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The National Congress of American Indians
Resolution #FTL-04-114C

TITLE: Opposition to the National Indian Gaming Commission's (NIGC) Proposed Class II Technological Standards Regulations

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the U.S. Supreme Court and Congress recognize that Tribal governments retain the inherent authority to conduct gaming operations on Indian lands to generate governmental revenue and attain economic self-sufficiency; and

WHEREAS, the U.S. Congress enacted the Indian Gaming Regulatory Act (IGRA) to promote Indian economic development and build strong tribal governments by protecting Indian gaming as a means of generating tribal governmental revenues; and

WHEREAS, when Congress enacted IGRA it made clear its intention that "tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility;" and

WHEREAS, the Eighth, Ninth, Tenth, and D.C. Federal Circuit Courts of Appeal have recognized that the Johnson Act does not prohibit IGRA technologic aids to class II games; and

WHEREAS, on June 17, 2002 in 67 Federal Register 41166 the National Indian Gaming Commission (NIGC) adopted a final rule amending it regulatory definitions ("Regulatory Definitions") by removing the reference to the Johnson Act from the definition of electronic and electromechanical facsimiles and made other important changes, which reflect that Congress did not intend the Johnson Act to apply to IGRA technologic aids to class II games; and

WHEREAS, Congress, through the 2003 Omnibus Appropriations Act, directed the NIGC to consult with Tribal governments on the implementation of the 2002 Regulatory Definitions; and

WHEREAS, the NIGC did not fully consult with Tribes specifically on implementing the Definition Regulations – and instead has proposed new "Class II Technological Standards" regulations, which would erode the above-cited Federal Appellate Court decisions, the NIGC's own Regulatory Definitions and classification opinions, conflict with specific definitions found in IGRA, and would restrict the ability of Tribes to use technologic aids contrary to Congress' intention to provide Tribes maximum flexibility in using technologic aids to Class II games; and

WHEREAS, the NIGC's process in developing the Working Draft on the Technological Standards conflicts with its own recently established "Government-to-Government Tribal Consultation Policy," 69 Fed. Reg. 16973-79 (Mar. 31, 2004), which requires the Commission to consult "with individual tribes and recognized governmental leaders" when formulating and implementing NIGC administrative regulations."

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby urge the NIGC to withdraw its proposed Class II Technological Standards and develop a proposal that will align with the Federal Court decisions in United States v. Santee Sioux Tribe of Nebraska, 324 F.3d 607 (8th Cir. 2003), cert. denied, 540 U.S. Docket number 03-762 (March 1, 2004), and Seneca-Cayuga Tribe of Oklahoma v. NIGC, 327 F.3d 1019 (10th Cir. 2003), cert. denied, 540 U.S. Docket number 03-740 (March 1, 2004), the 2002 NIGC Definition Regulations, congressional intent as expressed through IGRA, and to fully consult with tribal leaders in accord with the NIGC's recently established Government-to-Government Tribal Consultation Policy and President Bush's policy on tribal consultation.

CERTIFICATION

The foregoing resolution was adopted at the 61st Annual Session of the National Congress of American Indians, held at the Greater Fort Lauderdale/Broward County Convention Center, Fort Lauderdale, Florida on October 10-15, 2004 with a quorum present.

President

ATTEST:

Recording Secretary

Adopted by the General Assembly during the 2004 Annual Session of the National Congress of American Indians, held from October 10th to the 15th at the Greater Fort Lauderdale/Broward County Convention Center in Fort Lauderdale, Florida.