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## 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. In order to position Hawaii for



1 global competitiveness in the twenty-first century, this Act  
2 promotes 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 in order 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 commissioner under the administrative authority  
8           of the department of commerce and consumer affairs and require  
9           the commissioner to:

10          (1) Investigate, promote, and ensure the growth and  
11          development of broadband infrastructure within the  
12          State in accordance with the aforementioned goals;

13          (2) Champion the State's broadband, telecommunications,  
14          and video programming services interests before the  
15          federal government, including the United States  
16          Congress, the executive branch of the United States,  
17          and the Federal Communications Commission; and state  
18          and local agencies, including the governor, the state  
19          legislature, and municipal and county governments;

20          (3) Maintain close working relationships with community  
21          groups, civic associations, industry trade  
22          organizations, industry leaders, and other



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

10 **PART I. GENERAL PROVISIONS**

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

13 "Access organization" means any nonprofit organization  
14 designated by the commissioner to oversee the development,  
15 operation, supervision, management, production, or broadcasting  
16 of programs for any channels obtained under section -67, and  
17 any officers, agents, and employees of an organization with  
18 respect to matters within the course and scope of their  
19 employment by the access organization.

20 "Applicant" means a person who initiates an application or  
21 proposal.

22 "Application" means an unsolicited filing.



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

3 "Broadband" means an "always on" data networking service  
4 that enables end users to access the Internet and use a variety  
5 of applications, at minimum speeds set by the commissioner.

6 "Cable franchise" means a nonexclusive initial  
7 authorization or renewal thereof issued pursuant to this  
8 chapter, whether the authorization is designated as a franchise,  
9 permit, order, contract, agreement, or otherwise, which  
10 authorizes the construction or operation of a cable system.

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

12 (1) Provides cable service over a cable system and  
13 directly or through one or more affiliates owns a  
14 significant interest in the cable system; or

15 (2) Otherwise controls or is responsible for, through any  
16 arrangement, the management and operation of a cable  
17 system.

18 "Cable service" means:

19 (1) The one-way transmission to subscribers of video  
20 programming or other programming service; and



1           (2) Subscriber interaction, if any, which is required for  
2           the selection of video programming or other  
3           programming service.

4           "Cable system" means any facility within this State  
5           consisting of a set of closed transmission paths and associated  
6           signal generation, reception, and control equipment that is  
7           designed to provide cable service which includes video  
8           programming and which is provided to multiple subscribers within  
9           a community, but does not include a facility:

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

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

16          (3) Of a telecommunications carrier subject in whole or in  
17          part to the provisions of part II of this chapter,  
18          except to the extent that those facilities provide  
19          video programming directly to subscribers.

20          "Carrier of last resort" means a telecommunications carrier  
21          designated by the commissioner to provide universal service in a



1 given local exchange service area determined to be lacking in  
2 effective competition.

3 "Department" means the department of commerce and consumer  
4 affairs.

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

8 "Director" means the director of commerce and consumer  
9 affairs.

10 "Facility" includes all real property, antenna, poles,  
11 supporting structures, wires, cables, conduits, amplifiers,  
12 instruments, appliances, fixtures, and other personal property  
13 used by a cable operator in providing service to its  
14 subscribers.

15 "Hawaii communications commissioner" or "commissioner" has  
16 the same meaning as in section -2.

17 "Institution of higher education" means an academic college  
18 or university accredited by the Western Association of Schools  
19 and Colleges.

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





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

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

4 "Public, educational, or governmental access facilities" or

5 "PEG access facility" means:

6 (1) Channel capacity designated for public, educational,  
7 or governmental uses; and

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

10 "Public, educational, or governmental access organization"  
11 or "PEG access organization" means any person or entity that  
12 provides public, educational, or governmental access services.

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

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

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



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

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

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



1           §   -2   **Hawaii communications commissioner.**  There shall be  
2 established the Hawaii communications commissioner.  The  
3 implementation of this chapter shall be placed under the  
4 supervision and control of the Hawaii communications  
5 commissioner, who shall be exempt from chapter 76 and shall be  
6 appointed by the governor, with the advice and consent of the  
7 senate.

8           §   -3   **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           §   -4   **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, utilize 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 act as attorney(s)  
15 for the commissioner and shall be exempt from chapter 76. The  
16 commissioner shall define their powers and duties and fix their  
17 compensation.

18           (e) With the consent of the director, the commissioner may  
19 utilize from the department, one or more attorneys independent  
20 of 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 § -5 **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 commissioner  
9 may serve.

10 § -6 **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 § -7 **General powers and duties.** (a) The commissioner  
14 shall have the authority expressly conferred upon the  
15 commissioner by, or reasonably implied from, the provisions of  
16 this chapter.

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



1 (c) The commissioner has the authority to adopt rules  
2 pursuant to chapter 91 necessary for the purposes of this  
3 chapter.

4 (d) The commissioner shall have general supervision over  
5 public, educational, or governmental access facilities and  
6 public, educational, or governmental access organizations.

7 § -8 **Telecommunications development duties.** (a) The  
8 commissioner shall ensure that all consumers are provided with  
9 nondiscriminatory, reasonable, and equitable access to high  
10 quality telecommunications network facilities and capabilities  
11 that provide subscribers with sufficient network capacity to  
12 access information services that provide a combination of voice,  
13 data, image, and video, and that are available at just,  
14 reasonable, and nondiscriminatory rates.

15 (b) No later than July 1, 2011, the commissioner shall  
16 study and develop a comprehensive policy to further deploy  
17 broadband communications, including internet access, in the  
18 State. The study shall include consideration of communications  
19 by wire and radio, including satellite and wireless services.  
20 The commissioner shall develop plans and strategies to increase  
21 broadband affordability, penetration, and competitive  
22 availability in the State. The plans may include making



1 low-cost, broadband-capable computers available to eligible  
2 recipients. The commissioner shall regularly update and revise  
3 the commissioner's studies and findings to ensure that the  
4 State's policies and initiatives remain effective in promoting  
5 the State's interests.

6 (c) The commissioner shall develop programs and  
7 initiatives intended to facilitate the deployment of broadband  
8 communications services in the State and access to those  
9 services by users in the State. The commissioner shall fund  
10 these programs and initiatives using funds collected pursuant to  
11 section -51 and deposited in the commissioner special fund  
12 pursuant to section -20. In conjunction with the funds, or  
13 alternatively, the commissioner may seek appropriations of funds  
14 from the State.

15 (d) The commissioner shall develop, and routinely update,  
16 a state policy and formulate positions to be taken before  
17 federal agencies regarding areas outside its jurisdiction. The  
18 commissioner shall advocate on behalf of the State's broadband,  
19 telecommunications, and video programming distribution interests  
20 before the United States Congress, the executive branch of the  
21 United States, and the Federal Communications Commission, and  
22 locally before the governor, the state legislature, and



1 municipal and county governments. The commissioner shall also  
2 maintain close working relationships with community groups,  
3 civic associations, industry trade associations, industry  
4 leaders, and other stakeholders to ensure that the State's  
5 interests and concerns are understood.

6       § -9 **Investigative powers.** (a) The commissioner shall  
7 have power to examine the condition of each telecommunications  
8 carrier, cable operator, and PEG access organization; the manner  
9 in which each telecommunications carrier, cable operator, and  
10 PEG access organization is operated with reference to the safety  
11 or accommodation of the public; the safety, working hours, and  
12 wages of employees of each telecommunications carrier, cable  
13 operator, and PEG access organization; the fares and rates  
14 charged by each telecommunications carrier, cable operator, and  
15 PEG access organization; the value of the physical property of  
16 each telecommunications carrier, cable operator, and PEG access  
17 organization; the issuance by each telecommunications carrier,  
18 cable operator, and PEG access organization of stocks and bonds,  
19 and the disposition of the proceeds thereof; the amount and  
20 disposition of income of each telecommunications carrier, cable  
21 operator, and PEG access organization; and all financial  
22 transactions of each telecommunications carrier, cable operator,





1 and PEG access organization; business relations of each  
2 telecommunications carrier, cable operator, and PEG access  
3 organization with other persons, companies, or corporations;  
4 compliance of each telecommunications carrier, cable operator,  
5 and PEG access organization with all applicable state and  
6 federal laws and with the provisions of its franchise, charter,  
7 and articles of association, if any; and classifications, rules,  
8 regulations, practices, and service, and all matters of every  
9 nature affecting the relations and transactions between each  
10 telecommunications carrier, cable operator, and PEG access  
11 organization and the public or persons or corporations.

12 (b) The commissioner 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 commissioner on  
20 the commissioner's own motion, and shall be made when requested  
21 by 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 commissioner, setting forth any prima  
2 facie cause of complaint.

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

14       §   -11 **Annual report and register of orders.** The  
15 commissioner shall prepare and present to the governor, through  
16 the director, in the month of January in each year a report  
17 respecting the commissioner's actions during the preceding  
18 fiscal year. This report shall include summary information and  
19 analytical, comparative, and trend data concerning major  
20 regulatory issues acted upon and pending before the  
21 commissioner; cases processed by the commissioner, including  
22 their dispositions; telecommunications carrier and cable



1 operator operations, capital improvements, and rates;  
2 telecommunications carrier and cable operator performance in  
3 terms of efficiency and quality of services rendered;  
4 environmental matters having a significant impact upon  
5 telecommunications carriers and cable operators; actions of the  
6 federal government affecting the regulation of  
7 telecommunications carriers and cable operators in the State;  
8 long- and short-range plans and objectives of the commissioner;  
9 and the commissioner's recommendations respecting legislation  
10 and other matters requiring executive and legislative  
11 consideration. Copies of the annual reports shall be furnished  
12 by the governor to the legislature. In addition, the  
13 commissioner shall establish and maintain a register of all of  
14 the commissioner's orders and decisions, which shall be open and  
15 readily available for public inspection.

16 § -12 **Commissioner's investigative authorities.** In all  
17 investigations made by the commissioner, and in all proceedings  
18 before the commissioner, the commissioner shall have the same  
19 powers respecting administering of oaths, compelling the  
20 attendance of witnesses and the production of documentary  
21 evidence, examining witnesses, and punishing for contempt, as  
22 are possessed by circuit courts. In case of disobedience by any



1 person to any order of the commissioner, or any subpoena issued  
2 by the commissioner, or of the refusal of any witness to testify  
3 to any matter regarding which the witness may be questioned  
4 lawfully, any circuit court, on application by the commissioner,  
5 shall compel obedience as in case of disobedience of the  
6 requirements of a subpoena issued from a circuit court or a  
7 refusal to testify therein. No person shall be excused from  
8 testifying or from producing any book, waybill, document, paper,  
9 electronic record, or account in any investigation or inquiry by  
10 a hearing before the commissioner when ordered to do so, upon  
11 the ground that the testimony or evidence, book, waybill,  
12 document, paper, electronic record, or account required of the  
13 person may tend to incriminate the person or subject the person  
14 to penalty or forfeiture; but no person shall be prosecuted for  
15 any crime, punished for any crime, or subjected to any criminal  
16 penalty or criminal forfeiture for or on account of any act,  
17 transaction, matter, or thing concerning a matter about which  
18 the person has testified under oath or produced documentary  
19 evidence pursuant to a subpoena. Nothing herein shall be  
20 construed as in any manner giving to any telecommunications  
21 carrier, cable operator, PEG access organization, or any person,  
22 immunity of any kind. The fees and traveling expenses of



1 witnesses, when mandated to appear, shall be the same as allowed  
2 witnesses in the circuit courts and shall be paid by the State  
3 out of any appropriation available for the expenses of the  
4 commissioner.

5       § -13 Notices. (a) Whenever an investigation is  
6 undertaken and a hearing is scheduled by the commissioner,  
7 reasonable notice in writing of such fact and of the subject or  
8 subjects to be investigated shall be given to the  
9 telecommunications carrier, cable operator, PEG access  
10 organization, or the person concerned, and when based upon  
11 complaints made to the commissioner as prescribed section -9,  
12 a copy of the complaint, and a notice in writing of the date and  
13 place fixed by the commissioner for beginning the investigation,  
14 shall be served upon the telecommunications carrier, cable  
15 operator, PEG access organization, or the person concerned, or  
16 other respondent and the complainant not less than two weeks  
17 before the date designated for the hearing.

18       (b) Any notice provided pursuant to section -38(e),  
19 shall plainly state the rate, fare, charge, classification,  
20 schedule, rule, or practice proposed to be established,  
21 abandoned, modified, or departed from and the proposed effective



1 date thereof and shall be given by filing the notice with the  
2 commissioner and keeping it open for public inspection.

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

16 § -14 **Right to be represented by counsel.** At any  
17 investigation by or proceeding before the commissioner, the  
18 telecommunications carrier, cable operator, PEG access  
19 organization, or the person concerned, or other respondent or  
20 party and any complainant or permitted intervenor shall have the  
21 right to be present and represented by counsel, to present any



1 evidence desired, and to cross-examine any witness who may be  
2 called.

3       §   -15   **Commissioner may institute proceedings to enforce**  
4 **chapter.** (a) If the commissioner is of the opinion that any  
5 telecommunications carrier, cable operator, PEG access  
6 organization, or any person is violating or neglecting to comply  
7 with any provision of this chapter or of any rule, regulation,  
8 order, or other requirement of the commissioner, or of any  
9 provisions of its certificate of public convenience and  
10 necessity, franchise, charter, contract, or articles of  
11 association, if any, or that changes, additions, extensions, or  
12 repairs are desirable in its plant or service to meet the  
13 reasonable convenience or necessity of the public, or to ensure  
14 greater safety or security, or that any rates, fares,  
15 classifications, charges, or rules are unreasonable or  
16 unreasonably discriminatory, or that in any way it is doing what  
17 it ought not to do, or not doing what it ought to do, the  
18 commissioner shall in writing inform the telecommunications  
19 carrier, cable operator, PEG access organization, or the person  
20 and may institute proceedings before it as may be necessary to  
21 require the telecommunications carrier, cable operator, PEG  
22 access organization, or the person to correct any deficiency.



1 In that event, the commissioner may by order direct the consumer  
2 advocate to appear in the proceeding, to carry out the purposes  
3 of this section. The commissioner may examine into any of the  
4 matters referred to in section -9, notwithstanding that the  
5 same may be within the jurisdiction of any court or other body;  
6 provided that this section shall not be construed as in any  
7 manner limiting or otherwise affecting the jurisdiction of any  
8 court or other body. The commissioner may also revoke or amend  
9 any provision of a certificate of public convenience and  
10 necessity, franchise, charter, or articles of association, if  
11 any, pursuant to section -31 or -68.

12 (b) In addition to any other available remedy, the  
13 commissioner or its enforcement officer may issue citations to  
14 any person acting in the capacity of or engaging in the business  
15 of a telecommunications carrier or cable operator within the  
16 State, without having a certificate of public convenience and  
17 necessity, franchise, or other authority previously obtained  
18 under and in compliance with this chapter or the rules adopted  
19 thereunder. Citations issued and persons cited pursuant to this  
20 subsection shall be subject to the following:

21 (1) The citation may contain an order of abatement and an  
22 assessment of civil penalties as provided in section





1           -23. All penalties collected under this subsection  
2 shall be deposited in the treasury of the State.  
3 Service of a citation issued under this subsection  
4 shall be made by personal service whenever possible,  
5 or by certified mail, restricted delivery, sent to the  
6 last known business or residence address of the person  
7 cited;

8       (2) Any person served with a citation under this  
9 subsection may submit a written request to the  
10 commissioner for a hearing, within twenty days from  
11 the receipt of the citation, with respect to the  
12 violations alleged, the scope of the order of  
13 abatement, and the amount of civil penalties assessed.  
14 If the person cited under this subsection timely  
15 notifies the commissioner of the request for a  
16 hearing, the commissioner shall afford an opportunity  
17 for a hearing under chapter 91. The hearing shall be  
18 conducted by the commissioner or the commissioner may  
19 designate a hearings officer to hold the hearing;

20       (3) If the person cited under this subsection does not  
21 submit a written request to the commissioner for a  
22 hearing within twenty days from the receipt of the



1 citation, the citation shall be deemed a final order  
2 of the commissioner. The commissioner may apply to  
3 the appropriate court for a judgment to enforce the  
4 provisions of any final order, issued by the  
5 commissioner or designated hearings officer pursuant  
6 to this subsection, including the provisions for  
7 abatement and civil penalties imposed. In any  
8 proceeding to enforce the provisions of the final  
9 order of the commissioner or designated hearings  
10 officer, the commissioner need only show that the  
11 notice was given, that a hearing was held or the time  
12 granted for requesting the hearing has run without a  
13 request, and a certified copy of the final order of  
14 the commissioner or designated hearings officer; and  
15 (4) If any party is aggrieved by the decision of the  
16 commissioner or the designated hearings officer, the  
17 party may appeal to the intermediate appellate court,  
18 in the manner provided for in chapter 602; provided  
19 that the operation of an abatement order shall not be  
20 stayed on appeal unless specifically ordered by the  
21 intermediate appellate court after applying the stay  
22 criteria enumerated in section 91-14(c). The



1 sanctions and disposition authorized under this  
2 subsection shall be separate and in addition to all  
3 other remedies either civil or criminal provided in  
4 any other applicable statutory provision. The  
5 commissioner may adopt rules under chapter 91 as may  
6 be necessary to fully effectuate this subsection.

7 § -16 Appeals. An appeal from an order of the  
8 commissioner under this chapter shall lie, in the manner  
9 provided for in chapter 602. Only a person aggrieved in a  
10 contested case proceeding provided for in this chapter may  
11 appeal from a final order, or a preliminary order if it is of  
12 the nature defined by section 91-14(a). The commissioner may  
13 elect to be a party to all matters, from which an order of the  
14 commissioner is appealed or any action in any court of law  
15 seeking a mandamus, or injunctive or other relief to compel  
16 compliance with this chapter, or any rule or order adopted  
17 thereunder, or to restrain or otherwise prevent or prohibit any  
18 illegal or unauthorized conduct in connection therewith, and  
19 file appropriate responsive briefs or pleadings. If there is no  
20 adverse party to the appeal, the commissioner shall be a party  
21 and shall file responsive briefs or pleadings in defending all  
22 orders. The appearance of the commissioner as a party in



1 judicial proceedings in no way limits the participation of  
2 persons otherwise qualified to be parties on appeal. The appeal  
3 shall not of itself stay the operation of the order appealed  
4 from, but the appellate court may stay the order after a hearing  
5 upon a motion therefor and may impose conditions it deems  
6 proper, including but not limited to requiring a bond, requiring  
7 that accounts be kept, or requiring that other measures be taken  
8 as ordered to secure restitution of the excess charges, if any,  
9 made during the pendency of the appeal, in case the order  
10 appealed from is sustained, reversed, or modified in whole or in  
11 part.

12 § -17 **Alternative dispute resolution.** The commissioner  
13 may require the parties in any matter before the commissioner to  
14 participate in nonbinding arbitration, mediation, or other  
15 alternative dispute resolution process prior to the hearing.

16 § -18 **Perjury.** Any person who wilfully and knowingly  
17 makes under oath any false statement in connection with any  
18 investigation by or proceeding before the commissioner shall be  
19 guilty of perjury and, upon conviction, shall be subject to the  
20 penalty prescribed by law for the offense.

21 § -19 **Telecommunications carriers, cable operators, and**  
22 **PEG access organizations, to furnish information.** Every



1 telecommunications carrier, cable operator, PEG access  
2 organization, or other person subject to investigation by the  
3 commissioner, shall at all times, upon request, furnish to the  
4 commissioner all information that the commissioner may require  
5 respecting any of the matters concerning which the commissioner  
6 is given power to investigate, and shall permit the examination  
7 of its books, records, contracts, maps, and other documents by  
8 the commissioner or any person authorized by the commissioner in  
9 writing to make the examination, and shall furnish the  
10 commissioner with a complete inventory of property under its  
11 control or management in the form as the commissioner may  
12 direct.

13       §   -20   **Commissioner special fund.**   (a) There is  
14 established in the state treasury a commissioner special fund to  
15 be administered by the commissioner. The proceeds of the fund  
16 shall be used by the commissioner and the division of consumer  
17 advocacy of the department for all expenses incurred in the  
18 administration of this chapter, including, without limitation,  
19 the operation of programs developed by the commissioner to  
20 promote universal availability of communications services. The  
21 expenditures of the commissioner shall be in accordance with  
22 legislative appropriations. On a quarterly basis an amount not



1 to exceed thirty per cent of the proceeds remaining in the fund  
2 shall be allocated to the division of consumer advocacy and  
3 deposited in the compliance resolution fund established pursuant  
4 to section 26-9(o).

5 (b) All moneys appropriated to, received, and collected by  
6 the commissioner that are not otherwise pledged, obligated, or  
7 required by law to be placed in any other special fund or  
8 expended for any other purpose shall be deposited into the  
9 commissioner special fund including, but not limited to, all  
10 moneys received and collected by the commissioner pursuant to  
11 sections -23, -51, and 92-21.

12 (c) The commissioner shall submit a report to the  
13 legislature detailing all funds received and all moneys  
14 disbursed out of the fund prior to the convening of each regular  
15 session.

16 § -21 **Consumer advocate.** As the director serves as the  
17 consumer advocate to the public utilities commission pursuant to  
18 sections 269-51 through 269-55, the commissioner shall recognize  
19 the director as the consumer advocate in hearings and  
20 proceedings before the commissioner.

21 § -22 **Communications advisory committee.** There is  
22 established the communications advisory committee. The



1 committee shall consist of five members appointed by the  
2 governor as provided in section 26-34. The committee shall  
3 advise the commissioner, telecommunications carriers, and cable  
4 operators on matters within the jurisdiction of this chapter at  
5 the request of the commissioner or any telecommunications  
6 carrier or cable operator. The members of the committee shall  
7 serve without pay but shall be entitled to reimbursement for  
8 necessary expenses, including travel expenses, while attending  
9 meetings and while in discharge of their duties.

10       §   -23   **Penalties.** (a) Any telecommunications carrier,  
11 cable operator, or PEG access organization violating,  
12 neglecting, or failing in any particular way to conform to or  
13 comply with this chapter or any lawful order of the  
14 commissioner, including, but not limited to the grounds  
15 specified in section   -68 for cable operators and PEG access  
16 organizations, shall be subject to a civil penalty not to exceed  
17 \$25,000 for each day the violation, neglect, or failure  
18 continues, to be assessed by the commissioner after a hearing in  
19 accordance with chapter 91. The commissioner may order the  
20 telecommunications carrier or cable operator to cease carrying  
21 on its business while the violation, neglect, or failure  
22 continues.



1           (b) Notwithstanding subsection (a), any person acting in  
2 the capacity of or engaging in the business of a  
3 telecommunications carrier or a cable operator in the State  
4 without having a certificate of public convenience and  
5 necessity, franchise, or other authority previously obtained  
6 under and in compliance with this chapter and the rules adopted  
7 thereunder may be subject to a civil penalty not to exceed  
8 \$5,000 for each offense, and, in the case of a continuing  
9 violation, \$5,000 for each day that uncertified activity  
10 continues.

11           (c) Upon written application filed within fifteen days  
12 after service of an order imposing a civil penalty pursuant to  
13 this section, the commissioner may remit or mitigate the penalty  
14 upon terms as it deems proper.

15           (d) If any civil penalty imposed pursuant to this section  
16 is not paid within the period as the commissioner may direct,  
17 the attorney general shall institute a civil action for recovery  
18 of the same in circuit court.

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







1 the commissioner, and that the proposed service is, or will be,  
2 required by the present or future public convenience and  
3 necessity; otherwise the application shall be denied. Any  
4 certificate issued shall specify the service to be rendered and  
5 there shall be attached to the exercise of the privileges  
6 granted by the certificate at the time of issuance and from time  
7 to time thereafter, reasonable conditions and limitations as a  
8 public convenience and necessity may require. The  
9 reasonableness of the rates, charges, and tariff rules proposed  
10 by the applicant shall be determined by the commissioner during  
11 the same proceeding examining the present and future  
12 conveniences and needs of the public and qualifications of the  
13 applicant, in accordance with the standards set forth in section  
14 -38.

15 (c) No telecommunications carrier that, as of July 1,  
16 2009, holds a valid certificate of public convenience and  
17 necessity, franchise, or charter enacted or granted by the  
18 legislative or executive authority of the State or its  
19 predecessor governments, or has a bona fide operation as a  
20 telecommunications carrier recognized by the public utilities  
21 commission, shall be required to obtain, as a result of the



1 enactment of this Act, a new certificate of public convenience  
2 and necessity under this section.

3 (d) Any certificate, upon application of the holder and at  
4 the discretion of the commissioner, may be amended, suspended,  
5 or revoked, in whole or in part. The commissioner after notice  
6 and hearing may suspend, amend, or revoke any certificate in  
7 part or in whole, if the holder is found to be in wilful  
8 violation of any of the provisions of this chapter or with any  
9 lawful order or rule of the commissioner adopted thereunder, or  
10 with any term, condition, or limitation of the certificate.

11 § -32 **Location of records.** A telecommunications carrier  
12 shall keep and maintain records, books, papers, accounts, and  
13 other documents as the commissioner may determine are necessary  
14 to effectively regulate the telecommunications carrier, that can  
15 be made immediately accessible when requested by the  
16 commissioner; provided that the original copies are made  
17 available when requested by the commissioner.

18 § -33 **Annual financial reports.** Each annual financial  
19 report required to be filed with the commissioner by  
20 telecommunications carriers shall include a certification that  
21 the report conforms with the applicable uniform system of



1 accounts adopted by the commissioner. The commissioner shall  
2 adopt a uniform system of accounts for this purpose.

3       §   -34   **Telecommunications providers and services.**   (a)

4 Notwithstanding any provision of this chapter to the contrary,  
5 the commissioner, upon the commissioner's own motion or upon the  
6 application of any person, and upon notice and hearing, may  
7 exempt a telecommunications carrier or a telecommunications  
8 service from any or all of the provisions of this chapter,  
9 except the requirements of section   -36, upon a determination  
10 that the exemption is in the public interest. In determining  
11 whether an exemption is in the public interest, the commissioner  
12 shall consider whether the exemption promotes state policies in  
13 telecommunications, the development, maintenance, and operation  
14 of effective and economically efficient telecommunications  
15 services, and the furnishing of telecommunications services at  
16 just and reasonable rates and in a fair manner in view of the  
17 needs of the various customer segments of the telecommunications  
18 industry. Among the specific factors the commissioner may  
19 consider are:

- 20       (1) The responsiveness of the exemption to changes in the  
21           structure and technology of the State's  
22           telecommunications industry;



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



- 1           (9) The improvements in the regulatory system to be gained  
2           from the exemption, including the reduction in  
3           regulatory delays and costs;
- 4           (10) The impact of the exemption on promoting innovations  
5           in telecommunications services;
- 6           (11) The opportunity provided by the exemption for  
7           telecommunications carriers to respond to competition;
- 8           (12) The potential for the exercise of substantial market  
9           power by the exempt provider or by a provider of the  
10          exempt telecommunications service; and
- 11          (13) The impact of the exemption on the competitive  
12          availability and affordability of broadband and other  
13          advanced services to consumers.
- 14          (b) The commissioner shall expedite, where practicable,  
15          the regulatory process with respect to exemptions and shall  
16          adopt guidelines under which each provider of an exempted  
17          service shall be subject to similar terms and conditions.
- 18          (c) The commissioner may condition or limit any exemption  
19          as the commissioner deems necessary in the public interest. The  
20          commissioner may provide a trial period for any exemption and  
21          may terminate the exemption or continue it for a period and



1 under conditions and limitations as the commissioner deems  
2 appropriate.

3 (d) The commissioner may require a telecommunications  
4 provider to apply for a certificate of public convenience and  
5 necessity pursuant to section -31; provided that the  
6 commissioner may waive any application requirement whenever it  
7 deems the waiver to be in furtherance of the purposes of this  
8 section. The exemptions under this section may be granted in a  
9 proceeding for certification or in a separate proceeding.

10 (e) The commissioner may waive other regulatory  
11 requirements under this chapter applicable to telecommunications  
12 carriers when it determines that competition will serve the same  
13 purpose as public interest regulation.

14 (f) If any provider of an exempt telecommunications  
15 service or any exempt telecommunications carrier elects to  
16 terminate its service, it shall provide notice of this to its  
17 customers, the commissioner, and every telecommunications  
18 carrier providing basic local exchange service in this State.  
19 The notice shall be in writing and given not less than six  
20 months before the intended termination date. Upon termination  
21 of service by a provider of an exempt service or by an exempt  
22 provider, the appropriate telecommunications carrier providing



1 basic local exchange service shall ensure that all customers  
2 affected by the termination receive basic local exchange  
3 service. The commissioner, upon notice and hearing or by rule,  
4 shall determine the party or parties who shall bear the cost, if  
5 any, of access to the basic local exchange service by the  
6 customers of the terminated exempt service.

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

16 (h) For the purposes of this section, the commissioner,  
17 upon determination that any area of the State has less than  
18 adequate telecommunications service, shall require the existing  
19 telecommunications carrier to show cause as to why the  
20 commissioner should not authorize an alternative  
21 telecommunications carrier for that area under the terms and  
22 conditions of this section.





1           §    **-35 Application of this chapter.** This chapter shall  
2 not apply to commerce with foreign nations, or commerce with the  
3 several states of the United States, except insofar as the same  
4 may be permitted under the Constitution and laws of the United  
5 States; nor shall it apply to telecommunications carriers owned  
6 and operated by the State.

7           §    **-36 Obligations of telecommunications carriers.** In  
8 accordance with conditions and guidelines established by the  
9 commissioner to facilitate the introduction of competition into  
10 the State's telecommunications marketplace, each  
11 telecommunications carrier, upon bona fide request, shall  
12 provide services or information services, on reasonable terms  
13 and conditions, to an entity seeking to provide intrastate  
14 telecommunications, including:

15           (1) Interconnection to the telecommunications carrier's  
16 telecommunications facilities at any technically  
17 feasible and economically reasonable point within the  
18 telecommunications carrier's network so that the  
19 networks are fully interoperable;

20           (2) The current interstate tariff used as the access rate  
21 until such time that the commissioner may adopt a new



1 intrastate local service interconnection tariff  
2 pursuant to section -37;  
3 (3) Nondiscriminatory and equal access to any  
4 telecommunications carrier's telecommunications  
5 facilities, functions, and the information necessary  
6 to the transmission and routing of any  
7 telecommunications service and the interoperability of  
8 both carriers' networks;  
9 (4) Nondiscriminatory access among all telecommunications  
10 carriers, where technically feasible and economically  
11 reasonable, and where safety or the provision of  
12 existing electrical service is not at risk, to the  
13 poles, ducts, conduits, and rights-of-way owned or  
14 controlled by the telecommunications carrier, or the  
15 commissioner shall authorize access to electric  
16 utilities' poles as provided by the joint pole  
17 agreement, tariffs, rules, orders, or Federal  
18 Communications Commission rules and regulations;  
19 (5) Nondiscriminatory access to the network functions of  
20 the telecommunications carrier's telecommunications  
21 network, which shall be offered on an unbundled,  
22 competitively neutral, and cost-based basis;



- 1 (6) Telecommunications services and network functions  
2 without unreasonable restrictions on the resale or  
3 sharing of those services and functions; and
- 4 (7) Nondiscriminatory access of customers to the  
5 telecommunications carrier of their choice without the  
6 need to dial additional digits or access codes, where  
7 technically feasible. The commissioner shall  
8 determine the equitable distribution of costs among  
9 the authorized telecommunications carriers that will  
10 use such access and shall establish rules to ensure  
11 access.

12 Where possible, telecommunications carriers shall enter  
13 into negotiations to agree on the provision of services or  
14 information services without requiring intervention by the  
15 commissioner; provided that any agreement shall be subject to  
16 review by the commissioner to ensure compliance with the  
17 requirements of this section.

18 § -37 **Compensation agreements.** The commissioner shall  
19 ensure that telecommunications carriers are compensated on a  
20 fair basis for termination of telecommunications services on  
21 each other's networks, taking into account, among other things,  
22 reasonable and necessary costs to each telecommunications



1 carrier of providing the services in question.  
2 Telecommunications carriers may negotiate compensation  
3 arrangements, which may include "bill and keep", mutual and  
4 equal compensation, or any other reasonable division of revenues  
5 pending tariff access rates to be set by the commissioner. Upon  
6 failure of the negotiations, the commissioner shall determine  
7 the proper methodology and amount of compensation.

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

18       (b) The commissioner shall promptly examine rate  
19 regulation alternatives including rate-of-return ratemaking and  
20 price cap ratemaking, and may issue an order imposing  
21 alternative rate regulation procedures. The examination shall  
22 include pursuing incentive regulation with local exchange



1 carriers, one goal of which shall be to increase broadband  
2 competitive availability and affordability to consumers in the  
3 State.

4 (c) The commissioner may waive rate regulation and allow  
5 telecommunications carriers to have pricing flexibility for  
6 services that the commissioner determines to be effectively  
7 competitive; provided that the rates for:

8 (1) Basic telephone service and for services that are not  
9 effectively competitive are regulated and remain just,  
10 reasonable, and nondiscriminatory; and

11 (2) Universal service is preserved and advanced.

12 (d) Unless directed otherwise by the commissioner, a  
13 telecommunications carrier may charge any rate for a service  
14 less than or equal to the rate for the service included in the  
15 telecommunications carrier's filed tariff. The rate charged  
16 shall be available at the same terms for all customers in all  
17 geographic locations within the telecommunications carrier's  
18 service area.

19 (e) Unless and until the commissioner waives this  
20 requirement, no rate, fare, charge, classification, schedule,  
21 rule, or practice, other than one established pursuant to an  
22 automatic rate adjustment clause previously approved by the



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

18 (1) Suspend the operation of all or any part of the  
19 proposed rate, fare, charge, classification, schedule,  
20 rule, or practice or any proposed abandonment or  
21 modification thereof or departure therefrom;

22 (2) After a hearing, by order:



- 1 (A) Regulate, fix, and change all such rates, fares,  
2 charges, classifications, schedules, rules, and  
3 practices so that the same shall be just and  
4 reasonable;
- 5 (B) Prohibit rebates and unreasonable discrimination  
6 between localities or between users or consumers  
7 under substantially similar conditions;
- 8 (C) Regulate the manner in which the property of  
9 every telecommunications carrier is operated with  
10 reference to the safety and accommodation of the  
11 public;
- 12 (D) Prescribe the form and method of keeping  
13 accounts, books, records, and accounting systems  
14 for the telecommunications carrier;
- 15 (E) Regulate the return upon the telecommunications  
16 carrier's property;
- 17 (F) Regulate the incurring of indebtedness relating  
18 to the telecommunications carrier's business; and
- 19 (G) Regulate the financial transactions of the  
20 telecommunications carrier; and
- 21 (3) Do all things that are necessary and in the exercise  
22 of the commissioner's power and jurisdiction, all of



1           which as so ordered, regulated, fixed, and changed;  
2           are just and reasonable; and provide a fair return on  
3           the property of the telecommunications carrier  
4           actually used or useful for telecommunications carrier  
5           purposes.

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

21           (g) In any case of two or more organizations, trades, or  
22  businesses (whether or not incorporated, whether or not





1 organized in the State of Hawaii, and whether or not affiliated)  
2 owned or controlled directly or indirectly by the same  
3 interests, the commissioner may distribute, apportion, or  
4 allocate gross income, deductions, credits, or allowances  
5 between or among the organizations, trades, or businesses, if it  
6 determines that the distribution, apportionment, or allocation  
7 is necessary to adequately reflect the income of any such  
8 organizations, trades, or businesses to carry out the regulatory  
9 duties imposed by this section.

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

17 § -39 **Cross-subsidies.** (a) The commissioner shall  
18 ensure that noncompetitive services shall not cross-subsidize  
19 competitive services. Cross-subsidization shall be deemed to  
20 have occurred:

21 (1) If any competitive service is priced below the total  
22 service long-run incremental cost of providing the



1 service as determined by the commissioner in  
2 subsection (b); or

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

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

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

21 § -41 **Unfair or deceptive acts or practices.** The  
22 commissioner shall adopt rules prohibiting unfair or deceptive



1 acts or practices by telecommunications carriers and  
2 telecommunications service providers including resellers and  
3 aggregators of telecommunications services. Unfair or deceptive  
4 acts or practices may include unauthorized changes in subscriber  
5 carrier selections.

6       §   -42 **Lifeline telephone rates.** (a) The commissioner  
7 shall implement a program to achieve lifeline telephone rates  
8 for residential telephone users. The commissioner may achieve  
9 lifeline telephone rates by using funds collected pursuant to  
10 section   -51 and deposited in the commissioner special fund  
11 pursuant to section   -20. In conjunction with such funds, or  
12 alternatively, the commissioner may seek appropriations of funds  
13 from the State.

14       (b) For the purposes of this section, "lifeline telephone  
15 rate" means a discounted rate for residential telephone users  
16 identified as elders with limited income and the handicapped  
17 with limited income as designated by the commissioner.

18       (c) The commissioner shall require every  
19 telecommunications carrier providing local telephone service to  
20 file a schedule of rates and charges providing a rate for  
21 lifeline telephone subscribers.



1 (d) Nothing in this section shall preclude the  
2 commissioner from changing any rate established pursuant to  
3 subsection (a) either specifically or pursuant to any general  
4 restructuring of all telephone rates, charges, and  
5 classifications.

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

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

21 (c) The commissioner shall adopt rules pursuant to  
22 chapter 91 to carry out the provisions of this section or adopt



1 the rules provided in chapter 81 of the Hawaii Administrative  
2 Rules, which were in effect on July 1, 2009.

3       §   -44   **Telecommunications relay services for the deaf,**  
4 **persons with hearing disabilities, and persons with speech**  
5 **disabilities.** (a) The commissioner shall implement intrastate  
6 telecommunications relay services for the deaf, persons with  
7 hearing disabilities, and persons with speech disabilities.

8       (b) The commissioner shall investigate the availability of  
9 experienced providers of quality telecommunications relay  
10 services for the deaf, persons with hearing disabilities, and  
11 persons with speech disabilities. The provision of these  
12 telecommunications relay services to be rendered on or after  
13 July 1, 1992, shall be awarded by the commissioner to the  
14 provider or providers the commissioner determines to be best  
15 qualified to provide these services. In reviewing the  
16 qualifications of the provider or providers, the commissioner  
17 shall consider the factors of cost, quality of services, and  
18 experience, and other factors as the commissioner deems  
19 appropriate.

20       (c) If the commissioner determines that the  
21 telecommunications relay service can be provided in a cost-  
22 effective manner by a service provider or service providers, the



1 commissioner may require every intrastate telecommunications  
2 carrier to contract with the provider or providers for the  
3 provision of the telecommunications relay service under the  
4 terms established by the commissioner.

5 (d) The commissioner may establish a surcharge to collect  
6 customer contributions for telecommunications relay services  
7 required under this section.

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

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

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

22 (h) As used in this section:



1 "Telecommunications relay services" means telephone  
2 transmission services that provide an individual who has a  
3 hearing or speech disability, the ability to engage in  
4 communication by wire or radio with a hearing individual in a  
5 manner that is functionally equivalent to the ability of an  
6 individual who does not have a hearing or speech disability to  
7 communicate using wire or radio voice communication services.

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

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

18 § -46 **Emergency telephone service; capital costs;**  
19 **ratemaking.** (a) A telecommunications carrier providing local  
20 exchange telecommunications services may recover the capital  
21 cost and associated operating expenses of providing a statewide



1 enhanced 911 emergency telephone service in the public switched  
2 telephone network, through a telephone line surcharge.

3 (b) The commissioner shall require every  
4 telecommunications carrier providing statewide enhanced 911  
5 emergency telephone service to maintain a separate accounting of  
6 the costs of providing an enhanced 911 emergency service and the  
7 revenues received from related surcharges. The commissioner  
8 shall further require that every telecommunications carrier  
9 imposing a surcharge shall identify on all customer billing  
10 statements the separate line item for enhanced 911 emergency  
11 service.

12 (c) This section shall not preclude the commissioner from  
13 changing any rate, established pursuant to this section, either  
14 specifically or pursuant to any general restructuring of all  
15 telephone rates, charges, and classifications.

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

22 (1) For the acquisition of property;





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

20           As used in this section, "property" and "facilities", mean  
21   property and facilities used in all operations of a  
22   telecommunications carrier corporation whether or not included



1 in its operations or rate base. A telecommunications carrier  
2 corporation may not issue securities to acquire property or to  
3 construct, complete, extend, improve, or add to its facilities  
4 or service if the commissioner determines that the proposed  
5 purpose will have a materially adverse effect on its  
6 telecommunications carrier operations.

7 All stocks and every stock certificate, bond, note, or  
8 other evidence of indebtedness of a telecommunications carrier  
9 corporation not payable within twelve months, issued without an  
10 order of the commissioner authorizing the same, then in effect,  
11 shall be void.

12 § -48 **Issuance of voting stock; restrictions.** (a) For  
13 the purposes of this section:

14 "Foreign corporation" means a foreign corporation as  
15 defined in section 235-1 or a corporation in which a majority of  
16 the voting stock is held by a single foreign corporation as  
17 defined in section 235-1.

18 "Nonresident alien" means a person not a citizen of the  
19 United States who is not defined as a resident alien by the  
20 United States Citizenship and Immigration Services.

21 (b) No more than twenty-five per cent of the issued and  
22 outstanding voting stock of a corporation that is organized



1 under the laws of the State and that owns, controls, operates,  
2 or manages any plant or equipment, or any part thereof, as a  
3 telecommunications carrier within the definition set forth in  
4 section -1 shall be held, whether directly or indirectly, by  
5 any single foreign corporation or any single nonresident alien,  
6 or held by any person, unless prior written approval is obtained  
7 from the commissioner, or unless a transaction is exempt. An  
8 exempt transaction is:

- 9 (1) Any purchase or sale by an underwriter; or  
10 (2) A transaction to acquire shares of a corporation with  
11 less than one hundred shareholders and less than  
12 \$1,000,000 in assets.

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

19 **§ -49 Acquirement of stock of another telecommunications**  
20 **carrier.** No person or entity shall purchase or acquire, take or  
21 hold, any part of the capital stock of any telecommunications  
22 carrier corporation, organized or existing under or by virtue of



1 the laws of the State, without having been first authorized to  
2 do so by the order of the commissioner. Every assignment,  
3 transfer, contract, or agreement for assignment or transfer of  
4 any stock by or through any person or corporation to any  
5 corporation or otherwise in violation of this section shall be  
6 void and of no effect; and no such transfer shall be made on the  
7 books of any telecommunications carrier. Nothing in this  
8 section shall be construed to make illegal the holding of stock  
9 lawfully acquired before July 1, 1933.

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



1           §    **-51 Finances; regulatory fee.** (a) There shall be  
2 paid to the commissioner in each of the months of July and  
3 December of each year, by each telecommunications carrier  
4 subject to this chapter, a fee set by the commissioner not to  
5 exceed three-tenths of one per cent of the gross income from the  
6 telecommunications carrier's business during the preceding year,  
7 or the sum of \$30, whichever is greater. The commissioner shall  
8 set the fee amount based on its projected budget for the year to  
9 administer and enforce this chapter. This fee shall be  
10 deposited with the director of finance to the credit of the  
11 commissioner special fund created pursuant to section    -20.

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

19           (c) The commissioner may, in its discretion, impose  
20 additional fees on telecommunications carriers, including to  
21 facilitate deployment of broadband communications services in  
22 the State, and the fees shall be deposited with the director of



1 finance to the credit of the commissioner special fund created  
2 pursuant to section -20.

3       **§ -52 Injury to carrier property.** Any person who  
4 injures or destroys, through want of proper care, any necessary  
5 or useful facility, equipment, or property of any  
6 telecommunications carrier shall be liable to the  
7 telecommunications carrier for all damages sustained thereby.  
8 The measure of damages to the facility, equipment, or property  
9 injured or destroyed shall be the cost to repair or replace the  
10 property injured or destroyed including direct and allocated  
11 costs for labor, materials, supervision, supplies, tools, taxes,  
12 transportation, administrative and general expense, and other  
13 indirect or overhead expenses, less credit, if any, for salvage.  
14 The specifying of the measure of damages for the facility,  
15 equipment, or property shall not preclude the recovery of other  
16 damages occasioned thereby as may be authorized by law.

17       **§ -53 One call center; advance warning to excavators.**  
18 To finance the establishment and operation of the one call  
19 center, pursuant to chapter 269E, and the administrative costs  
20 of the commissioner, the commissioner shall direct  
21 telecommunications carriers to pay to the public utilities



1 commission a fee in an amount and at a schedule determined by  
2 the public utilities commission.

3 **PART III. CABLE**

4 § -61 **Issuance of cable franchises and regulation of**  
5 **cable operators by the commissioner.** The commissioner shall be  
6 empowered to issue cable franchises and otherwise administer and  
7 enforce this chapter.

8 § -62 **Cable franchise required.** (a) No person shall  
9 construct, operate, or acquire a cable system, or extend an  
10 existing cable system outside its designated service area,  
11 without first obtaining a cable franchise as provided in this  
12 chapter.

13 (b) No cable operator that, as of July 1, 2009, holds a  
14 franchise or charter enacted or granted by the legislative or  
15 executive authority of the State or its predecessor governments,  
16 or has a bona fide operation as a cable operator heretofore  
17 recognized by the department, shall be required to obtain, as a  
18 result of the enactment of this Act, a new franchise under this  
19 section.

20 § -63 **Application or proposal for cable franchise; fee;**  
21 **certain requirements.** (a) No cable franchise shall be issued



1 except upon written application or proposal therefor to the  
2 commissioner, accompanied by a fee set by the commissioner.

3 (b) An application for issuance of a cable franchise shall  
4 be made in a form prescribed by the commissioner. The  
5 application shall set forth the facts as required by the  
6 commissioner to determine in accordance with section -65  
7 whether a cable franchise should be issued, including facts as  
8 to:

- 9 (1) The citizenship and character of the applicant;
- 10 (2) The financial, technical, and other qualifications of  
11 the applicant;
- 12 (3) The principals and ultimate beneficial owners of the  
13 applicant;
- 14 (4) The public interest to be served by the requested  
15 issuance of a cable franchise; and
- 16 (5) Any other matters deemed appropriate and necessary by  
17 the commissioner including, but not limited to, the  
18 proposed plans and schedule of expenditures for or in  
19 support of the use of public, educational, and  
20 governmental access facilities, and the competitive  
21 availability and affordability of broadband and other  
22 advanced services to consumers.





1 (c) A proposal for issuance of a cable franchise shall be  
2 accepted for filing in accordance with section -64 only when  
3 made in response to the written request of the commissioner for  
4 the submission of proposals.

5 § -64 **Cable franchise application or proposal procedure;**  
6 **public hearing; notice.** An application or proposal for a cable  
7 franchise shall be processed as follows:

8 (1) After the application or proposal and required fee are  
9 received by the commissioner and within a time frame  
10 established by rule, the commissioner shall notify the  
11 applicant in writing of the acceptance or  
12 non-acceptance for filing of the application or  
13 proposal for issuance of a cable franchise required by  
14 this chapter;

15 (2) After the issuance of a notice of acceptance for  
16 filing and within a time frame established by rule,  
17 the commissioner shall hold a public hearing on the  
18 application or proposal to afford interested persons  
19 the opportunity to submit data, views, or arguments,  
20 orally or in writing. Notice thereof shall be given  
21 to the governing council and mayor of the county and  
22 to any telephone or other utility and cable company in



1 the county in which the proposed service area is  
2 located. The commissioner shall also give public  
3 notice of the application and hearing at least once in  
4 each of two successive weeks in the county in which  
5 the proposed service area is located. The last notice  
6 shall be given at least fifteen days prior to the date  
7 of the hearing;

8 (3) After holding a public hearing, the commissioner shall  
9 approve the application or proposal in whole or in  
10 part, with or without conditions or modifications, or  
11 shall deny the application or proposal, with reasons  
12 for denial sent in writing to the applicant. If the  
13 commissioner does not take final action after the  
14 issuance of a notice of acceptance for filing and  
15 within a time frame established by rule, the  
16 application or proposal shall be deemed denied; and

17 (4) The time limit for final action may be extended, on  
18 the commissioner's approval of the applicant's request  
19 and justification in writing for an extension of time  
20 to the commissioner at least two weeks in advance of  
21 the requested effective date of the extension, or by  
22 mutual agreement.



1           §   -65   **Issuance of cable franchise authority; criteria;**

2   **content.**   (a)   The commissioner is empowered to issue a cable  
3   franchise to construct or operate facilities for a cable system  
4   upon the terms and conditions provided in this chapter.

5           (b)   The commissioner, after a public hearing as provided  
6   in this chapter, shall issue a cable franchise to the applicant  
7   when the commissioner is convinced that it is in the public  
8   interest to do so.  In determining whether a cable franchise  
9   shall be issued, the commissioner shall take into consideration,  
10   among other things, the content of the application or proposal,  
11   the public need for the proposed service, the ability of the  
12   applicant to offer safe, adequate, and reliable service at a  
13   reasonable cost to the subscribers, the suitability of the  
14   applicant, the financial responsibility of the applicant, the  
15   technical and operational ability of the applicant to perform  
16   efficiently the service for which authority is requested, any  
17   objections arising from the public hearing, the communications  
18   advisory committee established by this chapter, or elsewhere,  
19   and any other matters as the commissioner deems appropriate in  
20   the circumstances.

21           (c)   In determining the area that is to be serviced by the  
22   applicant, the commissioner shall take into account the



1 geography and topography of the proposed service area, and the  
2 present, planned, and potential expansion in facilities or cable  
3 services of the applicant's proposed cable system and existing  
4 cable systems.

5 (d) In issuing a cable franchise under this chapter, the  
6 commissioner is not restricted to approving or disapproving the  
7 application or proposal but may issue it for only partial  
8 exercise of the privilege sought or may attach to the exercise  
9 of the right granted by the cable franchise terms, limitations,  
10 and conditions which the commissioner deems the public interest  
11 may require. The cable franchise shall be nonexclusive, shall  
12 include a description of the service area in which the cable  
13 system is to be constructed, extended, or operated and the  
14 approximate date on which the service is to commence and shall  
15 authorize the cable operator to provide service for a term of  
16 fifteen years or any other term that the commissioner determines  
17 to be appropriate.

18 **§ -66 Requirement for adequate service; terms and**  
19 **conditions of service.** (a) Every cable operator shall provide  
20 safe, adequate, and reliable service in accordance with  
21 applicable laws, rules, franchise requirements, and its filed  
22 schedule of terms and conditions of service.



1 (b) The commissioner shall require each cable operator to  
2 submit a schedule of all terms and conditions of service in the  
3 form and with the notice that the commissioner may prescribe.

4 (c) The commissioner shall ensure that the terms and  
5 conditions upon which cable service is provided are fair both to  
6 the public and to the cable operator, taking into account the  
7 geographic, topographic, and economic characteristics of the  
8 service area and the economics of providing cable service to  
9 subscribers in the service area.

10 § -67 **Cable system installation, construction,**

11 **operation, removal; general provisions.** (a) A cable franchise  
12 shall be construed to authorize the construction or operation of  
13 a cable system within the service area above, below, on, in, or  
14 along any highway or other public place and through easements  
15 that have been dedicated for compatible purposes.

16 (b) The technical specifications, general routes of the  
17 distribution system, and the schedule for construction of the  
18 cable system shall be subject to the commissioner's approval.

19 (c) In installing, operating, and maintaining facilities,  
20 the cable operator shall avoid all unnecessary damage and injury  
21 to any trees, structures, and improvements in and along the  
22 routes authorized by the commissioner.



1 (d) The cable operator shall indemnify and hold the State  
2 and the county harmless at all times from any and all claims for  
3 injury and damage to persons or property, both real and  
4 personal, caused by the installation, operation, or maintenance  
5 of its cable system, notwithstanding any negligence on the part  
6 of the State or county, or their employees or agents. Upon  
7 receipt of notice in writing from the State or county, the cable  
8 operator shall, at its own expense, defend any action or  
9 proceeding against the State or county in which it is claimed  
10 that personal injury or property damage was caused by activities  
11 of the cable operator in the installation, operation, or  
12 maintenance of its cable system.

13 (e) The cable operator shall install and provide basic  
14 cable television service at no cost to any school or institution  
15 of higher education within its service area as determined by the  
16 commissioner; provided that service is actually being delivered  
17 within a reasonable distance from the school or institution of  
18 higher education which may request service.

19 (f) The cable operator shall designate three or more  
20 television channels or video streams for public, educational, or  
21 governmental use as directed by the commissioner.



1           (g) 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 commissioner  
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           (h) 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                 commissioner 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 (i) In the use of easements dedicated to compatible  
5 purposes, the cable operator shall ensure:

6 (1) That 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) That the cost of the installation, construction,  
12 operation, or removal of facilities is borne by the  
13 cable operator or subscribers, or a combination of  
14 both; and

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

19 § -68 **Complaints; violations; revocation, alteration, or**  
20 **suspension of cable franchise.** (a) Subscriber complaints  
21 regarding the operation of a cable system may be made orally or





1 in writing to the commissioner. The commissioner shall resolve  
2 complaints informally when possible.

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

7 (1) For making material false or misleading statements in,  
8 or for material omissions from, any application or  
9 proposal or other filing made with the commissioner;

10 (2) For failure to maintain signal quality under the  
11 standards prescribed by the commissioner;

12 (3) For any sale, lease, assignment, or other transfer of  
13 its cable franchise without consent of the  
14 commissioner;

15 (4) Except when commercially impracticable, for  
16 unreasonable delay in construction or operation or for  
17 unreasonable withholding of the extension of cable  
18 service to any person in a service area;

19 (5) For violation of the terms of its cable franchise;

20 (6) For failure to comply with this chapter or any rules  
21 or orders prescribed by the commissioner;



1 (7) For violation of its filed schedule of terms and  
2 conditions of service; and

3 (8) For engaging in any unfair or deceptive act or  
4 practice as prohibited by section 480-2.

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

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



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

3 § -71 **Rate, filed with the commissioner; approval.** (a)

4 The commissioner shall require each cable operator to file a  
5 schedule of its rates of service on a form and with the notice  
6 that the commissioner may prescribe.

7 (b) To the extent permitted by federal law, the  
8 commissioner shall regulate rates to ensure that they are fair  
9 both to the public and to the cable operator.

10 § -72 **Reports.** Each cable operator shall file with the  
11 commissioner reports of its financial, technical, and  
12 operational condition and its ownership. The reports shall be  
13 made in a form and on the time schedule prescribed by the  
14 commissioner and shall be kept on file open to the public.

15 § -73 **Annual fees.** (a) Each cable operator shall pay  
16 an annual fee to be determined by the commissioner. The fees so  
17 collected under this section shall be deposited into the  
18 commissioner special fund established under section -20.

19 (b) The commissioner shall adjust the fees assessed under  
20 this section, as necessary from time to time, pursuant to rules  
21 adopted in accordance with chapter 91.



1           §   -74 **Criminal and civil liability.** Nothing in this  
2 chapter shall be deemed to affect the criminal and civil  
3 liability of cable programmers, cable operators, or public,  
4 educational, or governmental access organizations pursuant to  
5 the federal, state, or local laws regarding libel, slander,  
6 obscenity, incitement, invasions of privacy, false or misleading  
7 advertising, or other similar laws, except that no public,  
8 educational, or governmental access organization shall incur any  
9 liability arising from, based on, or related to any program not  
10 created by the public, educational, or governmental access  
11 organization, which is broadcast on any channel obtained under  
12 section   -65, or under similar arrangements."

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

15           "(o) Every person licensed under any chapter within the  
16 jurisdiction of the department of commerce and consumer affairs  
17 and every person licensed subject to chapter 485A or registered  
18 under chapter 467B shall pay upon issuance of a license, permit,  
19 certificate, or registration a fee and a subsequent annual fee  
20 to be determined by the director and adjusted from time to time  
21 to ensure that the proceeds, together with all other fines,  
22 income, and penalties collected under this section, do not



1 surpass the annual operating costs of conducting compliance  
2 resolution activities required under this section. The fees may  
3 be collected biennially or pursuant to rules adopted under  
4 chapter 91, and shall be deposited into the special fund  
5 established under this subsection. Every filing pursuant to  
6 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
7 initial filing and at each renewal period in which a renewal is  
8 required, a fee that shall be prescribed by rules adopted under  
9 chapter 91, and that shall be deposited into the special fund  
10 established under this subsection. Any unpaid fee shall be paid  
11 by the licensed person, upon application for renewal,  
12 restoration, reactivation, or reinstatement of a license, and by  
13 the person responsible for the renewal, restoration,  
14 reactivation, or reinstatement of a license, upon the  
15 application for renewal, restoration, reactivation, or  
16 reinstatement of the license. If the fees are not paid, the  
17 director may deny renewal, restoration, reactivation, or  
18 reinstatement of the license. The director may establish,  
19 increase, decrease, or repeal the fees when necessary pursuant  
20 to rules adopted under chapter 91. The director may also  
21 increase or decrease the fees pursuant to section 92-28.



1           There is created in the state treasury a special fund to be  
2 known as the compliance resolution fund to be expended by the  
3 director's designated representatives as provided by this  
4 subsection. Notwithstanding any law to the contrary, all  
5 revenues, fees, and fines collected by the department shall be  
6 deposited into the compliance resolution fund. Unencumbered  
7 balances existing on June 30, 1999, in the cable television fund  
8 under chapter 440G, the division of consumer advocacy fund under  
9 chapter 269, the financial institution examiners' revolving  
10 fund, section 412:2-109, the special handling fund, section  
11 414-13, and unencumbered balances existing on June 30, 2002, in  
12 the insurance regulation fund, section 431:2-215, shall be  
13 deposited into the compliance resolution fund. This provision  
14 shall not apply to any fee imposed by the Hawaii communications  
15 commissioner pursuant to chapter \_\_\_\_\_, including the regulatory  
16 fee in section \_\_\_\_\_-51, the drivers education fund underwriters  
17 fee, section 431:10C-115, insurance premium taxes and revenues,  
18 revenues of the workers' compensation special compensation fund,  
19 section 386-151, the captive insurance administrative fund,  
20 section 431:19-101.8, the insurance commissioner's education and  
21 training fund, section 431:2-214, the medical malpractice  
22 patients' compensation fund as administered under section 5 of



1 Act 232, Session Laws of Hawaii 1984, and fees collected for  
2 deposit in the office of consumer protection restitution fund,  
3 section 487-14, the real estate appraisers fund, section 466K-1,  
4 the real estate recovery fund, section 467-16, the real estate  
5 education fund, section 467-19, the contractors recovery fund,  
6 section 444-26, the contractors education fund, section 444-29,  
7 the condominium management education fund, section 514A-131, and  
8 the condominium education trust fund, section 514B-71. Any law  
9 to the contrary notwithstanding, the director may use the moneys  
10 in the fund to employ, without regard to chapter 76, hearings  
11 officers and attorneys. All other employees may be employed in  
12 accordance with chapter 76. Any law to the contrary  
13 notwithstanding, the moneys in the fund shall be used to fund  
14 the operations of the department. The moneys in the fund may be  
15 used to train personnel as the director deems necessary and for  
16 any other activity related to compliance resolution.

17 As used in this subsection, unless otherwise required by  
18 the context, "compliance resolution" means a determination of  
19 whether:

20 (1) Any licensee or applicant under any chapter subject to  
21 the jurisdiction of the department of commerce and  
22 consumer affairs has complied with that chapter;



- 1           (2) Any person subject to chapter 485A has complied with  
2           that chapter;
- 3           (3) Any person submitting any filing required by chapter  
4           514E or section 485A-202(a)(26) has complied with  
5           chapter 514E or section 485A-202(a)(26);
- 6           (4) Any person has complied with the prohibitions against  
7           unfair and deceptive acts or practices in trade or  
8           commerce; or
- 9           (5) Any person subject to chapter 467B has complied with  
10          that chapter;
- 11          and includes work involved in or supporting the above functions,  
12          licensing, or registration of individuals or companies regulated  
13          by the department, consumer protection, and other activities of  
14          the department.

15          The director shall prepare and submit an annual report to  
16          the governor and the legislature on the use of the compliance  
17          resolution fund. The report shall describe expenditures made  
18          from the fund including non-payroll operating expenses."

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

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





1           "(a) No department of the State other than the attorney  
2 general may employ or retain any attorney, by contract or  
3 otherwise, for the purpose of representing the State or the  
4 department in any litigation, rendering legal counsel to the  
5 department, or drafting legal documents for the department;  
6 provided that the foregoing provision shall not apply to the  
7 employment or retention of attorneys:

- 8           (1) By the public utilities commission, the labor and  
9 industrial relations appeals board, and the Hawaii  
10 labor relations board;
- 11           (2) By any court or judicial or legislative office of the  
12 State; provided that if the attorney general is  
13 requested to provide representation to a court or  
14 judicial office by the chief justice or the chief  
15 justice's designee, or to a legislative office by the  
16 speaker of the house of representatives and the  
17 president of the senate jointly, and the attorney  
18 general declines to provide such representation on the  
19 grounds of conflict of interest, the attorney general  
20 shall retain an attorney for the court, judicial, or  
21 legislative office, subject to approval by the court,  
22 judicial, or legislative office;



- 1 (3) By the legislative reference bureau;
- 2 (4) By any compilation commission that may be constituted
- 3 from time to time;
- 4 (5) By the real estate commission for any action involving
- 5 the real estate recovery fund;
- 6 (6) By the contractors license board for any action
- 7 involving the contractors recovery fund;
- 8 (7) By the trustees for any action involving the travel
- 9 agency recovery fund;
- 10 (8) By the office of Hawaiian affairs;
- 11 (9) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and
- 13 485A;
- 14 (10) As grand jury counsel;
- 15 (11) By the Hawaiian home lands trust individual claims
- 16 review panel;
- 17 (12) By the Hawaii health systems corporation, or its
- 18 regional system boards, or any of their facilities;
- 19 (13) By the auditor;
- 20 (14) By the office of ombudsman;
- 21 (15) By the insurance division;
- 22 (16) By the University of Hawaii;



1 (17) By the Kahoolawe island reserve commission;

2 (18) By the division of consumer advocacy;

3 (19) By the office of elections;

4 (20) By the campaign spending commission;

5 (21) By the Hawaii tourism authority, as provided in  
6 section 201B-2.5; [~~or~~]

7 (22) By the Hawaii communications commissioner; or

8 [~~(22)~~] (23) By a department, in the event the attorney  
9 general, for reasons deemed by the attorney general  
10 good and sufficient, declines to employ or retain an  
11 attorney for a department; provided that the governor  
12 thereupon waives the provision of this section."

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

14 "(c) Every attorney employed by any department on a  
15 full-time basis, except an attorney employed by the public  
16 utilities commission, the Hawaii communications commissioner,  
17 the labor and industrial relations appeals board, the Hawaii  
18 labor relations board, the office of Hawaiian affairs, the  
19 Hawaii health systems corporation or its regional system boards,  
20 the department of commerce and consumer affairs in prosecution  
21 of consumer complaints, insurance division, the division of  
22 consumer advocacy, the University of Hawaii, the Hawaii tourism



1 authority as provided in section 201B-2.5, the Hawaiian home  
2 lands trust individual claims review panel, or as grand jury  
3 counsel, shall be a deputy attorney general."

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

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



1           The mayor of each county with the approval of the  
2     respective council may designate a county agency or official who  
3     shall have the power to review all plans and specifications for  
4     the subdivisions, development and improvement of the land  
5     involved, and the construction and sale of homes thereon. The  
6     county agency or official shall have the power to approve or  
7     disapprove or to make modifications to all or any portion of the  
8     plans and specifications.

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

18           No action shall be prosecuted or maintained against any  
19    county, its officials or employees, on account of actions taken  
20    in reviewing, approving, or disapproving such plans and  
21    specifications.



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

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

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

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

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

19 [~~or~~]

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



1           (3) Any proceedings of the Hawaii communications  
2                           commissioner."

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

5           "**§92-21 Copies of records; other costs and fees.** Except  
6 as otherwise provided by law, a copy of any government record,  
7 including any map, plan, diagram, photograph, photostat, or  
8 geographic information system digital data file, which is open  
9 to the inspection of the public, shall be furnished to any  
10 person applying for the same by the public officer having charge  
11 or control thereof upon the payment of the reasonable cost of  
12 reproducing [~~such~~] the copy. Except as provided in section  
13 91-2.5, the cost of reproducing any government record, except  
14 geographic information system digital data, shall not be less  
15 than 5 cents per page, sheet, or fraction thereof. The cost of  
16 reproducing geographic information system digital data shall be  
17 in accordance with rules adopted by the agency having charge or  
18 control of that data. [~~Such~~] The reproduction cost shall  
19 include but shall not be limited to labor cost for search and  
20 actual time for reproducing, material cost, including  
21 electricity cost, equipment cost, including rental cost, cost  
22 for certification, and other related costs. All fees shall be



1 paid in by the public officer receiving or collecting the same  
2 to the state director of finance, the county director of  
3 finance, or to the agency or department by which the officer is  
4 employed, as government realizations; provided that fees  
5 collected by the public utilities commission pursuant to this  
6 section shall be deposited in the public utilities commission  
7 special fund established under section 269-33[~~7~~], and fees  
8 collected by the Hawaii communications commissioner shall be  
9 deposited in the commissioner special fund established under  
10 section -20."

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

13 "**§101-43 Requirements prior to exercise of power.** Any  
14 corporation having the power of eminent domain under section  
15 101-41 may continue to exercise the power, provided that prior  
16 to the exercise of the power:

17 (1) The corporation submits to the public utilities  
18 commission or, in the case of telecommunications  
19 carriers or telecommunications common carriers, to the  
20 Hawaii communications commissioner, its intention to  
21 exercise the power, with a description of the property  
22 to be condemned; and





1           (2) The public utilities commission or the Hawaii  
2                   communications commissioner, as the case may be, finds  
3           that the proposed condemnation is in the public  
4           interest, that the proposed condemnation is necessary,  
5           and that the corporation will use the property for its  
6           operations as a public utility."

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

9           "(b) If the corporation acquires the assets of a private  
10          or other corporation, then, notwithstanding any law to the  
11          contrary:

12          (1) Neither the corporation nor any subsidiary corporation  
13               vested with the assets shall be subject to chapter 91  
14               with respect to the assets;

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

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

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



1 (5) Neither the corporation nor a subsidiary corporation  
2 vested with the assets shall constitute a public  
3 utility or be subject to the jurisdiction of the  
4 public utilities commission under chapter 269[-] or  
5 the Hawaii communications commissioner under  
6 chapter \_\_\_\_\_."

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

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

- 18 (1) The board finds the agricultural park is consistent  
19 with the purpose and intent of this chapter, and meets  
20 minimum requirements of health and safety;
- 21 (2) The development of the proposed agricultural park does  
22 not contravene any safety standards or tariffs



1 approved for public utilities by the public utilities  
2 commission [~~for public utilities,~~] or the Hawaii  
3 communications commissioner;

4 (3) The legislative body of the county in which the  
5 agricultural park is to be situated shall have  
6 approved the agricultural park.

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

15 (B) No action shall be prosecuted or maintained  
16 against any county, its officials, or employees,  
17 on account of actions taken by them in reviewing,  
18 approving, or disapproving the plans and  
19 specifications.

20 (C) The final plans and specifications for the  
21 agricultural park shall be deemed approved by the  
22 legislative body if the final plans and



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

- 16 (4) The State shall assume the responsibility of  
17 maintaining all roads within the agricultural park if  
18 the roads are developed exempt from applicable county  
19 ordinances, charter provisions, and rules regarding  
20 roads."

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



1           "[\S166E-10] Non-agricultural park land development.

2   On behalf of the State or in partnership with a federal agency,  
3   a county, or a private party and except as provided in this  
4   section, the department may develop non-agricultural park lands  
5   that, at the option of the board, may be exempt from all  
6   statutes, ordinances, charter provisions, and rules of any  
7   governmental agency relating to planning, zoning, construction  
8   standards for subdivisions, development and improvement of land,  
9   and construction of buildings thereon; provided that:

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

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

18           (3) The county in which the non-agricultural park  
19               development is proposed shall approve the  
20               non-agricultural park development; and provided  
21               further that:



1 (A) The county shall approve or disapprove the  
2 development within forty-five days after the  
3 department submits preliminary plans and  
4 specifications for the development to the county.  
5 If the county does not disapprove the development  
6 after the forty-fifth day, the development shall  
7 be deemed approved;

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

13 (C) The final plans and specifications for the  
14 development shall be deemed approved by the  
15 county if the final plans and specifications do  
16 not substantially deviate from the preliminary  
17 plans and specifications. The final plans and  
18 specifications for the project shall constitute  
19 the planning, zoning, building, construction, and  
20 subdivision standards for that development. For  
21 purposes of sections 501-85 and 502-17, the  
22 chairperson of the board or the responsible



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

8 (4) The State shall assume the responsibility of  
9 maintaining all roads and infrastructure improvements  
10 within the boundaries if the improvements are  
11 developed exempt from applicable county ordinances,  
12 charter provisions, and rules regarding development."

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

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

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



- 1           (2) The development of the industrial park does not  
2           contravene any safety standards or tariffs approved  
3           for public utilities by the public utilities  
4           commission [~~for public utilities,~~] or the Hawaii  
5           communications commissioner;
- 6           (3) The legislative body of the county in which the  
7           industrial park is proposed to be situated approves  
8           the industrial park[-] in accordance with the  
9           following:
- 10          (A) The legislative body shall approve or disapprove  
11           the industrial park within forty-five days after  
12           the department has submitted preliminary plans  
13           and specifications for the industrial park to the  
14           legislative body. If after the forty-fifth day,  
15           an industrial park is not disapproved, it shall  
16           be deemed approved by the legislative body[-];
- 17          (B) No action shall be prosecuted or maintained  
18           against any county, its officials, or employees,  
19           on account of actions taken by them in reviewing,  
20           approving, or disapproving the plans and  
21           specifications[-]; and





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



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

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

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

9 "(c) This section shall not apply to any permit issued by  
10 the public utilities commission under chapter 269[-] or the  
11 Hawaii communications commissioner under chapter \_\_\_\_\_."

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

14 "[+]§201H-13[+] **Eminent domain, exchange or use of public**  
15 **property.** The corporation may acquire any real property,  
16 including fixtures and improvements, or interest therein:  
17 through voluntary negotiation; through exchange of land in  
18 accordance with section 171-50, provided that the public land to  
19 be exchanged need not be of like use to that of the private  
20 land; or by the exercise of the power of eminent domain which it  
21 deems necessary by the adoption of a resolution declaring that  
22 the acquisition of the property described therein is in the



1 public interest and required for public use. The corporation  
2 shall exercise the power of eminent domain granted by this  
3 section in the same manner and procedure as is provided by  
4 chapter 101 and otherwise in accordance with all applicable  
5 provisions of the general laws of the State; provided that  
6 condemnation of parcels greater than fifteen acres shall be  
7 subject to legislative disapproval expressed in a concurrent  
8 resolution adopted by majority vote of the senate and the house  
9 of representatives in the first regular or special session  
10 following the date of condemnation.

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



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

3 "(c) The corporation shall adopt, pursuant to chapter 91,  
4 rules on health, safety, building, planning, zoning, and land  
5 use that relate to the development, subdivision, and  
6 construction of dwelling units in housing projects in which the  
7 State, through the corporation, shall participate. The rules  
8 shall not contravene any safety standards or tariffs approved by  
9 the public utilities commission[7] or the Hawaii communications  
10 commissioner, and shall follow existing law as closely as is  
11 consistent with the production of lower cost housing with  
12 standards that meet minimum requirements of good design,  
13 pleasant amenities, health, safety, and coordinated development.

14 When adopted, the rules shall have the force and effect of  
15 law and shall supersede, for all housing projects in which the  
16 State, through the corporation, shall participate, all other  
17 inconsistent laws, ordinances, and rules relating to the use,  
18 zoning, planning, and development of land, and the construction  
19 of dwelling units thereon. The rules, before becoming  
20 effective, shall be presented to the legislative body of each  
21 county in which they will be effective and the legislative body  
22 of any county may within forty-five days approve or disapprove,



1 for that county, any or all of the rules by a majority vote of  
2 its members. On the forty-sixth day after submission, any rules  
3 not disapproved shall be deemed to have been approved by the  
4 county."

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

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

15 (1) The corporation finds the housing project is  
16 consistent with the purpose and intent of this  
17 chapter, and meets minimum requirements of health and  
18 safety;

19 (2) The development of the proposed housing project does  
20 not contravene any safety standards, tariffs, or rates  
21 and fees approved for public utilities by the public  
22 utilities commission [~~for public utilities~~] or the



1           Hawaii communications commissioner or of the various  
2           boards of water supply authorized under chapter 54;  
3           (3) The legislative body of the county in which the  
4           housing project is to be situated shall have approved  
5           the project with or without modifications:  
6           (A) The legislative body shall approve, approve with  
7           modification, or disapprove the project by  
8           resolution within forty-five days after the  
9           corporation has submitted the preliminary plans  
10           and specifications for the project to the  
11           legislative body. If on the forty-sixth day a  
12           project is not disapproved, it shall be deemed  
13           approved by the legislative body;  
14           (B) No action shall be prosecuted or maintained  
15           against any county, its officials, or employees  
16           on account of actions taken by them in reviewing,  
17           approving, modifying, or disapproving the plans  
18           and specifications; and  
19           (C) The final plans and specifications for the  
20           project shall be deemed approved by the  
21           legislative body if the final plans and  
22           specifications do not substantially deviate from



1 the preliminary plans and specifications. The  
2 final plans and specifications for the project  
3 shall constitute the zoning, building,  
4 construction, and subdivision standards for that  
5 project. For purposes of sections 501-85 and  
6 502-17, the executive director of the corporation  
7 or the responsible county official may certify  
8 maps and plans of lands connected with the  
9 project as having complied with applicable laws  
10 and ordinances relating to consolidation and  
11 subdivision of lands, and the maps and plans  
12 shall be accepted for registration or recordation  
13 by the land court and registrar; and

- 14 (4) The land use commission shall approve, approve with  
15 modification, or disapprove a boundary change within  
16 forty-five days after the corporation has submitted a  
17 petition to the commission as provided in section  
18 205-4. If, on the forty-sixth day, the petition is  
19 not disapproved, it shall be deemed approved by the  
20 commission."

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



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

5           (1) Cultivation of crops;

6           (2) Aquaculture;

7           (3) Landscaping; provided that the authority finds that  
8 the proposed structure or activity will not adversely  
9 affect beach processes and will not artificially fix  
10 the shoreline;

11          (4) Drainage;

12          (5) Boating, maritime, or watersports recreational  
13 facilities;

14          (6) Facilities or improvements by public agencies or  
15 public utilities regulated under chapter 269[+] or  
16 chapter ;

17          (7) Private facilities or improvements that are clearly in  
18 the public interest;

19          (8) Private facilities or improvements which will neither  
20 adversely affect beach processes nor artificially fix  
21 the shoreline; provided that the authority also finds  
22 that hardship will result to the applicant if the





1 facilities or improvements are not allowed within the  
2 shoreline area;

3 (9) Private facilities or improvements that may  
4 artificially fix the shoreline; provided that the  
5 authority also finds that shoreline erosion is likely  
6 to cause hardship to the applicant if the facilities  
7 or improvements are not allowed within the shoreline  
8 area, and the authority imposes conditions to prohibit  
9 any structure seaward of the existing shoreline unless  
10 it is clearly in the public interest; or

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

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

20 "[~~§~~239-6.5~~]~~ **Tax credit for lifeline telephone service**  
21 **subsidy.** A telephone public utility subject to this chapter  
22 that has been authorized to establish lifeline telephone service



1 rates by the public utilities commission before July 1, 2009, or  
2 by the Hawaii communications commissioner on or after July 1,  
3 2009, shall be allowed a tax credit, equal to the lifeline  
4 telephone service costs incurred by the utility, to be applied  
5 against the utility's tax imposed by this chapter. The amount  
6 of this credit shall be determined and certified annually by the  
7 [~~public utilities commission.~~] Hawaii communications  
8 commissioner. The tax liability for a telephone public utility  
9 claiming the credit shall be calculated in the manner prescribed  
10 in section 239-5; provided that the amount of tax due from the  
11 utility shall be net of the lifeline service credit."

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

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



- 1 (1) The State;
- 2 (2) The department of transportation;
- 3 (3) The counties;
- 4 (4) Any public utility regulated under chapter 269 or
- 5 chapter \_\_\_\_\_ that places its facilities within the
- 6 highway right-of-way; or
- 7 (5) Any officer, employee, or agent of an entity listed in
- 8 paragraphs (1) to (4)."

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

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

12 ""Public utility":

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



1 within the State, or between points within the State,  
2 or for the production, conveyance, transmission,  
3 delivery, or furnishing of light, power, heat, cold,  
4 water, gas, or oil, or for the storage or warehousing  
5 of goods, or the disposal of sewage; provided that the  
6 term shall include:

7 (A) Any person insofar as that person owns or  
8 operates a private sewer company or sewer  
9 facility; and

10 (B) Any telecommunications carrier or  
11 telecommunications common carrier;

12 (2) Shall not include:

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

15 (B) Persons owning or operating taxicabs, as defined  
16 in this section;

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



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



- 1                   (ii) Provides, sells, or transmits all of that
- 2                   power, except such power as is used in its
- 3                   own internal operations, directly to a
- 4                   public utility for transmission to the
- 5                   public;
  
- 6                   (H) A telecommunications provider only to the extent
- 7                   determined by the [~~commission~~] Hawaii
- 8                   communications commissioner pursuant to section
- 9                   [~~269-16.9;~~]     -34;
  
- 10                  (I) Any person who controls, operates, or manages
- 11                  plants or facilities developed pursuant to
- 12                  chapter 167 for conveying, distributing, and
- 13                  transmitting water for irrigation and such other
- 14                  purposes that shall be held for public use and
- 15                  purpose;
  
- 16                  (J) Any person who owns, controls, operates, or
- 17                  manages plants or facilities for the reclamation
- 18                  of wastewater; provided that:
  
- 19                   (i) The services of the facility shall be
- 20                   provided pursuant to a service contract
- 21                   between the person and a state or county
- 22                   agency and at least ten per cent of the



1 wastewater processed is used directly by the  
2 State or county which has entered into the  
3 service contract;

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

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

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



1                   that by design is intended or used for a  
2                   beneficial purpose; and  
3                   (v) The facility shall not be engaged, either  
4                   directly or indirectly, in the processing of  
5                   food wastes; and  
6                   (K) Any person who owns, controls, operates, or  
7                   manages any seawater air conditioning district  
8                   cooling project; provided that at least fifty per  
9                   cent of the energy required for the seawater air  
10                  conditioning district cooling system is provided  
11                  by a renewable energy resource, such as cold,  
12                  deep seawater.

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





1 communications commissioner, respectively, may prescribe, as  
2 provided in sections [~~269-16.9~~] -34 and 269-20."

3 2. By amending the definition of "telecommunications  
4 carrier" or "telecommunications common carrier" to read:

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

14 3. By amending the definition of "telecommunications  
15 service" or "telecommunications" to read:

16 ""Telecommunications service" or "telecommunications"  
17 [~~means the offering of transmission between or among points~~  
18 ~~specified by a user, of information of the user's choosing,~~  
19 ~~including voice, data, image, graphics, and video without change~~  
20 ~~in the form or content of the information, as sent and received,~~  
21 ~~by means of electromagnetic transmission, or other similarly~~  
22 ~~capable means of transmission, with or without benefit of any~~



1 ~~closed transmission medium, and does not include cable service~~  
2 ~~as defined in section 440G-3.] has the same meaning as in~~  
3 ~~section -1.~~

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

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

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

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

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



1 Hawaii communications commissioner is sworn in and the Hawaii  
2 communications commissioner issues an order accepting the  
3 commissioner's authority and undertaking to enforce  
4 chapter \_\_\_\_\_."

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

7 **"§269-51 Consumer advocate; director of commerce and**  
8 **consumer affairs.** The director of commerce and consumer affairs  
9 shall be the consumer advocate in hearings before the public  
10 utilities commission[+] and the Hawaii communications  
11 commissioner. The consumer advocate shall represent, protect,  
12 and advance the interests of all consumers, including small  
13 businesses, of utility services. The consumer advocate shall  
14 not receive any salary in addition to the salary received as  
15 director of commerce and consumer affairs.

16 The responsibility for advocating the interests of the  
17 consumer of utility services shall be separate and distinct from  
18 the responsibilities of the public utilities commission and  
19 those assistants employed by the commission. As consumer  
20 advocate, the director of commerce and consumer affairs shall  
21 have full rights to participate as a party in interest in all



1 proceedings before the public utilities commission[~~-~~] and the  
2 Hawaii communications commissioner."

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

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

6 (1) any public utility, telecommunications carrier, or cable  
7 operator has violated or failed to comply with any provision of  
8 this part or of any state or federal law; (2) any public  
9 utility, telecommunications carrier, or cable operator has  
10 failed to comply with any rule, regulation, or other requirement  
11 of the public utilities commission, the Hawaii communications  
12 commissioner, or of any other state or federal agency; (3) any  
13 public utility, telecommunications carrier, or cable operator  
14 has failed to comply with any provision of its charter,  
15 certificate of public convenience and necessity, or franchise;  
16 (4) changes, additions, extensions, or repairs to the plant or  
17 service of any public utility, telecommunications carrier, or  
18 cable operator are necessary to meet the reasonable convenience  
19 or necessity of the public; or (5) the rates, fares,  
20 classifications, charges, or rules of any public utility,  
21 telecommunications carrier, or cable operator are unreasonable  
22 or unreasonably discriminatory, the consumer advocate may



1 institute proceedings for appropriate relief before the public  
2 utilities commission~~[-]~~ or the Hawaii communications  
3 commissioner, as applicable. The consumer advocate may appeal  
4 any final decision and order in any proceeding to which the  
5 consumer advocate is a party in the manner provided by law.

6 (e) The consumer advocate may file with the public  
7 utilities commission or the Hawaii communications commissioner,  
8 as the case may be, and serve on any public utility,  
9 telecommunications carrier, or cable operator a request in  
10 writing to furnish any information reasonably relevant to any  
11 matter or proceeding before the public utilities commission or  
12 the Hawaii communications commissioner or reasonably required by  
13 the consumer advocate to perform the duties hereunder. Any  
14 [~~such~~] request shall set forth with reasonable specificity the  
15 purpose for which the information is requested and shall  
16 designate with reasonable specificity the information desired.  
17 The public utility, telecommunications carrier, or cable  
18 operator shall comply with [~~such~~] the request within the time  
19 limit set forth by the consumer advocate unless within ten days  
20 following service it requests a hearing on the matter before the  
21 public utilities commission or the Hawaii communications  
22 commissioner and states its reasons therefor. If a hearing is



1 requested, the public utilities commission or the Hawaii  
2 communications commissioner, as the case may be, shall proceed  
3 to hold the hearing and make its determination on the request  
4 within thirty days after the same is filed. The consumer  
5 advocate or the public utility may appeal the decision of the  
6 commission on any [~~such~~] request, subject to chapter 602, in the  
7 manner provided for civil appeals from the circuit courts. The  
8 consumer advocate, telecommunications carrier, or cable operator  
9 may appeal the decision of the Hawaii communications  
10 commissioner, in the manner provided for in section -16.

11 Subject to the foregoing, such requests may ask the public  
12 utility, telecommunications carrier, or cable operator to:

- 13 (1) Furnish any information [~~with~~] which the consumer  
14 advocate may require concerning the condition,  
15 operations, practices, or services of the public  
16 utility[~~+~~], telecommunications carrier, or cable  
17 operator;
- 18 (2) Produce and permit the consumer advocate or the  
19 consumer advocate's representative to inspect and copy  
20 any designated documents (including writings,  
21 drawings, graphs, charts, photographs, recordings, and  
22 other data compilations from which information can be



1           obtained), or to inspect and copy, test, or sample any  
2           designated tangible thing which is in the possession,  
3           custody, or control of the public utility[+],  
4           telecommunications carrier, or cable operator; or  
5       (3) Permit entry upon land or other property in the  
6           possession or control of the public utility,  
7           telecommunications carrier, or cable operator for the  
8           purpose of inspection and measuring, surveying,  
9           photographing, testing, or sampling the property or  
10          any designated object thereon."

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

13       "**§269-55 Handling of complaints.** The consumer advocate  
14       shall counsel public utility, telecommunications, and cable  
15       service customers in the handling of consumer complaints before  
16       the public utilities commission[-] or the Hawaii communications  
17       commissioner. The public utilities commission shall provide a  
18       central clearinghouse of information by collecting and compiling  
19       all consumer complaints and inquiries concerning public  
20       utilities. The Hawaii communications commissioner shall provide  
21       a central clearinghouse of information by collecting and



1 compiling all consumer complaints and inquiries concerning  
2 telecommunications carriers and cable operators."

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

5 "[+]§339K-2[+] **Compact administrator.** The compact  
6 administrator, acting jointly with like officers of other party  
7 states, may [~~promulgate~~] adopt rules and regulations to carry  
8 out more effectively the terms of the compact. The compact  
9 administrator shall cooperate with all departments, agencies,  
10 and officers of and in the government of this State and its  
11 subdivisions in facilitating the present administration of the  
12 compact or of any supplementary agreement or agreements entered  
13 into by this State thereunder. The compact administrator shall  
14 adopt the practices and may impose the fees authorized under  
15 article III of the compact, except that state and county law  
16 enforcement agencies [~~and~~], the public utilities commission, and  
17 the Hawaii communications commissioner shall retain their  
18 enforcement and inspection authority relating to carriers."

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

21 "(b) The authority may acquire by the exercise of the  
22 power of eminent domain property already devoted to a public





1 use; provided that no property belonging to any government may  
2 be acquired without its consent, and that no property belonging  
3 to a public utility may be acquired without the approval of the  
4 public utilities commission[+] or, in the case of  
5 telecommunications carriers or telecommunications common  
6 carriers, the Hawaii communications commissioner; and provided  
7 further that the acquisition is subject to legislative  
8 disapproval expressed in a concurrent resolution adopted by  
9 majority vote of the senate and the house of representatives in  
10 the first regular or special session following the date of  
11 condemnation."

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

14 "**§448E-13 Exemption of public utility and [community**  
15 **antennae] cable television company employees.** All employees of  
16 a public utility within the State under a franchise or charter  
17 granted by the State [~~which~~] that is regulated by the public  
18 utilities commission or the Hawaii communications commissioner  
19 and [~~community antennae television company,~~] a cable television  
20 franchisee, while so employed, shall be exempt from the  
21 provision of this chapter."



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

3 "**§481-11 Remedies cumulative.** The remedies prescribed in  
4 this part are cumulative and in addition to the remedies  
5 prescribed in [~~chapter~~] chapters 269 and \_\_\_\_\_ for discriminations  
6 by public utilities. If any conflict arises between this part  
7 and chapter 269 [~~, the latter prevails.~~] or chapter \_\_\_\_\_, chapter  
8 269 or chapter \_\_\_\_\_, whichever is applicable, shall prevail."

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

11 "**§481P-5 Exemptions.** This chapter shall not apply to:

12 (1) A person who initiates telephone calls to a residence  
13 for the sole purpose of polling or soliciting the  
14 expression of ideas, opinions, or votes, or a person  
15 soliciting solely for a political or religious cause  
16 or purpose;

17 (2) A securities broker-dealer, salesperson, investment  
18 adviser, or investment adviser representative who is  
19 registered with this State to sell securities or who  
20 is authorized to sell securities in this State  
21 pursuant to federal securities laws, when soliciting



- 1 over the telephone within the scope of the person's  
2 registration;
- 3 (3) A financial institution that is authorized to accept  
4 deposits under its chartering or licensing authority  
5 where such deposits are insured by the Federal Deposit  
6 Insurance Corporation or the National Credit Union  
7 Administration, including but not limited to a bank,  
8 savings bank, savings and loan association, depository  
9 financial services loan company, or credit union, or a  
10 nondepository financial services loan company that is  
11 licensed or authorized to conduct business in this  
12 State by the commissioner of financial institutions,  
13 or an affiliate or subsidiary of a financial  
14 institution as defined in chapter 412;
- 15 (4) A person or organization that is licensed or  
16 authorized to conduct business in this State by the  
17 insurance commissioner including but not limited to an  
18 insurance company and its employees, while engaged in  
19 the business of selling or advertising the sale of  
20 insurance products or services;



- 1           (5) A college or university accredited by an accrediting  
2                   organization recognized by the United States  
3                   Department of Education;
- 4           (6) A person who publishes a catalog of at least fifteen  
5                   pages, four times a year, with a circulation of at  
6                   least one hundred thousand, where the catalog includes  
7                   clear disclosure of sale prices, shipping, handling,  
8                   and other charges;
- 9           (7) A political subdivision or instrumentality of the  
10                   United States, or any state of the United States;
- 11          (8) The sale of goods or services by telecommunications or  
12                   landline (i.e., cable) or wireless video service  
13                   providers, for which the terms and conditions of the  
14                   offering, production, or sale are regulated by the  
15                   ~~[public utilities commission]~~ Hawaii communications  
16                   commissioner or the Federal Communications Commission,  
17                   ~~[or pursuant to chapter 440G,~~] including the sale of  
18                   goods or services by affiliates of these  
19                   telecommunications or video service providers.  
20                   Nothing herein shall be construed to preclude or  
21                   preempt actions brought under any other laws including  
22                   chapter 480;



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

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

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

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

10          (1) Express or implied warranties;

11          (2) Maintenance agreements; and

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

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

20          "**§486J-11 Powers of the public utilities commission[-] and**  
 21 **the Hawaii communications commissioner.** (a) The public  
 22 utilities commission and the Hawaii communications commissioner



1 may take any action or make any determination under this  
2 chapter, including but not limited to actions or determinations  
3 that affect persons not regulated under chapters 269, \_\_\_\_, 271,  
4 and 271G, as the public utilities commission or the Hawaii  
5 communications commissioner deems necessary to carry out its  
6 responsibilities or otherwise effectuate chapter 269, \_\_\_\_, 271,  
7 or 271G.

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

20 (c) In the performance of its duties under this chapter,  
21 the public utilities commission and the Hawaii communications  
22 commissioner shall have the same powers respecting administering



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

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

15 "[~~§~~659-3] **Forfeiture of franchise.** The several  
16 circuit courts shall have jurisdiction of all proceedings in, or  
17 in the nature of, quo warranto, brought by or in the name of the  
18 public utilities commission, the Hawaii communications  
19 commissioner, or the State, for the forfeiture of the franchise  
20 of any corporate body offending against any law relating to such  
21 corporation, for misuser, for nonuser, for doing or committing



1 any act or acts amounting to a surrender of its charter and for  
2 exercising rights not conferred upon it."

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

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

15 SECTION 34. Section 269-16.5, Hawaii Revised Statutes, is  
16 repealed.

17 [~~"§269-16.5 Lifeline telephone rates. (a) The public  
18 utilities commission shall implement a program to achieve  
19 lifeline telephone rates for residential telephone users.~~

20 ~~(b) "Lifeline telephone rate" means a discounted rate for  
21 residential telephone users identified as elders with limited~~





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

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

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

11 SECTION 35. Section 269-16.6, Hawaii Revised Statutes, is  
12 repealed.

13 [~~"§269-16.6 Telecommunications relay services for the~~  
14 ~~deaf, persons with hearing disabilities, and persons with speech~~  
15 ~~disabilities.~~ (a) ~~The public utilities commission shall~~  
16 ~~implement intrastate telecommunications relay services for the~~  
17 ~~deaf, persons with hearing disabilities, and persons with speech~~  
18 ~~disabilities.~~

19 ~~(b) The commission shall investigate the availability of~~  
20 ~~experienced providers of quality telecommunications relay~~  
21 ~~services for the deaf, persons with hearing disabilities, and~~  
22 ~~persons with speech disabilities. The provision of these~~



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

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

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

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

21 ~~(f) The commission shall require every intrastate~~  
22 ~~telecommunications carrier to file a schedule of rates and~~



1 ~~charges and every provider of telecommunications relay service~~  
2 ~~to maintain a separate accounting for the costs of providing~~  
3 ~~telecommunications relay services for the deaf, persons with~~  
4 ~~hearing disabilities, and persons with speech disabilities.~~

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

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

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

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

21 SECTION 36. Section 269-16.8, Hawaii Revised Statutes, is  
22 repealed.



1           ~~["§269-16.8] Aggregators of telephone service~~

2 ~~requirements.~~ (a) ~~For the purposes of this section:~~

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

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

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

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



- 1           ~~procedures, and means by which the customer may access~~  
2           ~~the various operator service providers.~~
- 3           ~~(2) Identification by name of the operator service~~  
4           ~~provider prior to the call connection and, if not~~  
5           ~~posted pursuant to subsection (b) (1), a disclosure of~~  
6           ~~pertinent rates, terms, conditions, and means of~~  
7           ~~access to various operator service providers and the~~  
8           ~~local exchange carriers; provided that the operator~~  
9           ~~service provider shall disclose this information at~~  
10           ~~any time upon request by the customer.~~
- 11           ~~(3) Allowing the customer access to any operator service~~  
12           ~~provider operating in the relevant geographic area~~  
13           ~~through the access method chosen by the provider or as~~  
14           ~~deemed appropriate by the commission.~~
- 15           ~~(4) Other requirements as deemed reasonable by the~~  
16           ~~commission in the areas of public safety, quality of~~  
17           ~~service, unjust or discriminatory pricing, or other~~  
18           ~~matters in the public interest." ]~~

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

21           ~~["§269-16.9 Telecommunications providers and services.~~

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



1 ~~contrary, the commission, upon its own motion or upon the~~  
2 ~~application of any person, and upon notice and hearing, may~~  
3 ~~exempt a telecommunications provider or a telecommunications~~  
4 ~~service from any or all of the provisions of this chapter,~~  
5 ~~except the provisions of section 269-34, upon a determination~~  
6 ~~that the exemption is in the public interest. In determining~~  
7 ~~whether an exemption is in the public interest, the commission~~  
8 ~~shall consider whether the exemption promotes state policies in~~  
9 ~~telecommunications, the development, maintenance, and operation~~  
10 ~~of effective and economically efficient telecommunications~~  
11 ~~services, and the furnishing of telecommunications services at~~  
12 ~~just and reasonable rates and in a fair manner in view of the~~  
13 ~~needs of the various customer segments of the telecommunications~~  
14 ~~industry. Among the specific factors the commission may~~  
15 ~~consider are:~~

- 16       ~~(1) The responsiveness of the exemption to changes in the~~  
17           ~~structure and technology of the State's~~  
18           ~~telecommunications industry;~~
- 19       ~~(2) The benefits accruing to the customers and users of~~  
20           ~~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 (c) 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 (e) 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. All rules, policies, procedures, orders,  
17 certificates of public convenience and necessity, franchises,  
18 guidelines, and other material adopted, issued, or developed by  
19 the department of commerce and consumer affairs and the public  
20 utilities commission to implement provisions of the Hawaii  
21 Revised Statutes that are reenacted or made applicable to the  
22 Hawaii communications commissioner by this Act, shall remain in



1 full force and effect until amended or repealed by the Hawaii  
2 communications commissioner. In the interim, every reference to  
3 the department of commerce and consumer affairs, director of  
4 commerce and consumer affairs, public utilities commission, or  
5 chairperson of the public utilities commission in those rules,  
6 policies, procedures, orders, franchises, guidelines, and other  
7 material is amended to refer to the Hawaii communications  
8 commissioner as appropriate.

9 SECTION 53. All deeds, leases, contracts, loans,  
10 agreements, permits, or other documents executed or entered into  
11 by or on behalf of the department of commerce and consumer  
12 affairs and the public utilities commission pursuant to the  
13 provisions of the Hawaii Revised Statutes that are reenacted or  
14 made applicable to the Hawaii communications commissioner by  
15 this Act, shall remain in full force and effect. Effective upon  
16 approval of this Act, every reference to the department of  
17 commerce and consumer affairs, director of commerce and consumer  
18 affairs, public utilities commission, or chairperson of the  
19 public utilities commission therein shall be construed as a  
20 reference to the Hawaii communications commissioner as  
21 appropriate.



1 SECTION 54. All appropriations, records, equipment,  
2 machines, files, supplies, contracts, books, papers, documents,  
3 maps, and other personal property heretofore made, used,  
4 acquired, or held by the department of commerce and consumer  
5 affairs and the public utilities commission relating to the  
6 functions transferred to the Hawaii communications commissioner  
7 shall be transferred with the functions to which they relate.

8 SECTION 55. The department of commerce and consumer  
9 affairs and public utilities commission shall each transfer four  
10 positions to the service of the Hawaii communications  
11 commissioner. The positions selected for transfer shall  
12 reasonably relate to the functions of the Hawaii communications  
13 commissioner.

14 All officers and employees whose functions are transferred  
15 by this Act shall be transferred with their functions and shall  
16 continue to perform their regular duties upon their transfer,  
17 subject to the state personnel laws and this Act.

18 No officer or employee of the State having tenure shall  
19 suffer any loss of salary, seniority, prior service credit,  
20 vacation, sick leave, or other employee benefit or privilege as  
21 a consequence of this Act, and such officer or employee may be  
22 transferred or appointed to a civil service position without the



1 necessity of examination; provided that the officer or employee  
2 possesses the minimum qualifications for the position to which  
3 transferred or appointed; and provided that subsequent changes  
4 in status may be made pursuant to applicable civil service and  
5 compensation laws.

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

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



1 SECTION 56. The Hawaii communications commissioner shall  
2 convene a work group to develop procedures for streamlined  
3 regulatory, franchising, and permitting functions normally  
4 available to state and local governments for the use or  
5 development of broadband service or broadband technology.

6 Members of the work group shall include:

7 (1) The Hawaii communications commissioner established in  
8 section 2 of this Act;

9 (2) The mayor of the county of Hawaii, or the mayor's  
10 designee;

11 (3) The mayor of the city and county of Honolulu, or the  
12 mayor's designee;

13 (4) The mayor of the county of Kauai, or the mayor's  
14 designee;

15 (5) The mayor of the county of Maui, or the mayor's  
16 designee;

17 (6) The chairperson of the Hawaii broadband task force  
18 established by Act 2, First Special Session Laws of  
19 Hawaii 2007; and

20 (7) Five representatives of the telecommunications, cable,  
21 wireless internet, and non-profit industries.



1 SECTION 57. The work group established under section 56  
2 shall submit to the legislature no later than January 1, 2010, a  
3 report with its recommended procedures for streamlining and  
4 expediting all regulatory, franchising, and permitting functions  
5 normally available to state and local governments for the use or  
6 development of broadband service or broadband technology. The  
7 procedures shall be consistent across all counties and shall  
8 provide that any permitting fees and revenues traditionally  
9 accruing to the counties that relate to the use or development  
10 of broadband service or broadband technology will continue to  
11 accrue to the counties once the procedures go into effect.

12 SECTION 58. The legislative reference bureau shall review  
13 all relevant laws in the Hawaii Revised Statutes relating to  
14 broadband technology, telecommunications, infrastructure  
15 development, permitting requirements, and any other issues the  
16 legislative reference bureau deems appropriate, including all  
17 acts passed by the legislature during this regular session of  
18 2009, whether enacted before or after the effective date of this  
19 Act, unless such acts specifically provide that this Act is  
20 being amended, and make recommendations on how these laws may be  
21 amended to conform to this Act or facilitate the implementation  
22 of this Act. The legislative reference bureau shall submit a





**Report Title:**

Hawaii Communications Commissioner; Broadband Regulation;  
Broadband Franchising; Broadband Permitting

**Description:**

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii communications commissioner (HCC) in the department of commerce and consumer affairs (DCCA). Transfers functions relating to telecommunications from the public utilities commission to the HCC and functions relating to cable services from DCCA to the HCC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature.

