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February 13, 2012

MEMORANDUM:

TO: The Honorable Carol Fukunaga
Chair, Committee on Economic Development & Technology

The Honorable Rosalyn H. Baker
Chair, Committee on Commerce & Consumer Protection

FROM: Everett S. Kaneshige, Chair, Broadband Assistance Advisory Council
Cathy Takase, Broadband Program Specialist

THROUGH: Keali`i S. Lopez
Director of Commerce & Consumer Affairs

RE: SB2786 and SB2788 – Proposed SD1s

At the joint hearing of the Senate Committees on Economic Development and Tourism and Commerce and Consumer held on February 8, 2012, the Department of Commerce and Consumer Affairs (DCCA) was asked to contact the various stakeholders who had submitted testimony in opposition or concerns regarding SB 2786 and SB 2788 (the “Bills”) in an attempt to come up with language that might be acceptable to DCCA and the stakeholders, which would form the basis for a proposed SD1 of the Bills. As part of these efforts a meeting of the Hawaii Broadband Assistance Advisory Council (BAAC) was held on February 10, 2012, for the primary purpose of soliciting specific amendments to the Bills.

As of February 12, 2012, DCCA had received proposed amendments and/or comments from the following stakeholders: Hawaiian Telcom (HT), Oceanic Time Warner Cable (Oceanic), AT&T Wireless (AT&T), Hawaiian Electric Company (HECO), the Public Utilities Commission (PUC).

Set forth below, is a summary of the changes and comments received by DCCA pertaining to each of the Bills and DCCA's response. In those cases where DCCA agreed with the requested revision or comments, an amendment was made to the applicable section in the proposed SD1 of the Bills. In those cases where DCCA did not agree with the requested revision or comments, the rationale for DCCA's position is contained in this memorandum.

Proposed SD1's for each of the Bills are attached to this memorandum in redlined form.

SB 2786

1. HT proposed the following amendments to this bill:
 - Deletion of the Consumer Advocate (CA). HT proposed several revisions which would result in the elimination of the role of the CA to represent the interests of consumers in all proceeding before the telecommunications commissioner (commissioner). Rejected: DCCA believes that the CA performs a vital role to represent and protect consumers. See pp. 8, 26, 33-37.
 - Narrowed the authority of the commissioner to delegate his/her authority. Accepted. See pp. 19-20.
 - Changed the arbitration provision to be non-binding. Rejected. Since the section giving the commissioner the authority to use alternative dispute resolution procedures already included mediation, DCCA felt it was both unreasonable and impractical if any arbitration was also non-binding. See p. 30.
 - Proposed deletion of various sections in the existing statute including those involving "price caps" as being obsolete in the current marketplace. Rejected. DCCA has been advised by legal counsel that while price cap regulation is no longer deemed necessary for telecommunications services provided on a retail basis, such regulation arguably remains necessary and available for wholesale telecommunications services and in those instances where HT is the carrier of last resort. Thus, although DCCA looks forward to a future in which all consumers in Hawaii enjoy vibrant competition in their access to modern communications service, the existing regulatory tools should remain available to DCCA in order to help facilitate this outcome. See pp. 51-53.
 - Proposed changing provisions in the existing statute which appear to allow HT to raise rates for ancillary services (call waiting, VOIP, etc.) above the tariff rate without regulatory approval. Rejected. The Consumer Advocate has advised DCCA that the deletion of this section could have the same effect as SB 2108, which the Consumer Advocate opposed because HT could use ancillary service rates to subsidize basic exchange rates. Doing so would make it difficult for the Consumer Advocate and the Commissioner to monitor HT's performance in this area. See pp. 52-53.
 - Added a new provision which would require the commissioner to ensure confidentiality of propriety and confidential that was submitted in annual financial reports. Accepted. See p. 43.

- Proposed deletion of a provision which would allow fees assessed for the one-call center to be used for the PUC's administrative costs. Rejected. Because the PUC will continue to operate the one-call center, DCCA defers to the PUC on this item. See p. 68.
- Deleted a provision pertaining to separate affiliate audits. DCCA was advised by its legal counsel that this requirement is governed by federal law. Accepted. See p. 50.
- Deleted all provisions giving the commissioner oversight over a carrier's issuance of stock as it relates to changes of ownership and control of a telecommunication provider/carrier and approval of mergers and consolidations. Rejected. These are present in the current law administered by the PUC. DCCA feels that there is strong public interest to retain this oversight authority. See p. 63-67.
- Proposed deletion of broadband service providers from the state universal service fund section. This is inconsistent with the trend at the federal level where the universal service fund is being transitioned from telecommunications to broadband. Rejected. See pp. 71-73.
- Clarified the section related to the payment of the public utility fee would not apply to telecommunications carrier to as to avoid duplicate payments. Accepted. See p. 128; see also p. 126-27.
- Clarified that existing filings, waivers, exemptions, rulings, tariffs would be included in the transfer of regulatory oversight from PUC to DCCA. Accepted. See p. 161-62.
- Proposed an amendment which specified that find that telecommunications carriers are not public utilities for purposes of HRS Chapter 269. Rejected. DCCA was advised by counsel that this could have unintended consequences regarding such issues as access to rights-of-ways, condemnation, obligations under common law, etc. As an alternative, a new Section 21 to the bill was added which states that although a telecommunications carrier is a public utility, it is no longer subject to regulation by the PUC. This provision was added to ensure the avoidance of confusion regarding whether the PUC will have continued authority to regulate and collect fees from telecommunications carriers and common carriers following the appointment of the Commissioner and the effective date of those provisions transferring authority to the Commissioner. See pp. 120, 122, 126-27.

2. HECO and the Public Utilities Commission.

- Both of these entities submitted proposed revisions to section -6(d) of this Bill which covers the approval process where a telecommunications provider or carrier requests access to poles, ducts, conduits or other infrastructure owned by the electric utility company. Because of current time constraints, DCCA has deleted this section of the bill and will continue to discuss this issue with the parties. See p. 13.
- In addition HECO proposed language to specify that the Commissioners duties and authorities would be exercised in accordance with applicable PUC safety and engineering standards, orders, guidelines and policies. Accepted. See p. 17.

3. AT&T

- AT&T had requested insertion of a specific provision stating that would “deregulate wireless”. Rejected. DCCA does not support such a provision at this time.
- AT&T also requested deletion of the Commissioner’s approval of mergers of telecommunications providers. Rejected. For the reasons stated in the HT section, DCCA does not support the removal of this provision at this time.
- AT&T proposed insertion of a provision stating “wireless would not be regulated to any more degree than it is now.” DCCA is receptive to this request and suggested that AT&T provide such a provision which could be inserted into section 1 of the Bill. AT&T countered that such a statement should be in section 2 of the Bill. Since the parties could not agree, no statement was inserted. AT&T provided written comments that they asked to be included with this memorandum. They are attached as Appendix A.

4. Oceanic

- Oceanic did not provide any specific amendment to the bill but offered comments which have been attached to this memo as Appendix B.

SB 2788

1. Oceanic provided the following amendments to this bill:

- Revised the reporting requirements for the mapping data to be done on a census block basis or in cases where service was only available to a portion of the census block, then the report could specific a percentage of the census block. This revision was the result of the discussion during the BAAC meeting on 2/10/12. After further review, DCCA felt this method would not be useful because no other governmental authorities accepted reporting using this method (including federal agencies responsible for determining broadband coverage in conjunction with federal grants and loans) nor would there be any readily accessible means to verify data reported in this fashion. As such, DCCA has proposed a reporting requirement based on street location v. individual address or tax map parcel. DCCA was advised that reporting by street location is done in other jurisdictions and doing so should alleviate concerns regarding the disclosure of individual customer data.
- Revised the confidentiality section of the bill to be more explicit. Accepted.

2. AT&T.

- AT&T proposed an amendment which would provide a different data reporting procedure for wireless broadband providers which would include maximum available download and upload speeds in various locations. DCCA accepts the idea that a separate reporting requirement that is more applicable for wireless providers makes sense but at the same time, as pointed out during the previous committee hearings, there is clearly a difference between maximum speeds and generally available coverage v. actual speeds and actual coverage. The parties are in discussions concerning specific language that would be mutually acceptable. In the meantime, the current bill contains "generic" reporting

language to provide for the concept of a separate reporting requirement for wireless providers.

- DCCA has proposed a requirement that is more specific than just maximum speeds but instead tries to obtain actual speeds and coverage.

3. HT

- HT did not provide any specific amendment to the bill but offered comments which have been attached to this memo as Appendix C.

Appendix A

Re: AT&T Comments on Hawaii SB2786 to Move Regulation of Telecommunications Companies To the Department of Commerce and Consumer Affairs

SB2786 would transfer the regulation of telecommunications companies and cable companies to a "Communications Division" within the Department of Commerce and Consumer Affairs ("DCCA"). The Communications Division would be headed by a single Communications Commissioner ("Commissioner"), who would be appointed by the director of the DCCA with the approval of the governor. The Commissioner would be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within Hawaii and regulating telecommunications and cable operators. To ensure that there is no gap in regulatory authority caused by the transition, the Bill provides for the current rules and decisions established by the Public Utilities Commission for telecommunications carriers to remain in effect unless and until they are changed by the Commissioner.

GENERAL CONCERNS

There are two general concerns about the Bill: (1) vesting all regulatory authority in one Commissioner, and (2) provisions that appear to give the Commissioner regulatory authority over broadband services, including wireless broadband services.

One Commissioner. Currently and for many years, regulation of telecommunications has been performed by the Hawaii Public Utilities Commission ("PUC"), composed of three commissioners. That body and its staff have knowledge of and experience with telecommunications. Importantly, the commissioners on a three-person commission bring different perspectives and backgrounds to bear on the many issues surrounding telecommunications. For example, in the case of the PUC, the commissioners are required to have experience in accounting, business, engineering, government, finance, law, or other similar fields. That diversity of perspectives would be lost with a one-commissioner communications division.

Authority over broadband provided on various technologies. Although described as simply transferring the PUC's current authority to the Communications Commissioner, the Bill appears to increase the State's regulation of broadband providers and services. Currently, the statutory authority of the PUC does not extend to broadband services. Moreover, because many broadband services, including broadband Internet access service, are interstate information services, states lack jurisdiction to regulate providers of these services. Permitting individual states to regulate broadband providers could result in a patchwork quilt of inconsistent and expansive state requirements across the nation, which would impose incredibly burdensome obligations on providers like AT&T that offer broadband services in all 50 states and the District of Columbia. State regulation of broadband services is inconsistent with FCC and Congressional policies that seek to promote broadband deployment with a light regulatory touch. Yet, the Bill includes many provisions authorizing the Commissioner to regulate broadband services. For example:

1. **(p. 3)**¹ The Commissioner may develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the state of Hawaii. It is worthwhile for Hawaii to set broad policies to encourage the deployment of broadband facilities by creating a political and business environment that motivates broadband providers to invest in the state. However, to the extent the Commissioner attempts to mandate the construction of broadband facilities or impose rules concerning rates, terms, or conditions for broadband services, the Commissioner would exceed state jurisdiction over broadband services and discourage broadband investment.
2. **(pp. 3-4)**² The Commissioner can develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public. Again, to the extent the Commissioner's programs require providers to construct infrastructure or share that infrastructure that would constitute regulation beyond the State's jurisdiction. Moreover, history has shown that sharing infrastructure by competing providers can lead to serious disputes between those competitors, as was the case with sharing of the legacy telecommunications infrastructure.
3. **(p. 6)**³ The Bill would allow the Commissioner to establish a minimum speed for an application to be considered "broadband" (p. 6). This would be inappropriate regulation of terms and conditions of broadband service.
4. **(pp. 13-16)**⁴ The Commissioner's duties would also include:
 - Ensuring that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video and that are available at just, reasonable, and nondiscriminatory rates.
 - Developing a comprehensive policy to further the deployment of broadband services, including Internet access, in the state. The study shall include consideration of communications by wire and radio, including satellite and wireless services.

As stated before, developing policies to reach these goals by creating a fertile environment for broadband providers to invest and operate is admirable. Attempting to achieve the goals by rules and regulations on broadband providers, including wireless carriers, would exceed the state's jurisdiction and be counterproductive.

5. **(p. 16)**⁵ The Bill requires the Commissioner to develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services in the state. The legislation indicates that the Commissioner shall fund those programs with fees collected pursuant to the legislation and from appropriations from the state. It is unclear what effect this provision would have on fees paid by telecommunications and cable carriers.

6. **(pp. 44-47)**⁶ As is the case under current law, the Bill would allow the Commissioner to exempt a telecommunications carrier from any or all of the provisions of this chapter, except the requirements of section 36 (interconnection rules), upon a determination that the exemption is in the public interest (similar criteria as HRS §269-16.9. The Bill, however, adds the following factor for the Commissioner to consider: "the impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers (p.47). This would give the Commissioner the improper ability to influence the broadband plans of telecommunications carriers by conditioning exemptions on certain broadband activities.
7. **(pp. 71-75)**⁷ These sections address universal service. Under current law, the state universal service fund can be used to maintain affordable, just, and reasonable rates for residential basic service. The bill would allow the Commissioner to develop universal service programs for broadband services "as defined by the Commissioner." For example, at page 72, the Bill states that the universal service program" would ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by majority consumers located in the metropolitan areas of the state." Also, at page 74, the Bill provides that the Commissioner shall require all telecommunications carriers providers to contribute to the universal service program.

EXAMPLES OF OTHER CONCERNS

In addition to the general concerns above, there are several other concerns with the language in the Bill. A non-exhaustive list of those concerns is as follows:

1. **(p.5)**⁸ The Bill provides for transitional provisions that ensure that there is no gap in regulatory authority caused by the transition, if and until, the Commissioner takes appropriate action to change existing rules, decisions, and other determinations. While there definitely is a need for such a rule, the Bill is not clear as to what procedures the Commissioner must follow in order to change rules, decisions, and other determinations of the previous Commission.
2. **(p. 19)**⁹ The Commissioner has authority to initiate an investigation "for any other reason determined by the Commissioner to be necessary or appropriate to carry out the requirements of this chapter." This very broad language is not included in the investigatory powers currently provided to the PUC.
3. **(p. 20)**¹⁰ The Commissioner's delegating powers are too broad. For example, the Commissioner can delegate any of his or her powers to any employee of the division (e.g., an office assistant).
4. **(pp. 25-26)** The Commissioner has broad power under proposed § - 15 to investigate a telecommunications carrier if it believes the carrier is violating or failing to comply with any provision of the legislation or any rule, order or other requirement of the Commissioner. Waivers were granted to wireless carriers

pursuant to Decision and Order No. 20890 issued on April 7, 2004 in PUC Docket No. 03-0186. These waivers should continue.

5. (p. 39) Under current law (HRS § 269-28(b)) there is a cap of \$500,000 on penalties for actions arising out of the same act or omission. The Bill would eliminate that cap.
6. (pp. 40-41)¹¹ Currently carriers are required to obtain a certificate of public convenience and necessity, certificate of authority, or certificate of registration before providing service. The Bill would create a new obligation to file a separate application (instead of tariff) to provide any modified or new service. Also, the Bill would require wireless carriers to provide certain information when applying for a certificate of registration. Wireless carriers currently are not required to provide that information pursuant to PUC D&O Number 20890.
7. (p. 53)¹² The provision on lines 5 and 6 allows the Commissioner to impose alternative rate regulation procedures. However, there is no indication of what notice and process the Commissioner must use prior to imposing alternative rate regulation procedures. Notice and process should be established.
8. (p. 54)¹³ The Bill allows the Commissioner to waive rate regulation for services the Commissioner determines "by whatever process the Commissioner determines to be appropriate pursuant to rule," to be effectively competitive. Again, this is too vague. Notice and process should be identified.
9. (p. 55)¹⁴ At lines 6 through 8, the Bill would require that "the rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area." To the best of our knowledge, this requirement is not present today, and rates do vary between islands. Also, there is a proposed bill, HB 1868, that would eliminate the need for Commission review of price increases for services other than basic service. If that bill is passed, this section would have to change.
10. (pp. 55-56)¹⁵ Beginning at line 21 on page 55, the Bill provides that "unless and until the Commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section... provided, however, that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier." This is inconsistent with HAR 6-80-136 (4), which waives public and contested case hearings for proposed rate increases, except for proposed increases to basic service rates in high-cost areas. It is extremely important to make sure that this Bill does not eliminate current rules adopted by the PUC, unless and until the Commissioner changes them after notice and an opportunity to be heard. Such changes could amount to a large step backward in Hawaii's regulation of telecommunications.
11. (p. 60)¹⁶ Section 41 requires the Commissioner to adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers, which may include unauthorized changes in subscriber carrier selections. Current statutes address cramming and slamming (i.e., HRS §269-26.92), which the Bill would delete.

The current statutory rules should be maintained. Additional rules are unnecessary.

12. **(p. 70)**¹⁷ Section 52 would allow the Commissioner to require telecommunications carriers to pay a fee for the operation of the "one call center." Currently, there is a provision which allows the crediting of this fee for carriers who pay the public utility fee required under HRS §269-30. This legislation does not appear to continue that exemption. This would be another new fee on telecommunications carriers.
13. **(pp. 93-97)**¹⁸ Beginning at line 20 of page 94, the Bill establishes a compliance resolution fund and a mechanism for collecting contributions to that fund. Currently, it is our understanding that telecommunications companies do not contribute to such a fund. Rather, they pay an annual regulatory fee, which would continue under the Bill as contributions to the communications fund established in the Bill. Although the Bill allows for the transfer of up to 30% of the regulatory fee to the compliance resolution fund, it is not clear whether telecommunications companies could additionally be assessed a direct contribution to the compliance resolution fund.
14. **(p. 165)**¹⁹ Section 54 is a critical provision. Its intent is to keep all current regulation of telecommunications carriers effective unless and until changed by the Commissioner. This provision is critical because the Public Utilities Commission has granted waivers and exemptions to various rules governing both wireline and wireless carriers. Loss of these waivers and exemption would be a huge regulatory step backward for telecommunications in Hawaii. To ensure this does not occur, we would propose edits to this section. Unfortunately, we suspect there would still be different interpretations as to what PUC regulations will continue and which ones the Commissioner will need to establish.

FOOTNOTES

¹ "The commissioner shall: (1) Develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the State of Hawaii;" (p.3, line 8)

² "(3) Develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public." (p.3, line 19.)

³ "'Broadband' means an 'always on' service that combines computer processing capabilities, information provision, and computing interactivity with data transport, enabling end users to access the internet and use a variety of applications, at minimum speeds set by the commissioner." (p.6, line 18)

⁴ "(a) The commissioner shall strive to ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video, and that are available at just, reasonable, and nondiscriminatory rates." (p.13, line 18).
"No later than July 1, 2014, the commissioner shall study and develop a comprehensive policy to further the deployment of .broadband services, including Internet access, in the State. The study shall include

consideration of communications by wire and radio, including satellite and wireless services. The commissioner shall develop plans and strategies to increase broadband affordability, penetration, and competitive availability in the State. (p.14, line 3).

⁵“(c) The commissioner shall develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services by users in the State. The commissioner shall fund these programs and initiatives using funds collected pursuant to section -21 and deposited in the communications special fund pursuant to section -20. In addition, the commissioner may seek appropriations of funds from the State.” (page 14, line 14)

⁶“(13) The impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers. (p.47, line 1).

⁷“Maintain affordable, just, and reasonable rates for basic residential telecommunications service and broadband service, as defined by the commissioner” (p. 72, line1)
“Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by a majority of consumers located in metropolitan areas of the State.”(p.72, line 13)
“(e) The commissioner shall require all telecommunications carriers and broadband service providers to contribute to the universal service program. The commissioner may require a person other than a telecommunications carrier or broadband service provider to contribute to the universal service program if, after notice and opportunity for hearing, the commissioner determines that the person is offering a commercial service in the State that directly benefits from the telecommunications or broadband infrastructure, and that directly competes with a telecommunications or broadband service provided in the State for which a contribution is required under this subsection.” (p.74, line 16).

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

⁹“(d) The commissioner may initiate an investigation concerning a possible violation of this chapter, or to ascertain the conditions of the broadband, telecommunications, or cable industries in the State, or for any other reason determined by the commissioner to be necessary or appropriate to carry out the requirements of this chapter.” (p. 19, line 14).

¹⁰“§ -10 Delegation of powers. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the division employed pursuant to section -5(a), (b), or (d) acting in the name and by the delegated authority of the commissioner. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the department utilized pursuant to section -5(c) or (e) acting in the name and by the delegated authority of the commissioner, with the approval of the director.” (p. 20, line 1)

¹¹“Further, before substantially altering, modifying, or changing the nature or scope of authorized telecommunications service under its existing certificate, or expanding the nature or scope of service of telecommunications services beyond the existing certificate, a telecommunications carrier shall file a separate application for the proposed, modified, or new service. (p.40, line 22).

¹²“(b) The commissioner may issue an order imposing alternative rate regulation procedures.” (p.53, line 6)

¹³“(d) The commissioner may waive rate regulation and allow telecommunications carriers to have pricing flexibility for services that the commissioner determines, by whatever process the commissioner determines to be appropriate pursuant to rule, to be effectively competitive” (p. 54, line 14;

¹⁴ “The rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area. (p.55, line 6)

¹⁵ “Unless and until the commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section -13(c), at which the customers of the telecommunications carrier may present testimony to the commissioner concerning the increase; provided that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier. (p. 55, line 21).

'6-80-136 Standard list of waivers. (a) Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

(1) Requirement that a separate, formal application for certification be filed with the commission for each new telecommunications service the telecommunications carrier proposes to offer, as mandated by '269-7.5, HRS, and '6-61-86. Instead, the carrier shall file a separate tariff for each proposed new service;

(2) Requirement that a telecommunications carrier maintain its financial records in conformance with the uniform system of accounts, as mandated by '269-8.5, HRS. Instead, the carrier may maintain its financial records in accordance with generally accepted accounting principles;

(3) Requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in the State, as mandated by '269-8.2, HRS. Instead, the carrier shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request; and

(4) Requirement subjecting telecommunications carriers to rate of return regulation and to public and contested case hearings on proposed rate increases, as mandated by '269-16, HRS, and "6-61-86 to 6-61-88;

except that waiver of this requirement does not apply to basic service in high cost areas provided by carriers receiving State or federal universal service fund subsidy or to noncompetitive services.

(b) In addition to subsection (a), fully competitive services shall be exempt from the '6-80-142 thirty-day tariff filing requirement.

¹⁶ “ -41 Unfair or deceptive acts or practices. The commissioner shall adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers and telecommunications service providers, including resellers and aggregators of telecommunications services. Such unfair or deceptive acts or practices may include unauthorized changes in subscriber carrier selections.” (p.60, line 11)

¹⁷ “ -52 One call center; advance warning to excavators. To finance the establishment and operation of the one call center pursuant to chapter 2693, and the administrative costs of the public utilities commission, the commissioner may direct all telecommunications carriers and cable operators to pay to the public utilities commission a fee in an amount and at a schedule determined by the commissioner.

Hawaii Rev. Stat. § 269-30 : (d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f)

¹⁸ “SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (0) to read as follows:

“(0) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee

to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section.” (p.93, line 12)

¹⁹ “SECTION 54 [UNEDITED]. Transfer of functions. (a) All rules, policies, procedures, orders, certificates of authority, certificates of registration, certificates of public convenience and necessity, franchises, guidelines, and other material adopted, issued, or developed by the department of commerce and consumer affairs and public utilities commission to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect until amended or repealed, as applicable, by the communications commissioner. In the interim, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission in those rules, policies, procedures, orders, franchises, guidelines, and other material is amended to refer to the communications division or the communications commissioner, as appropriate. (b) All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of commerce and consumer affairs and public utilities commission pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect. Effective upon approval of this Act, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission therein shall be construed as a reference to the communications division or communications commissioner, as appropriate.

APPENDIX B

Date: 02/12/2012 03:02PM
Subject: Draft redline of SB2786

Aloha Everett,

Per our discussion yesterday and as we discussed during the Broadband Assistance and Advisory Council meeting on February 10, 2012, the intent of SB2786 and its House companion was for the DCCA not to gain any additional regulatory powers or to put any new regulatory burdens on the providers. Unfortunately, this bill does provide new powers to the commissioner overall (power to subpoena, conduct investigations, involve the consumer advocate, etc.) that the cable administrator doesn't currently have. Moreover, there are many other concerns this legislation raises for us. In an attempt to develop language that would alleviate these concerns, we quickly realized that this task needs much more time than is available and would require further discussion with other stakeholders.

Cable is different from telecom and so deserves a separate regulator as is the case now. While this legislation does have distinct sections for telecom and cable, these services are regulated and defined separately under federal law and not combined under a single regulatory scheme. Therefore, we advocate that the state should mirror the federal separation of regulation for these services.

If the main intent is to transfer the regulatory authority of telecommunications providers from the PUC to the DCCA with the same authority, structure and means needed to apply the department's capabilities and resources to fulfill the visions of the Hawaii Broadband Initiative, while maintaining the current cable authority, structure and means needed to operate the cable division, we request the removal of all references for cable service providers from this bill, thereby leaving the current cable regulatory structure operating as is. In the future with more available time, work can be done to integrate cable and telecom under a different structure as may be allowed by federal law.

If broadband availability is the goal, we feel that working on adoption and increasing service demand instead of complicating the regulatory scheme will be a better solution.

For these reasons, we urge you to adopt these changes.

My best,

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APPENDIX C

From: Lester Chu <Lester.Chu@hawaiiantel.com>
Date: 02/12/2012 07:31PM
Subject: BAAC meeting: Feedback on SB 2788 / HB 2526

Everett,

Thanks for giving the BAAC an opportunity to provide input to the telecommunications bills under consideration. As discussed, the advancement of broadband is core and critical to the success of Hawaiian Telcom, and we look forward to working with others on the BAAC on a cooperative approach to aggressively expand broadband coverage and speeds across the State.

Hawaiian Telcom continues to be very concerned that the proposed draft of SB 2788 / HB 2526 calls for detailed confidential customer information without a clear indication of why this information is required and how it would be beneficial to our stated objectives. During the BAAC broadband symposium on January 12, 2012, the speakers from North Carolina and Ohio described how they have achieved success by working collaboratively with all parties on a voluntary basis, and not by imposing regulations on broadband services. For that reason, Hawaiian Telcom recommends that a better approach could be voluntary mapping such as that used by South Carolina (<http://www.connectsc.org/> and <http://www.gis.sc.gov/news.html>).

Again, thanks for the opportunity to comment. We look forward to continued dialogue on meaningful solutions to advance broadband in the State of Hawaii.

Thanks, Lester

Ph. (808) 546-3130

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:

SECTION 1. The State of Hawaii recognizes that advanced broadband capability is essential infrastructure required to drive innovation, the economy, and job creation in the twenty-first century as the telephone, interstate highways, and air travel did in the twentieth century. High speed broadband services at affordable prices are essential for the advancement of education, health, public safety, research and innovation, civic participation, e-government, economic development and diversification, and public safety and services. The State of Hawaii also recognizes the evolution in the manner in which communications and information services are delivered to the consumer, including by wireline, wireless, cable television, and satellite infrastructures, and that the voice, video, and data services provided by these infrastructures are converging. In

order to position Hawaii for global competitiveness in the twenty-first century, this Act promotes the following goals:

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

This Act creates a new communications division within the department of commerce and consumer affairs (~~"(division)"~~) 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 in accordance with these goals. The commissioner shall "champion" the interests of the State's broadband, telecommunications, and video programming services

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

The commissioner shall:

- (1) Develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the State of Hawaii;
- (2) Work with other governmental entities to investigate measures including standardization, consolidation, and coordination that can be ~~taken~~implemented to streamline and expedite permitting and approval processes for the construction of additional broadband infrastructure; and
- (3) Develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by

competing providers of broadband services to the public.

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

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

This Act combines the telecommunications provisions from chapter 269 and all of chapter 440G of the Hawaii Revised Statutes into a new chapter so that both telecommunications carriers and cable operators would be subject to regulation by the commissioner.

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

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

"CHAPTER

TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES

PART I. COMMUNICATIONS DIVISION, GENERALLY

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

"Access facility" means:

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

"Access organization" means any nonprofit organization designated by the commissioner to oversee the development, operation, supervision, management, production, or cablecasting of programs for any channels obtained under section ~~-6168~~,

and to provide public, educational, or governmental access services.

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

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

"Application" means an unsolicited filing.

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

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

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

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

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

"Cable service" means:

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

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

- (1) That serves only to retransmit the television signals of one or more television broadcast stations;
- (2) That serves only subscribers in one or more multiple unit dwellings under common ownership, control, or

management, unless that facility or facilities uses any public right-of-way; or

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

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

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

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

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

"Designated local exchange service area" means an area as determined by the commissioner to be best served by designating a carrier of last resort pursuant to section ~~4342~~.

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

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

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

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

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

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

"Proposal" means a filing solicited by the commissioner.

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

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

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

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

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

"Telecommunications relay services" means telephone transmission services that provide an individual who has a hearing or speech disability the ability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using wire or radio voice communication services. Telecommunications relay services includes services that enable two-way communication using text telephones or other non-voice

or duty assigned by the commissioner, and shall serve as the commissioner if, for any reason, the commissioner is unable to perform the duties of commissioner.

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

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

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

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

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

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

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

~~(d) Subject to consultation with the public utilities commission, the commissioner shall have authority over electric utilities only to the extent necessary to mandate and regulate access by telecommunications carriers and cable operators to the poles of electric utilities and such access shall be granted subject to applicable public utilities commission, state, county, and federal laws, rules, regulations, policies, orders, procedures, and guidelines, and joint pole and facility attachment agreements pertaining, but not limited, to safety, engineering, and reliability.~~

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

(b) No later than July 1, 2014, the commissioner shall study and develop a comprehensive policy to further the deployment of broadband services, including Internet access, in

the State. The study shall include consideration of communications by wire and radio, including satellite and wireless services. The commissioner shall develop plans and strategies to increase broadband affordability, penetration, and competitive availability in the State. The commissioner shall regularly update and revise such studies and findings in order to ensure that the State's policies and initiatives effectively promote the interests of the State.

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

(d) The commissioner shall develop, and routinely update, a state policy and formulate positions to be taken before federal agencies regarding communications-related matters of the State. The commissioner shall advocate the broadband, telecommunications, and video programming distribution interests of the State before the United States Congress, the executive branch of the United States, and the Federal Communications Commission, and locally before the governor, the state

legislature, and municipal and county governments. The commissioner shall also maintain active working relationships with community groups, civic associations, industry trade associations, industry leaders, and other stakeholders to communicate the interests and concerns of the State.

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

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

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

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

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

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

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

§ -8 Communications infrastructure permitting. The commissioner shall investigate measures that could streamline and expedite the permitting and approval processes that are imposed by governmental entities with respect to the construction of infrastructure intended for use in the provision of broadband services to the public. The commissioner shall also investigate the possibility of assuming all or a portion of the duties and authority to issue permits and approvals for the construction of broadband infrastructure. The commissioner may assume such duties and authorities and shall carry them out in accordance with any statutes or rules applicable to such duties

and authorities, including but not limited to those subject to applicable public utility commission safety and engineering standards, orders, guidelines, and policies; provided that the assumption of such duties and authorities is deemed by the commissioner to be appropriate and efficient, such duties and authorities can be delegated by the relevant governmental entities, and the relevant governmental entities approve.

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

- (1) The condition of each telecommunications carrier and cable operator;
- (2) The manner in which each telecommunications carrier and cable operator is operated with reference to the safety or accommodation of the public;
- (3) The safety, working hours, and wages of its employees of each telecommunications carrier and cable operator;
- (4) The services provided by telecommunications carriers and cable operators, and the steps being taken to provide those services;
- (5) The value of the physical property of each telecommunications carrier and cable operator;
- (6) The issuance by each telecommunications carrier and cable operator of stocks and bonds, and the disposition of the proceeds thereof;

- (7) The amount and disposition of income of each telecommunications carrier and cable operator, and all financial transactions of each telecommunications carrier and cable operator;
- (8) The business relations of each telecommunications carrier and cable operator, with other persons;
- (9) Compliance by each telecommunications carrier and cable operator, with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any; and
- (10) Classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between each telecommunications carrier and cable operator, and the public or any other persons.

(b) Beginning July 1, 2013, the commissioner may investigate any person acting in the capacity of or engaging in the business of a telecommunications carrier within the State without having a franchise or charter enacted or granted by the legislative or executive authority of the state or its predecessor governments or certificate of public convenience and necessity, certificate of authority or certificate of registration, or other authority previously obtained under and

in compliance with this chapter or chapter 269, or the rules adopted under this chapter or chapter 269.

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

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

§ -10 Delegation of powers. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the division employed pursuant to section -5(a), (b), or (d) acting in the name and by the delegated authority of the

commissioner. ~~Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or~~

~~performed by any employee of the department utilized pursuant to section 5(e) or (c) acting in the name and by the delegated authority of the commissioner, with the approval of the director.~~

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

- (1) Summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commissioner;
- (2) Cases processed by the commissioner, including their dispositions;
- (3) Telecommunications carrier and cable operator operations, capital improvements, and rates;
- (4) Telecommunications carrier and cable operator performance in terms of efficiency and quality of services rendered;
- (5) Environmental matters having a significant impact upon telecommunications carriers and cable operators;

- (6) Actions of the federal government affecting the regulation of telecommunications carriers and cable operators in the State;
- (7) Long and short-range plans and objectives of the commissioner; and together with the commissioner's recommendations regarding legislation and other matters requiring executive and legislative consideration;
- (8) The department's efforts to use broadband and its products and services to develop and expand telework initiatives, including telework participation levels and trends of both private and public sector employees in the State;
- (9) The receipt and expenditure of federal moneys from the American Recovery and Reinvestment Act of 2009 and other federal sources for the purposes of purchasing broadband facilities, services, or equipment or for entering into contracts for broadband-related projects by all ~~State~~state agencies; and
- (10) Any other matters deemed necessary by the commissioner, director, or governor.

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

§ -12 Commissioner's power to subpoena; contempt

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

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

(c) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(d) The commissioner shall pay to a financial institution that is served a subpoena issued under this section a fee for reimbursement of the costs that are necessary and that have been directly incurred in searching for, reproducing, or transporting books, papers, documents, or other objects designated by the

subpoena. Reimbursement shall be paid at a rate not to exceed the rate set forth in section 28-2.5(d).

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

§ -13 Notices. (a) Whenever an investigation is undertaken and a hearing is scheduled by the commissioner, reasonable notice in writing of the hearing and of the subject or subjects to be investigated shall be given to the telecommunications carrier, cable operator, access organization, or persons concerned. If the investigation is based upon

complaints made to the commissioner as prescribed in section-

-9(d), a copy of the complaint, and a notice in writing of the date and place fixed by the commissioner for beginning the investigation, shall be served upon the complainant and the

telecommunications carrier, cable operator, persons concerned, or other respondent not less than fourteen calendar days before the date designated for the hearing.

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

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

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

§ -15 Commissioner may institute proceedings to enforce chapter. (a) If the commissioner is of the opinion that any telecommunications carrier, cable operator, access organization, or person is violating or failing to comply with any provision of this chapter or of any rule, order, or other requirement of the commissioner, or of any provisions of the affected party's certificate of public convenience and necessity, certificate of authority, certificate of registration, franchise, charter, contract, or articles of association, if any; or that changes, additions, extensions, or repairs are desirable in the affected party's plant or service to meet the reasonable convenience or necessity of the public, or to ensure greater safety or security; or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory; or that in any way the affected party is doing what it ought not to do, or not doing what it ought to do, the commissioner shall in writing inform the affected party and may institute proceedings as may be necessary to require the affected party to correct any

such deficiency. The commissioner may by order direct the consumer advocate to appear in such proceeding, to carry out the purposes of this section. The commissioner may conduct an examination into any of the matters referred to in section - 9, notwithstanding any concurrent jurisdiction of any court or other body; provided that this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of any such court or other body. The commissioner may also revoke or amend any provision of a certificate of public convenience and necessity, certificate of authority, certificate of registration, cable franchise, charter, or articles of association, or contract, if any, pursuant to section -31 or -69.

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

(1) Any citation issued under this section may contain an order of abatement and an assessment of civil penalties as provided in section -24. All

penalties collected under this subsection shall be deposited in the communications special fund created in section -20. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, return receipt requested, sent to the last known business or residence address of the person cited~~;~~i

(2) Any person served with a citation under this subsection may submit a written request to the commissioner for a hearing, within twenty calendar days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement, and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commissioner of the request for a hearing, the commissioner shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commissioner or the commissioner may designate a hearings officer to conduct the hearing~~;~~i

(3) If the person cited under this subsection does not submit a written request to the commissioner for a hearing within twenty calendar days from the receipt of the citation, the citation shall be deemed a final order of the commissioner. The commissioner may apply

to the appropriate court for a judgment to enforce the provisions of any final order issued by the commissioner pursuant to this subsection, including but not limited to the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commissioner, the commissioner need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commissioner; and

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

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

§ -16 Appeals. An appeal from an order of the commissioner under this chapter shall lie, in the manner provided for in chapter 602. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order is final, or a preliminary order if it is of the nature defined by section 91-14(a). The commissioner may elect to be a party to all matters, from which an order of the commissioner is appealed or any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith, and file appropriate responsive briefs or pleadings.

If there is no adverse party to the appeal, the commissioner shall be a party and shall file responsive briefs or pleadings in defending all orders. The appearance of the commissioner as a party in judicial proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the appellate court may stay the order after a hearing upon a motion therefor and may impose conditions it deems proper, including but not limited to

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

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

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

§ -19 Telecommunications carriers, cable operators, and access organizations to furnish information. (a) Every telecommunications carrier, cable operator, access organization, or other person subject to investigation by the commissioner, shall at all times, upon request, furnish to the commissioner all information that the commissioner may require respecting any of the matters concerning which the commissioner is given power to investigate, and shall permit the examination of the affected party's books, records, contracts, maps, and other documents related to its operations in or affecting the State by the

commissioner, or any person authorized by the commissioner in writing to make such examination, and shall furnish the commissioner with a complete inventory of property under the affected party's control or management in or affecting the State in such form as the commissioner may direct. The affected party may request in writing that confidential commercial and business information and data that the commissioner requires to be produced be treated and protected as confidential by the commissioner. The affected party shall designate and separate the information claimed to be confidential, and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. Upon a showing satisfactory to the commissioner, the information, or a particular part thereof, shall be protected from public disclosure to the extent permitted by chapter 92F.

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

§ -20 Communications special fund. (a) There is established in the state treasury a communications special fund

to be administered by the division and expended to carry out the duties and obligations of the division under this chapter. All revenues, fees, penalties, and fines collected by the commissioner shall be deposited into the communications special fund. On a quarterly basis, an amount not to exceed thirty per cent of the fees derived under section 26-21 and any penalties and fines collected by the commissioner remaining in the fund after the deduction for central services expenses shall be allocated to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the commissioner from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations.

(b) All moneys appropriated to, received, and collected by the commissioner that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the communications special fund, including, but not limited to, all moneys received and collected by the commissioner pursuant to sections 26-21, 26-24, and 92-21.

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

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

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

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

(b) The consumer advocate shall represent, protect, and advance the interests of all consumers, including small businesses, of telecommunications carriers and cable operators. The responsibility for advocating the interests of the consumers of telecommunications carriers and cable operators shall be separate and distinct from the responsibilities of the communications division and those assistants employed by the division. The consumer advocate shall have full rights to participate as a party in interest in all proceedings before the communications division, including proceedings initiated pursuant to section -15.

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

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

- (1) Any telecommunications carrier or cable operator has violated or failed to comply with any provision of this chapter or of any state or federal law;
- (2) Any telecommunications carrier or cable operator has failed to comply with any rule, regulation, or other

requirement of the commissioner, or of any other state or federal agency;

- (3) Any telecommunications carrier or cable operator has failed to comply with any provision of its franchise, certificate of public convenience and necessity, certificate of authority, or certificate of registration;
- (4) Changes, additions, extensions, or repairs to the plant or service of any telecommunications carrier or cable operator are necessary to meet the reasonable convenience or necessity of the public; or
- (5) The rates, fares, classifications, charges, or rules of any telecommunications carrier or cable operator are unreasonable or unreasonably discriminatory;

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

(e) The consumer advocate may file with the communications division and serve on any telecommunications carrier or cable operator a request in writing to furnish any information reasonably relevant to any matter or proceeding before the communications division or reasonably required by the consumer

advocate to perform the duties hereunder. Any such request shall set forth with reasonable specificity the purpose for which the information is requested and shall designate with reasonable specificity the information desired. The telecommunications carrier or cable operator shall comply with such request within the time limit set forth by the consumer advocate unless within ten calendar days following service it requests a hearing on the matter before the communications division and states its reasons therefor. If a hearing is requested, the communications division shall proceed to hold the hearing and make its determination on the request within thirty calendar days after the same is filed. The consumer advocate, telecommunications carrier, or cable operator may appeal the decision of the commissioner, in the manner provided for in section -16. Subject to the foregoing, such requests may ask the telecommunications carrier or cable operator to:

- (1) Furnish any information with which the consumer advocate may require concerning the condition, operations, practices, or services of the telecommunications carrier or cable operator;
- (2) Produce and permit the consumer advocate or the consumer advocate's representative to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and

other data compilations from which information can be obtained), or to inspect and copy, test, or sample any designated tangible thing which is in the possession, custody, or control of the telecommunications carrier or cable operator; or

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

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

§ -24 Penalties. (a) Any telecommunications carrier, cable operator, or access organization violating or failing in any particular way to conform to or comply with this chapter or any lawful order of the commissioner, including but not limited to the acts specified in section -69 for cable operators, shall be subject to a civil penalty not to exceed:

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

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

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

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

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

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

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

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

PART II. TELECOMMUNICATIONS

§ -31 Certificate of public convenience and necessity; certificate of authority; certificate of registration. (a) No telecommunications carrier, as defined in section -1, shall commence its business without first having obtained from the commissioner a certificate of public convenience and necessity, certificate of authority, or certificate of registration. Further, before substantially altering, modifying, or changing the nature or scope of authorized telecommunications service under its existing certificate, or expanding the nature or scope

of service of telecommunications services beyond the existing certificate, a telecommunications carrier shall file a separate application for the proposed, modified, or new service.

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

- (1) An application for a certificate of authority, certification of registration, or certification of public convenience and necessity shall include:
 - (A) The type of service to be performed;
 - (B) The geographical scope of the operation;
 - (C) The type of equipment to be employed in the service;
 - (D) A statement of the applicant's financial ability to render the proposed service;
 - (E) A copy of the most recent audited financial statement of the applicant and if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement; and
 - (F) The rates or charges proposed to be charged including the rules governing the proposed service.

(2) Where exempted by federal law from entry and price regulation by the State, a telecommunications carrier seeking to offer, initiate, or provide intrastate telecommunications service shall apply for a certificate of registration with the division by complying with subparagraphs (1)(A) to (1)(C) and (1)(F).

(b) A certificate shall be issued to any qualified applicant, authorizing all or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able to properly perform the service proposed and to conform to the terms, conditions, and rules adopted by the commissioner, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the services to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, reasonable conditions and limitations as public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commissioner during the same proceeding, examining the present and future conveniences and needs of the public and qualifications of the

applicant in accordance with the standards set forth in section -38.

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

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

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

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

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

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

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

shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry. Among the specific factors the commissioner may consider are:

- (1) The need for the exemption as a result of changes in the structure and technology of the State's telecommunications industry;
- (2) The benefits accruing to the customers and users of the exempt telecommunications provider or service;
- (3) The impact of the exemption on the quality, efficiency, and availability of telecommunications services;
- (4) The impact of the exemption on the maintenance of fair, just, and reasonable rates for telecommunications services;
- (5) The likelihood of prejudice or disadvantage to ratepayers of basic local exchange service resulting from the exemption;
- (6) The effect of the exemption on the preservation and promotion of affordable, universal, basic

telecommunications services as those services are determined by the commissioner;

- (7) The resulting subsidization, if any, of the exempt telecommunications service or provider by nonexempt services;
- (8) The impact of the exemption on the availability of diversity in the supply of telecommunications services throughout the State;
- (9) The improvements in the regulatory system to be gained from the exemption, including the reduction in regulatory delays and costs;
- (10) The impact of the exemption on promoting innovations in telecommunications services;
- (11) The opportunity provided by the exemption for telecommunications providers to respond to competition;
- (12) The potential for the exercise of substantial market power by the exempt provider or by a provider of the exempt telecommunications service; and
- (13) The impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers.

(b) The commissioner shall expedite, where practicable, the regulatory process with respect to exemptions and shall

adopt guidelines under which each provider of an exempted service shall be subject to similar terms and conditions.

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

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

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

(f) If any provider of an exempt telecommunications service or any exempt telecommunications provider elects to terminate its service, it shall provide notice of the termination to its customers, the commissioner, and every

telecommunications carrier providing basic local exchange service in this State. The notice shall be in writing and given not less than six months before the intended termination date. Upon termination of service by a provider of an exempt service or by an exempt provider, the appropriate telecommunications carrier providing basic local exchange service shall ensure that all customers affected by the termination receive basic local exchange service. The commissioner shall, upon notice and hearing or by rule, determine the party or parties who shall bear the cost, if any, of access to the basic local exchange service by the customers of the terminated exempt service.

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

(h) For purposes of this section, the commissioner, upon determination that any area of the State has less than adequate telecommunications service, shall require the existing telecommunications provider to show cause as to why the

commissioner should not authorize an alternative telecommunications provider for that area under the terms and conditions of this section.

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

§ -36 Obligations of telecommunications carriers. (a) Consistent with federal law and in accordance with conditions and guidelines established by the commissioner to facilitate the introduction of competition into the State's telecommunications marketplace, each telecommunications carrier, upon bona fide request, shall provide services or information services, on reasonable terms and conditions, to an entity seeking to provide intrastate telecommunications, including but not limited to:

- (1) Interconnection to the telecommunications carrier's telecommunications facilities at any technically feasible and economically reasonable point within the telecommunications carrier's network so that the networks are fully interoperable;
- (2) The current interstate tariff used as the access rate until such time that the commissioner may adopt a new

intrastate local service interconnection tariff
pursuant to section -37;

- (3) Nondiscriminatory and equal access to any telecommunications carrier's telecommunications facilities, functions, and the information necessary to the transmission and routing of any telecommunications service and the interoperability of both carriers' networks;
- (4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights-of-way owned or controlled by the telecommunications carrier, or the commissioner shall authorize access to electric utilities' poles as provided by the joint pole agreement, division tariffs, rules, or orders, and consistent with the requirements established by the Federal Communications Commission rules and regulations;
- (5) Nondiscriminatory access to the network functions of the telecommunications carrier's telecommunications network, which shall be offered on an unbundled, competitively neutral, and cost-based basis;

- (6) Telecommunications services and network functions without unreasonable restrictions on the resale or sharing of those services and functions; and
- (7) Nondiscriminatory access of customers to the telecommunications carrier of their choice without the need to dial additional digits or access codes, where technically feasible; provided that the commissioner shall determine the equitable distribution of costs among the authorized telecommunications carriers that will use such access and shall establish rules to ensure such access.

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

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

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

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

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

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

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

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

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

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

- (1) Services such as wholesale services that are not effectively competitive are regulated and remain just, reasonable, and nondiscriminatory; and
- (2) Universal service is preserved and advanced.

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

(f) Except as provided in subsections (a) through (e), no rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commissioner, shall be established, abandoned, modified, or departed from by any telecommunications carrier, except after thirty calendar days'

notice to the commissioner as prescribed in section -13(b), and prior approval by the commissioner for any increases in rates, fares, or charges. The commissioner shall have the discretion to allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice no less than that provided for in section -13(b). Unless and until the commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section -13(c), at which the customers of the telecommunications carrier may present testimony to the commissioner concerning the increase; provided that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier. The commissioner, upon notice to the telecommunications carrier, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;
- (2) After a hearing, by order:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and

practices so that the same shall be just and reasonable;

- (B) Prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions;
 - (C) Regulate the manner in which the property of every telecommunications carrier is operated with reference to the safety and accommodation of the public;
 - (D) Prescribe the telecommunications carrier's form and method of keeping accounts, books and records, and accounting system;
 - (E) Regulate the return upon the telecommunications carrier's telecommunications carrier property;
 - (F) Regulate the incurring of indebtedness relating to the telecommunications carrier's telecommunications carrier business; and
 - (G) Regulate the telecommunications carrier's financial transactions; and
- (3) Do all things that are necessary and in the exercise of the commissioner's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the telecommunications carrier actually

used or useful for telecommunications carrier purposes.

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

(h) Where two or more organizations, trades, or businesses (~~whether or not incorporated, whether or not organized in the State, and whether or not affiliated~~), are owned or controlled directly or indirectly by the same interests, the commissioner may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if the commissioner determines that the

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

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

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

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

(b) The commissioner shall determine the methodology and frequency with which telecommunications providers calculate

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

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

~~§ -41~~ § -40 **Unfair or deceptive acts or practices.** The commissioner shall adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers and telecommunications service providers, including resellers and aggregators of telecommunications services. Such unfair or deceptive acts or practices may include unauthorized changes in subscriber carrier selections.

§ -4241 Lifeline telephone rates. (a) The commissioner shall implement a program to achieve lifeline telephone rates for residential telephone users. The commissioner may achieve lifeline telephone rates by using funds collected pursuant to

section -21 and deposited in the communications special fund pursuant to section -20. In conjunction with such funds, or alternatively, the commissioner may seek appropriations of funds from the State.

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

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

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

§ ~~4342~~ **Carriers of last resort.** (a) The commissioner may define and designate local exchange service areas where the commissioner has determined that a single provider will be the most appropriate way to ensure service for these areas.

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

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

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

§ ~~4443~~ Telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech

disabilities. (a) The commissioner shall implement intrastate telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

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

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

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

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

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

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

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

§ ~~-4544~~ **Telecommunications number portability.** The commissioner shall ensure that telecommunications number portability within an exchange is available, upon request. An impartial entity shall administer telecommunications numbering and make the numbers available on an equitable basis.

§ ~~-4645~~ **Emergency telephone service; capital costs; ratemaking.** (a) A telecommunications carrier providing local exchange telecommunications services may recover the capital cost and associated operating expenses of providing a statewide enhanced 911 emergency telephone service in the public switched telephone network, through a telephone line surcharge that is approved by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ -50 Merger and consolidation of telecommunications carriers. No telecommunications carrier corporation or its affiliate shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line,

plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other person or entity without first having secured from the commissioner an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commissioner, shall be void.

§ -51 Injury to telecommunications carrier property.

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

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

(c) The specifying of the measure of damages for the facility, equipment, or property shall not preclude the recovery

of such other damages occasioned thereby as may be authorized by law.

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

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

§ -53 Universal service subsidies. (a) For any alternative telecommunications provider authorized to provide basic local exchange service to any area of the State pursuant to section -34(h), the commissioner may consider the following:

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

(b) To receive the subsidy amounts ~~from the local exchange service provider~~, the alternative telecommunications provider

shall be required, to the extent possible, to obtain basic residential service subsidies from both the local exchange service provider and national universal service providers.

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

- (1) Maintaining affordable, just, and reasonable rates for basic and broadband residential service;
- (2) Assisting individuals or entities who cannot afford the cost of or otherwise require assistance in obtaining or maintaining their basic or broadband service or equipment as determined by the commissioner; and
- (3) Ensuring that consumers are given the information necessary to make informed choices among the alternative telecommunications providers and services.

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

- (1) Maintain affordable, just, and reasonable rates for basic residential telecommunications service and broadband service, as defined by the commissioner;
- (2) Assist customers located in the areas of the State that have high costs of essential telecommunications service or broadband service, low-income customers,

and customers with disabilities, in obtaining and maintaining access to a basic set of essential telecommunications and broadband services as determined by the commissioner. The commissioner may expand or otherwise modify relevant programs, such as the lifeline program under section ~~42;~~ 41;

- (3) Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by a majority of consumers located in metropolitan areas of the State. The commissioner shall provide for a reasonable transition period to support the statewide deployment of these advanced telecommunications services, including, but not limited to, the use of strategic community access points in public facilities such as education, library, and health care facilities;
- (4) Ensure that consumers are given the information necessary to make informed choices among the telecommunications carriers and broadband services; and
- (5) Promote affordable access throughout the State to enhanced government information and services,

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

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

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

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

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

(c) A telecommunications carrier, broadband service provider, or other person contributing to the universal service program may establish a surcharge which is clearly identified

and explained on customers' bills to collect from customers contributions required under this section.

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

(e) The commissioner shall require all telecommunications carriers and broadband service providers to contribute to the universal service program. The commissioner may require a person other than a telecommunications carrier or broadband service provider to contribute to the universal service program if, after notice and opportunity for hearing, the commissioner determines that the person is offering a commercial service in the State that directly benefits from the telecommunications or broadband infrastructure, and that directly competes with a telecommunications or broadband service provided in the State for which a contribution is required under this subsection.

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

of intrastate telecommunications or broadband services offered by the telecommunications carriers and broadband service providers subject to the contribution.

PART III. CABLE SERVICES

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

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

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

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

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

- (1) The citizenship and character of the applicant;
- (2) The financial, technical, and other qualifications of the applicant;
- (3) The principals and ultimate beneficial owners of the applicant;
- (4) The public interest to be served by the requested issuance of a cable franchise; and
- (5) Any other matters deemed appropriate and necessary by the commissioner including, but not limited to, the proposed plans and schedule of expenditures for or in support of the use of access facilities, and the competitive availability and affordability of broadband and other advanced services to consumers.

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

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

- (1) After the application or proposal and required fee are received by the commissioner and within a time frame established by rule, the commissioner shall notify an applicant in writing of the acceptance or non-acceptance for filing of an application or proposal for issuance of a cable franchise required by this part;
- (2) After the issuance to the applicant of a notice of acceptance for filing and within a time frame established by rule, the commissioner shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice of the public hearing shall be given to the governing council and mayor of the county and to any incumbent local exchange carrier or other utility and cable company in the county in which the proposed service area is located. The commissioner shall also give public notice of the application and hearing at least once in each of two successive weeks in the county in which the proposed service area is located.

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

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

§ -65 Issuance of cable franchise authority; criteria; content. (a) The commissioner may issue a cable franchise to construct or operate facilities for a cable system upon the terms and conditions provided in this part.

(b) The commissioner, after a public hearing as provided in this part, shall issue a cable franchise to the applicant

when the commissioner is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the commissioner shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the commissioner deems appropriate in the circumstances.

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

(d) In issuing a cable franchise under this chapter, the commissioner is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise

of the right granted by the cable franchise terms, limitations, and conditions which the commissioner deems the public interest may require. The cable franchise shall be nonexclusive, shall include a description of the service area in which the cable system is to be constructed, extended, or operated and the approximate date on which the service is to commence and shall authorize the cable operator to provide service for a term of fifteen years or any other term that the commissioner determines to be appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) For county highways, all applicable public welfare rules adopted by the governing body of the county in which the county highways are situated;
- (3) For state or federal-aid highways, all public welfare rules adopted by the director of transportation; and
- (4) For the relocation of cable facilities, the provisions of section 264-33 concerning the allocation of expenses for the relocation of utility facilities.

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

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

installation, construction, operation, or removal of facilities by the cable operator.

§ -68 Public, educational, or governmental access services; designation of channels; designation of access organizations. (a) The cable operator shall designate three or more television channels or video streams for public, educational, or governmental use as directed by the commissioner.

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

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

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

- (2) In determining whether to make a designation, the commissioner shall consider:
 - (A) The content of the application or proposal;
 - (B) The public need for the proposed service;
 - (C) The ability and experience of the applicant to offer public, educational, or government programming cablecast services;
 - (D) The suitability of the applicant;
 - (E) The technical and operational ability of the applicant to perform efficiently the services for which the designation is requested;
 - (F) Any objections arising from the public hearing, the cable advisory committee, or elsewhere; and
 - (G) Any other matters that the commissioner deems appropriate under the circumstances.
- (3) The commissioner may require an applicant to provide information on its process for selecting members of its board of directors; provided that the commissioner shall have no authority to require that an applicant amend its selection process as a condition of designation;
- (4) An applicant shall provide information regarding its past performance and any proposed practices for ensuring that the access facilities support the

diversity of viewpoints and uphold the public's right of free speech;

- (5) Any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefore shall first be submitted to the cable advisory committee for advice under section - 23;
- (6) The commissioner shall enter into a contract with each designated and selected access organization for the provision of public, educational, or governmental access services. The commissioner shall ensure that the terms and conditions required of the operation of an access organization designated under this part are fair to the public and the State. The commissioner shall have the authority to do all things necessary to enforce the terms and conditions of the contracts with access organizations; and
- (7) The commissioner may require a cable operator to provide funds to an access organization for the provision of public, educational, or governmental access services in the cable operator's service area; provided that:

- (A) Any such requirement shall be specified in the cable franchise issued to the cable operator by the commissioner;
- (B) The access organization may use those funds to acquire or purchase access organization assets;
- (C) Notwithstanding any other provision to the contrary, including but not limited to chapter 171, any and all access organization assets acquired or purchased from those funds, except as specified in subparagraph (D), shall be constructively held in trust for benefit of the State to be used primarily for the provision of public, educational, or governmental access services, or used for other purposes in the commissioner's sole discretion, and the commissioner may make these assets available to designated access organizations to provide public, educational, or governmental access services in a particular service area; and
- (D) If the contract between the commissioner and an access organization is terminated or cancelled:
- (i) Any and all claims, rights, interests, or titles to the access organization assets acquired or purchased from those funds after

the effective date of this Act shall belong to the State, and the State shall have the sole discretion on the disposition of those assets;

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

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

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

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

suspended by the commissioner as the commissioner deems necessary on any of the following grounds:

- (1) For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the commissioner;
- (2) For failure to maintain signal quality under the standards prescribed by the commissioner;
- (3) For any sale, lease, assignment, or other transfer of its cable franchise without consent of the commissioner;
- (4) Except when commercially impracticable, for unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area;
- (5) For violation of the terms of its cable franchise;
- (6) For failure to comply with state law or any rules or orders prescribed by the commissioner or failure to comply with applicable federal law;
- (7) For violation of its filed schedule of terms and conditions of service; and
- (8) For engaging in any unfair or deceptive act or practice as prohibited by section 480-2.

§ -70 Renewal of cable franchise. (a) Any cable franchise issued pursuant to this part may be renewed by the

commissioner upon approval of a cable operator's application or proposal therefor. The form of the application or proposal shall be prescribed by the commissioner.

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

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

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

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

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

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

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

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

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

§ -75 Criminal and civil liability. Nothing in this chapter shall be deemed to affect the criminal and civil liability of cable programmers, cable operators, or access organizations pursuant to the federal, state, or local laws

regarding libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws; provided that no access organization shall incur any such liability arising from, based on, or related to any program not created by the access organization, which is broadcast on any channel obtained under section -65, or under similar arrangements."

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

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

required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

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

13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the communications special fund, section -20, the drivers education fund underwriters fee, sections 431:10C-115 and 431:10G-107, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium education trust fund, section 514B-71, and the mortgage foreclosure dispute resolution special fund, section 667-86. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund

shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

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

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

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

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

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

1. By amending subsection (a) to read:

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

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice's designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney

general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;

- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the office of Hawaiian affairs;
- (8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (9) As grand jury counsel;
- (10) By the Hawaiian home lands trust individual claims review panel;
- (11) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (12) By the auditor;
- (13) By the office of ombudsman;
- (14) By the insurance division;

- (15) By the University of Hawaii;
- (16) By the Kahoolawe island reserve commission;
- (17) By the division of consumer advocacy;
- (18) By the office of elections;
- (19) By the campaign spending commission;
- (20) By the Hawaii tourism authority, as provided in section 201B-2.5;
- (21) By the division of financial institutions for any action involving the mortgage loan recovery fund; [ex]
- (22) By the communications division of the department of commerce and consumer affairs; or
- [+22+] (23) By a department, in the event the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section."

~~SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is amended by 2. By amending subsection (c) to read as follows:~~

"(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the communications division of the department of commerce and consumer affairs, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems

corporation or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general."

SECTION ~~6~~5. Section 46-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The mayor of each county, after holding a public hearing on the matter and receiving the approval of the respective council, shall be empowered to designate areas of land for experimental and demonstration housing projects, the purposes of which are to research and develop ideas that would reduce the cost of housing in the State. Except as hereinafter provided, the experimental and demonstration housing projects shall be exempt from all statutes, ordinances, charter provisions, and rules or regulations of any governmental agency or public utility relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction and sale of homes thereon; provided that the experimental and demonstration housing projects shall not affect the safety standards or tariffs approved by the public utility [~~commissions~~] commission for such public utility[~~-~~], or

by the communications division of the department of commerce and consumer affairs.

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

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

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

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

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

SECTION 76. Section 91-13.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) This section shall not apply to:

(1) Any proceedings of the public utilities commission;

~~[or]~~

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

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

SECTION 87. Section 92-21, Hawaii Revised Statutes, is amended to read as follows:

"§92-21 Copies of records; other costs and fees. (a)
Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy.

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

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

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

(e) All fees shall be paid in by the public officer receiving or collecting the same to the state director of

finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33[~~-~~], and fees collected by the communications division of the department of commerce and consumer affairs shall be deposited in the communications special fund established under section ~~---~~ -20."

SECTION 98. Section 101-43, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The corporation submits to the public utilities commission or, beginning July 1, 2013, in the case of telecommunications carriers, to the communications commissioner its intention to exercise the power, with a description of the property to be condemned; and
- (2) The public utilities commission or, beginning July 1, 2013, in the case of telecommunications carriers, the communications commissioner finds that the proposed condemnation is in the public interest, that the

proposed condemnation is necessary, and that the corporation will use the property for its operations as a public utility."

SECTION ~~109~~. Section 163D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

SECTION ~~410~~. Section 166-4, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The board finds the agricultural park is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed agricultural park does not contravene any safety standards or tariffs approved for public utilities by the public utilities commission [~~for public utilities;~~] or by the communications division of the department of commerce and consumer affairs;
- (3) The legislative body of the county in which the agricultural park is to be situated shall have approved the agricultural park.

- (A) The legislative body shall approve or disapprove the agricultural park within forty-five days after the department has submitted the preliminary plans and specifications for the agricultural park to the legislative body. If after the forty-fifth day an agricultural park is not disapproved, it shall be deemed approved by the legislative body.
- (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications.
- (C) The final plans and specifications for the agricultural park shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that agricultural park. For purposes of sections 501-85 and 502-17, the chairperson of the board of agriculture or the responsible county official

may certify maps and plans of lands connected with the agricultural park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar; and

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

SECTION ~~4211~~. Section 166E-10, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~166E-10[~~]~~] Non-agricultural park land development.

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

- (1) The board finds the development is consistent with the public purpose and intent of this chapter and meets minimum health and safety requirements;
- (2) The development of the proposed non-agricultural park land does not contravene any safety standards or tariffs approved for public utilities by the public utilities commission [~~for public utilities;~~] or by the communications division of the department of commerce and consumer affairs;
- (3) The county in which the non-agricultural park development is proposed shall approve the non-agricultural park development; and provided further that:
 - (A) The county shall approve or disapprove the development within forty-five days after the department submits preliminary plans and specifications for the development to the county. If the county does not disapprove the development after the forty-fifth day, the development shall be deemed approved;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on any actions taken by them in reviewing,

approving, or disapproving the plans and specifications; and

(C) The final plans and specifications for the development shall be deemed approved by the county if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that development. For purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of lands connected with the development as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and

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

SECTION ~~131~~12. Section 171-134, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The board finds that the industrial park meets the minimum requirements of health and safety;
- (2) The development of the industrial park does not contravene any safety standards or tariffs approved for public utilities by the public utilities commission [~~for public utilities;~~] or by the communications division of the department of commerce and consumer affairs;
- (3) The legislative body of the county in which the industrial park is proposed to be situated approves the industrial park.
 - (A) The legislative body shall approve or disapprove the industrial park within forty-five days after the department has submitted preliminary plans and specifications for the industrial park to the legislative body. If after the forty-fifth day,

an industrial park is not disapproved, it shall be deemed approved by the legislative body.

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

(C) The final plans and specifications for the industrial park shall be deemed approved by the legislative body if the final plans and specifications for the industrial park do not substantially deviate from the preliminary plans and specifications. The determination that the final plans and specifications do not substantially deviate from the preliminary plans and specifications of the industrial park shall rest with the board. The final plans and specifications for the park shall constitute the planning, zoning, building, improvement, construction, and subdivision standards for that industrial park. For the purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of land connected with the

industrial park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar; and

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

SECTION 4413. Section 196D-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

SECTION 4514. Section 201H-13, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~**201H-13** **Eminent domain, exchange or use of public property.** (a) The corporation may acquire any real property, including fixtures and improvements, or interest therein: through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private

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

(b) The corporation may acquire by the exercise of the power of eminent domain property already devoted to a public use; provided that no property belonging to any government may be acquired without its consent, and that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission[7] or, beginning July 1, 2013 in the case of telecommunications carriers, the communications division of the department of commerce and consumer affairs, and subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of

the senate and the house of representatives in the first regular or special session following the date of condemnation."

SECTION ~~1615~~. Section 201H-33, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

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

of any county may within forty-five days approve or disapprove, for that county, any or all of the rules by a majority vote of its members. On the forty-sixth day after submission, any rules not disapproved shall be deemed to have been approved by the county."

SECTION ~~1716~~. Section 201H-38, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved for public utilities by the public utilities commission [~~for public utilities~~] or by the communications division of the department of commerce

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

- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project with or without modifications:
 - (A) The legislative body shall approve, approve with modification, or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute

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

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

SECTION ~~1817~~. Section 205A-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

or improvements are not allowed within the shoreline area, and the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or

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

SECTION ~~1918~~. Section 239-6.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]239-6.5[§]~~ **Tax credit for lifeline telephone service subsidy.** A ~~[telephone public utility]~~ telecommunications carrier subject to this chapter that has been authorized to establish lifeline telephone service rates by the public utilities commission prior to July 1, 2013, or the communications division of the department of commerce and consumer affairs beginning July 1, 2013, shall be allowed a tax credit, equal to the lifeline telephone service costs incurred by the ~~[utility]~~ carrier, to be applied against the ~~[utility's]~~ carrier's tax imposed by this chapter. The amount of this credit shall be determined and certified annually by the ~~[public~~

~~utilities commission.] commissioner under chapter~~ . The tax liability for a [~~telephone public utility]~~ telecommunications carrier claiming the credit shall be calculated in the manner prescribed in section 239-5; provided that the amount of tax due from the [~~utility]~~ carrier shall be net of the lifeline service credit."

SECTION 2019. Section 264-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The State;
- (2) The department of transportation;
- (3) The counties;
- (4) Any public utility regulated under chapter 269 or telecommunications carrier regulated under chapter that places its facilities within the highway right-of-way; or

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

SECTION ~~2420~~. Section 269-1, Hawaii Revised Statutes, is amended byas follows:

~~(1) Repealing.~~ By repealing the definition of "carrier of last resort"":

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

~~(2) Repealing.~~ By repealing the definition of "designated local exchange service area"":

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

~~(3) Amending.~~ By amending the definition of "public utility" to read as follows:

"Public utility":

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

passengers or freight; for the conveyance or transmission of telecommunications messages; for the furnishing of facilities for the transmission of intelligence by electricity within the State or between points within the State by land, water, or air; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil; for the storage or warehousing of goods; or for the disposal of sewage; provided that the term shall include:

- (A) An owner or operator of a private sewer company or sewer facility; and
- (B) A telecommunications carrier or telecommunications common carrier; and

(2) Shall not include:

- (A) An owner or operator of an aerial transportation enterprise;
- (B) An owner or operator of a taxicab as defined in this section;
- (C) Common carriers that transport only freight on the public highways, unless operating within localities, along routes, or between points that the public utilities commission finds to be

inadequately serviced without regulation under this chapter;

- (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation is necessary in the public interest;
- (E) A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) A carrier by water, substantially engaged in interstate or foreign commerce, that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (G) Any person who:
 - (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and

- (ii) Provides, sells, or transmits all of that power, except as is used in its own internal operations, directly to a public utility for transmission to the public;
- (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9[+], or beginning July 1, 2013, by the communications commissioner pursuant to section -34;
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and other purposes for public use and purpose;
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
 - (i) The services of the facility are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the state or county agency that entered into the service contract;

(ii) The primary function of the facility is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility owned by a state or county agency;

(iii) The facility does not make sales of water to residential customers;

(iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose; and

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

(K) Any person who owns, controls, operates, or manages any seawater air conditioning district

cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater;

- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion; and
- (M) Any person who:
 - (i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and
 - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this clause, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares,

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

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

(4) Amending. By amending the definition of "telecommunications carrier" or "telecommunications common carrier" to read ~~as follows~~:

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

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

(5) Amending. By amending the definition of "telecommunications service" or "telecommunications" to read ~~as follows:~~

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

SECTION 21. Section 269-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. Included among the general powers of the commission is the authority to adopt rules

pursuant to chapter 91 necessary for the purposes of this chapter. Beginning July 1, 2013, the public utilities commission shall no longer have general supervision or the power to investigate public utilities that constitute telecommunications carriers, telecommunications common carriers, or telecommunications providers."

SECTION 221. Section 269-30, Hawaii Revised Statutes, is amended to read as follows:

"§269-30 Finances; public utility fee. (a) Sections 607-5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

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

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days' notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the public utility's next rate case; provided that the surcharge shall be subject to refund with interest at the public utility's authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

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

(e) Notwithstanding any provision of this chapter to the contrary and beginning July 1, 2013, this section shall not apply to any telecommunications carrier or telecommunications common carrier as defined in section -1 and subject to the authority of the communications commissioner pursuant to section

-6."

SECTION 232. Section 269-51, Hawaii Revised Statutes, is amended to read as follows:

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

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

SECTION 243. Section 269-52, Hawaii Revised Statutes, is amended to read as follows:

"§269-52 Division of consumer advocacy; personnel. There shall be a division of consumer advocacy within the department

of commerce and consumer affairs [~~to provide administrative support to~~] with an executive director who shall be appointed by the director of commerce and consumer affairs [~~acting~~] and shall act in the capacity of consumer advocate. The director may employ and at pleasure dismiss [~~an~~] the executive [~~administrator,~~] director, who shall be exempt from chapter 76, may define the executive [~~administrator's~~] director's powers and duties, and fix the executive [~~administrator's~~] director's compensation. The executive director may employ engineers, accountants, investigators, clerks, and stenographers as may be necessary for the performance of the consumer advocate's functions, in accordance with chapter 76; provided that:

- (1) The executive director may employ up to ten utility, communications, and cable analysts exempt from chapter 76; and
- (2) Each analyst shall possess at least the minimum qualifications required of comparable experts in the relevant industry."

SECTION 254. Section 339K-2, Hawaii Revised Statutes, is amended to read as follows:

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

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

SECTION 265. Section 356D-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

SECTION 2~~6~~7. Section 448E-13, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 2~~8~~7. Section 481-11, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 2~~9~~8. Section 481P-5, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- (2) A securities broker-dealer, salesperson, investment adviser, or investment adviser representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;
- (3) A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, including but not limited to a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;

- (4) A person or organization that is licensed or authorized to conduct business in this State by the insurance commissioner including but not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;
- (5) A college or university accredited by an accrediting organization recognized by the United States Department of Education;
- (6) A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;
- (7) A political subdivision or instrumentality of the United States, or any state of the United States;
- (8) The sale of goods or services by telecommunications or landline (i.e., cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or ~~[pursuant to chapter 440C,~~ beginning July 1, 2013, the communications commissioner, including the sale of goods or services

by affiliates of these telecommunications or video service providers. Nothing herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;

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

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

SECTION ~~3029~~. Section 659-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]659-3[§]~~ **Forfeiture of franchise.** The several circuit courts shall have jurisdiction of all proceedings in, or in the nature of, quo warranto, brought by or in the name of the public utilities commission~~[7]~~ or the communications division, or the State, for the forfeiture of the franchise of any corporate body offending against any law relating to such corporation, for misuser, for nonuser, for doing or committing any act or acts amounting to a surrender of its charter and for exercising rights not conferred upon it."

SECTION ~~310~~. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of "telecommunication service" to read as follows:

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

SECTION 321. Section 269-16.5, Hawaii Revised Statutes, is repealed.

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

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

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

~~(d) Nothing in this section shall preclude the commission from changing any rate established pursuant to subsection (a)~~

~~either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications."]~~

SECTION ~~332~~. Section 269-16.6, Hawaii Revised Statutes, is repealed.

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

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

~~(c) If the commission determines that the telecommunications relay service can be provided in a cost-effective manner by a service provider or service providers, the~~

~~commission may require every intrastate telecommunications carrier to contract with such provider or providers for the provision of the telecommunications relay service under the terms established by the commission.~~

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

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

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

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

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

~~"Telecommunications relay services" means telephone transmission services that provide an individual who has a hearing or speech disability the ability to engage in~~

~~communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using wire or radio voice communication services.~~

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

SECTION ~~343~~. Section 269-16.8, Hawaii Revised Statutes, is repealed.

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

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

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

~~(b) The commission, by rule or order, shall adopt and enforce operating requirements for the provision of operator-~~

~~assisted services by an aggregator. These requirements shall include, but not be limited to, the following:~~

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

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

SECTION 354. Section 269-16.9, Hawaii Revised Statutes, is repealed.

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

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

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

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

- ~~(10) The impact of the exemption on promoting innovations in telecommunications services;~~
- ~~(11) The opportunity provided by the exemption for telecommunications providers to respond to competition; and~~
- ~~(12) The potential for the exercise of substantial market power by the exempt provider or by a provider of the exempt telecommunications service.~~

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

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

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

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

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

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

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

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

SECTION 365. Section 269-16.85, Hawaii Revised Statutes, is repealed.

~~["**~~§269-16.85~~** ~~Retail intrastate services; fully competitive.~~ (a) Notwithstanding section 269 16.9 or any other law to the contrary, the public utilities commission shall treat retail intrastate telecommunications services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or~~

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

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

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

SECTION ~~376~~. Section 269-16.91, Hawaii Revised Statutes, is repealed.

~~["**~~§269-16.91~~** Universal service subsidies. (a) For any alternative telecommunications provider authorized to provide basic local exchange service to any area of the State pursuant~~

~~to section 269-16.9(h), the commission may consider the following:~~

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

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

SECTION 387. Section 269-16.92, Hawaii Revised Statutes, is repealed.

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

- ~~(1) A letter of agency or letter of authorization;~~

- ~~(2) An electronic authorization by use of a toll free number;~~
- ~~(3) An oral authorization verified by an independent third party; or~~
- ~~(4) Any other prescribed authorization;~~

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

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

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

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

SECTION 389. Section 269-16.95, Hawaii Revised Statutes, is repealed.

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

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

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

~~(c) The commission shall require every public utility providing statewide enhanced 911 emergency telephone service to maintain a separate accounting of the costs of providing an enhanced 911 emergency service and the revenues received from related surcharges until the next general rate case. The~~

~~commission shall further require that every public utility imposing a surcharge shall identify such as a separate line item on all customer billing statements.~~

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

SECTION ~~4039~~. Section 269-34, Hawaii Revised Statutes, is repealed.

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

- ~~(1) Interconnection to the telecommunications carrier's telecommunications facilities at any technically feasible and economically reasonable point within the telecommunications carrier's network so that the networks are fully interoperable;~~
- ~~(2) The current interstate tariff used as the access rate until the commission can adopt a new intrastate local~~

~~service interconnection tariff pursuant to section 269-37;~~

- ~~(3) Nondiscriminatory and equal access to any telecommunications carrier's telecommunications facilities, functions, and the information necessary to the transmission and routing of any telecommunications service and the interoperability of both carriers' networks;~~
- ~~(4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights of way owned or controlled by the telecommunications carrier, or the commission shall authorize access to electric utilities's poles as provided by the joint pole agreement, commission tariffs, rules, orders, or Federal Communications Commission rules and regulations;~~
- ~~(5) Nondiscriminatory access to the network functions of the telecommunications carrier's telecommunications network, that shall be offered on an unbundled, competitively neutral, and cost-based basis;~~

- ~~(6) Telecommunications services and network functions without unreasonable restrictions on the resale or sharing of those services and functions; and~~
- ~~(7) Nondiscriminatory access of customers to the telecommunications carrier of their choice without the need to dial additional digits or access codes, where technically feasible. The commission shall determine the equitable distribution of costs among the authorized telecommunications carriers that will use such access and shall establish rules to ensure such access.~~

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

SECTION ~~410~~. Section 269-35, Hawaii Revised Statutes, is repealed.

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

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

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

SECTION ~~421~~. Section 269-36, Hawaii Revised Statutes, is repealed.

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

SECTION ~~432~~. Section 269-37, Hawaii Revised Statutes, is repealed.

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

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

SECTION ~~443~~. Section 269-38, Hawaii Revised Statutes, is repealed.

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

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

SECTION ~~454~~. Section 269-39, Hawaii Revised Statutes, is repealed.

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

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

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

SECTION ~~465~~. Section 269-40, Hawaii Revised Statutes, is repealed.

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

~~reasonable, and nondiscriminatory rates that are based on reasonably identifiable costs of providing the services."~~]

SECTION ~~476~~. Section 269-41, Hawaii Revised Statutes, is repealed.

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

- ~~(1) Maintain affordable, just, and reasonable rates for basic residential telecommunications service, as defined by the commission;~~
- ~~(2) Assist customers located in the areas of the State that have high costs of essential telecommunications service, low income customers, and customers with disabilities, in obtaining and maintaining access to a basic set of essential telecommunications services as determined by the commission. The commission may expand or otherwise modify relevant programs, such as the lifeline program under section 269-16.5;~~
- ~~(3) Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications services which are used by a majority of consumers located in metropolitan areas of the State. The commission shall provide for a reasonable transition period to support the statewide~~

~~deployment of these advanced telecommunications services, including, but not limited to, the use of strategic community access points in public facilities such as education, library, and health care facilities;~~

- ~~(4) Ensure that consumers are given the information necessary to make informed choices among the alternative telecommunications carriers and services;~~
- ~~and~~
- ~~(5) Promote affordable access throughout the State to enhanced government information and services, including education, health care, public safety, and other government services.~~

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

SECTION 487. Section 269-42, Hawaii Revised Statutes, is repealed.

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

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

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

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

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

~~(e) The commission shall require all telecommunications carriers to contribute to the universal service program. The commission may require a person other than a telecommunications~~

~~carrier to contribute to the universal service program if, after notice and opportunity for hearing, the commission determines that the person is offering a commercial service in the State that directly benefits from the telecommunications infrastructure, and that directly competes with a telecommunications service provided in the State for which a contribution is required under this subsection.~~

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

SECTION ~~498~~. Section 269-43, Hawaii Revised Statutes, is repealed.

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

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

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

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

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

SECTION ~~5049~~. Chapter 440G, Hawaii Revised Statutes, is repealed.

SECTION ~~510~~. During fiscal year 2012-2013, an amount equal to fifty per cent of the moneys collected by the public utilities commission from telecommunications carriers and deposited into the public utilities commission special fund shall be transferred to and deposited into the communications special fund.

SECTION ~~521~~. The unencumbered balance existing on June 30, 2012, in the cable television division subaccount in the compliance resolution fund shall be deposited into the communications special fund.

SECTION 532. There is appropriated out of the communications special fund the sum of \$, \$ or so much thereof as may be necessary for fiscal year 2012-2013 to implement this Act.

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

SECTION 543. ~~During fiscal year 2012-2013, an additional appropriation of \$ There is appropriated~~ out of the communications special fund ~~shall~~the sum of \$ or so much thereof as may be ~~made to the public utilities commission~~necessary for fiscal year 2012-2013 to fund transition costs related to the retention of logistical and technical assistance by the public utilities commission in transferring electronic and physical data, as well as other related transition costs.

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

SECTION 554. **Transfer of functions.** (a) All rules, regulations, policies, procedures, decisions, orders, exemptions, waivers, certificates of authority, certificates of registration, certificates of public convenience and necessity, charters, franchises, guidelines, tariffs, informational filings, and other material adopted, issued, or developed by the department of commerce and consumer affairs ~~and~~or public utilities commission to implement certain applicable provisions

of the Hawaii Revised Statutes which are in effect on the effective date of this Act, reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect until amended or repealed, as applicable, by the communications commissioner. In the interim, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission in those rules, regulations, policies, procedures, decisions, orders, exemptions, waivers, franchises, charters, guidelines, tariffs, informational filings, and other material is amended to refer to the communications division or the communications commissioner, as appropriate. Notwithstanding the foregoing, this Act should be read in context with any applicable federal and state laws and regulations.

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

utilities commission, or chairperson of the public utilities commission therein shall be construed as a reference to the communications division or communications commissioner, as appropriate.

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

SECTION 565. **Transfer of records, equipment, appropriations, authorizations, and other property.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of commerce and consumer affairs and the public utilities commission relating to the functions transferred to the communications division of the department of commerce and consumer affairs shall be transferred with the functions to which they relate.

SECTION 576. **Transfer of personnel.** (a) The department of commerce and consumer affairs shall transfer seven positions from the cable television division to the communications division. The positions selected for transfer shall reasonably relate to the functions of the communications division.

(b) All officers and employees who are transferred to the communications division by this Act shall continue to perform

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

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

SECTION ~~587~~. **Conflict with provisions of this Act.** All Acts passed by the legislature during this regular session of 2012, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such Acts specifically provide that this Act is being amended.

SECTION ~~58-59~~. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ~~5960~~. This Act shall take effect ~~as follows~~ on July 1, 2012; provided that:

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

- (2) Sections 31 to 48 and 54 of this Act shall take effect on July 1, 2013;
- (3) Part I (relating to the communications division, generally) of the new chapter created in section 2 of this Act shall take effect on July 1, 2012; provided that those provisions relating to the regulation of telecommunications carriers shall take effect on July 1, 2013;
- (4) Part III (relating to cable services) of the new chapter created in section 2 of this Act shall take effect on July 1, 2012; ~~and~~
- (5) Part II (relating to telecommunications) of the new chapter created in section 2 of this Act shall take effect on July 1, 2013; and

INTRODUCED BY: _____

BY REQUEST

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

Report Title:

Regulation of Telecommunications and Cable Television Services

Description:

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

Effective July 1, 2012. (SB2786 SD1)

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

—

LATE

NEIL ABERCROMBIE
GOVERNOR



AARON S. FUJIOKA
ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
SENATE COMMITTEES
ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION**

February 8, 2012

1:15 p.m.

SB 2786

**RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE
TELEVISION SERVICES.**

Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and committee members, thank you for the opportunity to testify on SB 2786. This bill allows an exemption from HRS chapter 103D, Hawaii Public Procurement Code, for the designation of access organizations for public, educational, or governmental access channels.

The State Procurement Office (SPO) continues to oppose the selection of a public, educational, or governmental (PEG) access organization exempt from HRS chapter 103D. The bill identifies the "*commissioner shall have the authority to designate and select access organizations*" and defines an access organization as "*any nonprofit organization ... to oversee the development, operation, supervision, management, production, or cable casting of programs for any channels...*" which are essentially management services. The department may competitively solicit using the procurement method pursuant to HRS section 103D-303, competitive sealed proposals (CSP).

SB 2786-Testimony
Senate Committees on Economic Development and Technology
and Commerce and Consumer Protection
February 8, 2012
1:15 p.m.
Page 2

On May 20, 2010 the SPO issued a request for proposals (RFP), RFP-10-007-SW for the services to *Operate, Maintain, and Manage Public, Educational, and Governmental (PEG) Access Channels, Funds, Facilities, and Equipment*. On June 3, 2011 the RFP was cancelled at the request of the Department of Commerce and Consumer Affairs due to the enactment of Act 19, SLH 2011 that exempted access services contracts from HRS chapter 103D, Hawaii Public Procurement Code, effective July 1, 2011.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion or fraud in awarding of contracts.

There is no compelling reason to statutorily exempt management services for public, educational, or governmental access channels from the requirements of HRS chapter 103D since current statutes and administrative rules already provides independence and flexibility in the awarding of contracts. The SPO recommends the HRS chapter 103D exemption language on page 85, lines 10-12 be deleted.

Thank you.



Dan Youmans
President –Washington/Hawaii
External Affairs

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LATE

February 8, 2012

The Honorable Senator Carol Fukunaga
Chair, Committee on Economic Development and Technology

The Honorable Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection

*Re: Testimony on Senate Bill 2786
Hearing before the Senate Committee on Commerce and Consumer Protection and the
Senate Committee on Economic Development and Technology
1:15 p.m., Conference Room 016*

Thank you for giving AT&T this opportunity to comment on Senate Bill 2786. SB 2786 would create a new communications division within the department of commerce and consumer affairs ("division") to be headed by a single communications commissioner ("commissioner"). The commissioner would be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within the State. The bill would also consolidate the regulation of telecommunications carriers and cable operators in the State in the division under the commissioner.

AT&T supports efforts to make broadband services available to all Americans and, to that end, is an active participant on Hawaii's Broadband Task Force. However, we are concerned that the bill's worthy goals will not be fostered by moving regulation of telecommunications to the new communications division. In fact, the changes contemplated by the bill may actually inhibit broadband development by limiting the points of view addressing these issues and increasing regulation of broadband development.

Currently and for many years, regulation of telecommunications has been performed by the Hawaii Public Utilities Commission ("PUC"). That body and its staff have knowledge of and experience with telecommunications. Moreover, the PUC is composed of three Commissioners with different perspectives and backgrounds that can be brought to bear on the many issues surrounding telecommunications. For example, PUC commissioners are required to have experience in accounting, business, engineering, government, finance, law, or other similar fields. That diversity of perspectives would be lost with a one-commissioner communications division.

SB 2786 also appears to increase regulation of broadband facilities and deployment at a time when the State should allow the market to dictate how broadband will be deployed. The legislature needs to look no further than the vast and successful deployment and usage of wireless telecommunications to see the value of allowing market forces work with little regulation. If anything, the State should be examining ways to deregulate telecommunications, rather than increase regulation.

Finally, setting up a new division in DCCA would necessarily result in a steep learning curve for the new division since it is unlikely many PUC staff would transfer to the new division. This will result in lost technical and legal expertise in analyzing issues, processing filings, and rendering decisions. Additionally, the creation of a new division will result in a significant increase in state expenditures to properly staff up the new division. This would seem counterproductive at a time when the State is just beginning to come out of a major recession.

AT&T once again thanks the Committee for considering the concerns raised in this testimony.

Respectfully Submitted,

Dan Youmans, AT&T

Testimony before the Senate Committees On Economic Development and Technology and Commerce and Consumer Protection

**By Paul A. Nakagawa
Superintendent, Planning Division
Construction and Maintenance Department
Hawaiian Electric Company, Inc.**

**Wednesday, February 8, 2012
1:15 pm, Conference Room 016**

SB 2786 - Relating to the Regulation of Telecommunications and Cable Television Services

Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and Members of the Committee:

My name is Paul Nakagawa and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We support the deployment of high-speed broadband infrastructure in Hawaii and the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the development and implementation of broadband services. However, we ask that the “consolidating” and “streamlining” of the State’s regulatory processes for the telecommunications sector in support of the broadband initiative does not abate or exempt an entity from compliance to any and all of applicable safety and engineering requirements relating to the installation, improvement, or construction of overhead and/or underground electrical facilities with which HECO and its subsidiaries currently comply. By discounting or eliminating the issue of compliance to engineering and safety standards, public safety and electrical reliability would be at risk when installing new or modifying existing broadband facilities.

We would like to work with the Committees as well as the BAAC to develop appropriate language as it relates to insuring public safety and code compliance with respect to the addition of broadband technology onto existing utility poles.

Thank you for the opportunity to testify on this matter.



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COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair

Senator Glenn Wakai, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

DATE: Wednesday, February 8, 2012

TIME: 1:15 p.m.

PLACE: Conference Room 016

BILL: SB 2786 TELECOMMUNICATIONS AND CABLE

Position: OPPOSE WITH PROPOSED AMENDMENTS

Aloha Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi and Members of the Committees,

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 2786 establishes the Hawaii communications commission in DCCA.

The internet has transformed how business is done. We are entering an era of **Webocracy** -- the online participation of citizens in democratic processes. Collaborative Democracy provides better solutions where bids, plans, and processes are all transparent, documents are web-based and accessible; and entities are held accountable to the taxpayers.

Life of the Land supports making Hawai`i a world leader in broadband technology and telecommunication interconnectivity. We must vastly increasing high-speed internet capacities within the State. Every student should have a computer.

The goals of SB 2786 are laudable. The proposed bill seeks to modernize telecommunication regulation in a rapidly changing environment.

The concept is great, its just that the massive proposes to put all of the power of cable regulation in the hands of one person with little oversight and minimal public participation.

Life of the Land hopes that as the bill moves forward, a greater emphasis can be added to insure expanded opportunities for public involvement within the process.

With that in mind, we have proposed a number of amendments.

Hawaii Communications Commission

The bill creates the "Hawaii Communications Commission" (HCC). The Commission is a one person operation, the commissioner, although he has the right to expand it by having the option to hire staff. The Hawaii communications commissioner shall regulate telecommunication.

Management and Oversight

"The commissioner ... shall be appointed by the governor, with the consent of the Senate."

Proposed Amendment: Three commissioners serve on the Hawaii Communications Commission, one appointed ever two years for a six year term.

SB 2786 adds that there is an advisory board established in the same method as the Commission itself: "There is established the communications

advisory committee. The committee shall consist of five members "appointed by the governor" subject to Senate confirmation.

Proposed Amendment: There is a five member advisory board, two members appointed by the Governor, one by the Senate President, one by the House Speaker, and one by the largest PEG provider.

Affiliated Agencies

SB 2786: Two agencies (DCCA, PUC) with experience in telecommunications are removed of any regulatory authority: "The Act removes authority from the director of commerce and consumer affairs [DCCA] to regulate cable operators and, following a one-year transition period, removes authority from the public utilities commission [PUC] to regulate telecommunications carriers."

SB 2786 then assigns the role of the consumer advocate to the business advocate. The director of business, economic development, and tourism (DBEDT) "shall serve as the consumer advocate in hearings and proceedings before the commission." However, DBEDT has no mechanism for engaging consumer input.

Proposed Amendment: The DCCA Director should serve as the consumer advocate.

Functions

The HCC will oversee all regulation, and may choose to waive that regulation: "All rates, fares, charges ...shall be just and reasonable" "The commission may waive rate regulation"

The bill seeks to put one person in charge of all permitting needed to build broadband infrastructure

"Communications infrastructure permitting. The commissioner shall investigate measures that could streamline and expedite the permitting and approval processes that are imposed by governmental entities with respect to the construction of infrastructure intended for use in the provision of broadband services to the public. The commissioner shall also investigate the possibility of assuming all or a portion of the duties and authority to issue permits and approvals for the construction of broadband infrastructure. The commissioner may assume such duties and authorities and shall carry them out in accordance with any statutes or rules applicable to such duties

and authorities; provided that the assumption of such duties and authorities is deemed by the commissioner to be appropriate and efficient, such duties and authorities can be delegated by the relevant entities, and the relevant governmental approve."

Public Hearings

The only time the public may enter the picture is to provide testimony when a new company wishes to be issued a certificate of public convenience and necessity, or in a rate case:

"Any public hearing ...shall be a noticed public hearing or hearings on the island on which the telecommunications carrier is situated."

However the HCC has the right to eliminate that right by waiving regulation.

The "commission may waive any application requirement whenever it deems the waiver to be in furtherance of the purposes of this section. ...The commission may waive other regulatory requirements under this chapter ...when it determines that competition will serve the same purpose as public interest regulation."

There is one confusing section which appears to state that the HCC will allow contested case hearings until it decides that it does not want to hold contested case hearings; and if they choose to hold a contested case hearing, then a public hearing is appropriate. Conversely, it appears that a decision to not have a contested case proceeding eliminates the requirement for a public hearing and thus eliminates the legal opportunity for community input:

"Unless and until the commission waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing ...at which the consumers or patrons of the telecommunications carrier may present testimony to the commission concerning the increase."

Proposed Amendment: There shall be a public hearing on the relevant island(s) for the issuance of a certificate of public convenience and necessity (CPCN), any proposed change in rates, and any shift in the bandwidth that PEG access facilities are using.

Legal Appeals

In actions before most State agencies, an entity that files a Motion to Intervene may or may not be accepted as a party in the regulatory proceedings. If they are accepted, they get all of the legal rights and responsibilities of other parties.

The language of the bill states that a "party ...or permitted intervenor shall have the right to be present and ...to cross-examine any witness who may be called."

It appears that an intervenor might remain an intervenor and not be a party and thus not have a right to appeal: "If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the State intermediate appellate court"

Our above stated interpretation might be wrong. But it appears that there might be another way to limit the public.

Unconstitutional Provisions

According to the proposed bill, the only way to appeal a case is if the contested case hearing was held, because that is the only way of having standing for an appeal.

"An appeal from an order of the commission under this chapter shall lie ...in the manner provided for civil appeals from the circuit courts. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order."

However, the Commission could avoid appeals by not holding public hearings.

"Unless and until the commission waives this requirement [there shall be] a public hearing."

Thus if they choose not to hold a contested case hearing, no one can appeal, except that the Hawai`i Supreme Court has already ruled otherwise.

Life of the Land (1971-75)

During the 1960s HECO ran an advertising campaign asking people to increase their use of electricity. In HECO's 1971 rate case, HECO asked that the cost of the ad campaign be passed on to the ratepayers. Life of the Land filed to intervene in the docket. The Public Utilities Commission said no, but we could ask questions through their staff. (The Consumer Advocate was part of the PUC until the devastating 3 volume audit in the mid 1970s at which point they were moved to DCCA).

We convinced the staff but not the PUC Commissioners that ratepayers should not pay for the ad campaign. We appealed to the Hawaii Supreme Court (in the last few years PUC appeals have been redirected to the Intermediate Court of Appeals).

The PUC argued that because they had not let us into the contested case proceeding, we had no right to appeal.

Associate Justice Benjamin Menor wrote the unanimous decision for the Hawai`i Supreme Court in 1975. In essence, because we had sought to get involved at every step in the process we had a due process right to appeal. Furthermore, the cost of the ad campaign could not be passed through to ratepayers. Shortly thereafter the Legislature changed the law, in effect banning making ratepayers pay for such advertisement.

Proposed Amendment: Entities who actively participate in the administrative process have a due process right of appeal.

Public TV vs. `Olelo

A fee on cable operations pays for both PBS and `Olelo. The HCC would regulate `Olelo and other PEG access facilities but not PBS. Both are telecommunication entities, but as George Orwell in his book "Animal Farm" stated: "All animals are equal but some animals are more equal than others."

The HCC has total control over Public, Educational, or Governmental (PEG) access entities:

"The commission shall have the authority to designate and select PEG access organizations, the authority to contract with the PEG access organizations and enforce the terms and conditions of the contracts, and general supervision over PEG access in the State."

"The commission may examine the condition of each ...PEG access organization, the manner in which each is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the services provided by it, the steps being taken to provide those services, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

That appears to put one individual in charge of modifying conditions for PEG community television facilities before receiving any community input.

Proposed Amendment: The Hawaii Communications Commission may propose changes to PEG access facilities after holding public hearings.

Mahalo

Henry Curtis

LATE

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Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

RE: **SB 2786 - Relating to Telecommunications and Cable Television Services**
February 8, 2012, 1:15 p.m., Hawaii State Capitol Room 016

Aloha Chair Fukunaga, Chair Baker and members of the committees,

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to offer comments this bill.

Because cable operators and telecommunication providers are already separately regulated on the federal level and state level, consolidating them together would appear to complicate rather than streamline the regulatory scheme and process.

As an active member of the Broadband Assistance and Advisory Council, we support the state's expansion of broadband infrastructure that is in line with consumer and market demands.

Therefore, we urge the committee to allow the council to review and comment on this and other bills listed on the agenda for its February 10, 2012, meeting.

We appreciate the opportunity to offer our testimony on this bill.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

Lyndall W. Nipps
Vice President, Regulatory-Western Region

LATE



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Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

RE: **SB 2786 - Regulation of Telecommunications and Cable Television Services**
Hawaii State Capitol Room 016 – 1:15 pm

Aloha Chair Fukunaga, Chair Baker and Members of the Committee:

I am Lyndall Nipps, Vice President of Regulatory Affairs for **tw telecom of hawaii lp** ("TWTC"), which has operated in Hawaii since 1994, providing voice, Internet and data networking, and managing nearly 25,000 access lines to state and local governments, military, and businesses in the State. Thank you for the opportunity to present testimony on SB 2786.

We support the intent of the bill to speed the construction and deployment of broadband infrastructure within the state at levels that meet demand for the advancement of education, health, research and other purposes.

However, although the stated purpose of this bill is to establish the Hawaii Communications Commission ("HCC") to investigate, promote and ensure the growth and development of broadband infrastructure and to consolidate the regulation of telecommunications carriers and cable operators into a "one stop shop," it is unclear how this advances construction of broadband infrastructure.

1. **Separation of telecommunications and cable services exists for a reason** – No other state has consolidated telecommunications and cable services under one commission. Historically, telecommunications and cable services have been regulated under differing laws and regulations on both the state and federal levels. The Public Utilities Commission ("PUC") is knowledgeable of this history and is experienced in telecommunication regulations. Combining regulation under a single agency may result in blurring of these distinctions. This distinction needs to be maintained and not upended.
2. **Make-ready pole attachments under purview of PUC** – Facilitating the construction and sharing of broadband infrastructure is one of the purposes of this bill. However, a major roadblock for deploying facilities is the electric companies, who control most of the poles. If an agency other than the PUC is tasked with facilitating sharing of infrastructure, this could be more difficult than for the PUC, since they will not have jurisdiction over the electric utilities.

3. **Mandatory infrastructure sharing should not be imposed on carriers** – The sharing of infrastructure continues to be a great concern. This is a complex issue that should be examined in much greater detail prior to making any decision on whether it will further the goals of this initiative. Mandating that individual carriers share infrastructure at rates that may not be compensable to that carrier's investment will freeze any initiative to expand broadband capacity. Any mandatory sharing of infrastructure should be limited to infrastructure that is funded by the state and not by individual carriers.
4. **Effect of proposed mandated reporting requirements in conjunction with other requirements of this bill** – As a company that offers high-speed broadband service within the state, we are affected by provisions in a related bill HB2526 HD1, which would mandate TWTC to provide reports for each county that include broadband access availability and pricing over the most recent 30-day period, detailed by address or tax map key without any other personal or private information. We have concerns regarding this request since no other state mandates companies to provide the same information at such a granular level. Complying with this request would add significantly to our costs and to consumer costs and would slow the construction of broadband infrastructure.
5. **Composition of Hawaii Communication Commission** - The bill provides for a single commissioner who is appointed by the governor with the consent of the Senate. TWTC believes that a HCC of at minimum three commissioners is preferable to a single commissioner.

Altogether these proposed changes have a chilling effect on the construction of broadband infrastructure within the state. For these reasons, we respectfully request that you consider deferring action on this bill to allow stakeholders to work out these differences.

As always, we appreciate your consideration of our request.

Sincerely,

/s/

Lyndall Nipps

Vice President, Regulatory Affairs-Western Region

tw telecom of hawaii lp

Email: Lyndall.Nipps@twtelecom.com



**Testimony of Joyce Masamitsu
Associate Director of Public Policy for Verizon
Before the
Consumer Protection and Commerce Committee &
Committee on Economic Development and Technology
On S.B. 2786
February 8, 2012**

The Honorable Roslyn Baker
Chair
Committee on Consumer Protection & Commerce
Hawaii Senate

The Honorable Carol Fukunaga
Chair
Economic Development & Technology Committee
Hawaii Senate

Re: *S.B. 2786 – DCCA Reorganization*

Chairwomen Baker and Fukunaga:

On behalf of Verizon, I appreciate the opportunity to testify on S.B.2786, legislation which seeks to create a new Communications division within the Department of Commerce and Consumer Affairs (DCCA), for the explicit purpose of aiding in the advancement and deployment of broadband in the State of Hawaii.

First of all, we commend the Governor, the Legislature, and other key stakeholders in the State for showing leadership with regard to the goal of advancing broadband deployment. As a leading technology company, Verizon is proud of its investments nationwide to deliver high quality broadband services on a 4th Generation platform known as LTE – which stands for Long-term Evolution.

4G LTE represents the most efficient and highest speed wireless broadband available. In the rapid evolution of wireless broadband, 2G allowed consumers the opportunity to experience digital voice and text messaging. 3G took wireless broadband to the next level, providing a platform for smart phones, web browsing, and numerous apps.

4G LTE establishes a new global standard: ultra-fast speeds that download songs in seconds and movies in minutes; video conferencing; machine-to-machine applications; and more. Our 4G network is not 1G above 3G, but is a broadband network that is ten times faster than current 3G networks.

We don't just develop advanced cutting edge broadband technology, we also invest heavily in our network deployment, and are pleased that we have spent over \$300 million in the State of Hawaii since 2000, to ensure that our customers in this State have the best network, an investment that we do not pass the cost on to the customer because we want to earn their trust and loyalty.

Verizon also wants to be a strong partner with the State of Hawaii with regard to broadband deployment, but respectfully, we have a great deal of concern about this legislation, S.B. 2786, which we believe may have the opposite effect intended, and actually slow down investment in broadband by the private sector.

On the plain reading of the bill, S.B. 2786 seems pretty heavy handed. It sets up a new division within the Department of Commerce and Consumer Affairs (DCCA), moving all telecom authority out of the PUC and into this new division. The bill states that the Commissioner shall "develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the State of Hawaii."

The legislation creates a "one stop shop" for the regulation of telecommunications carriers, and claims to "assist businesses providing broadband, telecommunications, and video programming services." But at the same time, the legislation gives the new Commissioner numerous investigative powers, including the power to examine the conditions of each telecommunications carrier, safety, working hours, wages, and so forth.

Frankly, from the standpoint of a wireless carrier, which is where the most investment in broadband is taking place, and where the evolution of broadband services is taking off, the range and scope of this new bureaucracy seems very alarming. The bill creates new "command and control" authority over telecom, which better fits the 1950's when there was a less competitive landscape for telecom.

The best thing that the Legislature can do to help with broadband investment in the State, especially wireless broadband investment, is to reduce the regulatory burdens and bureaucratic impediments to investing in broadband. S.B. 2786 does the exact opposite. Businesses looking at the creation of this new overreaching bureaucracy, are likely to be concerned with whether Hawaii is a good place to expand broadband. This legislation discourages investment. It says to innovative technology companies: "we want to control everything you do."

New authority to create new burdensome regulation is not what Hawaii needs to attract greater broadband investment. What we need as wireless carriers are two critical things. First, pass legislation that will help expedite cell siting in the State and remove impediments to permitting. Secondly, pass legislation to provide tax incentives for broadband deployment. Those two actions will send a strong signal to all telecom providers that Hawaii wants their broadband investment dollars, and wants to remove obstacles to broadband investment.

S.B. 2786 sends the opposite signal. It says that if you're a telecom carrier with broadband capability, you're going to be subjected to more regulation, more bureaucracy, and have more disincentive to invest. This bill is not the way to go.

We urge you to vote "NO" on S.B. 2786.