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H. B. NO. 1922-70

A Bill for an Act Relating to Cable Television Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately numbered and to read as follows:

“CHAPTER

CABLE TELEVISION SYSTEMS

Sec. -1. Short title. This chapter shall be known as the Hawaii Cable Television Systems Law.

Sec. -2. Findings. The legislature finds that rapid and orderly expansion of cable television systems would be of great benefit to people throughout the State of Hawaii. Because the need for the further development of cable television service in Hawaii is so pressing, the legislature finds that regulatory power

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over cable television companies should be vested in the director of regulatory agencies. The legislature, however, shall study further the issue of whether the eventual regulatory body should be the public utilities commission or some other commission.

Sec. -3. Definitions. As used in this chapter, unless the context clearly requires otherwise:

- (1) "CATV" means either community antenna television or cable television.
- (2) "Community antenna television system company" or "cable television company" or "CATV company" or "CATV operator" means any person who owns, controls, operates, or manages a cable television system, but excluding (A) a telephone or other utility, regulated by the public utilities commission, in a case where it merely leases or rents facilities for the redistribution of television signals to or toward subscribers of a CATV company, or (B) a telephone or other utility, regulated by the public utilities commission, in a case where it provides communication channel service under published tariffs filed with the public utilities commission or the Federal Communications Commission.
- (3) "Community antenna television system" or "cable television system" or "CATV system" means any facility within this State, the primary function of which is either to receive and amplify the broadcast signals of one or more television and radio stations or to provide signals for additional closed circuit programming, and to redistribute such signals to members of the public who subscribe thereto or to whom redistribution of such signals is required by this chapter, by means of wires, cables, conduits, or any other devices which are above, below, on, in, or along any highway or other public place, but excluding (A) any nonprofit community antenna television system which serves fewer than one hundred subscribers, or (B) any system which serves, by means of a roof-top antenna and an internal cable distribution system, only the residents of one or more apartment dwellings or hotels under common ownership, control, or management, and commercial establishments located on the premises of such dwellings.
- (4) "Department" means the department of regulatory agencies.
- (5) "Director" means the director of regulatory agencies.
- (6) "Public utilities commission" means the public utilities commission of this State.
- (7) "CATV permit" means a nonexclusive permit issued pursuant to this chapter authorizing operation of a CATV system, including the right to use public rights of way.
- (8) "Facility" includes all real property, antenna, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fix-

tures, and other personal property used by a CATV company in providing service to its subscribers.

- (9) "Highway" includes every street, road, alley, thoroughfare, way, or place of any kind used by the public, or open for the use of the public as a matter of convenience and right.
- (10) "Permittee" means a person who is issued a CATV permit pursuant to this chapter.
- (11) "Public place" or "public places" includes any property, building, structure, or water to which the public has a right of access and use.
- (12) "Service area" is the geographic area in which a CATV company has facilities by means of which it can offer its services to the public and has been issued a permit to do so.
- (13) "CATV advisory committee" or "committee" means the CATV advisory committee established pursuant to this chapter.

Sec. -4. Issuance of CATV permits and regulation of CATV companies by director of regulatory agencies. The director of regulatory agencies shall be empowered to issue CATV permits, and otherwise administer and enforce this chapter.

Sec. -5. CATV permit required; exception. No person shall construct, operate, or acquire a CATV system, or extend an existing CATV system outside its designated service area, without first obtaining a CATV permit as provided in this chapter; except that, notwithstanding any other section of this chapter, CATV permits shall be issued by the director, for those service areas in which facilities had been placed on or before June 1, 1969, to each CATV company which was operating a CATV system, or which had erected a head-end antenna for distribution of a television signal by means of a coaxial cable, on or before June 1, 1969, if application for the permit is filed with the director within ninety days after the effective date of this Act; provided that, pending the issuance of the CATV permit, any existing CATV system may (a) continue to operate within the area served on the effective date of this Act, and (b) when in the discretion of the director of regulatory agencies the public interest would be served, continue construction of its facilities within areas approved by the director.

Sec. -6. Application for CATV permit; fee; certain requirements. (a) No CATV permit or renewal of a CATV permit shall be issued except upon written application therefor to the director, accompanied by a fee of \$100, and on an application form to be prescribed by the director. The form shall set forth such facts as the director may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the person seeking to operate the CATV system, and complete information as to the principals and ultimate beneficial owners (including in the case of a corporation, all stockholders both nominal and beneficial, owning ten per cent or more of the issued and outstanding stock, and in the case of unincorporated associations, all members

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and ultimate beneficial owners, however designated) and such other information as the director deems appropriate or necessary. The application shall be signed by the applicant whose relationship with the proposed permittee shall be as prescribed by regulation of the director, or by a duly authorized person, evidence of whose authority shall be submitted with the application. Each applicant shall make full disclosure as to the true ownership of the facilities to be employed in rendering service, as to the source of funds for the purchase, lease, rental, and installation of such facilities, except as to the source of funds for the purchase and installation of facilities to be provided by a public utility, and as to his ability to extend service at a reasonable cost to the potential subscribers in the proposed service area. Each application shall set forth the rates to be charged, the services to be offered, the facilities to be employed, the general routes of the wires, cables, conduits, or other devices used in the redistribution of signals, the service area or areas, the commencement and completion dates of construction of the CATV system, and the proposed date service will be available to the areas named.

(b) The application shall require that, in the event a CATV permit is issued, the applicant agrees to the following:

- (1) In installing, operating, and maintaining facilities, it will avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes authorized by the director.
- (2) It will 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 the permittee's CATV system. Upon receipt of notice in writing from the State or county it will, 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 permittee in the installation, operation, or maintenance of its CATV system.
- (3) It will provide a cable drop at reduced rates or at no cost to any school or any institution of higher education within the service area authorized by the CATV permit; provided that service is actually being delivered in the areas adjacent to the school.
- (4) Upon termination of the period of the CATV permit or of any renewal thereof, by passage of time or otherwise, it will 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 director and will restore the areas to their original condition, or otherwise dispose of same. If such removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the permittee will be liable for the cost of its removal.
- (5) Before commencing construction of an increment of a CATV system, the applicant or, in the case of a leased facility, the lessor, other than a public utility, will submit to the director a performance bond, with

corporate surety satisfactory to the director. The penal amount of the bond shall be not less than fifty per cent of the cost of construction. The conditions of the bond shall be the satisfactory completion of installation of the CATV system in accordance with the schedule of installation proposed in the application.

Sec. -7. Public hearing; notice. Upon the filing of an application and the payment of the fee prescribed, the director within sixty days shall fix the time and place for a hearing thereon and shall cause notice thereof to be given to the governing council of the county and to any telephone or other utility and CATV company in the county in which the proposed service area is located. The director shall also cause notice of the application and hearing to be published twice, not less than one week apart and at least one week prior to the hearing, in some newspaper of general circulation in the county in which the proposed service area is located.

Sec. -8. Issuance of CATV permit authority; criteria; content. (a) The director is empowered to issue a CATV permit to construct and operate facilities for a CATV system upon the terms and conditions provided in this chapter; provided that in the construction and operation of facilities for a CATV system:

- (1) The use of all highways and other public places shall be subject to all applicable state statutes which heretofore or hereafter may be adopted and to all applicable regulations of the public utilities commission which heretofore or hereafter may be adopted governing the construction and maintenance of overhead and underground facilities of public utilities;
- (2) The use of all highways and other public places which are county highways within the meaning of section 264-1 shall be subject to all public welfare regulations which heretofore or hereafter may be adopted by the governing body of the county within which the county highways are situated;
- (3) The use of all highways and other public places which are state or federal-aid highways within the meaning of section 264-1 shall be subject to all public welfare regulations which heretofore or hereafter may be adopted by the director of the department of transportation; and
- (4) The provisions of section 264-33 concerning the allocation of expenses for the relocation of utility facilities shall apply to the allocation of expenses for the relocation of CATV facilities.

(b) The director, after a public hearing as provided in this chapter, shall issue a CATV permit to the applicant when he is convinced that it is in the public interest to do so. In determining whether a CATV permit shall be issued, the director shall take into consideration, among other things, the public need for the proposed service or acquisition, the ability of the applicant to offer service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the ability of the applicant to perform

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efficiently the service for which authority is requested, and any objections arising from the public hearing, the CATV advisory committee, or elsewhere.

(c) In determining the area which is to be serviced by the CATV company, the director shall take into account the geography and topography of the proposed service area, and both the present operations and the planned and potential expansion of the applicant's and other CATV companies.

(d) In issuing a CATV permit under this chapter, the director is not restricted to approving or disapproving the application but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the CATV permit such terms, limitations, and conditions which he deems the public interest may require. The CATV permit shall be nonexclusive, shall include a description of the service area in which the CATV system is to be constructed, extended, operated, or acquired and the approximate date on which the service is to commence and shall authorize the CATV company to provide service for a term of twenty years.

Sec. -9. Complaints, revocation, alteration, or suspension of permits.

Any complaint by any person as to the operation of a CATV system shall be filed in writing with the director. Any permit issued hereunder may after hearing in accordance with chapter 91 be revoked, altered, or suspended by the director as he deems necessary on any of the following grounds:

- (1) For wilful false or misleading statements in, or material omissions from, any application;
- (2) For failure to file and maintain a bond under section -6;
- (3) For repeated failure, as determined by the director, to maintain signal quality under the standards prescribed by the director;
- (4) For any sale, lease, assignment, or other transfer of its permit without consent of the director;
- (5) For an inability to provide CATV service at reasonable cost to the service area;
- (6) For violation of the terms of its permit; and
- (7) For failure to comply with this chapter or any regulation prescribed by the director.

Sec. -10. Renewal of CATV permits; transfer. Any CATV permit issued pursuant to this chapter may be renewed, after a hearing as prescribed in section -7 and upon payment of the fee and compliance with the requirements prescribed in section -6, for additional periods of not less than ten nor more than twenty years each. No CATV permit may be assigned, sold, leased, encumbered, or otherwise transferred without the prior written consent of the director. Such consent shall be given only upon a written application therefor on forms to be prescribed by the director. The forms shall require from both the transferor and the proposed transferee substantially the same information as required by section -6. The application shall also contain information concerning the consideration to be paid and such other matters as the director may

deem appropriate or necessary, and shall be signed by both the transferor and the proposed transferee.

Sec. -11. Rate, filed with director; approval. The director shall require each CATV company to submit a schedule of its rates and all terms and conditions of service in such form and on such notice as the director may prescribe. The duty of the director shall be to maintain surveillance over such filed rates and terms and conditions of service to insure that the rates and terms and conditions of service are fair both to the public and to the CATV company, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing CATV service to subscribers in the service area.

Any disagreement between the director and a CATV company over its filed schedule or rates shall be resolved by the director after a hearing has been held to afford the CATV company an opportunity to explain the basis of its filed schedule of rates. After a hearing, the director shall make a determination which is final and conclusive subject only to any rights of appeal as may be provided by statute.

Sec. -12. Other duties of director; suit to enforce chapter. (a) The director has the power and jurisdiction to supervise and regulate every CATV company operating within this State so far as may be necessary to carry out the purposes of this chapter, and to do all things which are necessary or convenient in the exercise of this power and jurisdiction. The director may promulgate, pursuant to chapter 91, such rules and regulations as are necessary to carry out this chapter, including rules and regulations establishing criteria which:

- (1) Categorize CATV companies according to their method of operation or any other appropriate criteria;
- (2) Identify general requirements for the designation of service area; and
- (3) Govern the quality of the signal required to be transmitted by the CATV system.

(b) The director may approve or disapprove, as the public interest may require, all provisions of contracts or other agreements between CATV companies and public utilities concerning the use of the equipment of the public utility by the CATV company, except for those matters which are regulated by the public utilities commission or by the Federal Communications Commission.

(c) The director or a member of his department may from time to time visit the places of business and other premises and examine the records and facilities of all CATV companies to ascertain if all rules, regulations, and orders of the director have been complied with, and shall have the power to examine all officers, agents, and employees of such CATV companies, and all other persons, under oath, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering this chapter.

(d) The director may appoint or contract for such assistants and such clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter without regard to chapters 76 and 77; provided, the exemption from chapters 76 and 77 shall terminate one year

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after the effective date of this Act and any person appointed by the director to aid in the administration and enforcement of this chapter shall comply with chapters 76 and 77 at that time.

(e) The director shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce this chapter or the rules, regulations, and orders adopted thereunder, or to otherwise accomplish the purposes of this chapter.

(f) The director or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule, regulation, or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

Sec. -13. CATV advisory committee. There is established the CATV advisory committee. The committee shall consist of five members appointed by the governor as provided in section 26-34.

The committee shall advise the director, after its formation and so long as he has the power granted him by section -4 of this chapter, on all matters affecting the issuance or revocation of CATV permits, the filing of rates by CATV companies, and any other matter within the jurisdiction of 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.

Sec. -14. Annual reports; fees. With relation to each CATV permit, each permittee shall file annually with the director on forms to be prescribed by the director, a statement of its revenue and expenses and its ownership. The completed forms shall be kept on file open to the public.

A permittee under this chapter shall pay an annual fee computed in a schedule to be determined by the director. The fees so collected shall be used to offset the costs of administering this chapter."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii, the sum of \$40,000, or so much thereof as may be necessary, for the purpose of initiating this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 19, 1970.)