

**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.	)	

**ORDER ON RECONSIDERATION**

**Adopted:** March 25, 2002

**Released:** March 27, 2002

By the Commission:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we deny the Petition for Reconsideration of our Memorandum Opinion and Order<sup>1</sup> in the above-captioned matter filed by Texcom, Inc. d/b/a Answer Indiana (“Answer Indiana”).<sup>2</sup> In the *Answer Indiana Order*, the Commission denied Answer Indiana’s complaint alleging that Bell Atlantic Corp., d/b/a Verizon Communications (“GTE North”), an incumbent local exchange carrier (“LEC”), violated section 51.703 of our rules<sup>3</sup> by charging Answer Indiana, a commercial mobile radio service (“CMRS”) carrier, for traffic that originates on a third carrier’s network, transits GTE North’s network, and terminates on Answer Indiana’s network. In the instant Petition for Reconsideration, Answer Indiana raises several grounds to support its contention that the Commission’s decision in the *Answer Indiana Order* is erroneous. The Commission thoroughly considered and rejected all but one of these arguments in the original proceeding and Answer Indiana provides us with insufficient justification to revisit our earlier decision. The remaining argument is without merit. Accordingly, we deny the Petition for Reconsideration.

<sup>1</sup> *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum Opinion and Order, FCC 01-347 (rel. Nov. 28, 2001) (“*Answer Indiana Order*”).

<sup>2</sup> Petition for Reconsideration of Memorandum Opinion and Order, File No. EB-00-MD-014 (filed Dec. 27, 2001).

<sup>3</sup> *See* 47 C.F.R. § 51.703.

2. We also dismiss the Petition for Reconsideration of our *Answer Indiana Order* that Small Business in Telecommunications (“SBT”) filed.<sup>4</sup> SBT’s petition is substantively similar to one it filed in the *TSR Wireless* proceeding.<sup>5</sup> There, the Commission dismissed SBT’s petition because SBT, a non-party to the proceeding, failed to “state with particularity the manner in which . . . [its] interests are adversely affected by the action taken, and . . . show good reason why it was not possible . . . to participate in the earlier stages of the proceeding.”<sup>6</sup> SBT is a non-party in this proceeding as well, and its petition suffers from the same defect as the one we rejected in the *TSR Wireless* proceeding. Therefore, we dismiss SBT’s current Petition for Reconsideration.<sup>7</sup>

## II. DISCUSSION

3. This case involves only calls that travel over the networks of three carriers: the originating third-party carrier, GTE North, and then Answer Indiana. Answer Indiana contends that GTE North already receives compensation via reciprocal compensation and access charges for the facilities that interconnect GTE North’s network with Answer Indiana’s network.<sup>8</sup> Thus, according to Answer Indiana, the Commission should not allow GTE North to recover twice (or engage in “double recovery”) for these facilities.<sup>9</sup> We considered and rejected Answer Indiana’s double recovery allegations in the *Answer Indiana Order*.<sup>10</sup> Answer Indiana provides no new grounds for us to reconsider our earlier decision.

4. Nevertheless, we take this opportunity to address in additional detail Answer Indiana’s contention that GTE North already receives reciprocal compensation for the cost of the facilities that interconnect GTE North’s network with Answer Indiana’s network. Answer Indiana’s argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier. Our rules provide a mechanism for a terminating carrier, such as Answer Indiana, to recover from originating carriers the cost of the facilities at issue (transport from the point of

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<sup>4</sup> SBT Petition for Reconsideration, File No. EB-00-MD-14 (filed Dec. 28, 2001).

<sup>5</sup> SBT Petition for Reconsideration or Clarification, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (filed July 21, 2000).

<sup>6</sup> See *TSR Wireless, LLC v. U S West Communications, Inc.*, Order on Reconsideration, 16 FCC Rcd 11462, 11462–63, ¶ 2 (2001) (quoting 47 C.F.R. § 1.106(b)).

<sup>7</sup> See also *AT&T Corp. and Sprint Communications Co., L.P. v. Business Telecom, Inc.*, Order on Reconsideration, 2001 WL 1142305 (rel. Sep. 27, 2001) (dismissing non-parties’ petitions for reconsideration of a Commission order in a formal complaint proceeding on the same grounds as stated in the *TSR Wireless* Order on Reconsideration cited *supra* n.6).

<sup>8</sup> See Petition for Reconsideration of Memorandum Opinion and Order, File No. EB-00-MD-14, at 3–10, ¶¶ 5–15 (first ground regarding reciprocal compensation), 15–19, ¶¶ 25–29 (fourth ground regarding access charges) (filed Dec. 27, 2001) (“*Answer Indiana Petition*”).

<sup>9</sup> See *Answer Indiana Petition* at 3–4, ¶ 5, at 9–10, ¶ 15, at 16–19, ¶¶ 26–29, at 22–23, ¶¶ 32–33.

<sup>10</sup> See *Answer Indiana Order* at 5–6, ¶¶ 11–13.

interconnection at the LEC tandem to the terminating carrier's switch).<sup>11</sup> GTE North is not a terminating carrier, however, and as we noted in the *Answer Indiana Order*, Answer Indiana has presented no evidence that GTE North actually recovers the cost of facilities used in transiting traffic through reciprocal compensation. As we stated in the *TSR Wireless Order*, a LEC may charge a terminating carrier for the portion of facilities used to deliver transiting traffic to the terminating carrier.<sup>12</sup> Thus, GTE North may charge Answer Indiana for the cost of the portion of these facilities used for transiting traffic, and Answer Indiana may seek reimbursement of these costs from originating carriers through reciprocal compensation.<sup>13</sup>

5. Answer Indiana also argues that the Commission erred by not adopting Answer Indiana's position that GTE North is the originating carrier for *all traffic* reaching Answer Indiana's network, even that traffic that only transits GTE North's network. Answer Indiana claims that by refusing to adopt its definition of "originates" in the *Answer Indiana Order*, the Commission misconstrued the *Local Competition Order* and section 51.709(b) of our rules.<sup>14</sup> We thoroughly considered and rejected this argument in the *Answer Indiana Order*, and Answer Indiana provides no new reason to reconsider our prior conclusion.<sup>15</sup>

6. Answer Indiana reiterates its argument that footnote 70 of the *TSR Wireless Order*, stating that LECs may charge CMRS carriers for the portion of facilities used to transport transiting traffic, is a misstatement of the law and contrary to the *Local Competition Order*.<sup>16</sup> Because we fully considered and rejected this argument in the *Answer Indiana Order*, we will not address it again here.<sup>17</sup>

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<sup>11</sup> See *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, 16015, ¶ 1039 (1996) ("*Local Competition Order*") (subsequent history omitted) ("We define 'transport,' for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier). Many alternative arrangements exist for the provision of transport between the two networks . . . [including] facilities provided by alternative carriers . . ."). For purposes of reciprocal compensation, transport includes tandem switching. See 47 C.F.R. § 51.701(c).

<sup>12</sup> See *TSR Wireless, LLC v. US West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177, ¶ 19 n.70 (2000) ("*TSR Wireless Order*"), *aff'd sub. nom.*, *Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). While the cost of using the facilities at issue typically is recovered through reciprocal compensation charges to originating carriers, we note that carriers are free to negotiate different arrangements for the costs associated with indirect interconnection. See, e.g., 47 U.S.C. § 252 (a)(1).

<sup>13</sup> See 47 U.S.C. § 251(b)(5); 47 C.F.R. §§ 51.701, *et seq.*

<sup>14</sup> See *Answer Indiana Petition* at 10–12, ¶¶ 16–20 (second ground regarding *Local Competition Order*); *id.* at 12–15, ¶¶ 21–24 (third ground regarding section 51.709(b) or our rules). See also 47 C.F.R. § 51.709(b).

<sup>15</sup> See *Answer Indiana Order* at 4, ¶¶ 9–10.

<sup>16</sup> See *Answer Indiana Petition* at 20–22, ¶¶ 30–31; see *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶ 19 n.70.

<sup>17</sup> See *Answer Indiana Order* at 3, ¶¶ 5–6.

7. In its final ground for reconsideration, Answer Indiana argues that GTE North wrongfully refused to provide discovery to Answer Indiana.<sup>18</sup> Answer Indiana, however, failed to file a motion to compel or otherwise formally contest the adequacy of GTE North's discovery responses during the original proceeding. Accordingly, we decline to consider Answer Indiana's objections to the adequacy of GTE North's discovery responses at this late date.<sup>19</sup>

### III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, 405, and section 1.106 of our rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Answer Indiana IS DENIED.

9. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, 405, and section 1.106 of our rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by SBT IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

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<sup>18</sup> See *Answer Indiana Petition* at 22-23, ¶¶ 32-33.

<sup>19</sup> See 47 C.F.R. § 1.106(c).