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November 23, 2004

Philip N. Hogen, Chairman
National Indian Gaming Commission
1441 L Street, N.W. – Suite 9100
Washington, D.C. 20005

Re: Classification Standards for Electronic, Computer or Other
Technological Aids Used in Connection With Class II Gaming –
THIRD DRAFT

Dear Chairman Hogen,

I am writing on behalf of Parker Gaming, Inc. of Sioux Falls, South Dakota to comment on the above-referenced Classification Standards. As you know, on November 14, 2000, the NIGC issued a game classification opinion concluding that, based on the written materials submitted, the National Indian Bingo (NIB) game proposed by Parker Gaming, Inc. is a Class II game. Parker Gaming is concerned that the Classification Standards now under consideration may not be entirely consonant with the NIB game already approved by the NIGC and may contain other features that would unnecessarily prevent game enhancements that are wholly consistent with the game of bingo as defined in the Indian Gaming Regulatory Act and its implementing regulations. Clarification of the proposed Classification Standards, not substantive revisions, would address the concerns discussed below.

1. **Multiple winners.** In the definitions section, section 2(b) on page 3, the term “win” appears to be defined as contemplating one winner in a game. However, the standards for use of technologic aids through an electronic medium in Section 3(ix) on page 12 clearly recognize that bingo games can have multiple winners (“A player wins the game by being the first player(s) in the game to cover...”).

NIB, as approved by the NIGC, expressly contemplates the possibility of more than one winning bingo card in a game with the jackpot, in such a circumstance, to be shared among those holding such winning cards. See NIGC November 14, 2000 opinion, first full sentence on page 3 and first full paragraph on page 7. This is not unusual in the play of bingo. The possibility of multiple

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winners on a given draw is always present, notwithstanding that no two cards are alike. One number may fill one person's row and, simultaneously, fill another's column or diagonal or different row. The Classification Standards should clearly state that the game of bingo can have multiple winners and, in such circumstances, the pot will be divided evenly among such winners.

Parker Gaming is not unmindful of the fact that the IGRA and its implementing regulations defined and describe the game of bingo as being "won" by the "first person" covering a previously designated pattern. Nevertheless, the way in which the machine play of NIB is proposed, as well as the way in which other electronically assisted bingo games are played, the identification of one or more winning cards would occur virtually at the same instant or within milliseconds of time difference. Even in traditional bingo, without machine aids, there is always the possibility that two or more people can shout out "bingo" at exactly the same time. As long as the game rules are made clear to players, the standard should permit bingo games where the pot is split among multiple winners or where only one winner is allowed.

2. **"Auto-daub feature" and "card minding device."** These terms are defined in sections 2(j) and 2(k) on page 5. In NIB, as presented to the NIGC and as approved by the NIGC, players would purchase paper bingo cards. Since the game contemplates that the gaming facility or facilities would act in the capacity of legal agent for some or all card purchasers, the gaming facility, using card minding devices, would play every card for which it had an agent agreement. The proposed definition of "card minding device" limits the device to principally an "identifying" and "monitoring" function. NIB, as approved by the NIGC, would also have this device perform a daubing function upon instruction by the player or the player's legal agent. See NIGC November 14, 2000 opinion, last sentence on page 3 and pages 6-7. As the NIGC's NIB opinion states, the card minding device would satisfy IGRA requirements even if it daubed bingo cards automatically and, of course, the proposed Classification Standards recognize that automatic daubing is permissible where electronic player stations are used to play bingo. While Section 6(c) on page 17 recognizes that the card minding device can be employed by a player to daub cards in play and Section 6(d) implies, by using the words "interface directly," that these devices can automatically daub bingo cards in play, the definition of "card minding device" should incorporate the automatic daubing

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feature included in the definition of "auto daub." See below under number 8 where a fuller discussion is presented regarding features that should be permitted using a card minding device since these features are already recognized in the Third Draft for playing bingo by other means. The definition of "card minding device," in any event, should more closely conform to the description in Section 6 as augmented by adoption of any of the recommendations in this letter.

3. Agent play. The NIB game classified as Class II by the NIGC utilizes agents to play the game on behalf of persons who purchased bingo cards. See NIGC November 14, 2000 opinion, pages 3 and 5. As the opinion stresses, in NIB, the "agent is the player." *Id.* at 5. Section 3(a)(vii) on page 6 of the Third Draft states: "The gaming facility or its employees may not play as a substitute for a player." In terms of NIB, this standard requires clarification so that it is clear that its intent is to bar substitution only where the gaming facility (or its employees) is acting as a player. The standard should clearly not prohibit the gaming facility or its employees from playing bingo as the legal agent of a player.

4. Electronic display of bingo card. Section 3(b)(i) requires electronic player stations to display all cards in use by a player at all times during game play. This same issue is addressed in section 3(f)(iv) on page 13, on pages 81-82 under "Game Result Display," on page 83, subparagraph (5)(a) under "Alternative Display of Results," and in subparagraph (3) under "Bingo" on page 110. This requirement would limit players to the number of cards that can be physically displayed on a video screen. This number would be considerably less than the number of paper cards that could be played using a card minding device. Subparagraph (3) on page 82 appears to eliminate any disparity in this regard between the play of paper bingo and the play of bingo using an electronic player station. The subparagraph addresses the use of "multiple cards" in an electronic player station context and appears to suggest that all cards in use by a player need not be displayed so long as the features prescribed in the subparagraph are available. Parker Gaming recommends that the language in section 3(b)(i), 3(f)(iv) and on pages 81-82, 83, and 110 be revised to unambiguously state that where multiple cards are used by a player, the video screen need not display each such card provided the features identified in subparagraph (3) on page 82 are available and a player is able to cycle through all of the cards to see the results of covering or daubing.

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Consistent with the IGRA, an individual player, or a gaming facility playing multiple cards as the legal agent for card purchasers, should be allowed to play as many cards as can be technologically played using auto daubing and/or electronic card minding devices. Therefore, the standard should allow the player through use of an auto dauber and/or electronic card minding device to continually, for example, reorganize the order of the cards on the screen or in memory as numbers are drawn, displaying by image or reference number those with the higher possibility of winning first, i.e., the cards requiring, as the game progresses, the fewest numbers in a column or diagonal to win.

5. Requirement for pre-designated patterns. Section 3(c) on page 7 requires that "one pattern must be designated as the game-winning pattern." The term "pattern" is not defined. It is presumed that the "one pattern" requirement would not mean, for example, that the pattern must be the covering of the numbers in one row or column, or one diagonal, but would permit, as "one pattern," the covering of all of the numbers in any row or column or diagonal, the covering of all of the numbers or the covering of any other pattern. Consideration should be given to clarifying this.

6. Equal chance to obtain winning pattern. Section 3(d) on page 8 provides that players must have "an equal chance of obtaining any winning pattern for each card played." This requirement is not part of the definition of bingo in the IGRA. NIB as described to and approved by the NIGC contemplates using a "floating free space." See NIGC November 14, 2000 opinion, last paragraph on page 2. With a floating free space each card played would not have an equal chance of obtaining the winning pattern. A floating free space should be permitted especially where the game rules clearly inform players that cards where the free space is not in the center will have lower odds of winning than cards where the free space is in the center and further inform players that the odds of winning also differ depending on the off-center location of the free space. At a minimum, a floating free space should be permitted if the game permits players to always have the option of purchasing a bingo card where the floating free space is in the center or in another location selected by the player.

7. Use of technologic aids through an electronic medium. Section 3(e)(i) on page 10 and 3(e)(vii) on page 11 contain standards pertaining to daubing that should also be applicable to the play of paper bingo using a card minding device.

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Similarly, section 3(c)(xiv) on pages 12-13, as appropriately modified to suit a paper bingo game and the manner of agent play described in the NIB NIGC approved game, NIGC November 14, 2000 opinion, page 6, paragraph 2 and page 8, paragraph 1, should also be applicable to the play of paper bingo using a card minding device. In addition, subparagraphs 4 through 7 under "Bingo" on page 110, as appropriately modified for card minding devices, should likewise be incorporated into the play of paper bingo using a card minding device.

The language in the subparagraphs referenced above should be appropriately adapted to a paper bingo game and incorporated in Sections 6(c) and 6(d) on page 16, pertaining to card minding devices, because the language more fully and clearly describes the daubing function explained in Section (6)(c)(2) and the meaning of "interface directly" in Section 6(d).

For both paper bingo games using a card minding device and bingo played using an electronic player station, the daubing standard in Section 3(e) should be clarified to make clear that, consistent with the definition of "auto daub feature" in Section 2(i) and the intent of the definition and standard pertaining to card minding devices in Sections 2(k) and 6(d), respectively, automatic daubing is permissible. The lack of clarity arises from the language in Section 3(e)(i)(3) on page 10 requiring "an action by the player to cover (daub)....," the language in Section 3(vii) on page 11 requiring that a player "touch[] the video screen...or a button....," the language in Section 3(ix) on page 12 requiring that a player "touch[] the screen....," and the language in Section 3(iv) on page 12 providing that "Each player in a game must take overt action to cover (daub)...by touching the screen or a designated button" and the language in the same section on page 13 stating that "the player must overtly touch the screen or a designated button." Each of these references appear to be in conflict with the definition of "auto daub" recognizing that the auto daub feature "automatically performs the requirements for the player to cover (daub) numbers...drawn or electronically determined...."

8. Card minding devices. The NIB game classified as Class II by the NIGC contemplates that the gaming facility, acting as the legal agent for all players, will play all cards purchased for play in a bingo game. Section 6(a) on page 16 provides that "cards purchased by a player may be programmed into a card minding device." This subsection should be revised to make clear that where there is agent play occurring simultaneously on behalf of multiple players, the agent may program the

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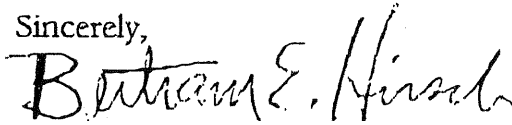
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cards of all such players into one or more card minding devices. Similarly, section 6(b) should be revised to permit an agent to view on a screen one or more of the cards that the agent is playing on behalf of the players for whom the agent is acting as agent.

Section 6(e) on page 17 provides that the card minding device "cannot serve as the means for a player to notify the bingo game operator" of a winning card while Section 6(f) allows for the card minding device "to display the winning card to the operator for verification." Subsection (f) appears to be a kind of notification making for a lack of clarity in the interplay between these two subsections. This lack of clarity can be eliminated if the word "verify" is substituted for the word "notify" in subsection (e).

In Section 6(g) on page 17, the word "other" in the first sentence should be deleted since "visual examination" is not a type of "electronic verification." This section should also state that visual examination can be made of the paper card, not just the electronic card.

Sincerely,



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