



## QUAPAW TRIBAL GAMING AGENCY

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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 Quapaw Tribal Gaming Agency (“QTGA”) appreciates the opportunity to comment on the consultation topics set forth in the National Indian Gaming Commission’s (“NIGC”) Notice of Consultation, which was originally issued to tribal leaders on November 22, 2016. The QTGA welcomes the NIGC’s decision to circulate these proposals—and in some cases, actual draft language—for comment before undertaking any official rulemaking activity. Early tribal involvement is a key step towards developing policies and regulations that are reflective of tribal concerns and advance the interests of tribes. It is also critical to ensuring that the consultation process is meaningful and consistent with the special government-to-government relationship between tribal and federal governments.

The QTGA encourages the NIGC to continue these important outreach efforts and respectfully requests favorable consideration of our comments below, which address the topics outlined in the November 22, 2016 Notice of Consultation in the following order: (1) Class III MICS guidance; (2) Creation of a Rapid City, South Dakota Regional Office; (3) Training a Strong Tribal Workforce; (4) Improvements to the Management Contract Provisions of the NIGC Regulations; (5) Draft Wireless Standards ; and (6) Draft Changes to the NIGC Fee Schedule.

### **I. CLASS III MICS GUIDANCE**

It has been almost eleven years since the U.S. Court of Appeals for the D.C. Circuit ruled that the NIGC lacked authority to enforce or promulgate the Class III Minimum Internal Control Standards (“MICS”) found under 25 C.F.R. Part 542. The QTGA is thus pleased that the NIGC is now acting on this issue by proposing to suspend these regulations and put in its place a guidance document for Class III gaming internal controls.

While the guidance document shows the NIGC’s progress on this issue, the QTGA is concerned the NIGC has not properly addressed how the proposed suspension of 25 C.F.R. Part 542 will affect other binding documents on tribal regulators. For example, the model Tribal-State

Compact agreed to between the Quapaw Tribe of Oklahoma (“Tribe”) and the State of Oklahoma incorporate by reference 25 C.F.R. Part 542:

All enterprises and facilities shall comply with, and all covered games approved under the procedures set forth in this Compact shall be operated in accordance with the requirements set forth in this Compact, including, but not limited to, those set forth in subsections C and D of this Part. In addition, all enterprises and facilities shall comply with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards (25 C.F.R., Part 542).<sup>1</sup>

Until 2020, the date the current model Compact expires, under the draft guidance, the Tribe would have to decide between following non-binding guidance and the Compact standards which make 25 C.F.R. Part 542 mandatory. Furthermore, the regulation that would formerly be referred to in the event of a conflict between Part 542 and a Compact, 25 C.F.R. § 542.4, would no longer be applicable or even binding once the Class III MICS are suspended. Thus, it is unclear which standard is to prevail in the event of a conflict.

In its consultation briefing, NIGC felt that it would be more cost-effective to create a guidance document “in-house” and publish it for public comment. The NIGC stated in its consultation briefing that it wanted to “begin the discussion” in this manner. Now that the discussion has begun, and there are still serious concerns that have gone unaddressed in the draft guidance, we again join other tribes in urging the NIGC to create a tribal advisory committee or some other body to assist in identifying and addressing unintended consequences of the NIGC’s draft guidance.

Overall, the QTGA would like the NIGC to stay consistent with the ruling of that 2006 case by allowing tribal regulators the opportunity to develop their own Class III internal controls and other provisions required under compacts. Giving tribal regulators a seat at the drafting table for this new Class III guidance so that solutions come from those who are faced with regulatory compliance issues will accord such deference to tribal regulators.

## **II. THE CREATION OF A RAPID CITY, SOUTH DAKOTA REGIONAL OFFICE**

While the QTGA supports the NIGC’s efforts to provide better services in rural Indian Country, we do not support one of the NIGC’s suggested fixes for this issue: placing a brand new regional office in Rapid City, South Dakota.

Establishing the Rapid City office would divert critical resources away from programs that actually do more to provide technical assistance and training to rural offices. For instance, while an eighth regional office in South Dakota would add administrative support for rural tribes in North Dakota, South Dakota, Wyoming, and Montana, it would likely take away more assets that could have been used for more tailored training for these same rural tribes (see Section III). Before the NIGC considers this change further, the QTGA urges it to elaborate specifically on

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<sup>1</sup> Part V.B of the Tribal Gaming Compact Between the Quapaw Tribe of Oklahoma and the State of Oklahoma.

how rural Indian Country in this area stands to benefit from the NIGC investing in a new regional office *in lieu of* investing more into already-established programs designed to assist smaller rural gaming operations.

### **III. TRAINING A STRONG TRIBAL WORKFORCE**

The QTGA is in favor of the NIGC's initiative to maintain a strong workforce both at the NIGC itself and at tribal gaming regulatory authorities. We are pleased that the NIGC continues to seek input from the regulated community concerning its training programs so that tribal gaming regulatory authorities may evolve alongside the gaming technology it regulates.

As the NIGC continues to focus on training a strong tribal workforce, the QTGA would like to remind the NIGC of the vast differences among the 497 gaming establishments operated by 244 tribes across 29 states. The Tribe, with its two gaming operations, may require a different set of trainings than other tribes to account for size and experience. For instance, although gaming operations large and small still face many of the same cybersecurity threats, some tribes are better equipped to address this danger than others. Tailored trainings for large and small operations will lead to a more effective defense against threats to tribal gaming.

In addition to more tailored trainings, the QTGA also wants to emphasize the importance of the NIGC keeping an open communications link between itself and tribal gaming regulatory authorities. This means allowing a permanent dialogue between tribal regulators, who are on the front line of gaming operations nationwide, and the NIGC. Tribal regulators must have an adequate mechanism through which it may report back to the policymakers in Washington, D.C. At the same, NIGC representatives should attempt to perform more on-site visits to gaming operations. The NIGC is welcome to come to any of the QTGA's gaming operations and experience how we perform our day-to-day regulatory tasks. Through an increase in two-way dialogues and on-site visits, the QTGA believes that the NIGC will gather the information it needs to create more comprehensive and effective training programs.

### **IV. IMPROVEMENTS TO THE MANAGEMENT CONTRACT PROVISIONS OF THE NIGC REGULATIONS**

The last time 25 C.F.R. Parts 531, 533, 535, and 537 (collectively known as the Management Contract Provisions) were reviewed by the NIGC was in 2012. Then, only minor changes to Part 537 were made. The remainder of these regulations have existed since 2009. As a result of "a significant increase in management agreements submissions," the NIGC is seeking comments "that may improve the NIGC's efficiency in processing management agreements and background investigations."

Although "[t]he purpose of these regulations is to ensure that the tribe is the primary beneficiary of its gaming operation," the QTGA does not feel that the NIGC has shown *how* these management contract provisions are used to benefit tribes and their gaming operations. Specifically, there is not enough transparency in the management contract review process to

allow tribes the ability to know what the NIGC approves and disapproves of; this information would benefit tribes in their future activities.

For instance, under 25 C.F.R. § 533.2, the Chairman of the NIGC has the power to review all management contracts. This review, however, is done without any communication from the NIGC as to what it expects from tribes in the submitted management contract. The QTGA would appreciate greater clarity as to the kinds of contract terms and conditions that would be viewed favorably or unfavorably by the Chairman. Clearly defined expectations of what the NIGC expects out of a management contract would improve “the NIGC’s efficiency in processing management agreements and background investigations” because tribes would then be better equipped to devise a contract more like to gain the Chairman’s approval.

## **V. DRAFT WIRELESS STANDARDS**

The NIGC proposes to add language to the Technical Standards found in 25 C.F.R. Part 547 that addresses mobile gaming devices used on tribal lands. The QTGA is concerned that the draft regulatory language is subject to become obsolete as mobile gaming continues to advance. We instead recommend that the language be presented as a guidance document.

Should any of the proposed draft wireless standards become obsolete as a regulation, the QTGA could automatically be at a competitive disadvantage with other non-tribal gaming outlets not subject to these regulations, possibly unable to innovate and offer the latest technologies. We could remain at a competitive disadvantage while the NIGC moves to amend the regulations. If these standards are presented as guidance instead, the QTGA would then be free to innovate *and* also abide by the NIGC’s guidance which ensures the security of mobile gaming.

The QTGA is aware that mobile gaming devices are already subject to 25 C.F.R. § 547.15 (“What are the minimum technical standards for electronic data communications between system components?”), which also ensure the safety and security of mobile gaming. We take the task of offering safe and secure gaming to all of our customers very seriously. While we appreciate the general message of the proposed regulation, we urge the NIGC to afford tribes the flexibility to integrate and adapt new technologies without significant delay. This would require that the new technical standards contemplated here are issued instead through guidance documents.

## **VI. DRAFT CHANGES TO THE NIGC FEE SCHEDULE**

Citing the need to better fit the established schedule of its annual budget release as well as the tribal gaming industry’s Gross Gaming Revenue, the NIGC is proposing to amend its fee schedule. Currently, a preliminary fee rate is adopted by March 1<sup>st</sup>, followed by a final fee rate by June 1<sup>st</sup>, every year. Under the proposed changes, the NIGC would no longer be required to announce a preliminary fee rate at all. It would also be releasing its final fee rate by November 1<sup>st</sup> every year.



We urge that the NIGC be extremely clear in setting an effective date should it decide to move forward with this change. Should two fee rates be announced in the same year (June 1<sup>st</sup> and November 1<sup>st</sup>), the NIGC must be ready to specifically clarify the obligations of the tribal gaming operations with regard to fees owed for that year. Alternatively, the NIGC could plan to begin with the November 1<sup>st</sup> final fee date in a new year and keep a June 1<sup>st</sup> final fee rate from the previous year in place until then; clarity would also be a necessity should the NIGC decide to pursue this introduction strategy.

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In closing, the QTGA would like to reiterate its appreciation for the opportunity to review and provide comments on the proposals outlined in the November 22, 2016 Notice of Consultation. Please let us know if we are able to assist you in any way with regard to this important issue.

Sincerely,



Barbara Kyser-Collier  
Director, Quapaw Tribal Gaming Agency