QUAPAW TRIBAL GAMING AGENCY
P. O. Box 405 • Quapaw, OK 74363
Phone: 918-919-6020
Fax: 918-919-6029

July 31, 2017

Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street N.W.
Mail Stop #1621
Washington, D.C. 20240

Re: Proposed Changes to 25 C.F.R. § 547.5

Dear Chairman Chaudhuri:

On behalf of the Quapaw Tribal Gaming Agency (QTGA), I am pleased to offer these comments in response to the National Indian Gaming Commission's (NIGC) Discussion Draft of 25 C.F.R. § 547.5 affecting grandfathered Class II gaming systems. As the tribal gaming regulatory authority of the Quapaw Tribe of Oklahoma (Tribe), the QTGA has a vested interest in ensuring that the regulatory framework governing Class II gaming is fair, reasonable, and consistent with the Indian Gaming Regulatory Act's goal of promoting tribal economic development, self-sufficiency, and strong tribal government. The QTGA appreciates this opportunity to review and provide comment on the proposals reflected in the Discussion Draft and hope they prove useful to the NIGC as it considers further revisions to this important regulation.

1. ***Annual Review and Reporting Requirements (§ 547.5(a)(2)(iii))***

While we support the NIGC's proposal to remove the sunset clause from Part 547, we urge the NIGC to reconsider its proposed alternative in § 547.5(a)(2)(iii) of the Discussion Draft, which subjects tribal gaming regulatory authorities (TGRAs) to onerous review and reporting requirements on an annual basis. These requirements include an annual review of each individual Class II gaming system operated by the Tribe, including identifying the modifications needed to achieve compliance with the full standards of 25 C.F.R. Part 547, and reporting findings to the NIGC. In order to comply with these new requirements, TGRAs would have to incur significant expense and expend considerable time and regulatory effort, which could prove cost-prohibitive for some TGRAs.

Our concern is that the compliance costs associated with this new proposal would far outweigh the actual regulatory benefits, if any. In our view, the proposed new requirements will result in imposing unnecessary burdens and costs on TGRAs without any discernable benefit. Particularly troubling is the lack of any justification or evidence showing a need for the proposed annual review and reporting procedures. It is well-established that federal agencies have a duty to articulate a reasoned basis for its regulatory actions, especially when they create new

compliance obligations. The NIGC's proposal to adopt new annual review and reporting requirements should not proceed absent a compelling regulatory need based on real concerns.

2. Scope of 2008 Systems (§ 547.5(a)(1))

The Discussion Draft includes changes to the terminology used in relation to grandfathered Class II gaming systems that create confusion as to the scope and coverage of proposed § 547.5(a). In introducing the required conditions for grandfathered Class II gaming systems, § 547.5(a)(1) of the Discussion Draft begins by stating that the proposed provision covers "any Class II gaming system manufactured before November 10, 2008." On its face, this provision reads as if it is intended to encompass ***all*** Class II gaming systems manufactured before November 10, 2008, regardless of their current compliance status.

The language used by the NIGC appears to be based on an assumption that none of the Class II gaming systems manufactured before November 10, 2008 are currently operating as fully compliant systems. This is simply untrue. There are numerous Class II gaming systems manufactured before November 10, 2008, that were either in full compliance at the time the 2008 technical standards became effective or have since become approved as fully compliant. These updated and fully compliant systems should not be subject to the requirements designated for grandfathered systems in § 547.5(a).

We strongly urge the NIGC to clarify in proposed § 547.5(a)(1) that the provision will only apply to those Class II gaming systems manufactured before November 10, 2008 that have not yet been brought into full compliance with 25 C.F.R. Part 547.

3. Player Interface Requirement (§ 547.5(a)(1)(viii))

The QTGA has serious concerns with the new requirement in the Discussion Draft that all player interfaces used in connection with a grandfathered Class II gaming system be manufactured before November 10, 2008. We find this new requirement to be unnecessary and counterproductive to the regulatory purpose of Part 547, which we understand is to eventually move all Class II gaming systems to full compliance. We note that the current regulation not only anticipates but provides for modifications to grandfathered systems, including the repair and replacement of hardware components. This new requirement is not only inconsistent with the regulatory scheme established in the current rule, but misguided in that it prohibits tribal operators from utilizing newer Class II gaming technology, even if doing so would enhance the overall compliance of the gaming system.

In its June 14, 2017 Dear Tribal Leader Letter, the NIGC notes that this requirement has been added to the Discussion Draft,[1] but fails to provide any justification or evidence showing a demonstrated need for this new requirement. Given that there has been no documented instances of older player interfaces posing any risk to the gaming operation or patrons, the NIGC should

[1] We note that in its Dear Tribal Leader Letter, the NIGC stated that it included this rule concerning player interfaces in its 2008 original standards. The QTGA could not find this requirement in the 2008 original standards.

not move forward with this proposal and allow TGRAs to retain the necessary flexibility to approve appropriate hardware modifications.

4. Modifications to Grandfathered Systems (§ 547.5(c)(2))

In § 547.5(c)(2) of the Discussion Draft, the NIGC proposes new procedures for approving modifications to grandfathered Class II gaming systems. We oppose the inclusion of these procedures because they would require modifications to grandfathered gaming systems to be tested for compliance with the full standards of Part 547, not just to those applicable to grandfathered systems.

Under the current rule, TGRAs are responsible for reviewing and approving modifications to all Class II gaming systems, and follow different approval procedures depending on whether the system has been approved as a grandfathered or fully compliant system. For instance, a grandfathered system can be modified as long as the QTGA determines that the modification will not detract from the system's proper operation or diminish its overall compliance with Part 547.

We do not believe the current rules governing modifications to grandfathered gaming systems should be changed. Under the current rule, TGRAs have greater flexibility and control over modifications to grandfathered systems than they do over fully compliant systems. There is simply no basis for eliminating this important benefit and subjecting modifications to grandfathered systems to the same testing and approval process as fully compliant systems.

5. Conclusion

In closing, we appreciate your consideration of our comments and urge the NIGC to thoroughly consider the regulatory need and impact of each proposed change before moving forward with any rulemaking activities. We look forward to continuing to engage with the NIGC in developing further revisions to this important regulation.

Sincerely,

Barbara Kyser-Collier, Director
Quapaw Tribal Gaming Agency