National Indian Gaming Commission

PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA 99-5

SENT BY FACSIMILE AND CERTIFIED MAIL

To: Chad Smith, Principal Chief
Cherokee Nation of Oklahoma
P.O Box 179
Tahlequah, Oklahoma 74465

1. Notice. Under the authority of 25 U.S.C. 2713(a) of the Indian Gaming Regulatory Act (IGRA) and 25 C.F.R. Part 575, the Chairman of the National Indian Gaming Commission (NIGC or the Commission) hereby provides notice of his intent to assess a civil fine against the Cherokee Nation of Oklahoma (hereinafter referred to as the "Nation" or the "Respondent"), for violation of 25 U.S.C. § 2710(d) and 25 C.F.R. § 573.6(a)(11), as set forth in detail in Notice of Violation and Closure Order, Reference NOV-99-5/CO-99-5, dated July 8, 1999, a copy of which is attached.

2. Authority. Under 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, the Chairman may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a Notice of Violation issued under 25 C.F.R. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act as a separate violation in calculating an appropriate civil fine assessment. 25 C.F.R. § 575.4(a)(2).

3. Circumstances of the Violation. Respondent, through Cherokee Nation Enterprises, Inc., a wholly owned, tribally chartered, corporate entity, operates gaming establishments on tribal land in the State of Oklahoma. Respondent offered a gaming device known as "Reels and Deals" for play in its gaming facilities. Respondent does not have a compact with the State of Oklahoma for the play of Class III gaming devices in its gaming facilities. On July 8, 1999, the NIGC Chairman, believing play of the "Reels and Deals" device to be a Class III gaming activity as defined by the IGRA, issued a Notice of Violation and Closure Order (NOV/CO 99-05) directing Respondent to cease and desist in the operation of the device in its gaming facilities. Respondent appealed the Notice of Violation and Closure Order but did not comply with the Closure Order. Under an agreement with the Chairman to resolve the appeal (the "Procedural Stipulation"), Respondent continued to offer play of the "Reels and Deals" gaming device while its appeal of the Notice of Violation and Closure Order was pending before the NIGC. On May 24, 2002, the

Commission issued a Notice of Decision and Order in the matter finding the "Reels and Deals" game to be a Class III gaming activity, play of which is prohibited by the IGRA in gaming operations on Indian lands in the absence of an approved tribal-state compact, and sustaining the Notice of Violation and Closure Order issued by the Chairman. Respondent discontinued play of the "Reels and Deals" gaming device on May 27, 2002.

4. In arriving at a proposed civil fine, the Chairman has considered the factors prescribed in 25 C.F.R. § 575.4, as follows:

I. Economic benefit of noncompliance. On June 17, 2002, under the terms of the Procedural Stipulation, Respondent provided financial information regarding its "Commissions" from the play of gaming devices that were the subject of the underlying Notice of Violation and Closure Order. The information demonstrates substantial economic benefit to the Respondent based on play of the gaming device in its gaming facilities. Because of the continuing nature of this violation, each day these devices were played illegally will be treated as a separate violation. A total of 1205 days elapsed from the date these devices were observed in play in Respondent's gaming facilities (February 7, 1999) until the date the devices were withdrawn from play (May 27, 2002), as represented by Respondent.

II. Seriousness of the violation. The operation of class III gambling devices, without a tribal-state compact, is a violation of both the civil and criminal provisions of the IGRA (25 U.S.C. § 2710 and 18 U.S.C. § 1166), as well as the regulations of the NIGC. By virtue of its inclusion as a criminal matter, Congress deemed this to be a serious violation. While serious, during negotiations for the Procedural Stipulation which set forth an intended process by which the parties would conduct the proceedings on appeal, the Chairman agreed that play of the particular gaming device at issue while the appeal was pending would not to be viewed as a substantial threat to the integrity of Indian gaming or bad faith, a position to which the Chairman adheres in this proposed civil fine assessment.

III. History of violations. Respondent has no history of violations in the last five years that became final actions of the Commission.

IV. Negligence or willfulness. Respondent's violation in this case was willful and intentional and not the result of negligence. Respondent was on notice that the machines at issue were considered to be Class III gambling devices by the Chairman, the play of which could only be under a compact between Respondent and the State of Oklahoma. Respondent consciously chose to operate the gaming devices nonetheless, and to profit thereby, and did not make an effort to correct the violation by discontinuing play. Respondent's position on this matter is reflected in a brief filed with the Chairman on June 17, 2002, and in a letter attached thereto dated

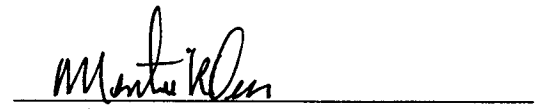
February 8, 1999. These submissions were considered in a determination of the Proposed Civil Fine Assessment. The Chairman acknowledges Respondent's effort to limit its play of the gaming device at issue in this matter to the number specified in the Procedural Stipulation.

V. Good faith. Under the Commission's regulation, the Chairman may reduce the amount of civil fine based on the degree of good faith in achieving rapid compliance after notice of the violation. Respondent made the conscious choice to continue play of the gaming device at issue despite the Notice of Violation and Closure Order. Accordingly, a basis does not exist to reduce the fine based on Respondent's attempt to achieve rapid compliance after notification of the violation. Respondent did discontinue play of the device but not until after notice of the Commission decision.

5. Assessment. WHEREFORE, having carefully reviewed the above factors and the written information submitted by Respondent about the violation, a fine in the amount of $3,976,500 is assessed on the Nation for operation of illegal gambling devices through May 27, 2002. This sum represents an initial fine of $3,300 and treats each subsequent day of illegal activity as a separate violation for which an additional fine at the rate of $3,300 per day is assessed.

6. Appeal Rights. Under 25 C.F.R. § 577.3, the respondent may appeal the proposed fine to the full Commission within thirty (30) days after service of this Notice of Proposed Civil Fine Assessment, by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L St., N.W., Suite 9100, Washington, D.C. 20005. The respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, the Respondent must file with the Commission a supplemental statement that states, with particularity, the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Respondent wishes to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The Respondent may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated: July 16-2002



Montie R. Deer
Chairman
National Indian Gaming Commission