



SPOKANE TRIBE OF INDIANS

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Spokane Tribe of Indians Comments – Parts 559, 518 and Sub Chapter H DUE April 2, 2012

Since our last submission in January 2012, the National Indian Gaming Commission published three additional Notices of Proposed Rulemaking and published discussion drafts of the Class II Minimum Internal Control Standards and the Technical Standards and Class III Minimum Internal Control Standards.

Tribal Advisory Committee

First, we commend the Commission for completing the Tribal Advisory Committee meetings and issuing discussion draft of the Class II Minimum Internal Control Standards and Technical Standards. We will provide further written comment on these regulations by April 16, 2012.

As we previously recommended, as you complete your work finalizing the Class II regulations, please keep in mind that a viable Class II game is the only leverage many tribes have in the wake of the *Seminole* decision. We also recommend the NIGC continue its work under the Stevens Administration to work collaboratively with the DOI and DOJ to develop a collective and coordinated approach which will ensure tribes are in the position that Congress intended when states refuse to negotiate in good faith. The Spokane Tribe recognizes that the Class III Minimum Internal Control Standards were not included as a topic of discussion during the Tribal Advisory meetings and we applaud the NIGC for leaving the Class III MICS out of that process. However, we must reiterate our previous recommendation that the NIGC establish a clear date to withdraw Class III MICS from its body of regulations, notices and Bulletins. The *Colorado River Indian Tribe* ruling made it clear that the NIGC NEVER possessed the authority to either promulgate regulations or enforce those regulations. While some tribes have embraced the NIGC Class III MICS in compacts and ordinances, those tribes did so at their peril. Those tribes can transition into some other type of default MICS through a regulators organization, or amend their compacts, or defer to some type of industry entity. As the Chairwoman testified before Congress, there is no regulatory void for the NIGC to fill with the promulgation of Class III MICS, guidelines or bulletins. Class III MICS are properly left as a point of compact negotiation between tribes and states.

Proposed Rulemaking

We strongly support the process of regulatory review the NIGC has undergone during the past 12 months. We applaud the Commission for listening to tribal comments and incorporating them into the Final and Proposed Rules and look forward to publication of other final rules in the very near future.

The Tribe is pleased to comment on Proposed Part 559. The previous facility license requirements were very troublesome to the Tribe and the proposed changes alleviate much of that concern. While we support the majority of the changes to the regulation, we do have a recommendation. While the Preamble to the Rule does clarify that a NIGC-issued Indian lands status verification is not required and that tribes could open a facility prior to the expiration of the 120 day timeframe, practically, tribes view the 120-day timeframe as a de facto required "waiting period" before they can open a facility. Further, tribes who need a favorable Indian Land Determination need to be assured that the submission of the facility license will trigger Agency action. Without this assurance, the NIGC can anticipate that tribes will begin to amend their gaming ordinance to be site-specific, which would require the Chair to approve or disapprove the amendment within 90 days. The Tribe recommends that Rule be modified to permit the Tribe to request the land status verification or, minimally, change the timeframe from 120 days to 90 days. The Tribe strongly supports the proposed changes to the Environmental Public Health and Safety Submission requirements. This is a welcome change and we commend the Commission for listening to the tribal comments and recommendations on this issue. Further, the Tribe supports the incorporation of Part 502.22 into Part 559.4.

The Tribe also supports the major changes made to Part 518 in the Proposed Rule. Self-regulation is a goal for tribes but the current regulation made the application and reporting process overly burdensome. By shifting the focus from the gaming operation to the regulatory structure and revising the submission and reporting process, the proposed rule opens the door to self-regulation to all tribes. Additionally, the clarification of the application review process and inclusion of the Commission early in the determination process provides a tribal applicant the assurance that their application will be thoroughly vetted and a fair decision reached by the appropriate decision-makers. Finally, the revised reporting requirements are much improved from the current practice. Overall, the proposed revisions to Part 518 are much needed and should facilitate many more tribes applying for self-regulation certification. The Tribe has seen the NIGC attempt to regulate tribal revenue allocation plans, we would recommend a statement in either the Preamble or the Part that revenue allocation plans will not be included in the review.

Finally, the changes to proceedings before the Commission process appear to streamline and simplify the process. We support the creation of a subchapter solely on these proceedings instead of the current rules scattered throughout the Chapter. By creating a part dedicated solely to general rules and parts for each type of proceeding, these proceedings are much more accessible to the parties and provide certainty about the process. Many times a tribe has been held in limbo waiting for long periods of time for

a decision on appeal, these regulations address that concern by identifying clear timeframes for a decision. We support the proposed changes included in this Part. Rincon appreciates the NIGC's efforts in conducting the regulatory review and inclusion of tribes in that review. We look forward to additional collaboration on the proposed rules as they are published.

Respectfully,

/s/ Scott Crowell

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On Behalf of the Spokane Tribe of Indians