

S.B. NO. 2786

JAN 25 2012

A BILL FOR AN ACT

RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE
TELEVISION SERVICES.

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

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

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

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

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

8 The commissioner shall:

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

1 competing providers of broadband services to the
2 public.

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

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

20 This Act combines the telecommunications provisions from
21 chapter 269 and all of chapter 440G of the Hawaii Revised
22 Statutes into a new chapter so that both telecommunications

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1 carriers and cable operators would be subject to regulation by
2 the commissioner.

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

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

12 **"CHAPTER**

13 **TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

14 **PART I. COMMUNICATIONS DIVISION, GENERALLY**

15 § -1 **Definitions.** As used in this chapter, unless the
16 context otherwise requires:

17 "Access facility" means:

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

1 "Access organization" means any nonprofit organization
2 designated by the commissioner to oversee the development,
3 operation, supervision, management, production, or cablecasting
4 of programs for any channels obtained under section -61, and
5 to provide public, educational, or governmental access services.

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

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

15 "Application" means an unsolicited filing.

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

18 "Broadband" means an "always on" service that combines
19 computer processing capabilities, information provision, and
20 computing interactivity with data transport, enabling end users
21 to access the internet and use a variety of applications, at
22 minimum speeds set by the commissioner.

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

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

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

13 "Cable service" means:

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

19 "Cable system" means any facility within this State
20 consisting of a set of closed transmission paths and associated
21 signal generation, reception, and control equipment that is
22 designed to provide cable service which includes video

1 programming and which is provided to multiple subscribers within
2 a community, but does not include a facility:

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

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

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

14 "Carrier of last resort" means a telecommunications carrier
15 designated by the commissioner to provide universal service in a
16 given local exchange service area determined to be lacking in
17 effective competition.

18 "Commissioner" means the communications commissioner of the
19 communications division of the department of commerce and
20 consumer affairs.

21 "Consumer advocate" means the executive director of the
22 division of consumer advocacy appointed by the director pursuant
23 to section 269-51, acting in the capacity of consumer advocate.

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1 "Department" means the department of commerce and consumer
2 affairs.

3 "Designated local exchange service area" means an area as
4 determined by the commissioner to be best served by designating
5 a carrier of last resort pursuant to section -43.

6 "Director" means the director of commerce and consumer
7 affairs.

8 "Division" means the communications division of the
9 department of commerce and consumer affairs.

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

15 "Institution of higher education" means an academic college
16 or university accredited by the Western Association of Schools
17 and Colleges.

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

20 "Person" means an individual, corporation, partnership,
21 association, limited liability company, any other form of
22 business entity, trust, or governmental agency.

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

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

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

9 "Service area" means the geographic area for which a cable
10 operator has been issued a cable franchise or for which a
11 telecommunications carrier is authorized to provide
12 telecommunications service.

13 "Telecommunications" means the transmission, between or
14 among points specified by a user, of information of the user's
15 choosing, without change in the form or content of the
16 information as sent and received.

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

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

12 "Telecommunications service" means the offering of
13 telecommunications for a fee directly to the public, or to such
14 classes of users as to be effectively available directly to the
15 public, regardless of the facilities used.

16 "Video programming" means programming provided by, or
17 generally considered comparable to programming provided by, a
18 television broadcast station.

19 § -2 **Communications division.** The communications
20 division is established within the department of commerce and
21 consumer affairs.

22 § -3 **Communications commissioner.** (a) The director,
23 with the approval of the governor, shall appoint the

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1 communications commissioner. The commissioner shall be
2 responsible for the performance of the duties imposed upon the
3 commissioner or the division as specified in this chapter. The
4 commissioner, who shall not be subject to chapter 76, may be
5 removed by the director with the approval of the governor.

6 (b) The salary of the commissioner shall be _____.

7 § -4 **Deputy commissioner.** The commissioner may appoint
8 a deputy commissioner, who shall not be subject to chapter 76.
9 The deputy commissioner shall have the power to perform any act
10 or duty assigned by the commissioner, and shall serve as the
11 commissioner if, for any reason, the commissioner is unable to
12 perform the duties of commissioner.

13 § -5 **Employment of assistants, personnel.** (a) The
14 commissioner may appoint and employ office assistants, agents,
15 engineers, accountants, and other personnel, with or without
16 regard to chapter 76.

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

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

21 (d) The commissioner may appoint one or more attorneys
22 independent of the attorney general who shall act as attorneys
23 for the division and who shall not be subject to chapter 76.

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1 The commissioner shall define their powers and duties and fix
2 their compensation.

3 **§ -6 General powers and duties.** (a) The commissioner
4 shall have the authority expressly conferred by, or reasonably
5 implied from, the provisions of this chapter.

6 (b) The commissioner shall have general regulatory
7 supervision over all telecommunications carriers and cable
8 operators, and shall perform the duties and exercise the powers
9 imposed or conferred by this chapter.

10 (c) The commissioner shall have the authority to adopt
11 rules pursuant to chapter 91 necessary to effectuate the
12 purposes of this chapter.

13 (d) Subject to consultation with the public utilities
14 commission, the commissioner shall have authority over electric
15 utilities to the extent necessary to mandate and regulate access
16 by telecommunications carriers and cable operators to the poles
17 of electric utilities.

18 **§ -7 Communications development duties.** (a) The
19 commissioner shall strive to ensure that all consumers are
20 provided with nondiscriminatory, reasonable, and equitable
21 access to high quality network facilities and services that
22 provide subscribers with sufficient network capacity to access
23 services that provide a combination of voice, data, image,

1 cable, and video, and that are available at just, reasonable,
2 and nondiscriminatory rates.

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

14 (c) The commissioner shall develop programs and
15 initiatives to encourage and facilitate the deployment of
16 broadband services and access to those services by users in the
17 State. The commissioner shall fund these programs and
18 initiatives using funds collected pursuant to section -21 and
19 deposited in the communications special fund pursuant to
20 section -20. In addition, the commissioner may seek
21 appropriations of funds from the State.

22 (d) The commissioner shall develop, and routinely update, a
23 state policy and formulate positions to be taken before federal

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1 agencies regarding communications related matters of the State.
2 The commissioner shall advocate the broadband,
3 telecommunications, and video programming distribution interests
4 of the State before the United States Congress, the executive
5 branch of the United States, and the Federal Communications
6 Commission, and locally before the governor, the state
7 legislature, and municipal and county governments. The
8 commissioner shall also maintain active working relationships
9 with community groups, civic associations, industry trade
10 associations, industry leaders, and other stakeholders to
11 communicate the interests and concerns of the State.

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

15 (f) The commissioner shall advise and assist state
16 agencies, and upon request of the counties, advise and assist
17 the counties, in planning, developing, and administering
18 programs, projects, plans, policies, and other activities to
19 promote telecommuting by state and county employees.

20 (g) The commissioner shall support the efforts of both
21 public and private entities in the State to enhance or
22 facilitate the deployment of, and access to, competitively
23 priced, advanced electronic communications services, including

1 broadband and its products and services and internet access
2 services of general application throughout the State.

3 (h) The commissioner shall make recommendations to
4 establish affordable, accessible broadband services to unserved
5 and underserved areas in the State and monitor advancements in
6 communications that will facilitate this goal.

7 (i) The commissioner shall advocate for, and facilitate the
8 development and deployment of, expanded broadband applications,
9 programs, and services, including telework, telemedicine, and e-
10 learning, that will bolster the usage of and demand for
11 broadband-level telecommunications.

12 (j) The commissioner shall serve as a broadband information
13 and applications clearinghouse for the State and coordinate
14 broadband-related services and programs under the federal
15 American Recovery and Reinvestment Act of 2009.

16 (k) The commissioner shall promote, advocate, and
17 facilitate the implementation of the findings and
18 recommendations of the Hawaii broadband task force established
19 by Act 2, First Special Session Laws of Hawaii 2007.

20 § -8 **Communications infrastructure permitting.** The
21 commissioner shall investigate measures that could streamline
22 and expedite the permitting and approval processes that are
23 imposed by governmental entities with respect to the

1 construction of infrastructure intended for use in the provision
2 of broadband services to the public. The commissioner shall
3 also investigate the possibility of assuming all or a portion of
4 the duties and authority to issue permits and approvals for the
5 construction of broadband infrastructure. The commissioner may
6 assume such duties and authorities and shall carry them out in
7 accordance with any statutes or rules applicable to such duties
8 and authorities; provided that the assumption of such duties and
9 authorities is deemed by the commissioner to be appropriate and
10 efficient, such duties and authorities can be delegated by the
11 relevant governmental entities, and the relevant governmental
12 entities approve.

13 § -9 **Investigative powers.** (a) The commissioner shall
14 have the power to examine:

15 (1) The condition of each telecommunications carrier and
16 cable operator;

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

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

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- 1 (4) The services provided by telecommunications carriers
2 and cable operators, and the steps being taken to
3 provide those services;
- 4 (5) The value of the physical property of each
5 telecommunications carrier and cable operator;
- 6 (6) The issuance by each telecommunications carrier and
7 cable operator of stocks and bonds, and the
8 disposition of the proceeds thereof;
- 9 (7) The amount and disposition of income of each
10 telecommunications carrier and cable operator, and all
11 financial transactions of each telecommunications
12 carrier and cable operator;
- 13 (8) The business relations of each telecommunications
14 carrier and cable operator, with other persons;
- 15 (9) Compliance by each telecommunications carrier and
16 cable operator, with all applicable state and federal
17 laws and with the provisions of its franchise,
18 charter, and articles of association, if any; and
- 19 (10) Classifications, rules, regulations, practices, and
20 service, and all matters of every nature affecting the
21 relations and transactions between each
22 telecommunications carrier and cable operator, and the
23 public or any other persons.

1 (b) Beginning July 1, 2013, the commissioner may
2 investigate any person acting in the capacity of or engaging in
3 the business of a telecommunications carrier within the State
4 without having a certificate of public convenience and
5 necessity, certificate of authority or certificate of
6 registration, or other authority previously obtained under and
7 in compliance with this chapter or chapter 269, or the rules
8 adopted under this chapter or chapter 269.

9 (c) The commissioner may investigate any person acting in
10 the capacity of or engaging in the business of a cable operator
11 within the State without having a franchise or other authority
12 previously obtained under and in compliance with this chapter,
13 or the rules adopted under this chapter.

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

1 § -10 **Delegation of powers.** Any power, duty, or
2 function vested in the commissioner by this chapter may be
3 exercised, discharged, or performed by any employee of the
4 division employed pursuant to section -5(a), (b), or (d)
5 acting in the name and by the delegated authority of the
6 commissioner. Any power, duty, or function vested in the
7 commissioner by this chapter may be exercised, discharged, or
8 performed by any employee of the department utilized pursuant to
9 section -5(c) or (e) acting in the name and by the delegated
10 authority of the commissioner, with the approval of the
11 director.

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

- 19 (1) Summary information and analytical, comparative, and
20 trend data concerning major regulatory issues acted
21 upon and pending before the commissioner;
- 22 (2) Cases processed by the commissioner, including their
23 dispositions;

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

1 broadband facilities, services, or equipment or for
2 entering into contracts for broadband-related projects
3 by all State agencies; and

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

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

9 **§ -12 Commissioner's power to subpoena; contempt**

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

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

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

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

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

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

1 § -13 **Notices.** (a) Whenever an investigation is
2 undertaken and a hearing is scheduled by the commissioner,
3 reasonable notice in writing of the hearing and of the subject
4 or subjects to be investigated shall be given to the
5 telecommunications carrier, cable operator, access organization,
6 or persons concerned. If the investigation is based upon
7 complaints made to the commissioner as prescribed in section
8 -9(d), a copy of the complaint, and a notice in writing of the
9 date and place fixed by the commissioner for beginning the
10 investigation, shall be served upon the complainant and the
11 telecommunications carrier, cable operator, persons concerned,
12 or other respondent not less than fourteen calendar days before
13 the date designated for the hearing.

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

20 (c) Any public hearing held pursuant to section -38(f),
21 shall be a noticed public hearing or hearings on the island on
22 which the telecommunications carrier is situated. Notice of the
23 hearing, with the purpose thereof and the date, time, and place

1 at which it will be held, shall be given not less than once in
2 each of three weeks in the affected county or counties, the
3 first notice being not less than twenty-one days before the
4 public hearing and the last notice being not more than two days
5 before the scheduled hearing. The applicant or applicants shall
6 notify their consumers or patrons of the proposed change in
7 rates and of the time and place of the public hearing not less
8 than seven calendar days before the date set, the manner and the
9 fact of notification to be reported to the commissioner before
10 the date of hearing.

11 § **-14 Right to be represented by counsel.** At any
12 investigation by or proceeding before the commissioner, the
13 telecommunications carrier, cable operator, access organization,
14 persons concerned, and any complainant shall have the right to
15 be present and represented by counsel, to present any evidence
16 desired, and to cross-examine any witness who may be called.

17 § **-15 Commissioner may institute proceedings to enforce**
18 **chapter.** (a) If the commissioner is of the opinion that any
19 telecommunications carrier, cable operator, access organization,
20 or person is violating or failing to comply with any provision
21 of this chapter or of any rule, order, or other requirement of
22 the commissioner, or of any provisions of the affected party's
23 certificate of public convenience and necessity, certificate of

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1 authority, certificate of registration, franchise, charter,
2 contract, or articles of association, if any; or that changes,
3 additions, extensions, or repairs are desirable in the affected
4 party's plant or service to meet the reasonable convenience or
5 necessity of the public, or to ensure greater safety or
6 security; or that any rates, fares, classifications, charges, or
7 rules are unreasonable or unreasonably discriminatory; or that
8 in any way the affected party is doing what it ought not to do,
9 or not doing what it ought to do, the commissioner shall in
10 writing inform the affected party and may institute proceedings
11 as may be necessary to require the affected party to correct any
12 such deficiency. The commissioner may by order direct the
13 consumer advocate to appear in such proceeding, to carry out the
14 purposes of this section. The commissioner may conduct an
15 examination into any of the matters referred to in section -
16 9, notwithstanding any concurrent jurisdiction of any court or
17 other body; provided that this section shall not be construed as
18 in any manner limiting or otherwise affecting the jurisdiction
19 of any such court or other body. The commissioner may also
20 revoke or amend any provision of a certificate of public
21 convenience and necessity, certificate of authority, certificate
22 of registration, franchise, charter, or articles of association,
23 or contract, if any, pursuant to section -31 or -69.

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

9 (1) Any citation issued under this section may contain an
10 order of abatement and an assessment of civil
11 penalties as provided in section -24. All
12 penalties collected under this subsection shall be
13 deposited in the communications special fund created
14 in section -20. Service of a citation issued under
15 this subsection shall be made by personal service
16 whenever possible, or by certified mail, return
17 receipt requested, sent to the last known business or
18 residence address of the person cited.

19 (2) Any person served with a citation under this
20 subsection may submit a written request to the
21 commissioner for a hearing, within twenty calendar
22 days from the receipt of the citation, with respect to
23 the violations alleged, the scope of the order of

1 abatement, and the amount of civil penalties
2 assessed. If the person cited under this subsection
3 timely notifies the commissioner of the request for a
4 hearing, the commissioner shall afford an opportunity
5 for a hearing under chapter 91. The hearing shall be
6 conducted by the commissioner or the commissioner may
7 designate a hearings officer to conduct the hearing.

- 8 (3) If the person cited under this subsection does not
9 submit a written request to the commissioner for a
10 hearing within twenty calendar days from the receipt
11 of the citation, the citation shall be deemed a final
12 order of the commissioner. The commissioner may apply
13 to the appropriate court for a judgment to enforce the
14 provisions of any final order issued by the
15 commissioner pursuant to this subsection, including
16 but not limited to the provisions for abatement and
17 civil penalties imposed. In any proceeding to enforce
18 the provisions of the final order of the commissioner,
19 the commissioner need only show that the notice was
20 given, a hearing was held or the time granted for
21 requesting the hearing has run without such a request,
22 and a certified copy of the final order of the
23 commissioner.

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

16 § -16 Appeals. An appeal from an order of the
17 commissioner under this chapter shall lie, in the manner
18 provided for in chapter 602. Only a person aggrieved in a
19 contested case proceeding provided for in this chapter may
20 appeal from the order, if the order is final, or a preliminary
21 order if it is of the nature defined by section 91-14(a). The
22 commissioner may elect to be a party to all matters, from which
23 an order of the commissioner is appealed or any action in any

1 court of law seeking a mandamus, or injunctive or other relief
2 to compel compliance with this chapter, or any rule or order
3 adopted thereunder, or to restrain or otherwise prevent or
4 prohibit any illegal or unauthorized conduct in connection
5 therewith, and file appropriate responsive briefs or pleadings.
6 If there is no adverse party to the appeal, the commissioner
7 shall be a party and shall file responsive briefs or pleadings
8 in defending all orders. The appearance of the commissioner as
9 a party in judicial proceedings in no way limits the
10 participation of persons otherwise qualified to be parties on
11 appeal. The appeal shall not of itself stay the operation of
12 the order appealed from, but the appellate court may stay the
13 order after a hearing upon a motion therefor and may impose
14 conditions it deems proper, including but not limited to
15 requiring a bond, requiring that accounts be kept, or requiring
16 that other measures be taken as ordered to secure restitution of
17 the excess charges, if any, made during the pendency of the
18 appeal, in case the order appealed from is sustained, reversed,
19 or modified in whole or in part.

20 § -17 **Alternative dispute resolution.** The commissioner
21 may require the parties in any matter before the commissioner to
22 participate in arbitration, mediation, or other alternative
23 dispute resolution process prior to the hearing.

1 § **-18 Perjury.** Any person who wilfully and knowingly
2 makes under oath any false statement in connection with any
3 investigation by or proceeding before the commissioner shall be
4 guilty of perjury and, upon conviction, shall be subject to the
5 penalty prescribed by law for the offense.

6 § **-19 Telecommunications carriers, cable operators, and**
7 **access organizations to furnish information.** (a) Every
8 telecommunications carrier, cable operator, access organization,
9 or other person subject to investigation by the commissioner,
10 shall at all times, upon request, furnish to the commissioner
11 all information that the commissioner may require respecting any
12 of the matters concerning which the commissioner is given power
13 to investigate, and shall permit the examination of the affected
14 party's books, records, contracts, maps, and other documents
15 related to its operations in or affecting the State by the
16 commissioner, or any person authorized by the commissioner in
17 writing to make such examination, and shall furnish the
18 commissioner with a complete inventory of property under the
19 affected party's control or management in or affecting the State
20 in such form as the commissioner may direct. The affected party
21 may request in writing that confidential commercial and business
22 information and data that the commissioner requires to be
23 produced be treated and protected as confidential by the

1 commissioner. The affected party shall designate and separate
2 the information claimed to be confidential, and shall submit a
3 separate statement providing the reasons and authority for the
4 request for confidential treatment. Upon a showing satisfactory
5 to the commissioner, the information, or a particular part
6 thereof, shall be protected from public disclosure to the extent
7 permitted by chapter 92F.

8 (b) The commissioner shall conduct a management audit of
9 the access organizations designated under this part, every three
10 years or sooner as determined by the commissioner to be
11 appropriate. The commissioner shall require the access
12 organizations designated under this part to submit annual
13 audited financial statements to the commissioner unless
14 determined otherwise by the commissioner for good cause.

15 § -20 **Communications special fund.** (a) There is
16 established in the state treasury a communications special fund
17 to be administered by the division and expended to carry out the
18 duties and obligations of the division under this chapter. All
19 revenues, fees, penalties, and fines collected by the
20 commissioner shall be deposited into the communications special
21 fund. On a quarterly basis, an amount not to exceed thirty per
22 cent of the fees derived under section -21 and any penalties
23 and fines collected by the commissioner remaining in the fund

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

7 (b) All moneys appropriated to, received, and collected by
8 the commissioner that are not otherwise pledged, obligated, or
9 required by law to be placed in any other special fund or
10 expended for any other purpose shall be deposited into the
11 communications special fund including, but not limited to, all
12 moneys received and collected by the commissioner pursuant to
13 sections -21, -24, and 92-21.

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

18 § -21 **Finances; regulatory fee.** (a) There shall be
19 paid to the commissioner in each of the months of July and
20 December of each year, by each telecommunications carrier
21 subject to this chapter, a fee set by the commissioner not to
22 exceed one-fourth of one per cent of the gross income from the
23 telecommunications carrier's business in the State during the

1 preceding year, or the sum of \$30, whichever is greater. The
2 commissioner shall set the fee amount based on its projected
3 budget for the year to administer and enforce this chapter.
4 This fee shall be deposited with the director of finance to the
5 credit of the communications special fund created pursuant to
6 section -20.

7 (b) Each telecommunications carrier paying a fee under
8 subsection (a) may impose a surcharge to consumers to recover
9 the amount paid above one-eighth of one per cent of its gross
10 income in the State. The surcharge imposed shall not be subject
11 to the notice, hearing, and approval requirements of this
12 chapter; provided that the surcharge may be imposed by the
13 telecommunications carrier only after at least thirty calendar
14 days' written notice to the commissioner.

15 § -22 **Consumer advocate.** (a) The consumer advocate
16 shall serve as the consumer advocate in all hearings and
17 proceedings before the commissioner.

18 (b) The consumer advocate shall represent, protect, and
19 advance the interests of all consumers, including small
20 businesses, of telecommunications carriers and cable operators.
21 The responsibility for advocating the interests of the consumers
22 of telecommunications carriers and cable operators shall be
23 separate and distinct from the responsibilities of the

1 communications division and those assistants employed by the
2 division. The consumer advocate shall have full rights to
3 participate as a party in interest in all proceedings before the
4 communications division, including proceedings initiated
5 pursuant to section -15.

6 (c) The consumer advocate shall counsel the customers of
7 telecommunications carriers and cable operators in the handling
8 of consumer complaints before the communications division. The
9 communications division shall provide a central clearinghouse of
10 information by collecting and compiling all consumer complaints
11 and inquiries concerning telecommunications carriers and cable
12 operators.

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

14 (1) Any telecommunications carrier or cable operator has
15 violated or failed to comply with any provision of
16 this chapter or of any state or federal law;

17 (2) Any telecommunications carrier or cable operator has
18 failed to comply with any rule, regulation, or other
19 requirement of the commissioner, or of any other state
20 or federal agency;

21 (3) Any telecommunications carrier or cable operator has
22 failed to comply with any provision of its franchise,
23 certificate of public convenience and necessity,

1 certificate of authority, or certificate of
2 registration;

3 (4) Changes, additions, extensions, or repairs to the
4 plant or service of any telecommunications carrier or
5 cable operator are necessary to meet the reasonable
6 convenience or necessity of the public; or

7 (5) The rates, fares, classifications, charges, or rules
8 of any telecommunications carrier or cable operator
9 are unreasonable or unreasonably discriminatory;

10 the consumer advocate may institute proceedings for appropriate
11 relief before the communications division. The consumer
12 advocate may appeal any final decision and order in any
13 proceeding to which the consumer advocate is a party in the
14 manner provided by law.

15 (e) The consumer advocate may file with the communications
16 division and serve on any telecommunications carrier or cable
17 operator a request in writing to furnish any information
18 reasonably relevant to any matter or proceeding before the
19 communications division or reasonably required by the consumer
20 advocate to perform the duties hereunder. Any such request
21 shall set forth with reasonable specificity the purpose for
22 which the information is requested and shall designate with
23 reasonable specificity the information desired. The

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1 telecommunications carrier or cable operator shall comply with
2 such request within the time limit set forth by the consumer
3 advocate unless within ten calendar days following service it
4 requests a hearing on the matter before the communications
5 division and states its reasons therefor. If a hearing is
6 requested, the communications division shall proceed to hold the
7 hearing and make its determination on the request within thirty
8 calendar days after the same is filed. The consumer advocate,
9 telecommunications carrier, or cable operator may appeal the
10 decision of the commissioner, in the manner provided for in
11 section -16. Subject to the foregoing, such requests may ask
12 the telecommunications carrier or cable operator to:

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

1 custody, or control of the telecommunications carrier
2 or cable operator; or

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

9 § -23 **Cable advisory committee.** There is established
10 the cable advisory committee. The committee shall consist of
11 five members appointed by the governor as provided in section
12 26-34. The committee shall advise the commissioner, cable
13 operators, and access organizations on matters within the
14 jurisdiction of this chapter at the request of the commissioner
15 or cable operator or access organization. The committee shall
16 advise the commissioner on matters relating to any decision to
17 designate, modify, or rescind a designation of a access
18 organization or the requirements therefore, as provided in this
19 chapter. The members of the committee shall serve without pay
20 but shall be entitled to reimbursement for necessary expenses
21 while attending meetings and while in discharge of their duties.

22 § -24 **Penalties.** (a) Any telecommunications carrier,
23 cable operator, or access organization violating or failing in

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1 any particular way to conform to or comply with this chapter or
2 any lawful order of the commissioner, including but not limited
3 to the acts specified in section -69 for cable operators,
4 shall be subject to a civil penalty not to exceed:

5 (1) For telecommunications carriers and cable operators,
6 \$25,000 for each day the violation, neglect, or
7 failure continues; and

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

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

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

1 violation, \$5,000 for each day the uncertified or unfranchised
2 activity continues.

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

7 (d) If any civil penalty imposed pursuant to this section
8 is not paid within such period as the commissioner may direct,
9 the attorney general may institute a civil action for recovery
10 of the same in circuit court.

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

15 **PART II. TELECOMMUNICATIONS**

16 **§ -31 Certificate of public convenience and necessity;**
17 **certificate of authority; certificate of registration.** (a) No
18 telecommunications carrier, as defined in section -1, shall
19 commence its business without first having obtained from the
20 commissioner a certificate of public convenience and necessity,
21 certificate of authority, or certificate of registration.

22 Further, before substantially altering, modifying, or changing
23 the nature or scope of authorized telecommunications service

1 under its existing certificate, or expanding the nature or scope
2 of service of telecommunications services beyond the existing
3 certificate, a telecommunications carrier shall file a separate
4 application for the proposed, modified, or new service.

5 Applications for certificates shall be made in writing to the
6 commissioner and shall comply with the requirements prescribed
7 in the commissioner's rules.

- 8 (1) An application for a certificate of authority,
9 certification of registration, or certification of
10 public convenience and necessity shall include:
- 11 (A) The type of service to be performed;
 - 12 (B) The geographical scope of the operation;
 - 13 (C) The type of equipment to be employed in the
14 service;
 - 15 (D) A statement of the applicant's financial ability
16 to render the proposed service;
 - 17 (E) A copy of the most recent audited financial
18 statement of the applicant and if more than three
19 months have elapsed since the date of the most
20 recent audited financial statement, a current,
21 unaudited financial statement; and

1 (F) The rates or charges proposed to be charged
2 including the rules governing the proposed
3 service.

4 (2) Where exempted by federal law from entry and price
5 regulation by the State, a telecommunications carrier
6 seeking to offer, initiate, or provide intrastate
7 telecommunications service shall apply for a
8 certificate of registration with the division by
9 complying with subparagraphs (A) to (C) and (F).

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

1 by the applicant shall be determined by the commissioner 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
5 section -38.

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

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

1 § **-32 Location of records.** A telecommunications carrier
2 shall keep and maintain records, books, papers, accounts, and
3 other documents related to its operations in or affecting the
4 State as the commissioner may determine are necessary to
5 effectively regulate the telecommunications carrier, that upon
6 request of the commissioner, shall be made accessible within a
7 time frame determined by the commissioner; provided that the
8 original copies shall be made available when requested by the
9 commissioner.

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

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

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

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

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

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

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

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

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

22 (e) The commissioner may waive other regulatory
23 requirements under this chapter applicable to telecommunications

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

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

18 (g) Upon the petition of any person or upon its own
19 motion, the commissioner may rescind any exemption or waiver
20 granted under this section if, after notice and hearing, the
21 commissioner finds that the conditions prompting the granting of
22 the exemption or waiver no longer apply, or that the exemption
23 or waiver is no longer in the public interest, or that the

1 telecommunications provider has failed to comply with one or
2 more of the conditions of the exemption or applicable statutory
3 or regulatory requirements.

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

11 § -35 **Application of this chapter.** This chapter shall
12 not apply to commerce with foreign nations, or commerce with the
13 several states of the United States, except insofar as the same
14 may be permitted under the Constitution and laws of the United
15 States; nor shall it apply to telecommunications carriers owned
16 and operated by the State.

17 § -36 **Obligations of telecommunications carriers.** (a)
18 Consistent with federal law and in accordance with conditions
19 and guidelines established by the commissioner to facilitate the
20 introduction of competition into the State's telecommunications
21 marketplace, each telecommunications carrier, upon bona fide
22 request, shall provide services or information services, on

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1 reasonable terms and conditions, to an entity seeking to provide
2 intrastate telecommunications, including but not limited to:

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 such time that the commissioner may adopt a new
10 intrastate local service interconnection tariff
11 pursuant to section -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
23 controlled by the telecommunications carrier, or the

1 commissioner shall authorize access to electric
2 utilities' poles as provided by the joint pole
3 agreement, division tariffs, rules, or orders, and
4 consistent with the requirements established by the
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, which 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; provided that the commissioner
18 shall determine the equitable distribution of costs
19 among the authorized telecommunications carriers that
20 will use such access and shall establish rules to
21 ensure such access.

22 (b) Where possible, telecommunications carriers shall
23 enter into negotiations to agree on the provision of services or

1 information services without requiring intervention by the
2 commissioner; provided that any agreement shall be subject to
3 review by the commissioner to ensure compliance with the
4 requirements of this section.

5 § -37 **Compensation agreements.** (a) The commissioner
6 shall ensure that telecommunications carriers are compensated on
7 a fair basis for termination of telecommunications services on
8 each other's networks, taking into account, among other things,
9 reasonable and necessary costs to each telecommunications
10 carrier of providing the services in question.

11 (b) Telecommunications carriers may negotiate compensation
12 arrangements, which may include "bill and keep", mutual and
13 equal compensation, or any other reasonable division of revenues
14 pending tariff access rates to be set by the commissioner. Upon
15 failure of the negotiations, the commissioner shall determine
16 the proper methodology and amount of compensation, which may
17 include bill and keep arrangements.

18 § -38 **Regulation of telecommunications carrier rates;**
19 **ratemaking procedures.** (a) All rates, fares, charges,
20 classifications, schedules, rules, and practices made, charged,
21 or observed by any telecommunications carrier, or by two or more
22 telecommunications carriers jointly, shall be just and
23 reasonable and shall be filed with the commissioner. The rates,

1 fares, classifications, charges, and rules of every
2 telecommunications carrier shall be published by the
3 telecommunications carriers in such manner as the commissioner
4 may require, and copies shall be furnished to any person on
5 request.

6 (b) The commissioner may issue an order imposing
7 alternative rate regulation procedures.

8 (c) Notwithstanding section -34, or any other law to
9 the contrary, the commissioner shall treat retail intrastate
10 telecommunications services, under the commissioner's
11 classification of services relating to costs, rates, and
12 pricing, as fully competitive and apply all rules of the
13 division in accordance with that designation. In addition, a
14 telecommunications carrier shall not be required to obtain
15 approval or provide any cost support or other information to
16 establish or otherwise modify in any manner its rates, fares,
17 and charges, or to bundle any service offerings into a single or
18 combined price package; provided that a telecommunications
19 carrier, except upon receiving the approval of the commissioner,
20 shall not charge a higher rate for any retail telecommunications
21 service than the rate for the same service included in the filed
22 tariff of the telecommunications carrier. All rates, fares,

1 charges, and bundled service offerings shall be filed with the
2 commissioner for information purposes only.

3 This subsection shall apply to retail rates charged for
4 service to end user consumers only and shall not apply to
5 wholesale rates charged for services provided by a
6 telecommunications carrier to another telecommunications
7 provider, a wireless communications provider, a voice over
8 internet protocol communications provider, or other similar
9 communications provider.

10 Nothing herein shall modify any requirements of a
11 telecommunications carrier to provide lifeline telephone
12 service, comply with carrier of last resort obligations, or
13 comply with applicable service quality standards.

14 (d) The commissioner may waive rate regulation and allow
15 telecommunications carriers to have pricing flexibility for
16 services that the commissioner determines, by whatever process
17 the commissioner determines to be appropriate pursuant to rule,
18 to be effectively competitive; provided that the rates for:

19 (1) Services such as wholesale services that are not
20 effectively competitive are regulated and remain just,
21 reasonable, and nondiscriminatory; and

22 (2) Universal service is preserved and advanced.

1 (e) Unless otherwise directed by the commissioner, a
2 telecommunications carrier may charge any rate for a service
3 less than or equal to the rate for the service included in the
4 telecommunications carrier's filed tariff as long as the rate is
5 at or above the total service long-run incremental cost of
6 providing the service. The rate charged shall be available at
7 the same terms for all customers in all geographic locations
8 within the telecommunications carrier's service area.

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

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

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

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1 reference to the safety and accommodation of the
2 public;

3 (D) Prescribe the telecommunications carrier's form
4 and method of keeping accounts, books and
5 records, and accounting system;

6 (E) Regulate the return upon the telecommunications
7 carrier's telecommunications carrier property;

8 (F) Regulate the incurring of indebtedness relating
9 to the telecommunications carrier's
10 telecommunications carrier business; and

11 (G) Regulate the telecommunications carrier's
12 financial transactions; and

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

20 (g) The commissioner may, after public hearing and upon
21 showing by a telecommunications carrier of probable entitlement
22 and financial need, authorize temporary increases in rates,
23 fares, and charges; provided that the commissioner shall require

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

12 (h) Where two or more organizations, trades, or businesses
13 (whether or not incorporated, whether or not organized in the
14 State, and whether or not affiliated) are owned or controlled
15 directly or indirectly by the same interests, the commissioner
16 may distribute, apportion, or allocate gross income, deductions,
17 credits, or allowances between or among the organizations,
18 trades, or businesses, if the commissioner determines that the
19 distribution, apportionment, or allocation is necessary to
20 adequately reflect the income of any such organizations, trades,
21 or businesses to carry out the regulatory duties imposed by this
22 section.

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

8 § -39 **Cross-subsidies.** (a) The commissioner shall
9 ensure that noncompetitive services shall not cross-subsidize
10 competitive services. Cross-subsidization shall be deemed to
11 have occurred:

12 (1) If any competitive service is priced below the total
13 service long-run incremental cost of providing the
14 service as determined by the commissioner in
15 subsection (b); or

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

19 (b) The commissioner shall determine the methodology and
20 frequency with which telecommunications providers calculate
21 total service long-run incremental cost and fully allocated
22 joint and common costs. The total service long-run incremental
23 cost of a service shall include an imputation of an amount equal

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1 to the contribution that the telecommunications carrier receives
2 from noncompetitive inputs used by alternative providers in
3 providing the same or equivalent service.

4 § -40 **Separate affiliate audits.** The commissioner shall
5 receive the results of joint federal and state audits required
6 for companies required to operate separate affiliates and obtain
7 and pay for a joint federal and state audit every two years from
8 an independent auditor pursuant to 47 U.S.C. section 272(d), as
9 amended. The commissioner shall make the results of the audit
10 available for public inspection.

11 § -41 **Unfair or deceptive acts or practices.** The
12 commissioner shall adopt rules prohibiting unfair or deceptive
13 acts or practices by telecommunications carriers and
14 telecommunications service providers, including resellers and
15 aggregators of telecommunications services. Such unfair or
16 deceptive acts or practices may include unauthorized changes in
17 subscriber carrier selections.

18 § -42 **Lifeline telephone rates.** (a) The commissioner
19 shall implement a program to achieve lifeline telephone rates
20 for residential telephone users. The commissioner may achieve
21 lifeline telephone rates by using funds collected pursuant to
22 section -21 and deposited in the communications special fund
23 pursuant to section -20. In conjunction with such funds, or

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

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

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

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

16 § -43 **Carriers of last resort.** (a) The commissioner
17 may define and designate local exchange service areas where the
18 commissioner has determined that a single provider will be the
19 most appropriate way to ensure service for these areas.

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

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

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

12 § -44 **Telecommunications relay services for the deaf,**
13 **persons with hearing disabilities, and persons with speech**
14 **disabilities.** (a) The commissioner shall implement intrastate
15 telecommunications relay services for the deaf, persons with
16 hearing disabilities, and persons with speech disabilities.

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

1 reviewing the qualifications of the provider or providers, the
2 commissioner shall consider the factors of cost, quality of
3 services, and experience, and such other factors as the
4 commissioner deems appropriate.

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

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

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

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

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

6 § -45 **Telecommunications number portability.** The
7 commissioner shall ensure that telecommunications number
8 portability within an exchange is available, upon request. An
9 impartial entity shall administer telecommunications numbering
10 and make the numbers available on an equitable basis.

11 § -46 **Emergency telephone service; capital costs;**
12 **ratemaking.** (a) A telecommunications carrier providing local
13 exchange telecommunications services may recover the capital
14 cost and associated operating expenses of providing a statewide
15 enhanced 911 emergency telephone service in the public switched
16 telephone network, through a telephone line surcharge that is
17 approved by the commissioner.

18 (b) The commissioner shall require every
19 telecommunications carrier providing statewide enhanced 911
20 emergency telephone service to maintain a separate accounting of
21 the costs of providing an enhanced 911 emergency service and the
22 revenues received from related surcharges. The commissioner
23 shall further require that every telecommunications carrier

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1 imposing a surcharge shall identify the surcharge as a separate
2 line item on all customer billing statements.

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

7 § -47 **Issuance of securities.** A telecommunications
8 carrier corporation may, with the prior approval of the
9 commissioner, issue stocks and stock certificates, bonds, notes,
10 and other evidences of indebtedness, payable at periods of more
11 than twelve months after the date thereof, for the following
12 purposes and no other:

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

1 (5) For any of the aforesaid purposes except maintenance
2 of service, replacements, and substitutions not
3 constituting capital expenditure in cases where the
4 corporation has kept its accounts for such
5 expenditures in a manner as to enable the commissioner
6 to ascertain the amount of moneys so expended and the
7 purposes for which the expenditures were made, and the
8 sources of the funds in its treasury applied to the
9 expenditures.

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

20 All stock and every stock certificate, and every bond,
21 note, or other evidence of indebtedness of a telecommunications
22 carrier corporation not payable within twelve months, issued

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1 without an order of the commissioner authorizing the same, then
2 in effect, shall be void.

3 § -48 **Issuance of voting stock; restrictions.** (a) For
4 the purposes of this section:

5 "Foreign corporation" means a foreign corporation as
6 defined in section 235-1 or a corporation in which a majority of
7 the voting stock is held by a single foreign corporation as
8 defined in section 235-1; and

9 "Nonresident alien" means an individual who is not a
10 citizen of the United States and who is not defined as a
11 resident alien by the United States Citizenship and Immigration
12 Services.

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

23 (1) Any purchase or sale by an underwriter; or

1 (2) A transaction to acquire shares of a corporation with
2 less than one hundred shareholders and less than
3 \$1,000,000 in assets.

4 (c) Every assignment, transfer, contract, or agreement for
5 assignment or transfer of any shares in violation of this
6 section shall be void and of no effect; and no such transfer
7 shall be made on the books of the corporation. Nothing in this
8 section shall be construed to make illegal the holding of stock
9 lawfully held, directly or indirectly, prior to June 4, 1977.

10 § -49 **Acquirement of stock of another telecommunications**
11 **carrier.** No person or entity shall purchase or acquire, take,
12 hold, or control, either directly or indirectly, any part of the
13 capital stock of any telecommunications carrier corporation,
14 organized or existing under or by virtue of the laws of this
15 State, without having been first authorized to do so by an order
16 of the commissioner. Every assignment, transfer, contract, or
17 agreement for assignment or transfer of any stock by or through
18 any person or corporation to any corporation or otherwise in
19 violation of this section shall be void and of no effect, and no
20 such transfer shall be made on the books of any
21 telecommunications carrier; provided that nothing herein shall
22 be construed to make illegal the holding of stock lawfully
23 acquired before July 1, 1933.

1 § -50 **Merger and consolidation of telecommunications**

2 **carriers.** No telecommunications carrier corporation or its
3 affiliate shall sell, lease, assign, mortgage, or otherwise
4 dispose of or encumber the whole or any part of its road, line,
5 plant, system, or other property necessary or useful in the
6 performance of its duties to the public, or any franchise or
7 permit, or any right thereunder, nor by any means, directly or
8 indirectly, merge or consolidate with any other person or entity
9 without first having secured from the commissioner an order
10 authorizing it so to do. Every such sale, lease, assignment,
11 mortgage, disposition, encumbrance, merger, or consolidation,
12 made other than in accordance with an order of the commissioner,
13 shall be void.

14 § -51 **Injury to telecommunications carrier property.**

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

19 (b) The measure of damages to the facility, equipment, or
20 property injured or destroyed shall be the cost to repair or
21 replace the facility, equipment, or property injured or
22 destroyed including direct and allocated costs for labor,
23 materials, supervision, supplies, tools, taxes, transportation,

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1 and administrative and general expense and other indirect or
2 overhead expenses, less credit, if any, for salvage.

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

7 § -52 **One call center; advance warning to excavators.**

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

14 § -53 **Universal service subsidies.** (a) For any

15 alternative telecommunications provider authorized to provide
16 basic local exchange service to any area of the State pursuant
17 to section -34(h), the commissioner may consider the
18 following:

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

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

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1 the local exchange provider's services other than
2 basic residential telephone service and which are used
3 to subsidize basic residential service in the area.

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

9 § -54 **Universal service.** The commissioner shall
10 preserve and advance universal service by:

11 (1) Maintaining affordable, just, and reasonable rates for
12 basic and broadband 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 or broadband
16 service or equipment as determined by the
17 commissioner; and

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

21 § -55 **Universal service program; establishment; purpose;**
22 **principles.** There is established the universal service
23 program. The purpose of this program is to:

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- 1 (1) Maintain affordable, just, and reasonable rates for
2 basic residential telecommunications service and
3 broadband service, as defined by the commissioner;
- 4 (2) Assist customers located in the areas of the State
5 that have high costs of essential telecommunications
6 service or broadband service, low-income customers,
7 and customers with disabilities, in obtaining and
8 maintaining access to a basic set of essential
9 telecommunications and broadband services as
10 determined by the commissioner. The commissioner may
11 expand or otherwise modify relevant programs, such as
12 the lifeline program under section -42;
- 13 (3) Ensure that consumers in all communities are provided
14 with access, at reasonably comparable rates, to all
15 telecommunications and broadband services which are
16 used by a majority of consumers located in
17 metropolitan areas of the State. The commissioner
18 shall provide for a reasonable transition period to
19 support the statewide deployment of these advanced
20 telecommunications services, including, but not
21 limited to, the use of strategic community access
22 points in public facilities such as education,
23 library, and health care facilities;

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

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

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

12 § -56 **Universal service program; contributions.** (a)

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

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

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

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

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

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

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

11 **PART III. CABLE SERVICES**

12 **§ -61 Issuance of cable franchises and regulation of**
13 **cable operators by the commissioner.** The commissioner is
14 authorized to issue cable franchises and otherwise administer
15 and enforce this part.

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

21 (b) No cable operator that, as of July 1, 2012, holds a
22 cable franchise or charter enacted or granted by the legislative
23 or executive authority of the State or its predecessor

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

5 **§ -63 Application or proposal for cable franchise; fee;**
6 **certain requirements.** (a) No cable franchise shall be issued
7 except upon written application or proposal therefor to the
8 commissioner, accompanied by a fee set by the commissioner.

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

- 15 (1) The citizenship and character of the applicant;
16 (2) The financial, technical, and other qualifications of
17 the applicant;
18 (3) The principals and ultimate beneficial owners of the
19 applicant;
20 (4) The public interest to be served by the requested
21 issuance of a cable franchise; and
22 (5) Any other matters deemed appropriate and necessary by
23 the commissioner including, but not limited to, the

1 proposed plans and schedule of expenditures for or in
2 support of the use of access facilities, and the
3 competitive availability and affordability of
4 broadband and other advanced services to consumers.

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

9 § -64 **Cable franchise application or proposal procedure;**
10 **public hearing; notice.** An application or proposal for a cable
11 franchise shall be processed as follows:

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

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

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1 data, views, or arguments, orally or in writing.

2 Notice of the public hearing shall be given to the
3 governing council and mayor of the county and to any
4 incumbent local exchange carrier or other utility and
5 cable company in the county in which the proposed
6 service area is located. The commissioner shall also
7 give public notice of the application and hearing at
8 least once in each of two successive weeks in the
9 county in which the proposed service area is located.

10 The last notice shall be given at least fifteen
11 calendar days prior to the date of the hearing;

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

1 to the commissioner submitted at least two weeks in
2 advance of the requested effective date of the
3 extension, by mutual agreement, or by the
4 commissioner's own motion.

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

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

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

1 other matters as the commissioner deems appropriate in the
2 circumstances.

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

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

22 § -66 Requirement for adequate service; terms and
23 conditions of service. (a) Every cable operator shall provide

1 safe, adequate, and reliable service in accordance with
2 applicable laws, rules, franchise requirements, and the cable
3 operator's filed schedule of terms and conditions of service.

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

7 (c) The commissioner shall ensure that the terms and
8 conditions upon which cable service is provided are fair both to
9 the public and to the cable operator, taking into account the
10 geographic, topographic, and economic characteristics of the
11 service area and the economics of providing cable service to
12 subscribers in the service area.

13 § -67 Cable system installation, construction,

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

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

22 (c) In installing, operating, and maintaining facilities,
23 the cable operator shall avoid all unnecessary damage and injury

1 to any trees, structures, and improvements in and along the
2 routes authorized by the commissioner.

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

15 (e) The cable operator shall install and provide basic
16 cable television service and make available a reasonable number
17 of set top boxes at no cost to any school, institution of higher
18 education, or public library within its service area as
19 determined by the commissioner; provided that service is
20 actually being delivered within a reasonable distance from the
21 school, institution of higher education, or public library which
22 may request service.

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

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

13 (1) All applicable state statutes and all applicable rules
14 and orders of the public utilities commission and the
15 commissioner governing the construction, maintenance,
16 and removal of overhead and underground facilities of
17 public utilities;

18 (2) For county highways, all applicable public welfare
19 rules adopted by the governing body of the county in
20 which the county highways are situated;

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

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1 (4) For the relocation of cable facilities, the provisions
2 of section 264-33 concerning the allocation of
3 expenses for the relocation of utility facilities.

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

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

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

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

19 **§ -68 Public, educational, or governmental access**
20 **services; designation of channels; designation of access**

21 **organizations.** (a) The cable operator shall designate three or
22 more television channels or video streams for public,

1 educational, or governmental use as directed by the
2 commissioner.

3 (b) The commissioner may initiate, or an access
4 organization, educational institution, or government agency may
5 at any time request the commissioner to have the cable operator
6 designate and activate additional channels; provided that the
7 commissioner shall have the discretion to grant, deny, or modify
8 the request based upon the best interest of the public,
9 requester, cable operator, or the State.

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

13 (1) No access organization shall be designated except upon
14 written application or proposal to the commissioner,
15 and following a public hearing on each island within
16 the local franchise area that provides opportunity for
17 public input;

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

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

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

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- 1 (C) The ability and experience of the applicant to
2 offer public, educational, or government
3 programming cablecast services;
- 4 (D) The suitability of the applicant;
- 5 (E) The technical and operational ability of the
6 applicant to perform efficiently the services for
7 which the designation is requested;
- 8 (F) Any objections arising from the public hearing,
9 the cable advisory committee, or elsewhere; and
- 10 (G) Any other matters that the commissioner deems
11 appropriate under the circumstances.
- 12 (3) The commissioner may require an applicant to provide
13 information on its process for selecting members of
14 its board of directors; provided that the commissioner
15 shall have no authority to require that an applicant
16 amend its selection process as a condition of
17 designation;
- 18 (4) An applicant shall provide information regarding its
19 past performance and any proposed practices for
20 ensuring that the access facilities support the
21 diversity of viewpoints and uphold the public's right
22 of free speech;

- 1 (5) Any decision designating, modifying, or rescinding a
2 designation of an access organization or the
3 requirements therefore shall first be submitted to the
4 cable advisory committee for advice under section -
5 23;
- 6 (6) The commissioner shall enter into a contract with each
7 designated and selected access organization for the
8 provision of public, educational, or governmental
9 access services. The commissioner shall ensure that
10 the terms and conditions required of the operation of
11 an access organization designated under this part are
12 fair to the public and the State. The commissioner
13 shall have the authority to do all things necessary to
14 enforce the terms and conditions of the contracts with
15 access organizations.
- 16 (7) The commissioner may require a cable operator to
17 provide funds to an access organization for the
18 provision of public, educational, or governmental
19 access services in the cable operator's service area;
20 provided that:
- 21 (A) Any such requirement shall be specified in the
22 cable franchise issued to the cable operator by
23 the commissioner;

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- 1 (B) The access organization may use those funds to
2 acquire or purchase access organization assets;
- 3 (C) Notwithstanding any other provision to the
4 contrary, including but not limited to chapter
5 171, any and all access organization assets
6 acquired or purchased from those funds, except as
7 specified in subparagraph (D), shall be
8 constructively held in trust for benefit of the
9 State to be used primarily for the provision of
10 public, educational, or governmental access
11 services, or used for other purposes in the
12 commissioner's sole discretion, and the
13 commissioner may make these assets available to
14 designated access organizations to provide
15 public, educational, or governmental access
16 services in a particular service area;
- 17 (D) If the contract between the commissioner and an
18 access organization is terminated or cancelled:
19 (i) Any and all claims, rights, interests, or
20 titles to the access organization assets
21 acquired or purchased from those funds after
22 the effective date of this Act shall belong
23 to the State, and the State shall have the

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1 sole discretion on the disposition of those
2 assets;

3 (ii) The access organization shall, upon request
4 by the commissioner, provide and transfer
5 all of these access organization assets to
6 the commissioner or the commissioner's
7 designee within a reasonable period of time
8 after the contract is terminated or
9 cancelled; and

10 (iii) The disposition of access organization
11 assets purchased with those funds prior to
12 the effective date of this Act shall be
13 subject to the terms and conditions of the
14 contracts between the access organization
15 and the State.

16 § -69 **Complaints; violations; revocation, alteration, or**
17 **suspension of cable franchise.** (a) Subscriber complaints
18 regarding the operation of a cable system may be made orally or
19 in writing to the commissioner. The commissioner shall resolve
20 complaints informally when possible.

21 (b) Any cable franchise issued hereunder, after hearing in
22 accordance with chapter 91, may be revoked, altered, or

1 suspended by the commissioner as the commissioner deems

2 necessary on any of the following grounds:

3 (1) For making material false or misleading statements in,
4 or for material omissions from, any application or
5 proposal or other filing made with the commissioner;

6 (2) For failure to maintain signal quality under the
7 standards prescribed by the commissioner;

8 (3) For any sale, lease, assignment, or other transfer of
9 its cable franchise without consent of the
10 commissioner;

11 (4) Except when commercially impracticable, for
12 unreasonable delay in construction or operation or for
13 unreasonable withholding of the extension of cable
14 service to any person in a service area;

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

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

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

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

1 **§ -70 Renewal of cable franchise.** (a) Any cable
2 franchise issued pursuant to this part may be renewed by the
3 commissioner upon approval of a cable operator's application or
4 proposal therefor. The form of the application or proposal
5 shall be prescribed by the commissioner.

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

8 (c) The commissioner shall require of the applicant full
9 disclosure, including the proposed plans and schedule of
10 expenditures for or in support of the use of access facilities
11 and equipment and broadband facilities.

12 **§ -71 Transfer of cable franchise.** (a) No cable
13 franchise, including the rights, privileges, and obligations
14 thereof, may be assigned, sold, leased, encumbered, or otherwise
15 transferred, voluntarily or involuntarily, directly or
16 indirectly, including by transfer of control of any cable
17 system, whether by change in ownership or otherwise, except upon
18 written application to and approval by the commissioner. The
19 form of the application shall be prescribed by the commissioner.

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

22 **§ -72 Rate, filed with the commissioner; approval.** (a)

23 The commissioner shall require each cable operator to file a

1 schedule of its rates of service on a form and with the notice
2 that the commissioner may prescribe.

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

6 § -73 **Reports.** Each cable operator shall provide the
7 commissioner with reports of the cable operator's financial,
8 technical, and operational condition, reports on its ownership,
9 and any other information requested by the commissioner. The
10 reports shall be made in a form and on the time schedule
11 prescribed by the commissioner and shall be kept on file open to
12 the public.

13 § -74 **Annual fees.** (a) Each cable operator shall pay
14 an annual fee to be determined by the commissioner. The fees so
15 collected under this section shall be deposited into the
16 communications special fund established under section -20.
17 The director shall transfer all of the annual fees previously
18 allocated to the cable television division by depositing such
19 fees into the communications special fund.

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

1 § -75 **Criminal and civil liability.** Nothing in this
2 chapter shall be deemed to affect the criminal and civil
3 liability of cable programmers, cable operators, or access
4 organizations pursuant to the federal, state, or local laws
5 regarding libel, slander, obscenity, incitement, invasions of
6 privacy, false or misleading advertising, or other similar laws;
7 provided that no access organization shall incur any such
8 liability arising from, based on, or related to any program not
9 created by the access organization, which is broadcast on any
10 channel obtained under section -65, or under similar
11 arrangements."

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

14 "(o) Every person licensed under any chapter within the
15 jurisdiction of the department of commerce and consumer affairs
16 and every person licensed subject to chapter 485A or registered
17 under chapter 467B shall pay upon issuance of a license, permit,
18 certificate, or registration a fee and a subsequent annual fee
19 to be determined by the director and adjusted from time to time
20 to ensure that the proceeds, together with all other fines,
21 income, and penalties collected under this section, do not
22 surpass the annual operating costs of conducting compliance
23 resolution activities required under this section. The fees may

1 be collected biennially or pursuant to rules adopted under
2 chapter 91, and shall be deposited into the special fund
3 established under this subsection. Every filing pursuant to
4 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
5 initial filing and at each renewal period in which a renewal is
6 required, a fee that shall be prescribed by rules adopted under
7 chapter 91, and that shall be deposited into the special fund
8 established under this subsection. Any unpaid fee shall be paid
9 by the licensed person, upon application for renewal,
10 restoration, reactivation, or reinstatement of a license, and by
11 the person responsible for the renewal, restoration,
12 reactivation, or reinstatement of a license, upon the
13 application for renewal, restoration, reactivation, or
14 reinstatement of the license. If the fees are not paid, the
15 director may deny renewal, restoration, reactivation, or
16 reinstatement of the license. The director may establish,
17 increase, decrease, or repeal the fees when necessary pursuant
18 to rules adopted under chapter 91. The director may also
19 increase or decrease the fees pursuant to section 92-28.

20 There is created in the state treasury a special fund to be
21 known as the compliance resolution fund to be expended by the
22 director's designated representatives as provided by this
23 subsection. Notwithstanding any law to the contrary, all

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1 revenues, fees, and fines collected by the department shall be
2 deposited into the compliance resolution fund. Unencumbered
3 balances existing on June 30, 1999, in the cable television fund
4 under chapter 440G, the division of consumer advocacy fund under
5 chapter 269, the financial institution examiners' revolving
6 fund, section 412:2-109, the special handling fund, section 414-
7 13, and unencumbered balances existing on June 30, 2002, in the
8 insurance regulation fund, section 431:2-215, shall be deposited
9 into the compliance resolution fund. This provision shall not
10 apply to the communications special fund, section -20, the
11 drivers education fund underwriters fee, sections 431:10C-115
12 and 431:10G-107, insurance premium taxes and revenues, revenues
13 of the workers' compensation special compensation fund, section
14 386-151, the captive insurance administrative fund, section
15 431:19-101.8, the insurance commissioner's education and
16 training fund, section 431:2-214, the medical malpractice
17 patients' compensation fund as administered under section 5 of
18 Act 232, Session Laws of Hawaii 1984, and fees collected for
19 deposit in the office of consumer protection restitution fund,
20 section 487-14, the real estate appraisers fund, section 466K-1,
21 the real estate recovery fund, section 467-16, the real estate
22 education fund, section 467-19, the contractors recovery fund,
23 section 444-26, the contractors education fund, section 444-29,

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1 the condominium education trust fund, section 514B-71, and the
2 mortgage foreclosure dispute resolution special fund, section
3 667-86. Any law to the contrary notwithstanding, the director
4 may use the moneys in the fund to employ, without regard to
5 chapter 76, hearings officers and attorneys. All other
6 employees may be employed in accordance with chapter 76. Any
7 law to the contrary notwithstanding, the moneys in the fund
8 shall be used to fund the operations of the department. The
9 moneys in the fund may be used to train personnel as the
10 director deems necessary and for any other activity related to
11 compliance resolution.

12 As used in this subsection, unless otherwise required by
13 the context, "compliance resolution" means a determination of
14 whether:

- 15 (1) Any licensee or applicant under any chapter subject to
16 the jurisdiction of the department of commerce and
17 consumer affairs has complied with that chapter;
- 18 (2) Any person subject to chapter 485A has complied with
19 that chapter;
- 20 (3) Any person submitting any filing required by chapter
21 514E or section 485A-202(a)(26) has complied with
22 chapter 514E or section 485A-202(a)(26);

1 (4) Any person has complied with the prohibitions against
2 unfair and deceptive acts or practices in trade or
3 commerce; or

4 (5) Any person subject to chapter 467B has complied with
5 that chapter;

6 and includes work involved in or supporting the above functions,
7 licensing, or registration of individuals or companies regulated
8 by the department, consumer protection, and other activities of
9 the department.

10 The director shall prepare and submit an annual report to
11 the governor and the legislature on the use of the compliance
12 resolution fund. The report shall describe expenditures made
13 from the fund including non-payroll operating expenses."

14 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

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

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

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- 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; [øf]
- 21 (22) By the communications division; or
- 22 [+22+] (23) By a department, in the event the attorney
23 general, for reasons deemed by the attorney general to

1 be good and sufficient, declines to employ or retain
2 an attorney for a department; provided that the
3 governor waives the provision of this section."

4 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

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

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
23 land for experimental and demonstration housing projects, the

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

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

21 The county agency or official shall submit preliminary
22 plans and specifications to the legislative body of the
23 respective county for its approval or disapproval. The final

1 plans and specifications for the project shall be deemed
2 approved by the legislative body if the final plans and
3 specifications do not substantially deviate from the approved
4 preliminary plans and specifications. The final plans and
5 specifications shall constitute the standards for the particular
6 project.

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

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

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

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1 the notice required for a public hearing by the planning
2 commission of the appropriate county."

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

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

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

7 [~~or~~]

8 (2) Any county or county agency that is exempted by county
9 ordinance from this section~~[+]~~; or

10 (3) Any proceedings of the communications division."

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

13 "**§92-21 Copies of records; other costs and fees.** (a)

14 Except as otherwise provided by law, a copy of any government
15 record, including any map, plan, diagram, photograph, photostat,
16 or geographic information system digital data file, which is
17 open to the inspection of the public, shall be furnished to any
18 person applying for the same by the public officer having charge
19 or control thereof upon the payment of the reasonable cost of
20 reproducing such copy.

21 (b) Except as provided in section 91-2.5, the cost of
22 reproducing any government record, except geographic information

1 system digital data, shall not be less than 5 cents per page,
2 sheet, or fraction thereof.

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

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

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

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

1 "**§101-43 Requirements prior to exercise of power.** Any
2 corporation having the power of eminent domain under section
3 101-41 may continue to exercise the power[~~7~~]; provided that
4 prior to the exercise of the power:

- 5 (1) The corporation submits to the public utilities
6 commission or, beginning July 1, 2013, in the case of
7 telecommunications carriers, to the communications
8 commissioner its intention to exercise the power, with
9 a description of the property to be condemned; and
10 (2) The public utilities commission or, beginning July 1,
11 2013, in the case of telecommunications carriers, the
12 communications commissioner finds that the proposed
13 condemnation is in the public interest, that the
14 proposed condemnation is necessary, and that the
15 corporation will use the property for its operations
16 as a public utility."

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

19 "(b) If the corporation acquires the assets of a private
20 or other corporation, then, notwithstanding any law to the
21 contrary:

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- 1 (1) Neither the corporation nor any subsidiary corporation
2 vested with the assets shall be subject to chapter 91
3 with respect to the assets;
- 4 (2) Employees retained to operate the assets shall not be
5 subject to chapter 76;
- 6 (3) Assets constituting real property interest shall not
7 be subject to chapter 171;
- 8 (4) No investment, loan, or use of funds by the
9 corporation or a subsidiary corporation vested with
10 the assets shall be subject to chapter 42F or 103; and
- 11 (5) Neither the corporation nor a subsidiary corporation
12 vested with the assets shall constitute a public
13 utility or be subject to the jurisdiction of the
14 public utilities commission under chapter 269[-] or
15 the communications division under chapter ."

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

18 "**§166-4 Park development.** Except as herein provided, the
19 department may develop, on behalf of the State or in partnership
20 with a federal agency, a county, or a private party,
21 agricultural parks which, at the option of the board, shall be
22 exempt from all statutes, ordinances, charter provisions, and
23 rules of any governmental agency relating to planning, zoning,

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

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

7 (2) The development of the proposed agricultural park does
8 not contravene any safety standards or tariffs
9 approved for public utilities by the public utilities
10 commission [~~for public utilities;~~] or by the
11 communications division;

12 (3) The legislative body of the county in which the
13 agricultural park is to be situated shall have
14 approved the agricultural park.

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

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1 (B) No action shall be prosecuted or maintained
2 against any county, its officials, or employees,
3 on account of actions taken by them in reviewing,
4 approving, or disapproving the plans and
5 specifications.

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

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

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

8 "~~§~~**§166E-10**~~§~~ **Non-agricultural park land development.**

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

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

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

1 utilities commission [~~for public utilities;~~] or by the
2 communications division;

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

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

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

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

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

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

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

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

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

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

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

10 (3) The legislative body of the county in which the
11 industrial park is proposed to be situated approves
12 the industrial park.

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

20 (B) No action shall be prosecuted or maintained
21 against any county, its officials, or employees,
22 on account of actions taken by them in reviewing,

1 approving, or disapproving the plans and
2 specifications.

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

1 or recordation by the land court and registrar;
2 and

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

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

9 "(c) This section shall not apply to any permit issued by
10 the public utilities commission under chapter 269[-] or the
11 communications division under chapter ."

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

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

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

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

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

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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 communications
8 division, and shall follow existing law as closely as is
9 consistent with the production of lower cost housing with
10 standards that meet minimum requirements of good design,
11 pleasant amenities, health, safety, and coordinated development.

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

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1 not disapproved shall be deemed to have been approved by the
2 county."

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

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

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

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

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

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

17 (C) The final plans and specifications for the
18 project 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
23 shall constitute the zoning, building,

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

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

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

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

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

1 to cause hardship to the applicant if the facilities
2 or improvements are not allowed within the shoreline
3 area, and the authority imposes conditions to prohibit
4 any structure seaward of the existing shoreline unless
5 it is clearly in the public interest; or

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

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

15 "[~~§~~239-6.5[~~]~~] **Tax credit for lifeline telephone service**
16 **subsidy.** A [~~telephone public utility~~] telecommunications
17 carrier subject to this chapter that has been authorized to
18 establish lifeline telephone service rates by the public
19 utilities commission prior to July 1, 2013, or the
20 communications division beginning July 1, 2013, shall be allowed
21 a tax credit, equal to the lifeline telephone service costs
22 incurred by the [~~utility~~] carrier, to be applied against the
23 [~~utility's~~] carrier's tax imposed by this chapter. The amount

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1 of this credit shall be determined and certified annually by the
2 [~~public utilities commission.~~] commissioner under chapter .
3 The tax liability for a [~~telephone public utility~~]
4 telecommunications carrier claiming the credit shall be
5 calculated in the manner prescribed in section 239-5; provided
6 that the amount of tax due from the [~~utility~~] carrier shall be
7 net of the lifeline service credit."

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

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

- 19 (1) The State;
20 (2) The department of transportation;
21 (3) The counties;
22 (4) Any public utility regulated under chapter 269 or
23 telecommunications carrier regulated under chapter

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1 that places its facilities within the highway right-
2 of-way; or

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

5 SECTION 21. Section 269-1, Hawaii Revised Statutes, is
6 amended by:

7 (1) Repealing the definition of "carrier of last 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 (2) Repealing the definition of "designated local exchange
13 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 (3) Amending the definition of "public utility" to read as
18 follows:

19 ""Public utility":

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

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

13 (A) An owner or operator of a private sewer company or
14 sewer facility; and

15 (B) A telecommunications carrier or telecommunications
16 common carrier; and

17 (2) Shall not include:

18 (A) An owner or operator of an aerial transportation
19 enterprise;

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

22 (C) Common carriers that transport only freight on
23 the public highways, unless operating within

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1 localities, along routes, or between points that
2 the public utilities commission finds to be
3 inadequately serviced without regulation under
4 this chapter;

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

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

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

21 (G) Any person who:
22 (i) Controls, operates, or manages plants or
23 facilities for the production, transmission,

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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[+], or beginning
10 July 1, 2013, by the communications commissioner
11 pursuant to section -34;

12 (I) Any person who controls, operates, or manages
13 plants or facilities developed pursuant to
14 chapter 167 for conveying, distributing, and
15 transmitting water for irrigation and other
16 purposes for public use and purpose;

17 (J) Any person who owns, controls, operates, or
18 manages plants or facilities for the reclamation
19 of wastewater; provided that:

20 (i) The services of the facility are provided
21 pursuant to a service contract between the
22 person and a state or county agency and at
23 least ten per cent of the wastewater

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

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1 (v) The facility is not engaged, either directly
2 or indirectly, in the processing of food
3 wastes;

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

11 (L) Any person who owns, controls, operates, or
12 manages plants or facilities primarily used to
13 charge or discharge a vehicle battery that
14 provides power for vehicle propulsion; and

15 (M) Any person who:
16 (i) Owns, controls, operates, or manages a
17 renewable energy system that is located on a
18 customer's property; and

19 (ii) Provides, sells, or transmits the power
20 generated from that renewable energy system
21 to an electric utility or to the customer on
22 whose property the renewable energy system
23 is located; provided that, for purposes of

1 this clause, a customer's property shall
2 include all contiguous property owned or
3 leased by the customer without regard to
4 interruptions in contiguity caused by
5 easements, public thoroughfares,
6 transportation rights-of-way, and utility
7 rights-of-way.

8 If the application of this chapter is ordered by the
9 commission in any case provided in paragraphs (2)(C), (2)(D),
10 (2)(H), and (2)(I), or beginning July 1, 2013, as determined by
11 the communications commissioner as provided in paragraph (2)(H),
12 the business of any public utility that presents evidence of
13 bona fide operation on the date of the commencement of the
14 proceedings resulting in the order shall be presumed to be
15 necessary to the public convenience and necessity, but any
16 certificate issued under this proviso shall nevertheless be
17 subject to terms and conditions as the public utilities
18 commission may prescribe, as provided in sections 269-16.9 and
19 269-20[-], or as the communications commission may prescribe, as
20 provided in section -34, whichever is applicable."

21 (4) Amending the definition of "telecommunications
22 carrier" or "telecommunications common carrier" to read as
23 follows:

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

10 (5) Amending the definition of "telecommunications
11 service" or "telecommunications" to read as follows:

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

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

1 "**§269-51 Consumer advocate; director of commerce and**
2 **consumer affairs.** (a) The director of commerce and consumer
3 affairs shall appoint the executive director of the division of
4 consumer advocacy, who shall be the consumer advocate in
5 hearings before the public utilities commission. The consumer
6 advocate shall represent, protect, and advance the interests of
7 all consumers, including small businesses, of utility services.
8 [~~The consumer advocate shall not receive any salary in addition~~
9 ~~to the salary received as director of commerce and consumer~~
10 ~~affairs.~~]

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

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

20 "**§269-52 Division of consumer advocacy; personnel.** There
21 shall be a division of consumer advocacy within the department
22 of commerce and consumer affairs [~~to provide administrative~~
23 ~~support to~~] with an executive director who shall be appointed by

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1 the director of commerce and consumer affairs [~~acting~~] and shall
2 act in the capacity of consumer advocate. The director may
3 employ and at pleasure dismiss [~~an~~] the executive
4 [~~administrator,~~] director, who shall be exempt from chapter 76,
5 may define the executive [~~administrator's~~] director's powers and
6 duties, and fix the executive [~~administrator's~~] director's
7 compensation. The executive director may employ engineers,
8 accountants, investigators, clerks, and stenographers as may be
9 necessary for the performance of the consumer advocate's
10 functions, in accordance with chapter 76; provided that:

11 (1) The executive director may employ up to ten utility,
12 communications, and cable analysts exempt from chapter
13 76; and

14 (2) Each analyst shall possess at least the minimum
15 qualifications required of comparable experts in the
16 relevant industry."

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

19 "[~~f~~]**§339K-2**[~~f~~] **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
23 shall cooperate with all departments, agencies, and officers of

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

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

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

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

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

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

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

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

23 "**§481P-5 Exemptions.** This chapter shall not apply to:

- 1 (1) A person who initiates telephone calls to a residence
2 for the sole purpose of polling or soliciting the
3 expression of ideas, opinions, or votes, or a person
4 soliciting solely for a political or religious cause
5 or purpose;
- 6 (2) A securities broker-dealer, salesperson, investment
7 adviser, or investment adviser representative who is
8 registered with this State to sell securities or who
9 is authorized to sell securities in this State
10 pursuant to federal securities laws, when soliciting
11 over the telephone within the scope of the person's
12 registration;
- 13 (3) A financial institution that is authorized to accept
14 deposits under its chartering or licensing authority
15 where such deposits are insured by the Federal Deposit
16 Insurance Corporation or the National Credit Union
17 Administration, including but not limited to a bank,
18 savings bank, savings and loan association, depository
19 financial services loan company, or credit union, or a
20 nondepository financial services loan company that is
21 licensed or authorized to conduct business in this
22 State by the commissioner of financial institutions,

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

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

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

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

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

16 "[~~§~~]**659-3**[~~§~~] **Forfeiture of franchise.** The several
17 circuit courts shall have jurisdiction of all proceedings in, or
18 in the nature of, quo warranto, brought by or in the name of the
19 public utilities commission[~~]~~ or the communications division,
20 or the State, for the forfeiture of the franchise of any
21 corporate body offending against any law relating to such
22 corporation, for misuser, for nonuser, for doing or committing

1 any act or acts amounting to a surrender of its charter and for
2 exercising rights not conferred upon it."

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

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

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

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

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

1 ~~(c) The commission shall require every telephone public~~
2 ~~utility providing local telephone service to file a schedule of~~
3 ~~rates and charges providing a rate for lifeline telephone~~
4 ~~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 SECTION 32. Section 269-16.6, Hawaii Revised Statutes, is
10 repealed.

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

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

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1 ~~provide these services. In reviewing the qualifications of the~~
2 ~~provider or providers, the commission shall consider the factors~~
3 ~~of cost, quality of services, and experience, and such other~~
4 ~~factors as the commission deems appropriate.~~

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

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

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

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

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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 33. 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~~
23 ~~business, makes telephones available and aggregates the calls of~~

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

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

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

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

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

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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.~~

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

14 ~~["§269-16.9 Telecommunications providers and services.~~

15 ~~(a) Notwithstanding any provision of this chapter to the~~
16 ~~contrary, the commission, upon its own motion or upon the~~
17 ~~application of any person, and upon notice and hearing, may~~
18 ~~exempt a telecommunications provider or a telecommunications~~
19 ~~service from any or all of the provisions of this chapter,~~
20 ~~except the provisions of section 269-34, upon a determination~~
21 ~~that the exemption is in the public interest. In determining~~
22 ~~whether an exemption is in the public interest, the commission~~
23 ~~shall consider whether the exemption promotes state policies in~~

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

8 ~~(1) The responsiveness of the exemption to changes in the~~
9 ~~structure and technology of the State's~~
10 ~~telecommunications industry;~~

11 ~~(2) The benefits accruing to the customers and users of~~
12 ~~the exempt telecommunications provider or service;~~

13 ~~(3) The impact of the exemption on the quality,~~
14 ~~efficiency, and availability of telecommunications~~
15 ~~services;~~

16 ~~(4) The impact of the exemption on the maintenance of~~
17 ~~fair, just, and reasonable rates for~~
18 ~~telecommunications services;~~

19 ~~(5) The likelihood of prejudice or disadvantage to~~
20 ~~ratepayers of basic local exchange service resulting~~
21 ~~from the exemption;~~

22 ~~(6) The effect of the exemption on the preservation and~~
23 ~~promotion of affordable, universal, basic~~

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- 1 ~~telecommunications services as those services are~~
2 ~~determined by the commission;~~
- 3 ~~(7) The resulting subsidization, if any, of the exempt~~
4 ~~telecommunications service or provider by nonexempt~~
5 ~~services;~~
- 6 ~~(8) The impact of the exemption on the availability of~~
7 ~~diversity in the supply of telecommunications services~~
8 ~~throughout the State;~~
- 9 ~~(9) The improvements in the regulatory system to be gained~~
10 ~~from the exemption, including the reduction in~~
11 ~~regulatory delays and costs;~~
- 12 ~~(10) The impact of the exemption on promoting innovations~~
13 ~~in telecommunications services;~~
- 14 ~~(11) The opportunity provided by the exemption for~~
15 ~~telecommunications providers to respond to~~
16 ~~competition; and~~
- 17 ~~(12) The potential for the exercise of substantial market~~
18 ~~power by the exempt provider or by a provider of the~~
19 ~~exempt telecommunications service.~~
- 20 ~~(b) The commission shall expedite, where practicable, the~~
21 ~~regulatory process with respect to exemptions and shall adopt~~
22 ~~guidelines under which each provider of an exempted service~~
23 ~~shall be subject to similar terms and conditions.~~

1 ~~(c) The commission may condition or limit any exemption as~~
2 ~~the commission deems necessary in the public interest. The~~
3 ~~commission may provide a trial period for any exemption and may~~
4 ~~terminate the exemption or continue it for such period and under~~
5 ~~such conditions and limitations as it deems appropriate.~~

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

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

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

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

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

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

1 ~~telecommunications provider for that area under the terms and~~
2 ~~conditions of this section."]~~

3 SECTION 35. Section 269-16.85, Hawaii Revised Statutes, is
4 repealed.

5 ~~["§269-16.85] Retail intrastate services; fully~~
6 ~~competitive.~~ (a) ~~Notwithstanding section 269-16.9 or any other~~
7 ~~law to the contrary, the public utilities commission shall treat~~
8 ~~retail intrastate telecommunications services, under the~~
9 ~~commission's classification of services relating to costs,~~
10 ~~rates, and pricing, as fully competitive and apply all~~
11 ~~commission rules in accordance with that designation. In~~
12 ~~addition, a telecommunications carrier shall not be required to~~
13 ~~obtain approval or provide any cost support or other information~~
14 ~~to establish or otherwise modify in any manner its rates, fares,~~
15 ~~and charges, or to bundle any service offerings into a single or~~
16 ~~combined price package; provided that a telecommunications~~
17 ~~carrier, except upon receiving the approval of the commission,~~
18 ~~shall not charge a higher rate for any retail telecommunications~~
19 ~~service than the rate for the same service included in the~~
20 ~~telecommunications carrier's filed tariff. All rates, fares,~~
21 ~~charges, and bundled service offerings shall be filed with the~~
22 ~~public utilities commission for information purposes only.~~

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1 ~~(b) This section shall apply to retail rates charged for~~
2 ~~service to end-user consumers only and shall not apply to~~
3 ~~wholesale rates charged for services provided by a~~
4 ~~telecommunications carrier to another telecommunications~~
5 ~~provider, a wireless communications provider, a voice over~~
6 ~~internet protocol communications provider, or other similar~~
7 ~~communications provider.~~

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

12 SECTION 36. Section 269-16.91, Hawaii Revised Statutes, is
13 repealed.

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

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

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

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

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

9 SECTION 37. Section 269-16.92, Hawaii Revised Statutes, is
10 repealed.

11 ~~["**§269-16.92** **Changes in subscriber carrier selections;**~~
12 ~~**prior authorization required; penalties for unauthorized**~~
13 ~~**changes.** (a) No telecommunications carrier shall initiate a~~
14 ~~change in a subscriber's selection or designation of a long-~~
15 ~~distance carrier 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;~~

22 ~~provided that the letter or authorization shall be in accordance~~
23 ~~with verification procedures that are prescribed by the Federal~~

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1 ~~Communications Commission or the public utilities commission.~~
2 ~~For purposes of this section, "telecommunications carrier" does~~
3 ~~not include a provider of commercial mobile radio service as~~
4 ~~defined by 47 United States Code section 332(d)(1).~~

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

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

18 ~~(c) The commission shall adopt rules, pursuant to chapter~~
19 ~~91, necessary for the purposes of this section. The commission~~
20 ~~may notify customers of their rights under these rules."]~~

21 SECTION 38. Section 269-16.95, Hawaii Revised Statutes, is
22 repealed.

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1 ~~["§269-16.95 Emergency telephone service; capital costs;~~
2 ~~ratemaking.~~ (a) ~~A public utility providing local exchange~~
3 ~~telecommunications services may recover the capital cost and~~
4 ~~associated operating expenses of providing a statewide enhanced~~
5 ~~911 emergency telephone service in the public switched telephone~~
6 ~~network, through:~~

7 ~~(1) A telephone line surcharge; or~~
8 ~~(2) Its rate case.~~

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

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

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

5 SECTION 39. Section 269-34, Hawaii Revised Statutes, is
6 repealed.

7 ~~["~~§269-34~~ Obligations of telecommunications carriers.~~

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

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

20 ~~(2) The current interstate tariff used as the access rate~~
21 ~~until the commission can adopt a new intrastate local~~
22 ~~service interconnection tariff pursuant to section~~
23 ~~269-37;~~

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1 ~~(3) Nondiscriminatory and equal access to any~~
2 ~~telecommunications carrier's telecommunications~~
3 ~~facilities, functions, and the information necessary~~
4 ~~to the transmission and routing of any~~
5 ~~telecommunications service and the interoperability of~~
6 ~~both carriers' networks;~~

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

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

1 ~~(6) Telecommunications services and network functions~~
2 ~~without unreasonable restrictions on the resale or~~
3 ~~sharing of those services and functions; and~~

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

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

18 SECTION 40. Section 269-35, Hawaii Revised Statutes, is
19 repealed.

20 ["~~§269-35~~ **Universal service.** The commission shall
21 preserve and advance universal service by:

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

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1 ~~(2) Assisting individuals or entities who cannot afford~~
2 ~~the cost of or otherwise require assistance in~~
3 ~~obtaining or maintaining their basic service or~~
4 ~~equipment as determined by the commission; and~~
5 ~~(3) Ensuring that consumers are given the information~~
6 ~~necessary to make informed choices among the~~
7 ~~alternative telecommunications providers and~~
8 ~~services."]~~

9 SECTION 41. Section 269-36, Hawaii Revised Statutes, is
10 repealed.

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

17 SECTION 42. Section 269-37, Hawaii Revised Statutes, is
18 repealed.

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~["§269-40 Access to advanced services. The commission~~
21 ~~shall ensure that all consumers are provided with~~
22 ~~nondiscriminatory, reasonable, and equitable access to high~~
23 ~~quality telecommunications network facilities and capabilities~~

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

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

8 ~~["~~§269-41~~ Universal service program; establishment;~~
9 ~~purpose; principles.~~ There is established the universal service
10 program. ~~The purpose of this program is to:~~

11 ~~(1) Maintain affordable, just, and reasonable rates for~~
12 ~~basic residential telecommunications service, as~~
13 ~~defined by the commission;~~

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

22 ~~(3) Ensure that consumers in all communities are provided~~
23 ~~with access, at reasonably comparable rates, to all~~

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

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

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

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

21 SECTION 47. Section 269-42, Hawaii Revised Statutes, is
22 repealed.

1 ~~["§269-42 Universal service program; contributions. (a)~~

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

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

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

21 ~~(d) Telecommunications carriers may compete to provide~~
22 ~~services to underserved areas using funds from the universal~~
23 ~~service program. For the purposes of this section, "underserved~~

1 ~~areas" means those areas in the State that lack or have very~~
2 ~~limited access to high capacity, advanced telecommunications~~
3 ~~networks and information services, including access to cable~~
4 ~~television.~~

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

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

21 SECTION 48. Section 269-43, Hawaii Revised Statutes, is
22 repealed.

1 ~~["[§269-43] Carriers of last resort. (a) The commission~~
2 ~~may define and designate local exchange service areas where the~~
3 ~~commission has determined that providing universal service funds~~
4 ~~to a single provider will be the most appropriate way to ensure~~
5 ~~service for these areas.~~

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

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

20 ~~(d) The commission shall adopt rules pursuant to chapter~~
21 ~~91 to carry out the provisions of this section."]~~

22 SECTION 49. Chapter 440G, Hawaii Revised Statutes, is
23 repealed.

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1 SECTION 50. 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 communications
6 special fund.

7 SECTION 51. The unencumbered balance existing on June 30,
8 2012, in the cable television division subaccount in the
9 compliance resolution fund shall be deposited into the
10 communications special fund.

11 SECTION 52. There is appropriated out of the
12 communications special fund the sum of \$_____, or so much
13 thereof as may be necessary for fiscal year 2012-2013 to
14 implement this Act.

15 The sums appropriated shall be expended by the public
16 utilities commission for the purposes of this Act.

17 SECTION 53. During fiscal year 2012-2013, an additional
18 appropriation of \$_____ out of the communications special
19 fund shall be made to the public utilities commission to fund
20 transition costs related to the retention of logistical and
21 technical assistance by the public utilities commission in
22 transferring electronic and physical data, as well as other
23 related transition costs.

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

3 SECTION 54. **Transfer of functions.** (a) All rules,
4 policies, procedures, orders, certificates of authority,
5 certificates of registration, certificates of public convenience
6 and necessity, franchises, guidelines, and other material
7 adopted, issued, or developed by the department of commerce and
8 consumer affairs and public utilities commission to implement
9 provisions of the Hawaii Revised Statutes which are reenacted or
10 made applicable to the communications commissioner by this Act,
11 shall remain in full force and effect until amended or repealed,
12 as applicable, by the communications commissioner. In the
13 interim, every reference to the department of commerce and
14 consumer affairs, director of commerce and consumer affairs,
15 public utilities commission, or chairperson of the public
16 utilities commission in those rules, policies, procedures,
17 orders, franchises, guidelines, and other material is amended to
18 refer to the communications division or the communications
19 commissioner, as appropriate.

20 (b) All deeds, leases, contracts, loans, agreements,
21 permits, or other documents executed or entered into by or on
22 behalf of the department of commerce and consumer affairs and
23 public utilities commission pursuant to the provisions of the

1 Hawaii Revised Statutes, which are reenacted or made applicable
2 to the communications commissioner by this Act, shall remain in
3 full force and effect. Effective upon approval of this Act,
4 every reference to the department of commerce and consumer
5 affairs, director of commerce and consumer affairs, public
6 utilities commission, or chairperson of the public utilities
7 commission therein shall be construed as a reference to the
8 communications division or communications commissioner, as
9 appropriate.

10 (c) All functions of the cable television division of the
11 department of commerce and consumer affairs shall be transferred
12 to the communications division.

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

22 SECTION 56. **Transfer of personnel.** (a) The department of
23 commerce and consumer affairs shall transfer seven positions

1 from the cable television division to the communications
2 division. The positions selected for transfer shall reasonably
3 relate to the functions of the communications division.

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

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

19 SECTION 57. **Conflict with provisions of this Act.** All
20 Acts passed by the legislature during this regular session of
21 2012, whether enacted before or after the effective date of this
22 Act, shall be amended to conform to this Act unless such Acts
23 specifically provide that this Act is being amended.

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1 SECTION 58. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 59. This Act shall take effect as follows:

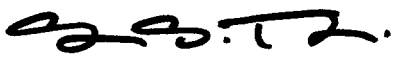
4 (1) Sections 1, 3 to 30, 49, 50 to 53, and 55 to 59 of
5 this Act shall take effect on July 1, 2012;

6 (2) Sections 31 to 48 and 54 of this Act shall take effect
7 on July 1, 2013;

8 (3) Part I (relating to the communications division,
9 generally) of the new chapter created in section 2 of
10 this Act shall take effect on July 1, 2012; provided
11 that those provisions relating to the regulation of
12 telecommunications carriers shall take effect on July
13 1, 2013;

14 (4) Part III (relating to cable services) of the new
15 chapter created in section 2 of this Act shall take
16 effect on July 1, 2012; and

17 (5) Part II (relating to telecommunications) of the new
18 chapter created in section 2 of this Act shall take
19 effect on July 1, 2013.

20
21 INTRODUCED BY: 

22 BY REQUEST

23
24

S . B . NO . 2786

Report Title:

Regulation of Telecommunications and Cable Television Services

Description:

Creates a communications division within the Department of Commerce and Consumer Affairs to regulate telecommunications and cable television services; to promote the development of broadband infrastructure; and to advance the provision of broadband, telecommunications, and video programming services.

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

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES.

PURPOSE: Creates the Communications Division ("Division") within the Department of Commerce and Consumer Affairs to be headed by a communications commissioner ("commissioner") and tasks the commissioner with investigating, promoting, and ensuring the growth and development of broadband infrastructure within the State. The commissioner will among other things: (1) advance the State's broadband, telecommunications, and video interests; (2) develop state policies relating to broadband communication services and facilities; (3) be responsible for the consolidated regulation of telecommunications carriers and cable operators; and (4) expedite the availability of communications services to the residents and businesses of Hawaii.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS), relating to the regulation of telecommunications and cable television services; amend the following sections of the HRS: section 26-9, section 28-8.3, section 28-8.3, section 46-15, section 91-13.5, section 92-21, section 101-43, section 163D-6, section 166-4, section 166E-10, section 171-134, section 196D-10, section 201H-13, section 201H-33, section 201H-38, section 205A-46, section 239-6.5, section 264-20, section 269-1, section 269-51, section 269-52, section 339K-2, section 356D-15, section 448E-13, section 481-11, section 481P-5, section 659-3, and section 708-800; ; and repeal chapter 440G, HRS, relating to cable services, and the following sections of the HRS: section 269-16.5, section 269-16.6, section 269-16.8,

section 269-16.9, section 269-16.85, section 269-16.91, section 269-16.92, section 269-16.95, section 269-34, section 269-35, section 269-36, section 269-37, section 269-38, section 269-39, section 269-40, section 269-41, section 269-42, section 269-43, relating to telecommunications.

JUSTIFICATION:

The administration's Hawaii Broadband Initiative ("HBI") sets the following goals:

- (1) Ensure ubiquitous access to world-class gigabit-per-second broadband service at affordable prices throughout Hawaii, without leaving behind our underserved communities.
- (2) Increase the use of high-speed broadband services and applications for economic development, health care, education, public safety, governmental efficiency, and civic engagement while reducing the digital divide that leaves some citizens behind.
- (3) Reduce Hawaii's barriers to global participation by promoting greater trans-Pacific fiber connectivity and ensure equitable access for all our islands.
- (4) Develop and implement a modern regulatory and permitting environment that supports and advances investment in broadband infrastructure and services for the public.

The Department is charged with working with government agencies, private stakeholders, and the Legislature to achieve these goals and to advocate the broadband, telecommunications, and video programming distribution interests of the State.

The Hawaii Broadband Task Force ("HBTF") was established by the 2007 Legislature to provide recommendations on how to advance broadband within the State of Hawaii. The HBTF vision and recommendations are consistent with those of the HBI, and

included the creation of a one-stop broadband advancement authority.

This bill will provide the Department the means to effectuate its duties under the HBI and the recommendations of the HBTF related to the Department.

This bill also prospectively addresses issues related to the ownership of assets acquired by access organizations designated to provide public, educational, or governmental access services, with funds provided under a cable franchise or order of the commissioner. Disposition of assets acquired prior to the effective date of the Act shall be subject to the terms and conditions of the respective contracts between the access organizations and the State.

Impact on the public: There should be a positive impact on the public as the provisions of this bill are intended to advance the availability of ultra high speed broadband service at affordable prices throughout the State, which will allow for the increased use of high speed broadband services for economic development, health care, education, public safety, government efficiency, and civic engagement. The bill creates a "one stop shop" to assist businesses providing broadband, telecommunications, and video programming services.

Impact on the department and other agencies: The Department will be affected by the consolidation under the Division of regulation of cable television and telecommunications, which is currently regulated by the Public Utilities Commission ("PUC"). The Division will require staff to perform the added regulatory functions.

The Division will be specially funded as follows:

From July 1, 2012 to June 30, 2013, by revenues of the PUC (collected for telecommunications) and by the Cable Television Division ("CATV").

From July 1, 2013 forward, by fees, penalties, and fines collected by the commissioner for telecommunications and cable television and deposited into the communications special fund established under this bill.

GENERAL FUND: None.

OTHER FUNDS: CRF and PUC Special Funds.

PPBS PROGRAM
DESIGNATION: CCA-102 Cable Television and BUF-901 Public Utilities Commission.

OTHER AFFECTED
AGENCIES: Public Utilities Commission.

EFFECTIVE DATE: July 1, 2012, with certain provisions taking effect on July 1, 2013.