

**SECOND AMENDED AND RESTATED BYLAWS**  
**OF**  
**HENDERSON COOPERATIVE TELEPHONE COMPANY**  
(adopted on \_\_\_\_\_, 2019)

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# Henderson Cooperative Telephone Company

## Second Amended and Restated Bylaws

### ARTICLE I PURPOSES

The purposes for which the corporation is formed, and the powers which it may exercise, are as set forth in the Articles of Incorporation as amended from time to time.

### ARTICLE II STOCKHOLDERS

**Section 1. Eligibility Requirements.** Any person, association, partnership, limited partnership, corporation, or limited liability company may subscribe to and purchase, own, and hold only one (1) share of common stock in the corporation, provided he, she or it has:

- a. Made application in writing to purchase said stock on a form approved by the Board of Directors (sometimes referred to herein as the "Board") of this corporation;
- b. Agreed to subscribe to telephone and/or other services supplied or to be supplied by the corporation;
- c. Agreed to be bound by the Articles of Incorporation, the Bylaws, or any other rules or regulations adopted from time to time by the Board of Directors;
- d. Paid in full, in cash the sum of \$20.00, the same being the par value or issuing price of one share of the common stock of this corporation; and
- e. Established a residence or business in the trade territory of this corporation.

**Section 2. Limitation of Stock Ownership.** No stockholder may hold more than one (1) share of the common stock in this corporation, which stock shall be transferrable only as provided by these Bylaws.

**Section 3. Stock Certificates.**

- a. **Certificate Form.** A certificate of stock in form as approved by the Board of Directors shall only be issued to eligible subscribers evidencing a share in said corporation as directed by the Board of Directors. Each certificate shall be numbered and issued in numerical order, stating thereon the par value thereof and the name of the stockholder, and shall bear the signature of the President and Secretary and the official seal of this corporation. Each certificate to be in force must be registered on the stock register of this corporation.
- b. **Certificate Reissuance.** Lost or destroyed or mutilated certificates may be issued upon such proof and uniform terms and indemnity as the Board of Directors may prescribe from time to time.
- c. **Joint Stockholders.** A husband and wife may apply for joint ownership of a share of stock of the corporation, subject to compliance with the eligibility requirements set forth above. All responsibilities, rights, and liabilities of stock ownership in the corporation shall apply jointly and severally to such joint stockholders. Such joint stockholders shall:

- (1) be regarded as one (1) unit at a meeting;
  - (2) be counted as one (1) vote in any matter requiring the vote of the stockholders;
  - (3) be counted as one (1) unit in the execution of proxies and waivers of notice;
  - (4) be entitled to hold any office of the corporation if qualified; provided both joint stockholders may not simultaneously hold office in the corporation.
- d. Conversions. A share of stock may be converted to joint stock ownership by the stockholder and his or her spouse by making a written request on the appropriate form provided for in these Bylaws. Upon approval of the request by the Board of Directors, the outstanding certificate evidencing ownership by the single stockholder shall be surrendered, and a new certificate shall be issued and duly registered upon the stock register of the corporation evidencing the joint ownership.
- e. Death of a Joint Stockholder. Upon the death of either joint stockholder, the survivor shall be the sole owner of the stock, and the outstanding certificate evidencing joint ownership shall be surrendered and re-issued and re-registered accordingly; provided, however, such surrender of a stock certificate under this subsection shall not relieve the estate of the deceased stockholder from any debts due and owing to the corporation.
- f. Lien of Debts. Each person or entity who is a stockholder in the corporation as of the effective date of these Bylaws, or who becomes a stockholder in the corporation hereafter, hereby consents, agrees and grants a first lien upon the shares of stock and other equities issued to the stockholder for any and all debts and demands owing by said stockholder to the corporation. Each such stockholder further grants to the corporation the right to hold and possess such shares of stock and other equities until the same are redeemed as provided for herein. No shares of stock or equities shall be transferred or redeemed until said stockholder is clear of all indebtedness to the corporation.
- g. Termination.
- (1) Any stockholder may sell his or her or its share of stock in the corporation upon compliance with such uniform conditions as the Board of Directors may prescribe.
  - (2) Any stockholder determined by the Board to be ineligible to hold stock pursuant to the stockholder eligibility requirements above shall surrender their stock certificate to the corporation, and thereafter be considered expelled as a stockholder of the corporation.
  - (3) The Board of Directors may, in its sole discretion upon an affirmative vote of not less than two-thirds of all directors, expel any stockholder who fails to comply with any of the provisions of the Articles of Incorporation, the Bylaws, and the rules and regulations subscribed by the Board of Directors, all as amended from time to time. Prior to such expulsion, such stockholder shall be given notice, by regular mail at the stockholder's address last appearing on the records of this corporation or by delivery in person by the corporate secretary, stating that the alleged failure makes said stockholder liable for expulsion if it shall continue for at least ten (10) days from the date of mailing or delivery of said notice. An expelled stockholder may be reinstated by a vote of the Board of Directors at any regular or special meeting.
  - (4) Upon the death, cessation of existence, expulsion, or any other termination of a stockholder, the relevant stock certificate involved shall be surrendered forthwith to the

corporation. However, surrender of said stock certificate shall not release the stockholder, or the stockholder's successors or assigns, from debts due and owing to the corporation by the stockholder.

- (5) In any case of termination, the corporation will repay the stockholder, or the estate of a deceased stockholder, or the person entitled to such payment upon surrender of the certificate, the par value thereof less any debts owing the corporation by the stockholder. If the stock certificate is not surrendered within five (5) years after the death or other termination of the stockholder all rights of repayment shall be forfeited, and the stock share evidenced thereby shall be cancelled.

### **ARTICLE III RIGHTS AND LIABILITIES OF STOCKHOLDERS**

**Section 1. Property Interest of Stockholders.** Upon dissolution of the corporation, following (i) payment of all debts and liabilities of the corporation; and (ii) retirement of all capital furnished through patronage as provided in these Bylaws, the remaining property and assets of this corporation shall be distributed among the stockholders in proportion which the aggregate patronage of each such stockholder bears to the total patronage of all stockholders during the three (3) years immediately preceding the date of the filing of the articles of dissolution.

**Section 2. Stockholder Limitation of Liability.** No stockholder shall be personally liable or responsible for the debts, obligations, or other liabilities of the corporation.

### **ARTICLE IV CAPITAL CREDITS**

The "remaining net earnings of the savings of the corporation" as defined in the Articles of Incorporation as amended from time to time, pursuant to the laws of the State of Nebraska and the Internal Revenue Code, from such activities and subject to further exceptions as the Board of Directors may direct, shall be made available for distribution among the stockholder shall be distributed solely on the basis of patronage in proportion to the amount or value of the services of or their transactions with the corporation by each stockholder in the manner as follows:

**Section 1. Determination of Capital Credit Account.** Said remaining net earnings or savings of the corporation available for distribution as provided above shall be determined by the Board of Directors for each activity and set aside as of the close of the calendar year in a separate special account entitled Capital Credits Account. The amounts or percentages available for distribution from the various activities need not be equal.

**Section 2. Notice of Allocation.** Each stockholder having received services of or property from the corporation during the previous calendar year shall, as provided by law, receive a written "qualified notice of allocation" disclosing the stated dollar amount for the year allocated to that stockholder on the books

of the corporation as of the close of the previous year. The notice shall be given by regular U.S. Mail or personal delivery.

**Section 3. Refund of Capital Credits.**

- a. The Board of Directors shall annually determine, at a regular or special meeting subsequent to the close of each year, the amount of the retained Capital Credits Account as of the close of the prior year to be refunded or paid in cash, if any, depending upon the financial integrity of the corporation at the time and the base level of equity required for operation. Distribution shall be in cash based upon first in / first out basis.
- b. In the event the corporation has after diligent effort failed to locate any stockholder, or their respective legal representative, entitled to a refund of their capital credit or repurchase of their share of stock, then after the lapse of a period of five (5) years, such share shall become the property of the corporation.

**Section 4. Lien for Debts.** The corporation shall at all times have a first lien and right of set off against all credits for all indebtedness to the corporation of any stockholder.

**Section 5. Assignability.** Capital credits to the account of each stockholder shall be assignable by such stockholder, or by the personal representative of a deceased stockholder, only on the books of the corporation pursuant to written instructions from the assignor, and only to qualified stockholders unless the Board of Directors determines otherwise.

**Section 6. Discretionary Payment of Capital Credits.** The Board of Directors, in its sole discretion, shall have the power at any time to retire and pay in cash all capital credits which are allocated as of the close of the previous year to stockholders who are or hereafter become deceased prior to such time said capital would otherwise be returned under the provisions of these Bylaws, if the personal representatives of such decedents' estates, or person or persons legally entitled thereto, shall request in writing the immediate retirement of such capital, upon such terms and conditions as the Board of Directors may determine, provided however, that the financial conditions of the corporation shall not be impaired thereby.

**ARTICLE V  
TREATMENT OF LOSSES**

In the event the corporation suffers a loss in any one year, the Board of Directors, in its sole discretion, may charge such loss or a part thereof to current operating expenses. Any part thereof not charged to current operating expenses shall be charged against the Capital Credit accounts of those stockholders whose patronage gave rise to such loss. If income or expense is attributable to extraordinary items, including gain or loss from business assets owned or investments held:

- a. The amount thereof shall be allocated, insofar as practicable, to the stockholders of the corporation during the period to which such gain or loss is attributable, and

b. If such income or expense is attributable to business done with or for stockholders is includible in gross income for a fiscal year after the fiscal year during which such patronage may be deemed to have occurred during the corporation's fiscal year during which such income or expense is includible in gross income; provided that the Board of Directors may allocate or treat such extraordinary income or expense in such manner as it, in its discretion, determines will provide equitable treatment to all stockholders of the corporation. The decision of the Board of Directors in determining allocations under this Article shall be conclusive.

## ARTICLE VI DIRECTORS

**Section 1. Number of Directors; General Powers.** The business and affairs of the Corporation shall be managed by a Board of Directors consisting of no fewer than five (5) and no more than seven (7) directors, with the exact number to be determined from time to time by the acting Board of Directors. Directors shall hold and exercise all the powers with respect to the Corporation except those as are specifically conferred upon or reserved to the stockholders by the Articles of Incorporation, these Bylaws, or other applicable law.

**Commented [AMA1]:** Amended to reduce required number of Directors from 7 to 5-7 as determined by the acting Board.

**Section 2. Election and Tenure of Office.** Beginning with the first meeting of stockholders, directors shall be elected by the stockholders for a period of three (3) years as terms of office expire or until such time as their successors shall have been elected and qualified. If an election of directors is not held on the day designated herein or the annual meeting, or by any adjournment thereof, a special meeting of the stockholders shall be held for the purpose of electing directors. For avoidance of a doubt, directors may be elected by a plurality vote of the stockholders.

**Commented [AMA2]:** Amended to fix all director terms at 3 years.

**Section 3. Qualifications.** No person shall be eligible to become or remain a director of the corporation unless such person is a stockholder of the corporation presently residing within the area, around and including Henderson, Nebraska, which is served by the corporation. No direct family members of any employee of the corporation shall be eligible to serve on the Board of Directors during such employee's tenure with the corporation or within five (5) years of the employee's departure from the corporation.

**Commented [AMA3]:** Amended to add restriction for family members of employees serving on the Board.

**Section 4. Nominations.** It shall be the duty of the Board of Directors to appoint, at least 40 days prior to the annual meeting, a Nominating Committee consisting of not less than three (3) nor more than five (5) members of the Board of Directors. The Nominating Committee shall be responsible for preparing, at least 30 days prior to the annual meeting, a list nominating at least two candidates for each director position to be elected. The Secretary shall, no less than ten (10) days prior to the annual meeting, mail a statement of the number of directors to be elected at the meeting and the names of the candidates nominated for each directorship. This statement may be mailed with the annual meeting notice or separately. The ballot to be used at the election shall list the names of the candidates nominated by the Nominating Committee. The chairman of the Board of Directors shall call for additional nominations from the floor and nominations shall not be closed until at least one minute has passed during which no additional nominations have been made.

**Commented [AMA4]:** Amended to change the composition of the Nominating Committee to 3-5 members of the Board of Directors.

**Section 5. Vacancies.** At the discretion of the Board of Directors, a vacancy may be declared after any director fails to attend three consecutive regular board meetings without cause. In the event a director shall become ineligible to hold office, his office shall be declared vacant. Vacancies occurring on the Board of Directors, other than by expiration of term, may be filled by appointment by a majority vote of the remaining directors for the unexpired portion of the term.

**Section 6. Compensation.** Directors shall not receive a salary for their services as directors, except pursuant to regulation by the Board of Directors, a fee of not to exceed One Hundred Dollars (\$100.00) may be allowed as an allowance for each director's attendance at each meeting of the Board.

**Section 7. Indemnification.** To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, each person, now or hereafter serving as a director, officer, or agent of this corporation, shall be indemnified by the corporation against all costs and expenses, including counsel, judgments, fees, and fines reasonably incurred by or imposed upon him/her in connection with or resulting from any action, suit, or proceeding, or the settlement thereof prior to final adjudication, to which he or she is or may be a party by reason of his or her being or having been a director, officer, or agent of the corporation (whether or not a director, officer, or agent at the time such costs or expenses are incurred by or imposed upon him), if he or she acted in good faith and in a manner reasonably believed to be in the best interest of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The right of indemnification herein provided shall not be exclusive of other rights to which any such person may be entitled as a matter of law. Application for and granting of the right of indemnification as set forth herein shall be completed in conformance with the Nebraska Model Business Corporation Act, as may be amended from time to time.

## ARTICLE VII 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 stockholders. A regular meeting of the Board shall also be held monthly at such time and place as the Board may provide by resolution. Such regular monthly meetings may be held without notice other than such resolution fixing the time and place thereof.

**Section 2. Special Meetings.** Special meetings of the Board may be called by the President or by any three 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 the holding of the meeting.

**Section 3. Notice of Directors Meetings.** Notice of the time, place and purpose of any special meeting of the Board shall be given to each director not less than one day prior to the date of such special meeting. Such notice may, in the sole discretion of the Secretary, be delivered to each director in person, by mail addressed to the director's address as it appears on the records, or by facsimile, e-mail, or by other means of electronic communication, or upon a default in such duty by the Secretary, by the President, or the directors calling the meeting.

**Commented [AMAS]:** Added to reflect modern means of communication.

**Section 4. Telephone Meetings.** Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Commented [AMA6]:** Added to reflect modern means of communication.

## ARTICLE VIII OFFICERS

**Section 1. Number.** The officers of the corporation shall be a President, Vice-President, Secretary, Treasurer and such other officers as may be determined by the Board from time to time. The offices of Secretary and Treasurer may be held by the same person.

**Section 2. Election and Term of Office.** The officers shall be elected annually by and from the Board of Directors at the meeting of the Board held immediately after the annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as convenience permits. Each officer shall hold office until the next regular meeting of the Board following the annual meeting of the stockholders or until his successor shall have been elected and 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.

**Commented [AMA7]:** Amended to remove the phrase "by ballot"

**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, with or without cause, whenever in the Board's judgment the best interest of the corporation will be served by such removal.

**Section 4. President.** The President shall:

- a. Be the principal executive officer of the corporation, unless otherwise determined by the stockholders or the Board, and shall preside at all meetings of the stockholders and the Board.
- b. Sign, along with the Secretary, all stock certificates, the issue of which shall have been authorized by the Board or the stockholders, and may sign any deeds, mortgages, deeds of trust, notes, bond, contracts or other instruments authorized by the Board to be executed, except in those cases in which the signing and execution thereof shall have been expressly delegated by the Articles of Incorporation or these Bylaws to some other officer or agent of the corporation, or is required by law to be otherwise signed or executed; and
- c. Perform all general 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 may be assigned to such office by the Board from time to time.

**Section 6. Secretary.** The Secretary shall:

- a. Keep the minutes of the meetings of the stockholders and the Board in one or more books provided for that purpose;
- b. See that all notices are duly given in accordance with these Bylaws or as otherwise required by law;
- c. Be the custodian of the corporate records and of the seal of the corporation, and affix the seal of the corporation to all stock certificates prior to the issue thereof and to all documents, the execution of which on behalf of the corporation 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 stockholders;
- e. Sign, along with the President, all stock certificates, the issuance of which shall have been authorized by the Board or the stockholders;
- f. Have general charge of the books of the corporation;
- g. Keep on file at all times a complete copy of the Articles of Incorporation and these Bylaws of the corporation containing all amendments thereto (which copies shall always be open and available for inspection of any stockholder); and
- h. Perform all duties incident to the office of Secretary and such other duties as time to time may be assigned to such office by the Board from time to time.

**Section 7. Treasurer.** The Treasurer shall:

- a. Have charge and custody of and be responsible for all funds and securities of the corporation;
- b. Be responsible for the receipt and the issuance of receipts for all monies due and payable to the corporation, and for the deposit of all such monies in the name of the corporation in such bank or banks as shall be selected in accordance with the provisions of these Bylaws; and
- c. Perform all duties incident to the office of Secretary and such other duties as time to time may be assigned to such office by the Board from time to time.

**Section 8. Manager.** The Board may appoint a manager. The manager shall perform such duties and exercise such authority as the Board may vest in him from time to time.

**Section 9. Bonds of Officers.** The Treasurer, and any other officer or agent of the corporation 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 sole discretion, may also require any other officer, agent or employee of the corporation to give bond in such amount and with such 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.

**Section 11. Reports.** The officers of the corporation shall submit at each annual meeting of the stockholder's reports covering the business of the corporation for the previous fiscal year. Such reports shall set forth the condition of the corporation at the close of such fiscal year.

**ARTICLE IX  
MEETINGS OF STOCKHOLDERS**

**Section 1. Annual Meeting.** The annual meeting of the stockholders of the corporation shall be held on that date within the first (1<sup>st</sup>) quarter of each year and at such place as may be decided upon by the Board and designated in the notice of the meeting. The purpose of such annual meeting of the stockholders shall be electing directors, passing upon the reports for the previous fiscal year, and transacting such other business as may come before the meeting. The Board of Directors may change the date for good cause. Failure to hold the annual meeting shall not work a forfeiture of dissolution of the corporation.

**Commented [AMA8]:** Amended to provide flexibility to hold annual stockholder meeting at any date in 1<sup>st</sup> quarter of the year.

**Section 2. Special Meetings.** Special meetings of the stockholders may be called by resolution of the Board, or upon a written request signed by any three (3) directors, by the President, or by not less than ten percent (10%) of all the stockholders, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the stockholders may be held at any place specified in the notice of the special meeting located in Henderson, Nebraska.

**Section 3. Notice of Stockholders Meetings.** Written notice stating the place, date, and time 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 then (10) days nor more than twenty (20) 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 persons calling the meeting, to each stockholder. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his address as it appears on the records of the corporation, with postage thereon prepaid. Notwithstanding the foregoing, stockholders may also consent to receiving notice of shareholder meetings via electronic transmission. The failure of any stockholder to receive notice of an annual or special meeting of the stockholders shall not invalidate any action which may be taken by the stockholders at any such meeting.

**Commented [AMA9]:** Added to reflect modern means of communication.

**Section 4. Quorum.** A "quorum" at all meetings shall consist of ten percent (10%) of the total number of stockholders, but never less than 10 stockholders nor more than 50 stockholders, being present personally or by proxy, or participating remotely in a manner consistent with Section 21-261 of the Nebraska Model Business Corporation Act. 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.

**Commented [AMA10]:** Added to reflect modern means of communication and options provided by Nebraska statute.

**Section 5. Voting.**

- a. Each stockholder shall be entitled to only one (1) vote upon each matter submitted to a vote at a meeting of the stockholders. All questions shall be decided by a vote of a majority of the stockholders voting thereon in person except as otherwise provided by law, the Articles of Incorporation, or these Bylaw.

- b. A stockholder may vote by written proxy filed with the Secretary of the corporation by the opening of any meeting. No proxy shall be valid after thirty (30) days from the date of execution. No proxy shall be voted unless it designates the particular meeting at which it is to be voted and may not be voted at any adjournment of said meeting unless specifically so indicated. A stockholder may give his or her proxy only to another stockholder or an adult from the same household as the stockholder. A stockholder present at any meeting will revoke any previously given proxy.

**Section 6. Order of Business.** The order of business at the annual meeting of the stockholders and, so far as possible, at all other meeting of the stockholders, shall be essentially as follows, except as otherwise determined by the stockholders at such meeting:

- a. Report on the number of stockholders present in person or by proxy, and electronic participation, in order to determine the existence of a quorum;
- b. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waivers of notice of the meeting, as the case may be;
- c. Reading of unapproved minutes of previous meetings of the stockholders and the taking of necessary action thereon;
- d. Presentation and consideration of reports of officers, directors and committee;
- e. Election of directors;
- f. Unfinished business;
- g. New business – Manager’s report; and
- h. Adjournment.

**ARTICLE X  
FISCAL YEAR**

The fiscal year of this corporation shall commence on the first day of January of each year and end on the last day of December of each year.

**ARTICLE XI  
AMENDMENTS**

These Bylaws may be altered by a majority vote of those stockholders present and voting, in person or by proxy, at any regular meeting or a special meeting, provided that a Notice of the Intention to Amend shall have been given in notice of such special meeting.

Provided further, that the Board of Directors, by unanimous vote, may amend the Bylaws at any time, subject to the approval or rejection of the stockholders at the next regular or special meeting of stockholders; provide that, said amendment shall have full force and effect, during the time that the Board of Directors have approved such amendment until acted upon by the stockholders, even though such amendment may be rejected.

**HENDERSON COOPERATIVE TELEPHONE COMPANY**  
a Nebraska cooperative corporation

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary of Henderson Cooperative Telephone Company, a Nebraska cooperative corporation, and that the foregoing SECOND AMENDED AND RESTATED BYLAWS, comprising twelve (12) pages, were unanimously adopted by the corporation's board of directors, and approved by sufficient vote of the corporation's stockholders, as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
\_\_\_\_\_, Secretary