
A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

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



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

3 (1) Access to broadband communications to all households,
4 businesses, and organizations throughout the State by
5 2012 at speeds and prices comparable to the average
6 speeds and prices available in the top three
7 performing countries in the world;

8 (2) Availability of advanced broadband communications
9 service on a competitive basis to reduce prices,
10 increase service penetration, and improve service to
11 all persons in the State;

12 (3) Increased broadband availability at affordable costs
13 to low income and other disadvantaged groups,
14 including by making low-cost, broadband-capable
15 computers available to eligible recipients;

16 (4) Increased sharing of the infrastructure used to deploy
17 broadband to reduce costs to providers, ease
18 deployment of broadband, and ease entry into a
19 competitive broadband marketplace;

20 (5) Increased, flexible, timely, and responsible access to
21 public rights-of-way and public facilities for
22 broadband service providers; and



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

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

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



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



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

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

8 **"CHAPTER**

9 **HAWAII COMMUNICATIONS COMMISSION**

10 **PART I. GENERAL PROVISIONS**

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

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

15 "Application" means an unsolicited filing.

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

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

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



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

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

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

11 "Cable service" means:

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

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



- 1 (1) That serves only to retransmit the television signals
- 2 of one or more television broadcast stations;
- 3 (2) That serves only subscribers in one or more multiple
- 4 unit dwellings under common ownership, control, or
- 5 management, unless that facility or facilities uses
- 6 any public right-of-way; or
- 7 (3) Of a telecommunications carrier subject in whole or in
- 8 part to the provisions of part II of this chapter,
- 9 except to the extent that that facility provides video
- 10 programming directly to subscribers.

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

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

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

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



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

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

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

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

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

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

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

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

19 "PEG access facility" means:

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



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

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

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

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

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

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



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

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

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

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

21 There is established within the department of commerce and



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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



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

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

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

- 19 (1) The condition of each telecommunications carrier,
20 cable operator, and PEG access organization;
- 21 (2) The manner in which each telecommunications carrier,
22 cable operator, and PEG access organization is



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



1 (10) Compliance of each telecommunications carrier, cable
2 operator, and PEG access organization with all
3 applicable state and federal laws and with the
4 provisions of its franchise, charter, and articles of
5 association, if any; and

6 (11) Classifications, rules, regulations, practices, and
7 service, and all matters of every nature affecting the
8 relations and transactions between each
9 telecommunications carrier, cable operator, and PEG
10 access organization and the public or persons or
11 corporations.

12 (b) The commission may investigate any person acting in
13 the capacity of or engaging in the business of a
14 telecommunications carrier within the State of Hawaii without
15 having a certificate of public convenience and necessity or
16 other authority previously obtained under and in compliance with
17 this chapter or the rules adopted under this chapter or chapter
18 269.

19 (c) Any investigation may be made by the commission on the
20 commissioner's own motion, and shall be made when requested by
21 the telecommunications carrier, cable operator, or PEG access
22 organization to be investigated, or by any person upon a sworn



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

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

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

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



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



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



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

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



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

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

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



1 (d) Any public hearing held pursuant to section -68(b),
2 shall be a noticed public hearing or hearings in the county to
3 be served by the applicant for designation as an access
4 organization. Notice of the hearing, with the purpose thereof
5 and the date, time, and place at which it will open, shall be
6 given not less than once in each of three weeks statewide, the
7 first notice being not less than twenty-one days before the
8 public hearing and the last notice being not more than two days
9 before the scheduled hearing.

10 **§ -15 Right to be represented by counsel.** At any
11 investigation by or proceeding before the commission, the
12 telecommunications carrier, cable operator, PEG access
13 organization, or the person concerned, or other respondent or
14 party and any complainant or permitted intervenor shall have the
15 right to be present and represented by counsel, to present any
16 evidence desired, and to cross-examine any witness who may be
17 called.

18 **§ -16 Commission may institute proceedings to enforce**
19 **chapter.** (a) If the commission is of the opinion that any
20 telecommunications carrier, cable operator, PEG access
21 organization, or any person is violating or neglecting to comply
22 with any provision of this chapter or of any rule, regulation,



1 order, or other requirement of the commission, or of any
2 provisions of its certificate of public convenience and
3 necessity, franchise, charter, contract, or articles of
4 association, if any, or that changes, additions, extensions, or
5 repairs are desirable in its plant or service to meet the
6 reasonable convenience or necessity of the public, or to ensure
7 greater safety or security, or that any rates, fares,
8 classifications, charges, or rules are unreasonable or
9 unreasonably discriminatory, or that in any way it is doing what
10 it ought not to do, or not doing what it ought to do, the
11 commission shall in writing inform the telecommunications
12 carrier, cable operator, PEG access organization, or the person
13 and may institute proceedings before it as may be necessary to
14 require the telecommunications carrier, cable operator, PEG
15 access organization, or the person to correct any deficiency.
16 In that event, the commission may by order direct the consumer
17 advocate to appear in the proceeding, to carry out the purposes
18 of this section. The commission may examine into any of the
19 matters referred to in section -10, notwithstanding that the
20 same may be within the jurisdiction of any court or other body;
21 provided that this section shall not be construed as in any
22 manner limiting or otherwise affecting the jurisdiction of any



1 court or other body. The commission may also revoke or amend
2 any provision of a certificate of public convenience and
3 necessity, franchise, charter, or articles of association, if
4 any, pursuant to section -31 or -71.

5 (b) In addition to any other available remedy, the
6 commission or its enforcement officer may issue citations to any
7 person acting in the capacity of or engaging in the business of
8 a telecommunications carrier or cable operator within the state,
9 without having a certificate of public convenience and
10 necessity, franchise, or other authority previously obtained
11 under and in compliance with this chapter or the rules adopted
12 thereunder. Citations issued and persons cited pursuant to this
13 subsection shall be subject to the following:

14 (1) The citation may contain an order of abatement and an
15 assessment of civil penalties as provided in section
16 -24. All penalties collected under this subsection
17 shall be deposited in the Hawaii communications
18 commission special fund established pursuant to
19 section -21. Service of a citation issued under this
20 subsection shall be made by personal service whenever
21 possible, or by certified mail, restricted delivery,



1 sent to the last known business or residence address
2 of the person cited;

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

15 (3) If the person cited under this subsection does not
16 submit a written request to the commission for a
17 hearing within twenty days from the receipt of the
18 citation, the citation shall be deemed a final order
19 of the commission. The commission may apply to the
20 appropriate court for a judgment to enforce the
21 provisions of any final order, issued by the
22 commission or designated hearings officer pursuant to



1 this subsection, including the provisions for
2 abatement and civil penalties imposed. In any
3 proceeding to enforce the provisions of the final
4 order of the commission or designated hearings
5 officer, the commission need only show that the notice
6 was given, that a hearing was held or the time granted
7 for requesting the hearing has run without a request,
8 and a certified copy of the final order of the
9 commission or designated hearings officer; and

- 10 (4) If any party is aggrieved by the decision of the
11 commission or the designated hearings officer, the
12 party may appeal to the intermediate appellate court,
13 in the manner provided for in chapter 602; provided
14 that the operation of an abatement order shall not be
15 stayed on appeal unless specifically ordered by the
16 intermediate appellate court after applying the stay
17 criteria enumerated in section 91-14(c). The
18 sanctions and disposition authorized under this
19 subsection shall be separate and in addition to all
20 other remedies either civil or criminal provided in
21 any other applicable statutory provision. The



1 commission may adopt rules under chapter 91 as may be
2 necessary to fully effectuate this subsection.

3 **§ -17 Appeals.** An appeal from an order of the
4 commission under this chapter shall lie, in the manner provided
5 for in chapter 602. Only a person aggrieved in a contested case
6 proceeding provided for in this chapter may appeal from a final
7 order, or a preliminary order if it is of the nature defined by
8 section 91-14(a). The commission may elect to be a party to all
9 matters, from which an order of the commission is appealed or
10 any action in any court of law seeking a mandamus, or injunctive
11 or other relief to compel compliance with this chapter, or any
12 rule or order adopted thereunder, or to restrain or otherwise
13 prevent or prohibit any illegal or unauthorized conduct in
14 connection therewith, and file appropriate responsive briefs or
15 pleadings. If there is no adverse party to the appeal, the
16 commission shall be a party and shall file responsive briefs or
17 pleadings in defending all orders. The appearance of the
18 commission as a party in judicial proceedings in no way limits
19 the participation of persons otherwise qualified to be parties
20 on appeal. The appeal shall not of itself stay the operation of
21 the order appealed from, but the appellate court may stay the
22 order after a hearing upon a motion therefor and may impose



1 conditions it deems proper, including but not limited to
2 requiring a bond, requiring that accounts be kept, or requiring
3 that other measures be taken as ordered to secure restitution of
4 the excess charges, if any, made during the pendency of the
5 appeal, in case the order appealed from is sustained, reversed,
6 or modified in whole or in part.

7 **§ -18 Alternative dispute resolution.** The commission
8 may require the parties in any matter before the commission to
9 participate in nonbinding arbitration, mediation, or another
10 alternative dispute resolution process prior to the hearing.

11 **§ -19 Perjury.** Any person who wilfully and knowingly
12 makes under oath any false statement in connection with any
13 investigation by or proceeding before the commission shall be
14 guilty of perjury and, upon conviction, shall be subject to the
15 penalty prescribed by law for the offense.

16 **§ -20 Telecommunications carriers, cable operators, and**
17 **PEG access organizations, to furnish information.** Every
18 telecommunications carrier, cable operator, PEG access
19 organization, or other person subject to investigation by the
20 commission, shall at all times, upon request, furnish to the
21 commission all information that the commission may require
22 respecting any of the matters concerning which the commission is



1 given power to investigate, and shall permit the examination of
 2 its books, records, contracts, maps, and other documents by the
 3 commission or any person authorized by the commission in writing
 4 to make the examination, and shall furnish the commission with a
 5 complete inventory of property under its control or management
 6 in the form as the commission may direct. Information and data
 7 that the commission requires to be produced by a
 8 telecommunications carrier, cable operator, PEG access
 9 organization, or other person that is proprietary in nature or
 10 qualifies as commercially sensitive information shall be treated
 11 and protected as confidential by the commission.

12 **§ -21 Hawaii communications commission special fund.**

13 (a) There is established in the state treasury a Hawaii
 14 communications commission special fund to be administered by the
 15 commission. The proceeds of the fund shall be used by the
 16 commission and the division of consumer advocacy for all
 17 expenses incurred in the administration of this chapter,
 18 including, without limitation, the operation of programs
 19 developed by the commission to develop and construct, or
 20 encourage the construction of, broadband infrastructure, make
 21 broadband capable services available to low income and
 22 disadvantaged persons, or otherwise promote universal



1 availability of communications services. The expenditures of
 2 the commission shall be in accordance with legislative
 3 appropriations. On a quarterly basis an amount not to exceed
 4 thirty per cent of the proceeds remaining in the fund shall be
 5 allocated to the division of consumer advocacy and deposited in
 6 the compliance resolution fund established pursuant to section
 7 26-9(o).

8 (b) All moneys appropriated to, received, and collected by
 9 the commission that are not otherwise pledged, obligated, or
 10 required by law to be placed in any other special fund or
 11 expended for any other purpose shall be deposited into the
 12 Hawaii communications commission special fund including but not
 13 limited to all moneys received and collected by the commission
 14 pursuant to sections -24, -51, and 92-21.

15 (c) The commission shall submit a report to the
 16 legislature detailing all funds received and all moneys
 17 disbursed out of the fund prior to the convening of each regular
 18 session.

19 **§ -22 Consumer advocate.** As the director serves as the
 20 consumer advocate to the public utilities commission pursuant to
 21 sections 269-51 through 269-55, the commission shall recognize



1 the director as the consumer advocate in hearings and
2 proceedings before the commission.

3 **§ -23 Communications advisory committee.** There is
4 established the communications advisory committee. The
5 committee shall consist of five members appointed by the
6 governor as provided in section 26-34. The committee shall
7 advise the commission, telecommunications carriers, and cable
8 operators on matters within the jurisdiction of this chapter at
9 the request of the commission or any telecommunications carrier
10 or cable operator. The members of the committee shall serve
11 without pay but shall be entitled to reimbursement for necessary
12 expenses, including travel expenses, while attending meetings
13 and while in discharge of their duties.

14 **§ -24 Penalties.** (a) Any telecommunications carrier,
15 cable operator, or PEG access organization violating,
16 neglecting, or failing in any particular way to conform to or
17 comply with this chapter or any lawful order of the commission,
18 including but not limited to the grounds specified in section
19 -71 for cable operators and PEG access organizations, shall
20 be subject to a civil penalty not to exceed \$25,000 for each day
21 the violation, neglect, or failure continues, to be assessed by
22 the commission after a hearing in accordance with chapter 91.



1 The commission may order the telecommunications carrier or cable
2 operator to cease carrying on its business while the violation,
3 neglect, or failure continues.

4 (b) Notwithstanding subsection (a), any person acting in
5 the capacity of or engaging in the business of a
6 telecommunications carrier or a cable operator in the state
7 without having a certificate of public convenience and
8 necessity, franchise, or other authority previously obtained
9 under and in compliance with this chapter and the rules adopted
10 thereunder may be subject to a civil penalty not to exceed
11 \$5,000 for each offense, and, in the case of a continuing
12 violation, \$5,000 for each day that uncertified activity
13 continues.

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

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



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

5 **PART II. TELECOMMUNICATIONS**

6 **§ -31 Certificates of public convenience and necessity.**

7 (a) No telecommunications carrier, as defined in section -1,
8 shall commence its business without first having obtained from
9 the commission a certificate of public convenience and
10 necessity. Applications for certificates shall be made in
11 writing to the commission and shall comply with the requirements
12 prescribed in the commission's rules. The application for a
13 certificate of public convenience and necessity shall include:

- 14 (1) The type of service to be performed;
- 15 (2) The geographical scope of the operation;
- 16 (3) The type of equipment to be employed in the service;
- 17 (4) The names of competing telecommunications carriers for
18 the proposed service;
- 19 (5) A statement of the applicant's financial ability to
20 render the proposed service;
- 21 (6) A current financial statement of the applicant; and



1 (7) The rates or charges proposed to be charged, including
2 the rules governing the proposed service.

3 (b) A certificate shall be issued to any qualified
4 applicant, authorizing the whole or any part of the operations
5 covered by the application, if it is found that the applicant is
6 fit, willing, and able to properly perform the proposed services
7 and to conform to the terms, conditions, and rules adopted by
8 the commission, and that the proposed service is, or will be,
9 required by the present or future public convenience and
10 necessity; otherwise the application shall be denied. Any
11 certificate issued shall specify the service to be rendered and
12 there shall be attached to the exercise of the privileges
13 granted by the certificate at the time of issuance and from time
14 to time thereafter, reasonable conditions and limitations as a
15 public convenience and necessity may require. The
16 reasonableness of the rates, charges, and tariff rules proposed
17 by the applicant shall be determined by the commission during
18 the same proceeding examining the present and future
19 conveniences and needs of the public and qualifications of the
20 applicant, in accordance with the standards set forth in section
21 -38.



1 (c) No telecommunications carrier that, as of July 1,
2 2009, holds a valid certificate of public convenience and
3 necessity, franchise, or charter enacted or granted by the
4 legislative or executive authority of the State or its
5 predecessor governments, or has a bona fide operation as a
6 telecommunications carrier recognized by the public utilities
7 commission, shall be required to obtain, as a result of the
8 enactment of this Act, a new certificate of public convenience
9 and necessity under this section.

10 (d) Any certificate, upon application of the holder and at
11 the discretion of the commission, may be amended, suspended, or
12 revoked, in whole or in part. The commission after notice and
13 hearing may suspend, amend, or revoke any certificate in part or
14 in whole, if the holder is found to be in wilful violation of
15 any of the provisions of this chapter or with any lawful order
16 or rule of the commission adopted thereunder, or with any term,
17 condition, or limitation of the certificate.

18 **§ -32 Location of records.** A telecommunications carrier
19 shall keep and maintain records, books, papers, accounts, and
20 other documents as the commission may determine are necessary to
21 effectively regulate the telecommunications carrier, that can be
22 made immediately accessible when requested by the commission;



1 provided that the original copies are made available when
2 requested by the commission.

3 **§ -33 Annual financial reports.** Each annual financial
4 report required to be filed with the commission by
5 telecommunications carriers shall include a certification that
6 the report conforms with the applicable uniform system of
7 accounts adopted by the commission. The commission shall adopt
8 a uniform system of accounts for this purpose.

9 **§ -34 Telecommunications providers and services.** (a)
10 Notwithstanding any provision of this chapter to the contrary,
11 the commission, upon the commission's own motion or upon the
12 application of any person, and upon notice and hearing, may
13 exempt a telecommunications carrier or a telecommunications
14 service from any or all of the provisions of this chapter,
15 except the requirements of section -36, upon a determination
16 that the exemption is in the public interest. In determining
17 whether an exemption is in the public interest, the commission
18 shall consider whether the exemption promotes state policies in
19 telecommunications, the development, maintenance, and operation
20 of effective and economically efficient telecommunications
21 services, and the furnishing of telecommunications services at
22 just and reasonable rates and in a fair manner in view of the



1 needs of the various customer segments of the telecommunications
2 industry. Among the specific factors the commission may
3 consider are:

4 (1) The responsiveness of the exemption to changes in the
5 structure and technology of the State's
6 telecommunications industry;

7 (2) The benefits accruing to the customers and users of
8 the exempt telecommunications carrier or service;

9 (3) The impact of the exemption on the quality,
10 efficiency, and availability of telecommunications
11 services;

12 (4) The impact of the exemption on the maintenance of
13 fair, just, and reasonable rates for
14 telecommunications services;

15 (5) The likelihood of prejudice or disadvantage to
16 ratepayers of basic local exchange service resulting
17 from the exemption;

18 (6) The effect of the exemption on the preservation and
19 promotion of affordable, universal, basic
20 telecommunications services as those services are
21 determined by the commission;



- 1 (7) The resulting subsidization, if any, of the exempt
2 telecommunications service or provider by nonexempt
3 services;
- 4 (8) The impact of the exemption on the availability of
5 diversity in the supply of telecommunications services
6 throughout the State of Hawaii;
- 7 (9) The improvements in the regulatory system to be gained
8 from the exemption, including the reduction in
9 regulatory delays and costs;
- 10 (10) The impact of the exemption on promoting innovations
11 in telecommunications services;
- 12 (11) The opportunity provided by the exemption for
13 telecommunications carriers to respond to competition;
- 14 (12) The potential for the exercise of substantial market
15 power by the exempt provider or by a provider of the
16 exempt telecommunications service; and
- 17 (13) The impact of the exemption on the competitive
18 availability and affordability of broadband and other
19 advanced services to consumers.
- 20 (b) The commission shall expedite, where practicable, the
21 regulatory process with respect to exemptions and shall adopt



1 guidelines under which each provider of an exempted service
2 shall be subject to similar terms and conditions.

3 (c) The commission may condition or limit any exemption as
4 the commission deems necessary in the public interest. The
5 commission may provide a trial period for any exemption and may
6 terminate the exemption or continue it for a period and under
7 conditions and limitations as the commission deems appropriate.

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

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

19 (f) If any provider of an exempt telecommunications
20 service or any exempt telecommunications carrier elects to
21 terminate its service, it shall provide notice of this to its
22 customers, the commission, and every telecommunications carrier



1 providing basic local exchange service in this state. The
2 notice shall be in writing and given not less than six months
3 before the intended termination date. Upon termination of
4 service by a provider of an exempt service or by an exempt
5 provider, the appropriate telecommunications carrier providing
6 basic local exchange service shall ensure that all customers
7 affected by the termination receive basic local exchange
8 service. The commission, upon notice and hearing or by rule,
9 shall determine the party or parties who shall bear the cost, if
10 any, of access to the basic local exchange service by the
11 customers of the terminated exempt service.

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

21 (h) For the purposes of this section, the commission, upon
22 determination that any area of the State has less than adequate



1 telecommunications service, shall require the existing
2 telecommunications carrier to show cause as to why the
3 commission should not authorize an alternative
4 telecommunications carrier for that area under the terms and
5 conditions of this section.

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

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

20 (1) Interconnection to the telecommunications carrier's
21 telecommunications facilities at any technically
22 feasible and economically reasonable point within the



- 1 telecommunications carrier's network so that the
2 networks are fully interoperable;
- 3 (2) The current interstate tariff as the access rate until
4 such time that the commission may adopt a new
5 intrastate local service interconnection tariff
6 pursuant to section -38;
- 7 (3) Nondiscriminatory and equal access to any
8 telecommunications carrier's telecommunications
9 facilities, functions, and the information necessary
10 for the transmission and routing of any
11 telecommunications service and the interoperability of
12 both carriers' networks;
- 13 (4) Nondiscriminatory access among all telecommunications
14 carriers, where technically feasible and economically
15 reasonable, and where safety or the provision of
16 existing electrical service is not at risk, to the
17 poles, ducts, conduits, and rights-of-way owned or
18 controlled by the telecommunications carrier, or the
19 commission shall authorize access to electric
20 utilities' poles as provided by the joint pole
21 agreement, tariffs, rules, orders, or Federal
22 Communications Commission rules and regulations;



1 (5) Nondiscriminatory access to the network functions of
2 the telecommunications carrier's telecommunications
3 network, which shall be offered on an unbundled,
4 competitively neutral, and cost-based basis;

5 (6) Telecommunications services and network functions
6 without unreasonable restrictions on the resale or
7 sharing of those services and functions; and

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

16 Where possible, telecommunications carriers shall enter
17 into negotiations to agree on the provision of services or
18 information services without requiring intervention by the
19 commission; provided that any agreement shall be subject to
20 review by the commission to ensure compliance with the
21 requirements of this section.



1 **§ -37 Compensation agreements.** The commission shall
2 ensure that telecommunications carriers are compensated on a
3 fair basis for termination of telecommunications services on
4 each other's networks, taking into account, among other things,
5 reasonable and necessary costs to each telecommunications
6 carrier of providing the services in question.
7 Telecommunications carriers may negotiate compensation
8 arrangements, which may include "bill and keep," mutual and
9 equal compensation, or any other reasonable division of revenues
10 pending tariff access rates to be set by the commission. Upon
11 failure of the negotiations, the commission shall determine the
12 proper methodology and amount of compensation.

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



1 (b) The commission shall promptly examine rate regulation
2 alternatives including rate-of-return ratemaking and price cap
3 ratemaking, and may issue an order imposing alternative rate
4 regulation procedures. The examination shall include pursuing
5 incentive regulation with local exchange carriers, one goal of
6 which shall be to increase broadband competitive availability
7 and affordability to consumers in the state.

8 (c) The commission may waive rate regulation and allow
9 telecommunications carriers to have pricing flexibility for
10 services that the commission determines to be effectively
11 competitive; provided that the rates for:

12 (1) Basic telephone service and for services that are not
13 effectively competitive are regulated and remain just,
14 reasonable, and nondiscriminatory; and

15 (2) Universal service is preserved and advanced.

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



1 (e) Unless and until the commission waives this
2 requirement, no rate, fare, charge, classification, schedule,
3 rule, or practice, other than one established pursuant to an
4 automatic rate adjustment clause previously approved by the
5 commission, or one that constitutes an increase in service
6 without a corresponding change in any rate, fare, or charge,
7 shall be established, abandoned, modified, or departed from, by
8 any telecommunications carrier, except after thirty days' notice
9 to the commission as prescribed in section -14(b), and prior
10 approval by the commission for any increases in rates, fares, or
11 charges. The commission, in the commission's discretion and for
12 good cause shown, may allow any rate, fare, charge,
13 classification, schedule, rule, or practice to be established,
14 abandoned, modified, or departed from upon notice other than
15 that provided for in sections -14(b) and -14(c). Unless
16 and until the commission waives this requirement, a contested
17 case hearing shall be held in connection with any increase in
18 rates, and the hearing shall be preceded by a public hearing as
19 prescribed in section -14(c), at which the consumers or
20 patrons of the telecommunications carrier may present testimony
21 to the commission concerning the increase. The commission, upon
22 notice to the telecommunications carrier, may:



- 1 (1) Suspend the operation of all or any part of the
2 proposed rate, fare, charge, classification, schedule,
3 rule, or practice or any proposed abandonment or
4 modification thereof or departure therefrom;
- 5 (2) After a hearing, by order:
- 6 (A) Regulate, fix, and change all such rates, fares,
7 charges, classifications, schedules, rules, and
8 practices so that the same shall be just and
9 reasonable;
- 10 (B) Prohibit rebates and unreasonable discrimination
11 between localities or between users or consumers
12 under substantially similar conditions;
- 13 (C) Regulate the manner in which the property of
14 every telecommunications carrier is operated with
15 reference to the safety and accommodation of the
16 public;
- 17 (D) Prescribe the form and method of keeping
18 accounts, books, records, and accounting systems
19 for the telecommunications carrier;
- 20 (E) Regulate the return upon the telecommunications
21 carrier's property;



1 (F) Regulate the incurring of indebtedness relating
2 to the telecommunications carrier's business; and

3 (G) Regulate the financial transactions of the
4 telecommunications carrier;

5 and

6 (3) Do all things that are necessary and in the exercise
7 of the commission's power and jurisdiction, all of
8 which as so ordered, regulated, fixed, and changed,
9 are just and reasonable, and provide a fair return on
10 the property of the telecommunications carrier
11 actually used or useful for telecommunications carrier
12 purposes.

13 (f) The commission may in the commission's discretion,
14 after public hearing and upon showing by a telecommunications
15 carrier of probable entitlement and financial need, authorize
16 temporary increases in rates, fares, and charges; provided that
17 the commission shall require by order the telecommunications
18 carrier to return, in the form of an adjustment to rates, fares,
19 or charges to be billed in the future, any amounts with
20 interest, at a rate equal to the rate of return on the
21 telecommunications carrier's rate base found to be reasonable by
22 the commission, received by reason of continued operation that



1 are in excess of the rates, fares, or charges finally determined
2 to be just and reasonable by the commission. Interest on any
3 excess shall commence as of the date that any rate, fare, or
4 charge goes into effect that results in the excess and shall
5 continue to accrue on the balance of the excess until returned.

6 (g) In any case of two or more organizations, trades, or
7 businesses (whether or not incorporated, whether or not
8 organized in the State of Hawaii, and whether or not affiliated)
9 owned or controlled directly or indirectly by the same
10 interests, the commission may distribute, apportion, or allocate
11 gross income, deductions, credits, or allowances between or
12 among the organizations, trades, or businesses, if it determines
13 that the distribution, apportionment, or allocation is necessary
14 to adequately reflect the income of any such organizations,
15 trades, or businesses to carry out the regulatory duties imposed
16 by this section.

17 (h) Notwithstanding any law to the contrary, for a
18 telecommunications carrier having annual gross revenues of less
19 than \$2,000,000, the commission may make and amend the
20 commission's rules and procedures to provide the commission with
21 sufficient facts necessary to determine the reasonableness of



1 the proposed rates without unduly burdening the
2 telecommunications carrier company and its customers.

3 **§ -39 Cross-subsidies.** (a) The commission shall ensure
4 that noncompetitive services shall not cross-subsidize
5 competitive services. Cross-subsidization shall be deemed to
6 have occurred:

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

10 (b); or

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

14 (b) The commission shall determine the methodology and
15 frequency with which telecommunications carriers calculate total
16 service long-run incremental cost and fully allocated joint and
17 common costs. The total service long-run incremental cost of a
18 service shall include an imputation of an amount equal to the
19 contribution that the telecommunications carrier receives from
20 noncompetitive inputs used by alternative providers in providing
21 the same or equivalent service.



1 **§ -40 Separate affiliate audits.** The commission shall
2 receive the results of joint federal and state audits required
3 for companies to operate separate affiliates, and obtain and pay
4 for a joint federal and state audit every two years from an
5 independent auditor pursuant to Title 47 United States Code
6 Section 272(d). The commission shall make the results of joint
7 federal and state audits available for public inspection.

8 **§ -41 Unfair or deceptive acts or practices.** The
9 commission shall adopt rules prohibiting unfair or deceptive
10 acts or practices by telecommunications carriers and
11 telecommunications service providers including resellers and
12 aggregators of telecommunications services. Unfair or deceptive
13 acts or practices may include unauthorized changes in subscriber
14 carrier selections.

15 **§ -42 Lifeline telephone rates.** (a) The commission
16 shall implement a program to achieve lifeline telephone rates
17 for residential telephone users. The commission may achieve
18 lifeline telephone rates by using funds collected pursuant to
19 section -51 and deposited in the Hawaii communications
20 commission special fund pursuant to section -21. In
21 conjunction with such funds, or alternatively, the commission
22 may seek appropriations of funds from the State.



1 (b) The commission shall require every telecommunications
2 carrier providing local telephone service to file a schedule of
3 rates and charges providing a rate for lifeline telephone
4 subscribers.

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

9 (d) For the purposes of this section, "lifeline telephone
10 rate" means a discounted rate for residential telephone users
11 identified as elders with limited income and the handicapped
12 with limited income as designated by the commission.

13 **§ -43 Carriers of last resort.** (a) The commission may
14 define and designate local exchange service areas where the
15 commission has determined that a single provider will be the
16 most appropriate way to ensure service for these areas.

17 (b) The commission shall determine the level of service
18 that is appropriate for each designated local exchange service
19 area and shall invite telecommunications providers to bid for a
20 level of service that is appropriate. The successful bidder
21 shall be designated as the carrier of last resort for the
22 designated local exchange service area for a period of time and



1 upon conditions set by the commission. In determining the
2 successful bidder, the commission shall take into consideration
3 the level of service to be provided, the investment commitment,
4 and the length of the agreement, in addition to the other
5 qualifications of the bidder.

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

10 **§ -44 Telecommunications relay services for the deaf,**
11 **persons with hearing disabilities, and persons with speech**

12 **disabilities.** (a) The commission shall implement intrastate
13 telecommunications relay services for the deaf, persons with
14 hearing disabilities, and persons with speech disabilities.

15 (b) The commission shall investigate the availability of
16 experienced providers of quality telecommunications relay
17 services for the deaf, persons with hearing disabilities, and
18 persons with speech disabilities. The provision of these
19 telecommunications relay services to be rendered on or after
20 July 1, 1992, shall be awarded by the commission to the provider
21 or providers the commission determines to be best qualified to
22 provide these services. In reviewing the qualifications of the



1 provider or providers, the commission shall consider the factors
2 of cost, quality of services, and experience, and other factors
3 as the commission deems appropriate.

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

11 (d) The commission may establish a surcharge to collect
12 customer contributions for telecommunications relay services
13 required under this section.

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

17 (f) The commission shall require every intrastate
18 telecommunications carrier to file a schedule of rates and
19 charges and every provider of telecommunications relay service
20 to maintain a separate accounting for the costs of providing
21 telecommunications relay services for the deaf, persons with
22 hearing disabilities, and persons with speech disabilities.



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

5 (h) As used in this section:

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

13 "Telecommunications relay services" includes services that
14 enable two-way communication using text telephones or other
15 non-voice terminal devices, speech-to-speech services, video
16 relay services, and non-English relay services.

17 **§ -45 Telecommunications number portability.** The
18 commission shall ensure that telecommunications number
19 portability within an exchange is available, upon request, as
20 soon as technically feasible and economically reasonable. An
21 impartial entity shall administer telecommunications numbering
22 and make the numbers available on an equitable basis.



1 **§ -46 Emergency telephone service; capital costs;**
2 **ratemaking.** (a) A telecommunications carrier providing local
3 exchange telecommunications services may recover the capital
4 cost and associated operating expenses of providing a statewide
5 enhanced 911 emergency telephone service in the public switched
6 telephone network, through a telephone line surcharge.

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

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

19 **§ -47 Issuance of securities.** A telecommunications
20 carrier corporation may, on securing the prior approval of the
21 commission, and not otherwise, issue stocks and stock
22 certificates, bonds, notes, and other evidences of indebtedness,



1 payable at periods of more than twelve months after the date
2 thereof, for the following purposes and no other, namely:

3 (1) For the acquisition of property;

4 (2) For the construction, completion, extension, or
5 improvement of or addition to its facilities or
6 service;

7 (3) For the discharge or lawful refunding of its
8 obligations;

9 (4) For the reimbursement of moneys actually expended from
10 income or from any other moneys in its treasury not
11 secured by or obtained from the issue of its stocks or
12 stock certificates, or bonds, notes, or other
13 evidences of indebtedness; and

14 (5) For any of the aforesaid purposes, except maintenance
15 of service, replacements, and substitutions not
16 constituting capital expenditure in cases where the
17 corporation has kept its accounts for such
18 expenditures in such manner as to enable the
19 commission to ascertain the amount of moneys so
20 expended and the purposes for which the expenditures
21 were made, and the sources of the funds in its
22 treasury applied to the expenditures.



1 As used in this section, "property" and "facilities" mean
2 property and facilities used in all operations of a
3 telecommunications carrier corporation whether or not included
4 in its operations or rate base. A telecommunications carrier
5 corporation may not issue securities to acquire property or to
6 construct, complete, extend, improve, or add to its facilities
7 or service if the commission determines that the proposed
8 purpose will have a materially adverse effect on its
9 telecommunications carrier operations.

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

15 **§ -48 Issuance of voting stock; restrictions.** (a) No
16 more than twenty-five per cent of the issued and outstanding
17 voting stock of a corporation that is organized under the laws
18 of the State and that owns, controls, operates, or manages any
19 plant or equipment, or any part thereof, as a telecommunications
20 carrier within the definition set forth in section -1 shall
21 be held, whether directly or indirectly, by any single foreign
22 corporation or any single nonresident alien, or held by any



1 person, unless prior written approval is obtained from the
2 commission, or unless a transaction is exempt. An exempt
3 transaction is:

- 4 (1) Any purchase or sale by an underwriter; or
- 5 (2) A transaction to acquire shares of a corporation with
6 less than one hundred shareholders and less than
7 \$1,000,000 in assets.

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

14 (b) For the purposes of this section:

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

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



1 **§ -49 Acquirement of stock of another telecommunications**
2 **carrier.** No person or entity shall purchase or acquire, take or
3 hold, any part of the capital stock of any telecommunications
4 carrier corporation, organized or existing under or by virtue of
5 the laws of the State, without having been first authorized to
6 do so by the order of the commission. Every assignment,
7 transfer, contract, or agreement for assignment or transfer of
8 any stock by or through any person or corporation to any
9 corporation or otherwise in violation of this section shall be
10 void and of no effect; and no such transfer shall be made on the
11 books of any telecommunications carrier. Nothing in this
12 section shall be construed to make illegal the holding of stock
13 lawfully acquired before July 1, 1933.

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



1 sale, lease, assignment, mortgage, disposition, encumbrance,
2 merger, or consolidation, made other than in accordance with the
3 order of the commission shall be void.

4 **§ -51 Finances; regulatory fee.** (a) There shall be
5 paid to the commission in each of the months of July and
6 December of each year, by each telecommunications carrier
7 subject to this chapter, a fee set by the commission not to
8 exceed one-fourth of one per cent of the gross income from the
9 telecommunications carrier's business during the preceding year,
10 or the sum of \$30, whichever is greater. The commission shall
11 set the fee amount based on its projected budget for the year to
12 administer and enforce this chapter. This fee shall be
13 deposited with the director of finance to the credit of the
14 Hawaii communications commission special fund created pursuant
15 to section -21.

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



1 (c) The commission may by rule adopted pursuant to chapter
2 91, impose additional fees on telecommunications carriers,
3 including fees to facilitate deployment of broadband
4 communications services in the state, and the fees shall be
5 deposited with the director of finance to the credit of the
6 Hawaii communications commission special fund created pursuant
7 to section -21.

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



1 recognized by the department, shall be required to obtain, as a
2 result of the enactment of this Act, a new franchise under this
3 section.

4 **§ -63 Application or proposal for cable franchise; fee;**
5 **certain requirements.** (a) No cable franchise shall be issued
6 except upon written application or proposal therefor to the
7 commission, accompanied by a fee set by the commission.

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

- 13 (1) The citizenship and character of the applicant;
- 14 (2) The financial, technical, and other qualifications of
15 the applicant;
- 16 (3) The principals and ultimate beneficial owners of the
17 applicant;
- 18 (4) The public interest to be served by the requested
19 issuance of a cable franchise; and
- 20 (5) Any other matters deemed appropriate and necessary by
21 the commission including but not limited to the
22 proposed plans and schedule of expenditures for or in



1 support of the use of PEG access facilities, and the
2 competitive availability and affordability of
3 broadband and other advanced services to consumers.

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

8 **§ -64 Cable franchise application or proposal procedure;**
9 **public hearing; notice.** An application or proposal for a cable
10 franchise shall be processed as follows:

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

18 (2) After the issuance of a notice of acceptance for
19 filing and within a time frame established by rule,
20 the commission shall hold a public hearing on the
21 application or proposal to afford interested persons
22 the opportunity to submit data, views, or arguments,



1 orally or in writing. Notice thereof shall be given
2 to the governing council and mayor of the county and
3 to any telephone or other utility and cable company in
4 the county in which the proposed service area is
5 located. The commission shall also give public notice
6 of the application and hearing at least once in each
7 of two successive weeks in the county in which the
8 proposed service area is located. The last notice
9 shall be given at least fifteen days prior to the date
10 of the hearing;

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

20 (4) The time limit for final action may be extended, on
21 the commission's approval of the applicant's request
22 and justification in writing for an extension of time



1 to the commission at least two weeks in advance of the
2 requested effective date of the extension, or by
3 mutual agreement.

4 **§ -65 Issuance of cable franchise authority; criteria;**

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

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



1 and any other matters as the commission deems appropriate in the
2 circumstances.

3 (c) In determining the area that is to be serviced by the
4 applicant, the commission shall take into account the geography
5 and topography of the proposed service area, and the present,
6 planned, and potential expansion in facilities or cable services
7 of the applicant's proposed cable system and existing cable
8 systems.

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

- 16 (1) Be nonexclusive;
- 17 (2) Include a description of the service area in which the
18 cable system is to be constructed, extended, or
19 operated and the approximate date on which the service
20 is to commence; and



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

4 **§ -66 Requirement for adequate service; terms and**
5 **conditions of service.** (a) Every cable operator shall provide
6 safe, adequate, and reliable service in accordance with
7 applicable laws, rules, franchise requirements, and its filed
8 schedule of terms and conditions of service.

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

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

18 **§ -67 Cable system installation, construction,**
19 **operation, removal; general provisions.** (a) A cable franchise
20 shall be construed to authorize the construction or operation of
21 a cable system within the service area above, below, on, in, or



1 along any highway or other public place and through easements
2 that have been dedicated for compatible purposes.

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

6 (c) In installing, operating, and maintaining facilities,
7 the cable operator shall avoid all unnecessary damage and injury
8 to any trees, structures, and improvements in and along the
9 routes authorized by the commission.

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



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

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

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

19 (h) Upon termination of the period of the cable franchise
20 or permit or of any renewal thereof, by passage of time or
21 otherwise, the cable operator shall remove its facilities from
22 the highways and other public places in, on, over, under, or



1 along which they are installed if so ordered by the commission
2 and shall restore the areas to their original or other
3 acceptable condition, or otherwise dispose of same. If removal
4 is not completed within six months of the termination, any
5 property not removed shall be deemed to have been abandoned and
6 the cable operator shall be liable for the cost of its removal.

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

- 9 (1) All applicable state statutes and all applicable rules
10 and orders of the public utilities commission and the
11 commission governing the construction, maintenance,
12 and removal of overhead and underground facilities of
13 public utilities;
- 14 (2) For county highways, all applicable public welfare
15 rules adopted by the governing body of the county in
16 which the county highways are situated;
- 17 (3) For state or federal-aid highways, all public welfare
18 rules adopted by the director of transportation; and
- 19 (4) For the relocation of cable facilities, the provisions
20 of section 264-33 concerning the allocation of
21 expenses for the relocation of utility facilities.



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

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

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

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

15 **§ -68 PEG access organization designation, generally.** (a)

16 The commission shall designate for each county one PEG access
17 organization to oversee the development, operation, supervision,
18 management, production, or broadcasting of programs for any
19 channels obtained under section -67.

20 (b) No PEG access organization shall be initially
21 designated except upon written application to the commission,



1 and following public hearing upon notice as provided in
2 section -14(d).

3 (c) An application for designation as a PEG access
4 organization shall be accepted for filing only when made in
5 response to the written request of the commission for the
6 submission of proposals. An application for designation shall
7 be made in a form prescribed by the commission by rule adopted
8 under chapter 91 and shall set forth the information required by
9 the commission and determined in accordance with this chapter,
10 as to whether a PEG access organization should be designated,
11 including:

- 12 (1) The management and technical experience of the
13 organization and its existing or proposed staff;
- 14 (2) The public media, community media, or PEG access
15 experience, or any combination thereof of the
16 organization and its existing or proposed staff;
- 17 (3) Whether the applicant's missions or purposes as
18 evidenced by its articles of incorporation, bylaws, or
19 similar corporate documents, include providing
20 training, education, and outreach to give individuals
21 and organizations the ability to use communication
22 tools to effectively convey their messages;



- 1 (4) The ability of the organization and its existing or
- 2 proposed staff to provide PEG access services
- 3 requested by the commission;
- 4 (5) The organization's short- and long-term plans for PEG
- 5 access services for a designated county;
- 6 (6) The financial capacity of the organization;
- 7 (7) Whether the organization agrees to expand the
- 8 marketplace of ideas and is committed to allowing
- 9 members of the public to express their first amendment
- 10 rights of free speech;
- 11 (8) The ability of the organization, through the use of
- 12 electronic media tools, to foster and engage in civic
- 13 and cultural development and engagement in communities
- 14 it has served; and
- 15 (9) Any other matters deemed appropriate and necessary by
- 16 the commission.
- 17 (d) The commission shall designate PEG access
- 18 organizations in accordance with the public interest. In
- 19 designating a PEG access organization, the commission shall take
- 20 into consideration, among other things:
- 21 (1) The content of the application;
- 22 (2) The public need for the services;



- 1 (3) The applicant's ability to provide PEG access
2 services;
- 3 (4) The applicant's suitability;
- 4 (5) The financial responsibility of the applicant;
- 5 (6) The technical and operational ability of the applicant
6 to efficiently perform the services for which
7 designation is requested;
- 8 (7) Any objections arising from the public hearing;
- 9 (8) The local needs of each community within each county;
- 10 (9) The advice of the communications advisory committee;
11 and
- 12 (10) Any other matters as the commission deems appropriate
13 in the circumstances.
- 14 (e) The period of an initial designation shall be for the
15 period of the franchise or franchises granted under section -67
16 and any renewal periods granted unless the designation is
17 revoked for cause. In cases of mid-term revocation of
18 designation, the subsequent designation shall be for a period of
19 the remaining term of the franchise or franchises revoked.
- 20 (f) The commission shall adopt rules pursuant to chapter
21 91 consistent with this chapter for the designation and
22 regulation of PEG access organizations.



1 § -69 PEG access organization services, terms of
2 designation. (a) Every PEG access organization shall provide
3 safe, adequate, and reliable service in accordance with
4 applicable laws, rules and designation requirements.

5 (b) The commission shall include in each PEG access
6 organization designation a statement of services to be provided,
7 performance standards and fees for the services, and all terms
8 and conditions of service, in the form and with the notice that
9 the commission may prescribe. Prior to finalizing the terms of
10 a designation, the commission shall seek advice from the
11 communications advisory committee regarding the appropriate
12 terms.

13 (c) The commission shall ensure that the terms and
14 conditions upon which PEG access organization services are
15 provided are fair both to the public and to the PEG access
16 organization, and shall take into account the appropriate
17 service area, information received during the designation
18 process, and the resources available to compensate the access
19 provider.

20 (d) If a designation period has ended, the designation
21 shall be extended upon mutual agreement of the PEG access
22 organization and the commission; provided:



- 1 (1) The period of each extension shall be coextensive with
2 any extension of the relevant franchise or franchises;
- 3 (2) The commission shall make a written determination that
4 it is not practical to designate another PEG access
5 organization; and
- 6 (3) The terms and conditions of the designation shall
7 remain the same as the original designation, as may be
8 amended by the designation; provided further that if
9 the terms and conditions are not the same or are
10 amended, the terms and conditions shall be fair and
11 reasonable.
- 12 (e) No PEG access organization designation or franchise,
13 including the rights, privileges, and obligations, may be
14 assigned, sold, leased, encumbered, or otherwise transferred,
15 voluntarily or involuntarily, directly, or indirectly, including
16 by transfer of control of any PEG access organization, whether
17 by change in ownership or otherwise, except upon written
18 application to and approval by the director. A transfer of an
19 PEG access organization designation shall authorize the new PEG
20 access organization to provide services for the remainder of the
21 term of the existing franchise.



1 **§ -70 Access fees.** The commission shall assess the
2 maximum access fees permitted under federal law based upon the
3 gross revenue of each operator. The PEG access organizations
4 shall receive not less than seventy-five per cent of the access
5 fees assessed; provided that the commission may cap access fees
6 distributed to PEG access organizations serving counties with
7 more than five hundred thousand residents, as provided by rule
8 adopted pursuant to chapter 91. Whatever fees are not
9 distributed to PEG access organizations and not used by the
10 commission for administering the designation of PEG access
11 organizations shall be distributed to institutions of higher
12 learning, schools, the state legislature, and the counties, as
13 provided by rule, for development and production of residential
14 cable access for television purposes.

15 **§ -71 Complaints; violations; revocation, alteration, or**
16 **suspension of cable franchise.** (a) Subscriber complaints
17 regarding the operation of a cable system may be made orally or
18 in writing to the commission. The commission shall resolve
19 complaints informally when possible.

20 (b) Any cable franchise issued hereunder after hearing in
21 accordance with chapter 91 may be revoked, altered, or suspended



1 by the commission as the commission deems necessary on any of
2 the following grounds:

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

21 **§ -72 Renewal of cable franchise.** Any cable franchise
22 issued pursuant to this chapter may be renewed by the commission



1 upon approval of a cable operator's application or proposal
2 therefor. The form of the application or proposal shall be
3 prescribed by the commission. The periods of renewal shall be
4 not less than five nor more than fifteen years each. The
5 commission shall require of the applicant full disclosure,
6 including the proposed plans and schedule of expenditures for or
7 in support of the use of PEG access facilities and broadband
8 facilities.

9 **§ -73 Transfer of cable franchise.** (a) No cable
10 franchise, including the rights, privileges, and obligations
11 thereof, may be assigned, sold, leased, encumbered, or otherwise
12 transferred, voluntarily or involuntarily, directly or
13 indirectly, including by transfer of control of any cable
14 system, whether by change in ownership or otherwise, except upon
15 written application to and approval by the commission. The form
16 of the application shall be prescribed by the commission.

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

19 **§ -74 Rate, filed with the commission; approval.** (a)
20 The commission shall require each cable operator to file a
21 schedule of its rates of service on a form and with the notice
22 that the commission may prescribe.



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

4 **§ -75 Reports.** Each cable operator shall file with the
5 commission reports of its financial, technical, and operational
6 condition and its ownership. The reports shall be made in a
7 form and on the time schedule prescribed by the commission and
8 shall be kept on file open to the public.

9 **§ -76 Annual fees.** (a) Each cable operator shall pay
10 an annual fee to be determined by the commission. The fees so
11 collected under this section shall be deposited into the Hawaii
12 communications commission special fund established under section
13 -21.

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

17 **§ -77 Criminal and civil liability.** Nothing in this
18 chapter shall be deemed to affect the criminal and civil
19 liability of cable programmers, cable operators, or PEG access
20 organizations pursuant to the federal, state, or local laws
21 regarding libel, slander, obscenity, incitement, invasions of
22 privacy, false or misleading advertising, or other similar laws,



1 except that no PEG access organization shall incur any liability
2 arising from, based on, or related to any program not created by
3 the PEG access organization, which is broadcast on any channel
4 obtained under section -67, or under similar arrangements."

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

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



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

14 There is created in the state treasury a special fund to be
15 known as the compliance resolution fund to be expended by the
16 director's designated representatives as provided by this
17 subsection. Notwithstanding any law to the contrary, all
18 revenues, fees, and fines collected by the department shall be
19 deposited into the compliance resolution fund. Unencumbered
20 balances existing on June 30, 1999, in the cable television fund
21 under chapter 440G, the division of consumer advocacy fund under
22 chapter 269, the financial institution examiners' revolving



1 fund, section 412:2-109, the special handling fund, section
2 414-13, and unencumbered balances existing on June 30, 2002, in
3 the insurance regulation fund, section 431:2-215, shall be
4 deposited into the compliance resolution fund. This provision
5 shall not apply to any fee imposed by the Hawaii communications
6 commission pursuant to chapter , including the regulatory fee
7 in section -51, the drivers education fund underwriters fee,
8 section 431:10C-115, insurance premium taxes and revenues,
9 revenues of the workers' compensation special compensation fund,
10 section 386-151, the captive insurance administrative fund,
11 section 431:19-101.8, the insurance commission's education and
12 training fund, section 431:2-214, the medical malpractice
13 patients' compensation fund as administered under section 5 of
14 Act 232, Session Laws of Hawaii 1984, and fees collected for
15 deposit in the office of consumer protection restitution fund,
16 section 487-14, the real estate appraisers fund, section 466K-1,
17 the real estate recovery fund, section 467-16, the real estate
18 education fund, section 467-19, the contractors recovery fund,
19 section 444-26, the contractors education fund, section 444-29,
20 the condominium management education fund, section 514A-131, and
21 the condominium education trust fund, section 514B-71. Any law
22 to the contrary notwithstanding, the director may use the moneys



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

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

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



1 (5) Any person subject to chapter 467B has complied with
2 that chapter;
3 and includes work involved in or supporting the above functions,
4 licensing, or registration of individuals or companies regulated
5 by the department, consumer protection, and other activities of
6 the department.

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

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

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

14 "(a) No department of the State other than the attorney
15 general may employ or retain any attorney, by contract or
16 otherwise, for the purpose of representing the State or the
17 department in any litigation, rendering legal counsel to the
18 department, or drafting legal documents for the department;
19 provided that the foregoing provision shall not apply to the
20 employment or retention of attorneys:



- 1 (1) By the public utilities commission, the labor and
2 industrial relations appeals board, and the Hawaii
3 labor relations board;
- 4 (2) By any court or judicial or legislative office of the
5 State; provided that if the attorney general is
6 requested to provide representation to a court or
7 judicial office by the chief justice or the chief
8 justice's designee, or to a legislative office by the
9 speaker of the house of representatives and the
10 president of the senate jointly, and the attorney
11 general declines to provide such representation on the
12 grounds of conflict of interest, the attorney general
13 shall retain an attorney for the court, judicial, or
14 legislative office, subject to approval by the court,
15 judicial, or legislative office;
- 16 (3) By the legislative reference bureau;
- 17 (4) By any compilation commission that may be constituted
18 from time to time;
- 19 (5) By the real estate commission for any action involving
20 the real estate recovery fund;
- 21 (6) By the contractors license board for any action
22 involving the contractors recovery fund;



- 1 (7) By the trustees for any action involving the travel
2 agency recovery fund;
- 3 (8) By the office of Hawaiian affairs;
- 4 (9) By the department of commerce and consumer affairs for
5 the enforcement of violations of chapters 480 and
6 485A;
- 7 (10) As grand jury counsel;
- 8 (11) By the Hawaiian home lands trust individual claims
9 review panel;
- 10 (12) By the Hawaii health systems corporation, or its
11 regional system boards, or any of their facilities;
- 12 (13) By the auditor;
- 13 (14) By the office of ombudsman;
- 14 (15) By the insurance division;
- 15 (16) By the University of Hawaii;
- 16 (17) By the Kahoolawe island reserve commission;
- 17 (18) By the division of consumer advocacy;
- 18 (19) By the office of elections;
- 19 (20) By the campaign spending commission;
- 20 (21) By the Hawaii tourism authority, as provided in
21 section 201B-2.5; [~~or~~]
- 22 (22) By the Hawaii communications commission; or



1 [~~22~~] (23) By a department, in the event the attorney
2 general, for reasons deemed by the attorney general
3 good and sufficient, declines to employ or retain an
4 attorney for a department; provided that the governor
5 thereupon waives the provision of this section."

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

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

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

21 "(a) The mayor of each county, after holding a public
22 hearing on the matter and receiving the approval of the



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

15 The mayor of each county with the approval of the
16 respective council may designate a county agency or official who
17 shall have the power to review all plans and specifications for
18 the subdivisions, development and improvement of the land
19 involved, and the construction and sale of homes thereon. The
20 county agency or official shall have the power to approve or
21 disapprove or to make modifications to all or any portion of the
22 plans and specifications.



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

10 No action shall be prosecuted or maintained against any
11 county, its officials or employees, on account of actions taken
12 in reviewing, approving, or disapproving such plans and
13 specifications.

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

17 The county agency or official shall apply to the state land
18 use commission for an appropriate land use district
19 classification change, except where a proposed project is
20 located on land within an urban district established by the
21 state land use commission. Notwithstanding any law, rule, or
22 regulation to the contrary, the state land use commission may



1 approve the application at any time after a public hearing held
2 in the county where the land is located upon notice of the time
3 and place of the hearing being published in the same manner as
4 the notice required for a public hearing by the planning
5 commission of the appropriate county."

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

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

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

10 [~~or~~]

11 (2) Any county or county agency that is exempted by county
12 ordinance from this section~~(-)~~; or

13 (3) Any proceedings of the Hawaii communications
14 commission."

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

17 "**§92-21 Copies of records; other costs and fees.** Except
18 as otherwise provided by law, a copy of any government record,
19 including any map, plan, diagram, photograph, photostat, or
20 geographic information system digital data file, which is open
21 to the inspection of the public, shall be furnished to any
22 person applying for the same by the public officer having charge



1 or control thereof upon the payment of the reasonable cost of
2 reproducing [~~such~~] the copy. Except as provided in section
3 91-2.5, the cost of reproducing any government record, except
4 geographic information system digital data, shall not be less
5 than 5 cents per page, sheet, or fraction thereof. The cost of
6 reproducing geographic information system digital data shall be
7 in accordance with rules adopted by the agency having charge or
8 control of that data. [~~Such~~] The reproduction cost shall
9 include but shall not be limited to labor cost for search and
10 actual time for reproducing, material cost, including
11 electricity cost, equipment cost, including rental cost, cost
12 for certification, and other related costs. All fees shall be
13 paid in by the public officer receiving or collecting the same
14 to the state director of finance, the county director of
15 finance, or to the agency or department by which the officer is
16 employed, as government realizations; provided that fees
17 collected by the public utilities commission pursuant to this
18 section shall be deposited in the public utilities commission
19 special fund established under section 269-33[-], and fees
20 collected by the Hawaii communications commission shall be
21 deposited in the Hawaii communications commission special fund
22 established under section -21."



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

3 "**§101-43 Requirements prior to exercise of power.** Any
4 corporation having the power of eminent domain under section
5 101-41 may continue to exercise the power[~~τ~~]; provided that
6 prior to the exercise of the power:

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

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

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



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

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

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

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

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

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

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



1 "**§166-4 Park development.** Except as herein provided, the
2 department may develop, on behalf of the State or in partnership
3 with a federal agency, a county, or a private party,
4 agricultural parks which, at the option of the board, shall be
5 exempt from all statutes, ordinances, charter provisions, and
6 rules of any governmental agency relating to planning, zoning,
7 construction standards for subdivisions, development and
8 improvement of land, and the construction of buildings thereon;
9 provided that:

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

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

18 (3) The legislative body of the county in which the
19 agricultural park is to be situated shall have
20 approved the agricultural park[-] in accordance with
21 the following:



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

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

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



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

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

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

17 " [f] **§166E-10 [f]** **Non-agricultural park land development.**

18 On behalf of the State or in partnership with a federal agency,
19 a county, or a private party and except as provided in this
20 section, the department may develop non-agricultural park lands
21 that, at the option of the board, may be exempt from all
22 statutes, ordinances, charter provisions, and rules of any



1 governmental agency relating to planning, zoning, construction
2 standards for subdivisions, development and improvement of land,
3 and construction of buildings thereon; provided that:

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

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

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

16 (A) The county shall approve or disapprove the
17 development within forty-five days after the
18 department submits preliminary plans and
19 specifications for the development to the county.
20 If the county does not disapprove the development
21 after the forty-fifth day, the development shall
22 be deemed approved;



- 1 (B) No action shall be prosecuted or maintained
2 against any county, its officials, or employees,
3 on any actions taken by them in reviewing,
4 approving, or disapproving the plans and
5 specifications; and
- 6 (C) The final plans and specifications for the
7 development shall be deemed approved by the
8 county if the final plans and specifications do
9 not substantially deviate from the preliminary
10 plans and specifications. The final plans and
11 specifications for the project shall constitute
12 the planning, zoning, building, construction, and
13 subdivision standards for that development. For
14 purposes of sections 501-85 and 502-17, the
15 chairperson of the board or the responsible
16 county official may certify maps and plans of
17 lands connected with the development as having
18 complied with applicable laws and ordinances
19 relating to consolidation and subdivision of
20 lands, and the maps and plans shall be accepted
21 for registration or recordation by the land court
22 and registrar; and



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

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

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

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

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

21 (3) The legislative body of the county in which the
22 industrial park is proposed to be situated approves



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

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

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

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



1 and specifications of the industrial park shall
2 rest with the board. The final plans and
3 specifications for the park shall constitute the
4 planning, zoning, building, improvement,
5 construction, and subdivision standards for that
6 industrial park. For the purposes of sections
7 501-85 and 502-17, the chairperson of the board
8 or the responsible county official may certify
9 maps and plans of land connected with the
10 industrial park as having complied with
11 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 board shall assume the responsibility of all
17 infrastructure within the industrial park, if the
18 infrastructure developed is exempt from applicable
19 county ordinances, charter provisions, and rules."

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



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

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

6 "**[+]§201H-13[+]** **Eminent domain, exchange or use of public**
7 **property.** The corporation may acquire any real property,
8 including fixtures and improvements, or interest therein:
9 through voluntary negotiation; through exchange of land in
10 accordance with section 171-50, provided that the public land to
11 be exchanged need not be of like use to that of the private
12 land; or by the exercise of the power of eminent domain which it
13 deems necessary by the adoption of a resolution declaring that
14 the acquisition of the property described therein is in the
15 public interest and required for public use. The corporation
16 shall exercise the power of eminent domain granted by this
17 section in the same manner and procedure as is provided by
18 chapter 101 and otherwise in accordance with all applicable
19 provisions of the general laws of the State; provided that
20 condemnation of parcels greater than fifteen acres shall be
21 subject to legislative disapproval expressed in a concurrent
22 resolution adopted by majority vote of the senate and the house



1 of representatives in the first regular or special session
2 following the date of condemnation.

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

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

17 "(c) The corporation shall adopt, pursuant to chapter 91,
18 rules on health, safety, building, planning, zoning, and land
19 use that relate to the development, subdivision, and
20 construction of dwelling units in housing projects in which the
21 State, through the corporation, shall participate. The rules
22 shall not contravene any safety standards or tariffs approved by



1 the public utilities commission[7] or the Hawaii communications
2 commission, and shall follow existing law as closely as is
3 consistent with the production of lower cost housing with
4 standards that meet minimum requirements of good design,
5 pleasant amenities, health, safety, and coordinated development.

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

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

21 "(a) The corporation may develop on behalf of the State or
22 with an eligible developer, or may assist under a government



1 assistance program in the development of, housing projects that
2 shall be exempt from all statutes, ordinances, charter
3 provisions, and rules of any government agency relating to
4 planning, zoning, construction standards for subdivisions,
5 development and improvement of land, and the construction of
6 dwelling units thereon; provided that:

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

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

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

21 (A) The legislative body shall approve, approve with
22 modification, or disapprove the project by



1 resolution within forty-five days after the
2 corporation has submitted the preliminary plans
3 and specifications for the project to the
4 legislative body. If on the forty-sixth day a
5 project is not disapproved, it shall be deemed
6 approved by the legislative body;

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

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



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

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

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

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

- 20 (1) Cultivation of crops;
21 (2) Aquaculture;



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



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

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

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

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



1 ~~[public utilities commission.]~~ Hawaii communications commission.

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

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

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

- 17 (1) The State;
- 18 (2) The department of transportation;
- 19 (3) The counties;
- 20 (4) Any public utility regulated under chapter 269 or
21 chapter that places its facilities within the
22 highway right-of-way; or



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

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

5 1. By amending the definition of "public utility" to read:
6 "Public utility":

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



- 1 (A) Any person insofar as that person owns or
2 operates a private sewer company or sewer
3 facility; and
- 4 (B) Any telecommunications carrier or
5 telecommunications common carrier;
- 6 (2) Shall not include:
- 7 (A) Any person insofar as that person owns or
8 operates an aerial transportation enterprise;
- 9 (B) Persons owning or operating taxicabs, as defined
10 in this section;
- 11 (C) Common carriers transporting only freight on the
12 public highways, unless operating within
13 localities or along routes or between points that
14 the public utilities commission finds to be
15 inadequately serviced without regulation under
16 this chapter;
- 17 (D) Persons engaged in the business of warehousing or
18 storage unless the commission finds that
19 regulation thereof is necessary in the public
20 interest;
- 21 (E) The business of any carrier by water to the
22 extent that the carrier enters into private



1 contracts for towage, salvage, hauling, or
2 carriage between points within the State and the
3 carriage is not pursuant to either an established
4 schedule or an undertaking to perform carriage
5 services on behalf of the public generally;

6 (F) The business of any carrier by water,
7 substantially engaged in interstate or foreign
8 commerce, transporting passengers on luxury
9 cruises between points within the State or on
10 luxury round-trip cruises returning to the point
11 of departure;

12 (G) Any person who:

13 (i) Controls, operates, or manages plants or
14 facilities for the production, transmission,
15 or furnishing of power primarily or entirely
16 from nonfossil fuel sources; and

17 (ii) Provides, sells, or transmits all of that
18 power, except such power as is used in its
19 own internal operations, directly to a
20 public utility for transmission to the
21 public;



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



1 wastewater that has been produced by a
2 municipal wastewater treatment facility that
3 is owned by a state or county agency;

4 (iii) The facility shall not make sales of water
5 to residential customers;

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

19 (v) The facility shall not be engaged, either
20 directly or indirectly, in the processing of
21 food wastes; and



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

8 If the application of this chapter is ordered by the
9 commission or the Hawaii communications commission, as the case
10 may be, in any case provided in [paragraphs] paragraph (2)(C),
11 ~~[(2)](D), [(2)](H), and [(2)](I)~~, the business of any public
12 utility that presents evidence of bona fide operation on the
13 date of the commencement of the proceedings resulting in the
14 order shall be presumed to be necessary to public convenience
15 and necessity, but any certificate issued under this proviso
16 shall nevertheless be subject to ~~[such]~~ terms and conditions as
17 the commission or the Hawaii communications commission,
18 respectively, may prescribe, as provided in sections [269-16.9]
19 -34 and 269-20."

20 2. By amending the definition of "telecommunications
21 carrier" or "telecommunications common carrier" to read:



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, signalling, or~~
9 ~~control devices.~~] has the same meaning as in section -1."

10 3. By amending the definition of "telecommunications
11 service" or "telecommunications" to read:

12 "Telecommunications service" or "telecommunications"
13 [~~means the offering of transmission between or among points~~
14 ~~specified by a user, of information of the user's choosing,~~
15 ~~including voice, data, image, graphics, and video without change~~
16 ~~in the form or content of the information, as sent and received,~~
17 ~~by means of electromagnetic transmission, or other similarly~~
18 ~~capable means of transmission, with or without benefit of any~~
19 ~~closed transmission medium, and does not include cable service~~
20 ~~as defined in section 440G-3.] has the same meaning as in
21 section -1.~~



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

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

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

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

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



1 commissioner's authority and undertaking to enforce
2 chapter ."

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

5 "**§269-51 Consumer advocate; director of commerce and**
6 **consumer affairs.** The director of commerce and consumer affairs
7 shall be the consumer advocate in hearings before the public
8 utilities commission[~~-~~] and the Hawaii communications
9 commission. The consumer advocate shall represent, protect, and
10 advance the interests of all consumers, including small
11 businesses, of utility services. The consumer advocate shall
12 not receive any salary in addition to the salary received as
13 director of commerce and consumer affairs.

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



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

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

4 (1) [~~any~~] Any public utility, telecommunications carrier,
5 or cable operator has violated or failed to comply
6 with any provision of this part or of any state or
7 federal law;

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

13 (3) [~~any~~] Any public utility, telecommunications carrier,
14 or cable operator has failed to comply with any
15 provision of its charter, certificate of public
16 convenience and necessity, or franchise;

17 (4) [~~changes,~~] Changes, additions, extensions, or repairs
18 to the plant or service of any public utility,
19 telecommunications carrier, or cable operator are
20 necessary to meet the reasonable convenience or
21 necessity of the public; or



1 (5) ~~[the]~~ The rates, fares, classifications, charges, or
2 rules of any public utility, telecommunications
3 carrier, or cable operator are unreasonable or
4 unreasonably discriminatory,
5 the consumer advocate may institute proceedings for appropriate
6 relief before the public utilities commission~~[-]~~ or the Hawaii
7 communications commission, as applicable. The consumer advocate
8 may appeal any final decision and order in any proceeding to
9 which the consumer advocate is a party in the manner provided by
10 law.

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



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

- 18 (1) Furnish any information [~~with~~] which the consumer
- 19 advocate may require concerning the condition,
- 20 operations, practices, or services of the public
- 21 utility[+], telecommunications carrier, or cable
- 22 operator;



- 1 (2) Produce and permit the consumer advocate or the
2 consumer advocate's representative to inspect and copy
3 any designated documents (including writings,
4 drawings, graphs, charts, photographs, recordings, and
5 other data compilations from which information can be
6 obtained), or to inspect and copy, test, or sample any
7 designated tangible thing which is in the possession,
8 custody, or control of the public utility[+],
9 telecommunications carrier, or cable operator; or
- 10 (3) Permit entry upon land or other property in the
11 possession or control of the public utility,
12 telecommunications carrier, or cable operator for the
13 purpose of inspection and measuring, surveying,
14 photographing, testing, or sampling the property or
15 any designated object thereon."

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

18 "**§269-55 Handling of complaints.** The consumer advocate
19 shall counsel public utility, telecommunications, and cable
20 service customers in the handling of consumer complaints before
21 the public utilities commission[-] or the Hawaii communications
22 commission. The public utilities commission shall provide a



1 central clearinghouse of information by collecting and compiling
 2 all consumer complaints and inquiries concerning public
 3 utilities. The Hawaii communications commission shall provide a
 4 central clearinghouse of information by collecting and compiling
 5 all consumer complaints and inquiries concerning
 6 telecommunications carriers and cable operators."

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

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



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

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

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

18 "~~§448E-13 Exemption of public utility and [community~~
19 ~~antennae]~~ cable television company employees. All employees of
20 a public utility within the [~~State]~~ state under a franchise or
21 charter granted by the State [~~which]~~ that is regulated by the
22 public utilities commission or the Hawaii communications



1 commission and [~~community antennae television company,~~] a cable
2 television franchisee, while so employed, shall be exempt from
3 the provision of this chapter."

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

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

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

14 "**§481P-5 Exemptions.** This chapter shall not apply to:

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

20 (2) A securities broker-dealer, salesperson, investment
21 adviser, or investment adviser representative who is
22 registered with this State to sell securities or who



1 is authorized to sell securities in this State
2 pursuant to federal securities laws, when soliciting
3 over the telephone within the scope of the person's
4 registration;

5 (3) A financial institution that is authorized to accept
6 deposits under its chartering or licensing authority
7 where such deposits are insured by the Federal Deposit
8 Insurance Corporation or the National Credit Union
9 Administration, including but not limited to a bank,
10 savings bank, savings and loan association, depository
11 financial services loan company, or credit union, or a
12 nondepository financial services loan company that is
13 licensed or authorized to conduct business in this
14 State by the commissioner of financial institutions,
15 or an affiliate or subsidiary of a financial
16 institution as defined in chapter 412;

17 (4) A person or organization that is licensed or
18 authorized to conduct business in this State by the
19 insurance commissioner including but not limited to an
20 insurance company and its employees, while engaged in
21 the business of selling or advertising the sale of
22 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 commission 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 commission."

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 commission.** (a) The public utilities

22 commission and the Hawaii communications commission may take any



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

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

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



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

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

14 "[~~§~~§659-3[~~§~~] **Forfeiture of franchise.** The several
15 circuit courts shall have jurisdiction of all proceedings in, or
16 in the nature of, quo warranto, brought by or in the name of the
17 public utilities commission, the Hawaii communications
18 commission, or the State, for the forfeiture of the franchise of
19 any corporate body offending against any law relating to such
20 corporation, for misuser, for nonuser, for doing or committing
21 any act or acts amounting to a surrender of its charter and for
22 exercising rights not conferred upon it."



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

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

13 SECTION 34. Section 269-16.5, Hawaii Revised Statutes, is
14 repealed.

15 [~~"**269-16.5 Lifeline telephone rates.** (a) The public~~
16 ~~utilities commission shall implement a program to achieve~~
17 ~~lifeline telephone rates for residential telephone users.~~

18 ~~(b) "Lifeline telephone rate" means a discounted rate for~~
19 ~~residential telephone users identified as elders with limited~~
20 ~~income and the handicapped with limited income as designated by~~
21 ~~the commission.~~



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

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

9 SECTION 35. Section 269-16.6, Hawaii Revised Statutes, is
10 repealed.

11 ~~["**§269-16.6 Telecommunications relay services for the**~~
12 ~~**deaf, persons with hearing disabilities, and persons with speech**~~
13 ~~**disabilities.** (a) The public utilities commission shall~~
14 ~~implement intrastate telecommunications relay services for the~~
15 ~~deaf, persons with hearing disabilities, and persons with speech~~
16 ~~disabilities.~~

17 ~~(b) The commission shall investigate the availability of~~
18 ~~experienced providers of quality telecommunications relay~~
19 ~~services for the deaf, persons with hearing disabilities, and~~
20 ~~persons with speech disabilities. The provision of these~~
21 ~~telecommunications relay services to be rendered on or after~~
22 ~~July 1, 1992, shall be awarded by the commission to the provider~~



1 ~~or providers the commission determines to be best qualified to~~
2 ~~provide these services. In reviewing the qualifications of the~~
3 ~~provider or providers, the commission shall consider the factors~~
4 ~~of cost, quality of services, and experience, and such other~~
5 ~~factors as the commission deems appropriate.~~

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

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

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

19 ~~(f) The commission shall require every intrastate~~
20 ~~telecommunications carrier to file a schedule of rates and~~
21 ~~charges and every provider of telecommunications relay service~~
22 ~~to maintain a separate accounting for the costs of providing~~



1 ~~telecommunications relay services for the deaf, persons with~~
2 ~~hearing disabilities, and persons with speech disabilities.~~

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

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

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

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

19 SECTION 36. Section 269-16.8, Hawaii Revised Statutes, is
20 repealed.

21 ["~~§269-16.8~~ **Aggregators of telephone service**
22 **requirements.** (a) ~~For the purposes of this section:~~



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

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

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

15 ~~(1) Posting and display of information in a prominent and~~
16 ~~conspicuous fashion on or near the telephone equipment~~
17 ~~owned or controlled by the aggregator which states the~~
18 ~~identity of the operator service provider, the~~
19 ~~operator service provider's complaint handling~~
20 ~~procedures, and means by which the customer may access~~
21 ~~the various operator service providers.~~



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

17 SECTION 37. Section 269-16.9, Hawaii Revised Statutes, is
18 repealed.

19 ["~~§269-16.9 Telecommunications providers and services.~~

20 ~~(a) Notwithstanding any provision of this chapter to the~~
21 ~~contrary, the commission, upon its own motion or upon the~~
22 ~~application of any person, and upon notice and hearing, may~~



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

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



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



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

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

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

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

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



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

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

20 ~~(g) Upon the petition of any person or upon its own~~
21 ~~motion, the commission may rescind any exemption or waiver~~
22 ~~granted under this section if, after notice and hearing, it~~



1 ~~finds that the conditions prompting the granting of the~~
2 ~~exemption or waiver no longer apply, or that the exemption or~~
3 ~~waiver is no longer in the public interest, or that the~~
4 ~~telecommunications provider has failed to comply with one or~~
5 ~~more of the conditions of the exemption or applicable statutory~~
6 ~~or regulatory requirements.~~

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

14 SECTION 38. Section 269-16.91, Hawaii Revised Statutes, is
15 repealed.

16 [~~§269-16.91~~] ~~Universal service subsidies.~~ (a) ~~For any~~
17 ~~alternative telecommunications provider authorized to provide~~
18 ~~basic local exchange service to any area of the State pursuant~~
19 ~~to section 269-16.9(h), the commission may consider the~~
20 ~~following:~~



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

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

14 SECTION 39. Section 269-16.92, Hawaii Revised Statutes, is
15 repealed.

16 ~~["**§269-16.92** Changes in subscriber carrier selections,~~
17 ~~prior authorization required; penalties for unauthorized~~
18 ~~changes. (a) No telecommunications carrier shall initiate a~~
19 ~~change in a subscriber's selection or designation of a long-~~
20 ~~distance carrier without first receiving:~~

21 ~~(1) A letter of agency or letter of authorization;~~



1 ~~(2) An electronic authorization by use of a toll-free~~
2 ~~number;~~

3 ~~(3) An oral authorization verified by an independent third~~
4 ~~party; or~~

5 ~~(4) Any other prescribed authorization;~~

6 ~~provided that the letter or authorization shall be in accordance~~
7 ~~with verification procedures that are prescribed by the Federal~~
8 ~~Communications Commission or the public utilities commission.~~

9 ~~For purposes of this section, "telecommunications carrier" does~~
10 ~~not include a provider of commercial mobile radio service as~~
11 ~~defined by 47 United States Code section 332(d)(1).~~

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

20 ~~The commission, if consistent with the public interest, may~~
21 ~~suspend, restrict, or revoke the registration, charter, or~~
22 ~~certificate of the telecommunications carrier, thereby denying,~~



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

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

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

8 [~~§269-16.95 Emergency telephone service; capital costs;~~
9 ~~ratemaking.~~ (a) ~~A public utility providing local exchange~~
10 ~~telecommunications services may recover the capital cost and~~
11 ~~associated operating expenses of providing a statewide enhanced~~
12 ~~911 emergency telephone service in the public switched telephone~~
13 ~~network, through:~~

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

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

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



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

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

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

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



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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

6 ~~(2) Universal service is preserved and advanced."]~~

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

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

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

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

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



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

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

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

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

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



- 1 ~~(1) Maintain affordable, just, and reasonable rates for~~
2 ~~basic residential telecommunications service, as~~
3 ~~defined by the commission;~~
- 4 ~~(2) Assist customers located in the areas of the State~~
5 ~~that have high costs of essential telecommunications~~
6 ~~service, low income customers, and customers with~~
7 ~~disabilities, in obtaining and maintaining access to a~~
8 ~~basic set of essential telecommunications services as~~
9 ~~determined by the commission. The commission may~~
10 ~~expand or otherwise modify relevant programs, such as~~
11 ~~the lifeline program under section 269-16.5;~~
- 12 ~~(3) Ensure that consumers in all communities are provided~~
13 ~~with access, at reasonably comparable rates, to all~~
14 ~~telecommunications services which are used by a~~
15 ~~majority of consumers located in metropolitan areas of~~
16 ~~the State. The commission shall provide for a~~
17 ~~reasonable transition period to support the statewide~~
18 ~~deployment of these advanced telecommunications~~
19 ~~services, including, but not limited to, the use of~~
20 ~~strategic community access points in public facilities~~
21 ~~such as education, library, and health care~~
22 ~~facilities;~~



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

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

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

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

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



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

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

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

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

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



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

7 ~~(f) The commission shall designate the method by which the~~
8 ~~contributions under subsection (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. During fiscal year 2009-2010, fifty per cent
17 of the moneys collected by the public utilities commission from
18 telecommunications carriers and deposited into the public
19 utilities commission special fund shall be deposited into the
20 Hawaii communications commission special.

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



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

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

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

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



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

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

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



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

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

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

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

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



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

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

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



1 SECTION 59. The Hawaii communications commission 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;
- 8 (2) The mayor of the county of Hawaii, or the mayor's
9 designee;
- 10 (3) The mayor of the city and county of Honolulu, or the
11 mayor's designee;
- 12 (4) The mayor of the county of Kauai, or the mayor's
13 designee;
- 14 (5) The mayor of the county of Maui, or the mayor's
15 designee;
- 16 (6) The chairperson of the Hawaii broadband task force
17 established by Act 2, First Special Session Laws of
18 Hawaii 2007; and
- 19 (7) Five representatives of the telecommunications, cable,
20 wireless internet, and non-profit industries.

21 SECTION 60. The work group established under section 59
22 shall submit to the legislature no later than January 1, 2010, a



1 report with its recommended procedures for streamlining and
2 expediting all regulatory, franchising, and permitting functions
3 normally available to state and local governments for the use or
4 development of broadband service or broadband technology. The
5 procedures shall be consistent across all counties and shall
6 provide that any permitting fees and revenues traditionally
7 accruing to the counties that relate to the use or development
8 of broadband service or broadband technology will continue to
9 accrue to the counties once the procedures go into effect. The
10 Hawaii communications commission shall begin to implement the
11 recommendations of the working group not later than July 1,
12 2010.

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



1 of this Act. The Hawaii communications commission shall submit
2 a report of its findings and recommendations, including proposed
3 legislation, to the legislature not later than twenty days prior
4 to the convening of the 2010 regular session.

5 SECTION 62. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 63. This Act shall take effect on July 1, 2009;
8 provided that any decision or order executed by the public
9 utilities commission prior to the enactment of this Act shall
10 remain in full force and effect until such time as the Hawaii
11 communications commission may amend or repeal the decision or
12 order under the Hawaii communications commission's jurisdiction;
13 provided further that the amendments made to section 28-8.3,
14 Hawaii Revised Statutes, in section 4 of this Act shall not be
15 repealed when that section is repealed and reenacted by Section
16 14 of Act 58, Session Laws of Hawaii 2004, as amended by section
17 50 of Act 22, Session Laws of Hawaii 2005, as amended by section
18 1 of Act 306, Session Laws of Hawaii 2006.

19



Report Title:

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

Description:

Implements key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Communications Commission (HCC) and the Hawaii Communications Commissioner in the Department of Commerce and Consumer Affairs (DCCA). Transfers functions relating to telecommunications from the Public Utilities Commission to HCC and to cable services from DCCA to HCC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the Legislature. (HB984 HD1)

