CHAPTER 46

Telephone Cooperative Act

ARTICLE 1

General Provisions

**SECTION 33‑46‑10.** Short title.

This chapter may be cited as the “Telephone Cooperative Act”.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑20.** Definitions.

In this chapter, unless the context otherwise requires:

(1) “Person” means any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision, or agency thereof, or any body politic.

(2) “Member” means each incorporator of a cooperative and each person admitted to and retaining membership therein and includes a husband and wife admitted to joint membership.

(3) “Articles of incorporation” means the articles of conversion of a corporation converted to a telephone cooperative pursuant to Article 8 of this chapter.

(4) “Telephone cooperative” means a corporation which is financed, now or formerly, in whole or in part by the Department of Agriculture made under the provisions of the Rural Electric Act of 1936, Title 26, Section 922 of the United States Code, and acts amendatory thereto for the purposes of owning or operating in this State equipment or facilities for the transmission of intelligence through a communication service system including, but not limited to, telephone services, mobile radio, and cable television on a cooperative basis as is tax exempt pursuant to Internal Revenue Service Code 501(c)(12) or an association of like corporations exempt from tax pursuant to 501(c)(6), or operated under a cooperative basis pursuant to Subchapter T of the Internal Revenue Code and originally incorporated pursuant to Title 33, Chapter 45 of the South Carolina Code of Laws or this chapter.

(5) “Telephone service” means the providing of communication service including, but not limited to, the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus, together with any communication services requiring band‑width capacity, community antenna, and cable television services and including all lines, wires, radio, lights, electromagnetic impulse and all facilities, systems, or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of Section 3(o) of the Federal Communications Act of 1934, as amended (47 USC Section 153(o)).

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑30.** Notice of meeting; waiver.

Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a telephone cooperative, a waiver thereof in writing, signed by the person entitled to such notice, must be deemed equivalent to such notice. If a person entitled to notice of a meeting attends such meeting, the attendance constitutes a waiver of notice of the meeting, except in cases where the attendance is for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. If the articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern. Notice may be in such forms as prescribed by Section 33‑1‑410(b). Written notice is effective when mailed, if mailed postpaid and correctly addressed to members or officers as shown in the records of the telephone cooperative. Oral notice is effective when communicated in a comprehensive manner.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑40.** Subject to jurisdiction of Public Service Commission; rights and privileges.

Telephone cooperatives transacting business in this State pursuant to this chapter are subject to the jurisdiction of the Public Service Commission of this State for such portions of their activities as are regulated by Title 58, Chapter 9 and have all rights and privileges granted a telephone utility as defined by Section 58‑9‑10(6).

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑50.** Title 35 not applicable to indebtedness.

The provisions of Chapter 1 of Title 35 do not apply to any note, bond, or other evidence of indebtedness issued by a telephone cooperative transacting business pursuant to this chapter, to the United States of America, any agency or instrumentality thereof, or to any mortgage or deed of trust excluded to secure the same. The provisions of that title do not apply to the issuance of shares or membership certificates by any telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑60.** Construction of chapter.

This chapter must be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing must not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑70.** No repeal of provisions by implication.

The provisions of this chapter are not intended to be repealed by implication. Should they be in conflict with other provisions of the Code of Laws, the provisions of this chapter prevail.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑80.** Subject to tax laws for cooperatives.

Each telephone cooperative transacting business in the State is subject to the tax laws as written or thereafter amended for cooperatives organized pursuant to Title 33, Chapter 45.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑90.** Filing of articles of incorporation, amendments, consolidations, mergers, conversions, or dissolutions and certificates of elections.

Articles of incorporation, amendments, consolidations, mergers, conversions, or dissolutions and certificates of election to dissolve and affidavits of compliance, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by the provisions of this chapter, must be presented to the Secretary of State for filing in the records of that office. If the Secretary of State’s office finds that the articles presented conform to the requirements of this chapter, it shall, upon payment of fees as prescribed in Section 33‑1‑220, file the articles so presented in the records of the office, and, upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein is in effect.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑100.** Rights, privileges, and responsibilities.

Telephone cooperatives transacting business in the State have such rights, privileges, and responsibilities as specified in Sections 33‑1‑240, 33‑1‑250, 33‑1‑260, 33‑1‑270, and 33‑1‑280.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 2

Incorporation

**SECTION 33‑46‑210.** Purpose.

Telephone cooperative nonprofit membership corporations may be organized under this chapter for the purpose of rendering communication and information services and for such other and further acquisitions, construction, and extensions as may be reasonably necessary and expedient for the proper control and operation of said communication and/or information system.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑220.** Organization.

Five or more natural persons or two or more telephone cooperatives may organize a telephone cooperative in the manner hereinafter provided.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑230.** Articles of incorporation.

The articles of incorporation shall recite in the caption that they are executed pursuant to this chapter, must be signed and acknowledged by each of the incorporators, and shall state:

(1) the name of the telephone cooperative;

(2) the address of its principal office;

(3) the name and address of the incorporators;

(4) the name and address of the persons who shall constitute its first board of directors; and

(5) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

Such articles of incorporation must be submitted to the Secretary of State for filing as provided in this chapter. It is not necessary to set forth in the articles of incorporation of a telephone cooperative the purpose for which it is organized or any of the corporate powers vested in a telephone cooperative under this chapter. Nothing in this chapter shall be interpreted to require a corporation created pursuant to Title 33, Chapter 45 and existing before the enactment of this chapter to amend its charter unless the corporation elects to convert pursuant to Article 8.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑240.** Naming of telephone cooperative.

The name of each telephone cooperative shall include the words “Telephone” and “Cooperative” and the abbreviation “Inc.”; provided, however, such limitations do not apply if, from an affidavit made by the president or vice president of a telephone cooperative and filed with the Secretary of State, it appears that the telephone cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 3

Powers

**SECTION 33‑46‑300.** Powers of telephone cooperatives.

A telephone cooperative operating in accordance with this chapter has all the powers conferred on private corporations by Section 33‑3‑102 unless restricted herein or by the bylaws of the telephone cooperative. A telephone cooperative also has the power to:

(1) construct, maintain, and operate lines for communications and information services along, upon, under, and across all public thoroughfares including, without limitation of the generality of the foregoing, all roads, highways, streets, alleys, bridges, and causeways, and upon, under, and across all publicly‑owned lands, subject, however, to the requirements in respect to the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating telephone lines or systems;

(2) become a member in one or more other cooperatives or corporations or to own shares therein;

(3) provide communication services including, but not limited to, the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus, together with any telecommunication services requiring band‑width capacity, community antenna, and cable television services and including all lines, wires, radio, lights, electromagnetic impulse, and all facilities, systems, or other means used in the rendition of such services, but not including message telegram services or radio broadcasting services or facilities within the meaning of Section 3(o) of the Federal Communications Act of 1934, as amended (47 USC Section 153(o));

(4) construct, purchase, take, receive, lease as lessee, or otherwise acquire, to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber communication lines or systems, lands, buildings, structures, plants, and equipment and any and all kinds and classes of real or personal property whatsoever considered necessary, convenient, or appropriate to accomplish the purpose for which the telephone cooperative is organized;

(5) purchase or otherwise acquire, to own, hold, use, and exercise, and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights‑of‑way, and easements;

(6) borrow money and otherwise contract indebtedness, to issue notes, bonds, and other evidences of indebtedness therefor and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then‑owned or after‑acquired real or personal property, assets, franchises, revenues, or income;

(7) exercise the power of eminent domain;

(8) conduct its business and exercise any or all of its powers within or without this State;

(9) do and perform any and all other acts and things and to exercise any and all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the telephone cooperative is organized.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑310.** Representation of ownership interests; voting.

A telephone cooperative by vote of a majority of the incorporators when originally organized or thereafter by vote of three‑fourths of the members present in person or by proxy at a regular or special meeting of the telephone cooperative may elect to have the ownership interest in the telephone cooperative represented by shares, by certificates of membership, or by other evidence of membership. The rights and responsibilities of the members are as defined in the bylaws. No member except a telephone cooperative shall own more than one‑fifth of all shares or certificates of membership of the telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑320.** Bylaws; adoption, amendment, or repeal; contents.

The original bylaws of a telephone cooperative must be adopted by its board of directors. Thereafter, bylaws must be adopted, amended, or repealed in accordance with the provisions of the bylaws. The bylaws shall set forth the rights and duties of members and directors and may contain other provisions for the regulation and management of the affairs of the telephone cooperative not inconsistent with this chapter or with its articles of incorporation.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑330.** Sale of assets; procedures.

A telephone cooperative may sell its assets as follows:

(A) A sale (which term includes a sale, lease, exchange, or other disposition of assets, except a mortgage of or other security interest in the assets) of all, or substantially all, the property and assets, with or without the goodwill, of a telephone cooperative may be made upon such terms and conditions and for such consideration (which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign) as is authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale and directing the submission thereof to a vote at a meeting of members, which may be either an annual or a special meeting.

(2) Written or printed notice must be given to each member of record entitled to vote at such meeting within the time and in the manner provided for the giving of notice of meetings of members. The notice shall state whether the meeting is an annual or a special meeting and shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale.

(3) At such meeting, the members may authorize such sale and may fix or may authorize the board of directors to fix any or all of the terms and conditions thereof, including the consideration to be received by the telephone cooperative. Each member of the telephone cooperative is entitled to vote thereon. Such authorization requires the affirmative vote of at least two‑thirds of all the members of the telephone cooperative.

(B) The articles of incorporation or bylaws of any telephone cooperative may contain a provision prescribing for approval of any sale of assets by a vote greater than, but in no event less than, two‑thirds of all members.

(C) After such authorization by a vote of the membership, the board of directors, in its discretion, may abandon such sale of assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by members.

(D) A sale (which term includes a sale, lease, exchange, or any other disposition of assets, except a mortgage of or other security interest in the assets) of less than all or substantially all of the property and assets of the cooperative may be undertaken without following the procedures of this section upon determination of the board of directors that such sale will not affect the quality of service provided by the cooperative or the economic stability of the cooperative. After the board of directors makes this finding, the assets may be sold upon such terms and conditions and for such consideration as determined by the board, provided that two‑thirds of the directors vote to approve the terms, conditions, and price and thereafter two‑thirds of the board approves the sale.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑340.** Authority to mortgage or pledge of security of assets.

A mortgage or pledge of or other security interest in all or any part of the assets of a telephone cooperative, whether or not in the usual and regular course of business, may be made by authority of the board of directors of the telephone cooperative without authorization of the members, unless the articles of incorporation or bylaws require otherwise.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 4

Members

**SECTION 33‑46‑400.** Membership of telephone cooperative.

No person who is not an incorporator shall become a member of a telephone cooperative unless such person agrees to use telephone service furnished by the cooperative when such telephone service is available through its facilities. The bylaws of the telephone cooperative may provide for any or all of the following matters:

(1) the requirement of membership in the telephone cooperative or ownership of shares;

(2) the method, time, and manner of permitting members to withdraw or to transfer shares;

(3) the manner of assignment and transfer of the interest of members and of the shares (if any) and conditions upon which membership of any member shall cease;

(4) the automatic suspension of the rights of a member when he ceases to be eligible for membership in the telephone cooperative and the mode, manner, and effect of expulsion of a member;

(5) the manner of determining the value of a member’s interest and provision for the purchase of that interest by the telephone cooperative upon the death, withdrawal, or other termination of the member’s membership;

(6) the property rights of members upon dissolution;

(7) the time, place, and manner of calling and conducting its meetings;

(8) the rights of members to vote by proxy and the condition, manner, form, and effect of such votes;

(9) the number of directors constituting a quorum;

(10) the qualifications, compensation, duties, and terms of officers and directors, the time of their election, and the mode and manner of giving notice thereof;

(11) the mode, method, and manner of determining the members’ patronage capital and of crediting the members’ patronage capital to the members’ accounts, together with the mode, time, manner, and priority of retiring or otherwise making provisions for payment of such patronage capital credits;

(12) any other provisions that may be necessary, convenient, or appropriate to accomplish the purpose for which the telephone cooperative is organized.

Provided, however, that any bylaw provisions in conflict with the provisions of this chapter are of no force or effect.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑420.** Meetings.

An annual meeting of the members must be held at such time as is provided in the bylaws. Special meetings of the members may be called by the president of the board of directors, by any three directors, or by not less than ten percent of the members. Meetings of members must be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings must be held in the county in which the principal office of the telephone cooperative is located.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑430.** Voting procedures.

A majority vote of the members present and voting at a meeting having a quorum is required for adoption of any question put to the members, except when a greater affirmative vote is required by this chapter or the bylaws. The foregoing majority requirement notwithstanding, bylaws may provide for a plurality vote of the membership for election of a director when more than two candidates are running for the same seat. When multiple directors are to be elected from the same district, each member has one vote for each vacancy in the district. The vote shall not be cumulative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑440.** Quorum.

Each telephone cooperative shall establish in its bylaws what percentage and/or number of its members shall constitute a quorum and whether proxies will be considered in determining whether a quorum is present for the transaction of business at all meetings of the membership. 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.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑450.** Entitlement to vote; voting by proxy.

Each member is entitled to vote on each matter submitted to a vote at a meeting. Unless prohibited by this chapter or by the bylaws, voting may be by proxy.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑460.** Distribution of excess revenue; allocation of patronage capital; retirement of patronage capital

(A) The bylaws of a telephone cooperative shall provide for the distribution of excess revenue to its members. Excess revenues do not include amounts:

(1) necessary to defray expenses of the telephone cooperative and for the operation and maintenance of its facilities during such fiscal year;

(2) to pay interest and principal obligations of the telephone cooperative coming due in such fiscal year;

(3) to finance or to provide a reserve for the financing of the construction or acquisition by the telephone cooperative of additional facilities to the extent determined by the board of directors;

(4) to provide a reasonable reserve for working capital; and

(5) to retire shares of the telephone cooperative to the extent determined by the board of directors.

Sums in excess of those specified above must, unless otherwise determined by a vote of the membership, be assigned by the telephone cooperative to its members as patronage capital. Nothing herein shall be construed so as to designate the method, manner, and time of distribution of excess revenue to the members, which must be governed by the cooperative bylaws, so long as the cooperative’s distribution policies and procedures comply with acceptable practices under the procedures for corporations exempt from income tax pursuant to Title 26, Section 501(c)(12) of the United States Code or Subchapter T of the United States Internal Revenue Code.

(B) On an annual basis, patronage capital shall be allocated on the books of the cooperative to each member based upon and in proportion to:

(1) the revenue from each member or group of similar members;

(2) the contribution of each member or group of similar members to the cooperative’s overall patronage capital; or

(3) any combination of items (1) and (2) as determined by the board of directors.

The allocation of patronage capital to a member’s account does not vest until such time that the board determines that retirement is proper pursuant to subsection (C).

(C) Retirement of patronage capital is the actual payment, as provided by subsection (D), of patronage capital to the cooperative members to whom it has previously been allocated. The board of directors of a cooperative may, in its discretion, utilize its business judgment to retire patronage capital as allocated on the books of the cooperative when the retirement is consistent with sound business and management practices and the long‑term financial stability of the cooperative. If the board of directors, in its discretion, utilizes its business judgment to retire patronage capital to members either upon their death, termination of telephone service, or bankruptcy, then the retirement may be discounted from the board’s approved retirement cycle to present‑day value when deemed appropriate by the board of directors in the exercise of its business judgment.

(D) When the board of directors of the cooperative has determined, pursuant to subsection (C), that patronage capital shall be retired, the retirement may be accomplished by a bill credit or by the mailing of payment or notice of payment to the person’s last known address of record on file with the cooperative. No interest shall be paid or payable by the cooperative on any patronage capital furnished by its members.

(E) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., or other law, patronage capital that has been retired by a cooperative but remains unclaimed for a period of five years shall become abandoned patronage capital. The cooperative shall, nonetheless, pay any validated claims by members or former members for unclaimed or abandoned patronage capital. With respect to abandoned patronage capital, the cooperative must follow the procedures set out in subsection (F). Each year, the cooperative may impose a reasonable administrative fee for abandoned or unclaimed patronage capital and may offset the fee against such abandoned or unclaimed patronage capital. Abandoned patronage capital shall be designated as equity and, at the board’s discretion, can be used only by the cooperative for:

(1) educational purposes;

(2) charitable purposes; or

(3) economic development purposes in the telephone cooperative’s service area.

(F) Notwithstanding the provisions of the Uniform Unclaimed Property Act, S.C. Code of Laws Section 27‑18‑10, et seq., telephone cooperatives must pay any validated claims from members or former members for abandoned patronage capital in accordance with the provisions of this subsection.

(1) Patronage capital, presumed abandoned, which is due to members or former members of telephone cooperatives and whose last known address is in South Carolina, may be retained by the telephone cooperative provided that the telephone cooperative performs the following due diligence duties to locate the rightful owners:

(a) the cooperative shall publish, for two consecutive years, in a newspaper of general circulation in the county of the cooperative’s principal place of business, the names and addresses of each person appearing from the cooperative’s records to be the owner of the unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim such property. Such publication will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed;

(b) the cooperative shall maintain a searchable website on which will be listed the names and addresses of each person appearing from the cooperative’s records to be the owner of unclaimed patronage capital of fifty dollars or more, together with instructions on how to claim the property. The listings will commence within one year after the check representing patronage capital was returned to the cooperative as undeliverable or has gone uncashed and will continue until the patronage capital has been paid to the rightful owner. The Office of State Treasurer shall maintain a link on the state’s Unclaimed Property Website to the cooperative’s searchable website to increase public awareness and access.

(2) A person aggrieved by a decision of the cooperative or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the court of common pleas of the county of the cooperative’s principal place of business. The action must be brought within ninety days after the decision of the cooperative or within one hundred eighty days after the filing of the claim if the cooperative has failed to act on it.

(3) The patronage capital accounts still unpaid that were included on previously filed annual unclaimed property reports for which no property was delivered will be returned to the respective cooperatives and will be treated in the same manner as provided by this section for patronage capital.

(4) The administrator, as defined in Section 27‑18‑20(1), shall not be responsible or held liable for any unclaimed patronage capital accounts retained by a cooperative pursuant to this section.

(5) The cooperative shall consider each claim filed by a person claiming an interest in patronage capital within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. If a claim is allowed, the cooperative shall pay over or deliver to the claimant the patronage capital owed to the claimant at the time the patronage capital became abandoned.

HISTORY: 1994 Act No. 392, Section 1; 2011 Act No. 44, Section 5, eff June 7, 2011.

Editor’s Note

2011 Act No. 44, Sections 1, 4, and 7, provide as follows:

“SECTION 1. The General Assembly determines it is in the best interest of South Carolina, the electric cooperatives, and their members to advocate energy efficiency and renewable energy initiatives in South Carolina.

“The General Assembly determines it is prudent to update and clarify procedures for South Carolina’s electric cooperatives to contribute, allocate, and retire patronage capital.

“The General Assembly determines it is prudent to clarify that South Carolina’s electric cooperatives may utilize the defense known as the “business judgment rule”.

“The General Assembly determines it is in the best interest of South Carolina’s electric cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.”

“SECTION 4. The General Assembly determines it is in the best interests of South Carolina, the telephone cooperatives, and their members to assist with educational, charitable, and economic development efforts in the rural areas of South Carolina.

“The General Assembly determines it is prudent to update and clarify the procedures for South Carolina’s telephone cooperatives to contribute, allocate, and retire patronage capital.

“The General Assembly determines it is prudent to clarify that the “business judgment rule” applies to South Carolina’s telephone cooperatives.

“The General Assembly determines it is in the best interest of South Carolina’s telephone cooperatives and their members that unclaimed patronage credits are hereafter exempt from the Uniform Unclaimed Property Act.”

“SECTION 7. This act takes effect upon approval by the Governor and applies to patronage capital determined to be unclaimed as of the effective date of the act.”

Effect of Amendment

The 2011 amendment added subsection identifier (A) to the first paragraph and added subsections (B) through (F).

**SECTION 33‑46‑470.** Members and their property exempt from liability for cooperative’s debts.

The private property of the members of a telephone cooperative is exempt from execution for the debts of the telephone cooperative, and no member is liable or responsible for any debts of the telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 5

Directors

**SECTION 33‑46‑500.** Number and qualifications of directors; removal and election of successors.

(A) The business affairs of a telephone cooperative must be managed by a board of not less than three directors, each of whom must be a member of the telephone cooperative or of another cooperative which is a member of the telephone cooperative. The bylaws must prescribe the number of directors, their qualifications (other than those qualifications provided for in this chapter), the manner of holding meetings of the board, and the filling of vacancies on the board.

(1) If a husband and wife hold a joint membership in a telephone cooperative, one, but not both, may be elected as a director.

(2) The board of directors may exercise all of the powers of a telephone cooperative, except those powers conferred upon the members by this chapter or by the telephone cooperative’s articles of incorporation or bylaws.

(B) The bylaws also may provide for the removal of directors from office and for the election of their successors as follows:

(1)(a) A temporary suspension of a director for cause may occur upon the affirmative vote of at least two‑thirds of the members of the board. The suspension must be enforced until the next annual or special meeting. At the next meeting, the membership may remove the suspended director for cause from the board by an affirmative vote of a majority of the members present and voting. In the event the members refuse to vote to remove the director, he must be reinstated immediately with all the powers of his office and he shall continue to serve for the remainder of his elected term.

(b) “Cause” for removal of a director under this subsection means fraudulent or dishonest acts, gross abuse of authority in the discharge of duties to the telephone cooperative, or failure to adhere to such obligations, duties, or qualifications as the bylaws may prescribe. Cause may not be found unless written notice of the specific charges and opportunity to meet and refute such charges has been provided to the director.

(c) If a removal occurs pursuant to this subsection, a successor must be elected as provided by the bylaws of the telephone cooperative.

(2) Two‑thirds of the members present and voting at a meeting legally called according to the bylaws of the telephone cooperative may remove any director, with or without cause.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑510.** Implementation or exercise of emergency bylaws and powers.

Unless the articles of incorporation provide otherwise, the board of directors is authorized pursuant to Sections 33‑2‑107 and 33‑3‑103 to implement or exercise emergency bylaws and powers.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑520.** Immunity.

All directors of telephone cooperatives are immune from suits arising from the conduct of the affairs of the telephone cooperative. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑530.** Indemnification of expenses of successful director’s defense or proceeding.

Unless limited by its articles of incorporation, a telephone cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the cooperative against reasonable expenses incurred by him in connection with the proceeding.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑540.** General standards for directors.

General standards for directors are as follows:

(A) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the telephone cooperative and its members.

(B) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the telephone cooperative whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(C) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

(D) A director is not liable for any action taken as a director, or any failure to take any action, if he performs the duties of his office in compliance with this section.

(E) An action against a director for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should have reasonably been discovered, whichever sooner occurs. This limitation period does not apply to breaches of duty which have been concealed fraudulently.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑550.** Directors from different districts in service area; staggered elections.

The bylaws may provide that the service area of the telephone cooperative must be divided into two or more districts and that one or more members be elected from each district to serve as director. The bylaws may further provide that in lieu of electing the whole number of directors annually that director election be staggered so that no less than one‑third of all director terms expire each year.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑560.** Quorum.

A majority of the board of directors constitutes a quorum, unless otherwise specified in the bylaws.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑570.** Officers.

Officers are as follows:

(1) A telephone cooperative has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors’ and members’ meetings and for authenticating records of the telephone cooperative.

(4) The same individual may hold more than one office in a telephone cooperative simultaneously.

(5) Any officer may be removed from office and his successor elected in the manner prescribed by the bylaws.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 6

Amendment of ARTICLEs of Incorporation; Consolidation; Merger; etc.

**SECTION 33‑46‑600.** Requirements for amending articles of incorporation.

A telephone cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment must be first approved by the board of directors and must then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, must be considered approved on the affirmative vote of not less than two‑thirds of those members voting thereon at the meeting.

(2) Upon such approval by the members, articles of amendment must be executed and acknowledged on behalf of the telephone cooperative by the directors carrying out the duties performed generally by the president or vice president and its corporate seal must be affixed thereto and attested by the director carrying out the duties of secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the telephone cooperative;

(b) the address of the principal office;

(c) the date of the filing of its articles of incorporation in the Office of the Secretary of State; and

(d) the amendment to its articles of incorporation.

The officers executing the articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were complied with. The articles of amendment and affidavit must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑610.** Change of location of principal office; filing of certificate.

A telephone cooperative may, without amending its articles of incorporation, upon authorization of its board of directors, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged on behalf of the telephone cooperative by the director carrying out the duties performed generally by the president or vice president under its seal attested by the director carrying out the duties of secretary, with the Office of the Secretary of State and also in each county office in which the articles of incorporation or any prior certificate of change of principal office of such telephone cooperative has been filed. Such telephone cooperative shall also within thirty days after filing such certificate of change of principal office in any county office file therein certified copies of its articles of incorporation and all amendments thereto if the same are not already on file therein.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑620.** Consolidation of cooperatives.

Any two or more telephone cooperatives, each of which is hereinafter designated a “consolidating cooperative”, may consolidate into a new telephone cooperative, hereinafter designated the “new cooperative”, by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto must be first approved by the board of directors of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating telephone cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the Office of the Secretary of State;

(b) the name of the new telephone cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of directors of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership or other evidence of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of the new telephone cooperative.

(2) The proposition for the consolidation of the consolidating telephone cooperatives into the new telephone cooperative and the proposed articles of consolidation approved by the board of directors of each consolidating telephone cooperative must then be submitted to a vote of the members of each consolidating cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation must be considered approved upon the affirmative vote of not less than two‑thirds of those members of each consolidating telephone cooperative present and voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating telephone cooperatives, articles of consolidation in the form approved must be executed and acknowledged on behalf of each consolidating cooperative by the director carrying out the duties performed generally by the president or vice president, and its seal must be affixed thereto and attested by the director carrying out the duties of secretary. The director carrying out the duties performed generally by the president or vice president of each consolidating telephone cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were complied with by such telephone cooperative. The articles of consolidation and affidavits must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑630.** Merging of cooperatives.

Any one or more telephone cooperatives, each of which is hereinafter designated a “merging cooperative”, may merge into another telephone cooperative, hereinafter designated the “surviving cooperative”, by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto must be first approved by the board of directors of each merging cooperative and by the board of directors of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the Office of the Secretary of State;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperative elects to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership or other evidence of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of the new telephone cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of directors of the respective telephone cooperatives, parties to the proposed merger, must then be submitted to a vote of the members of each such telephone cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger must be considered approved upon the affirmative vote of not less than two‑thirds of those members of each telephone cooperative present and voting thereon at such meeting.

(3) Upon such approval by the members of the respective telephone cooperatives, parties to the proposed merger, articles of merger in the form approved must be executed and acknowledged on behalf of each such cooperative by the director carrying out the duties generally of the president or vice president, and its seal must be affixed thereto and attested by the director carrying out the duties of secretary. The director carrying out the duties of president or vice president of each telephone cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were complied with by such telephone cooperative. The articles of merger and affidavits must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑640.** Effect of consolidation or merger.

The effect of consolidation or merger is as follows:

(1) The several telephone cooperatives, parties to the consolidation or merger, are a single cooperative which, in the case of a consolidation, is the new telephone cooperative provided for in the articles of consolidation and, in the case of a merger, is that telephone cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, ceases.

(2) The new or surviving telephone cooperative has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a telephone cooperative organized under the provisions of this chapter and possesses all the rights, privileges, immunities, and franchises of a public, as well as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives, and, furthermore, all and every interest of, or belonging or due to, each of the cooperatives so consolidated or merged must be taken and considered to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate or any interest therein under the laws of this State vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger;

(3) The new or surviving telephone cooperative thenceforth is responsible and liable for all of the liabilities and obligations of each of the telephone cooperatives so consolidated or merged and any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

(4) Neither the rights of creditors nor any liens upon the property of any of such telephone cooperatives are impaired by such consolidation or merger; and

(5) In the case of a consolidation the articles of consolidation must be considered to be the articles of incorporation of the new telephone cooperative, and in the case of a merger the articles of incorporation of the surviving telephone cooperative must be considered to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑650.** Merger of telephone cooperative into different corporation.

Any telephone cooperative may merge into a corporation which is not another telephone cooperative by complying with the following requirements:

(1) The proposition for the merger of the telephone cooperative into the corporation and proposed articles of merger to give effect thereto must be first approved by the board of directors of the cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the telephone cooperative, the address of its principal office, and the date of the filing of the articles of incorporation in the Office of the Secretary of State;

(b) the name of the corporation and the address of its principal office;

(c) a statement that the telephone cooperative elects to be merged into the corporation;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting memberships in the telephone cooperative into shares of stock in the corporation; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of the new corporation.

(2) The proposition for the merger and the proposed articles of merger approved by the board of directors of the telephone cooperative must then be submitted to a vote of the members of such telephone cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger must be considered approved upon the affirmative vote of not less than two‑thirds of the members of the telephone cooperative.

(3) Upon such approval by the members of the telephone cooperative, articles of merger in the form approved must be executed and acknowledged on behalf of the cooperative by the director carrying out the duties generally of the president or vice president, and its seal must be affixed thereto and attested by the director carrying out the duties of secretary. The director carrying out the duties of the president or vice president of the telephone cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were complied with by such telephone cooperative. The articles of merger and affidavits must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 7

Dissolution

**SECTION 33‑46‑700.** Dissolution of telephone cooperative prior to commencement of business.

A telephone cooperative which has not commenced business may dissolve voluntarily by delivering to the Secretary of State articles of dissolution, executed and acknowledged on behalf of the telephone cooperative by a majority of the incorporators, and shall state:

(1) the name of the telephone cooperative;

(2) the address of its principal office;

(3) the date of its incorporation;

(4) that the telephone cooperative has not commenced any business;

(5) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements have been released to the grantors;

(6) that no debt of the telephone cooperative remains unpaid; and

(7) that a majority of the incorporators elect that the telephone cooperative be dissolved.

The articles of dissolution must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑710.** Dissolution of telephone cooperative which has commenced business.

A telephone cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the manner provided in this article.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑720.** Recommendation of dissolution; membership vote; meeting; notice.

Two‑thirds of the membership of the board of directors shall first recommend to the membership that the telephone cooperative be dissolved. The proposition that the telephone cooperative be dissolved must be submitted to the membership of the telephone cooperative for a vote at a special meeting of the membership called only for this purpose. The notice for the meeting at which a proposal to dissolve the telephone cooperative is considered shall set forth:

(1) a detailed proposition for dissolution;

(2) the plan for sale and distribution of assets;

(3) the plan for continuance of service; and

(4) the time and location of the meeting.

The proposed voluntary dissolution is approved upon affirmative vote of not less than two‑thirds of the members of the telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑730.** Certificate of election to dissolve.

Upon such approval a certificate of election to dissolve, in this article designated the “certificate”, must be executed and acknowledged on behalf of the cooperative by the director carrying out the duties generally of the president or vice president, and its corporate seal must be affixed thereto and attested by the director carrying out the duties of secretary. The certificate shall state:

(1) the name of the telephone cooperative;

(2) the address of its principal office;

(3) the names and addresses of its directors; and

(4) the total number of members of the telephone cooperative and the number of members who voted for and against the voluntary dissolution of the telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑740.** Filing of certificate and affidavit.

Such certificate and affidavit must be submitted to the Secretary of State for filing as provided in this chapter and thereupon the telephone cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the Secretary of State.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑750.** Notice of winding up proceedings.

After the filing of the certificate and affidavit by the Secretary of State, the board of directors shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the telephone cooperative is located.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑760.** Directors’ powers to settle affairs.

The board of directors has full power to wind up and settle the affairs of the telephone cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and, after paying or adequately providing for the payment of all its debts, obligations, and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate or, if the telephone cooperative was not in existence for such period, during the period of its existence.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑770.** Execution of articles of dissolution.

When all debts, liabilities, and obligations of the telephone cooperative have been paid and discharged or adequate provisions have been made therefor, and all the remaining property and assets of the telephone cooperative have been distributed to the members pursuant to the provisions of Section 33‑46‑460, the board of directors shall authorize the execution of articles of dissolution, which must thereupon be executed and acknowledged on behalf of the cooperative by the director carrying out the duties generally of the president or vice president, and its corporate seal must be affixed thereto and attested by the director carrying out the duties of secretary. The articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(1) the name of the telephone cooperative;

(2) the address of the principal office of the telephone cooperative;

(3) that the telephone cooperative has theretofore delivered to the Secretary of State a certificate of election to dissolve and the date on which the certificate was filed by the Secretary of State in the records of his office;

(4) that all debts, obligations, and liabilities of the telephone cooperative have been paid and discharged or that adequate provisions have been made therefor;

(5) that all the remaining property and assets of the telephone cooperative have been distributed among the members in accordance with the provisions of Section 33‑46‑460; and

(6) that there are no actions or suits pending against the telephone cooperative.

The director executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this article have been complied with. The articles of dissolution and affidavit accompanied by proof of the publication required in Section 33‑46‑750 must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.

ARTICLE 8

Conversion

**SECTION 33‑46‑800.** Conversion of existing corporation into telephone cooperative.

Any corporation organized under the laws of the State of South Carolina for the purpose of providing communications and informational services in rural areas pursuant to Title 33, Chapter 45 may be converted into a telephone cooperative and become subject to this chapter with the same effect as if originally organized under this chapter by complying with the requirements of this article.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑810.** Proposed articles of conversion; contents; approval.

The proposition for the conversion of such corporation into a telephone cooperative and the proposed articles of conversion to give effect thereto must be first approved by the board of directors of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(1) the name of the corporation before its conversion into a telephone cooperative;

(2) the address of the principal office of such corporation;

(3) the date of the filing of the articles of incorporation of such corporation in the Office of the Secretary of State;

(4) the statute or statutes under which such corporation was organized;

(5) the name assumed by such corporation;

(6) a statement that such corporation elects to become a telephone cooperative nonprofit membership corporation subject to this chapter;

(7) the manner and basis of converting memberships or shares of stock in such corporation into memberships in the telephone cooperative after completion of the conversion; and

(8) any provision not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of such telephone cooperative.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑820.** Vote of members on proposed articles of conversion.

The proposition for the conversion of the corporation into a telephone cooperative and the proposed articles of conversion approved by the board of directors of such corporation must then be submitted to a vote of the members or shareholders, as the case may be, of such corporation at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a telephone cooperative and the proposed articles of conversion, with amendments thereto as the members or shareholders of such corporation shall choose to make, must be considered approved upon approval by the board of directors or the affirmative majority vote of those members of such corporation present and voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of a majority of the shares of such corporation represented at such meeting.

HISTORY: 1994 Act No. 392, Section 1.

**SECTION 33‑46‑830.** Approved articles of conversion; execution.

Upon such approval by the members or shareholders of such corporation, the articles of conversion in the form approved by the board of directors must be executed and acknowledged on behalf of such corporation by the director carrying out the duties generally of the president or vice president, and its corporate seal must be affixed thereto and attested by the director carrying out the duties of secretary. The director executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this article with respect to the approval of its directors and its members or shareholders of the proposition for the conversion of such corporation into a telephone cooperative and such articles of conversion were complied with. Such articles of conversion and affidavit must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 1994 Act No. 392, Section 1.