

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON ECONOMIC REVITALIZATION, BUSINESS
AND MILITARY AFFAIRS AND CONSUMER PROTECTION AND COMMERCE
ON
HOUSE BILL NO. 2698

February 3, 2010

RELATING TO TECHNOLOGY

House Bill No. 2698 creates the Hawaii Broadband Commission and the Hawaii Broadband Commissioner to promote and maximize availability of broadband services in the State. The bill defines broadband services to include data networking services that enables end users to access the Internet to use a variety of applications.

The bill further provides an unspecified percent of the annual revenues from the Wireless Enhanced 911 special fund to finance the expenditures of the commission and the commissioner. Funds for the Wireless Enhanced 911 special fund comes from a monthly surcharge imposed on each commercial mobile radio service connection (66 cents per month) collected by the wireless carrier from their customers.

As a matter of general policy, this department does not support any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-53.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is unclear if the Wireless Enhanced 911 special fund reflects a clear nexus between the benefits sought and charges made upon the users of the program and whether the fund would be self-sustaining.



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REVITALIZATION, BUSINESS, & MILITARY AFFAIRS
AND
CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Wednesday, February 3, 2010
2:30 p.m.

**TESTIMONY ON H.B. 2698
RELATING TO TECHNOLOGY**

TO THE HONORABLE ANGUS MCKELVEY AND ROBERT HERKES, CHAIRS, AND
MEMBERS OF THE COMMITTEES:

My name is Lawrence Reifurth, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide comments on this bill.

H.B. 2698 establishes the Hawai'i Broadband Commission and Hawai'i Broadband Commissioner to promote: 1) widespread access to broadband at competitive prices throughout the State; 2) the sharing of broadband infrastructure used for deployment to ease costs and entry into a competitive broadband market; and a streamlined permit approval process to be created jointly by stakeholders.

The bill calls for a broadband commission of five members appointed by the Governor with the advice and consent from the Senate from a list of nominees

selected by the House of Representatives. The commission is tasked with developing policy initiatives and regulatory changes to promote expanded broadband access, to recommend strategies encouraging private investment in broadband, to develop strategies to increase moneys available to State to provide increased broadband access to underserved populations and areas, and to develop strategies to share utilities infrastructure and conduits for broadband access.

In addition, the bill establishes a broadband commissioner within DCCA for administrative purposes. The commissioner is also appointed by the Governor with the advice and consent of the Senate from a list of nominees selected by the House of Representatives. The commissioner shall execute the recommendations of the commission as well as act as liaison between the State and other governmental agencies, private industry, and the public regarding broadband technology utilization; coordinate efforts between the State and counties to make broadband available to underserved populations and areas; encourage private business to invest in the broadband communications industry; assist in streamlining the permitting and regulatory process; and help secure funding for broadband projects. Funding for the commission and commissioner will come from a percentage of the wireless enhanced 911 fund.

While the intent of S.B. 2543 is commendable, the Department prefers H.B. 984, H.D. 4, S.D. 1, proposed C.D. 1, a comprehensive broadband bill, versions of which were introduced in the 2009 Session by the House Majority, the Senate Majority, House Minority, and the Administration. A copy of the Department's annotated proposed conference draft for H.B. 984, H.D. 4, S.D. 1 is attached for your convenience.

The proposed conference draft of H.B. 984, H.D. 4, S.D. 1 tracks key recommendations of the Hawai'i broadband task force by establishing the Hawai'i

Communications Commission to be administratively attached to the Department. After many legislative committee hearings, and one-on-one and group meetings on various versions of the broadband bill with communications service providers, governmental agencies, and interested parties, general consensus was reached on the proposed conference draft of H.B. 984, which directs the Commission to achieve various goals such as creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit approval process, and providing access to businesses and residents at prices and speeds that will make us world leaders, attract investment and empower our people, transfers funding from existing fees and transfers existing Department employees to the Commission.

The proposed conference draft differs from the S.D. 1 in part by the deletion of that portion that was intended to address the partial deregulation of telecommunications, in light of the Legislature's adoption last year of Act 180, Session Laws of Hawaii 2009.

In addition, the proposed conference draft includes the regulation of communication services (i.e., telecommunications and video programming) as part of the duties of the Hawai'i Communications Commission. In addition, the Commission shall be responsible to designate the entity to maintain the broadband inventory maps which are currently being developed under a federal American Recovery and Reinvestment Act grant.

Thank you for this opportunity to provide written testimony on this measure.

(Attachment)

Report Title:

Hawaii ~~Broadband commissioner~~ Communications commission;
Broadband Regulation; Broadband Franchising; Broadband
Permitting

Note: A provider recommended use of "Hawaii Broadband Commission" throughout. DCCA prefers "Hawaii Communications Commission" as broadband is not regulated, but is implemented through cable and telecom providers.

Description:

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii ~~broadband-communications commissioner~~ (HCC) in the department of commerce and consumer affairs (DCCA). Transfers functions relating to telecommunications from the public utilities commission to the HCC and functions relating to cable services from DCCA to the HCC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature.
(SD1)

Broadband - HB0984 HD4 SD1 7 2 DCA no cable cpa rvs.doc
Broadband - HB0984 HD4 SD1 7.2

A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

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

1 voice, video, and data services provided over these
2 infrastructures are converging. In order to position
3 Hawaii for global competitiveness in the twenty-first
4 century, this Act promotes the following goals:

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

11 Note: A provider suggested deleting language after "State" in goal # (1).
12 DCCA does not concur. This is a stated goal of the Broadband Task
13 Force to measure the progress of the commission's efforts.
14

15 (2) Availability of advanced broadband communications
16 service on a competitive basis to reduce prices,
17 increase service penetration, and improve service
18 to all persons in the State;

19 (3) Increased broadband availability at affordable
20 costs to low-income and other disadvantaged
21 groups, including by making low-cost, broadband-
22 capable computers available to eligible
23 recipients;

24 (4) Increased voluntary sharing of the infrastructure
25 used to deploy broadband in order to speed up
26 implementation, reduce costs to providers, reduce

1 | underlying costs to providers through incentives
2 | rather than eminent domain procedures, ease
3 | deployment of broadband, and ease entry into a
4 | competitive broadband marketplace;

5 | Notes: Changes made to allay the concerns of providers regarding the
6 | eminent domain procedures provision. They also have concerns
7 | regarding "sharing of infrastructure" which DCCA addressed by specifying
8 | that the sharing is voluntary.
9 |

- 10 | (5) Increased, flexible, timely, and responsible
11 | access to public rights-of-way and public
12 | facilities for broadband service providers; and
13 | (6) A more streamlined permit approval process that
14 | reduces the time and cost of infrastructure
15 | deployment, to be created jointly by disparate
16 | permitting agencies, stakeholders, and other
17 | interested parties.

18 | SECTION 2. The purpose of this Act is to establish
19 | the Hawaii ~~broadband~~ communications commissioner as an
20 | independent agency that is attached to the department of
21 | commerce and consumer affairs for administrative purposes
22 | only and require the commissioner to:

- 23 | (1) Investigate, promote, and ensure the growth and
24 | development of broadband infrastructure within
25 | the State in accordance with the aforementioned
26 | goals;

- 1 (2) Champion the State's broadband,
2 telecommunications, and video programming
3 services interests before the federal government,
4 including the United States Congress, the
5 executive branch of the United States, and the
6 Federal Communications Commission; and state and
7 local agencies, including the governor, the
8 legislature, and county governments;
- 9 (3) Maintain close working relationships with
10 community groups, civic associations, industry
11 trade organizations, industry leaders, and other
12 stakeholders to ensure that the State's interests
13 and concerns are understood;
- 14 (4) Develop state policies relating to the provision
15 of broadband communications services and
16 interstate and international communications
17 services and facilities serving or transiting the
18 State of Hawaii;
- 19 (5) Facilitate the construction and voluntary sharing
20 of shared telecommunications and broadband
21 infrastructure and expand the introduction and
22 capabilities of advanced broadband communications
23 services where appropriate and ~~permissible under~~
24 ~~federal law~~ not prohibited by federal law;

1 Notes: Providers agreed to the change. The "not prohibited by/under
2 federal law" language was incorporated at the request of providers here
3 and throughout the bill.
4

5 ~~(6) Consolidate the regulation of telecommunications~~
6 ~~carriers currently regulated by the public~~
7 ~~utilities commission and cable operators~~
8 ~~currently regulated by the director of commerce~~
9 ~~and consumer affairs, to create a unified agency~~
10 ~~to allow an environment that encourages businesses~~
11 ~~to providing broadband, telecommunications, and~~
12 ~~video programming services, and to make their~~
13 ~~services more readily available to the public;~~

14 Notes: Changes made to address the concerns of providers and to more
15 accurately reflect broadband goals.
16

17 ~~(4)(7) Promptly Further examine rate regulation for~~
18 ~~telecommunications carriers, including~~
19 ~~alternatives such as price cap regulation; and~~

20 Notes: Changes made to more accurately reflect broadband goals and
21 the fact that telcom rate regulation is being immediately impacted by this
22 bill.
23

24 ~~(5)(8) Investigate the possibility of~~
25 ~~implementing of incentive regulation for~~
26 ~~telecommunications carriers to increase~~
27 ~~investment in broadband infrastructure within the~~
28 ~~State.~~

1 Notes: Change made at the request of a provider.

2
3 (9) Administer special federal funding programs
4 designed to stimulate the economy through
5 investments in broadband programs and services.

6 Notes: Language included at the request of a provider.

7 SECTION 3. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to
9 read as follows:

10 "CHAPTER

11 HAWAII BROADBAND-COMMISSIONERCOMMUNICATIONS COMMISSION

12 PART I. GENERAL PROVISIONS

13 Note: Providers recommended changes to the definitions. However,
14 DCCA prefers that the bill's provisions remain consistent with current law.
15 Also, the proposed changes were repetitive and conflicted with the current
16 language in the bill and statute. Consequently, DCCA did not make the
17 changes.

18 § -1 **Definitions.** As used in this chapter, unless
19 the context otherwise requires:

20 "Access organization" means any nonprofit organization
21 designated by the commissioner to oversee the development,
22 operation, supervision, management, production, or
23 broadcasting of programs for any channels obtained under
24 section -67, and any officers, agents, and employees of
25 an organization with respect to matters within the course
26 and scope of their employment by the access organization.

1 "Applicant" means a person who initiates an
2 application or proposal.

3 "Application" means an unsolicited filing.

4 "Basic cable service" means any service tier that
5 includes the retransmission of local television broadcast
6 signals.

7 "Broadband" means an "always on" data networking
8 ~~service that enables end users to access to the Internet~~
9 ~~and use of a variety of services and applications, at~~
10 ~~minimum speeds set by the commissioner.~~

11 Notes: Changes made for purposes of clarification.
12

13 "Cable franchise" means a nonexclusive initial
14 authorization, or renewal thereof issued pursuant to this
15 chapter, whether the authorization is designated as a
16 franchise, permit, order, contract, agreement, or
17 otherwise, which authorizes the construction or operation
18 of a cable system.

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

21 (1) Provides cable service over a cable system and
22 directly or through one or more affiliates owns a
23 significant interest in the cable system; or

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

4 "Cable service" means:

- 5 (1) The one-way transmission to subscribers of video
6 programming or other programming service; and
7 (2) Subscriber interaction, if any, which is required
8 for the selection of video programming or other
9 programming service.

10 "Cable system" means any facility within this State
11 consisting of a set of closed transmission paths and
12 associated signal generation, reception, and control
13 equipment that is designed to provide cable service which
14 includes video programming and which is provided to
15 multiple subscribers within a community, but does not
16 include a facility:

- 17 (1) That serves only to retransmit the television
18 signals of one or more television broadcast
19 stations;
20 (2) That serves only subscribers in one or more
21 multiple unit dwellings under common ownership,
22 control, or management, unless that facility or
23 facilities uses any public right-of-way; or

1 (3) Of a telecommunications carrier subject in whole
2 or in part to the provisions of part II of this
3 chapter, except to the extent that those
4 facilities provide video programming directly to
5 subscribers.

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

10 "Department" means the department of commerce and
11 consumer affairs.

12 "Designated local exchange service area" means an area
13 as determined by the commissioner to be best served by
14 designating a carrier of last resort pursuant to section
15 413.

16 "Director" means the director of commerce and consumer
17 affairs.

18 "Facility" includes all real property, antennae,
19 poles, supporting structures, wires, cables, conduits,
20 amplifiers, instruments, appliances, fixtures, and other
21 personal property used by a cable operator in providing
22 service to its subscribers.

1 | "Hawaii communications commission ~~broadband~~
2 | ~~commissioner~~" or "commissioner" has the same meaning as in
3 | section -2.

4 | "Institution of higher education" means an academic
5 | college or university accredited by the Western Association
6 | of Schools and Colleges.

7 | "Other programming service" means information that a
8 | cable operator makes available to all subscribers
9 | generally.

10 | "Person" means an individual, partnership,
11 | association, joint stock company, trust, corporation, or
12 | governmental agency.

13 | "Proposal" means a filing solicited by the
14 | commissioner.

15 | "Public, educational, or governmental access
16 | facilities" or "PEG access facility" means:

- 17 | (1) Channel capacity designated for public,
18 | educational, or governmental uses; and
19 | (2) Facilities and equipment for the use of that
20 | channel capacity.

21 | "Public, educational, or governmental access
22 | organization" or "PEG access organization" means any person
23 | or entity that provides public, educational, or
24 | governmental access services.

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

4 "School" means an academic and non-college type
5 regular or special education institution of learning
6 established and maintained by the department of education
7 or licensed and supervised by that department and includes
8 charter schools as defined in chapter 302B.

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

11 "Telecommunications carrier" or "telecommunications
12 common carrier" means any person that owns, operates,
13 manages, or controls any facility used to furnish
14 telecommunications services for profit to the public, or to
15 classes of users as to be effectively available to the
16 public, engaged in the provision of services, such as
17 voice, data, image, graphics, and video services, that make
18 use of all or part of their transmission facilities,
19 switches, broadcast equipment, signaling, or control
20 devices.

21 "Telecommunications service" or "telecommunications"
22 means the offering of transmission between or among points
23 specified by a user, of information of the user's choosing,
24 including voice, data, image, graphics, and video without

1 change in the form or content of the information, as sent
2 and received, by means of electromagnetic transmission, or
3 other similarly capable means of transmission, with or
4 without benefit of any closed transmission medium, and does
5 not include cable service as defined in this section.

6 "Video programming" means programming provided by, or
7 generally considered comparable to programming provided by,
8 a television broadcast station.

9 § -2 ~~Hawaii broadband communications commission;~~
10 ~~established~~. There shall be established the Hawaii
11 ~~broadband communications commissioner~~ as an independent
12 agency that is attached to the department of commerce and
13 consumer affairs for administrative purposes only.

14 § -3 Hawaii communications commissioner. The
15 commission shall be under the supervision and control of
16 the Hawaii communications commissioner, implementation of
17 this chapter shall be placed under the supervision and
18 control of the Hawaii broadband commissioner, who shall be
19 exempt from chapter 76 and shall be appointed by the
20 governor, with the advice and consent of the senate. The
21 commissioner shall be responsible for the performance of
22 the duties imposed upon the commission to implement this
23 chapter.

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1 | Notes: HTC, TWT, and AT&T prefer 3 commissioners. As DCCA's goal is
2 | to reduce costs, improve timeliness, and enhance flexibility, we prefer one
3 | commissioner.
4 |

5 | § ~~-43~~ **Deputy commissioner.** The commissioner may
6 | appoint a deputy commissioner, who shall be exempt from
7 | chapter 76. The commissioner may, at pleasure, dismiss the
8 | deputy commissioner. The deputy commissioner shall have
9 | the power to perform any act or duty assigned by the
10 | commissioner and shall be acting commissioner if, for any
11 | reason, the commissioner is unable to perform the duties of
12 | commissioner, until a new commissioner is appointed.

13 | § ~~-54~~ **Employment of commissioner assistants**
14 | **personnel.** (a) The commissioner may appoint and employ
15 | clerks, stenographers, office assistants, agents, engineers,
16 | accountants, and other ~~assistant personnel~~, with or
17 | without regard to chapter 76; provided that:

18 | (1) The commissioner may employ utility and cable
19 | analysts exempt from chapter 76; and

20 | (2) Each analyst shall possess at least the minimum
21 | qualifications required of comparable experts in
22 | the relevant industry.

23 | (b) The commissioner may appoint and, at pleasure,
24 | dismiss hearings officers as may be necessary, with or
25 | without regard to chapter 76.

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1 (c) The commissioner may, with the consent of the
2 director, utilize staff including ~~clerks~~
3 ~~stenographic office assistants~~, agents, engineers,
4 accountants, hearings officers, and other ~~assistants~~
5 ~~personnel~~ from the department, as the commissioner finds
6 necessary for the performance of the commissioner's
7 functions, and define their powers and duties.

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8 Notes: Changes made per ATG and DHRD to accurately reflect current
9 position classifications.
10

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

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

22 § -65 **Terms.** The commissioner shall be appointed
23 for a term of six years and shall not serve more than
24 twelve consecutive years. Each commissioner shall hold
25 office until the commissioner's successor is appointed and

1 confirmed. Section 26-34 shall not apply insofar as it
2 relates to the number of terms and consecutive number of
3 years a commissioner may serve.

4 § -76 **Salary.** The salary of the commissioner shall
5 be set equal to that of the chairperson of the public
6 utilities commission pursuant to section 269-2.

7 § -87 **General powers and duties.** (a) The
8 commissioner shall have the authority expressly conferred
9 upon the commissioner by, or reasonably implied from, the
10 provisions of this chapter.

11 (b) The commissioner shall have general supervision
12 over all telecommunications carriers and cable operators
13 and shall perform the duties and exercise the powers
14 imposed or conferred upon it by this chapter, ~~as permitted~~
15 ~~by federal law where not prohibited by federal law.~~

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

19 (d) The commissioner shall have general supervision
20 over public, educational, or governmental access facilities
21 and public, educational, or governmental access
22 organizations.

23 § -98 **Telecommunications development duties.** (a)
24 The commissioner shall strive to ensure that all consumers

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1 are provided with ~~nondiscriminatory~~, reasonable and
2 equitable access to high quality telecommunications network
3 facilities and capabilities that provide subscribers with
4 sufficient network capacity to access ~~information services~~
5 ~~that provide a combination of voice, data, image, and~~
6 video, and that are available at ~~just, reasonable, and~~
7 ~~nondiscriminatory~~ fair and affordable rates.

8 Note: Change from "telecommunications" to "communications" was made
9 because this section is in Part I of the new chapter, which covers both
10 cable and telecommunications.

11 (b) No later than July 1, 2011, the commissioner
12 shall study and develop a comprehensive policy to promote
13 further deployment of broadband communications, including
14 internet access, in the State. The study shall include
15 consideration of communications by wire and radio,
16 including satellite and wireless services. The
17 commissioner shall develop plans and strategies to increase
18 broadband affordability, penetration, and competitive
19 availability in the State. The plans may include making
20 low-cost, broadband-capable computers available to eligible
21 recipients. The plans may also include measures to work
22 with the counties to streamline access to public rights-of-
23 ways and public facilities for providers of
24 telecommunications, cable, and broadband services and the
25 permitting and approval processes required for such access.
26

1 The commission~~er~~ shall regularly update and revise the
2 commission~~er~~'s studies and findings to ensure that the
3 State's policies and initiatives remain effective in
4 promoting the State's interests.

5 Notes: DCCA agreed to AT&T's suggested language. OTW wanted to
6 change "broadband communications" to "broadband services". DCCA
7 does not agree because it would eliminate reference to infrastructure.

8
9 DCCA agreed to TW Telcom suggested language that allows the plans to
10 include measures to streamline access to public rights-of-ways and public
11 facilities

12
13 (c) The commission~~er~~ shall develop programs and
14 initiatives intended to encourage and facilitate, where not
15 prohibited by federal law, the deployment of broadband
16 communications services in the State and access to those
17 services by users in the State. The commission~~er~~ shall
18 fund these programs and initiatives using funds collected
19 pursuant to sections -~~2423~~, -~~4951~~, -73, -75,
20 and 92-21 and deposited in the commission~~er~~ special fund
21 pursuant to section -~~210~~. In conjunction with the
22 funds, or alternatively, the commission~~er~~ may seek
23 appropriations of funds from the State.

24 Notes: OTW proposed the inclusion of "encourage" and wanted to delete
25 "facilitate". DCCA agreed with the inclusion of "encourage".

26
27 (d) The commission~~er~~ shall develop, and routinely
28 update, a state policy and formulate positions to be taken
29 before federal agencies regarding areas outside its

1 | jurisdiction. The commissioner shall advocate on behalf of
2 | the State's broadband, telecommunications, and video
3 | programming distribution interests before the United States
4 | Congress, the executive branch of the United States, and
5 | the Federal Communications Commission, and locally before
6 | the governor, the state legislature, and municipal and
7 | county governments. The commissioner shall also maintain
8 | close working relationships with community groups, civic
9 | associations, industry trade associations, industry
10 | leaders, and other stakeholders to ensure that the State's
11 | interests and concerns are understood.

12 | ~~(e) The commission shall promptly examine~~
13 | ~~telecommunications rate regulation alternatives including~~
14 | ~~rate-of-return ratemaking and price cap ratemaking. The~~
15 | ~~examination shall include pursuing incentive regulation~~
16 | ~~with local exchange carriers, one goal of which shall be to~~
17 | ~~increase broadband competitive availability and~~
18 | ~~affordability to consumers in the State.~~

19 | (f) The commission shall promptly examine the public
20 | utilities commission's telecommunications rules that are
21 | being made applicable to the commission by this Act to
22 | determine whether amendments are appropriate to achieve the
23 | purpose of this chapter.

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1 § -109 **Investigative powers.** (a) Where not
2 prohibited by federal law, tThe commissioner shall have
3 power to examine:

- 4 (1) The condition of each telecommunications carrier,
5 cable operator, and PEG access organization;
- 6 (2) The manner in which each telecommunications
7 carrier, cable operator, and PEG access
8 organization is operated with reference to the
9 safety or accommodation of the public;
- 10 (3) The safety, working hours, and wages of employees
11 of each telecommunications carrier, cable
12 operator, and PEG access organization;
- 13 (4) The fares and rates charged by each
14 telecommunications carrier, cable operator, and
15 PEG access organization;
- 16 (5) The value of the physical property of each
17 telecommunications carrier, cable operator, and
18 PEG access organization;
- 19 (6) The issuance by each telecommunications carrier,
20 cable operator, and PEG access organization of
21 stocks and bonds, and the disposition of the
22 proceeds thereof;
- 23 (7) The amount and disposition of income of each
24 telecommunications carrier, cable operator, and

1 PEG access organization, and all financial
2 transactions of each telecommunications carrier,
3 cable operator, and PEG access organization;

4 (8) Business relations of each telecommunications
5 carrier, cable operator, and PEG access
6 organization with other persons, companies, or
7 corporations;

8 (9) Compliance of each telecommunications carrier,
9 cable operator, and PEG access organization with
10 all applicable state and federal laws and with
11 the provisions of its franchise, charter, and
12 articles of association, if any; and

13 (10) Classifications, rules, regulations, practices,
14 and service, and all matters of every nature
15 affecting the relations and transactions between
16 each telecommunications carrier, cable operator,
17 and PEG access organization and the public or
18 persons or corporations.

19 (b) The commissioner may investigate any person
20 acting in the capacity of or engaging in the business of a
21 telecommunications carrier within the State of Hawaii
22 without having a certificate of public convenience and
23 necessity or other authority previously obtained under and

1 | in compliance with this chapter or the rules adopted under
2 | this chapter or chapter 269.

3 | (c) Any investigation may be made by the commissioner
4 | on the commissioner's own motion, and ~~may~~ may be made
5 | when requested by the telecommunications carrier, cable
6 | operator, or PEG access organization to be investigated, or
7 | by any person upon a sworn written complaint to the
8 | commissioner, setting forth any prima facie cause of
9 | complaint.

10 | § ~~-110~~ **Delegating powers.** Any power, duty, or
11 | function vested in the commissioner by this chapter may be
12 | exercised, discharged, or performed by any employee of the
13 | commissioner employed pursuant to section ~~-54~~(a),
14 | ~~-54~~(b), or ~~-54~~(d) acting in the name and by the
15 | delegated authority of the commissioner and who the
16 | commissioner determines is qualified in the area for which
17 | responsibility is being delegated. Any power, duty, or
18 | function vested in the commissioner by this chapter may be
19 | exercised, discharged, or performed by any employee of the
20 | department utilized pursuant to section ~~-54~~(c) or
21 | ~~-54~~(e) acting in the name and by the delegated authority
22 | of the commissioner, with the approval of the director.

23 | Notes: AT&T's suggestion with DCCA modification
24 |

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1 | § ~~-121~~ Annual report and register of orders. The
2 | commissioner shall prepare and present to the governor,
3 | through the director, in the month of January in each year
4 | a report respecting the commissioner's actions during the
5 | preceding fiscal year. This report shall include:
6 | (1) Summary information and analytical, comparative,
7 | and trend data concerning major regulatory issues
8 | acted upon and pending before the commissioner;
9 | (2) Cases processed by the commissioner, including
10 | their dispositions;
11 | (3) Telecommunications carrier and cable operator
12 | operations, capital improvements, and rates;
13 | (4) Telecommunications carrier and cable operator
14 | performance in terms of efficiency and quality of
15 | services rendered;
16 | (5) Environmental matters having a significant impact
17 | upon telecommunications carriers and cable
18 | operators;
19 | (6) Actions of the federal government affecting the
20 | regulation of telecommunications carriers and
21 | cable operators in the State;
22 | (7) Long- and short-range plans and objectives of the
23 | commissioner; and

1 | (8) The commissioner's recommendations respecting
2 | legislation and other matters requiring executive
3 | and legislative consideration.

4 | Copies of the annual reports shall be furnished by the
5 | governor to the legislature. In addition, the commissioner
6 | shall establish and maintain a register of all of the
7 | commissioner's orders and decisions, which shall be open
8 | and readily available for public inspection.

9 | **§ -132 Commissioner's investigative authorityies.**

10 | In all investigations made by the commissioner, and in all
11 | proceedings before the commissioner, the commissioner shall
12 | have the same powers respecting administering of oaths,
13 | compelling the attendance of witnesses and the production
14 | of documentary evidence, examining witnesses, and punishing
15 | for contempt, as are possessed by circuit courts. In case
16 | of disobedience by any person to any order of the
17 | commissioner, or any subpoena issued by the commissioner,
18 | or of the refusal of any witness to testify to any matter
19 | regarding which the witness may be questioned lawfully, any
20 | circuit court, on application by the commissioner, shall
21 | compel obedience as in case of disobedience of the
22 | requirements of a subpoena issued from a circuit court or a
23 | refusal to testify therein. No person shall be excused
24 | from testifying or from producing any book, waybill,

1 document, paper, electronic record, or account in any
2 investigation or inquiry by a hearing before the
3 | commissioner when ordered to do so, upon the ground that
4 | the testimony or evidence, book, waybill, document, paper,
5 | electronic record, or account required of the person may
6 | tend to incriminate the person or subject the person to
7 | penalty or forfeiture; but no person shall be prosecuted
8 | for any crime, punished for any crime, or subjected to any
9 | criminal penalty or criminal forfeiture for or on account
10 | of any act, transaction, matter, or thing concerning a
11 | matter about which the person has testified under oath or
12 | produced documentary evidence pursuant to a subpoena.
13 | Nothing in this section shall be construed as in any manner
14 | giving to any telecommunications carrier, cable operator,
15 | PEG access organization, or any person, immunity of any
16 | kind. The fees and traveling expenses of witnesses, when
17 | mandated to appear, shall be the same as allowed witnesses
18 | in the circuit courts and shall be paid by the State out of
19 | any appropriation available for the expenses of the
20 | commissioner.

21 | § ~~-143~~ **Notices.** (a) Whenever an investigation is
22 | undertaken and a hearing is scheduled by the commissioner,
23 | reasonable notice in writing of such fact and of the
24 | subject or subjects to be investigated shall be given to

1 the telecommunications carrier, cable operator, PEG access
2 organization, or the person concerned, and when based upon
3 complaints made to the commissioner as prescribed in
4 section ~~-109~~, a copy of the complaint, and a notice in
5 writing of the date and place fixed by the commissioner for
6 beginning the investigation, shall be served upon the
7 telecommunications carrier, cable operator, PEG access
8 organization, or the person concerned, or other respondent
9 and the complainant not less than two weeks before the date
10 designated for the hearing.

11 (b) Any notice provided pursuant to section
12 -38(e), shall plainly state the rate, fare, charge,
13 classification, schedule, rule, or practice proposed to be
14 established, abandoned, modified, or departed from and the
15 proposed effective date thereof and shall be given by
16 filing the notice with the commissioner and keeping it open
17 for public inspection.

18 (c) Any public hearing held pursuant to section
19 -38(e), shall be a noticed public hearing or hearings on
20 the island on which the telecommunications carrier is
21 situated. Notice of the hearing, with the purpose thereof
22 and the date, time, and place at which it will open, shall
23 be given not less than once in each of three weeks
24 statewide, the first notice being not less than twenty-one

1 days before the public hearing and the last notice being
2 not more than two days before the scheduled hearing. The
3 applicant or applicants shall notify their consumers or
4 patrons of the proposed change in rates and of the time and
5 place of the public hearing not less than one week before
6 the date set, the manner and the fact of notification to be
7 reported to the commissioner before the date of hearing.

8 § -154 **Right to be represented by counsel.** At any
9 investigation by or proceeding before the commissioner, the
10 telecommunications carrier, cable operator, PEG access
11 organization, or the person concerned, or other respondent
12 or party and any complainant or permitted intervenor shall
13 have the right to be present and represented by counsel, to
14 present any evidence desired, and to cross-examine any
15 witness who may be called.

16 § -165 **Commissioner may institute proceedings to**
17 **enforce chapter.** (a) If the commissioner is of the
18 opinion that any telecommunications carrier, cable
19 operator, PEG access organization, or any person is
20 violating or neglecting to comply with any provision of
21 this chapter or of any rule, regulation, order, or other
22 requirement of the commissioner, or of any provisions of
23 its certificate of public convenience and necessity,
24 franchise, charter, contract, or articles of association,

1 if any, or that changes, additions, extensions, or repairs
2 are desirable in its plant or service to meet the
3 reasonable convenience or necessity of the public, or to
4 ensure greater safety or security, or that any rates,
5 fares, classifications, charges, or rules are unreasonable
6 or unreasonably discriminatory, or that in any way it is
7 doing what it ought not to do, or not doing what it ought
8 to do, the commissioner shall in writing inform the
9 telecommunications carrier, cable operator, PEG access
10 organization, or the person and may institute proceedings
11 before it as may be necessary, where not prohibited by
12 federal law, to require the telecommunications carrier,
13 cable operator, PEG access organization, or the person to
14 correct any deficiency. In that event, the commissioner
15 may by order direct the consumer advocate to appear in the
16 proceeding, to carry out the purposes of this section. The
17 commissioner may examine into any of the matters referred
18 to in section -109, notwithstanding that the same may be
19 within the jurisdiction of any court or other body;
20 provided that this section shall not be construed as in any
21 manner limiting or otherwise affecting the jurisdiction of
22 any court or other body. The commissioner may also revoke
23 or amend any provision of a certificate of public
24 convenience and necessity, franchise, charter, or articles

1 of association, if any, pursuant to section -31 or
2 -68.

3 Notes: OTW proposed to limit investigative authority to
4 "telecommunications carriers". As DCCA already has investigative
5 authority over cable providers, OTW's suggestion would reduce the
6 commission's authority. Consequently, DCCA does not agree.

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

18 (1) The citation may contain an order of abatement
19 and an assessment of civil penalties as provided
20 in section -24~~3~~. All penalties collected
21 under this subsection shall be deposited in the
22 treasury of the State. Service of a citation
23 issued under this subsection shall be made by
24 personal service whenever possible, or by
25 certified mail, restricted delivery, sent to the

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

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

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

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

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

1 may be necessary to fully effectuate this
2 subsection.

3 § ~~-176~~ **Appeals.** An appeal from an order of the
4 commissioner under this chapter shall lie, in the manner
5 provided for in chapter 602. Only a person aggrieved in a
6 contested case proceeding provided for in this chapter may
7 appeal from a final order, or a preliminary order if it is
8 of the nature defined by section 91-14(a). The
9 commissioner may elect to be a party to all matters, from
10 which an order of the commissioner is appealed or any
11 action in any court of law seeking a mandamus, or
12 injunctive or other relief to compel compliance with this
13 chapter, or any rule or order adopted thereunder, or to
14 restrain or otherwise prevent or prohibit any illegal or
15 unauthorized conduct in connection therewith, and file
16 appropriate responsive briefs or pleadings. If there is no
17 adverse party to the appeal, the commissioner shall be a
18 party and shall file responsive briefs or pleadings in
19 defending all orders. The appearance of the commissioner
20 as a party in judicial proceedings in no way limits the
21 participation of persons otherwise qualified to be parties
22 on appeal. The appeal shall not of itself stay the
23 operation of the order appealed from, but the appellate
24 court may stay the order after a hearing upon a motion

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

8 | § ~~-187~~ **Alternative dispute resolution.** The
9 commissioner may require the parties in any matter before
10 the commissioner to participate in nonbinding arbitration,
11 mediation, or other alternative dispute resolution process
12 prior to the hearing.

13 | § ~~-198~~ **Perjury.** Any person who wilfully and
14 knowingly makes under oath any false statement in
15 connection with any investigation by or proceeding before
16 the commissioner shall be guilty of perjury and, upon
17 conviction, shall be subject to the penalty prescribed by
18 law for the offense.

19 | § ~~-2019~~ **Telecommunications carriers, cable**
20 **operators, and PEG access organizations, to furnish**
21 **information.** Every telecommunications carrier, cable
22 operator, PEG access organization, or other person subject
23 to investigation by the commissioner, shall at all times,
24 upon request, furnish to the commissioner all information

1 | that the commissioner may require respecting any of the
2 | matters concerning which the commissioner is given power to
3 | investigate, and shall permit the examination of its books,
4 | records, contracts, maps, and other documents related to
5 | its operations in or affecting the state by the
6 | commissioner or any person authorized by the commissioner
7 | in writing to make the examination, and shall furnish the
8 | commissioner with a complete inventory of property under
9 | its control or management in or affecting the state in the
10 | form as the commissioner may direct.

11 | Notes: OTW recommended "in or affecting the state", and DCCA agreed.

12 | AT&T suggested the following to be included:

13 | "Information and data that the commission requires to be produced by a
14 | telecommunications carrier, cable operator, PEG access organization, or
15 | other person that is proprietary in nature or qualifies as commercially
16 | sensitive information shall be treated and protected as confidential by the
17 | commission"

18 | DCCA disagrees because the current language already provides the same
19 | protection and because it reflects the current statute (§269-8, HRS), under
20 | which AT&T is currently regulated.

21 | § -210 Hawaii communications commissioner special

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22 | fund. (a) There is established in the state treasury a
23 | communications commissioner special fund to be administered
24 | by the commissioner. The proceeds of the fund shall be
25 | used by the commissioner and the division of consumer
26 | advocacy of the department for all expenses incurred in the
27 | administration of this chapter, including, without
28 | limitation, the operation of programs developed by the
29 |
30 |

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

12 | (b) All moneys appropriated to, received, and
13 | collected by the commissione~~r~~ that are not otherwise
14 | pledged, obligated, or required by law to be placed in any
15 | other special fund or expended for any other purpose shall
16 | be deposited into the communications commissione~~r~~ special
17 | fund including, but not limited to, all moneys received and
18 | collected by the commissione~~r~~ pursuant to sections
19 | -2423, -4951, -73, -75, and 92-21.

20 | (c) The commissione~~r~~ shall submit a report to the
21 | legislature detailing all funds received and all moneys
22 | disbursed out of the fund prior to the convening of each
23 | regular session.

1 (d) The director may transfer any unexpended portion
2 of the franchise fees previously collected to the
3 commissioner by depositing those franchise fees into the
4 commissioner special fund.

5 § ~~-221~~ **Consumer advocate.** As the director serves
6 as the consumer advocate to the public utilities commission
7 pursuant to sections 269-51 through 269-55, the
8 commissioner shall recognize the director as the consumer
9 advocate in hearings and proceedings relating to
10 telecommunications before the commissioner.

11 § ~~-232~~ **Communications advisory committee.** (a)
12 There is established the communications advisory
13 committee. The committee shall consist of _____ members
14 appointed by the governor as provided in section 26-34.

15 (b) The following shall each provide a list of at
16 least three _____ names for the governor's
17 consideration:

- 18 (1) The president of the senate;
19 (2) The speaker of the house of representatives;
20 (3) _____;
21 (4) _____; and
22 (5) _____.

23 The governor shall select one name from each of the
24 lists for appointment to the committee.

Comment [D1]: Conferees need to determine what they want here; DCCA has previously offered a recommendation, which was deleted here.

1 | Note: DCCA added "at least three" for purposes of clarification.

2 |
3 | (c) The communications advisory committee shall meet
4 | when called by the commissioner and may meet at any other
5 | times that the committee deems appropriate; provided that
6 | the committee shall meet at least on a quarterly basis.

7 | (d) The committee shall advise the commissioner,
8 | telecommunications carriers, and cable operators on matters
9 | within the jurisdiction of this chapter at the request of
10 | the commissioner or any telecommunications carrier or cable
11 | operator. The committee may also advise the commissioner
12 | and telecommunications carriers and cable operators on the
13 | committee's own initiative.

14 | (e) The members of the committee shall serve without
15 | pay but shall be entitled to reimbursement for necessary
16 | expenses, including travel expenses, while attending
17 | meetings and while in discharge of their duties.

18 | **§ -243 Penalties.** (a) Any telecommunications
19 | carrier, cable operator, or PEG access organization
20 | violating, neglecting, or failing in any particular way to
21 | conform to or comply with this chapter or any lawful order
22 | of the commissioner, including, but not limited to the
23 | grounds specified in section -68 for cable operators and
24 | PEG access organizations, shall be subject to a civil
25 | penalty not to exceed:

1 (1) For telecommunications carriers and cable
2 operators, -\$25,000 for each day the violation,
3 neglect, or failure continues; and

4 (2) For PEG access organizations, \$2,500 for each day
5 the violation, neglect, or failure continues;

6 to be assessed by the commissioner after a hearing in
7 accordance with chapter 91. The commissioner may order the
8 telecommunications carrier, cable operator, or PEG access
9 organization to cease carrying on its business while the
10 violation, neglect, or failure continues.

11 Note: DCCA changes in response to PEGs' concerns by limiting the
12 amount that they can be fined but retaining the ability to fine them without
13 canceling their contracts if they violate the chapter.

14
15 (b) Notwithstanding subsection (a), any person acting
16 in the capacity of or engaging in the business of a
17 telecommunications carrier or a cable operator in the State
18 without having a certificate of public convenience and
19 necessity, franchise, or other authority previously
20 obtained under and in compliance with this chapter and the
21 rules adopted thereunder may be subject to a civil penalty
22 not to exceed \$5,000 for each offense, and, in the case of
23 a continuing violation, \$5,000 for each day that
24 uncertified activity continues.

25 (c) Upon written application filed within fifteen
26 days after service of an order imposing a civil penalty

1 | pursuant to this section, the commissioner may remit or
2 | mitigate the penalty upon terms as it deems proper.

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

7 | (e) Any penalty assessed under this section shall be
8 | in addition to any other costs, expenses, or payments for
9 | which the telecommunications carrier, cable operator, or
10 | PEG access organization is responsible under this chapter.

11 | **PART II. TELECOMMUNICATIONS**

12 | **§ -31 Certificates of public convenience and**

13 | **necessity.** (a) No telecommunications carrier, as defined
14 | in section -1, shall commence its business without first
15 | having obtained from the commissioner a certificate of
16 | public convenience and necessity. Applications for
17 | certificates shall be made in writing to the commissioner
18 | and shall comply with the requirements prescribed in the
19 | commissioner's rules. The application for a certificate of
20 | public convenience and necessity shall include the type of
21 | service to be performed, the geographical scope of the
22 | operation, the type of equipment to be employed in the
23 | service, the names of competing telecommunications carriers
24 | for the proposed service, a statement of the applicant's

1 financial ability to render the proposed service, a current
2 financial statement of the applicant, and the rates or
3 charges proposed to be charged, including the rules
4 governing the proposed service.

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

1 (c) No telecommunications carrier that, as of July 1,
2 | 2009~~10~~, holds a valid certificate of public convenience and
3 | necessity, franchise, or charter enacted or granted by the
4 | legislative or executive authority of the State or its
5 | predecessor governments, or has a bona fide operation as a
6 | telecommunications carrier recognized by the public
7 | utilities commission, shall be required to obtain, as a
8 | result of the enactment of this Act, a new certificate of
9 | public convenience and necessity under this section.

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

19 § -32 **Location of records.** A telecommunications
20 carrier shall keep and maintain records, books, papers,
21 | accounts, and other documents related to its operations in
22 | or affecting the state as the commissioner may determine
23 | are necessary to effectively regulate the
24 | telecommunications carrier, that upon request of the

1 | commission, can be made immediately accessible within a
2 | time frame determined when requested by the commissioner;
3 | provided that the original copies are made available when
4 | requested by the commissioner.

5 | Notes: DCCA agrees with OTW's and AT&T's proposed changes.

6 |
7 | § -33 **Annual financial reports.** Each annual
8 | financial report required to be filed with the commissioner
9 | by telecommunications carriers shall include a
10 | certification that the report conforms with the applicable
11 | uniform system of accounts adopted by the commissioner.
12 | The commissioner shall adopt a uniform system of accounts
13 | for this purpose.

14 | § -34 **Telecommunications providers and services.**

15 | (a) Notwithstanding any provision of this chapter to the
16 | contrary, the commissioner, upon the commissioner's own
17 | motion or upon the application of any person, and upon
18 | notice and hearing, may exempt a telecommunications carrier
19 | or a telecommunications service from any or all of the
20 | provisions of this chapter, except the requirements of
21 | section -36, upon a determination that the exemption is
22 | in the public interest. In determining whether an
23 | exemption is in the public interest, the commissioner shall
24 | consider whether the exemption promotes state policies in
25 | telecommunications, the development, maintenance, and

1 operation of effective and economically efficient
2 telecommunications services, and the furnishing of
3 telecommunications services at just and reasonable rates
4 and in a fair manner in view of the needs of the various
5 customer segments of the telecommunications industry.
6 Among the specific factors the commissioner may consider
7 are:

8 Notes: OTW proposed changes intending to differentiate itself from
9 telecommunications carriers, which follows definitional changes that it also
10 proposed. DCCA agrees that OTW is not currently a telecom carrier or
11 common carrier and hence is not subject to chapter 269. Nevertheless,
12 DCCA observes no reason to change the current law.
13

- 14 (1) The responsiveness of the exemption to changes in
15 the structure and technology of the State's
16 telecommunications industry;
- 17 (2) The benefits accruing to the customers and users
18 of the exempt telecommunications carrier or
19 service;
- 20 (3) The impact of the exemption on the quality,
21 efficiency, and availability of
22 telecommunications services;
- 23 (4) The impact of the exemption on the maintenance of
24 fair, just, and reasonable rates for
25 telecommunications services;

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

1 provider of the exempt telecommunications
2 service; and

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

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

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

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

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

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

22 | (g) Upon the petition of any person or upon the
23 | commissioner's own motion, the commissioner may rescind any
24 | exemption or waiver granted under this section if, after

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

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

15 | AT&T proposed a new subsection (i) that specifies that any telecom
16 | carrier that holds a valid exemption from the PUC from any HRS provision
17 | that is reenacted or made applicable to the HCC, will not need to obtain a
18 | new exemption from the HCC. DCCA agrees with the clarification but
19 | prefers to address it in Section 56 of the bill, therefore, the proposed
20 | language was included there instead of here.

21 |
22 | § -35 **Application of this chapter.** This chapter
23 | shall not apply to commerce with foreign nations, or
24 | commerce with the several states of the United States,
25 | except insofar as the same may be permitted under the
26 | Constitution and laws of the United States; nor shall it

1 apply to telecommunications carriers owned and operated by
2 the State.

3 **§ -36 Obligations of telecommunications carriers.**

4 In accordance with conditions and guidelines established by
5 the commissioner to facilitate the introduction of
6 competition into the State's telecommunications
7 marketplace, each telecommunications carrier, upon bona
8 fide request, shall provide services or information
9 services, on reasonable terms and conditions, to an entity
10 seeking to provide intrastate telecommunications,
11 including:

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

18 (2) The current interstate tariff used as the access
19 rate until such time that the commissioner may
20 adopt a new intrastate local service
21 interconnection tariff pursuant to section

22 -37;

23 (3) Nondiscriminatory and equal access to any
24 telecommunications carrier's telecommunications

1 facilities, functions, and the information
2 necessary to the transmission and routing of any
3 telecommunications service and the
4 interoperability of both carriers' networks;

- 5 (4) Nondiscriminatory access among all
6 telecommunications carriers, where technically
7 feasible and economically reasonable, and where
8 safety or the provision of existing electrical
9 service is not at risk, to the poles, ducts,
10 conduits, and rights-of-way owned or controlled
11 by the telecommunications carrier, or the
12 commissioner shall authorize access to electric
13 utilities' poles as provided by the joint pole
14 agreement, tariffs, rules, orders, or Federal
15 Communications Commission rules and regulations;
- 16 (5) Nondiscriminatory access to the network functions
17 of the telecommunications carrier's
18 telecommunications network, which shall be
19 offered on an unbundled, competitively neutral,
20 and cost-based basis;
- 21 (6) Telecommunications services and network functions
22 without unreasonable restrictions on the resale
23 or sharing of those services and functions; and

1 (7) Nondiscriminatory access of customers to the
2 telecommunications carrier of their choice
3 without the need to dial additional digits or
4 access codes, where technically feasible. The
5 commissioner shall determine the equitable
6 distribution of costs among the authorized
7 telecommunications carriers that will use such
8 access and shall establish rules to ensure
9 access.

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

16 Notes: OTW proposed changes to distinguish ILECs from CLECs.
17 However, current language is consistent with current law, under which that
18 distinction is already clear. Consequently, DCCA did not make the
19 changes.

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

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

8 § -38 Regulation of telecommunications carrier

9 rates; ratemaking procedures. (a) All rates, fares,
10 charges, classifications, schedules, rules, and practices
11 made, charged, or observed by any telecommunications
12 carrier or by two or more telecommunications carriers
13 jointly shall be just and reasonable and, unless otherwise
14 provided by law, shall be filed with the commission.
15 ~~¶~~Notwithstanding any law to the contrary, the rates, fares,
16 classifications, charges, and rules of every
17 telecommunications carrier shall be published by the
18 telecommunications carrier in such manner as the commission
19 may require, and copies shall be furnished to any person on
20 request.

21 (b) The commission may issue an order imposing
22 alternative rate regulation procedures.

23 ~~_____ (c) The commission may waive rate regulation and~~
24 ~~allow telecommunications carriers to have pricing~~

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1 ~~flexibility for services that the commission determines, by~~
2 ~~whatever process it determines to be appropriate pursuant~~
3 ~~to rule, to be competitive; provided that the rates for:~~

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

7 ~~(2) Universal service is preserved and advanced.~~

8 ~~(d) Unless otherwise directed by the commission, a~~
9 ~~telecommunications carrier may charge any rate for a~~
10 ~~service less than or equal to the rate for the service~~
11 ~~included in the telecommunications carrier's filed tariff.~~

12 ~~The rate charged shall be available at the same terms for~~
13 ~~all customers in all geographic locations within the~~
14 ~~telecommunications carrier's service area.~~

15 ~~(ec) Except as provided in subsections (a) through~~
16 ~~(d) Unless otherwise provided by law, no rate, fare, charge,~~
17 ~~classification, schedule, rule, or practice, other than one~~
18 ~~established pursuant to an automatic rate adjustment clause~~
19 ~~previously approved by the commission, shall be~~
20 ~~established, abandoned, modified, or departed from by any~~
21 ~~telecommunications carrier, except after thirty days'~~
22 ~~notice to the commission as prescribed in section -~~
23 ~~14(b), and prior approval by the commission for any~~
24 ~~increases in rates, fares, or charges. The commission, in~~

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

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

18 (2) After a hearing, by order:

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

23 (B) Prohibit rebates and unreasonable
24 discrimination between localities or between

1 users or consumers under substantially
2 similar conditions;

3 (C) Regulate the manner in which the property of
4 every telecommunications carrier is operated
5 with reference to the safety and
6 accommodation of the public;

7 (D) Prescribe its form and method of keeping
8 accounts, books, and records, and its
9 accounting system;

10 (E) Regulate the return upon its
11 telecommunications carrier property;

12 (F) Regulate the incurring of indebtedness
13 relating to its telecommunications carrier
14 business; and

15 (G) Regulate its financial transactions; and

16 (3) Do all things that are necessary and in the
17 exercise of the commission's power and
18 jurisdiction, all of which as so ordered,
19 regulated, fixed, and changed are just and
20 reasonable, and provide a fair return on the
21 property of the telecommunications carrier
22 actually used or useful for telecommunications
23 carrier purposes.

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

17 (eg) In any case of two or more organizations,
18 trades, or businesses (whether or not incorporated, whether
19 or not organized in the State, and whether or not
20 affiliated) owned or controlled directly or indirectly by
21 the same interests, the commission may distribute,
22 apportion, or allocate gross income, deductions, credits,
23 or allowances between or among the organizations, trades,
24 or businesses, if it determines that the distribution,

1 | apportionment, or allocation is necessary to adequately
2 | reflect the income of any such organizations, trades, or
3 | businesses to carry out the regulatory duties imposed by
4 | this section.

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

12 | Note: DCCA replaced § -38 with the original § -38 found in S.B. 1680/H.B.
13 | 984 with a change to the first sentence in subsection (e) to clarify the
14 | application of the subsection. Additionally, most of the provisions in
15 | subsection (b) were moved to § -9.

16 |
17 | § -39 **Cross-subsidies.** (a) The commissione~~r~~ shall
18 | ensure that noncompetitive services shall not cross-
19 | subsidize competitive services. Cross-subsidization shall
20 | be deemed to have occurred:

- 21 | (1) If any competitive service is priced below the
22 | total service long-run incremental cost of
23 | providing the service as determined by the
24 | commissione~~r~~ in subsection (b); or

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

4 Notes: DCCA does not agree with OTW proposal to change terminology
5 to ILECs in numerous places in § -39.
6

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

16 ~~§ -40 Separate affiliate audits.~~ The
17 commissioner shall receive the results of joint
18 federal and state audits required for companies to
19 operate separate affiliates, and obtain and pay for a
20 joint federal and state audit every two years from an
21 independent auditor pursuant to title 47 United States
22 Code section 272(d). The commissioner shall make the
23 results of joint federal and state audits available
24 for public inspection. Note: AT&T proposed to delete the
25 "Separate affiliate audits" section. DCCA does not object to the deletion,
26 as, although the provision reflected existing requirements under federal
27 law, the commission could obtain a copy of the audit simply by requesting
28 a copy from the FCC.

29
30 ~~§ -41 Unfair or deceptive acts or practices.~~
31 The commissioner shall adopt rules prohibiting unfair
32 or deceptive acts or practices by telecommunications
33 carriers and telecommunications service providers
34 including resellers and aggregators of

1 | telecommunications services. Unfair or deceptive acts
2 | or practices may include unauthorized changes in
3 | subscriber carrier selections. Note: AT&T proposed removing
4 | the provision requiring the adoption of rules that prohibit UDAPs and
5 | replace it with language that authorizes the commission to only
6 | investigating complaints. As the bill already provides the commission with
7 | investigatory powers, DCCA removed the UDAP section.
8 |

9 | § -402 Lifeline telephone rates. (a) The
10 | commissioner shall implement a program to achieve lifeline
11 | telephone rates for residential telephone users. The
12 | commissioner may achieve lifeline telephone rates by using
13 | funds collected pursuant to section -4954 and deposited
14 | in the communications commissioner special fund pursuant to
15 | section -210. In conjunction with such funds, or
16 | alternatively, the commissioner may seek appropriations of
17 | funds from the State.

18 | (b) For the purposes of this section, "lifeline
19 | telephone rate" means a discounted rate for residential
20 | telephone users identified as elders with limited income
21 | and the handicapped with limited income as designated by
22 | the commissioner.

23 | (c) The commissioner shall require every
24 | telecommunications carrier providing local telephone
25 | service to file a schedule of rates and charges providing a
26 | rate for lifeline telephone subscribers.

27 | (d) Nothing in this section shall preclude the
28 | commissioner from changing any rate established pursuant to

1 subsection (a) either specifically or pursuant to any
2 general restructuring of all telephone rates, charges, and
3 classifications.

4 | § ~~-413~~ **Carriers of last resort.** (a) The
5 | commissioner may define and designate local exchange
6 | service areas where the commissioner has determined that a
7 | single provider will be the most appropriate way to ensure
8 | service for these areas.

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

21 | (c) The commissioner shall adopt rules pursuant to
22 | chapter 91 to carry out this section or adopt the rules
23 | provided in chapter 6-81 of the Hawaii Administrative
24 | Rules, which were in effect on July 1, 200~~9~~10.

1 | § -424 Telecommunications relay services for the
2 | deaf, persons with hearing disabilities, and persons with
3 | speech disabilities. (a) The commissioner shall implement
4 | intrastate telecommunications relay services for the deaf,
5 | persons with hearing disabilities, and persons with speech
6 | disabilities.

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

20 | (c) If the commissioner determines that the
21 | telecommunications relay service can be provided in a cost-
22 | effective manner by a service provider or service
23 | providers, the commissioner may require every intrastate
24 | telecommunications carrier to contract with the provider or

1 providers for the provision of the telecommunications relay
2 service under the terms established by the commissioner.

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

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

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

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

22 (h) As used in this section:

23 "Telecommunications relay services" means telephone
24 transmission services that provide an individual who has a

1 hearing or speech disability, the ability to engage in
2 communication by wire or radio with a hearing individual in
3 a manner that is functionally equivalent to the ability of
4 an individual who does not have a hearing or speech
5 disability to communicate using wire or radio voice
6 communication services. "Telecommunications relay
7 services" includes services that enable two-way
8 communication using text telephones or other non-voice
9 terminal devices, speech-to-speech services, video relay
10 services, and non-English relay services.

11 | § -435 **Telecommunications number portability.** The
12 | commissione~~r~~ shall ensure that telecommunications number
13 | portability within an exchange is available, upon request,
14 | as soon as technically feasible and economically
15 | reasonable. An impartial entity shall administer
16 | telecommunications numbering and make the numbers available
17 | on an equitable basis.

18 | § -446 **Emergency telephone service; capital costs;**
19 | **ratemaking.** (a) A telecommunications carrier providing
20 | local exchange telecommunications services may recover the
21 | capital cost and associated operating expenses of providing
22 | a statewide enhanced 911 emergency telephone service in the
23 | public switched telephone network, through a telephone line
24 | surcharge.

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

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

15 | § -457 **Issuance of securities.** A
16 | telecommunications carrier corporation may, on securing the
17 | prior approval of the commissioner, and not otherwise,
18 | issue stocks and stock certificates, bonds, notes, and
19 | other evidences of indebtedness, payable at periods of more
20 | than twelve months after the date thereof, for the
21 | following purposes and no other, namely:

22 | (1) For the acquisition of property;

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

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

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

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

13 | § -468 **Issuance of voting stock; restrictions.**

14 (a) For the purposes of this section:

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

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

22 (b) No more than twenty-five per cent of the issued
23 and outstanding voting stock of a corporation that is
24 organized under the laws of the State and that owns,

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

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

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

20 **§ -479 Acquisition of stock of another**
21 **telecommunications carrier.** No person or entity shall
22 purchase or acquire, take or hold, any part of the capital
23 stock of any telecommunications carrier corporation,
24 organized or existing under or by virtue of the laws of the

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

10 | § ~~-4850~~ **Merger and consolidation of**
11 **telecommunications carriers.** No telecommunications carrier
12 corporation shall sell, lease, assign, mortgage, or
13 otherwise dispose of or encumber the whole or any part of
14 its road, line, plant, system, or other property necessary
15 or useful in the performance of its duties to the public,
16 or any franchise or permit, or any right thereunder, nor by
17 any means, directly or indirectly, merge or consolidate
18 with any other person or entity without first having
19 secured from the commissioner an order authorizing it so to
20 do. Every sale, lease, assignment, mortgage, disposition,
21 encumbrance, merger, or consolidation, made other than in
22 accordance with the order of the commissioner shall be
23 void.

1 | § ~~-4951~~ **Finances; regulatory fee.** (a) There shall
2 | be paid to the commissioner in the months of July and
3 | December of each year, by each telecommunications carrier
4 | subject to this chapter, a fee set by the commissioner not
5 | to exceed ~~three-tenths~~one-fourth of one per cent of the
6 | gross income from the telecommunications carrier's business
7 | during the preceding year, or the sum of \$30, whichever is
8 | greater. The commissioner shall set the fee amount based
9 | on its projected budget for the year to administer and
10 | enforce this chapter. This fee shall be deposited with the
11 | director of finance to the credit of the communications
12 | commissioner special fund created pursuant to section
13 | -210.

14 | Note: By agreement of all parties, percentage was changed to revert back
15 | to the current ¼ %.
16 |

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

25 | Notes: By agreement with all providers, subsection (c) is deleted.

1 | ~~(c) The commissioner, in the commissioner's~~
2 | ~~discretion, may impose additional fees on~~
3 | ~~telecommunications carriers, including to facilitate~~
4 | ~~deployment of broadband communications services in the~~
5 | ~~State, and the fees shall be deposited with the~~
6 | ~~director of finance to the credit of the commissioner~~
7 | ~~special fund created pursuant to section 20.~~
8 |

9 | **§ -502 Injury to carrier property.** Any person who
10 | injures or destroys, through want of proper care, any
11 | necessary or useful facility, equipment, or property of any
12 | telecommunications carrier shall be liable to the
13 | telecommunications carrier for all damages sustained
14 | thereby. The measure of damages to the facility,
15 | equipment, or property injured or destroyed shall be the
16 | cost to repair or replace the property injured or destroyed
17 | including direct and allocated costs for labor, materials,
18 | supervision, supplies, tools, taxes, transportation,
19 | administrative and general expense, and other indirect or
20 | overhead expenses, less credit, if any, for salvage. The
21 | specifying of the measure of damages for the facility,
22 | equipment, or property shall not preclude the recovery of
23 | other damages occasioned thereby as may be authorized by
24 | law.

25 | **§ -513 One call center; advance warning to**
26 | **excavators.** To finance the establishment and operation of
27 | the one call center, pursuant to chapter 269E, and the
28 | administrative costs of the commissioner, the commissioner

1 shall direct telecommunications carriers to pay to the
2 public utilities commission a fee in an amount and at a
3 schedule determined by the public utilities commission.

4 AT&T proposed language that would allow the Commission to credit
5 telecom carriers for amounts paid under § -51 toward amounts owed in
6 one call center fees under §269E-6(f), HRS. DCCA incorporated
7 amendments to chapter 269E to address AT&T's concerns (see Section
8 27 of the bill).

9
10 **PART III. CABLE**

11 **§ -61 Issuance of cable franchises and regulation**
12 **of cable operators by the commissioner.** The commissioner
13 shall be empowered to issue cable franchises and otherwise
14 administer and enforce this part.

15 **§ -62 Cable franchise required.** (a) No person
16 shall construct, operate, or acquire a cable system, or
17 extend an existing cable system outside its designated
18 service area, without first obtaining a cable franchise as
19 provided in this part.

20 (b) No cable operator that, as of July 1, 20~~09~~10,
21 holds a franchise or charter enacted or granted by the
22 legislative or executive authority of the State or its
23 predecessor governments, or has a bona fide operation as a
24 cable operator heretofore recognized by the department,
25 shall be required to obtain, as a result of the enactment
26 of this chapter, a new franchise under this section.

1 § -63 Application or proposal for cable franchise;

2 fee; certain requirements. (a) No cable franchise shall
3 be issued except upon written application or proposal
4 therefor to the commissioner, accompanied by a fee set by
5 the commissioner.

6 (b) An application for issuance of a cable franchise
7 shall be made in a form prescribed by the commissioner.

8 The application shall set forth the facts as required by
9 the commissioner to determine in accordance with section

10 -65 whether a cable franchise should be issued,
11 including facts as to:

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

13 (2) The financial, technical, and other
14 qualifications of the applicant;

15 (3) The principals and ultimate beneficial owners of
16 the applicant;

17 (4) The public interest to be served by the requested
18 issuance of a cable franchise; and

19 (5) Any other matters deemed appropriate and
20 necessary by the commissioner including, but not
21 limited to, the proposed plans and schedule of
22 expenditures for or in support of the use of
23 public, educational, and governmental access
24 facilities, ~~and the competitive availability and~~

1 | ~~affordability of broadband and other advanced~~
2 | ~~services to consumers.~~

3 | Notes: OTW proposes to delete the last part of subsection (5) in HB 984
4 | SD1, and DCCA is in agreement.

5 |
6 | (c) A proposal for issuance of a cable franchise
7 | shall be accepted for filing in accordance with section
8 | -64 only when made in response to the written request of
9 | the commissioner for the submission of proposals.

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

14 | (1) After the application or proposal and required
15 | fee are received by the commissioner and within a
16 | time frame established by rule, the commissioner
17 | shall notify the applicant in writing of the
18 | acceptance or non-acceptance for filing of the
19 | application or proposal for issuance of a cable
20 | franchise required by this part;

21 | (2) After the issuance of a notice of acceptance for
22 | filing and within a time frame established by
23 | rule, the commissioner shall hold a public
24 | hearing on the application or proposal to afford
25 | interested persons the opportunity to submit

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

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

23 (4) The time limit for final action may be extended,
24 on the commissioner's approval of the applicant's

1 request and justification in writing for an
2 extension of time to the commissioner at least
3 two weeks in advance of the requested effective
4 date of the extension, or by mutual agreement.

5 **§ -65 Issuance of cable franchise authority;**

6 **criteria; content.** (a) The commissioner is empowered to
7 issue a cable franchise to construct or operate facilities
8 for a cable system upon the terms and conditions provided
9 in this part.

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

1 chapter, or elsewhere, and any other matters as the
2 commissioner deems appropriate in the circumstances.

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

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

23 **§ -66 Requirement for adequate service; terms and**
24 **conditions of service.** (a) Every cable operator shall

1 provide safe, adequate, and reliable service in accordance
2 with applicable laws, rules, franchise requirements, and
3 its filed schedule of terms and conditions of service.

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

8 (c) To the extent not prohibited by federal law, tThe
9 commissioner shall ensure that the terms and conditions
10 upon which cable service is provided are fair both to the
11 public and to the cable operator, taking into account the
12 geographic, topographic, and economic characteristics of
13 the service area and the economics of providing cable
14 service to subscribers in the service area.

15 § -67 **Cable system installation, construction,**
16 **operation, removal; general provisions.** (a) A cable
17 franchise shall be construed to authorize the construction
18 or operation of a cable system within the service area
19 above, below, on, in, or along any highway or other public
20 place and through easements that have been dedicated for
21 compatible purposes.

22 (b) To the extent not prohibited by federal law, tthe
23 technical specifications, general routes of the
24 distribution system, and the schedule for construction of

1 | the cable system shall be subject to the commissioner's
2 | approval.

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

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

21 | (e) The cable operator shall install and provide
22 | basic cable television service at no cost to any school or
23 | institution of higher education within its service area as
24 | determined by the commissioner; provided that service is

1 actually being delivered within a reasonable distance from
2 the school or institution of higher education which may
3 request service.

4 HTC opposes requiring cable providers to "install" cable television service
5 at schools. However, current law (§440G-8.2(e), HRS) already requires
6 cable operators to provide a "cable drop" to schools, which includes the
7 concept of "installation".

8
9 (f) The cable operator shall designate and activate
10 three or more channels for public, educational, or
11 governmental use. The commissioner may initiate, or a PEG
12 access organization, educational institution, or government
13 agency, may, at any time, request the commissioner to have
14 the cable operator designate and activate additional
15 channels; provided that the commissioner shall have the
16 sole discretion to grant, deny, or modify the request based
17 upon the best interest of the public, requester, cable
18 operator, and the State.

19 The Hawaii ~~broadband commissioner~~ communications
20 commission shall have the authority to designate and select
21 PEG access organizations pursuant to administrative rules
22 adopted in accordance with chapter 91. The commissioner
23 shall consider input from the public and take into
24 consideration the First Amendment rights of individuals who
25 utilize PEG access services when ~~promulgating~~ adopting
26 those rules.

Comment [D2]: Chapter 91, HRS, provides that rules may be adopted, amended, or repealed... rules are not promulgated.

1 PEG access organization assets include, but are not
2 limited to equipment, facilities, cash, financial assets
3 and instruments, land, and buildings. These assets will be
4 available to the PEG access organization designated by the
5 Hawaii communications commission to provide PEG services in
6 a particular service area. If the contract between the
7 Hawaii communications commission and a PEG access
8 organization is terminated or cancelled, these PEG assets
9 will be held in trust for the benefit of PEG services until
10 a new PEG access organization is designated by the Hawaii
11 communications commission.

12 DCCA proposes to reinsert the PEG asset language that was deleted in
13 the SD1. Because the bill proposes to exempt the PEG contracts from
14 chapter 103D, there is a need for oversight of the assets. The asset
15 provision safeguards the continuity of the assets that were purchased with
16 cable subscriber funds.

17
18 (g) Upon termination of the period of the cable
19 franchise or permit or of any renewal thereof, by passage
20 of time or otherwise, the cable operator shall remove its
21 facilities from the highways and other public places in,
22 on, over, under, or along which they are installed if so
23 ordered by the commissioner and shall restore the areas to
24 their original or other acceptable condition, or otherwise
25 dispose of same. If removal is not completed within six
26 months of the termination, any property not removed shall

1 be deemed to have been abandoned and the cable operator
2 shall be liable for the cost of its removal.

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

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

11 (2) For county highways, all applicable public
12 welfare rules adopted by the governing body of
13 the county in which the county highways are
14 situated;

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

18 (4) For the relocation of cable facilities, the
19 provisions of section 264-33 concerning the
20 allocation of expenses for the relocation of
21 utility facilities.

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

- 1 (1) That the safety, functioning, and appearance of
2 the property and the convenience and safety of
3 other persons are not adversely affected by the
4 installation or construction of facilities
5 necessary for a cable system;
- 6 (2) That the cost of the installation, construction,
7 operation, or removal of facilities is borne by
8 the cable operator or subscribers, or a
9 combination of both; and
- 10 (3) That the owner of the property is justly
11 compensated by the cable operator for any damages
12 caused by the installation, construction,
13 operation, or removal of facilities by the cable
14 operator.

15 (j) Contracts between the commissioner and PEG access
16 organizations for PEG access services shall be exempt from
17 the requirements of chapter 103D.

18 SPO wants the PEG selection and designation process to be in
19 accordance with chapter 103D, HRS. DCCA disagrees and supports the
20 exemption.

21 § -68 **Complaints; violations; revocation,**
22 **alteration, or suspension of cable franchise.** (a)
23 Subscriber complaints regarding the operation of a cable
24 system may be made orally or in writing to the
25



1 | commissioner. The commissioner shall resolve complaints
2 | informally when possible.

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

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

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

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

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

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

1 | to and approval by the commissioner. The form of the
2 | application shall be prescribed by the commissioner.

3 | (b) Sections -64 and -65 shall apply to the
4 | transfer of cable franchises.

5 | **§ -71 Rate, filed with the commissioner; approval.**

6 | (a) The commissioner shall require each cable operator to
7 | file a schedule of its rates of service on a form and with
8 | the notice that the commissioner may prescribe.

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

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

18 | **§ -73 Annual fees.** (a) Each cable operator shall
19 | pay an annual fee to be determined by the commissioner.
20 | The fees so collected under this section shall be deposited
21 | into the communications commissioner special fund
22 | established under section -210.

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

4 | § -74 **Criminal and civil liability.** Nothing in
5 | this chapter shall be deemed to affect the criminal and
6 | civil liability of cable programmers, cable operators, or
7 | public, educational, or governmental access organizations
8 | pursuant to the federal, state, or local laws regarding
9 | libel, slander, obscenity, incitement, invasions of
10 | privacy, false or misleading advertising, or other similar
11 | laws, except that no public, educational, or governmental
12 | access organization shall incur any liability arising from,
13 | based on, or related to any program not created by the
14 | public, educational, or governmental access organization,
15 | which is broadcast on any channel obtained under section
16 | -67, or under similar arrangements.

17 | § -75 **Use of American Recovery and Reinvestment Act**
18 | **of 2009, federal funds from fiscal year 2009 and fiscal**
19 | **year 2010 appropriation measures, and other federal**
20 | **moneys.** (a) The commissioner may apply for, and expend,
21 | federal moneys from the American Recovery and Reinvestment
22 | Act of 2009, federal funds from fiscal year 2009 and fiscal
23 | year 2010 appropriation measures, and other applicable
24 | federal acts.

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1 | (b) The commissioner may purchase broadband
2 | facilities, services, or equipment and may enter into
3 | contracts for broadband-related projects, through the
4 | commissioner special fund, using moneys from the American
5 | Recovery and Reinvestment Act of 2009, federal funds from
6 | fiscal year 2009 and fiscal year 2010 appropriation
7 | measures, and other applicable federal acts.

8 | (c) The commissioner may establish a separate account
9 | within the communications commissioner special fund and
10 | assign to that account federal moneys appropriated under
11 | federal laws that authorize principal forgiveness, zero and
12 | negative interest loans, and grants, including without
13 | limitation the American Recovery and Reinvestment Act of
14 | 2009, federal funds from fiscal year 2009 and fiscal year
15 | 2010 appropriation measures, and other applicable federal
16 | acts. The commissioner may use those moneys and, in so
17 | doing, may include additional requirements and
18 | subsidization not applicable to the remainder of the
19 | communications commissioner special fund, including
20 | forgiveness of principal and zero and negative interest
21 | loans.

22 | (d) Any moneys applied for or received by the
23 | department under the American Recovery and Reinvestment Act
24 | of 2009 or federal funds from fiscal year 2009 and fiscal

1 year 2010 appropriation measures for uses related to the
2 purpose of this chapter and not yet encumbered shall be
3 transferred to the commissioner's special fund upon its
4 establishment.

5 (e) The commissioner shall certify that a project has
6 been identified for expenditure of funds received pursuant
7 to the American Recovery and Reinvestment Act of 2009 and
8 is entitled to priority over other eligible projects on the
9 basis of the overall public benefit associated with the
10 project and financial needs, as well as a preference to
11 those projects that can be started and completed
12 expeditiously as stipulated under the American Recovery and
13 Reinvestment Act of 2009.

14 (f) Contracts or purchases hereunder using moneys
15 from the American Recovery and Reinvestment Act of 2009 or
16 federal funds from fiscal year 2009 and fiscal year 2010
17 appropriation measures shall be exempt from chapter 103D.

18 Notes: SPO recommends deleting subsection (f) because SB 21 SD2 and
19 HB 1184 HD2 address the issue. DCCA recommends that subsection (f)
20 be retained at least until those other bills pass.
21

22 (g) For the purposes of this section:

23 "American Recovery and Reinvestment Act of 2009" means
24 the federal law, P.L. 111-5, making appropriations for
25 various purposes, including job preservation and creation,
26 infrastructure investment, energy efficiency and science,

1 assistance to the unemployed, and state and local fiscal
2 stabilization purposes.

3 § -76 Broadband inventory maps and other

4 requirements. The Hawaii ~~broadband~~
5 ~~commissioner~~communications commission shall designate the
6 entity within the State to be responsible for developing
7 and maintaining broadband inventory maps, as well as other
8 initiatives, as described in the American Recovery and
9 Reinvestment Act of 2009 (P.L. 111-5) and section 106 of
10 the Broadband Data Improvement Act (P.L. 110-385). If
11 ~~permitted not prohibited~~ by federal law, the commissioner
12 may contract with service providers to develop the
13 broadband inventory maps and implement other related
14 requirements pursuant to this section. Subject only to any
15 limitations imposed by federal law, all providers of
16 telecommunications, cable, or broadband infrastructure and
17 services in Hawaii shall be required to furnish information
18 requested by the ~~broadband commissioner~~ in support of
19 broadband mapping, reporting, and data-driven policy
20 support. ~~Proprietary data on private infrastructure~~
21 ~~furnished by private providers shall be protected from~~
22 ~~disclosure under the Freedom of Information Act or Uniform~~
23 ~~Information Practices Act and shall be made available to~~
24 ~~the public only in a summarized form that appropriately~~

1 ~~protects the proprietary concerns of those private~~
2 ~~providers~~Except as provided in this chapter, proprietary
3 data on private infrastructure, including reports, working
4 papers, recorded information, documents and copies thereof,
5 produced by, obtained by, or disclosed to the commission or
6 any other person in the course of developing and
7 maintaining the broadband maps and other requirements of
8 this section, shall be confidential by law and privileged,
9 shall not be subject to disclosure under chapter 92F, shall
10 not be subject to subpoena, and shall not be subject to
11 discovery or admissible in evidence in any private civil
12 action. The data may be made available to the public only
13 in a summarized form that appropriately protects the
14 proprietary concerns of those private providers.

15 Notes: Mainland providers object to being required to provide confidential
16 data despite the protections provided in the proposal. From DCCA's
17 perspective, this makes the mapping exercise an illusion.

18
19 The confidentiality language was changed to address the concerns of
20 providers and is based on §431E-14, HRS.

21
22 The Hawaii ~~broadband commissioner~~communications
23 commission shall have the authority to designate economic
24 zones, pursuant to the requirements of the American
25 Recovery and Reinvestment Act of 2009 (P.L. 111-5), for the
26 explicit purpose of applying for and expending moneys that
27 the state may receive pursuant to the federal act, anywhere

1 in the State at a location that may be identified as a
2 strategic site to create facilities that will stimulate job
3 growth."

4 Note: New language clarifies the purpose of authorizing the commission
5 to designate "economic zones".

6
7 SECTION 4. Section 26-9, Hawaii Revised Statutes, is
8 amended by amending subsection (o) to read as follows:

9 AT&T proposed language that would exclude telecom carriers from paying
10 DCCA's license annual fee. AT&T's concerns are addressed by new
11 language later in subsection (o).

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

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

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

1 30, 1999, in the cable television fund under chapter 440G,
2 the division of consumer advocacy fund under chapter 269,
3 the financial institution examiners' revolving fund,
4 section 412:2-109, the special handling fund, section
5 414-13, and unencumbered balances existing on June 30,
6 2002, in the insurance regulation fund, section 431:2-215,
7 shall be deposited into the compliance resolution fund.

8 This provision shall not apply to any fee imposed by the
9 ~~Hawaii Broadband Commission-communications commission~~
10 ~~pursuant to chapter~~, including the regulatory fees in
11 ~~sections -2423, -4951, -73, -75, and 92-21, and~~
12 ~~deposited into the communications commission special fund,~~
13 ~~section -21,~~ the drivers education fund underwriters
14 fee, section 431:10C-115, insurance premium taxes and
15 revenues, revenues of the workers' compensation special
16 compensation fund, section 386-151, the captive insurance
17 administrative fund, section 431:19-101.8, the insurance
18 commissioner's education and training fund, section 431:2-
19 214, the medical malpractice patients' compensation fund as
20 administered under section 5 of Act 232, Session Laws of
21 Hawaii 1984, and fees collected for deposit in the office
22 of consumer protection restitution fund, section 487-14,
23 the real estate appraisers fund, section 466K-1, the real
24 estate recovery fund, section 467-16, the real estate

Comment [D3]: Language addresses AT&T's concerns.

1 education fund, section 467-19, the contractors recovery
2 fund, section 444-26, the contractors education fund,
3 section 444-29, the condominium management education fund,
4 section 514A-131, and the condominium education trust fund,
5 section 514B-71. Any law to the contrary notwithstanding,
6 the director may use the moneys in the fund to employ,
7 without regard to chapter 76, hearings officers and
8 attorneys. All other employees may be employed in
9 accordance with chapter 76. Any law to the contrary
10 notwithstanding, the moneys in the fund shall be used to
11 fund the operations of the department. The moneys in the
12 fund may be used to train personnel as the director deems
13 necessary and for any other activity related to compliance
14 resolution.

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

- 18 (1) Any licensee or applicant under any chapter
19 subject to the jurisdiction of the department of
20 commerce and consumer affairs has complied with
21 that chapter;
- 22 (2) Any person subject to chapter 485A has complied
23 with that chapter;

- 1 (3) Any person submitting any filing required by
2 chapter 514E or section 485A-202(a) (26) has
3 complied with chapter 514E or section 485A-
4 202(a) (26);
- 5 (4) Any person has complied with the prohibitions
6 against unfair and deceptive acts or practices in
7 trade or commerce; or
- 8 (5) Any person subject to chapter 467B has complied
9 with that chapter;

10 and includes work involved in or supporting the above
11 functions, licensing, or registration of individuals or
12 companies regulated by the department, consumer protection,
13 and other activities of the department.

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

19 SECTION 5. Section 28-8.3, Hawaii Revised Statutes,
20 is amended as follows:

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

22 "(a) No department of the State other than the
23 attorney general may employ or retain any attorney, by
24 contract or otherwise, for the purpose of representing the

1 State or the department in any litigation, rendering legal
2 counsel to the department, or drafting legal documents for
3 the department; provided that the foregoing provision shall
4 not apply to the employment or retention of attorneys:

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

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

21 (3) By the legislative reference bureau;

22 (4) By any compilation commission that may be
23 constituted from time to time;

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

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

3 (22) By the Hawaii communications commission; broadband
4 commissioner; or

5 [+22+] (23) By a department, in the event the attorney
6 general, for reasons deemed by the attorney
7 general good and sufficient, declines to employ
8 or retain an attorney for a department; provided
9 that the governor thereupon waives the provision
10 of this section."

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

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

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

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

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

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

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

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

18 Any experimental or demonstration housing project for
19 the purposes hereinabove mentioned may be sponsored by any
20 state or county agency or any person as defined in section
21 1-19.

22 The county agency or official shall apply to the state
23 land use commission for an appropriate land use district
24 classification change, except where a proposed project is

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

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

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

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

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

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

19 SECTION 8. Section 92-21, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**S92-21 Copies of records; other costs and fees.**

22 Except as otherwise provided by law, a copy of any
23 government record, including any map, plan, diagram,
24 photograph, photostat, or geographic information system

1 digital data file, which is open to the inspection of the
2 public, shall be furnished to any person applying for the
3 same by the public officer having charge or control thereof
4 upon the payment of the reasonable cost of reproducing
5 ~~[such]~~ the copy. Except as provided in section 91-2.5, the
6 cost of reproducing any government record, except
7 geographic information system digital data, shall not be
8 less than 5 cents per page, sheet, or fraction thereof.
9 The cost of reproducing geographic information system
10 digital data shall be in accordance with rules adopted by
11 the agency having charge or control of that data. ~~[Such]~~
12 The reproduction cost shall include but shall not be
13 limited to labor cost for search and actual time for
14 reproducing, material cost, including electricity cost,
15 equipment cost, including rental cost, cost for
16 certification, and other related costs. All fees shall be
17 paid in by the public officer receiving or collecting the
18 same to the state director of finance, the county director
19 of finance, or to the agency or department by which the
20 officer is employed, as government realizations; provided
21 that fees collected by the public utilities commission
22 pursuant to this section shall be deposited in the public
23 utilities commission special fund established under section
24 269-33[-], and fees collected by the Hawaii broadband

1 ~~commissioner~~communications commission shall be deposited in
2 the communications commissioner special fund established
3 under section -219."

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

6 **"§101-43 Requirements prior to exercise of power.**

7 Any corporation having the power of eminent domain under
8 section 101-41 may continue to exercise the power, provided
9 that prior to the exercise of the power:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (3) The legislative body of the county in which the
23 agricultural park is to be situated shall have
24 approved the agricultural park.

- 1 (A) The legislative body shall approve or
2 disapprove the agricultural park within
3 forty-five days after the department has
4 submitted the preliminary plans and
5 specifications for the agricultural park to
6 the legislative body. If after the forty-
7 fifth day an agricultural park is not
8 disapproved, it shall be deemed approved by
9 the legislative body.
- 10 (B) No action shall be prosecuted or maintained
11 against any county, its officials, or
12 employees, on account of actions taken by
13 them in reviewing, approving, or
14 disapproving the plans and specifications.
- 15 (C) The final plans and specifications for the
16 agricultural park shall be deemed approved
17 by the legislative body if the final plans
18 and specifications do not substantially
19 deviate from the preliminary plans and
20 specifications. The final plans and
21 specifications for the project shall
22 constitute the planning, zoning, building,
23 construction, and subdivision standards for
24 that agricultural park. For purposes of

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

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

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

18 "[~~§~~166E-10~~§~~] **Non-agricultural park land**
19 **development.** On behalf of the State or in partnership with
20 a federal agency, a county, or a private party and except
21 as provided in this section, the department may develop
22 non-agricultural park lands that, at the option of the
23 board, may be exempt from all statutes, ordinances, charter
24 provisions, and rules of any governmental agency relating

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

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

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

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

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

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

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

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

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

- 16 (1) The board finds that the industrial park meets
17 the minimum requirements of health and safety;
- 18 (2) The development of the industrial park does not
19 contravene any safety standards or tariffs
20 approved for public utilities by the public
21 utilities commission [~~for public utilities,~~] or
22 the Hawaii broadband commissioner communications
23 commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (3) The legislative body of the county in which the
24 housing project is to be situated shall have

1 approved the project with or without
2 modifications:

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

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

18 (C) The final plans and specifications for the
19 project shall be deemed approved by the
20 legislative body if the final plans and
21 specifications do not substantially deviate
22 from the preliminary plans and
23 specifications. The final plans and
24 specifications for the project shall

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

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

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

23 "(a) A variance may be granted for a structure or
24 activity otherwise prohibited in this part if the authority

1 finds in writing, based on the record presented, that the
2 proposed structure or activity is necessary for or
3 ancillary to:

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

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

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

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

19 "[~~§~~239-6.5~~]~~ **Tax credit for lifeline telephone**
20 **service subsidy.** A telephone public utility subject to
21 this chapter that has been authorized to establish lifeline
22 telephone service rates by the public utilities commission
23 before July 1, 2009~~10~~, or by the Hawaii broadband
24 commissionercommunications commission on or after July 1,

1 | 200910, shall be allowed a tax credit, equal to the
2 | lifeline telephone service costs incurred by the utility,
3 | to be applied against the utility's tax imposed by this
4 | chapter. The amount of this credit shall be determined and
5 | certified annually by the [~~public utilities commission.~~]
6 | Hawaii broadband commissionercommunications commission.

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

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

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

- 22 | (1) The State;
23 | (2) The department of transportation;
24 | (3) The counties;

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

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

6 SECTION 21. Section 269-1, Hawaii Revised Statutes,
7 is amended as follows:

8 1. By repealing the definitions of "carrier of last
9 resort" and "designated local exchange service area":

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

14 ~~"Designated local exchange service area" means an area~~
15 ~~as determined by the commission to be best served by~~
16 ~~designating a carrier of last resort pursuant to section~~
17 ~~269-43."]~~

18 2. By amending the definition of "public utility" to
19 read:

20 ""Public utility":

21 (1) Includes every person who may own, control,
22 operate, or manage as owner, lessee, trustee,
23 receiver, or otherwise, whether under a
24 franchise, charter, license, articles of

1 association, or otherwise, any plant or
2 equipment, or any part thereof, directly or
3 indirectly for public use, for the transportation
4 of passengers or freight, or the conveyance or
5 transmission of telecommunications messages, or
6 the furnishing of facilities for the transmission
7 of intelligence by electricity by land or water
8 or air within the State, or between points within
9 the State, or for the production, conveyance,
10 transmission, delivery, or furnishing of light,
11 power, heat, cold, water, gas, or oil, or for the
12 storage or warehousing of goods, or the disposal
13 of sewage; provided that the term shall include:

14 (A) Any person insofar as that person owns or
15 operates a private sewer company or sewer
16 facility; and

17 (B) Any telecommunications carrier or
18 telecommunications common carrier;

19 (2) Shall not include:

20 (A) Any person insofar as that person owns or
21 operates an aerial transportation
22 enterprise;

23 (B) Persons owning or operating taxicabs, as
24 defined in this section;

- 1 (C) Common carriers transporting only freight on
2 the public highways, unless operating within
3 localities or along routes or between points
4 that the public utilities commission finds
5 to be inadequately serviced without
6 regulation under this chapter;
- 7 (D) Persons engaged in the business of
8 warehousing or storage unless the commission
9 finds that regulation thereof is necessary
10 in the public interest;
- 11 (E) The business of any carrier by water to the
12 extent that the carrier enters into private
13 contracts for towage, salvage, hauling, or
14 carriage between points within the State and
15 the carriage is not pursuant to either an
16 established schedule or an undertaking to
17 perform carriage services on behalf of the
18 public generally;
- 19 (F) The business of any carrier by water,
20 substantially engaged in interstate or
21 foreign commerce, transporting passengers on
22 luxury cruises between points within the
23 State or on luxury round-trip cruises
24 returning to the point of departure;

- 1 (G) Any person who:
- 2 (i) Controls, operates, or manages plants or
- 3 facilities for the production,
- 4 transmission, or furnishing of power
- 5 primarily or entirely from nonfossil
- 6 fuel sources; and
- 7 (ii) Provides, sells, or transmits all of
- 8 that power, except such power as is
- 9 used in its own internal operations,
- 10 directly to a public utility for
- 11 transmission to the public;
- 12 (H) A telecommunications provider only to the
- 13 extent determined by the [~~commission~~] Hawaii
- 14 broadband commissioner communications
- 15 commission pursuant to section [~~269-16-9,~~]
- 16 -34;
- 17 (I) Any person who controls, operates, or manages
- 18 plants or facilities developed pursuant to
- 19 chapter 167 for conveying, distributing, and
- 20 transmitting water for irrigation and such
- 21 other purposes that shall be held for public
- 22 use and purpose;

1 (J) Any person who owns, controls, operates, or
2 manages plants or facilities for the
3 reclamation of wastewater; provided that:
4 (i) The services of the facility shall be
5 provided pursuant to a service contract
6 between the person and a state or
7 county agency and at least ten per cent
8 of the wastewater processed is used
9 directly by the State or county which
10 has entered into the service contract;
11 (ii) The primary function of the facility
12 shall be the processing of secondary
13 treated wastewater that has been
14 produced by a municipal wastewater
15 treatment facility that is owned by a
16 state or county agency;
17 (iii) The facility shall not make sales of
18 water to residential customers;
19 (iv) The facility may distribute and sell
20 recycled water or reclaimed water to
21 entities not covered by a state or
22 county service contract; provided that,
23 in the absence of regulatory oversight
24 and direct competition, the

20

1 distribution and sale of recycled or
2 reclaimed water shall be voluntary and
3 its pricing fair and reasonable. For
4 purposes of this subparagraph,
5 "recycled water" and "reclaimed water"
6 mean treated wastewater that by design
7 is intended or used for a beneficial
8 purpose; and

9 (v) The facility shall not be engaged,
10 either directly or indirectly, in the
11 processing of food wastes; and

12 (K) Any person who owns, controls, operates, or
13 manages any seawater air conditioning
14 district cooling project; provided that at
15 least fifty per cent of the energy required
16 for the seawater air conditioning district
17 cooling system is provided by a renewable
18 energy resource, such as cold, deep
19 seawater.

20 If the application of this chapter is ordered by the
21 commission or the Hawaii broadband
22 commissioner communications commission, as the case may be,
23 in any case provided in paragraphs (2)(C), (2)(D), (2)(H),
24 and (2)(I), the business of any public utility that

1 presents evidence of bona fide operation on the date of the
2 commencement of the proceedings resulting in the order
3 shall be presumed to be necessary to public convenience and
4 necessity, but any certificate issued under this proviso
5 shall nevertheless be subject to ~~such~~ terms and
6 conditions as the commission or the Hawaii broadband
7 ~~commissioner~~ communications commission, respectively, may
8 prescribe, as provided in sections ~~[269-16.9]~~ -34 and
9 269-20."

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

12 "Telecommunications carrier" or "telecommunications
13 common carrier" ~~[means any person that owns, operates,~~
14 ~~manages, or controls any facility used to furnish~~
15 ~~telecommunications services for profit to the public, or to~~
16 ~~classes of users as to be effectively available to the~~
17 ~~public, engaged in the provision of services, such as~~
18 ~~voice, data, image, graphics, and video services, that make~~
19 ~~use of all or part of their transmission facilities,~~
20 ~~switches, broadcast equipment, signalling, or control~~
21 ~~devices.] has the same meaning as in section -1."~~

22 4. By amending the definition of "telecommunications
23 service" or "telecommunications" to read:

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

11 | Notes: OTW wanted to include its definition of telecommunications as
12 | proposed in the Definitions section at the beginning of this bill. DCCA did
13 | not agree with the proposal in § -1 and continues to oppose it here.
14 |

15 SECTION 22. Section 269-6, Hawaii Revised Statutes,
16 is amended by amending subsection (a) to read as follows:
17 "(a) The public utilities commission shall have the
18 general supervision hereinafter set forth over all public
19 utilities, and shall perform the duties and exercise the
20 powers imposed or conferred upon it by this chapter.
21 Included among the general powers of the commission is the
22 authority to adopt rules pursuant to chapter 91 necessary
23 for the purposes of this chapter. Chapter 269 shall apply
24 to telecommunications carriers or telecommunications common
25 | carriers until such time as the Hawaii broadband

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

5 SECTION 23. Section 269-16, Hawaii Revised Statutes,
6 is amended to read as follows:

7 **"§269-16 Regulation of utility rates; ratemaking**
8 **procedures.** (a) All rates, fares, charges,
9 classifications, schedules, rules, and practices made,
10 charged, or observed by any public utility or by two or
11 more public utilities jointly shall be just and reasonable
12 and shall be filed with the public utilities commission.
13 The rates, fares, classifications, charges, and rules of
14 every public utility shall be published by the public
15 utility in ~~such~~ the manner as the public utilities
16 commission may require, and copies shall be furnished to
17 any person on request.

18 To the extent the contested case proceedings referred
19 to in chapter 91 are required in any rate proceeding to
20 ensure fairness and to provide due process to parties that
21 may be affected by rates approved by the commission, the
22 evidentiary hearings shall be conducted expeditiously and
23 shall be conducted as a part of the ratemaking proceeding.

1 (b) No rate, fare, charge, classification, schedule,
2 rule, or practice, other than one established pursuant to
3 an automatic rate adjustment clause previously approved by
4 the commission, shall be established, abandoned, modified,
5 or departed from by any public utility, except after thirty
6 days' notice to the commission as prescribed in section
7 269-12(b), and prior approval by the commission for any
8 increases in rates, fares, or charges. The commission, in
9 its discretion and for good cause shown, may allow any
10 rate, fare, charge, classification, schedule, rule, or
11 practice to be established, abandoned, modified, or
12 departed from upon notice less than that provided for in
13 section 269-12(b). A contested case hearing shall be held
14 in connection with any increase in rates, and the hearing
15 shall be preceded by a public hearing as prescribed in
16 section 269-12(c), at which the consumers or patrons of the
17 public utility may present testimony to the commission
18 concerning the increase. The commission, upon notice to
19 the public utility, may:

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

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

1 regulated, fixed, and changed are just and
2 reasonable, and provide a fair return on the
3 property of the utility actually used or useful
4 for public utility purposes.

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

21 (d) The commission shall make every effort to
22 complete its deliberations and issue its decision as
23 expeditiously as possible and before nine months from the
24 date the public utility filed its completed application;

1 provided that in carrying out this mandate, the commission
2 shall require all parties to a proceeding to comply
3 strictly with procedural time schedules that it
4 establishes. If a decision is rendered after the nine-
5 month period, the commission shall report in writing the
6 reasons therefor to the legislature within thirty days
7 after rendering the decision.

8 Notwithstanding subsection (c), if the commission has
9 not issued its final decision on a public utility's rate
10 application within the nine-month period stated in this
11 section, the commission, within one month after the
12 expiration of the nine-month period, shall render an
13 interim decision allowing the increase in rates, fares and
14 charges, if any, to which the commission, based on the
15 evidentiary record before it, believes the public utility
16 is probably entitled. The commission may postpone its
17 interim rate decision for thirty days if the commission
18 considers the evidentiary hearings incomplete. In the
19 event interim rates are made effective, the commission
20 shall require by order the public utility to return, in the
21 form of an adjustment to rates, fares, or charges to be
22 billed in the future, any amounts with interest, at a rate
23 equal to the rate of return on the public utility's rate
24 base found to be reasonable by the commission, received

1 under the interim rates that are in excess of the rates,
2 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
5 into effect that results in the excess and shall continue
6 to accrue on the balance of the excess until returned.

7 The nine-month period in this subsection shall begin
8 only after a completed application has been filed with the
9 commission and a copy served on the consumer advocate. The
10 commission shall establish standards concerning the data
11 required to be set forth in the application in order for it
12 to be deemed a completed application. The consumer
13 advocate may, within twenty-one days after receipt, object
14 to the sufficiency of any application, and the commission
15 shall hear and determine any objection within twenty-one
16 days after it is filed. If the commission finds that the
17 objections are without merit, the application shall be
18 deemed to have been completed upon original filing. If the
19 commission finds the application to be incomplete, it shall
20 require the applicant to submit an amended application
21 consistent with its findings, and the nine-month period
22 shall not commence until the amended application is filed.

23 (e) In any case of two or more organizations, trades,
24 or businesses (whether or not incorporated, whether or not

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

11 (f) Notwithstanding any law to the contrary, for
12 public utilities having annual gross revenues of less than
13 \$2,000,000, the commission may make and amend its rules and
14 procedures to provide the commission with sufficient facts
15 necessary to determine the reasonableness of the proposed
16 rates without unduly burdening the utility company and its
17 customers. In the determination of the reasonableness of
18 the proposed rates, the commission shall:

19 (1) Require the filing of a standard form application
20 to be developed by the commission. The standard
21 form application for general rate increases shall
22 describe the specific facts that shall be
23 submitted to support a determination of the
24 reasonableness of the proposed rates, and require

1 the submission of financial information in
2 conformance with a standard chart of accounts to
3 be approved by the commission, and other
4 commission guidelines to allow expeditious review
5 of a requested general rate increase application;

6 (2) Hold a public hearing as prescribed in section
7 269-12(c) at which the consumers or patrons of
8 the public utility may present testimony to the
9 commission concerning the increase. The public
10 hearing shall be preceded by proper notice, as
11 prescribed in section 269-12; and

12 (3) Make every effort to complete its deliberations
13 and issue a proposed decision and order within
14 six months from the date the public utility files
15 a completed application with the commission;
16 provided that all parties to the proceeding
17 strictly comply with the procedural schedule
18 established by the commission and no person is
19 permitted to intervene. If a proposed decision
20 and order is rendered after the six-month period,
21 the commission shall report in writing the
22 reasons therefor to the legislature within thirty
23 days after rendering the proposed decision and
24 order. Prior to the issuance of the commission's

1 proposed decision and order, the parties shall
2 not be entitled to a contested case hearing.

3 If all parties to the proceeding accept the
4 proposed decision and order, the parties shall
5 not be entitled to a contested case hearing, and
6 section 269-15.5 shall not apply. If the
7 commission permits a person to intervene, the
8 six-month period shall not apply and the
9 commission shall make every effort to complete
10 its deliberations and issue its decision within
11 the nine-month period from the date the public
12 utility's completed application was filed,
13 pursuant to subsections (b), (c), and (d).

14 If a party does not accept the proposed
15 decision and order, either in whole or in part,
16 that party shall give notice of its objection or
17 nonacceptance within the timeframe prescribed by
18 the commission in the proposed decision and
19 order, setting forth the basis for its objection
20 or nonacceptance; provided that the proposed
21 decision and order shall have no force or effect
22 pending the commission's final decision. If
23 notice is filed, the above six-month period shall
24 not apply and the commission shall make every

1 effort to complete its deliberations and issue
2 its decision within the nine-month period from
3 the date the public utility's completed
4 application was filed as set forth in subsection
5 (d). Any party that does not accept the proposed
6 decision and order under this paragraph shall be
7 entitled to a contested case hearing; provided
8 that the parties to the proceeding may waive the
9 contested case hearing.

10 Public utilities subject to this subsection shall
11 follow the standard chart of accounts to be approved by the
12 commission for financial reporting purposes. The public
13 utilities shall file a certified copy of the annual
14 financial statements in addition to an updated chart of
15 accounts used to maintain their financial records with the
16 commission and consumer advocate within ninety days from
17 the end of each calendar or fiscal year, as applicable,
18 unless this timeframe is extended by the commission. The
19 owner, officer, general partner, or authorized agent of the
20 utility shall certify that the reports were prepared in
21 accordance with the standard chart of accounts.

22 (g) Any automatic fuel rate adjustment clause
23 requested by a public utility in an application filed with

1 the commission shall be designed, as determined in the
2 commission's discretion, to:

- 3 (1) Fairly share the risk of fuel cost changes
4 between the public utility and its customers;
- 5 (2) Provide the public utility with sufficient
6 incentive to reasonably manage or lower its fuel
7 costs and encourage greater use of renewable
8 energy;
- 9 (3) Allow the public utility to mitigate the risk of
10 sudden or frequent fuel cost changes that cannot
11 otherwise reasonably be mitigated through other
12 commercially available means, such as through
13 fuel hedging contracts;
- 14 (4) Preserve, to the extent reasonably possible, the
15 public utility's financial integrity; and
- 16 (5) Minimize, to the extent reasonably possible, the
17 public utility's need to apply for frequent
18 applications for general rate increases to
19 account for the changes to its fuel costs.

20 ~~(h) Unless otherwise directed by the commission, a~~
21 ~~telecommunications carrier may charge any rate for a~~
22 ~~service less than or equal to the rate for the service~~
23 ~~included in the telecommunications carrier's filed tariff.~~
24 ~~The rate charged shall be available at the same terms for~~

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1 ~~all customers in all geographic locations within the~~
2 ~~telecommunications carrier's service area." (h)~~

3 ~~Notwithstanding any law to the contrary, this chapter shall~~
4 ~~not apply to the rates, fares, and charges of the incumbent~~
5 ~~local exchange carrier, and the incumbent local exchange~~
6 ~~carrier shall not be required to obtain approval or provide~~
7 ~~any cost support or other information to establish or~~
8 ~~otherwise modify in any manner its rates, fares, and~~
9 ~~charges and shall not be required to bundle any service~~
10 ~~offerings into a single or combined pricing package.~~

11 ~~Notwithstanding the above, all rates, fares, charges, and~~
12 ~~bundled service offerings shall be filed with the~~
13 ~~commission for informational purposes only and become~~
14 ~~effective immediately upon filing."~~

15 Notes: OTW sought to change the deregulation provision contained in the
16 new subsection (h) and TWT wanted to delete that provision in the new
17 subsection (h) in §269-16. DCCA agrees with TWT replaced the language
18 in the new subsection (h) with a provision that allows telecommunications
19 carriers to charge any rate that is less than or equal to the rate that is
20 included in the carrier's filed tariff. This reverts back to DCCA's original
21 proposal.

22
23 SECTION 24. Section 269-51, Hawaii Revised Statutes,
24 is amended to read as follows:

25 **"§269-51 Consumer advocate; director of commerce and**
26 **consumer affairs.** The director of commerce and consumer
27 affairs shall be the consumer advocate in hearings before
28 the public utilities commission[-] and the Hawaii broadband

1 | ~~commissionercommunications~~ commission. The consumer
2 | advocate shall represent, protect, and advance the
3 | interests of all consumers, including small businesses, of
4 | utility and telecommunications services. The consumer
5 | advocate shall not receive any salary in addition to the
6 | salary received as director of commerce and consumer
7 | affairs.

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

18 | SECTION 25. Section 269-54, Hawaii Revised Statutes,
19 | is amended by amending subsections (d) and (e) to read as
20 | follows:

21 | "(d) Whenever it appears to the consumer advocate
22 | that: (1) any public utility or telecommunications
23 | carrier ~~or cable operator~~ has violated or failed to comply
24 | with any provision of this part or of any state or federal

1 | law; (2) any public utility or telecommunications carrier,
2 | or cable operator has failed to comply with any rule,
3 | regulation, or other requirement of the public utilities
4 | commission, the Hawaii broadband commissioner communications
5 | commission, or of any other state or federal agency; (3)
6 | any public utility or telecommunications carrier, or cable
7 | operator has failed to comply with any provision of its
8 | charter, certificate of public convenience and necessity,
9 | or franchise; (4) changes, additions, extensions, or
10 | repairs to the plant or service of any public utility or
11 | telecommunications carrier, or cable operator are necessary
12 | to meet the reasonable convenience or necessity of the
13 | public; or (5) the rates, fares, classifications, charges,
14 | or rules of any public utility or telecommunications
15 | carrier, or cable operator where not prohibited by
16 | federal law, are unreasonable or unreasonably
17 | discriminatory, the consumer advocate may institute
18 | proceedings for appropriate relief before the public
19 | utilities commission[-] or the Hawaii broadband
20 | commissioner communications commission, as applicable. The
21 | consumer advocate may appeal any final decision and order
22 | in any proceeding to which the consumer advocate is a party
23 | in the manner provided by law.

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

1 same is filed. The consumer advocate or the public utility
2 may appeal the decision of the commission on any ~~such~~
3 request, subject to chapter 602, in the manner provided for
4 civil appeals from the circuit courts. The consumer
5 advocate or, telecommunications carrier, or cable operator
6 may appeal the decision of the Hawaii broadband
7 commissioner communications commission, in the manner
8 provided for in section -176. Subject to the foregoing,
9 such requests may ask the public utility or,
10 telecommunications carrier, or cable operator to:

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

1 control of the public utility[+] or
2 telecommunications carrier, or cable operator; or

3 (3) Permit entry upon land or other property in the
4 possession or control of the public utility or
5 telecommunications carrier, or cable operator for
6 the purpose of inspection and measuring,
7 surveying, photographing, testing, or sampling
8 the property or any designated object thereon."

9 SECTION 26. Section 269-55, Hawaii Revised Statutes,
10 is amended to read as follows:

11 **"§269-55 Handling of complaints.** The consumer
12 advocate shall counsel public utility and
13 telecommunications, and cable service customers in the
14 handling of consumer complaints before the public utilities
15 commission[-] or the Hawaii broadband
16 commissioner communications commission. The public
17 utilities commission shall provide a central clearinghouse
18 of information by collecting and compiling all consumer
19 complaints and inquiries concerning public utilities. The
20 Hawaii broadband commissioner communications commission
21 shall provide a central clearinghouse of information by
22 collecting and compiling all consumer complaints and
23 inquiries concerning telecommunications carriers and cable
24 operators."

1 SECTION 27. Section 269E-2, Hawaii Revised Statutes,
2 is amended by adding a new definition to be appropriately
3 inserted and to read as follows:

4 ""Hawaii communications commission" means the Hawaii
5 communications commission established pursuant to chapter
6 ."

7 SECTION 28. Section 269E-6, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "[f]§269E-6[+] One call center financing. (a) To
10 finance the establishment and operation of the center and
11 the administrative costs of the commission, operators shall
12 pay to the commission a fee in an amount and at a schedule
13 determined by the commission. The commission may also
14 assess fees on excavators. All fees paid by operators and
15 excavators shall be deposited with the director of finance
16 to the credit of the public utilities commission special
17 fund.

18 (b) All operators of subsurface installations in this
19 State shall share in the operational and administrative
20 costs of the center, except where:

21 (1) All of the operator's subsurface installations
22 are located on property owned exclusively by that
23 operator; and

1 (2) The operator has not authorized another operator
2 to use the property for any subsurface
3 installation.

4 (c) The commission may accept revenues,
5 compensations, proceeds, charges, penalties, grants, or any
6 other payments in any form, from any public agency or any
7 other source.

8 (d) Any agency required to participate may charge a
9 reasonable fee in an amount sufficient to cover the
10 administrative and operational costs required by this
11 chapter.

12 (e) Civil penalties collected pursuant to this
13 chapter shall be used by the commission to educate the
14 operating and excavating community in Hawaii and to reduce
15 the center's operating costs.

16 (f) Any operator or excavator that pays public
17 utility fees to the commission pursuant to section 269-30
18 may petition the commission for approval to apply a portion
19 of its public utility fee payments as a credit toward its
20 center fees.

21 (g) Any operator or excavator that pays fees to the
22 Hawaii communications commission pursuant to section -51
23 may petition the commission for approval to apply a portion
24 of its fee payments as a credit toward its center fees."

1 | Note: Incorporated to address AT&T's concerns regarding their proposal
2 | for §-51.

3 |
4 | SECTION 297. Section 339K-2, Hawaii Revised Statutes,
5 | is amended to read as follows:

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

22 | SECTION 3028. Section 356D-15, Hawaii Revised
23 | Statutes, is amended by amending subsection (b) to read as
24 | follows:

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

15 SECTION ~~3129~~. Section 448E-13, Hawaii Revised
16 Statutes, is amended to read as follows:

17 "**§448E-13 Exemption of public utility and [community**
18 **antennae] cable television company employees.** All
19 employees of a public utility within the State under a
20 franchise or charter granted by the State [~~which~~] that is
21 regulated by the public utilities commission or the Hawaii
22 broadband commissionercommunications commission and
23 [~~community antennae television company,~~] a cable television

1 franchisee, while so employed, shall be exempt from the
2 provision of this chapter."

3 SECTION ~~3230~~. Section 481-11, Hawaii Revised
4 Statutes, is amended to read as follows:

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

12 SECTION ~~334~~. Section 481P-5, Hawaii Revised Statutes,
13 is amended to read as follows:

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

- 16 (1) A person who initiates telephone calls to a
17 residence for the sole purpose of polling or
18 soliciting the expression of ideas, opinions, or
19 votes, or a person soliciting solely for a
20 political or religious cause or purpose;
- 21 (2) A securities broker-dealer, salesperson,
22 investment adviser, or investment adviser
23 representative who is registered with this State
24 to sell securities or who is authorized to sell

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

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

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

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

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

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

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

10 SECTION 342. Section 481X-1, Hawaii Revised Statutes,
11 is amended by amending subsection (a) to read as follows:

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

- 13 (1) Express or implied warranties;
- 14 (2) Maintenance agreements; and
- 15 (3) Warranties, service contracts, and maintenance
16 agreements offered by public utilities on their
17 transmission devices to the extent they are
18 regulated by the public utilities commission or
19 the [~~department of commerce and consumer~~
20 ~~affairs.~~] Hawaii broadband
21 commissionercommunications commission."

22 SECTION 353. Section 486J-11, Hawaii Revised
23 Statutes, is amended to read as follows:

1 "§486J-11 Powers of the public utilities

2 | commission[-] and the Hawaii broadband

3 | commissionercommunications commission. (a) The public

4 | utilities commission and the Hawaii broadband

5 | commissionercommunications commission may take any action

6 | or make any determination under this chapter, including but

7 | not limited to actions or determinations that affect

8 | persons not regulated under chapters 269, _____, 271, and

9 | 271G, as the public utilities commission or the Hawaii

10 | broadband-commissionercommunications commission deems

11 | necessary to carry out its responsibilities or otherwise

12 | effectuate chapter 269, _____, 271, or 271G.

13 (b) The public utilities commission or, in the case

14 | of telecommunications carriers or telecommunications common

15 | carriers, the Hawaii broadband-commissionercommunications

16 | commission, may examine or investigate each distributor,

17 | the manner in which it is operated, its prices and rates,

18 | its operating costs and expenses, the value of its property

19 | and assets, the amount and disposition of its income, any

20 | of its financial transactions, its business relations with

21 | other persons, companies, or corporations, its compliance

22 | with all applicable state and federal laws, and all matters

23 | of any nature affecting the relations and transactions

1 between the distributor and the public, persons, or
2 businesses.

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

21 SECTION 364. Section 659-3, Hawaii Revised Statutes,
22 is amended to read as follows:

23 "[~~†~~]**§659-3[†]** **Forfeiture of franchise.** The several
24 circuit courts shall have jurisdiction of all proceedings

1 in, or in the nature of, quo warranto, brought by or in the
2 name of the public utilities commission, the Hawaii
3 ~~broadband commissioner~~communications commission, or the
4 State, for the forfeiture of the franchise of any corporate
5 body offending against any law relating to such
6 corporation, for misuser, for nonuser, for doing or
7 committing any act or acts amounting to a surrender of its
8 charter and for exercising rights not conferred upon it."

9 SECTION 375. Section 708-800, Hawaii Revised
10 Statutes, is amended by amending the definition of
11 "telecommunication service" to read as follows:

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

21 SECTION 386. Section 269-16.5, Hawaii Revised
22 Statutes, is repealed.

23 [~~"§269-16.5 Lifeline telephone rates. (a) The~~
24 ~~public utilities commission shall implement a program to~~

1 ~~achieve lifeline telephone rates for residential telephone~~
2 ~~users.~~

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

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

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

16 SECTION 397. Section 269-16.6, Hawaii Revised
17 Statutes, is repealed.

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

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

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

21 ~~(d) The commission may establish a surcharge to~~
22 ~~collect customer contributions for telecommunications relay~~
23 ~~services required under this section.~~

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

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

12 ~~(g) Nothing in this section shall preclude the~~
13 ~~commission from changing any rate established pursuant to~~
14 ~~this section either specifically or pursuant to any general~~
15 ~~restructuring of all telephone rates, charges, and~~
16 ~~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~~
22 ~~a manner that is functionally equivalent to the ability of~~
23 ~~an individual who does not have a hearing or speech~~
24 ~~disability to communicate using wire or radio voice~~

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

6 | SECTION ~~4038~~. Section 269-16.8, Hawaii Revised
7 Statutes, is repealed.

8 | ~~["**§269-16.8** Aggregators of telephone service~~

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

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

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

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

- 1 ~~(1) Posting and display of information in a prominent~~
2 ~~and conspicuous fashion on or near the telephone~~
3 ~~equipment owned or controlled by the aggregator~~
4 ~~which states the identity of the operator service~~
5 ~~provider, the operator service provider's~~
6 ~~complaint handling procedures, and means by which~~
7 ~~the customer may access the various operator~~
8 ~~service providers.~~
- 9 ~~(2) Identification by name of the operator service~~
10 ~~provider prior to the call connection and, if not~~
11 ~~posted pursuant to subsection (b) (1), a~~
12 ~~disclosure of pertinent rates, terms, conditions,~~
13 ~~and means of access to various operator service~~
14 ~~providers and the local exchange carriers,~~
15 ~~provided that the operator service provider shall~~
16 ~~disclose this information at any time upon~~
17 ~~request by the customer.~~
- 18 ~~(3) Allowing the customer access to any operator~~
19 ~~service provider operating in the relevant~~
20 ~~geographic area through the access method chosen~~
21 ~~by the provider or as deemed appropriate by the~~
22 ~~commission.~~
- 23 ~~(4) Other requirements as deemed reasonable by the~~
24 ~~commission in the areas of public safety, quality~~

1 ~~of service, unjust or discriminatory pricing, or~~
2 ~~other matters in the public interest."]~~

3 SECTION ~~4139~~. Section 269-16.9, Hawaii Revised
4 Statutes, is repealed.

5 ~~["§269-16.9 Telecommunications providers and~~
6 ~~services. (a) Notwithstanding any provision of this~~
7 ~~chapter to the contrary, the commission, upon its own~~
8 ~~motion or upon the application of any person, and upon~~
9 ~~notice and hearing, may exempt a telecommunications~~
10 ~~provider or a telecommunications service from any or all of~~
11 ~~the provisions of this chapter, except the provisions of~~
12 ~~section 269-34, upon a determination that the exemption is~~
13 ~~in the public interest. In determining whether an~~
14 ~~exemption is in the public interest, the commission shall~~
15 ~~consider whether the exemption promotes state policies in~~
16 ~~telecommunications, the development, maintenance, and~~
17 ~~operation of effective and economically efficient~~
18 ~~telecommunications services, and the furnishing of~~
19 ~~telecommunications services at just and reasonable rates~~
20 ~~and in a fair manner in view of the needs of the various~~
21 ~~customer segments of the telecommunications industry.~~
22 ~~Among the specific factors the commission may consider are:~~

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

1 ~~(8) The impact of the exemption on the availability~~
2 ~~of diversity in the supply of telecommunications~~
3 ~~services throughout the State;~~

4 ~~(9) The improvements in the regulatory system to be~~
5 ~~gained from the exemption, including the~~
6 ~~reduction in regulatory delays and costs;~~

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

9 ~~(11) The opportunity provided by the exemption for~~
10 ~~telecommunications providers to respond to~~
11 ~~competition; and~~

12 ~~(12) The potential for the exercise of substantial~~
13 ~~market power by the exempt provider or by a~~
14 ~~provider of the exempt telecommunications~~
15 ~~service.~~

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

20 ~~(c) The commission may condition or limit any~~
21 ~~exemption as the commission deems necessary in the public~~
22 ~~interest. The commission may provide a trial period for~~
23 ~~any exemption and may terminate the exemption or continue~~

1 ~~it for such period and under such conditions and~~
2 ~~limitations as it deems appropriate.~~

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

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

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

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

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

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

1 SECTION 4240. Section 269-16.91, Hawaii Revised
2 Statutes, is repealed.

3 ~~["§269-16.91] Universal service subsidies. (a) For~~
4 ~~any alternative telecommunications provider authorized to~~
5 ~~provide basic local exchange service to any area of the~~
6 ~~State pursuant to section 269-16.9(h), the commission may~~
7 ~~consider the following:~~

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

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

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

23 SECTION 431. Section 269-16.92, Hawaii Revised
24 Statutes, is repealed.

1 ~~["§269-16.92] Changes in subscriber carrier~~
2 ~~selections; prior authorization required; penalties for~~
3 ~~unauthorized changes. (a) No telecommunications carrier~~
4 ~~shall initiate a change in a subscriber's selection or~~
5 ~~designation of a long-distance carrier without first~~
6 ~~receiving:~~

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

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

20 ~~(b) Upon a determination that any telecommunications~~
21 ~~carrier has engaged in conduct that is prohibited in~~
22 ~~subsection (a), the public utilities commission shall order~~
23 ~~the carrier to take corrective action as deemed necessary~~
24 ~~by the commission and may subject the telecommunications~~

1 ~~carrier to administrative penalties pursuant to section~~
2 ~~269-28. Any proceeds from administrative penalties~~
3 ~~collected under this section shall be deposited into the~~
4 ~~public utilities commission special fund.~~

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

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

15 SECTION 442. Section 269-16.95, Hawaii Revised
16 Statutes, is repealed.

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

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

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

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

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

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

22 SECTION 453. Section 269-34, Hawaii Revised Statutes,
23 is repealed.

1 ~~["§269-34] Obligations of telecommunications~~

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

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

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

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

1 ~~telecommunications service and the~~
2 ~~interoperability of both carriers' networks;~~
3 ~~(4) Nondiscriminatory access among all~~
4 ~~telecommunications carriers, where technically~~
5 ~~feasible and economically reasonable, and where~~
6 ~~safety or the provision of existing electrical~~
7 ~~service is not at risk, to the poles, ducts,~~
8 ~~conduits, and rights of way owned or controlled~~
9 ~~by the telecommunications carrier, or the~~
10 ~~commission shall authorize access to electric~~
11 ~~utilities' poles as provided by the joint pole~~
12 ~~agreement, commission tariffs, rules, orders, or~~
13 ~~Federal Communications Commission rules and~~
14 ~~regulations;~~
15 ~~(5) Nondiscriminatory access to the network functions~~
16 ~~of the telecommunications carrier's~~
17 ~~telecommunications network, that shall be offered~~
18 ~~on an unbundled, competitively neutral, and cost-~~
19 ~~based basis;~~
20 ~~(6) Telecommunications services and network functions~~
21 ~~without unreasonable restrictions on the resale~~
22 ~~or sharing of those services and functions; and~~
23 ~~(7) Nondiscriminatory access of customers to the~~
24 ~~telecommunications carrier of their choice~~

1 ~~without the need to dial additional digits or~~
2 ~~access codes, where technically feasible. The~~
3 ~~commission shall determine the equitable~~
4 ~~distribution of costs among the authorized~~
5 ~~telecommunications carriers that will use such~~
6 ~~access and shall establish rules to ensure such~~
7 ~~access.~~

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

14 SECTION 464. Section 269-35, Hawaii Revised Statutes,
15 is repealed.

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

- 18 ~~(1) Maintaining affordable, just, and reasonable~~
19 ~~rates for basic residential service;~~
20 ~~(2) Assisting individuals or entities who cannot~~
21 ~~afford the cost of or otherwise require~~
22 ~~assistance in obtaining or maintaining their~~
23 ~~basic service or equipment as determined by the~~
24 ~~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 ~~475~~. Section 269-36, Hawaii Revised Statutes,
6 is repealed.

7 ~~["~~§269-36~~ Telecommunications number portability.~~

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

14 SECTION ~~486~~. Section 269-37, Hawaii Revised Statutes,
15 is repealed.

16 ~~["~~§269-37~~ Compensation agreements. The commission~~

17 ~~shall ensure that telecommunications carriers are~~
18 ~~compensated on a fair basis for termination of~~
19 ~~telecommunications services on each other's networks,~~
20 ~~taking into account, among other things, reasonable and~~
21 ~~necessary costs to each telecommunications carrier of~~
22 ~~providing the services in question. Telecommunications~~
23 ~~carriers may negotiate compensation arrangements, that may~~
24 ~~include "bill and keep", mutual and equal compensation, or~~

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

5 | SECTION 497. Section 269-38, Hawaii Revised Statutes,
6 is 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~~
11 ~~competitive; provided that the rates for:~~

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

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

17 | SECTION 5048. Section 269-39, Hawaii Revised
18 Statutes, is repealed.

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

23 (1) ~~If any competitive service is priced below the~~
24 ~~total service long-run incremental cost of~~

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

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

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

14 SECTION 5149. Section 269-40, Hawaii Revised
15 Statutes, is repealed.

16 ~~["§269-40] Access to advanced services. The~~
17 ~~commission shall ensure that all consumers are provided~~
18 ~~with nondiscriminatory, reasonable, and equitable access to~~
19 ~~high quality telecommunications network facilities and~~
20 ~~capabilities that provide subscribers with sufficient~~
21 ~~network capacity to access information services that~~
22 ~~provide a combination of voice, data, image, and video, and~~
23 ~~that are available at just, reasonable, and~~

1 nondiscriminatory rates that are based on reasonably
2 identifiable costs of providing the services."]

3 SECTION 5250. Section 269-41, Hawaii Revised
4 Statutes, is repealed.

5 ~~["§269-41] Universal service program, establishment,~~
6 ~~purpose, principles.~~ There is established the universal
7 service program. The purpose of this program is to:

8 (1) ~~Maintain affordable, just, and reasonable rates~~
9 ~~for basic residential telecommunications service,~~
10 ~~as defined by the commission;~~

11 (2) ~~Assist customers located in the areas of the~~
12 ~~State that have high costs of essential~~
13 ~~telecommunications service, low income customers,~~
14 ~~and customers with disabilities, in obtaining and~~
15 ~~maintaining access to a basic set of essential~~
16 ~~telecommunications services as determined by the~~
17 ~~commission. The commission may expand or~~
18 ~~otherwise modify relevant programs, such as the~~
19 ~~lifeline program under section 269-16.5;~~

20 (3) ~~Ensure that consumers in all communities are~~
21 ~~provided with access, at reasonably comparable~~
22 ~~rates, to all telecommunications services which~~
23 ~~are used by a majority of consumers located in~~
24 ~~metropolitan areas of the State. The commission~~

1 shall provide for a reasonable transition period
2 to support the statewide deployment of these
3 advanced telecommunications services, including,
4 but not limited to, the use of strategic
5 community access points in public facilities such
6 as education, library, and health care
7 facilities;

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

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

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

19 SECTION 534. Section 269-42, Hawaii Revised Statutes,
20 is repealed.

21 ~~["§269-42 Universal service program; contributions.~~

22 ~~(a) There is established outside of the state treasury a~~
23 ~~special fund to be known as the universal service fund to~~
24 ~~be administered by the commission to implement the policies~~

1 ~~and goals of universal service. The fund shall consist of~~
2 ~~contributions from the sources identified in subsections~~
3 ~~(e) and (f). Interest earned from the balance of the fund~~
4 ~~shall become a part of the fund. The commission shall~~
5 ~~adopt rules regarding the distribution of moneys from the~~
6 ~~fund including reimbursements to carriers for providing~~
7 ~~reduced rates to low income, elderly, residents of~~
8 ~~underserved or rural areas, or other subscribers, as~~
9 ~~authorized by the commission.~~

10 ~~(b) The commission may allow distribution of funds~~
11 ~~directly to customers based upon a need criteria~~
12 ~~established by the commission.~~

13 ~~(c) A telecommunications carrier or other person~~
14 ~~contributing to the universal service program may establish~~
15 ~~a surcharge which is clearly identified and explained on~~
16 ~~customers' bills to collect from customers contributions~~
17 ~~required under this section.~~

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

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

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

19 SECTION 542. Section 269-43, Hawaii Revised Statutes,
20 is repealed.

21 ~~["~~§269-43~~ Carriers of last resort. (a) The~~
22 ~~commission may define and designate local exchange service~~
23 ~~areas where the commission has determined that providing~~

1 universal service funds to a single provider will be the
2 most appropriate way to ensure service for these areas.

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

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

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

20 SECTION 553. Chapter 440G, Hawaii Revised Statutes,
21 is repealed.

22 SECTION 564. All rules, including the rules in
23 chapter 6-80, Hawaii Administrative Rules, policies,
24 procedures, orders, certificates of public convenience and

Comment [D4]: AT&T's suggestion. Although not necessary, DCCA agreed to the language.

Comment [D5]: Changes to address AT&T's concerns are incorporated here rather than section 34, where AT&T suggested.

1 | necessity, ~~exemption,~~ franchises, guidelines, and other
2 | material adopted, issued, or developed by the department of
3 | commerce and consumer affairs and the public utilities
4 | commission to implement provisions of the Hawaii Revised
5 | Statutes that are reenacted or made applicable to the
6 | Hawaii ~~broadband commissioner~~ communications commission by
7 | this Act, shall remain in full force and effect until
8 | amended or repealed by the Hawaii ~~broadband~~
9 | ~~commissioner~~ communications commission. In the interim,
10 | every reference to the department of commerce and consumer
11 | affairs, director of commerce and consumer affairs, public
12 | utilities commission, or chairperson of the public
13 | utilities commission in those rules, policies, procedures,
14 | orders, franchises, guidelines, and other material is
15 | amended to refer to the Hawaii ~~broadband~~
16 | ~~commissioner~~ communications commission as appropriate.

17 | SECTION 575. All deeds, leases, contracts, loans,
18 | agreements, permits, or other documents executed or entered
19 | into by or on behalf of the department of commerce and
20 | consumer affairs and the public utilities commission
21 | pursuant to the provisions of the Hawaii Revised Statutes
22 | that are reenacted or made applicable to the Hawaii
23 | ~~broadband commissioner~~ communications commission by this
24 | Act, shall remain in full force and effect. Effective upon

1 approval of this Act, every reference to the department of
2 commerce and consumer affairs, director of commerce and
3 consumer affairs, public utilities commission, or
4 chairperson of the public utilities commission therein
5 shall be construed as a reference to the Hawaii ~~broadband~~
6 ~~commissioner~~communications commission as appropriate.

7 SECTION 586. During fiscal year 2009~~10~~-2010~~11~~, fifty
8 per cent of the moneys collected by the public utilities
9 commission from telecommunications carriers and deposited
10 into the public utilities commission special fund shall be
11 deposited into the ~~commissioner~~ special fund to provide
12 appropriations for the new ~~commissioner~~.

13 The unencumbered balance existing on June 30, 2009~~10~~,
14 in the cable television division subaccount in the
15 compliance resolution fund shall be deposited into the
16 ~~commissioner~~ special fund to provide appropriations for the
17 new ~~commissioner~~.

18 SECTION 597. All appropriations, records, equipment,
19 machines, files, supplies, contracts, books, papers,
20 documents, maps, and other personal property heretofore
21 made, used, acquired, or held by the department of commerce
22 and consumer affairs and the public utilities commission
23 relating to the functions transferred to the Hawaii

1 | ~~broadband commissioner~~communications commission shall be
2 transferred with the functions to which they relate.

3 | SECTION 6058. (a) The department of commerce and
4 consumer affairs shall transfer all four positions from the
5 cable television division to the service of the Hawaii
6 | ~~broadband commissioner~~communications commission; provided
7 that:

- 8 (1) Employees who occupy civil service positions and
9 whose functions are transferred by this Act shall
10 not suffer any loss of salary, seniority, prior
11 service credits, any vacation and sick leave
12 credits previously earned, or other rights,
13 benefits, and privileges under the State's
14 personnel laws. Employees who have permanent
15 civil service status shall retain their civil
16 service status and shall be transferred to
17 similar or corresponding positions in the Hawaii
18 | ~~broadband commissioner~~communications commission,
19 subject to the State's personnel laws and this
20 Act;
- 21 (2) Employees who, prior to this Act, are exempt from
22 civil service and are transferred by this Act
23 shall not suffer any loss of prior service
24 credits, any vacation and sick leave credits

1 previously earned, or other rights, benefits, and
2 privileges under the State's personnel laws. The
3 Hawaii ~~broadband commissioner~~communications
4 commission shall prescribe the qualifications and
5 duties of such employees and fix their salaries
6 without regard to chapter 76; and

7 (3) Employees, whose functions are transferred by
8 this Act, shall be transferred with their
9 functions and shall continue to perform their
10 regular duties subject to the State's personnel
11 laws and this Act.

12 (b) There shall be up to ten new temporary exempt
13 positions established in the Hawaii ~~broadband~~
14 ~~commissioner~~communications commission to assist the
15 commissioner in carrying out the provisions of this Act.

16 These positions shall be funded from the communications
17 ~~commissioner~~ special fund and may be filled without regard
18 to chapter 76.

19 SECTION 6159. The Hawaii ~~broadband~~
20 ~~commissioner~~communications commission shall convene a work
21 group to develop procedures for streamlined permitting
22 functions that are applicable to the development of
23 broadband services and broadband technology which are
24 normally available to state and local governments for the

1 use or development of broadband service or broadband
2 technology. Members of the work group shall include:

- 3 (1) The Hawaii ~~broadband commissioner~~communications
4 commission established in section 3 of this Act;
5 (2) The mayor of the county of Hawaii, or the mayor's
6 designee;
7 (3) The mayor of the city and county of Honolulu, or
8 the mayor's designee;
9 (4) The mayor of the county of Kauai, or the mayor's
10 designee;
11 (5) The mayor of the county of Maui, or the mayor's
12 designee;
13 (6) The chairperson of the Hawaii broadband task
14 force established by Act 2, First Special Session
15 Laws of Hawaii 2007; and
16 (7) Two representatives of state agencies with
17 jurisdiction over land use and permitting at the
18 state level.

19 TWT proposes to add 5 additional members to the work group who
20 represent telecommunications, cable, and wireless internet industries.

21 SECTION ~~6260~~. The work group established under
22
23 section 59 shall submit to the legislature no later than
24 January 1, 2011~~0~~, a report with its recommended procedures
25 for streamlining and expediting all permitting functions

1 normally available to state and local governments for the
2 use or development of broadband service or broadband
3 technology. The procedures shall be consistent across all
4 counties and shall provide that any permitting fees and
5 revenues traditionally accruing to the counties that relate
6 to the use or development of broadband service or broadband
7 technology will continue to accrue to the counties once the
8 procedures go into effect.

9 | SECTION 631. The legislative reference bureau shall
10 review all relevant laws in the Hawaii Revised Statutes
11 relating to broadband technology, telecommunications,
12 infrastructure development, permitting requirements, and
13 any other issues the legislative reference bureau deems
14 appropriate, including all acts passed by the legislature
15 | during this regular session of 2009~~10~~¹⁰, whether enacted
16 before or after the effective date of this Act, unless such
17 acts specifically provide that this Act is being amended,
18 and make recommendations on how these laws may be amended
19 to conform to this Act or facilitate the implementation of
20 this Act. The legislative reference bureau shall submit a
21 report of its findings and recommendations, including
22 proposed legislation, to the legislature not later than
23 twenty days prior to the convening of the 2010 regular
24 session.

1 SECTION 642. Upon receipt of federal funds allocated
2 by the American Recovery and Reinvestment Act of 2009 (P.L.
3 111-5), section 106 of the Broadband Data Improvement Act
4 (P.L. 110-385), and other federal stimulus acts, there is
5 appropriated out of the federal funds subaccount of the
6 commissioner special fund out of those funds the sum of
7 \$ or so much thereof as may be necessary for
8 fiscal year 2009-2009 and the sum of \$ or so much
9 thereof as may be necessary for fiscal year 2010-2011 to
10 purchase broadband facilities, services, or equipment or to
11 fund broadband-related infrastructure projects pursuant to
12 this Act.

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Comment [D6]: Conferees need to determine an appropriation amount, which can only estimate the broadband stimulus moneys that the State may obtain.

13 The sums appropriated shall be expended by the Hawaii
14 broadband commissioner communications commission for the
15 purposes of this Act.

16 SECTION 65. There is appropriated out of the
17 communications commission special fund the sum of \$
18 or so much thereof as may be necessary for fiscal year
19 2010-2011 to enable the Hawaii communications commission to
20 effectuate the purposes of this Act.

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21 The sums appropriated shall be expended by the Hawaii
22 communications commission for the purposes of this Act.

23 Note: DCCA inserted the appropriation section to authorize the
24 commission to expend moneys and to establish an initial expenditure
25 ceiling for the program.

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1
2 SECTION 663. Statutory material to be repealed is
3 bracketed and stricken. New statutory material is
4 underscored.

5 SECTION 674. This Act shall take effect on July 1,
6 ~~2050201009~~, to promote further discussion on various
7 segments of this Act; provided that:

8 (1) ~~A~~ any decision or order executed by the public
9 utilities commission prior to the enactment of
10 this Act shall remain in full force and effect
11 until such time as the Hawaii broadband
12 commissioner communications commission may amend
13 or repeal the decision or order under the Hawaii
14 broadband commissioner communications commission's
15 jurisdiction;

Comment [D7]: Not be necessary as Section 55 of the bill already addresses this issue.

16 (2) The provisions relating to the regulation of
17 telecommunications carriers and
18 telecommunications common carriers contained in
19 sections -31 to -51, in part II of the new
20 Hawaii Revised Statutes chapter created in
21 section 3 of this Act shall take effect on July
22 1, 2010;

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23 (2)(3) The public utilities commission shall
24 continue its regulation of telecommunications

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carriers and telecommunications common carriers
under chapter 269, Hawaii Revised Statutes, until
June 30, 2010; and

(4) On June 30, 2010, section 23 of this Act shall
be repealed and section 269-16, Hawaii Revised
Statutes, is reenacted in the form in which it
read on the day before the approval of this Act.

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org



MUFI HANNEMANN
MAYOR

LOUIS M. KEALOHA
CHIEF

DELBERT T. TATSUYAMA
RANDAL K. MACADANGDANG
DEPUTY CHIEFS

OUR REFERENCE MC-LS

February 3, 2010

The Honorable Angus L. K. McKelvey, Chair
and Members
Committee on Economic Revitalization,
Business, and Military Affairs
The Honorable Robert N. Herkes, Chair
and Members
Committee on Consumer Protection
and Commerce
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs McKelvey and Herkes and Members:

Subject: House Bill No. 2698, Relating to Technology

I am Marie McCauley, Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD strongly opposes House Bill No. 2698. We understand from this proposal that the current Wireless Enhanced 9-1-1 fund will be used to help start and pay for a Broadband Technology fund. The use of the 9-1-1 fund for this purpose will conflict with Public Law 110-283, The New and Emerging Technologies 9-1-1 Improvement, which directs states to use the fund for 9-1-1 purposes only.

We support broadband technology. However, we have serious concerns that the Wireless Enhanced 9-1-1 fund, which has been raided once and may be raided again this year, has barely enough funds to cover our current Public Safety Answering Points' expenses.

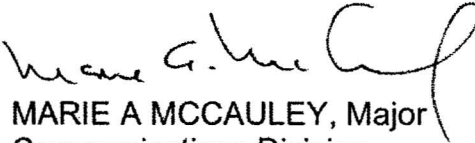
The HPD has had to reprioritize its requests for upgrades to the Next Generation 9-1-1 project. These upgrades must be completed before moving on to the broadband technology as described. Each step must be accomplished so that public safety is not

The Honorable Angus L. K. McKelvey
and Members
The Honorable Robert N. Herkes
and Members
Page 2
February 3, 2010

jeopardized. It is imperative that we have stable, reliable, and up-to-date 9-1-1 services to ensure the well-being of our residents and visitors.

Thank you for giving us the opportunity to express our strong opposition to this bill.

Sincerely,


MARIE A MCCAULEY, Major
Communications Division

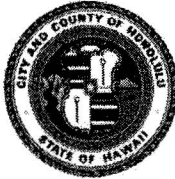
APPROVED:


for LOUIS M. KEALOHA
Chief of Police

DEPARTMENT OF INFORMATION TECHNOLOGY
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 5TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-7684 □ Fax: (808) 527-6272 □ Internet: www.honolulu.gov

MUFI HANNEMANN
MAYOR



GORDON J. BRUCE
DIRECTOR & CIO

TESTIMONY
of
GORDON J. BRUCE, DIRECTOR AND CHIEF INFORMATION OFFICER
Department of Information Technology
City and County of Honolulu
before the
COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
and the
COMMITTEE ON CONSUMER PROTECTION & COMMERCE
on
Wednesday, February 3, 2010
2:30 p.m.
State Capitol, Conference Room 325

In consideration of
HB 2698, RELATING TO TECHNOLOGY

Chair McKelvey, Vice Chair Choy, and Members of the Committee on Economic Revitalization, Business & Military Affairs; and Chair Herkes, Vice Chair Wakai, and Members of the Committee on Consumer Protection & Commerce.

As Director of the Department of Information Technology for the City & County of Honolulu, I support the creation of the Hawaii Communications Commission. However, I cannot support yet another raid on the Wireless Enhanced 911 fund to support the creation of the Hawaii Communications Commission.

With that in mind, however, the Hawaii Communications Commission could be vested with the responsibility as the Executive Director of the Wireless Enhanced 911 Board. Funds presently used to fund an outside service provider could be reallocated to the commission for the provision of this service.

Thank you for the opportunity to submit testimony on House Bill 2698.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gordon J. Bruce", is written over a circular stamp or seal.

Gordon J. Bruce
Director and Chief Information Officer

200 Akamainui Street
Mililani, Hawaii 96789-3999
Tel: 808-625-2100
Fax: 808-625-5888



February 3, 2010

Honorable Angus McKelvey
Chair, House Committee on Economic Revitalization, Business & Military Affairs

Honorable Robert Herkes
Chair, House Committee on Consumer Protection & Commerce

Re: HB 2698, Relating to Technology
EBM/CPC Hearing, Wednesday, February 3, 2010, 2:30 p.m., Room 325

Aloha Chairs McKelvey and Herkes, Vice Chairs Choy and Wakai and Members of the Committees:

I am Nate Smith, President of Oceanic Time Warner Cable ("Oceanic"). On behalf of Oceanic, which provides a diverse selection of entertainment, information, and communication services, and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to submit written testimony today. Oceanic supports the intent of HB 2698.

This bill establishes the Hawaii communications commission and the Hawaii broadband commissioner. Among other responsibilities, the bill requires the commission and commissioner to work towards various goals, including increasing broadband availability in the state, providing increased, flexible, timely and responsible access to public rights of way and public facilities for broadband service providers, and providing a more streamlined permit approval process that reduces the time and cost of broadband infrastructure deployment.

As the largest broadband provider in the state, Oceanic recognizes that advanced broadband services are important for our residents and are essential for the advancement of education, health, public safety, research, innovation, civic participation, and many other areas. Accordingly, Oceanic, in particular, supports the bill's intent to promote broadband availability, provide flexible, timely and responsible access for broadband infrastructure, and to find ways to streamline the permit approval process for broadband deployment.

Finally, as the committee is aware, the FCC is in the midst of developing a national broadband policy, and there will be further discussions among all affected stakeholders on the most efficient and cost-effective ways to accomplish the goals articulated in the

bill. Accordingly, detailed regulatory proposals are premature, and Oceanic therefore supports the bill's approach to establish a broadband commission (and commissioner) in order to establish a forum and process to fully and carefully consider various policy and operational issues that will arise in connection with fulfilling the objectives of the bill.

For the foregoing reasons, Oceanic supports the intent of HB 2698. As always, I appreciate the opportunity to share our views with you.

Sincerely,

Nate Smith
President



Dan Youmans
President – Washington/Hawaii
External Affairs

AT&T Services, Inc.
P.O. Box 97061
RTC1
Redmond, WA 98073-9761

T: 425-580-1833
F: 425-580-8652
daniel.youmans@att.com
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February 3, 2010

The Honorable Rep. Angus McKelvey
Chair, Committee on Economic Revitalization, Business & Military Affairs

The Honorable Rep. Robert Herkes
Chair, Committee on Consumer Protection & Commerce

RE: Opposition to House Bill 2698

Dear Rep. McKelvey, Rep. Herkes, and Members of the Committees:

AT&T opposes House Bill 2698, especially the provision in this legislation that would fund a new Hawaii Broadband Commission and Commissioner with state Wireless E911 funds. With all due respect, we think this would be a blatant misuse of taxes paid by wireless consumers. These funds should only be used for public safety purposes, and specifically for E911.

If there are surpluses in the state Wireless E911 account, the appropriate action would be to reduce the tax rate currently being paid by wireless consumers. These funds were never intended to pay for new state agencies or to balance the general fund budget.

AT&T understands the Legislature's concern for deployment of broadband services in Hawaii. We also place a high value on the benefits of high speed Internet services. In fact, AT&T believes there should be 100 percent availability of broadband in the U.S. in the next five years.

We do not believe it is necessary, however, to create a whole new state bureaucracy – funded by taxes intended for public safety – to meet this goal. Many other states, which also face budget deficits like Hawaii, are using existing state agencies, with the possible addition of advisory committees or other third-party organizations to bring in expertise from the private sector. Many states are also utilizing federal stimulus funds for broadband programs. AT&T urges the Hawaii Legislature to take a similar approach.

In addition, AT&T is concerned about the emphasis that this legislation places on “strategies for sharing new and existing utilities infrastructure and conduits to provide broadband access.” Telecommunications providers have invested millions of dollars in their networks, and any policy that would mandate sharing of these facilities would be detrimental to consumers and discourage further investment by providers. We would rather see the emphasis placed on public-private partnerships, which would be mutually beneficial to all stakeholders, especially consumers.

AT&T does support the recognition in the legislation that permitting processes should be improved at the state and local level to facilitate the deployment of broadband services.

Thank you for considering our comments. We invite a dialogue about how the State of Hawaii can best move forward to encourage the deployment of broadband services. We do not think House Bill 2698 is the answer, and urge your opposition.

Respectfully Submitted,

Dan Youmans, AT&T

**HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION, BUSINESS AND MILITARY AFFAIRS**

And

**HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

February 3, 2010

House Bill 2698 Relating to Technology

Chair McKelvey, Chair Herkes, members of the House Committee on Economic Revitalization, Business and Military Affairs and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing T-Mobile USA, Inc.

T Mobile opposes section 3 of House Bill 2698, which would take money from the E911 fund to finance the broadband commission and commissioner. It must be clearly noted that the monies collected for the E911 fund come from consumers as a fee for the use of their cellular phones. It is a fee intended to benefit cellular phone users by being able to determine their location for first responders. The diversion of monies to the broadband commission and commissioner will not benefit cellular phone users, and if it does it will only be in a peripheral way. This diversion then will turn a legal regulatory fee into an arguably unconstitutional tax as determined in the decision by the Hawaii Supreme Court in HIC v Lingle. Although in this case the E911 fees are not being diverted into the general fund, the use of the monies collected for one purpose for another purpose is highly suspect and undermines the purpose of those funds – public safety.

Forcing only cellular phone users to pay for a commission and commissioner which serves all technologies, including cable and telephonic internet providers, as well as competing wireless internet providers is not only legally suspect but, as a matter of public policy, is unfair and an unjustified tax on a certain population for the benefit of the larger society. The legislature must exercise discipline in avoiding raids of funds which exist for one purpose for the benefit of society as a whole. This contradiction is made clearer when the preamble in section 1 of the measure speaks to lowering prices and increasing services by providing increased broadband availability to low income and other disadvantaged groups and using the fees collected from cellular phone users who include those same individuals who are disadvantaged and poor to fund the broadband system which will benefit the state by paying for the commission's cost as well as the salary of the commissioner. The inconsistency is made even more problematic when no other revenue source is identified including any funds from the state's general fund or any other special fund which has or had been established for such a purpose, including any state funds in the various state departments.

On behalf of T-Mobile's customers who have paid this fee and continue to pay this fee into the E911 fund, we respectfully request that this committee reject section 3 of this measure and consider an alternative funding mechanism. Thank you for the opportunity to present this testimony.

Joyce Masamitsu
Associate Director
State Public Policy, West Area



Verizon Wireless
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joyce.masamitsu@VerizonWireless.com

February 3rd, 2010

The Honorable Representative Angus McKelvey,
Chair, Committee on Economic Revitalization, Business and Military Affairs

The Honorable Representative Robert Herkes
Chair, Committee on Consumer Protection and Commerce

RE: Opposition to House Bill 2698

Dear Rep. McKelvey, Rep. Herkes, and Members of the Committees:

On behalf of Verizon Wireless, I am writing to respectfully express our strong opposition to HB 2698, legislation which seeks to establish the Hawaii Communications Commission, and concurrently a Hawaii Broadband Commission.

While Verizon Wireless applauds the legislature's goals to ensure successful deployment of broadband services throughout the State, and agree with the key finding stated in HB 2698 that: "advanced broadband services are essential infrastructure for an innovative economy and a knowledgeable and competitive society," we believe that the bill as drafted, jeopardizes another important goal for the citizens of Hawaii, which is to ensure that they have reliable and accessible E9-1-1 service available through their wireless device.

Verizon Wireless continues to invest millions annually in its network in Hawaii, and is not only the largest wireless carrier in the nation, but also has the largest 3G network. Verizon Wireless is the only wireless carrier to consistently invest between \$5 and \$7 billion in our network operations nationwide, year over year, for the past decade. In 2009 alone, Verizon Wireless invested over \$28 million in our network operations in the state of Hawaii, and over \$214 million since 2000. This represents "private" investment dollars Verizon Wireless has dedicated to deliver exceptional service to the residents, business operators and visitors of this state, without a drain on public funds.

Our entire network in the State is broadband capable and broadband ready. To continue to ensure that our broadband network can expand and better serve the citizens of the State, we need continued cooperation from local governmental entities to ensure the expeditious deployment of cell sites, which we are pleased to pursue cooperatively with affected communities. Verizon Wireless is currently working on the development of its next generation broadband systems, known as LTE, which will be supported globally and

will produce broadband speeds many times current capabilities. We want to continue to be a strong partner with Hawaii and other states to lead our industry and lead the nation with wireless broadband.

However, we also recognize the importance of wireless technology and equipment for supporting E9-1-1, and strongly object to language in the legislation which states that: "In addition to any other sources of funding, money from the Wireless Enhanced 9-1-1 fund shall be used to fund the Commission and the Commissioners."

Such action risks jeopardizing the safety of Hawaii residents and visitors, who use wireless Enhanced 911 services to save lives, locate missing children and prevent numerous crimes. Therefore, the diversion of E9-1-1 funds for use outside of wireless emergency services is inappropriate. Our customers are billed with a line item description "*HI State 911 surcharge*" applied to their account every month, under the assumption that monies collected would be used for Wireless E9-1-1 services. It would be unfair to wireless customers to bill them for a purpose for which the money is not used. The wireless E9-1-1 fund was intended to support the deployment of emergency wireless 911 infrastructure and services essential to the safety of the public to and not just simple access to broadband. While Verizon Wireless continues to be dedicated to the expansion, upgrade and maintenance of our network, we believe that the use of Wireless E9-1-1 funds is an inappropriate source of money to fund the Broadband Commission.

The wireless E9-1-1 fund provides a consistent funding resource for operators who accept emergency calls, Public Safety Answering Points (PSAPs) to ensure their emergency systems are maintained and upgraded appropriately. During these trying economic times, city and county budgets are under siege, thus making the Wireless E9-1-1 fund increasingly important to ensure public safety has access to resources needed to support critical emergency services, today and in the future.

Emergency 911 calls are increasingly placed by wireless users to report life-threatening emergencies. Today, 911 services are limited to voice calls however future technologies will allow PSAP's to receive text messaging and possibly picture and video messaging. Such advanced service capabilities, will allow operators receiving emergency communications for wireless users to more accurately assess the kind of emergency, and to determine the appropriate equipment, personnel or expertise first responders will need to best deal with the emergency. Local Public Safety agencies will need additional funding beyond Phase I and Phase II implementation to accommodate the deployment of Next Generation of 9-1-1 Services in the very near future.

Currently, PSAPS have a long lead time in procurement process for the counties to proceed with acquisition of equipment and services lead to the fund being in excess of what the maximum expenditure per year which is set at 9 million. The PSAPS have gathered data that has a 5 year plan for maintenance and also new projects which the E9-1-1 board has reviewed and accepted. At the current rate, the maximum expenditure will have to be raised to 15 million in order for the PSAPS to procure new equipment to meet NG9-1-1 within the next 5 years. Any subsequent raid of the fund will have damaging

effects on the PSAPS and their capability to provide service to the state with their current operating situation. The constant drain and raiding of the Wireless E9-1-1 fund will leave PSAPs without access to vital resources necessary to deploy such critical services essential to the safety of Hawaiian families who contribute, in good faith, to the E9-1-1 fund on their monthly bills, and who will suffer the consequences when advanced wireless 911 services are not available.

Verizon Wireless is committed to supporting the needs of Public Safety needs in the state of Hawaii to ensure the ongoing availability, maintenance and upgrade of Wireless 9-1-1 services. We are also committed to continuing to heavily invest in our wireless broadband network. We believe that the State can move forward with its goals for broadband working with the private sector, without risking weakening the 911 system by diverting funds. To this end, we respectfully ask Chairman McKelvey, Chairman Herkes and Members of the Committees to not pass House Bill 2698 in its current form.

Thank you for your consideration.

Sincerely,



Joyce Masamitsu

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEES ON
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS AND
CONSUMER PROTECTION & COMMERCE

February 3, 2010

2:30 PM

State Capitol, Conference Room 325

In consideration of
HB 2698 RELATING TO TECHNOLOGY.

Chairs McKelvey and Herkes, Vice Chairs Choy and Wakai, and Members of the House Committees on Economic Revitalization, Business and Military Affairs, and Consumer Protection and Commerce.

The High Technology Development Corporation (HTDC) supports HB 2698, as we recognize the significance of the role of ubiquitous broadband in Hawaii and for its economic development.

While some may regard broadband as “nice to have”, technological advances have made regular utility services available via broadband and vice versa. As seen in court battles from the 1990s, the issue of open access and broadband has been a hot topic which required government intervention, as broadband is now the utility of the 21st century. The state of Hawaii has one of the most liberal telecommunication laws. We have an obligation to leverage it and to ensure that Hawaii does not become a “fly over state” in terms of broadband. To pursue that goal, the State requires a dedicated committee to discuss and implement broadband policies and initiatives recommended by the State’s Broadband Task Force and according to best practices considered by other states, and nations, such as studies by the Intelligent Community Forum and The Information Technology and Innovation Foundation, all outlining how broadband is one of the fundamental utilities to establish an innovation-based economy.

Further, establishing a structure like the Hawaii Communications Commission, would proactively address permitting bureaucracy that the public has criticized the State in the past.

Thank you for the opportunity to submit testimony on this bill.