

Appendix J:
**Copy of Legislation or Other
Establishing TRS in the State**

Puerto Rico's legislation regarding the establishment of the Board, the Puerto Rico Universal Service Fund and TRS is referred to as Act 213, approved September 12 of 1996. This document is 50 pages long. For your convenience, a copy of Act 213 has been included as part of this appendix. You may also view the document at the Telecommunications Regulatory Board's website at www.irtpr.gobierno.pr.



LEGISLATURE OF PUERTO RICO

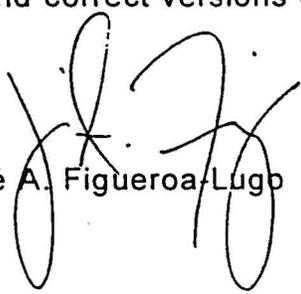
Office of Legislative Services

November 18, 1996

José A. Figueroa-Lugo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 213 (S.B. 1500) (Conference) of the 9th Session of the 12th Legislature of Puerto Rico, entitled:

AN ACT to create the Telecommunications Regulatory Board of Puerto Rico, establish its powers and prerogatives, and provide for its organization; to repeal Act No. 64 of August 23, 1990, as amended; to establish the public policy of the Government of Puerto Rico concerning telecommunications; and for other purposes,

and finds the same are complete, true and correct versions of each other.


José A. Figueroa-Lugo

CERTIFICATE OF SERVICE

I, Gail M. Mullen, do hereby certify that a copy of the foregoing Comments for the Puerto Rico Telecommunications Regulatory Board, was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (*), this 11th day of July, 1997, to the following:

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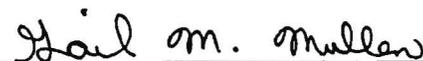
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(S. B. 1500)
(Conference)

(No. 213)

(Approved September 12, 1996)

AN ACT

To create the Telecommunications Regulatory Board of Puerto Rico, establish its powers and prerogatives, and provide for its organization; to repeal Act No. 64 of August 23, 1990, as amended; to establish the public policy of the Government of Puerto Rico concerning telecommunications; and for other purposes.

STATEMENT OF MOTIVES

After having investigated, analyzed, and determined the needs and interests of the people of Puerto Rico regarding the development of the telecommunications field, and taking into account the action taken by the Federal Government with regard to the extent and applicability of these services to the general public by enacting the Federal Communications Act of 1996, this Legislature has determined that it is essential to establish a Board that fosters total, equal, and fair competition in telecommunications, and to promote and facilitate the construction and development of telecommunications facilities, in order to allow and ensure for the people of Puerto Rico, better and more varied telecommunications services at reasonable rates, in order to promote the economic development for the general welfare of our Island.

With this objective in mind, this Act creates the Telecommunications Regulatory Board of Puerto Rico, with the powers and prerogatives needed to establish a regulatory code that: (1) ensures the availability of universal

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No fees collected

telecommunications services at affordable rates for all citizens of Puerto Rico; (2) oversees the efficiency of telephone and cable television services, as well as other telecommunications services; (3) assures the continuity in the rendering of services of a social nature, such as public telephones in urban and rural areas, and telephone directories, according to the public need; (4) promotes competition; (5) allows and guarantees to Puerto Ricans the same telecommunications and information privileges enjoyed by the United States citizens; and (6) safeguards the public interest to the utmost.

The market conditions to be created by virtue of this Act shall stimulate and strengthen the competitiveness of Puerto Rico in the field of telecommunications, which shall, in turn, contribute to the creation of more jobs.

The Legislature acknowledges that the telecommunications industry pursues the public purpose of providing our population with proper access to telecommunications services, at reasonable and affordable rates and charges. The Board created by this Act shall protect the general public interest, ensuring for our people the access to telecommunications services, pursuant to the universal service principles established by the Federal Telecommunications Act of 1996, the regulations promulgated thereunder, and the objectives of this Act.

The Board created by this legislation shall operate independently and shall be vested with the capacity and powers needed to ensure, facilitate, and stimulate the construction and development of the facilities of all branches of telecommunications in Puerto Rico, to promote the effective and fair competition, and to detect and correct anti-competitive behavior, in order to strengthen this industry and, thus the socio-economic development of the citizenry in general.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

**CHAPTER I.- PUBLIC POLICY OF THE GOVERNMENT OF PUERTO RICO
FOR THE TELECOMMUNICATIONS INDUSTRY OF PUERTO
RICO. GENERAL PROVISIONS**

Section 1.- Short Title.

This Act shall be cited as the "Puerto Rico Telecommunications Act of 1996."

Section 2.- Statement of Public Policy.

It shall be the public policy of the Commonwealth of Puerto Rico to:

- (a) acknowledge the telecommunications service as one whose rendering pursues a high public interest within a competitive market;
- (b) provide universal service at a fair, reasonable, and affordable rate for all citizens;
- (c) distribute the duties, responsibilities, and obligations inherent to the development and preservation of universal service equitably among all telecommunications companies;
- (d) establish specific, predictable, and sufficient support mechanisms to preserve and develop universal service;
- (e) promote the investment of capital in the development of the telecommunications infrastructure;
- (f) ensure the availability of the broadest range of competitive possibilities in the offering of telecommunications services and facilities;
- (g) promote competition and use the market forces as key factors in determining the prices, terms, availability, and conditions of the service;
- (h) propitiate interconnection and interoperability among telecommunications companies;
- (i) ensure that no regulatory barriers or unnecessary administrative procedures exist which hamper competition in the market;
- (j) simplify the regulatory process in those situations in which regulation is necessary, and gear such regulations to the promotion of the consumer's

welfare and to penalize for anti-competitive practices in the telecommunications market ;

(k) regulate service providers in a manner compatible to their standing in the market and the influence they exert on consumers;

(l) promote the establishment of cost-based pricing, so that consumers pay for the services they are really receiving, pursuant to what is provided or authorized by the Federal Communications Act;

(m) eliminate direct or indirect subsidies between competitive and noncompetitive services, as well as prohibit any other subsidy which allows for unreasonably low prices to be sustained, whose purpose is to reduce competition or undermine a competitor;

(n) protect the right to privacy of the subscribers of telecommunications services and assure that the constitutional and legal provisions which guarantee this right are complied with;

(o) concentrate the primary jurisdiction with regard to the regulation of the telecommunications field in a single agency of the Commonwealth of Puerto Rico;

(p) govern its regulation process by the so-called forbearance process, as the Federal Act has established for providers of telecommunications service, performing its duty as guardian of the competitive environment and allowing for said environment to indeed regulate, in the first instance, the conduct of participating companies. The companies shall, in turn, commit themselves to seek, also in the first instance, negotiated solutions for controversies among them, resorting to administrative and/or judiciary forums if all *bona fide* negotiation efforts have been exhausted.

(q) give access to telecommunications services which can be reasonably compared to those provided in urban areas to consumers throughout the Island, including low-income consumers and those living in rural areas or in areas where access to such services is costly;

(r) guarantee the enjoyment of the service offered, without fear of unreasonable interruptions or interference;

(s) guarantee the nondiscriminatory rendering of services regardless of race, sex, origin, religion, or political affiliation;

(t) guarantee all subscribers that service shall not be discontinued unless there is just cause, and in each case, only after due notice;

(u) guarantee the utmost promptness in the re-establishment of service when the same is inevitably interrupted. Should said interruptions continue beyond a reasonable period of time, the telecommunications companies shall provide credit of the corresponding portion of the basic rate;

(v) guarantee that all controversies on billing or services be handled in an equitable and diligent manner; and

(w) ensure that no law or regulations of the Commonwealth of Puerto Rico or municipal ordinance limits, prohibits or has the effect to limit or prohibit the capacity of a telecommunications company to provide competitive telecommunications services at intra-state or interstate level.

Section 3.- Definitions.

(a) "Local Exchange Carrier" shall mean any person engaged in rendering the local telecommunications exchange service or exchange access. This term does not include persons who render commercial mobile radio services under Section 332(c) of the Federal Communications Act, except to the extent that the Federal Communications Commission determines that said service should be included within that term.

(b) "Incumbent Local Exchange Service Carriers" shall mean the Puerto Rico Telephone Company, while there is no effective competition in the market.

(c) "Intrastate Long Distance Service Carrier" shall mean any person engaged in rendering long distance intrastate services.

(d) "Commercial Mobile Radio Service Carrier" shall mean any person engaged in rendering commercial mobile radio services as defined by the Federal Communications Act.

(e) "Competitive Access Service Carrier" shall mean any person engaged in rendering exchange access services in competition with the local exchange service carrier.

(f) "Exchange Access" shall mean the offering of access to telecommunications services or facilities in order to originate or terminate long distance telephone services.

(g) "Affiliate" shall mean a person who, directly or indirectly possesses or controls, is possessed or controlled by, or is jointly possessed or controlled with, another person. For the purposes of this clause, the term "possess" shall mean having proprietary interest or its equivalent, of more than ten (10) percent.

(h) "Bill and Keep" shall mean the mutual billing and accounting system which two telecommunications companies with interconnected networks shall charge each other, resulting in a rate of \$0 for terminating traffic in both directions.

(i) "Cable Company" shall mean any person who possesses, controls, operates or manages any plant, equipment and facility used to receive, amplify, modify and distribute through coaxial cable, fiber optics, metal or any other kind of cable, the signal originated by one or more television stations, programming services transmitted by wires, wireless, satellite or any other medium. The signals that can be projected in cinematography halls or that are received free of cost via satellite and that are not broadcast outside of the place where they are received, are excepted from this definition.

(j) "Telecommunications Company" shall mean any person who, whether partially or totally, directly or indirectly, possesses, controls, administers, operates, manages, supplies or resells, any telecommunications service in Puerto Rico, including services of access to the network; provided that those

cable companies which render telecommunications services shall be deemed to be telecommunications companies for the purposes of this Act.

(k) "Eligible Telecommunications Company" shall mean a telecommunications company which the Board designates to provide universal service in a specific geographical area.

(l) "Reciprocal Compensation" shall mean that flow of compensation between the networks interconnected by the traffic originating in the network of the telecommunications company which originates the call and vice versa.

(m) "Symmetrical Compensation" shall mean that the amount of traffic units compensation is equal in both directions between telecommunications companies whose networks are interconnected.

(n) "Effective Competition" shall mean that situation by which no telecommunications company has control of the market. Regarding cable service, the phrase "effective competition" shall have the same meaning as that indicated in the Federal Cable Television Act.

(o) "Market Control" shall mean the capacity of one person to exert control over the prices, terms or availability of goods or services, or the availability or functionality of substitutes in the market, pertinent to said goods and services.

(p) "Board" shall mean the Telecommunications Regulatory Board of Puerto Rico.

(q) "Federal Communications Act" shall mean the Federal Communications Act of 1934, as amended; which includes, in its totality, the Federal Telecommunications Act of 1996.

(r) "Federal Cable Television Act" shall mean the "Cable Act of 1984," as amended by the "Cable Television Consumer Protection and Competition Act of 1992", and the "Federal Telecommunications Act of 1996".

(s) "Parity in Dialing" shall mean the capacity of a person not affiliated to a local exchange service carrier, to provide telecommunications services so that his/her subscribers shall be enabled to automatically send, without

having to use any access code whatsoever, his/her telecommunications to the telecommunications company of his/her choice, between two or more telecommunications companies, including the local exchange service carrier.

(t) "Person" shall mean any person, whether natural or juridical, including, but without it being a limitation, any individual, corporation, partnership, association, trust, agency, public instrumentality or corporation, cooperative, cooperative association, special employee-owned corporations, or any combination of these, created, organized or existing under the laws of the Commonwealth of Puerto Rico, the United States of America, of any State of the Union, of any foreign State or Country.

(u) "Number of Portability" shall mean the capacity of the users of a telecommunications service to retain, at the same location, his/her existing telecommunications numbers, without impairing their quality, trustworthiness or convenience, when he/she changes from one telecommunications company to another.

(v) "Competitive Service" shall mean a telecommunications service where no single person exerts market control.

(w) "Intrastate Long Distance Service" shall mean service provided exclusively within Puerto Rico other than a local service and for which the client must pay a fee apart from the fees imposed by the local service.

(x) "Telecommunications Service" shall mean the offer of telecommunications directly to the public through payment, or to such classes of subscribers who actually make the service available directly to the public, regardless of the installations or means used. No part of this clause shall be interpreted to include transmission services through radio, television, cable service, including the "Multichannel Multipoint Distribution Service" or common television antennas.

(y) "Intrastate Telecommunications Service" shall mean the provision of telecommunications services originating and terminating in Puerto Rico.

(z) "Local Telecommunications Service" shall mean a telecommunications service rendered within a local area.

(aa) "Non-competitive Service" shall mean a telecommunications service where market control is exerted.

(bb) "Long Distance Telephone Service" shall mean non-local telecommunications service.

(cc) "Universal Service" shall mean an evolving level of basic telecommunications services in Puerto Rico, as established by the Board from time to time, pursuant to the Federal Communications Act.

(dd) "Right of way" shall mean for the purposes of this Act, any post, channel, conduit, or right of way which is owned or controlled by a telecommunications company.

(ee) "Telecommunications" shall mean the transmission of information selected by the subscriber, between points specified by the subscriber, without changing the format or content of the information sent and received.

Chapter II - CREATION OF THE TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

Section 1.- Creation of the Telecommunications Regulatory Board of Puerto Rico.

(a) The Telecommunications Regulatory Board of Puerto Rico is hereby created as the agency in charge of regulating telecommunications services in Puerto Rico and of enforcing compliance and administering this Act. All orders and authorizations issued and granted by the Board shall be issued on behalf of the "Telecommunications Regulatory Board of Puerto Rico," and all procedures instituted by the Board shall be on behalf of the Commonwealth of Puerto Rico.

(b) The Board shall have an official seal which shall bear the words Telecommunications Regulatory Board of Puerto Rico and the design prescribed by the Board.

Section 2.- Organization of the Board.

(a) The Board shall be composed of three associate members, one of whom shall be its Chairperson, appointed by the Governor with the advice and consent of the Senate.

(1) The Governor shall fix the remuneration and other benefits of the associate members.

(b) Two (2) members of the Board shall constitute quorum for a session of the Board in full.

(c) All actions taken by the Chairperson or by one of the associate members shall be subject to review by the Board in full.

(d) The decisions of the Board shall be made by a majority of its members and shall be subject to review by the Circuit Court of Appeals of Puerto Rico; except in those cases in which the Federal Communications Act confers jurisdiction to the Federal Communications Commission or to the Federal District Court for the District of Puerto Rico.

Section 3.- Members.

(a) The members of the Board shall be citizens of the United States of America and residents of Puerto Rico, and shall have broad, recognized experience in the telecommunications industry. The members shall not have a direct or indirect interest in, nor any contractual relationship with the telecommunications companies subject to the jurisdiction of the Board, or in entities in or outside of Puerto Rico affiliated to, or having interests in said telecommunications companies. No member of the Board shall, once he/she has ceased his/her functions, represent any person or entity before the Board with regard to any matter in which he/she participated while at the service of the Board and for two (2) years following his/her separation from said office when having to do with any other matter. The activities of the members during and after the expiration of their terms shall be subject to the restrictions provided in the Government Ethics Act, Act No. 12 of July 24, 1985.

(b) The first members appointed by virtue of this Act, shall hold office for the following terms: The Chairperson for seven (7) years, one (1) associate member for five (5) and one (1) associate member for three (3) years. Their successors shall be appointed for a six (6) year term. Any person selected to fill a vacancy shall be appointed only for the unexpired term of the member he/she replaces. Upon the expiration of the term of any member, he/she shall continue to hold office until his successor has been appointed and has taken office. The terms shall be counted from the expiration date of the preceding term.

The Board shall promulgate those regulations needed to govern its internal operations, including the type and frequency of meetings, appointments, contracting and remuneration of the personnel.

Section 4.- Chairperson.

The Chairperson shall preside all the meetings of the Board, shall be in charge of all administrative operations and shall represent the Board in all matters related to legislation and legislative reports, but any member may set forth his/her dissident or supplementary opinion. The Chairperson shall also represent the Board when conferences or communications with other heads of agencies of the Commonwealth of Puerto Rico are required. In case of the absence of the Chairperson or his/her inability to fulfill his/her obligations, the Board shall temporarily designate one of its members to assume the office of Chairperson until the cause or circumstance that require said designation cease or is corrected.

Section 5.- Personnel.

The Board shall be deemed an individual administrator pursuant to the provisions of the Public Service Personnel Act of Puerto Rico, Act No. 5 of October 14, 1975, as amended.

The Board, upon consultation with the Government Ethics Office, shall promulgate an ethics regulation to regulate the relationship between its personnel and the telecommunications companies.

Section 6.- Jurisdiction of the Board.

(a) The Board shall have primary jurisdiction over all telecommunications services and over all those persons which render these services in the Commonwealth of Puerto Rico, and over any person with a direct or indirect interest in said services or companies. Specifically, the Board shall have jurisdiction over:

(1) Any person who violates the provisions of this Act or the regulations of the Board, including any person or entity that uses its control over the telecommunications services or companies to carry out such violation.

(2) Any person whose actions affect the rendering of telecommunications service, including any person or entity that uses its control over telecommunications services or companies to affect the rendering of the abovementioned services.

(3) Any person who carries out any activity for which a certification from the Board is necessary.

(4) Any person whose actions or omissions are detrimental to the activities, resources or interests over which the Board has regulatory, supervisory or surveillance powers, including any person who uses his/her control over telecommunications services or companies in such a manner that is detrimental to them.

The Board shall exercise its jurisdiction in all that not in conflict with federal statutory or regulatory provisions, especially those that correspond to the Federal Communications Commission, as well as those preemptive federal norms.

Section 7.- General Powers and Duties of the Board.

(a) The Board shall adopt, promulgate, amend and repeal such rules, orders and regulations it deems are necessary and pertinent to the exercise of its powers and to the performance of its duties. When adopting, amending or repealing rules or regulations, the Board shall be subject to the provisions of the Uniform Administrative Procedures Act, Act No. 170 of August 12, 1989, as amended; and also:

(1) Shall serve by certified mail to the telecommunications companies in Puerto Rico that have received a certification as provided in subsection (a) of Section 2 of Chapter III of this Act, a notice of proposals for regulations, which explains the adoption, amendment or repeal proposed by the Board, including information as to where the complete text of the proposed change may be obtained, and grants a term of not less than thirty (30) days to submit their comments on said proposal; and

(2) Prior to the adoption, amendment or repeal of a regulation, the Board shall issue a resolution explaining its reasons for said action, giving specific attention to each one of the points considered, in writing, with respect to the regulatory proposal.

(b) The Board shall have the following powers to ensure compliance with this Act and its regulations:

(1) Impose reasonable administrative fines for violations of this Act, its regulations and orders to a maximum of twenty-five thousand (25,000) dollars per violation.

(2) Demand any type of information that is needed for the adequate compliance of its powers, making it clear however, that the information deemed confidential by its source shall be duly safeguarded and delivered exclusively to the Board personnel who have strict need to know it, subject to the principle of nondisclosure. Any claim of confidentiality of information of a telecommunications company under this subsection shall be resolved expeditiously by the Board through a Resolution to such effect

before revealing any information deemed confidential by its source. The information furnished by each of the telecommunications companies regarding their prices and charges, as provided by subsection (a) of Section 7 of Chapter III of this Act, shall be public and available to any persons that requests it.

(3) Shall order the ceasing of activities or acts in violation of any provision of this Act or of the regulations of the Board.

(4) Impose and order the payment of costs, expenses and attorney fees, as well as the payment of expenses and fees for other professional and consulting services incurred for adjudicative procedures before the Board;

(5) Direct that any act in compliance with the provisions of this Act or with the regulations of the Board be carried out.

(6) Resort to the corresponding forums to enforce the purposes of this Act, as well as its rules, regulations, orders, resolutions and determinations;

(7) Appear before any private entity, public organization, court, board, committee, administrative organization, department, office or agency of the Commonwealth of Puerto Rico or of the United States Government in any hearing, procedure or matter that affects or could affect the purposes of this Act or the regulations that the Board promulgates or the interests of the consumers of telecommunications services; and

(8) Carry out any other acts, if necessary, to ensure compliance of this Act, or the regulations promulgated thereby, such as:

(i) conducting public hearings;

(ii) issuing summons under admonishment of contempt, which shall be signed by a member, and served personally or by certified mail with acknowledgment of receipt;

(iii) participate, by petition of a party, in negotiations between telecommunications companies and mediate the controversies that arise in the course of said negotiations; and

(iv) intervene as arbitrator pursuant to the provisions of Section 252(b) of the Federal Communications Act.

(c) The Board shall have authority to conduct inspections, investigations and audits, if necessary, to attain the purposes of this Act.

(d) The Board shall also have the following powers and faculties:

(1) To subsist in perpetuity, to sue and be sued as a juridical person; and

(2) Grant contracts and execute any kind of document that is necessary and convenient in the exercise of its powers.

(e) All agreements between the Board and any telecommunications company shall be in writing and all resulting documents shall be kept on file. The Board shall establish its offices and facilities separate from those of any company subject to its jurisdiction.

(f) All the actions, regulations and determinations of the Board shall be governed by the Federal Communications Act, the public interest, and especially by the protection of the consumers' rights.

Section 8.- Expropriation and Right of Way.

(a) Expropriation. The Board shall have the power to identify the private property that shall be expropriated for the rendering of telecommunications services pursuant to the objectives of this Act. Said property shall be expropriated by petition of the Board, by the Commonwealth of Puerto Rico represented by the Governor, or by the agency or official on whom the latter delegates.

(b) Legal Rights of Way. The Board shall adopt such rules and regulations for the establishment, use and enjoyment of easements for any facilities needed for the installation of the systems essential to render telecommunications services, as provided in Act No. 143 of July 20, 1979, as

amended. These benefits shall apply equally to all companies providing telecommunications services, with no distinction whatsoever.

In the rules and regulations to be adopted, the Board shall establish the obligations that arise from the enjoyment of this right. Among these, the obligation to coordinate with the other companies the installation, repair and maintenance work in order to reduce the damage that could be caused to the property affected by the easement, and its occupants, the norms to prevent the interruption of other services, and compensation for damages caused to the services rendered by other companies and to the property.

Section 9.- Delegation of Powers.

(a) On One or More Members. With the exception of the power to adopt regulations, the Board may, through an order, assign, refer or delegate any adjudicative or non-adjudicative matter for its resolution on one or more members who shall be appointed in said order and who shall have the powers of the Board that it expressly delegates in said order. The members shall have the power to (1) take oaths and depositions, (2) issue summons, (3) receive and evaluate evidence, (4) preside over hearings, (5) hold conferences to simplify procedures. Any order issued by one or more members pursuant to this Section shall become a final order of the Board in full, unless the Board renders ineffective, alters or amends the order within thirty (30) days after it has been notified. The decisions of the Board shall be subject to review by the Circuit Court of Appeals of Puerto Rico, except in those situations in which the Federal Communications Act confers jurisdiction on the Federal Communications Commission or the Federal District Court for the District of Puerto Rico.

(b) Examining Officials and Administrative Judges. The Board shall have the authority to assign, refer or delegate any matter to examining officials, who shall have the authority to recommend decisions which shall take effect once they have been approved by the Board in full. Any examiner appointed to preside over a hearing or investigation shall have the powers expressly

delegated on him/her by the Board and the designation order. The Board shall also designate administrative judges with full decisional powers. The said examining officials and administrative judges shall be designated and shall carry out their duties as provided by Act No. 170 of August 12, 1989, as amended, known as the "Uniform Administrative Procedures Act of Puerto Rico". The decisions of the Board shall be subject to review by the Circuit Court of Appeals of Puerto Rico, except in those situations in which the Federal Communications Act confers jurisdiction on the Federal Communications Commission or the Federal District Court for the District of Puerto Rico.

Section 10.- Incidental Powers.

The provisions of this Act shall be liberally construed in order to achieve its purposes and whenever any specific power or authority is granted to the Board, such specification shall not be construed as excluding or impeding any other power or authority otherwise conferred to it. The Board created herein shall have, in addition to the powers specified in this Act, all those additional, implicit or incidental powers that are pertinent and necessary to put into effect and carry out, perform and exercise all the abovementioned powers and to attain the purposes of this Act, subject to the superseding of said powers by federal legislation or rules of the Federal Communications Commission.

Section 11.- Budget and Regulation Fees.

(a) The Board shall impose and collect fees pursuant to the provisions of this Section in order to produce sufficient income to: (1) cover the operating expenses of the Board in complying with its responsibilities under this Act, and (2) establish a reserve, that the Board deems reasonable, to ensure the continuous and efficient operation of the Board, in accordance with its projected goals and objectives, and the experience of previous years'

expenses. Said reserve shall not exceed 25% of the annual budget of the Board.

(b) The annual fee to defray the annual operating expenses of the Board shall be fixed proportionally on the basis of the gross income generated by each telecommunications or cable company which provides telecommunications services from the rendering of telecommunications services in Puerto Rico. In the case of the resale of services, the gross income shall not include the cost corresponding to the acquisition of the service subject to resale. These fees shall be paid to the Board on a quarterly basis, pursuant to the regulations promulgated by it.

(c) The fees to be imposed on a telecommunications or cable company which provides telecommunications services pursuant to the preceding subsection, shall not exceed point twenty-five percent (.25%) of its annual gross income from the rendering of telecommunications services in Puerto Rico. Those telecommunications companies whose annual gross income in Puerto Rico is less than twenty-five thousand (25,000) dollars shall be exempted from the payment of said fees.

(d) The costs and fees paid by telecommunications and cable companies as provided in subsection (e) of the Section shall be credited against the charge imposed on said companies in subsection (b). All telecommunications or cable companies shall submit the information required by the Board in the manner and on the forms that it determines in order for it to indicate the amount of the charges established in this Section. The Board is not under the obligation to give prior notice nor opportunity of a hearing before imposing any charge.

(e) The Board can obligate a telecommunications or cable company to reimburse the fees, special expenses and other direct and incidental costs incurred for professional and consultation services in the course of

investigations, hearings and other procedures conducted with respect to said companies.

(f) The telecommunications and cable companies shall liquidate the payment of the charges imposed within a period of not more than thirty (30) days after notice to such respect. Any delay in the payment of said charges shall be subject to the payment of interest and penalties determined by the Board through regulations. The payment of the charges shall be made in the manner and through the negotiable instruments that the Board specifies in any notice of charges.

(g) No telecommunications or cable company may request judicial review of any charge imposed by the Board unless (1) said company has paid or posted bond to the satisfaction of the Board within the term established in subsection (f) of this Section or that the Board has extended said term; (2) simultaneously with said payment, posting of bond or petition for extension, said company has submitted a detailed justification explaining why it considers said payment to be excessive or illegal; and (3) ninety (90) days have elapsed from the date of notice of the charges imposed. No petition for judicial review may be based on arguments other than those alleged by the company before the Board. The Board shall not be bound to reimburse any portion of the charges if it certifies that said reimbursement would adversely affect the operations of the Board. If the Board issues said certification, then the telecommunications or cable company thus affected shall have the right to reduce the corresponding amount from the future charges imposed by the Board.

(h) The payments at present contributed for franchise fees by the cable companies to the Public Service Commission, pursuant to the last franchise granted by said Commission to the cable companies, shall be paid in full to the Board as of the effective date of this Act.

(i) The Secretary of the Treasury shall cover into a special account denominated as the "Special Telecommunications Regulatory Board Fund,"

the moneys collected by virtue of this Act, which may be used solely and exclusively to defray the operating and functioning expenses of the Board.

(j) The operating expense budget of the Board shall be consigned separately from the General Budget of Expenses of the Government of Puerto Rico.

CHAPTER III. REGULATION AND SUPERVISION

Section 1.- Transitory Classification of Providers.

(a) On the date of approval of this Act, it shall be presumed that the incumbent local exchange service carrier has control of the market in the rendering of local telecommunications service, access service and intrastate long distance services and which it does not have in the cellular phones and beepers market.

(b) The Board may, once it has been requested and after the corresponding notification and public comments, forbear from applying or partially exempt a local exchange service carrier without control of the market in Puerto Rico from those provisions of this law of exclusive application to said local exchange service carrier, except the obligation to contribute to the universal service.

(c) Three months after the Board has been constituted, and by petition of the incumbent local exchange service carrier, or in any case, within three years after the effective date of this Act, the Board shall initiate a procedure which shall include public notice and comments, to determine if the incumbent local exchange service carrier shall retain control of the market on the totality or part of the telecommunications services markets indicated in subsection (a). If the Board determines that the incumbent local exchange service carrier does not have control of the market in any line of business, it may forbear from regulating the former or it may also exempt it from any of the provisions of this Act of exclusive application to the incumbent local exchange service carrier in the line of business in which the latter does not have control of the market.

Section 2.- Certifications.

(a) As of the date on which the Board promulgates the regulations required by this Section and with the exception of the provisions of Section 332 (c)(1) of the Federal Communications Act, all telecommunications companies shall receive a valid certification from the Board to render telecommunication services in Puerto Rico. The Board shall not have the authority to deny a petition for certification to provide telecommunications services for arbitrary or discriminatory reasons or whose purpose is to prevent competition.

(b) The Board shall adopt regulations specifying the form, content and procedures to file petitions for certification which shall be of uniform application.. All applicants shall present evidence of their moral and financial standing, their experience and background in the field for which certification is petitioned. The Board shall issue the certification if it determines that, in addition to substantially complying with the uniform criteria established, it is consistent with the mandate of the Federal Communications Act, the objectives of public interest pursued by this Act and that it also safeguards consumers' interests.

(c) Every telecommunications company that provides services upon the effective date of the regulations described in this subsection, shall be entitled to receive a certification to provide said services. Within the ninety (90) days following the effectiveness of this Act, the Board shall adopt regulations specifying the form and content of the petitions for said certifications. The petitions of said telecommunications companies shall be submitted to the Board within ninety (90) days following the effective date of the regulations promulgated by the Board. Every petition submitted shall be deemed as granted once thirty (30) days have elapsed from the date of filing the petition. It shall not constitute a violation to this Act by a telecommunications company to continue rendering the services they were providing: (1) prior to the adoption by the Board of the regulation required by this subsection; (2)

prior to the expiration of the term to file petitions for automatic certification or franchise as provided in this section; or (3) before the Board takes action regarding the petition filed by said telecommunications company to provide said services.

(d) All certifications granted by the Board pursuant to the provisions of this Section may be modified, suspended or revoked by the Board, for just cause and after due notice and hearing.

(e) The Board shall not implement regulations, nor give orders, or impose requirements that have or could have as a result the prohibition or interference with the capacity of any person to provide telecommunications services, with the exception of the provisions of Section 253 of the Federal Communications Act.

Section 3.- Discontinuation of Services.

No local exchange service carrier shall discontinue, reduce or limit the total or partial service of a community without effective competition due to lack of profitability in the operation of said service unless it has a valid authorization from the Board for said discontinuation, reduction or limitation. The Board shall grant said authorization if it determines that the same does not violate the purposes of this Act. If the Board should deny a petition to discontinue, reduce or limit the total or partial service of a community, the local exchange service carrier shall be entitled to request or to continue to receive from the Board, fair and adequate compensation under the universal service program to continue rendering those services that are eligible to receive funds from said program. Any action that implies or causes a violation of this Section or the regulations adopted by the Board shall be null *ab initio*. The provisions of this Section shall not apply to services subject to effective competition.

Section 4.- Competitive Safeguards.

(a) The Board shall adopt the regulations needed to require the incumbent local exchange service carrier to provide services and access to

its installations to any certified telecommunications company that requests it at any point of its network where it is technically feasible and in an unbundled manner, including any feature, function and capacity of its network, through the payment of fees determined on the basis of its real cost and profits as foreseen in the Federal Communications Act and under reasonable and nondiscriminatory conditions, mutually agreed on by the parties.

(b) Every telecommunications company shall have the duty to provide interconnection to its facilities directly or indirectly at any point within its network where it is technically feasible, under fair and nondiscriminatory terms and without unnecessary technical delays and restrictions.

(c) Every local exchange service carrier shall provide interconnection and access to its network at any point that is technically feasible through the payment of fees based on the real costs and profits as foreseen in the Federal Communications Act, and on individually designed terms, as agreed on in the interconnection contract with said telecommunications company, and in every case, and in accordance with terms not less favorable than those provided to the affiliates of the local exchange service carrier.

(d) Every local exchange service carrier shall offer and provide the features, functions and capacity of its network, in a nondiscriminatory manner, and subject to an interconnection contract consistent with the following principles:

(1) Each local exchange service carrier shall facilitate competition in the local exchange services allowing interconnection to other telecommunications companies at any point of its local network where it is technically feasible. Every local exchange service carrier shall offer access to its network in an unbundled manner giving separate access at any point of its network where technically feasible to: (i) local access lines (connecting the main offices of the local telephone service to the

subscriber's facilities); (ii) certain exchange functions of the main office; (iii) exchange functions of the "tandem" office and (iv) transport between the main office of the local exchange service carrier and/or the exchange equipment of the "tandem" offices. The local exchange service carriers may charge the telecommunications companies for the services or use of facilities which are indispensable to the rendering of the service or the facilities requested if said services or facilities are technically necessary to render the services requested.

(2) Each local exchange service carrier shall offer for resale at wholesale prices any telecommunications service that said carrier renders at retail price to subscribers other than telecommunications companies.

(3) All segregated rates negotiated by a local exchange service carrier in the interconnection contract shall follow a methodology that allows the local exchange service carrier to recover the real cost of providing the service plus a reasonable profit, as provided in Section 252(d)(1) of the Federal Communications Act.

(e) The Board shall make ensure that all telecommunications companies are fairly compensated for the transportation and termination of telecommunications services through their networks and that the compensation reflects the reasonable and necessary costs of each company. The Board shall require reciprocal compensation arrangements and shall allow arrangements of negotiated compensation, which may include bill and keep, symmetrical compensation, or any other reasonable distribution of fees that is acceptable to the contracting parties. By petition of the parties during the negotiations, the Board shall comply with the requirements of Section 5 of Chapter III of this Act and Section 252 of the Federal Communications Act of 1996.

(f) Every telecommunications company shall provide, under fair and nondiscriminatory terms, direct or indirect interconnection at any point of its network where technically feasible, and access to its installations with all the

features, functions and capacities thereof, including physical collocation, except that said company may provide virtual collocation if the telecommunications company proves to the Board that physical collocation is not practical due to limitations of space. Likewise, every telecommunications company shall make available the information needed for the transmission, routing and collection of any telecommunications service, including access to the data base, signal systems and transmission process, to assure the interoperability of the network of the telecommunications company that receives the interconnection petition and the telecommunications company that requests it.

(g) Every telecommunications company shall have access, under fair and nondiscriminatory terms, to the right of way of other telecommunications companies. Every telecommunications companies shall provide nondiscriminatory access to any right of way owned by it or under its control pursuant to the fair and reasonable charges, terms and conditions mutually agreed on. All charges and/or conditions for the use of any easements shall be fair and reasonable; and at the same time, shall be consistent with the rules and decisions of the Federal Communications Commission, of the Board and with the judicial decisions which have interpreted the applicable provisions of the Federal Communications Act.

(h) The Board shall administer the numbering of telecommunications and shall make the numbers available to the telecommunications companies on an equal basis in the measure that the Federal Communications Commission delegates to it the corresponding power. The cost of establishing agreements for the administration of the numbering of telecommunications and number portability shall be defrayed by all the telecommunications companies on a neutral competitive basis and as established or provided by the Federal Communications Commission.

(i) All local exchange service carrier shall provide, in the measure that is technically feasible, number portability, pursuant to the norms issued by the

Federal Communications Commission. If the Commission has not issued norms to such effect by December 31, 1996, the Board shall evaluate other number portability programs that could be feasible.

(j) Every local exchange service carrier shall offer reliable and nondiscriminatory access to the directory assistance service; operator service; relay service; repair service; 9-1-1 service where applicable; to telephone directories; referral service and change of number; and shall provide every telecommunications company that requests it, at a reasonable price, the name and address of its clients for billing purposes, and the names and addresses of its clients that have been published in a telephone directory directly or indirectly by said carrier, for the purposes and under the terms and conditions to be negotiated by the parties. All telecommunications companies shall cooperate to provide reliable 9-1-1 and relay system services.

(k) No telecommunications company shall use the income generated by noncompetitive services to subsidize the offering or rendering of competitive services, nor shall it discriminate in favor of its own competitive service when providing telecommunications services.

(l) No company shall offer telecommunications service at prices lower than the cost of rendering the same, except for brief periods of time and under those terms and conditions previously approved by the Board. When evaluating the petitions submitted by the telecommunications companies under this subsection, the Board shall take into consideration their impact on free competition and damages that could be caused to their competitors. The Board shall see to the strictest compliance of this subsection and, without impairing the rights of the telecommunications companies thus affected, shall file complaints for monopolistic practices before the Department of Justice, and by petition of the company against which a complaint has been filed, take the action that the Board itself deems pertinent pursuant to this Act.

(m) Every telecommunications company that provides competitive and non-competitive services, be it directly or through a subsidiary or affiliate, shall keep separate accounting systems for its competitive and non-competitive services.

(n) In case that a complaint is filed by a telecommunications company against another telecommunications company for violation to this Section, the latter shall, if the Board requests it, present its annual audit so that the Board may determine if said telecommunications company has, in effect, complied with the requirements of this Section. Said audit, and all the information related to it, shall be public, with the exception of that which the Board decides to keep confidential and for its exclusive use. The information it decides to keep confidential shall be that which is necessary to protect proprietary information, business or trade secrets, under Section 7(b)(2) of Chapter II of this Act.

(o) In case a telecommunications company files a complaint against another telecommunications company, the Board shall have access to all the accounts and records of the latter, in order to verify compliance of this Section, including all the working papers and support material of any audit carried out under this Section. All material requested pursuant to the provisions established herein shall be made available to whoever requests it, except that the Board shall keep confidential and for its exclusive use, whatever material that is essential to protect proprietary information, business or trade secrets pursuant to Chapter II, Section 7(b)(2) of this Act.

(p) Every local exchange service carrier shall provide a public notice on the changes in the necessary information related to the transmission and routing of the services used by their facilities or networks, as well as any other change that may affect the interoperability of their facilities and networks with those of any other competing telecommunications company.

(q) Within one hundred and eighty (180) days after the approval of this Act, the Board shall adopt the regulations needed to implement the requirements of this Section.

(r) No law or regulation of the Commonwealth of Puerto Rico nor any municipal ordinance shall limit or prohibit, nor shall have the effect of limiting or prohibiting the capacity of a telecommunications company to render competitive telecommunications services at intrastate or interstate level, provided however, that the courts of Puerto Rico shall not put into effect or require compliance of said laws, regulations or municipal ordinances that have or could have the effect of preventing or otherwise limiting the free rendering of such services.

(s) Nothing of the herein provided shall impair the rights under the Federal Statute that have been claimed before the Public Service Commission.

Section 5.- Procedure for Negotiation, Arbitration and Approval of Agreements.

(a) Agreements Arrived at Through Negotiation.-

(1) Voluntary negotiations.- Upon receiving a request for interconnection services, or access to network elements pursuant to Section 4 of Chapter III of this Act, an incumbent local exchange service carrier may negotiate and enter an agreement with the requesting telecommunications carrier without regard to the standards set forth in subsections (a), (c), (d), (e), (f), (g), (i) and (j) of Section 4 of Chapter III of this Act. The agreement shall include a detailed schedule of individual charges for interconnection and each service or access to network elements included in the agreement. Said agreement, as well as any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the Board under subsection (e) of this Section.

(2) Mediation.- Any party negotiating an agreement under this Section may, at any point in the negotiation, request the Board to participate in the negotiation and to resolve any differences arising in the course of the negotiation.

(b) Agreements Arrived at Through Compulsory Arbitration.-

(1) Arbitration.- During the period from the 135th through the 160th day (inclusive) from the date on which an incumbent local exchange service carrier receives a petition to negotiate under this Section, any of the parties to the negotiation may petition the Board to arbitrate any open issues.

(2) Duty of Petitioner.-

(A) The party that petitions the Board to arbitrate under paragraph (1) of this Subsection (b) shall, at the same time it files its petition, provide all relevant documentation concerning:

- (i) the unresolved issues;
- (ii) the position of each of the parties with respect to those issues; and
- (iii) any other issue discussed and resolved by the parties.

(B) A party petitioning for arbitration under paragraph (1) of this subsection (b) shall provide a copy of the petition and any other pertinent documentation to the other party or parties, no later than the day on which the Board receives said petition.

(3) Opportunity to Respond.- The non-petitioning party in a negotiation under this Section may respond to the other party's petition and provide such additional information it deems pertinent within 25 days after the date the Board receives the petition.

(4) Action by the Board.-

(A) The Board shall limit its consideration of any petition under paragraph (1) of this subsection (b) as well as the response, if any, to the issues set forth by the parties.

(B) The Board may require the petitioning party and the respondent party to provide the information it deems is necessary for it to reach a decision on the unresolved issues. If any party refuses to respond or does not comply within a reasonable period of time, without justification to a request of the Board, then the Board may resolve the issues on the basis of the best information available to it regardless of its source.

(C) The Board shall resolve each issue set forth in the petition and the response thereto, if any, by imposing appropriate conditions as required, to implement subsection (c) of this Section upon the parties to the agreement. The Board shall conclude the resolution of any unresolved issues within the nine (9) months following the date on which the local exchange service carrier received the request of the petitioner as provided in Section 4 of Chapter III of this Act.

(5) Refusal to Negotiate.- The refusal of any other party to the negotiation to continue negotiating, to cooperate with the Board in performing its functions as arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance of the Board, shall be deemed as a failure to negotiate in good faith.

(c) Standards for Arbitration.- In resolving any open issue by arbitration under subsection (b) and imposing conditions upon the parties to the agreement, the Board shall:

(1) ensure that such solution and conditions meet the requirements of Section 251 of the Federal Communications Act and the regulations approved by the Federal Communications Commission pursuant thereto;

(2) establish any rates for interconnection, services, or access to network elements according to subsection (d); and

(3) establish a schedule for the implementation of the terms and conditions for the parties to the agreement.

(d) Pricing Standards.-

(1) Charges for interconnection and access to network elements.-

Determinations by the Board as to what constitutes fair and reasonable rates for the interconnection of facilities and equipment for the purposes of the interconnection provided in Section 4 of Chapter III as well as what constitutes fair and reasonable rates for the use of network elements for segregated access purposes provided in said Section:

(A) Shall be based on:

(i) the cost of providing the interconnection or access to network elements which shall be applicable without reference to a rate-of-return or other rate-based formula, and in

(ii) nondiscriminatory criteria.

(B) may include a reasonable profit.

(2) Charges for Transport and Termination of Traffic.

(A) In general.- For the purposes of compliance by an incumbent local exchange service carrier with the reciprocal compensation requirement provided in Section 4 of Chapter III, the Board shall not consider the terms and conditions of reciprocal compensation to be fair and reasonable unless:

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of the costs associated to the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions establish said costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of Construction.- This paragraph shall not be construed:

(i) to preclude arrangements that afford the reciprocal recovery of costs through the offsetting of reciprocal obligations, including

arrangements that do not contemplate reciprocal recovery such as bill-and-keep arrangements; and

(ii) to authorize the Board to engage in any rate regulation procedure to particularly establish the additional costs of transporting or terminating calls, or to require carriers to keep records with respect to the additional costs of such calls.

(3) Wholesale Prices for Telecommunications Services.-

For the resale requirement purposes provided in Section 4 of Chapter III, the Board shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributed to any cost for marketing, billing, collection, and other costs not incurred by the local exchange service carrier.

(e) Approval by the Board.-

(1) Approval required.- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for the approval of the Board. The Board shall approve or reject the agreement, with written findings of facts as to any deficiencies it finds.

(2) Grounds for Rejection.- The Board may reject agreements if it finds that:

(A) the agreement or any portion thereof adopted by negotiation under subsection (a) of this Section 5:

(i) discriminates against a telecommunications carrier which is not a party to the agreement; or

(ii) the implementation of such agreement or portion thereof is not consistent with the public interest, convenience, and necessity.

(B) The agreement or any portion thereof adopted by arbitration under subsection (b) of this Section does not meet the requirements of Section 251 of the Federal Communications Act, including the regulations promulgated by the Federal Communications Commission

pursuant to said Section 251, or the standards set forth in subsection (d) of this Section.

(3) Preservation of Authority.- Regardless of the provisions of paragraph (2) of this subsection (e), but subject to Section 253 Federal Communications Act, nothing in this subsection shall prohibit the Board from establishing or enforcing other requirements of laws of Puerto Rico in the process to review an agreement, including compliance with intrastate telecommunications service quality standards or requirements.

(4) Term for Decision.- If the Board does not act to approve or reject an agreement adopted by negotiation under subsection (a) submitted to its consideration within 90 days after filing the same, or within 30 days in the case of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed as approved. No court of the Commonwealth of Puerto Rico shall have jurisdiction to review the determination adopted by the Board to such effect.

(5) Review of the Board's Actions.- In any case in which the Board makes a determination under this Section, any party affected thereby may file an appropriate action in the Federal District Court for the District of Puerto Rico to determine whether the agreement meets the requirements of Sections 251 and 252 of the Federal Communications Act.

(f) General Statements of Terms.-

(1) A telecommunications company may prepare and file with a Board a statement of the terms and conditions that such company generally offers in Puerto Rico to comply with the requirements of Section 251 of the Federal Communications Act and the regulations promulgated thereunder by the Federal Communications Commission and the standards that are applicable under this Section.

(2) Board review.- The Board shall not approve said statement unless it complies with subsection (d) of this Section, Section 251 of the Federal Communication Act, and the regulations promulgated thereunder by

the Federal Communications Commission. Except as provided in Section 253 of the Federal Communications Act, nothing in this Section shall prohibit the Board from establishing or enforcing any other requirements of the laws of Puerto Rico in its review of such statement, including compliance with quality standards and requirements applicable to intrastate telecommunications services.

(3) Term for review.- Within sixty (60) days following the date in which a statement has been submitted, the Board shall:

(A) complete the review of such statement under paragraph (2) of this subsection (f), including any reconsideration thereof, unless the filing carrier agrees to an extension of the period for such review; or

(B) permit said statement to take effect.

(4) Authority to Continue Review.- Paragraph (3) of this subsection (f) shall not preclude the Board from continuing to review a statement whose effectiveness is based on paragraph (B) of such subsection, or from allowing or disallowing such statement under paragraph (2) of this subsection (f).

(5) Duty to Negotiate Not Affected.- The submission or approval of a statement under this subsection shall not relieve the incumbent local exchange service carrier of its duty to negotiate the terms and conditions of an agreement under Section 4, Chapter III of this Act.

(g) Consolidation of Procedures.- When not inconsistent with the requirements of this Act, the Board may, to the extent which is practical, consolidate procedures in order to reduce administrative burdens imposed on telecommunications carriers, to the other parties to the procedures, and to the Board in performing its responsibilities under this Act.

(h) Filing Required.- The Board shall make a copy of the agreements approved under subsection (e) of this Section, and each statement approved under subsection (f) of this Section, available for public inspection and copying within 10 days after this approval. The Board may charge a

reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to recover the costs of approving and filing such agreements or statements.

(i) **Availability to Other Telecommunications Carriers.**- A local exchange service carrier shall make available any interconnection, service, or access to a network element provided under an agreement approved under this Section of which it is a party, to any other requesting telecommunications carrier, under the same terms and conditions as those provided in said agreement.

(j) **Definition of Incumbent Local Exchange Service Carrier.**- For the purposes of this Section, the term 'incumbent local exchange service carrier' has the meaning provided in subsection (b) of Section 3. Chapter I of this Act.

Section 6.- Universal Service.

(a) **Universal Service Principles.**

(1) The Board shall preserve and promote universal service through predictable, specific and sufficient support mechanisms, pursuant to the provisions of Section 254 of the Federal Communications Act, and also pursuant to the following principles:

(i) The goal of universal service is to provide comparable quality telecommunications services to all sectors of the population and geographical areas of Puerto Rico.

(ii) Telecommunications services shall be available throughout Puerto Rico at fair and reasonable rates, which means that the service rates in rural areas shall be reasonably comparable to those rates provided in urban areas.

(iii) Advanced telecommunications services shall be available in all municipalities and communities, as well as in all health care providers facilities, libraries and classrooms in the public schools of Puerto Rico.

(2) All telecommunications companies shall make an equitable and nondiscriminatory contribution, as established by the Board, for the preservation and development of universal services in Puerto Rico.

(3) The structure of those support mechanisms developed, implemented and periodically reviewed by the Board shall complement but not duplicate the support mechanisms established at federal level.

(4) Universal service shall include the following services as a minimum without excluding any other service, as provided by the Board pursuant to subsection (c)(3) of this Section:

(i) access to all public switched telephone networks with voice grade capacity;

(ii) single party service;

(iii) access, free of charge, to emergency services, including the 911 emergency service; and

(iv) access to operator services.

(b) Determination of eligible telecommunications companies.

(1) The Board may, *motu proprio* or by petition, designate a telecommunications company as an eligible telecommunications company to provide universal service in one or more areas designated by the Board. On petition, and pursuant to the public interest, convenience and need, the Board may designate more than one company as an eligible telecommunications company for a service area established by the Board, provided each company meets the requirements of subsection (b)(2) of this Section. In order to make the corresponding designation, the Board shall take into consideration, among other factors, technological factors and the cost of providing the service.

(2) In order for a telecommunications company to be designated as a telecommunications company eligible to receive the universal service

program funds, it shall, within the entire service area for which it has been designated:

(i) provide the services supported by the universal service program using its own facilities or a combination of its own facilities and the resale of services of another telecommunications company; and

(ii) publish in newspapers of general circulation the availability of such services and their rates.

(3) If no telecommunications company which receive funds from the universal service program wishes to, or is able to provide services to a community, or any part thereof, which has so requested them, the Board shall determine which telecommunications company or companies are in the best position to provide such service and shall order the corresponding procedures. Any telecommunications company which has been directed to provide services under to this subsection must comply with the requirements of subsection (b)(2) of this Section, and shall be designated as an eligible telecommunications company for such community or part thereof.

(4) The Board may allow an eligible telecommunications company, through a previous authorization from the Board, to surrender its designation in any area covered by more than one eligible telecommunications company. Before granting the authorization, the Board shall impose upon the remaining eligible telecommunications companies, the obligation to guarantee the service to the users of the eligible telecommunications company which withdraws, and shall require sufficient notice to allow the purchase or construction of proper facilities by any other eligible telecommunications company. The costs and expenses incurred by the telecommunications companies to provide eligible services shall be reimbursed to them through the universal service support procedures. The Board shall establish a period of time, which

shall not exceed one year after the approval of such withdrawal under this subsection, to complete the purchase or construction.

(c) Universal Service Procedures.

(1) Within one hundred and twenty (120) days following the establishment of the Board, the aforesaid shall initiate a formal procedure to incorporate the support mechanisms to the universal service throughout Puerto Rico. As part of this procedure, the Board shall take into consideration the report, if any, submitted by the Federal State Board created by virtue of Section 254 of the Federal Communications Act. This procedure shall include a period for notice and comments.

(2) As part of the procedure, the Board shall determine:

(i). the support mechanisms needed in the jurisdiction of Puerto Rico to extend or maintain the universal service. The decision to such effects shall be made by the majority of the members of the Board if the favored mechanism or mechanisms are included among those already being used in any area under the jurisdictions governed by the Federal Communications Act, or are among those under the consideration of the Federal Communications Commission or have been implemented in the different States of the United States of America. The decision to implement any other support mechanism shall require the unanimous vote of the members of the Board.

(ii) should it be determined that one of the support mechanisms should be the establishment of a fund to defray universal service throughout Puerto Rico, the annual sum thereof shall be equal to the difference between the cost of providing the eligible services and the maximum rates that can be charged for the same;

(iii) the manner that monetary contributions made through the support mechanisms to the universal service fund throughout Puerto Rico, shall be distributed among the eligible telecommunications companies; and

(iv) the manner in which any other support mechanism shall be established, administered and controlled throughout Puerto Rico.

(3) The services to be defrayed by the universal service program in Puerto Rico shall include those services needed to deal with the particular needs throughout Puerto Rico, as established by the Board. In the determination of the services that shall be included in the definition of universal service, the Board shall take into consideration the recommendations, if any, made by the Federal-State Joint Board, established by Section 254(a) of the Federal Communications Act, as well as those services implemented by the different states of the United States of America in their respective universal service programs.

(4) All telecommunications companies shall make equitable and nondiscriminatory contributions to the universal service fund.

(5) The obligation to contribute to the Universal Service Fund shall begin on the date the telecommunications company begins to render telecommunications services in Puerto Rico and to generate income from such services, pursuant to Section 254(f) of the Federal Communications Act.

(6) The Board shall have one hundred and eighty (180) days from the date of its constitution, to complete the formal procedure provided by subsection (c)(1) of this Section, and to implement universal service. If after one hundred and eighty (180) days the Board has not fixed the amount to be contributed by the telecommunications companies, the former shall fix a sum on that date as the provisional contribution to be paid by each telecommunications company until the amount to be required is finally determined. The amount fixed as a provisional contribution shall apply retroactively to the effective date of this Act, and shall be paid henceforth until the Board modifies or replaces it, through a final, binding and unappealable decision, which shall be adopted within ninety (90) days following the date on which the provisional contribution was fixed. Said

amount shall be paid for the first time by each telecommunications company, within fifteen (15) days following the date on which the sum is fixed, and henceforth, shall be paid quarterly, or as provided by the Board through regulations. Said amounts shall be paid by check, electronic transfer, or through any other means provided by the Board through regulations.

(7) Once a final determination is adopted regarding the mechanism to contribute to the universal service, the Board shall establish those measures needed to give credit for the sums paid in excess, or to collect deficiencies in the payments made prior to the date on which said final determination is adopted.

(8) The sums of money contributed by the telecommunications companies to the Universal Service Fund through the support mechanisms established by the Board shall be covered into a special account in the Government Development Bank. Said Fund shall be used exclusively to help to render, maintain and improve the services in support of which the Fund is created.

(9) Within the year following the constitution of the Board, it shall designate an independent administrator, through competitive bidding, to manage the sums deposited in the "Universal Service" account and supervise its disbursement to eligible telecommunications companies. The entire collection, administration and disbursement process, and the use of said sums, shall be subject to the audits by the Comptroller of Puerto Rico.

(10) The Board shall review the amount of the obligation that each telecommunications company has with the universal service fund, annually, and when fixing it, shall take into consideration the recommendations, if any, of the administrator. The decisions that the Board adopts to such effects shall be based on two principal factors:

(i) the public interest in extending and maintaining a modern telecommunications system available to all the geographic and social sectors of Puerto Rico and

(ii) the need to ensure that the criteria used to establish the contribution of the companies to the Fund are viable and are uniformly and equitable, applicable, and are not arbitrary or discriminatory.

(11) The funds obtained through the mechanism to contribute to universal services shall be used efficiently in order to expedite the offer of high quality services at the best price possible.

Section 7.- Pricing and Charges Information.

(a) Every telecommunications company shall have to submit to the Board a list of prices and charges, and every time a change is made, it shall have to submit them simultaneously when implemented in the market.

(b) The Board shall, at request of the interested party, and through a complaint thereby, ascertain whether the prices and/or charges established are not based on their cost, thus violating the principle of fair and sound competition. To such effects, the Board may request the complainant telecommunications company all the information pertinent to the prices or charges established by it. This information shall be available to the complainant party, except that the Board shall keep confidential and for its exclusive use, such material which is needed to protect proprietary information, and business or trade secrets, pursuant to Chapter II, Section 7 (b)(2) of this Act.

(c) The Board shall have a maximum of thirty (30) days to adjudicate complaints under this Section. However, the Board may, at the request of the complainant telecommunications company, order a suspension of the application of the prices and/or charges in question, until the complaint is resolved on its merits. Every request to suspend the temporary application of the objected prices and/or charges shall be adjudicated within a term of not more than five (5) days from the date the petition to such effects is filed.

(d) When the Board determines that the pricing and/or charge structure is not based on costs, the Board may order the permanent suspension of said prices and charges, besides imposing administrative fines up to a maximum twenty five thousand (25,000) dollars for each violation of this Act. In the case of a continuing violation, each additional day shall constitute a separate offense, but the total fine imposed shall not exceed two hundred and fifty thousand (250,000) dollars, in any case.

Section 8.- Availability of Public Property.

Within a term of one hundred eighty (180) days after the approval of this Act, the Board shall establish procedures through which the agencies, departments, public corporations, municipalities and political subdivisions of the Commonwealth of Puerto Rico shall, on a just, reasonable and non-discriminatory basis, make available to certified telecommunications companies, the real property, rights of way and easements under its control, for the location of new telecommunication services and equipment which depend, partially or totally, on the use of spectrum-related federal rights for the transmission or reception of telecommunication services. Such procedures shall establish a presumption that all requests for the use of real property, rights of way and easements by duly certified providers shall be granted, provided they are not in direct or inevitable conflict with the mission of the department, agency, public corporation, municipality or political subdivision, or with the present or planned use of the property, rights of way and easements owned by them. Said departments, agencies, public corporations, municipalities and political subdivisions may charge reasonable fees for the use of its properties, rights of way and easements.

Availability of the transmission towers shall be established in every case through negotiation by the parties, pursuant to the provisions of the Act and Federal laws and jurisprudence.

Section 9.- Regulation of Cable Systems.**(a) Franchises**

(1) No cable company shall build or operate a cable system in Puerto Rico, fully or partially, without having previously obtained a franchise under this Section for such construction or operation.

(2) The Board shall be empowered to grant non-exclusive franchises to one or more cable companies to provide said services, if it determines that granting such franchises, in one or all service areas and to one or more cable companies, is in the best public interest. A franchise may be granted for a specific period of time, which shall not exceed eighteen (18) years. The Board shall specify in all its franchises, the conditions, limitations, requirements and service areas determined as necessary to promote the purposes of this Act. All franchises granted up to the present by the Public Service Commission shall remain in effect with regard to their rights and responsibilities, but the Board shall assume jurisdiction on the terms and conditions of said franchises.

(3) Without it being understood as a limitation, the Board shall also specify in the franchises those reasonable conditions and requirements in connection with expansion and updating of the network, quality of service, extensions and improvements of services in areas with no service or poorly served, and shall evaluate the technical, legal, financial and moral credentials of the officials and directors of the cable company being granted a franchise. The Board may renew or extend said franchises for a specific term that shall not exceed ten (10) years, if it determines that such renovations or extensions help in promoting the purposes of this Act.

(4) Subject to the provisions of applicable Federal statutes, every cable company operator shall program, reserve and offer access to non-commercial channels for public and educational use as part of their basic services, so that every subscriber shall have access to said

channels. The Board shall not grant any authorization for the operation of cable services, unless the above obligation has been complied with to the satisfaction of the Board, provided that the Board shall require such compliance in the corresponding franchises.

(5) The Board may modify, suspend or cancel a franchise, for just cause, if it determines that a cable company has not complied substantially with the requirements of such franchise, or for having repeatedly violated the provisions of this Act or the regulations of the Board, after due notice and hearing.

(6) The Board shall promulgate the necessary regulations to enforce the provisions of this Section.

(7) The provisions of this Section, as well as all regulations promulgated by the Board with regard to cable services shall be consistent with the Federal Cable Television Act and Title III of the Federal Telecommunications Act of 1996.

(b) Transfer of Authority

Upon approval of this Act, all authority, powers and duties related to cable systems under the jurisdiction of the Public Service Commission, conferred by laws or regulations, shall be transferred to the Board without any limitation whatsoever.

(c) Franchise charges

Every cable company shall continue to pay the same charges, liens or taxes on account of franchise fees that it has paid up to the moment this Act is approved; Provided that said cable companies shall also pay annual regulatory fees, under the provisions of Section II of Chapter II of this Act, only to the extent and in proportion to the telecommunications services rendered in Puerto Rico.

Section 10.- Suspension of Services.

No cable or telecommunications company certified by the Board pursuant to the provisions of this Act may suspend its services to its subscribers without complying with the procedures established in Act No. 33 of June 27, 1985, as amended, which through the present is made applicable as pertinent to the suspension of services by private companies or enterprises in the cable and telecommunications field.

Section 11.- Complaints by Subscribers.

(a) Within ninety (90) days following the approval of this Act or the issuing of its certification or franchise, the telecommunications and cable companies shall adopt and present to the Board for its approval, a procedure for the resolution of subscriber complaints. Unless the Board takes action, said procedure shall be deemed as approved after thirty (30) days from the filing thereof before the Board.

Once it is approved, the procedure shall be notified to all subscribers of the telecommunications company. It shall also be incorporated to every new subscriber service contract. Said procedure shall include the obligation of the telecommunications company to give notice to the subscriber of his right to request a review of the adjudication of the complaint presented by the company.

(b) The Board shall have primary jurisdiction to review the adjudication by a telecommunications company of the complaints filed by their subscribers pursuant to the complaint resolution procedure of the telecommunications company. The Board shall not consider complaints of subscribers which have not been submitted first to the telecommunications company as part of the complaint procedure.

(c) Every petition for review under the above subsection shall be presented before the Board within the unextendable term of 30 days from the notice to the subscriber of the determination of the telecommunications company.

(d) The Board shall establish a new record apart from the one created by the telecommunications company during the consideration of the complaint to determine whether it shall confirm, reverse or modify the decision of the telecommunications company.

Section 12.- Fraud Prevention.

(a) Every telecommunications and cable company shall adopt the policies and procedures to reduce and prevent fraud in the purchase, sale and rendering of cable and telecommunications services within ninety (90) days following the approval of this Act, or of the date on which the Board issues the certification or corresponding franchise.

(b) The Board shall promulgate and put into effect regulations designed to fight and prevent fraud in telecommunications.

CHAPTER IV.- SUPPLEMENTAL PROVISIONS

Section 1.- Administrative Procedures.

All processes for which this Act fails to provide a procedure, shall be governed by Act No. 170 of August 12, 1989, as amended, known as the "Uniform Administrative Procedure Act of Puerto Rico." This means that the Uniform Administrative Procedure Act of Puerto Rico shall govern all procedures for the adoption of regulations, adjudicative procedures, judiciary review, the procedure to grant franchises, certifications, complaints of subscribers and between telecommunications companies, and inspection procedures. As provided in the Uniform Administrative Procedure Act of Puerto Rico, the decisions and orders of the Board shall be subject to review by the Circuit Court of Appeals of Puerto Rico, except in those cases in which the Federal Communications Act establishes the specific procedure to be followed.

Section 2.- Severability.

Invalidation of any part of this Act by a judicial determination shall not affect the validity of the remaining provisions.

Section 3.- Incorporation of Laws by Reference; Amendments.

Wherever reference is made to any portion of this Act or any other act of the Commonwealth of Puerto Rico, such reference shall apply to all its prior or subsequent amendments and additions in effect.

Section 4.- Procedural Guidelines.

The Board shall be guided, during the initial stage of its operations, by the procedural concepts and precepts used by the Federal Telecommunications Commission, especially Part I - Practices and Procedures - Subpart C, Rulemaking Proceedings- for the formulation of rules and regulations.

Section 5.- Repeal.

Act No. 64 of August 23, 1990, as amended, is hereby repealed.

Section 6.- Effectiveness.

This Act shall take effect immediately after its approval.

DEPARTMENT OF STATE

I DO HEREBY CERTIFY: That this is a true and correct copy of the original approved and signed by the Governor of the Commonwealth of Puerto Rico on.....
September 12, 1996

As of date: June 26, 1997


RAFAEL A. MARTINEZ COLON, JLM
Assistant Secretary of State

