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02/23/11
Cash Basis

Native American Telecom, LLC
Profit & Loss
January through December 2010

	<u>Jan - Dec 10</u>
Ordinary Income/Expense	
Income	
CABS Collection Income	1,148,925.84
Total Income	<u>1,148,925.84</u>
Gross Profit	1,148,925.84
Expense	
Advertising Expense	4,622.13
Bank Service Charges	366.32
CABS Collection and Billing Exp	96,967.00
Computer and Internet Expenses	2,650.20
Computer Expense	44.64
Consulting Expense	15,793.00
Filing Fee	60.00
Gifts & Charitable Contribution	3,451.00
Marketing Expense	794,307.49
Office Supplies	819.63
Payroll Expenses	25,295.92
Payroll Tax	3,194.41
Postage and Postal Charges	993.35
Printing and Duplication	833.03
Professional Fees	85,712.42
Repairs and Maintenance	98,959.42
Shipping Expense	199.59
Taxes - Federal	2,767.31
Telephone and Circuit Expenses	126,947.76
Travel Expense	15,575.77
Utilities	3,974.85
Total Expense	<u>1,283,535.24</u>
Nat Ordinary income	<u>-134,609.40</u>
Net Income	<u><u>-134,609.40</u></u>

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
as Special Judge of Tribal Court; and
CROW CREEK SIOUX TRIBAL COURT,

10 Defendants.

11
12 U.S. District Courthouse
13 Sioux Falls, SD
14 March 3, 2011, 9:00 a.m.

14 * * * * *

15 MOTION HEARING

16 * * * * *

17 BEFORE: The Honorable Karen E. Schreier
U.S. District Court Judge

18 APPEARANCES:

19 Mr. Scott G. Knudson
20 Briggs & Morgan
21 2200 IDS Center
80 S. Eighth St.
Minneapolis, MN 55402-2157

22 -and-

23 Mr. Tommy Drake Tobin
24 Attorney at Law
PO Box 730
Winner, SD 57580

25 for the Plaintiff

1 APPEARANCES: (Continued)

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3 Mr. Scott R. Swier
 4 Swier Law Office
 5 Box 256
 6 Avon, SD 57315

for Defendant Native American Telecom, LLC

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INDEX TO WITNESS

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<u>Witness</u>	Direct	Cross	Redirect	Recross
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DEFENDANTS'

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Peter Lengkeek	135	160	172	179
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PLAINTIFF'S

23

24

Amy Clouser	182	190		
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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 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.