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THE TULALIP TRIBES

6406 Marine Dr.
TULALIP, WA 98271-9694
(360) 716-4000
(360) 716-0606 (Fax)

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

February 10, 2011

Tracie Stevens
NIGC Chairwoman
National Indian Gaming Commission
1441 L. St., N.W. Suite 9100
Washington, D.C., 20005

RE: Comments from the Tulalip Tribes of Washington, NIGC Notice of Inquiry and Request for Information; Notice of Consultation, 75 Federal Register 70680 (Nov. 18, 2010)

Dear Chairwomen Stevens:

The Tulalip Tribes of Washington would like to thank you for the opportunity to review the National Indian Gaming Commission ("NIGC") regulations. In response, the Tulalip Tribes of Washington provides the following comments and suggestions to the notice of inquiry (NOI) referenced above. The Tribes will address the NOI by section number.

1. Part 502 - Definitions

(1) Net Revenues: Should the Commission consider definitions for the following two terms: Net Revenues – management fee; and Net Revenues – allowable uses.

No. The Indian Regulatory Gaming Act ("IGRA') defines Net Revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prices and total operating expenses, excluding management fees."[1] The regulation states that Net Revenues "means gross gaming revenues of an Indian gaming operation less (a) Amounts paid out as, or paid for, prices; and (b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees."[2] Congress provided a clear and precise definition for Net Revenues. The commission has no statutory authority to expand or change the definitions under IGRA. Furthermore, regulation on this matter would expose tribal governments to enforcement action.

(2) Management Contract. Should the definition of management contract be expanded to include any contract, such as slot lease agreements, that pay a fee based on a percentage of gaming revenues?

No. The definition of management contracts should not be expanded to include contracts based on a percentage of gaming revenues. Revenue sharing between the vendors and Tribal gaming establishments is an important mechanism for Indian Tribes to generate revenues. If these lease agreements had to undergo an extensive approval process it would slow the process down and reduce the Tribes ability to generate revenues. Furthermore, expanding the definition of management contracts to include lease agreement would constitute overreaching and cause unreasonable interference by the Commission.

(3) Management Contract Acceptable Compensation. Should there be a definition regarding acceptable compensation to a manager contractor.

[1] 25 U.S.C. §2703(9).

[2] 25 C.F.R. § 502.16.

No. This would cause unreasonable interference in the Tribes ability to run its gaming operations. Furthermore, Tribes are competent and need to continue to ensure they are the primary beneficiaries of revenues generated from these leasing agreements.

II. Part 514 Fees

(1) Revision of calculation of fees calendar year to fiscal year.

No. The NIGC regulations currently require submission of fees twice year based on a calendar year. Gaming operations should be able to elect either method based on their own business practices and individual preference. The NIGC may ask each Tribe to give notice on whether they intent to submit fees based on its fiscal or calendar year. However, failure to adhere to such notice should not subject a Tribe to a NOV.

(2) "Gross Gaming Revenues." Should this definition be revised to be consistent with GAAP?

No. Although GAAP (Generally Accepted Accounting Principles) may make fee calculation easier, we don't believe that an amendment to the definition of "gross gaming revenue" is necessary for the calculation of NIGC fee assessments.

(3) Fingerprint processing fees.

The commission should not amend the fee section to include fingerprint processing fees. Some Tribes do not use the NIGC for fingerprint processing fees. The Tribes fingerprint processing fees are paid by the Tulalip Tribal Gaming Commission and these fees are assessed by the State Gaming Agency.

(4) Notice of Violation vs. Late Payment System.

Yes. The NIGC should not issue a NOV for late fee submission. A separate system such as a progressive ticket system should be developed to handle late payments and a ticket should only be issued after a grace period. The NIGC should reserve a NOV for final action after a specific timeline has passed as specified in the progressive ticket system. The Tribes does not believe a regulation is needed for this but rather a policy or bulletin.

III. Part 518 - Self-Regulation

The current self-regulation procedure is extremely burdensome, duplicative, and overreaching in regards to information requested by the NIGC from Tribes. The process for self-regulation needs to be simplified and streamlined so Tribes may easily take advantage of the opportunity and not be overburdened with unnecessary requirements. A change in regulation should require extensive tribal involvement under the rule making process or other means as agreed upon by the Tribes and the NIGC.

IV. Part 523 - Review and Approval of Existing Ordinances or Resolution

The Tribes do not object to removal of Part 523 if this section does not apply to any Indian Tribes.

V. Part 531 – Collateral Agreements to Management Contracts

The Tribes believes that the current definition of a management already includes collateral agreements if they provide for the management of all or part of gaming operation. We believe this is sufficient for the NIGC to determine whether, overall, a management agreement violated the terms and intent of IGRA. If a Tribe requests specific approval of a collateral agreement, the NIGC should provide such approval.

VI. Part 533 – Approval of Management Contracts

The NIGC has asked whether the regulations for approving management contracts should be updated to include disapproval based on two reasons: 1) not submitted in accordance with the requirements of §533 and b) submission does

not contain the requirements in §531. If the requirements in §533 are not met, the NIGC should provide notice to the Tribe and work with the Tribe to meet these requirements. If the contract is disapproved because of failure to meet the regulatory requirements under this §533, the NIGC should provide give a clear reason for its decision. A change in regulation should require extensive tribal involvement under the rule making process or other means as agreed upon by the Tribes and the NIGC.

VII. Part 537 – Background Investigations

The Tribes believes that the NIGC has limited authority over Class III gaming and has authority is limited to approve of management contracts. The Tribes as primary regulators already have background investigation requirements under its Tribal – State Gaming Compact. Requiring Tribes to adhere to additional requirements is duplicative, burdensome, and overreaching.

VIII. Proceedings before the Commission on Appeals

There must be a more detailed and comprehensive set of rules governing the appeal process. Tribes must be afforded due process and a system must be in place to protect all parties involved. This should include standard methods for service given the multiple layers of tribal government and commission for tribal gaming and a written record maintained and available to all parties.

IX. Part 542 – Class III MICS

The Tribes strongly believes that IGRA does not give authority to the NIGC to promulgate and enforce MICS regulations for Class III gaming. The Tribal – State Gaming Compact governs minimum internal control standards, as with many other Tribal gaming organizations. These MICS meet or exceed NIGC standards. However, we understand there must be a mechanism (not a regulation) whereby Tribes can seek assistance or use NIGC as a resource for Class III technical standards, or an ability to use NIGC as resource for this assistance if they compact for this assistance under their own Tribal gaming compact with their respective State. Thus, we believe the regulation should be struck and replaced with a recommended set of guidelines. The Tribes views this as a **high Priority.**

X. Part 543 – Class II MICS

Part 543 is in need of revision and the NIGC should suspend any enforcement of this regulation until it's revised substantially. The other option it to pull the regulation in its entirety and use the last draft developed by the Tribal Advisory Committee at the starting point for drafting a new regulation. Tribes are the primary regulators and need to be involved extensively in this process. Revision of this regulation is of **high priority.**

XI. Part 547 – Minimum Technical Standards for Gaming Equipment

We support current and on-going revision of §547. As we move forward with these revisions, we believe it is important that a tribal advisory committee be formed to include tribal representatives with Class II technical knowledge to draft the standards in addition to industry representatives. The Tribes views this as a **high priority.**

XII. Pilot Program – Background Investigations for Licensing

The Tribes understands that the pilot program has been successful for Tribes and supports continuation of this program. We question whether a regulation is necessary. A formal policy guiding this program could be equally effective. Tribal input must be sought moving forward.

XIII. Part 559 – Facility License

This regulation needs to be struck. This regulation is duplicative, unnecessary and the NIGC is overreaching in its authority by requiring production of such licenses. The Tribal Gaming Ordinances and the Tribal – State Compacts already give authority to the Tribes to issue facility licenses, and already require Tribes to adhere to health and safety laws. Furthermore, Tribal governments have their own processes and procedures that are more than sufficient to meet the concerns underlying facility licensing on tribal land. The Tribes considers this a relatively **high priority.**

XIV. Part 571 – Inspections and Access

The Tribes does not oppose access to Class II records located off premises and held by third parties. Clarification may be necessary as to Class II records. However, it must be clear that the Tribes oppose any access to Class III gaming records as supported by the Colorado River Indian Tribes (CRIT) decision.

XV. Part 573 – Enforcement

There needs to be a mechanism or process in place for the NIGC to withdraw a NOV when the situation is remedied or when the NOV was issued in error, or any other change in circumstances that changes the stance of the NIGC and its initial issuance of the NOV. The Tribes does not object to the notion that since the Chair has the ability to issue a NOV they should also have the authority and discretion to withdraw the NOV, however, a separate process should be available for Tribes if the NOV is not withdrawn.

XVI. Potential New Regulations

(1) Tribal Advisory Committee

The Tribes supports the formation of a Tribal Advisory Committee (TAC), however, the TAC **does not** replace consultation. The TAC committee should be utilized when the Tribes and the NIGC needs specific and detailed advice on a given topic or regulation. The TAC should be comprised of Tribal leaders and representatives from the industry and from each region. Most important, utilization of the TAC must be done in a timely. We do not think a regulation is necessary for formation of a TAC.

(2) Sole Propriety Interest Regulation

A regulation is not needed. The NIGC should be a resource for Tribes and provide guidance on this issue when a Tribe seeks such assistance.

(3) Policy or Regulation on Communicating with Tribes

A protocol is necessary to ensure Tribal leaders are informed, however, given the number of Tribes and their unique attributes, the policy should be broad and ensure that all notices are provided to Tribal Leaders in addition to the tribal gaming agencies and commissions. It is important to remember that Consultation is government to government and is between the Commission and Tribal Leaders.

(4) Buy Indian Act Regulation

The Tribes supports a policy requiring the NIGC to give preference to Indian-owned businesses when obtaining goods or services.

In closing the Tulalip Tribes would like to thank NIGC for understanding the Tribes concerns with these important issues and the need for further review of NIGC Notice of Inquiry and Request for Information; Notice of Consultation, 75 Federal Register 70680 (Nov. 18, 2010). For further information and/or follow up please contact Theresa Sheldon, Governmental Affairs at (360) 716-5045 or email tsheldon@tulaiptribes-nsn.gov .

Sincerely,

Melvin R. Sheldon Jr.,