
A BILL FOR AN ACT

RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE
TELEVISION SERVICES.

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

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



- 1 (1) Development of broadband infrastructure to ensure
2 ubiquitous access to world-class broadband service at
3 affordable prices throughout the State;
- 4 (2) Competition in the telecommunications marketplace to
5 reduce prices, increase service penetration, and
6 improve service to all persons in the State;
- 7 (3) A modern regulatory and permitting environment that
8 supports and advances investment in broadband
9 infrastructure and provision of broadband services for
10 the public; and
- 11 (4) Increased, flexible, timely, and responsible access to
12 public rights-of-way and public facilities for
13 broadband service providers to encourage broadband
14 infrastructure investment and deployment.

15 This Act creates a new communications division within the
16 department of commerce and consumer affairs (division) to be
17 headed by a communications commissioner (commissioner) and tasks
18 the commissioner with investigating, promoting, and ensuring the
19 growth and development of broadband infrastructure within the
20 State in accordance with these goals. The commissioner shall
21 champion the interests of the State's broadband,
22 telecommunications, and video programming services before the



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

9 The commissioner shall:

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



1 services, and the sharing of such infrastructure by
2 competing providers of broadband services to the
3 public.

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

16 The public utilities commission currently regulates
17 telecommunications carriers pursuant to chapter 269, and the
18 director of commerce and consumer affairs currently regulates
19 cable operators pursuant to chapter 440G of the Hawaii Revised
20 Statutes.

21 This Act combines the telecommunications provisions from
22 chapter 269 and all of chapter 440G of the Hawaii Revised



1 Statutes into a new chapter so that both telecommunications
2 carriers and cable operators would be subject to regulation by
3 the commissioner.

4 This Act also provides for transitional provisions that
5 assure that there is no gap in regulatory authority caused by
6 the transition, and provides that prospectively the commissioner
7 may take appropriate action to change existing rules, decisions,
8 and other determinations. Finally, this Act proposes conforming
9 amendments to other chapters of the Hawaii Revised Statutes.

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

13 **"CHAPTER**

14 **TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

✓ 15 **PART I. COMMUNICATIONS DIVISION, GENERALLY**

16 **§ -1 Definitions.** As used in this chapter, unless the
17 context otherwise requires:

18 "Access facility" means:

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



1 (2) Facilities and equipment for the use of that channel
2 capacity or any public, educational, or governmental
3 activity.

4 "Access organization" means any nonprofit organization
5 designated by the commissioner to oversee the development,
6 operation, supervision, management, production, or cablecasting
7 of programs for any channels obtained under section -68, and
8 to provide public, educational, or governmental access services.

9 "Access organization assets" means all public, educational,
10 or governmental access facilities, equipment, property,
11 financial assets and instruments, buildings, land, and all other
12 tangible or intangible assets acquired or purchased by an access
13 organization from funds provided to the access organization
14 under a cable franchise or order of the director prior to July
15 1, 2012, or the commissioner beginning July 1, 2012.

16 "Applicant" means a person who files an application,
17 petition, or proposal with the division.

18 "Application" means an unsolicited filing.

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

21 "Broadband" means an "always on" service that combines
22 computer processing capabilities, information provision, and



1 computing interactivity with data transport, enabling end users
2 to access the Internet and use a variety of applications, at
3 minimum speeds set by the commissioner.

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

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

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

16 "Cable service" means:

- 17 (1) The transmission to subscribers of video programming
18 or other programming service; and
19 (2) Subscriber interaction, if any, which is required for
20 the selection of video programming or other
21 programming service.



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

7 (1) That serves only to retransmit the television signals
8 of one or more television broadcast stations;

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

13 (3) Owned, operated, or otherwise controlled by a
14 telecommunications carrier subject in whole or in part
15 to the provisions of part II of this chapter, except
16 to the extent that those facilities provide video
17 programming directly to subscribers.

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



1 "Commissioner" means the communications commissioner of the
2 communications division of the department of commerce and
3 consumer affairs.

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

6 "Designated local exchange service area" means an area as
7 determined by the commissioner to be best served by designating
8 a carrier of last resort pursuant to section -42.

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

11 "Division" means the communications division of the
12 department of commerce and consumer affairs.

13 "Facility" includes all real property, antenna, poles,
14 supporting structures, wires, cables, conduits, amplifiers,
15 instruments, appliances, fixtures, and other personal property
16 used by a cable operator or telecommunications carrier to
17 provide service.

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

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



1 "Person" means an individual, corporation, partnership,
2 association, limited liability company, any other form of
3 business entity, trust, or governmental agency.

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

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

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

13 "Service area" means the geographic area for which a cable
14 operator has been issued a cable franchise or for which a
15 telecommunications carrier is authorized to provide
16 telecommunications service.

17 "Telecommunications" means the transmission, between or
18 among points specified by a user, of information of the user's
19 choosing, without change in the form or content of the
20 information as sent and received.

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



1 controls any facility used to furnish telecommunications
2 services for profit to the public, or to classes of users as to
3 be effectively available to the public, engaged in the provision
4 of services.

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

16 "Telecommunications service" means the offering of
17 telecommunications for a fee directly to the public, or to such
18 classes of users as to be effectively available directly to the
19 public, regardless of the facilities used.

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



1 **§ -2 Communications division.** The communications
2 division is established within the department of commerce and
3 consumer affairs.

4 **§ -3 Communications commissioner.** (a) The director,
5 with the approval of the governor, shall appoint the
6 communications commissioner. The commissioner shall be
7 responsible for the performance of the duties imposed upon the
8 commissioner or the division as specified in this chapter. The
9 commissioner, who shall not be subject to chapter 76, may be
10 removed by the director with the approval of the governor.

11 (b) The salary of the commissioner shall be \$.

12 **§ -4 Deputy commissioner.** The commissioner may appoint
13 a deputy commissioner, who shall not be subject to chapter 76.
14 The deputy commissioner shall have the power to perform any act
15 or duty assigned by the commissioner, and shall serve as the
16 commissioner if, for any reason, the commissioner is unable to
17 perform the duties of commissioner.

18 **§ -5 Employment of assistants, personnel.** (a) The
19 commissioner may appoint and employ office assistants, agents,
20 engineers, accountants, and other personnel, with or without
21 regard to chapter 76.



1 (b) The commissioner may employ telecommunications
2 analysts who shall not be subject to chapter 76.

3 (c) The commissioner may appoint hearings officers as may
4 be necessary, who shall not be subject to chapter 76.

5 (d) The commissioner may appoint one or more attorneys
6 independent of the attorney general who shall act as attorneys
7 for the division and who shall not be subject to chapter 76.
8 The commissioner shall define their powers and duties and fix
9 their compensation.

10 **§ -6 General powers and duties.** (a) The commissioner
11 shall have the authority expressly conferred by, or reasonably
12 implied from, the provisions of this chapter.

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

17 (c) The commissioner shall have the authority to adopt
18 rules pursuant to chapter 91 necessary to effectuate the
19 purposes of this chapter.

20 (d) Subject to consultation with the public utilities
21 commission, the commissioner shall have authority over electric
22 utilities to the extent necessary to mandate and regulate access



1 by telecommunications carriers and cable operators to the poles
2 of electric utilities.

3 **§ -7 Communications development duties.** (a) The
4 commissioner shall strive to ensure that all consumers are
5 provided with nondiscriminatory, reasonable, and equitable
6 access to high quality network facilities and services that
7 provide subscribers with sufficient network capacity to access
8 services that provide a combination of voice, data, image,
9 cable, and video, and that are available at just, reasonable,
10 and nondiscriminatory rates.

11 (b) No later than July 1, 2014, the commissioner shall
12 study and develop a comprehensive policy to further the
13 deployment of broadband services, including Internet access, in
14 the State. The study shall include consideration of
15 communications by wire and radio, including satellite and
16 wireless services. The commissioner shall develop plans and
17 strategies to increase broadband affordability, penetration, and
18 competitive availability in the State. The commissioner shall
19 regularly update and revise such studies and findings in order
20 to ensure that the State's policies and initiatives effectively
21 promote the interests of the State.



1 (c) The commissioner shall develop programs and
2 initiatives to encourage and facilitate the deployment of
3 broadband services and access to those services by users in the
4 State. The commissioner shall fund these programs and
5 initiatives using funds collected pursuant to section -21 and
6 deposited in the communications special fund pursuant to
7 section -20. In addition, the commissioner may seek
8 appropriations of funds from the State.

9 (d) The commissioner shall develop and routinely update a
10 state policy and formulate positions to be taken before federal
11 agencies regarding communications-related matters of the State.
12 The commissioner shall advocate the broadband,
13 telecommunications, and video programming distribution interests
14 of the State before the United States Congress, the executive
15 branch of the United States, and the Federal Communications
16 Commission, and locally before the governor, the legislature,
17 and municipal and county governments. The commissioner shall
18 also maintain active working relationships with community
19 groups, civic associations, industry trade associations,
20 industry leaders, and other stakeholders to communicate the
21 interests and concerns of the State.



1 (e) The commissioner shall promote and encourage use of
2 telework alternatives for public and private employees,
3 including appropriate policy and legislative initiatives.

4 (f) The commissioner shall advise and assist state
5 agencies, and upon request of the counties, advise and assist
6 the counties, in planning, developing, and administering
7 programs, projects, plans, policies, and other activities to
8 promote telecommuting by state and county employees.

9 (g) The commissioner shall support the efforts of both
10 public and private entities in the State to enhance or
11 facilitate the deployment of, and access to, competitively
12 priced, advanced electronic communications services, including
13 broadband and its products and services and internet access
14 services of general application throughout the State.

15 (h) The commissioner shall make recommendations to
16 establish affordable, accessible broadband services to unserved
17 and underserved areas in the State and monitor advancements in
18 communications that will facilitate this goal.

19 (i) The commissioner shall advocate for, and facilitate
20 the development and deployment of, expanded broadband
21 applications, programs, and services, including telework,



1 telemedicine, and e-learning, that will bolster the usage of and
2 demand for broadband-level telecommunications.

3 (j) The commissioner shall serve as a broadband
4 information and applications clearinghouse for the State and
5 coordinate broadband-related services and programs under the
6 federal American Recovery and Reinvestment Act of 2009.

7 (k) The commissioner shall promote, advocate, and
8 facilitate the implementation of the findings and
9 recommendations of the Hawaii broadband task force established
10 by Act 2, First Special Session Laws of Hawaii 2007.

11 § -8 **Communications infrastructure permitting.** The
12 commissioner shall investigate measures that could streamline
13 and expedite the permitting and approval processes that are
14 imposed by governmental entities with respect to the
15 construction of infrastructure intended for use in the provision
16 of broadband services to the public. The commissioner shall
17 also investigate the possibility of assuming all or a portion of
18 the duties and authority to issue permits and approvals for the
19 construction of broadband infrastructure. The commissioner may
20 assume such duties and authorities and shall carry them out in
21 accordance with any statutes or rules applicable to such duties
22 and authorities; provided that the assumption of such duties and



1 authorities is deemed by the commissioner to be appropriate and
2 efficient, such duties and authorities can be delegated by the
3 relevant governmental entities, and the relevant governmental
4 entities approve.

5 **§ -9 Investigative powers.** (a) The commissioner shall
6 have the power to examine:

7 (1) The condition of each telecommunications carrier and
8 cable operator;

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

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

14 (4) The services provided by telecommunications carriers
15 and cable operators, and the steps being taken to
16 provide those services;

17 (5) The value of the physical property of each
18 telecommunications carrier and cable operator;

19 (6) The issuance by each telecommunications carrier and
20 cable operator of stocks and bonds, and the
21 disposition of the proceeds thereof;



- 1 (7) The amount and disposition of income of each
2 telecommunications carrier and cable operator, and all
3 financial transactions of each telecommunications
4 carrier and cable operator;
- 5 (8) The business relations of each telecommunications
6 carrier and cable operator, with other persons;
- 7 (9) Compliance by each telecommunications carrier and
8 cable operator, with all applicable state and federal
9 laws and with the provisions of its franchise,
10 charter, and articles of association, if any; and
- 11 (10) Classifications, rules, regulations, practices, and
12 service, and all matters of every nature affecting the
13 relations and transactions between each
14 telecommunications carrier and cable operator, and the
15 public or any other persons.
- 16 (b) Beginning July 1, 2013, the commissioner may
17 investigate any person acting in the capacity of or engaging in
18 the business of a telecommunications carrier within the State
19 without having a franchise or charter enacted or granted by the
20 legislative or executive authority of the state or its
21 predecessor governments or certificate of public convenience and
22 necessity, certificate of authority or certificate of



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

4 (c) The commissioner may investigate any person acting in
5 the capacity of or engaging in the business of a cable operator
6 within the State without having a franchise or other authority
7 previously obtained under and in compliance with this chapter,
8 or the rules adopted under this chapter.

9 (d) The commissioner may initiate an investigation
10 concerning a possible violation of this chapter, or to ascertain
11 the conditions of the broadband, telecommunications, or cable
12 industries in the State, or for any other reason determined by
13 the commissioner to be necessary or appropriate to carry out the
14 requirements of this chapter. The commissioner shall also
15 initiate an investigation when requested by the
16 telecommunications carrier, the cable operator, or any person
17 upon a sworn written complaint to the commissioner, setting
18 forth any prima facie cause of complaint.

19 **§ -10 Delegation of powers.** Any power, duty, or
20 function vested in the commissioner by this chapter may be
21 exercised, discharged, or performed by any employee of the
22 division employed pursuant to section -5(a), (b), or (d)



1 acting in the name and by the delegated authority of the
 2 commissioner. Any power, duty, or function vested in the
 3 commissioner by this chapter may be exercised, discharged, or
 4 performed by any employee of the department utilized pursuant to
 5 section -5(a) or (d) acting in the name and by the delegated
 6 authority of the commissioner, with the approval of the
 7 director.

8 **§ -11 Annual report and register of orders.** (a) The
 9 commissioner shall prepare and present to the governor, through
 10 the director, an annual report describing the commissioner's
 11 actions during the preceding fiscal year. Copies of the report
 12 shall be furnished by the governor to the legislature no later
 13 than twenty days prior to the convening of each regular session.
 14 The report shall include:

- 15 (1) Summary information and analytical, comparative, and
 16 trend data concerning major regulatory issues acted
 17 upon and pending before the commissioner;
- 18 (2) Cases processed by the commissioner, including their
 19 dispositions;
- 20 (3) Telecommunications carrier and cable operator
 21 operations, capital improvements, and rates;



- 1 (4) Telecommunications carrier and cable operator
2 performance in terms of efficiency and quality of
3 services rendered;
- 4 (5) Environmental matters having a significant impact upon
5 telecommunications carriers and cable operators;
- 6 (6) Actions of the federal government affecting the
7 regulation of telecommunications carriers and cable
8 operators in the State;
- 9 (7) Long and short-range plans and objectives of the
10 commissioner, together with the commissioner's
11 recommendations regarding legislation and other
12 matters requiring executive and legislative
13 consideration;
- 14 (8) The department's efforts to use broadband and its
15 products and services to develop and expand telework
16 initiatives, including telework participation levels
17 and trends of both private and public sector employees
18 in the State;
- 19 (9) The receipt and expenditure of federal moneys from the
20 American Recovery and Reinvestment Act of 2009 and
21 other federal sources for the purposes of purchasing
22 broadband facilities, services, or equipment or for



1 entering into contracts for broadband-related projects
2 by all state agencies; and

3 (10) Any other matters deemed necessary by the
4 commissioner, director, or governor.

5 (b) The commissioner shall establish and maintain a
6 register of all of the division's orders, decisions, and
7 contracts, which shall be available for public inspection.

8 **§ -12 Commissioner's power to subpoena; contempt**
9 **proceedings.** (a) The commissioner, either on the
10 commissioner's own behalf or on behalf of any interested party,
11 may take depositions, and subpoena witnesses or documentary
12 evidence relative to the subject of any hearing or investigation
13 conducted by the commissioner. The commissioner may administer
14 oaths, and examine under oath any individual relative to the
15 affairs of any person being examined, or relative to the subject
16 of any hearing or investigation conducted by the commissioner.

17 (b) The subpoena shall have the same force and effect and
18 shall be served in the same manner as if issued from a court of
19 record.

20 (c) Witness fees and mileage, if claimed, shall be allowed
21 the same as for testimony in a court of record. Witness fees,
22 mileage, and the actual expense necessarily incurred in securing



1 attendance of witnesses and their testimony shall be itemized,
2 and shall be paid by the person as to whom the examination is
3 being made, or by the person if other than the commissioner, at
4 whose request the hearing is held.

5 (d) The commissioner shall pay to a financial institution
6 that is served a subpoena issued under this section a fee for
7 reimbursement of the costs that are necessary and that have been
8 directly incurred in searching for, reproducing, or transporting
9 books, papers, documents, or other objects designated by the
10 subpoena. Reimbursement shall be paid at a rate not to exceed
11 the rate set forth in section 28-2.5(d).

12 (e) If any individual fails to obey the subpoena, or obeys
13 the subpoena but refuses to testify when required concerning any
14 matter under examination or investigation, or the subject of the
15 hearing, the commissioner shall file a written report thereof
16 and proof of service of the commissioner's subpoena in the
17 circuit court of the county where the examination,
18 investigation, or hearing is being conducted. Thereupon, the
19 court shall forthwith cause the individual to be brought before
20 it to show cause why the individual should not be held in
21 contempt. If the court holds the individual in contempt, the



1 court may punish the individual as if the failure or refusal
2 related to a subpoena from or testimony in that court.

3 **§ -13 Notices.** (a) Whenever an investigation is
4 undertaken and a hearing is scheduled by the commissioner,
5 reasonable notice in writing of the hearing and of the subject
6 or subjects to be investigated shall be given to the
7 telecommunications carrier, cable operator, access organization,
8 or persons concerned. If the investigation is based upon
9 complaints made to the commissioner as prescribed in section
10 -9(d), a copy of the complaint, and a notice in writing of
11 the date and place fixed by the commissioner for beginning the
12 investigation, shall be served upon the complainant and the
13 telecommunications carrier, cable operator, persons concerned,
14 or other respondent not less than fourteen calendar days before
15 the date designated for the hearing.

16 (b) Any notice provided pursuant to section -38(e),
17 shall plainly state the rate, fare, charge, classification,
18 schedule, rule, or practice proposed to be established,
19 abandoned, modified, or departed from and the proposed effective
20 date thereof, and shall be provided by filing the notice with
21 the commissioner and making it available for public inspection.



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

15 **§ -14 Right to be represented by counsel.** At any
16 investigation by or proceeding before the commissioner, the
17 telecommunications carrier, cable operator, access organization,
18 persons concerned, and any complainant shall have the right to
19 be present and represented by counsel, to present any evidence
20 desired, and to cross-examine any witness who may be called.

21 **§ -15 Commissioner may institute proceedings to enforce**
22 **chapter.** (a) If the commissioner is of the opinion that any



1 telecommunications carrier, cable operator, access organization,
2 or person is violating or failing to comply with any provision
3 of this chapter or of any rule, order, or other requirement of
4 the commissioner, or of any provisions of the affected party's
5 certificate of public convenience and necessity, certificate of
6 authority, certificate of registration, franchise, charter,
7 contract, or articles of association, if any; or that changes,
8 additions, extensions, or repairs are desirable in the affected
9 party's plant or service to meet the reasonable convenience or
10 necessity of the public, or to ensure greater safety or
11 security; or that any rates, fares, classifications, charges, or
12 rules are unreasonable or unreasonably discriminatory; or that
13 in any way the affected party is doing what it ought not to do,
14 or not doing what it ought to do, the commissioner shall in
15 writing inform the affected party and may institute proceedings
16 as may be necessary to require the affected party to correct any
17 such deficiency. The commissioner may conduct an examination
18 into any of the matters referred to in section -9,
19 notwithstanding any concurrent jurisdiction of any court or
20 other body; provided that this section shall not be construed as
21 in any manner limiting or otherwise affecting the jurisdiction
22 of any such court or other body. The commissioner may also



1 revoke or amend any provision of a certificate of public
2 convenience and necessity, certificate of authority, certificate
3 of registration, cable franchise, charter, or articles of
4 association, or contract, if any, pursuant to section -31
5 or -69.

6 (b) In addition to any other remedy available, the
7 commissioner may issue citations to any person acting in the
8 capacity of or engaging in the business of a telecommunications
9 carrier or cable operator within the State, without having a
10 certificate of public convenience and necessity, certificate of
11 authority, certificate of registration, franchise, or other
12 authority previously obtained under and in compliance with this
13 chapter or the rules adopted thereunder:

14 (1) Any citation issued under this section may contain an
15 order of abatement and an assessment of civil
16 penalties as provided in section -23. All
17 penalties collected under this subsection shall be
18 deposited in the communications special fund created
19 in section -20. Service of a citation issued under
20 this subsection shall be made by personal service
21 whenever possible, or by certified mail, return



1 receipt requested, sent to the last known business or
2 residence address of the 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 calendar
6 days 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 assessed.
9 If the person cited under this subsection timely
10 notifies the commissioner of the request for a
11 hearing, the commissioner shall afford an opportunity
12 for a hearing under chapter 91. The hearing shall be
13 conducted by the commissioner or the commissioner may
14 designate a hearings officer to conduct the hearing;

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



1 but not limited to the provisions for abatement and
2 civil penalties imposed. In any proceeding to enforce
3 the provisions of the final order of the commissioner,
4 the commissioner need only show that the notice was
5 given, a hearing was held or the time granted for
6 requesting the hearing has run without such a request,
7 and a certified copy of the final order of the
8 commissioner; and

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



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

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



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

8 **§ -17 Alternative dispute resolution.** The commissioner
9 may require the parties in any matter before the commissioner to
10 participate in non-binding arbitration, mediation, or other
11 alternative dispute resolution process prior to the hearing.

12 **§ -18 Perjury.** Any person who wilfully and knowingly
13 makes under oath any false statement in connection with any
14 investigation by or proceeding before the commissioner shall be
15 guilty of perjury and, upon conviction, shall be subject to the
16 penalty prescribed by law for the offense.

17 **§ -19 Telecommunications carriers, cable operators, and**
18 **access organizations to furnish information.** (a) Every
19 telecommunications carrier, cable operator, access organization,
20 or other person subject to investigation by the commissioner,
21 shall at all times, upon request, furnish to the commissioner
22 all information that the commissioner may require respecting any



1 of the matters concerning which the commissioner is given power
2 to investigate, and shall permit the examination of the affected
3 party's books, records, contracts, maps, and other documents
4 related to its operations in or affecting the State by the
5 commissioner, or any person authorized by the commissioner in
6 writing to make such examination, and shall furnish the
7 commissioner with a complete inventory of property under the
8 affected party's control or management in or affecting the State
9 in such form as the commissioner may direct. The affected party
10 may request in writing that confidential commercial and business
11 information and data that the commissioner requires to be
12 produced be treated and protected as confidential by the
13 commissioner. The affected party shall designate and separate
14 the information claimed to be confidential, and shall submit a
15 separate statement providing the reasons and authority for the
16 request for confidential treatment. Upon a showing satisfactory
17 to the commissioner, the information, or a particular part
18 thereof, shall be protected from public disclosure to the extent
19 permitted by chapter 92F.

20 (b) The commissioner shall conduct a management audit of
21 the access organizations designated under this part, every three
22 years or sooner as determined by the commissioner to be



1 appropriate. The commissioner shall require the access
2 organizations designated under this part to submit annual
3 audited financial statements to the commissioner unless
4 determined otherwise by the commissioner for good cause.

5 **§ -20 Communications special fund.** (a) There is
6 established in the state treasury a communications special fund
7 to be administered by the division and expended to carry out the
8 duties and obligations of the division under this chapter. All
9 revenues, fees, penalties, and fines collected by the
10 commissioner shall be deposited into the communications special
11 fund. On a quarterly basis, an amount not to exceed thirty per
12 cent of the fees derived under section -21 and any penalties
13 and fines collected by the commissioner remaining in the fund
14 after the deduction for central services expenses shall be
15 allocated to the division of consumer advocacy and deposited in
16 the compliance resolution fund established pursuant to section
17 26-9(o); provided that all moneys allocated by the commissioner
18 from the fund to the division of consumer advocacy shall be in
19 accordance with legislative appropriations.

20 (b) All moneys appropriated to, received, and collected by
21 the commissioner that are not otherwise pledged, obligated, or
22 required by law to be placed in any other special fund or



1 expended for any other purpose shall be deposited into the
2 communications special fund, including but not limited to all
3 moneys received and collected by the commissioner pursuant to
4 sections -21, -23, and 92-21.

5 (c) The commissioner shall submit a report to the
6 legislature detailing all funds received and all moneys
7 disbursed out of the fund prior to the convening of each regular
8 session.

9 **§ -21 Finances; regulatory fee.** There shall be paid to
10 the commissioner in each of the months of July and December of
11 each year, by each telecommunications carrier subject to this
12 chapter, a fee set by the commissioner not to exceed one-fourth
13 of one per cent of the gross income from the telecommunications
14 carrier's business in the State during the preceding year, or
15 the sum of \$30, whichever is greater. The commissioner shall
16 set the fee amount based on its projected budget for the year to
17 administer and enforce this chapter with respect to its
18 telecommunication regulatory duties. This fee shall be
19 deposited with the director of finance to the credit of the
20 communications special fund created pursuant to section -20.

21 **§ -22 Cable advisory committee.** There is established
22 the cable advisory committee. The committee shall consist of



1 five members appointed by the governor as provided in section
2 26-34. The committee shall advise the commissioner, cable
3 operators, and access organizations on matters within the
4 jurisdiction of this chapter at the request of the commissioner
5 or cable operator or access organization. The committee shall
6 advise the commissioner on matters relating to any decision to
7 designate, modify, or rescind a designation of a access
8 organization or the requirements therefore, as provided in this
9 chapter. The members of the committee shall serve without pay
10 but shall be entitled to reimbursement for necessary expenses
11 while attending meetings and while in discharge of their duties.

12 **§ -23 Penalties.** (a) Any telecommunications carrier,
13 cable operator, or access organization violating or failing in
14 any particular way to conform to or comply with this chapter or
15 any lawful order of the commissioner, including but not limited
16 to the acts specified in section -69 for cable operators,
17 shall be subject to a civil penalty not to exceed:

- 18 (1) For telecommunications carriers and cable operators,
19 \$25,000 for each day the violation, neglect, or
20 failure continues; and
21 (2) For access organizations, \$2,500 for each day the
22 violation, neglect, or failure continues,



1 which shall be assessed by the commissioner after a hearing in
2 accordance with chapter 91. The commissioner may order any
3 offender to cease carrying on its business while the violation,
4 neglect, or failure continues.

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

16 (c) Upon written application filed within fifteen calendar
17 days after service of an order imposing a civil penalty pursuant
18 to this section, the commissioner may suspend or decrease the
19 penalty upon terms as it deems proper.

20 (d) If any civil penalty imposed pursuant to this section
21 is not paid within such period as the commissioner may direct,



1 the attorney general may institute a civil action for recovery
2 of the same in circuit court.

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

7 **PART II. TELECOMMUNICATIONS**

8 **§ -31 Certificate of public convenience and necessity;**
9 **certificate of authority; certificate of registration.** (a) No
10 telecommunications carrier, as defined in section -1, shall
11 commence its business without first having obtained from the
12 commissioner a certificate of public convenience and necessity,
13 certificate of authority, or certificate of registration.
14 Further, before substantially altering, modifying, or changing
15 the nature or scope of authorized telecommunications service
16 under its existing certificate, or expanding the nature or scope
17 of service of telecommunications services beyond the existing
18 certificate, a telecommunications carrier shall file a separate
19 application for the proposed, modified, or new service.
20 Applications for certificates shall be made in writing to the
21 commissioner and shall comply with the requirements prescribed
22 in the commissioner's rules.



- 1 (1) An application for a certificate of authority,
2 certification of registration, or certification of
3 public convenience and necessity shall include:
4 (A) The type of service to be performed;
5 (B) The geographical scope of the operation;
6 (C) The type of equipment to be employed in the
7 service;
8 (D) A statement of the applicant's financial ability
9 to render the proposed service;
10 (E) A copy of the most recent audited financial
11 statement of the applicant and if more than three
12 months have elapsed since the date of the most
13 recent audited financial statement, a current,
14 unaudited financial statement; and
15 (F) The rates or charges proposed to be charged
16 including the rules governing the proposed
17 service.
- 18 (2) Where exempted by federal law from entry and price
19 regulation by the State, a telecommunications carrier
20 seeking to offer, initiate, or provide intrastate
21 telecommunications service shall apply for a
22 certificate of registration with the division by



1 complying with subparagraphs (1)(A) to (1)(C) and
2 (1)(F).

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



1 (c) No telecommunications carrier that, as of July 1,
2 2012, holds an unexpired certificate of public convenience and
3 necessity, certificate of authority, certificate of
4 registration, franchise, or charter enacted or granted by the
5 legislative or executive authority of the State or its
6 predecessor governments, or that has a bona fide operation as a
7 telecommunications carrier recognized by the public utilities
8 commission, shall be required to obtain a new certificate under
9 this section.

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

18 **§ -32 Location of records.** A telecommunications carrier
19 shall keep and maintain records, books, papers, accounts, and
20 other documents related to its operations in or affecting the
21 State as the commissioner may determine are necessary to
22 effectively regulate the telecommunications carrier, that upon



1 request of the commissioner, shall be made accessible within a
2 time frame determined by the commissioner; provided that the
3 original copies shall be made available when requested by the
4 commissioner.

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

11 (b) Notwithstanding chapter 92F or any other law to the
12 contrary, confidential and proprietary information submitted by
13 telecommunications carriers as part of the annual financial
14 reports shall be held in confidence by the commissioner to the
15 extent necessary to ensure confidentiality under chapter 92F.

16 **§ -34 Telecommunications providers and services.** (a)
17 Notwithstanding any provision of this chapter to the contrary,
18 the commissioner, upon the commissioner's own motion or upon the
19 application of any person, and upon notice and hearing, may
20 exempt a telecommunications carrier or a telecommunications
21 service from any or all of the provisions of this chapter,
22 except the requirements of section -36, upon a determination



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

- 11 (1) The need for the exemption as a result of changes in
12 the structure and technology of the State's
13 telecommunications industry;
- 14 (2) The benefits accruing to the customers and users of
15 the exempt telecommunications provider or service;
- 16 (3) The impact of the exemption on the quality,
17 efficiency, and availability of telecommunications
18 services;
- 19 (4) The impact of the exemption on the maintenance of
20 fair, just, and reasonable rates for
21 telecommunications services;



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



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

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

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

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

16 (d) The commissioner may require a telecommunications
17 provider to apply for a certificate of public convenience and
18 necessity, certificate of authority, or certificate of
19 registration pursuant to section -31; provided that the
20 commissioner may waive any application requirement whenever the
21 commissioner deems the waiver to be in furtherance of the
22 purposes of this section. The exemptions under this section may



1 be granted in a proceeding for certification or in a separate
2 proceeding.

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

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



1 (g) Upon the petition of any person or upon its own
2 motion, the commissioner may rescind any exemption or waiver
3 granted under this section if, after notice and hearing, the
4 commissioner finds that the conditions prompting the granting of
5 the exemption or waiver no longer apply, or that the exemption
6 or waiver is no longer in the public interest, or that the
7 telecommunications provider has failed to comply with one or
8 more of the conditions of the exemption or applicable statutory
9 or regulatory requirements.

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

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



- 1 **§ -36 Obligations of telecommunications carriers.** (a)
- 2 Consistent with federal law and in accordance with conditions
- 3 and guidelines established by the commissioner to facilitate the
- 4 introduction of competition into the State's telecommunications
- 5 marketplace, each telecommunications carrier, upon bona fide
- 6 request, shall provide services or information services, on
- 7 reasonable terms and conditions, to an entity seeking to provide
- 8 intrastate telecommunications, including but not limited to:
- 9 (1) Interconnection to the telecommunications carrier's
- 10 telecommunications facilities at any technically
- 11 feasible and economically reasonable point within the
- 12 telecommunications carrier's network so that the
- 13 networks are fully interoperable;
- 14 (2) The current interstate tariff used as the access rate
- 15 until such time that the commissioner may adopt a new
- 16 intrastate local service interconnection tariff
- 17 pursuant to section -37;
- 18 (3) Nondiscriminatory and equal access to any
- 19 telecommunications carrier's telecommunications
- 20 facilities, functions, and the information necessary
- 21 to the transmission and routing of any



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



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

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

15 § -37 **Compensation agreements.** (a) The commissioner
16 shall ensure that telecommunications carriers are compensated on
17 a fair basis for termination of telecommunications services on
18 each other's networks, taking into account, among other things,
19 reasonable and necessary costs to each telecommunications
20 carrier of providing the services in question.

21 (b) Telecommunications carriers may negotiate compensation
22 arrangements, which may include bill and keep, mutual and equal



1 compensation, or any other reasonable division of revenues
2 pending tariff access rates to be set by the commissioner. Upon
3 failure of the negotiations, the commissioner shall determine
4 the proper methodology and amount of compensation, which may
5 include bill and keep arrangements.

6 **§ -38 Regulation of telecommunications carrier rates;**
7 **ratemaking procedures.** (a) All rates, fares, charges,
8 classifications, schedules, rules, and practices made, charged,
9 or observed by any telecommunications carrier, or by two or more
10 telecommunications carriers jointly, shall be just and
11 reasonable and shall be filed with the commissioner. The rates,
12 fares, classifications, charges, and rules of every
13 telecommunications carrier shall be published by the
14 telecommunications carriers in such manner as the commissioner
15 may require, and copies shall be furnished to any person on
16 request.

17 (b) The commissioner may issue an order imposing
18 alternative rate regulation procedures.

19 (c) Notwithstanding section -34, or any other law to
20 the contrary, the commissioner shall treat retail intrastate
21 telecommunications services, under the commissioner's
22 classification of services relating to costs, rates, and



1 pricing, as fully competitive and apply all rules of the
2 division in accordance with that designation. In addition, a
3 telecommunications carrier shall not be required to obtain
4 approval or provide any cost support or other information to
5 establish or otherwise modify in any manner its rates, fares,
6 and charges, or to bundle any service offerings into a single or
7 combined price package; provided that a telecommunications
8 carrier, except upon receiving the approval of the commissioner,
9 shall not charge a higher rate for any retail telecommunications
10 basic exchange service than the rate for the same service
11 included in the filed tariff of the telecommunications carrier.
12 All rates, fares, charges, and bundled service offerings shall
13 be filed with the commissioner for information purposes only.

14 This subsection shall apply to retail rates charged for
15 service to end user consumers only and shall not apply to
16 wholesale rates charged for services provided by a
17 telecommunications carrier to another telecommunications
18 provider, a wireless communications provider, a voice over
19 internet protocol communications provider, or other similar
20 communications provider.

21 Nothing herein shall modify any requirements of a
22 telecommunications carrier to provide lifeline telephone



1 service, comply with carrier of last resort obligations, or
2 comply with applicable service quality standards.

3 (d) The commissioner may allow telecommunications carriers
4 to have pricing flexibility for services that the commissioner
5 finds are effectively competitive; provided that the rates for:

- 6 (1) Retail telecommunications basic exchange service
7 remain just, reasonable, and nondiscriminatory; and
8 (2) Universal service is preserved and advanced.

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



1 shall be held in connection with any increase in rates, and the
2 hearing shall be preceded by a public hearing as prescribed in
3 section -13(c), at which the customers of the
4 telecommunications carrier may present testimony to the
5 commissioner concerning the increase; provided that a contested
6 case hearing and public hearing shall be held upon request by
7 the consumer advocate or any customer of the telecommunications
8 carrier. The commissioner, upon notice to the
9 telecommunications carrier, may:

- 10 (1) Suspend the operation of all or any part of the
11 proposed rate, fare, charge, classification, schedule,
12 rule, or practice or any proposed abandonment or
13 modification thereof or departure therefrom;
- 14 (2) After a hearing, by order:
- 15 (A) Regulate, fix, and change all such rates, fares,
16 charges, classifications, schedules, rules, and
17 practices so that the same shall be just and
18 reasonable;
- 19 (B) Prohibit rebates and unreasonable discrimination
20 between localities or between users or consumers
21 under substantially similar conditions;



- 1 (C) Regulate the manner in which the property of
- 2 every telecommunications carrier is operated with
- 3 reference to the safety and accommodation of the
- 4 public;
- 5 (D) Prescribe the telecommunications carrier's form
- 6 and method of keeping accounts, books and
- 7 records, and accounting system;
- 8 (E) Regulate the return upon the telecommunications
- 9 carrier's telecommunications carrier property;
- 10 (F) Regulate the incurring of indebtedness relating
- 11 to the telecommunications carrier's
- 12 telecommunications carrier business; and
- 13 (G) Regulate the telecommunications carrier's
- 14 financial transactions; and
- 15 (3) Do all things that are necessary and in the exercise
- 16 of the commissioner's power and jurisdiction, all of
- 17 which as so ordered, regulated, fixed, and changed are
- 18 just and reasonable, and provide a fair return on the
- 19 property of the telecommunications carrier actually
- 20 used or useful for telecommunications carrier
- 21 purposes.



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

16 (g) Where two or more organizations, trades, or
17 businesses, whether or not incorporated, whether or not
18 organized in the State, and whether or not affiliated, are owned
19 or controlled directly or indirectly by the same interests, the
20 commissioner may distribute, apportion, or allocate gross
21 income, deductions, credits, or allowances between or among the
22 organizations, trades, or businesses, if the commissioner



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

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

12 § -39 Cross-subsidies. (a) The commissioner shall
13 ensure that noncompetitive services shall not cross-subsidize
14 competitive services. Cross-subsidization shall be deemed to
15 have occurred:

16 (1) If any competitive service is priced below the total
17 service long-run incremental cost of providing the
18 service as determined by the commissioner in
19 subsection (b); or

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



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

9 **§ -40 Unfair or deceptive acts or practices.** The
10 commissioner shall adopt rules prohibiting unfair or deceptive
11 acts or practices by telecommunications carriers and
12 telecommunications service providers, including resellers and
13 aggregators of telecommunications services. Such unfair or
14 deceptive acts or practices may include unauthorized changes in
15 subscriber carrier selections.

16 **§ -41 Lifeline telephone rates.** (a) The commissioner
17 shall implement a program to achieve lifeline telephone rates
18 for residential telephone users. The commissioner may achieve
19 lifeline telephone rates by using funds collected pursuant to
20 section -21 and deposited in the communications special fund
21 pursuant to section -20. In conjunction with such funds, or



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

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

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

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

16 **§ -42 Carriers of last resort.** (a) The commissioner
17 may define and designate local exchange service areas where the
18 commissioner has determined that a single provider will be the
19 most appropriate way to ensure service for these areas.

20 (b) The commissioner shall determine the level of service
21 that is appropriate for each designated local exchange service
22 area and shall invite telecommunications providers to bid for a



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

9 (c) The commissioner shall adopt rules pursuant to chapter
10 91 to carry out the provisions of this section, or retain the
11 rules provided in chapter 6-81 of the Hawaii Administrative
12 Rules, which were in effect on July 1, 2012.

13 **§ -43 Telecommunications relay services for the deaf,**
14 **persons with hearing disabilities, and persons with speech**
15 **disabilities.** (a) The commissioner shall implement intrastate
16 telecommunications relay services for the deaf, persons with
17 hearing disabilities, and persons with speech disabilities.

18 (b) The commissioner shall investigate the availability of
19 experienced providers of quality telecommunications relay
20 services for the deaf, persons with hearing disabilities, and
21 persons with speech disabilities. The provision of these
22 telecommunications relay services shall be awarded by the



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

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

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

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

20 (f) The commissioner shall require every intrastate
21 telecommunications carrier to file a schedule of rates and
22 charges and every provider of telecommunications relay service



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

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

9 § -44 **Telecommunications number portability.** The
10 commissioner shall ensure that telecommunications number
11 portability within an exchange is available, upon request. An
12 impartial entity shall administer telecommunications numbering
13 and make the numbers available on an equitable basis.

14 § -45 **Emergency telephone service; capital costs;
15 ratemaking.** (a) A telecommunications carrier providing local
16 exchange telecommunications services may recover the capital
17 cost and associated operating expenses of providing a statewide
18 enhanced 911 emergency telephone service in the public switched
19 telephone network, through a telephone line surcharge that is
20 approved by the commissioner.

21 (b) The commissioner shall require every
22 telecommunications carrier providing statewide enhanced 911



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

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

11 **§ -46 Injury to telecommunications carrier property.**

12 (a) Any person who injures or destroys, through want of proper
13 care, any necessary or useful facility, equipment, or property
14 of any telecommunications carrier shall be liable to the
15 telecommunications carrier for all damages sustained thereby.

16 (b) The measure of damages to the facility, equipment, or
17 property injured or destroyed shall be the cost to repair or
18 replace the facility, equipment, or property injured or
19 destroyed including direct and allocated costs for labor,
20 materials, supervision, supplies, tools, taxes, transportation,
21 and administrative and general expense and other indirect or
22 overhead expenses, less credit, if any, for salvage.



1 (c) The specifying of the measure of damages for the
2 facility, equipment, or property shall not preclude the recovery
3 of such other damages occasioned thereby as may be authorized by
4 law.

5 **§ -47 One call center; advance warning to excavators.**

6 To finance the establishment and operation of the one call
7 center pursuant to chapter 269E, the commissioner may direct all
8 telecommunications carriers and cable operators to pay to the
9 public utilities commission a fee in an amount and at a schedule
10 determined by the commissioner.

11 **§ -48 Universal service subsidies.** (a) For any
12 alternative telecommunications provider authorized to provide
13 basic local exchange service to any area of the State pursuant
14 to section -34(h), the commissioner may consider the
15 following:

- 16 (1) Transferring the subsidy, if any, of the local
17 exchange provider's basic residential telephone
18 service to the alternative provider; and
19 (2) Transferring from the local exchange carrier to the
20 alternative provider the amounts, if any, generated by
21 the local exchange provider's services other than



1 basic residential telephone service and which are used
2 to subsidize basic residential service in the area.

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

8 **§ -49 Universal service.** The commissioner shall
9 preserve and advance universal service by:

10 (1) Maintaining affordable, just, and reasonable rates for
11 basic and broadband residential service;

12 (2) Assisting individuals or entities who cannot afford
13 the cost of or otherwise require assistance in
14 obtaining or maintaining their basic or broadband
15 service or equipment as determined by the
16 commissioner; and

17 (3) Ensuring that consumers are given the information
18 necessary to make informed choices among the
19 alternative telecommunications providers and services.

20 **§ -50 Universal service program; establishment; purpose;**
21 **principles.** There is established the universal service program.
22 The purpose of this program is to:



- 1 (1) Maintain affordable, just, and reasonable rates for
- 2 basic residential telecommunications service and
- 3 broadband service, as defined by the commissioner;
- 4 (2) Assist customers located in the areas of the State
- 5 that have high costs of essential telecommunications
- 6 service or broadband service, low-income customers,
- 7 and customers with disabilities, in obtaining and
- 8 maintaining access to a basic set of essential
- 9 telecommunications and broadband services as
- 10 determined by the commissioner. The commissioner may
- 11 expand or otherwise modify relevant programs, such as
- 12 the lifeline program under section -41;
- 13 (3) Ensure that consumers in all communities are provided
- 14 with access, at reasonably comparable rates, to all
- 15 telecommunications and broadband services which are
- 16 used by a majority of consumers located in
- 17 metropolitan areas of the State. The commissioner
- 18 shall provide for a reasonable transition period to
- 19 support the statewide deployment of these advanced
- 20 telecommunications services, including but not limited
- 21 to the use of strategic community access points in



1 public facilities such as education, library, and
2 health care facilities;

3 (4) Ensure that consumers are given the information
4 necessary to make informed choices among the
5 telecommunications carriers and broadband services;
6 and

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

11 The commissioner shall administer the universal service
12 program, including the establishment of criteria by which the
13 purposes of the program are met.

14 **§ -51 Universal service program; contributions.** (a)
15 There is established outside of the state treasury a special
16 fund to be known as the universal service fund and to be
17 administered by the commissioner to implement the policies and
18 goals of universal service. The fund shall consist of
19 contributions from the sources identified in subsections (e) and
20 (f). Interest earned from the balance of the fund shall become
21 a part of the fund. The commissioner shall adopt rules
22 regarding the distribution of moneys from the fund including



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

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

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

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

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



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

7 (f) The commissioner shall designate the method by which
8 the contributions under subsection (e) shall be calculated and
9 collected. The commissioner shall consider basing contributions
10 solely on the gross operating revenues from the retail provision
11 of intrastate telecommunications services offered by the
12 telecommunications carriers subject to the contribution.

13 **PART III. CABLE SERVICES**

14 **§ -61 Issuance of cable franchises and regulation of**
15 **cable operators by the commissioner.** The commissioner is
16 authorized to issue cable franchises and otherwise administer
17 and enforce this part.

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



1 (b) No cable operator that, as of July 1, 2012, holds a
2 cable franchise or charter enacted or granted by the legislative
3 or executive authority of the State or its predecessor
4 governments, or that has a bona fide operation as a cable
5 operator heretofore recognized by the department, shall be
6 required to obtain, as a result of the enactment of this
7 chapter, a new franchise under this section.

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

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

- 18 (1) The citizenship and character of the applicant;
19 (2) The financial, technical, and other qualifications of
20 the applicant;
21 (3) The principals and ultimate beneficial owners of the
22 applicant;



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

3 (5) Any other matters deemed appropriate and necessary by
4 the commissioner including, but not limited to, the
5 proposed plans and schedule of expenditures for or in
6 support of the use of access facilities, and the
7 competitive availability and affordability of
8 broadband and other advanced services to consumers.

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

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

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



1 (2) After the issuance to the applicant of a notice of
2 acceptance for filing and within a time frame
3 established by rule, the commissioner shall hold a
4 public hearing on the application or proposal to
5 afford interested persons the opportunity to submit
6 data, views, or arguments, orally or in writing.
7 Notice of the public hearing shall be given to the
8 governing council and mayor of the county and to any
9 incumbent local exchange carrier or other utility and
10 cable company in the county in which the proposed
11 service area is located. The commissioner shall also
12 give public notice of the application and hearing at
13 least once in each of two successive weeks in the
14 county in which the proposed service area is located.
15 The last notice shall be given at least fifteen
16 calendar days prior to the date of the hearing;
17 (3) After holding a public hearing, the commissioner shall
18 approve the application or proposal in whole or in
19 part, with or without conditions or modifications, or
20 shall deny the application or proposal, with reasons
21 for denial sent in writing to the applicant. If the
22 commissioner does not take final action after the



1 issuance of a notice of acceptance for filing and
2 within a time frame established by rule, the
3 application or proposal shall be deemed denied; and
4 (4) The time limit for final action may be extended, on
5 the commissioner's approval of the applicant's request
6 and justification in writing for an extension of time
7 to the commissioner submitted at least two weeks in
8 advance of the requested effective date of the
9 extension, by mutual agreement, or by the
10 commissioner's own motion.

11 **§ -65 Issuance of cable franchise authority; criteria;**

12 **content.** (a) The commissioner may issue a cable franchise to
13 construct or operate facilities for a cable system upon the
14 terms and conditions provided in this part.

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



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

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

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



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

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

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

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

20 **§ -67 Cable system installation, construction,**
21 **operation, removal; general provisions.** (a) A cable franchise
22 shall be construed to authorize the construction or operation of



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

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

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

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



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

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

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

21 (1) All applicable state statutes and all applicable rules
22 and orders of the public utilities commission and the



1 commissioner governing the construction, maintenance,
2 and removal of overhead and underground facilities of
3 public utilities;

4 (2) For county highways, all applicable public welfare
5 rules adopted by the governing body of the county in
6 which the county highways are situated;

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

9 (4) For the relocation of cable facilities, the provisions
10 of section 264-33 concerning the allocation of
11 expenses for the relocation of utility facilities.

12 (h) In the use of easements dedicated to compatible
13 purposes, the cable operator shall ensure:

14 (1) That the safety, functioning, and appearance of the
15 property and the convenience and safety of other
16 persons are not adversely affected by the installation
17 or construction of facilities necessary for a cable
18 system;

19 (2) That the cost of the installation, construction,
20 operation, or removal of facilities is borne by the
21 cable operator or subscribers, or a combination of
22 both; and



1 (3) That the owner of the property is justly compensated
2 by the cable operator for any damages caused by the
3 installation, construction, operation, or removal of
4 facilities by the cable operator.

5 **§ -68 Public, educational, or governmental access**

6 **services; designation of channels; designation of access**

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

11 (b) The commissioner may initiate, or an access
12 organization, educational institution, or government agency may
13 at any time request the commissioner to have the cable operator
14 designate and activate additional channels; provided that the
15 commissioner shall have the discretion to grant, deny, or modify
16 the request based upon the best interest of the public,
17 requester, cable operator, or the State.

18 (c) The commissioner shall have the authority to designate
19 and select access organizations; provided that the designation
20 and selection shall be exempt from chapter 103D.

21 (1) No access organization shall be designated except upon
22 written application or proposal to the commissioner,



1 and following a public hearing on each island within
2 the local franchise area that provides opportunity for
3 public input;

4 (2) In determining whether to make a designation, the
5 commissioner shall consider:

6 (A) The content of the application or proposal;

7 (B) The public need for the proposed service;

8 (C) The ability and experience of the applicant to
9 offer public, educational, or government
10 programming cablecast services;

11 (D) The suitability of the applicant;

12 (E) The technical and operational ability of the
13 applicant to perform efficiently the services for
14 which the designation is requested;

15 (F) Any objections arising from the public hearing,
16 the cable advisory committee, or elsewhere; and

17 (G) Any other matters that the commissioner deems
18 appropriate under the circumstances.

19 (3) The commissioner may require an applicant to provide
20 information on its process for selecting members of
21 its board of directors; provided that the commissioner
22 shall have no authority to require that an applicant



- 1 amend its selection process as a condition of
2 designation;
- 3 (4) An applicant shall provide information regarding its
4 past performance and any proposed practices for
5 ensuring that the access facilities support the
6 diversity of viewpoints and uphold the public's right
7 of free speech;
- 8 (5) Any decision designating, modifying, or rescinding a
9 designation of an access organization or the
10 requirements therefore shall first be submitted to the
11 cable advisory committee for advice under section
12 -22;
- 13 (6) The commissioner shall enter into a contract with each
14 designated and selected access organization for the
15 provision of public, educational, or governmental
16 access services. The commissioner shall ensure that
17 the terms and conditions required of the operation of
18 an access organization designated under this part are
19 fair to the public and the State. The commissioner
20 shall have the authority to do all things necessary to
21 enforce the terms and conditions of the contracts with
22 access organizations; and



1 (7) The commissioner may require a cable operator to
2 provide funds to an access organization for the
3 provision of public, educational, or governmental
4 access services in the cable operator's service area;
5 provided that:
6 (A) Any such requirement shall be specified in the
7 cable franchise issued to the cable operator by
8 the commissioner;
9 (B) The access organization may use those funds to
10 acquire or purchase access organization assets;
11 (C) Notwithstanding any other provision to the
12 contrary, including but not limited to chapter
13 171, any and all access organization assets
14 acquired or purchased from those funds, except as
15 specified in subparagraph (D), shall be
16 constructively held in trust for benefit of the
17 State to be used primarily for the provision of
18 public, educational, or governmental access
19 services, or used for other purposes in the
20 commissioner's sole discretion, and the
21 commissioner may make these assets available to
22 designated access organizations to provide



1 public, educational, or governmental access
2 services in a particular service area; and
3 (D) If the contract between the commissioner and an
4 access organization is terminated or cancelled:
5 (i) Any and all claims, rights, interests, or
6 titles to the access organization assets
7 acquired or purchased from those funds after
8 the effective date of this Act shall belong
9 to the State, and the State shall have the
10 sole discretion on the disposition of those
11 assets;
12 (ii) The access organization shall, upon request
13 by the commissioner, provide and transfer
14 all of these access organization assets to
15 the commissioner or the commissioner's
16 designee within a reasonable period of time
17 after the contract is terminated or
18 cancelled; and
19 (iii) The disposition of access organization
20 assets purchased with those funds prior to
21 the effective date of this Act shall be
22 subject to the terms and conditions of the



1 contracts between the access organization
2 and the State.

3 § -69 Complaints; violations; revocation, alteration, or
4 suspension of cable franchise. (a) Subscriber complaints
5 regarding the operation of a cable system may be made orally or
6 in writing to the commissioner. The commissioner shall resolve
7 complaints informally when possible.

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

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



1 unreasonable withholding of the extension of cable
2 service to any person in a service area;

3 (5) For violation of the terms of its cable franchise;

4 (6) For failure to comply with state law or any rules or
5 orders prescribed by the commissioner or failure to
6 comply with applicable federal law;

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

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

11 **§ -70 Renewal of cable franchise.** (a) Any cable
12 franchise issued pursuant to this part may be renewed by the
13 commissioner upon approval of a cable operator's application or
14 proposal therefor. The form of the application or proposal
15 shall be prescribed by the commissioner.

16 (b) The periods of renewal shall be not less than five nor
17 more than twenty years each.

18 (c) The commissioner shall require of the applicant full
19 disclosure, including the proposed plans and schedule of
20 expenditures for or in support of the use of access facilities
21 and equipment and broadband facilities.



1 **§ -71 Transfer of cable franchise.** (a) No cable
2 franchise, including the rights, privileges, and obligations
3 thereof, may be assigned, sold, leased, encumbered, or otherwise
4 transferred, voluntarily or involuntarily, directly or
5 indirectly, including by transfer of control of any cable
6 system, whether by change in ownership or otherwise, except upon
7 written application to and approval by the commissioner. The
8 form of the application shall be prescribed by the commissioner.

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

11 **§ -72 Rate, filed with the commissioner; approval.** (a)
12 The commissioner shall require each cable operator to file a
13 schedule of its rates of service on a form and with the notice
14 that the commissioner may prescribe.

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

18 **§ -73 Reports.** Each cable operator shall provide the
19 commissioner with reports of the cable operator's financial,
20 technical, and operational condition, reports on its ownership,
21 and any other information requested by the commissioner. The
22 reports shall be made in a form and on the time schedule



1 prescribed by the commissioner and shall be kept on file open to
2 the public.

3 **§ -74 Annual fees.** (a) Each cable operator shall pay
4 an annual fee to be determined by the commissioner. The fees so
5 collected under this section shall be deposited into the
6 communications special fund established under section -20.
7 The director shall transfer all of the annual fees previously
8 allocated to the cable television division by depositing such
9 fees into the communications special fund.

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

13 **§ -75 Criminal and civil liability.** Nothing in this
14 chapter shall be deemed to affect the criminal and civil
15 liability of cable programmers, cable operators, or access
16 organizations pursuant to the federal, state, or local laws
17 regarding libel, slander, obscenity, incitement, invasions of
18 privacy, false or misleading advertising, or other similar laws;
19 provided that no access organization shall incur any such
20 liability arising from, based on, or related to any program not
21 created by the access organization, which is broadcast on any



1 channel obtained under section -65, or under similar
2 arrangements."

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

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



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

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



1 insurance regulation fund, section 431:2-215, shall be deposited
2 into the compliance resolution fund. This provision shall not
3 apply to the communications special fund, section -20, the
4 drivers education fund underwriters fee, sections 431:10C-115
5 and 431:10G-107, insurance premium taxes and revenues, revenues
6 of the workers' compensation special compensation fund, section
7 386-151, the captive insurance administrative fund, section
8 431:19-101.8, the insurance commissioner's education and
9 training fund, section 431:2-214, the medical malpractice
10 patients' compensation fund as administered under section 5 of
11 Act 232, Session Laws of Hawaii 1984, and fees collected for
12 deposit in the office of consumer protection restitution fund,
13 section 487-14, the real estate appraisers fund, section 466K-1,
14 the real estate recovery fund, section 467-16, the real estate
15 education fund, section 467-19, the contractors recovery fund,
16 section 444-26, the contractors education fund, section 444-29,
17 the condominium education trust fund, section 514B-71, and the
18 mortgage foreclosure dispute resolution special fund, section
19 667-86. Any law to the contrary notwithstanding, the director
20 may use the moneys in the fund to employ, without regard to
21 chapter 76, hearings officers and attorneys. All other
22 employees may be employed in accordance with chapter 76. Any



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

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

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



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

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

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

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

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

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



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



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



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

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

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

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



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

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



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

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

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

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

20 The county agency or official shall apply to the state land
21 use commission for an appropriate land use district
22 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, or
3 regulation to the contrary, the state land use commission may
4 approve the application at any time after a public hearing held
5 in the county where the land is located upon notice of the time
6 and place of the hearing being published in the same manner as
7 the notice required for a public hearing by the planning
8 commission of the appropriate county."

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

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

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

13 [~~or~~]

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

16 (3) Any proceedings of the communications division of the
17 department of commerce and consumer affairs."

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

20 "**§92-21 Copies of records; other costs and fees.** (a)

21 Except as otherwise provided by law, a copy of any government
22 record, including any map, plan, diagram, photograph, photostat,



1 or geographic information system digital data file, which is
2 open to the inspection of the public, shall be furnished to any
3 person applying for the same by the public officer having charge
4 or control thereof upon the payment of the reasonable cost of
5 reproducing such copy.

6 (b) Except as provided in section 91-2.5, the cost of
7 reproducing any government record, except geographic information
8 system digital data, shall not be less than 5 cents per page,
9 sheet, or fraction thereof.

10 (c) The cost of reproducing geographic information system
11 digital data shall be in accordance with rules adopted by the
12 agency having charge or control of that data.

13 [~~Such~~] (d) All reproduction [~~cost~~] costs shall include but
14 shall not be limited to labor cost for search and actual time
15 for reproducing, material cost, including electricity cost,
16 equipment cost, including rental cost, cost for certification,
17 and other related costs.

18 (e) All fees shall be paid in by the public officer
19 receiving or collecting the same to the state director of
20 finance, the county director of finance, or to the agency or
21 department by which the officer is employed, as government
22 realizations; provided that fees collected by the public



1 utilities commission pursuant to this section shall be deposited
2 in the public utilities commission special fund established
3 under section 269-33[~~7~~], and fees collected by the
4 communications division of the department of commerce and
5 consumer affairs shall be deposited in the communications
6 special fund established under section -20."

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

9 "**§101-43 Requirements prior to exercise of power.** Any
10 corporation having the power of eminent domain under section
11 101-41 may continue to exercise the power[~~7~~]; provided that
12 prior to the exercise of the power:

13 (1) The corporation submits to the public utilities
14 commission or, beginning July 1, 2013, in the case of
15 telecommunications carriers, to the communications
16 commissioner its intention to exercise the power, with
17 a description of the property to be condemned; and

18 (2) The public utilities commission or, beginning July 1,
19 2013, in the case of telecommunications carriers, the
20 communications commissioner finds that the proposed
21 condemnation is in the public interest, that the
22 proposed condemnation is necessary, and that the



1 corporation will use the property for its operations
2 as a public utility."

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

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

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

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

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

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

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



1 the communications division of the department of
2 commerce and consumer affairs under chapter ."

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

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

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

17 (2) The development of the proposed agricultural park does
18 not contravene any safety standards or tariffs
19 approved for public utilities by the public utilities
20 commission [~~for public utilities;~~] or by the
21 communications division of the department of commerce
22 and consumer affairs;



- 1 (3) The legislative body of the county in which the
2 agricultural park is to be situated shall have
3 approved the agricultural park.
- 4 (A) The legislative body shall approve or disapprove
5 the agricultural park within forty-five days
6 after the department has submitted the
7 preliminary plans and specifications for the
8 agricultural park to the legislative body. If
9 after the forty-fifth day an agricultural park is
10 not 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 employees,
14 on account of actions taken by them in reviewing,
15 approving, or disapproving the plans and
16 specifications.
- 17 (C) The final plans and specifications for the
18 agricultural park shall be deemed approved by the
19 legislative body if the final plans and
20 specifications do not substantially deviate from
21 the preliminary plans and specifications. The
22 final plans and specifications for the project



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

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

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

20 " **[+]§166E-10[+]** **Non-agricultural park land development.**

21 On behalf of the State or in partnership with a federal agency,
22 a county, or a private party and except as provided in this



1 section, the department may develop non-agricultural park lands
2 that, at the option of the board, may be exempt from all
3 statutes, ordinances, charter provisions, and rules of any
4 governmental agency relating to planning, zoning, construction
5 standards for subdivisions, development and improvement of land,
6 and construction of buildings thereon; provided that:

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

10 (2) The development of the proposed non-agricultural park
11 land does not contravene any safety standards or
12 tariffs approved for public utilities by the public
13 utilities commission [~~for public utilities,~~] or by the
14 communications division of the department of commerce
15 and consumer affairs;

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

20 (A) The county shall approve or disapprove the
21 development within forty-five days after the
22 department submits preliminary plans and



1 specifications for the development to the county.
2 If the county does not disapprove the development
3 after the forty-fifth day, the development shall
4 be deemed approved;

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

10 (C) The final plans and specifications for the
11 development shall be deemed approved by the
12 county if the final plans and specifications do
13 not substantially deviate from the preliminary
14 plans and specifications. The final plans and
15 specifications for the project shall constitute
16 the planning, zoning, building, construction, and
17 subdivision standards for that development. For
18 purposes of sections 501-85 and 502-17, the
19 chairperson of the board or the responsible
20 county official may certify maps and plans of
21 lands connected with the development as having
22 complied with applicable laws and ordinances



1 relating to consolidation and subdivision of
 2 lands, and the maps and plans shall be accepted
 3 for registration or recordation by the land court
 4 and registrar; and

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

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

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

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

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



1 commission [~~for public utilities;~~] or by the
2 communications division of the department of commerce
3 and consumer affairs;

4 (3) The legislative body of the county in which the
5 industrial park is proposed to be situated approves
6 the industrial park.

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

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

19 (C) The final plans and specifications for the
20 industrial park shall be deemed approved by the
21 legislative body if the final plans and
22 specifications for the industrial park do not



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

20 (4) The board shall assume the responsibility of all
21 infrastructure within the industrial park, if the



1 infrastructure developed is exempt from applicable
2 county ordinances, charter provisions, and rules."

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

5 "(c) This section shall not apply to any permit issued by
6 the public utilities commission under chapter 269[-] or the
7 communications division of the department of commerce and
8 consumer affairs under chapter _____."

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

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



1 chapter 101 and otherwise in accordance with all applicable
2 provisions of the general laws of the State; provided that
3 condemnation of parcels greater than fifteen acres shall be
4 subject to legislative disapproval expressed in a concurrent
5 resolution adopted by majority vote of the senate and the house
6 of representatives in the first regular or special session
7 following the date of condemnation.

8 **(b)** The corporation may acquire by the exercise of the
9 power of eminent domain property already devoted to a public
10 use; provided that no property belonging to any government may
11 be acquired without its consent, and that no property belonging
12 to a public utility corporation may be acquired without the
13 approval of the public utilities commission~~[7]~~ or, beginning
14 July 1, 2013 in the case of telecommunications carriers, the
15 communications division of the department of commerce and
16 consumer affairs, and subject to legislative disapproval
17 expressed in a concurrent resolution adopted by majority vote of
18 the senate and the house of representatives in the first regular
19 or special session following the date of condemnation."

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



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

13 When adopted, the rules shall have the force and effect of
14 law and shall supersede, for all housing projects in which the
15 State, through the corporation, shall participate, all other
16 inconsistent laws, ordinances, and rules relating to the use,
17 zoning, planning, and development of land, and the construction
18 of dwelling units thereon. The rules, before becoming
19 effective, shall be presented to the legislative body of each
20 county in which they will be effective and the legislative body
21 of any county may within forty-five days approve or disapprove,
22 for that county, any or all of the rules by a majority vote of



1 its members. On the forty-sixth day after submission, any rules
2 not disapproved shall be deemed to have been approved by the
3 county."

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

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

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

18 (2) The development of the proposed housing project does
19 not contravene any safety standards, tariffs, or rates
20 and fees approved for public utilities by the public
21 utilities commission [~~for public utilities~~] or by the
22 communications division of the department of commerce



1 and consumer affairs, or of the various boards of
2 water supply authorized under chapter 54;

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

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

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

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



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

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

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



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

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



1 facilities or improvements are not allowed within the
2 shoreline area;

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

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

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

20 "[+]§239-6.5[+] **Tax credit for lifeline telephone service**
21 **subsidy.** A [~~telephone public utility~~] telecommunications
22 carrier subject to this chapter that has been authorized to



1 establish lifeline telephone service rates by the public
 2 utilities commission prior to July 1, 2013, or the
 3 communications division of the department of commerce and
 4 consumer affairs beginning July 1, 2013, shall be allowed a tax
 5 credit, equal to the lifeline telephone service costs incurred
 6 by the [~~utility~~] carrier, to be applied against the [~~utility's~~]
 7 carrier's tax imposed by this chapter. The amount of this
 8 credit shall be determined and certified annually by the [~~public~~
 9 ~~utilities commission.~~] commissioner under chapter . The tax
 10 liability for a [~~telephone public utility~~] telecommunications
 11 carrier claiming the credit shall be calculated in the manner
 12 prescribed in section 239-5; provided that the amount of tax due
 13 from the [~~utility~~] carrier shall be net of the lifeline service
 14 credit."

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

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



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

4 (1) The State;

5 (2) The department of transportation;

6 (3) The counties;

7 (4) Any public utility regulated under chapter 269 or
8 telecommunications carrier regulated under chapter

9 that places its facilities within the highway right-
10 of-way; or

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

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

15 1. By repealing the definition of "carrier of last
16 resort":

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

21 2. By repealing the definition of "designated local
22 exchange service area":



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

4 3. By amending the definition of "public utility" to read
5 as follows:

6 "Public utility":

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



- 1 ~~(A)~~ ~~An]~~ an owner or operator of a private sewer
- 2 company or sewer facility; and
- 3 ~~[(B)~~ ~~A telecommunications carrier or~~
- 4 ~~telecommunications common carrier, and]~~
- 5 (2) Shall not include:
- 6 (A) An owner or operator of an aerial transportation
- 7 enterprise;
- 8 (B) An owner or operator of a taxicab as defined in
- 9 this section;
- 10 (C) Common carriers that transport only freight on
- 11 the public highways, unless operating within
- 12 localities, along routes, or between points that
- 13 the public utilities commission finds to be
- 14 inadequately serviced without regulation under
- 15 this chapter;
- 16 (D) Persons engaged in the business of warehousing or
- 17 storage unless the commission finds that
- 18 regulation is necessary in the public interest;
- 19 (E) A carrier by water to the extent that the carrier
- 20 enters into private contracts for towage,
- 21 salvage, hauling, or carriage between points
- 22 within the State; provided that the towing,



1 salvage, hauling, or carriage is not pursuant to
2 either an established schedule or an undertaking
3 to perform carriage services on behalf of the
4 public generally;

5 (F) A carrier by water, substantially engaged in
6 interstate or foreign commerce, that transports
7 passengers on luxury cruises between points
8 within the State or on luxury round-trip cruises
9 returning to the point of departure;

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

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

19 (H) A telecommunications [~~provider only to the extent~~
20 ~~determined by the public utilities commission~~
21 ~~pursuant to section 269-16.9;~~] carrier or
22 telecommunications common carrier as defined in



1 section -1, and subject to the authority of the
2 communications commissioner beginning July 1,
3 2013, pursuant to section -6;

4 (I) Any person who controls, operates, or manages
5 plants or facilities developed pursuant to
6 chapter 167 for conveying, distributing, and
7 transmitting water for irrigation and other
8 purposes for public use and purpose;

9 (J) Any person who owns, controls, operates, or
10 manages plants or facilities for the reclamation
11 of wastewater; provided that:

12 (i) The services of the facility are provided
13 pursuant to a service contract between the
14 person and a state or county agency and at
15 least ten per cent of the wastewater
16 processed is used directly by the state or
17 county agency that entered into the service
18 contract;

19 (ii) The primary function of the facility is the
20 processing of secondary treated wastewater
21 that has been produced by a municipal



- 1 wastewater treatment facility owned by a
2 state or county agency;
- 3 (iii) The facility does not make sales of water to
4 residential customers;
- 5 (iv) The facility may distribute and sell
6 recycled or reclaimed water to entities not
7 covered by a state or county service
8 contract; provided that, in the absence of
9 regulatory oversight and direct competition,
10 the distribution and sale of recycled or
11 reclaimed water shall be voluntary and its
12 pricing fair and reasonable. For purposes
13 of this subparagraph, "recycled water" and
14 "reclaimed water" means treated wastewater
15 that by design is intended or used for a
16 beneficial purpose; and
- 17 (v) The facility is not engaged, either directly
18 or indirectly, in the processing of food
19 wastes;
- 20 (K) Any person who owns, controls, operates, or
21 manages any seawater air conditioning district
22 cooling project; provided that at least fifty per



1 cent of the energy required for the seawater air
2 conditioning district cooling system is provided
3 by a renewable energy resource, such as cold,
4 deep seawater;

5 (L) Any person who owns, controls, operates, or
6 manages plants or facilities primarily used to
7 charge or discharge a vehicle battery that
8 provides power for vehicle propulsion; and

9 (M) Any person who:

10 (i) Owns, controls, operates, or manages a renewable
11 energy system that is located on a
12 customer's property; and

13 (ii) Provides, sells, or transmits the power
14 generated from that renewable energy system
15 to an electric utility or to the customer on
16 whose property the renewable energy system
17 is located; provided that, for purposes of
18 this clause, a customer's property shall
19 include all contiguous property owned or
20 leased by the customer without regard to
21 interruptions in contiguity caused by
22 easements, public thoroughfares,



1 transportation rights-of-way, and utility
2 rights-of-way.

3 If the application of this chapter is ordered by the
4 commission in any case provided in paragraphs (2)(C), (2)(D),
5 (2)(H), and (2)(I), or beginning July 1, 2013, as determined by
6 the communications commissioner as provided in paragraph (2)(H),
7 the business of any public utility that presents evidence of
8 bona fide operation on the date of the commencement of the
9 proceedings resulting in the order shall be presumed to be
10 necessary to the public convenience and necessity, but any
11 certificate issued under this proviso shall nevertheless be
12 subject to terms and conditions as the public utilities
13 commission may prescribe, as provided in sections 269-16.9 and
14 269-20[-], or as the communications commissioner may prescribe,
15 as provided in section -34, whichever is applicable."

16 4. By amending the definition of "telecommunications
17 carrier" or "telecommunications common carrier" to read:

18 "Telecommunications carrier" or "telecommunications common
19 carrier" [~~means any person that owns, operates, manages, or~~
20 ~~controls any facility used to furnish telecommunications~~
21 ~~services for profit to the public, or to classes of users as to~~
22 ~~be effectively available to the public, engaged in the provision~~



1 ~~of services, such as voice, data, image, graphics, and video~~
2 ~~services, that make use of all or part of their transmission~~
3 ~~facilities, switches, broadcast equipment, signalling, or~~
4 ~~control devices.] has the same meaning as in section -1."~~

5 5. By amending the definition of "telecommunications
6 service" or "telecommunications" to read:

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

17 SECTION 21. Section 269-30, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§269-30 Finances; public utility fee.** (a) Sections 607-
20 5 to 607-9 shall apply to the public utilities commission and
21 each commissioner, as well as to the supreme and circuit courts,
22 and all costs and fees paid or collected pursuant to this



1 section shall be deposited with the director of finance to the
2 credit of the public utilities commission special fund
3 established under section 269-33.

4 (b) There also shall be paid to the public utilities
5 commission in each of the months of July and December of each
6 year, by each public utility subject to investigation by the
7 public utilities commission, a fee equal to one-fourth of one
8 per cent of the gross income from the public utility's business
9 during the preceding year, or the sum of \$30, whichever is
10 greater. This fee shall be deposited with the director of
11 finance to the credit of the public utilities commission special
12 fund.

13 (c) Each public utility paying a fee under subsection (b)
14 may impose a surcharge to recover the amount paid above one-
15 eighth of one per cent of gross income. The surcharge imposed
16 shall not be subject to the notice, hearing, and approval
17 requirements of this chapter; provided that the surcharge may be
18 imposed by the utility only after thirty days' notice to the
19 public utilities commission. Unless ordered by the public
20 utilities commission, the surcharge shall be imposed only until
21 the conclusion of the public utility's next rate case; provided
22 that the surcharge shall be subject to refund with interest at



1 the public utility's authorized rate of return on rate base if
2 the utility collects more money from the surcharge than actually
3 paid due to the increase in the fee to one-fourth of one per
4 cent.

5 (d) Notwithstanding any provision of this chapter to the
6 contrary, the public utilities commission may, upon the filing
7 of a petition by a public utility, credit a public utility for
8 amounts paid under subsection (b) toward amounts the public
9 utility owes in one call center fees under section 269E-6(f).

10 (e) Notwithstanding any provision of this chapter to the
11 contrary and beginning July 1, 2013, this section shall not
12 apply to any telecommunications carrier or telecommunications
13 common carrier as defined in section -1 and subject to the
14 authority of the communications commissioner pursuant to section
15 -6."

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

18 **"§269-51 Consumer advocate; director of commerce and**
19 **consumer affairs.** (a) The director of commerce and consumer
20 affairs shall appoint the executive director of the division of
21 consumer advocacy, who shall be the consumer advocate in
22 hearings before the public utilities commission. The consumer



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

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

13 SECTION 23. Section 269-52, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§269-52 Division of consumer advocacy; personnel.** There
16 shall be a division of consumer advocacy within the department
17 of commerce and consumer affairs [~~to provide administrative~~
18 ~~support to~~] with an executive director who shall be appointed by
19 the director of commerce and consumer affairs [acting] and shall
20 act in the capacity of consumer advocate. The director may
21 employ and at pleasure dismiss [~~an~~] the executive
22 [~~administrator,~~] director, who shall be exempt from chapter 76,



1 may define the executive [~~administrator's~~] director's powers and
2 duties, and fix the executive [~~administrator's~~] director's
3 compensation. The executive director may employ engineers,
4 accountants, investigators, clerks, and stenographers as may be
5 necessary for the performance of the consumer advocate's
6 functions, in accordance with chapter 76; provided that:

7 (1) The executive director may employ up to ten utility,
8 communications, and cable analysts exempt from chapter
9 76; and

10 (2) Each analyst shall possess at least the minimum
11 qualifications required of comparable experts in the
12 relevant industry."

13 SECTION 24. Section 339K-2, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§339K-2[+] **Compact administrator.** The compact
16 administrator, acting jointly with like officers of other party
17 states, may promulgate rules and regulations to carry out more
18 effectively the terms of the compact. The compact administrator
19 shall cooperate with all departments, agencies, and officers of
20 and in the government of this State and its subdivisions in
21 facilitating the present administration of the compact or of any
22 supplementary agreement or agreements entered into by this State



1 thereunder. The compact administrator shall adopt the practices
2 and may impose the fees authorized under article III of the
3 compact, except that state and county law enforcement agencies
4 [~~and~~], the public utilities commission, and the communications
5 division shall retain their enforcement and inspection authority
6 relating to carriers."

7 SECTION 25. Section 356D-15, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The authority may acquire by the exercise of the
10 power of eminent domain property already devoted to a public
11 use; provided that no property belonging to any government may
12 be acquired without its consent, and that no property belonging
13 to a public utility may be acquired without the approval of the
14 public utilities commission[+] or, beginning July 1, 2013 in the
15 case of telecommunications carriers, the communications
16 division; and provided further that the acquisition is subject
17 to legislative disapproval expressed in a concurrent resolution
18 adopted by majority vote of the senate and the house of
19 representatives in the first regular or special session
20 following the date of condemnation."

21 SECTION 26. Section 448E-13, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§448E-13 Exemption of public utility and [~~community~~**
2 **antennae] cable television company employees.** All employees of
3 a public utility within the State under a franchise or charter
4 granted by the State which is regulated by the public utilities
5 commission [~~and community antennae television company,~~] or the
6 communications division, or employees of a cable operator within
7 the State under a franchise granted by the State that is
8 regulated by the communications division, while so employed,
9 shall be exempt from the provision of this chapter."

10 SECTION 27. Section 481-11, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§481-11 Remedies cumulative.** The remedies prescribed in
13 this part are cumulative and in addition to the remedies
14 prescribed in [~~chapter~~] chapters 269, 271, 271G, and for
15 discriminations by public utilities[-], motor carriers, water
16 carriers, or cable operators. If any conflict arises between
17 this part and chapter 269, [~~the latter prevails.~~] 271, 271G, or
18 , whichever is applicable, shall prevail."

19 SECTION 28. Section 481P-5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§481P-5 Exemptions.** This chapter shall not apply to:



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

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

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



- 1 or an affiliate or subsidiary of a financial
2 institution as defined in chapter 412;
- 3 (4) A person or organization that is licensed or
4 authorized to conduct business in this State by the
5 insurance commissioner including but not limited to an
6 insurance company and its employees, while engaged in
7 the business of selling or advertising the sale of
8 insurance products or services;
- 9 (5) A college or university accredited by an accrediting
10 organization recognized by the United States
11 Department of Education;
- 12 (6) A person who publishes a catalog of at least fifteen
13 pages, four times a year, with a circulation of at
14 least one hundred thousand, where the catalog includes
15 clear disclosure of sale prices, shipping, handling,
16 and other charges;
- 17 (7) A political subdivision or instrumentality of the
18 United States, or any state of the United States;
- 19 (8) The sale of goods or services by telecommunications or
20 landline (i.e., cable) or wireless video service
21 providers, for which the terms and conditions of the
22 offering, production, or sale are regulated by the



1 public utilities commission or the Federal
 2 Communications Commission, or [~~pursuant to chapter~~
 3 ~~440G,~~] beginning July 1, 2013, the communications
 4 commissioner, including the sale of goods or services
 5 by affiliates of these telecommunications or video
 6 service providers. Nothing herein shall be construed
 7 to preclude or preempt actions brought under any other
 8 laws including chapter 480;

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

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

15 SECTION 29. Section 659-3, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "[+]§659-3[+] **Forfeiture of franchise.** The several
 18 circuit courts shall have jurisdiction of all proceedings in, or
 19 in the nature of, quo warranto, brought by or in the name of the
 20 public utilities commission[~~7~~] or the communications division,
 21 or the State, for the forfeiture of the franchise of any
 22 corporate body offending against any law relating to such



1 corporation, for misuser, for nonuser, for doing or committing
2 any act or acts amounting to a surrender of its charter and for
3 exercising rights not conferred upon it."

4 SECTION 30. Section 708-800, Hawaii Revised Statutes, is
5 amended by amending the definition of "telecommunication
6 service" to read as follows:

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

16 SECTION 31. Section 269-16.5, Hawaii Revised Statutes, is
17 repealed.

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

21 ~~(b) "Lifeline telephone rate" means a discounted rate for~~
22 ~~residential telephone users identified as elders with limited~~



1 ~~income and the handicapped with limited income as designated by~~
2 ~~the commission.~~

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

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

11 SECTION 32. Section 269-16.6, Hawaii Revised Statutes, is
12 repealed.

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

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



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

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

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

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

21 ~~(f) The commission shall require every intrastate~~
22 ~~telecommunications carrier to file a schedule of rates and~~



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

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

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

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

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

21 SECTION 33. Section 269-16.8, Hawaii Revised Statutes, is
22 repealed.



1 ~~[" §269-16.8] Aggregators of telephone service~~

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

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

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

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

- 17 ~~(1) Posting and display of information in a prominent and~~
18 ~~conspicuous fashion on or near the telephone equipment~~
19 ~~owned or controlled by the aggregator which states the~~
20 ~~identity of the operator service provider, the~~
21 ~~operator service provider's complaint handling~~



1 ~~procedures, and means by which the customer may access~~
2 ~~the various operator service providers.~~

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

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

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

19 SECTION 34. Section 269-16.9, Hawaii Revised Statutes, is
20 repealed.

21 [~~"§269-16.9 Telecommunications providers and services.~~

22 ~~(a) Notwithstanding any provision of this chapter to the~~



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

- 16 ~~(1) The responsiveness of the exemption to changes in the~~
17 ~~structure and technology of the State's~~
18 ~~telecommunications industry;~~
- 19 ~~(2) The benefits accruing to the customers and users of~~
20 ~~the exempt telecommunications provider or service;~~



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



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

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

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

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

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

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



1 ~~section. The exemptions under this section may be granted in a~~
2 ~~proceeding for certification or in a separate proceeding.~~

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

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



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

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

17 SECTION 35. Section 269-16.85, Hawaii Revised Statutes, is
18 repealed.

19 ~~["**§269-16.85**—Retail intrastate services, fully~~
20 ~~competitive.~~ (a) ~~Notwithstanding section 269-16.9 or any other~~
21 ~~law to the contrary, the public utilities commission shall treat~~
22 ~~retail intrastate telecommunications services, under the~~



1 ~~commission's classification of services relating to costs,~~
2 ~~rates, and pricing, as fully competitive and apply all~~
3 ~~commission rules in accordance with that designation. In~~
4 ~~addition, a telecommunications carrier shall not be required to~~
5 ~~obtain approval or provide any cost support or other information~~
6 ~~to establish or otherwise modify in any manner its rates, fares,~~
7 ~~and charges, or to bundle any service offerings into a single or~~
8 ~~combined price package; provided that a telecommunications~~
9 ~~carrier, except upon receiving the approval of the commission,~~
10 ~~shall not charge a higher rate for any retail telecommunications~~
11 ~~service than the rate for the same service included in the~~
12 ~~telecommunications carrier's filed tariff. All rates, fares,~~
13 ~~charges, and bundled service offerings shall be filed with the~~
14 ~~public utilities commission for information purposes only.~~

15 ~~(b) This section shall apply to retail rates charged for~~
16 ~~service to end user consumers only and shall not apply to~~
17 ~~wholesale rates charged for services provided by a~~
18 ~~telecommunications carrier to another telecommunications~~
19 ~~provider, a wireless communications provider, a voice over~~
20 ~~internet protocol communications provider, or other similar~~
21 ~~communications provider.~~



1 ~~(c) Nothing herein shall modify any requirements of a~~
2 ~~telecommunications carrier to provide lifeline telephone~~
3 ~~service, comply with carrier of last resort obligations, or~~
4 ~~comply with applicable service quality standards."]~~

5 SECTION 36. Section 269-16.91, Hawaii Revised Statutes, is
6 repealed.

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

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

20 ~~(b) To receive the subsidy amounts from the local exchange~~
21 ~~service provider, the alternative telecommunications provider~~
22 ~~shall be required, to the extent possible, to obtain basic~~



1 ~~residential service subsidies from both the local exchange~~
2 ~~service provider and national universal service providers."]~~

3 SECTION 37. Section 269-16.92, Hawaii Revised Statutes, is
4 repealed.

5 ["~~§269-16.92~~ ~~Changes in subscriber carrier selections,~~

6 ~~prior authorization required, penalties for unauthorized~~

7 ~~changes.~~ (a) ~~No telecommunications carrier shall initiate a~~

8 ~~change in a subscriber's selection or designation of a long-~~

9 ~~distance carrier without first receiving:~~

10 (1) ~~A letter of agency or letter of authorization,~~

11 (2) ~~An electronic authorization by use of a toll-free~~
12 ~~number,~~

13 (3) ~~An oral authorization verified by an independent third~~
14 ~~party, or~~

15 (4) ~~Any other prescribed authorization,~~

16 ~~provided that the letter or authorization shall be in accordance~~

17 ~~with verification procedures that are prescribed by the Federal~~

18 ~~Communications Commission or the public utilities commission.~~

19 ~~For purposes of this section, "telecommunications carrier" does~~

20 ~~not include a provider of commercial mobile radio service as~~

21 ~~defined by 47 United States Code section 332(d)(1).~~



1 ~~(b) Upon a determination that any telecommunications~~
2 ~~carrier has engaged in conduct that is prohibited in subsection~~
3 ~~(a), the public utilities commission shall order the carrier to~~
4 ~~take corrective action as deemed necessary by the commission and~~
5 ~~may subject the telecommunications carrier to administrative~~
6 ~~penalties pursuant to section 269-28. Any proceeds from~~
7 ~~administrative penalties collected under this section shall be~~
8 ~~deposited into the public utilities commission special fund.~~

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

14 ~~(c) The commission shall adopt rules, pursuant to chapter~~
15 ~~91, necessary for the purposes of this section. The commission~~
16 ~~may notify customers of their rights under these rules."]~~

17 SECTION 38. Section 269-16.95, Hawaii Revised Statutes, is
18 repealed.

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



1 ~~911 emergency telephone service in the public switched telephone~~
2 ~~network, through:~~

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

4 ~~(2) its rate case.~~

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

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

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



1 SECTION 39. Section 269-34, Hawaii Revised Statutes, is
2 repealed.

3 [~~§269-34~~] ~~Obligations of telecommunications carriers.~~

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

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

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

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



1 ~~to the transmission and routing of any~~
2 ~~telecommunications service and the interoperability of~~
3 ~~both carriers' networks;~~

4 ~~(4) Nondiscriminatory access among all telecommunications~~
5 ~~carriers, where technically feasible and economically~~
6 ~~reasonable, and where safety or the provision of~~
7 ~~existing electrical service is not at risk, to the~~
8 ~~poles, ducts, conduits, and rights of way owned or~~
9 ~~controlled by the telecommunications carrier, or the~~
10 ~~commission shall authorize access to electric~~
11 ~~utilities's 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 of~~
16 ~~the telecommunications carrier's telecommunications~~
17 ~~network, that shall be offered on an unbundled,~~
18 ~~competitively neutral, and cost based basis;~~

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



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

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

15 SECTION 40. Section 269-35, Hawaii Revised Statutes, is
16 repealed.

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

- 19 ~~(1) Maintaining affordable, just, and reasonable rates for~~
20 ~~basic residential service;~~
21 ~~(2) Assisting individuals or entities who cannot afford~~
22 ~~the cost of or otherwise require assistance in~~



1 ~~obtaining or maintaining their basic service or~~
 2 ~~equipment as determined by the commission; and~~
 3 (3) ~~Ensuring that consumers are given the information~~
 4 ~~necessary to make informed choices among the~~
 5 ~~alternative telecommunications providers and~~
 6 ~~services."]~~

7 SECTION 41. Section 269-36, Hawaii Revised Statutes, is
 8 repealed.

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

15 SECTION 42. Section 269-37, Hawaii Revised Statutes, is
 16 repealed.

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



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

7 SECTION 43. Section 269-38, Hawaii Revised Statutes, is
8 repealed.

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

14 (1) ~~Basic telephone service and for services that are not~~
15 ~~effectively competitive are cost based and remain~~
16 ~~just, reasonable, and nondiscriminatory, and~~
17 (2) ~~Universal service is preserved and advanced."]~~

18 SECTION 44. Section 269-39, Hawaii Revised Statutes, is
19 repealed.

20 ["~~§269-39~~ ~~Cross subsidies.~~ (a) ~~The commission shall~~
21 ~~ensure that noncompetitive services shall not cross subsidize~~



1 ~~competitive services. Cross subsidization shall be deemed to~~
2 ~~have occurred.~~

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

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

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

18 SECTION 45. Section 269-40, Hawaii Revised Statutes, is
19 repealed.

20 [~~§269-40~~] ~~Access to advanced services.~~ The commission
21 shall ensure that all consumers are provided with
22 nondiscriminatory, reasonable, and equitable access to high



1 ~~quality telecommunications network facilities and capabilities~~
 2 ~~that provide subscribers with sufficient network capacity to~~
 3 ~~access information services that provide a combination of voice,~~
 4 ~~data, image, and video, and that are available at just,~~
 5 ~~reasonable, and nondiscriminatory rates that are based on~~
 6 ~~reasonably identifiable costs of providing the services."]~~

7 SECTION 46. Section 269-41, Hawaii Revised Statutes, is
 8 repealed.

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

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



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

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

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

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



1 SECTION 47. Section 269-42, Hawaii Revised Statutes, is
2 repealed.

3 [~~§269-42 Universal service program; contributions.~~ (a)
4 ~~There is established outside of the state treasury a special~~
5 ~~fund to be known as the universal service fund to be~~
6 ~~administered by the commission to implement the policies and~~
7 ~~goals of universal service. The fund shall consist of~~
8 ~~contributions from the sources identified in subsections (e) and~~
9 ~~(f). Interest earned from the balance of the fund shall become~~
10 ~~a part of the fund. The commission shall adopt rules regarding~~
11 ~~the distribution of moneys from the fund including~~
12 ~~reimbursements to carriers for providing reduced rates to low-~~
13 ~~income, elderly, residents of underserved or rural areas, or~~
14 ~~other subscribers, as authorized by the commission.~~

15 ~~(b) The commission may allow distribution of funds~~
16 ~~directly to customers based upon a need criteria established by~~
17 ~~the commission.~~

18 ~~(c) A telecommunications carrier or other person~~
19 ~~contributing to the universal service program may establish a~~
20 ~~surcharge which is clearly identified and explained on~~
21 ~~customers's bills to collect from customers contributions~~
22 ~~required under this section.~~



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

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

18 ~~(f) The commission shall designate the method by which the~~
19 ~~contributions under subsection (e) shall be calculated and~~
20 ~~collected. The commission shall consider basing contributions~~
21 ~~solely on the gross operating revenues from the retail provision~~



1 ~~of intrastate telecommunications services offered by the~~
2 ~~telecommunications carriers subject to the contribution."]~~

3 SECTION 48. Section 269-43, Hawaii Revised Statutes, is
4 repealed.

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

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



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

4 ~~(d) The commission shall adopt rules pursuant to chapter~~
5 ~~91 to carry out the provisions of this section."]~~

6 SECTION 49. Chapter 440G, Hawaii Revised Statutes, is
7 repealed.

8 SECTION 50. During fiscal year 2012-2013, an amount equal
9 to fifty per cent of the moneys collected by the public
10 utilities commission from telecommunications carriers and
11 deposited into the public utilities commission special fund
12 shall be transferred to and deposited into the communications
13 special fund.

14 SECTION 51. The unencumbered balance existing on June 30,
15 2012, in the cable television division subaccount in the
16 compliance resolution fund shall be deposited into the
17 communications special fund.

18 SECTION 52. There is appropriated out of the
19 communications special fund the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2012-2013 to
21 implement this Act.



1 The sum appropriated shall be expended by the public
2 utilities commission for the purposes of this Act.

3 SECTION 53. There is appropriated out of the
4 communications special fund the sum of \$ or so much thereof
5 as may be necessary for fiscal year 2012-2013 to fund transition
6 costs related to the retention of logistical and technical
7 assistance by the public utilities commission in transferring
8 electronic and physical data, as well as other related
9 transition costs.

10 The sum appropriated shall be expended by the public
11 utilities commission for the purposes of this Act.

12 SECTION 54. **Transfer of functions.** (a) All rules,
13 regulations, policies, procedures, decisions, orders,
14 exemptions, waivers, certificates of authority, certificates of
15 registration, certificates of public convenience and necessity,
16 charters, franchises, guidelines, tariffs, informational
17 filings, and other material adopted, issued, or developed by the
18 department of commerce and consumer affairs or public utilities
19 commission to implement certain applicable provisions of the
20 Hawaii Revised Statutes which are in effect on the effective
21 date of this Act, reenacted or made applicable to the
22 communications commissioner by this Act, shall remain in full



1 force and effect until amended or repealed, as applicable, by
2 the communications commissioner. In the interim, every
3 reference to the department of commerce and consumer affairs,
4 director of commerce and consumer affairs, public utilities
5 commission, or chairperson of the public utilities commission in
6 those rules, regulations, policies, procedures, decisions,
7 orders, exemptions, waivers, franchises, charters, guidelines,
8 tariffs, informational filings, and other material is amended to
9 refer to the communications division or the communications
10 commissioner, as appropriate. Notwithstanding the foregoing,
11 this Act should be read in context with any applicable federal
12 and state laws and regulations.

13 (b) All deeds, leases, contracts, loans, agreements,
14 permits, or other documents executed or entered into by or on
15 behalf of the department of commerce and consumer affairs and
16 public utilities commission pursuant to the provisions of the
17 Hawaii Revised Statutes, which are reenacted or made applicable
18 to the communications commissioner by this Act, shall remain in
19 full force and effect. Effective upon approval of this Act,
20 every reference to the department of commerce and consumer
21 affairs, director of commerce and consumer affairs, public
22 utilities commission, or chairperson of the public utilities



1 commission therein shall be construed as a reference to the
2 communications division or communications commissioner, as
3 appropriate.

4 (c) All functions of the cable television division of the
5 department of commerce and consumer affairs shall be transferred
6 to the communications division.

7 SECTION 55. **Transfer of records, equipment,**
8 **appropriations, authorizations, and other property.** All
9 appropriations, records, equipment, machines, files, supplies,
10 contracts, books, papers, documents, maps, and other personal
11 property heretofore made, used, acquired, or held by the
12 department of commerce and consumer affairs and the public
13 utilities commission relating to the functions transferred to
14 the communications division of the department of commerce and
15 consumer affairs shall be transferred with the functions to
16 which they relate.

17 SECTION 56. **Transfer of personnel.** (a) The department of
18 commerce and consumer affairs shall transfer seven positions
19 from the cable television division to the communications
20 division. The positions selected for transfer shall reasonably
21 relate to the functions of the communications division.



1 (b) All officers and employees who are transferred to the
2 communications division by this Act shall continue to perform
3 their regular duties upon their transfer, subject to the
4 personnel laws of the State and this Act. No officer or
5 employee of the State shall suffer any loss of salary,
6 seniority, prior service credit, vacation, sick leave, or other
7 employee benefit or privilege as a consequence of this Act.

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

16 SECTION 57. Beginning July 1, 2013, any telecommunications
17 carrier or telecommunications common carrier as defined in
18 section -1 and subject to the authority of the communications
19 commissioner pursuant to section -6 shall not be a public
20 utility for solely the purpose of chapter 269. Any reference to
21 a public utility, utility company, or public utility facility
22 that is referred to under any other chapter, charter, franchise,



1 statute, ordinance, rule, or regulation, shall continue to apply
2 to such telecommunications carrier or telecommunications common
3 carrier; provided that any reference in said chapter, charter,
4 franchise, statute, ordinance, rule, or regulation that states
5 or refers to the public utilities commission or chapter 269
6 shall instead mean and refer to the communications commissioner
7 and this chapter, respectively.

8 SECTION 58. **Conflict with provisions of this Act.** All
9 Acts passed by the legislature during this regular session of
10 2012, whether enacted before or after the effective date of this
11 Act, shall be amended to conform to this Act unless such Acts
12 specifically provide that this Act is being amended.

13 SECTION 59. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 60. This Act shall take effect on July 1, 2112;
16 provided that:

17 (1) The amendments made to section 26-9(o), Hawaii Revised
18 Statutes, in section 3 of this Act shall not be
19 repealed when that section is reenacted on September
20 30, 2014, pursuant to section 45 of Act 48, Session
21 Laws of Hawaii 2011;



- 1 (2) Sections 31 to 48 and 54 of this Act shall take effect
2 on July 1, 2112;
- 3 (3) Part I (relating to the communications division,
4 generally) of the new chapter created in section 2 of
5 this Act shall take effect on July 1, 2112; provided
6 that those provisions relating to the regulation of
7 telecommunications carriers shall take effect on July
8 1, 2112;
- 9 (4) Part III (relating to cable services) of the new
10 chapter created in section 2 of this Act shall take
11 effect on July 1, 2112; and
- 12 (5) Part II (relating to telecommunications) of the new
13 chapter created in section 2 of this Act shall take
14 effect on July 1, 2112.



Report Title:

Regulation of Telecommunications and Cable Television Services

Description:

Creates a communications division within the Department of Commerce and Consumer Affairs to regulate telecommunications and cable television services; to promote the development of broadband infrastructure; and to advance the provision of broadband, telecommunications, and video programming services. Effective July 1, 2112. (HB2524 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

