
A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. (a) Through Act 2 of the first special session
2 of 2007, the legislature created the Hawaii broadband task force
3 to provide recommendations on how to advance Hawaii's broadband
4 capabilities and use. The legislature finds that advanced
5 broadband services are essential infrastructure for an
6 innovation economy and a knowledge society in the twenty-first
7 century. High-speed broadband services at affordable prices are
8 essential for the advancement of education, health, public
9 safety, research and innovation, civic participation,
10 e-government, economic development and diversification, and
11 public safety and services. The legislature also recognizes the
12 evolution in the manner in which communications and information
13 services are delivered to the consumer, including by wireline,
14 wireless, cable television, and satellite infrastructures, and
15 that the voice, video, and data services provided over these
16 infrastructures are converging. To position Hawaii for global



1 competitiveness in the twenty-first century, this Act promotes
2 the following goals:

- 3 (1) Access to broadband communications to all households,
4 businesses, and organizations throughout the State by
5 2012 at speeds and prices comparable to the average
6 speeds and prices available in the top three
7 performing countries in the world;
- 8 (2) Availability of advanced broadband communications
9 service on a competitive basis to reduce prices,
10 increase service penetration, and improve service to
11 all persons in the State;
- 12 (3) Increased broadband availability at affordable costs
13 to low income and other disadvantaged groups,
14 including by making low-cost, broadband-capable
15 computers available to eligible recipients;
- 16 (4) Increased sharing of the infrastructure used to deploy
17 broadband to reduce costs to providers, ease
18 deployment of broadband, and ease entry into a
19 competitive broadband marketplace;
- 20 (5) Increased, flexible, timely, and responsible access to
21 public rights-of-way and public facilities for
22 broadband service providers; and



1 (6) A more streamlined permit approval process that
2 reduces the time and cost of infrastructure
3 deployment, to be created jointly by disparate
4 permitting agencies, stakeholders, and other
5 interested parties.

6 (b) The purpose of this Act is to establish the Hawaii
7 communications commission, administratively attached to the
8 department of commerce and consumer affairs. The commission is
9 placed under the supervision and control of the Hawaii
10 communications commissioner. The commission is required to:

- 11 (1) Investigate, promote, and ensure the growth and
12 development of broadband infrastructure within the
13 state in accordance with the aforementioned goals;
- 14 (2) Champion the State's broadband, telecommunications,
15 and video programming services interests before the
16 federal government, including the United States
17 Congress, the executive branch of the United States,
18 and the Federal Communications Commission; and state
19 and local agencies, including the governor, the state
20 legislature, and county governments;
- 21 (3) Maintain close working relationships with community
22 groups, civic associations, industry trade



- 1 organizations, industry leaders, and other
2 stakeholders to ensure that the State's interests and
3 concerns are understood;
- 4 (4) Develop state policies relating to the provision of
5 broadband communications services and interstate and
6 international communications services and facilities
7 serving or transiting through the State of Hawaii;
- 8 (5) Facilitate the construction of shared
9 telecommunications and broadband infrastructure and
10 expand the introduction and capabilities of advanced
11 broadband communications services;
- 12 (6) Consolidate the regulation of telecommunications
13 carriers currently regulated by the public utilities
14 commission and cable operators currently regulated by
15 the director of commerce and consumer affairs,
16 creating a "one stop shop" to allow businesses
17 providing broadband, telecommunications, and video
18 programming services to make their services more
19 readily available to the public;
- 20 (7) Promptly examine rate regulation for
21 telecommunications carriers, including alternatives
22 such as price cap regulation; and



1 (8) Investigate the possibility of implementing incentive
2 regulation for telecommunications carriers to increase
3 investment in broadband infrastructure within the
4 State.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 "CHAPTER

9 HAWAII COMMUNICATIONS COMMISSION

10 PART I. GENERAL PROVISIONS

11 § -1 **Definitions.** As used in this chapter, unless the
12 context otherwise requires:

13 "Applicant" means a person who initiates an application or
14 proposal.

15 "Application" means an unsolicited filing.

16 "Basic cable service" means any service tier that includes
17 the retransmission of local television broadcast signals.

18 "Broadband" means an "always on" data networking service to
19 access the Internet that uses a variety of applications, at
20 minimum speeds set by the commissioner.

21 "Cable franchise" means a nonexclusive initial
22 authorization or renewal thereof issued pursuant to this



1 chapter, whether the authorization is designated as a franchise,
2 permit, order, contract, agreement, or otherwise, which
3 authorizes the construction or operation of a cable system.

4 "Cable operator" means any person or group of persons who:

- 5 (1) Provides cable service over a cable system and
6 directly or through one or more affiliates owns a
7 significant interest in the cable system; or
8 (2) Otherwise controls or is responsible for, through any
9 arrangement, the management and operation of a cable
10 system.

11 "Cable service" means:

- 12 (1) The one-way transmission to subscribers of video
13 programming or other programming service; and
14 (2) Subscriber interaction, if any, which is required for
15 the selection of video programming or other
16 programming service.

17 "Cable system" means any facility within this state
18 consisting of a set of closed transmission paths and associated
19 signal generation, reception, and control equipment that is
20 designed to provide cable service which includes video
21 programming and which is provided to multiple subscribers within
22 a community, but does not include a facility:



1 (1) That serves only to retransmit the television signals
2 of one or more television broadcast stations;

3 (2) That serves only subscribers in one or more multiple
4 unit dwellings under common ownership, control, or
5 management, unless that facility or facilities uses
6 any public right-of-way; or

7 (3) Of a telecommunications carrier subject in whole or in
8 part to the provisions of part II of this chapter,
9 except to the extent that that facility provides video
10 programming directly to subscribers.

11 "Carrier of last resort" means a telecommunications carrier
12 designated by the commissioner to provide universal service in a
13 given local exchange service area determined to be lacking in
14 effective competition.

15 "Department" means the department of commerce and consumer
16 affairs.

17 "Designated local exchange service area" means an area as
18 determined by the commissioner to be best served by designating
19 a carrier of last resort pursuant to section -43.

20 "Director" means the director of commerce and consumer
21 affairs.



1 "Facility" includes all real property, antenna, poles,
 2 supporting structures, wires, cables, conduits, amplifiers,
 3 instruments, appliances, fixtures, and other personal property
 4 used by a cable operator in providing service to its
 5 subscribers.

6 "Hawaii communications commission" or "commission" means
 7 the commission established in section -2.

8 "Hawaii communications commissioner" or "commissioner"
 9 means the commissioner established in section -3.

10 "Institution of higher education" means an academic college
 11 or university accredited by the Western Association of Schools
 12 and Colleges.

13 "Other programming service" means information that a cable
 14 operator makes available to all subscribers generally.

15 "Person" means an individual, partnership, association,
 16 joint stock company, trust, corporation, or governmental agency.

17 "Proposal" means a filing solicited by the commissioner.

18 "Public, educational, or governmental access facilities" or
 19 "PEG access facility" means:

- 20 (1) Channel capacity designated for public, educational,
- 21 or governmental uses; and



1 (2) Facilities and equipment for the use of that channel
2 capacity.

3 "Public, educational, or governmental access organization"
4 or "PEG access organization" means any nonprofit organization
5 designated by the commissioner to oversee production training
6 for, or the development, operation, supervision, management,
7 production, or broadcasting of programs for any channels
8 obtained under section -67, and to provide these services,
9 and any officers, agents, and employees of the organization with
10 respect to matters within the course and scope of their
11 employment by the organization.

12 "Public place" includes any property, building, structure,
13 or body of water to which the public has a right of access and
14 use.

15 "School" means an academic and non-college type regular or
16 special education institution of learning established and
17 maintained by the department of education or licensed and
18 supervised by that department.

19 "Service area" means the geographic area for which a cable
20 operator has been issued a cable franchise.

21 "Telecommunications carrier" or "telecommunications common
22 carrier" means any person that owns, operates, manages, or



1 controls any facility used to furnish telecommunications
2 services for profit to the public, or to classes of users as to
3 be effectively available to the public, engaged to provide
4 services, such as voice, data, image, graphics, and video
5 services, which make use of all or part of their transmission
6 facilities, switches, broadcast equipment, signaling, or control
7 devices.

8 "Telecommunications service" or "telecommunications" means
9 the offering of transmission between or among points specified
10 by a user, of information of the user's choosing, including
11 voice, data, image, graphics, and video without change in the
12 form or content of the information, as sent and received, by
13 means of electromagnetic transmission, or other similarly
14 capable means of transmission, with or without benefit of any
15 closed transmission medium, and does not include cable service
16 as defined in this section.

17 "Video programming" means programming provided by, or
18 generally considered comparable to programming provided by, a
19 television broadcast station.

20 § -2 **Hawaii communications commission; established.**

21 There is established within the department of commerce and



1 consumer affairs for administrative purposes to implement this
2 chapter.

3 § -3 **Hawaii communications commissioner.** The commission
4 shall be under the supervision and control of the Hawaii
5 communications commissioner, who shall be exempt from chapter 76
6 and shall be appointed by the governor, with the advice and
7 consent of the senate.

8 § -4 **Deputy commissioner.** The commissioner may appoint
9 a deputy commissioner, who shall be exempt from chapter 76. The
10 commissioner may, at pleasure, dismiss the deputy commissioner.
11 The deputy commissioner shall have the power to perform any act
12 or duty assigned by the commissioner and shall be acting
13 commissioner if, for any reason, the commissioner is unable to
14 perform the duties of commissioner, until a new commissioner is
15 appointed.

16 § -5 **Employment of assistants.** (a) The commissioner
17 may appoint and employ clerks, stenographers, agents, engineers,
18 accountants, and other assistants, with or without regard to
19 chapter 76; provided that:

20 (1) The commissioner may employ utility and cable analysts
21 exempt from chapter 76; and



1 (2) Each analyst shall possess at least the minimum
2 qualifications required of comparable experts in the
3 relevant industry.

4 (b) The commissioner may appoint and, at pleasure, dismiss
5 hearings officers as may be necessary, with or without regard to
6 chapter 76.

7 (c) The commissioner may, with the consent of the
8 director, use staff including clerks, stenographers, agents,
9 engineers, accountants, hearings officers, and other assistants
10 from the department, as the commissioner finds necessary for the
11 performance of the commissioner's functions, and define their
12 powers and duties.

13 (d) The commissioner may appoint one or more attorneys
14 independent of the attorney general who shall provide legal
15 counsel and advise to the commission and shall be exempt from
16 chapter 76. The commissioner shall define their powers and
17 duties and fix their compensation.

18 (e) With the consent of the director, the commissioner may
19 use from the department, one or more attorneys independent of
20 the attorney general who shall act as attorney(s) for the
21 commissioner and shall be exempt from chapter 76. The

1 commissioner shall define the powers and duties of the attorneys
2 and fix their compensation.

3 § -6 **Terms.** The commissioner shall be appointed for a
4 term of six years and shall not serve more than twelve
5 consecutive years. Each commissioner shall hold office until
6 the commissioner's successor is appointed and confirmed.

7 Section 26-34 shall not apply insofar as it relates to the
8 number of terms and consecutive number of years a person may be
9 appointed as commissioner.

10 § -7 **Salary.** The salary of the commissioner shall be
11 set equal to that of the chairperson of the public utilities
12 commission pursuant to section 269-2.

13 § -8 **General powers and duties.** (a) The commission
14 shall have the authority expressly conferred upon the commission
15 by, or reasonably implied from, the provisions of this chapter.

16 (b) The commission shall have general supervision over all
17 telecommunications carriers and cable operators and shall
18 perform the duties and exercise the powers imposed or conferred
19 upon it by this chapter.

20 (c) The commission has the authority to adopt rules
21 pursuant to chapter 91 necessary for the purposes of this
22 chapter.



1 (d) The commission shall have general supervision over
2 public, educational, or governmental access facilities and
3 public, educational, or governmental access organizations.

4 § -9 **Telecommunications development duties.** (a) The
5 commission shall ensure that all consumers are provided with
6 nondiscriminatory, reasonable, and equitable access to high
7 quality telecommunications network facilities and capabilities
8 that provide subscribers with sufficient network capacity to
9 access information services that provide a combination of voice,
10 data, image, and video, and that are available at just,
11 reasonable, and nondiscriminatory rates. No later than July 1,
12 2010, the commission shall investigate the extent to which
13 telecommunications services provided to residential and business
14 customers are available from multiple providers in Hawaii and
15 whether to reclassify telecommunications services provided to
16 residential and business customers as "fully competitive"
17 communications services.

18 (b) No later than July 1, 2011, the commission shall study
19 and develop a comprehensive policy to further deploy broadband
20 communications, including Internet access, in the state. The
21 study shall include consideration of communications by wire and
22 radio, including satellite and wireless services. The



1 commission shall develop plans and strategies to increase
2 broadband affordability, penetration, and competitive
3 availability in the state. The plans may include measures to
4 streamline access to public rights-of-way and public facilities
5 for broadband service providers and the permitting and approval
6 processes required for such access. The plans may also include
7 making low-cost, broadband-capable computers available to
8 eligible recipients. The plans may further include encouraging
9 or, with respect to state-owned property, requiring the sharing
10 of new infrastructure used for broadband services. The
11 commission shall regularly update and revise the commission's
12 studies and findings to ensure that the State's policies and
13 initiatives remain effective in promoting the State's interests.

14 (c) The commission shall develop programs and initiatives
15 intended to facilitate the deployment of broadband
16 communications services in the state and access to those
17 services by users in the state. These programs may include
18 initiatives by the State to facilitate and construct new
19 broadband communications infrastructure that can be shared by
20 competing providers of broadband services. The commission shall
21 fund these programs and initiatives using fees collected
22 pursuant to section -51 and deposited in the Hawaii



1 communications commission special fund pursuant to section
2 -21. In conjunction with the funds, or alternatively, the
3 commission may seek appropriations of funds from the State.

4 (d) The commission shall develop, and routinely update, a
5 state policy and formulate positions to be taken before federal
6 agencies regarding areas outside its jurisdiction. The
7 commission shall advocate on behalf of the State's broadband,
8 telecommunications, and video programming distribution interests
9 before the United States Congress, the executive branch of the
10 United States, and the Federal Communications Commission, and
11 locally before the governor, the state legislature, and county
12 governments. The commission shall also maintain close working
13 relationships with community groups, civic associations,
14 industry trade associations, industry leaders, and other
15 stakeholders to ensure that the State's interests and concerns
16 are understood.

17 § -10 **Investigative powers.** (a) The commission shall
18 have power to examine:

19 (1) The condition of each telecommunications carrier,
20 cable operator, and PEG access organization;

21 (2) The manner in which each telecommunications carrier,
22 cable operator, and PEG access organization is



- 1 operated with reference to the safety or accommodation
2 of the public;
- 3 (3) The safety, working hours, and wages of employees of
4 each telecommunications carrier, cable operator, and
5 PEG access organization;
- 6 (4) The fares and rates charged by each telecommunications
7 carrier, cable operator, and PEG access organization;
- 8 (5) The value of the physical property of each
9 telecommunications carrier, cable operator, and PEG
10 access organization;
- 11 (6) The issuance by each telecommunications carrier, cable
12 operator, and PEG access organization of stocks and
13 bonds, and the disposition of the proceeds thereof;
- 14 (7) The amount and disposition of income of each
15 telecommunications carrier, cable operator, and PEG
16 access organization;
- 17 (8) All financial transactions of each telecommunications
18 carrier, cable operator, and PEG access organization;
- 19 (9) The business relations of each telecommunications
20 carrier, cable operator, and PEG access organization
21 with other persons, companies, or corporations;



- 1 (10) Compliance of each telecommunications carrier, cable
2 operator, and PEG access organization with all
3 applicable state and federal laws and with the
4 provisions of its franchise, charter, and articles of
5 association, if any; and
- 6 (11) Classifications, rules, regulations, practices, and
7 service, and all matters of every nature affecting the
8 relations and transactions between each
9 telecommunications carrier, cable operator, and PEG
10 access organization and the public or persons or
11 corporations.
- 12 (b) The commission may investigate any person acting in
13 the capacity of or engaging in the business of a
14 telecommunications carrier within the State of Hawaii without
15 having a certificate of public convenience and necessity or
16 other authority previously obtained under and in compliance with
17 this chapter or the rules adopted under this chapter or chapter
18 269.
- 19 (c) Any investigation may be made by the commission on the
20 commissioner's own motion, and shall be made when requested by
21 the telecommunications carrier, cable operator, or PEG access
22 organization to be investigated, or by any person upon a sworn



1 written complaint to the commission, setting forth any prima
2 facie cause of complaint.

3 § -11 **Delegating powers.** Any power, duty, or function
4 vested in the commissioner by this chapter may be exercised,
5 discharged, or performed by any employee of the commission
6 employed pursuant to section -5(a), -5(b), or -5(d)
7 acting in the name and by the delegated authority of the
8 commission. Any power, duty, or function vested in the
9 commission by this chapter may be exercised, discharged, or
10 performed by any employee of the department utilized pursuant to
11 section -5(c) or -5(e) acting in the name and by the
12 delegated authority of the commission, with the approval of the
13 director.

14 § -12 **Annual report and register of orders.** The
15 commission shall prepare and present to the governor, through
16 the director, in the month of January in each year a report
17 respecting the commission's actions during the preceding fiscal
18 year. This report shall include:

19 (1) Summary information and analytical, comparative, and
20 trend data concerning major regulatory issues acted
21 upon and pending before the commission;



- 1 (2) Cases processed by the commission, including their
 - 2 dispositions;
 - 3 (3) Telecommunications carrier and cable operator
 - 4 operations, capital improvements, and rates;
 - 5 (4) Telecommunications carrier and cable operator
 - 6 performance in terms of efficiency and quality of
 - 7 services rendered;
 - 8 (5) Environmental matters having a significant impact upon
 - 9 telecommunications carriers and cable operators;
 - 10 (6) Actions of the federal government that affect the
 - 11 regulation of telecommunications carriers and cable
 - 12 operators in the state;
 - 13 (7) Long- and short-range plans and objectives of the
 - 14 commission; and
 - 15 (8) The commission's recommendations respecting
 - 16 legislation and other matters requiring executive and
 - 17 legislative consideration.
- 18 Copies of the annual reports shall be furnished by the governor
- 19 to the legislature. In addition, the commission shall establish
- 20 and maintain a register of all of the commission's orders and
- 21 decisions, which shall be open and readily available for public
- 22 inspection.



1 § -13 **Commission's investigative authorities.** In all
2 investigations made by the commission, and in all proceedings
3 before the commission, the commission shall have the same powers
4 respecting administering of oaths, compelling the attendance of
5 witnesses and the production of documentary evidence, examining
6 witnesses, and punishing for contempt, as are possessed by
7 circuit courts. In case of disobedience by any person to any
8 order of the commission, or any subpoena issued by the
9 commission, or of the refusal of any witness to testify to any
10 matter regarding which the witness may be questioned lawfully,
11 any circuit court, on application by the commission, shall
12 compel obedience as in case of disobedience of the requirements
13 of a subpoena issued from a circuit court or a refusal to
14 testify therein. No person shall be excused from testifying or
15 from producing any book, waybill, document, paper, electronic
16 record, or account in any investigation or inquiry by a hearing
17 before the commission when ordered to do so, upon the ground
18 that the testimony or evidence, book, waybill, document, paper,
19 electronic record, or account required of the person may tend to
20 incriminate the person or subject the person to penalty or
21 forfeiture; but no person shall be prosecuted for any crime,
22 punished for any crime, or subjected to any criminal penalty or



1 criminal forfeiture for or on account of any act, transaction,
2 matter, or thing concerning a matter about which the person has
3 testified under oath or produced documentary evidence pursuant
4 to a subpoena. Nothing herein shall be construed as in any
5 manner giving to any telecommunications carrier, cable operator,
6 PEG access organization, or any person, immunity of any kind.
7 The fees and traveling expenses of witnesses, when mandated to
8 appear, shall be the same as allowed witnesses in the circuit
9 courts and shall be paid by the State out of any appropriation
10 available for the expenses of the commission.

11 § -14 Notices. (a) Whenever an investigation is
12 undertaken and a hearing is scheduled by the commission,
13 reasonable notice in writing of such fact and of the subject or
14 subjects to be investigated shall be given to the
15 telecommunications carrier, cable operator, PEG access
16 organization, or the person concerned, and when based upon
17 complaints made to the commission as prescribed in section
18 -10, a copy of the complaint, and a notice in writing of the
19 date and place fixed by the commission for beginning the
20 investigation, shall be served upon the telecommunications
21 carrier, cable operator, PEG access organization, or the person



1 concerned, or other respondent and the complainant not less than
2 two weeks before the date designated for the hearing.

3 (b) Any notice provided pursuant to section -38(e),
4 shall plainly state the rate, fare, charge, classification,
5 schedule, rule, or practice proposed to be established,
6 abandoned, modified, or departed from and the proposed effective
7 date thereof and shall be given by filing the notice with the
8 commission and keeping it open for public inspection.

9 (c) Any public hearing held pursuant to section -38(e),
10 shall be a noticed public hearing or hearings on the island on
11 which the telecommunications carrier is situated. Notice of the
12 hearing, with the purpose thereof and the date, time, and place
13 at which it will open, shall be given not less than once in each
14 of three weeks statewide, the first notice being not less than
15 twenty-one days before the public hearing and the last notice
16 being not more than two days before the scheduled hearing. The
17 applicant or applicants shall notify their consumers or patrons
18 of the proposed change in rates and of the time and place of the
19 public hearing not less than one week before the set date, the
20 manner and the fact of notification to be reported to the
21 commission before the date of hearing.



1 § -15 **Right to be represented by counsel.** At any
2 investigation by or proceeding before the commission, the
3 telecommunications carrier, cable operator, PEG access
4 organization, or the person concerned, or other respondent or
5 party and any complainant or permitted intervenor shall have the
6 right to be present and represented by counsel, to present any
7 evidence desired, and to cross-examine any witness who may be
8 called.

9 § -16 **Commission may institute proceedings to enforce**
10 **chapter.** (a) If the commission is of the opinion that any
11 telecommunications carrier, cable operator, PEG access
12 organization, or any person is violating or neglecting to comply
13 with any provision of this chapter or of any rule, regulation,
14 order, or other requirement of the commission, or of any
15 provisions of its certificate of public convenience and
16 necessity, franchise, charter, contract, or articles of
17 association, if any, or that changes, additions, extensions, or
18 repairs are desirable in its plant or service to meet the
19 reasonable convenience or necessity of the public, or to ensure
20 greater safety or security, or that any rates, fares,
21 classifications, charges, or rules are unreasonable or
22 unreasonably discriminatory, or that in any way it is doing what



1 it ought not to do, or not doing what it ought to do, the
2 commission shall in writing inform the telecommunications
3 carrier, cable operator, PEG access organization, or the person
4 and may institute proceedings before it as may be necessary to
5 require the telecommunications carrier, cable operator, PEG
6 access organization, or the person to correct any deficiency.
7 In that event, the commission may by order direct the consumer
8 advocate to appear in the proceeding, to carry out the purposes
9 of this section. The commission may examine into any of the
10 matters referred to in section -10, notwithstanding that the
11 same may be within the jurisdiction of any court or other body;
12 provided that this section shall not be construed as in any
13 manner limiting or otherwise affecting the jurisdiction of any
14 court or other body. The commission may also revoke or amend
15 any provision of a certificate of public convenience and
16 necessity, franchise, charter, or articles of association, if
17 any, pursuant to section -31 or -71.

18 (b) In addition to any other available remedy, the
19 commission or its enforcement officer may issue citations to any
20 person acting in the capacity of or engaging in the business of
21 a telecommunications carrier or cable operator within the state,
22 without having a certificate of public convenience and



1 necessity, franchise, or other authority previously obtained
2 under and in compliance with this chapter or the rules adopted
3 thereunder. Citations issued and persons cited pursuant to this
4 subsection shall be subject to the following:

5 (1) The citation may contain an order of abatement and an
6 assessment of civil penalties as provided in section
7 -24. All penalties collected under this subsection
8 shall be deposited in the Hawaii communications
9 commission special fund established pursuant to
10 section -21. Service of a citation issued under
11 this subsection shall be made by personal service
12 whenever possible, or by certified mail, restricted
13 delivery, sent to the last known business or residence
14 address of the person cited;

15 (2) Any person served with a citation under this
16 subsection may submit a written request to the
17 commission for a hearing, within twenty days from the
18 receipt of the citation, with respect to the
19 violations alleged, the scope of the order of
20 abatement, and the amount of civil penalties assessed.
21 If the person cited under this subsection timely
22 notifies the commission of the request for a hearing,



1 the commission shall afford an opportunity for a
2 hearing under chapter 91. The hearing shall be
3 conducted by the commission or the commission may
4 designate a hearings officer to hold the hearing;

5 (3) If the person cited under this subsection does not
6 submit a written request to the commission for a
7 hearing within twenty days from the receipt of the
8 citation, the citation shall be deemed a final order
9 of the commission. The commission may apply to the
10 appropriate court for a judgment to enforce the
11 provisions of any final order, issued by the
12 commission or designated hearings officer pursuant to
13 this subsection, including the provisions for
14 abatement and civil penalties imposed. In any
15 proceeding to enforce the provisions of the final
16 order of the commission or designated hearings
17 officer, the commission need only show that the notice
18 was given, that a hearing was held or the time granted
19 for requesting the hearing has run without a request,
20 and a certified copy of the final order of the
21 commission or designated hearings officer; and



1 (4) If any party is aggrieved by the decision of the
2 commission or the designated hearings officer, the
3 party may appeal to the intermediate appellate court,
4 in the manner provided for in chapter 602; provided
5 that the operation of an abatement order shall not be
6 stayed on appeal unless specifically ordered by the
7 intermediate appellate court after applying the stay
8 criteria enumerated in section 91-14(c). The
9 sanctions and disposition authorized under this
10 subsection shall be separate and in addition to all
11 other remedies either civil or criminal provided in
12 any other applicable statutory provision. The
13 commission may adopt rules under chapter 91 as may be
14 necessary to fully effectuate this subsection.

15 § -17 Appeals. An appeal from an order of the
16 commission under this chapter shall lie, in the manner provided
17 for in chapter 602. Only a person aggrieved in a contested case
18 proceeding provided for in this chapter may appeal from a final
19 order, or a preliminary order if it is of the nature defined by
20 section 91-14(a). The commission may elect to be a party to all
21 matters, from which an order of the commission is appealed or
22 any action in any court of law seeking a mandamus, or injunctive



1 or other relief to compel compliance with this chapter, or any
2 rule or order adopted thereunder, or to restrain or otherwise
3 prevent or prohibit any illegal or unauthorized conduct in
4 connection therewith, and file appropriate responsive briefs or
5 pleadings. If there is no adverse party to the appeal, the
6 commission shall be a party and shall file responsive briefs or
7 pleadings in defending all orders. The appearance of the
8 commission as a party in judicial proceedings in no way limits
9 the participation of persons otherwise qualified to be parties
10 on appeal. The appeal shall not of itself stay the operation of
11 the order appealed from, but the appellate court may stay the
12 order after a hearing upon a motion therefor and may impose
13 conditions it deems proper, including but not limited to
14 requiring a bond, requiring that accounts be kept, or requiring
15 that other measures be taken as ordered to secure restitution of
16 the excess charges, if any, made during the pendency of the
17 appeal, in case the order appealed from is sustained, reversed,
18 or modified in whole or in part.

19 § -18 **Alternative dispute resolution.** The commission
20 may require the parties in any matter before the commission to
21 participate in nonbinding arbitration, mediation, or another
22 alternative dispute resolution process prior to the hearing.



1 § **-19 Perjury.** Any person who wilfully and knowingly
2 makes under oath any false statement in connection with any
3 investigation by or proceeding before the commission shall be
4 guilty of perjury and, upon conviction, shall be subject to the
5 penalty prescribed by law for the offense.

6 § **-20 Telecommunications carriers, cable operators, and**
7 **PEG access organizations, to furnish information.** Every
8 telecommunications carrier, cable operator, PEG access
9 organization, or other person subject to investigation by the
10 commission, shall at all times, upon request, furnish to the
11 commission all information that the commission may require
12 respecting any of the matters concerning which the commission is
13 given power to investigate, and shall permit the examination of
14 its books, records, contracts, maps, and other documents by the
15 commission or any person authorized by the commission in writing
16 to make the examination, and shall furnish the commission with a
17 complete inventory of property under its control or management
18 in the form as the commission may direct. Information and data
19 that the commission requires to be produced by a
20 telecommunications carrier, cable operator, PEG access
21 organization, or other person that is proprietary in nature or



1 qualifies as commercially sensitive information shall be treated
2 and protected as confidential by the commission.

3 § -21 **Hawaii communications commission special fund.**

4 (a) There is established in the state treasury a Hawaii
5 communications commission special fund to be administered by the
6 commission. The proceeds of the fund shall be used by the
7 commission and the division of consumer advocacy for all
8 expenses incurred in the administration of this chapter,
9 including, without limitation, the operation of programs
10 developed by the commission to develop and construct, or
11 encourage the construction of, broadband infrastructure, make
12 broadband capable services available to low income and
13 disadvantaged persons, or otherwise promote universal
14 availability of communications services. The expenditures of
15 the commission shall be in accordance with legislative
16 appropriations. On a quarterly basis an amount not to exceed
17 thirty per cent of the proceeds remaining in the fund shall be
18 allocated to the division of consumer advocacy and deposited in
19 the compliance resolution fund established pursuant to section
20 26-9(o).

21 (b) All moneys appropriated to, received, and collected by
22 the commission that are not otherwise pledged, obligated, or



1 required by law to be placed in any other special fund or
 2 expended for any other purpose shall be deposited into the
 3 Hawaii communications commission special fund including but not
 4 limited to all moneys received and collected by the commission
 5 pursuant to sections -24, -51, and 92-21.

6 (c) The commission shall submit a report to the
 7 legislature detailing all funds received and all moneys
 8 disbursed out of the fund prior to the convening of each regular
 9 session.

10 § -22 **Consumer advocate.** As the director serves as the
 11 consumer advocate to the public utilities commission pursuant to
 12 sections 269-51 through 269-55, the commission shall recognize
 13 the director as the consumer advocate in hearings and
 14 proceedings before the commission.

15 § -23 **Communications advisory committee.** There is
 16 established the communications advisory committee. The
 17 committee shall consist of five members appointed by the
 18 governor as provided in section 26-34. The committee shall
 19 advise the commission, telecommunications carriers, and cable
 20 operators on matters within the jurisdiction of this chapter at
 21 the request of the commission or any telecommunications carrier
 22 or cable operator. The members of the committee shall serve



1 without pay but shall be entitled to reimbursement for necessary
2 expenses, including travel expenses, while attending meetings
3 and while in discharge of their duties.

4 § **-24 Penalties.** (a) Any telecommunications carrier,
5 cable operator, or PEG access organization violating,
6 neglecting, or failing in any particular way to conform to or
7 comply with this chapter or any lawful order of the commission,
8 including but not limited to the grounds specified in section
9 -71 for cable operators and PEG access organizations, shall
10 be subject to a civil penalty not to exceed \$25,000 for each day
11 the violation, neglect, or failure continues, to be assessed by
12 the commission after a hearing in accordance with chapter 91.
13 The commission may order the telecommunications carrier or cable
14 operator to cease carrying on its business while the violation,
15 neglect, or failure continues.

16 (b) Notwithstanding subsection (a), any person acting in
17 the capacity of or engaging in the business of a
18 telecommunications carrier or a cable operator in the state
19 without having a certificate of public convenience and
20 necessity, franchise, or other authority previously obtained
21 under and in compliance with this chapter and the rules adopted
22 thereunder may be subject to a civil penalty not to exceed



1 \$5,000 for each offense, and, in the case of a continuing
2 violation, \$5,000 for each day that uncertified activity
3 continues.

4 (c) Upon written application filed within fifteen days
5 after service of an order imposing a civil penalty pursuant to
6 this section, the commission may remit or mitigate the penalty
7 upon terms as it deems proper.

8 (d) If any civil penalty imposed pursuant to this section
9 is not paid within the period as the commission may direct, the
10 attorney general shall institute a civil action for recovery of
11 the same in circuit court.

12 (e) Any penalty assessed under this section shall be in
13 addition to any other costs, expenses, or payments for which the
14 telecommunications carrier, cable operator, or PEG access
15 organization is responsible under this chapter.

16 **PART II. TELECOMMUNICATIONS**

17 **§ -31 Certificates of public convenience and necessity.**

18 (a) No telecommunications carrier, as defined in section -1,
19 shall commence its business without first having obtained from
20 the commission a certificate of public convenience and
21 necessity. Applications for certificates shall be made in
22 writing to the commission and shall comply with the requirements



1 prescribed in the commission's rules. The application for a
2 certificate of public convenience and necessity shall include:

- 3 (1) The type of service to be performed;
- 4 (2) The geographical scope of the operation;
- 5 (3) The type of equipment to be employed in the service;
- 6 (4) The names of competing telecommunications carriers for
7 the proposed service;
- 8 (5) A statement of the applicant's financial ability to
9 render the proposed service;
- 10 (6) A current financial statement of the applicant; and
- 11 (7) The rates or charges proposed to be charged, including
12 the rules governing the proposed service.

13 (b) A certificate shall be issued to any qualified
14 applicant, authorizing the whole or any part of the operations
15 covered by the application, if it is found that the applicant is
16 fit, willing, and able to properly perform the proposed services
17 and to conform to the terms, conditions, and rules adopted by
18 the commission, and that the proposed service is, or will be,
19 required by the present or future public convenience and
20 necessity; otherwise the application shall be denied. Any
21 certificate issued shall specify the service to be rendered and
22 there shall be attached to the exercise of the privileges



1 granted by the certificate at the time of issuance and from time
2 to time thereafter, reasonable conditions and limitations as a
3 public convenience and necessity may require. The
4 reasonableness of the rates, charges, and tariff rules proposed
5 by the applicant shall be determined by the commission during
6 the same proceeding examining the present and future
7 conveniences and needs of the public and qualifications of the
8 applicant, in accordance with the standards set forth in section
9 -38.

10 (c) No telecommunications carrier that, as of July 1,
11 2009, holds a valid certificate of public convenience and
12 necessity, franchise, or charter enacted or granted by the
13 legislative or executive authority of the State or its
14 predecessor governments, or has a bona fide operation as a
15 telecommunications carrier recognized by the public utilities
16 commission, shall be required to obtain, as a result of the
17 enactment of this Act, a new certificate of public convenience
18 and necessity under this section.

19 (d) Any certificate, upon application of the holder and at
20 the discretion of the commission, may be amended, suspended, or
21 revoked, in whole or in part. The commission after notice and
22 hearing may suspend, amend, or revoke any certificate in part or



1 in whole, if the holder is found to be in wilful violation of
2 any of the provisions of this chapter or with any lawful order
3 or rule of the commission adopted thereunder, or with any term,
4 condition, or limitation of the certificate.

5 § -32 **Location of records.** A telecommunications carrier
6 shall keep and maintain records, books, papers, accounts, and
7 other documents as the commission may determine are necessary to
8 effectively regulate the telecommunications carrier, that can be
9 made immediately accessible when requested by the commission;
10 provided that the original copies are made available when
11 requested by the commission.

12 § -33 **Annual financial reports.** Each annual financial
13 report required to be filed with the commission by
14 telecommunications carriers shall include a certification that
15 the report conforms with the applicable uniform system of
16 accounts adopted by the commission. The commission shall adopt
17 a uniform system of accounts for this purpose.

18 § -34 **Telecommunications providers and services.** (a)
19 Notwithstanding any provision of this chapter to the contrary,
20 the commission, upon the commission's own motion or upon the
21 application of any person, and upon notice and hearing, may
22 exempt a telecommunications carrier or a telecommunications



1 service from any or all of the provisions of this chapter,
2 except the requirements of section -36, upon a determination
3 that the exemption is in the public interest. In determining
4 whether an exemption is in the public interest, the commission
5 shall consider whether the exemption promotes state policies in
6 telecommunications, the development, maintenance, and operation
7 of effective and economically efficient telecommunications
8 services, and the furnishing of telecommunications services at
9 just and reasonable rates and in a fair manner in view of the
10 needs of the various customer segments of the telecommunications
11 industry. Among the specific factors the commission may
12 consider are:

- 13 (1) The responsiveness of the exemption to changes in the
14 structure and technology of the State's
15 telecommunications industry;
- 16 (2) The benefits accruing to the customers and users of
17 the exempt telecommunications carrier or service;
- 18 (3) The impact of the exemption on the quality,
19 efficiency, and availability of telecommunications
20 services;



- 1 (4) The impact of the exemption on the maintenance of
2 fair, just, and reasonable rates for
3 telecommunications services;
- 4 (5) The likelihood of prejudice or disadvantage to
5 ratepayers of basic local exchange service resulting
6 from the exemption;
- 7 (6) The effect of the exemption on the preservation and
8 promotion of affordable, universal, basic
9 telecommunications services as those services are
10 determined by the commission;
- 11 (7) The resulting subsidization, if any, of the exempt
12 telecommunications service or provider by nonexempt
13 services;
- 14 (8) The impact of the exemption on the availability of
15 diversity in the supply of telecommunications services
16 throughout the State of Hawaii;
- 17 (9) The improvements in the regulatory system to be gained
18 from the exemption, including the reduction in
19 regulatory delays and costs;
- 20 (10) The impact of the exemption on promoting innovations
21 in telecommunications services;



1 (11) The opportunity provided by the exemption for
2 telecommunications carriers to respond to competition;

3 (12) The potential for the exercise of substantial market
4 power by the exempt provider or by a provider of the
5 exempt telecommunications service; and

6 (13) The impact of the exemption on the competitive
7 availability and affordability of broadband and other
8 advanced services to consumers.

9 (b) The commission shall expedite, where practicable, the
10 regulatory process with respect to exemptions and shall adopt
11 guidelines under which each provider of an exempted service
12 shall be subject to similar terms and conditions.

13 (c) The commission may condition or limit any exemption as
14 the commission deems necessary in the public interest. The
15 commission may provide a trial period for any exemption and may
16 terminate the exemption or continue it for a period and under
17 conditions and limitations as the commission deems appropriate.

18 (d) The commission may require a telecommunications
19 provider to apply for a certificate of public convenience and
20 necessity pursuant to section -31; provided that the
21 commission may waive any application requirement whenever it
22 deems the waiver to be in furtherance of the purposes of this



1 section. The exemptions under this section may be granted in a
2 proceeding for certification or in a separate proceeding.

3 (e) The commission may waive other regulatory requirements
4 under this chapter applicable to telecommunications carriers
5 when it determines that competition will serve the same purpose
6 as public interest regulation.

7 (f) If any provider of an exempt telecommunications
8 service or any exempt telecommunications carrier elects to
9 terminate its service, it shall provide notice of this to its
10 customers, the commission, and every telecommunications carrier
11 providing basic local exchange service in this state. The
12 notice shall be in writing and given not less than six months
13 before the intended termination date. Upon termination of
14 service by a provider of an exempt service or by an exempt
15 provider, the appropriate telecommunications carrier providing
16 basic local exchange service shall ensure that all customers
17 affected by the termination receive basic local exchange
18 service. The commission, upon notice and hearing or by rule,
19 shall determine the party or parties who shall bear the cost, if
20 any, of access to the basic local exchange service by the
21 customers of the terminated exempt service.



1 (g) Upon the petition of any person or upon the
2 commission's own motion, the commission may rescind any
3 exemption or waiver granted under this section if, after notice
4 and hearing, the commission finds that the conditions prompting
5 the granting of the exemption or waiver no longer apply, or that
6 the exemption or waiver is no longer in the public interest, or
7 that the telecommunications carrier has failed to comply with
8 one or more of the conditions of the exemption or applicable
9 statutory or regulatory requirements.

10 (h) For the purposes of this section, the commission, upon
11 determination that any area of the State has less than adequate
12 telecommunications service, shall require the existing
13 telecommunications carrier to show cause as to why the
14 commission should not authorize an alternative
15 telecommunications carrier for that area under the terms and
16 conditions of this section.

17 § -35 **Application of this chapter.** This chapter shall
18 not apply to commerce with foreign nations, or commerce with the
19 several states of the United States, except insofar as the same
20 may be permitted under the Constitution and laws of the United
21 States; nor shall it apply to telecommunications carriers owned
22 and operated by the State.



1 § -36 **Obligations of telecommunications carriers.** In
2 accordance with conditions and guidelines established by the
3 commission to facilitate the introduction of competition into
4 the State's telecommunications marketplace, each
5 telecommunications carrier, upon bona fide request, shall
6 provide services or information services, on reasonable terms
7 and conditions, to an entity seeking to provide intrastate
8 telecommunications, including:

- 9 (1) Interconnection to the telecommunications carrier's
10 telecommunications facilities at any technically
11 feasible and economically reasonable point within the
12 telecommunications carrier's network so that the
13 networks are fully interoperable;
- 14 (2) The current interstate tariff as the access rate until
15 such time that the commission may adopt a new
16 intrastate local service interconnection tariff
17 pursuant to section -38;
- 18 (3) Nondiscriminatory and equal access to any
19 telecommunications carrier's telecommunications
20 facilities, functions, and the information necessary
21 for the transmission and routing of any



1 telecommunications service and the interoperability of
2 both carriers' networks;

3 (4) Nondiscriminatory access among all telecommunications
4 carriers, where technically feasible and economically
5 reasonable, and where safety or the provision of
6 existing electrical service is not at risk, to the
7 poles, ducts, conduits, and rights-of-way owned or
8 controlled by the telecommunications carrier, or the
9 commission shall authorize access to electric
10 utilities' poles as provided by the joint pole
11 agreement, tariffs, rules, orders, or Federal
12 Communications Commission rules and regulations;

13 (5) Nondiscriminatory access to the network functions of
14 the telecommunications carrier's telecommunications
15 network, which shall be offered on an unbundled,
16 competitively neutral, and cost-based basis;

17 (6) Telecommunications services and network functions
18 without unreasonable restrictions on the resale or
19 sharing of those services and functions; and

20 (7) Nondiscriminatory access of customers to the
21 telecommunications carrier of their choice without the
22 need to dial additional digits or access codes, where



1 technically feasible. The commission shall determine
2 the equitable distribution of costs among the
3 authorized telecommunications carriers that will use
4 such access and shall establish rules to ensure
5 access.

6 Where possible, telecommunications carriers shall enter
7 into negotiations to agree on the provision of services or
8 information services without requiring intervention by the
9 commission; provided that any agreement shall be subject to
10 review by the commission to ensure compliance with the
11 requirements of this section.

12 § -37 **Compensation agreements.** The commission shall
13 ensure that telecommunications carriers are compensated on a
14 fair basis for termination of telecommunications services on
15 each other's networks, taking into account, among other things,
16 reasonable and necessary costs to each telecommunications
17 carrier of providing the services in question.
18 Telecommunications carriers may negotiate compensation
19 arrangements, which may include "bill and keep," mutual and
20 equal compensation, or any other reasonable division of revenues
21 pending tariff access rates to be set by the commission. Upon



1 failure of the negotiations, the commission shall determine the
2 proper methodology and amount of compensation.

3 § -38 Regulation of telecommunications carrier rates;
4 ratemaking procedures. (a) All rates, fares, charges,
5 classifications, schedules, rules, and practices made, charged,
6 or observed by any telecommunications carrier or by two or more
7 telecommunications carriers jointly shall be just and reasonable
8 and shall be filed with the commission. The rates, fares,
9 classifications, charges, and rules of every telecommunications
10 carrier shall be published by the telecommunications carrier in
11 such manner as the commission may require, and copies shall be
12 furnished to any person on request.

13 (b) The commission shall promptly examine rate regulation
14 alternatives including rate-of-return ratemaking and price cap
15 ratemaking, and may issue an order imposing alternative rate
16 regulation procedures. The examination shall include pursuing
17 incentive regulation with local exchange carriers, one goal of
18 which shall be to increase broadband competitive availability
19 and affordability to consumers in the state.

20 (c) The commission may waive rate regulation and allow
21 telecommunications carriers to have pricing flexibility for



1 services that the commission determines to be effectively
2 competitive; provided that the rates for:

3 (1) Basic telephone service and for services that are not
4 effectively competitive are regulated and remain just,
5 reasonable, and nondiscriminatory; and

6 (2) Universal service is preserved and advanced.

7 (d) Unless directed otherwise by the commission, a
8 telecommunications carrier may charge any rate for a service
9 less than or equal to the rate for the service included in the
10 telecommunications carrier's filed tariff. The rate charged
11 shall be available at the same terms for all customers in all
12 geographic locations within the telecommunications carrier's
13 service area.

14 (e) Unless and until the commission waives this
15 requirement, no rate, fare, charge, classification, schedule,
16 rule, or practice, other than one established pursuant to an
17 automatic rate adjustment clause previously approved by the
18 commission, or one that constitutes an increase in service
19 without a corresponding change in any rate, fare, or charge,
20 shall be established, abandoned, modified, or departed from, by
21 any telecommunications carrier, except after thirty days' notice
22 to the commission as prescribed in section -14(b), and prior



1 approval by the commission for any increases in rates, fares, or
2 charges. The commission, in the commission's discretion and for
3 good cause shown, may allow any rate, fare, charge,
4 classification, schedule, rule, or practice to be established,
5 abandoned, modified, or departed from upon notice other than
6 that provided for in sections -14(b) and -14(c). Unless
7 and until the commission waives this requirement, a contested
8 case hearing shall be held in connection with any increase in
9 rates, and the hearing shall be preceded by a public hearing as
10 prescribed in section -14(c), at which the consumers or
11 patrons of the telecommunications carrier may present testimony
12 to the commission concerning the increase. The commission, upon
13 notice to the telecommunications carrier, may:

14 (1) Suspend the operation of all or any part of the
15 proposed rate, fare, charge, classification, schedule,
16 rule, or practice or any proposed abandonment or
17 modification thereof or departure therefrom;

18 (2) After a hearing, by order:

19 (A) Regulate, fix, and change all such rates, fares,
20 charges, classifications, schedules, rules, and
21 practices so that the same shall be just and
22 reasonable;



- 1 (B) Prohibit rebates and unreasonable discrimination
2 between localities or between users or consumers
3 under substantially similar conditions;
- 4 (C) Regulate the manner in which the property of
5 every telecommunications carrier is operated with
6 reference to the safety and accommodation of the
7 public;
- 8 (D) Prescribe the form and method of keeping
9 accounts, books, records, and accounting systems
10 for the telecommunications carrier;
- 11 (E) Regulate the return upon the telecommunications
12 carrier's property;
- 13 (F) Regulate the incurring of indebtedness relating
14 to the telecommunications carrier's business; and
- 15 (G) Regulate the financial transactions of the
16 telecommunications carrier;
- 17 and
- 18 (3) Do all things that are necessary and in the exercise
19 of the commission's power and jurisdiction, all of
20 which as so ordered, regulated, fixed, and changed,
21 are just and reasonable, and provide a fair return on
22 the property of the telecommunications carrier



1 actually used or useful for telecommunications carrier
2 purposes.

3 (f) The commission may in the commission's discretion,
4 after public hearing and upon showing by a telecommunications
5 carrier of probable entitlement and financial need, authorize
6 temporary increases in rates, fares, and charges; provided that
7 the commission shall require by order the telecommunications
8 carrier to return, in the form of an adjustment to rates, fares,
9 or charges to be billed in the future, any amounts with
10 interest, at a rate equal to the rate of return on the
11 telecommunications carrier's rate base found to be reasonable by
12 the commission, received by reason of continued operation that
13 are in excess of the rates, fares, or charges finally determined
14 to be just and reasonable by the commission. Interest on any
15 excess shall commence as of the date that any rate, fare, or
16 charge goes into effect that results in the excess and shall
17 continue to accrue on the balance of the excess until returned.

18 (g) In any case of two or more organizations, trades, or
19 businesses (whether or not incorporated, whether or not
20 organized in the State of Hawaii, and whether or not affiliated)
21 owned or controlled directly or indirectly by the same
22 interests, the commission may distribute, apportion, or allocate



1 gross income, deductions, credits, or allowances between or
 2 among the organizations, trades, or businesses, if it determines
 3 that the distribution, apportionment, or allocation is necessary
 4 to adequately reflect the income of any such organizations,
 5 trades, or businesses to carry out the regulatory duties imposed
 6 by this section.

7 (h) Notwithstanding any law to the contrary, for a
 8 telecommunications carrier having annual gross revenues of less
 9 than \$2,000,000, the commission may make and amend the
 10 commission's rules and procedures to provide the commission with
 11 sufficient facts necessary to determine the reasonableness of
 12 the proposed rates without unduly burdening the
 13 telecommunications carrier company and its customers.

14 § -39 **Cross-subsidies.** (a) The commission shall ensure
 15 that noncompetitive services shall not cross-subsidize
 16 competitive services. Cross-subsidization shall be deemed to
 17 have occurred:

18 (1) If any competitive service is priced below the total
 19 service long-run incremental cost of providing the
 20 service as determined by the commission in subsection

21 (b); or



1 (2) If competitive services, taken as a whole, fail to
2 cover their direct and allocated joint and common
3 costs as determined by the commission.

4 (b) The commission shall determine the methodology and
5 frequency with which telecommunications carriers calculate total
6 service long-run incremental cost and fully allocated joint and
7 common costs. The total service long-run incremental cost of a
8 service shall include an imputation of an amount equal to the
9 contribution that the telecommunications carrier receives from
10 noncompetitive inputs used by alternative providers in providing
11 the same or equivalent service.

12 § -40 **Separate affiliate audits.** The commission shall
13 receive the results of joint federal and state audits required
14 for companies to operate separate affiliates, and obtain and pay
15 for a joint federal and state audit every two years from an
16 independent auditor pursuant to Title 47 United States Code
17 Section 272(d). The commission shall make the results of joint
18 federal and state audits available for public inspection.

19 § -41 **Unfair or deceptive acts or practices.** The
20 commission shall adopt rules prohibiting unfair or deceptive
21 acts or practices by telecommunications carriers and
22 telecommunications service providers including resellers and



1 aggregators of telecommunications services. Unfair or deceptive
2 acts or practices may include unauthorized changes in subscriber
3 carrier selections.

4 § **-42 Lifeline telephone rates.** (a) The commission
5 shall implement a program to achieve lifeline telephone rates
6 for residential telephone users. The commission may achieve
7 lifeline telephone rates by using funds collected pursuant to
8 section -51 and deposited in the Hawaii communications
9 commission special fund pursuant to section -21. In
10 conjunction with such funds, or alternatively, the commission
11 may seek appropriations of funds from the State.

12 (b) The commission shall require every telecommunications
13 carrier providing local telephone service to file a schedule of
14 rates and charges providing a rate for lifeline telephone
15 subscribers.

16 (c) Nothing in this section shall preclude the commission
17 from changing any rate established pursuant to subsection (a)
18 either specifically or pursuant to any general restructuring of
19 all telephone rates, charges, and classifications.

20 (d) For the purposes of this section, "lifeline telephone
21 rate" means a discounted rate for residential telephone users



1 identified as elders with limited income and the handicapped
2 with limited income as designated by the commission.

3 § **-43 Carriers of last resort.** (a) The commission may
4 define and designate local exchange service areas where the
5 commission has determined that a single provider will be the
6 most appropriate way to ensure service for these areas.

7 (b) The commission shall determine the level of service
8 that is appropriate for each designated local exchange service
9 area and shall invite telecommunications providers to bid for a
10 level of service that is appropriate. The successful bidder
11 shall be designated as the carrier of last resort for the
12 designated local exchange service area for a period of time and
13 upon conditions set by the commission. In determining the
14 successful bidder, the commission shall take into consideration
15 the level of service to be provided, the investment commitment,
16 and the length of the agreement, in addition to the other
17 qualifications of the bidder.

18 (c) The commission shall adopt rules pursuant to
19 chapter 91 to carry out the provisions of this section or adopt
20 the rules provided in chapter 81 of the Hawaii Administrative
21 Rules, which were in effect on July 1, 2009.



1 § -44 **Telecommunications relay services for the deaf,**
2 **persons with hearing disabilities, and persons with speech**
3 **disabilities.** (a) The commission shall implement intrastate
4 telecommunications relay services for the deaf, persons with
5 hearing disabilities, and persons with speech disabilities.
6 (b) The commission shall investigate the availability of
7 experienced providers of quality telecommunications relay
8 services for the deaf, persons with hearing disabilities, and
9 persons with speech disabilities. The provision of these
10 telecommunications relay services to be rendered on or after
11 July 1, 1992, shall be awarded by the commission to the provider
12 or providers the commission determines to be best qualified to
13 provide these services. In reviewing the qualifications of the
14 provider or providers, the commission shall consider the factors
15 of cost, quality of services, and experience, and other factors
16 as the commission deems appropriate.
17 (c) If the commission determines that the
18 telecommunications relay service can be provided in a cost-
19 effective manner by a service provider or service providers, the
20 commission may require every intrastate telecommunications
21 carrier to contract with the provider or providers for the



1 provision of the telecommunications relay service under the
2 terms established by the commission.

3 (d) The commission may establish a surcharge to collect
4 customer contributions for telecommunications relay services
5 required under this section.

6 (e) The commission may adopt rules to establish a
7 mechanism to recover the costs of administering and providing
8 telecommunications relay services required under this section.

9 (f) The commission shall require every intrastate
10 telecommunications carrier to file a schedule of rates and
11 charges and every provider of telecommunications relay service
12 to maintain a separate accounting for the costs of providing
13 telecommunications relay services for the deaf, persons with
14 hearing disabilities, and persons with speech disabilities.

15 (g) Nothing in this section shall preclude the commission
16 from changing any rate established pursuant to this section
17 either specifically or pursuant to any general restructuring of
18 all telephone rates, charges, and classifications.

19 (h) As used in this section:

20 "Telecommunications relay services" means telephone
21 transmission services that provide an individual who has a
22 hearing or speech disability, the ability to engage in



1 communication by wire or radio with a hearing individual in a
2 manner that is functionally equivalent to the ability of an
3 individual who does not have a hearing or speech disability to
4 communicate using wire or radio voice communication services.

5 "Telecommunications relay services" includes services that
6 enable two-way communication using text telephones or other
7 non-voice terminal devices, speech-to-speech services, video
8 relay services, and non-English relay services.

9 § -45 **Telecommunications number portability.** The
10 commission shall ensure that telecommunications number
11 portability within an exchange is available, upon request, as
12 soon as technically feasible and economically reasonable. An
13 impartial entity shall administer telecommunications numbering
14 and make the numbers available on an equitable basis.

15 § -46 **Emergency telephone service; capital costs;**
16 **ratemaking.** (a) A telecommunications carrier providing local
17 exchange telecommunications services may recover the capital
18 cost and associated operating expenses of providing a statewide
19 enhanced 911 emergency telephone service in the public switched
20 telephone network, through a telephone line surcharge.

21 (b) The commission shall require every telecommunications
22 carrier providing statewide enhanced 911 emergency telephone



1 service to maintain a separate accounting of the costs of
 2 providing an enhanced 911 emergency service and the revenues
 3 received from related surcharges. The commission shall further
 4 require that every telecommunications carrier imposing a
 5 surcharge shall identify on all customer billing statements the
 6 separate line item for enhanced 911 emergency service.

7 (c) This section shall not preclude the commission from
 8 changing any rate, established pursuant to this section, either
 9 specifically or pursuant to any general restructuring of all
 10 telephone rates, charges, and classifications.

11 § -47 **Issuance of securities.** A telecommunications
 12 carrier corporation may, on securing the prior approval of the
 13 commission, and not otherwise, issue stocks and stock
 14 certificates, bonds, notes, and other evidences of indebtedness,
 15 payable at periods of more than twelve months after the date
 16 thereof, for the following purposes and no other, namely:

- 17 (1) For the acquisition of property;
- 18 (2) For the construction, completion, extension, or
 19 improvement of or addition to its facilities or
 20 service;
- 21 (3) For the discharge or lawful refunding of its
 22 obligations;



- 1 (4) For the reimbursement of moneys actually expended from
2 income or from any other moneys in its treasury not
3 secured by or obtained from the issue of its stocks or
4 stock certificates, or bonds, notes, or other
5 evidences of indebtedness; and
- 6 (5) For any of the aforesaid purposes except maintenance
7 of service, replacements, and substitutions not
8 constituting capital expenditure in cases where the
9 corporation has kept its accounts for such
10 expenditures in such manner as to enable the
11 commission to ascertain the amount of moneys so
12 expended and the purposes for which the expenditures
13 were made, and the sources of the funds in its
14 treasury applied to the expenditures.

15 As used in this section, "property" and "facilities" mean
16 property and facilities used in all operations of a
17 telecommunications carrier corporation whether or not included
18 in its operations or rate base. A telecommunications carrier
19 corporation may not issue securities to acquire property or to
20 construct, complete, extend, improve, or add to its facilities
21 or service if the commission determines that the proposed



1 purpose will have a materially adverse effect on its
2 telecommunications carrier operations.

3 All stocks and every stock certificate, bond, note, or
4 other evidence of indebtedness of a telecommunications carrier
5 corporation not payable within twelve months, issued without an
6 order of the commission authorizing the same, then in effect,
7 shall be void.

8 § -48 Issuance of voting stock; restrictions. (a) No
9 more than twenty-five per cent of the issued and outstanding
10 voting stock of a corporation that is organized under the laws
11 of the State and that owns, controls, operates, or manages any
12 plant or equipment, or any part thereof, as a telecommunications
13 carrier within the definition set forth in section -1 shall
14 be held, whether directly or indirectly, by any single foreign
15 corporation or any single nonresident alien, or held by any
16 person, unless prior written approval is obtained from the
17 commission, or unless a transaction is exempt. An exempt
18 transaction is:

- 19 (1) Any purchase or sale by an underwriter; or
- 20 (2) A transaction to acquire shares of a corporation with
21 less than one hundred shareholders and less than
22 \$1,000,000 in assets.



1 Every assignment, transfer, contract, or agreement for
2 assignment or transfer of any shares in violation of this
3 section shall be void and of no effect; and no such transfer
4 shall be made on the books of the corporation. Nothing in this
5 section shall be construed to make illegal the holding of stock
6 lawfully held, directly or indirectly, prior to June 4, 1977.

7 (b) For the purposes of this section:

8 "Foreign corporation" means a foreign corporation as
9 defined in section 235-1 or a corporation in which a majority of
10 the voting stock is held by a single foreign corporation as
11 defined in section 235-1.

12 "Nonresident alien" means a person not a citizen of the
13 United States who is not defined as a resident alien by the
14 United States Citizenship and Immigration Services.

15 **§ -49 Acquirement of stock of another telecommunications**
16 **carrier.** No person or entity shall purchase or acquire, take or
17 hold, any part of the capital stock of any telecommunications
18 carrier corporation, organized or existing under or by virtue of
19 the laws of the State, without having been first authorized to
20 do so by the order of the commission. Every assignment,
21 transfer, contract, or agreement for assignment or transfer of
22 any stock by or through any person or corporation to any



1 corporation or otherwise in violation of this section shall be
2 void and of no effect; and no such transfer shall be made on the
3 books of any telecommunications carrier. Nothing in this
4 section shall be construed to make illegal the holding of stock
5 lawfully acquired before July 1, 1933.

6 § -50 **Merger and consolidation of telecommunications**
7 **carriers.** No telecommunications carrier corporation shall sell,
8 lease, assign, mortgage, or otherwise dispose of or encumber the
9 whole or any part of its road, line, plant, system, or other
10 property necessary or useful in the performance of its duties to
11 the public, or any franchise or permit, or any right thereunder,
12 nor by any means, directly or indirectly, merge or consolidate
13 with any other person or entity without first having secured
14 from the commission an order authorizing it so to do. Every
15 sale, lease, assignment, mortgage, disposition, encumbrance,
16 merger, or consolidation, made other than in accordance with the
17 order of the commission shall be void.

18 § -51 **Finances; regulatory fee.** (a) There shall be
19 paid to the commission in each of the months of July and
20 December of each year, by each telecommunications carrier
21 subject to this chapter, a fee set by the commission not to
22 exceed one-fourth of one per cent of the gross income from the



1 telecommunications carrier's business during the preceding year,
2 or the sum of \$30, whichever is greater. The commission shall
3 set the fee amount based on its projected budget for the year to
4 administer and enforce this chapter. This fee shall be
5 deposited with the director of finance to the credit of the
6 Hawaii communications commission special fund created pursuant
7 to section -21.

8 (b) Each telecommunications carrier that pays a fee under
9 subsection (a) may impose a surcharge to recover the amount paid
10 above one-eighth of one per cent of gross income. The surcharge
11 imposed shall not be subject to the notice, hearing, and
12 approval requirements of this chapter; provided that the
13 surcharge may be imposed by the telecommunications carrier only
14 after thirty days' notice to the commission.

15 § -52 **Injury to carrier property.** Any person who
16 injures or destroys, through want of proper care, any necessary
17 or useful facility, equipment, or property of any
18 telecommunications carrier shall be liable to the
19 telecommunications carrier for all damages sustained thereby.
20 The measure of damages to the facility, equipment, or property
21 injured or destroyed shall be the cost to repair or replace the
22 property injured or destroyed including direct and allocated



1 costs for labor, materials, supervision, supplies, tools, taxes,
 2 transportation, administrative and general expense, and other
 3 indirect or overhead expenses, less credit, if any, for salvage.
 4 The specifying of the measure of damages for the facility,
 5 equipment, or property shall not preclude the recovery of other
 6 damages occasioned thereby as may be authorized by law.

7 § -53 **One call center; advance warning to excavators.**

8 To finance the establishment and operation of the one call
 9 center, pursuant to chapter 269E, and the administrative costs
 10 of the commission, the commission shall direct
 11 telecommunications carriers to pay to the public utilities
 12 commission a fee in an amount and at a schedule determined by
 13 the public utilities commission.

14 **PART III. CABLE**

15 § -61 **Issuance of cable franchises and regulation of**
 16 **cable operators by the commission.** The commission shall be
 17 empowered to issue cable franchises and otherwise administer and
 18 enforce this chapter.

19 § -62 **Cable franchise required.** (a) No person shall
 20 construct, operate, or acquire a cable system, or extend an
 21 existing cable system outside its designated service area,



1 without first obtaining a cable franchise as provided in this
2 chapter.

3 (b) No cable operator that, as of July 1, 2009, holds a
4 franchise or charter enacted or granted by the legislative or
5 executive authority of the State or its predecessor governments,
6 or has a bona fide operation as a cable operator heretofore
7 recognized by the department, shall be required to obtain, as a
8 result of the enactment of this Act, a new franchise under this
9 section.

10 § -63 **Application or proposal for cable franchise; fee;**
11 **certain requirements.** (a) No cable franchise shall be issued
12 except upon written application or proposal therefor to the
13 commission, accompanied by a fee set by the commission.

14 (b) An application for issuance of a cable franchise shall
15 be made in a form prescribed by the commission. The application
16 shall set forth the facts as required by the commission to
17 determine in accordance with section -65 whether a cable
18 franchise should be issued, including facts as to:

- 19 (1) The citizenship and character of the applicant;
20 (2) The financial, technical, and other qualifications of
21 the applicant;



- 1 (3) The principals and ultimate beneficial owners of the
2 applicant;
- 3 (4) The public interest to be served by the requested
4 issuance of a cable franchise; and
- 5 (5) Any other matters deemed appropriate and necessary by
6 the commission including but not limited to the
7 proposed plans and schedule of expenditures for or in
8 support of the use of PEG access facilities, and the
9 competitive availability and affordability of
10 broadband and other advanced services to consumers.

11 (c) A proposal for issuance of a cable franchise shall be
12 accepted for filing in accordance with section -64 only when
13 made in response to the written request of the commission for
14 the submission of proposals.

15 **§ -64 Cable franchise application or proposal procedure;**
16 **public hearing; notice.** An application or proposal for a cable
17 franchise shall be processed as follows:

- 18 (1) After the application or proposal and required fee are
19 received by the commission and within a time frame
20 established by rule, the commission shall notify the
21 applicant in writing of the acceptance or
22 non-acceptance for filing of the application or



1 proposal for issuance of a cable franchise required by
2 this chapter;

3 (2) After the issuance of a notice of acceptance for
4 filing and within a time frame established by rule,
5 the commission shall hold a public hearing on the
6 application or proposal to afford interested persons
7 the opportunity to submit data, views, or arguments,
8 orally or in writing. Notice thereof shall be given
9 to the governing council and mayor of the county and
10 to any telephone or other utility and cable company in
11 the county in which the proposed service area is
12 located. The commission shall also give public notice
13 of the application and hearing at least once in each
14 of two successive weeks in the county in which the
15 proposed service area is located. The last notice
16 shall be given at least fifteen days prior to the date
17 of the hearing;

18 (3) After holding a public hearing, the commission shall
19 approve the application or proposal in whole or in
20 part, with or without conditions or modifications, or
21 shall deny the application or proposal, with reasons
22 for denial sent in writing to the applicant. If the



1 commission does not take final action after the
2 issuance of a notice of acceptance for filing and
3 within a time frame established by rule, the
4 application or proposal shall be deemed denied; and
5 (4) The time limit for final action may be extended, on
6 the commission's approval of the applicant's request
7 and justification in writing for an extension of time
8 to the commission at least two weeks in advance of the
9 requested effective date of the extension, or by
10 mutual agreement.

11 § -65 **Issuance of cable franchise authority; criteria;**

12 **content.** (a) The commission is empowered to issue a cable
13 franchise to construct or operate facilities for a cable system
14 upon the terms and conditions provided in this chapter.

15 (b) The commission, after a public hearing as provided in
16 this chapter, shall issue a cable franchise to the applicant
17 when the commission is convinced that it is in the public
18 interest to do so. In determining whether a cable franchise
19 shall be issued, the commission shall take into consideration,
20 among other things, the content of the application or proposal,
21 the public need for the proposed service, the ability of the
22 applicant to offer safe, adequate, and reliable service at a



1 reasonable cost to the subscribers, the suitability of the
2 applicant, the financial responsibility of the applicant, the
3 technical and operational ability of the applicant to perform
4 efficiently the service for which authority is requested, any
5 objections arising from the public hearing, the communications
6 advisory committee established by this chapter, or elsewhere,
7 and any other matters as the commission deems appropriate in the
8 circumstances.

9 (c) In determining the area that is to be serviced by the
10 applicant, the commission shall take into account the geography
11 and topography of the proposed service area, and the present,
12 planned, and potential expansion in facilities or cable services
13 of the applicant's proposed cable system and existing cable
14 systems.

15 (d) In issuing a cable franchise under this chapter, the
16 commission is not restricted to approving or disapproving the
17 application or proposal but may issue it for only partial
18 exercise of the privilege sought or may attach to the exercise
19 of the right granted by the cable franchise terms, limitations,
20 and conditions which the commission deems the public interest
21 may require. The cable franchise shall:

22 (1) Be nonexclusive;



1 (2) Include a description of the service area in which the
 2 cable system is to be constructed, extended, or
 3 operated and the approximate date on which the service
 4 is to commence; and

5 (3) Authorize the cable operator to provide service for a
 6 term of fifteen years or any other term that the
 7 commission determines to be appropriate.

8 § -66 Requirement for adequate service; terms and
 9 conditions of service. (a) Every cable operator shall provide
 10 safe, adequate, and reliable service in accordance with
 11 applicable laws, rules, franchise requirements, and its filed
 12 schedule of terms and conditions of service.

13 (b) The commission shall require each cable operator to
 14 submit a schedule of all terms and conditions of service in the
 15 form and with the notice that the commission may prescribe.

16 (c) The commission shall ensure that the terms and
 17 conditions upon which cable service is provided are fair both to
 18 the public and to the cable operator, taking into account the
 19 geographic, topographic, and economic characteristics of the
 20 service area and the economics of providing cable service to
 21 subscribers in the service area.



1 § -67 Cable system installation, construction,
 2 **operation, removal; general provisions.** (a) A cable franchise
 3 shall be construed to authorize the construction or operation of
 4 a cable system within the service area above, below, on, in, or
 5 along any highway or other public place and through easements
 6 that have been dedicated for compatible purposes.

7 (b) The technical specifications, general routes of the
 8 distribution system, and the schedule for construction of the
 9 cable system shall be subject to the commission's approval.

10 (c) In installing, operating, and maintaining facilities,
 11 the cable operator shall avoid all unnecessary damage and injury
 12 to any trees, structures, and improvements in and along the
 13 routes authorized by the commission.

14 (d) The cable operator shall indemnify and hold the State
 15 and the county harmless at all times from any and all claims for
 16 injury and damage to persons or property, both real and
 17 personal, caused by the installation, operation, or maintenance
 18 of its cable system, notwithstanding any negligence on the part
 19 of the State or county, or their employees or agents. Upon
 20 receipt of notice in writing from the State or county, the cable
 21 operator shall, at its own expense, defend any action or
 22 proceeding against the State or county in which it is claimed



1 that personal injury or property damage was caused by activities
2 of the cable operator in the installation, operation, or
3 maintenance of its cable system.

4 (e) The cable operator shall install and provide basic
5 cable television service at no cost to any school or institution
6 of higher education within its service area as determined by the
7 commission; provided that service is actually being delivered
8 within a reasonable distance from the school or institution of
9 higher education which may request service.

10 (f) The cable operator shall designate seven or more
11 television channels or video streams of not less than equal
12 value to the television channels for PEG access organization use
13 as directed by the commission, and up to ten per cent of the
14 total bandwidth capacity for PEG access organization use, as
15 directed by the commission by rule applicable to all franchises
16 uniformly.

17 (g) The cable operator shall designate ten per cent of
18 total channel or bandwidth capacity for lease by third parties
19 at reasonable rates or for common carrier use in addition to PEG
20 access organization use as determined by the commission by rule
21 applicable to all franchises uniformly.



1 (h) Upon termination of the period of the cable franchise
2 or permit or of any renewal thereof, by passage of time or
3 otherwise, the cable operator shall remove its facilities from
4 the highways and other public places in, on, over, under, or
5 along which they are installed if so ordered by the commission
6 and shall restore the areas to their original or other
7 acceptable condition, or otherwise dispose of same. If removal
8 is not completed within six months of the termination, any
9 property not removed shall be deemed to have been abandoned and
10 the cable operator shall be liable for the cost of its removal.

11 (i) The use of public highways within the meaning of
12 section 264-1 and other public places shall be subject to:

13 (1) All applicable state statutes and all applicable rules
14 and orders of the public utilities commission and the
15 commission governing the construction, maintenance,
16 and removal of overhead and underground facilities of
17 public utilities;

18 (2) For county highways, all applicable public welfare
19 rules adopted by the governing body of the county in
20 which the county highways are situated;

21 (3) For state or federal-aid highways, all public welfare
22 rules adopted by the director of transportation; and



1 (4) For the relocation of cable facilities, the provisions
2 of section 264-33 concerning the allocation of
3 expenses for the relocation of utility facilities.

4 (j) In the use of easements dedicated to compatible
5 purposes, the cable operator shall ensure that:

6 (1) The safety, functioning, and appearance of the
7 property and the convenience and safety of other
8 persons are not adversely affected by the installation
9 or construction of facilities necessary for a cable
10 system;

11 (2) The cost of the installation, construction, operation,
12 or removal of facilities is borne by the cable
13 operator or subscribers, or a combination of both; and

14 (3) The owner of the property is justly compensated by the
15 cable operator for any damages caused by the
16 installation, construction, operation, or removal of
17 facilities by the cable operator.

18 § -68 **Complaints; violations; revocation, alteration, or**
19 **suspension of cable franchise.** (a) Subscriber complaints
20 regarding the operation of a cable system may be made orally or
21 in writing to the commission. The commission shall resolve
22 complaints informally when possible.



1 (b) Any cable franchise issued hereunder after hearing in
2 accordance with chapter 91 may be revoked, altered, or suspended
3 by the commission as the commission deems necessary on any of
4 the following grounds:

- 5 (1) For making material false or misleading statements in,
6 or for material omissions from, any application or
7 proposal or other filing made with the commission;
- 8 (2) For failure to maintain signal quality under the
9 standards prescribed by the commission;
- 10 (3) For any sale, lease, assignment, or other transfer of
11 its cable franchise without consent of the commission;
- 12 (4) Except when commercially impracticable, for
13 unreasonable delay in construction or operation or for
14 unreasonable withholding of the extension of cable
15 service to any person in a service area;
- 16 (5) For violation of the terms of its cable franchise;
- 17 (6) For failure to comply with this chapter or any rules
18 or orders prescribed by the commission;
- 19 (7) For violation of its filed schedule of terms and
20 conditions of service; and
- 21 (8) For engaging in any unfair or deceptive act or
22 practice as prohibited by section 480-2.



1 § **-69 Renewal of cable franchise.** Any cable franchise
2 issued pursuant to this chapter may be renewed by the commission
3 upon approval of a cable operator's application or proposal
4 therefor. The form of the application or proposal shall be
5 prescribed by the commission. The periods of renewal shall be
6 not less than five nor more than fifteen years each. The
7 commission shall require of the applicant full disclosure,
8 including the proposed plans and schedule of expenditures for or
9 in support of the use of PEG access facilities and broadband
10 facilities.

11 § **-70 Transfer of cable franchise.** (a) No cable
12 franchise, including the rights, privileges, and obligations
13 thereof, may be assigned, sold, leased, encumbered, or otherwise
14 transferred, voluntarily or involuntarily, directly or
15 indirectly, including by transfer of control of any cable
16 system, whether by change in ownership or otherwise, except upon
17 written application to and approval by the commission. The form
18 of the application shall be prescribed by the commission.

19 (b) Sections -64 and -65 shall apply to the transfer
20 of cable franchises.

21 § **-71 Rate, filed with the commission; approval.** (a)
22 The commission shall require each cable operator to file a



1 schedule of its rates of service on a form and with the notice
2 that the commission may prescribe.

3 (b) To the extent permitted by federal law, the commission
4 shall regulate rates to ensure that they are fair both to the
5 public and to the cable operator.

6 § -72 **Reports.** Each cable operator shall file with the
7 commission reports of its financial, technical, and operational
8 condition and its ownership. The reports shall be made in a
9 form and on the time schedule prescribed by the commission and
10 shall be kept on file open to the public.

11 § -73 **Annual fees.** (a) Each cable operator shall pay
12 an annual fee to be determined by the commission. The fees so
13 collected under this section shall be deposited into the Hawaii
14 communications commission special fund established under section
15 -21.

16 (b) The commission shall adjust the fees assessed under
17 this section, as necessary from time to time, pursuant to rules
18 adopted in accordance with chapter 91.

19 § -74 **Criminal and civil liability.** Nothing in this
20 chapter shall be deemed to affect the criminal and civil
21 liability of cable programmers, cable operators, or PEG access
22 organizations pursuant to the federal, state, or local laws



1 regarding libel, slander, obscenity, incitement, invasions of
 2 privacy, false or misleading advertising, or other similar laws,
 3 except that no PEG access organization shall incur any liability
 4 arising from, based on, or related to any program not created by
 5 the PEG access organization, which is broadcast on any channel
 6 obtained under section -67, or under similar arrangements."

7 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
 8 amended by amending subsection (o) to read as follows:

9 "(o) Every person licensed under any chapter within the
 10 jurisdiction of the department of commerce and consumer affairs
 11 and every person licensed subject to chapter 485A or registered
 12 under chapter 467B shall pay upon issuance of a license, permit,
 13 certificate, or registration a fee and a subsequent annual fee
 14 to be determined by the director and adjusted from time to time
 15 to ensure that the proceeds, together with all other fines,
 16 income, and penalties collected under this section, do not
 17 surpass the annual operating costs of conducting compliance
 18 resolution activities required under this section. The fees may
 19 be collected biennially or pursuant to rules adopted under
 20 chapter 91, and shall be deposited into the special fund
 21 established under this subsection. Every filing pursuant to
 22 chapter 514E or section 485A-202(a)(26) shall be assessed, upon



1 initial filing and at each renewal period in which a renewal is
2 required, a fee that shall be prescribed by rules adopted under
3 chapter 91, and that shall be deposited into the special fund
4 established under this subsection. Any unpaid fee shall be paid
5 by the licensed person, upon application for renewal,
6 restoration, reactivation, or reinstatement of a license, and by
7 the person responsible for the renewal, restoration,
8 reactivation, or reinstatement of a license, upon the
9 application for renewal, restoration, reactivation, or
10 reinstatement of the license. If the fees are not paid, the
11 director may deny renewal, restoration, reactivation, or
12 reinstatement of the license. The director may establish,
13 increase, decrease, or repeal the fees when necessary pursuant
14 to rules adopted under chapter 91. The director may also
15 increase or decrease the fees pursuant to section 92-28.

16 There is created in the state treasury a special fund to be
17 known as the compliance resolution fund to be expended by the
18 director's designated representatives as provided by this
19 subsection. Notwithstanding any law to the contrary, all
20 revenues, fees, and fines collected by the department shall be
21 deposited into the compliance resolution fund. Unencumbered
22 balances existing on June 30, 1999, in the cable television fund



1 under chapter 440G, the division of consumer advocacy fund under
2 chapter 269, the financial institution examiners' revolving
3 fund, section 412:2-109, the special handling fund, section
4 414-13, and unencumbered balances existing on June 30, 2002, in
5 the insurance regulation fund, section 431:2-215, shall be
6 deposited into the compliance resolution fund. This provision
7 shall not apply to any fee imposed by the Hawaii communications
8 commission pursuant to chapter , including the regulatory fee
9 in section -51, the drivers education fund underwriters fee,
10 section 431:10C-115, insurance premium taxes and revenues,
11 revenues of the workers' compensation special compensation fund,
12 section 386-151, the captive insurance administrative fund,
13 section 431:19-101.8, the insurance commission's education and
14 training fund, section 431:2-214, the medical malpractice
15 patients' compensation fund as administered under section 5 of
16 Act 232, Session Laws of Hawaii 1984, and fees collected for
17 deposit in the office of consumer protection restitution fund,
18 section 487-14, the real estate appraisers fund, section 466K-1,
19 the real estate recovery fund, section 467-16, the real estate
20 education fund, section 467-19, the contractors recovery fund,
21 section 444-26, the contractors education fund, section 444-29,
22 the condominium management education fund, section 514A-131, and



1 the condominium education trust fund, section 514B-71. Any law
2 to the contrary notwithstanding, the director may use the moneys
3 in the fund to employ, without regard to chapter 76, hearings
4 officers and attorneys. All other employees may be employed in
5 accordance with chapter 76. Any law to the contrary
6 notwithstanding, the moneys in the fund shall be used to fund
7 the operations of the department. The moneys in the fund may be
8 used to train personnel as the director deems necessary and for
9 any other activity related to compliance resolution.

10 As used in this subsection, unless otherwise required by
11 the context, "compliance resolution" means a determination of
12 whether:

- 13 (1) Any licensee or applicant under any chapter subject to
14 the jurisdiction of the department of commerce and
15 consumer affairs has complied with that chapter;
- 16 (2) Any person subject to chapter 485A has complied with
17 that chapter;
- 18 (3) Any person submitting any filing required by chapter
19 514E or section 485A-202(a)(26) has complied with
20 chapter 514E or section 485A-202(a)(26);



1 (4) Any person has complied with the prohibitions against
2 unfair and deceptive acts or practices in trade or
3 commerce; or

4 (5) Any person subject to chapter 467B has complied with
5 that chapter;

6 and includes work involved in or supporting the above functions,
7 licensing, or registration of individuals or companies regulated
8 by the department, consumer protection, and other activities of
9 the department.

10 The director shall prepare and submit an annual report to
11 the governor and the legislature on the use of the compliance
12 resolution fund. The report shall describe expenditures made
13 from the fund including non-payroll operating expenses."

14 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) No department of the State other than the attorney
18 general may employ or retain any attorney, by contract or
19 otherwise, for the purpose of representing the State or the
20 department in any litigation, rendering legal counsel to the
21 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted
20 from time to time;

21 (5) By the real estate commission for any action involving
22 the real estate recovery fund;



- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the trustees for any action involving the travel
- 4 agency recovery fund;
- 5 (8) By the office of Hawaiian affairs;
- 6 (9) By the department of commerce and consumer affairs for
- 7 the enforcement of violations of chapters 480 and
- 8 485A;
- 9 (10) As grand jury counsel;
- 10 (11) By the Hawaiian home lands trust individual claims
- 11 review panel;
- 12 (12) By the Hawaii health systems corporation, or its
- 13 regional system boards, or any of their facilities;
- 14 (13) By the auditor;
- 15 (14) By the office of ombudsman;
- 16 (15) By the insurance division;
- 17 (16) By the University of Hawaii;
- 18 (17) By the Kahoolawe island reserve commission;
- 19 (18) By the division of consumer advocacy;
- 20 (19) By the office of elections;
- 21 (20) By the campaign spending commission;



1 (21) By the Hawaii tourism authority, as provided in
2 section 201B-2.5; [~~or~~]
3 (22) By the Hawaii communications commission; or
4 [~~(22)~~] (23) By a department, in the event the attorney
5 general, for reasons deemed by the attorney general
6 good and sufficient, declines to employ or retain an
7 attorney for a department; provided that the governor
8 thereupon waives the provision of this section."

9 2. By amending subsection (c) to read:

10 "(c) Every attorney employed by any department on a
11 full-time basis, except an attorney employed by the public
12 utilities commission, the Hawaii communications commission, the
13 labor and industrial relations appeals board, the Hawaii labor
14 relations board, the office of Hawaiian affairs, the Hawaii
15 health systems corporation or its regional system boards, the
16 department of commerce and consumer affairs in prosecution of
17 consumer complaints, insurance division, the division of
18 consumer advocacy, the University of Hawaii, the Hawaii tourism
19 authority as provided in section 201B-2.5, the Hawaiian home
20 lands trust individual claims review panel, or as grand jury
21 counsel, shall be a deputy attorney general."



1 SECTION 5. Section 46-15, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The mayor of each county, after holding a public
4 hearing on the matter and receiving the approval of the
5 respective council, shall be empowered to designate areas of
6 land for experimental and demonstration housing projects, the
7 purposes of which are to research and develop ideas that would
8 reduce the cost of housing in the [~~State.~~] state. Except as
9 hereinafter provided, the experimental and demonstration housing
10 projects shall be exempt from all statutes, ordinances, charter
11 provisions, and rules or regulations of any governmental agency
12 or public utility relating to planning, zoning, construction
13 standards for subdivisions, development and improvement of land,
14 and the construction and sale of homes thereon; provided that
15 the experimental and demonstration housing projects shall not
16 affect the safety standards or tariffs approved by the public
17 utility commissions or the Hawaii communications commission for
18 such public utility.

19 The mayor of each county with the approval of the
20 respective council may designate a county agency or official who
21 shall have the power to review all plans and specifications for
22 the subdivisions, development and improvement of the land



1 involved, and the construction and sale of homes thereon. The
2 county agency or official shall have the power to approve or
3 disapprove or to make modifications to all or any portion of the
4 plans and specifications.

5 The county agency or official shall submit preliminary
6 plans and specifications to the legislative body of the
7 respective county for its approval or disapproval. The final
8 plans and specifications for the project shall be deemed
9 approved by the legislative body if the final plans and
10 specifications do not substantially deviate from the approved
11 preliminary plans and specifications. The final plans and
12 specifications shall constitute the standards for the particular
13 project.

14 No action shall be prosecuted or maintained against any
15 county, its officials or employees, on account of actions taken
16 in reviewing, approving, or disapproving such plans and
17 specifications.

18 Any experimental or demonstration housing project for the
19 purposes hereinabove mentioned may be sponsored by any state or
20 county agency or any person as defined in section 1-19.

21 The county agency or official shall apply to the state land
22 use commission for an appropriate land use district



1 classification change, except where a proposed project is
 2 located on land within an urban district established by the
 3 state land use commission. Notwithstanding any law, rule, or
 4 regulation to the contrary, the state land use commission may
 5 approve the application at any time after a public hearing held
 6 in the county where the land is located upon notice of the time
 7 and place of the hearing being published in the same manner as
 8 the notice required for a public hearing by the planning
 9 commission of the appropriate county."

10 SECTION 6. Section 91-13.5, Hawaii Revised Statutes, is
 11 amended by amending subsection (f) to read as follows:

12 "(f) This section shall not apply to:

13 (1) Any proceedings of the public utilities commission;

14 [~~or~~]

15 (2) Any county or county agency that is exempted by county
 16 ordinance from this section[~~-~~]; or

17 (3) Any proceedings of the Hawaii communications
 18 commission."

19 SECTION 7. Section 92-21, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**§92-21 Copies of records; other costs and fees.** Except
 22 as otherwise provided by law, a copy of any government record,



1 including any map, plan, diagram, photograph, photostat, or
2 geographic information system digital data file, which is open
3 to the inspection of the public, shall be furnished to any
4 person applying for the same by the public officer having charge
5 or control thereof upon the payment of the reasonable cost of
6 reproducing [~~such~~] the copy. Except as provided in section
7 91-2.5, the cost of reproducing any government record, except
8 geographic information system digital data, shall not be less
9 than 5 cents per page, sheet, or fraction thereof. The cost of
10 reproducing geographic information system digital data shall be
11 in accordance with rules adopted by the agency having charge or
12 control of that data. [~~Such~~] The reproduction cost shall
13 include but shall not be limited to labor cost for search and
14 actual time for reproducing, material cost, including
15 electricity cost, equipment cost, including rental cost, cost
16 for certification, and other related costs. All fees shall be
17 paid in by the public officer receiving or collecting the same
18 to the state director of finance, the county director of
19 finance, or to the agency or department by which the officer is
20 employed, as government realizations; provided that fees
21 collected by the public utilities commission pursuant to this
22 section shall be deposited in the public utilities commission



1 special fund established under section 269-33[~~7~~], and fees
2 collected by the Hawaii communications commission shall be
3 deposited in the Hawaii communications commission special fund
4 established under section -21."

5 SECTION 8. Section 101-43, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§101-43 Requirements prior to exercise of power.** Any
8 corporation having the power of eminent domain under section
9 101-41 may continue to exercise the power[~~7~~]; provided that
10 prior to the exercise of the power:

11 (1) The corporation submits to the public utilities
12 commission or, in the case of telecommunications
13 carriers or telecommunications common carriers, to the
14 Hawaii communications commission, its intention to
15 exercise the power, with a description of the property
16 to be condemned; and

17 (2) The public utilities commission or the Hawaii
18 communications commission, as the case may be, finds
19 that the proposed condemnation is in the public
20 interest, that the proposed condemnation is necessary,
21 and that the corporation will use the property for its
22 operations as a public utility."



1 SECTION 9. Section 163D-6, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) If the corporation acquires the assets of a private
4 or other corporation, then, notwithstanding any law to the
5 contrary:

6 (1) Neither the corporation nor any subsidiary corporation
7 vested with the assets shall be subject to chapter 91
8 with respect to the assets;

9 (2) Employees retained to operate the assets shall not be
10 subject to chapter 76;

11 (3) Assets constituting real property interest shall not
12 be subject to chapter 171;

13 (4) No investment, loan, or use of funds by the
14 corporation or a subsidiary corporation vested with
15 the assets shall be subject to chapter 42F or 103; and

16 (5) Neither the corporation nor a subsidiary corporation
17 vested with the assets shall constitute a public
18 utility or be subject to the jurisdiction of the
19 public utilities commission under chapter 269[-] or
20 the Hawaii communications commission under
21 chapter ."



1 SECTION 10. Section 166-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§166-4 **Park development.** Except as herein provided, the
4 department may develop, on behalf of the State or in partnership
5 with a federal agency, a county, or a private party,
6 agricultural parks which, at the option of the board, shall be
7 exempt from all statutes, ordinances, charter provisions, and
8 rules of any governmental agency relating to planning, zoning,
9 construction standards for subdivisions, development and
10 improvement of land, and the construction of buildings thereon;
11 provided that:

12 (1) The board finds the agricultural park is consistent
13 with the purpose and intent of this chapter, and meets
14 minimum requirements of health and safety;

15 (2) The development of the proposed agricultural park does
16 not contravene any safety standards or tariffs
17 approved for public utilities by the public utilities
18 commission [~~for public utilities;~~] or the Hawaii
19 communications commission;

20 (3) The legislative body of the county in which the
21 agricultural park is to be situated shall have



1 approved the agricultural park[-] in accordance with
2 the following:

3 (A) The legislative body shall approve or disapprove
4 the agricultural park within forty-five days
5 after the department has submitted the
6 preliminary plans and specifications for the
7 agricultural park to the legislative body. If
8 after the forty-fifth day an agricultural park is
9 not disapproved, it shall be deemed approved by
10 the legislative body[-];

11 (B) No action shall be prosecuted or maintained
12 against any county, its officials, or employees,
13 on account of actions taken by them in reviewing,
14 approving, or disapproving the plans and
15 specifications[-]; and

16 (C) The final plans and specifications for the
17 agricultural park shall be deemed approved by the
18 legislative body if the final plans and
19 specifications do not substantially deviate from
20 the preliminary plans and specifications. The
21 final plans and specifications for the project
22 shall constitute the planning, zoning, building,



1 construction, and subdivision standards for that
 2 agricultural park. For purposes of sections
 3 501-85 and 502-17, the chairperson of the board
 4 of agriculture or the responsible county official
 5 may certify maps and plans of lands connected
 6 with the agricultural park as having complied
 7 with applicable laws and ordinances relating to
 8 consolidation and subdivision of lands, and such
 9 maps and plans shall be accepted for registration
 10 or recordation by the land court and registrar;
 11 and

12 (4) The State shall assume the responsibility of
 13 maintaining all roads within the agricultural park if
 14 the roads are developed exempt from applicable county
 15 ordinances, charter provisions, and rules regarding
 16 roads."

17 SECTION 11. Section 166E-10, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "[+]§166E-10[+] **Non-agricultural park land development.**
 20 On behalf of the State or in partnership with a federal agency,
 21 a county, or a private party and except as provided in this
 22 section, the department may develop non-agricultural park lands



1 that, at the option of the board, may be exempt from all
2 statutes, ordinances, charter provisions, and rules of any
3 governmental agency relating to planning, zoning, construction
4 standards for subdivisions, development and improvement of land,
5 and construction of buildings thereon; provided that:

6 (1) The board finds the development is consistent with the
7 public purpose and intent of this chapter and meets
8 minimum health and safety requirements;

9 (2) The development of the proposed non-agricultural park
10 land does not contravene any safety standards or
11 tariffs approved for public utilities by the public
12 utilities commission [~~for public utilities;~~] or the
13 Hawaii communications commission;

14 (3) The county in which the non-agricultural park
15 development is proposed shall approve the
16 non-agricultural park development; and provided
17 further that:

18 (A) The county shall approve or disapprove the
19 development within forty-five days after the
20 department submits preliminary plans and
21 specifications for the development to the county.

22 If the county does not disapprove the development



1 after the forty-fifth day, the development shall
2 be deemed approved;

3 (B) No action shall be prosecuted or maintained
4 against any county, its officials, or employees,
5 on any actions taken by them in reviewing,
6 approving, or disapproving the plans and
7 specifications; and

8 (C) The final plans and specifications for the
9 development shall be deemed approved by the
10 county if the final plans and specifications do
11 not substantially deviate from the preliminary
12 plans and specifications. The final plans and
13 specifications for the project shall constitute
14 the planning, zoning, building, construction, and
15 subdivision standards for that development. For
16 purposes of sections 501-85 and 502-17, the
17 chairperson of the board or the responsible
18 county official may certify maps and plans of
19 lands connected with the development as having
20 complied with applicable laws and ordinances
21 relating to consolidation and subdivision of
22 lands, and the maps and plans shall be accepted



1 for registration or recordation by the land court
2 and registrar; and

3 (4) The State shall assume the responsibility of
4 maintaining all roads and infrastructure improvements
5 within the boundaries if the improvements are
6 developed exempt from applicable county ordinances,
7 charter provisions, and rules regarding development."

8 SECTION 12. Section 171-134, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) At the option of the board, the development of an
11 industrial park shall be exempt from all statutes, ordinances,
12 charter provisions, and rules of any governmental agency
13 relating to planning, zoning, construction standards for
14 subdivision development and improvement of land, and the
15 construction of buildings thereon; provided that:

16 (1) The board finds that the industrial park meets the
17 minimum requirements of health and safety;

18 (2) The development of the industrial park does not
19 contravene any safety standards or tariffs approved
20 for public utilities by the public utilities
21 commission [~~for public utilities;~~] or the Hawaii
22 communications commission;



1 (3) The legislative body of the county in which the
2 industrial park is proposed to be situated approves
3 the industrial park[-] in accordance with the
4 following:

5 (A) The legislative body shall approve or disapprove
6 the industrial park within forty-five days after
7 the department has submitted preliminary plans
8 and specifications for the industrial park to the
9 legislative body. If after the forty-fifth day,
10 an industrial park is not disapproved, it shall
11 be deemed approved by the legislative body[-];

12 (B) No action shall be prosecuted or maintained
13 against any county, its officials, or employees,
14 on account of actions taken by them in reviewing,
15 approving, or disapproving the plans and
16 specifications[-]; and

17 (C) The final plans and specifications for the
18 industrial park shall be deemed approved by the
19 legislative body if the final plans and
20 specifications for the industrial park do not
21 substantially deviate from the preliminary plans
22 and specifications. The determination that the



1 final plans and specifications do not
2 substantially deviate from the preliminary plans
3 and specifications of the industrial park shall
4 rest with the board. The final plans and
5 specifications for the park shall constitute the
6 planning, zoning, building, improvement,
7 construction, and subdivision standards for that
8 industrial park. For the purposes of sections
9 501-85 and 502-17, the chairperson of the board
10 or the responsible county official may certify
11 maps and plans of land connected with the
12 industrial park as having complied with
13 applicable laws and ordinances relating to
14 consolidation and subdivision of lands, and such
15 maps and plans shall be accepted for registration
16 or recordation by the land court and registrar;
17 and

18 (4) The board shall assume the responsibility of all
19 infrastructure within the industrial park, if the
20 infrastructure developed is exempt from applicable
21 county ordinances, charter provisions, and rules."



1 SECTION 13. Section 196D-10, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) This section shall not apply to any permit issued by
4 the public utilities commission under chapter 269[~~-~~] or the
5 Hawaii communications commission under chapter ."

6 SECTION 14. Section 201H-13, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~+~~]**\$201H-13**[~~+~~] **Eminent domain, exchange or use of public**
9 **property.** The corporation may acquire any real property,
10 including fixtures and improvements, or interest therein:
11 through voluntary negotiation; through exchange of land in
12 accordance with section 171-50, provided that the public land to
13 be exchanged need not be of like use to that of the private
14 land; or by the exercise of the power of eminent domain which it
15 deems necessary by the adoption of a resolution declaring that
16 the acquisition of the property described therein is in the
17 public interest and required for public use. The corporation
18 shall exercise the power of eminent domain granted by this
19 section in the same manner and procedure as is provided by
20 chapter 101 and otherwise in accordance with all applicable
21 provisions of the general laws of the State; provided that
22 condemnation of parcels greater than fifteen acres shall be



1 subject to legislative disapproval expressed in a concurrent
2 resolution adopted by majority vote of the senate and the house
3 of representatives in the first regular or special session
4 following the date of condemnation.

5 The corporation may acquire by the exercise of the power of
6 eminent domain property already devoted to a public use;
7 provided that no property belonging to any government may be
8 acquired without its consent, and that no property belonging to
9 a public utility corporation may be acquired without the
10 approval of the public utilities commission~~[7]~~ or, in the case
11 of telecommunications carriers or telecommunications common
12 carriers, the Hawaii communications commission, and subject to
13 legislative disapproval expressed in a concurrent resolution
14 adopted by majority vote of the senate and the house of
15 representatives in the first regular or special session
16 following the date of condemnation."

17 SECTION 15. Section 201H-33, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) The corporation shall adopt, pursuant to chapter 91,
20 rules on health, safety, building, planning, zoning, and land
21 use that relate to the development, subdivision, and
22 construction of dwelling units in housing projects in which the



1 State, through the corporation, shall participate. The rules
 2 shall not contravene any safety standards or tariffs approved by
 3 the public utilities commission[7] or the Hawaii communications
 4 commission, and shall follow existing law as closely as is
 5 consistent with the production of lower cost housing with
 6 standards that meet minimum requirements of good design,
 7 pleasant amenities, health, safety, and coordinated development.

8 When adopted, the rules shall have the force and effect of
 9 law and shall supersede, for all housing projects in which the
 10 State, through the corporation, shall participate, all other
 11 inconsistent laws, ordinances, and rules relating to the use,
 12 zoning, planning, and development of land, and the construction
 13 of dwelling units thereon. The rules, before becoming
 14 effective, shall be presented to the legislative body of each
 15 county in which they will be effective and the legislative body
 16 of any county may within forty-five days approve or disapprove,
 17 for that county, any or all of the rules by a majority vote of
 18 its members. On the forty-sixth day after submission, any rules
 19 not disapproved shall be deemed to have been approved by the
 20 county."

21 SECTION 16. Section 201H-38, Hawaii Revised Statutes, is
 22 amended by amending subsection (a) to read as follows:



1 "(a) The corporation may develop on behalf of the State or
2 with an eligible developer, or may assist under a government
3 assistance program in the development of, housing projects that
4 shall be exempt from all statutes, ordinances, charter
5 provisions, and rules of any government agency relating to
6 planning, zoning, construction standards for subdivisions,
7 development and improvement of land, and the construction of
8 dwelling units thereon; provided that:

9 (1) The corporation finds the housing project is
10 consistent with the purpose and intent of this
11 chapter, and meets minimum requirements of health and
12 safety;

13 (2) The development of the proposed housing project does
14 not contravene any safety standards, tariffs, or rates
15 and fees approved for public utilities by the public
16 utilities commission [~~for public utilities~~] or the
17 Hawaii communications commission or of the various
18 boards of water supply authorized under chapter 54;

19 (3) The legislative body of the county in which the
20 housing project is to be situated shall have approved
21 the project with or without modifications[+] in
22 accordance with the following:



1 (A) The legislative body shall approve, approve with
2 modification, or disapprove the project by
3 resolution within forty-five days after the
4 corporation has submitted the preliminary plans
5 and specifications for the project to the
6 legislative body. If on the forty-sixth day a
7 project is not disapproved, it shall be deemed
8 approved by the legislative body;

9 (B) No action shall be prosecuted or maintained
10 against any county, its officials, or employees
11 on account of actions taken by them in reviewing,
12 approving, modifying, or disapproving the plans
13 and specifications; and

14 (C) The final plans and specifications for the
15 project shall be deemed approved by the
16 legislative body if the final plans and
17 specifications do not substantially deviate from
18 the preliminary plans and specifications. The
19 final plans and specifications for the project
20 shall constitute the zoning, building,
21 construction, and subdivision standards for that
22 project. For purposes of sections 501-85 and



1 502-17, the executive director of the corporation
2 or the responsible county official may certify
3 maps and plans of lands connected with the
4 project as having complied with applicable laws
5 and ordinances relating to consolidation and
6 subdivision of lands, and the maps and plans
7 shall be accepted for registration or recordation
8 by the land court and registrar; and

9 (4) The land use commission shall approve, approve with
10 modification, or disapprove a boundary change within
11 forty-five days after the corporation has submitted a
12 petition to the commission as provided in section
13 205-4. If, on the forty-sixth day, the petition is
14 not disapproved, it shall be deemed approved by the
15 commission."

16 SECTION 17. Section 205A-46, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) A variance may be granted for a structure or activity
19 otherwise prohibited in this part if the authority finds in
20 writing, based on the record presented, that the proposed
21 structure or activity is necessary for or ancillary to:

22 (1) Cultivation of crops;



- 1 (2) Aquaculture;
- 2 (3) Landscaping; provided that the authority finds that
3 the proposed structure or activity will not adversely
4 affect beach processes and will not artificially fix
5 the shoreline;
- 6 (4) Drainage;
- 7 (5) Boating, maritime, or watersports recreational
8 facilities;
- 9 (6) Facilities or improvements by public agencies or
10 public utilities regulated under chapter 269[+] or
11 chapter ;
- 12 (7) Private facilities or improvements that are clearly in
13 the public interest;
- 14 (8) Private facilities or improvements which will neither
15 adversely affect beach processes nor artificially fix
16 the shoreline; provided that the authority also finds
17 that hardship will result to the applicant if the
18 facilities or improvements are not allowed within the
19 shoreline area;
- 20 (9) Private facilities or improvements that may
21 artificially fix the shoreline; provided that the
22 authority also finds that shoreline erosion is likely



1 to cause hardship to the applicant if the facilities
2 or improvements are not allowed within the shoreline
3 area, and the authority imposes conditions to prohibit
4 any structure seaward of the existing shoreline unless
5 it is clearly in the public interest; or

6 (10) Moving of sand from one location seaward of the
7 shoreline to another location seaward of the
8 shoreline; provided that the authority also finds that
9 moving of sand will not adversely affect beach
10 processes, will not diminish the size of a public
11 beach, and will be necessary to stabilize an eroding
12 shoreline."

13 SECTION 18. Section 239-6.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§239-6.5[+] **Tax credit for lifeline telephone service**
16 **subsidy.** A telephone public utility subject to this chapter
17 that has been authorized to establish lifeline telephone service
18 rates by the public utilities commission before July 1, 2009, or
19 by the Hawaii communications commission on or after July 1,
20 2009, shall be allowed a tax credit, equal to the lifeline
21 telephone service costs incurred by the utility, to be applied
22 against the utility's tax imposed by this chapter. The amount



1 of this credit shall be determined and certified annually by the
2 [~~public utilities commission.~~] Hawaii communications commission.

3 The tax liability for a telephone public utility claiming the
4 credit shall be calculated in the manner prescribed in section
5 239-5; provided that the amount of tax due from the utility
6 shall be net of the lifeline service credit."

7 SECTION 19. Section 264-20, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Any other law to the contrary notwithstanding, any
10 decision by the State, the department of transportation, a
11 county, or any officers, employees, or agents of the State, the
12 department of transportation, or a county to select or apply
13 flexibility in highway design pursuant to this section and
14 consistent with the practices used by the Federal Highway
15 Administration and the American Association of State Highway and
16 Transportation Officials shall not give rise to a cause of
17 action or claim against:

- 18 (1) The State;
- 19 (2) The department of transportation;
- 20 (3) The counties;



1 (4) Any public utility regulated under chapter 269 or
2 chapter that places its facilities within the
3 highway right-of-way; or

4 (5) Any officer, employee, or agent of an entity listed in
5 paragraphs (1) to (4)."

6 SECTION 20. Section 269-1, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending the definition of "public utility" to read:

9 ""Public utility":

10 (1) Includes every person who may own, control, operate,
11 or manage as owner, lessee, trustee, receiver, or
12 otherwise, whether under a franchise, charter,
13 license, articles of association, or otherwise, any
14 plant or equipment, or any part thereof, directly or
15 indirectly for public use, for the transportation of
16 passengers or freight, or the conveyance or
17 transmission of telecommunications messages, or the
18 furnishing of facilities for the transmission of
19 intelligence by electricity by land or water or air
20 within the State, or between points within the State,
21 or for the production, conveyance, transmission,
22 delivery, or furnishing of light, power, heat, cold,



1 water, gas, or oil, or for the storage or warehousing
2 of goods, or the disposal of sewage; provided that the
3 term shall include:

4 (A) Any person insofar as that person owns or
5 operates a private sewer company or sewer
6 facility; and

7 (B) Any telecommunications carrier or
8 telecommunications common carrier;

9 (2) Shall not include:

10 (A) Any person insofar as that person owns or
11 operates an aerial transportation enterprise;

12 (B) Persons owning or operating taxicabs, as defined
13 in this section;

14 (C) Common carriers transporting only freight on the
15 public highways, unless operating within
16 localities or along routes or between points that
17 the public utilities commission finds to be
18 inadequately serviced without regulation under
19 this chapter;

20 (D) Persons engaged in the business of warehousing or
21 storage unless the commission finds that



- 1 regulation thereof is necessary in the public
- 2 interest;
- 3 (E) The business of any carrier by water to the
- 4 extent that the carrier enters into private
- 5 contracts for towage, salvage, hauling, or
- 6 carriage between points within the State and the
- 7 carriage is not pursuant to either an established
- 8 schedule or an undertaking to perform carriage
- 9 services on behalf of the public generally;
- 10 (F) The business of any carrier by water,
- 11 substantially engaged in interstate or foreign
- 12 commerce, transporting passengers on luxury
- 13 cruises between points within the State or on
- 14 luxury round-trip cruises returning to the point
- 15 of departure;
- 16 (G) Any person who:
 - 17 (i) Controls, operates, or manages plants or
 - 18 facilities for the production, transmission,
 - 19 or furnishing of power primarily or entirely
 - 20 from nonfossil fuel sources; and
 - 21 (ii) Provides, sells, or transmits all of that
 - 22 power, except such power as is used in its



1 own internal operations, directly to a
 2 public utility for transmission to the
 3 public;

4 (H) A telecommunications provider only to the extent
 5 determined by the [~~commission~~] Hawaii
 6 communications commission pursuant to section
 7 ~~[269-16.9;]~~ -34;

8 (I) Any person who controls, operates, or manages
 9 plants or facilities developed pursuant to
 10 chapter 167 for conveying, distributing, and
 11 transmitting water for irrigation and such other
 12 purposes that shall be held for public use and
 13 purpose;

14 (J) Any person who owns, controls, operates, or
 15 manages plants or facilities for the reclamation
 16 of wastewater; provided that:

17 (i) The services of the facility shall be
 18 provided pursuant to a service contract
 19 between the person and a state or county
 20 agency and at least ten per cent of the
 21 wastewater processed is used directly by the



1 State or county which has entered into the
2 service contract;

3 (ii) The primary function of the facility shall
4 be the processing of secondary treated
5 wastewater that has been produced by a
6 municipal wastewater treatment facility that
7 is owned by a state or county agency;

8 (iii) The facility shall not make sales of water
9 to residential customers;

10 (iv) The facility may distribute and sell
11 recycled water or reclaimed water to
12 entities not covered by a state or county
13 service contract; provided that, in the
14 absence of regulatory oversight and direct
15 competition, the distribution and sale of
16 recycled or reclaimed water shall be
17 voluntary and its pricing fair and
18 reasonable. For purposes of this
19 subparagraph, "recycled water" and
20 "reclaimed water" mean treated wastewater
21 that by design is intended or used for a
22 beneficial purpose; and



1 (v) The facility shall not be engaged, either
2 directly or indirectly, in the processing of
3 food wastes; and

4 (K) Any person who owns, controls, operates, or
5 manages any seawater air conditioning district
6 cooling project; provided that at least fifty per
7 cent of the energy required for the seawater air
8 conditioning district cooling system is provided
9 by a renewable energy resource, such as cold,
10 deep seawater.

11 If the application of this chapter is ordered by the
12 commission or the Hawaii communications commission, as the case
13 may be, in any case provided in [~~paragraphs~~] paragraph (2)(C),
14 [~~(2)~~](D), [~~(2)~~](H), and [~~(2)~~](I), the business of any public
15 utility that presents evidence of bona fide operation on the
16 date of the commencement of the proceedings resulting in the
17 order shall be presumed to be necessary to public convenience
18 and necessity, but any certificate issued under this proviso
19 shall nevertheless be subject to [~~such~~] terms and conditions as
20 the commission or the Hawaii communications commission,
21 respectively, may prescribe, as provided in sections [~~269-16-9~~]
22 -34 and 269-20."



1 2. By amending the definition of "telecommunications
2 carrier" or "telecommunications common carrier" to read:
3 ""Telecommunications carrier" or "telecommunications common
4 carrier" [~~means any person that owns, operates, manages, or~~
5 ~~controls any facility used to furnish telecommunications~~
6 ~~services for profit to the public, or to classes of users as to~~
7 ~~be effectively available to the public, engaged in the provision~~
8 ~~of services, such as voice, data, image, graphics, and video~~
9 ~~services, that make use of all or part of their transmission~~
10 ~~facilities, switches, broadcast equipment, signaling, or~~
11 ~~control devices.] has the same meaning as in section -1."~~

12 3. By amending the definition of "telecommunications
13 service" or "telecommunications" to read:
14 ""Telecommunications service" or "telecommunications"
15 [~~means the offering of transmission between or among points~~
16 ~~specified by a user, of information of the user's choosing,~~
17 ~~including voice, data, image, graphics, and video without change~~
18 ~~in the form or content of the information, as sent and received,~~
19 ~~by means of electromagnetic transmission, or other similarly~~
20 ~~capable means of transmission, with or without benefit of any~~
21 ~~closed transmission medium, and does not include cable service~~



1 ~~as defined in section 440G-3.] has the same meaning as in~~
2 ~~section -1."~~

3 4. By repealing the definitions of "carrier of last
4 resort" and "designated local exchange service area":

5 [~~"Carrier of last resort" means a telecommunications~~
6 ~~carrier designated by the commission to provide universal~~
7 ~~service in a given local exchange service area determined to be~~
8 ~~lacking in effective competition.~~

9 ~~"Designated local exchange service area" means an area as~~
10 ~~determined by the commission to be best served by designating a~~
11 ~~carrier of last resort pursuant to section 269-43."]~~

12 SECTION 21. Section 269-6, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The public utilities commission shall have the
15 general supervision hereinafter set forth over all public
16 utilities, and shall perform the duties and exercise the powers
17 imposed or conferred upon it by this chapter. Included among
18 the general powers of the commission is the authority to adopt
19 rules pursuant to chapter 91 necessary for the purposes of this
20 chapter. Chapter 269 shall apply to telecommunications carriers
21 and telecommunications common carriers until July 1, 2009, at
22 which time the Hawaii communications commissioner shall be sworn



1 in and the Hawaii communications commissioner shall issue an
2 order accepting the commissioner's authority and undertaking to
3 enforce chapter ; provided that, until July 1, 2010, the
4 commission may continue to exercise its authority with regard to
5 telecommunications carriers and telecommunications common
6 carriers with regard to proceedings that were begun before July
7 1, 2009."

8 SECTION 22. Section 269-51, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§269-51 Consumer advocate; director of commerce and**
11 **consumer affairs.** The director of commerce and consumer affairs
12 shall be the consumer advocate in hearings before the public
13 utilities commission[~~-~~] and the Hawaii communications
14 commission. The consumer advocate shall represent, protect, and
15 advance the interests of all consumers, including small
16 businesses, of utility services. The consumer advocate shall
17 not receive any salary in addition to the salary received as
18 director of commerce and consumer affairs.

19 The responsibility for advocating the interests of the
20 consumer of utility services shall be separate and distinct from
21 the responsibilities of the public utilities commission and
22 those assistants employed by the commission. As consumer



1 advocate, the director of commerce and consumer affairs shall
2 have full rights to participate as a party in interest in all
3 proceedings before the public utilities commission[+] and the
4 Hawaii communications commission."

5 SECTION 23. Section 269-54, Hawaii Revised Statutes, is
6 amended by amending subsections (d) and (e) to read as follows:

7 "(d) Whenever it appears to the consumer advocate that:

8 (1) [~~any~~] Any public utility, telecommunications carrier,
9 or cable operator has violated or failed to comply
10 with any provision of this part or of any state or
11 federal law;

12 (2) [~~any~~] Any public utility, telecommunications carrier,
13 or cable operator has failed to comply with any rule,
14 regulation, or other requirement of the public
15 utilities commission, the Hawaii communications
16 commission, or of any other state or federal agency;

17 (3) [~~any~~] Any public utility, telecommunications carrier,
18 or cable operator has failed to comply with any
19 provision of its charter, certificate of public
20 convenience and necessity, or franchise;

21 (4) [~~changes,~~] Changes, additions, extensions, or repairs
22 to the plant or service of any public utility,



1 telecommunications carrier, or cable operator are
2 necessary to meet the reasonable convenience or
3 necessity of the public; or

4 (5) [~~the~~] The rates, fares, classifications, charges, or
5 rules of any public utility, telecommunications
6 carrier, or cable operator are unreasonable or
7 unreasonably discriminatory,

8 the consumer advocate may institute proceedings for appropriate
9 relief before the public utilities commission[~~-~~] or the Hawaii
10 communications commission, as applicable. The consumer advocate
11 may appeal any final decision and order in any proceeding to
12 which the consumer advocate is a party in the manner provided by
13 law.

14 (e) The consumer advocate may file with the public
15 utilities commission or the Hawaii communications commission, as
16 the case may be, and serve on any public utility,
17 telecommunications carrier, or cable operator a request in
18 writing to furnish any information reasonably relevant to any
19 matter or proceeding before the public utilities commission or
20 the Hawaii communications commission or reasonably required by
21 the consumer advocate to perform the duties hereunder. Any
22 [~~such~~] request shall set forth with reasonable specificity the



1 purpose for which the information is requested and shall
2 designate with reasonable specificity the information desired.
3 The public utility, telecommunications carrier, or cable
4 operator shall comply with [~~such~~] the request within the time
5 limit set forth by the consumer advocate unless within ten days
6 following service it requests a hearing on the matter before the
7 public utilities commission or the Hawaii communications
8 commission and states its reasons therefor. If a hearing is
9 requested, the public utilities commission or the Hawaii
10 communications commission, as the case may be, shall proceed to
11 hold the hearing and make its determination on the request
12 within thirty days after the same is filed. The consumer
13 advocate or the public utility may appeal the decision of the
14 commission on any [~~such~~] request, subject to chapter 602, in the
15 manner provided for civil appeals from the circuit courts. The
16 consumer advocate, telecommunications carrier, or cable operator
17 may appeal the decision of the Hawaii communications commission
18 in the manner provided for in section -16. Subject to the
19 foregoing, such requests may ask the public utility,
20 telecommunications carrier, or cable operator to:
21 (1) Furnish any information [~~with~~] which the consumer
22 advocate may require concerning the condition,



1 operations, practices, or services of the public
2 utility[~~+~~], telecommunications carrier, or cable
3 operator;

4 (2) Produce and permit the consumer advocate or the
5 consumer advocate's representative to inspect and copy
6 any designated documents (including writings,
7 drawings, graphs, charts, photographs, recordings, and
8 other data compilations from which information can be
9 obtained), or to inspect and copy, test, or sample any
10 designated tangible thing which is in the possession,
11 custody, or control of the public utility[~~+~~],
12 telecommunications carrier, or cable operator; or

13 (3) Permit entry upon land or other property in the
14 possession or control of the public utility,
15 telecommunications carrier, or cable operator for the
16 purpose of inspection and measuring, surveying,
17 photographing, testing, or sampling the property or
18 any designated object thereon."

19 SECTION 24. Section 269-55, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§269-55 Handling of complaints.** The consumer advocate
22 shall counsel public utility, telecommunications, and cable



1 service customers in the handling of consumer complaints before
 2 the public utilities commission~~[-]~~ or the Hawaii communications
 3 commission. The public utilities commission shall provide a
 4 central clearinghouse of information by collecting and compiling
 5 all consumer complaints and inquiries concerning public
 6 utilities. The Hawaii communications commission shall provide a
 7 central clearinghouse of information by collecting and compiling
 8 all consumer complaints and inquiries concerning
 9 telecommunications carriers and cable operators."

10 SECTION 25. Section 339K-2, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "[~~+~~]**\$339K-2**[+] **Compact administrator.** The compact
 13 administrator, acting jointly with like officers of other party
 14 states, may [~~promulgate~~] adopt rules and regulations to carry
 15 out more effectively the terms of the compact. The compact
 16 administrator shall cooperate with all departments, agencies,
 17 and officers of and in the government of this State and its
 18 subdivisions in facilitating the present administration of the
 19 compact or of any supplementary agreement or agreements entered
 20 into by this State thereunder. The compact administrator shall
 21 adopt the practices and may impose the fees authorized under
 22 article III of the compact, except that state and county law



1 enforcement agencies [~~and~~], the public utilities commission, and
2 the Hawaii communications commission shall retain their
3 enforcement and inspection authority relating to carriers."

4 SECTION 26. Section 356D-15, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The authority may acquire by the exercise of the
7 power of eminent domain property already devoted to a public
8 use; provided that no property belonging to any government may
9 be acquired without its consent, and that no property belonging
10 to a public utility may be acquired without the approval of the
11 public utilities commission[+] or, in the case of
12 telecommunications carriers or telecommunications common
13 carriers, the Hawaii communications commission; and provided
14 further that the acquisition is subject to legislative
15 disapproval expressed in a concurrent resolution adopted by
16 majority vote of the senate and the house of representatives in
17 the first regular or special session following the date of
18 condemnation."

19 SECTION 27. Section 448E-13, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§448E-13 Exemption of public utility and [community**
22 **antennae] cable television company employees. All employees of**



1 a public utility within the [~~State~~] state under a franchise or
 2 charter granted by the State [~~which~~] that is regulated by the
 3 public utilities commission or the Hawaii communications
 4 commission and [~~community antennae television company,~~] a cable
 5 television franchisee, while so employed, shall be exempt from
 6 the provision of this chapter."

7 SECTION 28. Section 481-11, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "**§481-11 Remedies cumulative.** The remedies prescribed in
 10 this part are cumulative and in addition to the remedies
 11 prescribed in [~~chapter~~] chapters 269 and _____ for discriminations
 12 by public utilities. If any conflict arises between this part
 13 and chapter 269 [~~, the latter prevails.~~] or chapter _____, chapter
 14 269 or chapter _____, whichever is applicable, shall prevail."

15 SECTION 29. Section 481P-5, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "**§481P-5 Exemptions.** This chapter shall not apply to:

- 18 (1) A person who initiates telephone calls to a residence
- 19 for the sole purpose of polling or soliciting the
- 20 expression of ideas, opinions, or votes, or a person
- 21 soliciting solely for a political or religious cause
- 22 or purpose;



- 1 (2) A securities broker-dealer, salesperson, investment
2 adviser, or investment adviser representative who is
3 registered with this State to sell securities or who
4 is authorized to sell securities in this State
5 pursuant to federal securities laws, when soliciting
6 over the telephone within the scope of the person's
7 registration;
- 8 (3) A financial institution that is authorized to accept
9 deposits under its chartering or licensing authority
10 where such deposits are insured by the Federal Deposit
11 Insurance Corporation or the National Credit Union
12 Administration, including but not limited to a bank,
13 savings bank, savings and loan association, depository
14 financial services loan company, or credit union, or a
15 nondepository financial services loan company that is
16 licensed or authorized to conduct business in this
17 State by the commissioner of financial institutions,
18 or an affiliate or subsidiary of a financial
19 institution as defined in chapter 412;
- 20 (4) A person or organization that is licensed or
21 authorized to conduct business in this State by the
22 insurance commissioner including but not limited to an



- 1 insurance company and its employees, while engaged in
2 the business of selling or advertising the sale of
3 insurance products or services;
- 4 (5) A college or university accredited by an accrediting
5 organization recognized by the United States
6 Department of Education;
- 7 (6) A person who publishes a catalog of at least fifteen
8 pages, four times a year, with a circulation of at
9 least one hundred thousand, where the catalog includes
10 clear disclosure of sale prices, shipping, handling,
11 and other charges;
- 12 (7) A political subdivision or instrumentality of the
13 United States, or any state of the United States;
- 14 (8) The sale of goods or services by telecommunications or
15 landline (i.e., cable) or wireless video service
16 providers, for which the terms and conditions of the
17 offering, production, or sale are regulated by the
18 ~~[public utilities commission]~~ Hawaii communications
19 commission or the Federal Communications Commission,
20 ~~[or pursuant to chapter 440G,]~~ including the sale of
21 goods or services by affiliates of these
22 telecommunications or video service providers.



1 Nothing herein shall be construed to preclude or
2 preempt actions brought under any other laws including
3 chapter 480;

4 (9) A real estate broker or salesperson who is licensed by
5 this State to sell real estate, when soliciting within
6 the scope of the license; or

7 (10) A travel agency that is registered with this State,
8 when engaging in the business of selling or
9 advertising the sale of travel services."

10 SECTION 30. Section 481X-1, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) This chapter shall not apply to:

13 (1) Express or implied warranties;

14 (2) Maintenance agreements; and

15 (3) Warranties, service contracts, and maintenance
16 agreements offered by public utilities on their
17 transmission devices to the extent they are regulated
18 by the public utilities commission or the [~~department~~
19 ~~of commerce and consumer affairs.~~] Hawaii
20 communications commission."

21 SECTION 31. Section 486J-11, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§486J-11 Powers of the public utilities commission[~~-~~] and
2 the Hawaii communications commission. (a) The public utilities
3 commission and the Hawaii communications commission may take any
4 action or make any determination under this chapter, including
5 but not limited to actions or determinations that affect persons
6 not regulated under chapters 269, , 271, and 271G, as the
7 public utilities commission or the Hawaii communications
8 commission deems necessary to carry out its responsibilities or
9 otherwise effectuate chapter 269, , 271, or 271G.

10 (b) The public utilities commission or, in the case of
11 telecommunications carriers or telecommunications common
12 carriers, the Hawaii communications commission, may examine or
13 investigate each distributor, the manner in which it is
14 operated, its prices and rates, its operating costs and
15 expenses, the value of its property and assets, the amount and
16 disposition of its income, any of its financial transactions,
17 its business relations with other persons, companies, or
18 corporations, its compliance with all applicable state and
19 federal laws, and all matters of any nature affecting the
20 relations and transactions between the distributor and the
21 public, persons, or businesses.



1 (c) In the performance of its duties under this chapter,
2 the public utilities commission and the Hawaii communications
3 commission shall have the same powers respecting administering
4 oaths, compelling the attendance of witnesses and the production
5 of documents, examining witnesses, and punishing for contempt,
6 as are possessed by the circuit courts. In case of disobedience
7 by any person to any order of or subpoena issued by the public
8 utilities commission[7] or the Hawaii communications commission,
9 or of the refusal of any witness to testify to any matter
10 regarding which the witness may be lawfully questioned, any
11 circuit court, upon application by the public utilities
12 commission[7] or the Hawaii communications commission, shall
13 compel obedience as in case of disobedience of the requirements
14 of a subpoena issued from a circuit court or a refusal to
15 testify therein."

16 SECTION 32. Section 659-3, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§659-3[+] **Forfeiture of franchise.** The several
19 circuit courts shall have jurisdiction of all proceedings in, or
20 in the nature of, quo warranto, brought by or in the name of the
21 public utilities commission, the Hawaii communications
22 commission, or the State, for the forfeiture of the franchise of



1 any corporate body offending against any law relating to such
2 corporation, for misuser, for nonuser, for doing or committing
3 any act or acts amounting to a surrender of its charter and for
4 exercising rights not conferred upon it."

5 SECTION 33. Section 708-800, Hawaii Revised Statutes, is
6 amended by amending the definition of "telecommunication
7 service" to read as follows:

8 ""Telecommunication service" means the offering of
9 transmission between or among points specified by a user, of
10 information of the user's choosing, including voice, data,
11 image, graphics, and video without change in the form or content
12 of the information, as sent and received, by means of
13 electromagnetic transmission, or other similarly capable means
14 of transmission, with or without benefit of any closed
15 transmission medium, and does not include cable service as
16 defined in section [440G-3.] -1."

17 SECTION 34. Section 269-16.5, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§269-16.5 Lifeline telephone rates. (a) The public~~
20 ~~utilities commission shall implement a program to achieve~~
21 ~~lifeline telephone rates for residential telephone users.~~]



1 ~~(b) "Lifeline telephone rate" means a discounted rate for~~
2 ~~residential telephone users identified as elders with limited~~
3 ~~income and the handicapped with limited income as designated by~~
4 ~~the commission.~~

5 ~~(c) The commission shall require every telephone public~~
6 ~~utility providing local telephone service to file a schedule of~~
7 ~~rates and charges providing a rate for lifeline telephone~~
8 ~~subscribers.~~

9 ~~(d) Nothing in this section shall preclude the commission~~
10 ~~from changing any rate established pursuant to subsection (a)~~
11 ~~either specifically or pursuant to any general restructuring of~~
12 ~~all telephone rates, charges, and classifications."]~~

13 SECTION 35. Section 269-16.6, Hawaii Revised Statutes, is
14 repealed.

15 ~~["§269-16.6 Telecommunications relay services for the~~
16 ~~deaf, persons with hearing disabilities, and persons with speech~~
17 ~~disabilities. (a) The public utilities commission shall~~
18 ~~implement intrastate telecommunications relay services for the~~
19 ~~deaf, persons with hearing disabilities, and persons with speech~~
20 ~~disabilities.~~

21 ~~(b) The commission shall investigate the availability of~~
22 ~~experienced providers of quality telecommunications relay~~



1 ~~services for the deaf, persons with hearing disabilities, and~~
2 ~~persons with speech disabilities. The provision of these~~
3 ~~telecommunications relay services to be rendered on or after~~
4 ~~July 1, 1992, shall be awarded by the commission to the provider~~
5 ~~or providers the commission determines to be best qualified to~~
6 ~~provide these services. In reviewing the qualifications of the~~
7 ~~provider or providers, the commission shall consider the factors~~
8 ~~of cost, quality of services, and experience, and such other~~
9 ~~factors as the commission deems appropriate.~~

10 ~~(c) If the commission determines that the~~
11 ~~telecommunications relay service can be provided in a cost-~~
12 ~~effective manner by a service provider or service providers, the~~
13 ~~commission may require every intrastate telecommunications~~
14 ~~carrier to contract with such provider or providers for the~~
15 ~~provision of the telecommunications relay service under the~~
16 ~~terms established by the commission.~~

17 ~~(d) The commission may establish a surcharge to collect~~
18 ~~customer contributions for telecommunications relay services~~
19 ~~required under this section.~~

20 ~~(e) The commission may adopt rules to establish a~~
21 ~~mechanism to recover the costs of administering and providing~~
22 ~~telecommunications relay services required under this section.~~



1 ~~(f) The commission shall require every intrastate~~
2 ~~telecommunications carrier to file a schedule of rates and~~
3 ~~charges and every provider of telecommunications relay service~~
4 ~~to maintain a separate accounting for the costs of providing~~
5 ~~telecommunications relay services for the deaf, persons with~~
6 ~~hearing disabilities, and persons with speech disabilities.~~

7 ~~(g) Nothing in this section shall preclude the commission~~
8 ~~from changing any rate established pursuant to this section~~
9 ~~either specifically or pursuant to any general restructuring of~~
10 ~~all telephone rates, charges, and classifications.~~

11 ~~(h) As used in this section:~~

12 ~~"Telecommunications relay services" means telephone~~
13 ~~transmission services that provide an individual who has a~~
14 ~~hearing or speech disability the ability to engage in~~
15 ~~communication by wire or radio with a hearing individual in a~~
16 ~~manner that is functionally equivalent to the ability of an~~
17 ~~individual who does not have a hearing or speech disability to~~
18 ~~communicate using wire or radio voice communication services.~~

19 ~~"Telecommunications relay services" includes services that~~
20 ~~enable two-way communication using text telephones or other~~
21 ~~nonvoice terminal devices, speech-to-speech services, video~~
22 ~~relay services, and non-English relay services."]~~



1 SECTION 36. Section 269-16.8, Hawaii Revised Statutes, is
2 repealed.

3 ~~["**§269-16.8**—Aggregators of telephone service~~
4 ~~requirements.~~ (a) ~~For the purposes of this section:~~

5 ~~"Aggregator" means every person or entity that is not a~~
6 ~~telecommunications carrier, who, in the ordinary course of its~~
7 ~~business, makes telephones available and aggregates the calls of~~
8 ~~the public or transient users of its business, including but not~~
9 ~~limited to a hotel, motel, hospital, or university, that~~
10 ~~provides operator-assisted services through access to an~~
11 ~~operator service provider.~~

12 ~~"Operator service" means a service provided by a~~
13 ~~telecommunications company to assist a customer to complete a~~
14 ~~telephone call.~~

15 ~~(b) The commission, by rule or order, shall adopt and~~
16 ~~enforce operating requirements for the provision of operator-~~
17 ~~assisted services by an aggregator. These requirements shall~~
18 ~~include, but not be limited to, the following:~~

19 ~~(1) Posting and display of information in a prominent and~~
20 ~~conspicuous fashion on or near the telephone equipment~~
21 ~~owned or controlled by the aggregator which states the~~
22 ~~identity of the operator service provider, the~~



1 ~~operator service provider's complaint handling~~
2 ~~procedures, and means by which the customer may access~~
3 ~~the various operator service providers.~~

4 ~~(2) Identification by name of the operator service~~
5 ~~provider prior to the call connection and, if not~~
6 ~~posted pursuant to subsection (b) (1), a disclosure of~~
7 ~~pertinent rates, terms, conditions, and means of~~
8 ~~access to various operator service providers and the~~
9 ~~local exchange carriers; provided that the operator~~
10 ~~service provider shall disclose this information at~~
11 ~~any time upon request by the customer.~~

12 ~~(3) Allowing the customer access to any operator service~~
13 ~~provider operating in the relevant geographic area~~
14 ~~through the access method chosen by the provider or as~~
15 ~~deemed appropriate by the commission.~~

16 ~~(4) Other requirements as deemed reasonable by the~~
17 ~~commission in the areas of public safety, quality of~~
18 ~~service, unjust or discriminatory pricing, or other~~
19 ~~matters in the public interest."]~~

20 SECTION 37. Section 269-16.9, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§269-16.9 Telecommunications providers and services.~~

2 ~~(a) Notwithstanding any provision of this chapter to the~~

3 ~~contrary, the commission, upon its own motion or upon the~~

4 ~~application of any person, and upon notice and hearing, may~~

5 ~~exempt a telecommunications provider or a telecommunications~~

6 ~~service from any or all of the provisions of this chapter,~~

7 ~~except the provisions of section 269-34, upon a determination~~

8 ~~that the exemption is in the public interest. In determining~~

9 ~~whether an exemption is in the public interest, the commission~~

10 ~~shall consider whether the exemption promotes state policies in~~

11 ~~telecommunications, the development, maintenance, and operation~~

12 ~~of effective and economically efficient telecommunications~~

13 ~~services, and the furnishing of telecommunications services at~~

14 ~~just and reasonable rates and in a fair manner in view of the~~

15 ~~needs of the various customer segments of the telecommunications~~

16 ~~industry. Among the specific factors the commission may~~

17 ~~consider are:~~

18 ~~(1) The responsiveness of the exemption to changes in the~~

19 ~~structure and technology of the State's~~

20 ~~telecommunications industry;~~

21 ~~(2) The benefits accruing to the customers and users of~~

22 ~~the exempt telecommunications provider or service;~~



- 1 ~~(3) The impact of the exemption on the quality,~~
2 ~~efficiency, and availability of telecommunications~~
3 ~~services;~~
- 4 ~~(4) The impact of the exemption on the maintenance of~~
5 ~~fair, just, and reasonable rates for~~
6 ~~telecommunications services;~~
- 7 ~~(5) The likelihood of prejudice or disadvantage to~~
8 ~~ratepayers of basic local exchange service resulting~~
9 ~~from the exemption;~~
- 10 ~~(6) The effect of the exemption on the preservation and~~
11 ~~promotion of affordable, universal, basic~~
12 ~~telecommunications services as those services are~~
13 ~~determined by the commission;~~
- 14 ~~(7) The resulting subsidization, if any, of the exempt~~
15 ~~telecommunications service or provider by nonexempt~~
16 ~~services;~~
- 17 ~~(8) The impact of the exemption on the availability of~~
18 ~~diversity in the supply of telecommunications services~~
19 ~~throughout the State;~~
- 20 ~~(9) The improvements in the regulatory system to be gained~~
21 ~~from the exemption, including the reduction in~~
22 ~~regulatory delays and costs;~~



1 ~~(10) The impact of the exemption on promoting innovations~~
2 ~~in telecommunications services;~~

3 ~~(11) The opportunity provided by the exemption for~~
4 ~~telecommunications providers to respond to~~
5 ~~competition; and~~

6 ~~(12) The potential for the exercise of substantial market~~
7 ~~power by the exempt provider or by a provider of the~~
8 ~~exempt telecommunications service.~~

9 ~~(b) The commission shall expedite, where practicable, the~~
10 ~~regulatory process with respect to exemptions and shall adopt~~
11 ~~guidelines under which each provider of an exempted service~~
12 ~~shall be subject to similar terms and conditions.~~

13 ~~(c) The commission may condition or limit any exemption as~~
14 ~~the commission deems necessary in the public interest. The~~
15 ~~commission may provide a trial period for any exemption and may~~
16 ~~terminate the exemption or continue it for such period and under~~
17 ~~such conditions and limitations as it deems appropriate.~~

18 ~~(d) The commission may require a telecommunications~~
19 ~~provider to apply for a certificate of public convenience and~~
20 ~~necessity pursuant to section 269-7.5; provided that the~~
21 ~~commission may waive any application requirement whenever it~~
22 ~~deems the waiver to be in furtherance of the purposes of this~~



1 ~~section. The exemptions under this section may be granted in a~~
2 ~~proceeding for certification or in a separate proceeding.~~

3 ~~(e) The commission may waive other regulatory requirements~~
4 ~~under this chapter applicable to telecommunications providers~~
5 ~~when it determines that competition will serve the same purpose~~
6 ~~as public interest regulation.~~

7 ~~(f) If any provider of an exempt telecommunications~~
8 ~~service or any exempt telecommunications provider elects to~~
9 ~~terminate its service, it shall provide notice of this to its~~
10 ~~customers, the commission, and every telephone public utility~~
11 ~~providing basic local exchange service in this State. The~~
12 ~~notice shall be in writing and given not less than six months~~
13 ~~before the intended termination date. Upon termination of~~
14 ~~service by a provider of an exempt service or by an exempt~~
15 ~~provider, the appropriate telephone public utility providing~~
16 ~~basic local exchange service shall ensure that all customers~~
17 ~~affected by the termination receive basic local exchange~~
18 ~~service. The commission shall, upon notice and hearing or by~~
19 ~~rule, determine the party or parties who shall bear the cost, if~~
20 ~~any, of access to the basic local exchange service by the~~
21 ~~customers of the terminated exempt service.~~



1 ~~(g) Upon the petition of any person or upon its own~~
2 ~~motion, the commission may rescind any exemption or waiver~~
3 ~~granted under this section if, after notice and hearing, it~~
4 ~~finds that the conditions prompting the granting of the~~
5 ~~exemption or waiver no longer apply, or that the exemption or~~
6 ~~waiver is no longer in the public interest, or that the~~
7 ~~telecommunications provider has failed to comply with one or~~
8 ~~more of the conditions of the exemption or applicable statutory~~
9 ~~or regulatory requirements.~~

10 ~~(h) For purposes of this section, the commission, upon~~
11 ~~determination that any area of the State has less than adequate~~
12 ~~telecommunications service, shall require the existing~~
13 ~~telecommunications provider to show cause as to why the~~
14 ~~commission should not authorize an alternative~~
15 ~~telecommunications provider for that area under the terms and~~
16 ~~conditions of this section."]~~

17 SECTION 38. Section 269-16.91, Hawaii Revised Statutes, is
18 repealed.

19 ~~["~~§269-16.91~~ **Universal service subsidies.** (a) For any~~
20 ~~alternative telecommunications provider authorized to provide~~
21 ~~basic local exchange service to any area of the State pursuant~~



1 ~~to section 269-16.9(h), the commission may consider the~~
2 ~~following:~~

- 3 ~~(1) Transferring the subsidy, if any, of the local~~
- 4 ~~exchange provider's basic residential telephone~~
- 5 ~~service to the alternative provider; and~~
- 6 ~~(2) Transferring from the local exchange carrier to the~~
- 7 ~~alternative provider the amounts, if any, generated by~~
- 8 ~~the local exchange provider's services other than~~
- 9 ~~basic residential telephone service and which are used~~
- 10 ~~to subsidize basic residential service in the area.~~

11 ~~(b) To receive the subsidy amounts from the local exchange~~
12 ~~service provider, the alternative telecommunications provider~~
13 ~~shall be required, to the extent possible, to obtain basic~~
14 ~~residential service subsidies from both the local exchange~~
15 ~~service provider and national universal service providers."]~~

16 SECTION 39. Section 269-16.92, Hawaii Revised Statutes, is
17 repealed.

18 [~~§269-16.92~~] ~~Changes in subscriber carrier selections;~~
19 ~~prior authorization required; penalties for unauthorized~~
20 ~~changes.~~ (a) ~~No telecommunications carrier shall initiate a~~
21 ~~change in a subscriber's selection or designation of a long-~~
22 ~~distance carrier without first receiving:~~



- 1 ~~(1) A letter of agency or letter of authorization;~~
2 ~~(2) An electronic authorization by use of a toll-free~~
3 ~~number;~~
4 ~~(3) An oral authorization verified by an independent third~~
5 ~~party; or~~
6 ~~(4) Any other prescribed authorization;~~

7 ~~provided that the letter or authorization shall be in accordance~~
8 ~~with verification procedures that are prescribed by the Federal~~
9 ~~Communications Commission or the public utilities commission.~~
10 ~~For purposes of this section, "telecommunications carrier" does~~
11 ~~not include a provider of commercial mobile radio service as~~
12 ~~defined by 47 United States Code section 332(d)(1).~~

13 ~~(b) Upon a determination that any telecommunications~~
14 ~~carrier has engaged in conduct that is prohibited in subsection~~
15 ~~(a), the public utilities commission shall order the carrier to~~
16 ~~take corrective action as deemed necessary by the commission and~~
17 ~~may subject the telecommunications carrier to administrative~~
18 ~~penalties pursuant to section 269-28. Any proceeds from~~
19 ~~administrative penalties collected under this section shall be~~
20 ~~deposited into the public utilities commission special fund.~~

21 ~~The commission, if consistent with the public interest, may~~
22 ~~suspend, restrict, or revoke the registration, charter, or~~



1 ~~certificate of the telecommunications carrier, thereby denying,~~
2 ~~modifying, or limiting the right of the telecommunications~~
3 ~~carrier to provide service in this State.~~

4 ~~(c) The commission shall adopt rules, pursuant to chapter~~
5 ~~91, necessary for the purposes of this section. The commission~~
6 ~~may notify customers of their rights under these rules."]~~

7 SECTION 40. Section 269-16.95, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§269-16.95 Emergency telephone service; capital costs;~~
10 ~~ratemaking. (a) A public utility providing local exchange~~
11 ~~telecommunications services may recover the capital cost and~~
12 ~~associated operating expenses of providing a statewide enhanced~~
13 ~~911 emergency telephone service in the public switched telephone~~
14 ~~network, through:~~

15 ~~(1) A telephone line surcharge; or~~

16 ~~(2) Its rate case.~~

17 ~~(b) Notwithstanding the commission's rules on ratemaking,~~
18 ~~the commission shall expedite and give highest priority to any~~
19 ~~necessary ratemaking procedures related to providing a statewide~~
20 ~~enhanced 911 emergency telephone service; provided that the~~
21 ~~commission may set forth conditions and requirements as the~~
22 ~~commission determines are in the public interest.~~



1 ~~(c) The commission shall require every public utility~~
2 ~~providing statewide enhanced 911 emergency telephone service to~~
3 ~~maintain a separate accounting of the costs of providing an~~
4 ~~enhanced 911 emergency service and the revenues received from~~
5 ~~related surcharges until the next general rate case. The~~
6 ~~commission shall further require that every public utility~~
7 ~~imposing a surcharge shall identify such as a separate line item~~
8 ~~on all customer billing statements.~~

9 ~~(d) This section shall not preclude the commission from~~
10 ~~changing any rate, established pursuant to this section, either~~
11 ~~specifically or pursuant to any general restructuring of all~~
12 ~~telephone rates, charges, and classifications."]~~

13 SECTION 41. Section 269-34, Hawaii Revised Statutes, is
14 repealed.

15 ~~["**§269-34** Obligations of telecommunications carriers.~~
16 ~~In accordance with conditions and guidelines established by the~~
17 ~~commission to facilitate the introduction of competition into~~
18 ~~the State's telecommunications marketplace, each~~
19 ~~telecommunications carrier, upon bona fide request, shall~~
20 ~~provide services or information services, on reasonable terms~~
21 ~~and conditions, to an entity seeking to provide intrastate~~
22 ~~telecommunications, including:~~



- 1 ~~(1) Interconnection to the telecommunications carrier's~~
2 ~~telecommunications facilities at any technically~~
3 ~~feasible and economically reasonable point within the~~
4 ~~telecommunications carrier's network so that the~~
5 ~~networks are fully interoperable;~~
- 6 ~~(2) The current interstate tariff used as the access rate~~
7 ~~until the commission can adopt a new intrastate local~~
8 ~~service interconnection tariff pursuant to section~~
9 ~~269-37;~~
- 10 ~~(3) Nondiscriminatory and equal access to any~~
11 ~~telecommunications carrier's telecommunications~~
12 ~~facilities, functions, and the information necessary~~
13 ~~to the transmission and routing of any~~
14 ~~telecommunications service and the interoperability of~~
15 ~~both carriers' networks;~~
- 16 ~~(4) Nondiscriminatory access among all telecommunications~~
17 ~~carriers, where technically feasible and economically~~
18 ~~reasonable, and where safety or the provision of~~
19 ~~existing electrical service is not at risk, to the~~
20 ~~poles, ducts, conduits, and rights-of-way owned or~~
21 ~~controlled by the telecommunications carrier, or the~~
22 ~~commission shall authorize access to electric~~



1 ~~utilities' poles as provided by the joint pole~~
2 ~~agreement, commission tariffs, rules, orders, or~~
3 ~~Federal Communications Commission rules and~~
4 ~~regulations;~~

5 ~~(5) Nondiscriminatory access to the network functions of~~
6 ~~the telecommunications carrier's telecommunications~~
7 ~~network, that shall be offered on an unbundled,~~
8 ~~competitively neutral, and cost-based basis;~~

9 ~~(6) Telecommunications services and network functions~~
10 ~~without unreasonable restrictions on the resale or~~
11 ~~sharing of those services and functions; and~~

12 ~~(7) Nondiscriminatory access of customers to the~~
13 ~~telecommunications carrier of their choice without the~~
14 ~~need to dial additional digits or access codes, where~~
15 ~~technically feasible. The commission shall determine~~
16 ~~the equitable distribution of costs among the~~
17 ~~authorized telecommunications carriers that will use~~
18 ~~such access and shall establish rules to ensure such~~
19 ~~access.~~

20 ~~Where possible, telecommunications carriers shall enter~~
21 ~~into negotiations to agree on the provision of services or~~
22 ~~information services without requiring intervention by the~~



1 ~~commission; provided that any such agreement shall be subject to~~
2 ~~review by the commission to ensure compliance with the~~
3 ~~requirements of this section."]~~

4 SECTION 42. Section 269-35, Hawaii Revised Statutes, is
5 repealed.

6 [~~§269-35~~ ~~Universal service.~~ The commission shall
7 ~~preserve and advance universal service by:~~

8 (1) ~~Maintaining affordable, just, and reasonable rates for~~
9 ~~basic residential service;~~

10 (2) ~~Assisting individuals or entities who cannot afford~~
11 ~~the cost of or otherwise require assistance in~~
12 ~~obtaining or maintaining their basic service or~~
13 ~~equipment as determined by the commission; and~~

14 (3) ~~Ensuring that consumers are given the information~~
15 ~~necessary to make informed choices among the~~
16 ~~alternative telecommunications providers and~~
17 ~~services."]~~

18 SECTION 43. Section 269-36, Hawaii Revised Statutes, is
19 repealed.

20 [~~§269-36~~ ~~Telecommunications number portability.~~ The
21 ~~commission shall ensure that telecommunications number~~
22 ~~portability within an exchange is available, upon request, as~~



1 ~~soon as technically feasible and economically reasonable. An~~
2 ~~impartial entity shall administer telecommunications numbering~~
3 ~~and make the numbers available on an equitable basis."]~~

4 SECTION 44. Section 269-37, Hawaii Revised Statutes, is
5 repealed.

6 [~~["§269-37] Compensation agreements. The commission shall~~
7 ~~ensure that telecommunications carriers are compensated on a~~
8 ~~fair basis for termination of telecommunications services on~~
9 ~~each other's networks, taking into account, among other things,~~
10 ~~reasonable and necessary costs to each telecommunications~~
11 ~~carrier of providing the services in question.~~
12 ~~Telecommunications carriers may negotiate compensation~~
13 ~~arrangements, that may include "bill and keep", mutual and equal~~
14 ~~compensation, or any other reasonable division of revenues~~
15 ~~pending tariff access rates to be set by the commission. Upon~~
16 ~~failure of the negotiations, the commission shall determine the~~
17 ~~proper methodology and amount of compensation."]~~

18 SECTION 45. Section 269-38, Hawaii Revised Statutes, is
19 repealed.

20 [~~["§269-38] Regulatory flexibility for effectively~~
21 ~~competitive services. The commission may allow~~
22 ~~telecommunications carriers to have pricing flexibility for~~



1 ~~services that the commission finds are effectively competitive;~~
2 ~~provided that the rates for:~~

- 3 ~~(1) Basic telephone service and for services that are not~~
4 ~~effectively competitive are cost based and remain~~
5 ~~just, reasonable, and nondiscriminatory; and~~
6 ~~(2) Universal service is preserved and advanced."]~~

7 SECTION 46. Section 269-39, Hawaii Revised Statutes, is
8 repealed.

9 ~~["~~§269-39~~ **Cross-subsidies.** (a) The commission shall~~
10 ~~ensure that noncompetitive services shall not cross-subsidize~~
11 ~~competitive services. Cross-subsidization shall be deemed to~~
12 ~~have occurred:~~

13 ~~(1) If any competitive service is priced below the total~~
14 ~~service long-run incremental cost of providing the~~
15 ~~service as determined by the commission in subsection~~
16 ~~(b); or~~

17 ~~(2) If competitive services, taken as a whole, fail to~~
18 ~~cover their direct and allocated joint and common~~
19 ~~costs as determined by the commission.~~

20 ~~(b) The commission shall determine the methodology and~~
21 ~~frequency with which providers calculate total service long-run~~
22 ~~incremental cost and fully allocated joint and common costs.~~



1 ~~The total service long-run incremental cost of a service shall~~
2 ~~include an imputation of an amount equal to the contribution~~
3 ~~that the telecommunications carrier receives from noncompetitive~~
4 ~~inputs used by alternative providers in providing the same or~~
5 ~~equivalent service."]~~

6 SECTION 47. Section 269-40, Hawaii Revised Statutes, is
7 repealed.

8 [~~§269-40~~] ~~Access to advanced services.~~ The commission
9 shall ensure that all consumers are provided with
10 nondiscriminatory, reasonable, and equitable access to high
11 quality telecommunications network facilities and capabilities
12 that provide subscribers with sufficient network capacity to
13 access information services that provide a combination of voice,
14 data, image, and video, and that are available at just,
15 reasonable, and nondiscriminatory rates that are based on
16 reasonably identifiable costs of providing the services."]

17 SECTION 48. Section 269-41, Hawaii Revised Statutes, is
18 repealed.

19 [~~§269-41~~] ~~Universal service program; establishment;~~
20 ~~purpose; principles.~~ There is established the universal service
21 program. The purpose of this program is to:



- 1 ~~(1) Maintain affordable, just, and reasonable rates for~~
2 ~~basic residential telecommunications service, as~~
3 ~~defined by the commission;~~

- 4 ~~(2) Assist customers located in the areas of the State~~
5 ~~that have high costs of essential telecommunications~~
6 ~~service, low-income customers, and customers with~~
7 ~~disabilities, in obtaining and maintaining access to a~~
8 ~~basic set of essential telecommunications services as~~
9 ~~determined by the commission. The commission may~~
10 ~~expand or otherwise modify relevant programs, such as~~
11 ~~the lifeline program under section 269-16.5;~~

- 12 ~~(3) Ensure that consumers in all communities are provided~~
13 ~~with access, at reasonably comparable rates, to all~~
14 ~~telecommunications services which are used by a~~
15 ~~majority of consumers located in metropolitan areas of~~
16 ~~the State. The commission shall provide for a~~
17 ~~reasonable transition period to support the statewide~~
18 ~~deployment of these advanced telecommunications~~
19 ~~services, including, but not limited to, the use of~~
20 ~~strategic community access points in public facilities~~
21 ~~such as education, library, and health care~~
22 ~~facilities;~~



1 ~~(4) Ensure that consumers are given the information~~
2 ~~necessary to make informed choices among the~~
3 ~~alternative telecommunications carriers and services,~~
4 ~~and~~

5 ~~(5) Promote affordable access throughout the State to~~
6 ~~enhanced government information and services,~~
7 ~~including education, health care, public safety, and~~
8 ~~other government services.~~

9 ~~The commission shall administer the universal service~~
10 ~~program, including the establishment of criteria by which the~~
11 ~~purposes of the program are met."]~~

12 SECTION 49. Section 269-42, Hawaii Revised Statutes, is
13 repealed.

14 ~~["**§269-42 Universal service program; contributions.** (a)~~
15 ~~There is established outside of the state treasury a special~~
16 ~~fund to be known as the universal service fund to be~~
17 ~~administered by the commission to implement the policies and~~
18 ~~goals of universal service. The fund shall consist of~~
19 ~~contributions from the sources identified in subsections (e) and~~
20 ~~(f). Interest earned from the balance of the fund shall become~~
21 ~~a part of the fund. The commission shall adopt rules regarding~~
22 ~~the distribution of moneys from the fund including~~



1 ~~reimbursements to carriers for providing reduced rates to low-~~
2 ~~income, elderly, residents of underserved or rural areas, or~~
3 ~~other subscribers, as authorized by the commission.~~

4 ~~(b) The commission may allow distribution of funds~~
5 ~~directly to customers based upon a need criteria established by~~
6 ~~the commission.~~

7 ~~(c) A telecommunications carrier or other person~~
8 ~~contributing to the universal service program may establish a~~
9 ~~surcharge which is clearly identified and explained on~~
10 ~~customers' bills to collect from customers contributions~~
11 ~~required under this section.~~

12 ~~(d) Telecommunications carriers may compete to provide~~
13 ~~services to underserved areas using funds from the universal~~
14 ~~service program. For the purposes of this section, "underserved~~
15 ~~areas" means those areas in the State that lack or have very~~
16 ~~limited access to high capacity, advanced telecommunications~~
17 ~~networks and information services, including access to cable~~
18 ~~television.~~

19 ~~(e) The commission shall require all telecommunications~~
20 ~~carriers to contribute to the universal service program. The~~
21 ~~commission may require a person other than a telecommunications~~
22 ~~carrier to contribute to the universal service program if, after~~



1 ~~notice and opportunity for hearing, the commission determines~~
 2 ~~that the person is offering a commercial service in the State~~
 3 ~~that directly benefits from the telecommunications~~
 4 ~~infrastructure, and that directly competes with a~~
 5 ~~telecommunications service provided in the State for which a~~
 6 ~~contribution is required under this subsection.~~

7 ~~(f) The commission shall designate the method by which the~~
 8 ~~contributions under subsection (c) shall be calculated and~~
 9 ~~collected. The commission shall consider basing contributions~~
 10 ~~solely on the gross operating revenues from the retail provision~~
 11 ~~of intrastate telecommunications services offered by the~~
 12 ~~telecommunications carriers subject to the contribution."]~~

13 SECTION 50. Section 269-43, Hawaii Revised Statutes, is
 14 repealed.

15 [~~["**§269-43** Carriers of last resort.~~ (a) The commission
 16 may define and designate local exchange service areas where the
 17 commission has determined that providing universal service funds
 18 to a single provider will be the most appropriate way to ensure
 19 service for these areas.

20 ~~(b) The commission shall determine the level of service~~
 21 ~~that is appropriate for each designated local exchange service~~
 22 ~~area and shall invite telecommunications providers to bid for a~~



1 ~~level of service that is appropriate. The successful bidder~~
2 ~~shall be designated the carrier of last resort for the~~
3 ~~designated local exchange service area for a period of time and~~
4 ~~upon conditions set by the commission. In determining the~~
5 ~~successful bidder, the commission shall take into consideration~~
6 ~~the level of service to be provided, the investment commitment,~~
7 ~~and the length of the agreement, in addition to the other~~
8 ~~qualifications of the bidder.~~

9 ~~(c) The universal service fund shall also provide service~~
10 ~~drops and basic service at discounted rates to public~~
11 ~~institutions, as stated in section 269-41.~~

12 ~~(d) The commission shall adopt rules pursuant to chapter~~
13 ~~91 to carry out the provisions of this section."]~~

14 SECTION 51. Chapter 440G, Hawaii Revised Statutes, is
15 repealed.

16 SECTION 52. During fiscal year 2009-2010, fifty per cent
17 of the moneys collected by the public utilities commission from
18 telecommunications carriers and deposited into the public
19 utilities commission special fund shall be deposited into the
20 Hawaii communications commission special.

21 SECTION 53. The unencumbered balance existing on June 30,
22 2009, in the cable television division subaccount in the



1 compliance resolution fund shall be deposited into the Hawaii
2 communications commission special fund.

3 SECTION 54. There is appropriated out of the Hawaii
4 communications commission special fund the sum of \$ or
5 so much thereof as may be necessary for fiscal year 2009-2010
6 and the sum of \$ or so much thereof as may be
7 necessary for fiscal year 2010-2011 for purposes of this Act,
8 including the hiring of staff.

9 The sums appropriated shall be expended by the Hawaii
10 communications commission.

11 SECTION 55. All rules, policies, procedures, orders,
12 certificates of public convenience and necessity, franchises,
13 guidelines, and other material adopted, issued, or developed by
14 the department of commerce and consumer affairs and the public
15 utilities commission to implement provisions of the Hawaii
16 Revised Statutes that are reenacted or made applicable to the
17 Hawaii communications commission by this Act, shall remain in
18 full force and effect until amended or repealed by the Hawaii
19 communications commissioner. In the interim, every reference to
20 the department of commerce and consumer affairs, director of
21 commerce and consumer affairs, public utilities commission, or
22 chairperson of the public utilities commission in those rules,



1 policies, procedures, orders, franchises, guidelines, and other
2 material is amended to refer to the Hawaii communications
3 commission as appropriate.

4 SECTION 56. All deeds, leases, contracts, loans,
5 agreements, permits, or other documents executed or entered into
6 by or on behalf of the department of commerce and consumer
7 affairs and the public utilities commission pursuant to the
8 provisions of the Hawaii Revised Statutes that are reenacted or
9 made applicable to the Hawaii communications commission by this
10 Act, shall remain in full force and effect. Effective upon
11 approval of this Act, every reference to the department of
12 commerce and consumer affairs, director of commerce and consumer
13 affairs, public utilities commission, or chairperson of the
14 public utilities commission therein shall be construed as a
15 reference to the Hawaii communications commission as
16 appropriate.

17 SECTION 57. All appropriations, records, equipment,
18 machines, files, supplies, contracts, books, papers, documents,
19 maps, and other personal property heretofore made, used,
20 acquired, or held by the department of commerce and consumer
21 affairs and the public utilities commission relating to the



1 functions transferred to the Hawaii communications commission
2 shall be transferred with the functions to which they relate.

3 SECTION 58. (a) The department of commerce and consumer
4 affairs shall transfer four positions to the service of the
5 Hawaii communications commission. The positions selected for
6 transfer shall reasonably relate to the functions of the Hawaii
7 communications commission.

8 (b) Up to an additional ten general funded positions shall
9 be transferred to the Hawaii communications commission to be
10 funded from the Hawaii communications commission special fund.

11 (c) All officers and employees whose functions are
12 transferred by this Act shall be transferred with their
13 functions and shall continue to perform their regular duties
14 upon their transfer, subject to the state personnel laws and
15 this Act.

16 No officer or employee of the State having tenure shall
17 suffer any loss of salary, seniority, prior service credit,
18 vacation, sick leave, or other employee benefit or privilege as
19 a consequence of this Act, and such officer or employee may be
20 transferred or appointed to a civil service position without the
21 necessity of examination; provided that the officer or employee
22 possesses the minimum qualifications for the position to which



1 transferred or appointed; and provided that subsequent changes
2 in status may be made pursuant to applicable civil service and
3 compensation laws.

4 An officer or employee of the State who does not have
5 tenure and who may be transferred or appointed to a civil
6 service position as a consequence of this Act shall become a
7 civil service employee without the loss of salary, seniority,
8 prior service credit, vacation, sick leave, or other employee
9 benefits or privileges and without the necessity of examination;
10 provided that such officer or employee possesses the minimum
11 qualifications for the position to which transferred or
12 appointed.

13 If an office or position held by an officer or employee
14 having tenure is abolished, the officer or employee shall not
15 thereby be separated from public employment, but shall remain in
16 the employment of the State with the same pay and classification
17 and shall be transferred to some other office or position for
18 which the officer or employee is eligible under the personnel
19 laws of the State as determined by the head of the department or
20 the governor.

21 SECTION 59. The Hawaii communications commission shall
22 convene a work group to develop procedures for streamlined



1 regulatory, franchising, and permitting functions normally
2 available to state and local governments for the use or
3 development of broadband service or broadband technology.

4 Members of the work group shall include:

- 5 (1) The Hawaii communications commissioner;
- 6 (2) The mayor of the county of Hawaii, or the mayor's
7 designee;
- 8 (3) The mayor of the city and county of Honolulu, or the
9 mayor's designee;
- 10 (4) The mayor of the county of Kauai, or the mayor's
11 designee;
- 12 (5) The mayor of the county of Maui, or the mayor's
13 designee;
- 14 (6) The chairperson of the Hawaii broadband task force
15 established by Act 2, First Special Session Laws of
16 Hawaii 2007; and
- 17 (7) Five representatives of the telecommunications, cable,
18 wireless internet, and non-profit industries.

19 SECTION 60. The work group established under section 59
20 shall submit to the legislature no later than January 1, 2010, a
21 report with its recommended procedures for streamlining and
22 expediting all regulatory, franchising, and permitting functions



1 normally available to state and local governments for the use or
2 development of broadband service or broadband technology. The
3 procedures shall be consistent across all counties and shall
4 provide that any permitting fees and revenues traditionally
5 accruing to the counties that relate to the use or development
6 of broadband service or broadband technology will continue to
7 accrue to the counties once the procedures go into effect. The
8 Hawaii communications commission shall begin to implement the
9 recommendations of the working group not later than July 1,
10 2010.

11 SECTION 61. The Hawaii communications commission shall
12 review all relevant laws in the Hawaii Revised Statutes relating
13 to broadband technology, telecommunications, infrastructure
14 development, permitting requirements, and any other issues the
15 Hawaii communications commission deems appropriate, including
16 all acts passed by the legislature during this regular session
17 of 2009, whether enacted before or after the effective date of
18 this Act, unless such acts specifically provide that this Act is
19 being amended, and make recommendations on how these laws may be
20 amended to conform to this Act or facilitate the implementation
21 of this Act. The Hawaii communications commission shall submit
22 a report of its findings and recommendations, including proposed



1 legislation, to the legislature not later than twenty days prior
2 to the convening of the 2010 regular session.

3 SECTION 62. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 63. This Act shall take effect on July 1, 2009;
6 provided that any decision or order executed by the public
7 utilities commission prior to the enactment of this Act shall
8 remain in full force and effect until such time as the Hawaii
9 communications commission may amend or repeal the decision or
10 order under the Hawaii communications commission's jurisdiction;
11 provided further that the amendments made to section 28-8.3,
12 Hawaii Revised Statutes, in section 4 of this Act shall not be
13 repealed when that section is repealed and reenacted by Section
14 14 of Act 58, Session Laws of Hawaii 2004, as amended by section
15 50 of Act 22, Session Laws of Hawaii 2005, as amended by section
16 1 of Act 306, Session Laws of Hawaii 2006.



Report Title:

Hawaii Communications Commission; Broadband Regulation;
Broadband Franchising; Broadband Permitting

Description:

Implements key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Communications Commission (HCC) and the Hawaii Communications Commissioner in the Department of Commerce and Consumer Affairs (DCCA). Transfers functions relating to telecommunications from the Public Utilities Commission to HCC and to cable services from DCCA to HCC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the Legislature. (HD3)

