



National Indian Gaming Association

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September 20, 2004

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

Re: Concerns with the Class II Technical Standards Advisory Committee Process and
Invitation to the NCAI/NIGA Tribal Leaders Gaming Task Force Meeting

Dear Chairman Hogen, Vice Chairman Westrin, and Commissioner Choney:

On behalf of NIGA's 184 Member Tribes, I write to express our concerns about the NIGC's proposed Technical Standards Advisory Committee process. As you know, class II gaming has been an essential source of governmental revenue for many Indian Tribes. Over the past several years, five federal appellate court decisions, NIGC advisory opinions, and the Commission's own 2002 definition regulation have brought significant clarity and stability to this area of gaming. 67 Fed. Reg. 41166 (June 17, 2002). Further clarity came in the form of congressional approval of the regulatory change and a directive to the NIGC to consult with Tribes on the implementation of the definition regulations to ensure that their stated intent would be carried out. We consider these government rulings as the foundation for any additional work in the area of class II gaming. Indian Tribes have made significant investment-based decisions on these government rulings, and they expect that the NIGC will also consider these decisions a foundation as the Commission moves forward with the Class II Technical Standards Advisory Committee Process.

Specific concerns with the Technical Standards Process

However, six months and two drafts into the Technical Standards Advisory Committee process, we remain concerned that the Commission – through this process – will erode the foundation of class II gaming and withdraw from the positive court, congressional, and agency decisions relied on by many Tribes.

NIGA will submit a comprehensive list of our concerns, but I would like to highlight our most significant concerns. First, the NIGC's Second Draft of the Class II Technical Standards proposes arbitrary limitations on the speed of play of class II games by requiring that a game may only start once "6 players have elected to play or after the

elapse of 2 seconds." IGRA requires only that class II games be played by more than two players, and Congress expressly stated its intent to not place limits on the speed of play of class II games. Thus, we ask that the Commission strike these limitations to the play of class II games from the working Draft.

Second, the Draft would add a number of requirements to the game of bingo. The Second Draft would: prohibit the use of auto-daubing, prohibit mystery bingo prizes; require that operations recognize player sleeps, which then forfeits the use of that number or pattern in the game; require that players claim prizes; limit the use of "bingo minders"; prohibit proxy play; and require that bingo be played with a pool of at least 75 numbers or symbols. Congress and the federal courts have made clear that IGRA's three criteria for "bingo" constitutes the sole legal requirements for class II bingo. These are not technical standards to bingo, they are legal requirements that conflict with federal court rulings and congressional intent. In addition, these proposed additional requirements are contrary to the general standards of play in charitable and commercial bingo. We ask that the Commission strike these additional requirements to class II bingo from the working Draft.

Third, at part (3)(v), the Draft would require that in order for a player to be considered participating in a game to meet the minimum number of players, "each player must be eligible for all winning patterns in the game." We ask that the Commission either strike this provision or amend it to read that "each player must be eligible for all game winning patterns in the game." As long as all players are playing for the same game-winning pattern, there is a common game even if the players are playing for different interim patterns based on card-type or buy-in level. Also, in the game of bingo, players can play for different interim patterns based on the games into which they have bought.

Fourth, the Second Draft would redefine the term house banked for purposes of the term "other games similar to bingo" by deeming any game similar to bingo that "operate[s] with a payout table or targeted retention ratio or return to player percentage is housed banked and is not eligible for Class II determination." The Commission's 2002 regulatory definitions have set the legal standard for "games similar to bingo," and this additional requirement is not a technical standard, but instead amends the existing legal standard. Congress clearly intended the term "house banked" to make a distinction between class II and class III card games – not the 7 other form of games that IGRA defined earlier in the statute. This change conflicts with existing federal case law and agency decisions. Thus, we again ask that the NIGC remove this provision from the working Draft.

Request for direct government-to-government consultation

While we applaud the NIGC's use of a tribal advisory committee for the Technical Standards process, the advisory committee does not substitute for direct government-to-government consultation with tribal leaders. The Commission's recently established Consultation Policy requires the Commission to conduct meaningful and

direct consultation with individual Tribes and their recognized governmental leaders when formulating and implementing new or existing regulatory policies. Accordingly, we urge the NIGC to schedule and conduct a series of tribal government consultation meetings around the country. **To this end, we invite all three Commissioners to attend a NICA/NCAI Tribal Leaders Gaming Task Force meeting in Fort Lauderdale, Florida on October 10 from 3:00 to 5:00 p.m.** In addition, we encourage the Commission to attend the Oklahoma Indian Gaming Association's meeting on September 24, 2004.

Finally, we believe that unveiling the Third Draft of the Technical Standards at the Global Gaming Expo – a commercial gaming industry conference – is inappropriate. Indian gaming is governmental gaming, not commercial gaming, and as we have repeatedly stated, a commercial gaming venue is not the place to discuss Indian gaming policy. The Commission's duty of consultation extends to tribal governments not private sector third parties.

Thank you for your thoughtful consideration of our views on this important matter. Please contact me at (202) 546-7711 if you have any questions or need additional information regarding this important matter.

Sincerely,



Ernest Stevens, Jr.,
Chairman

CC: Hon. Ben Nighthorse Campbell, Chairman
Hon. Daniel K. Inouye, Vice Chairman
Hon. Richard Pombo, Chairman
Hon. Nick Rahall, Ranking Member