

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Texcom, Inc., d/b/a Answer Indiana,)	
)	
Complainant,)	
)	
v.)	File No. EB-00-MD-14
)	
Bell Atlantic Corp., d/b/a Verizon)	
Communications,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Adopted: November 26, 2001

Released: November 28, 2001

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny the above-captioned complaint filed by Texcom, Inc., d/b/a Answer Indiana (“Answer Indiana”) against Bell Atlantic Corp., d/b/a Verizon Communications (“GTE North”). Answer Indiana alleges that GTE North violated section 51.703 of our rules¹ by charging Answer Indiana for terminating traffic that transits GTE North’s network.²

II. BACKGROUND

2. Answer Indiana is a Commercial Mobile Radio Service (“CMRS”) provider offering one-way paging services to the public in the State of Indiana. GTE North is a local exchange carrier (“LEC”) offering local phone service to the public in the State of Indiana.³ GTE North serves as the interconnecting LEC for Answer Indiana’s paging facilities so that calls from the public switched

¹ See 47 C.F.R. § 51.703.

² Answer Indiana also alleged in its complaint that GTE North violated section 51.305 of our rules and sections 201, 251, and 252 of the Communication Act of 1934, as amended (the “Act”), by failing to negotiate an interconnection agreement with Answer Indiana in good faith. See *id.* § 51.305; see also 47 U.S.C. §§ 201, 251, 252. The good faith negotiation claims, however, were previously dismissed in a Letter Ruling on procedural grounds. See Letter Ruling from Frank G. Lamancusa, Deputy Chief, Market Disputes Resolution Division, File No. EB-00-MD-014 (Sep. 5, 2001).

³ See Formal Complaint of Answer Indiana, File No. EB-00-MD-014, at 3 (filed July 24, 2000) (“*Answer Indiana Complaint*”).

network can be made to Answer Indiana's paging customers.⁴ GTE North has been providing interconnection services to Answer Indiana since at least November 1996.

3. On April 12, 2000, Answer Indiana sent a letter to GTE North requesting that GTE North stop billing and issue refunds for any charges for numbers, call termination, and facilities used to deliver calls to Answer Indiana's network.⁵ On May 18, 2000, Answer Indiana sent another letter reiterating this request and indicated that it would file a complaint with the Commission alleging violations of 47 C.F.R. § 51.703(b) if GTE North failed to respond by June 5, 2000.⁶ On June 12, 2000, GTE North responded to Answer Indiana's letter, asking for more information from Answer Indiana and disagreeing with Answer Indiana's interpretation of 47 C.F.R. § 51.703(b).⁷ This complaint followed.

III. DISCUSSION

4. Our rules state that a CMRS provider (such as Answer Indiana) is not required to pay an interconnecting LEC (such as GTE North) for traffic that terminates on the CMRS provider's network if the traffic originated on the LEC's network.⁸ As we stated in the *TSR Wireless Order*, however, an interconnecting LEC may charge the CMRS carrier for traffic that transits across the interconnecting LEC's network and terminates on the CMRS provider's network, if the traffic did *not* originate on the LEC's network.⁹ In the *TSR Wireless Order*, we found that the defendant LECs had improperly charged for the delivery of LEC-originated traffic to complainants.¹⁰ We also noted that, although our rules bar a LEC from charging another carrier for the delivery of traffic from the LEC's own customers, a LEC could charge a CMRS carrier for the transport of third-party originated traffic that traversed the LEC's network on its way to the CMRS carrier's network. Citing the *Local Competition Order*, we concluded that the paging carriers were "required to pay for 'transiting traffic,' that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier's network."¹¹

⁴ See Answer of Verizon Communications, File No. EB-00-MD-014, at 8 (filed Aug. 15, 2000) ("GTE North Answer").

⁵ See *Answer Indiana Complaint* at 3, Exhibit II.

⁶ See *id.* at 3, Exhibit III.

⁷ See *id.* at 4, Exhibit V.

⁸ 47 C.F.R. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.").

⁹ See *TSR Wireless, LLC v. U S West Communications, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 11166, 11177, ¶ 19 n.70 (2000) ("*TSR Wireless Order*"), *petition for recon. dismissed*, 16 FCC Rcd 11462, *aff'd sub. nom.*, *Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

¹⁰ *TSR Wireless Order*, 15 FCC Rcd at 11176-83, ¶¶ 18-29.

¹¹ *Id.* at 11177, ¶ 19 n.70; see also 47 C.F.R. § 51.703(b), 51.709(b); see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Memorandum Opinion and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

5. Answer Indiana raises three arguments to counter the rule outlined above regarding transiting traffic. First, Answer Indiana claims that our rules do not allow LECs to charge for transiting traffic and that the *TSR Wireless Order* is, therefore, an incorrect statement of the law, insofar as the transiting traffic issue is concerned.¹² As we explain below, however, we interpret our rules to allow a LEC to charge a paging carrier for traffic that transits the LEC's network and terminates on the paging carrier's network as long as the traffic does not originate on the LEC's network.

6. Currently, our rules in this area follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers.¹³ Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the persons responsible for those calls, the LEC's customers. As we stated in the *Local Competition Order*, "[t]he local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call."¹⁴ We reflected this thinking in section 51.703(b), which bars a LEC from charging for the delivery of traffic that originates on the LEC's own network.¹⁵ In the case of third-party originated traffic, however, the only relationship between the LEC's customers and the call is the fact that the call traverses the LEC's network on its way to the terminating carrier. Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.

7. Answer Indiana further argues that where a LEC owns facilities that exchange traffic between the LEC and a CMRS carrier, section 51.709(b) bars the LEC from charging the CMRS carrier for more than the proportion of those facilities used by the CMRS carrier to send traffic *back* to the LEC.¹⁶ In the case of traffic between a LEC and a paging carrier like Answer Indiana, such a reading of section 51.709(b) effectively would prohibit all transiting traffic charges, since one-way paging companies do not originate any traffic.

8. We do not read section 51.709(b) in this manner. Section 51.709(b) governs the

¹² See *Answer Indiana Complaint* at 4–6.

¹³ See, e.g., *Local Competition Order*, 11 FCC Rcd at 15850–51, ¶ 691; see also *Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, 16 FCC Rcd 9610, 9624–28, ¶¶ 37–51 (2001).

¹⁴ *Local Competition Order*, 11 FCC Rcd at 16013, ¶ 1034.

¹⁵ 47 C.F.R. § 51.703(b) (“A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC’s network.”).

¹⁶ Section 51.709(b) of our rules states, in part, that “the rate of a carrier providing transmission facilities *dedicated* to the transmission of traffic between *two carriers* shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier’s network.” *Id.* § 51.709(b) (emphasis added).

division of the cost of *dedicated* transmission facilities between *two carriers*.¹⁷ As we stated in the *TSR Wireless Order*, “Section 51.709(b) simply applies the general principle of section 51.703(b) -- that a LEC may not impose on a paging carrier any costs the LEC incurs to deliver *LEC-originated*, intraMTA traffic, regardless of how the LEC characterizes those costs -- to the specific case of dedicated facilities.”¹⁸ The rule does not apply in the transiting traffic context, where the traffic is not “LEC-originated” but originates instead with a *third* carrier.

9. Second, Answer Indiana contends that if our rules do, in fact, allow GTE North to charge for transiting traffic that does not originate on GTE North’s network, then the Commission should consider *all* traffic that terminates on Answer Indiana’s network to have originated on GTE North’s network.¹⁹ We decline to adopt this interpretation of the term “originates” in section 51.703(b).²⁰ We have previously distinguished between the “originating” carrier from which a call begins and the “transit” or intermediate carrier that delivers that call to the terminating carrier.²¹ To adopt Answer Indiana’s definition of “originates” would vitiate the practical distinction between traffic that begins from a customer of GTE North and traffic that starts elsewhere. This distinction has a difference and we will continue to maintain the separate treatment of those types of traffic.

10. To construe section 51.709(b) to restrict transiting traffic charges would violate the cost causation principle discussed above. Our rules seek to impose the costs attributable to traffic on the carriers responsible for those calls, and ultimately, the callers making and receiving that traffic. Section 51.709(b) reflects this principle by requiring a LEC to charge a connecting carrier for dedicated transmission facilities used to carry traffic between the two carriers based solely on the amount of traffic the connecting carrier sends back to the LEC. In this manner, the two carriers split the cost of the facilities based on the amount of traffic each carrier originates and sends to the other. In the transiting traffic context, however, the LEC does not “originate” any traffic. Rather, the traffic originates with a third carrier, and terminates with the CMRS carrier. Construing section 51.709(b) to bar transiting traffic charges, therefore, would compel the LEC and its customers to bear the cost of carrying traffic to which they have no relation, and allow the terminating carrier and its customers a “free ride.” We have never interpreted section 51.709(b) to yield such a result. Accordingly, we do not agree with Answer Indiana that the term “originate” in section 51.703(b) read in conjunction with 51.709(b) bars GTE North from charging for traffic and facilities associated with transiting traffic.

11. Third, Answer Indiana claims that interconnecting LECs such as GTE North

¹⁷ See *id.*

¹⁸ *TSR Wireless Order*, 15 FCC Rcd at 11181-82, ¶ 26 (emphasis added).

¹⁹ See *Answer Indiana Complaint* at 7–11; *Answer Indiana Reply* at 6–10.

²⁰ See 47 C.F.R. § 51.703(b).

²¹ Cf. AT&T Corp. et al. for Grant of Section 214 Authority, *Memorandum Opinion and Order*, 14 FCC Rcd 19140, 19177 n.168 (1999) (“Transit allows a carrier in one country, the originating carrier, to route traffic to a carrier in another country, the destination carrier, through a carrier in a third country, the transit carrier.”).

already receive adequate compensation for carrying this traffic from other sources such as long distance carriers and other interconnecting LECs and CMRS carriers, and that permitting LECs to charge for transiting traffic allows them to recover their costs twice over.²² GTE North claims that it does not recover the cost for the facilities used to interconnect Answer Indiana from any other carrier and that our rules and previous decisions prohibit GTE North from recovering the cost of the facilities it provides to Answer Indiana except to the extent allowed under the *TSR Wireless Order*.²³

12. Answer Indiana's "double recovery" claims are deficient. The Commission has previously concluded that LECs cannot assess charges on interexchange carriers ("IXCs") for the facilities used to connect the CMRS provider's network to that of the LEC because those facilities are not common lines for purposes of the access charge rules.²⁴ Thus, access charge revenue received by GTE North from an IXC cannot lawfully include the cost of the interconnection facilities associated with transiting traffic between Answer Indiana and GTE North. Because Answer Indiana has presented no evidence indicating that GTE North's access charges do, in fact, include such costs, we conclude that GTE North is not using access charge revenue to recover twice for the same facilities.

13. The same argument holds true with respect to reciprocal compensation – the LEC that carries the call from the originating LEC to the CMRS provider is prohibited from recovering the cost associated with the facilities used to interconnect to the CMRS provider's network. Section 252(d)(2) allows for the recovery of "a reasonable approximation of the additional costs" to the terminating LEC for calls that originate on a competing LEC's network.²⁵ Pursuant to the *Local Competition Order*, "non-traffic sensitive costs should not be considered 'additional costs' when a LEC terminates a call that originated on the network of a competing carrier."²⁶ Thus, only traffic-sensitive costs can be recovered through termination charges when setting reciprocal compensation rates under section 252(d)(2).²⁷ Like common lines, the cost of the LEC-CMRS interconnection facilities do not vary in proportion to the number of calls transiting those facilities

²² See *Answer Indiana Complaint* at 5–6; see also *Texcom, Inc. d/b/a Answer Indiana's Brief*, File No. EB-00-MD-014, at 1–6 (filed Oct. 10, 2000) ("*Answer Indiana Brief*"); see also *Texcom, Inc. d/b/a Answer Indiana's Reply to the Brief of Verizon Communications*, File No. EB-00-MD-014, at 1–7 (filed Oct. 24, 2000) ("*Answer Indiana Reply*").

²³ See *Brief of Verizon Communications*, File No. EB-00-MD-014, at 5–6 (filed Oct. 10, 2000); see also *Verizon Reply Brief*, File No. EB-00-MD-014, at 2–3 (filed Oct. 24, 2000).

²⁴ See e.g., *Bell Atlantic Tel. Cos., Revisions to Tariff F.C.C. No. 1*, 6 FCC Rcd 4794, ¶ 7 (Com. Car. Bur. 1991) (prohibiting the assessment of carrier common line charges). A common line, sometimes called a "local loop," connects an end user's home or business to a LEC central office. See *AT&T Corp. v. Bell Atlantic – Pennsylvania*, 14 FCC Rcd 556, 559, ¶ 4 (1998). It is firmly established that paging carriers are not themselves end users and the lines to their facilities are not common lines. See *id.* at 583, ¶ 61; see also *Bell Atlantic Tel. Cos.*, 6 FCC Rcd 4794-95, ¶¶ 9-10.

²⁵ 47 U.S.C. § 252(d)(2).

²⁶ *Local Competition Order*, 11 FCC Rcd at 16024-25, ¶ 1057.

²⁷ *Id.* at 16024-26, ¶¶ 1056-58.

and are, therefore, non-traffic sensitive.²⁸ As a result, GTE North is prohibited from recovering the costs associated with the interconnection facilities between it and Answer Indiana through reciprocal compensation arrangements with competing LECs. Because Answer Indiana has presented no evidence indicating that GTE North's reciprocal compensation charges seek recovery for these facilities, we conclude that GTE North is not using reciprocal compensation revenue to recover twice for the same facilities.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 405, and sections 51.703(b) and 51.709(b) of our rules, 47 C.F.R. §§ 51.703(b) and 51.709(b), that Answer Indiana's Complaint IS DENIED and that this proceeding IS TERMINATED as of the Release Date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁸ *Id.* at 16024-25, ¶ 1057.