

(H.B. 927)
(S.B. 581)

(No. 54)

(Approved August 4, 1997)

AN ACT

To authorize the negotiation process for the sale of the assets of the Puerto Rico Telephone Authority and its subsidiaries; establish the procedures and conditions under which said sale shall be conducted; to establish the process for approval by the Governor and the Legislature; provide for the use of the net proceeds of said sale, provide compensation to the members of the Board and the Executive Director of the Telephone Authority under certain conditions; allow that private corporations be organized to make the sale feasible; exempt the sale process from compliance with Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico"; and exempt the Puerto Rico Telephone Authority from the obligation of filing certain reports.

STATEMENT OF MOTIVES

In 1974, due to the deficient development of the telecommunications system of Puerto Rico, operated at that time by the Puerto Rico Telephone Company ("PRTC"), it was declared as a public policy that our telecommunications system would be owned and operated by the Government of Puerto Rico. In accordance with this, the Government of Puerto Rico, through the Telephone Authority, acquired the stock of the PRTC.

The circumstances that justified said purchase no longer exist. Today, Puerto Rico has a modern and efficient telecommunications system with the latest technological advances and provides quality service. Furthermore, the objective of providing telephone service to remote areas of our Island has been achieved.

With the approval of the Telecommunications Act of 1996 by the United States Congress, Public Law 104-104 of February 8, 1996, 47 U.S.C. §151 et seq., and the approval by our Legislature of Act No. 213 of September 12, 1996, known as the "Puerto Rico Telecommunications Act of 1996," the telecommunications market has been opened up to competition, thus eliminating the monopoly enjoyed by the Telephone Authority. Now, the Telephone Authority shall have to compete with private companies of great financial capacity and technical competence, which enjoy competitive advantages over it. In this new era of world competition in the field of telecommunications, it is important for the welfare of our consumers and the development of our economy, that the telecommunications system currently operated by the Telephone Authority be passed on to the hands of a company that due to its resources, flexibility, technical capacity and experience, can maximize the competitive capacity of this system.

With this new competitive era and having obtained the objectives that motivated the purchase of the PRTC, the Government of Puerto Rico has determined that it is convenient and necessary to sell the assets of the Telephone Authority. The sale shall follow the procedures established in this Act. The Legislature shall have to approve, through a Joint Resolution, the terms and conditions of the sale after the same have been negotiated with the buyers and approved by the Governing Board of the Telephone Authority and the Governor of Puerto Rico. The net proceeds of the sale shall be used to attend to urgent needs such as the strengthening of the Employees Retirement System of the Government of Puerto Rico and its Instrumentalities and the investment in the development of our infrastructure, including our water supply and distribution systems. Furthermore, a portion of the net proceeds of the sale shall be used to provide benefits to the employees of the PRTC. The specific amounts that shall be used for

each one of these purposes shall be subsequently determined by the Legislature through a Joint Resolution.

This Act provides for the negotiation and steps leading to the sale of part or all the assets of the Authority. The objective shall be the complete privatization of said enterprise; however, this does not deprive the Negotiating Committee from the flexibility to reach that transaction which maximizes both the immediate financial value and the system component's future capacity to render services to clients, nor does this compel the Committee to accept disadvantageous offers. This flexibility shall allow the Committee to consider, as part of the terms for privatization, the offer of shares in the local market, the use of these shares for its contribution to the Retirement Fund and for employee benefits, the criteria for the participation of local capital, the possibility to establish regional and transnational alliances and any other condition or criteria, as may provide the greatest benefits for the People of Puerto Rico.

The sale of said assets shall not have as a result that the telecommunications services shall be totally deprived of government supervision. The Puerto Rico Telecommunications Regulatory Board, the body with jurisdiction over all telecommunications companies operating in Puerto Rico, shall see to the compliance of the provisions of the Puerto Rico Telecommunications Act of 1996. Through the Universal Service program required by the Federal Telecommunications Act of 1996, and our Puerto Rico Telecommunications Act of 1996, the mission to provide telephone services to all applicants shall be continued.

Regarding the fiscal and taxation aspects which the sale of the assets of the Puerto Rico Telephone Authority may entail, it is the intention of this Legislature to expressly consign that the buyer shall be responsible for paying income taxes,

excise taxes, municipal license fees and taxes on personal and real property as well as any other fees and tariffs imposed, pursuant to the body of laws of Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Statement of Purpose.-

The purpose of this Act is to authorize the Negotiating Committee, as defined in this Act, to carry out all necessary and convenient processes leading to the sale of the assets of the Puerto Rico Telephone Authority and of any of its direct or indirect subsidiaries, and negotiate the terms of said sale, to authorize said Committee and the Board of Directors of the Puerto Rico Telephone Authority to execute all the acts which are necessary and convenient to execute said sale, to establish the public policy guidelines which shall direct and govern the same, establish the process of approval by the Governor and the Legislature, and establish the use to be given to the net proceeds of the sale.

Section 2.- Definitions.-

The following terms shall have the meaning stated hereinbelow, unless another meaning clearly arises from the text:

- (a) "Stock" shall mean stock of any type (common or preferred) of any direct or indirect subsidiary of the Authority, of any corporation created pursuant to this Act, or of any corporation that acquires the assets of the Authority.
- (b) "Authority" shall mean the Puerto Rico Telephone Authority, created by Act No. 25 of May 6, 1974, as amended.
- (c) "Bank" shall mean the Government Development Bank for Puerto Rico, created by Act No. 17 of September 23, 1948, as amended.
- (d) "Assets of the Authority" shall mean all or any of the assets, resources and rights of any nature, chattel, real property or mixed, tangible or intangible

property of the Authority or of any of its direct or indirect subsidiaries, including the stock of any of said subsidiaries.

- (e) "Negotiating Committee" shall mean the Negotiating Committee for the Sale of the Assets of the Puerto Rico Telephone Authority established through a resolution of the Board, which shall be composed of three members of the Board, the Executive Director and the President of the Bank. The President of the Bank shall be the Chairperson of the Negotiating Committee.
- (f) "Buyer" shall mean the person or persons (natural or juridical) that acquires or acquire all or some of the assets of the Authority.
- (g) "Executive Director" shall mean the Executive Director of the Authority.
- (h) "Employee" shall mean any person who, at the time of the sale is a union employee of the PRTC, a regular managerial employee of the PRTC who has satisfactorily passed his/her probation period, or a confidential managerial employee of the PRTC, but shall not include persons who render services to the PRTC by means of a contract through an employment agency.
- (i) "Union Employee" shall mean any person who on the date of the sale, is employed by the PRTC and is a member of an appropriate collective bargaining unit.
- (j) "Date of sale" shall mean the date on which the assets of the Authority are effectively transferred to the buyer.
- (k) "Infrastructure Development Fund" shall mean the fund created by law under this name, which shall be maintained and administered by the Authority for the Financing of the Infrastructure of Puerto Rico.
- (l) "Board" shall mean the Governing Board of the Authority.

- (m) "Person" shall mean any natural or juridical person, including any agency, instrumentality or public corporation, corporation, partnership, cooperative partnership, association of cooperatives, special employee-owned corporation or any combination of the above, created, organized or existing under the laws of the Commonwealth of Puerto Rico, of the United States of America or of any state or foreign country.
- (n) "Net proceeds of the sale" shall mean the total price paid for the assets of the Authority, less the sums used or set aside to pay the debt of the Authority as of the date of the sale, and the costs related to the payment of said debt, the expenses incurred by the Authority, the Bank and the Office of the President and Speaker of the Legislative Bodies, if it were necessary, related to the transaction of the sale, and those other sums that the Bank or the Authority use or set aside to settle any liability or contingency of the Authority related to said sale.
- (o) "PRTC" shall mean the Puerto Rico Telephone Company and its subsidiaries.
- (p) "Retirement System" shall mean the Employees Retirement System of the Government of Puerto Rico and its Instrumentalities created by Act No. 447 of May 15, 1951, as amended.

Section 3.- Authorization.-

The negotiation process for the sale of the assets of the Authority is hereby authorized, subject to the conditions and procedures established in this Act. This authorization empowers the sale of some or all the assets of the Authority and of any of its direct or indirect subsidiaries, to one or several buyers, including the public or private sale of all or some of the shares of the PRTC, of any other direct or indirect subsidiary of the Authority, and of any other corporation created

pursuant to subsection (a) of Section 8 of this Act. The Negotiating Committee is hereby authorized to conduct the process of sale authorized herein. The Negotiating Committee may authorize the President of the Bank to contract whatever experts and advisors are needed, negotiate the terms and conditions of said sale, including the agreements with the buyers that are needed to protect the interests of the Authority, and take whatever steps are necessary and convenient before any Commonwealth, Federal or foreign country forum or agency, leading to promote said sale. The sale shall be subject to the conditions imposed by this Act.

Section 4.- Process of Sale.-

- (a) The Negotiating Committee shall be responsible for conducting the process of sale and of negotiating the terms and conditions of said sale through the President of the Bank.
- (b) The Negotiating Committee shall establish the procedures that shall rule the process of sale in order to: expedite the sale process; obtain offers from the largest number possible of potential buyers that are qualified to execute the purchase within the shortest term possible, as established in said procedures; promote competition between potential buyers; and, after considering all the relevant factors, maximize the benefits that the People of Puerto Rico shall receive. The procedures shall provide for the prompt handling of the sale. To achieve the purposes of this Act, it is indispensable that the information relevant to the process of sale be kept confidential. The Negotiating Committee shall establish as part of its procedures, the information that is to be confidential, taking into account the purpose of this Act and the need to keep the People of Puerto Rico informed.

- (c) When evaluating the proposals received, the following factors which are not listed in order of importance, shall be taken into consideration, among others:
- (1) the price and conditions of the sale;
 - (2) the commercial and financial reputation of the proponent, his/her financial and technical capability to conduct the telecommunications business and keep a technologically advanced and efficient telecommunications system at the service of the consumer;
 - (3) the financing plans of the proponent and the financial capacity thereof to execute them, including possible access to the local capital market for the purchase and sale of shares, so that the sale can be concluded in the shortest period of time possible;
 - (4) the probability that the proponent has of obtaining the necessary permits and approvals and to execute the purchase in a reasonably short period of time;
 - (5) the terms that the proponent is willing to accept in the sale contract;
and
 - (6) the discount level to be offered to non-profit post-secondary educational institutions to gain access to the Internet during the next five (5) years, from the date in which the Federal Communications Commission authorizes the sale.
- (d) After the Negotiating Committee has concluded its evaluation of the of the proposals received, and the negotiations of the President of the Bank of the terms and conditions under which the purchase shall be conducted and of the documents needed to execute the transaction with the selected proponent or proponents, the Negotiating Committee shall render a report

to the Board with the specific data on the proposals received and the negotiations conducted, with its recommendation on the proposal or proposals that best meet the factors listed in subsection (c) of this Section.

- (e) The Board shall examine the report prepared by the Negotiating Committee and shall decide whether it shall approve or reject the recommended proposal or proposals. If it approves said proposal or proposals, the Board shall authorize the Executive Director to sign those documents needed to complete the transaction. The documents shall provide that the effectiveness thereof shall be subject to the approval of the sale by the Governor of Puerto Rico and the Legislature.
- (f) Once the sales documents have been signed, the Negotiating Committee shall submit a report to the Governor of Puerto Rico summarizing the process of sale and explaining the reasons for which the recommended proposal or proposals were selected. If the Governor of Puerto Rico approves the sale under the same terms and conditions that were approved by the Board, and that are outlined in the transaction documents signed by the parties, the Governor shall remit the report prepared by the Board to the Legislature for its approval. The Governor shall also submit to the Legislature a succinct analysis of the objective criteria employed by the Negotiating Committee to evaluate the purchase offers submitted for its consideration. The Legislature shall have access to all documents and information considered by the Negotiating Committee during its process to select the proposal or proposals on the same terms and under the same conditions provided to the Negotiating Committee. It shall be understood that the sale is authorized if the Legislature, through a Joint Resolution, approves the sale under the same terms and conditions that were approved

by the Board and that are outlined in the transaction documents signed by the parties. The Legislature shall provide, through a Joint Resolution, the portion of the net proceeds of the sale that shall be applied to each one of the uses established in Section 5 of this Act.

Section 5.- Use of the Net Proceeds of the Sale.-

The net proceeds of the sale shall be used in the amounts established by the Legislature through a Joint Resolution to defray the costs corresponding to the Authority, from the benefits provided in Section 6 of this Act, and to make contributions to the Retirement System and to the Infrastructure Development Fund. The net proceeds of the sale that are to be assigned to the Infrastructure Development Fund shall remain deposited in said Fund. The revenues generated by the investment of these resources shall be used for infrastructure development projects whose construction contracts have not been adjudicated at the time of approval of this Act.

Section 6.- Protection and Benefits for Employees.-

(a) Protection for Employees. The sale contract shall include those terms and conditions that are needed to comply with the following:

- (1) Accrued Retirement Benefits. No employee or former employee who is a participant of the Retirement System or his/her beneficiaries, shall lose the retirement benefits accrued as of the date of the sale. The buyer shall not have to make contributions to the Retirement System for the employees or former employees who participate in the same and shall not be liable for the obligations the Retirement System has with said persons. The buyer shall not reduce the accrued retirement benefits over which the employees have accrued vested benefits as of the date of the sale, and shall not reduce the pensions granted as of the

date of the sale, under the PRTC retirement programs. The Authority and the buyer shall decide on a plan for compliance with this provision.

- (2) **Collective Bargaining Agreements.** The buyer shall agree to recognize the unions that, on the date of the sale, represent the union employees, and shall assume the collective bargaining agreements in effect on that date.
- (b) **Employee Benefits.** As part of the sale, the Authority or the buyer shall establish a benefit plan for employees, which may include an early retirement plan, a special bonus plan, or a transfer of shares plan.
- (c) **Management Employees.** In case a regular management employee does not choose to join the early retirement plan which may be implemented as provided by this Act, he/she shall be guaranteed at least a year of employment with the salary and fringe benefits enjoyed by the employee, as of the date on which the Federal Communications Commission authorizes the sale of the assets of the Authority, in addition to the benefits established in subsection (b) of this Section.

Section 7.- Compensation to Board Members and the Executive Director.-

The members of the Board and the Executive Director shall not be liable for any monetary claim, whether of civil or administrative nature, which is filed after the approval of this Act, which arises from any act or omission on their part regarding the sale transaction authorized by this Act, provided said actions or omissions have occurred in good faith and there is no conduct which constitutes an offense, gross negligence or is contrary to law.

In the event a civil or administrative cause of action is filed against any of the members of the Board or the Executive Director which arises from any act or

omission by them related to the sale transaction authorized by this Act, the members of the Board and the Executive Director may request to be represented and compensated by the Authority for all defense expenses and any payment that is imposed through judgment, and should the latter lack the funds, by the Commonwealth pursuant to the provisions of this Section.

The members of the Board and the Executive Director may choose to be represented by counsel in private practice recommended by them, after being authorized by the Secretary of Justice, or directly by the Department of Justice. If they are represented by counsel in private practice, the Authority or the Commonwealth, should the former lack the funds, shall defray all reasonable costs of said legal representation. The Authority or the Commonwealth, as the case may be, shall recover the expenses, costs and attorney fees, and the amounts thus recovered shall be covered into the funds of the Authority, or if the expenses were defrayed by the Commonwealth, into the General Fund of the Commonwealth.

When two (2) or more members of the Board or the Executive Director are sued or are subject to a monetary claim through an administrative procedure in the same case, and they have conflicting interests, the Secretary of Justice may authorize that each one of them be represented by different counsel in private practice, which shall be defrayed by the Authority, or should it lack funds therefor, by the Commonwealth pursuant to the provisions of this Section.

The Commonwealth guarantees the payment of all compensation to be granted under this Section. If at any time, the revenues, income or any other available funds of the Authority were not sufficient to pay said compensation or if these funds are nonexistent due to the sale of the assets of the Authority, the Secretary of the Treasury shall withdraw from any available funds in the Commonwealth Treasury those sums needed to cover the deficiencies in the amount required to pay

said compensation, and shall direct that the sums thus withdrawn be used for such purposes.

This Section shall continue in effect after the sale of the assets of the Authority.

Section 8.- Supplementary Provisions.-

- (a) Organization of Corporations. The Executive Director is hereby authorized to carry out the organization of one or more private corporations under the laws of Puerto Rico or of a state of the United States and to transfer to them the shares of any subsidiary of the Authority or any of the assets of the Authority if, in the judgment of the Negotiating Committee, it is necessary or convenient to ensure the viability of the sale process.
- (b) Inapplicability of the Uniform Administrative Procedures Act. Act No. 170 of August 12, 1988, as amended, shall not apply to the sale process or the acts authorized by this Act, or to any other procedure or action carried out or required to comply with the purpose of this Act.
- (c) Exemption from the Obligation to File Reports. To attain the objectives of this Act, while the herein authorized process of sale is being carried out, the Authority is exempted from the obligation to render the reports provided in subsection (d) of Section 3, and Section 24 of Act No. 25 of May 6, 1974, as amended, including the reports that should have been rendered during the year 1997.
- (d) Fiscal and Tax Responsibilities of the Buyer. The Buyer shall be responsible for the payment of income taxes, excise taxes, municipal license taxes, real and property taxes, and any other fee or tariff levied pursuant to that which is provided in the body of laws of Puerto Rico.
- (e) Statement of the Buyer attesting that no Public Official, Employee, or Former Public Official has received any Commission or Bonus on Account

of the Sale. The Buyer shall submit to the Legislature and the Department of Justice of Puerto Rico a sworn statement attesting that no commission or bonus has been paid and that no direct or indirect financial benefit has been granted to any public official or employee nor to any former public official or employee participating in the process of the sale of the Authority authorized in this Act while discharging his/her public service duties.

This obligation shall be met upon submission of the Final Report by the Negotiating Committee to the Board and upon the authorization of the sale of the Authority by the Federal Communications Commission. Any person who fails to comply with this obligation shall incur a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for a term of not less than ninety (90) days nor more than six (6) months or by a fine of not less than two thousand (2,000) dollars nor more than five thousand (5,000) dollars, or both penalties at the discretion of the Court.

- (f) Statements from Financial Consultant and Legal Counsel Firms and Experts and Advisers under Contract. Financial Consultant and Legal Counsel Firms or Companies, Experts, and any other Advisers contracted by the Negotiating Committee to participate in the analysis, evaluation and negotiation process for the sale, shall submit to the Legislature and the Department of Justice of Puerto Rico a sworn statement listing the names of all the persons who have been paid fees for their services or have received payments on any account, as a result of their functions in the process of the sale as authorized by this Act.

This obligation shall be met upon submission of the Final Report by the Negotiating Committee to the Board and upon the authorization of the sale of the Authority by the Federal Communications Commission. Any

person who fails to comply with this obligation shall incur a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for a term of not less than ninety (90) days nor more than six (6) months or by a fine of not less than two thousand (2,000) dollars nor more than five thousand (5,000) dollars, or both penalties at the discretion of the Court.

- (g) Requirements to be Included in the Contracts for Consultants and Advisers. Any contract awarded by the Negotiating Committee, the Bank, the Authority, or the PRTC, to contract the services of Financial Consultants, Legal Counsel, Experts, and any other Advisers, shall contain a clause expressly providing that said consultant, adviser or expert shall not, during the year following the expiration of his/her contract, hold any office nor contract any financial interest with the natural or juridical person chosen to purchase the assets of the Authority in connection with his/her business in Puerto Rico, and after the Legislature has approved the sale. Noncompliance with this contractual clause shall bring about the restoration of all fees earned through the granting of said contract.

Section 9.- Severance Clause.-

If any provision of this Act or the application of said provision to any person or circumstance were declared unconstitutional, the rest of this Act and the application thereof shall not be affected by said declaration of unconstitutionality.

Section 10.- Effectiveness.-

This Act shall take effect immediately after its approval.

August 20, 1997

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. 54 (H.B. 927) (SB 581) of the 1st Special Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to authorize the negotiation process for the sale of the assets of the Puerto Rico Telephone Authority and its subsidiaries; establish the procedures and conditions under which said sale shall be conducted; to establish the process for approval by the Governor and the Legislature; provide for the use of the net proceeds of said sale, provide compensation to the members of the Board and the Executive Director of the Telephone Authority under certain conditions; allow that private corporations be organized to make the sale feasible; exempt the sale process from compliance with Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico"; and exempt the Puerto Rico Telephone Authority from the obligation of filing certain reports,

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

José A. Figueroa-Lugo