

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Findings and purpose. The legislature finds that changes and advancements in technology have produced a diversity in the supply of telecommunications services available to consumers. Further, the legislature declares that it is the goal of the State to secure and maintain high quality universal telecommunications services at just and reasonable rates for all classes of customers and to encourage innovation within the telecommunications industry by a combination of regulation and competition in varying degrees.

The purpose of this act is to provide for flexible regulation by the public utilities commission to allow for such competition among telecommunications providers as the commission determines to be in the public's interest.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§269- Telecommunications providers and services. (a) Notwithstanding any provision of this chapter to the contrary, the commission may, upon its own motion or upon the application of any person, and upon notice and hearing, exempt a telecommunications provider or a telecommunications service from any or all of the provisions of this chapter 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.”

SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “public utility” to read as follows:

“ “Public utility” [means and] 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, or the conveyance or transmission of [telephone or telegraph] telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold,

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water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term:

- (1) [Means and includes] Includes any person, insofar as [such] that person owns or operates a private sewer company or sewer facility;
- (2) Shall not include any person insofar as [such] that person owns or operates an aerial transportation enterprise;
- (3) Shall not include persons owning or operating taxicabs, as defined [herein] in this section;
- (4) Shall not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points which the public utilities commission finds to be inadequately serviced without regulation under this chapter;
- (5) Shall not include persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
- (6) Shall not include the business of any carrier by water to the extent that [such] the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally, and also shall not include the business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure; [and]
- (7) Shall not include any person who (A) controls, operates, or manages plants or facilities for production, transmission, or furnishing of power primarily or entirely from non-fossil fuel sources, and (B) provides, sells, or transmits all of [such] that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public[.]; and
- (8) Shall not include a telecommunications provider only to the extent determined by the commission pursuant to section 269- .

In the event the application of this chapter is ordered by the commission in any case provided in paragraphs (4) [and], (5), and (8), the business of any public utility [which] 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 public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the commission may prescribe, as provided in section 269-20 and section 269- .”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 2, 1990.)

Note

1. Edited pursuant to HRS §23G-16.5.