

(S. B. 298)

(No. 34-2017)

(Approved June 9, 2017)

AN ACT

To amend Section 7 of Chapter III of Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act,” in order to empower the Telecommunications Regulatory Board of Puerto Rico to administer the Puerto Rico Universal Service Fund; and for other purposes.

STATEMENT OF MOTIVES

Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act” (hereinafter referred to as Act No. 213), expressly provides in its Section III-7 that the Telecommunications Regulatory Board (hereinafter referred to as the Board) shall designate an independent administrator to administer the Universal Service Fund of Puerto Rico (hereinafter referred to as the Fund) and to supervise disbursements to eligible telecommunications companies. The entire Fund administration process shall be subject to audits by the Office of the Comptroller of Puerto Rico.

As to the Universal Services, Act No. 213 expressly entrusted the Board with:

- 1) acknowledging telecommunications services as one whose rendering pursues a high public interest within a competitive market;
- 2) providing universal service at a fair, reasonable, and affordable rate for all citizens;
- 3) distributing equitably among all telecommunications companies the duties, responsibilities, and obligations inherent to the development and preservation of the universal service;
- 4) establishing specific, predictable, and sufficient support mechanisms to preserve and develop the universal service;
- 5) providing access to telecommunication services that are reasonably comparable to those provided in urban areas to consumers throughout

the Island, including low-income individuals and those who live in rural areas or in areas where access to such service is costly, ensuring that these services are available throughout Puerto Rico at fair and reasonable prices.

Currently, Act No. 213 provides that an independent administrator shall be in charge of the Fund. The process of hiring an entity to administer the Fund constitutes a significant disbursement of public funds; that is, twelve thousand seven hundred fifty dollars (\$12,750) monthly, in times where the Government of Puerto Rico is undergoing a delicate fiscal situation. In view of the Island's situation, the Government has taken countless actions geared toward balancing the finances and avoiding unnecessary spending, thus maximizing its resources. Several Executive Orders have been issued declaring a State of Fiscal Emergency and directing the immediate implementation of various expenditure control and reduction measures.

Taking into account the fiscal crisis that the Government is undergoing, we deem it necessary and beneficial to amend Act No. 213, in order to provide the Board with the authority to administer the Fund or appoint an independent administrator. Service contracting is an extraordinary resource that must be resorted to solely when such services promote the mission of the agency, and only when the agency is unable to provide such services with the available personnel.

The Board has the personnel and internal controls needed to ensure the sound administration of the Universal Service Fund. All of its operations are carried out in accordance with the accounting rules applicable to the Government of Puerto Rico and the entire process relating to the collection, administration, disbursement, and use of the monies of the Fund shall be audited by the Office of the Comptroller. Therefore, the duty to administer said Fund would not be irrelevant or inconsistent with the daily tasks of the Board. Currently, the account associated with the collections and disbursements of the Fund is maintained by Banco Popular de Puerto Rico.

This amendment would result in a more efficient use of the Public Funds administered by the Board.

In addition, Section III-7 of Act No. 213, as amended, is hereby amended to include contributions to the Fund from other services, as determined by the Federal Communications Commission (FCC), and to eliminate subsections relating to initial procedures prior to the creation of the Fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 7 of Chapter III of Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act” is hereby amended, to read as follows:

“Chapter III.- Regulation and Supervision

Section 1.- ...

Section 7.- ...

(a) ...

(b) ...

(c) Universal Service Procedures

(1) The Board shall determine:

(A) 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 a 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.

(B) The manner in which the monetary contributions made through the support mechanisms to the universal service fund throughout Puerto Rico shall be distributed among the eligible telecommunications companies, and

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

(2) The services to be defrayed by the universal service program in Puerto Rico shall include those services necessary to deal with particular needs throughout Puerto Rico, as established by the Board. When determining the services to 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 under Section 254(a) of the Federal Communications Act, the Federal Communications Commission, as well as those services implemented by the different states of the United States of America in their respective universal service programs.

(3) All telecommunications companies and those other service providers required to contribute shall make equitable and nondiscriminatory contributions to the universal service fund.

(4) The requirement to contribute to the universal service fund shall begin on the date the telecommunications company or other service providers required to contribute begin to render telecommunications services or other eligible services in Puerto Rico and to generate income from such services, pursuant to Section 254(f) of the Federal Communications Act or when the Federal Communications Commission so determines.

(5) The sums of money contributed by the telecommunications companies or other service providers required to contribute to the universal service fund through the support mechanisms established by the Board shall be deposited

into a special account in a bank to be determined by the Board. Said fund shall be used exclusively to help to render, maintain, improve, and administer services in support of which the fund is created.

(6) The Board may designate an independent administrator, through competitive bidding, or assign Board personnel to administer 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 audits by the Comptroller of Puerto Rico.

(7) The Board shall review, at least once (1) a year, the amount of the contribution required to the universal service fund from each telecommunications company or other providers of services developed in the future as technology evolves that are designated as an eligible telecommunications company. When fixing such amount, the Board shall take into consideration the recommendations, if any, of the Administrator or the personnel of the Board designated to the administration. The decisions adopted by the Board to such effects shall be based on two principal factors:

(A) The public interest in expanding and maintaining a modern telecommunications system available to all the geographic and social sectors of Puerto Rico, and

(B) the need to ensure that the criteria used to establish the companies’ contribution to the fund are viable and uniformly and equitably applicable, and are nonarbitrary or nondiscriminatory.

(8) The funds collected through the universal service contribution mechanism shall be used efficiently in order to facilitate the offering of high quality services at the best possible price.

(9) Once the Puerto Rico Universal Service Fund is established, any decisions relating thereto shall be made by a majority of the members of the Board. However, the Puerto Rico Universal Service Fund may only be repealed by the unanimous vote of the members of the Board in order to be valid, given the importance of said Fund to provide all the citizens of Puerto Rico with access to technology.

(d) ...
...”

Section 2.- If any section, provisions, paragraph, subsection, or part of this Act were held to be unconstitutional or null by a competent court, such holding shall not affect, impair, or invalidate the remaining provisions of this Act.

Section 3.- This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 34-2017 (S. B. 298)** of the **1st Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend Section 7 of Chapter III of Act No. 213-1996, as amended, known as the “Puerto Rico Telecommunications Act,” in order to empower the Telecommunications Regulatory Board of Puerto Rico to administer the Puerto Rico Universal Service Fund; and for other purposes.

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

In San Juan, Puerto Rico, on this 13th day of September, 2017.

Orlando Pagán-Ramírez
Acting Director