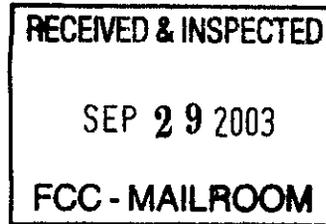


NATHANIEL HAWTHORNE
Attorney at Law/Consultant
Admitted in Ohio, Illinois and the District of Columbia

DOCKET FILE COPY ORIGINAL

www.telecomlawyer.com
email: nhawthorne@earthlink.net

27600 Chagrin Boulevard
Suite 260
Cleveland, OH 44122
(216) 514-3336
fax (216) 514-3337



Express Mail ET716363069US

**Appeal, and request for Expedited Relief, to the Federal
Communications Commission on behalf of Nicholas County
School District**

September 24, 2003

96-45

Secretary
Office of the Secretary
Federal Communications Commission
445 - 12th Street, S.W., Rm TW-204B
Washington, D.C. 20554

This is an appeal from a decision by the Schools and Libraries Division of the USAC.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

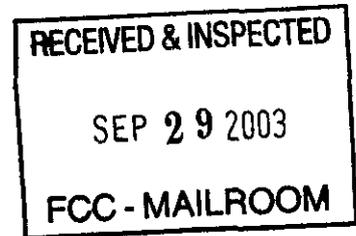
Nathaniel Hawthorne

Nathaniel Hawthorne
Attorney for Nicholas County School District

No. of Copies rec'd 014
List ATTORNEY

Express Mail ET716363069US

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of the)	File No. SLD -
)	
Appeal of the Decision of the)	
)	
Universal Service Administrator by)	
the)	
)	
Nicholas County School District)	
)	
)	
)	CC Docket No. 96 - 45
Federal-State Joint Board on)	
Universal Service)	
Changes to the Board of Directors of)	
The National Exchange Carrier)	
Association, Inc.)	CC Docket No. 97 - 21

**Appeal
and
Request for Expedited Relief
on behalf of the
Nicholas County School District**

September 23, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an appeal from a decision by the Schools and Libraries Division of the USAC.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

(1) **Funding Commitment Decision Letter Appealed**

Form 471 Application Number: 341461
Funding Year 2003: 07/01/2003-06/30/2004
Billed Entity Number: 126785

Date of Funding Denial Notice: August 25, 2003
Date of Appeal: September 23, 2003

(2) **SLD Contact Information**

(a) Currie A. Sutton
27600 Chagrin Blvd., Ste 260
Cleveland, OH 44122
Tel. (216) 682.0169
Fax. (216) 514-3337

(b) Nathaniel Hawthorne, Attorney (To discuss this Appeal)
27600 Chagrin Blvd., Ste 265
Cleveland, OH 44122
Tel. (216) 514.4798

(3) **Funding Request Numbers Appealed**

FRN -982474, FRN -982498, FRN -982656

(4) **SLD's Reason for Funding Denial**

FRN 982474, FRN 982498 and 982656

The SLD stated that funding is denied because:

“30% or more of this FRN includes a request for unsubstantiated telecommunication charges which are ineligible per program rules.”

(5) **The “30% rule” was incorrectly applied by the SLD.**

a) On January 29, 2003 the Nicholas County School District (Nicholas) prepared and filed a FCC Form 471 for telecommunications service with

Verizon-West Virginia, AT&T and Lloyd Hoff Holding dba Black Bear Paging as the vendors. The Verizon service had an “estimated” monthly charge of \$3,000.00, with an estimated annual charges of \$36,000.00. The AT&T service had an “estimated” monthly charge of \$750.00, with an estimated annual charges of \$9,000.00. The Lloyd Hoff Holding service had an “estimated” monthly charge of \$300.00, with an estimated annual charge of \$3,600.00.

- b) **Exhibit A** is the “billing” that Nicholas submitted to the SLD for Verizon, **Exhibit B** is the “billing” that Nicholas submitted to the SLD for AT&T and **Exhibit C** is the “billing” that Nicholas submitted to the SLD for Lloyd Hoff Holding.
- c) While the District’s request for funding was based on anticipated (estimated) telecommunications usage, Nicholas’s expenses should have been reduced rather than denied. The charges were not unsubstantiated since they were reasonable estimates of the District’s telecom expenses. These expenses were based on historical evidence , that is, telecom invoices.
- d) The FCC’s 30% rule provides, *in relevant part*, “[if] 30% or more of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services (including services for ineligible entities or uses), the PIA team will deny the entire Block 5 funding request, even if eligible components are part of the request. If less than 30% of the dollar amount of the request in Form 471 Block 5 Item 23K is for ineligible services, the PIA team will reduce the request by the cost of the ineligible components, and the Funding

Commitment Decision Letter will cite the ineligible services for which funds were not committed. If the request is reduced, applicants and service providers must ensure that the SLD is not invoiced for the ineligible items.

[Emphasis added.] **Here, there are no ineligible expenses included in Nicholas's USF request. The requested amount should have been reduced, not denied.**

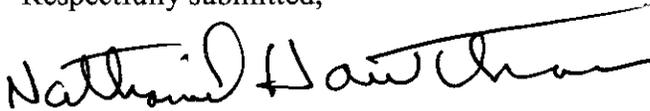
- e) Based on the the 30% rule and the attached exhibit, there is no factual basis for the denial.

Conclusion:

Nicholas is Requesting the Following Action by the FCC:

- (a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Application, specifically FRN(s) –982474, 982498 and 982656;**
- (b) Set aside funds to totally fund Nicholas's request.**

Respectfully submitted,



Nathaniel Hawthorne

District of Columbia Bar No. : 237693
27600 Chagrin Blvd., Ste. 265
Cleveland, OH 44122
tel.: 216/514.4798
e-mail: nhawthorne@earthlink.net

Attorney for
Nicholas County School District

EXHIBIT A

FAX COVER SHEET

To: Amanda Lopes
PIA

Fax: 973.599.6521

From: Currie A. Sutton



Date: 07/23/03

Pages: 17 (Including Cover)

Re: Nicholas County School District
471 Application Numbers-#341461

FRN 982458- Citizens

See the attached documentation. See pages 1 & 2

FRN 982474-Verizon

See attached documentation. . I have also attached a portion of the Verizon West Virginia Long Distance Tariff that identifies the Maximum Value Plan (MVP Plus) that appears on pages 6, 8,10, & 12. See pages 3-14 Incl.

FRN 982656-Lloyd Hoff Holding Corp. dba Black Bear Paging

The answer to Patricia Hasegawa on July 1, 2003 the documentation for FRN 982615 and FRN 982656 was mixed up.

The attached bill is the correct one for FRN 982656, Item 21 attachment WS, is also attached. This bill also reflects the correct monthly amount of \$100.02. Please change this request from \$300.00 a month to \$100.02 monthly/\$1200.24 annually. See pages 15 & 16.

Currie A. Sutton, email: curries@ameritech.net

Tel: 216.682.0169

Fax: 216.514.3337

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NICHOLAS COUNTY
SCHOOLS TITLE 1
304 742-5832

FRN 982474

Page 3

Account Summary

Amount of last bill dated 8/26/01.....	\$75.27
Payment(s). Thank you. 9/17.....	\$75.27ca
Balance.....	\$.00
Verizon Services	\$42.83
Current Charges Due by 10/25/01.....	\$42.83
Total Amount Due by 10/25/01	\$42.83

A late payment charge not to exceed 1% applies to any balance carried forward to next month's bill

61
#.41010.1111.331.205

Please write in amount enclosed and send this coupon with your payment in US funds to the address below

0• C

42•83 +
107•25 +
261•39 +
568•41 +
1,034•86 +
2,014•74 M+
2,014•74 M*

Page 4

FRN982474

Summary of Current Charges

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	3			31.2
Additions and Changes to Service(s)	3			1.5
Measured Calls Account Summary	3		208.0	6.6
Tax, Surcharges and Other Fees	3			3.4
Services and Equipment Information	4			
Total Verizon Current Charges		0	208.0	42.8
Total Summary of Current Charges				\$42.8



NICHOLAS COUNTY
BOARD OF EDUCATION
304 632-1323

Page 5

FRJ 982474

Account Summary

Amount of last bill dated 8/23/01.....	\$51.76
Payment(s). Thank you. 9/17.....	\$51.76
Balance.....	\$ 0.00
Verizon Services	\$107.25
Current Charges Due by 10/22/01.....	\$107.25
Total Amount Due by 10/22/01	\$107.25

A late payment charge not to exceed 1% applies to any balance carried forward to next month's bill

11.. 92621.415.001

Please write in amount enclosed and send this coupon with your payment in U.S. funds to the address below



Page 6

Summary of Current Charges

FRJ 982474

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	3			40.26
MVP Plus	3	28	51.0	4.34
Measured Calls Account Summary	3		1437.0	59.80
Operator-Assisted Calls	4	1	1.0	.75
Tax, Surcharges and Other Fees	4			2.10
Services and Equipment Information	5			
Total Verizon Current Charges		29	1489.0	107.25
Total Summary of Current Charges				\$107.25



2 Copies

Billing Date 9/26/01
Account 000042331865 86Y
Page 1 of 19
Questions? Call: (800) 607-6575

BD OF EDUCATION
715 BROAD ST
304 742-5271

Page 1

FRJ 982474

Account Summary

Amount of last bill dated 8/26/01.....	\$243.77
Payment(s). Thank you. 9/17.....	\$243.77 <i>cr</i>
Balance.....	\$.00
Verizon Services	\$261.39
Charges Billed for Other Companies	
VarTec Telecom, Inc.	\$.50
Current Charges Due by 10/25/01.....	\$261.89
Total Amount Due by 10/25/01	\$261.89

A late payment charge not to exceed 1% applies to any balance carried forward to next month's bill

11.. 92621.415.001

Please write in amount enclosed and send this coupon with your payment in U.S. funds to the address below



Billing Date 9/26/01
Account 000042331865 36Y
Page 2 of 19

Page 8

FRN 982474

Summary of Current Charges

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	3			234.70
MVP Plus	3	133	258.0	21.93
Measured Calls Account Summary	3		22.0	.76
Tax, Surcharges and Other Fees	8			4.00
Services and Equipment Information	10			
Total Verizon Current Charges		133	280.0	261.39

•VarTec Telecom, Inc.

Bill Section	First Page	Calls	Minutes	Amount
Calls	9	1	10.0	.50
Total Current Charges		1	10.0	.50
Total Summary of Current Charges				\$261.89



Billing Date 9/8/01
Account 000042335827 43Y
Page 1 of 31
Questions? Call: (800) 607-6575

NICHOLAS CO BOARD
OF EDUCATION
304 846-2591

page 9
FRN 982474

Account Summary

Amount of last bill dated 8/8/01.....	\$533.02
Payment(s). Thank you. 8/27.....	\$533.02 cr
Balance.....	\$.00 ✓
Verizon Services	\$568.41
Current Charges Due by 10/7/01.....	\$568.41
Total Amount Due by 10/7/01	\$568.41

A late payment charge not to exceed 1% applies to any balance carried forward to next month's bill

11. 92621.415.001

Please write in amount enclosed and send this coupon with your payment in U.S. funds to the address below



Billing Date 9/8/01
Account 000042335827 43Y
Page 2 of 31

Page 10

FEN 982474

Summary of Current Charges

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	3			507.81
MVP Plus	3	268	588.0	49.98
Measured Calls Account Summary	3		160.0	6.42
Tax, Surcharges and Other Fees	12			4.20
Services and Equipment Information	13			
Total Verizon Current Charges		268	748.0	568.41
Total Summary of Current Charges				\$568.41



NICHOLAS COUNTY SCHOOLS
400 OLD MAIN DR
304 872-2141

Page 11

FRN 982474

Account Summary

Amount of last bill dated 8/11/01.....	\$1066.21
Payment(s). Thank you. 8/27.....	\$1066.21 ^α
Credits and Adjustments.....	\$3.00 ^α
Credit Balance.....	\$3.00 ^α
Verizon Services	\$1034.86
Charges Billed for Other Companies	
AT&T.....	\$.30
Enhanced Services.....	\$31.00
Current Charges Due by 10/10/01.....	\$1066.16
Total Amount Due by 10/10/01	\$1063.16

A late payment charge not to exceed 1% applies to any balance carried forward to next month's bill

11. 92021.415.001

Please write in amount enclosed and send this coupon with your payment in U.S. funds to the address below

on

Page 12

FRN 982474

Summary of Current Charges

This summary is for informational purposes only.

• Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	3			883.58
MVP Plus	3	658	1739.0	156.51
Measured Calls Account Summary	3		101.0	3.28
Operator-Assisted Calls	19	2		2.30
Tax, Surcharges and Other Fees	22			9.19
Services and Equipment Information	28			
Total Verizon Current Charges		660	1840.0	1034.86

• AT&T

Bill Section	First Page	Calls	Minutes	Amount
Calls	23	1	1.0	.30
Total Current Charges		1	1.0	.30

• Enhanced Services

Bill Section	First Page	Calls	Minutes	Amount
Miscellaneous Charges	25			31.00
Miscellaneous Credits	25			.00
Total Current Charges				31.00

Total Summary of Current Charges \$1066.16

LONG DISTANCE SERVICES TARIFF
P.S.C.-W.Va.-No. 209

Page 13
FRN 98244

Verizon West Virginia Inc.

Section 2D
1st Revised Page 1
Cancels Original Page 1

Maximum Value Plan™ TWO-POINT SERVICE (LA-3) (C)

A. GENERAL

Maximum Value Plan (MVP) Two-point Service consists of telecommunications between two main stations, Miscellaneous Common Carrier mobile radio, branch exchange or Centrex systems, or any combination thereof, involving different local service areas. This plan is available only to business customers who have presubscribed to Verizon West Virginia Inc. for their intraLATA toll service.

B. REGULATIONS

1. Limitation of Service

MVP Two-point Service is offered on a customer dialed station-to-station basis to business customers only. Detail billing is not provided.

2. Chargeable time for all station-to-station calls begins when connection is established between the calling station and the called station, Miscellaneous Common Carrier mobile radio system, branch exchange or Centrex system and ends when the calling station "hangs-up" thereby releasing the network connection. If the called station "hangs-up" but the calling station does not, chargeable time ends when the network connection is released by automatic timing equipment in the telephone network.

3. Usage charges are based on the greater of the following.

- a. Actual accumulated time per month, or
- b. The minimum accumulated time per month which is determined by multiplying one minute times the number of completed calls.

C. RATES

1. Application of Rates

- a. Determine total usage time.
- b. Determine the equivalent hours used by applying the minimum average time requirement of 60 seconds (1 call = 1 minute).

Issued by authority of an Order of the Public Service Commission of West Virginia
in Case No. _____ dated _____.

Issued: April 4, 2003

Effective: April 19, 2003

LONG DISTANCE SERVICES TARIFF
P.S.C.-W.Va.-No. 209

Page 14

FRN 982474

Verizon West Virginia Inc.

Section 2D
2nd Revised Page 2
Cancels 1st Revised Page 2

Maximum Value Plan** TWO-POINT SERVICE (LA-3)

(C)

C. RATES (Cont'd)

1. Application of Rates (Cont'd)

Determine the total chargeable hours which is the greater of (a) or (b) above, rounded to the nearest hundredth (two decimal places).

- d. Determine usage charges by multiplying the hourly rate by the chargeable hours as determined in (c) above.

2. Rate Schedule

	<u>Per Month</u>	<u>USOC</u>
a. Per Billing Telephone Number.....	Rate Deregulated	TGX
b. Usage charges, per hour.....	Rate Deregulated	

Issued by authority of an Order of the Public Service Commission of West Virginia
in Case No. _____ dated _____.

Issued: April 4, 2003

Effective: April 19, 2003

FAX COVER SHEET

**To: Patricia Hasegawa
PIA**

Fax: 973.599.6521

From: Currie A. Sutton

Date: 07/01/2003

Pages: 20 (Including Cover)

**Re: Nicholas County School District
471 Application Numbers-#341461**

FRN 982458 Citizens

See the attached documentation. See page 1

FRN 982474 Verizon

See the attached documentation. See pages 2-5 Incl.

FRN 982498 AT&T

See the attached documentation. See page 6

FRN 982528 Citizens

See attached documentation. See the fax sent to Martin Kozlik on 6-3-03. See Attachment HB1 This attachment indicates in Year 6 a new T1 will be installed. Attached you will find the State of West Virginia pricing information from the master contract with Frontier-Citizens which quotes the monthly rate. See pages 7-9 Incl.

FRN 982545 Verizon

See the attached documentation. See attachment HB2. This attachment is requesting the addition of 6 new T1's in Year 6. This would increase the monthly rate by \$421.25 X 6=\$ 2527.50 a month. Attached you will find the State of West Virginia pricing from the master contract with Verizon-West Virginia. See pages 10-15 Incl.

FRN 982584. Douglass Telecommunications, Inc

See attached documentation. See page 16.

FRN 982615 Lloyd Hoff Holding Corp dba Black Bear Paging
See attached documentation. See page 17

FRN 982656 Lloyd Hoff Holding Corp. Black Bear Paging
See attached documentation. See page 18

Currie A. Sutton, email: curries@ameritech.net
Tel: 216.682.0169 Fax: 216.514.3337

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Billing Date: 9/23/02
 Account 000042328406 62Y
 Page 2 of 8
 Questions? Call: (800) 344-7710

How Your Charges are Billed

Your telephone bill includes five types of service charges:

1. **Basic Service Charges** - Charges for local telephone service, dial tone line, associated services and installation charges. Your bill will always include some regulated service charges, even if you do not use your phone.
2. **Non-Basic Service** - All charges other than Basic, Toll, Non-Telcom or Directory Advertising.
3. **Toll Charges** - Charges for both local and long distance toll charges.
4. **Non-Telecommunication Charges** - Charges not regulated by the Public Service Commission of West Virginia.
5. **Directory Advertising Charges** - Charges for advertising in the directory.

	Past Due Balances	Current Charges	Totals
Basic Charges	.00 *	121.68	121.68
Non-Basic Charges	.00 *	.10	.10
Toll Charges	.00 *	5.10	5.10
Non-Telcom Charges	.00 *	10.50	10.50
Directory Advertising	.00 *	.00	.00
Totals	\$0.00 *	\$137.38	\$137.38

* Failure to pay an amount indicated by the asterisk could result in the discontinuance of those services. For example, if basic charges are marked by an asterisk and basic charges are not paid, you could lose dial tone.

The following pages provide billing detail for the charges listed. If you have questions or complaints, call us using the telephone number found at the top of the Verizon pages of your bill.

Verizon-West Virginia is a utility regulated by the Public Service Commission of West Virginia. Please mail payments to Verizon-WV, P.O. Box 17577, Baltimore, Maryland 21297-0513. Payments received on any business day will be credited to your account the next business day. Payments credited to your account on or before the due date are considered "on-time". If your payment is late, we will notify you that your service may be disconnected.

For information about your Verizon service, see the "Customer Guide" in front of your phone book. (Federal Tax ID 55-0142020)



Billing Date 9/26/02
 Account 000042331865 86Y
 Page 2 of 20
 Questions? Call: (800) 344-7710

How Your Charges are Billed

Your telephone bill includes five types of service charges:

1. **Basic Service Charges** - Charges for local telephone service, dial tone line, associated services and installation charges. Your bill will always include some regulated service charges, even if you do not use your phone.
2. **Non-Basic Service** - All charges other than Basic, Toll, Non-Telcom or Directory Advertising.
3. **Toll Charges** - Charges for both local and long distance toll charges.
4. **Non-Telecommunication Charges** - Charges not regulated by the Public Service Commission of West Virginia.
5. **Directory Advertising Charges** - Charges for advertising in the directory.

	Past Due Balances	Current Charges	Totals
Basic Charges	.00 *	88.85	88.85
Non-Basic Charges	.00 *	319.75	319.75
Toll Charges	.00 *	10.50	10.50
Non-Telcom Charges	.00 *	23.95	23.95
Directory Advertising	.00 *	.00	.00
Totals	\$0.00 *	\$442.85	\$442.85

* Failure to pay an amount indicated by the asterisk could result in the discontinuance of those services. For example, if basic charges are marked by an asterisk and basic charges are not paid, you could lose dial tone.

The following pages provide billing detail for the charges listed. If you have questions or complaints, call us using the telephone number found at the top of the Verizon pages of your bill.
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For information about your Verizon service, see the "Customer Guide" in front of your phone book. (Federal Tax ID 55-0142020)



Summary of Current Charges

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	4			1326.3
Additions and Changes to Service(s)	4			822.7
MVP Plus	32	637	1588.0	142.9
Measured Calls Account Summary	32		314.0	10.3
Operator-Assisted Calls	51	1		1.4
Tax, Surcharges and Other Fees	51			10.2
Services and Equipment Information	53			
Total Verizon Current Charges		638	1902.0	2313.2

•Integretel, Inc.

Bill Section	First Page	Calls	Minutes	Amount
Miscellaneous Charges	51			35.9
Total Current Charges				35.9

•VarTec Telecom, Inc.

Bill Section	First Page	Calls	Minutes	Amount
Calls	52	3	30.0	1.5
Total Current Charges		3	30.0	1.5

Total Summary of Current Charges **\$2350.6**



Summary of Current Charges

This summary is for informational purposes only.

•Verizon

Bill Section	First Page	Calls	Minutes	Amount
Monthly Charges	4			790.7
Additions and Changes to Service(s)	4			172.2
MVP Plus	10	301	594.0	50.4
Measured Calls Account Summary	10		167.0	7.4
Tax, Surcharges and Other Fees	19			4.4
Services and Equipment Information	20			
Total Verizon Current Charges		301	761.0	1025.3
Total Summary of Current Charges				\$1025.3

EXHIBIT B

EXHIBIT C

Lloyd Hoff Holding Corporation
100 Industrial Lane
PO Box 250
Millwood WV 25262

Invoice 03-002311

Date
3/15/03

Page: 1

Page 16

FRJ982656

Bill To:
NICHOLAS COUNTY BOE
400 OLD MAIN STREET

Ship To:
NICHOLAS COUNTY BOE
400 OLD MAIN STREET

SUMMERSVILLE WV 26691

SUMMERSVILLE WV 26691

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.		
	20204		UPS	Net 15 days	0/0/00	50,768	Ordered	Shipped
			Item Number	Description	Discount	Unit Price	Ext.	Price
			0 GAULEY 9-20 BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67
			0 CRAIGSVILLE LOS BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67
			0 WALLBACK L18 BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67
			0 SUTTON L21 BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67
			0 LONE TREE L29 BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67
			0 RAVENSWOOD L34 BASE 6 RPTRS		\$0.00	\$16.67	\$16.67	\$16.67

Subtotal	\$100.02
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Total	\$100.02