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October 18, 2002

Doug Bell
BELL & INGRAM, P.S.
1604 Hewitt Avenue, Suite 700
Everett, WA 98206

Dear Doug,

SUBJECT: Tulalip Compact Amendment

I have conducted an initial review of your proposed sixth amendment to the Tulalip/State Compact relative to the Compact recently agreed to with the Confederated Tribes of the Colville Reservation. As we discussed on the phone last Monday, my primary purpose in this initial review was to determine which of the proposed changes are covered by the "most favored nation" (MFN) clause (Section 15(d)(ii)(cc) of the Compact, fifth amendment) and which would require the more formal amendment process.

I find that most of the proposed changes do not fall within the MFN clause. I will address each of the changes below, but first I would like to discuss application of the MFN clause in general. The MFN clause was intended to allow for expedited amendment of compacts in situations where one tribe has more gaming opportunities or activities than are contained in another tribe's compact. Such expanded gaming opportunities would include: more facilities, more gaming activities, more gaming stations, higher wagering limits, or longer hours of operation. This was agreed to by the state in recognition of the highly competitive nature of gaming and the desire of tribes to have the ability to offer the same gaming activities to their customers as other tribes can offer.

The MFN clause was not intended to cover all differences between the various tribal compacts. It was not intended to apply to regulatory, technical, or operational matters that do not relate to expanded gaming opportunities.

Furthermore, where the MFN clause does apply, it must be applied in full to the expanded activity. It should not apply only to the positive aspects of the expanded activity while ignoring the limitations imposed upon that activity. For example, the Colville Compact allows a greater number of facilities than contained in other tribal compacts. However, this provision is limited by the condition that the facilities be at least 25 miles apart. This unique language was agreed to in recognition of special demographic and geographical situations of the Colville Tribes. Amending the Tulalip Compact to include the same number of facilities as Colville without the 25-mile limitation would not fall within the language of the MFN clause.

Based on the preceding analysis of the MFN clause, I will now briefly address each of the proposed changes. While it is our position that many of these proposals are not properly the subject of the MFN clause, they would, of course, be proper subjects for compact re-negotiations, which the Tribe may request at any time.

1. Section 3(a)(xxiii): This proposed change, together with the proposed change number 5, would eliminate Appendix C of the Compact authorizing Off Track Wagering and replace it with language regarding future negotiations of Off Track Wagering. This does not fall within the MFN clause, as it does not authorize an expanded gaming activity. Moreover, I am confused as to why the Tribe would want this change. It eliminates your current authority to conduct Off Track Wagering. While it grants the Tribe the right to ask for future negotiations on the subject, this is already covered in Section 15(d)(iii)(bb) of the Compact and the general re-negotiations clause.

   Section 3(a)(xxiv): Appendix Colville. See discussion of item 8 below.

   Section 3(a)(xxv): This proposed change deals with other Class III gaming activities not specifically covered in Section 3(a). All of the compacts address this issue, but the language varies from compact to compact. The Tulalip Compact currently addresses this in Section 3(a)(xxi). While I see no problem with the change, it is not one that falls within the MFN clause.

   Section 3(b) and Section 3(f): These changes would increase the number of gaming facilities from two to three and increase the number of gaming stations. However, they do not include the 25-mile limitation imposed in the Colville Compact. For the reasons discussed above, I do not believe that these changes fall within the MFN clause.

2. Section 12(f): This change deals with dispute resolution. It does not fall within the MFN clause for two reasons: First, it does not authorize an expanded gaming activity; it deals with an operations or enforcement matter. Second, the dispute resolution provisions in the Colville and Tulalip Compacts are quite different. This proposed change takes one sentence out of the Colville Compact, but does not encompass the other differences in Colville.

3. Section 15(c): This change deals with the dispute resolution process when a change in state law occurs. Again, I do not believe that it falls within the MFN clause. It could be the proper subject of negotiations, but it does not relate to expanded gaming opportunities.

4. Section 15(d)(ii)(cc): This amends the MFN clause. While the language is slightly different from your current compact, the main change is the reference to secretarial procedures. I do not find this to fall within MFN, as it does not relate to expanded gaming opportunities.

5. Deletion of Appendix C: See discussion of Section 3(a)(xxiii) above.

6. Deletion of Appendix D: This one confuses me because I am not aware of an Appendix D. Your cross-reference to the Colville Compact deals with the number of gaming stations and electronic gaming devices, which are covered in Appendix X of the Tulalip Compact. See item 7 below.

7. These changes amend Section 12 of Appendix X on Tribal Lottery Terminal Allocations. I cannot agree that the changes as proposed fall within the MFN clause. However, I would agree that there is a MFN aspect to this area of the Colville compact.

   a. The first changes, contained in Sections 12.1, 12.2, and 12.3, remove the requirement for a compliance review before the Tribe's machine allocation can be increased from 425 to 675. As the Tulalip Tribe has already completed the compliance review and has had its allocation increased to 675, this change is unnecessary.

   b. The second change, contained in Section 12.4, deals with the maximum number of machines that the Tribe may operate above its 675 machine allocation and with the location of those machines. The language, as proposed, does not comply with the MFN clause for the following reasons.

      The current state gaming compacts with Washington tribes provide for a maximum of 1500 player terminals per facility. This equals a maximum limit of 3000 terminals for those tribes, such as Tulalip, that are authorized for two facilities, and a maximum of 1500 terminals for tribes that have one facility. The Colville Compact allows for a maximum of 4800 terminals. This is based on 1500 terminals for each of its three authorized casinos and 100 for each of the proposed satellite casinos. The Compact also provides that the Colville Tribes can distribute the machines between facilities, allowing operation of up to 2000 machines at a facility, so long as the total does not exceed the tribe's maximum limit.

      We believe that proper application of the MFN clause would allow the Tulalip Tribe to operate 2000 terminals at one facility, so long as the maximum limit of 3000 terminals for both facilities is not exceeded.

   c. The third change incorporates references to Electronic Gaming Devices. This change would fall within the MFN clause. See discussion of item 8 below.

   d. The fourth change, contained in Section 12.4, deals with renegotiations should terminals be unavailable. Again, the MFN clause does not appear to apply, as this does not deal with expanded gaming activities. Moreover, this language is simply a commitment to negotiate in good faith, which is already covered by your Compact and the law.

8. This change would incorporate Appendix Colville into the Compact. This does fall within the MFN clause. (However, do you mind if we call it Appendix Y?)

Once you have reviewed this letter, please contact me and let me know how you want to proceed. Again, let me stress that I am not rejecting any of your proposals. I simply believe that most of them should be handled through the normal negotiation process.

Sincerely,

Ed Fleisher

Ed Fleisher
Special Assistant, Tribal & Government Affairs

cc: Rick Day