



# Northeast Arizona Technological Institute of Vocational Education

P.O. Box 710 • Kayenta, AZ 86033

November 30, 2015

Letter of Appeal

Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

## CC Docket No 02-6

**Request for Review** of Administrator's Decisions on Appeal – Funding Year 2012, Issued October 2, 2015, Re: Form 471 Application Numbers 871949

### Authorized person who can best discuss this Appeal with you

Richard Larson  
eRate 360 Solutions, LLC  
322 Route 46W, Suite 280W  
Parsippany, NJ 07054

Phone: (888) 535-7771 ext 102  
Fax: (866) 569-3019  
Email: [rlarson@erate360.com](mailto:rlarson@erate360.com)  
(preferred mode of contact)

### Application Information

Entity

Billed Entity Number

Funding Year

Form 471 Number

Service Provider / SPIN

NATIVE Vocational District Office  
16020596  
2012-13  
871949  
BNI Solutions, LLC / 143005529

FRN	Funding Requested
2378471	\$33,947.23
2378637	\$126,408.26
2378984	\$61,374.88
2379549	\$64,465.33
2379635	\$12,366.41
2379894	\$69,028.74
	<b>\$367,590.85</b>

Document Being Appealed: Administrator's Decisions on Appeal – Funding Year 2012, Issued October 2, 2015, Re: Form 471 Application Numbers 871949 <sup>1</sup>

FRNs 2378471, 2378637, 2378984, 2379549, 2379635, & 2379894:

Decision on Appeal: Denied

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<sup>1</sup> Letter from Schools and Libraries Division, USAC, to Richard Larson, consultant to NATIVE Vocational District, entitled "Administrator's Decisions on Appeal – Funding Year 2012", re Form 471 Number 871949, dated October 2, 2015 (ADL).

Explanation:

- In accordance with the FCC decision in the matter of FCC DA 15-773 you were given an opportunity to file additional documentation to support the calculation of the correct discount rate.

The Provision 2 discount documentation received on September 28, 2015 shows that the discount for Tuba City High School is validated at 74.47%, with enrollment of 705 students which equates to 80% discount level for this entity. Therefore, the FRNS were approved with appropriate discount level. Your appeal has not shown that USAC erred in its initial determination. Therefore your appeal is denied.

- FCC rules provide that the discount available to an applicant is determined by indicators of poverty and high cost. See 47 C.F.R. sec. 54.505(b). The level of poverty is measured by the percentage of students enrolled in a school or school district that are eligible for a free or reduced price lunch under the National School Lunch Program (NSLP), or a federally-approved alternative mechanism. Alternatively, the level of poverty is measured according to participation in Medicaid, Food Stamps, Supplementary Security Income (SSI), Federal Public Housing Assistance or Section 8, or Low Income Home Energy Assistance Program (LIHEAP). See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9045, FCC 97-157 para. 510, n.1334 (rel. May 8, 1997). The high cost determination is made pursuant to FCC rules that classify a school or library as rural or urban. See 47 C.F.R. sec. 54.505(b)(3). An applicant's discount rate is determined by reference to a matrix based upon the level of poverty and whether the entity is classified as rural or urban. See 47 C.F.R. sec. 54.505(c).

**Request for Review:**

NATIVE Vocational District Office (NATIVE) requests that the FCC reverse the decision of the Schools and Libraries Division of USAC (SLD) to deny funding to the six FRNs listed above. These FRNs were denied because the SLD reviewer did not accept the 90% discount level for the NATIVE school located at Tuba City High School, entity number 16042711. The entire Tuba City Unified District was granted Provision 2 status for the 2012-13 school year. Because Provision 2 qualifies 100% of students at Tuba City High School as eligible to receive free meals, NATIVE respectfully contends that the discount percentage for the NATIVE school located at Tuba City High School should be 90%, and the shared discount for FRNs 2378471, 2378637, 2378984, 2379549, 2379635, and 2379894 should be restored to 90%, thereby reversing the SLD's denial of funding to these six FRNs.

Code of Federal Regulations §54.505 states that "*For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism.*"<sup>2</sup> The National School Lunch Act established three alternative mechanisms to the national school lunch program, Provisions 1, 2, and 3.

The state of Arizona allows participation in Provisions 2 and 3, and Tuba City Unified District was granted Provision 2 status by the State of Arizona Department of Education on June 15, 2011, for a four year period beginning with the 2011-12 school year.<sup>3</sup> Provision 2 status recognizes the high poverty level of the entire district – in the base year more that 80% of the students in the district qualified for free or reduced lunch. Under Provision 2, all students in the district are eligible to receive free meals, including at Tuba City High School (TCHS).

<sup>2</sup> Code of Federal Regulations §54.505, 62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2130, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998; 75 FR 75414, Dec. 3, 2010.

<sup>3</sup> Memorandum AZ # 469-11 from the State of Arizona Department of Education, dated June 15, 2011.

NATIVE respectfully asserts that in accordance with CFR §54.505:

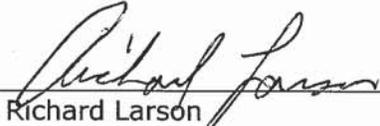
1. Provision 2 is a "federally-approved alternative mechanism" that qualified 100% of TCHS students as eligible for free price lunch for funding year 2012-13.
2. "For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch,"
3. The percentage of TCHS student enrollment eligible for free lunch under the federally-approved Provision 2 alternative mechanism is 100%,
4. A 100% eligible rate qualifies TCHS for a 90% discount.

Because under CFR §54.505 TCHS qualifies for a 90% discount, NATIVE's Tuba City High School Vocational school, entity number 16042711, located at TCHS and attended by THCS students also qualifies for a 90% discount. As a result:

- The discount %age for FRN 2378637 should be restored from 80% to 90%.
- The Shared Discount for Block 4 worksheet 1489523 should be restored from 89% to 90%. This in turn should restore the discount %age for FRNs 2378471, 2378984, 2379549, 2379635, and 2379894 from 89% to 90%.

NATIVE appreciates the SLD's consideration of this appeal. We are available to respond to questions or to provide any further information requested by the SLD.

**Authorized signature for this Appeal** <sup>4</sup>



Richard Larson  
eRate 360 Solutions, LLC  
322 Route 46W, Suite 280W  
Parsippany, NJ 07054

Date: 11/30/15

Phone: (888) 535-7771 ext 102  
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<sup>4</sup> "Letter of Agency" from Ron Tsosie, Interim Superintendent of NATIVE Vocational District, authorizing employees of eRate 360 Solutions, LLC, to perform e-rate services on behalf of NATIVE.

**Administrator's Decision on FCC Remand - Funding Year 2012**

October 2, 2015

Richard Larson  
eRate 360 Solutions, LLC  
322 Route 46W  
Suite 280W  
Parsippany, NJ 07054

Re: Applicant Name: Native Vocational District  
Billed Entity Number: 16020596  
Form 471 Application Number: 871949  
Form 486 Application Number:  
Funding Request Number(s): 2378471, 2378637, 2378984, 2379549,  
2379635 and 2379894  
FCC Order: DA 15-773  
FCC Order Release Date: June 30, 2015

The Federal Communications Commission (FCC) has directed the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to further review your application consistent with the FCC Order referenced above.

After thorough review and investigation of all the relevant facts, USAC has made its decision in regard to the FCC Remand for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60-day time period for appealing this decision. If you included more than one Application Number in your appeal, please note that you will receive a separate letter for each application.

Funding Request Number(s):

Decision on FCC Remand: **Denied**

Explanation:

- In accordance with the FCC decision in the matter of FCC DA 15-773 you were given an opportunity to file additional documentation to support the calculation of the correct discount rate.

The Provision 2 discount documentation received on September 28, 2015 shows that the discount for Tuba City High School is validated at 74.47%, with enrollment of 705 students which equates to 80% discount level for this entity. Therefore, the FRNS were approved with

appropriate discount level. Your appeal has not shown that USAC erred in its initial determination. Therefore your appeal is denied.

- FCC rules provide that the discount available to an applicant is determined by indicators of poverty and high cost. See 47 C.F.R. sec. 54.505(b). The level of poverty is measured by the percentage of students enrolled in a school or school district that are eligible for a free or reduced price lunch under the National School Lunch Program (NSLP), or a federally-approved alternative mechanism. Alternatively, the level of poverty is measured according to participation in Medicaid, Food Stamps, Supplementary Security Income (SSI), Federal Public Housing Assistance or Section 8, or Low Income Home Energy Assistance Program (LIHEAP). See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9045, FCC 97-157 para. 510, n.1334 (rel. May 8, 1997). The high cost determination is made pursuant to FCC rules that classify a school or library as rural or urban. See 47 C.F.R. sec. 54.505(b)(3). An applicant's discount rate is determined by reference to a matrix based upon the level of poverty and whether the entity is classified as rural or urban. See 47 C.F.R. sec. 54.505(c).

Since your appeal has been denied, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the FCC Remand review process.

Schools and Libraries Division  
Universal Service Administrative Company

CC: Karen C. Leshner  
Native Vocational District  
North Highway 163  
PO Box 710  
Kayenta, AZ 86033

Richard Larson  
eRate 360 Solutions, LLC  
322 Route 46W  
Suite 280W  
Parsippany, NJ 07054

Billed Entity Number: 16020596  
Form 471 Application Number: 871949  
Form 486 Application Number:

**§54.505 Discounts.**

(a) *Discount mechanism.* Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) *Discount percentages.* The discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers, as defined in this subpart. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts applying for eligible services on behalf of their individual schools may calculate the district-wide percentage of eligible students using a weighted average. For example, a school district would divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. Alternatively, the district could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located. If the library is not in a school district then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend. Library systems applying for discounted services on behalf of their individual branches shall calculate the system-wide percentage of eligible families using an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities.

(3) The Administrator shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(i) Schools and libraries located in metropolitan counties, as measured by the Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as urban, except for those schools and libraries located within metropolitan counties identified by census block or tract in the Goldsmith Modification.

(ii) Schools and libraries located in non-metropolitan counties, as measured by the Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as rural. Schools and libraries located in rural areas within metropolitan counties identified by census block or tract in the Goldsmith Modification shall also be designated as rural.

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in §54.502(b) that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the applicable discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the average discount shall be a weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

(c) *Matrix*. The Administrator shall use the following matrix to set a discount rate to be applied to eligible interstate services purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

Schools and Libraries discount matrix	Discount level	
	How disadvantaged?	
% of students eligible for national school lunch program	Urban discount	Rural discount
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

(d) [Reserved]

(e) *Interstate and intrastate services*. Federal universal service support for schools and libraries shall be provided for both interstate and intrastate services.

(1) Federal universal service support under this subpart for eligible schools and libraries in a state is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services.

(2) A state may, however, secure a temporary waiver of this latter requirement based on unusually compelling conditions.

(f) *State support*. Federal universal service discounts shall be based on the price of a service prior to the application of any state provided support for schools or libraries.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2130, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998; 75 FR 75414, Dec. 3, 2010]



NOTE 3

State of Arizona  
Department of Education

AZ # 469-11

CERTIFIED MAIL

MEMORANDUM

**To:** Delores Roan, Food and Nutrition Secretary  
Tuba City Unified District

**From:** Kelsey Strothers, Special Assistance Coordinator   
Arizona Department of Education, School Nutrition Programs

**Date:** June 15, 2011

**RE:** Special Assistance Certification, Provision 2

Based on criteria established by the Arizona Department of Education (ADE), Tuba City Unified District has successfully passed an Administrative Review during the 2010-2011 school year and has successfully completed a base year. The following sites (listed below) will be eligible to participate in the Special Assistance claiming alternative for breakfast and lunch under Provision 2, beginning with the 2011-2012 school year.

- Tuba City Junior High School
- Gap Primary School
- Tuba City Primary School
- Tuba City Alternative School
- Dzil Libei Elementary School
- Eagles Nest Intermediate School
- Tuba City High School

Provision 2 operates on a four-year cycle that consists of one base year (2010-2011) and three non-base years (2012-2014). The next base year for Tuba City Unified District will be the 2014-2015 school year.

All sponsors in a NON-BASE YEAR MUST:

- Complete the NSLP online application and indicate the following on the site/sponsor application:
  - **Sponsor Application Section 5:** Special Assistance Provision 2
  - **Site Application Section 8 and Section 9:** Special Assistance Provision 2
- Operate a non-pricing breakfast and lunch program for each non-base year
- Maintain all base-year records for a period of five years after the completion of the approved provision cycle
- Attend Provision 2 and 3 training during each non-base year

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- Submit the Verification exempt report prior to March 1<sup>st</sup> of each school year

The Tuba City Unified District is considered exempt from Certification and Verification during the 2012-2014 school years (non-base years) and may **NOT** complete the following:

- Distribute and/or collect household applications
- Conduct Direct Certification (unless approved as part of an extension application)

At the end of the approved Provision 2 cycle the sponsor must either apply for an extension of provision status or re-apply for the Special Assistance program in order to complete a new base year. A new Special Assistance application will also need to be submitted for any sponsor who wishes to re-establish a new base year prior to the next approved base year. New base years are required to be established at a sponsor level and any individual sites that apply for a repeat base year would remain on the same cycle established at the sponsor level.

The most current information on Special Assistance is now available online at:  
[www.ade.az.gov/health-safety/cnp/sa/](http://www.ade.az.gov/health-safety/cnp/sa/).

Please contact Kelsey Strothers at (602) 542-8703 or email [Kelsey.Strothers@azed.gov](mailto:Kelsey.Strothers@azed.gov) with any questions.



# Northeast Arizona Technological Institute of Vocational Education

## Governing Board

**Shannon Tooke**  
Board President  
Tuba City USD

**Margaret Yazzie**  
Vice President  
Sanders USD

**Theodore Allen**  
Member  
Chinle USD

**Curtis H. Berry**  
Member  
Ganado USD

**Eugene Kirk**  
Member  
Window Rock USD

**Lavina Smith**  
Member  
Kayenta USD

**Wallace Todacheeny**  
Member  
Red Mesa USD

**Mary Tom**  
Member  
Pinon USD

## Site CTE Directors

Woody Begay  
Tuba City HS

Ted Goodluck  
Valley HS

Deborah Mayher  
Window Rock HS

Clyde McBride  
Monument Valley HS

Doris Nelson  
Ganado HS

Joni Sherman  
Pinon HS

Steve Sorden  
Chinle HS

Virginia Tsosie  
Red Mesa HS

## N.A.T.I.V.E.

Ron Tsosie  
Interim Superintendent

Geraldine Begay  
Business Manager

Jonathan Yazzie  
CTE Coordinator

Charles Waite  
Business Consultant

Sheena Greenstone  
Supt./Board Secretary

P.O. Box 710 • Kayenta, AZ 86033 • (928) 697-2500 • Fax (928) 697-2502

## Letter of Agency

NATIVE Vocational District  
Billed Entity Number: 16020596

Letter of Agency For FY 6 (2003-2004); FY 7 (2004 - 2005); FY 8 (2005 - 2006); FY 9 (2006 - 2007); FY 10 (2007 -2008); FY 11 (2008 - 2009); FY 12 (2009 - 2010); FY 13 (2010 - 2011); FY 14 (2011 - 2012); FY 15 (2012 - 2013); FY 16 (2013 - 2014)

I hereby authorize eRate 360 Solutions, LLC and its employees: Keith C. Oakley, Steve Tenzer, Rich Larson, Carlos Alvarez, Matt Hetman, Fred Josephs, Bert Garofano, and John Harvey to submit FCC Form 470, FCC Form 471, and other E-rate forms, and to submit various change applications such as SPIN changes and service substitutions, to the Schools and Library Division of the Universal Service Administrative Company on behalf of **NATIVE Vocational District** for all eligible services outlined in the most current "Eligible Services List" published by USAC. I understand that, in submitting these forms on our behalf, you are making certifications for **NATIVE Vocational District**. By signing this Letter of Agency, I make the following certifications

(a) I certify that **schools in our district** are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.

(b) I certify that our **school district** has secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.

(c) I certify that our **school district** is covered by a technology plan(s) that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of priority two services. The plan(s) is written at the following level(s):

\_\_\_\_\_ an individual technology plan for using the services requested in this application; and/or  
 higher-level technology plan(s) for using the services requested in this application; or  
 \_\_\_\_\_ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.

(d) I certify that the services the district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).

(e) I certify that our **school district** has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

(f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

(g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

(h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

(i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.

(j) I certify, on behalf of the entities covered by this Letter of Agency, that any funding requests for internal connections services, except basic maintenance services, applied for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).

(k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.

(l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to **eRate 360 Solutions, LLC** for E-rate submission is true.

District: NATIVE Vocational District

Date: 10/2/13

Signature: 

Printed Name: Ron Tsosie

Title: Interim Superintendent