

(S. B. 1650)

(No. 302)

(Approved September 2, 1999)

AN ACT

To add new subsection (p) and (q); redesignate subsections (p) to (ee) as subsections (r) to (gg) of Section 3 of Chapter I; to add Section 5; and renumber Sections 5 to 12 as Sections 6 to 13 of Chapter III of Act No. 213 of September 12, 1996, known as the "Puerto Rico Telecommunications Regulatory Board", in order to prohibit the practice of imposing additional surcharges (cramming) or a change in the service provider (slamming) without the consent of the subscriber in Puerto Rico.

STATEMENT OF MOTIVES

The Puerto Rico Telecommunications Regulatory Board was created by virtue of Act No. 213 of September 12, 1996, known as the Puerto Rico Telecommunications Act of 1996, as the agency in charge of regulating telecommunications services in Puerto Rico and enforcing and administering the provisions of the abovementioned Act. Upon the approval of this Act, the Legislature recognized that the telecommunications industry pursues the public purpose of providing our population adequate access to telecommunications services and to reasonable rates and charges, pursuant to the postulates of universal services established by the Federal Telecommunications Act of 1996 and its Regulations, promulgated under said Act.

The Board has primary jurisdiction over all telecommunications services and all the persons that render these services within the

Commonwealth of Puerto Rico and over any person with a direct or indirect interest in said services or companies.

The Regulatory Board, through its regulations, guarantees the availability of telecommunications services at a reasonable cost; sees to the efficiency of the telecommunications services, guarantees the continuous rendering of the services that the people need; promotes competition; allows and assures the same telecommunications privileges enjoyed by the residents of the United States mainland to Puerto Ricans; and safeguards the public interest to the maximum.

The Federal Communications Commission (FCC) determined that Section 258 of the Communications Act of 1934, endorsed by the Telecommunications Act of 1996, prohibits a telecommunications company or local exchange service or interstate long distance carrier to make changes in the telecommunications services providers of the persons without due verification of the authorization of said person. This is what the term "slamming" means. The purpose of Section 258 and of the determination made in the Report of December 23, 1992, is to eliminate said practice. The person may request a change in the telecommunications services providers, through an explicit authorization, which shall be verified by the telecommunications company or the local exchange service or long distance carrier, to prevent incurring this practice inadvertently or knowingly, and thus violating the provisions of law or regulations related to this type of fraud with the responsibilities and penalties which it entails.

This Legislature deems it necessary to approve this Act in order to assure the free selection of telecommunications services and promote the honest practice of keeping the persons informed and rendering to them the services as they have been agreed on, pursuant to what is established by the

Federal Telecommunications Act of 1996, the regulations promulgated to such effects and the objectives of the Puerto Rico Telecommunications Regulatory Board.

For such purposes, this measure has the intention of regulating certain practices of the telecommunications companies, local exchange service carriers or long distance island-wide Commonwealth carriers to guarantee the purposes pursued by this legislation.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- New subsections (p) and (q) are hereby added; and subsections (p) to (ee) are redesignated as subsections (r) to (gg) of Section 3 of Chapter I of Act No. 213 of September 12, 1996, to read as follows:

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

Section 1.- Brief Title

...

Section 3.- Definitions.

...

(p) "Imposition of Provider" ("Slamming").- shall mean to subscribe a person to the services of a telecommunications company without the person's authorization.

(q) "Imposition of an Additional Surcharge" ("Cramming").- shall mean charging a person for telecommunications services that were not expressly requested, authorized or contracted by the person.

... "

Section 2.- A new Section 5 is hereby added and Sections 5 to 12 are renumbered as Section 6 to 13 of Chapter III of Act No. 213 of September 12, 1996, to read as follows:

"CHAPTER III.- REGULATION AND SUPERVISION

Section 1.-

Section 5.- Imposition of Provider ("Slamming") or Additional Surcharge ("Cramming")

- (1) With the exception of the provisions of subsections (2) and (3) of this Section, a telecommunications company shall not charge a client for telecommunication services not requested by him/her.
- (2) Any telecommunications company that imposes a charge for services not requested shall accredit the amount or sum of said charge to the next invoice, provided that the subscriber has notified the telecommunications company that he/she did not request nor use said service.
- (3) A telecommunications company that receives a notice from the subscriber, as provided in the preceding paragraph, shall have the obligation to inform said person of his/her right to limit or block the future use of the services, and shall limit or block the future use of the services in question, if thus requested. If the subscriber requests the company not to limit or block the service, or subsequently requests that said limitation or blocking be cancelled, the subscriber shall be liable for the charges caused by the subsequent use of said services. The

telecommunications company shall not collect a recurrent charge for the limiting or blocking of the service.

- (b) Imposition of Provider ("Slamming"); fraud
 - (1) To impose, require or request a change of the telecommunications services provider of a subscriber without the verification of his/her consent shall constitute fraud.
 - (2) A person who has subscribed to a telecommunications service may avail him/herself of the remedies provided by the Law for any violation of the preceding paragraph of this Act;
 - (3) The following is provided for the purposes of subsection (1) of this section:
 - (A) the consent of the person subscribed to the telecommunications services may be verified through any method that is consistent with federal and state laws and regulations.
 - (B) Compliance with federal and state laws and regulations shall constitute a defense against an allegation of fraud, pursuant to subsection (1) of this section.
 - (C) It shall be the responsibility of the telecommunications company that requests the change in the telecommunications services provider of the subscriber, to verify the consent.
Any telecommunications company that makes a change of the telecommunications services

provider shall be liable or may be subject to prosecution under the provisions of this section, only if it participates in the process of change knowing that the due authorization of the subscriber did not exist.

Section 3.- The Puerto Rico Telecommunications Regulatory Board is hereby authorized to establish the necessary regulations to enforce the provisions of this Act.

Section 4.- Separability.- The invalidation of any part of this Act by a judicial determination shall not affect the validity of the remaining provisions.

Section 5.- Repealing Clause.- Any Act or part thereof that is not compatible with this Act is hereby repealed.

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

November 18, 1999

Luis G. Hidalgo, 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. 302 (S.B. 1650) of the 5th Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to add new subsection (p) and (q); redesignate subsections (p) to (ee) as subsections (r) to (gg) of Section 3 of Chapter I; to add Section 5; and renumber Sections 5 to 12 as Sections 6 to 13 of Chapter III of Act No. 213 of September 12, 1996, known as the "Puerto Rico Telecommunications Regulatory Board", in order to prohibit the practice of imposing additional surcharges (cramming) or a change in the service provider (slamming) without the consent of the subscriber in Puerto Rico,

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

Luis G. Hidalgo