

ACT 225

H.B. NO. 471

A Bill for an Act Relating to Telecommunications.

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

SECTION 1. The legislature finds that:

- (1) It is the policy of the State to protect and advance the public interest by having appropriate and efficient telecommunications services available to all persons of the State at fair, just, reasonable, and non-discriminatory rates;
- (2) It is in the public interest to encourage the further development of the State's telecommunications services and capabilities as a means of:
  - (A) Enhancing the quality of life;
  - (B) Ensuring a high standard of public health and safety;
  - (C) Improving the quality of educational services delivered to all communities;
  - (D) Allowing citizens to participate more fully in their community and government; and
  - (E) Promoting economic development and participation in the local, state, national, and global economies;
- (3) Telecommunications development is particularly crucial to the continued economic development of the islands of Hawaii, Maui, Kauai, Molokai, and Lanai, and the rural areas of Oahu, as telecommunica-

- tions can serve to neutralize geographic barriers, while preserving the diverse and unique qualities of these communities;
- (4) Telecommunications and related information technologies can be used to enhance the competitive advantages of Hawaii's businesses through improved operational efficiencies, and expanded access to market opportunities;
  - (5) Advancement in the State's telecommunications capabilities and services will improve the public welfare by helping to speed the delivery of new services such as distance learning, remote medical sensing, and the distribution of medical information;
  - (6) The development and maintenance of telecommunications capabilities and services must be accomplished in an environment that ensures consumer protection, and provides incentives for private sector participation, while maximizing the benefits of effective competition under appropriate regulatory oversight;
  - (7) It is in the public interest that all consumers share in the benefits of effective competition in telecommunications, that include encouraging infrastructure development, lower prices, universal availability, and increased variety and improved quality of telecommunications services;
  - (8) Effective competition, as defined by the public utilities commission, not merely the conditions for competition or even the existence of competitors, is the threshold for allowing pricing flexibility and the relaxed regulation of the incumbent local exchange telecommunications carrier. Appropriate consumer safeguards for those services that are not effectively competitive include cost-based regulation of the local exchange telecommunications carrier. It is in the public interest to continue the authority of the public utilities commission over telecommunications matters, although the role of regulation will change as services become effectively competitive;
  - (9) The public utilities commission must ensure that effective competition proceeds under rules that are fair to all telecommunications carriers and that will protect consumers, provided that all telecommunications carriers provide their services on a nondiscriminatory basis;
  - (10) Universal service must be maintained where it exists today and extended to households where it does not exist. Assuring that every household has access at an affordable rate to essential telecommunications services must remain a fundamental precept in considering any expansion of the universal service concept. It is in the public interest to preserve and promote affordable, universal, and high-quality basic telecommunications services as those services are determined by the public utilities commission;
  - (11) All telecommunications carriers shall make their networks available for interconnection by others;
  - (12) It is not in the public interest that a provider cross-subsidize competitive services from noncompetitive services or that a provider shift common costs onto captive consumers and basic services to reduce prices in competitive markets;
  - (13) Changes in technology are outpacing changes in regulations at the state level and a national policy is evolving to advance competition in the provision of telecommunications services that may preempt state authority;
  - (14) A consistent state policy is needed in telecommunications matters. Unreasonable barriers to enter into the telecommunications services

market must be removed, and state regulatory policies must be revised and supplemented to:

- (A) Ensure that all consumers have adequate services available at just, reasonable, and nondiscriminatory rates;
- (B) Advance the development of effective competition in telecommunications services;
- (C) Advance universal service; and
- (D) Adhere to national standards for interconnection as they are established to allow participation in the national information infrastructure;

and

- (15) The public utilities commission has opened infrastructure Docket No. 7702 to investigate the communications infrastructure of the State and to identify the infrastructure necessary to support the deployment and use of technologies and services in Hawaii.

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

**“§269-A 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-D;
- (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’ 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 telecommunica-

tions 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.

**§269-B 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.

**§269-C 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.

**§269-D 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.

**§269-E 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 non-discriminatory; and
- (2) Universal service is preserved and advanced.

**§269-F 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.

**§269-G 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.

**§269-H 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.

**§269-I Universal service program; contributions.** (a) There is established the universal service fund to be administered by the commission. 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' 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 (e) 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.

**§269-J 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-H.

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

SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:

"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-J.

"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.

"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.

"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."

2. By amending the definition of "public utility" to read:

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

- (1) Shall include any person insofar as that person owns or operates a private sewer company or sewer facility;
- (2) Shall include telecommunications carrier or telecommunications common carrier;
- [(2)] (3) Shall not include any person insofar as that person owns or operates an aerial transportation enterprise;
- [(3)] (4) Shall not include persons owning or operating taxicabs, as defined in this section;
- [(4)] (5) Shall not include common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
- [(5)] (6) 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)] (7) Shall not include:
  - (A) The business of any carrier by water to the extent that 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
  - (B) 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;
- [(7)] (8) Shall not include any person who:
  - (A) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
  - (B) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;
- [(8)] (9) Shall not include a telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9; and
- [(9)] (10) Shall not include any person who controls, operates, or manages [plan] plans or facilities developed pursuant to chapter 167 for convey-

ing, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose.

In the event the application of this chapter is ordered by the commission in any case provided in paragraphs [(4),] (5), (6), [(8), and] (9), and (10), 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 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 sections 269-16.9 and 269-20.”

SECTION 4. Section 269-16.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the commission determines that the relay service can be provided in a cost-effective manner by a service provider, the commission may require every telephone public utility, including telecommunications carriers, to contract with that provider for the provision of the relay service under the terms established by the commission.”

SECTION 5. Section 269-16.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The commission shall require every telephone public utility, including telecommunications carriers, providing local telephone service to file a schedule of rates and charges and every provider of relay service to maintain a separate accounting for the costs of providing for relay services for the deaf, hearing-impaired, and speech-impaired.”

SECTION 6. Section 269-16.9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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, 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-A, 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.”

SECTION 7. The public utilities commission shall submit a report to the legislature no later than September 30, 1995, detailing the progress of the introduction of competition into the State’s telecommunications marketplace. In addition, the public utilities commission and the department of commerce and consumer affairs shall submit separate reports to the legislature not later than September 30, 1995, detailing the progress made in response to S.C.R. No. 191, S.D. 1, H.D. 1 (1994), ‘REQUESTING THE PUBLIC UTILITIES COMMISSION AND THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS’ CABLE TELEVISION DIVISION TO EXAMINE THE CURRENT REGULATORY PROCESSES’’, which requested a review and assessment of the current communications and broadcast media regulation processes with a view toward determining the requirements for consolidated regulation of all communications technologies in the State. The legislature may require subsequent reports from the public utilities commission and department of commerce and consumer affairs as it deems necessary.

SECTION 8. In codifying the sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designation in this Act.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect upon its approval.

(Approved June 29, 1995.)

**Note**

1. Edited pursuant to HRS §23G-16.5.