

(H.B. 1225)  
(Reconsidered)

**(No. 138)**

(Approved November 4, 2005)

## **AN ACT**

To add a new Section 12-A to Chapter III of Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” in order to provide that the Telecommunications Regulatory Board shall have primary and exclusive jurisdiction to determine whether there has been a violation of this Act, its regulations and/or the service contract, to estimate and provide compensation for damages and losses caused by the violation of the provisions of the aforementioned Act, its regulations or the service contract for the users consumers of said telecommunications and cable services; to establish a limit to the compensation the Board is allowed to grant; and to amend Section 3 of Chapter 1 in order to add the definitions of “Damages” and “Users”; and for other purposes.

## **STATEMENT OF MOTIVES**

The Supreme Court of Puerto Rico, through an opinion issued by Associate Judge Francisco Rebollo-López, in the case of Caribe Communications, Inc. vs. Puerto Rico Telephone Co., Inc., 2002 J.T.S. 91, Opinion of June 18, 2002, determined that the Telecommunications Regulatory Board has neither express or implicit authority of law to grant compensation for damages or loss. As a result, in spite of the fact that Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” grants primary exclusive jurisdiction

over all telecommunications services and over all persons who render such services in the Commonwealth of Puerto Rico as well as over any person with direct or indirect interest in said services or companies, our body of laws demands that any controversy related to telecommunications or cable services whereby damages or losses are caused, be taken before the Court of First Instance. This limitation to the jurisdiction of the Board puts the stability of the industry at risk by creating two forums, one with and the other without the necessary expertise to simultaneously interpret such complex legislation. This Legislature believes that interpretation of the Puerto Rico Telecommunications Act of 1996 must, in the first instance, fall upon the Telecommunications Regulatory Board. For this reason legislation must be passed to clarify this matter.

Thus, and in consideration of the fact that the Telecommunications Regulatory Board is a specialized forum that has the technical knowledge needed to attend to any claim related to telecommunications and cable services, it is proper that it be granted express authority to estimate and grant compensation for damages and losses caused as a consequence of a violation of the provisions of Act No. 213. The Legislature believes that by granting said authority to the Telecommunications Regulatory Board greater access is given to the citizens to the administrative forum to claim compensation for the damages and losses they may have suffered. However, in understanding that there are certain cases of greater complexity that require the rigor and the procedural guarantees the judicial forum is able to provide, we believe it is necessary to limit the competence or jurisdiction of the Regulatory Board to grant compensation for damages and losses for up to a maximum of five thousand (5,000) dollars. Any claim that exceeds the maximum established shall be addressed in the first instance by the Board to determine whether

there was a violation of the Telecommunications Act, the regulations of said agency and/or the contract between the consumer and the telecommunications and/or the cable company. Should the Board determine, after the adjudicative process has concluded, that there was a violation, the consumer may claim damages and losses before the Court of First Instance which will determine whether said damages and losses do exist and the amount of the same. We believe that thus is clarified the doubt that might have arisen after the aforementioned decision of the Supreme Court of Puerto Rico.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.-A new Section 12-A is hereby added to Chapter III of Act No. 213 of September 12, 1996, to read as follows:

“Section 12-A.-Cases of Damages Filed by the users:

The Telecommunications Regulatory Board shall have primary and exclusive jurisdiction for adjudicating any damages and losses claim caused by any natural or juridical person to a user, except for claims between telecommunications and cable companies, as a result of violations of the provisions of this Act, the regulations approved by the Board and the service contract between the user and the telecommunications and cable company for a maximum sum of five thousand (5,000) dollars per incident. The term user shall include those persons who receive telecommunications and cable services from companies that are not telecommunications and cable companies. In those cases the Telecommunications Regulatory Board shall have primary and exclusive jurisdiction. In the case of claims over the established maximum compensation claimed, the Board shall have primary and exclusive jurisdiction to determine whether there has been a violation of this Act, its regulations and/or the service contract. If after a hearing on the

merits has been held, the Board determines that there has been a violation, it shall issue a Resolution and Order describing the same. Once the determination is final and binding, the user may file a suit for damages and losses with the Court of First Instance accompanied by a certified copy of the Resolution and Order of the Board. The Court shall determine whether damages and losses have occurred as a result of said violation and shall grant those established through sufficient evidence. In both cases the Board shall call for at least one mediation hearing to try to achieve a speedy and fair solution to the claims of the users. Regardless of what has been provided in any other provision of this or any other law, the Board shall have primary exclusive jurisdiction for elucidating any class suit filed or to be filed by the users after the effective date of this Act for violations of the provisions of this Act or the regulations of the Board or for claims related to telecommunications and cable services, provided they are not between telecommunications and cable companies. The total compensation that may be granted in these cases shall never exceed the amount between five million dollars (\$5,000,000) or half (1/2) percent of the assets of the defendant according to its books, whichever is less. The provisions of Act No. 118 of June 25, 1971, as amended shall not apply to the class suits herein mentioned. The Board shall approve regulations to adjudicate cases of class suits, which should be in agreement with the parameters established by the jurisprudence for those purposes. In the performance of its duty of adjudicating controversies related to damages and losses, the Board shall comply with the following:

- (1) The Telecommunications Regulatory Board, in harmony with Act No. 170 of August 12, 1988, as amended, known as the 'Uniform Administrative Procedures Act,' shall approve

separately, within ninety (90) days following the approval of this Act, regulations for handling the complaints of the users in which indemnity is claimed for damages and losses caused as a result of violations of the provisions of this Act, the regulations approved by the Telecommunications Regulatory Board and/or the terms of the service contract of the company.

The regulations approved by virtue of this Act shall include sufficient guarantees of due process of law that shall govern the adjudicative procedure, the introduction of evidence and the discovery of proof. At the same time adjudicative procedures shall be established to allow speedy and fair solutions.

- (2) The right to require discovery of evidence is hereby recognized to those parties in any complaint filed with the Telecommunications Regulatory Board in which compensation is claimed for damages and losses caused by violations of Act of No. 213 of September 12, 1996, as amended. The procedure shall be conducted pursuant to the provisions of the regulations approved to those effects by the Telecommunications Regulatory Board in compliance with Section 12-A of Chapter III of this Act.
- (3) The Telecommunications Regulatory Board is hereby directed to publish all its determinations about complaints for damages and losses caused by violations of Act of No. 213 of September 12, 1996, as amended, known as the Puerto Rico Telecommunications Act of 1996. The provisions herein set forth shall not be interpreted to mean that the decisions of the Telecommunications Regulatory Board on such claims shall

establish a precedent that binds the Telecommunications Regulatory Board in subsequent cases. However, prior decisions of the Telecommunications Regulatory Board that have been published pursuant to this Act may be used as guidelines for estimating any compensation for damages and losses in a subsequent case.”

Section 2.-Two new subsections (ff) and (gg) are hereby added to Section 3 of Chapter I of Act No. 213 of September 12, 1996, as amended, to read as follows:

“(ff) ‘Damages and Losses’ – shall exclusively mean the economic damages suffered by the consumer that directly arise from noncompliance with this Act, the regulations approved by the Board and/or the service contract between the consumer and the telecommunications or television cable company.

(gg) ‘User’ – shall mean a natural or juridical person that is not a telecommunications or television cable company certified by the Board that receives telecommunications or television cable services.”

Section 3.-This Act shall take effect immediately after its approval and shall have an effect on any procedure pending by this date or that is filed after the same.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 138 (H.B. 1225) (Reconsidered) of the 2<sup>nd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to add a new Section 12-A to Chapter III of Act No. 213 of September 12, 1996, as amended, known as the “Puerto Rico Telecommunications Act of 1996,” in order to provide that the Telecommunications Regulatory Board shall have primary and exclusive jurisdiction to determine whether there has been a violation of this Act, its regulations and/or the service contract, to estimate and provide compensation for damages and losses caused by the violation of the provisions of the aforementioned Act, its regulations or the service contract for the users consumers of said telecommunications and cable services; etc.,

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

In San Juan, Puerto Rico, today 9<sup>th</sup> of February of 2006.

Francisco J. Domenech  
Director