

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO THE HAWAII COMMUNICATIONS COMMISSION.

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

**PART I**

1  
2 SECTION 1. The State of Hawaii recognizes that advanced  
3 broadband services are essential infrastructure for an  
4 innovation economy and a knowledge society in the twenty-first  
5 century. High speed broadband services at affordable prices are  
6 essential for the advancement of education, health, public  
7 safety, research and innovation, civic participation, e-  
8 government, economic development and diversification, and public  
9 safety and services. The State of Hawaii also recognizes the  
10 evolution in the manner in which communications and information  
11 services are delivered to the consumer, including by wireline,  
12 wireless, cable television, and satellite infrastructures, and  
13 that the voice, video and data services provided by these  
14 infrastructures are converging. In order to position Hawaii for  
15 global competitiveness in the twenty-first century, this Act  
16 promotes the following goals:

- 17 (1) Access to broadband communications for all persons in  
18 the State by 2012 at speeds and prices comparable to

S.B. NO. 895

1 the average available in the top three performing  
2 countries in the world;

3 (2) Availability of broadband communications services on a  
4 competitive basis to reduce prices, increase service  
5 penetration, and improve service to all persons in the  
6 State;

7 (3) Increased broadband availability at affordable cost to  
8 low income and other disadvantaged groups;

9 (4) Increased sharing of broadband infrastructure to reduce  
10 provider costs and customer prices, encourage  
11 deployment, and ease entry into a competitive broadband  
12 marketplace;

13 (5) Increased, flexible, timely and responsible access to  
14 public rights-of-way and public facilities for  
15 broadband service providers; and

16 (6) A more streamlined permit approval process that  
17 incorporates the input of stakeholders and other  
18 interested parties.

19 This Act creates the Hawaii communications commission  
20 ("commission") and tasks it with investigating, promoting, and  
21 ensuring the growth and development of broadband infrastructure  
22 within the State in accord with these goals. The commission

1 shall "champion" the State's broadband, telecommunications, and  
2 video programming services interests before the federal  
3 government, including Congress, the executive branch, and the  
4 Federal Communications Commission and state and local agencies,  
5 including the governor, the state legislature, and county  
6 governments. The commission shall also maintain close working  
7 relationships with community groups, civic associations,  
8 industry trade organizations, industry leaders, and other  
9 stakeholders to ensure that the State's interests and concerns  
10 are understood.

11 The commission shall:

- 12 (1) Develop state policies relating to the provision of  
13 broadband communications services and interstate and  
14 international communications services and facilities  
15 serving or transiting the State of Hawaii;
- 16 (2) Work with other governmental entities to investigate  
17 measures including standardization, consolidation, and  
18 coordination that can be taken to streamline and  
19 expedite permitting and approval processes for the  
20 construction of additional broadband infrastructure;  
21 and

1           (3) Develop and implement initiatives and programs to  
2           construct or otherwise make available additional  
3           infrastructure for the provision of broadband  
4           services, and the sharing of such infrastructure by  
5           competing providers of broadband services to the  
6           public.

7           This Act also consolidates the regulation of  
8           telecommunications carriers and cable operators in the State  
9           under the commission. In doing so, the Act creates a "one stop  
10          shop" to assist businesses providing broadband,  
11          telecommunications, and video programming services, and  
12          expediting the process for them to make their services rapidly  
13          available to the public. Consolidating and streamlining the  
14          State's regulatory processes for the telecommunications sector  
15          in the State will help to facilitate the construction of  
16          telecommunications and broadband infrastructure and the  
17          introduction, penetration, and capability of advanced broadband  
18          communications services.

19          The public utilities commission currently regulates  
20          telecommunications carriers pursuant to chapter 269 and the  
21          director of commerce and consumer affairs currently regulates

1 cable operators pursuant to chapter 440G of the Hawaii Revised  
2 Statutes.

3 This Act extracts the telecommunications provisions from  
4 chapter 269 and all of chapter 440G of the Hawaii Revised  
5 Statutes. The Act removes authority from the director of  
6 commerce and consumer affairs to regulate cable operators and,  
7 following a one-year transition period, removes authority from  
8 the public utilities commission to regulate telecommunications  
9 carriers. The commission is established to regulate both  
10 telecommunications carriers and cable operators, and is  
11 established within the department of commerce and consumer  
12 affairs.

13 This Act requires the commission to examine promptly rate  
14 regulation for telecommunications carriers, including  
15 alternatives such as price cap regulation. The Act also directs  
16 the commission to investigate the possibility of implementing  
17 incentive regulation for telecommunications carriers in order to  
18 increase investment in broadband infrastructure within the  
19 State. This Act also provides for transitional provisions that  
20 assure that there is no gap in regulatory authority caused by  
21 the transition, if and until, the commission takes appropriate  
22 action to change existing rules, decisions, and other

1 determinations. Finally, this Act proposes conforming amendments  
2 to other chapters of the Hawaii Revised Statutes.

3 **PART II**

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

7 **"CHAPTER**

8 **HAWAII COMMUNICATIONS COMMISSION**

9 **PART I. HAWAII COMMUNICATIONS COMMISSION, GENERALLY**

10 **§ -1 Definitions.** As used in this chapter, unless the  
11 context otherwise requires:

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

14 "Application" means an unsolicited filing.

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

17 "Broadband" means an "always on" service that combines  
18 computer processing, information provision, and computer  
19 interactivity with data transport, enabling end users to access  
20 the internet and use a variety of applications, at minimum  
21 speeds set by the commission.

1 "Cable franchise" means a nonexclusive initial authorization  
2 or renewal thereof issued pursuant to this chapter, whether the  
3 authorization is designated as a franchise, permit, order,  
4 contract, agreement, or otherwise, which authorizes the  
5 construction or operation of a cable system.

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

7 (1) Provides cable service over a cable system and directly  
8 or through one or more affiliates owns a significant  
9 interest in the cable system; or

10 (2) Otherwise controls or is responsible for, through any  
11 arrangement, the management and operation of a cable  
12 system.

13 "Cable service" means:

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

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

19 "Cable system" means any facility within this State  
20 consisting of a set of closed transmission paths and associated  
21 signal generation, reception, and control equipment that is  
22 designed to provide cable service which includes video

1 programming and which is provided to multiple subscribers within  
2 a community, but does not include a facility:

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

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

17 "Department" means the department of commerce and consumer  
18 affairs.

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

1 "Director" means the director of commerce and consumer  
2 affairs.

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

8 "Hawaii communications commission" or "commission" has the  
9 meaning as in section -2.

10 "Hawaii communications commissioner" or "commissioner" has  
11 the meaning as in section -3.

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

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

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

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

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

21 "PEG access facility" means:

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

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

5 "Public, educational, or governmental access organization"  
6 or "PEG access organization" or "access organization" means any  
7 nonprofit organization designated by the commissioner to oversee  
8 the development, operation, supervision, management, production,  
9 or broadcasting of programs for any channels obtained under  
10 section -67, and provide PEG access services.

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

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

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

20 "Telecommunications carrier" or "telecommunications common  
21 carrier" means any person that owns, operates, manages, or  
22 controls any facility used to furnish telecommunications

1 services for profit to the public, or to classes of users as to  
2 be effectively available to the public, engaged in the provision  
3 of services, such as voice, data, image, graphics, and video  
4 services, that make use of all or part of their transmission  
5 facilities, switches, broadcast equipment, signaling, or control  
6 devices.

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

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

19 **§ -2 Hawaii communications commission; established.**

20 There shall be created a Hawaii communications commission.  
21 The commission shall implement this chapter and shall be placed  
22 within the department for administrative purposes.

1           **§ -3 Hawaii communications commissioner.** The commission  
2 shall be under the supervision and control of the Hawaii  
3 communications commissioner. The commissioner, who shall be  
4 exempt from chapter 76, shall be appointed by the governor, with  
5 the consent of the Senate. The commissioner shall be  
6 responsible for the performance of the duties imposed upon the  
7 commission, and any other specific duties, provided in this  
8 chapter.

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

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

21           (1) The commissioner may employ utility and cable analysts  
22           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, in the commissioner's  
5           discretion, dismiss hearings officers as may be necessary, with  
6           or without regard to chapter 76.

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

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

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

1       **§ -6 Terms.** The commissioner shall be appointed for a  
2 term of six years, shall not serve more than two consecutive  
3 terms, and shall hold office until the commissioner's successor  
4 is appointed and confirmed. Section 26-34 shall not apply  
5 insofar as it relates to the number of terms and consecutive  
6 number of years a person may be appointed as commissioner.

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

10       **§ -8 General powers and duties.** (a) The commission  
11 shall have the authority expressly conferred upon the commission  
12 by, or reasonably implied from, the provisions of this chapter.

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

17       (c) The commission has the authority to adopt rules  
18 pursuant to chapter 91 necessary for the purposes of this  
19 chapter.

20       (d) The commission shall have the authority to designate  
21 and select PEG access organizations, the authority to contract  
22 with the PEG access organizations and enforce the terms and

1 conditions of the contracts, and general supervision over PEG  
2 access in the State.

3       **§ -9 Development duties.** (a) The commission shall  
4 ensure that all consumers are provided with nondiscriminatory,  
5 reasonable, and equitable access to high quality network  
6 facilities and services that provide subscribers with sufficient  
7 network capacity to services that provide a combination of  
8 voice, data, image, cable, and video, and that are available at  
9 just, reasonable, and nondiscriminatory rates. Within twelve  
10 months of the effective date of this part, the commission shall  
11 investigate the extent to which telecommunications services  
12 provided to residential and business customers are available  
13 from multiple providers in Hawaii and whether to reclassify  
14 telecommunications services provided to residential and business  
15 customers as 'fully competitive' communications services.

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

1 availability in the State. Such plans may include measures to  
2 streamline access to public rights-of-way and public facilities  
3 for broadband service providers and the permitting and approval  
4 processes required for such access. Such plans may also include  
5 making low-cost broadband-capable computers available to  
6 eligible recipients. Such plans may further include encouraging  
7 or, with respect to state-owned property, requiring the sharing  
8 of new infrastructure used for broadband services.

9 The commission shall regularly update and revise its studies  
10 and findings in order to ensure that the State's policies and  
11 initiatives remain effective in promoting the State's interests.

12 (c) The commission shall develop programs and initiatives  
13 intended to facilitate the deployment of broadband  
14 communications services in the State and access to those  
15 services by users in the State. Such programs may include  
16 initiatives by the State to facilitate and construct new  
17 broadband communications infrastructure that can be shared by  
18 competing providers of broadband services. The commission shall  
19 fund these programs and initiatives using funds collected  
20 pursuant to section -23 and deposited in the commission  
21 special fund pursuant to section -22. In addition, the  
22 commission may seek appropriations of funds from the State.

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

14 **§ -10 Communications infrastructure permitting.** The  
15 commission shall investigate measures that could streamline and  
16 expedite the permitting and approval processes that are imposed  
17 by governmental entities with respect to the construction of  
18 infrastructure intended for use in the provision of broadband  
19 services to the public. The commission shall also investigate  
20 the possibility of assuming all or a portion of the duties and  
21 authority to issue permits and approvals for the construction of  
22 broadband communications infrastructure. If the assumption of

1 such duties and authorities is deemed by the commission to be  
2 appropriate and efficient, and if the relevant governmental  
3 entities approve, the commission shall assume such duties and  
4 authorities and shall carry them out in accordance with any  
5 statutes or rules applicable to such duties and authorities.

6       **§ -11 Investigative powers.** (a) The commission shall  
7 have the power to examine the condition of each  
8 telecommunications carrier, cable operator and PEG access  
9 organization, the manner in which each is operated with  
10 reference to the safety or accommodation of the public, the  
11 safety, working hours, and wages of its employees, the services  
12 provided by it, the steps being taken to provide those services,  
13 the fares and rates charged by it, the value of its physical  
14 property, the issuance by it of stocks and bonds and the  
15 disposition of the proceeds thereof, the amount and disposition  
16 of its income, and all its financial transactions, its business  
17 relations with other persons, companies, or corporations, its  
18 compliance with all applicable state and federal laws and with  
19 the provisions of its franchise, charter, and articles of  
20 association, if any, its classifications, rules, regulations,  
21 practices, and service, and all matters of every nature

1 affecting the relations and transactions between it and the  
2 public or persons or corporations.

3 (b) Beginning July 1, 2010, the commission may investigate  
4 any person acting in the capacity of or engaging in the business  
5 of a telecommunications carrier within the State without having a  
6 certificate of public convenience and necessity or other  
7 authority previously obtained under and in compliance with this  
8 chapter or the rules adopted under this chapter or chapter 269.

9 (c) The commission may investigate any person acting in the  
10 capacity of or engaging in the business of a cable television  
11 operator within the State without having a franchise or other  
12 authority previously obtained under and in compliance with this  
13 chapter or the rules adopted under this chapter or chapter 440G.

14 (d) Any investigation may be made by the commission on its  
15 own motion either to investigate the possibility of a violation  
16 of this chapter, or to ascertain the conditions of the industry  
17 in the State, or for any other reason determined by the  
18 commission to be necessary or appropriate to carry out the  
19 requirements of this chapter. The commission shall also  
20 initiate an investigation when requested by the  
21 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       **§ -12 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), (b), or (d) acting in the  
7 name and by the delegated authority of the commissioner. Any  
8 power, duty, or function vested in the commissioner by this  
9 chapter may be exercised, discharged, or performed by any  
10 employee of the department utilized pursuant to section -5(c)  
11 or (e) acting in the name and by the delegated authority of the  
12 commissioner, with the approval of the director.

13       **§ -13 Annual report and register of orders.** The  
14 commission shall prepare and present to the governor, through  
15 the director, in the month of January in each year a report  
16 respecting its actions during the preceding fiscal year. This  
17 report shall include summary information and analytical,  
18 comparative, and trend data concerning major regulatory issues  
19 acted upon and pending before the commission; cases processed by  
20 the commission, including their dispositions; telecommunications  
21 carrier and cable operator operations, capital improvements, and  
22 rates; telecommunications carrier and cable operator and PEG

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

15       **§ -14 Commission investigative authorities.** In all  
16 investigations made by the commission, and in all proceedings  
17 before it, the commission and the commissioner shall have the  
18 same powers regarding administering oaths, compelling the  
19 attendance of witnesses and the production of documentary  
20 evidence, examining witnesses, and punishing for contempt, as  
21 are possessed by the circuit courts of the State. In case of  
22 disobedience by any person to any order of the commission or of

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

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

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

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

1 date thereof, and shall be given by filing the notice with the  
2 commission and making it available for public inspection.

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

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

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

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

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

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

19 (1) The citation may contain an order of abatement and an  
20 assessment of civil penalties as provided in section  
21 -26. All penalties collected under this subsection  
22 shall be deposited in the Hawaii communications

1 commission special fund created in section -22.

2 Service of a citation issued under this subsection  
3 shall be made by personal service whenever possible, or  
4 by certified mail, return receipt requested, sent to  
5 the last known business or residence address of the  
6 person cited.

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

19 (3) If the person cited under this subsection does not  
20 submit a written request to the commission for a  
21 hearing within twenty calendar days from the receipt of  
22 the citation, the citation shall be deemed a final

1 order of the commission. The commission may apply to  
2 the appropriate court for a judgment to enforce the  
3 provisions of any final order issued by the commission  
4 pursuant to this subsection, including but not limited  
5 to the provisions for abatement and civil penalties  
6 imposed. In any proceeding to enforce the provisions  
7 of the final order of the commission, the commission  
8 need only show that the notice was given, a hearing was  
9 held or the time granted for requesting the hearing has  
10 run without such a request, and a certified copy of the  
11 final order of the commission.

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

1           either civil or criminal provided in any other  
2           applicable statutory provision. The commission may  
3           adopt rules under chapter 91 as may be necessary to  
4           fully effectuate this subsection.

5           **§ -18 Appeals.** An appeal from an order of the commission  
6           under this chapter shall lie, subject to chapter 602, in the  
7           manner provided for civil appeals from the circuit courts. Only  
8           a person aggrieved in a contested case proceeding provided for  
9           in this chapter may appeal from the order, if the order is  
10          final, or if preliminary, is of the nature defined by section  
11          91-14(a). The commission may elect to be a party to all  
12          matters, from which an order of the commission is appealed or  
13          any action in any court of law seeking a mandamus, or injunctive  
14          or other relief to compel compliance with this chapter, or any  
15          rule or order adopted thereunder, or to restrain or otherwise  
16          prevent or prohibit any illegal or unauthorized conduct in  
17          connection therewith, and file appropriate responsive briefs or  
18          pleadings. If there is no adverse party to the appeal, the  
19          commission shall be a party and shall file responsive briefs or  
20          pleadings in defending all orders. The appearance of the  
21          commission as a party in judicial proceedings in no way limits  
22          the participation of persons otherwise qualified to be parties

1 on appeal. The appeal shall not of itself stay the operation of  
2 the order appealed from, but the appellate court may stay the  
3 order after a hearing upon a motion therefor and may impose  
4 conditions it deems proper, including but not limited to  
5 requiring a bond, requiring that accounts be kept, or requiring  
6 that other measures be taken as ordered to secure restitution of  
7 the excess charges, if any, made during the pendency of the  
8 appeal, in case the order appealed from is sustained, reversed,  
9 or modified in whole or in part.

10       **§ -19 Alternative dispute resolution.** The commission may  
11 require the parties in any matter before the commission to  
12 participate in nonbinding arbitration, mediation, or other  
13 alternative dispute resolution process prior to the hearing.

14       **§ -20 Perjury.** Any person who willfully and knowingly  
15 makes under oath any false statement in connection with any  
16 investigation by or proceeding before the commission shall be  
17 guilty of perjury and, upon conviction, shall be subject to the  
18 penalty prescribed by law for the offense.

19       **§ -21 Telecommunications carriers, cable operators and**  
20 **PEG access organizations, to furnish information.** Every  
21 telecommunications carrier, cable operator, PEG access  
22 organization, or other person subject to investigation by the

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

15 **§ -22 Commission special fund.** (a) There is established  
16 in the state treasury a commission special fund to be  
17 administered by the commission. The proceeds of the fund shall  
18 be used by the commission and the division of consumer advocacy  
19 of the department for all expenses incurred in the  
20 administration of this chapter, including without limitation,  
21 the operation of programs as may be developed by the commission  
22 to develop and construct, or encourage the construction of,

1 broadband infrastructure; make broadband capable computers  
2 available to low income and disadvantaged persons; or otherwise  
3 promote universal availability of communications services. The  
4 expenditures of the commission shall be done in accordance with  
5 legislative appropriations. On a quarterly basis, an amount not  
6 to exceed thirty per cent of the proceeds remaining in the fund  
7 shall be allocated to the division of consumer advocacy and  
8 deposited in the compliance resolution fund established pursuant  
9 to section 26-9(o).

10 (b) All moneys appropriated to, received, and collected by  
11 the commission that are not otherwise pledged, obligated, or  
12 required by law to be placed in any other special fund or  
13 expended for any other purpose shall be deposited into the  
14 commission special fund including, but not limited to, all  
15 moneys received and collected by the commission pursuant to  
16 sections -23, -26, and 92-21.

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

20 **§ -23 Finances; regulatory fee.** (a) There shall be paid  
21 to the commission in each of the months of July and December of  
22 each year, by each telecommunications carrier subject to this

1 chapter, a fee set by the commission not to exceed one-fourth of  
2 one per cent of the gross income from the telecommunications  
3 carrier's business during the preceding year, or the sum of \$30,  
4 whichever is greater. The commission shall set the fee amount  
5 based on its projected budget for the year to administer and  
6 enforce this chapter. This fee shall be deposited with the  
7 director of finance to the credit of the commission special fund  
8 created pursuant to section -22.

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

16 **§ -24 Consumer advocate.** The commission shall recognize  
17 the director as the consumer advocate in hearings and  
18 proceedings before the commission.

19 **§ -25 Communications advisory committee.** There is  
20 established the communications advisory committee. The  
21 committee shall consist of five members appointed by the  
22 governor as provided in section 26-34. The committee shall

1 advise the commission, telecommunications carriers, and cable  
2 operators on matters within the jurisdiction of this chapter at  
3 the request of the commission or any telecommunications carrier  
4 or cable operator. The members of the committee shall serve  
5 without pay but shall be entitled to reimbursement for necessary  
6 expenses while attending meetings and while in discharge of  
7 their duties.

8       **§ -26 Penalties.** (a) Any telecommunications carrier,  
9 cable operator, or PEG access organization violating or failing  
10 in any particular way to conform to or comply with this chapter  
11 or any lawful order of the commission, including, but not  
12 limited to the acts specified in section -68 for cable  
13 operators and PEG access organizations, shall be subject to a  
14 civil penalty not to exceed \$25,000 for each day such violation,  
15 neglect, or failure continues, to be assessed by the commission  
16 after a hearing in accordance with chapter 91. The commission  
17 may order any offender to cease carrying on its business while  
18 the violation, neglect, or failure continues.

19       (b) Notwithstanding the provisions of subsection (a), any  
20 person acting in the capacity of or engaging in the business of a  
21 telecommunications carrier or a cable operator in the State  
22 without having a certificate of public convenience and necessity,

1 franchise, or other authority previously obtained under and in  
2 compliance with this chapter and the rules adopted thereunder may  
3 be subject to a civil penalty not to exceed \$5,000 for each such  
4 offense, and, in the case of a continuing violation, \$5,000 for  
5 each day the uncertified or unfranchised activity continues.

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

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

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

18 **PART II. TELECOMMUNICATIONS**

19 **§ -31 Certificates of public convenience and necessity.**

20 (a) No telecommunications carrier, as defined in section -1,  
21 shall commence its business without first having obtained from  
22 the commission a certificate of public convenience and

1 necessity. Applications for certificates shall be made in  
2 writing to the commission and shall comply with the requirements  
3 prescribed in the commission's rules. The application for a  
4 certificate of public convenience and necessity shall include  
5 the type of service to be performed, the geographical scope of  
6 the operation, the type of equipment to be employed in the  
7 service, the name of competing telecommunications carriers for  
8 the proposed service, a statement of the applicant's financial  
9 ability to render the proposed service, a current financial  
10 statement of the applicant, and the rates or charges proposed to  
11 be charged including the rules governing the proposed service.

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

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

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

17 (d) Any certificate, upon application of the holder and at  
18 the discretion of the commission, may be amended, suspended, or  
19 revoked, in whole or in part. The commission after notice and  
20 hearing may suspend, amend, or revoke any certificate in part or  
21 in whole, if the holder is found to be in willful violation of  
22 any of the provisions of this chapter or with any lawful order

1 or rule of the commission adopted thereunder, or with any term,  
2 condition, or limitation of the certificate.

3       **§ -32 Location of records.** A telecommunications carrier  
4 shall keep and maintain records, books, papers, accounts, and  
5 other documents that the commission determines are necessary and  
6 shall make them immediately available when requested by the  
7 commission; provided that the original copies shall be made  
8 available when requested by the commission.

9       **§ -33 Annual financial reports.** All annual financial  
10 reports required to be filed with the commission by  
11 telecommunications carriers shall include a certification that  
12 such report conforms with the applicable uniform system of  
13 accounts adopted by the commission. The commission shall adopt  
14 a uniform system of accounts for this purpose.

15       **§ -34 Telecommunications providers and services.** (a)  
16 Notwithstanding any provision of this chapter to the contrary,  
17 the commission, upon its own motion or upon the application of  
18 any person, and upon notice and hearing, may exempt a  
19 telecommunications carrier or a telecommunications service from  
20 any or all of the provisions of this chapter, except the  
21 requirements of section -36, upon a determination that the  
22 exemption is in the public interest. In determining whether an

1 exemption is in the public interest, the commission shall  
2 consider whether the exemption promotes state policies in  
3 telecommunications, the development, maintenance, and operation  
4 of effective and economically efficient telecommunications  
5 services, and the furnishing of telecommunications services at  
6 just and reasonable rates and in a fair manner in view of the  
7 needs of the various customer segments of the telecommunications  
8 industry. Among the specific factors the commission may  
9 consider are:

- 10 (1) The appropriateness of the exemption in view of changes  
11 in the structure and technology of the State's  
12 telecommunications industry;
- 13 (2) The benefits accruing to the customers and users of the  
14 exempt telecommunications carrier or service;
- 15 (3) The impact of the exemption on the quality, efficiency,  
16 and availability of telecommunications services;
- 17 (4) The impact of the exemption on the maintenance of fair,  
18 just, and reasonable rates for telecommunications  
19 services;
- 20 (5) The likelihood of prejudice or disadvantage to  
21 ratepayers of basic local exchange service resulting  
22 from the exemption;

- 1           (6) The effect of the exemption on the preservation and  
2                   promotion of affordable, universal, basic  
3                   telecommunications services as those services are  
4                   determined by the commission;
- 5           (7) The resulting subsidization, if any, of the exempt  
6                   telecommunications service or provider by nonexempt  
7                   services;
- 8           (8) The impact of the exemption on the availability of  
9                   diversity in the supply of telecommunications services  
10                  throughout the State;
- 11          (9) The improvements in the regulatory system to be gained  
12                  from the exemption, including the reduction in  
13                  regulatory delays and costs;
- 14          (10) The impact of the exemption on promoting innovations in  
15                  telecommunications services;
- 16          (11) The opportunity provided by the exemption for  
17                  telecommunications carriers to respond to competition;
- 18          (12) The potential for the exercise of substantial market  
19                  power by the exempt provider or by a provider of the  
20                  exempt telecommunications service; and

1           (13) The impact of the exemption on the competitive  
2           availability and affordability of broadband and other  
3           advanced services to consumers.

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

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

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

20          (e) The commission may waive other regulatory requirements  
21          under this chapter applicable to telecommunications carriers

1 when it determines that competition will serve the same purpose  
2 as public interest regulation.

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

18 (g) Upon the petition of any person or upon its own motion,  
19 the commission may rescind any exemption or waiver granted under  
20 this section if, after notice and hearing, it finds that the  
21 conditions prompting the granting of the exemption or waiver no  
22 longer apply, or that the exemption or waiver is no longer in

1 the public interest, or that the telecommunications carrier has  
2 failed to comply with one or more of the conditions of the  
3 exemption or applicable statutory or regulatory requirements.

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

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

17 **§ -36 Obligations of telecommunications carriers.** In  
18 accordance with conditions and guidelines established by the  
19 commission to facilitate the introduction of competition into  
20 the State's telecommunications marketplace, each  
21 telecommunications carrier, upon bona fide request, shall  
22 provide services or information services, on reasonable terms

1 and conditions, to an entity seeking to provide intrastate  
2 telecommunications, including but not limited to:

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

1 controlled by the telecommunications carrier, or the  
2 commission shall authorize access to electric  
3 utilities' poles as provided by the joint pole  
4 agreement, commission tariffs, rules, or orders, or  
5 Federal Communications Commission rules and  
6 regulations;

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

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

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

1           Where possible, telecommunications carriers shall enter  
2 into negotiations to agree on the provision of services or  
3 information services without requiring intervention by the  
4 commission; provided that any such agreement shall be subject to  
5 review by the commission to ensure compliance with the  
6 requirements of this section.

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

19           **§ -38 Regulation of telecommunications carrier rates;**  
20 **ratemaking procedures.** (a) All rates, fares, charges,  
21 classifications, schedules, rules, and practices made, charged,  
22 or observed by any telecommunications carrier or by two or more

1 telecommunications carriers jointly shall be just and reasonable  
2 and shall be filed with the commission. The rates, fares,  
3 classifications, charges, and rules of every telecommunications  
4 carrier shall be published by the telecommunications carrier in  
5 such manner as the commission may require, and copies shall be  
6 furnished to any person on request.

7 (b) The commission shall promptly examine rate regulation  
8 alternatives including rate-of-return ratemaking and price cap  
9 ratemaking, and may issue an order imposing alternative rate  
10 regulation procedures. The examination shall include pursuing  
11 incentive regulation with local exchange carriers, one goal of  
12 which shall be to increase broadband competitive availability  
13 and affordability to consumers in the State.

14 (c) The commission may waive rate regulation and allow  
15 telecommunications carriers to have pricing flexibility for  
16 services that the commission determines to be effectively  
17 competitive; provided that the rates for:

- 18 (1) Basic telephone service and for services that are not  
19 effectively competitive are regulated and remain just,  
20 reasonable, and nondiscriminatory; and  
21 (2) Universal service is preserved and advanced.

1 (d) Unless otherwise directed by the commission, a  
2 telecommunications carrier may charge any rate for a service  
3 less than or equal to the rate for the service included in the  
4 telecommunications carrier's filed tariff. The rate charged  
5 shall be available at the same terms for all customers in all  
6 geographic locations within the telecommunications carrier's  
7 service area.

8 (e) Unless and until the commission waives this  
9 requirement, no rate, fare, charge, classification, schedule,  
10 rule, or practice, other than one established pursuant to an  
11 automatic rate adjustment clause previously approved by the  
12 commission, shall be established, abandoned, modified, or  
13 departed from by any telecommunications carrier, except after  
14 thirty days' notice to the commission as prescribed in section  
15 -14(b), and prior approval by the commission for any increases  
16 in rates, fares, or charges. The commission, in its discretion  
17 and for good cause shown, may allow any rate, fare, charge,  
18 classification, schedule, rule, or practice to be established,  
19 abandoned, modified, or departed from upon notice less than that  
20 provided for in section -15(b). Unless and until the  
21 commission waives this requirement, a contested case hearing  
22 shall be held in connection with any increase in rates, and the

1 hearing shall be preceded by a public hearing as prescribed in  
2 section -15(c), at which the consumers or patrons of the  
3 telecommunications carrier may present testimony to the  
4 commission concerning the increase. The commission, upon notice  
5 to the telecommunications carrier, may:

6 (1) Suspend the operation of all or any part of the  
7 proposed rate, fare, charge, classification, schedule,  
8 rule, or practice or any proposed abandonment or  
9 modification thereof or departure therefrom;

10 (2) After a hearing, by order:

11 (A) Regulate, fix, and change all such rates, fares,  
12 charges, classifications, schedules, rules, and  
13 practices so that the same shall be just and  
14 reasonable;

15 (B) Prohibit rebates and unreasonable discrimination  
16 between localities or between users or consumers  
17 under substantially similar conditions;

18 (C) Regulate the manner in which the property of every  
19 telecommunications carrier is operated with  
20 reference to the safety and accommodation of the  
21 public;

1 (D) Prescribe its form and method of keeping accounts,  
2 books, and records, and its accounting system;

3 (E) Regulate the return upon its telecommunications  
4 carrier property;

5 (F) Regulate the incurring of indebtedness relating to  
6 its telecommunications carrier business; and

7 (G) Regulate its financial transactions; and

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

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

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

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

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

1 without unduly burdening the telecommunications carrier company  
2 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 costs  
13           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 required to operate separate affiliates and obtain  
4 and pay for a joint federal and state audit every two years from  
5 an independent auditor pursuant to 47 U.S.C. section 272(d), as  
6 amended. The commission shall make the results of the audit  
7 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. Such unfair or  
13 deceptive acts or practices may include unauthorized changes in  
14 subscriber 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 -23 and deposited in the commission special fund  
20 pursuant to section -22. In conjunction with such funds, or  
21 alternatively, the commission may seek appropriations of funds  
22 from the State.

1 (b) For purposes of this section, "lifeline telephone rate"  
2 means a discounted rate for residential telephone users  
3 identified as elders with limited income and the handicapped with  
4 limited income as designated by the commission.

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

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

13 **§ -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 the carrier of last resort for the designated  
22 local exchange service area for a period of time and upon

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

6 (c) The commission shall adopt rules pursuant to chapter  
7 91 to carry out the provisions of this section.

8 **§ -44 Telecommunications relay services for the deaf,**  
9 **persons with hearing disabilities, and persons with speech**

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

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

1 experience, and such other factors as the commission deems  
2 appropriate.

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

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

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

16 (f) The commission shall require every intrastate  
17 telecommunications carrier to file a schedule of rates and  
18 charges and every provider of telecommunications relay service to  
19 maintain a separate accounting for the costs of providing  
20 telecommunications relay services for the deaf, persons with  
21 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 non-  
15 voice terminal devices, speech-to-speech services, video relay  
16 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 such as a separate line item on all  
14 customer billing statements.

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: for  
3 the acquisition of property or for the construction, completion,  
4 extension, or improvement of or addition to its facilities or  
5 service, or for the discharge or lawful refunding of its  
6 obligations or for the reimbursement of moneys actually expended  
7 from income or from any other moneys in its treasury not secured  
8 by or obtained from the issue of its stocks or stock  
9 certificates, or bonds, notes, or other evidences of  
10 indebtedness, for any of the aforesaid purposes except  
11 maintenance of service, replacements, and substitutions not  
12 constituting capital expenditure in cases where the corporation  
13 has kept its accounts for such expenditures in such manner as to  
14 enable the commission to ascertain the amount of moneys so  
15 expended and the purposes for which the expenditures were made,  
16 and the sources of the funds in its treasury applied to the  
17 expenditures. As used herein, "property" and "facilities" mean  
18 property and facilities used in all operations of a  
19 telecommunications carrier corporation whether or not included  
20 in its operations or rate base. A telecommunications carrier  
21 corporation may not issue securities to acquire property or to  
22 construct, complete, extend, improve, or add to its facilities

1 or service if the commission determines that the proposed  
2 purpose will have a material adverse effect on its  
3 telecommunications carrier operations.

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

9 **§ -48 Issuance of voting stock; restrictions.** (a) For  
10 purposes of this section:

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

15 "Nonresident alien" means a person not a citizen of the  
16 United States who is not defined as a resident alien by the  
17 United States Citizenship and Immigration Services.

18 (b) No more than twenty-five per cent of the issued and  
19 outstanding voting stock of a corporation organized under the  
20 laws of this State and that owns, controls, operates, or manages  
21 any plant or equipment, or any part thereof, as a  
22 telecommunications carrier within the definition set forth in

1 section -1 shall be held, whether directly or indirectly, by  
2 any single foreign corporation or any single nonresident alien,  
3 or held by any person, unless prior written approval is obtained  
4 from the commission, or unless a transaction is exempt. An  
5 exempt transaction is:

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

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

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

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

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

19       **§ -51 Injury to carrier property.** Any person who injures  
20 or destroys, through want of proper care, any necessary or useful  
21 facility, equipment or property of any telecommunications carrier  
22 shall be liable to the telecommunications carrier for all damages

1 sustained thereby. The measure of damages to the facility,  
2 equipment, or property injured or destroyed shall be the cost to  
3 repair or replace the facility, equipment, or property injured or  
4 destroyed including direct and allocated costs for labor,  
5 materials, supervision, supplies, tools, taxes, transportation,  
6 and administrative and general expense and other indirect or  
7 overhead expenses, less credit, if any, for salvage. The  
8 specifying of the measure of damages for the facility, equipment,  
9 or property shall not preclude the recovery of such other damages  
10 occasioned thereby as may be authorized by law.

11       **§ -52 One call center; advance warning to excavators.** To  
12 finance the establishment and operation of the one call center,  
13 pursuant to chapter 269E, and the administrative costs of the  
14 commission, the commission shall direct telecommunications  
15 carriers to pay to the public utilities commission a fee in an  
16 amount and at a schedule determined by the public utilities  
17 commission.

18                                   **PART III. CABLE SERVICES**

19       **§ -61 Issuance of cable franchises and regulation of**  
20 **cable operators by the commission.** The commission shall be  
21 empowered to issue cable franchises and otherwise administer and  
22 enforce this chapter.

1           **§ -62 Cable franchise required.** (a) No person shall  
2 construct, operate, or acquire a cable system, or extend an  
3 existing cable system outside its designated service area,  
4 without first obtaining a cable franchise as provided in this  
5 chapter.

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

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

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

21           (1) The citizenship and character of the applicant;

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

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

18           **§   -64 Cable franchise application or proposal procedure;**  
19 **public hearing; notice.** An application or proposal for a cable  
20 franchise shall be processed as follows:

- 21           (1) After the application or proposal and required fee are
- 22                   received by the commission and within a time frame

1 established by rule, the commission shall notify an  
2 applicant in writing of the acceptance or non-  
3 acceptance for filing of an application or proposal for  
4 issuance of a cable franchise required by this chapter;

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

20 (3) After holding a public hearing, the commission shall  
21 approve the application or proposal in whole or in  
22 part, with or without conditions or modifications, or

1 shall deny the application or proposal, with reasons  
2 for denial sent in writing to the applicant. If the  
3 commission does not take final action after the  
4 issuance of a notice of acceptance for filing and  
5 within a time frame established by rule, the  
6 application or proposal shall be deemed denied; and

- 7 (4) The time limit for final action may be extended, on the  
8 commission's approval of the applicant's request and  
9 justification in writing for an extension of time to  
10 the commission at least two weeks in advance of the  
11 requested effective date of the extension, or by mutual  
12 agreement.

13 **§ -65 Issuance of cable franchise authority; criteria;**

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

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

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

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

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

1 include a description of the service area in which the cable  
2 system is to be constructed, extended, or operated and the  
3 approximate date on which the service is to commence and shall  
4 authorize the cable operator to provide service for a term of  
5 fifteen years or any other term that the commission determines  
6 to be appropriate.

7 **§ -66 Requirement for adequate service; terms and**

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

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

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

21 **§ -67 Cable system installation, construction, operation,**

22 **removal; general provisions.** (a) A cable franchise shall be

1 construed to authorize the construction or operation of a cable  
2 system within the service area above, below, on, in, or along  
3 any highway or other public place and through easements which  
4 have been dedicated for compatible purposes.

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

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

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

1 operator in the installation, operation, or maintenance of its  
2 cable system.

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

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

12 (g) Upon termination of the period of the cable franchise  
13 or permit or of any renewal thereof, by passage of time or  
14 otherwise, the cable operator shall remove its facilities from  
15 the highways and other public places in, on, over, under, or  
16 along which they are installed if so ordered by the commission  
17 and shall restore the areas to their original or other acceptable  
18 condition, or otherwise dispose of same. If removal is not  
19 completed within six months of the termination, any property not  
20 removed shall be deemed to have been abandoned and the cable  
21 operator shall be liable for the cost of its removal.

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

3 (1) All applicable state statutes and all applicable rules  
4 and orders of the public utilities commission and the  
5 commission governing the construction, maintenance, and  
6 removal of overhead and underground facilities of  
7 public utilities;

8 (2) For county highways, all applicable public welfare  
9 rules adopted by the governing body of the county in  
10 which the county highways are situated;

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

13 (4) For the relocation of cable facilities, the provisions  
14 of section 264-33 concerning the allocation of expenses  
15 for the relocation of utility facilities.

16 (i) In the use of easements dedicated to compatible  
17 purposes, the cable operator shall ensure:

18 (1) That the safety, functioning, and appearance of the  
19 property and the convenience and safety of other  
20 persons is not adversely affected by the installation  
21 or construction of facilities necessary for a cable  
22 system;

1           (2) That the cost of the installation, construction,  
2           operation, or removal of facilities is borne by the  
3           cable operator or subscribers, or a combination of  
4           both; and

5           (3) That the owner of the property is justly compensated by  
6           the cable operator for any damages caused by the  
7           installation, construction, operation, or removal of  
8           facilities by the cable operator.

9           **§ -68 Complaints; violations; revocation, alteration, or**

10          **suspension of cable franchise.** (a) Subscriber complaints  
11          regarding the operation of a cable system may be made orally or  
12          in writing to the commission. The commission shall resolve  
13          complaints informally when possible.

14          (b) Any cable franchise, after a hearing in accordance with  
15          chapter 91, may be revoked, altered, or suspended by the  
16          commission as the commission deems necessary on any of the  
17          following grounds:

18               (1) For making material false or misleading statements in,  
19               or for material omissions from, any application or  
20               proposal or other filing made with the commission;

21               (2) For failure to maintain signal quality under the  
22               standards prescribed by the commission;

- 1 (3) For any sale, lease, assignment, or other transfer of  
2 its cable franchise without consent of the commission;
- 3 (4) Except when commercially impracticable, for  
4 unreasonable delay in construction or operation or for  
5 unreasonable withholding of the extension of cable  
6 service to any person in a service area;
- 7 (5) For violation of the terms of its cable franchise;
- 8 (6) For failure to comply with this chapter or any rules or  
9 orders prescribed by the commission;
- 10 (7) For violation of its filed schedule of terms and  
11 conditions of service; and
- 12 (8) For engaging in any unfair or deceptive act or practice  
13 as prohibited by section 480-2.

14 **§ -69 Renewal of cable franchise.** Any cable franchise  
15 issued pursuant to this chapter may be renewed by the commission  
16 upon approval of a cable operator's application or proposal  
17 therefor. The form of the application or proposal shall be  
18 prescribed by the commission. The periods of renewal shall be  
19 not less than five nor more than fifteen years each. The  
20 commission shall require of the applicant full disclosure,  
21 including the proposed plans and schedule of expenditures for or

1 in support of the use of PEG access facilities and equipment and  
2 broadband facilities.

3       **§ -70 Transfer of cable franchise.** (a) No cable  
4 franchise, including the rights, privileges, and obligations  
5 thereof, may be assigned, sold, leased, encumbered, or otherwise  
6 transferred, voluntarily or involuntarily, directly or  
7 indirectly, including by transfer of control of any cable  
8 system, whether by change in ownership or otherwise, except upon  
9 written application to and approval by the commission. The form  
10 of the application shall be prescribed by the commission.

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

13       **§ -71 Rate, filed with the commission; approval.** (a)  
14 The commission shall require each cable operator to file a  
15 schedule of its rates of service on a form and with the notice  
16 that the commission may prescribe.

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

20       **§ -72 Reports.** Each cable operator shall file with the  
21 commission reports of its financial, technical, and operational  
22 condition and its ownership. The reports shall be made in a

1 form and on the time schedule prescribed by the commission and  
2 shall be kept on file open to the public.

3       **§ -73 Annual fees.** (a) Each cable operator shall pay an  
4 annual fee to be determined by the commission. The fees so  
5 collected under this section shall be deposited into the  
6 commission special fund established under section -22.

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

10       **§ -74 Criminal and civil liability.** Nothing in this  
11 chapter shall be deemed to affect the criminal and civil  
12 liability of cable programmers, cable operators, or PEG access  
13 organizations pursuant to the federal, state, or local laws  
14 regarding libel, slander, obscenity, incitement, invasions of  
15 privacy, false or misleading advertising, or other similar laws,  
16 except that no PEG access organization shall incur any such  
17 liability arising from, based on, or related to any program not  
18 created by the PEG access organization, which is broadcast on  
19 any channel obtained under section -65, or under similar  
20 arrangements."

21                                   **PART III**

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

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

1 the person responsible for the renewal, restoration,  
2 reactivation, or reinstatement of a license, upon the  
3 application for renewal, restoration, reactivation, or  
4 reinstatement of the license. If the fees are not paid, the  
5 director may deny renewal, restoration, reactivation, or  
6 reinstatement of the license. The director may establish,  
7 increase, decrease, or repeal the fees when necessary pursuant  
8 to rules adopted under chapter 91. The director may also  
9 increase or decrease the fees pursuant to section 92-28.

10 There is created in the state treasury a special fund to be  
11 known as the compliance resolution fund to be expended by the  
12 director's designated representatives as provided by this  
13 subsection. Notwithstanding any law to the contrary, all  
14 revenues, fees, and fines collected by the department shall be  
15 deposited into the compliance resolution fund. Unencumbered  
16 balances existing on June 30, 1999, in the cable television fund  
17 under chapter 440G, the division of consumer advocacy fund under  
18 chapter 269, the financial institution examiners' revolving  
19 fund, section 412:2-109, the special handling fund, section 414-  
20 13, and unencumbered balances existing on June 30, 2002, in the  
21 insurance regulation fund, section 431:2-215, shall be deposited  
22 into the compliance resolution fund. This provision shall not

1 apply to any fee imposed by the Hawaii communications commission  
2 pursuant to chapter \_\_\_ including the regulatory fee in  
3 section\_\_\_\_-23, the drivers education fund underwriters fee,  
4 section 431:10C-115, insurance premium taxes and revenues,  
5 revenues of the workers' compensation special compensation fund,  
6 section 386-151, the captive insurance administrative fund,  
7 section 431:19-101.8, the insurance commissioner's education and  
8 training fund, section 431:2-214, the medical malpractice  
9 patients' compensation fund as administered under section 5 of  
10 Act 232, Session Laws of Hawaii 1984, and fees collected for  
11 deposit in the office of consumer protection restitution fund,  
12 section 487-14, the real estate appraisers fund, section 466K-1,  
13 the real estate recovery fund, section 467-16, the real estate  
14 education fund, section 467-19, the contractors recovery fund,  
15 section 444-26, the contractors education fund, section 444-29,  
16 the condominium management education fund, section 514A-131, and  
17 the condominium education trust fund, section 514B-71. Any law  
18 to the contrary notwithstanding, the director may use the moneys  
19 in the fund to employ, without regard to chapter 76, hearings  
20 officers and attorneys. All other employees may be employed in  
21 accordance with chapter 76. Any law to the contrary  
22 notwithstanding, the moneys in the fund shall be used to fund

1 the operations of the department. The moneys in the fund may be  
2 used to train personnel as the director deems necessary and for  
3 any other activity related to compliance resolution.

4 As used in this subsection, unless otherwise required by the  
5 context, "compliance resolution" means a determination of  
6 whether:

- 7 (1) Any licensee or applicant under any chapter subject to  
8 the jurisdiction of the department of commerce and  
9 consumer affairs has complied with that chapter;
- 10 (2) Any person subject to chapter 485A has complied with  
11 that chapter;
- 12 (3) Any person submitting any filing required by chapter  
13 514E or section 485A-202(a)(26) has complied with  
14 chapter 514E or section 485A-202(a)(26);
- 15 (4) Any person has complied with the prohibitions against  
16 unfair and deceptive acts or practices in trade or  
17 commerce; or
- 18 (5) Any person subject to chapter 467B has complied with  
19 that chapter;

20 and includes work involved in or supporting the above functions,  
21 licensing, or registration of individuals or companies regulated

1 by the department, consumer protection, and other activities of  
2 the department.

3 The director shall prepare and submit an annual report to  
4 the governor and the legislature on the use of the compliance  
5 resolution fund. The report shall describe expenditures made  
6 from the fund including non-payroll operating expenses."

7 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

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

16 (1) By the public utilities commission, the labor and  
17 industrial relations appeals board, and the Hawaii  
18 labor relations board;

19 (2) By any court or judicial or legislative office of the  
20 State; provided that if the attorney general is  
21 requested to provide representation to a court or  
22 judicial office by the chief justice or the chief

1 justice's designee, or to a legislative office by the  
2 speaker of the house of representatives and the  
3 president of the senate jointly, and the attorney  
4 general declines to provide such representation on the  
5 grounds of conflict of interest, the attorney general  
6 shall retain an attorney for the court, judicial, or  
7 legislative office, subject to approval by the court,  
8 judicial, or legislative office;

9 (3) By the legislative reference bureau;

10 (4) By any compilation commission that may be constituted  
11 from time to time;

12 (5) By the real estate commission for any action involving  
13 the real estate recovery fund;

14 (6) By the contractors license board for any action  
15 involving the contractors recovery fund;

16 (7) By the trustees for any action involving the travel  
17 agency recovery fund;

18 (8) By the office of Hawaiian affairs;

19 (9) By the department of commerce and consumer affairs for  
20 the enforcement of violations of chapters 480 and 485A;

21 (10) As grand jury counsel;

- 1 (11) By the Hawaiian home lands trust individual claims
- 2 review panel;
- 3 (12) By the Hawaii health systems corporation, or its
- 4 regional system boards, or any of their facilities;
- 5 (13) By the auditor;
- 6 (14) By the office of ombudsman;
- 7 (15) By the insurance division;
- 8 (16) By the University of Hawaii;
- 9 (17) By the Kahoolawe island reserve commission;
- 10 (18) By the division of consumer advocacy;
- 11 (19) By the office of elections;
- 12 (20) By the campaign spending commission;
- 13 (21) By the Hawaii tourism authority, as provided in section
- 14 201B-2.5; ~~[ex]~~

15 (22) By the Hawaii communications commission; or

16 [~~+22~~] (23) By a department, in the event the attorney

17 general, for reasons deemed by the attorney general

18 good and sufficient, declines to employ or retain an

19 attorney for a department; provided that the governor

20 thereupon waives the provision of this section."

21 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is

22 amended by amending subsection (c) to read as follows:

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

13           SECTION 6. Section 46-15, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15           "(a) The mayor of each county, after holding a public  
16 hearing on the matter and receiving the approval of the  
17 respective council, shall be empowered to designate areas of  
18 land for experimental and demonstration housing projects, the  
19 purposes of which are to research and develop ideas that would  
20 reduce the cost of housing in the State. Except as hereinafter  
21 provided, the experimental and demonstration housing projects  
22 shall be exempt from all statutes, ordinances, charter

1 provisions, and rules or regulations of any governmental agency  
2 or public utility relating to planning, zoning, construction  
3 standards for subdivisions, development and improvement of land,  
4 and the construction and sale of homes thereon; provided that  
5 the experimental and demonstration housing projects shall not  
6 affect the safety standards or tariffs approved by the public  
7 utility [~~commissions~~] commission or the Hawaii communications  
8 commission for such public utility.

9       The mayor of each county with the approval of the respective  
10 council may designate a county agency or official who shall have  
11 the power to review all plans and specifications for the  
12 subdivisions, development and improvement of the land involved,  
13 and the construction and sale of homes thereon. The county  
14 agency or official shall have the power to approve or disapprove  
15 or to make modifications to all or any portion of the plans and  
16 specifications.

17       The county agency or official shall submit preliminary plans  
18 and specifications to the legislative body of the respective  
19 county for its approval or disapproval. The final plans and  
20 specifications for the project shall be deemed approved by the  
21 legislative body if the final plans and specifications do not  
22 substantially deviate from the approved preliminary plans and

1 specifications. The final plans and specifications shall  
2 constitute the standards for the particular project.

3 No action shall be prosecuted or maintained against any  
4 county, its officials or employees, on account of actions taken  
5 in reviewing, approving, or disapproving such plans and  
6 specifications.

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

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

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

- 1           (f) This section shall not apply to:
- 2           (1) Any proceedings of the public utilities commission;
- 3                 ~~[or]~~
- 4           (2) Any county or county agency that is exempted by county
- 5                 ordinance from this section~~[-]~~; or
- 6           (3) Any proceedings of the Hawaii communications
- 7                 commission."

8           SECTION 8. Section 92-21, Hawaii Revised Statutes, is

9           amended to read as follows:

10           "**§92-21 Copies of records; other costs and fees.** Except as

11 otherwise provided by law, a copy of any government record,

12 including any map, plan, diagram, photograph, photostat or

13 geographic information system digital data file, which is open

14 to the inspection of the public, shall be furnished to any

15 person applying for the same by the public officer having charge

16 or control thereof upon the payment of the reasonable cost of

17 reproducing such copy. Except as provided in section 91-2.5,

18 the cost of reproducing any government record, except geographic

19 information system digital data, shall not be less than 5 cents

20 per page, sheet, or fraction thereof. The cost of reproducing

21 geographic information system digital data shall be in

22 accordance with rules adopted by the agency having charge or

1 control of that data. Such reproduction cost shall include but  
2 shall not be limited to labor cost for search and actual time  
3 for reproducing, material cost, including electricity cost,  
4 equipment cost, including rental cost, cost for certification,  
5 and other related costs. All fees shall be paid in by the  
6 public officer receiving or collecting the same to the state  
7 director of finance, the county director of finance, or to the  
8 agency or department by which the officer is employed, as  
9 government realizations; provided that fees collected by the  
10 public utilities commission pursuant to this section shall be  
11 deposited in the public utilities commission special fund  
12 established under section 269-33[-], and fees collected by the  
13 Hawaii communications commission shall be deposited in the  
14 Hawaii communications commission special fund established under  
15 section \_\_\_\_-22."

16 SECTION 9. Section 101-43, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§101-43 Requirements prior exercise of power.** Any  
19 corporation having the power of eminent domain under section  
20 101-41 may continue to exercise the power, provided that prior  
21 to the exercise of the power:

1           (1) The corporation submits to the public utilities  
2           commission or, beginning July 1, 2010 in the case of  
3           telecommunications carriers or telecommunications  
4           common carriers, to the Hawaii communications  
5           commission its intention to exercise the power, with a  
6           description of the property to be condemned; and

7           (2) The public utilities commission or, beginning July 1,  
8           2010 in the case of telecommunications carriers or  
9           telecommunications common carriers, the Hawaii  
10          communications commission finds that the proposed  
11          condemnation is in the public interest, that the  
12          proposed condemnation is necessary, and that the  
13          corporation will use the property for its operations as  
14          a public utility."

15          SECTION 10. Section 163D-6, Hawaii Revised Statutes, is  
16          amended by amending subsection (b) to read as follows:

17          "(b) If the corporation acquires the assets of a private or  
18          other corporation, then, notwithstanding any law to the  
19          contrary:

20          (1) Neither the corporation nor any subsidiary corporation  
21          vested with the assets shall be subject to chapter 91  
22          with respect to the assets;

- 1 (2) Employees retained to operate the assets shall not be  
2 subject to chapter 76;
- 3 (3) Assets constituting real property interest shall not be  
4 subject to chapter 171;
- 5 (4) No investment, loan, or use of funds by the corporation  
6 or a subsidiary corporation vested with the assets  
7 shall be subject to chapter 42F or 103; and
- 8 (5) Neither the corporation nor a subsidiary corporation  
9 vested with the assets shall constitute a public  
10 utility or be subject to the jurisdiction of the public  
11 utilities commission under chapter 269[-] or the Hawaii  
12 communications commission under chapter \_\_\_\_."

13 SECTION 11. Section 166-4, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§166-4 Park development.** Except as herein provided, the  
16 department may develop, on behalf of the State or in partnership  
17 with a federal agency, a county, or a private party,  
18 agricultural parks which, at the option of the board, shall be  
19 exempt from all statutes, ordinances, charter provisions, and  
20 rules of any governmental agency relating to planning, zoning,  
21 construction standards for subdivisions, development and

1 improvement of land, and the construction of buildings thereon;  
2 provided that:

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

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

11 (3) The legislative body of the county in which the  
12 agricultural park is to be situated shall have approved  
13 the agricultural park.

14 (A) The legislative body shall approve or disapprove  
15 the agricultural park within forty-five days after  
16 the department has submitted the preliminary plans  
17 and specifications for the agricultural park to  
18 the legislative body. If after the forty-fifth  
19 day an agricultural park is not disapproved, it  
20 shall be deemed approved by the legislative body.

21 (B) No action shall be prosecuted or maintained  
22 against any county, its officials, or employees,

1 on account of actions taken by them in reviewing,  
2 approving, or disapproving the plans and  
3 specifications.

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

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

6           SECTION 12. Section 166E-10, Hawaii Revised Statutes, is  
7           amended to read as follows:

8           "~~+~~**§166E-10**~~+~~ **Non-agricultural park land development.** On  
9           behalf of the State or in partnership with a federal agency, a  
10          county, or a private party and except as provided in this  
11          section, the department may develop non-agricultural park lands  
12          that, at the option of the board, may be exempt from all  
13          statutes, ordinances, charter provisions, and rules of any  
14          governmental agency relating to planning, zoning, construction  
15          standards for subdivisions, development and improvement of land,  
16          and construction of buildings thereon; provided that:

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

20          (2) The development of the proposed non-agricultural park  
21          land does not contravene any safety standards or  
22          tariffs approved for public utilities by the public

1           utilities commission [~~for public utilities,~~] or the  
2           Hawaii communications commission;

3           (3) The county in which the non-agricultural park  
4           development is proposed shall approve the non-  
5           agricultural park development; and provided further  
6           that:

7           (A) The county shall approve or disapprove the  
8           development within forty-five days after the  
9           department submits preliminary plans and  
10          specifications for the development to the county.  
11          If the county does not disapprove the development  
12          after the forty-fifth day, the development shall  
13          be deemed approved;

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

19          (C) The final plans and specifications for the  
20          development shall be deemed approved by the county  
21          if the final plans and specifications do not  
22          substantially deviate from the preliminary plans

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

- 14           (4) The State shall assume the responsibility of  
15           maintaining all roads and infrastructure improvements  
16           within the boundaries if the improvements are developed  
17           exempt from applicable county ordinances, charter  
18           provisions, and rules regarding development."

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

21           "(b) At the option of the board, the development of an  
22           industrial park shall be exempt from all statutes, ordinances,

1 charter provisions, and rules of any governmental agency  
2 relating to planning, zoning, construction standards for  
3 subdivision development and improvement of land, and the  
4 construction of buildings thereon; provided that:

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

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

12 (3) The legislative body of the county in which the  
13 industrial park is proposed to be situated approves the  
14 industrial park.

15 (A) The legislative body shall approve or disapprove  
16 the industrial park within forty-five days after  
17 the department has submitted preliminary plans  
18 and specifications for the industrial park to the  
19 legislative body. If after the forty-fifth day,  
20 an industrial park is not disapproved, it shall  
21 be deemed approved by the legislative body.

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1 (B) No action shall be prosecuted or maintained  
2 against any country, its officials, or employees,  
3 on account of actions taken by them in reviewing,  
4 approving, or disapproving the plans and  
5 specifications.

6 (C) The final plans and specifications for the  
7 industrial park shall be deemed approved by the  
8 legislative body if the final plans and  
9 specifications for the industrial park do not  
10 substantially deviate from the preliminary plans  
11 and specifications. The determination that the  
12 final plans and specifications do not  
13 substantially deviate from the preliminary plans  
14 specifications of the industrial park shall rest  
15 with the board. The final plans and  
16 specifications for the park shall constitute the  
17 planning, zoning, building, improvement,  
18 construction, and subdivision standards for that  
19 industrial park. For the purposes of sections  
20 501-85 and 502-17, the chairperson of the board  
21 or the responsible county official may certify  
22 maps and plans of land connected with the

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

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

11 SECTION 14. Section 196D-10, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

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

16 SECTION 15. Section 201H-13, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§201H-13[+] **Eminent domain, exchange or use of public**  
19 **property.** The corporation may acquire any real property,  
20 including fixtures and improvements, or interest therein:  
21 through voluntary negotiation; through exchange of land in  
22 accordance with section 171-50, provided that the public land to

1 be exchanged need not be of like use to that of the private  
2 land; or by the exercise of the power of eminent domain which it  
3 deems necessary by the adoption of a resolution declaring that  
4 the acquisition of the property described therein is in the  
5 public interest and required for public use. The corporation  
6 shall exercise the power of eminent domain granted by this  
7 section in the same manner and procedure as is provided by  
8 chapter 101 and otherwise in accordance with all applicable  
9 provisions of the general laws of the State; provided that  
10 condemnation of parcels greater than fifteen acres shall be  
11 subject to legislative disapproval expressed in a concurrent  
12 resolution adopted by majority vote of the senate and the house  
13 of representatives in the first regular or special session  
14 following the date of condemnation.

15 The corporation may acquire by the exercise of the power of  
16 eminent domain property already devoted to a public use;  
17 provided that no property belonging to any government may be  
18 acquired without its consent, and that no property belonging to  
19 a public utility corporation may be acquired without the  
20 approval of the public utilities commission[~~7~~] or, beginning  
21 July 1, 2010 in the case of telecommunications carriers or  
22 telecommunications common carriers, the Hawaii communications

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

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

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

18 When adopted, the rules shall have the force and effect of  
19 law and shall supersede, for all housing projects in which the  
20 State, through the corporation, shall participate, all other  
21 inconsistent laws, ordinances, and rules relating to the use,  
22 zoning, planning, and development of land, and the construction

1 of dwelling units thereon. The rules, before becoming  
2 effective, shall be presented to the legislative body of each  
3 county in which they will be effective and the legislative body  
4 of any county may within forty-five days approve or disapprove,  
5 for that county, any or all of the rules by a majority vote of  
6 its members. On the forty-sixth day after submission, any rules  
7 not disapproved shall be deemed to have been approved by the  
8 county."

9 SECTION 17. Section 201H-38, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

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

19 (1) The corporation finds the housing project is consistent  
20 with the purpose and intent of this chapter, and meets  
21 minimum requirements of health and safety;

1           (2) The development of the proposed housing project does  
2           not contravene any safety standards, tariffs, or rates  
3           and fees approved for public utilities by the public  
4           utilities commission [~~for public utilities~~] or the  
5           Hawaii communications commission, or of the various  
6           boards of water supply authorized under chapter 54;

7           (3) The legislative body of the county in which the housing  
8           project is to be situated shall have approved the  
9           project with or without modifications:

10           (A) The legislative body shall approve, approve with  
11           modification, or disapprove the project by  
12           resolution within forty-five days after the  
13           corporation has submitted the preliminary plans  
14           and specifications for the project to the  
15           legislative body. If on the forty-sixth day a  
16           project is not disapproved, it shall be deemed  
17           approved by the legislative body;

18           (B) No action shall be prosecuted or maintained  
19           against any county, its officials, or employees  
20           on account of actions taken by them in reviewing,  
21           approving, modifying, or disapproving the plans  
22           and specifications; and

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

18 (4) The land use commission shall approve, approve with  
19 modification, or disapprove a boundary change within  
20 forty-five days after the corporation has submitted a  
21 petition to the commission as provided in section 205-  
22 4. If, on the forty-sixth day, the petition is not

1 disapproved, it shall be deemed approved by the  
2 commission."

3 SECTION 18. Section 205A-46, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) A variance may be granted for a structure or activity  
6 otherwise prohibited by this part if the authority finds in  
7 writing, based on the record presented, that the proposed  
8 structure or activity is necessary for or ancillary to:

- 9 (1) Cultivation of crops;
- 10 (2) Aquaculture;
- 11 (3) Landscaping; provided that the authority finds that  
12 the proposed structure or activity will not adversely  
13 affect beach processes and will not artificially fix  
14 the shoreline;
- 15 (4) Drainage;
- 16 (5) Boating, maritime, or watersports recreational  
17 facilities;
- 18 (6) Facilities or improvements by public agencies or  
19 public utilities regulated under chapter 269[+] or  
20 chapter \_\_\_\_\_ ;
- 21 (7) Private facilities or improvements that are clearly in  
22 the public interest;

- 1           (8) Private facilities or improvements which will neither  
2           adversely affect beach processes nor artificially fix  
3           the shoreline; provided that the authority also finds  
4           that hardship will result to the applicant if the  
5           facilities or improvements are not allowed within the  
6           shoreline area;
- 7           (9) Private facilities or improvements that may  
8           artificially fix the shoreline; provided that the  
9           authority also finds that shoreline erosion is likely  
10          to cause hardship to the applicant if the facilities  
11          or improvements are not allowed within the shoreline  
12          area, and the authority imposes conditions to prohibit  
13          any structure seaward of the existing shoreline unless  
14          it is clearly in the public interest; or
- 15          (10) Moving of sand from one location seaward of the  
16          shoreline to another location seaward of the  
17          shoreline; provided that the authority also finds that  
18          moving of sand will not adversely affect beach  
19          processes, will not diminish the size of a public  
20          beach, and will be necessary to stabilize an eroding  
21          shoreline."

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

3 "[~~f~~]**§239-6.5**[~~]~~ **Tax credit for lifeline telephone service**  
4 **subsidy.** A telecommunications service provider or common  
5 carrier subject to this chapter that has been authorized to  
6 establish lifeline telephone service rates by the public  
7 utilities commission prior to July 1, 2010, or the Hawaii  
8 communications commission beginning July 1, 2010, shall be  
9 allowed a tax credit, equal to the lifeline telephone service  
10 costs incurred by the utility, to be applied against the  
11 utility's tax imposed by this chapter. The amount of this  
12 credit shall be determined and certified annually by the [~~public~~  
13 ~~utilities commission.~~] Hawaii communications commission. The  
14 tax liability for a telephone public utility claiming the credit  
15 shall be calculated in the manner prescribed in section 239-5;  
16 provided that the amount of tax due from the utility shall be  
17 net of the lifeline service credit."

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

20 "(b) Any other law to the contrary notwithstanding, any  
21 decision by the State, the department of transportation, a  
22 county, or any officers, employees, or agents of the State, the

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1 department of transportation, or a county to select or apply  
2 flexibility in highway design pursuant to this section and  
3 consistent with the practices used by the Federal Highway  
4 Administration and the American Association of State Highway and  
5 Transportation Officials shall not give rise to a cause of  
6 action or claim against:

7 (1) The State;

8 (2) The department of transportation;

9 (3) The counties;

10 (4) Any public utility regulated under chapter 269 or  
11 chapter that places its facilities within the  
12 highway right of way; or

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

15 SECTION 21. Section 269-1, Hawaii Revised Statutes, is  
16 amended by:

17 1. Repealing the definition of "carrier of last resort".

18 [~~"Carrier of last resort" means a telecommunications carrier~~  
19 ~~designated by the commission to provide universal service in a~~  
20 ~~given local exchange service area determined to be lacking in~~  
21 ~~effective competition."~~]

1           2. Repealing the definition of "designated local exchange  
2 service area".

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

6           3. Amending the definition of "Public utility" to read as  
7 follows:

8           "Public utility":

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

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1 disposal of sewage; provided that the term shall  
2 include:

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

5 (B) Any telecommunications carrier or  
6 telecommunications common carrier;

7 (2) Shall not include:

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

10 (B) Persons owning or operating taxicabs, as defined  
11 in this section;

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

18 (D) Persons engaged in the business of warehousing or  
19 storage unless the commission finds that  
20 regulation thereof is necessary in the public  
21 interest;

1 (E) The business of any carrier by water to the extent  
2 that the carrier enters into private contracts for  
3 towage, salvage, hauling, or carriage between  
4 points within the State and the carriage is not  
5 pursuant to either an established schedule or an  
6 undertaking to perform carriage services on behalf  
7 of the public generally;

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

14 (G) Any person who:  
15 (i) Controls, operates, or manages plants or  
16 facilities for the production, transmission,  
17 or furnishing of power primarily or entirely  
18 from nonfossil fuel sources; and  
19 (ii) Provides, sells, or transmits all of that  
20 power, except such power as is used in its  
21 own internal operations, directly to a

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1 public utility for transmission to the  
2 public;

3 (H) A telecommunications provider only to the extent  
4 determined by the commission, or beginning July 1,  
5 2010, by the Hawaii communications commission  
6 pursuant to section [~~269-16.9;~~] -34;

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

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

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

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- 1                   (ii) The primary function of the facility shall  
2                   be the processing of secondary treated  
3                   wastewater that has been produced by a  
4                   municipal wastewater treatment facility that  
5                   is owned by a state or county agency;
- 6                   (iii) The facility shall not make sales of water  
7                   to residential customers;
- 8                   (iv) The facility may distribute and sell  
9                   recycled or reclaimed water to entities not  
10                  covered by a state or county service  
11                  contract; provided that, in the absence of  
12                  regulatory oversight and direct competition,  
13                  the distribution and sale of recycled or  
14                  reclaimed water shall be voluntary and its  
15                  pricing fair and reasonable. For purposes  
16                  of this subparagraph, "recycled water" and  
17                  "reclaimed water" mean treated wastewater  
18                  that by design is intended or used for a  
19                  beneficial purpose; and
- 20                  (v) The facility shall not be engaged, either  
21                  directly or indirectly, in the processing of  
22                  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, deep  
7           seawater.

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

18          4. Amending the definition of "telecommunications carrier"  
19          or "telecommunications common carrier" to read as follows:

20          "Telecommunications carrier" or "telecommunications common  
21          carrier" [~~means any person that owns, operates, manages, or~~  
22          ~~controls any facility used to furnish telecommunications~~

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1 ~~services for profit to the public, or to classes of users as to~~  
2 ~~be effectively available to the public, engaged in the provision~~  
3 ~~of services, such as voice, data, image, graphics, and video~~  
4 ~~services, that make use of all or part of their transmission~~  
5 ~~facilities, switches, broadcast equipment, signaling, or~~  
6 ~~control devices.] has the same meaning as in section -1."~~

7       5. Amending the definition of "telecommunications service"  
8 or "telecommunications" to read as follows:

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

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

21       "**§269-51 Consumer advocate; director of commerce and**  
22 **consumer affairs.** The director of commerce and consumer affairs

1 shall be the consumer advocate in hearings before the public  
2 utilities commission[-] and the Hawaii communications  
3 commission. The consumer advocate shall represent, protect, and  
4 advance the interests of all consumers, including small  
5 businesses, of utility services. The consumer advocate shall  
6 not receive any salary in addition to the salary received as  
7 director of commerce and consumer affairs.

8 The responsibility for advocating the interests of the  
9 consumer of utility services shall be separate and distinct from  
10 the responsibilities of the public utilities commission and  
11 those assistants employed by the commission. As consumer  
12 advocate, the director of commerce and consumer affairs shall  
13 have full rights to participate as a party in interest in all  
14 proceedings before the public utilities commission."

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

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

18 (1) any public utility, telecommunications carrier, or cable  
19 operator has violated or failed to comply with any provision of  
20 this part or of any state or federal law; (2) any public  
21 utility, telecommunications carrier, or cable operator has  
22 failed to comply with any rule, regulation, or other requirement

1 of the public utilities commission, the Hawaii communications  
2 commission, or of any other state or federal agency; (3) any  
3 public utility, telecommunications carrier, or cable operator  
4 has failed to comply with any provision of its charter [~~or~~],  
5 franchise[+] , or certificate of public convenience and  
6 necessity; (4) changes, additions, extensions, or repairs to the  
7 plant or service of any public utility, telecommunications  
8 carrier, or cable operator are necessary to meet the reasonable  
9 convenience or necessity of the public; or (5) the rates, fares,  
10 classifications, charges, or rules of any public utility,  
11 telecommunications carrier, or cable operator are unreasonable  
12 or unreasonably discriminatory, the consumer advocate may  
13 institute proceedings for appropriate relief before the public  
14 utilities commission[-] or the Hawaii communications commission.  
15 The consumer advocate may appeal any final decision and order in  
16 any proceeding to which the consumer advocate is a party in the  
17 manner provided by law.

18 (e) The consumer advocate may file with the public  
19 utilities commission or the Hawaii communications commission and  
20 serve on any public utility, telecommunications carrier, or  
21 cable operator a request in writing to furnish any information  
22 reasonably relevant to any matter or proceeding before the

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

1 foregoing, such requests may ask the public utility,  
2 telecommunications carrier, or cable operator to:

3 (1) Furnish any information with which the consumer  
4 advocate may require concerning the condition,  
5 operations, practices, or services of the public  
6 utility[+], telecommunications carrier, or cable  
7 operator;

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

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

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

3 "**§269-55 Handling of complaints.** The consumer advocate  
4 shall counsel public utility, telecommunications, and cable  
5 service customers in the handling of consumer complaints before  
6 the public utilities commission[-] or the Hawaii communications  
7 commission. The public utilities commission shall provide a  
8 central clearinghouse of information by collecting and compiling  
9 all consumer complaints and inquiries concerning public  
10 utilities. The Hawaii communications commission shall provide a  
11 central clearing house of information by collecting and  
12 compiling all consumer complaints and inquiries concerning  
13 telecommunications carriers and cable operators."

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

16 "[+]§339K-2[+] **Compact administrator.** The compact  
17 administrator, acting jointly with like officers of other party  
18 states, may promulgate rules and regulations to carry out more  
19 effectively the terms of the compact. The compact administrator  
20 shall cooperate with all departments, agencies, and officers of  
21 and in the government of this State and its subdivisions in  
22 facilitating the present administration of the compact or of any

1 supplementary agreement or agreements entered into by this State  
2 thereunder. The compact administrator shall adopt the practices  
3 and may impose the fees authorized under article III of the  
4 compact, except that state and county law enforcement agencies  
5 ~~[and]~~, the public utilities commission, and the Hawaii  
6 communications commission shall retain their enforcement and  
7 inspection authority relating to carriers."

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

10 "(b) The authority may acquire by the exercise of the power  
11 of eminent domain property already devoted to a public use;  
12 provided that no property belonging to any government may be  
13 acquired without its consent, and that no property belonging to  
14 a public utility may be acquired without the approval of the  
15 public utilities commission~~[+]~~ or, beginning July 1, 2010 in the  
16 case of telecommunications carriers or telecommunications common  
17 carriers, the Hawaii communications commission; and provided  
18 further that the acquisition is subject to legislative  
19 disapproval expressed in a concurrent resolution adopted by  
20 majority vote of the senate and the house of representatives in  
21 the first regular or special session following the date of  
22 condemnation."

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

3 "**§448E-13 Exemption of public utility and ~~community~~**  
4 **~~antennae~~ cable television company employees.** All employees of  
5 a public utility within the State under a franchise or charter  
6 granted by the State which is regulated by the public utilities  
7 commission [~~and community antennae television company,~~] or the  
8 Hawaii communications commission, or employees of a cable  
9 operator within the State under a franchise granted by the State  
10 which is regulated by the Hawaii communications commission,  
11 while so employed, shall be exempt from the provision of this  
12 chapter."

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

15 "**§481-11 Remedies cumulative.** The remedies prescribed in  
16 this part are cumulative and in addition to the remedies  
17 prescribed in [~~chapter~~] chapters 269 and \_\_\_\_\_ for discriminations  
18 by public utilities. If any conflict arises between this part  
19 and chapter 269 [~~, the latter prevails.~~] or chapter \_\_\_\_\_, chapter  
20 269 or chapter \_\_\_\_\_, whichever is applicable, shall prevail."

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

1       "**§481P-5 Exemptions.** This chapter shall not apply to:

2       (1) A person who initiates telephone calls to a residence  
3             for the sole purpose of polling or soliciting the  
4             expression of ideas, opinions, or votes, or a person  
5             soliciting solely for a political or religious cause  
6             or purpose;

7       (2) A securities broker-dealer, salesperson, investment  
8             adviser, or investment adviser representative who is  
9             registered with this State to sell securities or who  
10            is authorized to sell securities in this State  
11            pursuant to federal securities laws, when soliciting  
12            over the telephone within the scope of the person's  
13            registration;

14       (3) A financial institution that is authorized to accept  
15             deposits under its chartering or licensing authority  
16             where such deposits are insured by the Federal Deposit  
17             Insurance Corporation or the National Credit Union  
18             Administration, including but not limited to a bank,  
19             savings bank, savings and loan association, depository  
20             financial services loan company, or credit union, or a  
21             nondepository financial services loan company that is  
22             licensed or authorized to conduct business in this

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1 State by the commissioner of financial institutions,  
2 or an affiliate or subsidiary of a financial  
3 institution as defined in chapter 412;

4 (4) A person or organization that is licensed or  
5 authorized to conduct business in this State by the  
6 insurance commissioner including but not limited to an  
7 insurance company and its employees, while engaged in  
8 the business of selling or advertising the sale of  
9 insurance products or services;

10 (5) A college or university accredited by an accrediting  
11 organization recognized by the United States  
12 Department of Education;

13 (6) A person who publishes a catalog of at least fifteen  
14 pages, four times a year, with a circulation of at  
15 least one hundred thousand, where the catalog includes  
16 clear disclosure of sale prices, shipping, handling,  
17 and other charges;

18 (7) A political subdivision or instrumentality of the  
19 United States, or any state of the United States;

20 (8) The sale of goods or services by telecommunications or  
21 landline (i.e., cable) or wireless video service  
22 providers, for which the terms and conditions of the

1 offering, production, or sale are regulated by the  
2 Federal Communications Commission, the public  
3 utilities commission, or beginning July 1, 2010, the  
4 Hawaii communications commission, [~~or pursuant to~~  
5 ~~chapter 440G,~~] including the sale of goods or services  
6 by affiliates of these telecommunications or video  
7 service providers. Nothing herein shall be construed  
8 to preclude or preempt actions brought under any other  
9 laws including chapter 480;

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

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

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

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

19 (1) Express or implied warranties;

20 (2) Maintenance agreements; and

21 (3) Warranties, service contracts, and maintenance  
22 agreements offered by public utilities on their

1 transmission devices to the extent they are regulated  
2 by the public utilities commission or the [~~department~~  
3 ~~of commerce and consumer affairs.~~] Hawaii  
4 communications commission."

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

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

16 (b) The public utilities commission or, in the case of  
17 telecommunications carriers or telecommunications common  
18 carriers, the Hawaii communications commission may examine or  
19 investigate each distributor, the manner in which it is  
20 operated, its prices and rates, its operating costs and  
21 expenses, the value of its property and assets, the amount and  
22 disposition of its income, any of its financial transactions,

1 its business relations with other persons, companies, or  
2 corporations, its compliance with all applicable state and  
3 federal laws, and all matters of any nature affecting the  
4 relations and transactions between the distributor and the  
5 public, persons, or businesses.

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

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

1            "[+]§659-3[+] **Forfeiture of franchise.** The several circuit  
2 courts shall have jurisdiction of all proceedings in, or in the  
3 nature of, quo warranto, brought by or in the name of the public  
4 utilities commission[7] or the Hawaii communications commission,  
5 or the State, for the forfeiture of the franchise of any  
6 corporate body offending against any law relating to such  
7 corporation, for misuser, for nonuser, for doing or committing  
8 any act or acts amounting to a surrender of its charter and for  
9 exercising rights not conferred upon it."

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

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

22

**PART IV**

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1 SECTION 34. Section 269-16.5, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§269-16.5 Lifeline telephone rates. (a) The public  
4 utilities commission shall implement a program to achieve  
5 lifeline telephone rates for residential telephone users.~~

6 (b) ~~"Lifeline telephone rate" means a discounted rate for  
7 residential telephone users identified as elders with limited  
8 income and the handicapped with limited income as designated by  
9 the commission.~~

10 (c) ~~The commission shall require every telephone public  
11 utility providing local telephone service to file a schedule of  
12 rates and charges providing a rate for lifeline telephone  
13 subscribers.~~

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

18 SECTION 35. Section 269-16.6, Hawaii Revised Statutes, is  
19 repealed.

20 [~~"§269-16.6 Telecommunications relay services for the deaf,  
21 persons with hearing disabilities, and persons with speech  
22 disabilities. (a) The public utilities commission shall~~

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

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

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

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

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

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

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

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

18       ~~"Telecommunications relay services" means telephone~~  
19 ~~transmission services that provide an individual who has a~~  
20 ~~hearing or speech disability the ability to engage in~~  
21 ~~communication by wire or radio with a hearing individual in a~~  
22 ~~manner that is functionally equivalent to the ability of an~~

1 ~~individual who does not have a hearing or speech disability to~~  
2 ~~communicate using wire or radio voice communication services.~~

3 ~~"Telecommunications relay services" includes services that~~  
4 ~~enable two way communication using text telephones or other~~  
5 ~~nonvoice terminal devices, speech to speech services, video~~  
6 ~~relay services, and non-English relay services." ]~~

7 SECTION 36. Section 269-16.8, Hawaii Revised Statutes, is  
8 repealed.

9 [~~"§269-16.8~~ **Aggregators of telephone service**  
10 **requirements.** ~~(a) For the purposes of this section:~~

11 ~~"Aggregator" means every person or entity that is not a~~  
12 ~~telecommunications carrier, who, in the ordinary course of its~~  
13 ~~business, makes telephones available and aggregates the calls of~~  
14 ~~the public or transient users of its business, including but not~~  
15 ~~limited to a hotel, motel, hospital, or university, that~~  
16 ~~provides operator assisted services through access to an~~  
17 ~~operator service provider.~~

18 ~~"Operator service" means a service provided by a~~  
19 ~~telecommunications company to assist a customer to complete a~~  
20 ~~telephone call.~~

21 ~~(b) The commission, by rule or order, shall adopt and~~  
22 ~~enforce operating requirements for the provision of operator~~

1 ~~assisted services by an aggregator. These requirements shall~~  
2 ~~include, but not be limited to, the following:~~

3 ~~(1) Posting and display of information in a prominent and~~  
4 ~~conspicuous fashion on or near the telephone equipment~~  
5 ~~owned or controlled by the aggregator which states the~~  
6 ~~identity of the operator service provider, the~~  
7 ~~operator service provider's complaint handling~~  
8 ~~procedures, and means by which the customer may access~~  
9 ~~the various operator service providers.~~

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

18 ~~(3) Allowing the customer access to any operator service~~  
19 ~~provider operating in the relevant geographic area~~  
20 ~~through the access method chosen by the provider or as~~  
21 ~~deemed appropriate by the commission.~~

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

5           SECTION 37. Section 269-16.9, Hawaii Revised Statutes, is  
6           repealed.

7           [ "~~§269-16.9 Telecommunications providers and services.~~ (a)  
8           ~~Notwithstanding any provision of this chapter to the contrary,~~  
9           ~~the commission, upon its own motion or upon the application of~~  
10          ~~any person, and upon notice and hearing, may exempt a~~  
11          ~~telecommunications provider or a telecommunications service from~~  
12          ~~any or all of the provisions of this chapter, except the~~  
13          ~~provisions of section 269-34, upon a determination that the~~  
14          ~~exemption is in the public interest. In determining whether an~~  
15          ~~exemption is in the public interest, the commission shall~~  
16          ~~consider whether the exemption promotes state policies in~~  
17          ~~telecommunications, the development, maintenance, and operation~~  
18          ~~of effective and economically efficient telecommunications~~  
19          ~~services, and the furnishing of telecommunications services at~~  
20          ~~just and reasonable rates and in a fair manner in view of the~~  
21          ~~needs of the various customer segments of the telecommunications~~

1 ~~industry. Among the specific factors the commission may~~  
2 ~~consider are:~~

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

6 ~~(2) The benefits accruing to the customers and users of~~  
7 ~~the exempt telecommunications provider or service;~~

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

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

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

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

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- 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;~~
- 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 providers to respond to~~
- 14           ~~competition; and~~
- 15       ~~(12) The potential for the exercise of substantial market~~
- 16           ~~power by the exempt provider or by a provider of the~~
- 17           ~~exempt telecommunications service.~~
- 18       ~~(b) The commission shall expedite, where practicable, the~~
- 19       ~~regulatory process with respect to exemptions and shall adopt~~
- 20       ~~guidelines under which each provider of an exempted service~~
- 21       ~~shall be subject to similar terms and conditions.~~

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

6       ~~(d) The commission may require a telecommunications~~  
7 ~~provider to apply for a certificate of public convenience and~~  
8 ~~necessity pursuant to section 269 7.5; provided that the~~  
9 ~~commission may waive any application requirement whenever it~~  
10 ~~deems the waiver to be in furtherance of the purposes of this~~  
11 ~~section. The exemptions under this section may be granted in a~~  
12 ~~proceeding for certification or in a separate proceeding.~~

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

17       ~~(f) If any provider of an exempt telecommunications service~~  
18 ~~or any exempt telecommunications provider elects to terminate~~  
19 ~~its service, it shall provide notice of this to its customers,~~  
20 ~~the commission, and every telephone public utility providing~~  
21 ~~basic local exchange service in this State. The notice shall be~~  
22 ~~in writing and given not less than six months before the~~

1 ~~intended termination date. Upon termination of service by a~~  
2 ~~provider of an exempt service or by an exempt provider, the~~  
3 ~~appropriate telephone public utility providing basic local~~  
4 ~~exchange service shall ensure that all customers affected by the~~  
5 ~~termination receive basic local exchange service. The~~  
6 ~~commission shall, upon notice and hearing or by rule, determine~~  
7 ~~the party or parties who shall bear the cost, if any, of access~~  
8 ~~to the basic local exchange service by the customers of the~~  
9 ~~terminated exempt service.~~

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

18 ~~(h) For purposes of this section, the commission, upon~~  
19 ~~determination that any area of the State has less than adequate~~  
20 ~~telecommunications service, shall require the existing~~  
21 ~~telecommunications provider to show cause as to why the~~  
22 ~~commission should not authorize an alternative~~

1 ~~telecommunications provider for that area under the terms and~~  
2 ~~conditions of this section." ]~~

3 SECTION 38. Section 269-16.91, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"§269-16.91 Universal service subsidies. (a) For any~~  
6 ~~alternative telecommunications provider authorized to provide~~  
7 ~~basic local exchange service to any area of the State pursuant~~  
8 ~~to section 269-16.9(h), the commission may consider the~~  
9 ~~following:~~

10 ~~(1) Transferring the subsidy, if any, of the local~~  
11 ~~exchange provider's basic residential telephone~~  
12 ~~service to the alternative provider; and~~

13 ~~(2) Transferring from the local exchange carrier to the~~  
14 ~~alternative provider the amounts, if any, generated by~~  
15 ~~the local exchange provider's services other than~~  
16 ~~basic residential telephone service and which are used~~  
17 ~~to subsidize basic residential service in the area.~~

18 ~~(b) To receive the subsidy amounts from the local exchange~~  
19 ~~service provider, the alternative telecommunications provider~~  
20 ~~shall be required, to the extent possible, to obtain basic~~  
21 ~~residential service subsidies from both the local exchange~~  
22 ~~service provider and national universal service providers." ]~~

1 SECTION 39. Section 269-16.92, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§269-16.92] Changes in subscriber carrier selections,~~  
4 ~~prior authorization required; penalties for unauthorized~~  
5 ~~changes. (a) No telecommunications carrier shall initiate a~~  
6 ~~change in a subscriber's selection or designation of a long-~~  
7 ~~distance carrier without first receiving:~~

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

9 ~~(2) An electronic authorization by use of a toll free~~  
10 ~~number;~~

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

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

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

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

20 ~~(b) Upon a determination that any telecommunications~~  
21 ~~carrier has engaged in conduct that is prohibited in subsection~~  
22 ~~(a), the public utilities commission shall order the carrier to~~

1 ~~take corrective action as deemed necessary by the commission and~~  
2 ~~may subject the telecommunications carrier to administrative~~  
3 ~~penalties pursuant to section 269-28. Any proceeds from~~  
4 ~~administrative penalties collected under this section shall be~~  
5 ~~deposited into the public utilities commission special fund.~~

6 ~~The commission, if consistent with the public interest, may~~  
7 ~~suspend, restrict, or revoke the registration, charter, or~~  
8 ~~certificate of the telecommunications carrier, thereby denying,~~  
9 ~~modifying, or limiting the right of the telecommunications~~  
10 ~~carrier to provide service in this State.~~

11 ~~(c) The commission shall adopt rules, pursuant to chapter~~  
12 ~~91, necessary for the purposes of this section. The commission~~  
13 ~~may notify customers of their rights under these rules." ]~~

14 SECTION 40. Section 269-16.95, Hawaii Revised Statutes, is  
15 repealed.

16 [ "~~§269-16.95 Emergency telephone service; capital costs;~~  
17 ~~ratemaking.~~ (a) A public utility providing local exchange  
18 telecommunications services may recover the capital cost and  
19 associated operating expenses of providing a statewide enhanced  
20 911 emergency telephone service in the public switched telephone  
21 network, through:

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

1       ~~(2) Its rate case.~~

2       ~~(b) Notwithstanding the commission's rules on ratemaking,~~  
3 ~~the commission shall expedite and give highest priority to any~~  
4 ~~necessary ratemaking procedures related to providing a statewide~~  
5 ~~enhanced 911 emergency telephone service; provided that the~~  
6 ~~commission may set forth conditions and requirements as the~~  
7 ~~commission determines are in the public interest.~~

8       ~~(c) The commission shall require every public utility~~  
9 ~~providing statewide enhanced 911 emergency telephone service to~~  
10 ~~maintain a separate accounting of the costs of providing an~~  
11 ~~enhanced 911 emergency service and the revenues received from~~  
12 ~~related surcharges until the next general rate case. The~~  
13 ~~commission shall further require that every public utility~~  
14 ~~imposing a surcharge shall identify such as a separate line item~~  
15 ~~on all customer billing statements.~~

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

20       SECTION 41. Section 269-34, Hawaii Revised Statutes, is  
21 repealed.

1       ~~["§269-34] Obligations of telecommunications carriers. In~~  
2 ~~accordance with conditions and guidelines established by the~~  
3 ~~commission to facilitate the introduction of competition into~~  
4 ~~the State's telecommunications marketplace, each~~  
5 ~~telecommunications carrier, upon bona fide request, shall~~  
6 ~~provide services or information services, on reasonable terms~~  
7 ~~and conditions, to an entity seeking to provide intrastate~~  
8 ~~telecommunications, including:~~

9       ~~(1) Interconnection to the telecommunications carrier's~~  
10       ~~telecommunications facilities at any technically~~  
11       ~~feasible and economically reasonable point within the~~  
12       ~~telecommunications carrier's network so that the~~  
13       ~~networks are fully interoperable;~~

14       ~~(2) The current interstate tariff used as the access rate~~  
15       ~~until the commission can adopt a new intrastate local~~  
16       ~~service interconnection tariff pursuant to section~~  
17       ~~269-37;~~

18       ~~(3) Nondiscriminatory and equal access to any~~  
19       ~~telecommunications carrier's telecommunications~~  
20       ~~facilities, functions, and the information necessary~~  
21       ~~to the transmission and routing of any~~

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

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

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

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

21           ~~(7) Nondiscriminatory access of customers to the~~  
22           ~~telecommunications carrier of their choice without the~~

1           ~~need to dial additional digits or access codes, where~~  
2           ~~technically feasible. The commission shall determine~~  
3           ~~the equitable distribution of costs among the~~  
4           ~~authorized telecommunications carriers that will use~~  
5           ~~such access and shall establish rules to ensure such~~  
6           ~~access.~~

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

13          SECTION 42. Section 269-35, Hawaii Revised Statutes, is  
14          repealed.

15          ~~[ "**[§269-35] Universal service.** The commission shall~~  
16          ~~preserve and advance universal service by:~~

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

19           ~~(2) Assisting individuals or entities who cannot afford~~  
20           ~~the cost of or otherwise require assistance in~~  
21           ~~obtaining or maintaining their basic service or~~  
22           ~~equipment as determined by the commission; and~~

1           (3) ~~Ensuring that consumers are given the information~~  
2           ~~necessary to make informed choices among the~~  
3           ~~alternative telecommunications providers and~~  
4           ~~services."~~]

5           SECTION 43. Section 269-36, Hawaii Revised Statutes, is  
6           repealed.

7           ["~~§269-36 Telecommunications number portability. The~~  
8           ~~commission shall ensure that telecommunications number~~  
9           ~~portability within an exchange is available, upon request, as~~  
10          ~~soon as technically feasible and economically reasonable. An~~  
11          ~~impartial entity shall administer telecommunications numbering~~  
12          ~~and make the numbers available on an equitable basis."~~]

13          SECTION 44. Section 269-37, Hawaii Revised Statutes, is  
14          repealed.

15          ["~~§269-37 Compensation agreements. The commission shall~~  
16          ~~ensure that telecommunications carriers are compensated on a~~  
17          ~~fair basis for termination of telecommunications services on~~  
18          ~~each other's networks, taking into account, among other things,~~  
19          ~~reasonable and necessary costs to each telecommunications~~  
20          ~~carrier of providing the services in question.~~  
21          ~~Telecommunications carriers may negotiate compensation~~  
22          ~~arrangements, that may include "bill and keep", mutual and equal~~

1 ~~compensation, or any other reasonable division of revenues~~  
2 ~~pending tariff access rates to be set by the commission. Upon~~  
3 ~~failure of the negotiations, the commission shall determine the~~  
4 ~~proper methodology and amount of compensation." ]~~

5 SECTION 45. Section 269-38, Hawaii Revised Statutes, is  
6 repealed.

7 [ "~~§269-38~~ ~~Regulatory flexibility for effectively~~  
8 ~~competitive services.~~ The commission may allow  
9 telecommunications carriers to have pricing flexibility for  
10 services that the commission finds are effectively competitive,  
11 provided that the rates for:

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

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

16 SECTION 46. Section 269-39, Hawaii Revised Statutes, is  
17 repealed.

18 [ "~~§269-39~~ ~~Cross-subsidies.~~ (a) ~~The commission shall~~  
19 ~~ensure that noncompetitive services shall not cross subsidize~~  
20 ~~competitive services. Cross subsidization shall be deemed to~~  
21 ~~have occurred.~~

1       ~~(1) If any competitive service is priced below the total~~  
2           ~~service long run incremental cost of providing the~~  
3           ~~service as determined by the commission in subsection~~  
4           ~~(b); or~~

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

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

16       SECTION 47. Section 269-40, Hawaii Revised Statutes, is  
17       repealed.

18       ~~[ "**§269-40** **Access to advanced services.** The commission~~  
19       ~~shall ensure that all consumers are provided with~~  
20       ~~nondiscriminatory, reasonable, and equitable access to high~~  
21       ~~quality telecommunications network facilities and capabilities~~  
22       ~~that provide subscribers with sufficient network capacity to~~

1 ~~access information services that provide a combination of voice,~~  
2 ~~data, image, and video, and that are available at just,~~  
3 ~~reasonable, and nondiscriminatory rates that are based on~~  
4 ~~reasonably identifiable costs of providing the services." ]~~

5 SECTION 48. Section 269-41, Hawaii Revised Statutes, is  
6 repealed.

7 [~~"§269-41 Universal service program, establishment,~~  
8 ~~purpose, principles.~~ There is established the universal service  
9 program. The purpose of this program is to:

- 10 (1) ~~Maintain affordable, just, and reasonable rates for~~  
11 ~~basic residential telecommunications service, as~~  
12 ~~defined by the commission,~~
- 13 (2) ~~Assist customers located in the areas of the State~~  
14 ~~that have high costs of essential telecommunications~~  
15 ~~service, low income customers, and customers with~~  
16 ~~disabilities, in obtaining and maintaining access to a~~  
17 ~~basic set of essential telecommunications services as~~  
18 ~~determined by the commission. The commission may~~  
19 ~~expand or otherwise modify relevant programs, such as~~  
20 ~~the lifeline program under section 269-16.5,~~
- 21 (3) ~~Ensure that consumers in all communities are provided~~  
22 ~~with access, at reasonably comparable rates, to all~~

1 ~~telecommunications services which are used by a~~  
2 ~~majority of consumers located in metropolitan areas of~~  
3 ~~the State. The commission shall provide for a~~  
4 ~~reasonable transition period to support the statewide~~  
5 ~~deployment of these advanced telecommunications~~  
6 ~~services, including, but not limited to, the use of~~  
7 ~~strategic community access points in public facilities~~  
8 ~~such as education, library, and health care~~  
9 ~~facilities;~~

10 ~~(4) Ensure that consumers are given the information~~  
11 ~~necessary to make informed choices among the~~  
12 ~~alternative telecommunications carriers and services,~~  
13 ~~and~~

14 ~~(5) Promote affordable access throughout the State to~~  
15 ~~enhanced government information and services,~~  
16 ~~including education, health care, public safety, and~~  
17 ~~other government services.~~

18 ~~The commission shall administer the universal service~~  
19 ~~program, including the establishment of criteria by which the~~  
20 ~~purposes of the program are met." ]~~

21 SECTION 49. Section 269-42, Hawaii Revised Statutes, is  
22 repealed.

1       ~~[" §269-42 Universal service program; contributions. (a)~~

2       ~~There is established outside of the state treasury a special~~

3       ~~fund to be known as the universal service fund to be~~

4       ~~administered by the commission to implement the policies and~~

5       ~~goals of universal service. The fund shall consist of~~

6       ~~contributions from the sources identified in subsections (e) and~~

7       ~~(f). Interest earned from the balance of the fund shall become~~

8       ~~a part of the fund. The commission shall adopt rules regarding~~

9       ~~the distribution of moneys from the fund including~~

10       ~~reimbursements to carriers for providing reduced rates to low-~~

11       ~~income, elderly, residents of underserved or rural areas, or~~

12       ~~other subscribers, as authorized by the commission.~~

13       ~~(b) The commission may allow distribution of funds directly~~

14       ~~to customers based upon a need criteria established by the~~

15       ~~commission.~~

16       ~~(c) A telecommunications carrier or other person~~

17       ~~contributing to the universal service program may establish a~~

18       ~~surcharge which is clearly identified and explained on~~

19       ~~customers's bills to collect from customers contributions~~

20       ~~required under this section.~~

21       ~~(d) Telecommunications carriers may compete to provide~~

22       ~~services to underserved areas using funds from the universal~~

1 ~~service program. For the purposes of this section, "underserved~~  
2 ~~areas" means those areas in the State that lack or have very~~  
3 ~~limited access to high capacity, advanced telecommunications~~  
4 ~~networks and information services, including access to cable~~  
5 ~~television.~~

6 ~~(e) The commission shall require all telecommunications~~  
7 ~~carriers to contribute to the universal service program. The~~  
8 ~~commission may require a person other than a telecommunications~~  
9 ~~carrier to contribute to the universal service program if, after~~  
10 ~~notice and opportunity for hearing, the commission determines~~  
11 ~~that the person is offering a commercial service in the State~~  
12 ~~that directly benefits from the telecommunications~~  
13 ~~infrastructure, and that directly competes with a~~  
14 ~~telecommunications service provided in the State for which a~~  
15 ~~contribution is required under this subsection.~~

16 ~~(f) The commission shall designate the method by which the~~  
17 ~~contributions under subsection (e) shall be calculated and~~  
18 ~~collected. The commission shall consider basing contributions~~  
19 ~~solely on the gross operating revenues from the retail provision~~  
20 ~~of intrastate telecommunications services offered by the~~  
21 ~~telecommunications carriers subject to the contribution." ]~~

1 SECTION 50. Section 269-43, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§269-43] Carriers of last resort.~~ (a) ~~The commission~~  
4 ~~may define and designate local exchange service areas where the~~  
5 ~~commission has determined that providing universal service funds~~  
6 ~~to a single provider will be the most appropriate way to ensure~~  
7 ~~service for these areas.~~

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

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

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

3   **PART V**

4       SECTION 51. Chapter 440G, Hawaii Revised Statutes, is  
5 repealed.

6   **PART VI**

7       SECTION 52. During fiscal year 2009-2010, fifty per cent of  
8 the moneys collected by the public utilities commission from  
9 telecommunications carriers and deposited into the public  
10 utilities commission special fund shall be deposited into the  
11 Hawaii communications commission special fund.

12       SECTION 53. The unencumbered balance existing on June 30,  
13 2009, in the cable television division subaccount in the  
14 compliance resolution fund shall be deposited into the Hawaii  
15 communications commission special fund.

16       SECTION 54. There is appropriated out of the Hawaii  
17 communications commission special fund the sum of \$                 , or  
18 so much thereof as may be necessary for fiscal year 2009-2010,  
19 and the sum of \$                 , or so much thereof as may be  
20 necessary for fiscal year 2010-2011, for purposes of this Act,  
21 including the hiring of staff.

1 The sums appropriated shall be expended by the Hawaii  
2 communications commission.

3 **PART VII**

4 SECTION 55. **Transfer of functions.** (a) All rules,  
5 policies, procedures, orders, certificates of public convenience  
6 and necessity, franchises, guidelines, and other material  
7 adopted, issued, or developed by the department of commerce and  
8 consumer affairs and public utilities commission to implement  
9 provisions of the Hawaii Revised Statutes which are reenacted or  
10 made applicable to the Hawaii communications commission by this  
11 Act, shall remain in full force and effect until amended or  
12 repealed by the Hawaii communications commission. In the  
13 interim, every reference to the department of commerce and  
14 consumer affairs, director of commerce and consumer affairs,  
15 public utilities commission, or chairperson of the public  
16 utilities commission in those rules, policies, procedures,  
17 orders, franchises, guidelines, and other material is amended to  
18 refer to the Hawaii communications commission or the Hawaii  
19 communications commissioner, as appropriate.

20 (b) All deeds, leases, contracts, loans, agreements,  
21 permits, or other documents executed or entered into by or on  
22 behalf of the department of commerce and consumer affairs and

1 public utilities commission pursuant to the provisions of the  
2 Hawaii Revised Statutes, which are reenacted or made applicable  
3 to the Hawaii communications commission by this Act, shall  
4 remain in full force and effect. Effective upon approval of  
5 this Act, every reference to the department of commerce and  
6 consumer affairs, director of commerce and consumer affairs,  
7 public utilities commission, or chairperson of the public  
8 utilities commission therein shall be construed as a reference  
9 to the Hawaii communications commission or Hawaii communications  
10 commissioner, as appropriate.

11 SECTION 56. **Transfer of records, equipment, appropriations,**  
12 **authorizations, and other property.** All appropriations,  
13 records, equipment, machines, files, supplies, contracts, books,  
14 papers, documents, maps, and other personal property heretofore  
15 made, used, acquired, or held by the department of commerce and  
16 consumer affairs and the public utilities commission relating to  
17 the functions transferred to the Hawaii communications  
18 commission shall be transferred with the functions to which they  
19 relate.

20 SECTION 57. **Transfer of personnel.** (a) The department of  
21 commerce and consumer affairs shall transfer four positions to  
22 the Hawaii communications commission. The positions selected

1 for transfer shall reasonably relate to the functions of the  
2 Hawaii communications commission.

3 (b) Up to an additional ten general funded positions shall  
4 be transferred to the Hawaii communications commission to be  
5 funded from the Hawaii communications commission special fund.

6 (c) All officers and employees who are transferred to the  
7 Hawaii communications commission by this Act shall continue to  
8 perform their regular duties upon their transfer, subject to the  
9 personnel laws of the State and this Act. No officer or  
10 employee of the State shall suffer any loss of salary,  
11 seniority, prior service credit, vacation, sick leave, or other  
12 employee benefit or privilege as a consequence of this Act.

13 (d) In the event that an office or position held by an  
14 officer or employee having tenure is abolished, the officer or  
15 employee shall not thereby be separated from public employment,  
16 but shall remain in the employment of the State with the same  
17 pay and classification and shall be transferred to some other  
18 office or position for which the officer or employee is eligible  
19 under the personnel laws of the State as determined by the  
20 director of human resources development.

21 SECTION 58. **Conflict with provisions of this Act.** All acts  
22 passed by the legislature during this regular session of 2009,

1 whether enacted before or after the effective date of this Act,  
2 shall be amended to conform to this Act unless such acts  
3 specifically provide that this Act is being amended.

4 SECTION 59. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 60. Parts I, III, V, VI, and VII of this Act shall  
7 take effect on July 1, 2009; provided that:

8 (1) Part IV of this Act shall take effect on July 1, 2010;

9 (2) Part I (relating to the Hawaii communications  
10 commission, generally) of the new Chapter created in  
11 Part II of this Act shall take effect on July 1, 2009;  
12 provided further that those provisions relating to the  
13 regulation of telecommunications carriers shall take  
14 effect on July 1, 2010;

15 (3) Part III (relating to cable) of the new Chapter  
16 created in Part II of this Act shall take effect on  
17 July 1, 2009; and

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1 (4) Part II (relating to telecommunications) of the new  
2 Chapter created in Part II of this Act shall take  
3 effect on July 1, 2010.

4  
5 INTRODUCED BY: \_\_\_\_\_

6  
BY REQUEST

**Report Title:**

Hawaii Communications Commission

**Description:**

Establishes the Hawaii Communications Commission (HCC) in the Department of Commerce and Consumer Affairs (DCCA). Transfers functions relating to telecommunications from the Public Utilities Commission (PUC) to the HCC. Also transfers functions relating to cable services from DCCA to HCC.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAII COMMUNICATIONS COMMISSION

PURPOSE: Creates the Hawaii Communications Commission (Commission) and tasks it with investigating, promoting, and ensuring the growth and development of broadband infrastructure within the State. The Commission will among other things: (1) "champion" the State's broadband, telecommunications, and video interests; (2) develop state policies relating to broadband communication services and facilities; (3) be responsible for the consolidated regulation of telecommunications carriers and cable operators; and (4) expedite the availability of communications services to the residents of Hawaii.

MEANS: Add a new chapter to the Hawaii Revised Statutes ("HRS"), relating to the Commission, amend chapter 269, HRS, relating to telecommunications, and repeal chapter 440G, HRS, relating to cable services.

JUSTIFICATION: The Hawaii Broadband Task Force ("HBTF") was established by the 2007 Legislature to provide recommendations on how to advance broadband within the State of Hawaii. The HBTF established its vision as follows:

"Hawaii understands that advanced broadband services are essential infrastructure for an innovation economy and a knowledge society in the 21<sup>st</sup> century. As a result of proactive policy initiatives, Hawaii residents and businesses throughout the State have access to advanced broadband services of the caliber and at the pricing available in the leading developed nations of the world."

The HBTF developed the following four recommendations to address its vision statement: (1) establish a forward-looking vision to make Hawaii globally competitive; (2) create a one-stop broadband advancement authority; (3) welcome trans-pacific submarine fiber to Hawaii; and (4) increase computer availability in low-income homes.

This bill will effectuate the recommendations of the HBTF and implement its vision statement.

Impact on the public: There should be a positive impact on the public as the provisions of this bill are intended to accelerate economic development through improvements in Hawaii's broadband infrastructure. The Commission's goal shall be to develop and expand Hawaii's broadband infrastructure that is referenced as a world class model.

Impact on the department and other agencies: The Department will be affected by the consolidation of the Cable Television Division ("CATV") and the Public Utilities Commission ("PUC") into the Commission. The Commission will be attached to the Department and will compensate the Department for administrative services provided. The Commission will be specially funded by existing revenues of the PUC (collected for telecommunications) and by CATV.

GENERAL FUND:

None.

OTHER FUNDS:

CRF and PUC Special Funds.

PPBS PROGRAM  
DESIGNATION:

CCA-102 Cable Television and BUF-901 Public Utilities Commission.

OTHER AFFECTED  
AGENCIES:

Public Utilities Commission.

EFFECTIVE DATE:

July 1, 2009, with certain provisions taking  
effect on July 1, 2010.