

(H. B. 2277)  
(Conference)

**(No. 11-2011)**

(Approved February 18, 2011)

## **AN ACT**

To add a new subsection (l) and renumber the current subsection (l) and subsequent subsections as subsections (m) to (ll) in Section 3 of Chapter 1 of Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” in order to empower the Telecommunications Regulatory Board of Puerto Rico to regulate the terms and conditions set forth in contracts for direct broadcast satellite (DBS) services; empower the Board to address consumer complaints regarding services offered by DBS companies in Puerto Rico; establish in the Board a register of companies offering DBS services in Puerto Rico, which shall contain the necessary information to effectively address consumer claims or complaints; and include such service in the definitions of the Puerto Rico Telecommunications Act of 1996; and for other purposes.

### **STATEMENT OF MOTIVES**

The Enabling Act of the Telecommunications Regulatory Board of Puerto Rico (hereinafter, “the Board”), Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” provides that it shall be the public policy of the Government of Puerto Rico to regulate telecommunications service providers through the Board in a manner that is consistent with their standing in the market and the influence they exert on consumers. The Board is also empowered by law to regulate cable television services. Said Act further establishes that 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 consumer rights.

According to such Enabling Act, serving as a forum to address the complaints of telecommunications service and cable television users was among the protections that the Board was empowered to provide to consumers. The Act further provided for such companies to adopt and present to the Board, for its approval, a procedure whereby subscriber complaints would be acted on. This procedure has been approved and implemented by telecommunications companies, with the approval of the Board, and currently applies to first-level user complaints.

As provided by Act No. 213-1996, the procedure includes the obligation of such companies to notify subscribers of their right to request a review of the adjudication of their complaint. Such Act also provides that 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 process of the telecommunications company. However, it states that the Board shall not consider complaints of subscribers which have not been filed first with the telecommunications company as part of the complaint process. Furthermore, every request for review shall be submitted to the Board within the unextendable term of 30 days as of the notice sent to the subscriber regarding the company's determination. The Board shall establish a new record in addition to that created by the telecommunications company during the consideration of the complaint, in order to determine whether it shall uphold, revoke, or modify the decision of such company.

This legal scheme has allowed the Board to satisfactorily address the complaints of telecommunication services and cable television users. According to the Board's statistics, more than ninety five percent (95%) of the complaints filed by telecommunication services and cable television users are addressed and resolved informally with the service providers through the Office of Complaint Analysis and Examining Officials.

It is important to mention that DBS companies offer their services in Puerto Rico and benefit from our market, but issues related to service and contract terms and conditions are not regulated by any local or Federal agency. Many consumers have expressed their concern because, month after month, the balance of their bills is higher than what they are used to paying, and new services or charges are added without being requested or previously informed or notified. These actions alter the clauses of the original contract, and cause setbacks and inconveniences to consumers. The Board acts on a significant number of this sort of complaints filed by DBS users and, in some cases, they are informally and satisfactorily resolved. This can be achieved through communication established in good faith with officials from a company whose operations in Puerto Rico include a customer service office. However, other companies that offer such services in the Island do not have facilities of this kind, and their users are completely devoid of reasonable means to resolve issues regarding service and/or contract terms. Moreover, the Board has limited jurisdiction to regulate this field, since it is not empowered to intervene with companies that offer such services in matters related to transmissions of energy by interstate or foreign radio, such as with DBS.

Therefore, the regulatory provisions concerning the authorization, construction, and operation of radio and television broadcast services, including DBS, are contained in the Federal Communications Act of 1934, as amended, and the Federal Communications Commission (FCC) is exclusively in charge of such regulation by virtue of Section 2 of such Act, which provides: “SEC. 2. [47 U.S.C. 152] APPLICATION OF ACT. (a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States...” (Emphasis supplied). According to its Section 303(v), the FCC also has exclusive jurisdiction in all that pertains to DBS construction and

operation, but the legislative history of said Section and other related Sections of said Act fail to provide how to address issues brought forth by consumers of such services.

That is to say, no state or territory of the United States of America is empowered to regulate transmissions of energy by interstate or foreign radio, such as DBS; however, neither Congress nor the FCC have expressly disempowered states and territories to regulate consumer issues regarding service.

Given the lack of powers to safeguard the State's compelling interest to protect DBS consumers in matters related to service contract terms and conditions and dispute resolution procedures, it is necessary to amend the Puerto Rico Telecommunications Act of 1996 to provide the powers herein granted, insofar as they are not inconsistent with Federal laws and regulations that prevail over the authority of the Government of Puerto Rico on this issue.

In other words, the Board shall have limited jurisdiction over DBS companies that offer services in Puerto Rico to regulate the terms and conditions stipulated in service contracts; address complaints related to said service; and require such companies to register with the Board. The Board shall not have jurisdiction over issues solely and exclusively addressed by Federal laws and regulations, which constitutes preemption.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1. – Subsection (i) is hereby amended, a new subsection (l) is hereby added, and current subsection (l) and subsequent subsections are hereby renumbered as subsections (m) to (ll) of Section 3 of Chapter 1 of Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” to read as follows:

“Section 3. – Definitions. –

(i) Cable Company. – Shall mean any person who possesses, controls operates, or manages any plant, equipment, and facilities 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 hereby excluded from this definition. Direct broadcast satellite (DBS) companies shall be excluded from this definition.

...

(l) Direct Broadcast Satellite (DBS) Companies. – Licensed entities that operate satellites in the Ku-band fixed satellite service under Part 100 of Title 47 of the Code of Federal Regulations of the United States of America; or any distributor providing a sufficient number of channels (as specified in FCC Regulations) using a fixed satellite system in the Ku-band to offer video programming directly to consumers in Puerto Rico, who is licensed under Part 25 of Title 47 of the Code of Federal Regulations and has administrative and customer service offices or departments in and/or outside Puerto Rico.

(m) ...”

Section 2. – A new subsection (b) is hereby added to Section 6 of Chapter II of Act No. 213 of September 12, 1996, as amended, to read as follows:

“(b) The Board shall have jurisdiction to regulate the service contract terms and conditions of DBS companies rendering such services in Puerto Rico over any person with a direct or indirect interest in such services or companies, and to address subscriber complaints related to such services and/or contract terms and conditions; also, to address consumer complaints related to services offered within Puerto Rico by DBS companies operating in Puerto Rico. The Board shall have jurisdiction, insofar as it is not inconsistent with the provisions of Federal laws and regulations, especially those of the Federal Communications Commission. As for DBS services, the Federal Telecommunications Act of 1996 and Federal regulations have preemption in all that pertains to the authorization, construction, and regulation of the transmission of energy by interstate or foreign radio in Puerto Rico.”

Section 3. – A new subsection (e) is hereby added to Section 12 of Chapter III of Act No. 213 of September 12, 1996, as amended, to read as follows:

“(e) The Board shall adopt Regulations within ninety (90) days after the effective date of this Act in order to specify the form and content of applications for DBS companies in Puerto Rico to register with the Board. Such register has the sole purpose of containing the information deemed pertinent by the Board to act on complaints related to service and contract terms and conditions. The registration applications of such DBS companies shall be submitted to the Board within ninety (90) days after the Regulations issued by the Board take effect. Within ninety (90) days after registration, said companies shall adopt and file with the Board, for its approval, a procedure whereby disputes with their users would be addressed. These procedures shall exclusively apply to the provisions of this Section regarding complaints. Procedures related to jurisdiction for review and adjudication of

complaints, as provided in this Section, shall exclusively apply to telecommunications and cable companies.”

Section 4. – None of the provisions of this Act shall be inconsistent with the jurisdiction of rights under the Federal Telecommunications Act of 1996 and the Federal regulations promulgated thereunder, including, without it being understood as a limitation, those in which Federal legislation has preemption.

Section 5. – If any provision or language in this Act were challenged in a Court and held to be null or unconstitutional, such holding shall not affect, impair, or invalidate the remaining provisions of this Act.

Section 6.—This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 11-2011 (H. B. 2277) (Conference)** of the **5<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to add a new subsection (l) and renumber the current subsection (l) and subsequent subsections as subsections (m) to (ll) in Section 3 of Chapter 1 of Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” in order to empower the Telecommunications Regulatory Board of Puerto Rico to regulate the terms and conditions set forth in contracts for direct broadcast satellite (DBS) services; empower the Board to address consumer complaints regarding services offered by DBS companies in Puerto Rico; etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 17<sup>th</sup> day of June, 2013.

Juan Luis Martínez Martínez  
Acting Director