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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	
)	
Amendment of the Commission's)	GN Docket No. 90-314
Cellular-PCS Cross-Ownership Rule)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
Regulatory Treatment of Mobile)	
Services)	

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To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), submits this Opposition to the Petition for Reconsideration of the Commission's Sixth Report and Order¹ filed on August 21, 1995 by the Sovereign Nation of the Oneida Tribe of Wisconsin ("Oneida Tribe"). For the reasons set forth below, CIRI urges the Commission to deny the Oneida Tribe's Petition for Reconsideration of the Sixth Report and Order.

The Oneida Tribe asks the Commission to reconsider its Sixth Report and Order and to rescind the gaming revenues rule that the Commission adopted as part of the Tribal Affiliation Rule.² The

¹ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Sixth Report and Order, FCC 95-301 (rel. July 18, 1995) ("Sixth Report and Order").

² See 47 C.F.R. 24.720(1)(11)(i).

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gaming revenues rule about which the Oneida Tribe complains was adopted by the Commission in its Fifth Memorandum Opinion and Order³ on November 10, 1994. For more than six months, however, the Oneida Tribe remained silent about the substantive and procedural issues it now raises.

Indeed, the Oneida Tribe did not articulate its instant complaints until the Commission issued a Further Notice of Proposed Rule Making⁴ in June to address unrelated issues raised by the Supreme Court's decision in Adarand Constructors, Inc. v. Pena.⁵ Thus, in the Sixth Report and Order, the Commission ruled on the Oneida Tribe's arguments, "We have adequately considered these issues previously and we find no basis to revisit them here in this narrowly-focused rule making."⁶ The Oneida Tribe now asks the Commission to revisit the same issues. This request again should be denied.

As a threshold matter, the Oneida Tribe's petition to reconsider the substance of the gaming revenues rule comes long after the expiration of the period for reconsideration permitted by the Communications Act and the Commission's Rules. The Fifth

³. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 428-29 (1994) ("Fifth Memorandum Opinion and Order").

⁴. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Further Notice of Proposed Rule Making, FCC 95-263 (rel. June 23, 1995) ("Further NPRM").

⁵. 115 S.Ct. 2097 (1995).

⁶. Sixth Report and Order at ¶ 55.

Memorandum Opinion and Order was adopted by the Commission on November 10, 1994 and was released on November 23, 1994.⁷ Public notice of the Fifth Memorandum Opinion and Order appeared in the Federal Register on December 7, 1994.⁸ Thus, pursuant to Section 405(a) of the Communications Act and Section 1.429(d) of the Commission's Rules, petitions for reconsideration of the Fifth Memorandum Opinion and Order were due no later than January 6, 1995.⁹

Although six parties filed timely petitions for reconsideration of the Fifth Memorandum Opinion and Order with the Commission,¹⁰ the Oneida Tribe was not among them. Yet, the details of the Oneida Tribe's substantive concerns were as mature on January 6 as they were when the Tribe first raised its arguments in Comments filed on July 7. The intervening six months added nothing to the Oneida Tribe's position. Even the Supreme Court's decision in Adarand — the specific catalyst of the Further NPRM¹¹ — was not germane to the Oneida Tribe's complaints. The release of the Commission's Further NPRM was not

7. Fifth Memorandum Opinion and Order, 10 FCC Rcd at 403.

8. 59 Fed. Reg. 63,210 (1994). See 47 C.F.R. § 1.4(b)(1) (1994) (defining public notice in notice and comment rule making proceedings to mean the date of publication in the Federal Register).

9. 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d) (1994).

10. Public Notice: Petitions for Reconsideration of Action in Rulemaking Proceedings, PN 51719 (Jan. 20, 1995).

11. Further NPRM at ¶ 1.

an open invitation to reconsider the entire broadband personal communications service proceeding and did not remedy the Oneida Tribe's failure to address its concerns about the Fifth Memorandum Opinion and Order to the Commission in a timely manner.

Further, although the Oneida Tribe argues that procedural issues merit review of the gaming revenues rule, it cannot say that it was afforded no opportunity to challenge the gaming revenues rule when it was adopted. The nature and content of the Commission's reasoning in adopting the rule was plainly set forth in the Fifth Memorandum Opinion and Order.¹² By reviewing that order, interested parties easily could grasp the scope of the gaming revenues rule and the policy underpinnings thereof. Indeed, the Oneida Tribe itself nowhere contends that its eventual opposition to the gaming revenues rule derived from anything but the Commission's discussion of the rule in the Fifth Memorandum Opinion and Order. Immediately in the wake of the Fifth Memorandum Opinion and Order, the Oneida Tribe possessed all of the information that has formed the basis of its challenge and could have raised the same issues that it has raised here. It remained silent, however, and should not now expect the Commission to revisit the rule at the Tribe's convenience.

Finally, it is important to note that the gaming revenues rule includes a mechanism to waive the application of the rule in

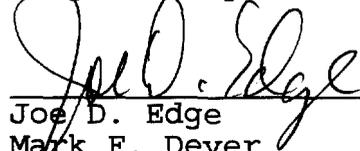
^{12.} See Fifth Memorandum Opinion and Order, 10 FCC Rcd at 428-29.

a given instance.¹³ The Oneida Tribe does not appear to have requested such a waiver. In its July 7 Comments, the Oneida Tribe indicated that unique circumstances render it ineligible for the entrepreneurs' block auctions by only a narrow margin.¹⁴ If that is so, the Tribe should pursue a waiver of the rule as expressly contemplated by the Commission.

CONCLUSION

For these reasons, CIRI urges the Commission to deny the Oneida Tribe's Petition for Reconsideration of the Commission's Sixth Report and Order.

Respectfully submitted,



Joe D. Edge
Mark F. Dever
DRINKER BIDDLE & REATH
901 Fifteenth Street, NW
Suite 900
Washington, DC 20005
(202) 842-8800

Attorneys for
COOK INLET REGION, INC.

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¹³. See 47 C.F.R. § 24.720(1)(11)(i) (waiver available if applicant "establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicants ability to access such gross revenues").

¹⁴. Oneida Tribe Comments at 14-15.

CERTIFICATE OF SERVICE

I, Esther Y. Chambers, hereby certify that the foregoing Opposition to Petition for Reconsideration was mailed, first class postage prepaid, to the following on October 18, 1995:

Charles H. Helein, Esq.
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Counsel to the Sovereign Nation of
the Oneida Tribe of Wisconsin

Rosalind K. Allen*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5202
Washington, DC 20554

Kathleen O'Brien Ham*
Auction Division
Federal Communications Commission
2025 M Street, NW
Room 5202
Washington, DC 20554

Jackie Chorney*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, DC 20554

Peter A. Tenhula*
Office of General Counsel
Federal Communications Commission
1919 M Street, NW
Room 615
Washington, DC 20554

*Hand Delivery



Esther Y. Chambers