



STATE OF WASHINGTON
GAMBLING COMMISSION

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November 30, 2004

Mr. Philip Hogen, Chairman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Dear Chairman Hogen:

The Washington State Gambling Commission appreciates the opportunity to comment on the Third Draft of the Classification Standards for Electronic, Computer or Other Technological Aids Used in Connection with Class II Gaming and Class II Technical Standards proposed by the National Indian Gaming Commission. We acknowledge and respect Tribal and the National Indian Gaming Commission's (NIGC) jurisdiction relative to Class II gambling. However, as the State Gaming Agency, we do have an interest in ensuring electronic gaming devices referred to as Class II are not merely a guise for what is actually a Class III gambling device.

Due to time constraints, we are providing our initial comments, and wish to reserve the right to forward a more detailed analysis, should additional items of concern come to our attention. The primary concern of the Washington State Gambling Commission is that the standards clearly describe the difference between Class II and Class III gambling activities that is solidly supported by the Indian Gaming Regulatory Act (IGRA).

Commission staff is concerned that certain aspects of the third draft standards may be unclear or conflict with the Indian Gaming Regulatory Act (IGRA). Our concerns focus on the following issues:

1. **Separation of Class II activities** - The proposed standards integrate multiple Class II activities. We recommend that pull-tabs have a separate classification and technical standards document apart from bingo.
2. **Multiple numbers daubed with one player interaction** - In the classification document section 2) j) states that the "auto daub" feature "automatically performs" the required player daub function. Section 3) e) i) (2) and (3), allows for a single daub to mark a "batch" of numbers that are randomly drawn. These sections combined seem to indicate that a player pressing one button would daub all numbers that had been previously drawn. In contrast IGRA, Section 2703, (7)(A)(i)(II), requires a player to cover such numbers or designations when objects similarly numbered are drawn so that the first person covering

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a designated pattern wins the prize. Bingo is a real time game; therefore, allowing a player to press a single button to cover a group of numbers previously drawn creates a different game. It would also be difficult to confirm the first person to win the prize when multiple numbers are drawn and daubed at one time.

3. **Automatic “Sleep” daubing** - As stated in IGRA, Section (7)(A)(i)(III), the game is won by the first person covering a designated pattern. The proposed classification standard 3) d) i) (g), allows for the electronic daubing feature to daub the card automatically when a player “sleeps” or fails to daub after a number is drawn. This allows the player to be eligible for prizes on future drawings without active participation throughout the game to make the designated pattern.
4. **Alternate Displays** – The two sentences of Technical Standards Section 7.4 appear to conflict concerning alternate display of results. In addition, the second sentence appears to refer to Section 7.1 12). For these reasons, we suggest that 7.4 be removed.
5. **Random Number Generator for pull-tabs** - Proposed Technical Standards Section 5.2.3 1) does not allow the use of a random number generator (RNG) for Class II pull-tab prize determination. Section 5.2.3 2) indicates an RNG would be allowed for Class II prize determination, conflicting with section 5.2.3 1).
6. **Pay Tables** - Technical Standards Section 2.4.1, Change to Games, makes reference to game pay tables. As game pay tables differ between Class II and Class III activities, further clarification is needed. In addition, a definition for “client” and “server” should be added. For example, are individual tribes “clients” that can change pay tables on their server so that each tribe operating the game pays different amounts for the same game, or does the pay table change have to be done at the game source “server”?
7. **Clarification of Technologic Aid** - Technical Standards Section 4.7.5.4 1) a) and Classification Standards Section 3) f), Alternative Display Results provide that a video screen can be used as a “technologic aid” and may have an alternative display. Both the 9th and the 10th United States Circuit Courts of Appeal acknowledge that the use of a video terminal connected to other terminals is a “technologic aid”. However, we are not aware of any legal conclusion that any video or mechanical representation is a technical aid to playing bingo.

We recommend that section 4.7.5.4 1) a) be worded as follows: “a video screen using alternative displays including game theme graphics.” In addition we believe a definition of a “technologic aid” should be added in conformity with Court opinions.

8. **Randomness Standards** – Finally, we are concerned that the individual content requirements are left open for interpretation. The Technical Standards Section 5.5 RNG Testing and Verification, articulates that logged results need to pass statistical tests. However, these standards are silent as to the measure of success. Regulatory

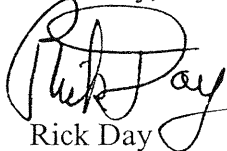
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jurisdictions normally establish a percentage of compliance for the tests. We suggest standards of 95 percent to 98 percent proof of randomness.

9. **Technologic aids and alternative displays** - Although the technical standards appear to make a distinction in how these operate on a Class II system, they do not address the limitations that these electronic components must have to remain a Class II gaming device. As defined in IGRA Section 2703 (7)(B)(ii), electronic or electromechanical facsimiles of any game of chance, including bingo, is a Class III device. It is important to clarify that key processes like ball drawing or auto-daubing, must remain physical and not electronic.

The Washington State Gambling Commission staff looks forward to continuing its work with the National Indian Gaming Commission and appreciates the opportunity to provide input. We are available to provide you with any additional input. If you have any questions, please contact Dallas Burnett, Administrator, Electronic Gambling Lab at (360) 486-3503.

Sincerely,



Rick Day
Director

cc: Gambling Commission
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