



Spokane Tribe of Indians

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The Spokane Tribe of Indians Comments – Class II Technical Standards and Minimum Control Standards

The Spokane Tribe of Indians is pleased to submit these comments to the National Indian Gaming Commission. The Tribe has consistently supported the process of regulatory review the NIGC has undertaken during the past 12 months. We commend the Agency's revolutionary approach to consultation and commitment to consistency and transparency throughout this process. The Tribe acknowledges the immense resources that both Tribes and the NIGC have invested in developing a work product that the tribal gaming industry will be proud of, and more importantly, will allow the industry to grow while maintaining the integrity of the industry. Spokane encourages the Commission to continue to work collaboratively with tribes as these last controversial regulations are finalized. We recognize that we may disagree with the Agency as to the substance of the rules, but we continue to hope that we can disagree respectfully and that you will continue to both listen and consider our testimony with an open mind.

Class II Technical Standards and Minimum Internal Control Standards.

Class II gaming is the foundation of Indian gaming. We appreciate the Commission commitment to follow through on the promise to finally publish Class II MICS and Technical Standards. The Tribe continues to recommend that as you complete your work finalizing the Class II regulations, please keep in mind that a viable Class II game is the only leverage many tribes have in the wake of the *Seminole* decision. We also recommend the NIGC continue its work under the Stevens Administration to work collaboratively with the Department of Interior and Department of Justice to develop a collective and coordinated approach which will ensure tribes are in the position that Congress intended when states refuse to negotiate in good faith.

We were very relieved to see the recent Grandfathering Bulletin clarifying the intent behind the grandfathering provision. The Bulletin is a reflection of the Commission's commitment to listening to the concerns of the tribal gaming industry and responding to those concerns. Spokane recognizes the work product developed by the Tribal Gaming Working Group and supports the major issues identified in the cover letter. We also recognize that the NIGC is ultimately the decision maker and we encourage you to draw as much as possible from the Tribal Gaming Working Group's draft.

The Tribe renews our recommendation that the Commission recognize in the regulations that tribes are the primary regulators of Indian gaming. We make this recommendation to ensure that future Commissions, other federal agencies and state officials are guided by this recognition. The Tribe acknowledges, as the Preamble of Proposed Part 547 states, that the regulatory authority of the Tribal Gaming Regulatory Agency ("TGRA") and the NIGC are concurrent, however, the Tribe strongly believes that a statement acknowledging the tribal role in regulating Class II gaming would not be commentary on the NIGC's regulatory authority. It is important for other federal agencies and state gaming regulatory authorities to understand the key role TGRA's play in regulating tribal gaming, this statement would provide all interested parties that notice. The Tribe would also not be opposed to a statement that the TGRA's and NIGC exercise concurrent regulation if the NIGC is concerned that stating the tribes are the primary regulators detracts in some fashion from the NIGC's authority.

The proposed regulations submitted by the Tribal Gaming Working Group ("TGWG") included a significant amount of guidance information. Understanding the need for balance between regulation and guidance, Spokane recommends that the NIGC utilize guidance documents, similar to guidance documents used by other federal agencies, to assist tribes as we begin to revise our MICS to meet these new regulations.

The Tribe also supports the TGWG recommendation that the Part 543 include a control clarifying that "nothing in this part is intended to limit technology." Previous administrations used advancements in technology as a mechanism for drawing a "bright line" between Class II and Class III gaming even though the math behind the game was bingo-based. Spokane would like to ensure, to the degree possible, that a future Commission would not use advancements in technology to limit Class II gaming. Class II gaming must remain both viable and relevant for tribes to utilize it to the greatest potential.

Class III MICS.

The Tribe recognizes that the Class III Minimum Internal Control Standards were not included as a topic of discussion during the Tribal Advisory meetings and we applaud the NIGC for leaving the Class III MICS out of that process. However, Spokane was dismayed to receive an email from the Region Director asking for input on regarding the concept of utilizing NIGC Audit staff to conduct Class III audits on a strictly volunteer basis as a service to region tribes. This request begs the question as to "which" Class III MICS would these "volunteer" tribes be audited? The current Class III MICS are outdated and, in Washington State, largely inapplicable to the Washington tribes as our gaming compacts provide the Class III MICS with which we must comply. While we support tribal development of model Class III MICS, we must reiterate, again, our previous recommendation that the NIGC

establish a clear date to withdraw the current Class III MICS from its body of regulations, notices and bulletins and leave Class III MICS to the compact negotiation table.

Conclusion.

Spokane understands that the NIGC must balance the regulatory interests of the Agency with the need to provide flexibility for advancements in technology and needs of the gaming operation. We do not envy you this task, but we have confidence that you will weigh these concerns and develop regulations which will improve the current regulatory framework.

Respectfully,



Rudy J. Peone

Chairman, Spokane Tribe of Indians