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BILL ANOATUBBY
GOVERNOR

June 30, 2017

Mr. Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

Dear Chairman Chaudhuri:

Included with this letter are the Chickasaw Nation's comments regarding the National Indian Gaming Commission's 2017 Tribal Consultation relating to the December 12, 2016 Consultation Notice, as further described in the comments below.

Thank you for your consideration of our comments.

Sincerely,

Bill Anoatubby

Bill Anoatubby, Governor
The Chickasaw Nation

Comments from the Chickasaw Nation
Regarding NIGC Consultation Notice of December 12, 2016

The Chickasaw Nation ("Nation") welcomes the opportunity to provide its comments to the National Indian Gaming Commission on the latest consultation topics, including our most recent comments on the removal of sunset provision for grandfathered games under 25 C.F.R Part 547. The National Indian Gaming Commission (NIGC) has earned high marks for its continuous efforts to reach out to tribal governments and solicit tribal input during this important regulatory review process. As noted in the Nation's earlier comments, we appreciate the NIGC's efforts to engage tribal governments during the early planning stages of the rulemaking process. Early tribal involvement is a significant step towards developing a final rule or guidance document that will accommodate the underlying regulatory concerns and accord recognition of the TGRA's role as primary regulator. We continue to be encouraged by the NIGC's commitment to accommodate tribal concerns and propose revisions that will bring the regulations closest to the purposes and goals of the Indian Gaming Regulatory Act (IGRA).

The Nation encourages the NIGC to continue these important outreach efforts and respectfully requests favorable consideration of our comments below, which address the following topics outlined in the December 12, 2016 Notice of Consultation in the following order (1) Draft Guidance on the Class III Minimum Internal Control Standards; (2) Management Contract Regulations and (3) Technical Standards for Mobile Gaming Devices.

Notwithstanding the particular areas identified below, the Nation commends the NIGC's rural outreach and technical training efforts. Many tribal gaming facilities in Indian Country support rural areas and, without the economic development that Indian gaming provides, there would be little to no economic development in these already under-served areas. Indian gaming has brought jobs and economic stability to many rural areas across the country, including Oklahoma. NIGC assistance and outreach in these areas is important because it demonstrates an assistance based approach as opposed to an enforcement attitude.

Draft Guidance on the Class III Minimum Internal Control Standards

The Nation previously submitted comments on the NIGC's proposal to withdraw 25 C.F.R. Part 542 regulations. As previously stated, the Nation will continue to operate and regulate its compacted gaming under TICS that meet or exceed the Part 542 MICS as referenced in Part 5 of the Tribal-State Compact between the State of Oklahoma and the Nation; it is our position that doing so would be our compact obligation regardless of what action the NIGC may take.

Likewise, the Nation remains steadfast in its position that the NIGC must not disrupt any existing state-tribal gaming compacts that have incorporated the 542 standards. The Nation commends the NIGC for offering to officially recognize that the 542 standards are not enforceable *by* the NIGC; however, the Nation believes that the NIGC could go further to

state that the NIGC's action, including the statement of unenforceability and any promulgation of guidance documents should not be construed as modifying, supplementing or amending any tribal-state compact that specifically references the 542 standards. The Nation believes this is an important clarification, and that the statement will give true meaning to the purpose of the guidance document by making any additional incorporations *optional* for the respective tribes.

Finally, the Nation believes that guidance documents are the best approach to the NIGC's oversight authority under the IGRA, given that the tribes are the primary regulator of Indian gaming. In fact, it is the Nation's understanding that the specific guidance document at hand was instituted because of the significant tribal outreach for assistance in this area. There are many other areas that of NIGC regulation that could be better addressed by guidance documents as opposed to regulation. The Nation supports and encourages the NIGC's steps in that direction.

Management Contract Regulations and Procedures

The Nation complements the NIGC for taking comments on improving the management contract review process under Sections 2710 and 2711 of the IGRA. In the Nation's experience, in many instances the management contract process is avoided due to the strict requirements outlined in the regulations promulgated by the NIGC, when in fact a management contract is likely needed given the lack of experience for a particular tribe that is seeking to conduct economic development through gaming operations.

Of interest to the Nation and its direct subsidiaries is 25 C.F.R. Part 537.1(a)(4). The Nation believes it would be helpful to clarify how and when the scope of the background investigation required under that particular part can and should be limited when an entity that is wholly owned by an Indian tribe (and that has personnel licensed through its regulatory agency or otherwise) is seeking to act as a management contractor under the IGRA. That section seems to indicate and provide discretion as to how the background investigation may be limited but provides no clarification on what that limited scope could or would look like. Many tribes have become very experienced in operating gaming facilities around the country and can share that knowledge with new and smaller operations that may lack the knowledge or manpower to conduct their own gaming operations. The NIGC should expedite the management contract approval process to encourage this inter-tribal exchange of information by implementing a waiver of the background check requirements of 537.1(a)(4) for tribes, wholly owned tribal entities, and associated individuals that meet certain criteria (e.g., TRGA or state commercial licensure). After furnishing proof to the NIGC that these criteria are met, the entity and associated individuals could forgo the background check process because the IGRA mandate to gather background information under Section 2711 would be satisfied.

The Nation believes further clarification on this section would be helpful to those tribal entities seeking management contract review by giving clear guidance to those entities described in 25 C.F.R. 537.1(a)(4), as opposed to limiting the scope on a case-by-case basis.

Technical Standards for Mobile Gaming Devices

The Nation has expressed its concerns with the NIGC's authority to promulgate Technical Standards in the past, and these concerns remain following our review of the proposed Technical Standards for mobile gaming devices. The Indian Gaming Regulatory Act specifies the powers of the NIGC.[1] Specifically, the NIGC is tasked with monitoring Class II gaming on Indian lands and inspecting Indian lands on which Class II gaming is conducted. The IGRA's grant of rulemaking authority is limited to regulations necessary to implement the express provisions of IGRA. The Nation has previously stated its opposition to the Class II gaming system technical standards on the grounds that such standards were tantamount to product standards, which are not contemplated under the IGRA. This concern remains in regards to the NIGC's proposed technical standards for mobile gaming systems and equipment. While federal courts are highly deferential to administrative agency interpretations under the *Chevron*[2] decision, they are not bound by agency interpretations of federal statutes when the statute is not ambiguous. There is no ambiguity in the IGRA provisions that specify the NIGC's enumerated regulatory powers, which are primarily investigative.

The IGRA makes clear the primary role of tribal governments in regulating gaming activities at their own gaming facilities. Specifically, the IGRA's express language vests tribal governments with primary regulatory authority over their gaming operations, subject only to the NIGC's oversight responsibilities as specified in the Act.[3] Tribal gaming regulatory authorities (TGRAs) are given tremendous responsibilities in gaming regulatory matters and possess the insight and expertise necessary to craft effective regulations

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[1] The NIGC's powers relating to class II gaming are codified at 25 U.S.C. § 2706:
(b) The Commission—
(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;
(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;
(3) shall conduct or cause to be conducted such background investigations as may be necessary;
(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;
(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;
(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;
(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;
(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;
(9) may administer oaths or affirmations to witnesses appearing before the Commission; and
(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

[2] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), in which the Supreme Court held that courts must defer to agency interpretations of organic statutes where Congressional intent is ambiguous and the agency interpretation is reasonable.

[3] 25 U.S.C. § 2710(a)(2).

relating to wireless player interfaces. Consistent with the mandate of IGRA, TGRAs should continue to exercise their primary regulatory role in the regulation of wireless player gaming systems.

In review of the Draft Minimum Technical Standards, we note that the Standards lack definition of key words and impose requirements on related gaming equipment. Without further definition the proposed standards are unclear and potentially create requirements that are impractical to the technology utilized within gaming facilities. The lack of clarity is indicative of a broader issue; the NIGC has not engaged tribal and industry information technology experts to inform the rule-making process. At this stage, issuance of a final rule is premature, as there has been no meaningful consultation with the various stakeholders in tribal gaming operations. It is essential that industry as well as tribal expertise is considered and included in a collaborative effort to achieve meaningful, concise wireless standards or guidance. The final rule or guidance should reflect the collective technological expertise available to tribal gaming and the NIGC.

In our view, the proposed Technical Standards for wireless gaming systems and player interfaces are more appropriately suited to implementation as guidance documents. Due to the constant innovation and change in wireless technology, it is important for gaming facilities and TGRAs to quickly adapt. Class II gaming facilities' ability to maximize revenue should not be inhibited by inflexible regulation. Accordingly, guidance documents are more compatible with evolving technology concerns, with the process of reconsideration and amendment easier to accomplish than the amendment of a formally adopted final rule. Technological progress exceeds the glacial pace of administrative rulemaking procedures, highlighting the necessity for a guidance document in lieu of a formal rule. Additionally, the issuance of these standards in the form of a guidance document would balance the interest in maintaining security and integrity in Class II gaming with the demands of technological evolution, while allowing tribes to fully capitalize on the benefits of Class II gaming.

For these reasons, we do not support the Draft Minimum Technical Standards as proposed and request that the Commission consider the implementation of a guidance document to assist TGRAs in maintaining the appropriate regulatory controls with key insight from the industry stakeholders.

Conclusion

In closing, we appreciate the NIGC's rural outreach and technical training efforts. We believe that those efforts will reduce the necessity of enforcement actions and allow tribes to continue their economic development efforts consistent with the IGRA while avoiding expensive and unnecessary enforcement costs.

We also appreciate the step towards using guidance documents as a means of informing and providing assistance to those tribal gaming operations that seek assistance. The gaming industry is very fluid and the guidance documents allow TGRAs the flexibility needed to adapt to that ever-changing industry.