

DEPARTMENT OF BUDGET AND FINANCE

Repeal of State of Hawaii, Public Utilities Commission,

"Rules Governing Shared Tenant Service,"

Chapter 6-76 (effective date October 3, 1994),

Hawaii Administrative Rules, and

Adoption of State of Hawaii, Public

Utilities Commission,

"Shared Tenant Service,"

Chapter 6-76.1, Hawaii Administrative Rules

August 29, 1997

SUMMARY

1. Chapter 6-76, Hawaii Administrative Rules, entitled "Rules Governing Shared Tenant Service," is repealed.
2. Chapter 6-76.1, Hawaii Administrative Rules, entitled "Shared Tenant Service," is adopted.

DEPARTMENT OF BUDGET AND FINANCE

State of Hawaii, Public Utilities Commission, Rules Governing Shared Tenant Service,
Title 6, Chapter 76, Hawaii Administrative Rules, REPEALED []

DEPARTMENT OF BUDGET AND FINANCE

Adoption of Chapter 76.1

Hawaii Administrative Rules

August 29, 1997

1. Chapter 6-76.1, of Title 6, Hawaii Administrative Rules, entitled "Shared Tenant Service," is adopted to read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 76.1

SHARED TENANT SERVICE

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'6-76.1-33 Disclosure to end users

'6-76.1-34 Termination of shared tenant service

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'6-76.1-46 Exemptions - shared tenant service

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'6-76.1-47 Extension of shared tenant service by

hotels, hospitals, or other
establishments to permanent residents or
non-affiliated entities

"6-76.1-48 to 52 (Reserved)

SUBCHAPTER 1

GENERAL PROVISIONS

'6-76.1-1 Purpose and scope of rules. (a) The purpose and scope of this chapter is to prescribe procedures and standards governing shared tenant service. [Eff]
(Auth: HRS "269-6, 269 16.9) (Imp: HRS "269-6, 269 16.9)

'6-76.1-2 Application of additional sources. This chapter:

(1) Shall be read in context with any applicable State law and commission order and rule, including chapter 269, HRS, and chapters 6 61, 6-80, and 6-81; and

(2) Supersedes any conflicting commission order or rule that may be in effect on the effective date of this chapter. [Eff] (Auth: HRS "269-6, 269-16.9)
(Imp: HRS "269-6, 269-16.9)

'6-76.1-3 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Affiliated" means closely associated with and under the ownership, management, or operational control of another.

"Certificate of authority" or "COA" means the certificate issued pursuant to chapter 6-80, subchapter 2.

"Certificate of public convenience and necessity" or "CPCN" means the certificate issued pursuant to '269 7.5, HRS.

"Commercial shared tenant service provider" means a shared tenant service provider other than a premises owner.

'6-76.1-3

"Commission" means the public utilities commission of the State.

"Demarcation point" means the point at the end user's premises at which the equipment and wiring of a telecommunications carrier terminate, consistent with FCC regulations under 47 C.F.R. Part 68.

"End user" means a person to whom telecommunications service is provided through shared tenant service.

"HRS" means the Hawaii Revised Statutes.

"Incumbent telecommunications carrier" or "incumbent carrier" means the telecommunications carrier referred to in '269-7.5(c), HRS.

"Person" includes individuals, partnerships, corporations, associations, joint stock companies, public trusts, organized groups of persons, whether incorporated or not, receivers or trustees of the foregoing, municipalities, including cities, counties, or other political subdivisions of the State, or any agency, authority, or instrumentality of the State, or any one or more of the foregoing.

"Premises owner" means the owner or lessee of a building or complex of buildings described in '6 76.1 21.

"Resale" or "resale basis" means the provision of telecommunications service through shared tenant service at the shared tenant service provider's cost of providing the

telecommunications service plus a margin payable to the shared tenant service provider.

"Shared tenant service" means telecommunications service provided through centralized or common switching on a resale or shared basis to end users who are occupants or tenants of units in a building or a complex of buildings described in '6-76.1-21.

"Shared tenant service provider" or "provider" means a person who owns, controls, operates, or manages as owner, lessee, trustee, receiver, affiliate, or agent, any plant or equipment, or any part of plant or equipment, used to provide shared tenant service and includes an owner or lessee of any building or site where shared tenant service is provided.

'6-76.1-11

"Share" or "shared basis" means the costs of the telecommunications service provided through shared tenant service is passed through to or shared by the end users on a non-profit basis.

"State" means the State of Hawaii.

"Telecommunications service" means the same as in '269-1, HRS.

"Telecommunications carrier" means the same as in '269-1, HRS, and includes the incumbent telecommunications carrier. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269 16.9)

'6-76.1-4 Enforcement of chapter 6-76.1. Chapter 269, HRS, and any other applicable State law and commission rule and order, apply to the enforcement of this chapter. [Eff] (Auth: HRS "269-6, 269 16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-5 Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.
[Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269 16.9)

"6-76.1-6 to 11 (Reserved)

'6-76.1-12

SUBCHAPTER 2

INFORMATION FILING BY AND CERTIFICATION OF SHARED TENANT SERVICE PROVIDERS

'6-76.1-12 Premises owner - status as a public utility. A premises owner who provides shared tenant service to occupants or tenants of units in the owner's building or

complex of buildings is not a public utility within the meaning of '269-1, HRS.

[Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-13 Premises owner - filing of information. (a) A premises owner who provides shared tenant service to occupants or tenants of units in the owner's building or complex of buildings need not apply for certification as required by '6-76.1-14 to provide such shared tenant service. However, such premises owner, before providing the shared tenant service, must file with the commission, on forms prescribed by the commission, the following information:

- (1) A description of the location, together with a map showing the building or buildings, at which the shared tenant service will be provided;
- (2) The class or group of end users to whom the shared tenant service will be provided;
- (3) A description of the telecommunications facilities that will be used to provide the shared tenant service; and
- (4) The name of the telecommunications carrier interconnecting on the non owner's side of the demarcation point.

The premises owner must notify the commission in writing of any changes in the information previously supplied within thirty days of such changes.

'6-76.1-14

(b) A premises owner who is providing shared tenant service within the owner's premises on the effective date of this chapter must file the information required in subsection (a) within ninety days of the effective date of this chapter.

[Eff] (Auth: HRS "269 6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-14 Commercial shared tenant service provider - certification to provide shared tenant service. (a) Any exemption granted a commercial shared tenant service provider from the certification requirement of chapter 269, HRS, for the provision of shared tenant service, previously granted by the commission pursuant to '269-16.9, HRS, and in effect on the effective date of this chapter, is automatically converted to a certificate of authority.

(b) A telecommunications carrier granted a CPCN, COA, or COR before the effective date of this chapter authorizing the provision of telecommunications service in the State need not apply for an additional COA or COR in order to provide shared tenant service in the State. Any such telecommunications carrier, however, before adding or expanding the nature or scope of its telecommunications services beyond that authorized in its existing CPCN, COA, or COR, to include the provision of shared tenant service, shall file a separate tariff for its new service, unless ordered otherwise by the commission.

(c) Any person, other than the incumbent telecommunications carrier or a premises owner, seeking to offer, initiate, or provide shared tenant service on a commercial basis shall apply in writing to the commission for a certificate of authority. The application shall comply with the applicable provisions of chapter 6-80, subchapter 2, and also provide the following information:

'6-76.1-14

- (1) A description of the location, together with a map showing the building or buildings, at which the shared tenant service will be provided;
- (2) The class or group of end-users to whom the shared tenant service will be provided;
- (3) A description of the proposed resale or cost sharing arrangement with end users;
- (4) A description of the telecommunications facilities proposed to be used, including:
 - (A) The type and amount of facilities; and
 - (B) The identification of the demarcation points for its end users;

(5) Evidence that the applicant has authorization from the building owner to furnish shared tenant service;

(6) Evidence that the customer premises equipment and inside wiring meet the FCC's standards for interconnection of terminal equipment to the public switched network;

(7) Evidence that the conduits, inside wire, and equipment rooms are sufficient to provide individual line service to all units in the event the shared tenant service arrangement is terminated; and

(8) The name of the telecommunications carrier interconnecting on the non-owner's side of the premises' demarcation point.

(d) The provisions of chapter 6-80, subchapter 2, govern the issuance or denial of any certification authorizing the provision of shared tenant service. [Eff]

(Auth: HRS "269 6, 269-16.9) (Imp: HRS "269-6, 269-7.5, 269 16.9)

'6-76.1-15 Terms and conditions of certification. Any certificate issued authorizing the provision of shared tenant service and any holder of such certificate are subject to the terms and

'6-76.1-22

conditions enumerated in chapter 6-80, subchapter 2, including those relating to suspension and revocation of certificates. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-7.5, 269 16.9)

"6-76.1-16 to 20 (Reserved)

SUBCHAPTER 3

RESTRICTIONS ON SHARED TENANT SERVICE

'6-76.1-21 Premise boundaries. Shared tenant service will be permitted only within a single building or contiguous complex of buildings under common ownership or management located on a single continuous piece of property or two or more pieces of property that would be a single piece of property but for separation by public thoroughfare(s). [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-22 Access to the public switched network, etc. (a) A shared tenant service provider shall provide to all end-users access to the public switched network. No end-user may be precluded from receiving telecommunications service directly from any authorized telecommunications carrier.

(b) A shared tenant service provider shall also provide to all end-users access to:

- (1) All authorized interexchange carriers;
- (2) Directory assistance;
- (3) Operator service;
- (4) Enhanced 911; and

'6-76.1-22

(5) Telecommunications relay service. [Eff] (Auth: HRS "269-6, 269-16.9)
(Imp: HRS "269-6, 269-16.9)

'6-76.1-23 Access to premises. The provider of shared tenant service and the owner of the premises at which shared tenant service is provided shall allow any authorized telecommunications carrier reasonable access to any end-user who desires telecommunications service directly from that carrier. Reasonable access includes access to the facilities necessary to allow the carrier to provide service directly to the end user. The access shall be provided to the telecommunications carrier free of charge. Such carrier may elect to utilize any existing wire and cable. [Eff]
(Auth: HRS "269-6, 269 16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-24 Other restrictions. (a) A shared tenant service provider shall furnish only those telecommunications services authorized by the commission and shall not change or expand the area served by a shared tenant service system without obtaining authorization from the commission.

(b) The commission may impose other conditions in the public interest. [Eff]
(Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-25 to 29 (Reserved)

'6-76.1-33

SUBCHAPTER 4

RESPONSIBILITIES OF THE SHARED TENANT SERVICE PROVIDER

'6-76.1-30 Network. The shared tenant service provider is responsible for the installation, maintenance, and quality of the switched network on the end-user side of the demarcation point. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-31 Rate schedule. (a) Before commencing shared tenant service, the provider shall submit a rate schedule to the commission. Revised rate schedules shall be submitted to the commission before the effective date of the revised rates.

(b) A rate schedule is effective upon filing, and no commission action is required to validate the schedule; provided that the commission may, at any time, as it deems appropriate, examine any rate schedule. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-32 Payment of rates and charges. The provider shall be the customer of record that is responsible for the payment of all rates and charges for all telecommunications services utilized by the provider. [Eff] (Auth: HRS "269-6, 269-16.9)
(Imp: HRS "269-6, 269-16.9)

'6-76.1-33 Disclosure to end users. The provider shall inform all end-users that the

'6-76.1-33

commission does not regulate the rates, charges, or payment arrangements for shared tenant service. In addition, the provider shall disclose the following to all end users:

- (1) The end-user's option to obtain any telecommunications service directly from a telecommunications carrier in addition to or in lieu of telecommunication service furnished by the provider;
- (2) The terms and conditions for service, including rates, payment arrangements, and termination charges, if any;
- (3) The terms and conditions under which the end user may terminate the shared arrangement;
- (4) Any limitations of enhanced emergency 911 service, e.g., inability to identify the caller and caller's location;
- (5) Any limitations on the portability or reuse of the assigned telephone number when the service is moved or transferred; and
- (6) Any limitations on intercept service provided by any other telecommunications carrier for direct inward dial (DID) numbers. [Eff] (Auth: HRS "269-6, 269-

16.9) (Imp: HRS "269-6, 269 16.9)

'6-76.1-34 Termination of shared tenant service. (a) A shared tenant service provider intending or seeking to terminate the offering or providing of shared tenant service in its service area shall provide, not later than one hundred eighty days before the proposed date of termination, a written notice of its intent to the:

- (1) Commission;
- (2) End-users affected by the proposed termination of service;
- (3) Consumer advocate; and

'6-76.1-34

(4) Telecommunications carrier providing service to the demarcation point.

(b) The shared tenant service provider shall include in the notice of intent to terminate service the following information:

- (1) Certification that the persons identified in subsection (a) were served a copy of the notice;
- (2) Proposed date of termination;
- (3) Reasons for the proposed termination;
- (4) Effects of the proposed termination on end users;
- (5) The identification of any telecommunications carrier or provider that may be interested in providing replacement service to the end users; and
- (6) Identification of the persons responsible for bearing the costs, if any, of access to the switched network by the end-users of the terminated service.

(c) The commission may suspend and investigate the proposed termination of service and hold an expedited hearing on the matter. With or without a hearing, the commission may:

(1) Allow the proposed termination to take effect upon such reasonable terms and conditions that it deems are in the public interest;

(2) Delay the proposed termination until:

(A) Another carrier or provider is able to provide the same or equivalent service, consistent with the public interest; and

(B) The other carrier or provider initiates the provision of the same or equivalent service for the service area; or

(3) Deny the proposed termination of service. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-35

"6-76.1-35 to 38 (Reserved)

SUBCHAPTER 5

RESPONSIBILITIES OF THE TELECOMMUNICATIONS CARRIER

'6-76.1-39 Telecommunications network. The telecommunications carrier providing the network access for a shared tenant service provider at a particular property shall be responsible for the installation, maintenance, and quality of the telecommunications network from the central office to the telecommunications carrier's side of the demarcation point. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

"6-76.1-40 to 44 (Reserved)

SUBCHAPTER 6

EXEMPTION AND WAIVER

'6-76.1-45 Exemption and waiver. (a) Chapter 6 80, subchapter 12, applies to any provider (including a premises owner), end-user, or any other person seeking an exemption or waiver from any provision of chapter 269, HRS, or any rule implementing any provision of chapter 269, HRS, including this chapter.

(b) Unless otherwise ordered by the commission, any exemption granted any provider of shared tenant

'6-76.1-46

service is limited to the specific exemption granted. The provider must comply with all other applicable requirements of State law, rule (including this chapter), and commission order with respect to the provision of shared tenant service. [Eff]
(Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-46 Exemptions - shared tenant service provided by premises owner; shared tenant service provided to hotel, hospitals, and other establishments. (a) Except for "6-76.1-21, 6 76.1 22(b), 6-76.1-30, and 6-76.1-32, subchapters 3 and 4 do not apply to shared tenant service provided by a premises owner or to shared tenant service provided to the following entities (whether provided by a premises owner or by a commercial shared tenant service provider):

(1) A hotel, where the shared tenant service is provided to hotel transient residents, hotel administrative offices, and hotel facilities, but not to permanent residents at the hotel or to entities, businesses, or enterprises located within the hotel that are not affiliated with the hotel. "Hotel" includes a hotel/condominium; it also includes a hotel or hotel/condominium complex that is commonly-owned or commonly managed and operated as a single entity. To be a hotel, the establishment must:

(A) Furnish transient lodging accommodation, have a centralized front desk, and provide one or more customary hotel services, such as room attendant service, bell service, linen laundering, restaurant, and use of furniture and fixtures;

'6-76.1-46

(B) Be subject to the Transient Accommodations Tax as provided in chapter 237D,

HRS;

(C) Be registered and certificated to engage in the business of furnishing transient accommodations pursuant to '237D 4, HRS; and

(D) Be situated on a single, continuous piece of property or on two or more pieces of property that would be a single, continuous piece of property, but for separation by public thoroughfare(s);

(2) A hospital licensed pursuant to rules promulgated under '321-11, HRS, where the shared tenant service is provided to hospital patients, hospital administrative offices, and hospital-affiliated facilities, but not to physicians or others occupying offices in the hospital who are engaged in the private practice of medicine or private business or to other medical or non medical entities, businesses, or enterprises located at the hospital that are not affiliated with the hospital;

(3) A nursing home licensed pursuant to chapter 457B, HRS, where the shared tenant service is provided to nursing home patients, nursing home administrative offices, and facilities affiliated with the nursing home, but not to entities, businesses, or enterprises located in the nursing home that are not affiliated with the home;

(4) A continuing care facility licensed pursuant to '321-15.6, HRS, where the shared tenant service is provided to the care facility patients, care facility administrative offices, and other offices affiliated with the care facility, but not to entities, businesses, or enterprises located at the

'6-76.1-47

care facility that are not affiliated with the facility; and

(5) An airport complex under the jurisdiction of the department of transportation where the department of transportation provides shared tenant services to non-affiliates as well as affiliates.

(b) The exclusion of shared tenant service to permanent residents (in the case of hotels) and to entities, businesses, or enterprises located within any of the establishments enumerated in subsection (a) that are not affiliated with the establishment is to require each of them to obtain telecommunications service directly from a telecommunications carrier for originating calls to and receiving calls from

persons outside the establishment; provided that the shared tenant service provider at any of these establishments may extend its service to permanent residents (in the case of hotels) and to entities, businesses, and enterprises located within the establishment but not affiliated with the establishment, provided such extended service is only for the purpose of providing communications solely within the confines of the establishment. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-47 Extension of shared tenant service by hotels, hospitals, or other establishments to permanent residents or non-affiliated entities. (a) If any establishment enumerated in '6-76.1-46 desires to extend the shared tenant service to permanent residents (in the case of hotels) or to entities, businesses, or enterprises located within the establishment but not affiliated with the establishment, the establishment may apply to the commission in writing for an authorization to do so. The application must address the factors set forth in subsection (b). The establishment shall serve a copy of the application on the telecommunications carrier

'6-76.1-47

providing telecommunications service to the demarcation point.

(b) In determining whether to authorize the establishment to provide shared tenant service to permanent residents (in the case of hotels) or to entities, businesses, and enterprises located within the establishment but not affiliated with the establishment, the commission shall consider the following factors:

- (1) The extent, nature, and amount of permanent residents (in the case of hotels) or non affiliated entities affected;
- (2) The commonality of interests between the establishment (hotel, hospital, nursing home, continuing care facility) and permanent residents (in the case of hotels) or non-affiliated entities;
- (3) The commonality of interests among the permanent residents (in the case of hotels)

or non-affiliated entities; and

(4) Any other factors deemed relevant by the commission.

(c) No hearing is required for the granting or denial of an application to extend shared tenant service to permanent residents (in the case of hotels) or to non-affiliated entities; provided that the commission may hold a hearing before it grants or denies an application, if it deems a hearing is appropriate.

(d) Any authorization issued by the commission to extend shared tenant service shall:

(1) Specify the shared tenant service to be rendered to the permanent residents (in the case of hotels) or non-affiliated entities;

(2) Delineate the geographic area in which the service is to be rendered; and

(3) Define the terms and conditions of the authorization as the commission may reasonably prescribe. [Eff] (Auth: HRS "269-6, 269-16.9) (Imp: HRS "269-6, 269-16.9)

'6-76.1-52

"6-76.1-48 to 52 (Reserved)

DEPARTMENT OF BUDGET AND FINANCE

Chapter 6-76.1, Hawaii Administrative Rules, on the Summary Page dated August 29, 1997, was adopted on August 29, 1997, following public hearings held on March 17, 18, 19, 20, and 21, 1997, after public notice was given in the Honolulu Advertiser, Maui

News, Hawaii Tribune-Herald, Ltd., West Hawaii Today, and The Garden Island on February 12, 1997.

The adoption of chapter 6-76.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Earl I. Anzai

Director of Finance

Department of Budget &

Finance

Yukio Naito, Chairman

Public Utilities Commission

APPROVED:

Benjamin J. Cayetano

Governor

State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed