

## **IC 8-1-17**

### **Chapter 17. Telephones—Rural Telephone Cooperative Act**

#### **IC 8-1-17-1**

##### **Short title**

Sec. 1. This chapter may be known and referred to as the "Rural Telephone Cooperative Act".

*(Formerly: Acts 1951, c.193, s.1.) As amended by P.L.59-1984, SEC.73.*

#### **IC 8-1-17-2**

##### **Formation of corporation**

Sec. 2. Any number of natural persons not less than eleven (11) may, by executing, filing and recording articles of incorporation, as hereinafter provided, form a cooperative corporation, not organized for pecuniary profit, for the purpose of: (1) if such corporation be local in its scope, promoting and encouraging the fullest possible use of telephone service in the state by making telephone service and educational services incident to telephone service available to inhabitants of rural areas of the state at the lowest cost consistent with sound economy and prudent management of the business of the cooperative corporation or (2) if such corporation be general in its scope, furnishing engineering, financial, accounting, and/or educational services, incident to telephone service.

*(Formerly: Acts 1951, c.193, s.2.)*

#### **IC 8-1-17-2.1**

##### **Not-for-profit corporations formed under Acts 1935, c. 157; amended articles of incorporation**

Sec. 2.1. (a) If the requirements of subsection (b) are met, a local cooperative telephone corporation formed under Acts 1935, c.157 is considered to have been formed under this chapter and is subject to its requirements and not the requirements of IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(b) A local cooperative telephone corporation described in subsection (a) shall amend its articles of incorporation in accordance with IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17 to conform to the requirements of this chapter and shall submit a copy of its amended articles to the commission for approval. After examining the articles, the commission shall approve the amended articles if they conform to the requirements of this chapter. The commission may approve the amended articles without conducting a hearing. The secretary of state may not issue a certificate of amendment before the commission approves the amended articles under this subsection.

(c) The certificate of public convenience and necessity or certificate of territorial authority previously issued to a local cooperative telephone corporation described in subsection (a) shall serve as the certificate required under section 6 of this chapter (before its repeal July 1, 2009).

(d) Subsection (a) applies to a local telephone cooperative corporation as of the date the secretary of state issues a certificate of amendment under IC 23-7-1.1-26 (before its repeal August 1, 1991) or IC 23-17-17.

(e) The local cooperative telephone corporation shall record the amended articles of incorporation in the county where the local cooperative telephone corporation has its principal office.

*As added by P.L.122-1987, SEC.1. Amended by P.L.179-1991, SEC.13; P.L.96-1993, SEC.1; P.L.27-2006, SEC.40.*

### **IC 8-1-17-3**

#### **Definitions**

Sec. 3. As used in this chapter, the following terms have the following meanings unless a different meaning clearly appears from the context:

- (1) "Acquire" means to obtain by construction, purchase, lease, devise, gift, eminent domain, or by any other lawful means.
- (2) "Board" means the board of directors of a cooperative corporation.
- (3) "Cooperative corporation" means a corporation formed under this chapter.
- (4) "Facilities based local exchange carrier" has the meaning set forth in IC 8-1-32.4-5.
- (5) "General cooperative corporation" means a cooperative corporation formed to render services to local cooperative corporations.
- (6) "Improve" includes construct, reconstruct, extend, enlarge, alter, better, or repair.
- (7) "Local cooperative corporation" means a cooperative corporation formed to render telephone services within Indiana.
- (8) "Member" includes each individual signing the articles of incorporation of a cooperative corporation and each person admitted to membership of the cooperative corporation under law or the corporation's bylaws.
- (9) "Obligations" includes negotiable bonds, notes, debentures, interim certificates or receipts, and other evidences of indebtedness, either issued or the payment of which is assumed by a cooperative corporation.
- (10) "Person" or "inhabitant" includes an individual, a firm, an association, a corporation, a limited liability company, a business trust, and a partnership.
- (11) "Service" or "services", when not accompanied by the word "telephone", means construction, engineering, financial, accounting, or educational services incidental to telephone service.
- (12) "System" includes any plant, works, system, facilities, or properties, together with all parts of and appurtenances to the plant, works, system, facilities, or properties, used or useful in telephone service.
- (13) "Telephone facilities" includes all buildings, plants, works,

structures, improvements, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, underground or overhead lines, wires, cables, exchanges, switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, paystations, protectors, instruments, connections, and appliances, office furniture and equipment, work equipment, and all other property used in connection with the provision of telephone and other telecommunications services.

(14) "Telephone service" refers to telecommunications service (as defined in 47 U.S.C. 153(46)) provided by a telephone cooperative corporation. The term includes all facilities or systems used in the rendition of the service.

*(Formerly: Acts 1951, c.193, s.3.) As amended by P.L.59-1984, SEC.74; P.L.23-1988, SEC.56; P.L.97-1993, SEC.1; P.L.8-1993, SEC.127; P.L.27-2006, SEC.41.*

#### **IC 8-1-17-4**

##### **Articles of incorporation**

Sec. 4. The articles of incorporation shall be entitled and endorsed "Articles of Incorporation of \_\_\_\_\_ (the blank space to be filled in with the name of the corporation) and shall state:

(1) The name of the cooperative corporation, which shall be such as to distinguish it from any other corporation, and a statement whether it is to be a general or a local cooperative corporation.

(2) A statement of the county or counties within which its operations are to be conducted. If it is a local cooperative corporation, the rural area or areas in which its operations are to be conducted shall be further described and limited from time to time by certificate issued by the commission.

(3) Location of its principal office and post office address.

(4) The maximum number of directors, not less than three (3).

(5) The names and post office addresses of the directors who are to manage the affairs of the cooperative corporation for the first year of its existence or until their successors are chosen.

(6) The period, if any, limited for the duration of the cooperative corporation or a statement that the duration of the cooperative corporation is to be perpetual.

(7) The terms and conditions upon which members of the corporation shall be admitted.

(8) The articles of incorporation of a cooperative corporation may contain also any provision not contrary to law which the incorporators may desire for the regulation of its business and the conduct of its affairs; and any provisions creating, defining, limiting or regulating the powers of the cooperative corporation, its directors and members.

*(Formerly: Acts 1951, c.193, s.4.) As amended by P.L.119-1987, SEC.2.*

#### **IC 8-1-17-5**

**Articles of incorporation; certificate of territorial authority; commission review; notice to facilities based local exchange carriers; issuance of certificate; request for additional information; filing with secretary of state; status as body corporate**

Sec. 5. (a) The individuals executing the articles of incorporation of a local cooperative corporation shall be residents of the area in which the operations of the cooperative corporation are to be conducted and shall be persons desirous of using telephone service to be furnished by the cooperative corporation.

(b) The individuals executing the articles of incorporation of a general cooperative corporation shall be members or prospective members of one (1) or more local cooperative corporations which are prospective members of such general cooperative corporation.

(c) The articles shall be executed in at least six (6) originals and shall be acknowledged by the subscribers before an officer authorized by law to take acknowledgments of deeds. When so acknowledged, three (3) originals of said articles shall be submitted to the commission. At the time the articles of incorporation are filed, an application for a certificate of territorial authority under IC 8-1-32.5 shall be filed with the commission if the applicant will operate as a local cooperative corporation. The application shall be executed by one (1) or more of the individuals executing the articles, and shall comply with the requirements of IC 8-1-32.5-6, as applicable.

(d) Upon the receipt of any articles of incorporation and application for a certificate of territorial authority, the commission shall conduct the review required under IC 8-1-32.5-8. If the applicant is a local cooperative corporation, the commission shall give written notice, by United States registered mail, of the filing of the application to each facilities based local exchange carrier operating in territory contiguous to the area in which the cooperative corporation proposes to render telephone service. The commission shall use the record maintained by the commission under IC 8-1-32.5-13 to determine which facilities based local exchange carriers are entitled to notice under this subsection.

(e) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the applicant meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall:

- (1) issue a certificate of territorial authority under IC 8-1-32.5;
- and
- (2) enter an order approving the organization of the cooperative corporation and the proposed articles of incorporation.

(f) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the applicant does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall:

- (1) request the applicant to provide additional information; or
- (2) notify the applicant of the applicant's right to:
  - (A) appeal the commission's determination under IC 8-1-3;or
  - (B) file another application at a later date, without prejudice;under IC 8-1-32.5-8.

(g) If the commission approves the articles of incorporation under subsection (e), the cooperative corporation shall submit the following documents, along with two (2) copies of each, to the secretary of state for filing:

- (1) One (1) of the original articles of incorporation executed by the corporation under subsection (c).
- (2) A certified copy of the order of the commission under subsection (e)(2).
- (3) A certified copy of the certificate of territorial authority issued by the commission under subsection (e)(1).

If the secretary of state determines that the documents described in subdivisions (1) through (3) comply with law, the secretary of state shall endorse the documents and file one (1) set of the documents in the secretary of state's office and deliver the other two (2) sets, endorsed with the secretary of state's approval, to the incorporators. The incorporators shall record one (1) of the approved original or certified copies of the documents in the office of the recorder of the county in which the cooperative corporation has, or will have, its principal office.

(h) As soon as the provisions of this section have been complied with, the proposed cooperative corporation, described in the articles of incorporation recorded under subsection (g), under its designated name, is a body corporate.

*(Formerly: Acts 1951, c.193, s.5.) As amended by P.L.97-1993, SEC.2; P.L.27-2006, SEC.42.*

#### **IC 8-1-17-6**

##### **Repealed**

*(Repealed by P.L.27-2006, SEC.62.)*

#### **IC 8-1-17-7**

##### **Board of directors**

Sec. 7. (a) Each cooperative corporation formed under this chapter shall have a board of directors, which board shall constitute the governing body of the cooperative corporation. The directors of a local cooperative corporation must be members, or if the cooperative corporation's bylaws so provide, a member's officers, directors, or partners, or the owner of a member that is a sole proprietorship may be directors of the cooperative corporation. Directors other than those named in the cooperative corporation's articles of incorporation shall be elected by the cooperative corporation's members.

(b) Unless the bylaws of the cooperative corporation provide otherwise, such directors shall be elected annually. The bylaws may provide that the directors may hold office for any stated period not

exceeding three (3) years, and be so elected that the terms of only part of such directors shall expire at any one (1) time and that only enough directors to succeed those whose terms are about to expire need be elected in any year.

(c) The bylaws may provide that the area in which the members of the cooperative corporation reside shall be apportioned into districts and prescribe the procedure by which the members residing in any one (1) district may nominate a director.

(d) The bylaws may specify a fair remuneration for the time actually spent by its officers, directors, and members of its executive committee in the performance of their duties as such and provide that the same be paid them respectively. The officers, directors, and members of the executive committee shall be entitled to reimbursement for expenses incurred by them in the performance of their duties whether or not the bylaws provide that they be remunerated for their time spent in such performance.

(e) The board shall annually designate and elect those officers it considers necessary.

*(Formerly: Acts 1951, c.193, s.7.) As amended by P.L.97-1993, SEC.4; P.L.145-1999, SEC.2; P.L.198-1999, SEC.4; P.L.14-2000, SEC.25.*

#### **IC 8-1-17-8**

##### **Board of directors; powers and duties**

Sec. 8. The board shall have power to do all things necessary or convenient in conducting the business of the cooperative corporation, including but not limited to:

(a) The power to make, alter, amend or repeal by-laws for the regulation and management of the affairs of the cooperative corporation not inconsistent with law or with the articles of incorporation.

(b) To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative corporation.

(c) To execute instruments.

(d) To delegate to one or more of the directors or to the agents and employees of the cooperative corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure.

*(Formerly: Acts 1951, c.193, s.8.)*

#### **IC 8-1-17-9**

##### **Certificates of membership; meetings of members; notice; quorum; votes required for action; elections**

Sec. 9. (a) A cooperative corporation may issue to its members certificates of membership and each member shall be entitled to only one (1) vote on each question or election at any regular or special meetings of the cooperative corporation.

(b) Meetings of members may be held at such place as may be provided in the bylaws. An annual meeting of the members shall be

held at such time as may be provided by the bylaws. Special meetings may be called by the board of directors, by a petition signed by not less than five percent (5%) of all the members, or by such other officers or persons as may be provided in the articles of incorporation or by the bylaws.

(c) Written or printed notice stating the place, day, and hour of the meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at the member's address as it appears on the records of the cooperative corporation, with postage prepaid. Notice of meetings of members may be waived in writing.

(d) Unless otherwise provided in the articles of incorporation, two percent (2%) of all the members of the cooperative corporation present in person at any meeting of members, of which meeting notice shall have been given as provided in subsection (c), shall constitute a quorum for the transaction of business at such meeting.

(e) Except as provided in subsection (f), a majority vote of those members who are present in person and voting at any regular meeting, or at any special meeting of the members called for that purpose, shall be necessary for the taking of any action, adoption of any resolution, or the election of any directors or officers, or otherwise, as the case may be.

(f) This subsection applies to an election for a director of a cooperative corporation held after March 20, 2006. A cooperative corporation may provide in the corporation's bylaws that if more than two (2) persons run for election as a director from the same district, the person receiving the most votes is elected, regardless of whether that person receives a majority of the total votes cast by those members present in person and voting at the meeting at which the election occurs.

*(Formerly: Acts 1951, c.193, s.9.) As amended by P.L.97-1993, SEC.5; P.L.145-1999, SEC.3 and P.L.198-1999, SEC.5; P.L.14-2006, SEC.1.*

#### **IC 8-1-17-10**

##### **Corporate purpose; local cooperative corporation**

Sec. 10. (a) The corporate purpose of each local cooperative corporation shall be to render telephone service to its members and to such other persons in the specific instances as expressly provided in this chapter, and no person shall become or remain a member unless such person shall use telephone service supplied by such cooperative corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative corporation.

(b) A local cooperative corporation is one formed under this chapter for the purpose of furnishing telephone service to its patrons. *(Formerly: Acts 1951, c.193, s.10.) As amended by P.L.59-1984, SEC.76.*

#### **IC 8-1-17-11**

##### **General cooperative corporation and local cooperative corporation distinguished**

Sec. 11. Any cooperative corporation to be formed under this chapter shall be either a general cooperative corporation or a local cooperative corporation.

(a) A general cooperative corporation is one formed under this chapter for the purpose of furnishing engineering, financial accounting, or educational services to its members or to persons expecting to form a local cooperative corporation, and having for its members only its incorporators or local cooperative corporations. It shall not render telephone service and the commission shall not allocate to it any territory for such purpose.

(b) A general cooperative corporation may be formed to have as members, and serve, local cooperative corporations in all, or certain named, counties of this state, not including any county theretofore named as part of the territory to be served by another general cooperative corporation then organized and existing, unless such other general cooperative corporation duly consents in writing, filed with the commission, to such inclusion.

(c) A general cooperative corporation, before obtaining the approval of its articles of incorporation, must prove to the commission that it has written consent to its incorporation signed by or on behalf of:

(1) the local cooperative corporations then existing and contemplated to be members of the general cooperative corporation; and

(2) the incorporated agricultural association or associations, including in its or their members at least one-third (1/3) of the members residing in the territory in which the general cooperative proposes to operate and reasonably anticipated to become members of local cooperative corporations which will become members of such general cooperative corporation.

Such signatures of said local cooperative corporations and of such agricultural associations shall be made by their respective presidents or vice presidents, and secretaries or assistant secretaries, and shall be supported by certified copies of resolutions authorizing the same and duly adopted by their boards of directors, respectively.

*(Formerly: Acts 1951, c.193, s.11.) As amended by P.L.59-1984, SEC.77; P.L.97-1993, SEC.6.*

#### **IC 8-1-17-12**

##### **General grant of powers to corporation**

Sec. 12. Each cooperative corporation is hereby vested with all powers necessary or requisite for the accomplishment of its corporate



purpose and capable of being delegated by the general assembly of the state of Indiana; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class or classes as those so enumerated.

*(Formerly: Acts 1951, c.193, s.12.)*

### **IC 8-1-17-13**

#### **Powers of corporation enumerated**

Sec. 13. A cooperative corporation may do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including the following:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold, and dispose of property, real and personal, tangible and intangible, or any interest in the property and to pay in cash or credit, and to secure and procure payment of all or any part of the purchase price on the terms and conditions as the board shall determine.
- (4) If it is a local cooperative corporation, to furnish, improve, and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons.
- (5) If it is a local cooperative corporation, to construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber telephone facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible which is necessary or appropriate to accomplish the purpose for which the local cooperative corporation is organized.
- (6) To cease doing business and to dissolve and surrender its corporate franchise.
- (7) If it is a local cooperative corporation, to construct, operate, and maintain its telephone facilities across or along any street or public highway, or over lands that are the property of this state or a political subdivision of the state. Before telephone facilities are constructed across or along a highway in the state highway system, the local cooperative corporation shall first obtain the permit of the Indiana department of transportation to do so, and the location and setting of the telephone facilities shall be approved by and subject to the supervision of the Indiana department of transportation. Before telephone facilities are constructed on or across land belonging to the state, the local cooperative corporation shall first obtain the permit of the department of state having charge of the lands to do so, and the location and setting of the telephone facilities shall be approved by and subject to the supervision of the department. The telephone facilities shall be erected and maintained so as not to interfere with the use and maintenance of the streets, highways,

and lands, and no pole or appliance shall be located so as to interfere with the ingress or egress from any premises on the street or highway. Nothing in this section contained shall deprive the body having charge of the street or highway of the right to require the relocation of any pole or appliance which may affect the proper use of the street or highway for public travel, for drainage, or for the repair, construction, or reconstruction of the street or highway. The local cooperative corporation shall restore the street, highway, or lands to their former condition or state as near as may be and shall not use the same in a manner to impair unnecessarily their usefulness or to injure the property of others.

(8) To accept gifts or grants of property, real or personal, from any person, municipality, or federal agency and to accept voluntary and uncompensated services.

(9) If it is a local cooperative corporation, to connect and interconnect its telephone facilities or systems with other telephone facilities or systems. A connection or interconnection shall be in a manner and according to specifications as will avoid interference with or hazards to existing telephone facilities or systems.

(10) To issue membership certificates.

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

(12) To make any and all contracts necessary or convenient for the full exercise of the powers in this chapter granted, including, without limiting the generality of the foregoing, contracts with any person, federal agency, municipality, or other corporation for the interconnection of telephone service; for the management and conduct of the business of the cooperative corporation; and for the fixing of the rates, fees, or charges for service rendered or to be rendered by the local cooperative corporation.

(13) To levy and collect reasonable fees, rents, tolls, and other charges for telephone service rendered.

(14) If it is a local cooperative corporation, to exercise the right of eminent domain in the manner provided by law for the exercise thereof by communications service providers (as defined in IC 8-1-2.6-13(b)).

(15) To adopt, amend, and repeal bylaws.

(16) If it is a local cooperative corporation, to become a member of a general cooperative corporation and if it is a general cooperative corporation, to have local cooperative corporations as its members.

(17) To recover, after a period of two (2) years, any unclaimed stocks, dividends, capital credits, patronage refunds, utility

deposits, membership fees, account balances, or book equities for which the owner cannot be found and are the result of distributable savings of the corporation returned to the members on a pro rata basis pursuant to section 20 of this chapter.

*(Formerly: Acts 1951, c.193, s.13.) As amended by Acts 1980, P.L.74, SEC.36; Acts 1981, P.L.106, SEC.2; P.L.18-1990, SEC.28; P.L.97-1993, SEC.7; P.L.27-2006, SEC.43.*

#### **IC 8-1-17-14**

##### **Sale, encumbrance, or other disposition of property**

Sec. 14. A local cooperative corporation may not sell, lease, exchange, mortgage, pledge, or otherwise sell all, or substantially all, of its property unless the transaction is authorized by a resolution duly adopted at a meeting of the corporation's members duly called and held as provided in section 9 of this chapter. The resolution must receive the affirmative vote of at least three-fourths (3/4) of the corporation's members who are present at the meeting and the affirmative vote of at least three-fourths (3/4) of the corporation's directors who are present at a meeting of the board of directors duly called and held as provided in the corporation's bylaws.

*(Formerly: Acts 1951, c.193, s.14.) As amended by P.L.59-1984, SEC.78; P.L.27-2006, SEC.44.*

#### **IC 8-1-17-15**

##### **Obligations; authority for issuance**

Sec. 15. (a) A cooperative corporation shall have power and is hereby authorized, from time to time, to issue its obligations for any corporate purpose. The obligations may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at any rate, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding the principal amount of the obligations plus accrued interest, as the board's resolution or resolutions may provide.

(b) The obligations may be sold in such manner and upon such terms as the board may determine at not less than the principal amount of the obligations plus accrued interest.

(c) Any provision of law to the contrary notwithstanding, any obligations and related interest coupons, if any, issued pursuant to this act shall possess all the qualities of negotiable instruments. The commission's approval shall not be required for the issuance by a cooperative corporation of its bonds, notes, or other evidences of indebtedness.

*(Formerly: Acts 1951, c.193, s.15.) As amended by Acts 1981, P.L.11, SEC.46; P.L.27-2006, SEC.45.*

#### **IC 8-1-17-16**

### **Obligations; covenants and agreements to secure**

Sec. 16. In connection with the issuance of any obligations, a cooperative corporation may make such covenants or agreements and do any and all such acts and things as may be necessary, convenient or desirable in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute a limitation on the exercise of the powers herein granted.

*(Formerly: Acts 1951, c.193, s.16.)*

### **IC 8-1-17-17**

#### **Purchase of own obligations**

Sec. 17. A cooperative corporation shall have power out of any funds available therefor to purchase any obligations issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All obligations so purchased shall be canceled.

*(Formerly: Acts 1951, c.193, s.17.)*

### **IC 8-1-17-18**

#### **Repealed**

*(Repealed by P.L.3-2008, SEC.269.)*

### **IC 8-1-17-18.1**

#### **Repealed**

*(Repealed by P.L.1-2010, SEC.156.)*

### **IC 8-1-17-18.2**

#### **Consolidation of corporations**

Sec. 18.2. (a) Any two (2) or more cooperative corporations created under this chapter and operating or authorized to operate in contiguous territory may enter into an agreement for the consolidation of the cooperative corporations, which agreement shall be submitted for the review of the commission in the manner provided for in section 5 of this chapter. The agreement must set forth the terms and conditions of the consolidation, the name of the proposed consolidated cooperative corporation, the number of its directors, not less than three (3), the time of the annual election, and the names of the persons, not less than three (3), to be directors until the first annual meeting. Each cooperative corporation participating in the consolidation shall call and hold a meeting of its members as provided in section 9 of this chapter, at which the proposal of the consolidation shall be presented. If at each meeting the consolidation agreement is approved by a resolution duly adopted and receiving the affirmative vote of at least three-fourths (3/4) of the members who attend each meeting, the directors named in the agreement shall subscribe and acknowledge articles conforming substantially to the original articles of incorporation. The new articles shall be entitled and endorsed "Articles of Consolidation of \_\_\_\_\_" (the blank space being filled in with the names of the cooperative corporations

being consolidated) and must state:

- (1) the names of the cooperative corporations being consolidated;
- (2) the name of the consolidated cooperative corporation;
- (3) a statement that each consolidating cooperative corporation agrees to the consolidation;
- (4) the names and addresses of the directors of the new cooperative corporation; and
- (5) the terms and conditions of the consolidation and the mode of carrying the consolidation into effect, including the manner in which members of the consolidating cooperative corporations may or shall become members of the new cooperative corporation.

The new articles of incorporation may contain any provisions not inconsistent with this chapter that are necessary or advisable for the conduct of the business of the new cooperative corporation.

(b) If the commission approves the articles of consolidation under section 5 of this chapter, the articles of consolidation or a certified copy or copies of the articles shall be filed, together with the attached copy of the order of the commission under section 5(e)(2) of this chapter, in the same place as the original articles of incorporation. Upon the filings required under section 5(g) of this chapter, the proposed consolidated cooperative corporation, under its designated name, is a body corporate with all the powers of a cooperative corporation as originally formed under this chapter.

*As added by P.L.3-2008, SEC.72.*

### **IC 8-1-17-19**

#### **Consolidation of corporations; transfer of assets, franchises, and obligations**

Sec. 19. (a) In case of a consolidation, the existence of the consolidating cooperative corporations shall cease and the articles of consolidation are considered the articles of incorporation of the new cooperative corporation.

(b) All rights, privileges, immunities, and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating cooperative corporations are transferred to and vested in the new cooperative corporation without further act or deed.

(c) The new cooperative corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating cooperative corporations. Any claim existing or action or proceeding pending by or against any of the consolidating cooperative corporations may be prosecuted as if the consolidation had not taken place but the new cooperative corporation may be instituted in its place.

(d) The new cooperative corporation may operate in all the areas in which the consolidating cooperative corporations were authorized to operate. Before the new corporation may operate in any other area,

it shall submit to the commission:

- (1) an application for a new certificate of territorial authority under IC 8-1-32.5; or
- (2) a notice of change under IC 8-1-32.5-12(7), as allowed by the commission.

(e) The rights of creditors and any liens upon the property of any consolidating cooperative corporations shall not be impaired by the consolidation.

*(Formerly: Acts 1951, c.193, s.19.) As amended by P.L.59-1984, SEC.80; P.L.97-1993, SEC.8; P.L.27-2006, SEC.47.*

#### **IC 8-1-17-20**

##### **Rates and charges; revenues and receipts not needed; REA borrowers; rates sufficient to repay financial assistance**

Sec. 20. (a) A local cooperative corporation shall be required to furnish reasonably adequate telephone services and facilities. The charge made by any local cooperative corporation for any service rendered or to be rendered, either directly or in connection with the service, shall be nondiscriminatory, reasonable, and just, and every discriminatory, unjust, or unreasonable charge for telephone service is prohibited and declared unlawful. Reasonable and just charges for telephone service within the meaning of this section are those charges that produce sufficient revenue to pay all legal and other necessary expense incident to the operation of the local cooperative corporation's system, including maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions and replacements, and also for the payment of any taxes that may be assessed against the cooperative corporation or its property. Charges described in this section must produce an income sufficient to maintain the local cooperative corporation's property in sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the foregoing requirements is unlawful. Revenues and receipts not needed for the purposes described in this section, or not needed in reserves for those purposes, shall be returned to the patrons on a pro rata basis according to the amounts paid by them for telephone service. Amounts returned under this section shall be either in cash or in abatement of current charges for telephone service, as the board may decide.

(b) As used in subsection (d), "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

including loans made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(c) As used in subsections (d) and (e), "REA borrower" means a corporation created under this chapter that is the recipient of

financial assistance.

(d) In determining rates under this section, an REA borrower must charge rates sufficient to enable the REA borrower to:

- (1) satisfy its reasonable expenses and obligations; and
- (2) repay the full amount of any financial assistance and the interest thereon.

(e) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance, regardless of the full or partial retirement of the property or any other change in the status of the property.

*(Formerly: Acts 1951, c.193, s.20.) As amended by P.L.74-1991, SEC.3; P.L.97-1993, SEC.9; P.L.27-2006, SEC.48.*

### **IC 8-1-17-21**

#### **Repealed**

*(Repealed by P.L.27-2006, SEC.62.)*

### **IC 8-1-17-22**

#### **Repealed**

*(Repealed by P.L.27-2006, SEC.62.)*

### **IC 8-1-17-22.5**

#### **Repealed**

*(Repealed by P.L.27-2006, SEC.62.)*

### **IC 8-1-17-23**

**Articles of incorporation; amendment; change in territory served; commission review; notice to facilities based local exchange carriers; issuance of new or amended certificate of territorial authority; request for additional information; filing of amended articles**

Sec. 23. (a) A cooperative corporation may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors, or to change any other provisions set forth in the articles. However, any change of location of the principal office shall be effected in the manner set forth in section 24 of this chapter. An amendment under this section may be accomplished by filing articles of amendment, along with any notice of change required under IC 8-1-32.5-12, with the commission. The articles of amendment shall be entitled and endorsed "Articles of Amendment of \_\_\_\_\_" (the blank space being filled in with the name of the cooperative corporation) and must include the following:

- (1) The name of the cooperative corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the articles of incorporation in each public office where filed.
- (3) Whether the statement of counties within which the corporation's operations are to be conducted is to be changed, and if so a new statement of the counties in which the

corporation will operate.

(4) An affidavit, signed by the officer executing the articles of amendment, stating that the provisions of this section were complied with.

(b) The amended articles shall be subscribed in the name of the cooperative corporation by the appropriate officers of the cooperative corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file the amended articles by a resolution duly adopted at a meeting of the cooperative corporation duly called and held as provided in section 9 of this chapter. If by any amendment to the articles of incorporation, the territory proposed to be served by the cooperative corporation is to be increased or decreased, the appropriate officers of the cooperative corporation shall submit to the commission:

- (1) an application for a new certificate of territorial authority under IC 8-1-32.5-6; or
- (2) a notice of change under IC 8-1-32.5-12(7), as allowed by the commission.

(c) Upon receipt of an application or a notice of change under subsection (b), the commission shall conduct the review required under IC 8-1-32.5-8. If the applicant is a local cooperative corporation, the commission shall give written notice of the proposed change in the corporation's territory to each facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter. If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the amended articles and the application or notice of change under IC 8-1-32.5 are accurate, complete, and properly verified, the commission shall:

- (1) issue a new or amended certificate under IC 8-1-32.5 that reflects the increase or decrease in the territory served by the corporation; and
- (2) enter an order approving the amended articles of the cooperative corporation.

(d) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the amended articles or an application or notice of change under IC 8-1-32.5 are inaccurate, incomplete, or not properly verified, the commission shall:

- (1) request the corporation to provide additional information; or
- (2) notify the corporation of the corporation's right to:
  - (A) appeal the commission's determination under IC 8-1-3; or
  - (B) file the amended articles or an application or notice of change under IC 8-1-32.5 at a later date, without prejudice;

under IC 8-1-32.5-8.

(e) An amendment increasing or decreasing the territory to be served by a cooperative corporation shall not be filed in the office of the secretary of state or of any county recorder unless there is attached to the amendment a certified copy of an order of the



commission under subsection (c)(2). The amended articles shall be filed in the same places as the original articles of incorporation and upon filing the amendment shall be considered to have been effected. *(Formerly: Acts 1951, c.193, s.24.) As amended by P.L.59-1984, SEC.83; P.L.145-1999, SEC.4 and P.L.198-1999, SEC.6; P.L.27-2006, SEC.49.*

#### **IC 8-1-17-24**

##### **Principal office; change of location**

Sec. 24. A cooperative corporation formed under this chapter may change the location of its principal office by filing in the office of the secretary of state a certificate reciting the change of principal office and setting forth the resolution by its board of directors authorizing the change and stating the time and place of its adoption. The certificate shall be executed and acknowledged by the appropriate officers of the cooperative corporation with the corporate seal attached and attested by the appropriate officer of the cooperative corporation. The cooperative corporation shall also notify the commission of the change as required under IC 8-1-32.5-12(3). *(Formerly: Acts 1951, c.193, s.25.) As amended by P.L.145-1999, SEC.5 and P.L.198-1999, SEC.7; P.L.27-2006, SEC.50.*

#### **IC 8-1-17-25**

##### **Dissolution of corporation; articles of dissolution; relinquishment of certificate of territorial authority; disposition of assets**

Sec. 25. (a) Any cooperative corporation may dissolve by filing in the office of the secretary of state articles of dissolution entitled and endorsed "Articles of Dissolution of \_\_\_\_\_" (the blank space being filled in with the name of the cooperative corporation). The articles of dissolution shall state the following:

- (1) The name of the cooperative corporation, and if the cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the names of the original cooperative corporations.
- (2) The date of filing of the articles of incorporation in the office of secretary of state and, if the cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the dates on which the articles of incorporation of the original cooperative corporations were filed in the office of secretary of state.
- (3) That the cooperative corporation elects to dissolve.
- (4) The name and post office address of each of its directors, and the name, title, and post office address of each of its officers.

The articles shall be subscribed and acknowledged by the appropriate officers of the cooperative corporation who shall make and annex an affidavit stating that they have been authorized to execute and file the articles by a resolution duly adopted by the members of the cooperative corporation at a meeting duly called and held as provided in section 9 of this chapter. Articles of dissolution or a

certified copy or copies of the articles shall be filed in the same places as original articles of incorporation. If the dissolving corporation is a local cooperative corporation, any certificate of territorial authority issued under IC 8-1-32.5 shall be relinquished, and the appropriate officers of the corporation shall notify the commission of the relinquishment under IC 8-1-32.5-12(5).

(b) Upon the filings required by subsection (a), the cooperative corporation is dissolved. However, the cooperative corporation shall continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities and obligations of the cooperative corporation have been satisfied and discharged shall be refunded pro rata to the patrons, their assignees, personal representatives, heirs, or legatees, who have paid for telephone service rendered by the cooperative corporation within the five (5) year period immediately preceding the dissolution. Any assets not refunded within the two (2) year period after the dissolution is completed shall pass to and become the property of the state.

*(Formerly: Acts 1951, c.193, s.26.) As amended by P.L.59-1984, SEC.84; P.L.145-1999, SEC.6 and P.L.198-1999, SEC.8; P.L.27-2006, SEC.51.*

#### **IC 8-1-17-26**

#### **Foreign nonprofit corporations; application for certificate of territorial authority; review by commission; admission to do business in Indiana**

Sec. 26. (a) Any foreign corporation organized as a nonprofit corporation for the purpose of making telephone service available to the inhabitants of rural areas may be admitted to do business in Indiana and shall have the same powers, restrictions, and liabilities as a cooperative corporation organized under this chapter. Whenever a foreign corporation desires to be admitted to operate in Indiana, it shall file with the commission an application for a certificate of territorial authority under IC 8-1-32.5. The appropriate officers of the corporation shall attach to the application a copy of the articles of incorporation of the foreign corporation, and all amendments to the articles, duly authenticated by the proper officer of the state in which the corporation is incorporated. Upon receipt of the application and the articles of incorporation, the commission shall conduct the review required under IC 8-1-32.5-8. The commission shall give written notice of the filing of the application to each facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter.

(b) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the commission shall enter an order granting a certificate of

territorial authority under IC 8-1-32.5 for the proposed operations of the foreign corporation in Indiana and shall attach a copy of the order, duly certified by the secretary of the commission, to each original application filed with the commission and deliver the applications and orders to the petitioner.

(c) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the commission shall:

(1) request the foreign corporation to provide additional information; or

(2) notify the foreign corporation of the foreign corporation's right to:

(A) appeal the commission's determination under IC 8-1-3; or

(B) file another application at a later date, without prejudice;

under IC 8-1-32.5-8.

(d) If the commission issues a certificate of territorial authority under subsection (b), the foreign corporation shall present to the secretary of state all sets of authenticated copies of its articles of incorporation, the original applications under IC 8-1-32.5, and the order of the commission under subsection (b), together with any application for admission to do business in Indiana that the secretary of state may require, and shall tender to the secretary of state six dollars and fifty cents (\$6.50) to cover the secretary of state's fees under this subsection. If the secretary of state approves the documents submitted, the secretary of state shall endorse the secretary of state's approval upon each of the documents, file one (1) copy in the secretary of state's office, return the remaining copies to the foreign corporation, and issue to the foreign corporation a certificate of admission to do business in Indiana. Before the foreign corporation may do any business in Indiana, it shall file in the office of the recorder of each county in Indiana in which it will make telephone service available one (1) set of the documents bearing the approval of the secretary of state under this subsection.

*(Formerly: Acts 1951, c.193, s.27.) As amended by P.L.59-1984, SEC.85; P.L.27-2006, SEC.52.*

#### **IC 8-1-17-27**

##### **General nonprofit corporation act; application to chapter**

Sec. 27. The provisions of IC 23-17 and all rights and powers under IC 23-17 shall apply to cooperative corporations organized under this chapter, except where such provisions are in conflict or inconsistent with the express provisions of this chapter.

*(Formerly: Acts 1951, c.193, s.28.) As amended by P.L.59-1984, SEC.86; P.L.179-1991, SEC.14.*

#### **IC 8-1-17-28**

##### **Construction of chapter**

Sec. 28. This chapter is to be liberally construed, and the enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

*(Formerly: Acts 1951, c.193, s.29.) As amended by P.L.59-1984, SEC.87.*

**IC 8-1-17-29**

**Members not liable for corporate debts or liabilities**

Sec. 29. No member of any cooperative corporation shall be liable or responsible for its debts or liabilities.

*(Formerly: Acts 1951, c.193, s.31.)*