

OMAHA TRIBE OF NEBRASKA

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June 29, 2017

Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street N.W.
Mail Stop #1621
Washington, D.C. 20240

Re: Comments on 2017 NIGC Consultation Topics #1-6

Dear Chairman Chaudhuri:

The Omaha Tribe of Nebraska ("Tribe") hereby issues these official comments in response to the National Indian Gaming Commission's ("NIGC") 2017 Tribal Consultation Comment Submission Notice released on May 4, 2017. The Tribe appreciates this opportunity to provide written comments on six different topics that were part of the initial 2017 Notice of Consultation on November 22, 2016. Active communication between Tribes and the NIGC is critical to maintaining the unique government-to-government relationship between tribal and federal governments.

Below, we address each of the six topics in the order given by the NIGC: (1) Class III Minimum Internal Control Standards ("MICS") Guidance; (2) Servicing Rural Gaming Tribes; (3) Tribal Workforce Training; (4) Management Contract Provisions; (5) Mobile Gaming Device Standards; and (6) Fees.

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Class III MICS Guidance

As emphasized in the *CRIT v. NIGC* decision, tribal gaming regulators should be the primary actors in charge of developing and enforcing Class III gaming operations. As such, the Tribe is encouraged that the NIGC is proposing to suspend the Class III MICS under 25 C.F.R. Part 542 and in its place issue guidance on Class III gaming internal controls.

While the draft guidance released generally accomplishes the goal of handing over the power to tribal regulators to create Class III internal controls for their own tribe, there are at least two major flaws that are apparent in the language released: (1) How the guidance squares with Tribal-State Compacts and (2) How the guidance would impact annual audits.

The Tribe maintains a Tribal-State Compact with the State of Iowa in order to conduct Class III gaming in its Blackbird Bend Casino ("BBC"). In Section 4 of the Compact, the Tribe is required to "conduct all Class III gaming pursuant to . . . minimum internal control standards." The Compact therefore requires the Tribe to continue following the Class III MICS in 25 C.F.R. Part 542. While leaving Part 542 suspended and not withdrawing it is prudent in order for the Tribe to comply with its own Compact, at least one provision, § 542.4, is still called into question. This provision settles conflicts between compacts and the Class III MICS. If this provision is rendered non-binding, and there is nothing in the draft guidance that would take its place, then tribes would be left to guess which standard is to be followed in the event of a conflict.

When the BBC undergoes its annual audit checks, both Class II and Class III gaming devices are studied for their compliance with the Indian Gaming Regulatory Act, the Compact, the Gaming Ordinance, Regulations, other applicable laws, and the MICS. Audits typically do not distinguish between different classes of games, however. Thus, by converting the Class III MICS into non-binding guidance, there would be the potential for difficulty in determining what machines would be scrutinized in an audit when certain machines on the gaming floor are only subject to the voluntary Class III guidance only.

We believe these flaws would be best fixed through appointing a tribal advisory committee featuring people from the regulated community with experience and knowledge of Class III gaming and who are on the front lines of regulation. While we understand that the NIGC's use of subject matter experts allowed it to create the draft guidance document, input from an established

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committee to address these difficult issues would help make this draft guidance document better suited for those who will rely on it the most: tribal regulators on the ground at gaming operations nationwide.

Servicing Rural Gaming Tribes

As a Tribe with a gaming operation in rural northwest Iowa, we are pleased that the NIGC would like to focus on outreach to rural Indian Country. At the same time, we would hope that the NIGC places its resources into the programs best suited to help rural Indian Country directly. The main proposal relating to rural outreach offered by the NIGC, the establishment of a regional office in Rapid City, South Dakota, is not the most effective use of NIGC resources to aid rural outreach.

As a Tribe that is serviced by the St. Paul, Minnesota Regional Office, the entity that would be affected by the creation of the Rapid City Regional Office, we do not support the creation of such an office that would do little to help with rural outreach. We have not experienced any issues under the current organizational structure and do not feel that a problem exists here. Before further action is taken, we urge the NIGC to consult further with the tribes within the 9-state area the St. Paul Regional Office covers to determine a plan that would more directly benefit rural gaming tribes.

Tribal Workforce Training

We strongly support the NIGC's commitment to building an ever-stronger workforce. We only wish to comment that, moving forward, the NIGC considers the depth and breadth of its training offerings. For instance, trainings should be tailored to the resources available to a tribe and personalized as much as possible to fit the needs and aspirations of a tribe. To accomplish this, we support the creation of a cross-training component that would educate the NIGC as to the day-to-day functions of tribal gaming regulators. This would allow stronger communication between tribal gaming regulators and the NIGC, the latter of which will benefit from knowing sooner the kinds of new issues that may arise on the gaming floor. Better two-way communication will deepen and broaden the NIGC's training programs.

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Management Contract Provisions

We support the NIGC's decision to address in its consultations the management contract provisions of its regulations. Last updated in 2012, the provisions do not currently satisfy our Tribe's need to understand what the NIGC requires out of a submitted management contract. This has led to uncertainties in the process. Additionally, there is no clear timetable for reviewing submission documents, likely because of the ebbs and flows of the NIGC's resources and workload.

For a more efficient and transparent process, we urge the NIGC to at least supply tribes with some kind of timetable for reviewing and responding to submissions during the initial review process detailed in 25 C.F.R. Part 533. We also urge the NIGC to release guidance on how it scrutinizes management contracts. This would help tribes better prepare its submission documents so as to avoid impermissible provisions and financial arrangements. With both of these changes, tribes would have the information they need to create compliant management contracts and possibly even cut down on the time it takes to review these arrangements.

Mobile Gaming Device Standards

Because 25 C.F.R. § 542.15 adequately addresses technical standards for wireless security and communications, we find that the addition of 25 C.F.R. § 542.18 addressing mobile gaming device standards is unnecessary. Instead, to address the ever-evolving advances in mobile gaming technology, we urge the NIGC to issue guidance documents for these devices that may be more quickly updated and flexible enough to address new innovations. For example, an NIGC Bulletin could address current issues with mobile gaming devices. With our mutual interest in providing safe and secure gaming opportunities to our patrons, the Tribe would ensure that the guidance in the Bulletin is followed through when applicable. Should certain guidance become obsolete, the NIGC could simply issue new Bulletins rather than go through the rulemaking process.

Fees

We generally support the NIGC's proposed fee schedule which eliminates the preliminary fee rate at establishes a new final fee rate date of November 1st of each year. We note, however, that the implementation of this new final fee rate date of November 1st be treated carefully, as tribes have different fiscal year-end dates and generally would like to plan how and when they will remit fee payments. For instance, should two different final fee rates be established in the first

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year of implementation, clarity is critical in ensuring tribes understand their obligations so that they may properly plan on making an on-time payment.

Please let us know if we are able to assist you in any way with regard to these critical issues.

Sincerely,

Mike Wolfe
Chairman
Omaha Tribe of Nebraska

