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# 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 PART I

2 SECTION 1. The legislature recognizes that advanced  
3 telecommunications and cable television services capability is  
4 essential infrastructure required to drive innovation, the  
5 economy, and job creation in the twenty-first century as the  
6 telephone, interstate highways, and air travel did in the  
7 twentieth century.

8 This Act establishes a telecommunications and cable  
9 television services commission within the department of  
10 business, economic development, and tourism and consolidates the  
11 regulation of telecommunications carriers and cable operators in  
12 the State under the commission. In doing so, this Act creates a  
13 "one stop shop" to assist businesses providing  
14 telecommunications and cable services, and expedites the process  
15 for these businesses to make their services available to the  
16 public. Consolidating and streamlining the State's regulatory  
17 processes for the telecommunications sector in the State will

1 help facilitate the development and growth of telecommunications  
2 and cable television infrastructure and services.

3 The public utilities commission currently regulates  
4 telecommunications carriers pursuant to chapter 269, Hawaii  
5 Revised Statutes, and the director of commerce and consumer  
6 affairs currently regulates cable operators pursuant to chapter  
7 440G, Hawaii Revised Statutes.

8 This Act combines the telecommunications provisions from  
9 chapter 269, Hawaii Revised Statutes, and the cable television  
10 systems from chapter 440G, Hawaii Revised Statutes, in its  
11 entirety, into a new chapter so that both telecommunications  
12 carriers and cable operators are subject to regulation by the  
13 telecommunications and cable television services commission.

14 This Act provides for transitional provisions to ensure  
15 that there is no gap in regulatory authority caused by the  
16 transition. This Act also makes conforming amendments to other  
17 chapters of the Hawaii Revised Statutes.

18 PART II

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

22 **"CHAPTER**

1                   **TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

2                               **PART I.   GENERAL PROVISIONS**

3           §   -1   **Definitions.**   As used in this chapter, unless the  
4 context otherwise requires:

5           "Access organization" means any nonprofit organization  
6 designated by the director to oversee the development,  
7 operation, supervision, management, production, or broadcasting  
8 of programs for any channels obtained under section       -56, and  
9 any officers, agents, and employees of such an organization with  
10 respect to matters within the course and scope of their  
11 employment by the access organization.

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

14           "Application" means an unsolicited filing.

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

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

22           "Cable operator" means any person or group of persons:

1 (1) Who provides cable service over a cable system and  
2 directly or through one or more affiliates owns a  
3 significant interest in the cable system; or

4 (2) Who otherwise controls or is responsible for, through  
5 any arrangement, the management and operation of a  
6 cable system.

7 "Cable service" means:

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

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

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

19 (1) A facility that serves only to retransmit the  
20 television signals of one or more television broadcast  
21 stations;

1           (2) A facility that serves only subscribers in one or more  
2           multiple unit dwellings under common ownership,  
3           control, or management, unless that facility or  
4           facilities uses any public right-of-way; or

5           (3) A facility of a public utility subject in whole or in  
6           part to the provisions of chapter 269, except to the  
7           extent that those facilities provide video programming  
8           directly to subscribers.

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

13          "Commission" means the telecommunications and cable  
14          television services commission.

15          "Designated local exchange service area" means an area as  
16          determined by the commission to be best served by designating a  
17          carrier of last resort pursuant to section        -51.

18          "Enforcement officer" means any person employed and  
19          authorized by the commission to investigate any matter on behalf  
20          of the commission.

21          "Facility" includes all real property, antenna, poles,  
22          supporting structures, wires, cables, conduits, amplifiers,

1 instruments, appliances, fixtures, and other personal property  
2 used by a cable operator in providing service to its  
3 subscribers.

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

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

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

11 "Proposal" means a filing solicited by the director.

12 "Public, educational, or governmental access facilities"  
13 means:

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

16 (2) Facilities and equipment for the use of that channel  
17 capacity.

18 "Public highways" has the meaning defined by section 264-1,  
19 including both state and county highways, but operation upon  
20 rails shall not be deemed transportation on public highways.

21 "Public place" includes any property, building, structure,  
22 or water to which the public has a right of access and use.

1 "Public utilities commission" means the public utilities  
2 commission of this State.

3 "School" means an academic and noncollege type regular or  
4 special education institution of learning established and  
5 maintained by the department of education or licensed and  
6 supervised by that department.

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

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

18 "Telecommunications service" or "telecommunications" means  
19 the offering of transmission between or among points specified  
20 by a user, of information of the user's choosing, including  
21 voice, data, image, graphics, and video without change in the  
22 form or content of the information, as sent and received, by

1 means of electromagnetic transmission, or other similarly  
2 capable means of transmission, with or without benefit of any  
3 closed transmission medium, and does not include cable service  
4 as defined in this section.

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

8 § -2 **Telecommunications and cable television services**

9 **commission; established.** (a) There shall be a  
10 telecommunications and cable television services commission  
11 consisting of three members, one of which shall be the  
12 chairperson. The speaker of the house of representatives and  
13 the president of the senate shall each submit a list of four  
14 nominees for each member of the commission to the governor. The  
15 governor shall select the commissioners and the chairperson from  
16 the respective lists, with the advice and consent of the senate.  
17 If the governor selects the chairperson from the list of  
18 nominees submitted by the speaker of the house of  
19 representatives, the governor shall appoint the other two  
20 commissioners from the lists submitted by the president of the  
21 senate. If the governor selects the chairperson from the list  
22 of nominees submitted by the president of the senate, the

1 governor shall appoint the other two commissioners from the  
2 lists submitted by the speaker of the house of representatives.  
3 All commissioners shall be appointed for terms of four years  
4 each, except that the terms of the commissioners first appointed  
5 shall be for two, three, and four years, respectively, as  
6 designated by the governor at the time of appointment.  
7 Thereafter, upon expiration of the terms of the commissioners  
8 first appointed, the speaker of the house of representatives and  
9 the president of the senate shall submit two names each to the  
10 governor, for each vacancy on the commission. Each commissioner  
11 shall hold office until the commissioner's successor is  
12 appointed and qualified. No commissioner shall serve more than  
13 twelve consecutive years.

14       The commissioners shall devote full time to their duties as  
15 members of the commission and no commissioner shall hold any  
16 other public office or other employment during the  
17 commissioner's term of office. No person owning any stock or  
18 bonds of any telecommunications carrier or cable operator, or  
19 having any interest in, or deriving any remuneration from, any  
20 telecommunications carrier or cable operator shall be appointed  
21 a commissioner.

1           (b) The chairperson of the commission shall be paid a  
2 salary set at                           per cent of the salary of the director  
3 of human resources development, and each of the other  
4 commissioners shall be paid a salary equal to ninety-five per  
5 cent of the chairperson's salary. The commissioners shall be  
6 exempt from chapters 76 and 89, but shall be members of the  
7 state employees' retirement system and shall be eligible to  
8 receive the benefits of any state or federal employee benefit  
9 program generally applicable to officers and employees of the  
10 State, including those under chapter 87A.

11           (c) The commission is placed within the department of  
12 business, economic development, and tourism for administrative  
13 purposes.

14           §     -3 **Employment of assistants.** (a) The chairperson of  
15 the commission may appoint and employ clerks, stenographers,  
16 agents, engineers, accountants, and other assistants for the  
17 commission as the chairperson finds necessary for the  
18 performance of the commission's functions and define their  
19 powers and duties. The chairperson may appoint and, at  
20 pleasure, dismiss a chief administrator and hearings officers as  
21 may be necessary. Notwithstanding section 103D-209, the  
22 chairperson shall appoint one or more attorneys independent of

1 the attorney general who shall act as attorneys for the  
2 commission and define their powers and duties and fix their  
3 compensation. The chief administrator and attorneys shall be  
4 exempt from chapter 76. Research assistants, economists, legal  
5 secretaries, legal assistants, and enforcement officers may be  
6 appointed with or without regard to chapter 76. Other employees  
7 shall be appointed as may be needed by the chairperson in  
8 accordance with chapter 76.

9 (b) Notwithstanding section 91-13, the commission may  
10 consult with its assistants appointed under authority of this  
11 section in any contested case or agency hearing concerning any  
12 issue of facts. Neither the commission nor any of its  
13 assistants shall in the proceeding consult with any other person  
14 or party except upon notice and an opportunity for all parties  
15 to participate, save to the extent required for the disposition  
16 of ex parte matters authorized by law.

17 § -4 **Annual report and register of orders.** The  
18 commission shall prepare and present to the governor, through  
19 the director of business, economic development, and tourism, in  
20 the month of January in each year a report respecting its  
21 actions during the preceding fiscal year. This report shall  
22 include summary information and analytical, comparative, and

1 trend data concerning major regulatory issues acted upon and  
2 pending before the commission; cases processed by the  
3 commission, including their dispositions; telecommunications  
4 carriers' and cable operators' operations, capital improvements,  
5 and rates; telecommunications carriers' and cable operators'  
6 performance in terms of efficiency and quality of services  
7 rendered; environmental matters having a significant impact upon  
8 public utilities; actions of the federal government affecting  
9 the regulation of telecommunications carriers and cable  
10 operators in Hawaii; long- and short-range plans and objectives  
11 of the commission; together with the commission's  
12 recommendations respecting legislation and other matters  
13 requiring executive and legislative consideration. Copies of  
14 the annual reports shall be furnished by the governor to the  
15 legislature. In addition, the commission shall establish and  
16 maintain a register of all of its orders and decisions, which  
17 shall be open and readily available for public inspection, and  
18 no order or decision of the commission shall take effect until  
19 it is filed and recorded in this register.

20       §     **-5 General powers and duties.** (a) The commission  
21 shall have the general supervision hereinafter set forth over  
22 all telecommunications carriers and cable operators, and shall

1 perform the duties and exercise the powers imposed or conferred  
2 upon it by this chapter. Included among the general powers of  
3 the commission is the authority to adopt rules pursuant to  
4 chapter 91 necessary for the purposes of this chapter.

5 (b) The chairperson of the commission may appoint a  
6 hearings officer, who shall not be subject to chapter 76, to  
7 hear and recommend decisions in any proceeding before it other  
8 than a proceeding involving the rates or any other matters  
9 covered in the tariffs filed by the telecommunications carriers.  
10 The hearings officer shall have the power to take testimony,  
11 make findings of fact and conclusions of law, and recommend a  
12 decision; provided that the findings of fact, the conclusions of  
13 law, and the recommended decision shall be reviewed and may be  
14 approved by the commission after notice to the parties and an  
15 opportunity to be heard. The hearings officer shall have all of  
16 the above powers conferred upon the commission under section  
17 -13.

18 § -6 **Electronic copies of documents.** (a) The  
19 commission shall accept from any person who submits a document  
20 to the commission the original and one electronic copy of each  
21 application, complaint, pleading, brief, or other document  
22 required to be filed with the commission pursuant to this

1 chapter and the consumer advocate shall accept service of one  
2 paper copy and one electronic copy of each application,  
3 complaint, pleading, brief, or other document filed with the  
4 commission.

5 (b) The commission shall adopt rules pursuant to chapter  
6 91 to effectuate the purposes of this section. Until the final  
7 adoption by the commission of rules governing the electronic  
8 filing of documents with the commission, the following  
9 requirements shall apply to all documents submitted to the  
10 commission pursuant to this section; provided that additional  
11 requirements with regard to document format may be established  
12 by the commission through written guidelines:

13 (1) Unless otherwise required by this chapter or the rules  
14 or guidelines of the commission, each person who  
15 submits or files an application, complaint, pleading,  
16 brief, or other document shall submit to or file with  
17 the commission an original and one electronic copy of  
18 each document and shall serve one paper copy and one  
19 electronic copy of each document on the consumer  
20 advocate;

- 1           (2) All paper documents submitted to or filed with the  
2           commission shall be printed on one side of the page  
3           only and, if practicable, in portrait orientation;
- 4           (3) Original paper documents submitted to or filed with  
5           the commission shall not be stapled but shall be  
6           clipped together or placed in a clearly marked three-  
7           ring binder, as appropriate;
- 8           (4) All paper documents filed or submitted to the  
9           commission shall include appropriately labeled  
10          separator pages in addition to tabbed dividers, as  
11          applicable;
- 12          (5) All confidential documents filed under confidential  
13          seal shall be clearly designated in accordance with  
14          the requirements of any applicable protective order,  
15          and the sealed envelope in which the confidential  
16          documents are enclosed shall clearly indicate the  
17          appropriate docket number and subject;
- 18          (6) Electronic documents shall be submitted on a clearly  
19          marked compact disk and shall be in portable document  
20          format saved in separate files corresponding to the  
21          original paper document submission; provided that  
22          electronic documents submitted under confidential seal

1 shall be submitted on a separate compact disk, clearly  
2 marked as confidential and indicating the appropriate  
3 docket number and subject; and

4 (7) Electronic documents shall be named using the filing  
5 party's name, docket number, date of filing, and name  
6 of document as part of the document title.

7 Upon final adoption of rules pursuant to chapter 91, the  
8 rules of the commission governing submission or filing of  
9 electronic documents shall supersede the provisions of this  
10 subsection.

11 (c) The commission shall accept any application,  
12 complaint, pleading, brief, or other document required to be  
13 filed with the commission pursuant to this chapter as either a  
14 paper document or an electronic document.

15 (d) If a signature is required on any document submitted  
16 electronically pursuant to this section, that requirement shall  
17 be satisfied by the inclusion of an electronic signature.

18 Chapter 489E shall apply to all electronic documents submitted  
19 pursuant to this section.

20 § -7 **Investigative powers.** (a) The commission and  
21 each commissioner shall have the power to examine the condition  
22 of each telecommunications carrier and cable operator, the

1 manner in which it is operated with reference to the safety or  
2 accommodation of the public, the safety, working hours, and  
3 wages of its employees, the fares and rates charged by it, the  
4 value of its physical property, the issuance by it of stocks and  
5 bonds, and the disposition of the proceeds thereof, the amount  
6 and disposition of its income, and all of its financial  
7 transactions, its business relations with other persons,  
8 companies, or corporations, its compliance with all applicable  
9 state and federal laws and with the provisions of its franchise,  
10 charter, and articles of association, if any, its  
11 classifications, rules, regulations, practices, and service, and  
12 all matters of every nature affecting the relations and  
13 transactions between it and the public or persons or  
14 corporations.

15 (b) The commission may investigate any person acting in  
16 the capacity of or engaging in the business of a  
17 telecommunications carrier or cable operator within the State,  
18 without having a certificate of public convenience and necessity  
19 or other authority previously obtained under and in compliance  
20 with this chapter or the rules adopted under this chapter.

21 (c) Any investigation may be made by the commission on its  
22 own motion, and shall be made when requested by the

1 telecommunications carrier or cable operator to be investigated,  
2 or by any person upon a sworn written complaint to the  
3 commission, setting forth any prima facie cause of complaint. A  
4 majority of the commission shall constitute a quorum.

5 **PART II. TELECOMMUNICATIONS SERVICES**

6 **§ -8 Certificates of public convenience and necessity.**

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

20 (b) If the applicant for a certificate of public  
21 convenience and necessity has any known consumers or patrons at  
22 the time of the filing of the application, the applicant shall

1 notify these consumers or patrons of the rates and charges  
2 proposed to be established by the application; provided that:

3 (1) The notice shall be mailed to the last known address  
4 of the consumer or patron on file with the applicant  
5 or the applicant's affiliates; and

6 (2) The manner and the fact of the notification shall be  
7 reported to the commission,

8 within seven days from the filing of the application.

9 (c) A certificate shall be issued to any qualified  
10 applicant, authorizing the whole or any part of the operations  
11 covered by the application, if it is found that the applicant is  
12 fit, willing, and able properly to perform the service proposed  
13 and to conform to the terms, conditions, and rules adopted by  
14 the commission, and that the proposed service is, or will be,  
15 required by the present or future public convenience and  
16 necessity; otherwise the application shall be denied. Any  
17 certificate issued shall specify the service to be rendered and  
18 there shall be attached to the exercise of the privileges  
19 granted by the certificate at the time of issuance and from time  
20 to time thereafter, such reasonable conditions and limitations  
21 as a public convenience and necessity may require. The  
22 reasonableness of the rates, charges, and tariff rules proposed

1 by the applicant shall be determined by the commission during  
2 the same proceeding examining the present and future  
3 conveniences and needs of the public and qualifications of the  
4 applicant, in accordance with the standards set forth in section  
5 -19.

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

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

21 § -9 **Telecommunications carriers to furnish**  
22 **information.** Every telecommunications carrier or other person

1 subject to investigation by the commission, shall at all times,  
2 upon request, furnish to the commission all information that it  
3 may require respecting any of the matters concerning which it is  
4 given power to investigate, and shall permit the examination of  
5 its books, records, contracts, maps, and other documents by the  
6 commission, or any of its members, or any person authorized by  
7 it in writing to make the examination, and shall furnish the  
8 commission with a complete inventory of its property in a form  
9 as the commission may direct.

10       §     -10   **Location of records.** A telecommunications  
11 carrier shall keep and maintain within the State such records,  
12 books, papers, accounts, and other documents as the commission  
13 may determine are necessary to its effective regulation.

14       §     -11   **Annual financial reports.** All annual financial  
15 reports required to be filed with the commission by  
16 telecommunications carriers shall include a certification that  
17 the report conforms with the applicable uniform system of  
18 accounts adopted by the commission.

19       §     -12   **Report accidents.** Every telecommunications  
20 carrier shall report to the commission all accidents caused by  
21 or occurring in connection with its operations and service, and  
22 the commission shall investigate the causes of any accident

1 which results in loss of life, and may investigate any other  
2 accidents which in its opinion require investigation.

3       §     -13   **Commission may compel attendance of witnesses,**  
4 **etc.** In all investigations made by the commission, and in all  
5 proceedings before it, the commission and each commissioner  
6 shall have the same powers respecting administering oaths,  
7 compelling the attendance of witnesses and the production of  
8 documentary evidence, examining witnesses, and punishing for  
9 contempt, as are possessed by circuit courts. In case of  
10 disobedience by any person to any order of the commission or of  
11 any commissioner, or any subpoena issued by it or the  
12 commissioner, or of the refusal of any witness to testify to any  
13 matter regarding which the witness may be questioned lawfully,  
14 any circuit court, on application by the commission or a  
15 commissioner, shall compel obedience as in case of disobedience  
16 of the requirements of a subpoena issued from a circuit court or  
17 a refusal to testify therein. No person shall be excused from  
18 testifying or from producing any book, waybill, document, paper,  
19 or account in any investigation or inquiry by a hearing before  
20 the commission or any commissioner, when ordered to do so, upon  
21 the ground that the testimony or evidence, book, waybill,  
22 document, paper, or account required of the person may tend to

1 incriminate the person or subject the person to penalty or  
2 forfeiture; but no person shall be prosecuted for any crime,  
3 punished for any crime, or subjected to any criminal penalty or  
4 criminal forfeiture for or on account of any act, transaction,  
5 matter, or thing concerning which the person shall under oath  
6 have testified or produced documentary evidence. Nothing herein  
7 shall be construed as in any manner giving to any  
8 telecommunications carrier or any person immunity of any kind.  
9 The fees and traveling expenses of witnesses shall be the same  
10 as allowed witnesses in the circuit courts and shall be paid by  
11 the State out of any appropriation available for the expenses of  
12 the commission. All meetings and hearings of the commission  
13 shall be public.

14       §     -14 **Notices.** (a) Whenever an investigation is  
15 undertaken by the commission, reasonable notice in writing of  
16 the fact and of the subject or subjects to be investigated shall  
17 be given to the telecommunications carrier or the person  
18 concerned, and when based upon complaints made to it as  
19 prescribed in section     -7, a copy of the complaint, and a  
20 notice in writing of the date and place fixed by the commission  
21 for beginning the investigation, shall be served upon the  
22 telecommunications carrier or the person concerned, or other

1 respondent and the complainant not less than two weeks before  
2 the date designated for the hearing.

3 (b) Any notice provided pursuant to section -19(b),  
4 shall plainly state the rate, fare, charge, classification,  
5 schedule, rule, or practice proposed to be established,  
6 abandoned, modified, or departed from and the proposed effective  
7 date thereof and shall be given by filing the notice with the  
8 commission and keeping it open for public inspection.

9 (c) Any public hearing held pursuant to section -19(b),  
10 shall be a noticed public hearing or hearings on the island or  
11 islands on which the telecommunications carrier provides  
12 services. Notice of the hearing, with the purpose thereof and  
13 the date, time, and place at which it will open, shall be given  
14 not less than once in each of three weeks in the county or  
15 counties in which the telecommunications carrier provides  
16 service, the first notice being not less than twenty-one days  
17 before the public hearing and the last notice being not more  
18 than two days before the scheduled hearing. The applicant or  
19 applicants shall notify their consumers or patrons of the  
20 proposed change in rates and of the time and place of the public  
21 hearing not less than one week before the date set, the manner

1 and the fact of notification to be reported to the commission  
2 before the date of hearing.

3       §     -15   **Right to be represented by counsel.** At any  
4 investigation by or proceeding before the commission, the  
5 telecommunications carrier or the person concerned, or other  
6 respondent or party and any complainant or permitted intervenor  
7 shall have the right to be present and represented by counsel,  
8 to present any evidence desired, and to cross-examine any  
9 witness who may be called.

10       §     -16   **Commission may institute proceedings to enforce**  
11 **chapter.** (a) If the commission is of the opinion that any  
12 telecommunications carrier or any person is violating or  
13 neglecting to comply with any provision of this chapter or of  
14 any rule, regulation, order, or other requirement of the  
15 commission, or of any provisions of its franchise, charter, or  
16 articles of association, if any, or that changes, additions,  
17 extensions, or repairs are desirable in its plant or service to  
18 meet the reasonable convenience or necessity of the public, or  
19 to ensure greater safety or security, or that any rates, fares,  
20 classifications, charges, or rules are unreasonable or  
21 unreasonably discriminatory, or that in any way it is doing what  
22 it ought not to do, or not doing what it ought to do, it shall

1 in writing inform the telecommunications carrier or the person  
2 and may institute proceedings before it as may be necessary to  
3 require the telecommunications carrier or the person to correct  
4 any such deficiency. In such event, the commission may by order  
5 direct the director of commerce and consumer affairs to appear  
6 in such proceeding, to carry out the purposes of this section.  
7 The commission may examine any of the matters referred to in  
8 section -7, notwithstanding that the same may be within the  
9 jurisdiction of any court or other body; provided that this  
10 section shall not be construed as in any manner limiting or  
11 otherwise affecting the jurisdiction of any such court or other  
12 body.

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

20 (1) The citation may contain an order of abatement and an  
21 assessment of civil penalties as provided in section  
22 -36(b). All penalties collected under this

1 subsection shall be deposited in the treasury of the  
2 State. Service of a citation issued under this  
3 subsection shall be made by personal service whenever  
4 possible, or by certified mail, restricted delivery,  
5 sent to the last known business or residence address  
6 of the person cited.

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

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

1 of the commission. The commission may apply to the  
2 appropriate court for a judgment to enforce the  
3 provisions of any final order, issued by the  
4 commission or designated hearings officer pursuant to  
5 this subsection, including the provisions for  
6 abatement and civil penalties imposed. In any  
7 proceeding to enforce the provisions of the final  
8 order of the commission or designated hearings  
9 officer, the commission need only show that the notice  
10 was given, a hearing was held or the time granted for  
11 requesting the hearing has run without such a request,  
12 and a certified copy of the final order of the  
13 commission or designated hearings officer.

- 14 (4) If any party is aggrieved by the decision of the  
15 commission or the designated hearings officer, the  
16 party may appeal to the intermediate appellate court,  
17 subject to chapter 602, in the manner provided for  
18 civil appeals from the circuit court; provided that  
19 the operation of an abatement order shall not be  
20 stayed on appeal unless specifically ordered by a  
21 court of competent jurisdiction after applying the  
22 stay criteria enumerated in section 91-14(c). The

1 sanctions and disposition authorized under this  
2 subsection shall be separate and in addition to all  
3 other remedies either civil or criminal provided in  
4 any other applicable statutory provision. The  
5 commission may adopt rules under chapter 91 as may be  
6 necessary to fully effectuate this subsection.

7 § -17 **Appeals.** (a) An appeal from an order of the  
8 commission under this chapter shall lie, subject to chapter 602,  
9 in the manner provided for civil appeals from the circuit  
10 courts. Only a person aggrieved in a contested case proceeding  
11 provided for in this chapter may appeal from the order, if the  
12 order is final, or if preliminary, is of the nature defined by  
13 section 91-14(a). The commission may elect to be a party to all  
14 matters from which an order of the commission is appealed, and  
15 the commission may file appropriate responsive briefs or  
16 pleadings in the appeal; provided that where there was no  
17 adverse party in the case below, or in cases where there is no  
18 adverse party to the appeal, the commission shall be a party to  
19 all matters in which an order of the commission is appealed and  
20 shall file the appropriate responsive briefs or pleadings in  
21 defending all such orders. The appearance of the commission as  
22 a party in appellate proceedings in no way limits the

1 participation of persons otherwise qualified to be parties on  
2 appeal.

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

12 § -18 **Alternative dispute resolution.** The commission  
13 may require the parties in any matter before the commission to  
14 participate in nonbinding arbitration, mediation, or other  
15 alternative dispute resolution process prior to the hearing.

16 § -19 **Regulation of rates; ratemaking procedures.** (a)  
17 All rates, fares, charges, classifications, schedules, rules,  
18 and practices made, charged, or observed by any  
19 telecommunications carrier or by two or more telecommunications  
20 carriers jointly shall be just and reasonable and shall be filed  
21 with the commission. The rates, fares, classifications,  
22 charges, and rules of every telecommunications carrier shall be

1 published by the telecommunications carrier in such manner as  
2 the commission may require, and copies shall be furnished to any  
3 person on request.

4 To the extent the contested case proceedings referred to in  
5 chapter 91 are required in any rate proceeding to ensure  
6 fairness and to provide due process to parties that may be  
7 affected by rates approved by the commission, the evidentiary  
8 hearings shall be conducted expeditiously and shall be conducted  
9 as a part of the ratemaking proceeding.

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

1 shall be preceded by a public hearing as prescribed in section  
2 -14(c), at which the consumers or patrons of the  
3 telecommunications carrier may present testimony to the  
4 commission concerning the increase. The commission, upon notice  
5 to the telecommunications carrier, may:

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

10 (2) After a hearing, by order:

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

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

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

- 1 (D) Prescribe its form and method of keeping  
2 accounts, books, and records, and its accounting  
3 system;
- 4 (E) Regulate the return upon its telecommunications  
5 carrier property;
- 6 (F) Regulate the incurring of indebtedness relating  
7 to its telecommunications carrier business; and
- 8 (G) Regulate its financial transactions; and
- 9 (3) Do all things that are necessary and in the exercise  
10 of the commission's power and jurisdiction, all of  
11 which as so ordered, regulated, fixed, and changed are  
12 just and reasonable, and provide a fair return on the  
13 property of the telecommunications carrier actually  
14 used or useful for telecommunications carrier  
15 purposes.
- 16 (c) The commission may in its discretion, after public  
17 hearing and upon showing by a telecommunications carrier of  
18 probable entitlement and financial need, authorize temporary  
19 increases in rates, fares, and charges; provided that the  
20 commission shall require by order the telecommunications carrier  
21 to return, in the form of an adjustment to rates, fares, or  
22 charges to be billed in the future, any amounts with interest,

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

9 (d) The commission shall make every effort to complete its  
10 deliberations and issue its decision as expeditiously as  
11 possible and before nine months from the date the  
12 telecommunications carrier filed its completed application;  
13 provided that in carrying out this mandate, the commission shall  
14 require all parties to a proceeding to comply strictly with  
15 procedural time schedules that it establishes. If a decision is  
16 rendered after the nine-month period, the commission shall  
17 report in writing the reasons therefor to the legislature within  
18 thirty days after rendering the decision.

19 Notwithstanding subsection (c), if the commission has not  
20 issued its final decision on a telecommunication carrier's rate  
21 application within the nine-month period stated in this section,  
22 the commission, within one month after the expiration of the

1 nine-month period, shall render an interim decision allowing the  
2 increase in rates, fares and charges, if any, to which the  
3 commission, based on the evidentiary record before it, believes  
4 the telecommunications carrier is probably entitled. The  
5 commission may postpone its interim rate decision for thirty  
6 days if the commission considers the evidentiary hearings  
7 incomplete. In the event interim rates are made effective, the  
8 commission shall require by order the telecommunications carrier  
9 to return, in the form of an adjustment to rates, fares, or  
10 charges to be billed in the future, any amounts with interest,  
11 at a rate equal to the rate of return on the telecommunications  
12 carrier's rate base found to be reasonable by the commission,  
13 received under the interim rates that are in excess of the  
14 rates, fares, or charges finally determined to be just and  
15 reasonable by the commission. Interest on any excess shall  
16 commence as of the date that any rate, fare, or charge goes into  
17 effect that results in the excess and shall continue to accrue  
18 on the balance of the excess until returned.

19 The nine-month period in this subsection shall begin only  
20 after a completed application has been filed with the commission  
21 and a copy served on the consumer advocate. The commission  
22 shall establish standards concerning the data required to be set

1 forth in the application in order for it to be deemed a  
2 completed application. The consumer advocate may, within  
3 twenty-one days after receipt, object to the sufficiency of any  
4 application, and the commission shall hear and determine any  
5 objection within twenty-one days after it is filed. If the  
6 commission finds that the objections are without merit, the  
7 application shall be deemed to have been completed upon original  
8 filing. If the commission finds the application to be  
9 incomplete, it shall require the applicant to submit an amended  
10 application consistent with its findings, and the nine-month  
11 period shall not commence until the amended application is  
12 filed.

13 (e) In any case of two or more organizations, trades, or  
14 businesses (whether or not incorporated, whether or not  
15 organized in the State, and whether or not affiliated) owned or  
16 controlled directly or indirectly by the same interests, the  
17 commission may distribute, apportion, or allocate gross income,  
18 deductions, credits, or allowances between or among the  
19 organizations, trades, or businesses, if it determines that the  
20 distribution, apportionment, or allocation is necessary to  
21 adequately reflect the income of any such organizations, trades,

1 or businesses to carry out the regulatory duties imposed by this  
2 section.

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

11 (1) Require the filing of a standard form application to  
12 be developed by the commission. The standard form  
13 application for general rate increases shall describe  
14 the specific facts that shall be submitted to support  
15 a determination of the reasonableness of the proposed  
16 rates, and require the submission of financial  
17 information in conformance with a standard chart of  
18 accounts to be approved by the commission, and other  
19 commission guidelines to allow expeditious review of a  
20 requested general rate increase application;

21 (2) Hold a public hearing as prescribed in section -  
22 14(c) at which the consumers or patrons of the

1 telecommunications carrier may present testimony to  
2 the commission concerning the increase. The public  
3 hearing shall be preceded by proper notice, as  
4 prescribed in section -14; and

- 5 (3) Make every effort to complete its deliberations and  
6 issue a proposed decision and order within six months  
7 from the date the telecommunications carrier files a  
8 completed application with the commission; provided  
9 that all parties to the proceeding strictly comply  
10 with the procedural schedule established by the  
11 commission and no person is permitted to intervene.  
12 If a proposed decision and order is rendered after the  
13 six-month period, the commission shall report in  
14 writing the reasons therefor to the legislature within  
15 thirty days after rendering the proposed decision and  
16 order. Prior to the issuance of the commission's  
17 proposed decision and order, the parties shall not be  
18 entitled to a contested case hearing.

19 If all parties to the proceeding accept the  
20 proposed decision and order, the parties shall not be  
21 entitled to a contested case hearing, and  
22 section -17 shall not apply. If the commission

1           permits a person to intervene, the six-month period  
2           shall not apply and the commission shall make every  
3           effort to complete its deliberations and issue its  
4           decision within the nine-month period from the date  
5           the telecommunications carrier's completed application  
6           was filed, pursuant to subsections (b), (c), and (d).

7           If a party does not accept the proposed decision  
8           and order, either in whole or in part, that party  
9           shall give notice of its objection or nonacceptance  
10          within the time frame prescribed by the commission in  
11          the proposed decision and order, setting forth the  
12          basis for its objection or nonacceptance; provided  
13          that the proposed decision and order shall have no  
14          force or effect pending the commission's final  
15          decision. If notice is filed, the above six-month  
16          period shall not apply and the commission shall make  
17          every effort to complete its deliberations and issue  
18          its decision within the nine-month period from the  
19          date the telecommunications carrier's completed  
20          application was filed as set forth in subsection (d).  
21          Any party that does not accept the proposed decision  
22          and order under this paragraph shall be entitled to a

1           contested case hearing; provided that the parties to  
2           the proceeding may waive the contested case hearing.

3           Telecommunications carriers subject to this subsection  
4 shall follow the standard chart of accounts to be approved by  
5 the commission for financial reporting purposes. The  
6 telecommunications carriers shall file a certified copy of the  
7 annual financial statements in addition to an updated chart of  
8 accounts used to maintain their financial records with the  
9 commission and consumer advocate within ninety days from the end  
10 of each calendar or fiscal year, as applicable, unless this time  
11 frame is extended by the commission. The owner, officer,  
12 general partner, or authorized agent of the telecommunications  
13 carrier shall certify that the reports were prepared in  
14 accordance with the standard chart of accounts.

15           (g) Any automatic fuel rate adjustment clause requested by  
16 a telecommunications carrier in an application filed with the  
17 commission shall be designed, as determined in the commission's  
18 discretion, to:

19           (1) Fairly share the risk of fuel cost changes between the  
20           telecommunications carrier and its customers;

1 (2) Provide the telecommunications carrier with sufficient  
2 incentive to reasonably manage or lower its fuel costs  
3 and encourage greater use of renewable energy;

4 (3) Allow the telecommunications carrier to mitigate the  
5 risk of sudden or frequent fuel cost changes that  
6 cannot otherwise reasonably be mitigated through other  
7 commercially available means, such as through fuel  
8 hedging contracts;

9 (4) Preserve, to the extent reasonably possible, the  
10 telecommunications carrier's financial integrity; and

11 (5) Minimize, to the extent reasonably possible, the  
12 telecommunications carrier's need to apply for  
13 frequent applications for general rate increases to  
14 account for the changes to its fuel costs.

15 § -20 **Statewide rate increase surcharge assessment on**  
16 **ratepayers in emergency situations.** (a) Any telecommunications  
17 carrier that sustains damage to its facilities as a result of a  
18 state-declared emergency (including but not limited to disaster  
19 relief and civil defense emergencies as defined in chapters 127  
20 and 128) and incurs costs related to the restoration and repair  
21 of its facilities which, if assessed only on the  
22 telecommunications carrier ratepayers of the affected

1 telecommunications carrier service territory, may result in a  
2 rate increase of more than fifteen per cent for the average  
3 ratepayer in that telecommunications carrier service territory,  
4 may apply to the commission in accordance with this section to  
5 recover the costs provided herein through a monthly surcharge  
6 which shall be assessed on a statewide basis and shall be based  
7 on the telecommunications carrier's net restoration and repair  
8 costs; provided that the surcharge shall not result in an  
9 assessment of more than fifteen per cent for the average  
10 ratepayer in each of the other telecommunications carrier  
11 territories and provided further that the commission shall  
12 exclude ratepayers in telecommunications carrier service  
13 territories with rates that may be substantially higher than  
14 other telecommunications carrier service territories in the  
15 State.

16       The commission shall have the authority to initially set,  
17 or subsequently revise, the surcharge to reflect the actual net  
18 restoration and repair costs incurred after deduction of amounts  
19 received from outside sources of recovery. Such outside sources  
20 of recovery shall include but not be limited to insurance  
21 proceeds, government grants, and shareholder contributions.

1           (b) Any telecommunications carrier meeting the criteria  
2 set forth in subsection (a) may file an application with the  
3 commission setting forth its estimated restoration and repair  
4 costs as well as the estimated amount or amounts that may be  
5 received from outside sources of recovery.

6           (c) Within ninety days after filing of the  
7 telecommunications carrier's application, the commission, upon  
8 notice, hearing, and a determination that the application is  
9 just, reasonable, and in the public interest, shall:

10           (1) Decide the extent to which it is just, reasonable, and  
11 in the public interest for the damaged  
12 telecommunications carrier's ratepayers or  
13 shareholders, or both, to bear part or all of the  
14 restoration and repair costs;

15           (2) Determine whether the estimated amount of any net  
16 restoration and repair costs to be borne by the  
17 ratepayers of the damaged telecommunications carrier  
18 would result in a rate increase of more than fifteen  
19 per cent for the average residential ratepayer in that  
20 telecommunications carrier's service territory;

21           (3) Issue an order allowing the affected  
22 telecommunications carrier or another

1 telecommunications carrier acting on behalf of the  
2 affected telecommunications carrier to implement a  
3 monthly surcharge on all ratepayers statewide for the  
4 type of service rendered by the affected  
5 telecommunications carrier if the commission  
6 determines pursuant to paragraph (2) that a rate  
7 increase of more than fifteen per cent would otherwise  
8 be assessed;

9 (4) Exclude from any such order ratepayers in  
10 telecommunications carrier service territories with  
11 rates that are substantially higher than other  
12 telecommunications carrier service territories in the  
13 State; and

14 (5) Periodically review the order to ensure that the  
15 amounts collected by, or on behalf of, the  
16 telecommunications carrier shall not exceed the amount  
17 determined by the commission to be the net restoration  
18 and repair costs actually incurred.

19 The surcharge shall be assessed over a period to be determined  
20 by the commission; provided, however, that the period shall not  
21 exceed ten years.

1 (d) Any outside sources of recovery, including but not  
2 limited to grants from federal or state sources, shall be used  
3 to offset any restoration and repair costs except where the use  
4 of the funds is otherwise limited by the grantor thereof.

5 (e) For the purposes of this section, the term  
6 "restoration and repair costs" means those costs necessary to  
7 restore facilities damaged by a state-declared emergency to a  
8 functional level substantially the same as that existing  
9 immediately before the emergency and does not include the costs  
10 of upgrades or enhancements.

11 (f) Any telecommunications carrier authorized by the  
12 commission to assess a surcharge pursuant to this section shall  
13 state separately the amount of the assessment on each affected  
14 ratepayer's monthly bill.

15 § -21 **Lifeline telephone rates.** (a) The commission  
16 shall implement a program to achieve lifeline telephone rates  
17 for residential telephone users.

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

1 (c) The commission shall require every telephone  
2 telecommunications carrier providing local telephone service to  
3 file a schedule of rates and charges providing a rate for  
4 lifeline telephone subscribers.

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

9 § -22 **Telecommunications relay services for the deaf,**  
10 **persons with hearing disabilities, and persons with speech**  
11 **disabilities.** (a) The commission shall implement intrastate  
12 telecommunications relay services for the deaf, persons with  
13 hearing disabilities, and persons with speech disabilities.

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

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

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

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

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

16 (f) The commission shall require every intrastate  
17 telecommunications carrier to file a schedule of rates and  
18 charges and every provider of telecommunications relay service  
19 to maintain a separate accounting for the costs of providing  
20 telecommunications relay services for the deaf, persons with  
21 hearing disabilities, and persons with speech disabilities.

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

5 (h) As used in this section:

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

13 "Telecommunications relay services" includes services that  
14 enable two-way communication using text telephones or other  
15 nonvoice terminal devices, speech-to-speech services, video  
16 relay services, and non-English relay services.

17 **§ -23 Aggregators of telephone service requirements.**

18 (a) For the purposes of this section:

19 "Aggregator" means every person or entity that is not a  
20 telecommunications carrier, who, in the ordinary course of its  
21 business, makes telephones available and aggregates the calls of  
22 the public or transient users of its business, including but not

1 limited to a hotel, motel, hospital, or university, that  
2 provides operator-assisted services through access to an  
3 operator service provider.

4 "Operator service" means a service provided by a  
5 telecommunications company to assist a customer to complete a  
6 telephone call.

7 (b) The commission, by rule or order, shall adopt and  
8 enforce operating requirements for the provision of operator-  
9 assisted services by an aggregator. These requirements shall  
10 include but not be limited to the following:

11 (1) Posting and display of information in a prominent and  
12 conspicuous fashion on or near the telephone equipment  
13 owned or controlled by the aggregator which states the  
14 identity of the operator service provider, the  
15 operator service provider's complaint handling  
16 procedures, and means by which the customer may access  
17 the various operator service providers;

18 (2) Identification by name of the operator service  
19 provider prior to the call connection and, if not  
20 posted pursuant to paragraph (1), a disclosure of  
21 pertinent rates, terms, conditions, and means of  
22 access to various operator service providers and the

1 local exchange carriers; provided that the operator  
2 service provider shall disclose this information at  
3 any time upon request by the customer;

4 (3) Allowing the customer access to any operator service  
5 provider operating in the relevant geographic area  
6 through the access method chosen by the provider or as  
7 deemed appropriate by the commission; and

8 (4) Other requirements as deemed reasonable by the  
9 commission in the areas of public safety, quality of  
10 service, unjust or discriminatory pricing, or other  
11 matters in the public interest.

12 § -24 **Retail intrastate services; fully competitive.**

13 (a) Notwithstanding section -25 or any other law to the  
14 contrary, the commission shall treat retail intrastate  
15 telecommunications services, under the commission's  
16 classification of services relating to costs, rates, and  
17 pricing, as fully competitive and apply all commission rules in  
18 accordance with that designation. In addition, a  
19 telecommunications carrier shall not be required to obtain  
20 approval or provide any cost support or other information to  
21 establish or otherwise modify in any manner its rates, fares,  
22 and charges, or to bundle any service offerings into a single or

1 combined price package; provided that a telecommunications  
2 carrier, except upon receiving the approval of the commission,  
3 shall not charge a higher rate for any retail telecommunications  
4 service than the rate for the same service included in the  
5 telecommunications carrier's filed tariff. All rates, fares,  
6 charges, and bundled service offerings shall be filed with the  
7 commission for information purposes only.

8 (b) This section shall apply to retail rates charged for  
9 service to end-user consumers only and shall not apply to  
10 wholesale rates charged for services provided by a  
11 telecommunications carrier to another telecommunications  
12 provider, a wireless communications provider, a voice over  
13 internet protocol communications provider, or other similar  
14 communications provider.

15 (c) Nothing herein shall modify any requirements of a  
16 telecommunications carrier to provide lifeline telephone  
17 service, comply with carrier of last resort obligations, or  
18 comply with applicable service quality standards.

19 § -25 **Telecommunications providers and services.** (a)  
20 Notwithstanding any provision of this chapter to the contrary,  
21 the commission, upon its own motion or upon the application of  
22 any person, and upon notice and hearing, may exempt a

1 telecommunications provider or a telecommunications service from  
2 any or all of the provisions of this chapter, except the  
3 provisions of section -42, upon a determination that the  
4 exemption is in the public interest. In determining whether an  
5 exemption is in the public interest, the commission shall  
6 consider whether the exemption promotes state policies in  
7 telecommunications, the development, maintenance, and operation  
8 of effective and economically efficient telecommunications  
9 services, and the furnishing of telecommunications services at  
10 just and reasonable rates and in a fair manner in view of the  
11 needs of the various customer segments of the telecommunications  
12 industry. Among the specific factors the commission may  
13 consider are:

- 14 (1) The responsiveness of the exemption to changes in the  
15 structure and technology of the State's  
16 telecommunications industry;
- 17 (2) The benefits accruing to the customers and users of  
18 the exempt telecommunications provider or service;
- 19 (3) The impact of the exemption on the quality,  
20 efficiency, and availability of telecommunications  
21 services;

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

1 (11) The opportunity provided by the exemption for  
2 telecommunications providers to respond to  
3 competition; and

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

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

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

16 (d) The commission may require a telecommunications  
17 provider to apply for a certificate of public convenience and  
18 necessity pursuant to section -8; provided that the  
19 commission may waive any application requirement whenever it  
20 deems the waiver to be in furtherance of the purposes of this  
21 section. The exemptions under this section may be granted in a  
22 proceeding for certification or in a separate proceeding.

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

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

21 (g) Upon the petition of any person or upon its own  
22 motion, the commission may rescind any exemption or waiver

1 granted under this section if, after notice and hearing, it  
2 finds that the conditions prompting the granting of the  
3 exemption or waiver no longer apply, or that the exemption or  
4 waiver is no longer in the public interest, or that the  
5 telecommunications provider has failed to comply with one or  
6 more of the conditions of the exemption or applicable statutory  
7 or regulatory requirements.

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

15 § -26 **Universal service subsidies.** (a) For any  
16 alternative telecommunications provider authorized to provide  
17 basic local exchange service to any area of the State pursuant  
18 to section -25(h), the commission may consider the  
19 following:

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

1           (2) Transferring from the local exchange carrier to the  
2           alternative provider the amounts, if any, generated by  
3           the local exchange provider's services other than  
4           basic residential telephone service and which are used  
5           to subsidize basic residential service in the area.

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

11          §     -27   **Changes in subscriber carrier selections; prior**  
12          **authorization required; penalties for unauthorized changes.**   (a)

13          No telecommunications carrier shall initiate a change in a  
14          subscriber's selection or designation of a long-distance carrier  
15          without first receiving:

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

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

7 (b) Upon a determination that any telecommunications  
8 carrier has engaged in conduct that is prohibited in subsection  
9 (a), the commission shall order the carrier to take corrective  
10 action as deemed necessary by the commission and may subject the  
11 telecommunications carrier to administrative penalties pursuant  
12 to section -36. Any proceeds from administrative penalties  
13 collected under this section shall be deposited into the  
14 telecommunications and cable television services commission  
15 special fund.

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

1 (c) The commission shall adopt rules, pursuant to chapter  
2 91, necessary for the purposes of this section. The commission  
3 may notify customers of their rights under these rules.

4 § -28 **Emergency telephone service; capital costs;**

5 **ratemaking.** (a) A telecommunications carrier providing local  
6 exchange telecommunications services may recover the capital  
7 cost and associated operating expenses of providing a statewide  
8 enhanced 911 emergency telephone service in the public switched  
9 telephone network, through:

10 (1) A telephone line surcharge; or

11 (2) Its rate case.

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

18 (c) The commission shall require every telecommunications  
19 carrier providing statewide enhanced 911 emergency telephone  
20 service to maintain a separate accounting of the costs of  
21 providing an enhanced 911 emergency service and the revenues  
22 received from related surcharges until the next general rate

1 case. The commission shall further require that every  
2 telecommunications carrier imposing a surcharge shall identify  
3 such as a separate line item on all customer billing statements.

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

8 § -29 Issuance of securities. (a) A

9 telecommunications carrier corporation may, on securing the  
10 prior approval of the commission, and not otherwise, issue  
11 stocks and stock certificates, bonds, notes, and other evidences  
12 of indebtedness, payable at periods of more than twelve months  
13 after the date thereof, for the following purposes and no other,  
14 namely: for the acquisition of property or for the  
15 construction, completion, extension, or improvement of or  
16 addition to its facilities or service, or for the discharge or  
17 lawful refunding of its obligations or for the reimbursement of  
18 moneys actually expended from income or from any other moneys in  
19 its treasury not secured by or obtained from the issue of its  
20 stocks or stock certificates, or bonds, notes, or other  
21 evidences of indebtedness, for any of the aforesaid purposes  
22 except maintenance of service, replacements, and substitutions

1 not constituting capital expenditure in cases where the  
2 corporation has kept its accounts for such expenditures in such  
3 manner as to enable the commission to ascertain the amount of  
4 moneys so expended and the purposes for which the expenditures  
5 were made, and the sources of the funds in its treasury applied  
6 to the expenditures. As used herein, "property" and  
7 "facilities" mean property and facilities used in all operations  
8 of a telecommunications carrier corporation whether or not  
9 included in its telecommunications carrier operations or rate  
10 base. A telecommunications carrier corporation may not issue  
11 securities to acquire property or to construct, complete, extend  
12 or improve or add to its facilities or service if the commission  
13 determines that the proposed purpose will have a material  
14 adverse effect on its telecommunications carrier operations.

15 (b) All stock and every stock certificate, and every bond,  
16 note, or other evidence of indebtedness of a telecommunications  
17 carrier corporation not payable within twelve months, issued  
18 without an order of the commission authorizing the same, then in  
19 effect, shall be void.

20 § -30 **Issuance of voting stock; restrictions.** (a) For  
21 purposes of this section, "foreign corporation" means a foreign  
22 corporation as defined in section 235-1 or a corporation in

1 which a majority of the voting stock is held by a single foreign  
2 corporation as defined in section 235-1.

3 (b) "Nonresident alien" means a person not a citizen of  
4 the United States who is not defined as a resident alien by the  
5 United States Citizenship and Immigration Services.

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

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

20 Every assignment, transfer, contract, or agreement for  
21 assignment or transfer of any shares in violation of this  
22 section shall be void and of no effect; and no such transfer

1 shall be made on the books of the corporation. Nothing herein  
2 shall be construed to make illegal the holding of stock lawfully  
3 held, directly or indirectly, prior to June 4, 1977.

4       §     -31   **Acquirement of stock of another**

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

18       §     -32   **Merger and consolidation of telecommunications**

19 **carriers.** (a) Except as provided in subsection (b), no  
20 telecommunications carrier shall sell, lease, assign, mortgage,  
21 or otherwise dispose of or encumber the whole or any part of its  
22 road, line, plant, system, or other property necessary or useful

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

9 (b) A telecommunications carrier, under circumstances that  
10 it deems exigent and in its judgment require a response that  
11 rapidly restores one of its customers to normal, or near normal,  
12 operating status in order to prevent serious disruption of  
13 essential public services, or avoid serious risk to public  
14 safety, or to mitigate severe economic losses to that customer,  
15 may transfer, assign, or otherwise dispose of its property  
16 without prior approval from the commission as required in  
17 subsection (a); provided that in so doing:

18 (1) The telecommunications carrier does not unduly hinder  
19 or degrade the telecommunication carrier's operation  
20 with respect to its services or other customers;

21 (2) The telecommunications carrier is duly compensated for  
22 its property; and

1           (3) The telecommunications carrier reports in detail to  
2           the commission within thirty days of any such action  
3           unless otherwise approved by the commission for good  
4           cause shown.

5           For purposes of this subsection, "property" does not  
6           include real property.

7           §     -33   **Relations with an affiliated interest;**  
8           **definition; contracts with affiliates filed and subject to**  
9           **commission action.** (a) For purposes of this section,  
10          "affiliated interests" with a telecommunications carrier  
11          includes the following:

12          (1) Every person owning or holding, directly or  
13          indirectly, ten per cent or more of the voting  
14          securities of a telecommunications carrier, and every  
15          person having ownership of ten per cent or more of  
16          voting securities of a person owning ten per cent or  
17          more of the voting securities of a telecommunications  
18          carrier;

19          (2) Every corporation ten per cent or more of whose voting  
20          securities is owned by any person owning ten per cent  
21          or more of the voting securities of a  
22          telecommunications carrier;

1           (3) Every person who is an officer or director of a  
2           telecommunications carrier;

3           (4) Every corporation operating a telecommunications  
4           carrier, or providing engineering, accounting, legal,  
5           or similar service to telecommunications carriers or  
6           common carriers by water, which has three or more  
7           officers or three or more directors in common with a  
8           telecommunications carrier, and every other  
9           corporation which has directors in common with a  
10          telecommunications carrier where the number of common  
11          directors is more than one-third of the total number  
12          of the telecommunications carrier's directors.

13          (b) The purpose of this section is to encourage companies  
14          providing essential utility and regulated transport service to  
15          Hawaii consumers to obtain their services, supplies, and  
16          equipment by relying, to the extent practicable, on competitive  
17          procurement practices; provided that when companies obtain their  
18          services, supplies, and equipment from affiliated interests, the  
19          contracts and agreements between the regulated entity and its  
20          affiliates must be shown by clear and convincing evidence to be  
21          in furtherance of the interests of the public.

1 (c) No contract or agreement providing for the furnishing  
2 of management, supervisory, construction, engineering,  
3 accounting, legal, financial, or similar services, and no  
4 contract or agreement for the purchase, sale, lease, furnishing  
5 or exchange of any real or personal property rights, including  
6 but not limited to real estate, improvements on land, equipment,  
7 leasehold interests, easements, rights-of-way, franchises,  
8 licenses, permits, trademarks, and copyrights, made or entered  
9 into after July 1, 1988, between a telecommunications carrier  
10 and any affiliated interest shall be valid or effective unless  
11 and until the contract or agreement has been received by the  
12 commission. It shall be the duty of every telecommunications  
13 carrier to file with the commission a verified copy of any  
14 contract or agreement with an affiliate having a face value of  
15 at least \$300,000, or a verified summary of any unwritten  
16 contract or agreement having a face value of at least \$300,000  
17 within forty-five days of the effective date of the contract or  
18 agreement. Each and every contract or agreement between a  
19 telecommunications carrier and an affiliate for capital  
20 expenditures other than for real property or an interest  
21 therein, shall be accompanied with price quotations provided by  
22 at least two nonaffiliated suppliers, providers, or purveyors,

1 or if such price quotations cannot be obtained without  
2 substantial expense to the telecommunications carrier, that the  
3 telecommunications carrier verify that fact by affidavit;  
4 provided that all contracts or agreements effective at the time  
5 of a general rate proceeding which were discoverable and subject  
6 to review by the commission, shall be valid and not subject to  
7 subsequent regulatory review and action by the commission;  
8 provided further, however, that notwithstanding any other  
9 provision to the contrary, there shall be no transfer of real  
10 property, or interest in real property between a  
11 telecommunications carrier and an affiliate, without prior  
12 approval of the commission, after hearing, wherein the  
13 telecommunications carrier must show that the transfer is in the  
14 best interest of the telecommunications carrier and all of its  
15 customers.

16 No affirmative action is required by the commission in  
17 regards to the filing of the contract or agreement; provided  
18 however, that if the commission, in its discretion, determines  
19 that the terms and conditions of the contract or agreement to be  
20 unreasonable or otherwise contrary to the public interest, the  
21 commission shall notify the telecommunications carrier of its  
22 determination, whereupon the telecommunications carrier shall

1 have the option to alter, revise, amend, or terminate the  
2 contract or agreement, or assume the risk that future payments  
3 for performance of the contract or agreement will be deemed  
4 unreasonable and excluded by the commission for ratemaking  
5 purposes.

6 (d) In any proceeding, whether upon the commission's own  
7 motion or upon application or complaint, involving the rates or  
8 practices of any telecommunications carrier, the commission may  
9 exclude from the accounts of the telecommunications carrier any  
10 payment or compensation to an affiliated interest for any  
11 services rendered or property or service furnished, as above  
12 described, under existing contracts or agreements with the  
13 affiliated interest unless the telecommunications carrier shall  
14 establish by clear and convincing evidence the reasonableness of  
15 the payment or compensation.

16 (e) The commission shall have continuing supervisory  
17 control over the terms and conditions of the contracts and  
18 agreements above described so far as necessary to protect and  
19 promote the public interest. The commission shall have the same  
20 jurisdiction over modifications of or amendments to contracts or  
21 agreements as it has over original contracts or agreements. The  
22 fact that the telecommunications carrier may have entered into

1 contracts or agreements without submittal of documents to the  
2 commission shall not preclude disallowance or disapproval of  
3 payments made pursuant thereto, for ratemaking purposes, if upon  
4 actual experience under the contracts or agreements it appears  
5 that the payments provided for or made are or were unreasonable.  
6 Every contract or agreement shall be expressly conditioned upon  
7 the reserved power of the commission to take appropriate  
8 ratemaking actions if, and as necessary, subsequent to submittal  
9 of the contract or agreement in order to protect and promote the  
10 public interest.

11 (f) Whenever the commission shall discover that any  
12 telecommunications carrier is giving effect to any contract or  
13 agreement without the contract or agreement having been received  
14 by the commission for review, as required by this section, the  
15 commission has authority to issue an order to the  
16 telecommunications carrier to show cause why the  
17 telecommunications carrier should not cease and desist from  
18 making any payments or otherwise giving any effect to the terms  
19 of the contract or agreement, and the telecommunications carrier  
20 shall have the opportunity to show with clear and convincing  
21 evidence that the contract or agreement is in the best interest  
22 of the telecommunications carrier and all of its customers.

1 (g) None of the provisions of this section shall apply to  
2 transactions with affiliated interests where the total  
3 consideration involved in a transaction is less than \$300,000  
4 for any calendar year; provided that multiple payments under any  
5 contract or agreement shall be added together for purposes of  
6 construing this provision; and provided, further, that the  
7 provisions of this section shall apply to any contract or  
8 agreement structured specifically to avoid regulation hereunder.

9 (h) Transactions between affiliated Hawaii based  
10 telecommunications carriers shall be exempt from the provisions  
11 of this section.

12 § -34 **Valuations.** The commission may either upon its  
13 own motion or upon application by any telecommunications carrier  
14 for any order where the commission deems it advisable and to the  
15 best interest of the public and the telecommunications carrier  
16 cause a valuation to be made to ascertain for any purpose  
17 specified in this chapter the value of the property of any  
18 telecommunications carrier and every fact and element of value  
19 which in its judgment may or does have any bearing on such  
20 value. The commission may make revaluations and ascertain the  
21 value of all additions, betterments, extensions, and  
22 acquisitions of property of any telecommunications carrier.

1           **§ -35 Establishment of geothermal energy rates.** The  
2 rate payable by a telecommunications carrier to the producer of  
3 geothermal steam or electricity generated from geothermal steam  
4 shall be established by agreement between the telecommunications  
5 carrier and the supplier, subject to approval by the commission;  
6 provided that if the telecommunications carrier and the supplier  
7 fail to reach an agreement for the rate, or if the agreed upon  
8 rate is disapproved by the commission, the commission shall  
9 establish a just and reasonable rate for the geothermal steam or  
10 electricity generated from geothermal steam supplied to the  
11 telecommunications carrier by the producer.

12           **§ -36 Penalty.** (a) Any telecommunications carrier  
13 violating or neglecting or failing in any particular to conform  
14 to or comply with this chapter or any lawful order of the  
15 commission shall be subject to a civil penalty not to exceed  
16 \$25,000 for each day a violation, neglect, or failure continues,  
17 to be assessed by the commission after a hearing in accordance  
18 with chapter 91. The commission may order the  
19 telecommunications carrier to cease carrying on its business  
20 while the violation, neglect, or failure continues.

21           (b) Notwithstanding the provisions of subsection (a), any  
22 person acting in the capacity of or engaging in the business of

1 a telecommunications carrier in the State without having a  
2 certificate of public convenience and necessity or other  
3 authority previously obtained under and in compliance with this  
4 chapter and the rules adopted thereunder may be subject to a  
5 civil penalty not to exceed \$5,000 for each such offense, and,  
6 in the case of a continuing violation, \$5,000 for each day that  
7 uncertified activity continues.

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

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

16 § -37 **Perjury.** Any person who wilfully and knowingly  
17 makes under oath any false statement in connection with any  
18 investigation by or proceeding before the commission shall be  
19 guilty of perjury and, upon conviction, shall be subject to the  
20 penalty prescribed by law for the offense.

21 § -38 **Finances; regulatory fee.** (a) Sections 607-5 to  
22 607-9 shall apply to the commission and each commissioner, as

1 well as to the supreme and circuit courts, and all costs and  
2 fees paid or collected pursuant to this section shall be  
3 deposited with the director of finance to the credit of the  
4 telecommunications and cable television services commission  
5 special fund established under section -41.

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

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

1 telecommunications carrier's next rate case; provided that the  
2 surcharge shall be subject to refund with interest at the  
3 telecommunications carrier's authorized rate of return on rate  
4 base if the telecommunications carrier collects more money from  
5 the surcharge than actually paid due to the increase in the fee  
6 to one-fourth of one per cent.

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

13 § -39 **Application of this chapter.** This chapter shall  
14 not apply to commerce with foreign nations, or commerce with the  
15 several states of the United States, except insofar as the same  
16 may be permitted under the Constitution and laws of the United  
17 States; nor shall it apply to telecommunications carriers or  
18 public utilities owned and operated by the State, or any county,  
19 or other political subdivision.

20 § -40 **Injury to telecommunications carrier property.**  
21 Any person who injures or destroys, through want of proper care,  
22 any necessary or useful facility, equipment, or property of any

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

12       §     -41   **Telecommunications and cable television services**  
13 **commission special fund.** (a) There is established in the state  
14 treasury a telecommunications and cable television services  
15 commission special fund to be administered by the commission.  
16 The proceeds of the fund shall be used by the commission and the  
17 division of consumer advocacy of the department of commerce and  
18 consumer affairs for all expenses incurred in the administration  
19 of this chapter; provided that the expenditures of the  
20 commission shall be in accordance with legislative  
21 appropriations. On a quarterly basis, an amount not exceeding  
22 thirty per cent of the proceeds remaining in the fund after the

1 deduction for central service expenses, pursuant to section 36-  
2 27, shall be allocated by the commission to the division of  
3 consumer advocacy and deposited in the compliance resolution  
4 fund established pursuant to section 26-9(o); provided that all  
5 moneys allocated by the commission from the fund to the division  
6 of consumer advocacy shall be in accordance with legislative  
7 appropriations.

8 (b) All moneys appropriated to, received, and collected by  
9 the commission that are not otherwise pledged, obligated, or  
10 required by law to be placed in any other special fund or  
11 expended for any other purpose shall be deposited into the  
12 telecommunications and cable television services commission  
13 special fund including but not limited to all moneys received  
14 and collected by the commission pursuant to sections 92-21,  
15 -36, -38, and 607-5.

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

20 (d) All moneys in excess of \$1,000,000 remaining on  
21 balance in the commission special fund on June 30 of each year  
22 shall lapse to the credit of the state general fund.

1           **§     -42   Obligations of telecommunications carriers.**   (a)

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

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

14           (2)   The current interstate tariff used as the access rate  
15           until the commission can adopt a new intrastate local  
16           service interconnection tariff pursuant to  
17           section       -45;

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 commission shall authorize access to electric  
10 utilities' poles as provided by the joint pole  
11 agreement, commission tariffs, rules, orders, or  
12 Federal Communications Commission rules and  
13 regulations;

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

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

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

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

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

13          §     **-43 Universal service.** The commission shall preserve  
14          and advance universal service by:

- 15          (1) Maintaining affordable, just, and reasonable rates for  
16          basic residential service;
- 17          (2) Assisting individuals or entities who cannot afford  
18          the cost of or otherwise require assistance in  
19          obtaining or maintaining their basic service or  
20          equipment as determined by the commission; and

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

4           §    **-44 Telecommunications number portability.** The  
5           commission shall ensure that telecommunications number  
6           portability within an exchange is available, upon request, as  
7           soon as technically feasible and economically reasonable. An  
8           impartial entity shall administer telecommunications numbering  
9           and make the numbers available on an equitable basis.

10          §    **-45 Compensation agreements.** The commission shall  
11          ensure that telecommunications carriers are compensated on a  
12          fair basis for termination of telecommunications services on  
13          each other's networks, taking into account, among other things,  
14          reasonable and necessary costs to each telecommunications  
15          carrier of providing the services in question.  
16          Telecommunications carriers may negotiate compensation  
17          arrangements, that may include "bill and keep", mutual and equal  
18          compensation, or any other reasonable division of revenues  
19          pending tariff access rates to be set by the commission. Upon  
20          failure of the negotiations, the commission shall determine the  
21          proper methodology and amount of compensation.

1           §     **-46 Regulatory flexibility for effectively**  
2 **competitive services.** The commission may allow  
3 telecommunications carriers to have pricing flexibility for  
4 services that the commission finds are effectively competitive;  
5 provided that the rates for:

- 6           (1) Basic telephone service and for services that are not  
7               effectively competitive are cost-based and remain  
8               just, reasonable, and nondiscriminatory; and  
9           (2) Universal service is preserved and advanced.

10          §     **-47 Cross-subsidies.** (a) The commission shall  
11 ensure that noncompetitive services shall not cross-subsidize  
12 competitive services. Cross-subsidization shall be deemed to  
13 have occurred:

- 14           (1) If any competitive service is priced below the total  
15               service long-run incremental cost of providing the  
16               service as determined by the commission in subsection  
17               (b); or  
18           (2) If competitive services, taken as a whole, fail to  
19               cover their direct and allocated joint and common  
20               costs as determined by the commission.

21           (b) The commission shall determine the methodology and  
22 frequency with which providers calculate total service long-run

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

7       §     **-48 Access to advanced services.** The commission  
8 shall ensure that all consumers are provided with  
9 nondiscriminatory, reasonable, and equitable access to high  
10 quality telecommunications network facilities and capabilities  
11 that provide subscribers with sufficient network capacity to  
12 access information services that provide a combination of voice,  
13 data, image, and video, and that are available at just,  
14 reasonable, and nondiscriminatory rates that are based on  
15 reasonably identifiable costs of providing the services.

16       §     **-49 Universal service program; establishment;**  
17 **purpose; principles.** There is established the universal service  
18 program. The purpose of this program is to:

19       (1) Maintain affordable, just, and reasonable rates for  
20           basic residential telecommunications service, as  
21           defined by the commission;

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

1           alternative telecommunications carriers and services;  
2           and

3           (5) Promote affordable access throughout the State to  
4           enhanced government information and services,  
5           including education, health care, public safety, and  
6           other government services.

7           The commission shall administer the universal service  
8 program, including the establishment of criteria by which the  
9 purposes of the program are met.

10           §     -50   **Universal service program; fund; contributions.**

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

1           (b) The commission may allow distribution of funds  
2 directly to customers based upon a need criteria established by  
3 the commission.

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

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

16           (e) The commission shall require all telecommunications  
17 carriers to contribute to the universal service program. The  
18 commission may require a person other than a telecommunications  
19 carrier to contribute to the universal service program if, after  
20 notice and opportunity for hearing, the commission determines  
21 that the person is offering a commercial service in the State  
22 that directly benefits from the telecommunications

1 infrastructure, and that directly competes with a  
2 telecommunications service provided in the State for which a  
3 contribution is required under this subsection.

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

10 § -51 **Carriers of last resort.** (a) The commission may  
11 define and designate local exchange service areas where the  
12 commission has determined that providing universal service funds  
13 to a single provider will be the most appropriate way to ensure  
14 service for these areas.

15 (b) The commission shall determine the level of service  
16 that is appropriate for each designated local exchange service  
17 area and shall invite telecommunications providers to bid for a  
18 level of service that is appropriate. The successful bidder  
19 shall be designated the carrier of last resort for the  
20 designated local exchange service area for a period of time and  
21 upon conditions set by the commission. In determining the  
22 successful bidder, the commission shall take into consideration

1 the level of service to be provided, the investment commitment,  
2 and the length of the agreement, in addition to the other  
3 qualifications of the bidder.

4 (c) The universal service fund shall also provide service  
5 drops and basic service at discounted rates to public  
6 institutions, as stated in section -49.

7 (d) The commission shall adopt rules pursuant to chapter  
8 91 to carry out the provisions of this section.

9 **PART III. CABLE SERVICES**

10 § -52 **Issuance of cable franchises and regulation of**  
11 **cable operators by commission.** The commission shall be  
12 empowered to issue cable franchises and otherwise administer and  
13 enforce this part.

14 § -53 **Cable franchise required.** No person shall  
15 construct, operate, or acquire a cable system, or extend an  
16 existing cable system outside its designated service area,  
17 without first obtaining a cable franchise as provided in this  
18 part.

19 § -54 **Application or proposal for cable franchise; fee;**  
20 **certain requirements.** (a) No cable franchise shall be issued  
21 except upon written application or proposal therefor to the  
22 commission, accompanied by a fee of \$1,000.

1 (b) An application for issuance of a cable franchise shall  
2 be made in a form prescribed by the commission. The application  
3 shall set forth the facts as required by the commission to  
4 determine in accordance with section -56(b) whether a cable  
5 franchise should be issued, including facts as to:

- 6 (1) The citizenship and character of the applicant;
- 7 (2) The financial, technical, and other qualifications of  
8 the applicant;
- 9 (3) The principals and ultimate beneficial owners of the  
10 applicant;
- 11 (4) The public interest to be served by the requested  
12 issuance of a cable franchise; and
- 13 (5) Any other matters deemed appropriate and necessary by  
14 the commission including the proposed plans and  
15 schedule of expenditures for or in support of the use  
16 of public, educational, and governmental access  
17 facilities.

18 (c) A proposal for issuance of a cable franchise shall be  
19 accepted for filing in accordance with section -55 only when  
20 made in response to the written request of the commission for  
21 the submission of proposals.

1           §     -55   **Cable franchise application or proposal**

2   **procedure; public hearing; notice.**   An application or proposal  
3   for a cable franchise shall be processed as follows:

4           (1)   After the application or proposal and required fee are  
5                received by the commission and within a time frame  
6                established by rule, the commission shall notify an  
7                applicant in writing of the acceptance or  
8                nonacceptance for filing of an application or proposal  
9                for issuance of a cable franchise required by this  
10              part;

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

1 proposed service area is located. The last notice  
2 shall be given at least fifteen days prior to the date  
3 of the hearing;

- 4 (3) After holding a public hearing, the commission shall  
5 approve the application or proposal in whole or in  
6 part, with or without conditions or modifications, or  
7 shall deny the application or proposal, with reasons  
8 for denial sent in writing to the applicant. If the  
9 commission does not take final action after the  
10 issuance of a notice of acceptance for filing and  
11 within a time frame established by rule, the  
12 application or proposal shall be deemed denied; and
- 13 (4) The time limit for final action may be extended, on  
14 the commission's approval of the applicant's request  
15 and justification in writing for an extension of time  
16 to the commission at least two weeks in advance of the  
17 requested effective date of the extension, or by  
18 mutual agreement.

19 **§ -56 Issuance of cable franchise authority; criteria;**  
20 **content.** (a) The commission is empowered to issue a cable  
21 franchise to construct or operate facilities for a cable system  
22 upon the terms and conditions provided in this part.

1           (b) The commission, after a public hearing as provided in  
2 this part, shall issue a cable franchise to the applicant when  
3 the commission is convinced that it is in the public interest to  
4 do so. In determining whether a cable franchise shall be  
5 issued, the commission shall take into consideration, among  
6 other things, the content of the application or proposal, the  
7 public need for the proposed service, the ability of the  
8 applicant to offer safe, adequate, and reliable service at a  
9 reasonable cost to the subscribers, the suitability of the  
10 applicant, the financial responsibility of the applicant, the  
11 technical and operational ability of the applicant to perform  
12 efficiently the service for which authority is requested, any  
13 objections arising from the public hearing, the cable advisory  
14 committee established by this part, or elsewhere, and any other  
15 matters as the commission deems appropriate in the  
16 circumstances.

17           (c) In determining the area which is to be serviced by the  
18 applicant, the commission shall take into account the geography  
19 and topography of the proposed service area, and the present,  
20 planned, and potential expansion in facilities or cable services  
21 of the applicant's proposed cable system and existing cable  
22 systems.

1           (d) In issuing a cable franchise under this part, the  
2 commission is not restricted to approving or disapproving the  
3 application or proposal but may issue it for only partial  
4 exercise of the privilege sought or may attach to the exercise  
5 of the right granted by the cable franchise terms, limitations,  
6 and conditions which the commission deems the public interest  
7 may require. The cable franchise shall be nonexclusive, shall  
8 include a description of the service area in which the cable  
9 system is to be constructed, extended, or operated and the  
10 approximate date on which the service is to commence and shall  
11 authorize the cable operator to provide service for a term of  
12 fifteen years.

13           §     -57   **Requirement for adequate service; terms and**  
14 **conditions of service.** (a) Every cable operator shall provide  
15 safe, adequate, and reliable service in accordance with  
16 applicable laws, rules, franchise requirements, and its filed  
17 schedule of terms and conditions of service.

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

21           (c) The commission shall ensure that the terms and  
22 conditions upon which cable service is provided are fair both to

1 the public and to the cable operator, taking into account the  
2 geographic, topographic, and economic characteristics of the  
3 service area and the economics of providing cable service to  
4 subscribers in the service area.

5 § -58 **Cable system installation, construction,**

6 **operation, removal; general provisions.** (a) A cable franchise  
7 shall be construed to authorize the construction or operation of  
8 a cable system within the service area above, below, on, in, or  
9 along any highway or other public place and through easements  
10 which have been dedicated for compatible purposes.

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

14 (c) In installing, operating, and maintaining facilities,  
15 the cable operator shall avoid all unnecessary damage and injury  
16 to any trees, structures, and improvements in and along the  
17 routes authorized by the commission.

18 (d) The cable operator shall indemnify and hold the State  
19 and the county harmless at all times from any and all claims for  
20 injury and damage to persons or property, both real and  
21 personal, caused by the installation, operation, or maintenance  
22 of its cable system, notwithstanding any negligence on the part

1 of the State or county, their employees or agents. Upon receipt  
2 of notice in writing from the State or county, the cable  
3 operator shall, at its own expense, defend any action or  
4 proceeding against the State or county in which it is claimed  
5 that personal injury or property damage was caused by activities  
6 of the cable operator in the installation, operation, or  
7 maintenance of its cable system.

8 (e) The cable operator shall provide a cable drop and  
9 basic cable service at no cost to any school or institution of  
10 higher education within its service area; provided that service  
11 is actually being delivered within a reasonable distance from  
12 the school or institution of higher education which may request  
13 service.

14 (f) The cable operator shall designate three or more  
15 channels for public, educational, or governmental use.

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

1 six months of the termination, any property not removed shall be  
2 deemed to have been abandoned and the cable operator shall be  
3 liable for the cost of its removal.

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

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

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

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

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

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

21 (1) That the safety, functioning, and appearance of the  
22 property and the convenience and safety of other

1 persons is not adversely affected by the installation  
2 or construction of facilities necessary for a cable  
3 system;

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

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

12 § -59 **Designation of access organizations for public,**  
13 **educational, or governmental access channels.** (a) The  
14 commission may designate an access organization to oversee the  
15 development, operation, supervision, management, production, and  
16 broadcasting of programs of public, educational, or governmental  
17 access facilities obtained under section -56; provided that  
18 the designation shall be exempt from chapter 103D.

19 (b) No access organization shall be designated except upon  
20 written application or proposal to the commission, and following  
21 a public hearing on each island within the local franchise area

1 that provides opportunity for public input and allows interested  
2 parties to intervene.

3 (c) In determining whether to make a designation, the  
4 commission shall consider:

5 (1) The content of the application or proposal;

6 (2) The public need for the proposed service;

7 (3) The ability and experience of the applicant to offer  
8 public, educational, or government programming  
9 broadcast services;

10 (4) The suitability of the applicant;

11 (5) The financial responsibility of the applicant;

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

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

17 (8) Any other matters that the commission deems  
18 appropriate under the circumstances.

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

1 to require that an applicant amend its selection process as a  
2 condition of designation.

3 (e) An applicant shall provide information regarding its  
4 past performance and any proposed practices for ensuring that  
5 the public, educational, or governmental access facilities  
6 support the diversity of viewpoints and uphold the public's  
7 right of free speech.

8 (f) The commission shall ensure that the terms and  
9 conditions required of the operation of an access organization  
10 designated under subsection (a) are fair to the public, taking  
11 into account the geographic, topographic, and economic  
12 characteristics of the service area and the economics of  
13 providing cable access in the service area.

14 (g) Any decision designating, modifying, or rescinding a  
15 designation of an access organization or the requirements  
16 therefore shall first be submitted to the cable advisory  
17 committee for advice under section -66.

18 (h) The department of business, economic development, and  
19 tourism shall conduct an annual management and financial audit  
20 of the access organization designated under this section.

21 § -60 **Complaints; violations; revocation, alteration,**  
22 **or suspension of cable franchise; penalties.** (a) Subscriber

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

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

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

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

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

5 (c) In lieu of or in addition to the relief provided by  
6 subsection (b), the commission may fine a cable operator, for  
7 each violation of subsection (b) (1) through (8), an amount not  
8 less than \$50 nor more than \$25,000 for each violation. Each  
9 day's continuance of a violation may be treated as a separate  
10 violation pursuant to rules adopted by the commission. Any  
11 penalty assessed under this section shall be in addition to any  
12 other costs, expenses, or payments for which the cable operator  
13 is responsible under other provisions of this part.

14 § -61 **Renewal of cable franchise.** Any cable franchise  
15 issued pursuant to this part may be renewed by the commission  
16 upon approval of a cable operator's application or proposal  
17 therefor. The form of the application or proposal shall be  
18 prescribed by the commission. The periods of renewal shall be  
19 not less than five nor more than twenty years each. The  
20 commission shall require of the applicant full disclosure,  
21 including the proposed plans and schedule of expenditures for or

1 in support of the use of public, educational, or governmental  
2 access facilities.

3       §     **-62 Transfer of cable franchise.** (a) No cable  
4 franchise, including the rights, privileges, and obligations  
5 thereof, may be assigned, sold, leased, encumbered, or otherwise  
6 transferred, voluntarily or involuntarily, directly or  
7 indirectly, including by transfer of control of any cable  
8 system, whether by change in ownership or otherwise, except upon  
9 written application to and approval by the commission. The form  
10 of the application shall be prescribed by the commission.

11       (b) Sections     -55 and     -56 shall apply to the  
12 transfer of cable franchises.

13       §     **-63 Rate, filed with commission; approval.** (a) The  
14 commission shall require each cable operator to file a schedule  
15 of its rates of service on a form and with the notice that the  
16 commission may prescribe.

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

20       §     **-64 Other duties of the commission; broadband**  
21 **services.** (a) In conjunction with broadband services, the  
22 commission shall:

- 1 (1) Promote and encourage use of telework alternatives for  
2 public and private employees, including appropriate  
3 policy and legislative initiatives;
- 4 (2) Advise and assist state agencies, and upon request of  
5 the counties, advise and assist the counties, in  
6 planning, developing, and administering programs,  
7 projects, plans, policies, and other activities to  
8 promote telecommuting by employees of state and county  
9 agencies;
- 10 (3) Support the efforts of both public and private  
11 entities in Hawaii to enhance or facilitate the  
12 deployment of, and access to, competitively priced,  
13 advanced electronic communications services, including  
14 broadband and its products and services and internet  
15 access services of general application throughout  
16 Hawaii;
- 17 (4) Make recommendations to establish affordable,  
18 accessible broadband services to unserved and  
19 underserved areas of Hawaii and monitor advancements  
20 in communications that will facilitate this goal;
- 21 (5) Advocate for, and facilitate the development and  
22 deployment of, expanded broadband applications,

1 programs, and services, including telework,  
2 telemedicine, and e-learning, that will bolster the  
3 usage of and demand for broadband level  
4 telecommunications;

5 (6) Serve as a broadband information and applications  
6 clearinghouse for the State and a coordination point  
7 for federal American Recovery and Reinvestment Act of  
8 2009 broadband-related services and programs; and

9 (7) Promote, advocate, and facilitate the implementation  
10 of the findings and recommendations of the Hawaii  
11 broadband task force established by Act 2, First  
12 Special Session Laws of Hawaii 2007.

13 (b) The commission shall submit an annual report to the  
14 legislature, no later than twenty days prior to the convening of  
15 each regular session, on the commission's efforts to use  
16 broadband and its products and services to develop and expand  
17 telework initiatives, including telework participation levels  
18 and trends of both private and public sector employees in  
19 Hawaii.

20 (c) The department of business, economic development, and  
21 tourism shall report annually to the legislature, no later than  
22 twenty days prior to the convening of each regular session, on

1 the receipt and expenditure of federal moneys from the American  
2 Recovery and Reinvestment Act of 2009, and moneys from other  
3 federal appropriation measures or applicable federal acts, for  
4 the purposes of purchasing broadband facilities, services, or  
5 equipment or for entering into contracts for broadband-related  
6 projects by all state agencies for all state agencies approval.

7 (d) Pursuant to section -65(d), the commission may  
8 appoint and employ engineers, accountants, attorneys, and  
9 professional, clerical, stenographic, or other assistants, as  
10 required, with or without regard to chapter 76.

11 § -65 **Other duties of commission; suit to enforce this**  
12 **part.** (a) The commission may supervise and regulate every  
13 cable operator within this State so far as may be necessary to  
14 carry out the purposes of this part, and to do all things which  
15 are necessary or convenient in the exercise of this power and  
16 jurisdiction.

17 (b) The commission may adopt, pursuant to chapter 91,  
18 rules necessary to carry out this part.

19 (c) The commission or the commission's designated  
20 representatives may from time to time visit the places of  
21 business and other premises and examine the records and  
22 facilities of all cable operators to ascertain if all laws,

1 rules, cable franchise provisions, and orders of the commission  
2 have been complied with, and shall have the power to examine all  
3 officers, agents, and employees of cable operators, and all  
4 other persons, under oath, and to compel the production of  
5 papers and the attendance of witnesses to obtain the information  
6 necessary for administering this part.

7 (d) The commission may appoint, without regard to chapter  
8 76, an administrator and one or more attorneys for purposes of  
9 enforcing this part. The commission shall define their powers  
10 and duties and fix their compensation. The commission may also  
11 appoint professional, clerical, stenographic, and other staff as  
12 may be necessary for the proper administration and enforcement  
13 of this part subject to chapter 76.

14 (e) The commission may institute all proceedings and  
15 investigations, hear all complaints, issue all process and  
16 orders, and render all decisions necessary to enforce this part  
17 or the rules and orders adopted thereunder, or to otherwise  
18 accomplish the purposes of this part.

19 (f) The commission or other aggrieved party may institute,  
20 or to intervene as a party in, any action in any court of law  
21 seeking a mandamus, or injunctive or other relief to compel  
22 compliance with this part, or any rule or order adopted

1 thereunder, or to restrain or otherwise prevent or prohibit any  
2 illegal or unauthorized conduct in connection therewith.

3       **§ -66 Cable advisory committee.** (a) There is  
4 established the cable advisory committee. The committee shall  
5 consist of five members appointed by the governor as provided in  
6 section 26-34.

7       The committee shall advise:

- 8       (1) The commission, cable operators, and access  
9             organizations on matters within the jurisdiction of  
10            this part at the request of the commission, any cable  
11            operator, or any access organization; and
- 12       (2) The commission on any decision designating, modifying,  
13             or rescinding a designation of an access organization  
14             or the requirements therefor, as provided in  
15             section -59.

16       (b) The members of the committee shall serve without pay  
17 but shall be entitled to reimbursement for necessary expenses  
18 while attending meetings and while in discharge of their duties.

19       **§ -67 Reports.** Each cable operator shall file with the  
20 commission reports of its financial, technical, and operational  
21 condition and its ownership. The reports shall be made in a

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

3       §     **-68 Annual fees.** (a) Each cable operator shall pay  
4 an annual fee to be determined by the commission. The fees so  
5 collected under this section shall be deposited into the  
6 telecommunications and cable television services commission  
7 special fund established under section       -41.

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

11       §     **-69 Rules.** The commission shall adopt rules pursuant  
12 to chapter 91 necessary for the purposes of this part.

13       §     **-70 Criminal and civil liability.** Nothing in this  
14 part shall be deemed to affect the criminal and civil liability  
15 of cable programmers, cable operators, or access organizations  
16 pursuant to the federal, state, or local laws regarding libel,  
17 slander, obscenity, incitement, invasions of privacy, false or  
18 misleading advertising, or other similar laws, except that no  
19 access organization shall incur any such liability arising from,  
20 based on, or related to any program not created by the access  
21 organization, which is broadcast on any channel obtained under  
22 section       -56, or under similar arrangements."

## 1 PART III

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

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

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

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

1 into the compliance resolution fund. This provision shall not  
2 apply to any fee imposed by the telecommunications and cable  
3 television services commission pursuant to chapter , 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 telecommunications and cable television  
22 services commission; 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 telecommunications and cable television services  
10          commission, the labor and industrial relations appeals board,  
11          the Hawaii labor relations board, the office of Hawaiian  
12          affairs, the Hawaii health systems corporation or its regional  
13          system boards, the department of commerce and consumer affairs  
14          in prosecution of consumer complaints, insurance division, the  
15          division of consumer advocacy, the University of Hawaii, the  
16          Hawaii tourism authority as provided in section 201B-2.5, the  
17          Hawaiian home lands trust individual claims review panel, or as  
18          grand jury counsel, shall be a deputy attorney general."

19          SECTION 5. Section 36-27, Hawaii Revised Statutes, is  
20          amended by amending subsection (a) to read as follows:

21          "(a) Except as provided in this section, and  
22          notwithstanding any other law to the contrary, from time to

1 time, the director of finance, for the purpose of defraying the  
2 prorated estimate of central service expenses of government in  
3 relation to all special funds, except the:

- 4 (1) Special out-of-school time instructional program fund  
5 under section 302A-1310;
- 6 (2) School cafeteria special funds of the department of  
7 education;
- 8 (3) Special funds of the University of Hawaii;
- 9 (4) State educational facilities improvement special fund;
- 10 (5) Convention center enterprise special fund under  
11 section 201B-8;
- 12 (6) Special funds established by section 206E-6;
- 13 (7) Housing loan program revenue bond special fund;
- 14 (8) Housing project bond special fund;
- 15 (9) Aloha Tower fund created by section 206J-17;
- 16 (10) Funds of the employees' retirement system created by  
17 section 88-109;
- 18 (11) Unemployment compensation fund established under  
19 section 383-121;
- 20 (12) Hawaii hurricane relief fund established under chapter  
21 431P;

- 1 (13) Hawaii health systems corporation special funds and  
2 the subaccounts of its regional system boards;
- 3 (14) Tourism special fund established under section 201B-  
4 11;
- 5 (15) Universal service fund established under section [~~269-~~  
6 ~~42.7~~]       -50;
- 7 (16) Emergency and budget reserve fund under section 328L-  
8 3;
- 9 (17) Public schools special fees and charges fund under  
10 section 302A-1130;
- 11 (18) Sport fish special fund under section 187A-9.5;
- 12 (19) Glass advance disposal fee established by section  
13 342G-82;
- 14 (20) Center for nursing special fund under section 304A-  
15 2163;
- 16 (21) Passenger facility charge special fund established by  
17 section 261-5.5;
- 18 (22) Court interpreting services revolving fund under  
19 section 607-1.5;
- 20 (23) Hawaii cancer research special fund;
- 21 (24) Community health centers special fund;
- 22 (25) Emergency medical services special fund;

1       (26) Rental motor vehicle customer facility charge special  
2               fund established under section 261-5.6; and  
3       (27) Shared services technology special fund under section  
4               27-43,  
5 shall deduct five per cent of all receipts of all special funds,  
6 which deduction shall be transferred to the general fund of the  
7 State and become general realizations of the State. All  
8 officers of the State and other persons having power to allocate  
9 or disburse any special funds shall cooperate with the director  
10 in effecting these transfers. To determine the proper revenue  
11 base upon which the central service assessment is to be  
12 calculated, the director shall adopt rules pursuant to chapter  
13 91 for the purpose of suspending or limiting the application of  
14 the central service assessment of any fund. No later than  
15 twenty days prior to the convening of each regular session of  
16 the legislature, the director shall report all central service  
17 assessments made during the preceding fiscal year."

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

20       "(a) The mayor of each county, after holding a public  
21 hearing on the matter and receiving the approval of the  
22 respective council, shall be empowered to designate areas of

1 land for experimental and demonstration housing projects, the  
2 purposes of which are to research and develop ideas that would  
3 reduce the cost of housing in the State. Except as hereinafter  
4 provided, the experimental and demonstration housing projects  
5 shall be exempt from all statutes, ordinances, charter  
6 provisions, and rules or regulations of any governmental agency  
7 or public utility relating to planning, zoning, construction  
8 standards for subdivisions, development and improvement of land,  
9 and the construction and sale of homes thereon; provided that  
10 the experimental and demonstration housing projects shall not  
11 affect the safety standards or tariffs approved by the public  
12 utility [~~commissions~~] commission for such public utility[-], or  
13 by the telecommunications and cable television services  
14 commission.

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

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

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

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

17           The county agency or official shall apply to the state land  
18 use commission for an appropriate land use district  
19 classification change, except where a proposed project is  
20 located on land within an urban district established by the  
21 state land use commission. Notwithstanding any law, rule, or  
22 regulation to the contrary, the state land use commission may

1 approve the application at any time after a public hearing held  
2 in the county where the land is located upon notice of the time  
3 and place of the hearing being published in the same manner as  
4 the notice required for a public hearing by the planning  
5 commission of the appropriate county."

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

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

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

10 [~~or~~]

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

13 (3) Any proceedings of the telecommunications and cable  
14 television services commission."

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

17 "**§92-21 Copies of records; other costs and fees.** (a)

18 Except as otherwise provided by law, a copy of any government  
19 record, including any map, plan, diagram, photograph, photostat,  
20 or geographic information system digital data file, which is  
21 open to the inspection of the public, shall be furnished to any  
22 person applying for the same by the public officer having charge

1 or control thereof upon the payment of the reasonable cost of  
2 reproducing such copy.

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

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

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

15 (e) All fees shall be paid in by the public officer  
16 receiving or collecting the same to the state director of  
17 finance, the county director of finance, or to the agency or  
18 department by which the officer is employed, as government  
19 realizations; provided that fees collected by the public  
20 utilities commission pursuant to this section shall be deposited  
21 in the public utilities commission special fund established  
22 under section 269-33~~[=]~~, and fees collected by the

1 telecommunications and cable television services commission  
2 shall be deposited in the telecommunications and cable  
3 television services commission special fund established under  
4 section -41."

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

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

11 (1) The corporation submits to the public utilities  
12 commission or, in the case of telecommunications  
13 carriers, to the telecommunications and cable  
14 television services commission its intention to  
15 exercise the power, with a description of the property  
16 to be condemned; and

17 (2) The public utilities commission or, in the case of  
18 telecommunications carriers, the telecommunications  
19 and cable television services commission finds that  
20 the proposed condemnation is in the public interest,  
21 that the proposed condemnation is necessary, and that

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

3           SECTION 10. Section 138-2, Hawaii Revised Statutes, is  
4 amended as follows:

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

6           "(a) There is created within the department of accounting  
7 and general services, for administrative purposes, an enhanced  
8 911 board consisting of thirteen voting members; provided that  
9 the membership shall consist of:

- 10           (1) The comptroller or the comptroller's designee;
- 11           (2) Three representatives from wireless communications  
12           service providers, who shall be appointed by the  
13           governor as provided in section 26-34;
- 14           (3) One representative each from the public safety  
15           answering points for Oahu, Hawaii, Kauai, Maui, and  
16           Molokai and one representative, chosen by the mayor of  
17           the city and county of Honolulu, who shall be  
18           appointed by the governor as provided in section 26-  
19           34;
- 20           (4) The consumer advocate or the consumer advocate's  
21           designee;

1 (5) One representative from a communications service  
2 company that offers Interconnected Voice over Internet  
3 Protocol services, who shall be appointed by the  
4 governor as provided in section 26-34; and

5 (6) One representative of the [~~public utility~~]  
6 telecommunications carrier providing  
7 telecommunications services and land line enhanced 911  
8 services through section [~~269-16.95.~~] \_\_\_\_\_ -28."

9 2. By amending subsection (e) to read:

10 "(e) The members representing wireless providers, the  
11 [~~public utility~~] telecommunications carrier providing  
12 telecommunications services and land line enhanced 911 services  
13 through section [~~269-16.95,~~] \_\_\_\_\_ -28, and Interconnected Voice  
14 over Internet Protocol service providers shall be appointed by  
15 the governor for terms of two years."

16 SECTION 11. Section 138-4, Hawaii Revised Statutes, is  
17 amended as follows:

18 1. By amending subsections (a) and (b) to read:

19 "(a) A monthly enhanced 911 surcharge, subject to this  
20 chapter, shall be imposed upon each communications service  
21 connection, except connections of the [~~public utility~~]  
22 telecommunications carrier providing telecommunications services

1 and land line enhanced 911 services through section [~~269-16.95.~~]  
2 -28.

3 (b) The rate of the surcharge shall be set at 66 cents per  
4 month for each communications service connection. The surcharge  
5 shall have uniform application and shall be imposed on each  
6 communications service connection operating within the State  
7 except:

8 (1) Connections billed to federal, state, and county  
9 governmental entities;

10 (2) Prepaid connections; and

11 (3) Connections provided by the [~~public utility~~]  
12 telecommunications carrier providing  
13 telecommunications services and land line enhanced 911  
14 services through section [~~269-16.95.~~] -28."

15 2. By amending subsection (g) to read:

16 "(g) A [~~public utility~~] telecommunications carrier  
17 providing telecommunications services and land line enhanced 911  
18 services for its customer base and other service providers using  
19 the wire line provider's enhanced 911 service may collect and  
20 retain the surcharge at the established rate set forth in  
21 section [~~269-16.95.~~] -28."

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

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

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

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

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

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

16 (5) Neither the corporation nor a subsidiary corporation  
17 vested with the assets shall constitute a public  
18 utility or be subject to the jurisdiction of the  
19 public utilities commission under chapter 269[~~-~~] or  
20 the telecommunications and cable television services  
21 commission under chapter \_\_\_\_\_."

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

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

- 12 (1) The board finds the agricultural park is consistent  
13 with the purpose and intent of this chapter, and meets  
14 minimum requirements of health and safety;
- 15 (2) The development of the proposed agricultural park does  
16 not contravene any safety standards or tariffs  
17 approved for public utilities by the public utilities  
18 commission [~~for public utilities,~~] or by the  
19 telecommunications and cable television services  
20 commission;

- 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 14. 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 telecommunications and cable television services  
15 commission;

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 15. 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           telecommunications and cable television services  
3           commission;

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 16. 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 telecommunications and cable television services commission  
8 under chapter \_\_\_\_\_."

9           SECTION 17. 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, in the case  
14 of telecommunications carriers, the approval of the  
15 telecommunications and cable television services commission, and  
16 subject to legislative disapproval expressed in a concurrent  
17 resolution adopted by majority vote of the senate and the house  
18 of representatives in the first regular or special session  
19 following the date of condemnation."

20       SECTION 18. 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~~[7]~~ or the telecommunications and  
8 cable television services commission, and shall follow existing  
9 law as closely as is consistent with the production of lower  
10 cost housing with standards that meet minimum requirements of  
11 good design, pleasant amenities, health, safety, and coordinated  
12 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 19. 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 telecommunications and cable television services

1           commission, or of the various boards of water supply  
2           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  
18          205-4. If, on the forty-sixth day, the petition is  
19          not disapproved, it shall be deemed approved by the  
20          commission."

21          SECTION 20. 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 21. 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~~] telecommunications and cable television  
3 services commission shall be allowed a tax credit, equal to the  
4 lifeline telephone service costs incurred by the [~~utility,~~  
5 carrier, to be applied against the [~~utility's~~] carrier's tax  
6 imposed by this chapter. The amount of this credit shall be  
7 determined and certified annually by the [~~public utilities~~  
8 ~~commission.~~] telecommunications and cable television services  
9 commission. The tax liability for a [~~telephone public utility~~]  
10 telecommunications carrier claiming the credit shall be  
11 calculated in the manner prescribed in section 239-5; provided  
12 that the amount of tax due from the [~~utility~~] carrier shall be  
13 net of the lifeline service credit."

14 SECTION 22. Section 264-20, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

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

1 Transportation Officials shall not give rise to a cause of  
2 action or claim against:

3 (1) The State;

4 (2) The department of transportation;

5 (3) The counties;

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

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

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

12 SECTION 23. Section 269-1, Hawaii Revised Statutes, is  
13 amended as follows:

14 1. By amending the definition of "public utility" to read  
15 as follows:

16 ""Public utility":

17 (1) Includes every person who may own, control, operate,  
18 or manage as owner, lessee, trustee, receiver, or  
19 otherwise, whether under a franchise, charter,  
20 license, articles of association, or otherwise, any  
21 plant or equipment, or any part thereof, directly or  
22 indirectly for public use for the transportation of

1 passengers or freight; for the conveyance or  
2 transmission of telecommunications messages; for the  
3 furnishing of facilities for the transmission of  
4 intelligence by electricity within the State or  
5 between points within the State by land, water, or  
6 air; for the production, conveyance, transmission,  
7 delivery, or furnishing of light, power, heat, cold,  
8 water, gas, or oil; for the storage or warehousing of  
9 goods; or for the disposal of sewage; provided that  
10 the term shall include[÷

11 ~~(A) An~~ an owner or operator of a private sewer  
12 company or sewer facility; and

13 [~~(B) A telecommunications carrier or~~  
14 ~~telecommunications common carrier; and]~~

15 (2) Shall not include:

16 (A) An owner or operator of an aerial transportation  
17 enterprise;

18 (B) An owner or operator of a taxicab as defined in  
19 this section;

20 (C) Common carriers that transport only freight on  
21 the public highways, unless operating within  
22 localities, along routes, or between points that

1           the public utilities commission finds to be  
2           inadequately serviced without regulation under  
3           this chapter;

4           (D) Persons engaged in the business of warehousing or  
5           storage unless the commission finds that  
6           regulation is necessary in the public interest;

7           (E) A carrier by water to the extent that the carrier  
8           enters into private contracts for towage,  
9           salvage, hauling, or carriage between points  
10          within the State; provided that the towing,  
11          salvage, hauling, or carriage is not pursuant to  
12          either an established schedule or an undertaking  
13          to perform carriage services on behalf of the  
14          public generally;

15          (F) A carrier by water, substantially engaged in  
16          interstate or foreign commerce, that transports  
17          passengers on luxury cruises between points  
18          within the State or on luxury round-trip cruises  
19          returning to the point of departure;

20          (G) Any person who:

21                 (i) Controls, operates, or manages plants or  
22                 facilities for the production, transmission,

- 1                   or furnishing of power primarily or entirely  
2                   from nonfossil fuel sources; and
- 3           (ii) Provides, sells, or transmits all of that  
4                   power, except as is used in its own internal  
5                   operations, directly to a public utility for  
6                   transmission to the public;
- 7           (H) A telecommunications [~~provider only to the extent~~  
8                   ~~determined by the public utilities commission~~  
9                   ~~pursuant to section 269-16.9;~~] carrier or  
10                   telecommunications common carrier as defined in  
11                   section -1, and subject to the authority of the  
12                   telecommunications and cable television services  
13                   commission pursuant to section -5;
- 14           (I) Any person who controls, operates, or manages  
15                   plants or facilities developed pursuant to  
16                   chapter 167 for conveying, distributing, and  
17                   transmitting water for irrigation and other  
18                   purposes for public use and purpose;
- 19           (J) Any person who owns, controls, operates, or  
20                   manages plants or facilities for the reclamation  
21                   of wastewater; provided that:

- 1 (i) The services of the facility are provided  
2 pursuant to a service contract between the  
3 person and a state or county agency and at  
4 least ten per cent of the wastewater  
5 processed is used directly by the state or  
6 county agency that entered into the service  
7 contract;
- 8 (ii) The primary function of the facility is the  
9 processing of secondary treated wastewater  
10 that has been produced by a municipal  
11 wastewater treatment facility owned by a  
12 state or county agency;
- 13 (iii) The facility does not make sales of water to  
14 residential customers;
- 15 (iv) The facility may distribute and sell  
16 recycled or reclaimed water to entities not  
17 covered by a state or county service  
18 contract; provided that, in the absence of  
19 regulatory oversight and direct competition,  
20 the distribution and sale of recycled or  
21 reclaimed water shall be voluntary and its  
22 pricing fair and reasonable. For purposes

1 of this subparagraph, "recycled water" and  
2 "reclaimed water" means treated wastewater  
3 that by design is intended or used for a  
4 beneficial purpose; and

5 (v) The facility is not engaged, either directly  
6 or indirectly, in the processing of food  
7 wastes;

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

15 (L) Any person who owns, controls, operates, or  
16 manages plants or facilities primarily used to  
17 charge or discharge a vehicle battery that  
18 provides power for vehicle propulsion; and

19 (M) Any person who:  
20 (i) Owns, controls, operates, or manages a  
21 renewable energy system that is located on a  
22 customer's property; and

1           (ii) Provides, sells, or transmits the power  
2           generated from that renewable energy system  
3           to an electric utility or to the customer on  
4           whose property the renewable energy system  
5           is located; provided that, for purposes of  
6           this clause, a customer's property shall  
7           include all contiguous property owned or  
8           leased by the customer without regard to  
9           interruptions in contiguity caused by  
10          easements, public thoroughfares,  
11          transportation rights-of-way, and utility  
12          rights-of-way.

13          If the application of this chapter is ordered by the  
14          commission in any case provided in paragraphs (2) (C), (2) (D),  
15          ~~[(2) (H),]~~ and (2) (I), or as determined by the telecommunications  
16          and cable television services commission as provided in  
17          paragraph (2) (H), the business of any public utility that  
18          presents evidence of bona fide operation on the date of the  
19          commencement of the proceedings resulting in the order shall be  
20          presumed to be necessary to the public convenience and  
21          necessity, but any certificate issued under this proviso shall  
22          nevertheless be subject to terms and conditions as the public

1 utilities commission may prescribe, as provided in [~~sections~~  
2 ~~269-16.9 and~~] section 269-20[-], or as the telecommunications  
3 and cable television services commission may prescribe, as  
4 provided in section -25, whichever is applicable."

5 2. By amending the definition of "telecommunications  
6 carrier" or "telecommunications common carrier" to read:

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

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

18 ""Telecommunications service" or "telecommunications"  
19 [~~means the offering of transmission between or among points~~  
20 ~~specified by a user, of information of the user's choosing,~~  
21 ~~including voice, data, image, graphics, and video without change~~  
22 ~~in the form or content of the information, as sent and received,~~

1 ~~by means of electromagnetic transmission, or other similarly~~  
2 ~~capable means of transmission, with or without benefit of any~~  
3 ~~closed transmission medium, and does not include cable service~~  
4 ~~as defined in section 440G-3.] has the same meaning as in~~  
5 section -1."

6 4. By repealing the definition of "carrier of last  
7 resort".

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

12 5. By repealing the definition of "designated local  
13 exchange service area".

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

17 SECTION 24. 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, this section shall not apply to any telecommunications  
12 carrier or telecommunications common carrier as defined in  
13 section -1 and subject to the authority of the  
14 telecommunications and cable television services commission  
15 pursuant to section -5."

16 SECTION 25. 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 be the consumer advocate in hearings before the  
21 public utilities commission[-] and the telecommunications and  
22 cable television services commission. The consumer advocate

1 shall represent, protect, and advance the interests of all  
2 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~~[-]~~ and the  
13 telecommunications and cable television services commission."

14       SECTION 26. Section 269-54, Hawaii Revised Statutes, is  
15 amended by amending subsections (d) and (e) to read as follows:

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

17       (1) ~~[any]~~ Any public utility, or beginning July 1, 2013,  
18       for a telecommunications carrier, or a cable operator  
19       has violated or failed to comply with any provision of  
20       this part or of any state or federal law;

21       (2) ~~[any]~~ Any public utility, or beginning July 1, 2013,  
22       for a telecommunications carrier, or a cable operator

1 has failed to comply with any rule, regulation, or  
2 other requirement of the public utilities commission,  
3 the telecommunications and cable television services  
4 commission, or of any other state or federal agency;

5 (3) [~~any~~] Any public utility, or beginning July 1, 2013,  
6 for a telecommunications carrier, or a cable operator  
7 has failed to comply with any provision of its charter  
8 or franchise[~~+~~] or certificate of public convenience  
9 and necessity;

10 (4) [~~changes,~~] Changes, additions, extensions, or repairs  
11 to the plant or service of any public utility, or  
12 beginning July 1, 2013, for a telecommunications  
13 carrier, or a cable operator are necessary to meet the  
14 reasonable convenience or necessity of the public; or

15 (5) [~~the~~] The rates, fares, classifications, charges, or  
16 rules of any public utility, or beginning July 1,  
17 2013, for a telecommunications carrier, or a cable  
18 operator are unreasonable or unreasonably  
19 discriminatory,

20 the consumer advocate may institute proceedings for appropriate  
21 relief before the public utilities commission[~~-~~] or the  
22 telecommunications and cable television services commission.

1 The consumer advocate may appeal any final decision and order in  
2 any proceeding to which the consumer advocate is a party in the  
3 manner provided by law.

4 (e) The consumer advocate may file with the public  
5 utilities commission or the telecommunications and cable  
6 television services commission and serve on any public utility,  
7 or beginning July 1, 2013, for a telecommunications carrier, or  
8 a cable operator a request in writing to furnish any information  
9 reasonably relevant to any matter or proceeding before the  
10 public utilities commission or the telecommunications and cable  
11 television services commission or reasonably required by the  
12 consumer advocate to perform the duties hereunder. Any such  
13 request shall set forth with reasonable specificity the purpose  
14 for which the information is requested and shall designate with  
15 reasonable specificity the information desired. The public  
16 utility, or beginning July 1, 2013, for a telecommunications  
17 carrier, or a cable operator shall comply with such request  
18 within the time limit set forth by the consumer advocate unless  
19 within ten days following service it requests a hearing on the  
20 matter before the public utilities commission or the  
21 telecommunications and cable television services commission and  
22 states its reasons therefor. If a hearing is requested, the

1 public utilities commission or the telecommunications and cable  
2 television services commission shall proceed to hold the hearing  
3 and make its determination on the request within thirty days  
4 after the same is filed. The consumer advocate or the public  
5 utility may appeal the decision of the public utilities  
6 commission on any such request, subject to chapter 602, in the  
7 manner provided for civil appeals from the circuit courts. The  
8 consumer advocate, or beginning July 1, 2013, for a  
9 telecommunications carrier, or a cable operator may appeal the  
10 decision of the telecommunications and cable television services  
11 commission in the manner provided in section -17. Subject  
12 to the foregoing, such requests may ask the public utility, or  
13 beginning July 1, 2013, for a telecommunications carrier, or a  
14 cable operator to:

- 15 (1) Furnish any information with which the consumer  
16 advocate may require concerning the condition,  
17 operations, practices, or services of the public  
18 utility~~[+]~~, or beginning July 1, 2013, for a  
19 telecommunications carrier, or a cable operator;
- 20 (2) Produce and permit the consumer advocate or the  
21 consumer advocate's representative to inspect and copy  
22 any designated documents (including writings,

1 drawings, graphs, charts, photographs, recordings, and  
2 other data compilations from which information can be  
3 obtained), or to inspect and copy, test, or sample any  
4 designated tangible thing which is in the possession,  
5 custody, or control of the public utility[+], or  
6 beginning July 1, 2013, for a telecommunications  
7 carrier, or a cable operator; or

8 (3) Permit entry upon land or other property in the  
9 possession or control of the public utility, or  
10 beginning July 1, 2013, for a telecommunications  
11 carrier, or a cable operator for the purpose of  
12 inspection and measuring, surveying, photographing,  
13 testing, or sampling the property or any designated  
14 object thereon."

15 SECTION 27. Section 269-55, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§269-55 Handling of complaints.** The consumer advocate  
18 shall counsel public utility, telecommunications, and cable  
19 service customers in the handling of consumer complaints before  
20 the public utilities commission[-] or the telecommunications and  
21 cable television services commission. The public utilities  
22 commission shall provide a central clearinghouse of information

1 by collecting and compiling all consumer complaints and  
2 inquiries concerning public utilities. The telecommunications  
3 and cable television services commission shall provide a central  
4 clearinghouse of information by collecting and compiling all  
5 consumer complaints and inquiries concerning cable operators,  
6 and beginning on July 1, 2013, telecommunications carriers."

7 SECTION 28. Section 269E-1, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[~~§~~269E-1 **Administration.** ~~§~~] This chapter shall be  
10 administered by the public utilities commission and the  
11 provisions of this chapter and of chapter 269, not inconsistent  
12 with this chapter, shall govern its administration; provided  
13 that sections 269-7.5, 269-8.2, 269-8.5, 269-9, [~~269-16 to 269-~~  
14 ~~28,~~] 269-16 to 269-16.4, 269-17 to 269-28, 269-30, 269-31, [269-  
15 ~~34 to 269-43,~~] and 269-71 to 269-111 shall not, in any respect,  
16 apply to the one call center."

17 SECTION 29. Section 339K-2, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~§~~339K-2 ~~§~~] **Compact administrator.** The compact  
20 administrator, acting jointly with like officers of other party  
21 states, may promulgate rules and regulations to carry out more  
22 effectively the terms of the compact. The compact administrator

1 shall cooperate with all departments, agencies, and officers of  
2 and in the government of this State and its subdivisions in  
3 facilitating the present administration of the compact or of any  
4 supplementary agreement or agreements entered into by this State  
5 thereunder. The compact administrator shall adopt the practices  
6 and may impose the fees authorized under article III of the  
7 compact, except that state and county law enforcement agencies  
8 ~~[and]~~, the public utilities commission, and the  
9 telecommunications and cable television services commission  
10 shall retain their enforcement and inspection authority relating  
11 to carriers."

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

14 "(b) The authority may acquire by the exercise of the  
15 power of eminent domain property already devoted to a public  
16 use; provided that no property belonging to any government may  
17 be acquired without its consent, and that no property belonging  
18 to a public utility may be acquired without the approval of the  
19 public utilities commission~~[+]~~ or, in the case of  
20 telecommunications carriers, the telecommunications and cable  
21 television services commission; and provided further that the  
22 acquisition is subject to legislative disapproval expressed in a

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

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

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

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

18 "**§481-11 Remedies cumulative.** The remedies prescribed in  
19 this part are cumulative and in addition to the remedies  
20 prescribed in [~~chapter]~~ chapters 269, and \_\_\_\_\_, for  
21 discriminations by public utilities~~[-]~~, or beginning July 1,  
22 2013, for telecommunications carriers, or cable operators. If

1 any conflict arises between this part and chapter 269 [~~the~~  
2 ~~latter prevails.~~] or chapter \_\_\_\_\_, chapter 269 or chapter \_\_\_\_\_,  
3 whichever is applicable, shall prevail."

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

6 "**§481P-5 Exemptions.** This chapter shall not apply to:

- 7 (1) A person who initiates telephone calls to a residence  
8 for the sole purpose of polling or soliciting the  
9 expression of ideas, opinions, or votes, or a person  
10 soliciting solely for a political or religious cause  
11 or purpose;
- 12 (2) A securities broker-dealer, salesperson, investment  
13 adviser, or investment adviser representative who is  
14 registered with this State to sell securities or who  
15 is authorized to sell securities in this State  
16 pursuant to federal securities laws, when soliciting  
17 over the telephone within the scope of the person's  
18 registration;
- 19 (3) A financial institution that is authorized to accept  
20 deposits under its chartering or licensing authority  
21 where such deposits are insured by the Federal Deposit  
22 Insurance Corporation or the National Credit Union

1 Administration, including but not limited to a bank,  
2 savings bank, savings and loan association, depository  
3 financial services loan company, or credit union, or a  
4 nondepository financial services loan company that is  
5 licensed or authorized to conduct business in this  
6 State by the commissioner of financial institutions,  
7 or an affiliate or subsidiary of a financial  
8 institution as defined in chapter 412;

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

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

18 (6) A person who publishes a catalog of at least fifteen  
19 pages, four times a year, with a circulation of at  
20 least one hundred thousand, where the catalog includes  
21 clear disclosure of sale prices, shipping, handling,  
22 and other charges;

- 1 (7) A political subdivision or instrumentality of the  
2 United States, or any state of the United States;
- 3 (8) The sale of goods or services by telecommunications or  
4 landline (i.e., cable) or wireless video service  
5 providers, for which the terms and conditions of the  
6 offering, production, or sale are regulated by the  
7 public utilities commission ~~[or]~~, the Federal  
8 Communications Commission, or ~~[pursuant to chapter~~  
9 ~~440G,~~ the telecommunications and cable television  
10 services commission, including the sale of goods or  
11 services by affiliates of these telecommunications or  
12 video service providers. Nothing herein shall be  
13 construed to preclude or preempt actions brought under  
14 any other laws including chapter 480;
- 15 (9) A real estate broker or salesperson who is licensed by  
16 this State to sell real estate, when soliciting within  
17 the scope of the license; or
- 18 (10) A travel agency that is registered with this State,  
19 when engaging in the business of selling or  
20 advertising the sale of travel services."

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

1        "(a) This chapter shall not apply to:  
2        (1) Express or implied warranties;  
3        (2) Maintenance agreements; and  
4        (3) Warranties, service contracts, and maintenance  
5        agreements offered by public utilities on their  
6        transmission devices to the extent they are regulated  
7        by the public utilities commission or the [~~department~~  
8        ~~of commerce and consumer affairs.~~] telecommunications  
9        and cable television services commission."

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

12        "**§486J-11 Powers of the public utilities commission[-] and**  
13        **the telecommunications and cable television services commission.**

14        (a) The public utilities commission and the telecommunications  
15        and cable television services commission may take any action or  
16        make any determination under this chapter, including but not  
17        limited to actions or determinations that affect persons not  
18        regulated under chapters 269, \_\_\_\_\_, 271, and 271G, as the public  
19        utilities commission or the telecommunications and cable  
20        television services commission deems necessary to carry out its  
21        responsibilities or otherwise effectuate chapter 269, \_\_\_\_\_, 271,  
22        or 271G.

1           (b) The public utilities commission or, beginning July 1,  
2 2013, in the case of telecommunications carriers or  
3 telecommunications common carriers, the telecommunications and  
4 cable television services commission may examine or investigate  
5 each distributor, the manner in which it is operated, its prices  
6 and rates, its operating costs and expenses, the value of its  
7 property and assets, the amount and disposition of its income,  
8 any of its financial transactions, its business relations with  
9 other persons, companies, or corporations, its compliance with  
10 all applicable state and federal laws, and all matters of any  
11 nature affecting the relations and transactions between the  
12 distributor and the public, persons, or businesses.

13           (c) In the performance of its duties under this chapter,  
14 the public utilities commission or the telecommunications and  
15 cable television services commission shall have the same powers  
16 respecting administering oaths, compelling the attendance of  
17 witnesses and the production of documents, examining witnesses,  
18 and punishing for contempt, as are possessed by the circuit  
19 courts. In case of disobedience by any person to any order of  
20 or subpoena issued by the public utilities commission~~[7]~~ or the  
21 telecommunications and cable television services commission, or  
22 of the refusal of any witness to testify to any matter regarding

1 which the witness may be lawfully questioned, any circuit court,  
2 upon application by the public utilities commission[7] or the  
3 telecommunications and cable television services commission,  
4 shall compel obedience as in case of disobedience of the  
5 requirements of a subpoena issued from a circuit court or a  
6 refusal to testify therein."

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

9 "[+]§659-3[+] **Forfeiture of franchise.** The several  
10 circuit courts shall have jurisdiction of all proceedings in, or  
11 in the nature of, quo warranto, brought by or in the name of the  
12 public utilities commission[7] or the telecommunications and  
13 cable television services commission, or the State, for the  
14 forfeiture of the franchise of any corporate body offending  
15 against any law relating to such corporation, for misuser, for  
16 nonuser, for doing or committing any act or acts amounting to a  
17 surrender of its charter and for exercising rights not conferred  
18 upon it."

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

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

10       SECTION 38. Section 269-16.5, Hawaii Revised Statutes, is  
11 repealed.

12       [~~"§269-16.5 Lifeline telephone rates. (a) The public~~  
13 ~~utilities commission shall implement a program to achieve~~  
14 ~~lifeline telephone rates for residential telephone users.~~

15       ~~(b) "Lifeline telephone rate" means a discounted rate for~~  
16 ~~residential telephone users identified as elders with limited~~  
17 ~~income and the handicapped with limited income as designated by~~  
18 ~~the commission.~~

19       ~~(c) The commission shall require every telephone public~~  
20 ~~utility providing local telephone service to file a schedule of~~  
21 ~~rates and charges providing a rate for lifeline telephone~~  
22 ~~subscribers.~~

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

5       SECTION 39. Section 269-16.6, Hawaii Revised Statutes, is  
6 repealed.

7       ~~[**"§269-16.6 Telecommunications relay services for the**~~  
8 ~~**deaf, persons with hearing disabilities, and persons with speech**~~  
9 ~~**disabilities.** (a) The public utilities commission shall~~  
10 ~~implement intrastate telecommunications relay services for the~~  
11 ~~deaf, persons with hearing disabilities, and persons with speech~~  
12 ~~disabilities.~~

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

1 ~~of cost, quality of services, and experience, and such other~~  
2 ~~factors as the commission deems appropriate.~~

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

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

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

16 ~~(f) The commission shall require every intrastate~~  
17 ~~telecommunications carrier to file a schedule of rates and~~  
18 ~~charges and every provider of telecommunications relay service~~  
19 ~~to maintain a separate accounting for the costs of providing~~  
20 ~~telecommunications relay services for the deaf, persons with~~  
21 ~~hearing disabilities, and persons with speech disabilities.~~

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

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

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

13 ~~"Telecommunications relay services" includes services that~~  
14 ~~enable two-way communication using text telephones or other~~  
15 ~~nonvoice terminal devices, speech-to-speech services, video~~  
16 ~~relay services, and non-English relay services." ]~~

17 SECTION 40. Section 269-16.8, Hawaii Revised Statutes, is  
18 repealed.

19 ~~"[§269-16.8] Aggregators of telephone service~~  
20 ~~requirements. (a) For the purposes of this section:~~

21 ~~"Aggregator" means every person or entity that is not a~~  
22 ~~telecommunications carrier, who, in the ordinary course of its~~

1 ~~business, makes telephones available and aggregates the calls of~~  
2 ~~the public or transient users of its business, including but not~~  
3 ~~limited to a hotel, motel, hospital, or university, that~~  
4 ~~provides operator-assisted services through access to an~~  
5 ~~operator service provider.~~

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

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

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

20 ~~(2) Identification by name of the operator service~~  
21 ~~provider prior to the call connection and, if not~~  
22 ~~posted pursuant to subsection (b)(1), a disclosure of~~

1 ~~pertinent rates, terms, conditions, and means of~~  
2 ~~access to various operator service providers and the~~  
3 ~~local exchange carriers; provided that the operator~~  
4 ~~service provider shall disclose this information at~~  
5 ~~any time upon request by the customer.~~

6 ~~(3) Allowing the customer access to any operator service~~  
7 ~~provider operating in the relevant geographic area~~  
8 ~~through the access method chosen by the provider or as~~  
9 ~~deemed appropriate by the commission.~~

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

14 SECTION 41. Section 269-16.85, Hawaii Revised Statutes, is  
15 repealed.

16 ~~["**~~§269-16.85~~** **Retail intrastate services; fully**~~  
17 ~~**competitive.** (a) Notwithstanding section 269-16.9 or any other~~  
18 ~~law to the contrary, the public utilities commission shall treat~~  
19 ~~retail intrastate telecommunications services, under the~~  
20 ~~commission's classification of services relating to costs,~~  
21 ~~rates, and pricing, as fully competitive and apply all~~  
22 ~~commission rules in accordance with that designation. In~~

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

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

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

1 SECTION 42. Section 269-16.9, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§269-16.9 Telecommunications providers and services.~~

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

20 ~~(1) The responsiveness of the exemption to changes in the~~  
21 ~~structure and technology of the State's~~  
22 ~~telecommunications industry;~~

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

1       ~~(9) The improvements in the regulatory system to be gained~~  
2       ~~from the exemption, including the reduction in~~  
3       ~~regulatory delays and costs;~~

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

6       ~~(11) The opportunity provided by the exemption for~~  
7       ~~telecommunications providers to respond to~~  
8       ~~competition; and~~

9       ~~(12) The potential for the exercise of substantial market~~  
10       ~~power by the exempt provider or by a provider of the~~  
11       ~~exempt telecommunications service.~~

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

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

21       ~~(d) The commission may require a telecommunications~~  
22       ~~provider to apply for a certificate of public convenience and~~

1 ~~necessity pursuant to section 269-7.5; provided that the~~  
2 ~~commission may waive any application requirement whenever it~~  
3 ~~deems the waiver to be in furtherance of the purposes of this~~  
4 ~~section. The exemptions under this section may be granted in a~~  
5 ~~proceeding for certification or in a separate proceeding.~~

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

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

1 ~~any, of access to the basic local exchange service by the~~  
2 ~~customers of the terminated exempt service.~~

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

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

19 SECTION 43. Section 269-16.91, Hawaii Revised Statutes, is  
20 repealed.

21 ~~["**[§269-16.91] Universal service subsidies.** (a) For any~~  
22 ~~alternative telecommunications provider authorized to provide~~

1 ~~basic local exchange service to any area of the State pursuant~~  
2 ~~to section 269-16.9(h), the commission may consider the~~  
3 ~~following:~~

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

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

12 ~~(b) To receive the subsidy amounts from the local exchange~~  
13 ~~service provider, the alternative telecommunications provider~~  
14 ~~shall be required, to the extent possible, to obtain basic~~  
15 ~~residential service subsidies from both the local exchange~~  
16 ~~service provider and national universal service providers." ]~~

17 SECTION 44. Section 269-16.92, Hawaii Revised Statutes, is  
18 repealed.

19 ~~["~~§269-16.92~~ Changes in subscriber carrier selections;~~  
20 ~~prior authorization required; penalties for unauthorized~~  
21 ~~changes.~~ (a) ~~No telecommunications carrier shall initiate a~~

1 ~~change in a subscriber's selection or designation of a long-~~  
2 ~~distance carrier without first receiving:~~

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

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

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

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

1       ~~The commission, if consistent with the public interest, may~~  
2 ~~suspend, restrict, or revoke the registration, charter, or~~  
3 ~~certificate of the telecommunications carrier, thereby denying,~~  
4 ~~modifying, or limiting the right of the telecommunications~~  
5 ~~carrier to provide service in this State.~~

6       ~~(c) The commission shall adopt rules, pursuant to chapter~~  
7 ~~91, necessary for the purposes of this section. The commission~~  
8 ~~may notify customers of their rights under these rules." ]~~

9       SECTION 45. Section 269-16.95, Hawaii Revised Statutes, is  
10 repealed.

11       ~~[ "**~~\$269-16.95 Emergency telephone service; capital costs;~~**~~  
12 ~~**ratemaking.** (a) A public utility providing local exchange~~  
13 ~~telecommunications services may recover the capital cost and~~  
14 ~~associated operating expenses of providing a statewide enhanced~~  
15 ~~911 emergency telephone service in the public switched telephone~~  
16 ~~network, through:~~

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

18       ~~(2) Its rate case.~~

19       ~~(b) Notwithstanding the commission's rules on ratemaking,~~  
20 ~~the commission shall expedite and give highest priority to any~~  
21 ~~necessary ratemaking procedures related to providing a statewide~~  
22 ~~enhanced 911 emergency telephone service; provided that the~~

1 ~~commission may set forth conditions and requirements as the~~  
2 ~~commission determines are in the public interest.~~

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

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

15 SECTION 46. Section 269-34, Hawaii Revised Statutes, is  
16 repealed.

17 ~~["**~~§269-34~~** **~~Obligations of telecommunications carriers.~~**~~  
18 ~~In accordance with conditions and guidelines established by the~~  
19 ~~commission to facilitate the introduction of competition into~~  
20 ~~the State's telecommunications marketplace, each~~  
21 ~~telecommunications carrier, upon bona fide request, shall~~  
22 ~~provide services or information services, on reasonable terms~~

1 ~~and conditions, to an entity seeking to provide intrastate~~  
2 ~~telecommunications, including:~~

3 ~~(1) Interconnection to the telecommunications carrier's~~  
4 ~~telecommunications facilities at any technically~~  
5 ~~feasible and economically reasonable point within the~~  
6 ~~telecommunications carrier's network so that the~~  
7 ~~networks are fully interoperable;~~

8 ~~(2) The current interstate tariff used as the access rate~~  
9 ~~until the commission can adopt a new intrastate local~~  
10 ~~service interconnection tariff pursuant to section~~  
11 ~~269-37;~~

12 ~~(3) Nondiscriminatory and equal access to any~~  
13 ~~telecommunications carrier's telecommunications~~  
14 ~~facilities, functions, and the information necessary~~  
15 ~~to the transmission and routing of any~~  
16 ~~telecommunications service and the interoperability of~~  
17 ~~both carriers' networks;~~

18 ~~(4) Nondiscriminatory access among all telecommunications~~  
19 ~~carriers, where technically feasible and economically~~  
20 ~~reasonable, and where safety or the provision of~~  
21 ~~existing electrical service is not at risk, to the~~  
22 ~~poles, ducts, conduits, and rights-of-way owned or~~

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

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

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

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

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

7       SECTION 47. Section 269-35, Hawaii Revised Statutes, is  
8 repealed.

9       ~~[ "~~§269-35~~ **Universal service.** The commission shall~~  
10 ~~preserve and advance universal service by:~~

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

21       SECTION 48. Section 269-36, Hawaii Revised Statutes, is  
22 repealed.

1       ~~["§269-36] Telecommunications number portability. The~~  
2       ~~commission shall ensure that telecommunications number~~  
3       ~~portability within an exchange is available, upon request, as~~  
4       ~~soon as technically feasible and economically reasonable. An~~  
5       ~~impartial entity shall administer telecommunications numbering~~  
6       ~~and make the numbers available on an equitable basis."]~~

7       SECTION 49. Section 269-37, Hawaii Revised Statutes, is  
8       repealed.

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

21       SECTION 50. Section 269-38, Hawaii Revised Statutes, is  
22       repealed.

1           ~~["§269-38] Regulatory flexibility for effectively~~  
2 ~~competitive services.~~ The commission may allow  
3 telecommunications carriers to have pricing flexibility for  
4 services that the commission finds are effectively competitive;  
5 provided that the rates for:

- 6           ~~(1) Basic telephone service and for services that are not~~  
7           ~~effectively competitive are cost-based and remain~~  
8           ~~just, reasonable, and nondiscriminatory; and~~  
9           ~~(2) Universal service is preserved and advanced."]~~

10           SECTION 51. Section 269-39, Hawaii Revised Statutes, is  
11 repealed.

12           ~~["§269-39] Cross-subsidies. (a) The commission 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 commission in subsection~~

19           ~~(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 commission.~~

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

9       SECTION 52. Section 269-40, Hawaii Revised Statutes, is  
10 repealed.

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

20       SECTION 53. Section 269-41, Hawaii Revised Statutes, is  
21 repealed.

1           ~~["§269-41] Universal service program; establishment;~~  
2 ~~purpose; principles.~~ There is established the universal service  
3 program. The purpose of this program is to:

4           ~~(1) Maintain affordable, just, and reasonable rates for~~  
5           ~~basic residential telecommunications service, as~~  
6           ~~defined by the commission;~~

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

15           ~~(3) Ensure that consumers in all communities are provided~~  
16           ~~with access, at reasonably comparable rates, to all~~  
17           ~~telecommunications services which are used by a~~  
18           ~~majority of consumers located in metropolitan areas of~~  
19           ~~the State. The commission shall provide for a~~  
20           ~~reasonable transition period to support the statewide~~  
21           ~~deployment of these advanced telecommunications~~  
22           ~~services, including, but not limited to, the use of~~

1 ~~strategic community access points in public facilities~~  
2 ~~such as education, library, and health care~~  
3 ~~facilities;~~

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

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

12 ~~The commission shall administer the universal service~~  
13 ~~program, including the establishment of criteria by which the~~  
14 ~~purposes of the program are met." ]~~

15 SECTION 54. Section 269-42, Hawaii Revised Statutes, is  
16 repealed.

17 [~~§269-42 Universal service program; contributions.~~ (a)  
18 ~~There is established outside of the state treasury a special~~  
19 ~~fund to be known as the universal service fund to be~~  
20 ~~administered by the commission to implement the policies and~~  
21 ~~goals of universal service. The fund shall consist of~~  
22 ~~contributions from the sources identified in subsections (c) and~~

1 ~~(f). Interest earned from the balance of the fund shall become~~  
2 ~~a part of the fund. The commission shall adopt rules regarding~~  
3 ~~the distribution of moneys from the fund including~~  
4 ~~reimbursements to carriers for providing reduced rates to low-~~  
5 ~~income, elderly, residents of underserved or rural areas, or~~  
6 ~~other subscribers, as authorized by the commission.~~

7 ~~(b) The commission may allow distribution of funds~~  
8 ~~directly to customers based upon a need criteria established by~~  
9 ~~the commission.~~

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

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

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

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

17       SECTION 55. Section 269-43, Hawaii Revised Statutes, is  
18 repealed.

19       ~~["~~§269-43~~ **Carriers of last resort.** (a) The commission~~  
20 ~~may define and designate local exchange service areas where the~~  
21 ~~commission has determined that providing universal service funds~~

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

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

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

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

19 SECTION 56. Chapter 440G, Hawaii Revised Statutes, is  
20 repealed.

21 PART IV

1           SECTION 57. During fiscal year 2012-2013, an amount equal  
2 to fifty per cent of the moneys collected by the public  
3 utilities commission from telecommunications carriers and  
4 deposited into the public utilities commission special fund  
5 shall be transferred to and deposited into the  
6 telecommunications and cable television services commission  
7 special fund.

8           SECTION 58. The unencumbered balance existing on June 30,  
9 2012, in the cable television division subaccount in the  
10 compliance resolution fund shall be deposited into the  
11 telecommunications and cable television services commission  
12 special fund.

13           SECTION 59. There is appropriated out of the  
14 telecommunications and cable television services commission  
15 special fund the sum of \$                    or so much thereof as may be  
16 necessary for fiscal year 2012-2013 to implement this Act.

17           The sum appropriated shall be expended by the department of  
18 business, economic development, and tourism for the purposes of  
19 this Act.

20           SECTION 60. There is appropriated out of the  
21 telecommunications and cable television services commission  
22 special fund the sum of \$                    or so much thereof as may be

1 necessary for fiscal year 2012-2013 to fund transition costs  
2 related to the retention of logistical and technical assistance  
3 by the public utilities commission in transferring electronic  
4 and physical data, as well as other related transition costs.

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

7 SECTION 61. **Transfer of functions.** (a) All rules,  
8 regulations, policies, procedures, decisions, orders,  
9 exemptions, waivers, certificates of authority, certificates of  
10 registration, certificates of public convenience and necessity,  
11 charters, franchises, guidelines, tariffs, informational  
12 filings, and other material adopted, issued, or developed by the  
13 department of commerce and consumer affairs or public utilities  
14 commission to implement certain applicable provisions of the  
15 Hawaii Revised Statutes which are in effect on the effective  
16 date of this Act, reenacted or made applicable to the  
17 telecommunications and cable television services commission by  
18 this Act, shall remain in full force and effect until amended or  
19 repealed, as applicable, by the telecommunications and cable  
20 television services commission. In the interim, every reference  
21 to the department of commerce and consumer affairs, director of  
22 commerce and consumer affairs, public utilities commission, or

1 chairperson of the public utilities commission in those rules,  
2 regulations, policies, procedures, decisions, orders,  
3 exemptions, waivers, franchises, charters, guidelines, tariffs,  
4 informational filings, and other material is amended to refer to  
5 the telecommunications and cable television services commission,  
6 as appropriate. Notwithstanding the foregoing, this Act should  
7 be read in context with any applicable federal and state laws  
8 and regulations.

9 (b) All deeds, leases, contracts, loans, agreements,  
10 permits, or other documents executed or entered into by or on  
11 behalf of the department of commerce and consumer affairs and  
12 public utilities commission pursuant to the provisions of the  
13 Hawaii Revised Statutes, which are reenacted or made applicable  
14 to the telecommunications and cable television services  
15 commission by this Act, shall remain in full force and effect.  
16 On the effective date of this Act, every reference to the  
17 department of commerce and consumer affairs, director of  
18 commerce and consumer affairs, public utilities commission, or  
19 chairperson of the public utilities commission therein shall be  
20 construed as a reference to the telecommunications and cable  
21 television services commission, as appropriate.

1 (c) All functions of the cable television division of the  
2 department of commerce and consumer affairs shall be transferred  
3 to the telecommunications and cable television services  
4 commission.

5 SECTION 62. **Transfer of records, equipment,**  
6 **appropriations, authorizations, and other property.** All  
7 appropriations, records, equipment, machines, files, supplies,  
8 contracts, books, papers, documents, maps, and other personal  
9 property heretofore made, used, acquired, or held by the  
10 department of commerce and consumer affairs and the public  
11 utilities commission relating to the functions transferred to  
12 the telecommunications and cable television services commission  
13 shall be transferred with the functions to which they relate.

14 SECTION 63. **Transfer of personnel.** (a) The department of  
15 commerce and consumer affairs shall transfer seven positions  
16 from the cable television division to the telecommunications and  
17 cable television services commission. The positions selected  
18 for transfer shall reasonably relate to the functions of the  
19 telecommunications and cable television services commission.

20 (b) All officers and employees who are transferred to the  
21 telecommunications and cable television services commission by  
22 this Act shall continue to perform their regular duties upon

1 their transfer, subject to the personnel laws of the State and  
2 this Act. No officer or employee of the State shall suffer any  
3 loss of salary, seniority, prior service credit, vacation, sick  
4 leave, or other employee benefit or privilege as a consequence  
5 of this Act.

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

14 SECTION 64. Beginning July 1, 2013, any telecommunications  
15 carrier or telecommunications common carrier as defined in  
16 section -1 of section 2 of this Act and subject to the  
17 authority of the telecommunications and cable television  
18 services commission pursuant to section -5 of section 2 of  
19 this Act shall not be a public utility solely for the purpose of  
20 chapter 269. Any reference to a public utility, utility  
21 company, or public utility facility that is referred to under  
22 any other chapter, charter, franchise, statute, ordinance, rule,

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

8 SECTION 65. **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 those Acts  
12 specifically provide that this Act is being amended.

13 SECTION 66. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 67. This Act shall take effect on July 1, 2012;  
16 provided that:

17 (1) Section 2 of this Act shall take effect as follows:

18 (A) Part I (relating to the telecommunications and  
19 cable television services commission, generally)  
20 of the new chapter shall take effect on July 1,  
21 2012; provided that those provisions relating to

- 1           the regulation of telecommunications carriers  
2           shall take effect on July 1, 2013;
- 3           (B) Part II (relating to telecommunications services)  
4           of the new chapter shall take effect on July 1,  
5           2013; provided that section -41 shall take  
6           effect on July 1, 2012; and
- 7           (C) Part III (relating to cable services) of the new  
8           chapter shall take effect on July 1, 2012;
- 9           (2) Sections 5, 9, 10, 11, 17, 21, 22, 23, 24, 28, 30, and  
10          38 to 55 of this Act shall take effect on July 1,  
11          2013;
- (3) The amendments made to section 26-9(o), Hawaii Revised  
          Statutes, in section 3 of this Act shall not be  
          repealed when that section is reenacted on September  
          30, 2014, pursuant to section 45 of Act 48, Session  
          Laws of Hawaii 2011; and
- (4) The amendments made to section 36-27(a), Hawaii  
          Revised Statutes, in section 5 of this Act shall not  
          be repealed when that section is reenacted on June 30,  
          2015, pursuant to section 34 of Act 79, Session Laws  
          of Hawaii 2009.

**Report Title:**

Telecommunications and Cable Television Services; Commission

**Description:**

Establishes the telecommunications and cable television services commission within DBEDT to regulate telecommunications and cable television services. Effective 7/1/12 regarding cable operators and 7/1/13 regarding telecommunications carriers. (HB2524 HD2 Proposed)

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