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BUSINESS AND MILITARY AFFAIRS
AND CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, March 15, 2010
2:00 p.m.

**WRITTEN COMMENTS ON S.B. 2543, S.D. 2
RELATING TO TECHNOLOGY**

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

My name is Ron Boyer, Acting Director of the Department of Commerce and Consumer Affairs ("Department"). The Department joins the measure's proponents in wishing to promote and encourage broadband development and deployment, but prefers an alternate approach.

S.B. 2543, S.D. 2 imposes additional duties on the Department by adding the functions of telework promotion and broadband assistance under chapter 440G, HRS, which is related to the administration of cable television. The bill also establishes the Broadband Council within the Department to advise on policy and funding priorities to promote and encourage use of telework alternatives and expedite deployment of affordable and accessible broadband in the State.

Telework

The Department's core mission is to protect consumers from unfair business practices while "upholding fairness in the marketplace." The Department's mission does not include providing centralized services to other Executive branch departments and agencies, as the bill proposes by including as a duty of the Department in conjunction with expanded digital cable programming and services, to advise and assist State and county agencies in planning, developing, and administering programs and activities to promote telecommuting by State and county employees. The bill would cause the Department to stray from, and lose focus of, its core mission.

Broadband

While the Department appreciates the need to coordinate and expedite the deployment of affordable and accessible broadband service and also to advocate for and facilitate the development and deployment of expanded digital cable programming and applications and is eager to assume that objective as part of a properly designed program, this bill increases the Department's responsibilities without allocating additional funding for the personnel costs or without specifying a funding source to be used for operational costs of the Broadband Council. Because the Department is structured to be self-sufficient, it generally does not have access to the general fund, and therefore must charge fees to cover the costs of the services that we provide. Without the authority to impose fees on a revenue source that has a reasonable nexus to the services that are being provided, and in light of the principles enunciated in the

Supreme Court's 2008 decision in the *HIC v. Lingle* case, the Department will not be able to fund the additional duties imposed on it by this measure.

Preferred Approach

While the general intent of S.B. 2543, S.D. 2 concerning broadband promotion and advocacy 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 does not specifically address any telework issues, but it does include the regulation of communication services (i.e., telecommunications and video programming) as part of the duties of the Hawaii 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 comments on this measure.

Report Title:

Hawaii 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 communications commission (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)

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 ease deployment of broadband, and ease entry into
3 a competitive broadband marketplace;

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

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

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

- 22 (1) Investigate, promote, and ensure the growth and
23 development of broadband infrastructure within
24 the State in accordance with the aforementioned
25 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 not prohibited by
24 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) Create an environment that encourages businesses
6 to provide broadband, telecommunications, and
7 video programming services, and to make their
8 services more readily available to the public;

9 Notes: Changes made to address the concerns of providers and to more
10 accurately reflect broadband goals.
11

12 (7) Further examine rate regulation for
13 telecommunications carriers; and

14 Notes: Changes made to more accurately reflect broadband goals and
15 the fact that telcom rate regulation is being immediately impacted by this
16 bill.
17

18 (8) Investigate the possibility of implementing
19 incentive regulation for telecommunications
20 carriers to increase investment in broadband
21 infrastructure within the State.

22 Notes: Change made at the request of a provider.
23

24 (9) Administer special federal funding programs
25 designed to stimulate the economy through
26 investments in broadband programs and services.

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

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

4 "CHAPTER

5 HAWAII COMMUNICATIONS COMMISSION

6 PART I. GENERAL PROVISIONS

7 Note: Providers recommended changes to the definitions. However,
8 DCCA prefers that the bill's provisions remain consistent with current law.
9 Also, the proposed changes were repetitive and conflicted with the current
10 language in the bill and statute. Consequently, DCCA did not make the
11 changes.

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

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

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

23 "Application" means an unsolicited filing.

24 "Basic cable service" means any service tier that
25 includes the retransmission of local television broadcast
26 signals.
27

1 "Broadband" means an "always on" data network that
2 enables access to the Internet and use of a variety of
3 services and applications.

4 Notes: Changes made for purposes of clarification.
5

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

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

- 14 (1) Provides cable service over a cable system and
15 directly or through one or more affiliates owns a
16 significant interest in the cable system; or
17 (2) Otherwise controls or is responsible for, through
18 any arrangement, the management and operation of
19 a cable system.

20 "Cable service" means:

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

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

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

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

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

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

23 "Carrier of last resort" means a telecommunications
24 carrier designated by the commission to provide universal

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

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

5 "Designated local exchange service area" means an area
6 as determined by the commission to be best served by
7 designating a carrier of last resort pursuant to section
8 -41.

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

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

16 "Hawaii communications commission" or "commission" has
17 the same meaning as in section -2.

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

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

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

4 "Proposal" means a filing solicited by the commission.

5 "Public, educational, or governmental access
6 facilities" or "PEG access facility" means:

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

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

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

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

18 "School" means an academic and non-college type
19 regular or special education institution of learning
20 established and maintained by the department of education
21 or licensed and supervised by that department and includes
22 charter schools as defined in chapter 302B.

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

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

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

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

23 § -2 **Hawaii communications commission;**
24 **established.** There shall be established the Hawaii

1 communications commission as an independent agency that is
2 attached to the department of commerce and consumer affairs
3 for administrative purposes only.

4 § -3 **Hawaii communications commissioner.** The
5 commission shall be under the supervision and control of
6 the Hawaii communications commissioner, who shall be exempt
7 from chapter 76 and shall be appointed by the governor,
8 with the advice and consent of the senate. The
9 commissioner shall be responsible for the performance of
10 the duties imposed upon the commission to implement this
11 chapter.

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

15
16 § -4 **Deputy commissioner.** The commissioner may
17 appoint a deputy commissioner, who shall be exempt from
18 chapter 76. The commissioner may, at pleasure, dismiss the
19 deputy commissioner. The deputy commissioner shall have
20 the power to perform any act or duty assigned by the
21 commissioner and shall be acting commissioner if, for any
22 reason, the commissioner is unable to perform the duties of
23 commissioner, until a new commissioner is appointed.

24 § -5 **Employment of commission personnel.** (a) The
25 commissioner may appoint and employ office assistants,

1 agents, engineers, accountants, and other ~~personnel~~, with
2 or without regard to chapter 76; provided that:

- 3 (1) The commissioner may employ utility and cable
4 analysts exempt from chapter 76; and
5 (2) Each analyst shall possess at least the minimum
6 qualifications required of comparable experts in
7 the relevant industry.

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

11 (c) The commissioner may, with the consent of the
12 director, utilize staff including ~~office assistants~~,
13 agents, engineers, accountants, hearings officers, and
14 other ~~personnel~~ from the department, as the commissioner
15 finds necessary for the performance of the commissioner's
16 functions, and define their powers and duties.

17 Notes: Changes made per ATG and DHRD to accurately reflect current
18 position classifications.
19

20 (d) The commissioner may appoint one or more
21 attorneys independent of the attorney general who shall act
22 as attorney(s) for the commissioner and shall be exempt
23 from chapter 76. The commissioner shall define their
24 powers and duties and fix their compensation.

1 (e) With the consent of the director, the
2 commissioner may utilize from the department, one or more
3 attorneys independent of the attorney general who shall act
4 as attorney(s) for the commissioner and shall be exempt
5 from chapter 76. The commissioner shall define the powers
6 and duties of the attorneys and fix their compensation.

7 § -6 **Terms.** The commissioner shall be appointed
8 for a term of six years and shall not serve more than
9 twelve consecutive years. Each commissioner shall hold
10 office until the commissioner's successor is appointed and
11 confirmed. Section 26-34 shall not apply insofar as it
12 relates to the number of terms and consecutive number of
13 years a commissioner may serve.

14 § -7 **Salary.** The salary of the commissioner shall
15 be set equal to that of the chairperson of the public
16 utilities commission pursuant to section 269-2.

17 § -8 **General powers and duties.** (a) The
18 commission shall have the authority expressly conferred
19 upon the commission by, or reasonably implied from, the
20 provisions of this chapter.

21 (b) The commission shall have general supervision
22 over all telecommunications carriers and cable operators
23 and shall perform the duties and exercise the powers

1 imposed or conferred upon it by this chapter, where not
2 prohibited by federal law.

3 (c) The commission has the authority to adopt rules
4 pursuant to chapter 91 necessary for the purposes of this
5 chapter.

6 (d) The commission shall have general supervision
7 over public, educational, or governmental access facilities
8 and public, educational, or governmental access
9 organizations.

10 § -9 ~~Communications~~ **development duties.** (a) The
11 commission shall strive to ensure that all consumers are
12 provided with reasonable and equitable access to high
13 quality communications network facilities and capabilities
14 that provide subscribers with sufficient network capacity
15 to access a combination of voice, data, image, and video,
16 and that are available at fair and affordable rates.

17 Note: Change from "telecommunications" to "communications" was made
18 because this section is in Part I of the new chapter, which covers both
19 cable and telecommunications.
20

21 (b) No later than July 1, 2011, the commission shall
22 study and develop a comprehensive policy to promote further
23 deployment of broadband communications, including internet
24 access, in the State. The study shall include
25 consideration of communications by wire and radio,
26 including satellite and wireless services. The commission

1 shall develop plans and strategies to increase broadband
2 affordability, penetration, and competitive availability in
3 the State. The plans may include making low-cost,
4 broadband-capable computers available to eligible
5 recipients. The plans may also include measures to work
6 with the counties to streamline access to public rights-of-
7 ways and public facilities for providers of
8 telecommunications, cable, and broadband services and the
9 permitting and approval processes required for such access.

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

14 Notes: DCCA agreed to AT&T's suggested language. OTW wanted to
15 change "broadband communications" to "broadband services". DCCA
16 does not agree because it would eliminate reference to infrastructure.
17

18 DCCA agreed to TW Telcom suggested language that allows the plans to
19 include measures to streamline access to public rights-of-ways and public
20 facilities
21

22 (c) The commission shall develop programs and
23 initiatives intended to encourage and facilitate, where not
24 prohibited by federal law, the deployment of broadband
25 communications services in the State and access to those
26 services by users in the State. The commission shall fund
27 these programs and initiatives using funds collected
28 pursuant to sections -42, -49, -73, -75, and

1 92-21 and deposited in the commission special fund pursuant
2 to section -21. In conjunction with the funds, or
3 alternatively, the commission may seek appropriations of
4 funds from the State.

5 Notes: OTW proposed the inclusion of "encourage" and wanted to delete
6 "facilitate". DCCA agreed with the inclusion of "encourage".
7

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

22 (f) The commission shall promptly examine the public
23 utilities commission's telecommunications rules that are
24 being made applicable to the commission by this Act to

1 determine whether amendments are appropriate to achieve the
2 purpose of this chapter.

3 § -10 Investigative powers. (a) Where not
4 prohibited by federal law, the commission shall have power
5 to examine:

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

8 (2) The manner in which each telecommunications
9 carrier, cable operator, and PEG access
10 organization is operated with reference to the
11 safety or accommodation of the public;

12 (3) The safety, working hours, and wages of employees
13 of each telecommunications carrier, cable
14 operator, and PEG access organization;

15 (4) The fares and rates charged by each
16 telecommunications carrier, cable operator, and
17 PEG access organization;

18 (5) The value of the physical property of each
19 telecommunications carrier, cable operator, and
20 PEG access organization;

21 (6) The issuance by each telecommunications carrier,
22 cable operator, and PEG access organization of
23 stocks and bonds, and the disposition of the
24 proceeds thereof;

1 (7) The amount and disposition of income of each
2 telecommunications carrier, cable operator, and
3 PEG access organization, and all financial
4 transactions of each telecommunications carrier,
5 cable operator, and PEG access organization;

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

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

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

21 (b) The commission may investigate any person acting
22 in the capacity of or engaging in the business of a
23 telecommunications carrier within the State of Hawaii
24 without having a certificate of public convenience and

15

1 necessity or other authority previously obtained under and
2 in compliance with this chapter or the rules adopted under
3 this chapter or chapter 269.

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

11 § -11 **Delegating powers.** Any power, duty, or
12 function vested in the commissioner by this chapter may be
13 exercised, discharged, or performed by any employee of the
14 commission employed pursuant to section -5(a), -5(b),
15 or -5(d) acting in the name and by the delegated
16 authority of the commissioner and who the commissioner
17 determines is qualified in the area for which
18 responsibility is being delegated. Any power, duty, or
19 function vested in the commissioner by this chapter may be
20 exercised, discharged, or performed by any employee of the
21 department utilized pursuant to section -5(c) or
22 -5(e) acting in the name and by the delegated authority
23 of the commissioner, with the approval of the director.

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

1
2 § -12 Annual report and register of orders. The
3 commission shall prepare and present to the governor,
4 through the director, in the month of January in each year
5 a report respecting the commission's actions during the
6 preceding fiscal year. This report shall include:

- 7 (1) Summary information and analytical, comparative,
8 and trend data concerning major regulatory issues
9 acted upon and pending before the commission;
10 (2) Cases processed by the commission, including
11 their dispositions;
12 (3) Telecommunications carrier and cable operator
13 operations, capital improvements, and rates;
14 (4) Telecommunications carrier and cable operator
15 performance in terms of efficiency and quality of
16 services rendered;
17 (5) Environmental matters having a significant impact
18 upon telecommunications carriers and cable
19 operators;
20 (6) Actions of the federal government affecting the
21 regulation of telecommunications carriers and
22 cable operators in the State;
23 (7) Long- and short-range plans and objectives of the
24 commission; and

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

20 § -14 Notices. (a) Whenever an investigation is
21 undertaken and a hearing is scheduled by the commission,
22 reasonable notice in writing of such fact and of the
23 subject or subjects to be investigated shall be given to
24 the telecommunications carrier, cable operator, PEG access

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

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

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

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

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

15 **§ -16 Commission may institute proceedings to**
16 **enforce chapter.** (a) If the commission is of the opinion
17 that any telecommunications carrier, cable operator, PEG
18 access organization, or any person is violating or
19 neglecting to comply with any provision of this chapter or
20 of any rule, regulation, order, or other requirement of the
21 commission, or of any provisions of its certificate of
22 public convenience and necessity, franchise, charter,
23 contract, or articles of association, if any, or that
24 changes, additions, extensions, or repairs are desirable in

1 its plant or service to meet the reasonable convenience or
2 necessity of the public, or to ensure greater safety or
3 security, or that any rates, fares, classifications,
4 charges, or rules are unreasonable or unreasonably
5 discriminatory, or that in any way it is doing what it
6 ought not to do, or not doing what it ought to do, the
7 commission shall in writing inform the telecommunications
8 carrier, cable operator, PEG access organization, or the
9 person and may institute proceedings before it as may be
10 necessary, where not prohibited by federal law, to require
11 the telecommunications carrier, cable operator, PEG access
12 organization, or the person to correct any deficiency. In
13 that event, the commission may by order direct the consumer
14 advocate to appear in the proceeding, to carry out the
15 purposes of this section. The commission may examine into
16 any of the matters referred to in section -10,
17 notwithstanding that the same may be within the
18 jurisdiction of any court or other body; provided that this
19 section shall not be construed as in any manner limiting or
20 otherwise affecting the jurisdiction of any court or other
21 body. The commission may also revoke or amend any
22 provision of a certificate of public convenience and
23 necessity, franchise, charter, or articles of association,
24 if any, pursuant to section -31 or -68.

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

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

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

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

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

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

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

1 § -17 **Appeals.** An appeal from an order of the
2 commissioner under this chapter shall lie, in the manner
3 provided for in chapter 602. Only a person aggrieved in a
4 contested case proceeding provided for in this chapter may
5 appeal from a final order, or a preliminary order if it is
6 of the nature defined by section 91-14(a). The
7 commissioner may elect to be a party to all matters, from
8 which an order of the commissioner is appealed or any
9 action in any court of law seeking a mandamus, or
10 injunctive or other relief to compel compliance with this
11 chapter, or any rule or order adopted thereunder, or to
12 restrain or otherwise prevent or prohibit any illegal or
13 unauthorized conduct in connection therewith, and file
14 appropriate responsive briefs or pleadings. If there is no
15 adverse party to the appeal, the commissioner shall be a
16 party and shall file responsive briefs or pleadings in
17 defending all orders. The appearance of the commissioner
18 as a party in judicial proceedings in no way limits the
19 participation of persons otherwise qualified to be parties
20 on appeal. The appeal shall not of itself stay the
21 operation of the order appealed from, but the appellate
22 court may stay the order after a hearing upon a motion
23 therefor and may impose conditions it deems proper,
24 including but not limited to requiring a bond, requiring

1 that accounts be kept, or requiring that other measures be
2 taken as ordered to secure restitution of the excess
3 charges, if any, made during the pendency of the appeal, in
4 case the order appealed from is sustained, reversed, or
5 modified in whole or in part.

6 § -18 **Alternative dispute resolution.** The
7 commissioner may require the parties in any matter before
8 the commissioner to participate in nonbinding arbitration,
9 mediation, or other alternative dispute resolution process
10 prior to the hearing.

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

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

1 investigate, and shall permit the examination of its books,
2 records, contracts, maps, and other documents related to
3 its operations in or affecting the state by the commission
4 or any person authorized by the commission in writing to
5 make the examination, and shall furnish the commission with
6 a complete inventory of property under its control or
7 management in or affecting the state in the form as the
8 commission may direct.

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

10
11 AT&T suggested the following to be included:

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

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

20
21 **§ -21 Hawaii communications commission special**

22 **fund.** (a) There is established in the state treasury a
23 communications commission special fund to be administered
24 by the commissioner. The proceeds of the fund shall be
25 used by the commission 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 commission to develop and construct, or encourage the
30 construction of, broadband infrastructure, make broadband

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

10 (b) All moneys appropriated to, received, and
11 collected by the commission that are not otherwise pledged,
12 obligated, or required by law to be placed in any other
13 special fund or expended for any other purpose shall be
14 deposited into the communications commission special fund
15 including, but not limited to, all moneys received and
16 collected by the commission pursuant to sections -42,
17 -49, -73, -75, and 92-21.

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

22 (d) The director may transfer any unexpended portion
23 of the franchise fees previously collected to the

1 commission by depositing those franchise fees into the
2 commission special fund.

3 § -22 **Consumer advocate.** As the director serves as
4 the consumer advocate to the public utilities commission
5 pursuant to sections 269-51 through 269-55, the commission
6 shall recognize the director as the consumer advocate in
7 hearings and proceedings relating to telecommunications
8 before the commission.

9 § -23 **Communications advisory committee.** (a)
10 There is established the communications advisory
11 committee. The committee shall consist of _____ members
12 appointed by the governor as provided in section 26-34.

13 (b) The following shall each provide a list of at
14 least three names for the governor's consideration:

- 15 (1) The president of the senate;
- 16 (2) The speaker of the house of representatives;
- 17 (3) ;
- 18 (4) ; and
- 19 (5) .

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

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

23 (c) The communications advisory committee shall meet
24 when called by the commission and may meet at any other
25

1 times that the committee deems appropriate; provided that
2 the committee shall meet at least on a quarterly basis.

3 (d) The committee shall advise the commission,
4 telecommunications carriers, and cable operators on matters
5 within the jurisdiction of this chapter at the request of
6 the commission or any telecommunications carrier or cable
7 operator. The committee may also advise the commission and
8 telecommunications carriers and cable operators on the
9 committee's own initiative.

10 (e) The members of the committee shall serve without
11 pay but shall be entitled to reimbursement for necessary
12 expenses, including travel expenses, while attending
13 meetings and while in discharge of their duties.

14 § -24 Penalties. (a) Any telecommunications
15 carrier, cable operator, or PEG access organization
16 violating, neglecting, or failing in any particular way to
17 conform to or comply with this chapter or any lawful order
18 of the commission, including, but not limited to the
19 grounds specified in section -68 for cable operators and
20 PEG access organizations, shall be subject to a civil
21 penalty not to exceed:

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

1 (2) For PEG access organizations, \$2,500 for each day
2 the violation, neglect, or failure continues;
3 to be assessed by the commission after a hearing in
4 accordance with chapter 91. The commission may order the
5 telecommunications carrier, cable operator, or PEG access
6 organization to cease carrying on its business while the
7 violation, neglect, or failure continues.

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

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

21 (c) Upon written application filed within fifteen
22 days after service of an order imposing a civil penalty
23 pursuant to this section, the commission may remit or
24 mitigate the penalty upon terms as it deems proper.
25

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

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

9 **PART II. TELECOMMUNICATIONS**

10 **§ -31 Certificates of public convenience and**
11 **necessity.** (a) No telecommunications carrier, as defined
12 in section -1, shall commence its business without first
13 having obtained from the commission a certificate of public
14 convenience and necessity. Applications for certificates
15 shall be made in writing to the commission and shall comply
16 with the requirements prescribed in the commission's
17 rules. The application for a certificate of public
18 convenience and necessity shall include the type of service
19 to be performed, the geographical scope of the operation,
20 the type of equipment to be employed in the service, the
21 names of competing telecommunications carriers for the
22 proposed service, a statement of the applicant's financial
23 ability to render the proposed service, a current financial
24 statement of the applicant, and the rates or charges

1 proposed to be charged, including the rules governing the
2 proposed service.

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

23 (c) No telecommunications carrier that, as of July 1,
24 2010, holds a valid certificate of public convenience and

1 necessity, franchise, or charter enacted or granted by the
2 legislative or executive authority of the State or its
3 predecessor governments, or has a bona fide operation as a
4 telecommunications carrier recognized by the public
5 utilities commission, shall be required to obtain, as a
6 result of the enactment of this Act, a new certificate of
7 public convenience and necessity under this section.

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

17 § -32 **Location of records.** A telecommunications
18 carrier shall keep and maintain records, books, papers,
19 accounts, and other documents related to its operations in
20 or affecting the state as the commission may determine are
21 necessary to effectively regulate the telecommunications
22 carrier, that upon request of the commission, can be made
23 accessible within a time frame determined by the

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

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

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

12 § -34 **Telecommunications providers and services.**

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

1 telecommunications services at just and reasonable rates
2 and in a fair manner in view of the needs of the various
3 customer segments of the telecommunications industry.

4 Among the specific factors the commission may consider are:

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

10
11 (1) The responsiveness of the exemption to changes in
12 the structure and technology of the State's
13 telecommunications industry;

14 (2) The benefits accruing to the customers and users
15 of the exempt telecommunications carrier or
16 service;

17 (3) The impact of the exemption on the quality,
18 efficiency, and availability of
19 telecommunications services;

20 (4) The impact of the exemption on the maintenance of
21 fair, just, and reasonable rates for
22 telecommunications services;

23 (5) The likelihood of prejudice or disadvantage to
24 ratepayers of basic local exchange service
25 resulting from the exemption;

26 (6) The effect of the exemption on the preservation
27 and promotion of affordable, universal, basic

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

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

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

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

19 (e) The commission may waive other regulatory
20 requirements under this chapter applicable to
21 telecommunications carriers when it determines that
22 competition will serve the same purpose as public interest
23 regulation.

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

17 (g) Upon the petition of any person or upon the
18 commission's own motion, the commission may rescind any
19 exemption or waiver granted under this section if, after
20 notice and hearing, the commission finds that the
21 conditions prompting the granting of the exemption or
22 waiver no longer apply, or that the exemption or waiver is
23 no longer in the public interest, or that the
24 telecommunications carrier has failed to comply with one or

1 more of the conditions of the exemption or applicable
2 statutory or regulatory requirements.

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

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

16
17 § -35 **Application of this chapter.** This chapter
18 shall not apply to commerce with foreign nations, or
19 commerce with the several states of the United States,
20 except insofar as the same may be permitted under the
21 Constitution and laws of the United States; nor shall it
22 apply to telecommunications carriers owned and operated by
23 the State.

24 § -36 **Obligations of telecommunications carriers.**
25 In accordance with conditions and guidelines established by
26 the commission to facilitate the introduction of
27 competition into the State's telecommunications

1 marketplace, each telecommunications carrier, upon bona
2 fide request, shall provide services or information
3 services, on reasonable terms and conditions, to an entity
4 seeking to provide intrastate telecommunications,
5 including:

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

12 (2) The current interstate tariff used as the access
13 rate until such time that the commission may
14 adopt a new intrastate local service
15 interconnection tariff pursuant to section
16 -37;

17 (3) Nondiscriminatory and equal access to any
18 telecommunications carrier's telecommunications
19 facilities, functions, and the information
20 necessary to the transmission and routing of any
21 telecommunications service and the
22 interoperability of both carriers' networks;

23 (4) Nondiscriminatory access among all
24 telecommunications carriers, where technically

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

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

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

18 (7) Nondiscriminatory access of customers to the
19 telecommunications carrier of their choice
20 without the need to dial additional digits or
21 access codes, where technically feasible. The
22 commission shall determine the equitable
23 distribution of costs among the authorized
24 telecommunications carriers that will use such

1 access and shall establish rules to ensure
-2 access.

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

9 Notes: OTW proposed changes to distinguish ILECs from CLECs.
10 However, current language is consistent with current law, under which that
11 distinction is already clear. Consequently, DCCA did not make the
12 changes.

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

1 § -38 Regulation of telecommunications carrier
2 **rates; ratemaking procedures.** (a) All rates, fares,
3 charges, classifications, schedules, rules, and practices
4 made, charged, or observed by any telecommunications
5 carrier or by two or more telecommunications carriers
6 jointly shall be just and reasonable and, unless otherwise
7 provided by law, shall be filed with the commission.
8 Notwithstanding any law to the contrary, the rates, fares,
9 classifications, charges, and rules of every
10 telecommunications carrier shall be published by the
11 telecommunications carrier in such manner as the commission
12 may require, and copies shall be furnished to any person on
13 request.

14 (b) The commission may issue an order imposing
15 alternative rate regulation procedures.

16 (c) Unless otherwise provided by law, no rate, fare,
17 charge, classification, schedule, rule, or practice, other
18 than one established pursuant to an automatic rate
19 adjustment clause previously approved by the commission,
20 shall be established, abandoned, modified, or departed from
21 by any telecommunications carrier, except after thirty
22 days' 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

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

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

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

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

15 § -39 **Cross-subsidies.** (a) The commission shall
16 ensure that noncompetitive services shall not cross-
17 subsidize competitive services. Cross-subsidization shall
18 be deemed to have occurred:
19

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

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

1 Notes: DCCA does not agree with OTW proposal to change terminology
2 to ILECs in numerous places in § -39.
3

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

13 Note: AT&T proposed to delete the "Separate affiliate audits" section.
14 DCCA does not object to the deletion, as, although the provision reflected
15 existing requirements under federal law, the commission could obtain a
16 copy of the audit simply by requesting a copy from the FCC.
17

18 Note: AT&T proposed removing the provision requiring the adoption of
19 rules that prohibit UDAPs and replace it with language that authorizes the
20 commission to only investigating complaints. As the bill already provides
21 the commission with investigatory powers, DCCA removed the UDAP
22 section.
23

24 **§ -40 Lifeline telephone rates.** (a) The
25 commission shall implement a program to achieve lifeline
26 telephone rates for residential telephone users. The
27 commission may achieve lifeline telephone rates by using
28 funds collected pursuant to section -49 and deposited in
29 the communications commission special fund pursuant to
30 section -21. In conjunction with such funds, or

1 alternatively, the commission may seek appropriations of
2 funds from the State.

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

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

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

17 § -41 Carriers of last resort. (a) The commission
18 may define and designate local exchange service areas where
19 the commissioner has determined that a single provider will
20 be the most appropriate way to ensure service for these
21 areas.

22 (b) The commission shall determine the level of
23 service that is appropriate for each designated local
24 exchange service area and shall invite telecommunications

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

10 (c) The commission shall adopt rules pursuant to
11 chapter 91 to carry out this section or adopt the rules
12 provided in chapter 6-81 of the Hawaii Administrative
13 Rules, which were in effect on July 1, 2010.

14 **§ -42 Telecommunications relay services for the**
15 **deaf, persons with hearing disabilities, and persons with**
16 **speech disabilities.** (a) The commission shall implement
17 intrastate telecommunications relay services for the deaf,
18 persons with hearing disabilities, and persons with speech
19 disabilities.

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

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

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

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

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

22 (f) The commission shall require every intrastate
23 telecommunications carrier to file a schedule of rates and
24 charges and every provider of telecommunications relay

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

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

10 (h) As used in this section:

11 "Telecommunications relay services" means telephone
12 transmission services that provide an individual who has a
13 hearing or speech disability, the ability to engage in
14 communication by wire or radio with a hearing individual in
15 a manner that is functionally equivalent to the ability of
16 an individual who does not have a hearing or speech
17 disability to communicate using wire or radio voice
18 communication services. "Telecommunications relay
19 services" includes services that enable two-way
20 communication using text telephones or other non-voice
21 terminal devices, speech-to-speech services, video relay
22 services, and non-English relay services.

23 § -43. **Telecommunications number portability.** The
24 commission shall ensure that telecommunications number

1 portability within an exchange is available, upon request,
2 as soon as technically feasible and economically
3 reasonable. An impartial entity shall administer
4 telecommunications numbering and make the numbers available
5 on an equitable basis.

6 § -44 **Emergency telephone service; capital costs;**
7 **ratemaking.** (a) A telecommunications carrier providing
8 local exchange telecommunications services may recover the
9 capital cost and associated operating expenses of providing
10 a statewide enhanced 911 emergency telephone service in the
11 public switched telephone network, through a telephone line
12 surcharge.

13 (b) The commission shall require every
14 telecommunications carrier providing statewide enhanced 911
15 emergency telephone service to maintain a separate
16 accounting of the costs of providing an enhanced 911
17 emergency service and the revenues received from related
18 surcharges. The commission shall further require that
19 every telecommunications carrier imposing a surcharge shall
20 identify on all customer billing statements the separate
21 line item for enhanced 911 emergency service.

22 (c) This section shall not preclude the commission
23 from changing any rate, established pursuant to this
24 section, either specifically or pursuant to any general

1 restructuring of all telephone rates, charges, and
2 classifications.

3 § -45 **Issuance of securities.** A telecommunications
4 carrier corporation may, on securing the prior approval of
5 the commission, and not otherwise, issue stocks and stock
6 certificates, bonds, notes, and other evidences of
7 indebtedness, payable at periods of more than twelve months
8 after the date thereof, for the following purposes and no
9 other, namely:

- 10 (1) For the acquisition of property;
- 11 (2) For the construction, completion, extension, or
12 improvement of or addition to its facilities or
13 service;
- 14 (3) For the discharge or lawful refunding of its
15 obligations;
- 16 (4) For the reimbursement of moneys actually expended
17 from income or from any other moneys in its
18 treasury not secured by or obtained from the
19 issue of its stocks or stock certificates, or
20 bonds, notes, or other evidences of indebtedness;
21 and
- 22 (5) For any of the aforesaid purposes except
23 maintenance of service, replacements, and
24 substitutions not constituting capital

1 expenditure in cases where the corporation has
2 kept its accounts for such expenditures in such
3 manner as to enable the commission to ascertain
4 the amount of moneys so expended and the purposes
5 for which the expenditures were made, and the
6 sources of the funds in its treasury applied to
7 the expenditures.

8 As used in this section, "property" and "facilities",
9 mean property and facilities used in all operations of a
10 telecommunications carrier corporation whether or not
11 included in its operations or rate base. A
12 telecommunications carrier corporation may not issue
13 securities to acquire property or to construct, complete,
14 extend, improve, or add to its facilities or service if the
15 commission determines that the proposed purpose will have a
16 materially adverse effect on its telecommunications carrier
17 operations.

18 All stocks and every stock certificate, bond, note, or
19 other evidence of indebtedness of a telecommunications
20 carrier corporation not payable within twelve months,
21 issued without an order of the commissioner authorizing the
22 same, then in effect, shall be void.

23 **§ -46 Issuance of voting stock; restrictions.** (a)

24 For the purposes of this section:

1 "Foreign corporation" means a foreign corporation as
2 defined in section 235-1 or a corporation in which a
3 majority of the voting stock is held by a single foreign
4 corporation as defined in section 235-1.

5 "Nonresident alien" means a person not a citizen of
6 the United States who is not defined as a resident alien by
7 the United States Citizenship and Immigration Services.

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

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

23 Every assignment, transfer, contract, or agreement for
24 assignment or transfer of any shares in violation of this

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

6 § -47 Acquisition of stock of another

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

20 § -48 Merger and consolidation of

21 telecommunications carriers. No telecommunications carrier
22 corporation shall sell, lease, assign, mortgage, or
23 otherwise dispose of or encumber the whole or any part of
24 its road, line, plant, system, or other property necessary

1 or useful in the performance of its duties to the public,
2 or any franchise or permit, or any right thereunder, nor by
3 any means, directly or indirectly, merge or consolidate
4 with any other person or entity without first having
5 secured from the commissioner an order authorizing it so to
6 do. Every sale, lease, assignment, mortgage, disposition,
7 encumbrance, merger, or consolidation, made other than in
8 accordance with the order of the commissioner shall be
9 void.

10 § -49 **Finances; regulatory fee.** (a) There shall
11 be paid to the commission in the months of July and
12 December of each year, by each telecommunications carrier
13 subject to this chapter, a fee set by the commission not to
14 exceed one-fourth of one per cent of the gross income from
15 the telecommunications carrier's business during the
16 preceding year, or the sum of \$30, whichever is greater.
17 The commission shall set the fee amount based on its
18 projected budget for the year to administer and enforce
19 this chapter. This fee shall be deposited with the
20 director of finance to the credit of the communications
21 commission special fund created pursuant to section -21.

22 Note: By agreement of all parties, percentage was changed to revert back
23 to the current $\frac{1}{4}$ %.
24

1 (b) Each telecommunications carrier paying a fee
2 under subsection (a) may impose a surcharge to recover the
3 amount paid above one-eighth of one per cent of gross
4 income. The surcharge imposed shall not be subject to the
5 notice, hearing, and approval requirements of this chapter;
6 provided that the surcharge may be imposed by the
7 telecommunications carrier only after thirty days' notice
8 to the commission.

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

10

11 § -50 **Injury to carrier property.** Any person who
12 injures or destroys, through want of proper care, any
13 necessary or useful facility, equipment, or property of any
14 telecommunications carrier shall be liable to the
15 telecommunications carrier for all damages sustained
16 thereby. The measure of damages to the facility,
17 equipment, or property injured or destroyed shall be the
18 cost to repair or replace the property injured or destroyed
19 including direct and allocated costs for labor, materials,
20 supervision, supplies, tools, taxes, transportation,
21 administrative and general expense, and other indirect or
22 overhead expenses, less credit, if any, for salvage. The
23 specifying of the measure of damages for the facility,
24 equipment, or property shall not preclude the recovery of

1 other damages occasioned thereby as may be authorized by
2 law.

3 § -51 **One call center; advance warning to**
4 **excavators.** To finance the establishment and operation of
5 the one call center, pursuant to chapter 269E, and the
6 administrative costs of the commission, the commission
7 shall direct telecommunications carriers to pay to the
8 public utilities commission a fee in an amount and at a
9 schedule determined by the public utilities commission.

10 AT&T proposed language that would allow the Commission to credit
11 telecom carriers for amounts paid under § -51 toward amounts owed in
12 one call center fees under §269E-6(f), HRS. DCCA incorporated
13 amendments to chapter 269E to address AT&T's concerns (see Section
14 27 of the bill).

15
16 **PART III. CABLE**

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

21 § -62 **Cable franchise required.** (a) No person
22 shall construct, operate, or acquire a cable system, or
23 extend an existing cable system outside its designated
24 service area, without first obtaining a cable franchise as
25 provided in this part.

26 (b) No cable operator that, as of July 1, 2010, holds
27 a franchise or charter enacted or granted by the

1 legislative or executive authority of the State or its
2 predecessor governments, or has a bona fide operation as a
3 cable operator heretofore recognized by the department,
4 shall be required to obtain, as a result of the enactment
5 of this chapter, a new franchise under this section.

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

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

- 17 (1) The citizenship and character of the applicant;
- 18 (2) The financial, technical, and other
19 qualifications of the applicant;
- 20 (3) The principals and ultimate beneficial owners of
21 the applicant;
- 22 (4) The public interest to be served by the requested
23 issuance of a cable franchise; and

1 (5) Any other matters deemed appropriate and
2 necessary by the commission including, but not
3 limited to, the proposed plans and schedule of
4 expenditures for or in support of the use of
5 public, educational, and governmental access
6 facilities.

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

9
10 (c) A proposal for issuance of a cable franchise
11 shall be accepted for filing in accordance with section
12 -64 only when made in response to the written request of
13 the commission for the submission of proposals.

14 **§ -64 Cable franchise application or proposal**
15 **procedure; public hearing; notice.** An application or
16 proposal for a cable franchise shall be processed as
17 follows:

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

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

18 (3) After holding a public hearing, the commission
19 shall approve the application or proposal in
20 whole or in part, with or without conditions or
21 modifications, or shall deny the application or
22 proposal, with reasons for denial sent in writing
23 to the applicant. If the commission does not
24 take final action after the issuance of a notice

1 of acceptance for filing and within a time frame
2 established by rule, the application or proposal
3 shall be deemed denied; and

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

10 § -65 Issuance of cable franchise authority;

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

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

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

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

14 (d) In issuing a cable franchise under this part, the
15 commission is not restricted to approving or disapproving
16 the application or proposal but may issue it for only
17 partial exercise of the privilege sought or may attach to
18 the exercise of the right granted by the cable franchise
19 terms, limitations, and conditions which the commission
20 deems the public interest may require. The cable franchise
21 shall be nonexclusive, shall include a description of the
22 service area in which the cable system is to be
23 constructed, extended, or operated and the approximate date
24 on which the service is to commence and shall authorize the

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

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

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

13 (c) To the extent not prohibited by federal law, the
14 commission shall ensure that the terms and conditions upon
15 which cable service is provided are fair both to the public
16 and to the cable operator, taking into account the
17 geographic, topographic, and economic characteristics of
18 the service area and the economics of providing cable
19 service to subscribers in the service area.

20 § -67 **Cable system installation, construction,**
21 **operation, removal; general provisions.** (a) A cable
22 franchise shall be construed to authorize the construction
23 or operation of a cable system within the service area
24 above, below, on, in, or along any highway or other public

1 place and through easements that have been dedicated for
2 compatible purposes.

3 (b) To the extent not prohibited by federal law, the
4 technical specifications, general routes of the
5 distribution system, and the schedule for construction of
6 the cable system shall be subject to the commission's
7 approval.

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

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

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

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

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

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

25 The Hawaii communications commission shall have the
26 authority to designate and select PEG access organizations

1 pursuant to administrative rules adopted in accordance with
2 chapter 91. The commission shall consider input from the
3 public and take into consideration the First Amendment
4 rights of individuals who utilize PEG access services when
5 adopting those rules.

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

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

22
23 (g) Upon termination of the period of the cable
24 franchise or permit or of any renewal thereof, by passage
25 of time or otherwise, the cable operator shall remove its
26 facilities from the highways and other public places in,
27 on, over, under, or along which they are installed if so

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

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

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

1 allocation of expenses for the relocation of
2 utility facilities.

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

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

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

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

19 (j) Contracts between the commission and PEG access
20 organizations for PEG access services shall be exempt from
21 the requirements of chapter 103D.

22 SPO wants the PEG selection and designation process to be in
23 accordance with chapter 103D, HRS. DCCA disagrees and supports the
24 exemption.
25

1 § -68 Complaints; violations; revocation,
2 alteration, or suspension of cable franchise. (a)

3 Subscriber complaints regarding the operation of a cable
4 system may be made orally or in writing to the commission.
5 The commission shall resolve complaints informally when
6 possible.

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

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

- 1 (5) For violation of the terms of its cable
2 franchise;
- 3 (6) For failure to comply with this chapter or any
4 rules or orders prescribed by the commission;
- 5 (7) For violation of its filed schedule of terms and
6 conditions of service; and
- 7 (8) For engaging in any unfair or deceptive act or
8 practice as prohibited by section 480-2.

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

20 § -70 **Transfer of cable franchise.** (a) No cable
21 franchise, including the rights, privileges, and
22 obligations thereof, may be assigned, sold, leased,
23 encumbered, or otherwise transferred, voluntarily or
24 involuntarily, directly or indirectly, including by

1 transfer of control of any cable system, whether by change
2 in ownership or otherwise, except upon written application
3 to and approval by the commission. The form of the
4 application shall be prescribed by the commission.

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

7 § -71 **Rate, filed with the commissioner; approval.**

8 (a) The commission shall require each cable operator to
9 file a schedule of its rates of service on a form and with
10 the notice that the commission may prescribe.

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

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

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

1 (b) The commission 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 commission 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.

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

8 (c) The commission may establish a separate account
9 within the communications commission 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 commission 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 commission 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 commission special fund upon its
4 establishment.

5 (e) The commission 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 communications commission shall
5 designate the entity within the State to be responsible for
6 developing and maintaining broadband inventory maps, as
7 well as other initiatives, as described in the American
8 Recovery and Reinvestment Act of 2009 (P.L. 111-5) and
9 section 106 of the Broadband Data Improvement Act (P.L.
10 110-385). If not prohibited by federal law, the commission
11 may contract with service providers to develop the
12 broadband inventory maps and implement other related
13 requirements pursuant to this section. Subject only to any
14 limitations imposed by federal law, all providers of
15 telecommunications, cable, or broadband infrastructure and
16 services in Hawaii shall be required to furnish information
17 requested by the commission in support of broadband
18 mapping, reporting, and data-driven policy support. Except
19 as provided in this chapter, proprietary data on private
20 infrastructure, including reports, working papers, recorded
21 information, documents and copies thereof, produced by,
22 obtained by, or disclosed to the commission or any other
23 person in the course of developing and maintaining the
24 broadband maps and other requirements of this section,

1 shall be confidential by law and privileged, shall not be
2 subject to disclosure under chapter 92F, shall not be
3 subject to subpoena, and shall not be subject to discovery
4 or admissible in evidence in any private civil action. The
5 data may be made available to the public only in a
6 summarized form that appropriately protects the proprietary
7 concerns of those private providers.

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

11
12 The confidentiality language was changed to address the concerns of
13 providers and is based on §431E-14, HRS.

14
15 The Hawaii communications commission shall have the
16 authority to designate economic zones, pursuant to the
17 requirements of the American Recovery and Reinvestment Act
18 of 2009 (P.L. 111-5), for the explicit purpose of applying
19 for and expending moneys that the state may receive
20 pursuant to the federal act, anywhere in the State at a
21 location that may be identified as a strategic site to
22 create facilities that will stimulate job growth."

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

25
26 SECTION 4. Section 26-9, Hawaii Revised Statutes, is
27 amended by amending subsection (o) to read as follows:

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

1
2 "(o) Every person licensed under any chapter within
3 the jurisdiction of the department of commerce and consumer
4 affairs and every person licensed subject to chapter 485A
5 or registered under chapter 467B shall pay upon issuance of
6 a license, permit, certificate, or registration a fee and a
7 subsequent annual fee to be determined by the director and
8 adjusted from time to time to ensure that the proceeds,
9 together with all other fines, income, and penalties
10 collected under this section, do not surpass the annual
11 operating costs of conducting compliance resolution
12 activities required under this section. The fees may be
13 collected biennially or pursuant to rules adopted under
14 chapter 91, and shall be deposited into the special fund
15 established under this subsection. Every filing pursuant
16 to chapter 514E or section 485A-202(a)(26) shall be
17 assessed, upon initial filing and at each renewal period in
18 which a renewal is required, a fee that shall be prescribed
19 by rules adopted under chapter 91, and that shall be
20 deposited into the special fund established under this
21 subsection. Any unpaid fee shall be paid by the licensed
22 person, upon application for renewal, restoration,
23 reactivation, or reinstatement of a license, and by the
24 person responsible for the renewal, restoration,

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

10 There is created in the state treasury a special fund
11 to be known as the compliance resolution fund to be
12 expended by the director's designated representatives as
13 provided by this subsection. Notwithstanding any law to
14 the contrary, all revenues, fees, and fines collected by
15 the department shall be deposited into the compliance
16 resolution fund. Unencumbered balances existing on June
17 30, 1999, in the cable television fund under chapter 440G,
18 the division of consumer advocacy fund under chapter 269,
19 the financial institution examiners' revolving fund,
20 section 412:2-109, the special handling fund, section
21 414-13, and unencumbered balances existing on June 30,
22 2002, in the insurance regulation fund, section 431:2-215,
23 shall be deposited into the compliance resolution fund.

24 This provision shall not apply to any fee imposed by the

1 Hawaii communications commission pursuant to chapter ,
2 including the regulatory fees in sections -42, -49,
3 -73, -75, and 92-21, and deposited into the
4 communications commission special fund, section -21, the
5 drivers education fund underwriters fee, section 431:10C-
6 115, insurance premium taxes and revenues, revenues of the
7 workers' compensation special compensation fund, section
8 386-151, the captive insurance administrative fund, section
9 431:19-101.8, the insurance commissioner's education and
10 training fund, section 431:2-214, the medical malpractice
11 patients' compensation fund as administered under section 5
12 of Act 232, Session Laws of Hawaii 1984, and fees collected
13 for deposit in the office of consumer protection
14 restitution fund, section 487-14, the real estate
15 appraisers fund, section 466K-1, the real estate recovery
16 fund, section 467-16, the real estate education fund,
17 section 467-19, the contractors recovery fund, section 444-
18 26, the contractors education fund, section 444-29, the
19 condominium management education fund, section 514A-131,
20 and the condominium education trust fund, section 514B-71.
21 Any law to the contrary notwithstanding, the director may
22 use the moneys in the fund to employ, without regard to
23 chapter 76, hearings officers and attorneys. All other
24 employees may be employed in accordance with chapter 76.

1 Any law to the contrary notwithstanding, the moneys in the
2 fund shall be used to fund the operations of the
3 department. The moneys in the fund may be used to train
4 personnel as the director deems necessary and for any other
5 activity related to compliance resolution.

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

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

1 and includes work involved in or supporting the above
2 functions, licensing, or registration of individuals or
3 companies regulated by the department, consumer protection,
4 and other activities of the department.

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

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

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

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

20 (1) By the public utilities commission, the labor and
21 industrial relations appeals board, and the
22 Hawaii labor relations board;

23 (2) By any court or judicial or legislative office of
24 the State; provided that if the attorney general

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

12 (3) By the legislative reference bureau;

13 (4) By any compilation commission that may be
14 constituted from time to time;

15 (5) By the real estate commission for any action
16 involving the real estate recovery fund;

17 (6) By the contractors license board for any action
18 involving the contractors recovery fund;

19 (7) By the trustees for any action involving the
20 travel agency recovery fund;

21 (8) By the office of Hawaiian affairs;

22 (9) By the department of commerce and consumer
23 affairs for the enforcement of violations of
24 chapters 480 and 485A;

- 1 (10) As grand jury counsel;
- 2 (11) By the Hawaiian home lands trust individual
- 3 claims review panel;
- 4 (12) By the Hawaii health systems corporation, or its
- 5 regional system boards, or any of their
- 6 facilities;
- 7 (13) By the auditor;
- 8 (14) By the office of ombudsman;
- 9 (15) By the insurance division;
- 10 (16) By the University of Hawaii;
- 11 (17) By the Kahoolawe island reserve commission;
- 12 (18) By the division of consumer advocacy;
- 13 (19) By the office of elections;
- 14 (20) By the campaign spending commission;
- 15 (21) By the Hawaii tourism authority, as provided in
- 16 section 201B-2.5; [~~or~~]
- 17 (22) By the Hawaii communications commission; or
- 18 [~~(22)~~] (23) By a department, in the event the attorney
- 19 general, for reasons deemed by the attorney
- 20 general good and sufficient, declines to employ
- 21 or retain an attorney for a department; provided
- 22 that the governor thereupon waives the provision
- 23 of this section."
- 24 2. By amending subsection (c) to read:

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

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

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

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

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

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

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

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

7 Any experimental or demonstration housing project for
8 the purposes hereinabove mentioned may be sponsored by any
9 state or county agency or any person as defined in section
10 1-19.

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

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

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

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

9 amended to read as follows:

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

11 Except as otherwise provided by law, a copy of any

12 government record, including any map, plan, diagram,

13 photograph, photostat, or geographic information system

14 digital data file, which is open to the inspection of the

15 public, shall be furnished to any person applying for the

16 same by the public officer having charge or control thereof

17 upon the payment of the reasonable cost of reproducing

18 [~~such~~] the copy. Except as provided in section 91-2.5, the

19 cost of reproducing any government record, except

20 geographic information system digital data, shall not be

21 less than 5 cents per page, sheet, or fraction thereof.

22 The cost of reproducing geographic information system

23 digital data shall be in accordance with rules adopted by

24 the agency having charge or control of that data. [~~Such~~]

1 The reproduction cost shall include but shall not be
2 limited to labor cost for search and actual time for
3 reproducing, material cost, including electricity cost,
4 equipment cost, including rental cost, cost for
5 certification, and other related costs. All fees shall be
6 paid in by the public officer receiving or collecting the
7 same to the state director of finance, the county director
8 of finance, or to the agency or department by which the
9 officer is employed, as government realizations; provided
10 that fees collected by the public utilities commission
11 pursuant to this section shall be deposited in the public
12 utilities commission special fund established under section
13 269-33[-], and fees collected by the Hawaii communications
14 commission shall be deposited in the communications
15 commission special fund established under section -21."

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

18 **"§101-43 Requirements prior to exercise of power.**

19 Any corporation having the power of eminent domain under
20 section 101-41 may continue to exercise the power, provided
21 that prior to the exercise of the power:

22 (1) The corporation submits to the public utilities
23 commission or, in the case of telecommunications
24 carriers or telecommunications common carriers,

1 to the Hawaii communications commission, its
2 intention to exercise the power, with a
3 description of the property to be condemned; and

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

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

13 "(b) If the corporation acquires the assets of a
14 private or other corporation, then, notwithstanding any law
15 to the contrary:

16 (1) Neither the corporation nor any subsidiary
17 corporation vested with the assets shall be
18 subject to chapter 91 with respect to the assets;

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

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

23 (4) No investment, loan, or use of funds by the
24 corporation or a subsidiary corporation vested

1 with the assets shall be subject to chapter 42F
2 or 103; and
3 (5) Neither the corporation nor a subsidiary
4 corporation vested with the assets shall
5 constitute a public utility or be subject to the
6 jurisdiction of the public utilities commission
7 under chapter 269[-] or the Hawaii communications
8 commission under chapter _____."

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

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

20 (1) The board finds the agricultural park is
21 consistent with the purpose and intent of this
22 chapter, and meets minimum requirements of health
23 and safety;

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

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

21 (4) The State shall assume the responsibility of
22 maintaining all roads within the agricultural
23 park if the roads are developed exempt from

1 applicable county ordinances, charter provisions,
2 and rules regarding roads."

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

5 "[~~§~~166E-10~~§~~] **Non-agricultural park land**

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

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

19 (2) The development of the proposed non-agricultural
20 park land does not contravene any safety
21 standards or tariffs approved for public
22 utilities by the public utilities commission [~~for~~
23 ~~public utilities;~~] or the Hawaii communications
24 commission;

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

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

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

17 (C) The final plans and specifications for the
18 development shall be deemed approved by the
19 county if the final plans and specifications
20 do not substantially deviate from the
21 preliminary plans and specifications. The
22 final plans and specifications for the
23 project shall constitute the planning,
24 zoning, building, construction, and

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

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

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

20 "(b) At the option of the board, the development of
21 an industrial park shall be exempt from all statutes,
22 ordinances, charter provisions, and rules of any
23 governmental agency relating to planning, zoning,
24 construction standards for subdivision development and

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

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

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

10 (3) The legislative body of the county in which the
11 industrial park is proposed to be situated
12 approves the industrial park[-] in accordance
13 with the following:

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

22 (B) No action shall be prosecuted or maintained
23 against any county, its officials, or
24 employees, on account of actions taken by

1 them in reviewing, approving, or
2 disapproving the plans and
3 specifications[~~-~~]; and

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

1 lands, and such maps and plans shall be
2 accepted for registration or recordation by
3 the land court and registrar; and

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

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

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

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

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

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

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

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

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

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

17 When adopted, the rules shall have the force and
18 effect of law and shall supersede, for all housing projects
19 in which the State, through the corporation, shall
20 participate, all other inconsistent laws, ordinances, and
21 rules relating to the use, zoning, planning, and
22 development of land, and the construction of dwelling units
23 thereon. The rules, before becoming effective, shall be
24 presented to the legislative body of each county in which

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

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

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

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

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

1 ~~public utilities]~~ or the Hawaii communications
2 commission or of the various boards of water
3 supply authorized under chapter 54;

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

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

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

23 (C) The final plans and specifications for the
24 project shall be deemed approved by the

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

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

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

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

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

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

1 (8) Private facilities or improvements which will
2 neither adversely affect beach processes nor
3 artificially fix the shoreline; provided that the
4 authority also finds that hardship will result to
5 the applicant if the facilities or improvements
6 are not allowed within the shoreline area;

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

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

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

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

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

19 "(b) Any other law to the contrary notwithstanding,
20 any decision by the State, the department of
21 transportation, a county, or any officers, employees, or
22 agents of the State, the department of transportation, or a
23 county to select or apply flexibility in highway design
24 pursuant to this section and consistent with the practices

1 used by the Federal Highway Administration and the American
2 Association of State Highway and Transportation Officials
3 shall not give rise to a cause of action or claim against:

4 (1) The State;

5 (2) The department of transportation;

6 (3) The counties;

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

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

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

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

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

20 ~~"Designated local exchange service area" means an area~~
21 ~~as determined by the commission to be best served by~~
22 ~~designating a carrier of last resort pursuant to section~~
23 ~~269-43."~~]

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

3 ""Public utility":

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

21 (A) Any person insofar as that person owns or
22 operates a private sewer company or sewer
23 facility; and

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

1 perform carriage services on behalf of the
2 public generally;

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

9 (G) Any person who:

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

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

20 (H) A telecommunications provider only to the
21 extent determined by the [~~commission~~] Hawaii
22 communications commission pursuant to
23 section [~~269-16.9;~~] -34;

- 1 (I) Any person who controls, operates, or manages
2 plants or facilities developed pursuant to
3 chapter 167 for conveying, distributing, and
4 transmitting water for irrigation and such
5 other purposes that shall be held for public
6 use and purpose;
- 7 (J) Any person who owns, controls, operates, or
8 manages plants or facilities for the
9 reclamation of wastewater; provided that:
- 10 (i) The services of the facility shall be
11 provided pursuant to a service contract
12 between the person and a state or
13 county agency and at least ten per cent
14 of the wastewater processed is used
15 directly by the State or county which
16 has entered into the service contract;
- 17 (ii) The primary function of the facility
18 shall be the processing of secondary
19 treated wastewater that has been
20 produced by a municipal wastewater
21 treatment facility that is owned by a
22 state or county agency;
- 23 (iii) The facility shall not make sales of
24 water to residential customers;

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

15 (v) The facility shall not be engaged,
16 either directly or indirectly, in the
17 processing of food wastes; and

18 (K) Any person who owns, controls, operates, or
19 manages any seawater air conditioning
20 district cooling project; provided that at
21 least fifty per cent of the energy required
22 for the seawater air conditioning district
23 cooling system is provided by a renewable

1 energy resource, such as cold, deep
2 seawater.

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

15 3. By amending the definition of "telecommunications
16 carrier" or "telecommunications common carrier" to read:

17 ""Telecommunications carrier" or "telecommunications
18 common carrier" [~~means any person that owns, operates,~~
19 ~~manages, or controls any facility used to furnish~~
20 ~~telecommunications services for profit to the public, or to~~
21 ~~classes of users as to be effectively available to the~~
22 ~~public, engaged in the provision of services, such as~~
23 ~~voice, data, image, graphics, and video services, that make~~
24 ~~use of all or part of their transmission facilities,~~

1 ~~switches, broadcast equipment, signalling, or control~~
2 ~~devices.] has the same meaning as in section -1."~~

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

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

15 Notes: OTW wanted to include its definition of telecommunications as
16 proposed in the Definitions section at the beginning of this bill. DCCA did
17 not agree with the proposal in § -1 and continues to oppose it here.
18

19 SECTION 22. Section 269-6, Hawaii Revised Statutes,
20 is amended by amending subsection (a) to read as follows:

21 "(a) The public utilities commission shall have the
22 general supervision hereinafter set forth over all public
23 utilities, and shall perform the duties and exercise the
24 powers imposed or conferred upon it by this chapter.

25 Included among the general powers of the commission is the

62

1 authority to adopt rules pursuant to chapter 91 necessary
2 for the purposes of this chapter. Chapter 269 shall apply
3 to telecommunications carriers or telecommunications common
4 carriers until such time as the Hawaii communications
5 commission is sworn in and the Hawaii communications
6 commission issues an order accepting the commission's
7 authority and undertaking to enforce chapter ."

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

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

21 To the extent the contested case proceedings referred
22 to in chapter 91 are required in any rate proceeding to
23 ensure fairness and to provide due process to parties that
24 may be affected by rates approved by the commission, the

1 evidentiary hearings shall be conducted expeditiously and
2 shall be conducted as a part of the ratemaking proceeding.

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

22 (1) Suspend the operation of all or any part of the
23 proposed rate, fare, charge, classification,
24 schedule, rule, or practice or any proposed

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

1 (3) Do all things that are necessary and in the
2 exercise of the commission's power and
3 jurisdiction, all of which as so ordered,
4 regulated, fixed, and changed are just and
5 reasonable, and provide a fair return on the
6 property of the utility actually used or useful
7 for public utility purposes.

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

1 (d) The commission shall make every effort to
2 complete its deliberations and issue its decision as
3 expeditiously as possible and before nine months from the
4 date the public utility filed its completed application;
5 provided that in carrying out this mandate, the commission
6 shall require all parties to a proceeding to comply
7 strictly with procedural time schedules that it
8 establishes. If a decision is rendered after the nine-
9 month period, the commission shall report in writing the
10 reasons therefor to the legislature within thirty days
11 after rendering the decision.

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

1 form of an adjustment to rates, fares, or charges to be
2 billed in the future, any amounts with interest, at a rate
3 equal to the rate of return on the public utility's rate
4 base found to be reasonable by the commission, received
5 under the interim rates that are in excess of the rates,
6 fares, or charges finally determined to be just and
7 reasonable by the commission. Interest on any excess shall
8 commence as of the date that any rate, fare, or charge goes
9 into effect that results in the excess and shall continue
10 to accrue on the balance of the excess until returned.

11 The nine-month period in this subsection shall begin
12 only after a completed application has been filed with the
13 commission and a copy served on the consumer advocate. The
14 commission shall establish standards concerning the data
15 required to be set forth in the application in order for it
16 to be deemed a completed application. The consumer
17 advocate may, within twenty-one days after receipt, object
18 to the sufficiency of any application, and the commission
19 shall hear and determine any objection within twenty-one
20 days after it is filed. If the commission finds that the
21 objections are without merit, the application shall be
22 deemed to have been completed upon original filing. If the
23 commission finds the application to be incomplete, it shall
24 require the applicant to submit an amended application

1 consistent with its findings, and the nine-month period
2 shall not commence until the amended application is filed.

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

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

23 (1) Require the filing of a standard form application
24 to be developed by the commission. The standard

1 form application for general rate increases shall
2 describe the specific facts that shall be
3 submitted to support a determination of the
4 reasonableness of the proposed rates, and require
5 the submission of financial information in
6 conformance with a standard chart of accounts to
7 be approved by the commission, and other
8 commission guidelines to allow expeditious review
9 of a requested general rate increase application;

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

16 (3) Make every effort to complete its deliberations
17 and issue a proposed decision and order within
18 six months from the date the public utility files
19 a completed application with the commission;
20 provided that all parties to the proceeding
21 strictly comply with the procedural schedule
22 established by the commission and no person is
23 permitted to intervene. If a proposed decision
24 and order is rendered after the six-month period,

1 the commission shall report in writing the
2 reasons therefor to the legislature within thirty
3 days after rendering the proposed decision and
4 order. Prior to the issuance of the commission's
5 proposed decision and order, the parties shall
6 not be entitled to a contested case hearing.

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

18 If a party does not accept the proposed
19 decision and order, either in whole or in part,
20 that party shall give notice of its objection or
21 nonacceptance within the timeframe prescribed by
22 the commission in the proposed decision and
23 order, setting forth the basis for its objection
24 or nonacceptance; provided that the proposed

1 decision and order shall have no force or effect
2 pending the commission's final decision. If
3 notice is filed, the above six-month period shall
4 not apply and the commission shall make every
5 effort to complete its deliberations and issue
6 its decision within the nine-month period from
7 the date the public utility's completed
8 application was filed as set forth in subsection
9 (d). Any party that does not accept the proposed
10 decision and order under this paragraph shall be
11 entitled to a contested case hearing; provided
12 that the parties to the proceeding may waive the
13 contested case hearing.

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

1 utility shall certify that the reports were prepared in
2 accordance with the standard chart of accounts.

3 (g) Any automatic fuel rate adjustment clause
4 requested by a public utility in an application filed with
5 the commission shall be designed, as determined in the
6 commission's discretion, to:

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

24

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

8
9 SECTION 24. Section 269-51, Hawaii Revised Statutes,
10 is amended to read as follows:

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

21 The responsibility for advocating the interests of the
22 consumer of utility services shall be separate and distinct
23 from the responsibilities of the public utilities
24 commission and those assistants employed by the
25 commission. As consumer advocate, the director of commerce
26 and consumer affairs shall have full rights to participate
27 as a party in interest in all proceedings before the public

1 utilities commission[~~r~~] and in all telecommunications
2 proceedings before the Hawaii communications commission."

3 SECTION 25. Section 269-54, Hawaii Revised Statutes,
4 is amended by amending subsections (d) and (e) to read as
5 follows:

6 "(d) Whenever it appears to the consumer advocate
7 that: (1) any public utility or telecommunications carrier
8 has violated or failed to comply with any provision of this
9 part or of any state or federal law; (2) any public utility
10 or telecommunications carrier has failed to comply with any
11 rule, regulation, or other requirement of the public
12 utilities commission, the Hawaii communications commission,
13 or of any other state or federal agency; (3) any public
14 utility or telecommunications carrier has failed to comply
15 with any provision of its charter, certificate of public
16 convenience and necessity, or franchise; (4) changes,
17 additions, extensions, or repairs to the plant or service
18 of any public utility or telecommunications carrier are
19 necessary to meet the reasonable convenience or necessity
20 of the public; or (5) the rates, fares, classifications,
21 charges, or rules of any public utility or
22 telecommunications carrier, where not prohibited by federal
23 law, are unreasonable or unreasonably discriminatory, the
24 consumer advocate may institute proceedings for appropriate

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

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

1 communications commission, as the case may be, shall
2 proceed to hold the hearing and make its determination on
3 the request within thirty days after the same is filed.
4 The consumer advocate or the public utility may appeal the
5 decision of the commission on any [~~sueh~~] request, subject
6 to chapter 602, in the manner provided for civil appeals
7 from the circuit courts. The consumer advocate or
8 telecommunications carrier may appeal the decision of the
9 Hawaii communications commission, in the manner provided
10 for in section -17. Subject to the foregoing, such
11 requests may ask the public utility or telecommunications
12 carrier to:

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

1 thing which is in the possession, custody, or
2 control of the public utility[?] or
3 telecommunications carrier; or

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

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

12 "**§269-55 Handling of complaints.** The consumer
13 advocate shall counsel public utility and
14 telecommunications customers in the handling of consumer
15 complaints before the public utilities commission[?] or the
16 Hawaii communications commission. The public utilities
17 commission shall provide a central clearinghouse of
18 information by collecting and compiling all consumer
19 complaints and inquiries concerning public utilities. The
20 Hawaii communications commission shall provide a central
21 clearinghouse of information by collecting and compiling
22 all consumer complaints and inquiries concerning
23 telecommunications carriers and cable 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 "[+]§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 29. 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 communications commission shall
20 retain their enforcement and inspection authority relating
21 to carriers."

22 SECTION 30. Section 356D-15, Hawaii Revised Statutes,
23 is amended by amending subsection (b) to read as follows:

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

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

13 SECTION 31. Section 448E-13, Hawaii Revised Statutes,
14 is amended to read as follows:

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

1 SECTION 32. Section 481-11, Hawaii Revised Statutes,
2 is amended to read as follows:

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

10 SECTION 33. Section 481P-5, Hawaii Revised Statutes,
11 is amended to read as follows:

12 **"§481P-5 Exemptions.** This chapter shall not apply
13 to:

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

1 telephone within the scope of the person's
2 registration;

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

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

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

- 1 (9) A real estate broker or salesperson who is
2 licensed by this State to sell real estate, when
3 soliciting within the scope of the license; or
4 (10) A travel agency that is registered with this
5 State, when engaging in the business of selling
6 or advertising the sale of travel services."

7 SECTION 34. Section 481X-1, Hawaii Revised Statutes,
8 is amended by amending subsection (a) to read as follows:

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

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

18 SECTION 35. Section 486J-11, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "**§486J-11 Powers of the public utilities**
21 **commission[-] and the Hawaii communications commission.**

22 (a) The public utilities commission and the Hawaii
23 communications commission may take any action or make any
24 determination under this chapter, including but not limited

1 to actions or determinations that affect persons not
2 regulated under chapters 269, _____, 271, and 271G, as the
3 public utilities commission or the Hawaii communications
4 commission deems necessary to carry out its
5 responsibilities or otherwise effectuate chapter 269,
6 _____, 271, or 271G.

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

19 (c) In the performance of its duties under this
20 chapter, the public utilities commission and the Hawaii
21 communications commission shall have the same powers
22 respecting administering oaths, compelling the attendance
23 of witnesses and the production of documents, examining
24 witnesses, and punishing for contempt, as are possessed by

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

11 SECTION 36. Section 659-3, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "[+]§659-3[+] **Forfeiture of franchise.** The several
14 circuit courts shall have jurisdiction of all proceedings
15 in, or in the nature of, quo warranto, brought by or in the
16 name of the public utilities commission, the Hawaii
17 communications commission, or the State, for the forfeiture
18 of the franchise of any corporate body offending against
19 any law relating to such corporation, for misuser, for
20 nonuser, for doing or committing any act or acts amounting
21 to a surrender of its charter and for exercising rights not
22 conferred upon it."

1 SECTION 37. Section 708-800, Hawaii Revised Statutes,
2 is amended by amending the definition of "telecommunication
3 service" to read as follows:

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

13 SECTION 38. Section 269-16.5, Hawaii Revised
14 Statutes, is repealed.

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

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

23 ~~(c) The commission shall require every telephone~~
24 ~~public utility providing local telephone service to file a~~

1 ~~schedule of rates and charges providing a rate for lifeline~~
2 ~~telephone subscribers.~~

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

8 SECTION 39. Section 269-16.6, Hawaii Revised
9 Statutes, is repealed.

10 ~~["§269-16.6 Telecommunications relay services for the~~
11 ~~deaf, persons with hearing disabilities, and persons with~~
12 ~~speech disabilities. (a) The public utilities commission~~
13 ~~shall implement intrastate telecommunications relay~~
14 ~~services for the deaf, persons with hearing disabilities,~~
15 ~~and persons with speech disabilities.~~

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

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

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

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

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

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

1 ~~persons with hearing disabilities, and persons with speech~~
2 ~~disabilities.~~

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

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

9 ~~"Telecommunications relay services" means telephone~~
10 ~~transmission services that provide an individual who has a~~
11 ~~hearing or speech disability the ability to engage in~~
12 ~~communication by wire or radio with a hearing individual in~~
13 ~~a manner that is functionally equivalent to the ability of~~
14 ~~an individual who does not have a hearing or speech~~
15 ~~disability to communicate using wire or radio voice~~
16 ~~communication services. "Telecommunications relay~~
17 ~~services" includes services that enable two-way~~
18 ~~communication using text telephones or other nonvoice~~
19 ~~terminal devices, speech-to-speech services, video relay~~
20 ~~services, and non-English relay services."]~~

21 SECTION 40. Section 269-16.8, Hawaii Revised
22 Statutes, is repealed.

23 ~~["~~§269-16.8~~ **Aggregators of telephone service**~~
24 ~~requirements.~~ (a) ~~For the purposes of this section:~~

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

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

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

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

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

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

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

19 SECTION 41. Section 269-16.9, Hawaii Revised
20 Statutes, is repealed.

21 ~~["§269-16.9 Telecommunications providers and~~
22 ~~services. (a) Notwithstanding any provision of this~~
23 ~~chapter to the contrary, the commission, upon its own~~
24 ~~motion or upon the application of any person, and upon~~

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

14 ~~Among the specific factors the commission may consider are:~~

15 ~~(1) The responsiveness of the exemption to changes in~~
16 ~~the structure and technology of the State's~~
17 ~~telecommunications industry;~~

18 ~~(2) The benefits accruing to the customers and users~~
19 ~~of the exempt telecommunications provider or~~
20 ~~service;~~

21 ~~(3) The impact of the exemption on the quality,~~
22 ~~efficiency, and availability of~~
23 ~~telecommunications services;~~

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

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

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

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

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

23 ~~(e) The commission may waive other regulatory~~
24 ~~requirements under this chapter applicable to~~

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

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

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

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

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

12 SECTION 42. Section 269-16.91, Hawaii Revised
13 Statutes, is repealed.

14 ~~["§269-16.91] Universal service subsidies. (a) For~~
15 ~~any alternative telecommunications provider authorized to~~
16 ~~provide basic local exchange service to any area of the~~
17 ~~State pursuant to section 269-16.9(h), the commission may~~
18 ~~consider the following:~~

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

22 ~~(2) Transferring from the local exchange carrier to~~
23 ~~the alternative provider the amounts, if any,~~
24 ~~generated by the local exchange provider's~~

1 ~~services other than basic residential telephone~~
2 ~~service and which are used to subsidize basic~~
3 ~~residential service in the area.~~

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

10 SECTION 43. Section 269-16.92, Hawaii Revised
11 Statutes, is repealed.

12 ~~["~~§269-16.92~~ Changes in subscriber carrier~~
13 ~~selections; prior authorization required; penalties for~~
14 ~~unauthorized changes.~~ (a) ~~No telecommunications carrier~~
15 ~~shall initiate a change in a subscriber's selection or~~
16 ~~designation of a long distance carrier without first~~
17 ~~receiving:~~

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

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

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

17 ~~The commission, if consistent with the public~~
18 ~~interest, may suspend, restrict, or revoke the~~
19 ~~registration, charter, or certificate of the~~
20 ~~telecommunications carrier, thereby denying, modifying, or~~
21 ~~limiting the right of the telecommunications carrier to~~
22 ~~provide service in this State.~~

23 ~~(c) The commission shall adopt rules, pursuant to~~
24 ~~chapter 91, necessary for the purposes of this section.~~

1 ~~The commission may notify customers of their rights under~~
2 ~~these rules."]~~

3 SECTION 44. Section 269-16.95, Hawaii Revised
4 Statutes, is repealed.

5 ~~["§269-16.95 Emergency telephone service; capital~~
6 ~~costs; ratemaking. (a) A public utility providing local~~
7 ~~exchange telecommunications services may recover the~~
8 ~~capital cost and associated operating expenses of providing~~
9 ~~a statewide enhanced 911 emergency telephone service in the~~
10 ~~public switched telephone network, through:~~

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

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

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

20 ~~(c) The commission shall require every public utility~~
21 ~~providing statewide enhanced 911 emergency telephone~~
22 ~~service to maintain a separate accounting of the costs of~~
23 ~~providing an enhanced 911 emergency service and the~~
24 ~~revenues received from related surcharges until the next~~

1 ~~general rate case. The commission shall further require~~
2 ~~that every public utility imposing a surcharge shall~~
3 ~~identify such as a separate line item on all customer~~
4 ~~billing statements.~~

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

10 SECTION 45. Section 269-34, Hawaii Revised Statutes,
11 is repealed.

12 ~~["**{§269-34} Obligations of telecommunications**~~
13 ~~**carriers.** In accordance with conditions and guidelines~~
14 ~~established by the commission to facilitate the~~
15 ~~introduction of competition into the State's~~
16 ~~telecommunications marketplace, each telecommunications~~
17 ~~carrier, upon bona fide request, shall provide services or~~
18 ~~information services, on reasonable terms and conditions,~~
19 ~~to an entity seeking to provide intrastate~~
20 ~~telecommunications, including:~~

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

1 ~~network so that the networks are fully~~
2 ~~interoperable;~~

3 ~~(2) The current interstate tariff used as the access~~
4 ~~rate until the commission can adopt a new~~
5 ~~intrastate local service interconnection tariff~~
6 ~~pursuant to section 269-37;~~

7 ~~(3) Nondiscriminatory and equal access to any~~
8 ~~telecommunications carrier's telecommunications~~
9 ~~facilities, functions, and the information~~
10 ~~necessary to the transmission and routing of any~~
11 ~~telecommunications service and the~~
12 ~~interoperability of both carriers' networks;~~

13 ~~(4) Nondiscriminatory access among all~~
14 ~~telecommunications carriers, where technically~~
15 ~~feasible and economically reasonable, and where~~
16 ~~safety or the provision of existing electrical~~
17 ~~service is not at risk, to the poles, ducts,~~
18 ~~conduits, and rights-of-way owned or controlled~~
19 ~~by the telecommunications carrier, or the~~
20 ~~commission shall authorize access to electric~~
21 ~~utilities' poles as provided by the joint pole~~
22 ~~agreement, commission tariffs, rules, orders, or~~
23 ~~Federal Communications Commission rules and~~
24 ~~regulations;~~

- 1 ~~(5) Nondiscriminatory access to the network functions~~
2 ~~of the telecommunications carrier's~~
3 ~~telecommunications network, that shall be offered~~
4 ~~on an unbundled, competitively neutral, and cost-~~
5 ~~based basis;~~
- 6 ~~(6) Telecommunications services and network functions~~
7 ~~without unreasonable restrictions on the resale~~
8 ~~or sharing of those services and functions; and~~
- 9 ~~(7) Nondiscriminatory access of customers to the~~
10 ~~telecommunications carrier of their choice~~
11 ~~without the need to dial additional digits or~~
12 ~~access codes, where technically feasible. The~~
13 ~~commission shall determine the equitable~~
14 ~~distribution of costs among the authorized~~
15 ~~telecommunications carriers that will use such~~
16 ~~access and shall establish rules to ensure such~~
17 ~~access.~~

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

1 SECTION 46. Section 269-35, Hawaii Revised Statutes,
2 is repealed.

3 ~~["§269-35] Universal service. The commission shall~~
4 ~~preserve and advance universal service by:~~

- 5 ~~(1) Maintaining affordable, just, and reasonable~~
6 ~~rates for basic residential service;~~
7 ~~(2) Assisting individuals or entities who cannot~~
8 ~~afford the cost of or otherwise require~~
9 ~~assistance in obtaining or maintaining their~~
10 ~~basic service or equipment as determined by the~~
11 ~~commission; and~~
12 ~~(3) Ensuring that consumers are given the information~~
13 ~~necessary to make informed choices among the~~
14 ~~alternative telecommunications providers and~~
15 ~~services."]~~

16 SECTION 47. Section 269-36, Hawaii Revised Statutes,
17 is repealed.

18 ~~["§269-36] Telecommunications number portability.~~
19 ~~The commission shall ensure that telecommunications number~~
20 ~~portability within an exchange is available, upon request,~~
21 ~~as soon as technically feasible and economically~~
22 ~~reasonable. An impartial entity shall administer~~
23 ~~telecommunications numbering and make the numbers available~~
24 ~~on an equitable basis."]~~

1 SECTION 48. Section 269-37, Hawaii Revised Statutes,
2 is repealed.

3 ~~["**§269-37** Compensation agreements. The commission~~
4 ~~shall ensure that telecommunications carriers are~~
5 ~~compensated on a fair basis for termination of~~
6 ~~telecommunications services on each other's networks,~~
7 ~~taking into account, among other things, reasonable and~~
8 ~~necessary costs to each telecommunications carrier of~~
9 ~~providing the services in question. Telecommunications~~
10 ~~carriers may negotiate compensation arrangements, that may~~
11 ~~include "bill and keep", mutual and equal compensation, or~~
12 ~~any other reasonable division of revenues pending tariff~~
13 ~~access rates to be set by the commission. Upon failure of~~
14 ~~the negotiations, the commission shall determine the proper~~
15 ~~methodology and amount of compensation."]~~

16 SECTION 49. Section 269-38, Hawaii Revised Statutes,
17 is repealed.

18 ~~["**§269-38** Regulatory flexibility for effectively~~
19 ~~competitive services. The commission may allow~~
20 ~~telecommunications carriers to have pricing flexibility for~~
21 ~~services that the commission finds are effectively~~
22 ~~competitive; provided that the rates for:~~

23 ~~(1) Basic telephone service and for services that are~~
24 ~~not effectively competitive are cost-based and~~

1 ~~remain just, reasonable, and nondiscriminatory;~~
2 ~~and~~

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

4 SECTION 50. Section 269-39, Hawaii Revised Statutes,
5 is repealed.

6 ~~[" [§269-39] Cross-subsidies. (a) The commission~~
7 ~~shall ensure that noncompetitive services shall not cross-~~
8 ~~subsidize competitive services. Cross-subsidization shall~~
9 ~~be deemed to have occurred:~~

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

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

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

1 SECTION 51. Section 269-40, Hawaii Revised Statutes,
2 is repealed.

3 ~~["**§269-40** **Access to advanced services.** The~~
4 ~~commission shall ensure that all consumers are provided~~
5 ~~with nondiscriminatory, reasonable, and equitable access to~~
6 ~~high quality telecommunications network facilities and~~
7 ~~capabilities that provide subscribers with sufficient~~
8 ~~network capacity to access information services that~~
9 ~~provide a combination of voice, data, image, and video, and~~
10 ~~that are available at just, reasonable, and~~
11 ~~nondiscriminatory rates that are based on reasonably~~
12 ~~identifiable costs of providing the services."]~~

13 SECTION 52. Section 269-41, Hawaii Revised Statutes,
14 is repealed.

15 ~~["**§269-41** **Universal service program; establishment;**~~
16 ~~**purpose; principles.** There is established the universal~~
17 ~~service program. The purpose of this program is to:~~

- 18 ~~(1) Maintain affordable, just, and reasonable rates~~
19 ~~for basic residential telecommunications service,~~
20 ~~as defined by the commission;~~
- 21 ~~(2) Assist customers located in the areas of the~~
22 ~~State that have high costs of essential~~
23 ~~telecommunications service, low income customers,~~
24 ~~and customers with disabilities, in obtaining and~~

1 ~~maintaining access to a basic set of essential~~
2 ~~telecommunications services as determined by the~~
3 ~~commission. The commission may expand or~~
4 ~~otherwise modify relevant programs, such as the~~
5 ~~lifeline program under section 269-16.5;~~

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

18 ~~(4) Ensure that consumers are given the information~~
19 ~~necessary to make informed choices among the~~
20 ~~alternative telecommunications carriers and~~
21 ~~services; and~~

22 ~~(5) Promote affordable access throughout the State to~~
23 ~~enhanced government information and services,~~

1 ~~including education, health care, public safety,~~
2 ~~and other government services.~~

3 ~~The commission shall administer the universal service~~
4 ~~program, including the establishment of criteria by which~~
5 ~~the purposes of the program are met."]~~

6 SECTION 53. Section 269-42, Hawaii Revised Statutes,
7 is repealed.

8 ~~["§269-42 Universal service program; contributions.—~~

9 ~~(a) There is established outside of the state treasury a~~
10 ~~special fund to be known as the universal service fund to~~
11 ~~be administered by the commission to implement the policies~~
12 ~~and goals of universal service. The fund shall consist of~~
13 ~~contributions from the sources identified in subsections~~
14 ~~(c) and (f). Interest earned from the balance of the fund~~
15 ~~shall become a part of the fund. The commission shall~~
16 ~~adopt rules regarding the distribution of moneys from the~~
17 ~~fund including reimbursements to carriers for providing~~
18 ~~reduced rates to low income, elderly, residents of~~
19 ~~underserved or rural areas, or other subscribers, as~~
20 ~~authorized by the commission.~~

21 ~~(b) The commission may allow distribution of funds~~
22 ~~directly to customers based upon a need criteria~~
23 ~~established by the commission.~~

1 ~~(c) A telecommunications carrier or other person~~
2 ~~contributing to the universal service program may establish~~
3 ~~a surcharge which is clearly identified and explained on~~
4 ~~customers' bills to collect from customers contributions~~
5 ~~required under this section.~~

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

13 ~~(e) The commission shall require all~~
14 ~~telecommunications carriers to contribute to the universal~~
15 ~~service program. The commission may require a person other~~
16 ~~than a telecommunications carrier to contribute to the~~
17 ~~universal service program if, after notice and opportunity~~
18 ~~for hearing, the commission determines that the person is~~
19 ~~offering a commercial service in the State that directly~~
20 ~~benefits from the telecommunications infrastructure, and~~
21 ~~that directly competes with a telecommunications service~~
22 ~~provided in the State for which a contribution is required~~
23 ~~under this subsection.~~

1 ~~(f) The commission shall designate the method by~~
2 ~~which the contributions under subsection (e) shall be~~
3 ~~calculated and collected. The commission shall consider~~
4 ~~basing contributions solely on the gross operating revenues~~
5 ~~from the retail provision of intrastate telecommunications~~
6 ~~services offered by the telecommunications carriers subject~~
7 ~~to the contribution."]~~

8 SECTION 54. Section 269-43, Hawaii Revised Statutes,
9 is repealed.

10 ~~["~~§269-43~~ Carriers of last resort. (a) The~~
11 ~~commission may define and designate local exchange service~~
12 ~~areas where the commission has determined that providing~~
13 ~~universal service funds to a single provider will be the~~
14 ~~most appropriate way to ensure service for these areas.~~
15 ~~(b) The commission shall determine the level of~~
16 ~~service that is appropriate for each designated local~~
17 ~~exchange service area and shall invite telecommunications~~
18 ~~providers to bid for a level of service that is~~
19 ~~appropriate. The successful bidder shall be designated the~~
20 ~~carrier of last resort for the designated local exchange~~
21 ~~service area for a period of time and upon conditions set~~
22 ~~by the commission. In determining the successful bidder,~~
23 ~~the commission shall take into consideration the level of~~
24 ~~service to be provided, the investment commitment, and the~~

1 ~~length of the agreement, in addition to the other~~
2 ~~qualifications of the bidder.~~

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

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

8 SECTION 55. Chapter 440G, Hawaii Revised Statutes, is
9 repealed.

10 SECTION 56. All rules, including the rules in chapter
11 6-80, Hawaii Administrative Rules, policies, procedures,
12 orders, certificates of public convenience and necessity,
13 exemption, franchises, guidelines, and other material
14 adopted, issued, or developed by the department of commerce
15 and consumer affairs and the public utilities commission to
16 implement provisions of the Hawaii Revised Statutes that
17 are reenacted or made applicable to the Hawaii
18 communications commission by this Act, shall remain in full
19 force and effect until amended or repealed by the Hawaii
20 communications commission. In the interim, every reference
21 to the department of commerce and consumer affairs,
22 director of commerce and consumer affairs, public utilities
23 commission, or chairperson of the public utilities
24 commission in those rules, policies, procedures, orders,

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

4 SECTION 57. All deeds, leases, contracts, loans,
5 agreements, permits, or other documents executed or entered
6 into by or on behalf of the department of commerce and
7 consumer affairs and the public utilities commission
8 pursuant to the provisions of the Hawaii Revised Statutes
9 that are reenacted or made applicable to the Hawaii
10 communications commission by this Act, shall remain in full
11 force and effect. Effective upon approval of this Act,
12 every reference to the department of commerce and consumer
13 affairs, director of commerce and consumer affairs, public
14 utilities commission, or chairperson of the public
15 utilities commission therein shall be construed as a
16 reference to the Hawaii communications commission as
17 appropriate.

18 SECTION 58. During fiscal year 2010-2011, fifty per
19 cent of the moneys collected by the public utilities
20 commission from telecommunications carriers and deposited
21 into the public utilities commission special fund shall be
22 deposited into the commission special fund to provide
23 appropriations for the new commission.

1 The unencumbered balance existing on June 30, 2010, in
2 the cable television division subaccount in the compliance
3 resolution fund shall be deposited into the commission
4 special fund to provide appropriations for the new
5 commission.

6 SECTION 59. All appropriations, records, equipment,
7 machines, files, supplies, contracts, books, papers,
8 documents, maps, and other personal property heretofore
9 made, used, acquired, or held by the department of commerce
10 and consumer affairs and the public utilities commission
11 relating to the functions transferred to the Hawaii
12 communications commission shall be transferred with the
13 functions to which they relate.

14 SECTION 60. (a) The department of commerce and
15 consumer affairs shall transfer all four positions from the
16 cable television division to the service of the Hawaii
17 communications commission; provided that:

18 (1) Employees who occupy civil service positions and
19 whose functions are transferred by this Act shall
20 not suffer any loss of salary, seniority, prior
21 service credits, any vacation and sick leave
22 credits previously earned, or other rights,
23 benefits, and privileges under the State's
24 personnel laws. Employees who have permanent

1 civil service status shall retain their civil
2 service status and shall be transferred to
3 similar or corresponding positions in the Hawaii
4 communications commission, subject to the State's
5 personnel laws and this Act;

6 (2) Employees who, prior to this Act, are exempt from
7 civil service and are transferred by this Act
8 shall not suffer any loss of prior service
9 credits, any vacation and sick leave credits
10 previously earned, or other rights, benefits, and
11 privileges under the State's personnel laws. The
12 Hawaii communications commission shall prescribe
13 the qualifications and duties of such employees
14 and fix their salaries without regard to chapter
15 76; and

16 (3) Employees, whose functions are transferred by
17 this Act, shall be transferred with their
18 functions and shall continue to perform their
19 regular duties subject to the State's personnel
20 laws and this Act.

21 (b) There shall be up to ten new temporary exempt
22 positions established in the Hawaii communications
23 commission to assist the commissioner in carrying out the
24 provisions of this Act. These positions shall be funded

1 from the communications commission special fund and may be
2 filled without regard to chapter 76.

3 SECTION 61. The Hawaii communications commission
4 shall convene a work group to develop procedures for
5 streamlined permitting functions that are applicable to the
6 development of broadband services and broadband technology
7 which are normally available to state and local governments
8 for the use or development of broadband service or
9 broadband technology. Members of the work group shall
10 include:

- 11 (1) The Hawaii communications commission established
12 in section 3 of this Act;
- 13 (2) The mayor of the county of Hawaii, or the mayor's
14 designee;
- 15 (3) The mayor of the city and county of Honolulu, or
16 the mayor's designee;
- 17 (4) The mayor of the county of Kauai, or the mayor's
18 designee;
- 19 (5) The mayor of the county of Maui, or the mayor's
20 designee;
- 21 (6) The chairperson of the Hawaii broadband task
22 force established by Act 2, First Special Session
23 Laws of Hawaii 2007; and

1 (7) Two representatives of state agencies with
2 jurisdiction over land use and permitting at the
3 state level.

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

6
7 SECTION 62. The work group established under
8 section 59 shall submit to the legislature no later than
9 January 1, 2011, a report with its recommended procedures
10 for streamlining and expediting all permitting functions
11 normally available to state and local governments for the
12 use or development of broadband service or broadband
13 technology. The procedures shall be consistent across all
14 counties and shall provide that any permitting fees and
15 revenues traditionally accruing to the counties that relate
16 to the use or development of broadband service or broadband
17 technology will continue to accrue to the counties once the
18 procedures go into effect.

19 SECTION 63. The legislative reference bureau shall
20 review all relevant laws in the Hawaii Revised Statutes
21 relating to broadband technology, telecommunications,
22 infrastructure development, permitting requirements, and
23 any other issues the legislative reference bureau deems
24 appropriate, including all acts passed by the legislature
25 during this regular session of 2010, whether enacted before

1 or after the effective date of this Act, unless such acts
2 specifically provide that this Act is being amended, and
3 make recommendations on how these laws may be amended to
4 conform to this Act or facilitate the implementation of
5 this Act. The legislative reference bureau shall submit a
6 report of its findings and recommendations, including
7 proposed legislation, to the legislature not later than
8 twenty days prior to the convening of the 2010 regular
9 session.

10 SECTION 64. ~~Upon receipt of federal funds allocated~~
11 ~~by the American Recovery and Reinvestment Act of 2009 (P.L.~~
12 ~~111-5), section 106 of the Broadband Data Improvement Act~~
13 ~~(P.L. 110-385), and other federal stimulus acts,~~ there is
14 appropriated out of those funds the sum of \$ or
15 so much thereof as may be necessary for fiscal year 2010-
16 2011 to purchase broadband facilities, services, or
17 equipment or to fund broadband-related infrastructure
18 projects pursuant to this Act.

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

21 ~~SECTION 65. There is appropriated out of the~~
22 ~~communications commission special fund the sum of \$~~
23 ~~or so much thereof as may be necessary for fiscal year~~

1 2010-2011 to enable the Hawaii communications commission to
2 effectuate the purposes of this Act.

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

5 Note: DCCA inserted the appropriation section to authorize the
6 commission to expend moneys and to establish an initial expenditure
7 ceiling for the program.

8
9 SECTION 66. Statutory material to be repealed is
10 bracketed and stricken. New statutory material is
11 underscored.

12 SECTION 67. This Act shall take effect on July 1,
13 2010; provided that:

14 (1) Any decision or order executed by the public
15 utilities commission prior to the enactment of
16 this Act shall remain in full force and effect
17 until such time as the Hawaii communications
18 commission may amend or repeal the decision or
19 order under the Hawaii communications
20 commission's jurisdiction;

21 (2) The provisions relating to the regulation of
22 telecommunications carriers and
23 telecommunications common carriers contained in
24 sections 47-31 to 47-51, in part II of the new
25 Hawaii Revised Statutes chapter created in

1 section 3 of this Act shall take effect on July
2 1, 2011;

3 (3) The public utilities commission shall continue
4 its regulation of telecommunications carriers and
5 telecommunications common carriers under chapter
6 269, Hawaii Revised Statutes, until June 30,
7 2011; and

8 (4) On June 30, 2011, section 23 of this Act shall be
9 repealed and section 269-16, Hawaii Revised
10 Statutes, as reenacted in the form in which it
11 read on the day before the approval of this Act,
12



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March 15, 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: Support for Senate Bill 2543 SD2, Hearing 2 p.m. Monday, March 15

Dear Rep. McKelvey, Rep. Herkes, and Members of the Committees:

AT&T supports Senate Bill 2543 SD2, which would create a Telework Promotion and Broadband Assistance office within the Department of Commerce and Consumer Affairs. Both of these initiatives – allowing for work place flexibility, and greater access and adoption of high speed Internet services – deserve a special focus in the State of Hawaii.

AT&T also supports the creation of a work group to address issues around permitting to allow for more efficient deployment of broadband services.

Concerning the first initiative, AT&T has been a long-time supporter of telework as a means to work more efficiently and effectively. Now, with today's advanced mobile broadband technologies, telework can be expanded even further, and services like telemedicine and e-learning are even more of a reality.

The Broadband Advisory Council would bring policy makers together with broadband providers and other experts to determine best practices for increasing access and adoption of broadband services. AT&T believes the United States should achieve 100 percent broadband availability within the next five years. Creating this Broadband Advisory Council would help ensure that Hawaii meets this goal by cooperatively bringing together the public and private sectors.

Although we support the bill as a whole, AT&T would suggest two changes to Senate Bill 2543 SD2. The bill would set as a goal to achieve comparable broadband speeds and prices as the top three performing countries in the world by 2012 (Page 2, lines 4-8). This may not be realistic given the very different marketplace conditions in foreign countries. AT&T suggests language such as "access to broadband speeds and prices necessary to compete in the global marketplace."

Senate Bill 2543 SD2 also makes reference to "increased sharing of infrastructure used to deploy broadband." (Page 2, Line 17-18) The telecommunications industry would be very concerned with any requirements to share facilities in which millions of dollars have been invested. We suggest this language instead: "Unite public and private interests to speed up implementation, reduce costs to providers through incentives rather than eminent domain procedures, ease the deployment of broadband, and ease regulatory requirements for entry into the competitive broadband marketplace."

Thank you for considering these amendments to Senate Bill 2543 SD2.

Respectfully Submitted,

Dan Youmans, AT&T