November 13, 2017

Mr. Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1840 C Street NW
Mailstop #1621
Washington, DC 20240

Re: Comments Pertaining to Proposed Rule 25 C.F.R. § 547.5

Dear Chairman Chaudhuri:

The Seneca-Cayuga Office of the Gaming Commissioner (SCOGC), on behalf of the Seneca-Cayuga Nation (Nation), hereby provides the following Comments to the National Indian Gaming Commission's (NIGC) Proposed Rule 25 C.F.R. § 547.5 relating to Technical Standards for Class II Gaming Systems, published to the Federal Register on September 28, 2017. The SCOGC appreciates that the NIGC chose to embrace a consultative process as it developed revisions to the Rule. We feel that interaction with Tribes at the earliest stages of rulemaking, as the NIGC sought here, serves the development of sound, reasonable, and effective regulations for the Indian gaming industry and we are pleased to have participated in the process. We hope that the following comments will be carefully considered by the Commission as it moves forward in its development of a Final Rule.

1. The SCOGC Fully Supports the Removal of the Sunset Provision from the Proposed Rule

As the SCOGC has expressed to the NIGC previously, we fully support the removal of the Sunset Provision from the Proposed Rule. Under the current Rule, Class II gaming systems manufactured before November 10, 2008 must be brought into compliance with all technical standards of § 547 by November 10, 2018, or be removed from operation. We commend the Commission for its recognition that 2008 Systems can continue to operate as they have while posing no threat to fairness, public safety, or the integrity of gaming. These 2008 Systems continue to be very popular with the gaming public. They continue to generate much-needed revenue for tribal communities and are operated and maintained to a sound regulatory standard that provides for technical compliance and oversight, just as other games.

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We agree that an effective and reasonable Class II technical Rule can accommodate the continued operation of 2008 Systems, and also provide for effective, workable, and relevant technical compliance.

2. The Annual Review Requirement is Unnecessary for the Certification or Operation of 2008 Systems and Will Unnecessarily Diminish Tribal Regulatory Resources.

While the SCOGC supports the removal of the Sunset Provision, we have deep concerns regarding the new annual review requirement appearing in § 547.5(a)(2)(iii) of the Proposed Rule. This Rule requires a tribal gaming regulatory authority (TGRA) to annually review each 2008 System, to identify and document the compliance status of each component within each 2008 System, to identify and document which specific components prevent certification under § 547.5(b), and to describe any modifications needed for the 2008 System to achieve compliance with the full standards of 25 C.F.R. Part 547. This new requirement will be overly burdensome for TGRAs and is unnecessary in order for 2008 Systems to operate as provided for in the rest of § 547.5(a).

The annual review will be costly and impose additional expense on TGRAs, many of which are already operating under very limited budgets with limited personnel. The extensive and repetitive process of reviewing testing laboratory reports already reviewed and documented by the TGRA, duplicating findings and certifications already rendered, and compiling extensive technical data into a stand-alone volume will impose needless demands and pressures on TGRAs and will divert time, money, and regulatory resources away from other more pressing demands of oversight and enforcement.

The Preamble of the Proposed Rule supplies no rationale as to why this new annual review is necessary or even helpful to achieving the regulatory objective of Part 547. It is unreasonable to mandate such burdensome adjustments to TGRA processes without identifying a regulatory need or the intended benefit. We are pleased that the NIGC removed the reporting requirement from the Propose Rule, which would have required the submission of each annual review to the Commission. However, the withdrawal of the reporting requirement is a strong indication that the NIGC does not consider the information in the annual reviews to be critical, and may, itself, view the prospect of receiving numerous, voluminous, and frequent annual technical reviews as an unnecessary burden on the Agency. We note that under well-established principles of administrative law and agency rulemaking, federal agencies have a duty to articulate a reasoned basis for its regulations and regulatory actions. We feel that the NIGC has not met this standard with regard to the annual review requirement in § 547.5(a)(2)(iii) of the Proposed Rule.

Current regulations already provide for adequate recordkeeping and reporting requirements, including retention of all records pertaining to TGRA gaming system certifications and approved modifications and submission of such records to the NIGC upon its request. We urge the NIGC to withdraw the annual review requirement from the Proposed Rule and to preserve the existing standards in this area.

3. Procedures Relating to the Approval of Modifications to Grandfathered Class II Gaming Systems.

We are likewise concerned with § 547.5(c) (2) of the Proposed Rule, which provides a general process for system component repair, replacement, and modification that shall be equally applicable to all Class II gaming systems, rather than reasonably and logically having separate requirements for 2008 Systems. This would require that any component modifications to 2008 Systems be laboratory tested for compliance with the full standards of § 547, not just those standards applicable to 2008 Systems.

"Modifications" are necessary for the normal and regular maintenance of 2008 Systems. When a component is damaged or wears out, the precise component that was used in the original manufacture of the game is often no longer available. Thus, a newer component of the same function, such as a ticket printer, must be used. This nevertheless constitutes a "modification" to the system under the Rule. It is important to point out that not every component of a 2008 System implicates the certification designation of the game, i.e., whether the game is compliant with § 547.5(a) or § 547.5(b). For this reason, the current Rule provides that a 2008 System can be modified without laboratory testing to the full § 547 compliance standard as long as the TGRA determines that the change will not detract from the system's proper operation or diminish its overall compliance with Part 547. This enables approved maintenance of 2008 Systems to take place more efficiently and at a lower cost.

We thus believe that subjecting 2008 System repairs, replacements, and modifications to laboratory testing for full compliance with all of § 547 is unnecessary and departs from the long-standing practice that has worked well for many years. The new § 547.5(c)(2) seeks to eliminate the important distinction of 2008 Systems and unnecessarily subjects ongoing system maintenance and modification to the same testing and approval process as all other Class II systems. We believe that this is inconsistent with the principal fact that § 547.5(a) accommodates the continued operation of 2008 Systems apart from the requirements of § 547.5(b) and, accordingly, we urge the NIGC to remove this requirement.

4. Conclusion.

In closing, we would like to express our appreciation for the opportunity to provide comments on this important Proposed Rule. We hope our comments may be helpful to the NIGC as the Commission moves forward in developing a Final Rule, and we hope that our comments offered herein are given favorable consideration.

Sincerely,

Danielle Brashear, Gaming Commissioner
Seneca-Cayuga Nation Office of the Gaming Commissioner