

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **MICHAEL AND**)
JEANETTE GENO against **AMERITECH MICHIGAN**)
_____)

Case No. U-12015

At the January 10, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On June 14, 1999, Michael and Jeanette Geno filed a complaint against Ameritech Michigan. In the complaint, Mr. and Mrs. Geno, who are visually impaired and rely on Braille to read printed materials, allege that various aspects of Ameritech Michigan's service and responses to their requests for assistance were inappropriate.

On September 27, 1999, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) conducted an evidentiary hearing.¹ Mr. Geno, appearing without counsel, testified, and Ameritech Michigan and the Commission Staff (Staff) also participated. Gordon Bell, an employee of the Commission's Communications Division, also testified briefly after being called as a witness by Mr. Geno. After the first day of hearings, Mr. Geno obtained counsel, and the ALJ continued the hearing until December 6, 1999. On

¹Although originally scheduled for August 4, 1999, the hearing was rescheduled twice, once by stipulation of the parties and the second time at the Genos' request.

that day, Mr. Geno completed his testimony, Ameritech Michigan presented three witnesses, Mr. Geno presented rebuttal testimony, and the record closed.

To enable the Commission to meet the statutory 210-day deadline,² which runs on January 10, 2000 in this case, the ALJ set an expedited briefing schedule that made no provision for filing reply briefs or replies to exceptions. On December 16, 1999, the Genos and Ameritech Michigan filed briefs. On December 21, 1999, the ALJ issued a Proposal for Decision (PFD) recommending that the complaint be dismissed. On January 3, 2000, the Genos filed exceptions.

In the PFD, the ALJ first determined that Mr. Geno did not provide evidence to establish that the Braille telephone bills issued to him were confusing or inaccurate or otherwise violated the Commission's billing standards. The ALJ found nothing in the record to show how the Braille bills compared to the printed bills or to demonstrate an error, mistake, or omission of information in the Braille bills. Second, the ALJ found that Mr. Geno did not support his allegations regarding Ameritech Michigan's inadequate response to his request for repair of an outage in his service. The ALJ noted that Ameritech Michigan in fact restored service in two days and rejected Mr. Geno's argument that Ameritech Michigan should have notified him that it had expedited the repair after initially advising him that it might take five days. Third, the ALJ found that Ameritech Michigan acted properly in blocking Mr. Geno's toll access due to his nonpayment of bills and agreed with Ameritech Michigan that it could have shut off Mr. Geno's telephone service altogether. Fourth, the ALJ found no violation arising from the changes in the interdigital timing, which is a switching software setting that disconnects dial tone for an outgoing call if the customer does not dial a digit within a preset duration. He determined that Ameritech Michigan did not reduce the timing

²MCL 484.2203(6); MSA 22.1469(203)(6).

interval for discriminatory or retaliatory purposes and quickly resolved problems relating to the effect of the timing on the Genos' dialing patterns once it became aware of them.

In their exceptions, Mr. and Mrs. Geno argue that a Braille bill should be equivalent in all respects with the visual print version of the bill. Mr. Geno testified that some of his Braille bills were confusing, incomplete, and inaccurate. He objected to the omission of page breaks and dollar signs that would have been readily apparent on a visual print bill. The Genos further argue that the Braille bills violated Rule 35 of the Commission's billing standards for basic residential telecommunication service, R 484.335, which specifies the information that a telephone bill must contain.

The Commission generally agrees with the ALJ's findings and analysis on the issue of whether Mr. Geno's Braille bills were the equivalent of the visual print versions. Specifically, the Commission agrees that the record failed to demonstrate that the Braille bills issued to Mr. Geno were deficient, omitted necessary information, contained inaccurate information, were confusing, or otherwise fell short of the standards set forth in the Commission's residential billing rules, R 484.301 et seq. Although the exhibits in this case include Mr. Geno's bills in both their Braille and visual print formats, neither party offered testimony or other evidence by a witness capable of reading and comparing both formats. Because the Commission does not have employees trained in Braille or other internal capabilities for reading and interpreting Braille documents, it is unable to read the Braille bills or make a comparison between the two formats. Mr. Geno's generalized assertions that he found the bills to be deficient are not persuasive without further evidentiary corroboration. Therefore, the Commission is unable to find that the Braille bills failed to include the information required by Rule 35 or were inaccurate or different from the visual print

bills. Moreover, Mr. Geno testified that later versions of his Braille bills were improved and that he did not note any discrepancies on his April 1999 bill. Tr. 93-95.

One matter that was not directly addressed in the PFD requires further discussion. During these proceedings, Ameritech Michigan responded to Mr. Geno's claims by asserting that it issues Braille bills only as a courtesy, that the visual print version of the bill is official and controls over any discrepancies with the Braille version, and that it is not responsible for any errors committed by Horizons for the Blind, a third-party contractor that prepares the Braille bills. The ALJ indicated that it was not necessary to decide whether the visual print bill was official in light of his finding that there was no evidence of discrepancies between the two versions of the bills. While the Commission adopts the ALJ's finding regarding a lack of evidence showing that the Braille bills were inaccurate or defective, it would note that some of Ameritech Michigan's arguments characterizing the validity and effect of the Braille bills were unreasonable, if not frivolous. The Commission wishes to make clear that those views are contrary to the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., (MTA) and the Commission's rules and that Ameritech Michigan should not implement those views when serving and billing visually impaired persons.

The Commission finds no merit in Ameritech Michigan's suggestion that a Braille version of a telephone bill need not be accurate, as long as it sends a parallel print version that is accurate and complies with the MTA and the billing rules. Ameritech Michigan's statement that the MTA does not expressly dictate or otherwise mention the use of Braille is technically correct, but misleading. The MTA does not directly prescribe or make specific reference to any particular medium for communicating billing information to customers. Although the rules speak more specifically to billing matters, they also do not

address whether a bill must appear in visual print form or in Braille.³ It is implausible to interpret the lack of a specific statutory or rule reference to Braille as sanctioning the failure to send a Braille bill when appropriate or the sending of an inaccurate, deficient Braille bill. Because the objective of a bill rendered in either format is to convey to a customer the amount he or she owes for service and to demand payment, a Braille bill can be no less valid than a standard printed bill for purposes of the MTA and the rules.

In its dealings with Mr. Geno, Ameritech Michigan was aware that he relied on the Braille format. It is unreasonable to assume that Ameritech Michigan could have complied with the billing requirements simply by sending him a bill in visual print form, regardless of any errors or omissions in the corresponding Braille bill. Moreover, sending inaccurate Braille bills would violate the MTA's prohibition against making "a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive." MCL 484.2502(a); MSA 22.1469(502)(a). See also R 484.322(a).

The Commission also rejects the argument that retaining an independent contractor to prepare Braille bills somehow insulates Ameritech Michigan from responsibility for inaccurate or otherwise noncomplying bills. By contracting with Horizons for the Blind to prepare Braille bills, Ameritech Michigan did not (and cannot) relinquish its responsibility to comply with the MTA and the rules.

Although there was no evidentiary showing in this case that the Braille bills issued to Mr. Geno did violate the Commission's rules, this order should be understood as an unequivocal rejection of the view

³Rule 31 requires a basic local exchange provider to "render" a bill. R 484.331. Rule 34 assumes that a bill will be rendered by "physical mailing." R 484.334.

that a Braille bill (as well as shutoff notices and other communications required by the rules) need not comply with the same requirements as the visual print version.

In their exceptions, the Genos argue that Ameritech Michigan violated Rule 31 of the Commission's rules governing telecommunication services, R 484.31, by failing to staff its business offices with persons qualified to explain and answer questions regarding Braille bills. The Commission is not persuaded that this argument has merit. If a customer calls with a question regarding a Braille bill, the problem either would affect the visual print bill as well or the two versions of the bill are not comparable. In either case, staffing the business office with persons proficient in Braille is not a practical solution.

The Genos argue that the ALJ erred in rejecting their claim regarding Ameritech Michigan's failure to notify them that it was expediting their request for repairs. However, the Genos do not point to any obligation on Ameritech Michigan's part to give such notice. Under the circumstances, the more important consideration is that Ameritech Michigan expedited the request for repairs and restored service within two days.

The Genos contend that Ameritech Michigan's imposition of toll blocking was improper for several reasons. They argue that Ameritech Michigan violated Rule 81 of the billing standards, R 484.381, by imposing toll blocking in April 1999 even though the amount they owed was in dispute. They argue that Ameritech Michigan continued to restrict their access to incoming collect calls even after they paid the disputed amount. They argue that the only advance notice of shutoff given to them was not in Braille.

The Commission finds that the ALJ properly addressed issues related to toll blocking. Rule 84(2), R 484.384(2), prohibits the provider from issuing a notice of shutoff while a formal complaint is pending. Although Mr. Geno had informally disputed his bill with Ameritech Michigan, he did not have a formal

complaint pending in April 1999. The continuation of a collect call block after Ameritech Michigan lifted the toll restriction appears to be an oversight, and Ameritech Michigan removed the block after being informed of it.

It is not clear on the record whether Ameritech Michigan sent a Braille version of the past-due notice to Mr. Geno.⁴ Because the Genos have the burden of proof, the Commission is unable to find that such a notice was not sent. However, as noted earlier, the Commission does agree that notices sent to customers receiving Braille bills should also be in Braille. It is unreasonable to expect that a visual print mailing would give a customer relying on Braille adequate notice.

The Genos argue that the software change reducing the interval for interdigital timing worked a hardship on them and that Ameritech Michigan should have notified them in advance before it performed the software upgrades. However, the record shows that Ameritech Michigan increased the timing interval for the Genos once it became aware of the problem. There is no indication that Ameritech Michigan acted improperly by failing to notify the Genos in advance of changes in switching software that had unintended and unforeseen consequences for them. The record does not support Mr. Geno's claim that any other problems he encountered in dialing his telephones are attributable to Ameritech Michigan's equipment.

The Commission FINDS that:

⁴The assertion in the Genos' brief and exceptions that Mr. Geno did not receive a Braille notice prior to the collection action in April 1999 is not accompanied by a transcript citation to Mr. Geno's testimony. Although an Ameritech Michigan witness testified that the collection process system automatically generated a past-due notice for mailing to Mr. Geno on April 9, 1999, Tr. 262-63, she did not know whether a Braille version of the notice was sent, Tr. 283-84.

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Ameritech Michigan should issue bills to visually impaired customers in accordance with the requirements of the MTA and the Commission's billing rules, as explained in this order.

c. The complaint should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the complaint is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of January 10, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated January 10, 2000 dismissing the complaint of Michael and Jeanette Geno against Ameritech Michigan, as set forth in the order.”