

# **Expert Report of Larry Thompson**

*Prepared for*

*Civil No. 04-3014, U.S. District Court,  
District of South Dakota, Central Division*

***EXHIBIT 16***

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Developing a Unified Intercarrier ) CC Docket No. 01-92  
Compensation Regime )

**REPLY COMMENTS OF THE  
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION  
ON THE MISSOULA PLAN PHANTOM TRAFFIC PROPOSAL**

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**I. Introduction**

The South Dakota Telecommunications Association ("SDTA"), an association of thirty (30) rural incumbent local exchange carriers (ILECs) serving South Dakota, hereby submits reply comments in the above captioned proceeding. The Federal Communications Commission ("Commission") solicited comments from interested parties on a proposed interim process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records as contained in a written *ex parte* filed November 6, 2006, by the Supporters of the Missoula Plan<sup>1</sup>.

**II. SDTA Supports Immediate Adoption and Implementation of the Phantom Traffic Plan Submitted by the Supporters of the Missoula Plan**

The Phantom Traffic Plan (Plan) proposed in this proceeding by the Missoula Plan Supporters is an important and reasonable first step to resolving a number of long standing phantom traffic issues that have resulted in SDTA members not being properly compensated for intercarrier charges. SDTA urges the Commission to adopt and immediately implement the proposed interim phantom traffic solution outlined in the Missoula Plan and the Supplemental

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<sup>1</sup> Public Notice, DA No. 06-2294, November 8, 2006. Written *ex parte* from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, November 6, 2006. ("Phantom Traffic Plan" or "Plan").

Filing with the clarifications stated herein. This interim process will put in place steps to begin resolution of the phantom traffic problems that have plagued rural carriers for years. The Missoula Plan phantom traffic proposals require all originating carriers to include certain standard information in call detail records and/or certain call summary information with the transmission of traffic. Through the implementation of these requirements, carriers receiving traffic from transiting providers, as well as the Commission itself, would have a much more accurate and complete record of the amount and origin of terminating traffic that is subject to non-access intercarrier compensation. Adoption of the interim solution would also advance the process for this Commission's approval of a permanent phantom traffic solution.

### **III. Phantom Traffic Has Been an Ongoing Problem for SDTA Members for a Long Time**

SDTA member companies experience high rural transport costs as the result of hundreds of miles of transport between rural towns and tandems, low subscriber numbers, and lower volumes of traffic. Given these higher transport costs which naturally require higher rural carrier transport rates, originating carriers of non-access or local traffic often use the transiting services of the incumbent Regional Bell Operating Company (RBOC) operating within the LATA in sending traffic to rural carrier service areas. This is the case in South Dakota for SDTA's members.

A number of CMRS, CLECs, VoIP and other providers utilize Qwest transiting services in South Dakota to terminate non-access and also access traffic to rural ILEC exchanges. In most cases, these entities have established transiting service agreements with Qwest that facilitate the termination of this traffic. The rural ILECs have not, however, been parties to these agreements or consented to any of the terms within these agreements that resulted in traffic

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terminating to them indirectly through Qwest trunks. Thus, the rural ILECs have effectively been left with no control concerning the traffic that is delivered to their networks over transiting facilities. Much of the phantom traffic that the rural carriers receive is delivered over these Qwest transiting facilities.

The rural ILECs have struggled to get complete call detail records from Qwest and the originating carriers that utilize the Qwest transiting facilities, and at times are unable to get any records at all. Further, Qwest in its position as a transiting carrier has refused to accept responsibility for the payment of charges related to traffic that is delivered for termination over its transiting trunks. The result to the rural ILECs has been increased phantom traffic, loss of compensation, a drain on management and billing resources and frequent billing disputes with Qwest and the originating carriers.

Some of the rural carriers in South Dakota have spent thousands of dollars on Signaling System 7 (SS7) traffic analyzers and phantom traffic studies in an effort to quantify the amount of traffic that is terminated to them without sufficient call detail information. The carriers also spend growing amounts on consultants and attorneys in the review of their phantom traffic issues and in efforts to collect amounts due for the usage of their networks. Often, however, for a significant percentage of terminated telecommunications traffic, the rural ILECs are unable to obtain enough information to identify the carriers, determine the jurisdiction or type of traffic, or bill a carrier at all.

Without rules in place to force originating and/or transiting carriers to provide adequate call detail information, such as that proposed by the Missoula Plan, rural ILECs will be unable to address in any satisfactory way the phantom traffic issues they face. Presently, rural carriers are doubly damaged by the phantom traffic problem. They not only often lose the carrier

compensation related to the phantom traffic that is due, they often incur substantial expense in their attempts to identify, bill and collect payment for such traffic. Even in situations where the terminating rural carriers have identified billable traffic through phantom traffic studies, they often struggle to collect it due to the lack of enforcement mechanisms available to them and the high cost of pursuing billing disputes against responsible carriers.

The magnitude of the problem can be seen by the increase in intercarrier billing disputes brought before the South Dakota Public Utilities Commission.<sup>2</sup> It is also evident by the fact that the South Dakota Legislature has attempted to alleviate the phantom traffic problem through the enactment of laws that require appropriate signaling information to be forwarded to terminating carriers.<sup>3</sup> Yet, even these laws at the state level have not led to a resolution of the phantom traffic problems for the rural ILECs in South Dakota, as the carriers are now incurring substantial expenses to defend the state laws in the federal courts.<sup>4</sup>

It is time for the FCC to end these historic abuses that result in traffic being dumped on the network facilities of small rural carriers without knowledge or participation in any intercarrier agreements and without assurance that sufficient information will be provided to allow for a billing of the carrier that is financially responsible for the delivery of the telecommunications traffic. Phantom traffic problems desperately need to be addressed and addressing issues related to the identification of telecommunications traffic is an essential prerequisite to proceeding ahead with other Missoula Plan proposals. FCC rules are needed now.

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<sup>2</sup> TC06-181 In the Matter of the Petition of Venture Communications Cooperative for Suspension or Modification of Local Dialing Parity Reciprocal Compensation Obligations, TC05-001 In the Matter of the Complaint filed by WWC License LLC against Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Sioux Valley Telephone Company, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Kadoka Telephone Company Regarding Intercarrier Billings, and CT05-002 In the Matter of the Complaint filed by WWC License LLC against Venture Communications Cooperative Regarding Intercarrier Billings

<sup>3</sup> South Dakota Codified Laws §§ 49-31-109 to 49-31-114.

Allowing the abuses associated with unidentified traffic to continue results in an anti-competitive, un-level playing field as certain carriers receive a free ride on landline networks and gain advantage over other carriers that appropriately pay for transport and/or termination services. Competitive advantage is also gained because the rural carriers are ultimately forced to pass on costs associated with phantom traffic to their end-user subscribers making them less competitive as retail local service providers.

#### **IV. Clarifications to the Proposed Phantom Traffic Plan**

**A. Enforcement Mechanisms.** In adopting the Phantom Traffic Plan, SDTA urges the Commission to clarify the specific enforcement mechanisms that would be available to carriers that receive traffic without the mandated call detail information, or that would apply when some other violation of the phantom traffic rules makes it impossible to render an appropriate bill for terminated traffic. This should include FCC fines for willful violations and the collection of damages, interest, and litigation expenses for other violations. The Commission should utilize Section 503(b) of the Communications Act to impose forfeitures of up to \$100,000 per violation, or per day of continuing violation (up to a \$1 million maximum) in cases where carriers engage in willful or repeated violations of the phantom traffic rules or orders. Willful violations would include situations where a carrier intentionally misroutes traffic on an inappropriate trunk or strips call detail that is necessary to bill the call.

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<sup>4</sup> Civil Number 04-3014 Verizon Wireless, etc. al, Plaintiff, vs. Bob Sahr, Gary Hanson, and Dustin Johnson, in their official capacities as the Commissioners of the South Dakota Public Utilities Commission, Defendants.

Further, it should be clarified to what extent complaints related to Phantom Traffic would be filed with and handled by State Commissions.

**B. Call Detail Record Content.** Section II.D. of the Plan lists the Call Detail Record (CDR) content, including the Call Date, Calling Party Telephone Number, Called Party Telephone Number, Sending Carrier ID (OCN or CIC), and the Call Duration. SDTA would urge the Commission to clarify that this information should also include Call Start and End Times and Conversation Start and End Times so that Terminating LECs will have the ability to audit originating or transiting carrier records or to perform traffic studies. Any audit or traffic study includes a call detail matching processes between the terminating LEC's switch records and the billing information received from the tandem transit provider or originating carrier. However, it is often difficult to receive this information from the transit provider or originating carrier so that the call matching process can be performed. The Call Start and End Times and the Conversation Start and End Times are already included in most Call Detail Records, so SDTA would like the Commission to clarify that this information should be included in the CDRs that are forwarded to terminating LECs.

**C. Requirement to Establish Separate Trunk Groups for Non-Access Traffic (Phantom Traffic Plan, Section III.C.).** SDTA agrees that establishing a separate trunk group for non-access traffic where a LEC is not LNP capable would be a good method to clearly record and



distinguish between access and non-access traffic. However, consistent with other provisions in the Missoula Plan that are intended to fairly limit the transport obligations imposed on “Covered Rural Telephone Companies” (CRTCs), the imposition of this additional requirement should not require rural LECs to bear additional transport costs associated with facilities extending beyond their service areas. Historically, rural LECs have not had any interexchange transport obligations and, being distant from the LATA tandem, many do not even have their own facilities reaching the tandem location. If the separate trunk requirement related to LNP queries is adopted, it must also be clarified that it does not affect the CRTC transport responsibilities as otherwise described in the plan. Imposition of the requirement should not impose additional transport costs on rural LECs extending all the way to the Transit Provider’s tandem switch.

- D. Charges for Call Detail Records.** SDTA would also like the Commission to clarify that the Call Detail Record (CDR) charge of \$0.0025 to be billed by Transit Providers, as described in III.F.2.c., would not be included in the Commission’s final Missoula Plan ruling. This rate is acceptable for the interim plan. However, the rate in the final plan, if any, should be based on the actual costs of providing the CDRs or should become a part of the transit rate itself.

## V. Conclusion

SDTA urges the Commission to adopt and implement the interim portions of the Missoula Group Phantom Traffic Plan immediately in order to implement mandatory procedures that will allow for the effective creation and distribution of uniform call records. The proposed procedures should reduce the incidences of calls transmitted without sufficient call detail information and should permit terminating carriers to correctly bill the carrier responsible for payment.

SDTA further urges the Commission to consider certain clarifications to the rules, as set forth above.

Respectfully Submitted,

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