

Express Mail ET716363041US

DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
FEB 23 2004
FCC - MAILROOM

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)	
)	
Berkeley 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
Berkeley County School District**

February 19, 2004

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: 338662
Funding Year 2003: 07/01/2003-06/30/2004
Billed Entity Number: 126681
Date of Funding Denial Notice: January 20, 2004
Date of Appeal: February 17, 2004

(2) **SLD Contact Information**

Cathy Crytzer
27600 Chagrin Blvd., Ste 260
Cleveland, OH 44122
Tel. (216) 682.0169
Fax. (216) 514-3337

(3) **Funding Request Numbers Appealed**

FRN -957539

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

The SLD stated that funding is denied because:

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

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

- a) The Berkeley County School District (Berkeley) prepared and timely filed a FCC Form 471 for telecommunications service with Hardy Cellular Telephone Company as the vendor. The service had an “estimated” monthly charge of \$4,167.00. The District provided “support” to the SLD \$2,738.85, and requested a reduction in the estimated amount.

- b) **Exhibit A** is the “billing” that Berkeley submitted to the SLD.
- c) While the District’s request for funding was based on anticipated (estimated) telecommunications usage, Berkeley’s expenses should have been reduced, to \$2,738.85, rather than denied in full.
- 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.]

e) If the FCC’s 30% rule is unclear, then we should look at the SLD’s rule on this issue. The SLD’s Rule provides as follows:

“Processing of Funding Requests Containing Ineligible Products and Services (The “30% Rule”)

Applicants should be sure that they include only eligible products and services in their Form 471 Block 5 funding requests. If services to be delivered include both eligible and ineligible components, applicants must subtract the ineligible costs using Item 23B and/or Item 23G of their Block 5 funding requests.

The SLD's Program Integrity Assurance (PIA) Team reviews all Forms 471 to ensure that funds are being requested only for eligible products and services. If an applicant includes ineligible products and services in a Block 5 funding request, the entire request may be jeopardized.

The SLD has developed the "30% Rule" to more efficiently process the large number of applications under the Schools and Libraries Support Mechanism, especially because demand for funding generally exceeds the funding available.

- 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.”

- e) “Ineligible charges” are defined as expenses for ineligible services, e.g., voice mail and phones. *See, Oversight of the Universal Service Fund, as prepared by the Federal Office of the Inspector General, Pg. 11.*

f) **Here, there are no ineligible expenses included in Berkeley's USF request.**

g) Based on the 30% rule and the attached exhibits, there is no factual basis for the denial.

Conclusion:

Berkeley 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-957539

(b) Set aside funds to totally fund Berkeley'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
Berkeley County School District

Cc: Berkeley County School District

Exhibit A

FAX COVER

**TO: Wes Woodman/PIA Associate
SLD**

Fax: 973.599.6513

From: Cathy Crytzer

Date: 10/24/2003

Pages: 29 (Including Cover)

Re: Berkeley County School District-Application # 338662

FRN 957511

**See attached documentation. See pages 1-16 Incl.
Please reduce the FRN to the amount supported
by the documentation presented.**

FRN 957526

**See attached documentation. See pages 17-22 INCL.
Pages 18-22 are part of the OCC charges for this bill. The bill is 396 pages.
Attached are a few pages of the OCC showing the charges applied to each line.
They include Primary Carrier Charge, Universal Connect Charge, and Universal
Service Fund charge per telephone number.
Please reduce this FRN to the amount supported
by the documentation presented.**

FRN 957539

**See attached documentation. See pages 23-26 Incl.
Please reduce this FRN to the amount supported
by the documentation presented**

**FRN 957535 Contract #1050107 was reported to the SLD in the first year of the
program with an incorrect expiration date, see attached change order #4 from 1997,
which shows the correct expiration date is June 30, 2005. The original master
contract is maintained by the State of West Virginia Department of Education and
or State of West Virginia Purchasing authority. See page 27**



Page 23

Page 1 of 62
Account Number: 916889607
Bill Date: 5/24/03
Invoice Number: 916889607-025

BERKELEY COUNTY SCHOOLS

238.77	238.77CR	0.00	4,050.08
--------	----------	------	----------

ACCOUNT SUMMARY

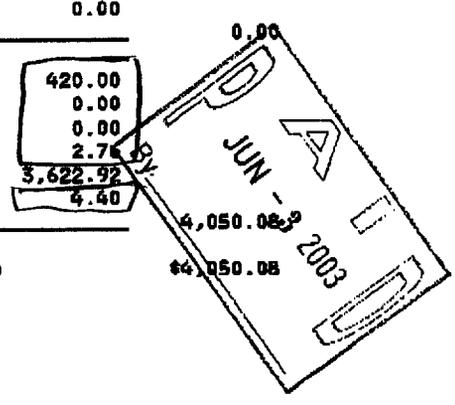
Previous Balance 238.77
 Payments Received thru 5/25/03. Thank you! 238.77CR
 Credits and Adjustments to Previous Balance 0.00
 Past Due Balance

Monthly Service Charges 420.00
 Local Usage 0.00
 Extended Home Service Area Charges 0.00
 Roaming Charges 2.75
 Other Charges & Credits 3,622.92
 Taxes 4.40

Total Current Charges Due by 6/23/03

TOTAL AMOUNT DUE

427.16
Tele 001



Thank you for choosing our wireless service. We appreciate your business.
For all billing inquiries, call 888-944-9400 or call 611 or *611 from your cellular phone.

Please detach and mail bottom portion with your payment to ensure prompt handling



Page 24

Page 3 of 62
 Account Number: 916989607
 Bill Date: 5/24/03
 Invoice Number: 916989607-025

ACCOUNT SUMMARY

	CHARGES	TOTAL
PAYMENTS RECEIVED		
Payment by check received on 05/13/03 - Thank You	238.77CR	
Total Payments		\$238.77CR
MONTHLY SERVICE CHARGES 5/24/03 THROUGH 6/23/03		
LOCAL UNLIMITED N&W	0.00	
Total Monthly Service Charges		\$0.00
ACCOUNT SUMMARY OF AIRTIME USAGE		
Local Usage		
CORP COMBINED REGIONAL 500 v2 1,721 Calls, 4/24/03 through 5/23/03		
SPECIFIC EXTRA Off Peak 249.00 min X 0.00 per min		
INCLUDED Peak 4,227.00 min X 0.00 per min		
Total minutes 4,476.00		
Extended Home Service Area		
CORP COMBINED REGIONAL 500 v2 357 Calls, 4/24/03 through 5/23/03		
SPECIFIC EXTRA Off Peak 77.00 min X 0.00 per min		
INCLUDED Peak 744.00 min X 0.00 per min		
INCLUDED Off Peak 208.00 min X 0.00 per min		
Total minutes 1,029.00		
DETAIL OF OTHER CHARGES & CREDITS		
DEBIT CREDIT OVERAGE S&L PROGRAM	3,591.17	
Total Other Charges & Credits		\$3,591.17

Tax

Total Tax for Account Activity \$0.00

ACCOUNT SUMMARY BY PHONE NUMBER

User Name/ Cellular Telephone Number	Mins/ Msgs Used	Adj. to Prev Bal.	Monthly Service	Local Usage	Roaming Charges	Other Charges & Credits	Taxes	Total
BERKELEY COUNTY SCHOOLS								
304-676-4801	1,086.00	0.00	35.00	0.00	2.76	2.71	0.00	40.47
BERKELEY COUNTY SCHOOLS								
304-676-4802	580.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4803	18.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4804	1,055.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4805	167.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
Berkeley County Schools								
304-676-4806	1,165.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4807	180.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4808	96.00	0.00	35.00	0.00	0.00	2.64	0.00	37.64
BERKELEY COUNTY SCHOOLS								
304-676-4835	571.00	0.00	35.00	0.00	0.00	2.64	1.10	38.74
ENERGY MANAGER								
304-676-4836	309.00	0.00	35.00	0.00	0.00	2.64	1.10	38.74
PUPIL SERVICES DIRECTOR								
304-676-4840	150.00	0.00	35.00	0.00	0.00	2.64	1.10	38.74
FOOD AND SERVICE DIRECTOR								
304-676-4841	130.00	0.00	35.00	0.00	0.00	2.64	1.10	38.74
	<u>5,509.00</u>							<u>\$458.91</u>

Tax

Federal Tax

4.40



Page 1 of 408
Account Number: 141671570
Bill Date: 5/24/03
Invoice Number: 141671570-092

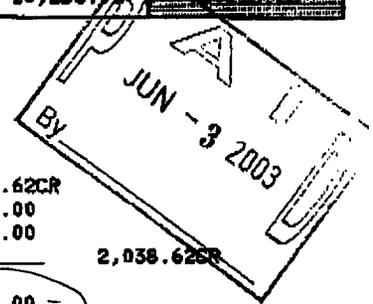
Page 25

BERKELEY COUNTY BOARD OF EDUCATION

2,038.62CR	0.00	0.00	10,156.90	10,156.90
------------	------	------	-----------	-----------

ACCOUNT SUMMARY

Previous Balance	2,038.62CR	
Payments Received thru 5/25/03	0.00	
Credits and Adjustments to Previous Balance	0.00	
Past Due Balance		2,038.62CR
Monthly Service Charges	1,246.00 -	
Local Usage	955.76	
Extended Home Service Area Charges	48.73	
Roaming Charges	61.20	
Other Charges & Credits	7,845.21	
Taxes	0.00	
Total Current Charges Due by 6/23/03		10,156.90
TOTAL AMOUNT DUE		18,118.28



2311.69
tel
002

Thank you for choosing our wireless service. We appreciate your business.
For all billing inquiries, call 888-944-9400 or call 611 or *611 from your cellular phone.

Please detach and mail bottom portion with your payment to ensure prompt handling



Page 26

Page 3 of 408
 Account Number: 141671570
 Bill Date: 5/24/03
 Invoice Number: 141671570-092

BERKELEY COUNTY BOARD OF EDUCATION

	CHARGES	TOTAL
MONTHLY SERVICE CHARGES 5/24/03 THROUGH 6/23/03		
Monthly charge for CORPORATE CUSTOM	0.00	
Including: Automatic Roaming Wide		
Call Delivery Wide		
Call Waiting		
Detailed Airtime		
No Answer Transfer (Call Forward)		
Three Way Conference Calling		
Total Monthly Service Charges		\$0.00

ACCOUNT SUMMARY OF AIRTIME USAGE

Local Usage

CORPORATE CUSTOM	4,055 Calls, 4/24/03 through 5/23/03		
BILLED Peak	8,356.00 min X	0.11 per min	
BILLED Off Peak	310.00 min X	0.11 per min	
Total minutes	8,666.00		

Extended Home Service Area

CORPORATE CUSTOM	191 Calls, 4/24/03 through 5/23/03		
BILLED Peak	396.00 min X	0.11 per min	
BILLED Off Peak	47.00 min X	0.11 per min	
Total minutes	443.00		

DETAIL OF OTHER CHARGES & CREDITS

DEBIT CREDIT COVERAGE S&L PROGRAM	8,096.01	
Schools & Libraries Disc 60%	602.72CR	
Federal USF Charge	15.66CR	
Total Other Charges & Credits		\$7,477.63

BERKELEY COUNTY BOARD OF EDUCATION

Total Tax for Account Activity	\$0.00
---------------------------------------	---------------

BERKELEY COUNTY BOARD OF EDUCATION

User Name/ Cellular Telephone Number	Mins/ Msgs Used	Adj. to Prev Bal.	Monthly Service	Local Usage	Roaming Charges	Other Charges & Credits	Taxes	Total
BERKELEY COUNTY BO OF ED								
304-582-8416	56.00	0.00	7.00	6.16	0.00	2.07	0.00	15.23
BERKELEY COUNTY BO OF ED								
304-582-8417	35.00	0.00	7.00	3.85	0.00	2.01	0.00	12.86
BERKELEY COUNTY BO OF ED								
304-582-8419	8.00	0.00	7.00	0.88	0.00	1.93	0.00	9.81
BERKELEY COUNTY BO OF ED								
304-582-8421	8.00	0.00	7.00	0.88	0.00	1.93	0.00	9.81
BERKELEY COUNTY BO OF ED								
304-582-8425	0.00	0.00	7.00	0.00	0.00	1.91	0.00	8.91
BERKELEY COUNTY BO OF ED								
304-582-8426	399.00	0.00	7.00	42.46	3.90	3.11	0.00	56.47
BERKELEY COUNTY BOARD OF EDUCA								
304-671-0904	17.00	0.00	7.00	1.87	0.00	1.96	0.00	10.83
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1172	18.00	0.00	7.00	1.98	0.00	1.96	0.00	10.94
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1183	0.00	0.00	7.00	0.00	0.00	1.91	0.00	8.91
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1229	22.00	0.00	7.00	2.20	0.60	1.99	0.00	11.79
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1346	37.00	0.00	7.00	4.07	0.00	2.02	0.00	13.09
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1379	15.00	0.00	7.00	1.65	0.00	1.95	0.00	10.60
BERKELEY COUNTY BOARD OF EDUCA								
304-671-1393	1.00	0.00	7.00	0.11	0.00	1.91	0.00	9.02