

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH DAKOTA
3 SOUTHERN DIVISION
4 * * * * * Case Civ. 10-4110
5 SPRINT COMMUNICATIONS COMPANY, L.P.,
6 Plaintiff,
7 -vs-
8 NATIVE AMERICAN TELECOM, LLC;
9 B.J. JONES, in his official capacity
10 as Special Judge of Tribal Court; and
11 CROW CREEK SIOUX TRIBAL COURT,
12 Defendants.
13 U.S. District Courthouse
14 Sioux Falls, SD
15 March 3, 2011, 9:00 a.m.
16 * * * * *
17 MOTION HEARING
18 * * * * *
19 BEFORE: The Honorable Karen E. Schreier
20 U.S. District Court Judge
21 APPEARANCES:
22 Mr. Scott G. Knudson
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-and-
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14 INDEX TO WITNESS
15 Witness Direct Cross Redirect Recross
16 DEPENDANTS'
17 Carlos Cestero 9 64 110 123
18 130
19 By The Court 103
20 Peter Lengkeek 135 160 172 179
21
22 PLAINTIFF'S
23 Amy Clouser 182 190
24
25

INDEX TO EXHIBITS

OFFERED	RECEIVED
Exhibit 1 26 (First Dakota Bank statement, 8-31-09)	27
Exhibit 2 26 (First Dakota Bank statement, 9-30-09)	27
Exhibit 3 26 (First Dakota Bank statement, 10-30-09)	27
Exhibit 4 26 (First Dakota Bank statement, 11-30-09)	27
Exhibit 5 26 (First Dakota Bank statement, 12-31-09)	27
Exhibit 6 26 (First Dakota Bank statement, 1-29-10)	27
Exhibit 7 26 (First Dakota Bank statement, 2-26-10)	27
Exhibit 8 26 (First Dakota Bank statement, 3-31-10)	27
Exhibit 9 26 (First Dakota Bank statement, 4-20-10)	27
Exhibit 10 26 (First Dakota Bank statement, 5-28-10)	27
Exhibit 11 26 (First Dakota Bank statement, 6-30-10)	27
Exhibit 12 26 (First Dakota Bank statement, 7-30-10)	27
Exhibit 13 26 (First Dakota Bank statement, 8-31-10)	27
Exhibit 14 26 (First Dakota Bank statement, 9-30-10)	27
Exhibit 15 26 (First Dakota Bank statement, 10-31-10)	27

Exhibit 16 26 (First Dakota Bank statement, 10-31-10)	27
Exhibit 17 26 (First Dakota Bank statement, 10-31-10)	27
Exhibit 18 26 (First Dakota Bank statement, 10-31-10)	27
Exhibit 19 26 (Wells Fargo Bank statement, 7-31-10)	27
Exhibit 20 26 (Wells Fargo Bank statement, 8-31-10)	27
Exhibit 21 26 (Wells Fargo Bank statement, 9-30-10)	27
Exhibit 22 26 (Wells Fargo Bank statement, 10-31-10)	27
Exhibit 23 26 (Wells Fargo Bank statement, 11-30-10)	27
Exhibit 24 26 (Wells Fargo Bank statement, 12-31-10)	27
Exhibit 25 26 (Wells Fargo Bank statement, 1-31-11)	27
Exhibit 26 44 (Balance Sheet for NAT, 12-31-10)	44
Exhibit 27 48 (Support for amount on Balance Sheet due)	49
Exhibit 28 52 (Balance Sheet for NAT, 1-31-11)	52
Exhibit 29 201 (Jobs created by NATS)	201
Exhibit 30 201 (Access Service, Regulations Rates and Charges, etc)	201

1 Exhibit A 71 71
 (NAT's responses - Bates 0001 through 00083)
 2 Exhibit B 82 83
 (Affidavit of Carlos Cestero)
 3 Exhibit C 91 91
 (NAT's Answers to Plaintiff's First Set of Interrogatories)
 4 Exhibit D 99 99
 (Profit/Loss Statement for NAT, January 2011)
 5 Exhibit E 101 101
 (Pages from bank statements)
 6 Exhibit F 186 186
 (Terminating OCN 424F, Type FGD, dialed telephone numbers,
 7 12-1 through 12-31-10)
 8
 9
 10
 11
 12
 13
 14
 15
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1 THE COURT: This is the time scheduled for a
 2 hearing in the matter entitled United States of America vs.
 3 Sprint -- I'm sorry, Sprint Communications Company vs.
 4 Native American Telecom. I'm used to the United States
 5 being a party. It just came out.
 6 Would counsel please note their appearances for
 7 the record?
 8 MR. SWIER: Good morning, Your Honor. Scott
 9 Swier, appearing on behalf of the Defendant in this case,
 10 Native American Telecom, an LLC.
 11 MR. KNUDSON: Scott Knudson and Tom Tobin for the
 12 Plaintiff, Sprint Communications, and with us, before the
 13 rail, is Bret Lawson, in-house counsel for Sprint
 14 Communications.
 15 THE COURT: Thank you. Before I take up the
 16 Motion for a Preliminary Injunction, I wanted to raise an
 17 issue.
 18 The Native American Telecom filed a Motion to Amend
 19 its Answer and to add Counterclaims. I know this was just
 20 filed within the last week. I was wondering if Sprint was
 21 going to be objecting to that, or if you would need the
 22 rest of your time to determine whether you would be
 23 objecting.
 24 MR. KNUDSON: Your Honor, we would stipulate to
 25 its filing. That would obviate the need for the Court to

1 rule on our opposition.
 2 THE COURT: All right. Then the Motion to Amend
 3 the Answer and to add Counterclaims is granted.
 4 One other issue I wanted to raise, in Sprint's
 5 Objections to the Motion for Preliminary Injunction, one of
 6 the arguments that you had raised was that Native American
 7 Telecom didn't have any claim for relief that was pending.
 8 So, therefore, the Court couldn't grant preliminary
 9 injunction.
 10 I was wondering if the fact they have now amended
 11 their Answer and added the Counterclaims, does that moot
 12 out that issue, or do you still have that particular issue?
 13 MR. KNUDSON: I believe that resolves that issue.
 14 THE COURT: Okay. Now that we've dealt with
 15 those procedural things. Since Native American Telecom is
 16 the moving party, you have the burden of proof. So you can
 17 go ahead and proceed, Mr. Swier.
 18 MR. SWIER: Thank you, Your Honor. If it's
 19 appropriate with the Court, I think that there's no need
 20 for an opening statement, because the Court is familiar
 21 with the case. So if we could start with our witnesses, I
 22 would ask the Court to do that.
 23 THE COURT: All right. Mr. Knudson, did you have
 24 something?
 25 MR. KNUDSON: Well, there were a Motion for

1 Protective Order and a corresponding Motion to Compel that
 2 had been filed before. I don't know if the Court intends
 3 to bring those up or address those today, as well.
 4 THE COURT: I didn't plan on addressing those
 5 today. I was just going to allow the parties to respond in
 6 normal course, and then I would enter a written ruling on
 7 those.
 8 MR. KNUDSON: Then I will address those issues in
 9 my argument later today then.
 10 THE COURT: Okay. Mr. Swier?
 11 MR. SWIER: Thank you. Your Honor, at this time
 12 I would ask if the parties have any witnesses for their
 13 case in chief, that those witnesses be sequestered, please.
 14 THE COURT: The Motion to Sequester all witnesses
 15 is granted, except for the corporate representative would
 16 be allowed to stay in. I assume he is the corporate
 17 representative.
 18 MR. KNUDSON: He is.
 19 THE COURT: Okay.
 20 MR. SWIER: Your Honor, if I may, Mr. Lengkeek is
 21 serving as the corporate representative today, and he will
 22 also be one of my witnesses. May he be allowed to sit with
 23 me?
 24 THE COURT: He may.
 25 MR. KNUDSON: Excuse me. What is Mr. Lengkeek's

1 status then?

2 THE COURT: He is the corporate representative.

3 Is he also your first witness?

4 MR. SWIER: He'll be my second witness,

5 Your Honor. At this time I'll ask Carlos Cestero to please

6 take the stand.

7 Your Honor, what I've done is I've provided

8 Mr. Cestero with the original exhibits. I've also provided

9 copies of the exhibits both to the Court and to opposing

10 counsel, so everyone is working off the same page.

11 THE COURT: All right.

12 CARLOS CESTERO,

13 called as a witness, being first duly sworn, testified as

14 follows:

15 DIRECT EXAMINATION

16 BY MR. SWIER:

17 Q. Good morning, Mr. Cestero. Would you please introduce

18 yourself to the Court?

19 A. Sure. My name is Carlos Cestero.

20 Q. And would you, please, spell your name for the Court

21 and the court reporter?

22 A. Sure. C-A-R-L-O-S. Last name is C-E-S-T-E-R-O.

23 Q. I'll refer to you as Carlos. Is that all right?

24 A. That's fine.

25 Q. Carlos, what's your business address?

1

2

3 THE COURT: Counsel, if I could just remind you,

4 anytime you have somebody give their complete business

5 address, you'll have to do a redaction of the transcript.

6 So unless there's a real need to have their entire business

7 address, and unless you really want to do redactions to the

8 transcript, you don't need to ask for a formal address.

9 MR. SWIER: I will not ask again, Your Honor.

10 Thank you.

11 BY MR. SWIER:

12 Q. Carlos, would you share with the Court your

13 educational background, please?

14 A. Sure. After high school, I went to college at

15 California State University Long Beach, where I graduated

16 with an accounting degree.

17 Q. What year did you graduate with your accounting

18 degree?

19 A. 1994.

20 Q. Since you graduated Cal State Long Beach in '94, have

21 you been working in your related accounting field?

22 A. Yes, I have.

23 Q. Carlos, would you share with us your employment

24 history since you graduated from college?

25 A. Sure. My first job out of college was at a company

1 called Balboa Capital. I worked there for about nine and a

2 half years.

3 Q. What did you do at Balboa Capital?

4 A. I had a variety of different things. I was an

5 accountant. I handled the securitization accounting, cash

6 management. I handled the funding operations, as well as I

7 was the COO during the last few moments of my tenure there.

8 Q. Just remember, for the court reporter, please slow

9 down.

10 A. All right.

11 Q. Carlos, what did Balboa do?

12 A. They are an equipment leasing company.

13 Q. You shared with us your duties there. How long were

14 you with Balboa?

15 A. About nine and a half years.

16 Q. When did you leave Balboa?

17 A. About 2005.

18 Q. Why did you leave Balboa?

19 A. I found another position at another company.

20 Q. When you left Balboa, what was your next employment

21 opportunity?

22 A. It was a company called Nationwide Funding.

23 Q. What does Nationwide Funding do?

24 A. Equipment leasing.

25 Q. What were your duties at Nationwide?

1 A. I was the CFO.

2 Q. What duties entailed the CFO position?

3 A. That would involve managing all the accounting

4 records, the bookkeeping, journal entries, reconciliations,

5 anything related to a normal controller/CFO type of

6 position.

7 Q. How long were you in that position?

8 A. About two years.

9 Q. After you left, was it Nationwide?

10 A. Yes.

11 Q. After you left Nationwide, what was your next

12 employment opportunity?

13 A. I went to work for a company called Strada Capital

14 Corporation.

15 Q. Can you spell that, please?

16 A. S-T-R-A-D-A C-A-P-I-T-A-L Corporation.

17 Q. What did you do at Strada?

18 A. Strada, I was their chief operating officer, as well

19 as their controller.

20 Q. How long were you at Strada?

21 A. For about three years almost.

22 Q. Describe for us your day-to-day duties at Strada.

23 A. I managed the books, handled the operational side of

24 the business, did the reconciliations, did all the record

25 keeping. Normal controller/CFO-type responsibilities.

1 Q. And you left Strada when?
 2 A. 2009.
 3 Q. Why did you leave Strada in 2009?
 4 A. For another opportunity.
 5 Q. What was that opportunity?
 6 A. Free Conferencing Corporation.
 7 Q. And is Free Conferencing Corporation your current
 8 employer?
 9 A. Yes, they are.
 10 Q. Is Free Conferencing Corporation located in
 11 Long Beach, California?
 12 A. That's correct.
 13 Q. Carlos, since graduating with your accounting degree
 14 in 1994, how many years of experience do you have in the
 15 accounting and controller type business?
 16 A. About 16 years.
 17 Q. Carlos, when did you begin your controller duties at
 18 FreeConferenceCall?
 19 A. September of 2009.
 20 Q. Real briefly for the Court, what does the controller
 21 of FreeConferenceCall do? What do you do?
 22 A. I maintain the books, I do all the reconciliations,
 23 prepare the financial statements, record cash receipts,
 24 payables, typical controller duties.
 25 Q. You are the bean counter.

1 A. So to speak, yes.
 2 Q. Carlos, who do you get paid by each month?
 3 A. Free Conferencing Corporation.
 4 Q. So Free Conferencing Corporation is the entity that
 5 actually pays your salary?
 6 A. That's correct.
 7 Q. In addition to your duties with FreeConferenceCall, do
 8 you also serve as the controller for any other entities?
 9 A. I do.
 10 Q. We're going to go through those in a second. Are you
 11 paid any type of money to do the work for those entities?
 12 A. No, I'm not.
 13 Q. Let's talk about those other entities you serve in
 14 this role. What would be the first one?
 15 A. Free Conferencing Corporation.
 16 Q. You told us what you do for that.
 17 A. Yes.
 18 Q. What other entities do you serve as the controller or
 19 the bookkeeper?
 20 A. Native American Telecom.
 21 Q. Native American Telecom, LLC, the party that's a
 22 Defendant in this case?
 23 A. Yes.
 24 Q. Carlos, just for sake of shortening things up, if I
 25 refer to Native American Telecom, LLC, as NAT, is that

1 sufficient?
 2 A. Yes.
 3 Q. You'll know what I'm talking about?
 4 A. Yes.
 5 Q. What other entities do you serve as the controller?
 6 A. WideVoice Communications.
 7 Q. What other groups?
 8 A. FreeConferenceCall Global.
 9 Q. Anyone else?
 10 A. Wyde Voice, spelled slightly different, W-Y-D-E. They
 11 are a conferencing bridge company.
 12 Q. Just to make clear, there are two companies called
 13 WideVoice.
 14 A. That sound the same, yes.
 15 Q. One is spelled W-Y-D-E?
 16 A. Correct.
 17 Q. Any other entities you serve as controller for?
 18 A. Yes. HDPSTN.
 19 Q. Can you say that one more time?
 20 A. HDPSTN.
 21 Q. I want to talk about what you do for WideVoice
 22 Communications, the W-I-D-E Voice Communications. What's
 23 the purpose of WideVoice Communications?
 24 A. They are a telephone carrier.
 25 Q. What is the purpose of FreeConferenceCall Global?

1 A. It's a conferencing company.
 2 Q. What is the purpose of Wyde Voice with a Y?
 3 A. It's a conferencing bridge company.
 4 Q. What's the purpose of HDPSTN?
 5 A. They are a telephone company.
 6 Q. Do you know what HDPSTN is the acronym for?
 7 A. Yes.
 8 Q. What is that?
 9 A. It's High Definition Public Switch Telephone Network.
 10 Q. So, Carlos, at this time, just to make sure we
 11 clarify, your actual job that you get paid for is to act as
 12 the controller of FreeConferenceCall. Correct?
 13 A. Correct.
 14 Q. But you also serve as the controller for these other
 15 entities that we've discussed?
 16 A. That's correct.
 17 Q. As an accountant, do you keep separate books for each
 18 of those respective entities?
 19 A. Absolutely.
 20 Q. Explain to the Court the mechanics of how that's done.
 21 A. First, we maintain separate databases. We also have
 22 separate file cabinets, separate file folders. Basically
 23 everything is separated.
 24 Q. Explain to the Court why that separation between the
 25 entities is important.

1 A. Well, to maintain the proper internal controls.
 2 Q. What do you mean by "proper internal controls"?
 3 A. You want to make sure nothing is mixed in with
 4 anything else. You want to keep things separated and
 5 segregated from one another.
 6 Q. When you are dealing with multiple entities like that,
 7 is that a fundamental purpose of accounting practice, to
 8 make sure you keep that separation very strict?
 9 A. Yes.
 10 Q. Carlos, in your 16 years of accounting and controller
 11 experience, have you ever deviated from those fundamental
 12 separation principles?
 13 A. No.
 14 Q. Not once?
 15 A. No.
 16 Q. Since you started working for FreeConferenceCall in
 17 2009, and for the other entities later on, have you always
 18 followed those fundamental separation principles?
 19 A. Yes.
 20 Q. Carlos, one of the entities you do the accounting work
 21 for is, of course, NAT, Native American Telecom. Is that
 22 right?
 23 A. Yes.
 24 Q. Explain to Judge Schreier what you do for NAT.
 25 A. I maintain the books, record all the cash receipts,

1 maintain the payables, reconcile the accounts, prepare the
 2 financial statements, normal controller/accounting
 3 responsibilities.
 4 Q. When did you take over that role for NAT?
 5 A. It was in late July of 2010.
 6 Q. So about eight months ago?
 7 A. About, yes.
 8 Q. Why did you take over that controller role for NAT?
 9 A. It was basically to -- it was a cost efficiency move,
 10 and it allowed for us to maintain the proper controls.
 11 Q. Before you took over the book work for NAT -- strike
 12 that question. So you did it for a cost effectiveness and
 13 efficiency purpose. Is that right?
 14 A. Sure, yes.
 15 Q. Carlos, I want to talk about NAT a little bit. Will
 16 you describe for us what you understand the ownership
 17 structure of NAT to be?
 18 A. Would I describe it?
 19 Q. Yes. How is the ownership structure of NAT set up?
 20 A. There's three separate entities. Would you like me
 21 to --
 22 Q. So there's three separate entities. Who is the
 23 majority owner of NAT?
 24 A. The Crow Creek Sioux Tribe.
 25 Q. Do you know what percentage of NAT the Tribe owns?

1 A. Yes.
 2 Q. What is that percentage?
 3 A. 51 percent.
 4 Q. So they are the majority owner?
 5 A. Yes.
 6 Q. You said there were three total entities?
 7 A. Yes.
 8 Q. We have the first one. What is the second entity that
 9 owns NAT?
 10 A. WideVoice Communications.
 11 Q. What percentage of NAT does WideVoice Communications
 12 own?
 13 A. 24 percent.
 14 Q. Again, WideVoice Communications, their purpose, or
 15 what do they do, Carlos?
 16 A. They are a telephone carrier. They transport traffic.
 17 Q. What is the third entity that has an ownership
 18 interest in NAT?
 19 A. Native American Telecom Enterprise.
 20 Q. What does that entity own, what percentage?
 21 A. They have 25 percent.
 22 Q. Just so we're clear, because the names start to get
 23 confusing, Native American Telecom Enterprise, is that a
 24 separate and distinct entity from NAT?
 25 A. Yes, it is.

1 Q. They own what percentage again, Native American
 2 Telecom Enterprise?
 3 A. 25 percent.
 4 Q. Carlos, I want to talk a little bit about the record
 5 keeping and the books you maintain for NAT. Who has access
 6 to NAT's financial books?
 7 A. Myself.
 8 Q. What if something happens to you? Are there codes set
 9 up with another person so they could access the financials?
 10 A. Yes, my assistant.
 11 Q. Tell me how that code thing works. Is it kind of a
 12 backup?
 13 A. Yes, it's a backup.
 14 Q. Is that standard in the accounting industry?
 15 A. Yes. You want to make sure someone can access things
 16 if you're absent or something happens to you.
 17 Q. Carlos, do you receive any payment for the services
 18 you provide to NAT?
 19 A. No, I do not.
 20 Q. Do you understand why that is?
 21 A. Native American Telecom cannot afford to pay for an
 22 outside accountant.
 23 Q. I want to talk about these internal controls a little
 24 bit, and let's go back to the entities you do work for.
 25 FreeConferenceCall. Who has check-writing authority

1 for FreeConferenceCall?
 2 A. David Erickson and Sue Erickson.
 3 Q. Does David Erickson serve as the CEO for
 4 FreeConferenceCall?
 5 A. Yes, he does.
 6 Q. Who is Sue Erickson?
 7 A. His wife.
 8 Q. You also do accounting work for WideVoice, W-I-D-E
 9 Voice. Who has check-writing authority for that entity?
 10 A. Dave Erickson, Sue Erickson, and Patrick Chicas.
 11 That's spelled C-H-I-C-A-S.
 12 Q. For FreeConferenceCall Global, who has the
 13 check-writing authority for that entity?
 14 A. David Erickson and Sue Erickson.
 15 Q. Who has check-writing authority for Wyde Voice with a
 16 Y?
 17 A. David Erickson and Sue Erickson.
 18 Q. Who has check-writing authority for HDPSTN?
 19 A. David Erickson and Sue Erickson.
 20 Q. For Native American Telecom, for NAT, who has the
 21 check-writing authority for that entity?
 22 A. Myself and Jeff Holoubek. H-O-L-O-U-B-E-K.
 23 Q. Does David Erickson have any check-writing authority
 24 for NAT?
 25 A. No, he does not.

1 Q. Does Sue Erickson have any check-writing authority for
 2 NAT?
 3 A. No, she does not.
 4 Q. Does Mr. Chicas have any check-writing authority for
 5 NAT?
 6 A. No, he does not.
 7 Q. Carlos, in front of you are a number of exhibits. I
 8 would like you to take a look at those exhibits, if you
 9 would, please.
 10 A. Sure.
 11 Q. I would first like you to take a look at Defendant's
 12 Exhibit No. 1. Can you tell the Court what that exhibit
 13 shows?
 14 A. Sure. It's the bank statements for Native American
 15 Telecom for the First Dakota National Bank ending
 16 8-31-2009.
 17 Q. Let's clarify this. Since Native American Telecom
 18 became an entity, how many checking accounts has NAT had?
 19 A. Two.
 20 Q. Was the First Dakota National Bank checking account
 21 the first one?
 22 A. Yes, it was.
 23 Q. First Dakota National Bank is obviously based here in
 24 South Dakota?
 25 A. Yes, it is.

1 Q. Carlos, I'd like you to take a look at Defendant's
 2 Exhibit 1, because I want to show some of the financial
 3 status of NAT. What is the date of Exhibit 1?
 4 A. It's 8-31-2009.
 5 Q. For this bank statement, what is the deposit?
 6 A. We're showing a deposit of \$100.
 7 Q. Carlos, are you aware of what switched access fees
 8 are?
 9 A. Yes.
 10 Q. What are they?
 11 A. It's the payments that are made for traffic generated.
 12 Q. Is that the business that NAT is involved in, part of
 13 their business?
 14 A. Yes.
 15 Q. Carlos, can you tell, by looking at these bank
 16 statements, if the deposits NAT receives come from those
 17 switched access fees?
 18 A. Should be able to, yes.
 19 Q. The hundred dollars that's in Exhibit 1, is that from
 20 a switched access fee payment?
 21 A. No.
 22 Q. Do you know where that comes from?
 23 A. I can't tell from here, but I know it's not a switched
 24 access.
 25 Q. So the first month of operation, there's a hundred

1 dollar deposit. Is that right?
 2 A. Yes.
 3 Q. I would like you now to look at Defendant's Exhibit
 4 No. 2. This is another banking statement from First
 5 Dakota?
 6 A. Yes.
 7 Q. What's the date of Exhibit 2?
 8 A. 9-30-2009.
 9 Q. What does that bank statement show for a deposit?
 10 A. It shows a deposit of \$50.
 11 Q. Based on your knowledge, is that a deposit that was
 12 derived from receiving switched access fees?
 13 A. No, it was not.
 14 Q. If you would now take a look at Defendant's Exhibit
 15 No. 3. What is the date of this banking statement?
 16 A. October 30, 2009.
 17 Q. What type of deposit did NAT receive in that month?
 18 A. They received \$140.
 19 Q. Based on your review of Exhibit 3, did that \$140
 20 derive from switched access fees?
 21 A. No, it did not.
 22 Q. If you'd now please take a look at Defendant's Exhibit
 23 No. 4. What is the date of that banking statement?
 24 A. November 30, 2009.
 25 Q. What is the deposit under Exhibit 4?

1 A. \$65.
 2 Q. Again, based on your review, did that \$65 derive from
 3 any type of switched access fees?
 4 A. No, it did not.
 5 Q. Defendant's Exhibit No. 5. What's the date of that
 6 bank statement?
 7 A. 12-31-2009.
 8 Q. The deposit in Exhibit 5 shows how much?
 9 A. It shows total deposits of \$5,040.
 10 Q. Can you tell, by looking at the bank statement, where
 11 the large majority of that money came from?
 12 A. Yes.
 13 Q. Where?
 14 A. It came from WideVoice. It was a loan to NAT.
 15 Q. So that \$5,000 of that \$5,040 was a loan from
 16 WideVoice?
 17 A. Correct.
 18 Q. Do you know if that loan WideVoice made to NAT was
 19 ever paid back?
 20 A. Yes, it was.
 21 Q. When was it paid back?
 22 A. I believe it was paid back in February sometime.
 23 Q. Of?
 24 A. 2010.
 25 Q. The extra \$40 of that \$5,040, did that derive from

1 switched access fees?
 2 A. No, it did not.
 3 MR. KNUDSON: Your Honor, is he going to offer
 4 these as exhibits?
 5 MR. SWIER: I was going to offer them at the end.
 6 I can offer each one individually, if you'd like.
 7 MR. KNUDSON: I just wanted clarification, since
 8 he's testifying from the exhibits before they are admitted.
 9 I don't have any objection to their admission.
 10 THE COURT: Why don't you offer them all at this
 11 point. Then if he has an objection, I can take up the
 12 objection.
 13 MR. SWIER: Thank you. Your Honor, at this time
 14 I would move to admit Defendant's Exhibits 1 through I
 15 believe it's 29.
 16 THE COURT: Why don't we just do the bank records
 17 at this point.
 18 MR. SWIER: Then, Your Honor, we would offer
 19 Defendant's Exhibits 1 through 25.
 20 THE COURT: Any objection to 1 through 25?
 21 MR. KNUDSON: Before I respond, Your Honor, I
 22 would like to add that I will also be using an exhibit that
 23 will be the same records, but they are numbered, and I will
 24 be referring to them by that identification number so it
 25 will move my interrogation along more quickly. I don't

1 object to his exhibits as to bank records.
 2 THE COURT: All right. Exhibits 1 through 25 are
 3 received.
 4 MR. SWIER: Thank you, Your Honor.
 5 BY MR. SWIER:
 6 Q. Carlos, I would now like you to look at Exhibit 6.
 7 What's the date of that banking statement?
 8 A. January 29, 2010.
 9 Q. What does that bank statement show as far as deposits
 10 for NAT?
 11 A. Zero.
 12 Q. Now I'd like you to look at Defendant's Exhibit No. 7.
 13 What is the date of that banking statement?
 14 A. February 26, 2010.
 15 Q. Does that banking statement reflect any deposits?
 16 A. Yes, it does.
 17 Q. What amount of a deposit does Exhibit 7 show?
 18 A. \$114,138.47.
 19 Q. So we've gone from a very minimal amount for the first
 20 four or five months to now we're talking some real money?
 21 A. Yes.
 22 Q. Carlos, can you tell, from looking at that banking
 23 statement, where that \$114,000 derived from?
 24 A. Yes.
 25 Q. Where?

1 A. It came from our billing agent. They're called CABS
 2 Agent.
 3 Q. Briefly how does that work with CABS Agent? What is
 4 it?
 5 A. They basically bill on behalf of NAT for the traffic
 6 that's generated, and they collect on its behalf.
 7 Q. Is using an agent like CABS a standard method of
 8 billing in the telecommunications industry?
 9 A. It is.
 10 Q. Carlos, again, based on your review of Exhibit 7, that
 11 \$114,000, did that derive from switched access fees that
 12 were paid by carriers?
 13 A. Yes.
 14 Q. Just to clarify, in February of 2010, that's when NAT
 15 started to be paid for switched access fees?
 16 A. That is correct.
 17 Q. Carlos, I would like you to look at Defendant's
 18 Exhibit No. 8. What's the date on that bank statement?
 19 A. March 31, 2010.
 20 Q. What does it show for NAT's deposits?
 21 A. Shows total deposits of \$149,601.40.
 22 Q. Can you tell from that banking statement how much of
 23 that amount derived from switched access payments from
 24 carriers?
 25 A. Yes, I can.

1 Q. How much?
 2 A. \$142,043.72.
 3 Q. Carlos, do you know of those payments, did some of
 4 those payments come from switched access fees that were
 5 paid by Sprint?
 6 A. I do not know.
 7 Q. Carlos, now look at Exhibit No. 9. What is the date
 8 of that banking statement?
 9 A. April 30, 2010.
 10 Q. What does that exhibit show as far as access fees that
 11 were received?
 12 A. Access fees?
 13 Q. Yes.
 14 A. \$7,909.88.
 15 Q. Can you explain the downward trend between the
 16 previous month, which was \$142,000, and now we're down to
 17 \$7,000 or so? Did a payment come in late?
 18 A. I believe so.
 19 Q. Now I'd like you to look at Exhibit 10. What is the
 20 date of that banking statement?
 21 A. It is May 28, 2010.
 22 Q. Does that show that NAT received a deposit?
 23 A. Yes, it does.
 24 Q. How much was the deposit NAT received?
 25 A. \$217,877.45.

1 Q. Can you tell, by looking at that document, if that
 2 amount derived from switched access payments from carriers?
 3 A. Yes, it did.
 4 Q. If you'd now look at Exhibit No. 11. What is the date
 5 of that bank statement?
 6 A. It is June 30, 2010.
 7 Q. Does that exhibit show that NAT received a deposit or
 8 made a deposit?
 9 A. Yes, it does.
 10 Q. How much is that deposit, Carlos?
 11 A. They made \$243,779.29.
 12 Q. Of that amount, how much of that derived from switched
 13 access fees paid by carriers?
 14 A. \$239,879.58.
 15 Q. If you'd now look at Exhibit 12, please. What is the
 16 date of that banking statement?
 17 A. It is July 30, 2010.
 18 Q. Does that show -- does that banking statement show
 19 money received by NAT?
 20 A. Yes, it does.
 21 Q. How much?
 22 A. It shows total deposits of \$162,029.60.
 23 Q. Can you tell us, of that amount, how much derived from
 24 switched access fee payments?
 25 A. Yes.

1 Q. How much?
 2 A. \$158,955.70.
 3 Q. If you'd now look at Exhibit 13, please. What's the
 4 date of that banking statement?
 5 A. August 31, 2010.
 6 Q. Does that banking statement reflect a deposit made by
 7 NAT?
 8 A. Yes, it does.
 9 Q. How much?
 10 A. \$128,855.42.
 11 Q. Is that amount derived totally from switched access
 12 payments?
 13 A. Yes.
 14 Q. Just to clarify, Carlos, you can tell that by looking
 15 at the deposit on the banking statement. Is that right?
 16 A. By the description.
 17 Q. Carlos, if you would now look at Exhibit 14, please.
 18 What's the date of that banking statement?
 19 A. It is September 30, 2010.
 20 Q. What type of deposit is shown there?
 21 A. Zero.
 22 Q. Is that approximately when you took over the
 23 controlling function for NAT?
 24 A. It's about that time, yes.
 25 Q. Let's explain to the Court. When you started to take

1 over the controlling functions for NAT, did you switch the
 2 checking account?
 3 A. Yes. We opened up a new account.
 4 Q. Where did you open up that account?
 5 A. With Wells Fargo.
 6 Q. So, Carlos, Exhibits 14, 15, 16, 17, and 18, are those
 7 the final statements you've received for NAT from First
 8 Dakota Bank?
 9 A. Yes, they are.
 10 Q. And they would show what in deposits?
 11 A. Zero in each.
 12 Q. Is that because any revenue NAT received from
 13 approximately October of 2010 forward went into the
 14 Wells Fargo checking account?
 15 A. From September forward, I believe.
 16 Q. Excuse me. When you took over the books, we switched
 17 to Wells Fargo.
 18 A. Yes.
 19 Q. Carlos, so the First Dakota Bank account, is that
 20 really a dormant account? Nothing goes through there?
 21 A. It doesn't have any activity anymore.
 22 Q. Besides the First Dakota account and the new account
 23 with Wells Fargo, does NAT have any other checking accounts
 24 or money accounts out there?
 25 A. No.

1 Q. These are the only two?
 2 A. Yes.
 3 Q. Carlos, if you would now look at Exhibit 19. What
 4 does this document show?
 5 A. This is the bank statement for Wells Fargo for the
 6 period ending July 31, 2010, for Native American Telecom.
 7 Q. Is this the first banking statement NAT has with
 8 Wells Fargo?
 9 A. Yes, it is.
 10 Q. Does Exhibit 19 show any type of deposit?
 11 A. No, it does not.
 12 Q. Is that because it's just a brand-new account?
 13 A. I just opened the account, yes.
 14 Q. You can now look at Exhibit 20, please. What is the
 15 date on that Wells Fargo Bank statement?
 16 A. It's August 31, 2010.
 17 Q. What does that statement show as any deposits that
 18 were received by NAT?
 19 A. It's transfers that were initiated from the First
 20 Dakota Bank to the Wells Fargo.
 21 Q. I want to go through this real quickly, so we can stay
 22 on the same page.
 23 On Exhibit 20 where it says "posted date." Do you see
 24 that about halfway down?
 25 A. I do.

1 Q. We have a posted date of August 4 of 2010. Is that
 2 right?
 3 A. Yes.
 4 Q. How much was the amount that was transferred into this
 5 Wells Fargo checking account?
 6 A. \$75,000.
 7 Q. Explain where that \$75,000 came from.
 8 A. It came from the existing balances in the First Dakota
 9 National Bank account.
 10 Q. So you closed the First Dakota account down and took
 11 whatever was in there and gave it to the Wells Fargo
 12 account. Is that right?
 13 A. Yes.
 14 Q. There is also, Carlos, an amount of approximately
 15 \$128,855. What does that represent?
 16 A. That's the switch carrier payments we received in the
 17 First Dakota Bank that I transferred from First Dakota Bank
 18 to the Wells Fargo Bank.
 19 Q. So both of those items are just transferred from
 20 First Dakota to Wells Fargo?
 21 A. Right.
 22 Q. Carlos, I want you to look at Exhibit No. 21. What is
 23 the date on that Wells Fargo statement?
 24 A. September 30, 2010.
 25 Q. Does that statement show that NAT received a deposit?

1 A. Yes, it received three.
 2 Q. What is the total of those deposits?
 3 A. \$38,765.67.
 4 Q. Do you know where that amount of money derived from?
 5 A. From switched access.
 6 Q. So we're back to receiving switched access payments
 7 from the carriers?
 8 A. Yes.
 9 Q. Carlos, if you would now take a look at Exhibit 22,
 10 please. What's the date on that Wells Fargo statement?
 11 A. October 31, 2010.
 12 Q. What does it show for NAT's deposits for that
 13 statement?
 14 A. Shows \$6.54. I take that back. There's a total of
 15 \$6,006.54.
 16 Q. Do you know where that amount derived from?
 17 A. Yes.
 18 Q. Where?
 19 A. \$6.54 came from switched access; and \$6,000 was a loan
 20 from WideVoice.
 21 Q. To NAT?
 22 A. To NAT, yes.
 23 Q. Before we go any further, are you familiar with the
 24 loan agreement between WideVoice and NAT?
 25 A. The loan agreement between --

1 Q. Do you know if there's any terms for that loan
 2 agreement or anything?
 3 A. I don't know specific terms.
 4 Q. Fair enough. So under this statement, NAT received
 5 \$6.54 of access fees. Correct?
 6 A. Yes.
 7 Q. Carlos, you're obviously aware of the various
 8 lawsuits, including this one we're currently in. Correct?
 9 A. Yes.
 10 Q. Can you tell the Court what happened around this time
 11 where your access fees have gone from hundreds of thousands
 12 down to \$6.54?
 13 MR. KNUDSON: Objection. Vague as to time.
 14 THE COURT: Sustained. Rephrase your question.
 15 BY MR. SWIER:
 16 Q. Approximately October of 2010, Carlos, the same time
 17 as this statement, can you tell the Court what was going on
 18 with the legal status of the cases here in South Dakota?
 19 A. Yes. Sprint brought suit to Native American Telecom.
 20 Q. When Sprint brought suit against Native American
 21 Telecom, I would presume that all the other carriers, at
 22 least, kept paying you. Didn't they?
 23 A. No, they didn't.
 24 Q. Well, who stopped paying you?
 25 A. Most of them.

1 Q. Other than \$6,547
 2 A. That's correct.
 3 Q. Carlos, if you would now look at Exhibit 23, please.
 4 What's the date on that banking statement?
 5 A. November 30, 2010.
 6 Q. What does it show for deposits that were received from
 7 NAT?
 8 A. Total deposits?
 9 Q. Total deposits first.
 10 A. Total deposits, we've got \$58,077.69.
 11 Q. Of that amount, how much of it derives from switched
 12 access fees NAT received?
 13 A. \$7,077.69.
 14 Q. In Exhibit 23 there are also a couple references to a
 15 couple rather large numbers that says "online transfer
 16 loans." Do you see that?
 17 A. I do.
 18 Q. Will you share with the Court what those numbers
 19 reflect?
 20 A. Those are loans from WideVoice to Native American
 21 Telecom.
 22 Q. How much was the loan amount WideVoice made to NAT
 23 that month?
 24 A. \$51,000.
 25 Q. As the controller of NAT and being familiar with the

1 financials of both WideVoice and NAT, why was that loan
 2 made from WideVoice to NAT?
 3 A. To cover operating expenses.
 4 Q. Because the switched access payments relatively
 5 stopped?
 6 A. That's correct. Didn't have enough funds to cover its
 7 own expenses.
 8 Q. If you would now look at Exhibit No. 24. What is the
 9 date on that banking statement?
 10 A. December 31, 2010.
 11 Q. What does that statement show regarding deposits from
 12 NAT?
 13 A. Shows total deposits of \$47,519.77.
 14 Q. Did NAT receive any switched access fees from the
 15 carriers, and if so, how much?
 16 A. They did. They received \$3,519.77.
 17 Q. And the remainder of that amount came from who?
 18 A. Loans from WideVoice to Native American Telecom.
 19 Q. Why did WideVoice make the loan to Native American
 20 Telecom?
 21 A. Again, to cover the expenses Native American Telecom
 22 couldn't pay.
 23 Q. Because the access fee payments stopped?
 24 A. That's correct.
 25 Q. Carlos, if you would now look at Exhibit 25. What's

1 the date on that banking statement?
 2 A. January 31, 2011.
 3 Q. What does it show for deposits for NAT?
 4 A. Shows total deposits of \$45,031.02.
 5 Q. Of that amount, what constitutes switched access fees
 6 received by NAT?
 7 A. \$31.02.
 8 Q. Where did the other \$45,000 derive?
 9 A. Loans from WideVoice to Native American Telecom.
 10 Q. Why did WideVoice make those loans?
 11 A. For the same reason. Couldn't afford -- didn't have
 12 any money to pay their operating expenses.
 13 Q. The switched access fee payments stopped?
 14 A. Yes.
 15 Q. Carlos, if you would, would you, please, take a look
 16 at Exhibit No. 26?
 17 A. Sure.
 18 Q. I'll give you a minute. Are you familiar with that
 19 document?
 20 A. I am.
 21 Q. What is that document?
 22 A. This represents the Balance Sheet for Native American
 23 Telecom as of December 31, 2010.
 24 Q. I want to run through this very quickly with you.
 25 Look under the "Checking and Savings" column. Do you see

1 that?
 2 A. Yes.
 3 Q. How much money remains in that First Dakota checking
 4 account?
 5 A. \$1,814.19.
 6 Q. How much cash is in the Wells Fargo account that you
 7 opened when you first started doing the controller
 8 function?
 9 A. \$10,043.06.
 10 Q. So as of December 31, 2010, just a couple months ago,
 11 what were NAT's total current assets in those two accounts?
 12 A. \$11,857.25.
 13 Q. If we go down under the "Fixed Assets," we have a line
 14 item that talks about "Computer Equipment." Will you
 15 explain to us, please, what that is?
 16 A. Sure. That's computer equipment related to the
 17 Communications Center and Internet Library at the
 18 Crow Creek Reservation.
 19 Q. Those are fixed assets from NAT that were placed on
 20 the Reservation?
 21 A. Correct.
 22 Q. There's also a line there that says "Furniture and
 23 Equipment" for \$617.00. What's that?
 24 A. That also goes towards the Communications Center and
 25 Internet Library located on the Reservation.

1 Q. Then we have a big number. We have a \$216,000 number
2 for "Wi-Max Equipment." What does that represent?
3 A. That's the cost of the communications tower that was
4 put on the Reservation.
5 Q. That's all the hardware and software that goes with
6 that?
7 A. Yes.
8 Q. So, Carlos, total fixed assets as of December 31,
9 2010, are what?
10 A. \$224,914.85.
11 Q. Now if we look under the "Liabilities and Equity"
12 column, do you see that?
13 A. I do.
14 Q. It says "Current Liabilities," and then it says "Other
15 Current Liabilities," and then it gets down to, it says
16 "Due to WideVoice Communications." Do you see that?
17 A. Yes.
18 Q. What does that represent?
19 A. It's a combination of two things. It's a combination
20 of expenses that WideVoice has paid on behalf of Native
21 American Telecom, as well as loans it made directly to
22 Native American Telecom.
23 Q. That total amount due to WideVoice, either through
24 them paying for equipment or giving loans, is how much?
25 A. \$474,949.38.

1 Q. Do you know who that person is?
2 A. As of which date?
3 Q. As of today.
4 A. As of today? Yes.
5 Q. Who is that?
6 A. It would be Kolpfstin & Kapur.
7 Q. Could you spell that, the best you can?
8 A. K-O-L-P-F-S-T-I-N and K-A-P-U-R.
9 Q. That's an accounting firm from where?
10 A. They're located in Irvine, California.
11 Q. Does that accounting firm have any type of ownership
12 interest in NAT?
13 A. None whatsoever.
14 Q. Does that accounting firm have any type of ownership
15 interest in any of the other various entities that you do
16 accounting work for?
17 A. None whatsoever.
18 Q. So they come in and do your taxes?
19 A. Yes. They are completely independent.
20 Q. Carlos, there's also a line item there for "Net
21 Income" for approximately minus \$134,000. What does that
22 represent?
23 A. Those are the losses for the period from January
24 through December of 2010.
25 Q. You took about a \$135,000 loss?

1 Q. Do you remember when WideVoice started either paying
2 for things on behalf of NAT or started to provide the
3 loans? Do you remember when all of that started?
4 A. I do.
5 Q. When was that?
6 A. It was around June of 2009.
7 Q. Then, Carlos, there are a couple things under
8 "Equity." The first item is "Retained Earnings" for
9 approximately \$75,000. Explain to the Court what that
10 represents, please.
11 A. Retained earnings is the losses from the prior year.
12 Q. "Shareholder distributions." What does that
13 represent?
14 A. Those are expenses that -- or transactions that took
15 place throughout the years that we classified as
16 shareholder distributions that were incurred by members of
17 Native American Telecom Enterprise that we classified as
18 shareholder distributions, because we weren't exactly sure
19 if we wanted to classify those as expenses on the books of
20 Native American Telecom until everybody had a chance to
21 figure out if they wanted to allocate those in that manner.
22 Q. Does NAT have an independent tax accountant?
23 A. Independent tax accountant?
24 Q. Yes.
25 A. Yes.

1 A. Yes.
2 Q. "Total Equity" of minus \$238,000, approximately.
3 Where does that number derive?
4 A. That's the cumulative total of the equity, retained
5 earnings, shareholder distributions, and the net income of
6 this year.
7 Q. So total liabilities and equities of course always add
8 up to the total assets. What does that show, Carlos, the
9 "Total Liabilities and Equity"?
10 A. \$236,772.10.
11 Q. Just as a matter of accounting, your total liabilities
12 and equity and your total assets, those numbers come out
13 that mirror each other. Correct?
14 A. Yes. It's called a Balance Sheet. Everything is
15 supposed to balance.
16 MR. SWIER: Your Honor, at this time I would move
17 Defendant's Exhibit 26.
18 THE COURT: Any objection?
19 MR. KNUDSON: No objection.
20 THE COURT: 26 is received.
21 BY MR. SWIER:
22 Q. Carlos, if you would now, please, take a look at
23 Defendant's Exhibit 27. Can you please tell the Court what
24 this document is?
25 A. Sure. This is the support for the amount on the

1 Balance Sheet that's due to WideVoice Communications.
 2 Q. Let's go through some of those items real quickly.
 3 Let's take, for instance, if you look at the third column
 4 over where it says "Num."
 5 A. Yes.
 6 Q. What does that stand for?
 7 A. That's the journal number.
 8 Q. Under "Name," it says "Wirefree Communications." Is
 9 that right?
 10 A. Yes.
 11 Q. You have a memo that describes what that is. What is
 12 the amount under that line item, and what was it for?
 13 A. The amount is \$47,750. It was for the first payment
 14 for the installation of the antenna of the communications
 15 tower on the Indian Reservation.
 16 Q. That was necessary to put the hardware and software
 17 and everything up probably?
 18 A. Yes.
 19 Q. Carlos, if you look at the next line -- excuse me, two
 20 down, there is an amount of \$32,775. Do you see that?
 21 A. Yes, I do.
 22 Q. What does that amount reflect? What payment does that
 23 reflect?
 24 A. That's another payment for the installation of the
 25 communications tower.

1 Q. The next item, we have a payment of \$80,290.28.
 2 Correct?
 3 A. Correct.
 4 Q. What is that for?
 5 A. Again, it's another payment for the installation of
 6 the communications tower on the Reservation.
 7 Q. Then we go down a couple lines where we have an amount
 8 of \$26,970.93. Correct?
 9 A. Correct.
 10 Q. What's that for?
 11 A. Those are the circuit charges for the transporting of
 12 the traffic.
 13 Q. Do you understand that circuit thing at all?
 14 A. No, I don't.
 15 Q. You know you need circuits to do this work.
 16 A. Correct.
 17 Q. Carlos, we have an amount of \$14,341. Is that also
 18 for circuit payments?
 19 A. Yes.
 20 Q. Then we have some charges for approximately \$10,000
 21 also for circuit charges. Correct? Quite a few of those
 22 actually.
 23 A. Yes.
 24 Q. Carlos, if you then go down to where we have an amount
 25 of \$20,000, which is a loan to Native American Telecom. Is

1 that right?
 2 A. Yes. In November?
 3 Q. Yes.
 4 A. Yes.
 5 Q. What does that reflect?
 6 A. That's a loan from WideVoice, so that's a cash
 7 transfer.
 8 Q. Do you know why that was needed?
 9 A. To be able to allow Native American Telecom to pay its
 10 expenses.
 11 Q. It says to cover payroll, too. Is that right?
 12 A. Yes.
 13 Q. You have another circuit charge. Then you have an
 14 amount for \$26,000. Do you see that?
 15 A. I do.
 16 Q. What is that for?
 17 A. Again, another transfer to Native American Telecom to
 18 allow Native American Telecom to pay its expenses.
 19 Q. Who is that from?
 20 A. WideVoice Communications.
 21 Q. Then we have another entry for approximately \$30,000.
 22 What does that reflect?
 23 A. Another loan to Native American Telecom to cover its
 24 expenses.
 25 Q. Carlos, at that time, is that the very middle of the

1 period where the carriers, after Sprint brought suit here,
 2 all the other carriers stopped paying NAT?
 3 A. That's about the same time.
 4 Q. Then we have the last entry there is for \$12,000.
 5 Correct?
 6 A. Yes.
 7 Q. What does that reflect?
 8 A. A loan from WideVoice to Native American Telecom to
 9 cover its expenses.
 10 Q. Why did WideVoice have to make that loan to Native
 11 American Telecom?
 12 A. It didn't have enough money. It wasn't getting paid.
 13 Q. So, Carlos, when you look at the final column, the
 14 balance column that has a balance of \$474,949.38, what does
 15 that number reflect?
 16 A. That's the amount due from NAT to WideVoice
 17 Communications for the amounts that were loaned by
 18 WideVoice Communications.
 19 Q. That's debt NAT owes to WideVoice?
 20 A. It is, yes.
 21 Q. Carlos, as of December 31 of 2010, is that a true and
 22 accurate transaction account for NAT?
 23 A. Yes, it is.
 24 MR. SWIER: Your Honor, I would move to admit
 25 Exhibit 27, please.

1 MR. KNUDSON: No objection.
 2 THE COURT: 27 is received.
 3 MR. SWIER: Thank you, Your Honor.
 4 BY MR. SWIER:
 5 Q. Carlos, if you'd now take a look at Exhibit 28,
 6 please. What is the date on that Balance Sheet?
 7 A. It is January 31, 2011.
 8 Q. I skipped ahead. I'm sorry. What is this document,
 9 Exhibit 28?
 10 A. It represents the Balance Sheet for Native American
 11 Telecom as of January 31, 2011.
 12 Q. So about a month ago. Correct?
 13 A. Correct.
 14 Q. Is this the most up-to-date Balance Sheet Native
 15 American Telecom has?
 16 A. Yes.
 17 Q. Did I ask you to prepare this so you could give the
 18 Court the most updated information?
 19 A. Yes.
 20 Q. Carlos, let's look at Exhibit 28 real quickly. Again,
 21 under the "Checking and Savings" account, we have the First
 22 Dakota National account for approximately \$1,800. Correct?
 23 A. Correct.
 24 Q. And that one is just sitting dormant. There's no
 25 activity there.

1 A. There's no activity on there.
 2 Q. Then we show approximately \$23,702 in the Wells Fargo
 3 account. Is that right?
 4 A. Yes.
 5 Q. So our total checking and savings between those two
 6 accounts is what?
 7 A. A total of \$25,516.34.
 8 Q. Then we go down under "Fixed Assets," "Computer
 9 Equipment, Furniture and Equipment, and Wi-Max Equipment."
 10 Is that the same as you testified to in the yearly Balance
 11 Sheet a few minutes ago?
 12 A. Yes.
 13 Q. Now let's go down -- so "Total Assets," it looks like,
 14 is how much, Carlos?
 15 A. \$250,431.19.
 16 Q. Now let's look at the "Liability" section. As of
 17 approximately a month ago, how much does NAT owe to
 18 WideVoice Communications?
 19 A. It shows \$530,689.43.
 20 Q. The "Total Liabilities" for NAT are that amount, too?
 21 A. Yes, they are.
 22 Q. Then we go under "Equity," the "Retained Earnings."
 23 We have a negative \$210,592.66. Correct?
 24 A. Correct.
 25 Q. What does that reflect?

1 A. That's the cumulative losses that NAT has incurred for
 2 the periods from 2009 through 2010.
 3 Q. "Shareholder Distributions," you commented on that
 4 earlier. Is that the same?
 5 A. That's the same.
 6 Q. The "Net Income" of a negative \$42,000, approximately.
 7 What does that show?
 8 A. That's the current month's losses.
 9 Q. So "Total Equity," Carlos, shows what?
 10 A. Negative \$280,258.24.
 11 Q. Just to make sure we have these numbers straight,
 12 under this Balance Sheet, NAT shows they had about \$25,516
 13 in the bank. Is that right?
 14 A. That's correct.
 15 Q. And its liabilities that were owed to WideVoice were
 16 approximately \$530,000. Is that right?
 17 A. That's correct.
 18 Q. Carlos, did I ask you to check on what's in the
 19 checking account as of last night?
 20 A. You did, yes.
 21 Q. Share with the Court what NAT's account balance is as
 22 of last evening?
 23 A. It's just a little over \$6,000.
 24 Q. Why did we go from having \$25,000 in the checking
 25 account last month to now we're down to a little over

1 \$6,000?
 2 A. Because it still hasn't received any payments, and
 3 it's had certain expenses that it's paid.
 4 MR. SWIER: Your Honor, if I have not done so, I
 5 would move Exhibit 28 into evidence.
 6 THE COURT: Any objection?
 7 MR. KNUDSON: No objection, Your Honor.
 8 THE COURT: 28 is received.
 9 BY MR. SWIER:
 10 Q. Carlos, as the controller of NAT, are you aware of a
 11 Marketing Fee Agreement that Native American Telecom has
 12 with FreeConferenceCall?
 13 A. Yes, I am.
 14 Q. Based only on your knowledge, but what do you
 15 understand that agreement between NAT and
 16 FreeConferenceCall to be?
 17 A. My understanding is that Native American Telecom gets
 18 to keep 25 percent of the access charges received.
 19 Q. Native American Telecom gets to keep 25 percent of the
 20 gross or the net access fees?
 21 A. The gross.
 22 Q. In your role as a controller for these companies, and
 23 based on the knowledge and experience you've gained, have
 24 you had an opportunity to review multiple marketing
 25 agreements between FreeConferenceCall and other companies

1 around the country?

2 A. I'm familiar with other arrangements.

3 Q. Does FreeConferenceCall enter into these type of

4 Marketing Fee Agreements with other local exchange

5 carriers?

6 A. Yes.

7 Q. And is the Marketing Fee Agreement between

8 FreeConferenceCall and Native American Telecom, does that

9 pretty much replicate the other agreements that you are

10 familiar with?

11 MR. KNUDSON: Objection. Foundation.

12 A. Yes.

13 THE COURT: Overruled. You may answer. Or the

14 answer will stand.

15 BY MR. SWIER:

16 Q. "Yes," you said?

17 A. Yes.

18 Q. Carlos, you indicated earlier you also served as the

19 controller for WideVoice, W-I-D-E Voice. Correct?

20 A. Yes.

21 Q. I want to go back to October of 2010. That is when

22 the switched access revenues for NAT went from hundreds of

23 thousands down to almost nothing. Is that right?

24 A. That's correct.

25 Q. You indicated that was approximately the time that

1 Sprint started bringing suits, lawsuits against NAT?

2 A. Yes.

3 Q. At that same time did WideVoice Communications start

4 to have problems with carriers like Sprint not paying their

5 switched access fees?

6 A. Sure.

7 MR. KNUDSON: Objection. Relevancy.

8 THE COURT: Overruled.

9 A. Shortly after, yes, they did start receiving problems

10 with payments.

11 BY MR. SWIER:

12 Q. Describe that, please.

13 A. Many of the carriers just simply stopped paying.

14 Q. What, they cut their payments in half, or what did

15 they do?

16 A. Some just stopped paying altogether.

17 Q. Was Sprint one of those that stopped paying

18 altogether?

19 A. Yes.

20 Q. So, Carlos, what we had then at the same time, tell me

21 if this is right, we had the switched access fees, payments

22 stopped to both WideVoice and to NAT. Is that right?

23 A. That's correct.

24 Q. There was a recent development over the last couple

25 weeks regarding NAT. Did NAT receive a switched access fee

1 payment from AT&T?

2 A. Recently?

3 Q. Yes.

4 A. Yes.

5 Q. When did NAT receive that AT&T payment?

6 A. It was in late January of 2011.

7 Q. So about a month ago?

8 A. About a month ago, yes.

9 Q. How much did AT&T pay NAT for its switched access

10 fees?

11 A. About \$150,000.

12 Q. When NAT received that money from AT&T, what did NAT

13 do with it?

14 A. NAT had to pay WideVoice back for the debt it had on

15 its books.

16 Q. So of that \$150,000, how much was paid to repay

17 WideVoice for the loans?

18 A. \$140,000.

19 Q. So NAT retained about \$10,000 of that?

20 A. Correct.

21 Q. That amount is now down to about \$6,000 in the

22 checking account?

23 A. Correct.

24 Q. Hold on here, because I have a question. Under the

25 Marketing Fee Agreement that you talked about a few minutes

1 ago, isn't 75 percent of those switched access fees

2 supposed to go to FreeConferenceCall for the work they do

3 for NAT?

4 A. It is.

5 Q. Then I presume you honored the contract and paid

6 FreeConferenceCall their 75 percent of that \$150,000.

7 Didn't you?

8 A. We did not.

9 Q. How come?

10 A. Because WideVoice demanded their payment from NAT.

11 Q. So now we have a situation where NAT owes both

12 WideVoice for loans, and it also, under its contract with

13 FreeConference, owes them?

14 A. Correct.

15 Q. Why doesn't NAT just write out a check to

16 FreeConferenceCall and abide by your contractual agreement?

17 MR. KNUDSON: Objection. Speculation.

18 THE COURT: Overruled. You may answer.

19 A. NAT demanded their payment.

20 BY MR. SWIER:

21 Q. WideVoice?

22 A. I'm sorry. WideVoice demanded their payment from NAT.

23 Q. Well, can't NAT just write a check out of its checking

24 account to pay FreeConferenceCall?

25 A. It doesn't have any more money.

1 Q. So you received that payment from AT&T the end of
2 January, about a month ago. Correct?
3 A. Correct.
4 Q. When that payment came -- have you received any other
5 payments from any other carriers?
6 A. No, we haven't.
7 Q. Have you received five cents from Sprint?
8 A. No.
9 Q. Does NAT continue to provide service to Sprint's
10 customers?
11 A. Yes, it does.
12 Q. Does Sprint accept that service from NAT?
13 A. Yes, it does.
14 Q. But it just doesn't pay you.
15 A. Right.
16 Q. If AT&T made a payment to NAT back the end of January,
17 if AT&T is going to start making consistent payments, would
18 that make a huge difference for NAT?
19 A. Yes.
20 Q. Carlos, if AT&T would have made its payment a few days
21 ago, the end of the month, like it was supposed to, would
22 that help NAT?
23 A. Yes.
24 Q. Carlos, did AT&T make their regular monthly payment
25 this month or in February?

1 A. No, they did not.
2 Q. You've been in South Dakota for a few days. Correct?
3 A. Yes.
4 Q. When was the last time you checked to see if, indeed,
5 AT&T is continuing to make its payments?
6 A. I checked last night.
7 Q. And I'm sure they paid?
8 A. They did not.
9 Q. Has Sprint paid?
10 A. No.
11 Q. You indicated of the \$150,000 AT&T payment, \$140,000
12 went to WideVoice to start to pay the loans back?
13 A. Yes.
14 Q. Why was that? Why did you pay WideVoice? Why did you
15 start paying their loan back?
16 MR. KNUDSON: Objection. Cumulative.
17 THE COURT: Sustained.
18 BY MR. SWIER:
19 Q. Carlos, you are familiar with the financial status of
20 WideVoice Communications?
21 A. Yes.
22 Q. Based on your knowledge as WideVoice's controller,
23 based on their financial status, is WideVoice
24 Communications going to continue to loan NAT money?
25 MR. KNUDSON: Objection. Foundation. Hearsay.

1 THE COURT: Sustained.
2 BY MR. SWIER:
3 Q. Are you familiar with WideVoice's financial status?
4 A. Yes.
5 MR. KNUDSON: Objection. Relevance.
6 THE COURT: Overruled.
7 A. Yes.
8 BY MR. SWIER:
9 Q. WideVoice Communications isn't in a position to keep
10 paying NAT these loans. Is it?
11 MR. KNUDSON: Objection. Leading.
12 THE COURT: Sustained as leading.
13 BY MR. SWIER:
14 Q. Are they in a position to continue to pay these loans?
15 A. No.
16 MR. KNUDSON: Objection. Foundation.
17 THE COURT: Overruled. The answer will stand.
18 BY MR. SWIER:
19 Q. Does NAT have any other source of income to keep
20 afloat if WideVoice discontinues its financial assistance?
21 A. It does not.
22 Q. Carlos, are you familiar with the fact that Native
23 American Telecom has filed two access fee tariffs with the
24 Federal Communications Commission?
25 A. Yes.

1 Q. You don't know the details. You just know they filed.
2 Is that right?
3 A. I'm aware of the filings.
4 Q. Do you know when NAT filed its first access revenue
5 tariff with the Federal Communications Commission?
6 A. The first tariff?
7 Q. Yes.
8 A. I'm not one hundred percent certain.
9 Q. Let me narrow it down. Approximately the winter of
10 2010. Would that jog your memory?
11 A. That would be about right.
12 Q. To the best of your knowledge, has --
13 THE COURT: Are you talking about January through
14 March of 2010, or November, December of 2010, since those
15 are both winter months?
16 MR. SWIER: We're talking from February 2010,
17 Your Honor, up until today. Of course they are, as you
18 know, two separate tariffs.
19 BY MR. SWIER:
20 Q. So, Carlos, let's do this. Under those two tariffs
21 NAT has, so from February of 2010 to January of 2011, have
22 you calculated how much Sprint owes to NAT under NAT's
23 switched access tariffs?
24 A. Yes, I have.
25 Q. Would you please share with the Court what that

1 outstanding amount is?

2 A. Sure. It's about \$557,000.

3 Q. That doesn't include anything for February yet?

4 A. No, it does not. It's through the November 10th

5 billing -- I mean, January 10th billing. Excuse me.

6 Q. So it will be more as of today?

7 A. Yes.

8 Q. Carlos, are you familiar with the second tariff that

9 NAT filed back in November?

10 A. Yes.

11 Q. I'm going to, for clarity, I'll refer to that as the

12 high-volume access tariff. Is that okay?

13 A. That's fine.

14 Q. The high-volume access tariff, are you aware the

15 high-volume access tariff is written a little bit

16 differently than the initial tariff?

17 A. Yes.

18 Q. Again, I know you don't know the details, so I won't

19 ask you. Since that high-volume access tariff went into

20 place, which would be November 30 of 2010, have you

21 calculated what Sprint owes to NAT, not under all the past

22 debt they owe, but since November 30 of 2010 up until

23 today's date? How much does Sprint owe NAT under that

24 high-volume access tariff?

25 MR. KNUDSON: Objection. Vague at this point.

1 I'm not sure if he's asking for the total, or if this is a

2 subset of the \$530,000 he testified to earlier.

3 THE COURT: If you could clarify. Is it in

4 addition to or is it already a part of the \$557,000?

5 BY MR. SWIER:

6 Q. Carlos, would you clarify? First of all, under the

7 high-volume access tariff from November 30 to the present

8 date, what is the amount that Sprint owes under that

9 tariff?

10 A. \$127,000.

11 Q. Now, is that \$127,000 number included in the \$557,000

12 number?

13 A. Part of it is.

14 Q. Okay. Since that high-volume access tariff went into

15 play a few months ago, how much has Sprint paid of that

16 \$127,000?

17 A. None of it.

18 Q. Zero?

19 A. Zero.

20 Q. Has payment been demanded by NAT or your agent?

21 A. Yes.

22 Q. Do you hear anything from them?

23 A. No.

24 Q. Your check didn't come?

25 A. It has not come.

1 Q. When is the last time Sprint paid NAT for the switched

2 access fees? Do you know?

3 A. It was around February of 2010.

4 Q. So almost exactly a year ago?

5 A. Yes.

6 Q. Carlos, through your 16 years of experience in doing

7 accounting and controller-like actions, you are familiar

8 with business plans and how businesses come and go. Aren't

9 you?

10 A. Yes.

11 Q. Based on your experience, what are NAT's options at

12 this point to move forward?

13 MR. KNUDSON: Objection. Foundation.

14 THE COURT: Overruled. You may answer.

15 A. What options?

16 BY MR. SWIER:

17 Q. What options do they have?

18 A. One option is to close their doors.

19 Q. Would they have another option?

20 A. Yes. Another option would be to file for bankruptcy

21 protection.

22 Q. Has NAT reached out to a bankruptcy attorney? If you

23 know, has NAT reached out to a bankruptcy attorney here in

24 South Dakota?

25 A. They have.

1 Q. So NAT can file bankruptcy. They can just close its

2 doors. Do they have any other options?

3 A. If Sprint would pay, they could continue to operate.

4 Q. And if Sprint would pay their debt owed, would that

5 keep NAT afloat for the time being?

6 A. It would.

7 MR. SWIER: Your Honor, if I may have a minute.

8 THE COURT: You may.

9 MR. SWIER: Thank you. Your Honor, I believe

10 that's all the questions I have. Thank you.

11 THE COURT: Mr. Knudson?

12 MR. KNUDSON: Yes, Your Honor. Did you want to

13 start right away?

14 THE COURT: Why don't we take a 10-minute break.

15 We'll be in recess until 25 to 11:00.

16 (Recess at 10:26 until 10:40)

17 THE COURT: Mr. Knudson?

18 MR. KNUDSON: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KNUDSON:

21 Q. Good morning, Mr. Cestero. You recall we met two days

22 ago.

23 A. Yes.

24 Q. We had the pleasure of doing a deposition on Tuesday.

25 Do you recall that?

1 A. I do.

2 Q. Do you recall when your deposition was taken, you were
3 sworn to tell the truth. Do you remember?

4 A. Yes.

5 Q. Just like you were sworn by the Court today to tell
6 the truth. Correct?

7 A. Yes.

8 Q. I would like to ask you a few questions about your
9 testimony today and what you said on Tuesday. One thing I
10 think we should clarify is, isn't it a fact in 2010 NAT
11 reported a gross income of \$1,148,925.84?

12 A. It did.

13 Q. It is also true, is it not, that NAT paid as marketing
14 expenses on its P&L \$794,307.49 in 2010?

15 A. I don't have the P&L in front of me, but it sounds
16 about right.

17 Q. Before we get into those numbers, I'd like to clarify
18 something you testified to about WideVoice with an I. You
19 say that's a carrier.

20 A. Yes.

21 Q. Then Wyde Voice with a Y. That's a conference bridge
22 equipment manufacturer?

23 A. Yes.

24 Q. Free Conferencing Corporation, that provides free
25 conferencing service. Correct?

1 A. Correct.

2 Q. Free Conferencing Global. That also provides free
3 conferencing services. Correct?

4 A. Yes.

5 Q. HDPSTN is a telephone company, you say?

6 A. Yes.

7 Q. Where does it do business?

8 A. Where does HDPSTN?

9 Q. Yes.

10 A. It's a start-up company. It's not actually conducting
11 business.

12 Q. I think the common theme in your testimony on direct
13 was that David Erickson had check-signing authority in all
14 these companies. Is that right?

15 MR. SWIER: Objection, Your Honor. Mistakes the
16 facts.

17 THE COURT: Overruled. You may answer.

18 A. Not for Native American Telecom, it does not.

19 BY MR. KNUDSON:

20 Q. I didn't list that. WideVoice with an I, Wyde Voice
21 with a Y, Free Conferencing Corporation, Free Conferencing
22 Global, and HDPSTN, the common theme between all those
23 companies is that David Erickson has check-signing
24 authority. Correct?

25 A. He has signing authority.

1 Q. In fact, he's the majority owner of WideVoice with
2 an I. Is that true?

3 A. Yes.

4 Q. That's a Nevada Sub S corporation?

5 A. It is.

6 Q. Then Wyde Voice with a Y, David Erickson is the
7 majority owner of that, too. Isn't he?

8 A. Yes.

9 Q. And Free Conferencing Corporation, David Erickson is
10 the founder and chief owner of that, as well?

11 A. Yes.

12 Q. Likewise, Free Conferencing Global, David Erickson is
13 the majority owner of that, as well. Correct?

14 A. Yes.

15 Q. HDPSTN, is he also the majority owner of that company?

16 A. Yes.

17 Q. Now, you said today, if I understood this correctly,
18 just confirm it for me, that you serve as the controller
19 for these entities?

20 A. I serve the function of a controller.

21 Q. You don't have the title. Just the function?

22 A. I don't have a title. It's just a title I use, to
23 keep things simple.

24 Q. So you're not the controller of Native American
25 Telecom?

1 A. I'm not employed by anybody, other than Free
2 Conferencing Corporation as the controller.

3 Q. So you're the controller of Free Conferencing
4 Corporation then?

5 A. Yes.

6 Q. Now, who do you report to at Free Conferencing
7 Corporation?

8 A. Jeff Holoubek.

9 Q. What is Jeff Holoubek's title at Free Conferencing
10 Corporation?

11 A. He's the Director of Legal and Finance.

12 Q. Mr. Holoubek reports to David Erickson?

13 A. I don't know.

14 Q. But David Erickson is the President and CEO of
15 Free Conferencing Corporation. Is that true?

16 A. Yes, it is.

17 Q. Your understanding is Jeff Holoubek is now the
18 President of Native American Telecom?

19 A. He is.

20 Q. Do you know when that took place?

21 A. I don't know the exact date. No.

22 Q. Was it in 2010?

23 A. I believe so.

24 Q. Would it have taken place when you assumed the duties
25 of controller for NAT?

1 A. Excuse me?
 2 Q. Would Mr. Holoubek have become the President of NAT
 3 when you assumed the duties of the controller for NAT?
 4 A. I don't know when he became President of NAT.
 5 MR. KNUDSON: If I may approach, Your Honor.
 6 THE COURT: You may.
 7 BY MR. KNUDSON:
 8 Q. Mr. Cestero, I'm handing you what's been marked
 9 Plaintiff's Exhibit No. 1. Mr. Cestero, take a moment to
 10 look at this. I think you've seen it before, but tell me
 11 if you recognize it.
 12 A. Yes, I have.
 13 Q. Can you identify it for us, please?
 14 A. It's NAT's Responses to Sprint's Document Request
 15 No. 1 through 18.
 16 Q. It's numbered NAT 00001 through NAT 00083. Is that
 17 correct?
 18 A. Yes.
 19 Q. Do you recognize most of this Exhibit 1 contains the
 20 bank statements from First Dakota and Wells Fargo?
 21 A. Yes, it does.
 22 Q. You recognize those as the banking statements of NAT.
 23 Correct?
 24 A. Yes.
 25 Q. And previously on your direct, they were used by

1 Mr. Swier in your examination. Correct?
 2 A. Yes.
 3 Q. What is the first page of this Exhibit NAT 00001?
 4 A. This represents the minutes generated at NAT.
 5 Q. So, in other words, this is the minutes of usage by
 6 month for NAT?
 7 A. Yes.
 8 Q. Do you recognize that as something generated from
 9 NAT's business records?
 10 A. Yes.
 11 Q. Go back to the very end of this exhibit, and look at
 12 Page 82. That's the Balance Sheet. Isn't it?
 13 A. It is.
 14 Q. This is what was previously admitted. Look at the
 15 screen, if you need to.
 16 A. Oh, yes.
 17 Q. Look at Page 83. That's the Profit and Loss
 18 Statement. Is it not?
 19 A. Yes, it is.
 20 Q. If it's easier for you to look at the paper
 21 document --
 22 A. That's a little blurry.
 23 Q. The Profit and Loss Statement, that's something you
 24 generated. Is it not?
 25 A. Yes, it is.

1 Q. This is from NAT's business records?
 2 A. Correct.
 3 MR. KNUDSON: I would offer Exhibit 1.
 4 THE COURT: Any objection?
 5 MR. SWIER: No objection.
 6 THE COURT: Exhibit 1 is received.
 7 BY MR. KNUDSON:
 8 Q. Before we dig into that, I would like to -- let's go
 9 back to Page 83, if you would.
 10 THE COURT: Can I make a suggestion? Since the
 11 other exhibits are 1 through whatever, can we have this
 12 Exhibit A?
 13 MR. KNUDSON: That's fine. Let's relabel it
 14 Plaintiff's A.
 15 BY MR. KNUDSON:
 16 Q. Do you have Page 83 in front of you now?
 17 A. I do.
 18 Q. Now, you heard reference to Free Conferencing
 19 Corporation getting 75 percent of the gross revenues from
 20 NAT's receipts from carriers paying for terminating
 21 services. Correct?
 22 A. Yes.
 23 Q. Is that then shown here on the P&L as the marketing
 24 expenses?
 25 A. That's correct.

1 Q. These marketing expenses were paid to Free
 2 Conferencing Corporation. Isn't that true?
 3 A. Yes.
 4 Q. Now, I believe it's also the case you have not seen
 5 any written agreement between NAT and Free Conferencing
 6 Corporation setting forth the terms by which NAT is
 7 obligated to pay Free Conferencing Corporation 75 percent
 8 of their gross revenues?
 9 A. I have not seen the document, no.
 10 Q. Do you know if one exists?
 11 A. I do not know.
 12 Q. You were in charge of making these transfers to Free
 13 Conferencing Corporation, were you not?
 14 A. Yes.
 15 Q. You did so at the direction of Jeff Holoubek. Did you
 16 not?
 17 A. Yes. He explained the relationship NAT has with Free
 18 Conferencing Corporation.
 19 Q. Free Conferencing Corporation, that's located in
 20 Long Beach at the address you gave earlier. Isn't it?
 21 A. Yes.
 22 Q. If we look at the banking statements, beginning with
 23 the Wells Fargo statements, they all start going to the
 24 same address. Do they not?
 25 A. Yes.

1 Q. Turn to Page 1 of Exhibit 1. What were the minutes of
2 usage for NAT for all carriers for December 2010?
3 A. About 8.4 million.
4 Q. Then what happened in January of 2011?
5 A. They went up to 12 million.
6 Q. Your understanding that Free Conferencing
7 Corporation's share of NAT's revenues came from what
8 Mr. Holoubek told you. Is that correct?
9 A. He explained the relationship, the agreement that NAT
10 has with Free Conferencing Corporation.
11 Q. So he told you it was 75 percent?
12 A. Yes.
13 Q. He is the President of NAT. Correct?
14 A. Correct.
15 Q. He is also Director of Legal and Finance at
16 Free Conferencing Corporation. Correct?
17 A. Yes.
18 Q. You followed his directives to pay this share of
19 Free Conferencing Corporation's share of NAT's revenues to
20 Free Conferencing Corporation in 2010. Didn't you?
21 A. Yes.
22 Q. Did you ever endeavor to find if there was a written
23 agreement between NAT and Free Conferencing Corporation
24 regarding the 75 percent revenue split?
25 A. I didn't find it necessary.

1 Q. You just followed Mr. Holoubek's directive on that
2 point?
3 A. He's my direct supervisor.
4 Q. So that's yes?
5 A. Yes.
6 Q. I believe then it's the case that NAT's business
7 records are in Long Beach at the same location as
8 Free Conferencing Corporation?
9 A. Yes.
10 Q. Is your understanding that WideVoice is a member of
11 NAT?
12 A. Correct.
13 Q. They have 24 percent interest. Correct?
14 A. Correct.
15 Q. Have you ever looked at the Joint Venture Agreement
16 between WideVoice and Native American Telecom Enterprise
17 and the Crow Creek Tribe to see how NAT is formulated?
18 Have you looked at the Joint Venture Agreement?
19 A. I've seen the Operating Agreement.
20 Q. So if you understand from the Operating Agreement,
21 then WideVoice was responsible for the buildout of the
22 Wi-Max infrastructure on the Reservation. Is that right?
23 A. I'm not entirely familiar with the Operating Agreement
24 as to that specific item.
25 Q. But the cost of that buildout, how much does it show

1 up on the budget or Balance Statement for NAT? Page 82 of
2 Exhibit 1.
3 A. About \$216,000.
4 Q. Turn to Defendant's 27. Do you have that handy?
5 A. What am I looking at?
6 Q. What was previously admitted as Defendant's 27.
7 A. I have it, yes.
8 Q. The \$216,000 is reflected in this exhibit. Is that
9 right, sir?
10 A. Part of it would be, yes.
11 Q. Part of the additional loan, if you will, you say is
12 payments to South Dakota Network. Correct?
13 A. Among other.
14 Q. Then there's a direct loan to NAT itself. Correct?
15 A. Yes. There are several loans to NAT.
16 Q. So at the end of 2010, NAT reported owing WideVoice
17 almost \$480,000?
18 A. At the end of 2010?
19 Q. Yes. Page 82.
20 A. \$474,000. Yes.
21 Q. Did you ever determine whether there was a written
22 loan agreement between WideVoice and NAT?
23 A. No. I'm not familiar.
24 Q. Now, some of what WideVoice purchased was part
25 equipment to locate on the Reservation. Correct?

1 A. Yes.
2 Q. Do you know if WideVoice took out a security interest
3 in that equipment?
4 A. I do not know.
5 Q. Did you ever see a Promissory Note between NAT and
6 WideVoice reflecting the terms and conditions by which
7 WideVoice loaned money to NAT?
8 A. I have not.
9 Q. Take a look at the Income Statement, if you would,
10 Page 83 of Exhibit 1.
11 MR. SWIER: Exhibit A, Scott?
12 MR. KNUDSON: I'm sorry, Exhibit A.
13 BY MR. KNUDSON:
14 Q. Looking at that, do you see anywhere that there's a
15 payment of interest to WideVoice in 2010?
16 A. No.
17 Q. Let's go back to the Balance Sheet now, Page 83 of
18 Exhibit A. I would like to look at this \$27,584 in
19 shareholder distributions. I think you testified on direct
20 that those were distributions to people in NAT, such as
21 Tom Reiman and Gene DeJordy?
22 A. They are members of Native American Telecom
23 Enterprise.
24 Q. So these were distributions to those two gentlemen
25 that show up on the Balance Sheet for NAT. Is that

1 correct?

2 A. Yes. They were expenses that were incurred by those

3 two that we classified as shareholder distributions.

4 Q. In other words, by classifying them as "shareholder

5 distributions," that's money Mr. Reiman and Mr. DeJordy

6 took out of NAT. Correct?

7 A. Yes. They used as certain expenses, and we decided to

8 classify those as shareholder distributions until we could

9 figure out how to appropriately account for those.

10 Q. Now, Reiman and DeJordy had debit cards for which they

11 could draw funds out of the First Dakota accounts.

12 Correct?

13 A. They did.

14 Q. They had no check-signing authority at the Wells Fargo

15 account. Did they?

16 A. They did not.

17 Q. Well, let's look at a few of the expenses that were

18 classified as "shareholder distributions." Would you take

19 a look at Page 42 of Exhibit A?

20 A. Okay.

21 Q. Do you see those that are boxed with a notation,

22 "S/H Distribution Note"?

23 A. Yes.

24 Q. Is that your handwriting?

25 A. That is my handwriting, yes.

1 Q. Looking at these, I think we talked about this on

2 Tuesday. There is an ATM withdrawal, something

3 "NCL-PEARL," which could be the Norwegian Cruiseline ship,

4 Pearl in Miami. Right?

5 A. It could be many things.

6 Q. But it's expenses incurred, it says here on this

7 listing, in Miami, Florida. Correct?

8 A. I've seen charges that show Miami, and charges in

9 California. I can't verify that.

10 Q. In your handwriting, you are determining that those

11 are shareholder distributions to either Reiman or DeJordy.

12 Did you not?

13 A. Yes. As I stated before, we classified all these

14 expenses as shareholder distributions.

15 Q. What business purpose would NAT have incurring

16 expenses in Miami, Florida?

17 A. You don't know those are in Miami. I don't know.

18 Q. Let's take a look at some other expenses then. Turn

19 to Page 67. Is there not an entry for a limousine charge,

20 Fairfield, Connecticut? That's not allocated as a

21 shareholder distribution. Is it?

22 A. I would classify as a shareholder distribution. Just

23 because I didn't write it down, doesn't mean I didn't

24 classify it.

25 Q. So you think it is a shareholder distribution?

1 A. I would classify that as a shareholder distribution.

2 Q. Do you know that Gene DeJordy lives in Fairfield,

3 Connecticut?

4 A. I don't know exactly where he lives.

5 Q. What business purpose would he have in taking a

6 limousine for \$153.00?

7 A. I wouldn't begin to speculate.

8 Q. Now, let's go back to 67. What was the date of this

9 bank statement?

10 A. What was the date?

11 Q. Yes.

12 A. July 30, 2010.

13 Q. That's shortly before this account was drained and the

14 money shifted over to Wells Fargo. Correct?

15 A. It was about the time we transferred over to

16 Wells Fargo.

17 Q. In fact, you opened the Wells Fargo account on

18 July 23. Didn't you?

19 A. Correct.

20 Q. Once the money was in Wells Fargo, Mr. Reiman and

21 Mr. DeJordy had no access to it. Correct?

22 A. Correct.

23 Q. Now, these two accounts are the only two accounts that

24 NAT has. Correct? First Dakota, which has about \$1,800

25 still, and the Wells Fargo account having, you said just

1 now, \$6,000. The only two signers for the Wells Fargo

2 account are Mr. Holoubek and yourself. Correct?

3 A. Yes.

4 Q. And for First Dakota, it's DeJordy and Reiman.

5 Correct?

6 A. Yes.

7 Q. There are no members of the Crow Creek Tribe that have

8 signing authority on either account. Correct?

9 A. Correct.

10 Q. Another one for you. Take a look at Page 66, if you

11 would. Do you see the expenses in Bismarck there on

12 July 19, \$129 for a hotel?

13 A. Yes.

14 Q. Does NAT provide any services in Bismarck, North

15 Dakota?

16 A. I don't know.

17 Q. Do you know what business purpose there would be in

18 going to Bismarck, North Dakota?

19 A. I would not know.

20 Q. How about New Town, Cache Restaurant, on July 20,

21 \$31.90? Do you know where New Town is?

22 A. I don't know where New Town is.

23 Q. That's in North Dakota, though. That's what it says.

24 Do you know what the business purpose was there for

25 someone to be drawing funds out of the First Dakota Bank

1 account?
 2 A. I don't know.
 3 Q. Did you ever ask Mr. DeJordy or Mr. Reiman why they
 4 incurred these expenses?
 5 A. I do not.
 6 THE COURT: Are you implying you would go to
 7 Bismarck or New Town for fun?
 8 MR. KNUDSON: I spent a lot of time in Bismarck.
 9 I would agree, probably not.
 10 BY MR. KNUDSON:
 11 Q. I would like to know how it ties up to doing business
 12 in Crow Creek, as well.
 13 A. I do not know.
 14 Q. Isn't it true that once the money was only flowing
 15 through the Wells Fargo account, that that gave Free
 16 Conference Corporation control over the money?
 17 A. It allowed us to manage NAT.
 18 Q. And control the flow of funds through NAT, as well.
 19 Correct?
 20 A. For proper accounting.
 21 Q. But the only people who controlled those funds were
 22 employed by Free Conferencing Corporation. Correct?
 23 A. Yes.
 24 Q. You recall you gave an Affidavit in this case. Did
 25 you not?

1 A. I did.
 2 Q. Handing you what has been marked for identification as
 3 Plaintiff's Exhibit B. Take a look at Exhibit B, sir, and
 4 tell me if you recognize it.
 5 A. I recognize it.
 6 Q. What is it?
 7 A. It is the Affidavit of Carlos Cestero. Do you want me
 8 to read the entire thing?
 9 Q. No, I don't. It has been previously submitted to the
 10 Court as part of the moving papers of NAT.
 11 MR. KNUDSON: I would offer for purposes of this
 12 hearing Exhibit B.
 13 THE COURT: Any objection?
 14 MR. SWIER: No objection.
 15 THE COURT: B is received.
 16 BY MR. KNUDSON:
 17 Q. Let me ask you about the accounting practices of NAT.
 18 It's a cash basis taxpayer. Correct?
 19 A. Yes.
 20 Q. Its method of accounting is also the cash method of
 21 accounting. Correct?
 22 A. Yes.
 23 Q. Isn't it true, with the cash method of accounting,
 24 that you record income when received. Correct?
 25 A. Correct.

1 Q. So if you received income in the month of January, you
 2 should post it as received revenue in January. Correct?
 3 A. We record it when we deposit the check.
 4 Q. Deposit versus receipt?
 5 A. Yes.
 6 Q. So do you recall when you received payment from AT&T?
 7 A. It was in late January.
 8 Q. Late January was what day in January?
 9 A. I don't know. I don't remember the exact date.
 10 Q. When were the funds deposited into NAT's bank account?
 11 A. February of 2011.
 12 Q. What date?
 13 A. The very beginning, around the 2nd.
 14 Q. The 2nd of February?
 15 A. Yes.
 16 Q. Let's take a look at your Affidavit, Paragraph 12.
 17 Would you read that for us, please?
 18 A. Yes. "Because of Sprint's conduct, NAT's current
 19 financial condition is perilous and NAT has been forced to
 20 exhaust its credit limits to keep operations running."
 21 Q. I would like, first of all, to establish the credit
 22 limits. Is there a Loan Agreement with any lender for NAT?
 23 A. I'm not aware of an agreement.
 24 Q. Does WideVoice have a written Loan Agreement with NAT?
 25 A. I don't know.

1 Q. Does NAT have any line of credit with any lender?
 2 A. I don't know.
 3 Q. So what credit limits were you referring to in
 4 Paragraph 12?
 5 A. It would be WideVoice's desire to loan money to NAT.
 6 Q. But they didn't have an expressed limit on what it
 7 would loan. Did it?
 8 A. I'm not aware of any limits.
 9 Q. I'm looking at the phrase at the beginning of
 10 Paragraph 12 of your Affidavit. "Because of Sprint's
 11 conduct." Do you see that, sir?
 12 A. I do.
 13 Q. I think it's your testimony that because Sprint
 14 refused to pay, other carriers refused to pay. Is that
 15 right?
 16 A. That's correct.
 17 Q. But the timing of that doesn't tie out to the revenues
 18 received by NAT. Does it?
 19 A. It does.
 20 Q. When was the last time Sprint paid NAT?
 21 A. Sprint paid NAT in February of 2010.
 22 Q. I think Mr. Swier ran you through the revenues being
 23 received by NAT after February of 2010. Didn't he? Do you
 24 recall that testimony?
 25 A. Yes.

1 Q. You recall that money continued to come in from
2 carriers throughout the summer of 2010. Correct?
3 A. From various carriers, but some had stopped paying.
4 Q. And some continued to pay, as well. Is that true?
5 A. Some had stopped.
6 Q. And some continued to pay. Isn't that true?
7 A. We received little bits here and there.
8 Q. How much did Sprint pay you in 2010?
9 A. About \$29,000.
10 Q. How much did the other carriers in total pay you?
11 A. I don't recall exactly.
12 Q. Should I refresh your recollection? Let's look at
13 NAT 83. How much did the other carriers pay NAT in 2010?
14 A. About \$1,120,000.
15 Q. I would like to look at this number. It says, "CABS
16 Collection Income." "CABS," that refers to CABS Agent,
17 does it?
18 A. Yes.
19 Q. That was the original billing agent for NAT. Correct?
20 A. No. It stands for the Carrier Access Billing. It
21 contains some of the CABS Agent collections, in addition to
22 our latest --
23 Q. You've switched billing agents, haven't you?
24 A. Yes.
25 Q. Who do you use now?

1 A. CDG Communications Data Group.
2 Q. When did you switch?
3 A. Sometime mid 2010.
4 Q. Looking at your Affidavit again. Isn't it true that
5 because of Sprint's conduct, Sprint stopped paying in
6 February, but other carriers continued to pay throughout
7 2010 up and over \$1.1 million. Isn't that true?
8 A. Yes.
9 Q. Let's take a look at Paragraph 13. Could you read
10 that for us, please?
11 A. Sure. "NAT is currently unable to meet its financial
12 obligations because of Sprint's refusal to pay NAT's
13 interstate switched access service charges."
14 Q. Now, there are other carriers that aren't paying NAT,
15 as well. Isn't that true?
16 A. There are.
17 Q. Is Verizon paying NAT?
18 A. I don't know.
19 Q. Is Qwest paying NAT?
20 A. I don't know.
21 Q. How would you know? Are there financial records at
22 NAT that would let us know?
23 A. I would have to look at the ledgers.
24 Q. Well, do you have Defendant's Exhibit 27 handy?
25 A. Yes.

1 Q. Is this part of the ledger detail that would be used
2 to determine who was paying and who was not?
3 A. No. These are loans.
4 Q. This is the "Transactions by Account" for WideVoice.
5 Isn't that true?
6 A. These are the loans made to NAT from WideVoice.
7 Q. So this Exhibit 27, that ties to your Balance Sheet,
8 does it not?
9 A. Yes.
10 Q. And the \$474,949 listed as owing WideVoice shows up on
11 the Balance Sheet. Correct?
12 A. Correct.
13 Q. Well, I was asking you the other day about the support
14 for the income on the P&L. Is there detail that supports
15 how you determine that there was \$1.148 million in revenue
16 in NAT?
17 A. I have the detail.
18 Q. You have the detail. It's available to you?
19 A. Yes.
20 Q. That would show which carriers you're paying. Would
21 it not?
22 A. It would.
23 Q. And by date?
24 A. It would.
25 Q. And by amount?

1 A. Yes.
2 Q. And you also have records of NAT that shows what was
3 invoiced of those carriers. Do you not?
4 A. Yes.
5 Q. Those are business records of NAT. Correct?
6 A. They are.
7 Q. They are part of the determination of how much revenue
8 NAT made in 2010. Correct?
9 A. How much revenue it received, yes.
10 Q. And whether or not they are paying also bears on
11 whether or not NAT has revenue sufficient to stay in
12 business. Correct?
13 A. Rephrase that. I'm sorry.
14 Q. Whether or not the carriers are paying has an impact
15 on whether NAT continues to stay in business. Correct?
16 A. Yes.
17 Q. So when you prepared your Affidavit, you signed it on
18 January 11. Is that correct?
19 A. Yes.
20 Q. Within a couple of weeks, NAT had \$150,000 from AT&T?
21 A. Yes, at the tail end of January.
22 Q. Did NAT and AT&T reach an agreement for AT&T to start
23 paying the invoices from NAT?
24 A. I don't know.
25 Q. Did NAT sue AT&T?

1 A. I don't know.

2 Q. Has NAT sued any other carrier for unpaid invoices?

3 MR. SWIER: Your Honor, if I may object, please.

4 The objection is who has NAT sued? In this lawsuit Sprint

5 is the Plaintiff. They sued NAT in this case. I want the

6 record to reflect who is the Plaintiff and the Defendant

7 here. Thank you.

8 THE COURT: The record will so reflect. You need

9 to answer the question.

10 A. I don't know.

11 BY MR. KNUDSON:

12 Q. Have you asked Mr. Holoubek, Director of Legal and

13 Regulatory at Free Conference Corporation, whether NAT has

14 sued any other carriers for nonpayment?

15 A. No.

16 Q. Did you reference in your Affidavit the fact that

17 other carriers were not paying?

18 A. I don't believe so.

19 Q. Now, I think you were testifying, based on the earlier

20 exhibits, about what you could determine when things were

21 coming into Wells Fargo. Do you recall that testimony,

22 sir?

23 A. I do.

24 Q. Let's take a look here at Exhibit A, Page 5. That's

25 the statement for September of 2010. Do you see the

1 deposits there totaling \$38,000 and change?

2 A. Yes.

3 Q. Was it your testimony that these were deposits from

4 carriers paying for terminating access service?

5 A. Yes.

6 Q. I believe you testified on Tuesday that you couldn't

7 tell from this whether or not those were payments from

8 carriers. Correct?

9 A. Not from the statement, I couldn't tell.

10 Q. What did you do to investigate then?

11 A. I looked to see if those were payments.

12 Q. What records did you examine?

13 A. Our internal records.

14 Q. Such as the detail which would back up the total gross

15 revenues posted on the P&L for 2010. Correct?

16 A. Sure, support for the cash receipts.

17 Q. And you did that between Tuesday and today. Is that

18 correct?

19 A. I did.

20 MR. KNUDSON: If I may approach, Your Honor?

21 THE COURT: You may.

22 BY MR. KNUDSON:

23 Q. Handing you what's been marked as Plaintiff's

24 Exhibit C.

25 MR. KNUDSON: I'd give you a copy, Your Honor,

1 but I would be without one.

2 THE COURT: Okay.

3 BY MR. KNUDSON:

4 Q. Tell me if you recognize Exhibit C, sir.

5 A. I do.

6 Q. What is it?

7 A. It is the Defendant Native American Telecom Answers to

8 Plaintiff Sprint Communications First Set of

9 Interrogatories.

10 Q. Is your signature on Page 10 of this exhibit?

11 A. Yes, it is.

12 Q. You reviewed and signed on behalf of Native American

13 Telecom?

14 A. Yes.

15 MR. KNUDSON: I'd offer Exhibit C.

16 THE COURT: Any objection?

17 MR. SWIER: No objection, Your Honor.

18 THE COURT: C is received.

19 BY MR. KNUDSON:

20 Q. We've been talking about the support for the P&L

21 Statement, the detail. You recall that Defendant's 27 was

22 the detail that supports the Balance Sheet information on

23 the amount owing WideVoice.

24 Let's take a look at Interrogatory No. 7. The

25 question, it's on the screen, Your Honor, "Identify all

1 interexchange carriers whom NAT has invoiced under any of

2 its tariffs, including the name of the interexchange

3 carrier, the amounts invoiced, and the payments received,

4 if any."

5 MR. SWIER: Your Honor, I'm sorry. I don't have

6 that page on the exhibit I was given. I go from 4 to 6.

7 (Discussion off the record)

8 BY MR. KNUDSON:

9 Q. Now, that information that's being sought from

10 Interrogatory No. 7, that's contained in the business

11 records of NAT. Is that correct?

12 A. Yes.

13 Q. Did you provide an answer to that interrogatory

14 answering who was invoiced, which carriers paid, and how

15 much?

16 A. I did not.

17 Q. Is that information in that answer?

18 A. It is not.

19 MR. KNUDSON: In fact, the answer, Your Honor, is

20 objected to on the grounds it's protected by the

21 attorney-client privilege and the work-product doctrine.

22 It's further objected to as being overly broad and unduly

23 burdensome. It's further objected to as seeking

24 information that is beyond the permissible scope of

25 discovery and that it is not reasonably calculated to lead

1 to the discovery of admissible evidence.
 2 I would submit that objection is unfounded. We were
 3 entitled to this information before this hearing, and we
 4 didn't get it.
 5 MR. SWIER: Your Honor, may I comment on that?
 6 THE COURT: Why don't we take argument later.
 7 This should really be limited to questions and answers, and
 8 not argument by either counsel.
 9 BY MR. KNUDSON:
 10 Q. We didn't get that information, did we, Mr. Cestero?
 11 A. You didn't.
 12 Q. After Sprint stopped paying in February and the
 13 revenues NAT received continued to climb, did it peak at
 14 about \$240,000 in July of 2010?
 15 A. Did it peak?
 16 Q. Come to its highest point?
 17 A. Yes.
 18 Q. Then after August 6, 2010, when NAT received over
 19 \$128,000 from carriers, the revenue declined dramatically.
 20 Correct?
 21 A. Correct.
 22 Q. This was months and months after Sprint stopped
 23 paying. Isn't that true?
 24 A. It is.
 25 Q. I'm wondering whether NAT instituted any cost-cutting

1 measures to reduce its operating expenses in the face of
 2 its declining revenues?
 3 A. Is that a question?
 4 Q. Yes. Did it?
 5 A. It certainly has. It's tried to limit its amount of
 6 expenses by contracting me to do the books.
 7 Q. Is there a written contract between you and NAT for
 8 that purpose?
 9 A. No.
 10 Q. If you would, take a look at the Profit and Loss again
 11 for 2010. That's NAT 83. You mentioned there's a circuit
 12 expense. On Defendant's 27 that's an expense paid to SDN
 13 Communications.
 14 A. Where are you looking?
 15 Q. Look first at Defendant's 27, if you would.
 16 A. Got it.
 17 Q. If you would, just look at Entry No. 11, 12, 13. Do
 18 you see those, sir?
 19 A. I do.
 20 Q. That's for SDN Communications?
 21 A. Yes.
 22 Q. What was that for?
 23 A. Those are circuit charges that WideVoice paid on
 24 behalf of Native American Telecom.
 25 Q. That was circuit charges paid to SDN Communications?

1 A. Yes.
 2 Q. As far as you understand, that's necessary to complete
 3 the signal or call all the way to NAT's equipment in
 4 Ft. Thompson?
 5 A. I'm not a circuit expert. I don't know exactly their
 6 true function.
 7 Q. Circuit expenses connected to the usage of that
 8 circuit. Correct?
 9 A. It's required is my understanding. Circuits are
 10 required to communicate.
 11 Q. The more you use a circuit, the more you pay for it.
 12 Isn't that true?
 13 A. Yes.
 14 Q. The 12 million minutes of use you reported for January
 15 of 2011, there would be circuit expenses associated with
 16 those minutes of use. Isn't that true?
 17 A. There would be.
 18 Q. You have a number of carriers that aren't paying that.
 19 Isn't that true?
 20 A. Yes.
 21 Q. Has NAT ever attempted to stop service to these
 22 carriers that are not paying?
 23 A. I don't know.
 24 Q. Is that you don't know, or is the answer no?
 25 A. I don't know.

1 Q. Who would know?
 2 A. I don't know.
 3 Q. Look at another line item here besides circuit
 4 expenses. That would be Exhibit A. Let's look at the
 5 collection and billing expense. Is that a percentage of
 6 the billings?
 7 A. I do not know.
 8 Q. You've never investigated how that number is
 9 determined?
 10 A. I don't recall. I've seen the invoices. I just don't
 11 recall how it's calculated.
 12 Q. Would there be that detail in NAT's business records,
 13 how it would be calculated?
 14 A. Yes.
 15 Q. You spent over \$96,000 in 2010 for billing expenses.
 16 Did you ever investigate whether you were overcharged for
 17 any of those expenses?
 18 MR. SWIER: Objection, Your Honor. Irrelevant.
 19 THE COURT: Overruled. You may answer.
 20 A. I did not.
 21 BY MR. KNUDSON:
 22 Q. So do you have a calculator, sir?
 23 A. Not with me.
 24 Q. Could you determine what percentage of the gross
 25 revenues went out as an expense to the billing agent?

1 A. I don't know.
 2 Q. It's at least, almost \$97,000. Is it not?
 3 A. I see the amount, \$97,000.
 4 Q. Is that eight percent?
 5 A. Whatever the math comes out to be.
 6 Q. It's a simple calculation you could do if you had a
 7 calculator.
 8 A. Sure.
 9 Q. Circuit expenses, you would agree that's more than 10
 10 percent of the gross revenues. Would you not?
 11 A. More than 10 percent?
 12 Q. Yes.
 13 A. It would be less than.
 14 Q. If you multiply \$126,000 by 10, what do you get?
 15 A. Where do you get the -- I'm sorry, yes. Yes.
 16 Q. Now, if I understand correctly, who are the members of
 17 the Board of NAT? Do you know?
 18 A. I do not know all the members, no.
 19 Q. How about people from WideVoice or Free Conference
 20 Corporation? Who are members of the Board of NAT?
 21 A. From which entity?
 22 Q. Free Conference Corporation.
 23 A. David Erickson.
 24 Q. How about Jeff Holoubek?
 25 A. And Jeff Holoubek.

1 Q. Anyone else?
 2 A. That's all I know.
 3 Q. Now, you testified earlier today that in late January
 4 AT&T paid NAT \$150,000. Is that right?
 5 A. Correct.
 6 Q. And then \$140,000 went to pay down WideVoice.
 7 Correct?
 8 A. Correct.
 9 Q. You've testified there's no written agreement between
 10 WideVoice and NAT?
 11 A. I'm not aware of any agreement.
 12 Q. There are no other creditors of NAT, to your
 13 knowledge?
 14 A. Not to my knowledge.
 15 Q. Was there any provision in the Joint Venture Agreement
 16 that permitted NAT to pay the \$140,000 to WideVoice?
 17 A. I'm not that familiar with the Operating Agreement.
 18 Q. Was there a vote of the NAT Board to authorize that
 19 payment?
 20 A. Excuse me?
 21 Q. Was there a vote of the Board of NAT to authorize that
 22 payment to WideVoice?
 23 A. I don't know.
 24 Q. You just did it because you were told to do so. Is
 25 that correct?

1 A. Correct.
 2 Q. And you were directed to by Mr. Holoubek?
 3 A. Yes.
 4 MR. KNUDSON: May I approach, Your Honor?
 5 THE COURT: You may.
 6 BY MR. KNUDSON:
 7 Q. I'm handing you what's been marked Plaintiff's
 8 Exhibit D. Do you recognize that?
 9 A. I do.
 10 Q. What is it?
 11 A. It's the Profit and Loss Statement for Native American
 12 Telecom for January of 2011.
 13 Q. That's from the same business records of NAT that lets
 14 you produce the Balance Sheet for January of 2011.
 15 Correct?
 16 A. Correct.
 17 MR. KNUDSON: I offer Plaintiff's Exhibit D.
 18 MR. SWIER: No objection.
 19 THE COURT: D is received.
 20 MR. KNUDSON: If I may again, Your Honor?
 21 THE COURT: You may.
 22 BY MR. KNUDSON:
 23 Q. Look at Plaintiff's Exhibit E.
 24 MR. KNUDSON: I apologize, Your Honor. It seems
 25 my extra copy has gone astray. Here it is.

1 BY MR. KNUDSON:
 2 Q. Tell me if you recognize Plaintiff's Exhibit E, sir.
 3 A. I do.
 4 Q. What is it?
 5 A. It's the bank statement for First Dakota for Native
 6 American Telecom for the period ending 1-29-2010.
 7 Q. That's the first page. The second page is a May 28,
 8 2010 --
 9 A. I'm sorry. Then there's another page for the period
 10 ending 5-28-2010, which is Page 2. Then a statement ending
 11 July 30, 2010, Page 9.
 12 Q. I would explain that these are -- do you recall that
 13 we had a discussion about redactions on the bank
 14 statements?
 15 A. Yes.
 16 Q. In fact, you removed your handwriting and other
 17 handwriting from the statements. Correct?
 18 A. These were internal notes that I didn't think you
 19 needed.
 20 Q. But you subsequently produced an unredacted copy of
 21 your bank statements?
 22 A. Yes, I did.
 23 Q. Exhibit E is a selection of a few pages from that. Is
 24 that right?
 25 A. Correct.

1 MR. KNUDSON: I would offer Exhibit E.
 2 MR. SWIER: No objection.
 3 THE COURT: E is received.
 4 BY MR. KNUDSON:
 5 Q. Let's take a look at the first page of Exhibit E.
 6 There seems to be two different persons' handwriting on
 7 that page. Is that true?
 8 A. Yes.
 9 Q. You can recognize your handwriting, can you not?
 10 A. Yes.
 11 Q. Which is your handwriting?
 12 A. The darker.
 13 Q. It says, "Utilities - central electric, shareholder
 14 distribution - Nate," for three for Tom. Is that right?
 15 A. Yes.
 16 Q. Another "Shareholder Distribution - Nate," as well?
 17 A. Yes.
 18 Q. The shareholder distributions, according to the
 19 entries here for the bank statement, they show a transfer
 20 to Tom's account. Is that correct?
 21 A. Yes.
 22 Q. So how much money had he transferred to his own
 23 account?
 24 A. I don't recall.
 25 Q. Does it add up to \$2,400?

1 A. I don't know.
 2 Q. It's \$1,000 and \$500 --
 3 A. Oh, on this page?
 4 Q. Yes, this page.
 5 A. Oh, \$2,400.
 6 Q. The next page, you recall our question about whether
 7 these expenses were on the cruiseship in Miami. That's
 8 your handwriting, though, is it not?
 9 MR. SWIER: Your Honor, I'll object to that. The
 10 foundation was never laid for what the purpose of the Miami
 11 charges were.
 12 THE COURT: The objection is overruled. You may
 13 continue on with your question.
 14 BY MR. KNUDSON:
 15 Q. Mr. Cestero, there's handwriting. Do you recognize
 16 the other handwriting?
 17 A. I do.
 18 Q. Whose is it?
 19 A. Tom Reiman's.
 20 Q. Tom wrote down those were his expenses?
 21 A. He provided the statements to me.
 22 Q. With his handwriting on them?
 23 A. Yes.
 24 Q. Did he explain to you why these were associated with
 25 his withdrawals?

1 A. No. I did not ask him.
 2 Q. But you concluded this was a shareholder distribution
 3 for Nate. Correct?
 4 A. As I mentioned before, there were several transactions
 5 reported to shareholder distributions, this being a few of
 6 them.
 7 Q. Let's look at the next page. There are a series of
 8 debit card transactions. Do you know what business purpose
 9 there was to incur \$433.51 in lodging expenses in
 10 Washington, D.C., for NAT?
 11 A. I do not know.
 12 Q. So you never questioned why that was a business
 13 expense?
 14 A. I do not know.
 15 Q. My question is did you question anybody whether it was
 16 appropriate?
 17 A. No.
 18 MR. KNUDSON: I have nothing further at this
 19 time, Mr. Cestero. Thank you.
 20 THE COURT: I have a couple questions before I
 21 have Mr. Swier ask his.
 22 On that document, Exhibit A, there was an expense for
 23 telephone and circuit expenses. Can you tell me what
 24 that's for?
 25 THE WITNESS: On which page?

1 THE COURT: Page 83 of Exhibit A.
 2 THE WITNESS: The telephone and circuit expenses?
 3 THE COURT: Right.
 4 THE WITNESS: Those are the circuit costs.
 5 THE COURT: Are those one-time expenses or
 6 ongoing?
 7 THE WITNESS: No, they're ongoing.
 8 THE COURT: Is it based on the amount of traffic
 9 that's happening?
 10 THE WITNESS: I'm not exactly sure what they are
 11 based on. They are monthly invoices that are sent to
 12 Native American Telecom.
 13 THE COURT: You don't know if it's the same flat
 14 fee, no matter how much traffic there is, and it's an
 15 ongoing expense, or if it's directly related to the amount
 16 of traffic?
 17 THE WITNESS: I don't know.
 18 THE COURT: And before you began doing NAT's
 19 accounting, who did the accounting work for NAT?
 20 THE WITNESS: There was a company Tom hired,
 21 Stern Accounting, I believe is their name.
 22 THE COURT: You indicated that NAT has reduced
 23 their costs by eliminating that accounting expense and
 24 having you do their accounting for free?
 25 THE WITNESS: Yes.

1 THE COURT: Have there been any other
2 cost-cutting measures that have been taken by NAT that you
3 are aware of?

4 THE WITNESS: When we switched out the CABS
5 Agent.

6 THE COURT: What difference did that make?

7 THE WITNESS: Substantial. I don't know the
8 exact amount that we saved, but we're saving money by using
9 a different CABS Agent or collection service.

10 THE COURT: So when I did the math, it looked
11 like CABS' collection and billing expense ended up being
12 about eight percent of the gross revenue. Are you saying
13 CABS was at a higher rate than that? Since this was for
14 the full year, part of it would be the new billing agent?

15 THE WITNESS: There were two billing agents in
16 2010. I don't know when one stopped and the other one
17 began. But the current one they are using is less
18 expensive than the previous one.

19 THE COURT: But you don't know the rate either
20 entity charged?

21 THE WITNESS: Not with me, no.

22 THE COURT: You said that Sprint last paid in
23 February of 2010?

24 THE WITNESS: Yes.

25 THE COURT: The tariff was filed in February of

1 2010?

2 THE WITNESS: I don't know exactly when the
3 tariff was filed.

4 MR. KNUDSON: Could we clarify which tariff we're
5 referring to; 1 or 2?

6 THE COURT: I thought when Mr. Swier questioned
7 you on direct examination, you said the first tariff was
8 filed in the winter of 2010. I then asked: "Is that
9 January or February of 2010, or is it the end of 2010 when
10 we also have winter?" I thought the representation was it
11 was filed in February of 2010. So you're now saying you
12 don't know when it was filed?

13 THE WITNESS: I didn't specify the actual month.
14 You asked about the time, and I said around that time. I
15 don't know the exact month.

16 THE COURT: So you really don't know when it was
17 filed?

18 THE WITNESS: No, I don't.

19 THE COURT: Well, when Sprint made that payment
20 in February of 2010, was it pursuant to the tariff, to the
21 first tariff?

22 THE WITNESS: I believe so. I don't know. I
23 believe so.

24 THE COURT: Did they make more than one payment
25 or just one payment?

1 THE WITNESS: They made two payments, totaling
2 \$29,000.

3 THE COURT: When was the other payment?

4 THE WITNESS: In January of 2010.

5 THE COURT: On Exhibit 25, which shows -- it's
6 the bank account record, the Wells Fargo Bank account
7 record.

8 THE WITNESS: Yes.

9 THE COURT: It's for January, January 1 through
10 January 31. You testified that AT&T paid NAT \$150,000 in
11 late January of 2011.

12 THE WITNESS: We deposited the funds in February.
13 We received the check in late January, but it didn't go
14 into the bank until February. That's why it doesn't show
15 up on the January statement.

16 THE COURT: On the First Dakota National Bank
17 statements, for example, Exhibit 13, it indicates the
18 payments that were made from the phone companies were a
19 direct pay, so it would be a direct deposit into the
20 account.

21 THE WITNESS: Yes, that's from the CABS Agent.
22 The CABS Agent would collect the payments on behalf of
23 Native American Telecom and submit one payment for all the
24 carriers.

25 THE COURT: The new group you have doing that

1 sends you checks from the carrier?

2 THE WITNESS: That's correct. They actually just
3 collect the checks and forward the checks to us. They do
4 not deposit the checks.

5 THE COURT: When did you switch?

6 THE WITNESS: Sometime in the middle of the year.
7 I don't recall exactly.

8 THE COURT: Before or after July?

9 THE WITNESS: It would be around that time. It
10 would be around the time where the direct pays were posted
11 into the account, and then we started receiving the
12 individual checks.

13 THE COURT: You're saying you did receive
14 individual checks from the new agent?

15 THE WITNESS: Yes. CDG sends us checks.

16 THE COURT: I see a deposit into your account
17 that is a direct pay --

18 THE WITNESS: Into which account?

19 THE COURT: August 31, so during the month of
20 August. It's Defendant's Exhibit 13. For \$128,000. I'm
21 assuming that would be under the old billing agent.

22 THE WITNESS: Yes. I guess there's overlap
23 between the time that we switched over to the new carrier
24 -- or to the billing agent. The old billing agent would
25 have billed, and they would have for, say, the two months

1 prior, would have collected those payments. In the
2 meantime we would have switched over to the new service.
3 The new service would bill, and then we'd receive payments
4 thereafter.

5 THE COURT: So that August statement shows a
6 direct deposit of \$128,000 from the old billing agent. I
7 don't see any other payments after that. So you switched
8 to a new billing agent, and you didn't receive any new
9 payments?

10 THE WITNESS: Right.

11 THE COURT: I thought you just told me that you
12 did.

13 THE WITNESS: We did, but the new billing agent
14 took over where the old agent left off. So they billed for
15 those payments that she had not yet received.

16 THE COURT: But you said those were not direct
17 deposits into the account. Those were checks sent to that
18 billing agent, and those were then forwarded on to you.

19 THE WITNESS: Correct.

20 THE COURT: My question is I'm looking at the
21 bank statements, and I don't see any more deposits.

22 THE WITNESS: Not for First Dakota Bank, because
23 everything goes to the Wells Fargo Bank.

24 THE COURT: I'm looking at both of them.

25 THE WITNESS: They won't show up as direct pays.

1 They would show up just as deposits.

2 THE COURT: I've looked through those, too. I
3 don't see any significant deposits.

4 THE WITNESS: You're right, because most of the
5 people stopped paying. The deposits that you can see, if
6 you look at January 31st on Exhibit 25, you'll see two
7 deposits on 1-18, one for \$27.61 and another one for \$3.41.
8 Those are the payments that we received that were forwarded
9 from the new billing agent for the CABS. You would see
10 similar entries on the other Wells Fargo statements.

11 THE COURT: For instance, Exhibit 24 shows a
12 deposit of \$3,519.77. You are saying that is what the new
13 billing agent was able to collect for you?

14 THE WITNESS: That's correct. That's what was
15 paid by the carriers.

16 THE COURT: All right. Thank you. Mr. Swier?

17 REDIRECT EXAMINATION

18 BY MR. SWIER:

19 Q. Carlos, Mr. Knudson asked you on cross-examination
20 about the marketing fee payments that NAT has made to
21 FreeConferenceCall. Is that right?

22 A. Yes.

23 Q. Those payments are pursuant to a contract between NAT
24 and FreeConferenceCall. Is that correct?

25 A. That's correct.

1 Q. So NAT has a legal contractual relationship to make
2 those marketing fee payments. Correct?

3 MR. KNUDSON: Objection. Foundation. Calls for
4 a legal conclusion.

5 THE COURT: Sustained.

6 A. Yes.

7 BY MR. SWIER:

8 Q. Based on your knowledge --

9 MR. KNUDSON: Motion to strike the answer.

10 THE COURT: The motion to strike is granted. If
11 I sustain an objection, then you don't get to answer it.

12 THE WITNESS: Oh, I'm so sorry.

13 BY MR. SWIER:

14 Q. To the best of your knowledge, there's a contract
15 between FreeConferenceCall and Native American Telecom that
16 FreeConferenceCall's marketing fees are paid. Correct?

17 MR. KNUDSON: Objection. Foundation. Misstates
18 his prior testimony.

19 THE COURT: Sustained.

20 BY MR. SWIER:

21 Q. Carlos, you were asked about the percentage of that
22 contract between FreeConferenceCall and Native American
23 Telecom. You indicated earlier that you are familiar with
24 the contracts that FreeConferenceCall has with other
25 companies like NAT. Correct?

1 MR. KNUDSON: Objection. Assumes a fact not in
2 evidence.

3 THE COURT: Overruled.

4 A. Correct.

5 BY MR. SWIER:

6 Q. And are those agreements that FreeConferenceCall has
7 with the other telephone companies the same or similar as
8 what FreeConferenceCall has with Native American Telecom?

9 A. Yes, they are.

10 Q. So that's a standard contract that FreeConferenceCall
11 has with its other telephone companies?

12 A. Yes, very similar.

13 MR. KNUDSON: Objection. Misstates his prior
14 testimony. Lack of foundation.

15 THE COURT: Overruled. Now you can answer.

16 A. Yes.

17 BY MR. SWIER:

18 Q. Carlos, you were asked by Mr. Knudson about some
19 charges that Native American Telecom has paid out, is that
20 correct, that were payments made for the deal in Miami.
21 Can you remember that?

22 A. Yes.

23 Q. And North Dakota. Correct?

24 A. Yes.

25 Q. Does FreeConferenceCall do business all over the

1 world?
 2 A. Yes.
 3 Q. Do you know what the purpose of Mr. Reiman being in
 4 Miami was on that particular day?
 5 A. I do not.
 6 Q. As far as you know, it could be related to the
 7 business?
 8 MR. KNUDSON: Objection. Speculation.
 9 Foundation.
 10 THE COURT: Sustained.
 11 MR. SWIER: May I approach, Your Honor?
 12 THE COURT: You may.
 13 BY MR. SWIER:
 14 Q. Carlos, I'll show you what has been marked as Sprint's
 15 Exhibit A. I'm looking at what's designated as NAT 00042
 16 on the bottom right-hand corner. Do you see that?
 17 A. I do.
 18 Q. Mr. Knudson asked you about the charges Mr. Reiman had
 19 in Miami. There are some other charges on here, also, for
 20 Washington, D.C. Are there not?
 21 A. Yes.
 22 Q. Do you know why NAT had to travel to Washington, D.C.,
 23 for a business-related purpose?
 24 A. I'm familiar with certain trips they've taken.
 25 Q. Why is it NAT had to take certain trips to Washington,

1 D.C.?
 2 MR. KNUDSON: Objection. Foundation as to this
 3 particular trip.
 4 THE COURT: Overruled. You may answer.
 5 A. My understanding is they've gone to Washington, D.C.,
 6 to meet with the Senators and Representatives regarding the
 7 Native American Tribe.
 8 Q. So it's your understanding they've gone to talk to
 9 South Dakota's Congressional delegation?
 10 A. In addition to others.
 11 Q. Regarding the nonpayment issue? Do you know?
 12 A. I believe so.
 13 Q. According to your knowledge, has NAT also traveled to
 14 Washington, D.C., to visit with the Federal Communications
 15 Commission?
 16 A. Yes.
 17 Q. Do you know what the purpose of those trips were?
 18 A. I do not know the exact purpose.
 19 Q. Would you consider, as an accountant, would you
 20 consider traveling to Washington, D.C., to lobby
 21 administrative agencies in South Dakota's Congressional
 22 delegation, based on these nonpayment issues, would be a
 23 reasonable business expense?
 24 MR. KNUDSON: Objection. Foundation.
 25 Speculation.

1 THE COURT: Overruled. You may answer.
 2 A. Yes, I would.
 3 BY MR. SWIER:
 4 Q. Carlos, the Court asked you a good question earlier
 5 about NAT's expenses. Approximately how much each month
 6 are Native American Telecom's expenses, just as a total,
 7 first of all?
 8 A. About \$40,000 a month.
 9 Q. Can you share with us a breakdown of the \$40,000
 10 number and what that monthly amount goes to?
 11 A. Sure. If you look at the January --
 12 Q. Which exhibit are you referring to?
 13 A. Plaintiff's Exhibit D.
 14 MR. SWIER: May I approach, Your Honor?
 15 THE COURT: You may.
 16 BY MR. SWIER:
 17 Q. Carlos, I'm looking at Plaintiff's Exhibit D. This is
 18 the most recent Profit and Loss Statement of NAT from a
 19 month ago, January of 2011. Is that right?
 20 A. Correct.
 21 Q. Does this Profit and Loss Statement show a typical
 22 month of expenses for NAT?
 23 A. It would.
 24 Q. Let's go through those a moment. How much did NAT
 25 receive from the carriers?

1 A. \$31.00.
 2 Q. So what was your gross profit?
 3 A. We lost \$42,000.
 4 Q. No, I'm talking your gross profit from the carrier
 5 payments.
 6 A. Oh, \$31.00.
 7 Q. Now let's look at the expenses. Bank service charges.
 8 How much is that every month?
 9 A. \$28.00.
 10 Q. In your professional opinion is that reasonable?
 11 A. Yes.
 12 Q. CABS collection and billing expense. How much was
 13 that?
 14 A. \$771.00.
 15 Q. Based on what you know, has NAT attempted to minimize
 16 that collection as much as they possibly can in the
 17 industry?
 18 A. Absolutely.
 19 Q. Consulting expenses of \$3,000. Share with the Court
 20 what those consulting expenses are for.
 21 A. Those are payments to Tom Reiman to assist with the
 22 operations of the Reservation.
 23 Q. What's your understanding of what Mr. Reiman's role is
 24 on a daily basis for NAT?
 25 A. They vary. I mean they go and make sure everything is

1 operating smoothly. If people have problems, he goes by.
 2 Q. Is Mr. Reiman NAT's conduit or the person who deals
 3 with the Tribe?
 4 A. Yes.
 5 Q. You are paying him a fee each month of \$3,000 to do
 6 that?
 7 A. That's correct.
 8 Q. Payroll expenses of \$1,906. What do those represent?
 9 A. Those are people that work in the Internet Library,
 10 Communications Center.
 11 Q. Are those Tribal members that you pay on a monthly
 12 basis for their services?
 13 A. They are.
 14 Q. Do you know what you pay those folks an hour?
 15 A. I don't recall exactly.
 16 Q. Do you have a ballpark? Do they get paid by the hour?
 17 A. Yes.
 18 Q. What's a number?
 19 A. I believe it's \$10.00 an hour.
 20 Q. \$10.00 an hour?
 21 A. Yes.
 22 Q. Do you think earning a couple dollars above minimum
 23 wage is reasonable?
 24 A. Yes.
 25 MR. KNUDSON: Objection. Argumentative.

1 THE COURT: Overruled. The answer will stand.
 2 BY MR. SWIER:
 3 Q. Payroll tax of \$358.00. What's that?
 4 A. That's the taxes related to the payroll.
 5 Q. Is NAT required to pay those?
 6 A. Yes.
 7 Q. Or you will go to jail?
 8 A. Yes.
 9 Q. Postage and postal charges. How much?
 10 A. \$125.00.
 11 Q. Why do we need postage expenses for NAT?
 12 A. It's the P.O. box.
 13 Q. So you can get mail?
 14 A. So we can get mail, yes.
 15 Q. Is it standard in the industry for a company to have a
 16 mailbox?
 17 A. Yes.
 18 Q. Is that a reasonable amount in your opinion?
 19 A. For a P.O. box? Yes.
 20 Q. Then you have professional fees of \$23,543. This is
 21 the most interesting item in the whole bunch. Explain to
 22 the Court what those professional fees reflect.
 23 A. Those are legal fees.
 24 Q. Legal fees for what?
 25 A. To help us fight everything that's going on.

1 Q. So last month, in order to maintain this litigation,
 2 NAT paid your attorneys \$23,000.
 3 A. Yes.
 4 Q. If you don't fight this in Court, what happens to NAT?
 5 A. It goes out of business.
 6 Q. Do you think, based on the work you received from your
 7 legal professionals, that in order to go through this case,
 8 that that's a reasonable amount?
 9 A. Yes.
 10 MR. KNUDSON: Objection. Foundation.
 11 THE COURT: Overruled. The answer will stand.
 12 BY MR. SWIER:
 13 Q. The next item is taxes, Federal taxes. I think it's
 14 self-explanatory, but what is that?
 15 A. Those are the Federal taxes we have to pay.
 16 Q. You are required to pay those every month?
 17 A. Not every month, but every quarter.
 18 Q. Are those consistent?
 19 A. Yes.
 20 Q. Then we have \$10,765 for telephone and circuit
 21 expenses. You've kind of talked about this a little bit,
 22 but are those monthly expenses that are needed for NAT to
 23 run?
 24 A. That's my understanding without them, you couldn't
 25 have it.

1 Q. Based on your knowledge of the circuits, which is
 2 limited, but you know what they cost, is that a reasonable
 3 amount for telephone and circuit expenses?
 4 A. Yes.
 5 Q. We have \$720 for travel expenses. Do you know what
 6 those travel expenses would be for?
 7 A. I don't know exactly, but they more likely would be
 8 for trips to Washington, D.C.
 9 Q. To do what?
 10 A. Meet with the FCC and other lobbying efforts.
 11 Q. So, Carlos, in January of 2011, if you add all those
 12 up, what are NAT's total expenses?
 13 A. \$42,000.
 14 Q. Where is the fat in there in your opinion?
 15 MR. KNUDSON: Objection. Argumentative.
 16 THE COURT: Overruled. You may answer.
 17 A. There isn't any. It's as lean as it gets.
 18 BY MR. SWIER:
 19 Q. Can you not pay your attorneys?
 20 A. We want to be represented.
 21 Q. You want to have good counsel?
 22 A. We want the best.
 23 Q. Do you have to pay those telephone and circuit
 24 expenses?
 25 A. Absolutely.

1 Q. Do you think you need to pay the Federal taxes?
 2 A. Yes.
 3 Q. Do you need to pay the company that collects your
 4 bills for you?
 5 A. Yes.
 6 Q. Why?
 7 A. If they didn't bill, we wouldn't have any chance of
 8 collecting.
 9 Q. You're not getting paid, anyway.
 10 A. We're not getting paid, but they still need to get
 11 billed.
 12 Q. Carlos, Mr. Knudson asked you questions about the
 13 loans that have been made from WideVoice Communications to
 14 NAT. Is that correct?
 15 A. Yes.
 16 Q. What have been the total amount of those loans as of
 17 today's date?
 18 A. Total amount that they've lent?
 19 Q. Yes.
 20 MR. KNUDSON: Objection. I think this is
 21 ambiguous. Are we talking about total lent or current
 22 balance outstanding?
 23 MR. SWIER: I'll clarify.
 24 THE COURT: Rephrase.
 25 BY MR. SWIER:

1 Q. What is the outstanding debt that NAT owes to
 2 WideVoice?
 3 A. About \$395,000.
 4 Q. That's as of today?
 5 A. As of today.
 6 Q. And you've indicated that based on the conversations
 7 you've had with your bosses, that WideVoice, because of
 8 their financial status, is now going to discontinue
 9 payments or loans to NAT?
 10 MR. KNUDSON: Objection. Hearsay.
 11 THE COURT: Sustained.
 12 BY MR. SWIER:
 13 Q. Carlos, what's your understanding of WideVoice's
 14 future intentions regarding loans to NAT?
 15 MR. KNUDSON: Same objection.
 16 THE COURT: Overruled. You may answer.
 17 A. They've indicated they are no longer going to fund NAT
 18 if they lose this.
 19 MR. KNUDSON: Your Honor, I still object. This
 20 is clearly based on hearsay. Move to strike.
 21 THE COURT: Overruled. The answer will stand.
 22 BY MR. SWIER:
 23 Q. Based on your familiarity with WideVoice's financial
 24 statements, based on your experience, is that a reasonable
 25 financial decision for WideVoice?

1 MR. KNUDSON: Also speculation.
 2 A. Yes.
 3 THE COURT: Overruled. The answer will stand.
 4 BY MR. SWIER:
 5 Q. What was the answer, Carlos?
 6 A. Yes.
 7 MR. SWIER: Your Honor, I don't have any further
 8 questions. Thank you.
 9 THE COURT: Mr. Knudson?
 10 RE-CROSS-EXAMINATION
 11 BY MR. KNUDSON:
 12 Q. Mr. Cestero, your understanding on what WideVoice
 13 would or would not do is based on what other people told
 14 you. Is that not correct?
 15 A. Amongst other conversations I was made a part of.
 16 Q. You are not a decision-maker of WideVoice. Correct?
 17 A. I am not.
 18 Q. So whatever WideVoice intends to do is something
 19 somebody else told you. Correct?
 20 A. It's what I've heard, and that's my understanding of
 21 it.
 22 Q. There's no fixed plan to do anything at this point in
 23 time. Is there?
 24 A. I can't predict the future.
 25 Q. So you are speculating on what WideVoice might do.

1 Right?
 2 A. It's my understanding what would happen.
 3 Q. You can't predict the future, so you are just guessing
 4 about what would happen. Correct?
 5 A. It's an educated guess.
 6 Q. But still a guess, though. Right?
 7 A. Yes.
 8 Q. Okay. Let's go back to Plaintiff's Exhibit D. I'll
 9 direct your attention to payroll expenses. You can look at
 10 it on the screen.
 11 I will take your answer that the people, the four
 12 employees NAT has on the Reservation are paid about \$10.00
 13 an hour. Are you with me on that?
 14 A. Yes.
 15 Q. I think this is pretty easy arithmetic here. If you
 16 divide 10 into \$1,906, how many hours of work would you get
 17 out of that if you are paying \$10.00 an hour?
 18 A. How many hours?
 19 Q. Yes.
 20 A. Nineteen?
 21 Q. You are an accountant.
 22 A. That was basic. I'm sorry. What was the question?
 23 If I divided by 10?
 24 Q. Let me rephrase the question.
 25 THE COURT: 190.

1 A. 190.
 2 BY MR. KNUDSON:
 3 Q. If you pay \$10.00 an hour and your total payroll
 4 expense is \$1,906, how many hours of work did you purchase
 5 for \$1,906?
 6 A. I'm sorry. I'm not doing the math in my head. I
 7 apologize.
 8 Q. Would you agree it's 190 hours?
 9 A. Yes.
 10 Q. So for the month of January the amount of payroll
 11 expenses, that's for the four people at the Internet Cafe
 12 on the Reservation, came to \$1,900. That's 190 hours of
 13 work. Are you with me on that?
 14 A. Yes.
 15 Q. You would agree with that statement?
 16 A. Yes. It's not necessarily just hourly. It's also
 17 other expenses that go in.
 18 Q. In other words, there may be some incidental expenses
 19 that are not wages?
 20 A. Well, let me retract that. That would be -- that
 21 specific line item would be for payroll, for hours. Yes.
 22 Q. You bought 190 hours worth of work in January.
 23 Correct?
 24 A. Yes.
 25 Q. Are you aware that South Dakota Network has a tariff?

1 MR. SWIER: Objection. Beyond the scope of
 2 cross-examination.
 3 MR. KNUDSON: No, not at all.
 4 MR. SWIER: Let me make my objection, please.
 5 Your Honor, I would object as that being beyond the scope
 6 of my redirect. We never talked about South Dakota Network
 7 on redirect.
 8 THE COURT: Mr. Knudson?
 9 MR. KNUDSON: South Dakota Network came up both
 10 in direct and cross. Also, it was raised and opened the
 11 door when he started talking about circuit expenses on his
 12 redirect.
 13 THE COURT: I think that it is included in
 14 circuit expenses, so it was discussed in redirect. So the
 15 objection is overruled.
 16 BY MR. KNUDSON:
 17 Q. Are you aware that South Dakota Network has a tariff
 18 by which it charges circuit expenses per minute of use to
 19 NAT?
 20 MR. SWIER: Objection. Irrelevant.
 21 THE COURT: Overruled.
 22 A. I'm not exactly sure how they are tied in.
 23 BY MR. KNUDSON:
 24 Q. If South Dakota Network charges NAT per minute of use,
 25 then the charges South Dakota Network submits to NAT would

1 vary by the amount of minutes of use. Correct?
 2 A. I don't know.
 3 Q. Well, try my question.
 4 MR. SWIER: Objection, Your Honor. Asking for
 5 speculation. He's testified he doesn't know.
 6 A. Yeah, don't know.
 7 THE COURT: Sustained.
 8 A. I'm not a circuits expert.
 9 THE COURT: Just a minute. I sustained the
 10 objection. Ask a new question.
 11 BY MR. KNUDSON:
 12 Q. If South Dakota Network charges per minute of usage.
 13 Are you with me there?
 14 A. Yes.
 15 Q. And the amount, that means the amount South Dakota
 16 Network charges NAT, varies by the minutes of usage.
 17 Correct?
 18 MR. SWIER: Objection. It's been asked, and he
 19 indicated he doesn't know the answer.
 20 THE COURT: Sustained.
 21 BY MR. KNUDSON:
 22 Q. So you're unaware whether or not South Dakota Network
 23 has a tariff in place for minutes of use charged to NAT.
 24 Correct?
 25 MR. SWIER: Objection. Asked and answered.

1 THE COURT: Overruled. You may answer.
 2 A. I don't know.
 3 BY MR. KNUDSON:
 4 Q. Do you know if anybody at NAT has gone to South Dakota
 5 Network to try to get a lower price on the circuit service
 6 South Dakota Network charges?
 7 A. I don't know.
 8 Q. Now, this P&L for January 2011, that's a cash basis
 9 again. You indicated even though, in fact, AT&T had paid
 10 you \$150,000 in January, you received a check from your
 11 billing agent in January. Right?
 12 MR. SWIER: Objection, Your Honor. Beyond the
 13 scope of redirect.
 14 THE COURT: Overruled. It was an area that I
 15 went into. So both parties can go into anything that I
 16 brought up in my questioning. So it's proper. You can go
 17 ahead.
 18 A. Ask the question. I'm sorry.
 19 BY MR. KNUDSON:
 20 Q. AT&T paid NAT \$150,000 in January. Correct?
 21 A. We received the payment in January.
 22 Q. You received the payment. So you had the funds
 23 available as soon as you deposited it into the bank.
 24 Right?
 25 A. It's not available until you deposit it into the bank.

1 Q. So your cash basis method of accounting is when it
2 goes into the bank. Right?
3 A. Right.
4 Q. But then the operating profit, if I understand, for
5 February, there would have been \$150,000 minus this
6 approximately \$40,000 in monthly expenses. Correct?
7 A. It would have been, but we would have had to pay
8 \$140,000 back to WideVoice.
9 Q. That's a different question in issue. The operating
10 profit, before paying off a loan, correct, would have been
11 \$110,000?
12 A. Sure.
13 Q. And NAT could have kept that \$110,000 in its bank
14 account. Correct?
15 A. They could have, but it needed it. WideVoice needed
16 the money.
17 Q. Is there any term or condition of a Loan Agreement
18 between WideVoice and NAT that required payment in
19 February?
20 MR. SWIER: Objection, Your Honor. Again, beyond
21 the scope, I believe, of everyone's redirect, and it's been
22 asked and answered previously on cross.
23 THE COURT: Overruled. You may answer.
24 A. Can you re-ask the question?
25 MR. KNUDSON: Let's have it read back.

1 (The requested portion of the record was read by the
2 reporter.)
3 A. Is there any term or condition that required payment?
4 BY MR. KNUDSON:
5 Q. Yes.
6 A. I don't know.
7 Q. So if AT&T pays in March, you don't know whether or
8 not NAT would keep that money, do you?
9 MR. SWIER: Objection. Speculation.
10 THE COURT: Overruled. You may answer.
11 A. If AT&T pays?
12 BY MR. KNUDSON:
13 Q. In March.
14 A. Would what now?
15 Q. If AT&T pays NAT in March, you don't know whether NAT
16 would keep that money. Do you?
17 A. I don't.
18 MR. KNUDSON: No further questions.
19 THE COURT: Mr. Swier? Anything?
20 FURTHER REDIRECT EXAMINATION
21 BY MR. SWIER:
22 Q. Carlos, if Sprint or AT&T, or whatever carrier, would
23 be willing to pay you and guarantee you payment of \$150,000
24 until the end of these lawsuits, would that be okay with
25 NAT?

1 A. That would be perfectly fine with NAT.
2 Q. And you've received one of those payments in the last
3 month?
4 A. Yes.
5 Q. You have not received any other payment, when it
6 should have already been received, if they were going to
7 continue payments. Right?
8 MR. KNUDSON: Objection.
9 A. Right.
10 THE COURT: Based on?
11 MR. KNUDSON: "Should have." That means
12 foundation. They haven't established when the payments are
13 due.
14 THE COURT: Sustained.
15 BY MR. SWIER:
16 Q. Carlos, are you familiar with when you receive
17 switched access payments from AT&T?
18 A. Yes.
19 Q. Have you received a switched access payment from AT&T
20 within the last few days?
21 A. No.
22 Q. Based on their standard of conduct, if they were going
23 to continue to pay that amount, would NAT have received the
24 check by now?
25 A. Yes.

1 MR. KNUDSON: Objection. Foundation.
2 THE COURT: Overruled. The answer will stand.
3 MR. SWIER: Thank you. I don't have anything
4 further, Your Honor.
5 THE COURT: Mr. Knudson? Anything?
6 MR. KNUDSON: Nothing, Your Honor.
7 THE COURT: You can be excused. Thanks.
8 (Witness excused)
9 THE COURT: We'll take a lunch break. But I'm
10 wondering how we're doing on timing for today. Mr. Swier,
11 how many more witnesses do you have?
12 MR. SWIER: Your Honor, it really will depend a
13 little bit on what the Court would like to do.
14 Mr. Lengkeek, during our October 14 preliminary injunction
15 hearing, did testify substantially under oath, and I
16 believe under the Rules, the Court is well within its right
17 to take judicial notice of his prior testimony and apply it
18 to the facts in this case.
19 If the Court would be willing to do that, then
20 Mr. Lengkeek's remaining testimony would be very brief,
21 like 10 or 15 minutes. If the Court would not take notice
22 of that, then we would probably have a couple hours. For
23 expediency sake, we're fine if the Court wants to just
24 review his prior testimony. It will be similar, if we put
25 him on the stand.