a joint waiver of notice of the meeting;
- (b) The vote of either separately or both jointly shall constitute one (1) joint vote;
- (c) A waiver of notice signed by either or both shall constitute a joint waiver;
- (d) Notice to either shall constitute a 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; provided that both meet the qualifications for such office.

#### **SECTION 4. Conversion of Membership**

- (a) A membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse to comply with the articles of incorporation, bylaws, and any rules and regulations adopted by the Board. The records of the Company shall be changed in such manner as shall indicate the changed membership status.
- (b) Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor. The records of the Company shall be changed in such manner as shall indicate the changed membership status, provided, however, that the estate of the deceased shall not be released from any debts due the Company.

**SECTION 5. Membership Fee.** No membership fee should be charged an applicant for membership. A connection fee shall be paid by each member in accordance with the rules, regulations and tariffs as adopted from time to time by the Board.

**SECTION 6. Purchase of Telephone Service or Internet Access Service.** Each member shall, as soon as telephone service or internet access service is available, take local exchange service or internet access service from the Company to be used on the premises specified in his application for membership, shall pay therefor monthly rates which shall from time to time be fixed by the Board; provided, however, that the Board may limit the amount of telephone service or internet access which the Company shall be required to furnish any one member. It is expressly understood that amounts paid for telephone service or the amounts paid for internet access service and the associated communications facilities commissioned by the Member to provide said service (“Patronage”) in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided by these bylaws. Each member shall

pay to the Company such minimum amount per month for telephone service or internet access as shall be fixed by the Board from time to time. Each member shall also pay all amounts owed by him to the Company as and when the same shall become due and payable.

#### **SECTION 7. Termination of Membership.**

- (a) Membership in the Company can be terminated:
  - (1) By voluntary withdrawal from the Company by the member upon such and conditions as the Board may prescribe.
  - (2) By the Board, by a two-thirds (2/3) vote of its members, after a finding that a member has failed to comply with any of the provisions of the related articles of incorporation, bylaws, or any rules or regulations adopted by the Board. Prior to termination, a member shall be given notice of his violation and shall be allowed a ten (10) day period to correct the violation.
  - (3) Automatically, by the death or cessation of the existence of a member, by failure to install service from the Company within thirty (30) days after notice that service is available or by the failure of a member to purchase local exchange service or internet access service from the Company.
- (b) Termination of membership shall not release a member or his estate from any debts owing to the Company.
- (c) In the event of termination of membership, the Company shall make such changes in the membership record to reflect such termination.

## **ARTICLES II RIGHTS AND LIABILITIES OF MEMBERS**

**SECTION 1. Property Interest of Members.** Upon dissolution, (a) all debts and liabilities of the Company shall be paid, (b) all capital furnished through Patronage shall be retired as provided in these bylaws, and (c) the remaining property and assets of the Company shall be distributed among the members at the time of liquidation in the proportion which the aggregate Patronage of each member bears to the total Patronage of all such members, unless otherwise provided by law.

**SECTION 2. Non-Liability for Debts of the Company.** The private property of the members shall be exempt from execution or other liability for the debts of the Company and no member shall be liable or responsible for any debts or liabilities of the Company.

## **ARTICLE III MEETING OF MEMBERS**

**SECTION 1. Annual Meeting.** The annual meeting of the members shall be held at the place and on such date and hour as shall be specified by the Board and 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. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Company.

**SECTION 2. Special Meeting.** Special meetings of the members may be called by the Board, by the President, or by not less than twenty (20%) 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 to the members may be held at any place that the Board may determine.

**SECTION 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 delivered not less than ten (10) days nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the person calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at the address as it appears on the records of the Company, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting to the members shall not invalidate any action which may be taken by the members at any such meeting.

**SECTION 4. Quorum and Procedure.** A quorum at a member meeting of the Company shall be ten (10%) percent of the first one hundred (100) members, plus five (5%) percent of additional members but never more than fifty (50) members nor less than five (5) members. Meetings of the members shall be conducted according to Robert's Rules of Order or in any other manner approved by the Board. Failure to abide by such rules shall neither invalidate any meeting nor any actions taken at such meeting.

**SECTION 5. Voting.**

- (a) Each member shall be entitled to only one (1) vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of the majority of the members voting thereon in person, except as otherwise provided by law, the articles of incorporation, or these bylaws. The directors of the Company shall establish such methods and procedures for voting as shall be in the best interest of the Company.
- (b) The vote of a member who is also a business, limited liability company, a partnership, unincorporated association, a cooperative, a corporation or a body politic shall be cast only by an individual designated in writing to represent such member. Such designation shall be filed with the company at its offices at least five (5) days prior to the meeting at which the vote is to be cast. An individual so designated may represent more than one (1) such member and may vote as an individual if he is an individual member.

**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 essentially as follows, except as otherwise determined by the members at such meeting.

1. Report on the number of members present in person in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Reading of unapproved minutes of previous meeting of the members and the taking of necessary action thereon.
4. Presentation and consideration or reports of officers, directors, and committees.
5. Election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

## **ARTICLE IV DIRECTORS**

**SECTION 1. General Powers.** The business and affairs of the Company shall be managed by a board of ten (10) directors, which shall exercise all of the powers of the Company except such as are by law, the articles of incorporation or these bylaws conferred upon or reserved to the members. Notwithstanding the foregoing, on or about January 1, 2018, the board of directors shall be reduced to eight (8) as set forth in Section 4 below.

**SECTION 2. Election and Tenure of Office.** The persons holding the office of director at the time and date of the adoption of these bylaws shall hold office for their terms and until their successors shall have been elected and take office.

The directors shall be elected by secret ballot of the members residing in the corresponding district as set forth below. Unless otherwise specified each director, so elected by the members, shall hold office for the term of three (3) years and until his successor shall have been elected.

For the purpose of electing directors, the area served by the Company comprises four (4) territorial districts. Each of the four (4) districts shall be represented by two (2) directors elected in conformance with procedures and for term of office as provided in these bylaws. In addition to the eight (8) directors representing specific districts, there shall be two (2) at-large directors representing the entire membership of the Company and not a specific district.

**SECTION 3. Qualifications.** No person shall be eligible to become or remain a director of the Company whom:

- (a) Is not a member, or representative of a member who is other than a natural person, and bona fide resident of the particular ILEC Area or CLEC Area which such person is to represent;
- (b) Is in any way employed by or financially interested in a competing enterprise or a business engaged in selling communication 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 communications. Provided however, that holding stock in a publically traded competing enterprise or business shall not disqualify any persons from becoming or remaining a director of the Company;
- (c) Is currently an employee of the Company or has been an employee of the Company during the five (5) years immediately preceding the date on which the person would otherwise take office as a director; or
- (d) Is related to a present director, director elect or present employee of the Company by two (2) or fewer degrees of kinship, or whose spouse is related to a present director, director elect or present employee of the Company by two (2) or fewer degrees of kinship. For purposes of these bylaws, "kinship" shall be deemed to include relations by blood and relations created by marriage or adoption, including, without limitation, step-children, step-parents, or step-siblings.

Upon establishment of the fact that a director is holding office in violation of any of the foregoing provisions, a majority of the then serving members of the Board may vote to permit such director to continue to serve on the Board until the next annual meeting of the Company's members, at which time the director's successor shall be elected and take office in accordance with the Company's Bylaws. In all other instances, 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. Voting Districts and Nominations.**

- (a) **Voting Districts.** The territory served or to be served by the Company shall be divided into territorial districts for the purpose of nomination and election of directors. Two (2) directors shall represent each territorial district. The four (4) districts shall be as follows:

**District One** – constitutes and encompasses the area of members receiving service from Gann Valley, Kimball and Fort Thompson telephone exchanges;

**District Two** – constitutes and encompasses the area of members receiving service from the Delmont, New Holland, Stickney, and White Lake telephone exchanges;

**District Three** – constitutes and encompasses the area of members receiving service from the CLEC Area (Chamberlain/Oacoma) and the Pukwana telephone exchange; and

**District Four** – constitutes and encompasses the area of members receiving service from the Geddes, Platte, and Academy telephone exchanges;

In addition to the eight (8) directors representing the above referenced four (4) territorial districts, two (2) directors shall serve as at-large directors representing the entire membership of the Company.

Immediately following the Company's Annual Meeting of the Members held in 2015, the directors who formerly represented the Gann Valley-Fort Thompson Exchange District and the Kimball Exchange District shall represent District 1; the directors who formerly represented the Stickney Exchange District and the White Lake Exchange District shall represent District 2; the directors who formerly represented the Pukwana-Academy Exchange District and the Chamberlain/Oacoma Area District shall represent District 3; the directors who formerly represented the Platte City Exchange District and the City of Geddes and Platte Rural Exchange District shall represent District 4; and the directors who formerly represented the Delmont Exchange District and the New Holland Exchange District shall thereafter serve as at-large directors representing the entire membership of the Company.

The directors representing Districts 1, 2, 3, and 4 shall serve until the expiration of their current term of office, at which time each such director shall be required to stand for election in accordance with these Bylaws. Each of the two at-large directors shall serve until January 1, 2018 and shall not be required to stand for election during such time. On January 1, 2018, the two at-large positions on the Company's Board of Directors shall be eliminated and the Company's Board of Directors shall thereafter consist of eight (8) members. Nothing contained in these Bylaws shall prohibit the at-large directors from standing for election at a future date for any position on the Board of Directors for which they are otherwise qualified.

**(b) Nominations**

- (1) Directors shall be nominated by a petition signed by not less than fifteen (15) members who reside in the director district.
- (2) The nominating petition shall state the name and address of the person running for director, and the name and/or number of the district in which he is running; each member signing said petition shall also date his signature and place his address on the petition.

- (3) The petition shall be filed in the office of the Company in Kimball, South Dakota, not less than thirty (30) days prior to the district election meeting. Any petition received which has been mailed by first class, postage prepaid and postmarked thirty (30) days prior to the district director election meeting, shall be deemed to have been filed in sufficient time.
- (4) Not more than 120 days nor less than 60 days before the annual meeting of the members , the Board shall set a time and place in the district where a directorship will expire or become vacant for any reason, and a district director election meeting shall be held at said time and place. At the district director election meeting, a director shall be elected. The meeting shall be presided over by a director not up for re-election at that meeting, or an employee of the Company who shall be selected by the President. A quorum at a district director election meeting shall be the presence of five (5) members who reside in that district.
- (5) Not less than forty-five (45) days before the district director election meeting, the secretary of the Company shall mail to each member of a director district entitled to vote thereon a notice that there is or will be a vacancy in the director district, that any person who qualifies under the bylaws may run for that directorship, and that prior to running, a petition must be signed by fifteen (15) members of the district, and filed no later than thirty (30) days before the district director election meeting. The notice shall contain the date, place and time of said election meeting, and shall also state that a petition in proper form may be requested from the Company headquarters and will be mailed to any member making a said request.
- (6) If only one person files a petition in proper form within the proper time, such person shall be deemed to have been unanimously elected to fill the vacant directorship and the meeting shall be canceled, and the notice of cancellation shall be published in the local newspaper of general circulation in the district.
- (7) If more than one person files a petition in proper form within the proper time, the Secretary of the Company shall mail each member of a director district entitled to vote thereon a ballot for the district director election no later than twenty days before such election and each member residing in said district shall express their vote by placing either a check () or a cross (X) in the space provided by the candidate of their choice and signing the ballot. Each member shall enclose their ballot in a sealed blank envelope. The blank envelope will be placed in a second envelope bearing the member's name and address, and shall be returned to the Secretary at the headquarters of the Company (Kimball, SD). When such written vote so enclosed is timely received by mail or by being hand delivered by a member on or before the date and time of the district director election meeting, then it shall be counted as a vote of such member. A member may also be personally present at the election meeting and cast their ballot, unless such



member has previously submitted a ballot by mail which has not been cancelled in accordance with these bylaws. The person presiding over the meeting shall appoint not less than two (2) nor more than five (5) members, who are unrelated to any of the candidates in the election in question, to count the votes at the conclusion of the date and time of the district director election meeting. A ballot may be canceled at any time before the date of the election by delivering a dated and signed written Notice to the Secretary. If a husband and wife hold a joint membership, then they shall jointly be entitled to one vote by mail as provided in this section. The failure of any member to receive a ballot shall not invalidate the election.

**Election and Tenure of Offices.** At each district director election meeting, the director shall be elected by ballot of the members residing in said district, as provided in these bylaws, to serve for a period of three (3) years, or until his successor has been elected and shall have qualified, or to fill an unexpired term made vacant for any reason. The candidate for director receiving the highest number of votes shall be deemed elected. If there is a tie for the highest number of votes on the original ballot, the ballot shall be re-submitted with only the names of those candidates who tied to be voted upon by the district members until a winner is determined. If an election shall not be held on the day designated for the district director election meeting, the Board shall cause an election to be held at a special meeting in that said district within a reasonable time thereafter. After a director has been elected at said meeting; the person presiding at the meeting shall file a report with the headquarters of the Company, stating that the election was held and the name of the director so elected. That report shall be submitted to the annual meeting, and the director shall assume his office immediately following the annual meeting of the Company.

**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, may request the removal of such director by reason thereof. The Board shall then call a Special Meeting of the Members to consider such charges, to be held within forty-five (45) days of a bona fide petition. 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 of the charges; and the person or persons bringing charges against him shall have the same opportunity. The question of the removal of such director shall be considered and voted upon at the same meeting of the members.

**SECTION 6. Vacancies.** A vacancy occurring on the Board shall be filled by the affirmative vote of a majority of the remaining directors until the next annual meeting.

**SECTION 7. Compensation.** Directors shall not receive any salary for their services as directors, except that by resolution of the Board a fixed sum and actual expenses of attendance, if any, may be allowed for attendance at each meeting of the Board. Directors may receive compensation or other benefits which are available to officers and employees of the Company. No

director shall receive compensation for serving the Company in any other capacity, nor shall any close relative of a director receive compensation from the Company, unless the payment and amount of compensation shall be specifically authorized by a vote of the members or the service by such director or close relative shall have been certified by the Board as an emergency measure. Only the following shall constitute a close relative of a director: husband, wife, brother, sister, son, daughter, father, mother, niece or nephew.

**SECTION 8. Liability.** To the fullest extent permitted by South Dakota Law governing this Company as the same exists or may hereafter be amended, a director of this Company shall not be personally liable to the Company or its members for monetary damages for breach of fiduciary duty as a director, except for liability:

- (a) For any breach of the director's duty of loyalty to the Company or its members;
- (b) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (c) For any violation of Section 47-17-7 of the South Dakota Codified Laws; or
- (d) For any transaction from which the director derived an improper personal benefit.

## **ARTICLE V MEETING 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. The Board of Directors shall meet regularly at such time and places as the Board of Directors may determine. Such regular meeting 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 four (4) 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 for holding the meeting.

**SECTION 3. Notice of Directors' Meetings.** Written notice of the time, place and purpose of any special meeting of the Board shall be delivered to each director not less than five (5) days previous thereto either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or 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 Company with the postage thereon prepaid.

**SECTION 4. Quorum and Procedure.** A majority of the directors in office shall constitute a quorum, provided, that if less than such majority of the directors is 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 at a meeting at which a quorum is present shall be the act of the Board.

Meetings of the Board shall be conducted according to Robert's Rules of Order or in any other manner approved by the majority of the directors. Failure to abide by such rules shall not invalidate any meeting or any actions taken at such meeting.

## **ARTICLE VI OFFICERS**

**SECTION 1. Number.** The officers of the Company shall be President, Vice President, Secretary, and Treasurer. The same person may hold the offices of Secretary and Treasurer.

**SECTION 2. Election and Term of Office.** The officers shall be elected 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 completion of the next annual meeting of the members or 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 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 judgement the best interest of the Company will be served thereby. In addition, any member of the Company may bring charges against an officer, and by filing with the Secretary such charges in writing together with a petition signed by ten (10%) per centum of the members, 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 any 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. The question of removal of such officer shall be considered and voted upon by the Directors at the same meeting.

**SECTION 4. President.** The President shall:

- (a) Be the principal executive officer of the Company, and, unless otherwise determined by the members or the Board shall preside at all meetings of the members and the Board. During the course of any such member or Board meeting, the President may temporarily delegate his duty to preside over the meeting to (1) the Company's attorney or (2) any other person in accordance with provisions of *Robert's Rules of Order*;
- (b) Sign with the Secretary any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board or these bylaws or required by law to be 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:

- (a) Keep the minutes of the meeting of the members and of the Board in one (1) or more books provided for that purpose;
- (b) See that all notices are duly given in accordance with these bylaws or as required by law;
- (c) Be custodian of the corporate records and of the seal of the Company and affix the seal of the Company to all documents, the execution of which on behalf of the Company under its seal is duly authorized in accordance with the provisions of these bylaws;
- (d) Keep a register of the names and post office addresses of all members;
- (e) Have general charge of the books of the Company;
- (f) Keep on file at all times a complete copy of the articles of incorporation and bylaws of the Company containing all amendments thereto (which copy shall be open to the inspection of any member) and at the expense of the Company, forward a copy of the bylaws and of all amendments thereto to each member; and
- (g) In general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

SECTION 7. **Treasurer.** The Treasurer shall:

- (a) Have charge of the custody of and be responsible for all funds and securities of the Company;
- (b) Be responsible for the receipt of and the issuance of receipts for all monies due and payable to the Company and for the deposit of all such moneys in the name of the Company in such bank or banks as shall be selected in accordance with the provisions of these bylaws; and

- (c) In general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned him by the Board.

SECTION 8. **Manager.** The Board may appoint a manager who may be, but who shall not be required to be, a member of the Company. The manager shall perform such duties and shall exercise such authority as the Board may from time to time vest in him.

SECTION 9. **Bonds of Officers.** The Treasurer and any other officer or agent of the Company charged with responsibility for the custody of any of its funds or property shall 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 Company to give bond in such amount and with surety, as it shall determine.

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 relatives of directors.

SECTION 11. **Reports.** The officers of the Company shall submit at each annual meeting of the members, reports covering the business of the Company of the previous fiscal year. Such reports shall set forth the condition of the Company at the close of such fiscal year.

## ARTICLE VII NONPROFIT OPERATION

SECTION 1. **Interest or Dividends on Capital Prohibited.** The Company 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 Company on any capital stock, or on any capital furnished by its Patrons.

SECTION 2. **Patronage Capital in Connection with Furnishing Telephone Service or Internet Access Service.** In the furnishing of telephone service or internet access service, the Company's operations shall be so conducted that all Patrons will through their Patronage furnish capital for the Company. In order to include Patronage and to assure that the Company will operate on a non-profit basis, the Company is obligated to account on a patronage basis to all its Patrons for all amounts received and receivable, both directly and indirectly, from the Company's operating income in the furnishing of communications services in excess of operating costs and expense properly chargeable against the furnishing of telephone service or internet access service. All such amounts in excess of operating costs and expenses at the moment of receipt by the Company are received with the understanding that they are furnished by the Patrons as capital. This capital shall be distributed as follows:

- (a) An amount not less than one percent (1%) nor more than five percent (5%) thereof shall be set aside as an educational fund to be used in teaching or promoting Company organization or principles in a manner prescribed by the Board. Such funds shall, for all purposes except the computation in net proceeds, be deemed an expense of operation of the Company.

- (b) All of the remainder of such amounts in excess of operating costs and expenses at the moment of receipt by the Company are received with the understanding that they are furnished by the Patrons as capital. The Company is obligated to pay by credits to a capital account for each Patron all such amounts in excess of operating costs and expenses. The method of allocating such credits shall conform to generally accepted practices of telephone cooperatives. The specific methodology used will consider the sources of such receipts, with consideration given to the measurement of both direct and indirect receipts. The total of the capital credits shall be apportioned among the several Patrons on the basis of their respective Patronage of this Company, and may be apportioned on the basis of their respective Patronage of the various kinds, qualities, grades, quantities, and values of products, services or equipment received by such Patron from the Company.

The books and records of the Company shall be set up and kept in such a manner that at the end of the fiscal year the amount of capital, if any, so furnished by each Patron is clearly reflected and credited in an appropriate record to the capital account of each Patron, and the Company shall within a reasonable time after the close of the fiscal year notify each Patron of the amount of a capital so credited to his account; provided, however, that in no event shall such notification be issued later than eight and one-half months after the end of the Company's tax year. The individual capital accounts shall be maintained in a manner so that the capital furnished relative to the furnishing of telecommunications information services can be distinguished from allocation of capital derived from non-operating and other income. All such amounts credited to the capital account of any Patron shall have the same status as though they have been paid to the Patron in cash in pursuance of a legal obligation to do so and the Patron had then furnished the Company corresponding amounts for capital.

All other amounts received by the Company from its operations in excess of cost and expenses shall, insofar as permitted by law, be:

- (a) Used to offset any losses incurred during the current or any prior fiscal year; and
- (b) To the extent not needed for that purpose, allocated to its Patrons on a patronage basis; and any amount so allocated shall be included as a part of the capital credited to the accounts of Patron as herein provided.

All other amounts received by the Company as non-operating income, which shall include but not be limited to interest income, dividends, capital gains and other miscellaneous income, in excess of costs and expenses, may, at the discretion of the Board and insofar as permitted by law.

- (a) be reserved as unallocated retained earnings, and shall not be allocated to the Company's Patrons on a patronage basis as a part of the capital credited to the accounts of patrons, as herein provided; and

(b) be used for business purposes as determined by the Board.

In the event of dissolution or liquidation of the Company, after all outstanding indebtedness of the Company 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. If, at any time prior to dissolution or liquidation, the Board shall determine that the financial condition of the Company will not be impaired thereby, the capital then credited to Patrons' accounts may be retired in full or in part. Any such retirements of capital shall be at the discretion and direction of the Board as to timing, method and type of retirement, and may include the retirement of capital furnished from non-operating and other income on a cycle basis different from the retirement of capital furnished relative to telecommunications and information services.

Capital credited to the account of each Patron shall be assignable only on the books of the Company, pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or part of such Patron's premises served by the Company unless the Board, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provision of these bylaws, the Board at its discretion, shall have the power at any time upon the death or dissolution of any Patron, if the legal representation of said Patron or heirs or his estate shall request in writing that the capital credited to any such Patron be retired prior to the time such capital would otherwise be retired under the provisions of the 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 representatives of such Patron shall agree upon; provided, however, that the financial condition of the Company will not be impaired thereby.

The Patrons of the Company, by dealing with the Company, acknowledge that the terms and provisions of the articles of incorporation and bylaws shall constitute and be a contract between the Company and each Patron, and both the Company and Patron are bound by such contract, as fully as though each Patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the bylaws shall be called to the attention of each Patron of the Company by posing in a conspicuous place in the Company's office.

Notwithstanding anything contained in these bylaws to the contrary, a telecommunications company shall not receive any allocation of patronage capital in consideration for any of the following: (i) its payment of any fees or settlements to this Company; (ii) its purchase of local telephone exchange, internet access service, information or cable television products or services primarily for purposes of resale to a third-party or to the public at large; or (iii) its purchase of any products or services from this Company other than local telephone exchange service, internet access service, information service, cable television service or other consumer products for its own use.

## **ARTICLE VIII ENCUMBERING OR DISPOSING OF PROPERTY; MERGERS AND CONSOLIDATIONS**

**SECTION 1. Disposition of Property and Encumbering of Assets.** The Company may not sell, lease or otherwise dispose of all of its property unless such sale, lease or other disposition is authorized at a meeting of the members thereof by the affirmative vote of not less than three-fourths (3/4) of all the members of the Company, 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, subject to all applicable provisions of law, the Board shall have full power and authority to borrow money and issue therefor bonds, notes, or other evidences of indebtedness, whether or not the amount so borrowed exceeds the subscribed capital stock, and the Board shall also have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Company, whether acquired or to be situated, as well as the revenues therefrom, all upon such terms and conditions as the Board shall determine, to secure an indebtedness of the Company.

**SECTION 2. Mergers and Consolidations.** If otherwise lawful, the Company may merge or consolidate with another business entity only pursuant to a written plan of merger or consolidation setting forth the terms of such merger or consolidation and the effect of the merger or consolidation upon the members. Such written plan of merger or consolidation shall also have been approved of by not less than a three-fourths majority of all members of the Company's Board of Directors and by the following majorities of the members of the Company (as applicable):

- (a) In the case of a merger or consolidation in which the ultimate surviving entity is a member owned communications cooperative in which membership is determined by patronage and residency, the majority of members required to approve such plan of merger or consolidation shall be a simple majority of those members present and entitled to vote at a duly called and noticed meeting held for such purpose;
- (b) In the case of a merger or consolidation of the Company and a wholly-owned subsidiary of the Company after which membership in the Company remains based upon patronage and residency, the majority of members required to approve such plan of merger or consolidation shall be a simple majority of those members present and entitled to vote at a duly called and noticed meeting held for such purpose; and
- (c) In all other cases of merger or consolidation, the majority of members required to approve such plan of merger or consolidation shall be a majority of three-fourths of those members present and entitled to vote at a duly called and noticed meeting held for such purpose.



Section 3. **Cash and Cash Equivalents in the Event of Merger or Consolidation.** In the event of a merger or consolidation of the nature described in Article VIII, Section 2(c) above, the plan of merger or consolidation shall, among other things, include a provision requiring that prior to the consummation of the merger or consolidation, the cash and cash equivalents of the Company (determined in accordance with Generally Accepted Accounting Principles) be paid to the members of the Company in retirement of a corresponding portion of the members' unretired patronage capital in the Company, such that following such retirement and immediately prior to the consummation of the merger or consolidation, the Company has positive working capital of one dollar (\$1.00) determined in accordance with Generally Accepted Accounting Principles.

## **ARTICLE IX SEAL**

The corporate seal of the Company shall be in the form of a circle and shall have inscribed thereon the name of the Company and the words "Corporate Seal South Dakota."

## **ARTICLE X 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 Company, and such authority may be general or confined to specific instances.

SECTION 2. **Checks, Drafts, etc.** All checks, drafts or other order for the payment of money, and all notes, bonds or other evidence of indebtedness issued in the name of the Company shall be signed by such officer or officers, agent or agents, employees of the Company and in such manner as shall from time to time be determined by resolution of the Board.

SECTION 3. **Deposits.** All funds of the Company shall be deposited from time to time to the credit of the Company in such bank or banks as the Board may select.

SECTION 4. **Fiscal Year.** The fiscal year of the Company shall be as set by the Board.

## **ARTICLE XI MISCELLANEOUS**

SECTION 1. **Membership in Other Organizations.** The Company shall not become a member of or purchase stock in any other organization without affirmative vote of the members at a duly held meeting, the notice of which shall specify that action is to be taken upon such proposed membership or stock purchases; provided, however, that the Company may, upon the authorization of the Board: (1) purchase stock or equity in or become a member of any corporation or organization which offers merchandise or service which the Company may utilize in the operation of its affairs, (2) purchase stock or become a member of any corporation or organization organized on a non-profit basis for the purpose of engaging in or furthering the cause of rural telephony, or

(3) with the approval of the Administrator of RUS, purchase stock or become a member of any other corporation or organization for the purpose of acquiring telephone facilities.

**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 transaction of any business on the ground that the meeting has not been lawfully called or convened and so raises his objection at such meeting.

**SECTION 3. Rules and Regulations.** The Board shall have the power to make and adopt such rules and regulations, not inconsistent with the law, the articles of incorporation or these bylaws, as it may deem advisable for the management of the business and affairs of the Company.

**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 accounting system as may from time to time be designated by the Administration of RUS of the United States of America. The Board shall also after the close of the fiscal year cause to be made a full and complete audit of the accounts, books and financial condition of the Company as of the end of such fiscal year. Such audit reports shall be submitted to the members within nine (9) months of the close of the fiscal year.

**SECTION 5. Patron Defined.** "Patron" means any member who purchases products or services provided in the normal course of business of the Company. The term Patron does not include a telecommunications company which purchases any products or services from the Company or pays any fees or settlements to the Company, other than local telecommunications exchange services.

**SECTION 6. Indemnification.** The Company 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, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Company, by reason of the fact that he or she is or was a director, officer, employee, or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, limited liability company, association, or other enterprise, against expenses including reasonable attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her contract was unlawful.

The Board by resolution may make any indemnification provided for in the preceding paragraph. The Board by resolution may establish in advance an indemnification plan based upon a majority vote of a quorum. The Board may expend sums of money for coverage by insurance for all or any part of the indemnification provided for in the preceding paragraph.

## **ARTICLE XII AMENDMENTS**

SECTION 1. These bylaws may be altered, amended or repealed by a majority vote of the members voting at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal.

SECTION 2. Pursuant to the provisions of SDCL 47-15-16, these bylaws may be adopted and amended by the Board; provided that any bylaw adopted or amended by the Board shall be reported at the next regular member meeting. Any such bylaw shall be at any time subject to amendment or repeal by the members.