

**SB 2543**

**EDT**



LINDA LINGLE  
GOVERNOR  
  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON ECONOMIC  
DEVELOPMENT AND TECHNOLOGY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Monday, February 1, 2010  
1:30 p.m.

**TESTIMONY ON S.B. 2543  
RELATING TO TECHNOLOGY**

TO THE HONORABLE CAROL FUKUNAGA, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

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

S.B. 2543 establishes an Office of Telework Promotion and Broadband Assistance (“**Office**”) and a broadband advisory council to be attached administratively to the Department. The Office has two distinct policy goals: 1) to encourage telework as a family-friendly, business-friendly policy that promotes workplace efficiency and reduces strain on transportation infrastructure; and 2) the development of widespread access to broadband services.

### **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 Executive Director of the Office to advise and assist State and county agencies in planning, developing, and administering programs to promote telecommuting by State and county employees. This bill would cause the Department to stray from, and lose focus of its core mission.

### **Broadband**

As to the broadband-specific proposals, the bill requires the DCCA Director to appoint the Executive Director and other telework and broadband professionals but does not specify a funding source to be used for the personnel costs. 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 activities of the Office.

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

The proposed conference draft of H.B. 984, H.D. 4, S.D. 1 tracks key recommendations of the Hawai'i broadband task force by establishing the Hawai'i Communications Commission to be administratively attached to the Department. After many legislative committee hearings, and one-on-one and group meetings on various versions of the broadband bill with communications service providers, governmental agencies, and interested parties, general consensus was reached on the proposed conference draft of H.B. 984, which directs the Commission to achieve various goals such as creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit approval process, and providing access to businesses and residents at prices and speeds that will make us world leaders, attract investment and empower our people, transfers funding from existing fees and transfers existing Department employees to the Commission.

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

In addition, the proposed conference draft 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 Hawai'i Communications Commission. In addition, the Commission shall be responsible to designate the entity to maintain the broadband inventory maps which are currently being developed under a federal American Recovery and Reinvestment Act grant.

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

(Attachment)

**Report Title:**

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

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

**Description:**

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii ~~broadband communications~~ 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 | ~~rather than eminent domain procedures~~, ease  
3 | deployment of broadband, and ease entry into a  
4 | competitive broadband marketplace;

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

10 "CHAPTER

11 ~~HAWAII BROADBAND COMMISSIONER~~ COMMUNICATIONS COMMISSION

12 PART I. GENERAL PROVISIONS

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

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

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

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

3 "Application" means an unsolicited filing.

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

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

11 Notes: Changes made for purposes of clarification.  
12

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

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

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

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

4 "Cable service" means:

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

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

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

17 (1) That serves only to retransmit the television  
18 signals of one or more television broadcast  
19 stations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

Formatted: Indent: First line: 0"

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

4 |  
5 | § -43 Deputy commissioner. The commissioner may  
6 | appoint a deputy commissioner, who shall be exempt from  
7 | chapter 76. The commissioner may, at pleasure, dismiss the  
8 | deputy commissioner. The deputy commissioner shall have  
9 | the power to perform any act or duty assigned by the  
10 | commissioner and shall be acting commissioner if, for any  
11 | reason, the commissioner is unable to perform the duties of  
12 | commissioner, until a new commissioner is appointed.

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

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

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

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

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

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

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

Formatted: Highlight

Formatted: Highlight

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

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

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

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

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

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

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

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

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

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

Formatted: Highlight

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

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

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

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

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

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

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

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

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

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

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

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

Formatted: Highlight

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

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



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

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

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

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

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

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

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

10 | § ~~-119~~ **Delegating powers.** Any power, duty, or  
11 | function vested in the commissioner by this chapter may be  
12 | exercised, discharged, or performed by any employee of the  
13 | commissioner employed pursuant to section ~~-54~~(a),  
14 | ~~-54~~(b), or ~~-54~~(d) acting in the name and by the  
15 | delegated authority of the commissioner and who the  
16 | commissioner determines is qualified in the area for which  
17 | responsibility is being delegated. Any power, duty, or  
18 | function vested in the commissioner by this chapter may be  
19 | exercised, discharged, or performed by any employee of the  
20 | department utilized pursuant to section ~~-54~~(c) or  
21 | ~~-54~~(e) acting in the name and by the delegated authority  
22 | of the commissioner, with the approval of the director.

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

Formatted: Highlight

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

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

1 | (8) The commission~~er~~'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~~er~~  
6 | shall establish and maintain a register of all of the  
7 | commissioner's orders and decisions, which shall be open  
8 | and readily available for public inspection.

9 | **§ -132 Commission~~er~~'s investigative authority~~ies~~.**

10 | In all investigations made by the commission~~er~~, and in all  
11 | proceedings before the commission~~er~~, the commission~~er~~ 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~~er~~,  
18 | or of the refusal of any witness to testify to any matter  
19 | regarding which the witness may be questioned lawfully, any  
20 | circuit court, on application by the commission~~er~~, shall  
21 | compel obedience as in case of disobedience of the  
22 | requirements of a subpoena issued from a circuit court or a  
23 | refusal to testify therein. No person shall be excused  
24 | from testifying or from producing any book, waybill,

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1           may be necessary to fully effectuate this  
2           subsection.

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

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

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

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

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

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

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

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

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

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

21 | § -210 Hawaii communications ce  
22 | commission~~er~~ special

Formatted: Indent: Left: 0"

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

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

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

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

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

5 § -22~~1~~ **Consumer advocate.** As the director serves  
6 as the consumer advocate to the public utilities commission  
7 pursuant to sections 269-51 through 269-55, the  
8 commission~~er~~ shall recognize the director as the consumer  
9 advocate in hearings and proceedings relating to  
10 telecommunications before the commission~~er~~.

11 § -23~~2~~ **Communications advisory committee.** (a)  
12 There is established the communications advisory  
13 committee. The committee shall consist of \_\_\_\_\_ members  
14 appointed by the governor as provided in section 26-34.

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

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

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

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



1 | [Note: DCCA added "at least three" for purposes of clarification.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

11 | **PART II. TELECOMMUNICATIONS**

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

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

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

1 (c) No telecommunications carrier that, as of July 1,  
2 | 20~~09~~10, holds a valid certificate of public convenience and  
3 necessity, franchise, or charter enacted or granted by the  
4 legislative or executive authority of the State or its  
5 predecessor governments, or has a bona fide operation as a  
6 telecommunications carrier recognized by the public  
7 utilities commission, shall be required to obtain, as a  
8 result of the enactment of this Act, a new certificate of  
9 public convenience and necessity under this section.

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

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

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

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

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

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

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

1 operation of effective and economically efficient  
2 telecommunications services, and the furnishing of  
3 telecommunications services at just and reasonable rates  
4 and in a fair manner in view of the needs of the various  
5 customer segments of the telecommunications industry.

6 Among the specific factors the commission~~e~~r may consider  
7 are:

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

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

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



1 provider of the exempt telecommunications  
2 service; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18       (2) The current interstate tariff used as the access  
19 rate until such time that the commission~~er~~ may  
20 adopt a new intrastate local service  
21 interconnection tariff pursuant to section  
22       -37;

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

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

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

16 (5) Nondiscriminatory access to the network functions  
17 of the telecommunications carrier's  
18 telecommunications network, which shall be  
19 offered on an unbundled, competitively neutral,  
20 and cost-based basis;

21 (6) Telecommunications services and network functions  
22 without unreasonable restrictions on the resale  
23 or sharing of those services and functions; and

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

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

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

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

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

8 § -38 Regulation of telecommunications carrier  
9 rates; ratemaking procedures. (a) All rates, fares,  
10 charges, classifications, schedules, rules, and practices  
11 made, charged, or observed by any telecommunications  
12 carrier or by two or more telecommunications carriers  
13 jointly shall be just and reasonable and, unless otherwise  
14 provided by law, shall be filed with the commission.  
15 ~~Notwithstanding any law to the contrary, the rates, fares,~~  
16 ~~classifications, charges, and rules of every~~  
17 ~~telecommunications carrier shall be published by the~~  
18 ~~telecommunications carrier in such manner as the commission~~  
19 ~~may require, and copies shall be furnished to any person on~~  
20 ~~request.~~  
21 (b) The commission may issue an order imposing  
22 alternative rate regulation procedures.  
23 ~~(c) The commission may waive rate regulation and~~  
24 ~~allow telecommunications carriers to have pricing~~

Formatted: Indent: First line: 0.5"

1 ~~flexibility for services that the commission determines, by~~  
2 ~~whatever process it determines to be appropriate pursuant~~  
3 ~~to rule, to be competitive; provided that the rates for:~~  
4 ~~—— (1) Basic telephone service and for services that are~~  
5 ~~not competitive are regulated and remain just,~~  
6 ~~reasonable, and nondiscriminatory; and~~  
7 ~~—— (2) Universal service is preserved and advanced.~~  
8 ~~(d) Unless otherwise directed by the commission, a~~  
9 ~~telecommunications carrier may charge any rate for a~~  
10 ~~service less than or equal to the rate for the service~~  
11 ~~included in the telecommunications carrier's filed tariff.~~  
12 ~~The rate charged shall be available at the same terms for~~  
13 ~~all customers in all geographic locations within the~~  
14 ~~telecommunications carrier's service area.~~  
15 ~~—— (ec) Except as provided in subsections (a) through~~  
16 ~~(d) Unless otherwise provided by law, no rate, fare, charge,~~  
17 ~~classification, schedule, rule, or practice, other than one~~  
18 ~~established pursuant to an automatic rate adjustment clause~~  
19 ~~previously approved by the commission, shall be~~  
20 ~~established, abandoned, modified, or departed from by any~~  
21 ~~telecommunications carrier, except after thirty days'~~  
22 ~~notice to the commission as prescribed in section -~~  
23 ~~14(b), and prior approval by the commission for any~~  
24 ~~increases in rates, fares, or charges. The commission, in~~

Formatted: Indent: Left: 0", First line: 0"



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

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

18 (2) After a hearing, by order:

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

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

1 users or consumers under substantially  
2 similar conditions;

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

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

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

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

15 (G) Regulate its financial transactions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 |       **§ -402 Lifeline telephone rates.** (a) The  
10 | commission~~er~~ shall implement a program to achieve lifeline  
11 | telephone rates for residential telephone users. The  
12 | commission~~er~~ may achieve lifeline telephone rates by using  
13 | funds collected pursuant to section -4951 and deposited  
14 | in the communications commission~~er~~ special fund pursuant to  
15 | section -210. In conjunction with such funds, or  
16 | alternatively, the commission~~er~~ may seek appropriations of  
17 | funds from the State.

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

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

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

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

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

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

21 |       (c) The commission~~er~~ shall adopt rules pursuant to  
22 | chapter 91 to carry out this section or adopt the rules  
23 | provided in chapter 6-81 of the Hawaii Administrative  
24 | Rules, which were in effect on July 1, 2009~~10~~.

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

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

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



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

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

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

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

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

22 (h) As used in this section:

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

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

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

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

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

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

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

22 | (1) For the acquisition of property;

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

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

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

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

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

14 (a) For the purposes of this section:

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

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

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

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

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

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

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

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

10 | § ~~-4859~~ Merger and consolidation of

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

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

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

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

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



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

**§ -502 Injury to carrier property.** Any person who

injures or destroys, through want of proper care, any necessary or useful facility, equipment, or property of any telecommunications carrier shall be liable to the telecommunications carrier for all damages sustained thereby. The measure of damages to the facility, equipment, or property injured or destroyed shall be the cost to repair or replace the property injured or destroyed including direct and allocated costs for labor, materials, supervision, supplies, tools, taxes, transportation, administrative and general expense, and other indirect or overhead expenses, less credit, if any, for salvage. The specifying of the measure of damages for the facility, equipment, or property shall not preclude the recovery of other damages occasioned thereby as may be authorized by law.

**§ -513 One call center; advance warning to**

**excavators.** To finance the establishment and operation of the one call center, pursuant to chapter 269E, and the administrative costs of the commission~~er~~, the commission~~er~~

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

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

9  
10 **PART III. CABLE**

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

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

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

1           **§ -63 Application or proposal for cable franchise;**  
2 **fee; certain requirements.** (a) No cable franchise shall

3 be issued except upon written application or proposal  
4 therefor to the commissioner, accompanied by a fee set by  
5 the commissioner.

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

8 The application shall set forth the facts as required by  
9 the commissioner to determine in accordance with section  
10 -65 whether a cable franchise should be issued,

11 including facts as to:

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

~~affordability of broadband and other advanced services to consumers.~~

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

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

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

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

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the commission~~er~~ shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit

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

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

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

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

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

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

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

1 chapter, or elsewhere, and any other matters as the  
2 | commissione~~r~~ deems appropriate in the circumstances.

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

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

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

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

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

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

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

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



1 | the cable system shall be subject to the commission~~er~~'s  
2 | approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 [SPO wants the PEG selection and designation process to be in](#)  
19 [accordance with chapter 103D, HRS. DCCA disagrees and supports the](#)  
20 [exemption.](#)  
21

22 **§ -68 Complaints; violations; revocation,**  
23 **alteration, or suspension of cable franchise. (a)**

24 Subscriber complaints regarding the operation of a cable  
25 system may be made orally or in writing to the

1 | commission~~er~~. The commission~~er~~ shall resolve complaints  
2 | informally when possible.

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

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

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

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

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

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

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

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

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

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

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

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

18 | **§ -73 Annual fees.** (a) Each cable operator shall  
19 | pay an annual fee to be determined by the commissioner.  
20 | The fees so collected under this section shall be deposited  
21 | into the communications commissioner special fund  
22 | established under section -21~~0~~.



1 | (b) The commission~~er~~ 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~~er~~ 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.

Formatted: Highlight

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

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

5 (e) The commission~~er~~ 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 (g) For the purposes of this section:

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

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

3       § -76 **Broadband inventory maps and other**  
4 **requirements**. The Hawaii ~~broadband~~  
5 ~~commissioner~~communications commission shall designate the  
6 entity within the State to be responsible for developing  
7 and maintaining broadband inventory maps, as well as other  
8 initiatives, as described in the American Recovery and  
9 Reinvestment Act of 2009 (P.L. 111-5) and section 106 of  
10 the Broadband Data Improvement Act (P.L. 110-385). If  
11 ~~permitted-not prohibited~~ by federal law, the ~~commissioner~~  
12 may contract with service providers to develop the  
13 broadband inventory maps and implement other related  
14 requirements pursuant to this section. Subject only to any  
15 limitations imposed by federal law, all providers of  
16 telecommunications, cable, or broadband infrastructure and  
17 services in Hawaii shall be required to furnish information  
18 requested by the ~~broadband-commissioner~~ in support of  
19 broadband mapping, reporting, and data-driven policy  
20 support. ~~Proprietary data on private infrastructure~~  
21 ~~furnished by private providers shall be protected from~~  
22 ~~disclosure under the Freedom of Information Act or Uniform~~  
23 ~~Information Practices Act and shall be made available to~~  
24 ~~the public only in a summarized form that appropriately~~

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

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

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

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

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

4 [Note: New language clarifies the purpose of authorizing the commission](#)  
5 [to designate "economic zones".](#)

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

21 (3) By the legislative reference bureau;

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

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

1 (21) By the Hawaii tourism authority, as provided in  
2 section 201B-2.5; [~~or~~]  
3 (22) By the Hawaii ~~communications commission; broadband~~  
4 ~~commissioner; or~~  
5 [~~(22)~~] (23) By a department, in the event the attorney  
6 general, for reasons deemed by the attorney  
7 general good and sufficient, declines to employ  
8 or retain an attorney for a department; provided  
9 that the governor thereupon waives the provision  
10 of this section."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

1 | ~~commissionercommunications commission~~ shall be deposited in  
2 | the communications commissioner special fund established  
3 | under section ~~-210~~."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

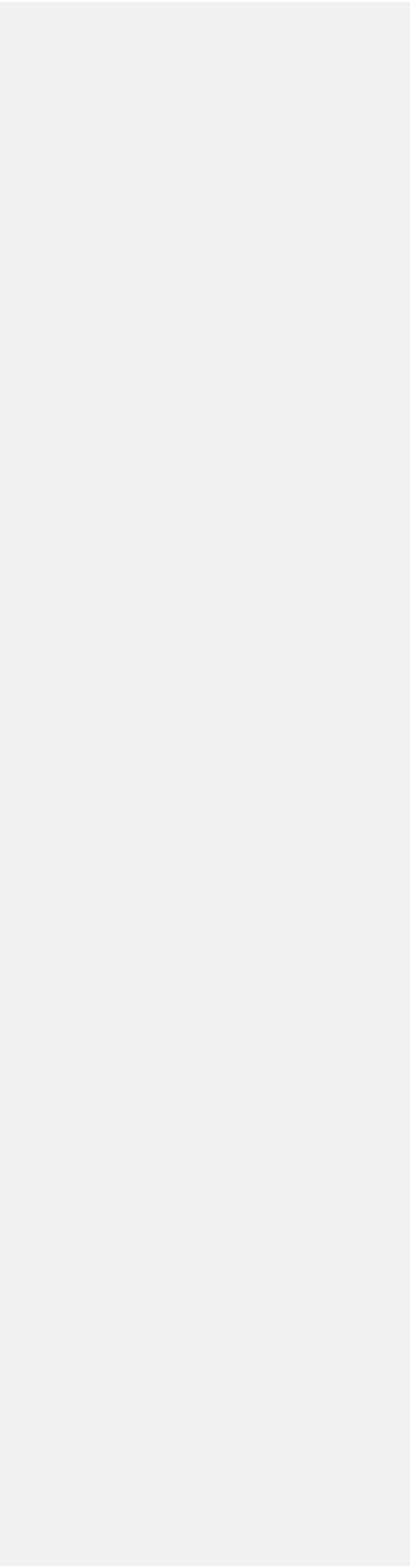
1 approved the project with or without  
2 modifications:

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

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

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

|





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

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

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

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

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

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

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

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

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

19 "[~~+~~§239-6.5[~~+~~] **Tax credit for lifeline telephone**  
20 **service subsidy.** A telephone public utility subject to  
21 this chapter that has been authorized to establish lifeline  
22 telephone service rates by the public utilities commission  
23 before July 1, 20~~09~~10, or by the Hawaii ~~communications~~ **broadband**  
24 ~~commissioner~~**communications commission** on or after July 1,

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

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

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

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

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

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

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

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

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

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

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

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

20 "Public utility":

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

1 association, or otherwise, any plant or  
2 equipment, or any part thereof, directly or  
3 indirectly for public use, for the transportation  
4 of passengers or freight, or the conveyance or  
5 transmission of telecommunications messages, or  
6 the furnishing of facilities for the transmission  
7 of intelligence by electricity by land or water  
8 or air within the State, or between points within  
9 the State, or for the production, conveyance,  
10 transmission, delivery, or furnishing of light,  
11 power, heat, cold, water, gas, or oil, or for the  
12 storage or warehousing of goods, or the disposal  
13 of sewage; provided that the term shall include:  
14 (A) Any person insofar as that person owns or  
15 operates a private sewer company or sewer  
16 facility; and  
17 (B) Any telecommunications carrier or  
18 telecommunications common carrier;  
19 (2) Shall not include:  
20 (A) Any person insofar as that person owns or  
21 operates an aerial transportation  
22 enterprise;  
23 (B) Persons owning or operating taxicabs, as  
24 defined in this section;

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

1 the submission of financial information in  
2 conformance with a standard chart of accounts to  
3 be approved by the commission, and other  
4 commission guidelines to allow expeditious review  
5 of a requested general rate increase application;  
6 (2) Hold a public hearing as prescribed in section  
7 269-12(c) at which the consumers or patrons of  
8 the public utility may present testimony to the  
9 commission concerning the increase. The public  
10 hearing shall be preceded by proper notice, as  
11 prescribed in section 269-12; and  
12 (3) Make every effort to complete its deliberations  
13 and issue a proposed decision and order within  
14 six months from the date the public utility files  
15 a completed application with the commission;  
16 provided that all parties to the proceeding  
17 strictly comply with the procedural schedule  
18 established by the commission and no person is  
19 permitted to intervene. If a proposed decision  
20 and order is rendered after the six-month period,  
21 the commission shall report in writing the  
22 reasons therefor to the legislature within thirty  
23 days after rendering the proposed decision and  
24 order. Prior to the issuance of the commission's

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

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

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

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

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

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

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

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

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

Formatted: Highlight

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

1 selling or advertising the sale of insurance  
2 products or services;

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

6 (6) A person who publishes a catalog of at least  
7 fifteen pages, four times a year, with a  
8 circulation of at least one hundred thousand,  
9 where the catalog includes clear disclosure of  
10 sale prices, shipping, handling, and other  
11 charges;

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

14 (8) The sale of goods or services by  
15 telecommunications or landline (i.e., cable) or  
16 wireless video service providers, for which the  
17 terms and conditions of the offering, production,  
18 or sale are regulated by the [~~public utilities~~  
19 ~~commission~~] Hawaii broadband  
20 commissioner communications commission or the  
21 Federal Communications Commission, [~~or pursuant~~  
22 ~~to chapter 440G,~~] including the sale of goods or  
23 services by affiliates of these  
24 telecommunications or video service providers.

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

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

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

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

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

13           (1) Express or implied warranties;

14           (2) Maintenance agreements; and

15           (3) Warranties, service contracts, and maintenance  
16           agreements offered by public utilities on their  
17           transmission devices to the extent they are  
18           regulated by the public utilities commission or  
19           the [~~department of commerce and consumer~~

20           ~~affairs.~~] Hawaii broadband  
21           commissioner communications commission."

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

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

2       commission[-] and the Hawaii broadband

3       ~~commissionercommunications commission~~. (a) The public  
4       utilities commission and the Hawaii broadband  
5       ~~commissionercommunications commission~~ may take any action  
6       or make any determination under this chapter, including but  
7       not limited to actions or determinations that affect  
8       persons not regulated under chapters 269, \_\_\_\_\_, 271, and  
9       271G, as the public utilities commission or the Hawaii  
10      ~~broadband-commissionercommunications commission~~ deems  
11      necessary to carry out its responsibilities or otherwise  
12      effectuate chapter 269, \_\_\_\_\_, 271, or 271G.

13           (b) The public utilities commission or, in the case  
14      of telecommunications carriers or telecommunications common  
15      carriers, the Hawaii broadband-commissionercommunications  
16      ~~commission~~, may examine or investigate each distributor,  
17      the manner in which it is operated, its prices and rates,  
18      its operating costs and expenses, the value of its property  
19      and assets, the amount and disposition of its income, any  
20      of its financial transactions, its business relations with  
21      other persons, companies, or corporations, its compliance  
22      with all applicable state and federal laws, and all matters  
23      of any nature affecting the relations and transactions

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

18       ~~"Telecommunications relay services" means telephone~~  
19 ~~transmission services that provide an individual who has a~~  
20 ~~hearing or speech disability the ability to engage in~~  
21 ~~communication by wire or radio with a hearing individual in~~  
22 ~~a manner that is functionally equivalent to the ability of~~  
23 ~~an individual who does not have a hearing or speech~~  
24 ~~disability to communicate using wire or radio voice~~

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

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

8 | ~~["§269-16.8] Aggregators of telephone service~~  
9 ~~requirements. (a) For the purposes of this section:~~

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

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

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

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

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

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

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

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

- 1       ~~(8) The impact of the exemption on the availability~~  
2           ~~of diversity in the supply of telecommunications~~  
3           ~~services throughout the State;~~
- 4       ~~(9) The improvements in the regulatory system to be~~  
5           ~~gained from the exemption, including the~~  
6           ~~reduction in regulatory delays and costs;~~
- 7       ~~(10) The impact of the exemption on promoting~~  
8           ~~innovations in telecommunications services;~~
- 9       ~~(11) The opportunity provided by the exemption for~~  
10           ~~telecommunications providers to respond to~~  
11           ~~competition; and~~
- 12       ~~(12) The potential for the exercise of substantial~~  
13           ~~market power by the exempt provider or by a~~  
14           ~~provider of the exempt telecommunications~~  
15           ~~service.~~

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

5       SECTION 475. Section 269-36, Hawaii Revised Statutes,  
6 is repealed.

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

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

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

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

5 | SECTION 497. Section 269-38, Hawaii Revised Statutes,  
6 is repealed.

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

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

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

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

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

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

1 ~~providing the service as determined by the~~  
2 ~~commission in subsection (b); or~~  
3 ~~(2) If competitive services, taken as a whole, fail~~  
4 ~~to cover their direct and allocated joint and~~  
5 ~~common costs as determined by the commission.~~  
6 ~~(b) The commission shall determine the methodology~~  
7 ~~and frequency with which providers calculate total service~~  
8 ~~long run incremental cost and fully allocated joint and~~  
9 ~~common costs. The total service long run incremental cost~~  
10 ~~of a service shall include an imputation of an amount equal~~  
11 ~~to the contribution that the telecommunications carrier~~  
12 ~~receives from noncompetitive inputs used by alternative~~  
13 ~~providers in providing the same or equivalent service." ]~~

14 | SECTION [5149](#). Section 269-40, Hawaii Revised  
15 Statutes, is repealed.

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

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

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

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

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

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

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

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

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

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

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

19 | SECTION 5~~31~~. Section 269-42, Hawaii Revised Statutes,  
20 is repealed.

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

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

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

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

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

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





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

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

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

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

20 SECTION 5~~53~~. Chapter 440G, Hawaii Revised Statutes,  
21 is repealed.

22 SECTION 5~~64~~. All rules, including the rules in  
23 chapter 6-80, Hawaii Administrative Rules, policies,  
24 procedures, orders, certificates of public convenience and

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

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

1 | necessity, exemption, franchises, guidelines, and other  
2 | material adopted, issued, or developed by the department of  
3 | commerce and consumer affairs and the public utilities  
4 | commission to implement provisions of the Hawaii Revised  
5 | Statutes that are reenacted or made applicable to the  
6 | Hawaii ~~broadband-commissionercommunications commission~~ by  
7 | this Act, shall remain in full force and effect until  
8 | amended or repealed by the Hawaii ~~broadband~~  
9 | ~~commissionercommunications commission~~. In the interim,  
10 | every reference to the department of commerce and consumer  
11 | affairs, director of commerce and consumer affairs, public  
12 | utilities commission, or chairperson of the public  
13 | utilities commission in those rules, policies, procedures,  
14 | orders, franchises, guidelines, and other material is  
15 | amended to refer to the Hawaii ~~broadband~~  
16 | ~~commissionercommunications commission~~ as appropriate.  
17 | SECTION 575. All deeds, leases, contracts, loans,  
18 | agreements, permits, or other documents executed or entered  
19 | into by or on behalf of the department of commerce and  
20 | consumer affairs and the public utilities commission  
21 | pursuant to the provisions of the Hawaii Revised Statutes  
22 | that are reenacted or made applicable to the Hawaii  
23 | ~~broadband-commissionercommunications commission~~ by this  
24 | Act, shall remain in full force and effect. Effective upon

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

7 SECTION 586. During fiscal year 2009~~10~~-2010~~1~~, fifty  
8 per cent of the moneys collected by the public utilities  
9 commission from telecommunications carriers and deposited  
10 into the public utilities commission special fund shall be  
11 deposited into the ~~commissioner~~ special fund to provide  
12 appropriations for the new ~~commissioner~~.

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

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

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

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

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

21 (2) Employees who, prior to this Act, are exempt from  
22 civil service and are transferred by this Act  
23 shall not suffer any loss of prior service  
24 credits, any vacation and sick leave credits

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

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

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

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

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

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

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

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

21 SECTION ~~6260~~. The work group established under  
22 section 59 shall submit to the legislature no later than  
23 January 1, 201~~10~~, a report with its recommended procedures  
24 for streamlining and expediting all permitting functions  
25

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

9 | SECTION 634. The legislative reference bureau shall  
10 review all relevant laws in the Hawaii Revised Statutes  
11 relating to broadband technology, telecommunications,  
12 infrastructure development, permitting requirements, and  
13 any other issues the legislative reference bureau deems  
14 appropriate, including all acts passed by the legislature  
15 | during this regular session of 20~~09~~10, whether enacted  
16 before or after the effective date of this Act, unless such  
17 acts specifically provide that this Act is being amended,  
18 and make recommendations on how these laws may be amended  
19 to conform to this Act or facilitate the implementation of  
20 this Act. The legislative reference bureau shall submit a  
21 report of its findings and recommendations, including  
22 proposed legislation, to the legislature not later than  
23 twenty days prior to the convening of the 2010 regular  
24 session.

1 SECTION 642. Upon receipt of federal funds allocated  
2 by the American Recovery and Reinvestment Act of 2009 (P.L.  
3 111-5), section 106 of the Broadband Data Improvement Act  
4 (P.L. 110-385), and other federal stimulus acts, there is  
5 appropriated out of the federal funds subaccount of the  
6 commissioner special fund out of those funds the sum of  
7 \$ or so much thereof as may be necessary for  
8 fiscal year 2008-2009 and the sum of \$ or so much  
9 thereof as may be necessary for fiscal year 2010-2011 to  
10 purchase broadband facilities, services, or equipment or to  
11 fund broadband-related infrastructure projects pursuant to  
12 this Act.

Formatted: Highlight

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

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

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

Formatted: Highlight

Formatted: Highlight

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

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

Formatted: Indent: Left: 0.5"



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

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

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

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

16 (2) The provisions relating to the regulation of  
17 telecommunications carriers and  
18 telecommunications common carriers contained in  
19 sections -31 to -51, in part II of the new  
20 Hawaii Revised Statutes chapter created in  
21 section 3 of this Act shall take effect on July  
22 1, 20101;

Formatted: Highlight

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

Formatted: Highlight

1  
2  
3  
4  
5  
6  
7  
8

carriers and telecommunications common carriers  
under chapter 269, Hawaii Revised Statutes, until  
June 30, 2014; and  
(4) On June 30, 2014, section 23 of this Act shall  
be repealed and section 269-16, Hawaii Revised  
Statutes, is reenacted in the form in which it  
read on the day before the approval of this Act.

Formatted: Highlight

Formatted: Bullets and Numbering

Formatted: Highlight

Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**  
Monday, February 1, 2010  
1:30 PM  
State Capitol, Conference Room 016

In consideration of  
**SB 2543 RELATING TO TECHNOLOGY.**

Chair Fukunaga, Vice Chair Baker, and Members of the Senate Committee on Economic Development and Technology.

The High Technology Development Corporation (HTDC) recognizes the significance of the role of ubiquitous broadband in Hawaii and for its economic development and offers comments on SB 2543.

**HTDC supports** the section of SB 2543 (page 5, starting with line 9) which establishes a **work group to develop procedures for streamlined permitting functions** applicable to development of broadband services or technology, as the State has been often criticized for unnecessary bureaucracy with respect to permitting that gets in the way of businesses. As seen in court battles from the 1990s, issue of open access and broadband has been a hot topic which required government intervention, as broadband is now the utility of the 21<sup>st</sup> century. The state of Hawaii has one of the most liberal telecommunication laws. We have an obligation to leverage it and to ensure that Hawaii does not become a “fly over state” in terms of broadband. To pursue that goal, the State requires a dedicated committee to discuss and implement broadband policies and initiatives recommended by the State’s Broadband Task Force and according to best practices considered by other states, and nations, such as studies by Intelligent Community Forum and The Information Technology and Innovation Foundation, all outlining how broadband is one of the fundamental utilities to establish an innovation-based economy.

However, **HTDC does not support** the section of the bill (page 3, starting with line 10) which establishes **the office of telework promotion**. Given limited (and reduced) government resources, the State should not be directing resources to educate the public where the public is perhaps more aware of telecommuting and telework opportunities. This area can be addressed by trusting the market to make the most optimal solutions. HTDC would prefer to see the State’s limited resources focus on the core broadband issues to enrich its broadband infrastructure and its policies, without which any promotion of telework would be deemed irrelevant (for lack of stable and inexpensive broadband options to facilitate telework).

Thank you for the opportunity to submit testimony in support.



Dan Youmans  
President –Washington/Hawaii  
External Affairs

AT&T Services, Inc.  
P.O. Box 97061  
RTC1  
Redmond, WA 98073-9761

T: 425-580-1833  
F: 425-580-8652  
daniel.youmans@att.com  
www.att.com

February 1, 2010

The Honorable Senator Carol Fukunaga  
Chair, Economic Development and Technology Committee  
Hawaii State Senate

*RE: AT&T Support For Senate Bill 2543, with Amendments*

Dear Sen. Fukunaga and Members of the Committee:

AT&T supports Senate Bill 2543, 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.

However, AT&T suggests two changes in the legislative intent section of Senate Bill 2543.

Concerning the first initiative within this legislation, AT&T has been a long-time supporter of telework as a means to work more 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.

A 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.

As mentioned, AT&T would suggest two changes to Senate Bill 2543. 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 a particular country. Instead, AT&T would suggest language such as “access to broadband networks with the performance, capacity, and connections they need to compete successfully in the global marketplace.”

Senate Bill 2543 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 the private sector has already invested millions of dollars. We would suggest language such as this: “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.

Respectfully submitted, Dan Youmans, AT&T

**SB 2543**

**RELATING TO TECHNOLOGY**

**KEN HIRAKI  
VICE PRESIDENT-GOVERNMENT AFFAIRS**

**HAWAIIAN TELCOM**

**February 1, 2010**

Chair Fukunaga and members of the Senate Economic Development and Technology Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 2543- Relating to Technology. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to propose the following amendments which, if enacted, will help to promote the expeditious and equitable deployment of advance broadband services in Hawaii:

- Level Playing Field- We believe that the governmental requirements for broadband providers should be applied fairly so as to not disadvantage one provider over another. On page 2 of the bill, we recommend that SB 2543 be amended to include as a goal, “*Create a level playing field for broadband providers by rationalizing fees and requirements to the extent permissible under federal law.*” This language is taken directly from the recommendations found in the *Hawaii Broadband Task Report* and may have been inadvertently omitted in SB 2543.
- Permitting Functions Work Group- The Task Force received presentations from numerous broadband service providers expressing frustration with the current multi-agency permit process that has made it more difficult and expensive to deploy broadband infrastructure. On page 4, we recommend the inclusion of an individual from the private sector as a member on the work group to ensure that concerns raised by permit applicants will be fully considered.

In summary, Hawaiian Telcom supports the intent of SB 2543 and respectfully requests your full consideration of our proposed amendments. Thank you for the opportunity to testify on SB 2543.

200 Akamainui Street  
Mililani, Hawaii 96789-3999  
Tel: 808-625-2100  
Fax: 808-625-5888



February 1, 2010

Honorable Carol Fukunaga  
Chair, Senate Committee Economic Development and Technology

**Re: SB 2543, Relating to Technology - Support with Amendments**  
**EDT Hearing, Monday, February 1, 2010, 1:30 pm – Room 016**

Aloha Chair Fukunaga, Vice Chair Baker and Committee members:

I am Nate Smith, President of Oceanic Time Warner Cable ("Oceanic"). On behalf of Oceanic, which provides a diverse selection of entertainment, information, and communication services to nearly 400,000 households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to submit testimony today. We offer our support for this bill and respectfully request that it be amended to permit Oceanic to continue its participation and support for broadband availability in Hawaii.

This bill would establish an Office of Telework Promotion and Broadband Assistance and a Broadband Advisory Council, as well as a work group to develop procedures for streamlined permitting functions applicable to development of broadband services or technology. It also requires annual reporting by all state agencies to the legislature on expenditures of federal moneys for broadband initiatives.

As the largest broadband provider in the state, and as a member of the State Broadband Task Force, Oceanic supports the idea of having a Broadband Advisory Council to promote broadband availability and the adoption of broadband services by Hawaii consumers. Oceanic has well over 220,000 high-speed Internet customers, and is continually improving its broadband services. We recently implemented Road Runner Mobile on Oahu, for example, and will implement the service on Maui shortly.

Accordingly, Oceanic supports the promotion of telework, streamlining of permitting and several of the other initiatives offered in this bill, and requests that Section -2 (b)(4) ("Broadband Advisory Council") be amended to include the following:

(4) Five representatives of Hawaii's private sector technology, telecommunications, and investment industries, including the incumbent local exchange carrier and a state-wide cable service provider.

We also ask that you amend Section 3 of the bill to designate a representative of a state-wide cable service provider to be a member of the work group to develop procedures for streamlined permitting functions to help develop broadband deployment.

Oceanic believes that these suggested amendments will ensure that all relevant stakeholders will participate in the important work that the council and work group will need to accomplish, and that Oceanic's experience and expertise in this area will continue to benefit the state and its residents. Oceanic is ready and willing to continue its support for advancing access to broadband networks to improve performance, capacity and connections needed for Hawaii to compete successfully in the global marketplace.

For these reasons, we respectfully request members of the committee to consider the foregoing amendments to this bill.

As always, I appreciate the opportunity to share our views with you.

Sincerely,

Nate Smith  
President