

Ohiya Casino & Bingo Santee Sioux Nation

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November 15, 2004

Phillip Hogan, Chairman
National Indian Gaming Commission
1441 L St., N.W.
Suite 9100
Washington, DC 20005

RE: Comments on Class II Technical Standards Draft Regulation

Dear Chairman Hogen, Vice Chairman Westrin and Commissioner Choney:

On behalf of the *Santee Sioux Nation*, I write to comment on NIGC's Class II Technical Standards Draft Regulations. Indian gaming is an exercise of inherent Indian sovereignty that is essential to tribal economic development, self-sufficiency and strong self-government. Class II gaming, including the use of "technologic aids", is essential to Indian Gaming.

Our Nation calls upon the NIGC to engage in respectful and truly meaningful government-to-government consultation concerning the Class II Technical Standards Draft Regulation. In our view, your most recent draft is dramatically different than the earlier draft proposals, so NIGC must now begin serious consultation with tribal governments on this proposal. We expect you to consult in good faith with Indian Tribes, with due regard for our status as sovereigns.

Tribal governments have fought to secure recognition for our rights to use Class II technologic aids as an integral part of our tribal government gaming facilities. Specifically, our Nation, the Santee Sioux, and several other Tribes have fought legal battles in court for a decade against the National Indian Gaming Commission and against the Department of Justice, and the TRIBES HAVE WON! The courts have decided that Tribes may use technologic aids for bingo and pull-tabs.

In your rule making, the SANTEE SIOUX NATION calls upon you to honor IGRA's language, OUR federal court victories, NIGC's June 17, 2002 definition regulation, and the existing NIGC opinions on Class II technologic aids. We have a number of specific concerns about your proposal and they are listed below:

1. **NIGC should develop technical standards, not revisit legal standards.** Too much of the current rule making focuses on the legal aspects of Class II gaming. Bingo and other

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Class II games do not need to be redefined. The latest NIGC draft would reclassify a number of games the federal courts, tribal gaming commissions and the NIGC itself previously determined to be Class II.

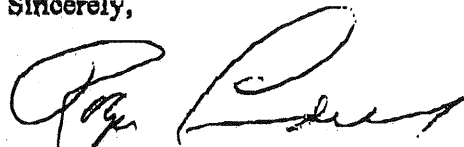
2. **NIGC should honor the IGRA's definition of Bingo.** The NIGC's proposal to impose more requirements on bingo games would chill technical advancement and micromanage both the business judgement and regulatory responsibilities of the tribes.
3. **Bingo Prizes** - the IGRA specifies that a game of bingo be played for prizes, but the NIGC seeks to restrict both the amount and types of prizes that Tribes can offer. These are marketing decisions with tribal government discretion.
4. **Bingo Cards** IGRA requires that bingo be played with cards, but the NIGC seeks to regulate all aspects of a bingo card, including both its size and number of squares.
5. **Timing of Card Selection** - NIGC's proposal asserts that a player must not be able to obtain a new card once game play begins or join a game in progress. Such restrictions find no support in IGRA or court decisions, and conflict with long-established games such as Bonanza Bingo.
6. **Auto Daub is an accepted part of bingo.** The NIGC's attempt to prohibit this advancement in technology is without legal support.
7. **Bingo ball draw -** NIGC's position that balls must be released to players in close proximity to the time at which they were generated, also lacks supports. The game of Bonanza Bingo with pre-drawn balls, predates IGRA.
8. **Multiple Ball Releases** - This aspect of the draft violates the holdings and spirit of the MegaMania cases.
9. **Different Interim Patterns Within a Common Game.** The Courts have held the proper focus of a game classification analysis is whether the game "as a whole" meets the three statutory requirements of bingo - not each constituent part of the game. Nothing prohibits a game where players competing for the same game-winning pattern also compete for different interim patterns.
10. **House Banking.** Unlike traditional house banked games such as black jack, in bingo and games similar to bingo, the house is not a participant in the game. At no time does the house have its own card, nor does it take on or compete against the game's players. NIGC should not put arbitrary restrictions concerning "house banking" upon the game of bingo or games similar to bingo.
11. **Broadening Participation.** Contrary to the latest draft, technologic aids are not uniformly required to broaden participation but merely to facilitate the conduct of Class II games. Requirements calling for a minimum of either six players in each game or a two second delay between games should not be placed upon the game of bingo. The focus should be

upon ensuring that a player does not play alone against a machine, a standard that is satisfied by requiring the participation of two or more players.

12. **Paper Pull-Tabs Are Not Required.** NIGC seeks to require "tangible", or paper pull-tabs when the game of pull-tabs is played with electronic equipment. This presumption is not supported by either IGRA or recent court decisions.
13. **FOCUS ON IGRA'S CLASS II TECHNOLOGIC AID PROVISIONS, NOT THE JOHNSON ACT.** NIGC's 2002 RULEMAKING SUPPORTED BY THE DECISIONS OF FEDERAL APPEALS COURTS REMOVED THE JOHNSON ACT FROM THE ANALYSIS OF CLASS II TECHNOLOGIC AIDS UNDER IGRA. NIGC should avoid any return to the notion that the Johnson Act should be included in a game classification analysis under IGRA.
14. **Due Process Concerns.** Under the NIGC advisory opinion process, there is no clear avenue for an appeal to the NIGC to secure a final agency decision that a tribal government may appeal to federal court. There is no clear avenue for appeal to the full NIGC Commission.
15. **Bypasses Tribal Regulatory Agencies.** The IGRA establishes tribal government regulatory agencies as the primary day to day regulators of Indian gaming. Tribal governments retain the authority to engage in Class II gaming pursuant to a tribal gaming ordinance approved by NIGC. The NIGC is empowered to monitor Class II gaming. Tribal Gaming Commissions need to retain their authority. Also, Tribal Gaming Commissions need to retain the authority to review any gaming laboratory decisions concerning Class II gaming and subject to NIGC monitoring. NIGC's proposal effectively deletes tribal regulatory agencies of this process.

In closing, the Santee Sioux Nation supports the position of the National Indian Gaming Association and the National Congress of American Indians to develop a proposal on Technical Standards for Class II technologic aids that specifies IGRA's language and original intent. The Santee Sioux Nation calls upon you to take tribal comments into account prior to any effort to develop a draft for publication in the Federal Register and withdraw your proposal.

Sincerely,



Roger Trudell, Chairman
Santee Sioux Nation

Cc: NIGA
GPIGA