

Oneida Tribe of Indians of Wisconsin

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Oneida, WI 54155



UGWA DEMOLUM YATEHE
Because of the help of
this Oneida Chief in
cementing a friendship
between the six nations
and the colony of
Pennsylvania, a new
nation, the United States
was made possible.

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Resolution 5-31-95 C

- WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and treaty Tribe recognized by the laws of the United States, and
- WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council, and
- WHEREAS, the Oneida Tribe is entering into a joint venture with Wisconsin Wireless for the purposes of applying to the Federal Communications Commission ("FCC") for licenses in the personal communication services area ("PCS"), and
- WHEREAS, the FCC has promulgated rules and requirements governing the award of broadband PCS licenses through a system of competitive bidding in which Indian Tribes are given special consideration with respect to their eligibility to participate in the auctions for the entrepreneurs' blocks of the PCS spectrum, and
- WHEREAS, applicants are required to file certain information so that the FCC can determine whether the applicants are legally, technically, and financially qualified to bid in the entrepreneurs' blocks, and
- WHEREAS, the Oneida Tribe is requesting an initial determination from the FCC as to whether the Tribe will be eligible to bid for certain entrepreneurs' blocks set aside for minority applicants, and
- WHEREAS, the Oneida Tribe's eligibility will be determined on the basis of whether our gaming revenues are to be included in the FCC's calculation, and
- WHEREAS, the Oneida Tribe needs to prove to the FCC that our gaming revenues will not give the Tribe a competitive advantage in the FCC auctions scheduled for August 2, 1995, and

WHEREAS an Ordinance that prohibits the use of gaming revenues for purposes of the Tribe's participation in the upcoming auctions would negate the possibility that the Oneida Tribe derives any competitive advantage, and

WHEREAS, in order to participate in this investment, this Ordinance need to be adopted on an emergency basis, and

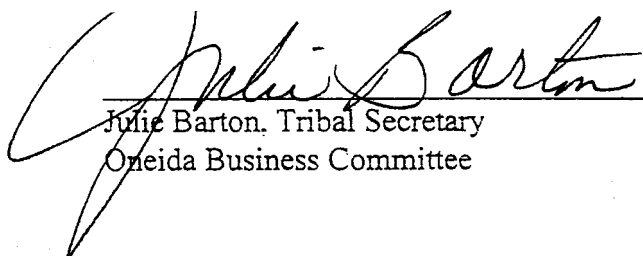
WHEREAS, the Business Committee has the authority under the Oneida Tribal Administrative Procedure Act, Section VI, to adopt emergency ordinances when it has been determined to be in the best interest of the Oneida Tribe.

NOW THEREFORE BE IT RESOLVED THAT the Business Committee is hereby invoking their authority under the Administrative Procedures Act, Section VI, adopting the Prohibitive Gaming Revenue Allocation Ordinance;

BE IT FINALLY RESOLVED THAT this Ordinance will be in effect until September 30, 1995, the date of which signifies the end the 1995 fiscal year.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 7 members were present at a meeting duly called, noticed and held on the Saturday of May, 1995; that the foregoing resolution was duly adopted at such meeting by a vote of 6 members for; 0 members against; and 0 members not voting; and that said resolution has not been rescinded or amended in any way



Julie Barton, Tribal Secretary
Oneida Business Committee

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STATEMENT OF EFFECT

Resolution Proposing the Adoption of the Prohibitive Gaming Revenue Allocation Ordinance Pursuant to the Emergency Provisions in the Administrative Procedures Act

Summary

This resolution proposes that the Business Committee adopt the Prohibitive Gaming Revenue Allocation Ordinance on an emergency basis, pursuant to Section VI of the Administrative Procedures Act. It further proposes that this Ordinance be in effect until September 30, 1995, at which time this Ordinance will no longer be in effect.

The Federal Communications Commission ("FCC") has promulgated special rules for businesses owned by minorities and women to ensure that these "designated entities" have a meaningful opportunity to participate in the broadband PCS auctions scheduled for August 2, 1995. However, the FCC has placed financial caps (in which the Tribe exceeds) on those allowed to participate and has deemed that gaming revenues are to be included in their calculations when determining whether an applicant is eligible to bid as a "designated entity" in the upcoming auctions. They view gaming revenues as "exceptional revenues" that may provide the Tribes with an unfair competitive advantage. To address challenges to their position, the FCC has created a "rebuttable presumption" that such revenues are to be included in determining eligibility. To overcome that presumption, the applicant must show legal constraints restrict the ability to access and utilize gaming revenues for purposes of raising capital, in a similar manner to legal restrictions and controls that exist on the Tribe's ability to utilize other assets and revenues.

The Tribe intends to apply for this "designated entity" status and challenge the FCC's rule by proving that allocations for expenditures in 1995 did not include any authorization to use gaming revenues to apply for or support the applications for any PCS licenses. The existence of a statutory law that precludes the use of gaming revenues to support participation in the PCS auctions has been cited as clearest example of how to rebut the presumption that gaming revenues provide Indian Tribes with an unfair competitive advantage in the auctions.

That is the only purpose of the above Ordinance. The Ordinance specifically states in Section 3 that:

"In order to eliminate any ambiguity which might adversely affect the Nation's eligibility to participate in the broadband PCS auction before the FCC scheduled for August 2, 1995, no revenues derived by the Nation from its gaming revenues shall be used for any auction activities which might provide an unfair competitive advantage..."

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In order for the Tribe to participate in this financial venture, this Ordinance is being adopted on an emergency basis due to the limited time constraints imposed by the scheduled August 2, 1995 auctions. Furthermore, due to the Oneida Tribal budgeting process that is currently in effect, this allocation prohibition will only be in effect until September 30, 1995, which signifies the end of fiscal year 1995. Finally, as expenditures for the fiscal year of 1995 have already been approved by the Oneida General Tribal Council, money used to apply for the above licenses are will not be taken from money allocated to existing programs, departments, divisions, committees, etc.

PROHIBITIVE GAMING REVENUE
ALLOCATION ORDINANCE

To promote and advance the economic development, public welfare, technological advancement of the Sovereign Nation of the Oneida Tribe of Indians of Wisconsin and to promote investment and participation in the telecommunications infrastructure of the United States of America by the Sovereign Nation of the Oneida Tribe of Indians of Wisconsin, and for other purposes.

Be it enacted by the Oneida Business Committee of the Sovereign Nation of the Oneida Tribe of Indians of Wisconsin in session assembled,

§ 1. Short Title.

This Act may be cited as the "PCS Eligibility Act of 1995".

§ 2. Findings.

The Oneida Business Committee finds that

(1) On August 10, 1993, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1993 adding a new section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-173 which gave the Federal Communications Commission ("FCC" authority to employ competitive bidding procedures to award certain licenses and specified in § 309(j)(4) the contents of the regulations the FCC was directed to adopt to implement the competitive bidding procedures

(2) In § 309(j)(3)(B), Congress established the objective for the Commission of "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people. by disseminating licenses among...businesses owned by members of minority groups

(3) In § 309(j)(4)(D), Congress directed the FCC to “ensure that.. businesses owned by members of minority groups...are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and other procedures...”

(4) On June 29, 1994, in implementation of the foregoing Congressional objectives and directives, the FCC adopted its Implementation of Section 309(j) of the Communications Act--Competitive Bidding, Fifth Report and Order in PP Docket No. 93-253, FCC No. 94-178, released July 15, 1994, 9 FCC Rod 5532 1994); 59 Fed. Reg. 37566 (July 22, 1994) which contained rules to conduct auctions for the award of licenses to provide personal communications services, which the FCC calls “broadband PCS” (“Fifth Report and Order”).

(5) The FCC’s rules adopted in the Fifth Report and Order were crafted to fulfill Congress’s mandate that the FCC ensure that small businesses and businesses owned by minorities were given the opportunity to participate in the provision of broadband PCS

(6) On August 31, 1994, the FCC in an Order on Reconsideration of the Implementation of Section 309(j) of the Communications Act--Competitive Bidding, Fifth Report and Order in PP Docket No. 93-253, FCC No. 94-217, released August 15 1994, 75 RR 2d 208 994); 59 Fed. Reg. 43062, on its own motion amended its rules adopted in the Fifth Report and Order to broaden the basis for participation by Indian Tribes in the auctions for broadband PCS by exempting such entities from the FCC’s affiliation rules by which the gross revenues and total assets are attributed and counted toward the FCC’s eligibility criteria for broadband PCS applicants

7 On November 10, 1994 the FCC adopted its Fifth Memorandum Opinion and Order in the Implementation of Section 309(j) of the

Communications Act--Competitive Bidding, PP Docket No. 93-253, FCC No. 94-285, released November 23, 1994, and further amended its rules to limit the exemption from the affiliation rules for Indian tribes to the extent that a tribe or any affiliate obtains its or their revenues from gaming activities unless it can be shown that no unfair competitive advantage in the broadband PCS auctions arises from such access to such revenues.

(8) Allocation of revenues from enterprises of the Oneida Tribe of Indians of Wisconsin are made pursuant to the laws and Constitution of the Nation in the year preceding the expenditure of such revenues.

(9) The allocation of revenues in 1994 for expenditure in 1995 did not include any allocation for participation by the Nation in the FCC's broadband PCS auction for 1995 and hence no such gaming revenues are available to support the Nation's applications to the FCC for bidding in the broadband PCS auction scheduled for August 2, 1995.

§ 3. Prohibition of Use of Gaming Revenues.

In order to eliminate any ambiguity which might adversely affect the Nation's eligibility to participate in the broadband PCS auction before the FCC scheduled for August 2, 1995, no revenues derived by the Nation from its gaming revenues shall be used for any auction activities which might provide an unfair competitive advantage in contravention of FCC Rule 47 C.F.R. § 24.720(l)(11)(I).

§4. Authority to Adopt.

The Oneida Business Committee, pursuant to its authority under the Administrative Procedures Act, Section VI, has adopted this Ordinance under the Emergency Provisions contained in the Act referenced hereinbefore. This Ordinance shall remain in effect until September 30, 1995, the date of which signifies the end of fiscal year 1995