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November 1, 2006

National Indian Gaming Commission
Attn: Penny Coleman
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Re: Comments on Class II Classification Standards

Dear Ms. Coleman:

I write on behalf of Artichoke Joe's, a cardroom in San Bruno, California, about 10 miles south of San Francisco, to provide comments on the proposed rule on classification standards for bingo games used in conjunction with electronic aids and the companion proposal defining electronic or electromechanical facsimiles. The proposed rules, like the regulations adopted in 2002, contain a fundamental defect: they ignore the prohibition in Section 4 of IGRA against classification of "slot machines of any kind" as Class II games.

Artichoke Joe's interest in the regulations is easily explained. In California, state licensed cardrooms are restricted to the operation of poker-style table games, and cannot operate slot machines. Indian casinos are opening in urban areas in competition with cardrooms, and are operating types of slot machines. Over the last year, the Lytton Indians installed over 1,000 gaming machines at Casino San Pablo just 10 miles north of Oakland in the middle of the urban Bay Area, claiming the machines constitute Class II games. However, these machines have the look and feel of slot machines and are generating revenue estimated at $400 per day per machine, well over the average for slot machines on the Las Vegas strip.

In 1987, after the U.S. Supreme Court held that Indian gaming was beyond state regulation (*California v. Cabazon Band*, 480 U.S. 202 (1987)), Congress, like state governments and the public, had serious concerns about the unregulated use of slot machines on Indian lands. Slot machines are very popular, and though a single spin is cheap, the machines win much money from players. They offer a solitary, non-competitive gaming experience, requiring no skill and no strategizing. Winning depends entirely on luck. The spin of reels builds anticipation, and external stimuli such as lights and sounds excite the senses. These characteristics, together with the hope that the next spin might be a big winner, breed addictive play, and such play is a problem, causing harmful social and economic effects. As a result, the public demands that limits be placed on such gaming.

Congress, in IGRA, recognized the widespread concerns about the impacts of slot machines on communities, and provided that such machines would receive the highest level of control and regulation, including regulation by the states. Congress classified games into two main groups, one which would be primarily self-regulated by tribes, Class II, and one which would require state compacts and ongoing state regulation, Class III. Congress defined Class II games to include non-banked card games and bingo games. (25 USC 2703(7)(A).) Class III games were defined to include "the staples of the typical casino, such as slot machines, craps, roulette, and banked card games." Canby, *American Indian Law* (4th ed. 2004), p. 308.

Most significantly, Congress prohibited slot machines from being classified as Class II games. Section 2703(7)(B) provides, "The term 'class II gaming' does not include ... electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." (25 USC 2703(7)(B).) (Emphasis added.) The phrase "of any kind" is broad and inclusive. Congress was being very clear. No slot machines of any kind were to be classified as Class II games. The proposed rules, however, like the current regulations, ignore this law and would allow Indian tribes to operate certain kinds of slot machines without state limits and controls.

The Preamble to the proposed rule states what the public has recognized for years: the line between Class II games and Class III games has become blurred. As proof of this, the Lytton claim that the machines in operation at Casino San Pablo are class II games, but California Attorney General Lockyer, in a November 16, 2005 letter, opined that the machines are slot machines under state law.

The question is how did this situation develop and what to do about it, and the proposed rule neither provides an honest answer nor a solution which adheres to Congress' intent. The cause of this problem is disregard by the 2002 regulations of the statutory prohibition against classifying "slot machines of any kind" as Class II games. The original regulations, adopted ten years earlier in 1992, remained true to the statute by defining "facsimiles" broadly to include all slot machines. The 2002 rule narrowed the definition of facsimile but then failed to add a broad prohibition against classifying "slot machines of any kind" as Class II games. The proposed rule fails to cure that fundamental defect.

Federal law prohibits the operation of slot machines on Indian land. The Johnson Act, which preexisted IGRA, provides "It shall be unlawful to . . . use any gambling device . . . within Indian Country. . . ." (15 USC 1175.) The Johnson Act defines the term "gambling device" in section 1171(a) very broadly as:

> (1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of

> chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or
>
> (2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or
>
> (3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

IGRA created an exception to the Johnson Act for Class III gaming conducted pursuant to a state-tribal compact. 25 USC §2710(d)(6). However, Congress provided no such exception for Class II games. To the contrary, Congress provided that the Johnson Act would continue to apply to Class II games on Indian lands. IGRA provided that a tribe may engage in Class II gaming only if "such gaming is not otherwise specifically prohibited on Indian lands by Federal law." 25 U.S.C. §2710 (b)(1)(A). The Senate Report which accompanied IGRA made explicit the continued applicability of the Johnson Act to Class II gaming. Under the sub-heading "Class II" in a section entitled "Explanation of Major Provisions," the Report reads:

> The phrase "not otherwise prohibited by Federal Law" refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands . . . .
> S.Rep. No. 446, 100th Cong., 2d Sess. 12 (1988).

Congress did not intend to allow any machine constituting a gambling device under the Johnson Act to be classified as a Class II game.

Congress did allow that "electronic, computer or other technologic aids" could be used in connection with bingo (25 USC 2703(7)), but it is clear that the term "aids" did not include facsimiles, let alone "slot machines of any kind." The Senate Report reads:

> The Committee specifically rejects any inference that tribes should restrict class II games to existing games sizes, levels of participation, or current technology. . . . In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class II operations and thereby enhance the potential of

> increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take. Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the technology does not change the fundamental characteristics of the bingo or lotto games. . . . In other words, such technology would merely broaden the potential participation levels and is readily distinguishable from the use of electronic facsimiles in which a single participant plays a game with or against a machine rather than with or against other players.
> S.Rep. No. 446, 100th Cong., 2d Sess. 9 (1988).

This passage makes a clear distinction between Class II aids and facsimiles. Facsimiles are characterized by a gaming experience of a single player playing with or against a machine, the same gaming experience offered by slot machines.

The original NIGC regulations were true to Congress' intent. Those regulations defined "electronic, computer or other technologic aid" to include devices such as "a computer, telephone, cable, television, satellite or bingo blower" and further required that such devices when used not be "a game of chance but merely assist[] a player or the playing of a game." 25 CFR §502.7 (1992). Further, the 1992 regulations defined the term "electronic or electro-mechanical facsimile" as "any gambling device as defined by [the Johnson Act]." 25 CFR §502.8 (1992). This effectively classified any type of slot machine as a Class III game. The Preamble to the Final Rule emphasized the need for this rule. It read:

> ...[T]he Commission has determined that ... machines that fall within the scope of the Johnson Act are class III games. ¶ ... The Johnson Act regulates gaming related machinery and technology. In the view of the Commission, the relationship of the two acts is key to interpreting Congress' intent concerning which gaming related technology is class II and which is class III. The foundation of the Commission's view rests on two points: (1) The Johnson Act prohibits the use of gambling devices in Indian Country (15 U.S.C. 1175); and (2) the IGRA does not supersede or repeal the Johnson Act except with respect to class III gaming conducted under a compact negotiated between a state and a tribe.
> 57 FR 12385.

Defining "facsimile" to include all slot machines achieved Congress' goal, but conflation of the two terms and subsumption of the broader category "slot machines of any kind" within the narrower category "facsimiles" was confusing. The regulations could have separately implemented the two terms, and in fact, the two terms were separated in the regulatory definition

of Class III games as "slot machines as defined in [the Johnson Act] and electronic or electro-mechanical facsimiles of any game of chance." 25 CFR §502.3 (1992). Thus, in one place, "facsimiles" included slot machines, and in the other, slot machines were a separate category. Conflation of the two terms created a risk that readers would lose sight of the statutory basis of the regulation, a risk which years later came to fruition.

The first courts to apply the 1992 rule were not misled by subsumption of slot machines within the term "facsimiles." In two cases, electronic versions of pull tab games were held to be facsimiles, ineligible for classification as Class II games. *Cabazon Band v. NIGC*, 14 F.3d 633 (D.C. Cir. 1994); *Sycuan Band v. Roche*, 54 F.3d 535 (9th Cir. 1994). The trial court in *Cabazon* praised NIGC's regulations, writing:

> [I]f the definition of facsimiles were less broad than that of gambling device, IGRA would be internally contradictory: technology that – ostensibly – now would be allowed for class II gaming under 25 U.S.C. 2703(7)(A) would be prohibited by the Johnson Act (since the repeal of the Johnson Act is only for class III gaming). Thus, only a definition of facsimile that is equivalent to that of gaming device renders the statute internally consistent and allows both statutes peaceably to coexist.
> *Cabazon Band v. NIGC*, 827 F.Supp. 26, 31 (1993).

The first signs that sight was being lost of the statute came a few years later, upon issuance by NIGC staff of an advisory opinion regarding the game "Rocket Bingo Classics Bingo," a game played on an electronic terminal. The Advisory, dated July 22, 1997, failed to quote the statutory prohibition on classification of "slot machines of any kind" as Class II games, and instead relied exclusively on the regulations. The opinion recognized the broad definition of "facsimile" to include the term "gambling device" and quoted the definition of "gambling device" from the Johnson Act. However, NIGC staff then refused to enforce this, writing, "We are not prepared, at this time, to decide whether the game uses gambling devices." A second opinion on a similar game issued days later included the same sentence. NIGC then allowed the games despite its inability to determine that the games were not Class III.

In 1998, NIGC staff evidenced signs of losing sight of the Congressional purpose behind the statutory prohibition on classification of slot machines as Class II games when they issued another advisory opinion. The June 8 opinion on Tab Force, a pull-tab validation system, provided a very narrow interpretation of the Johnson Act, an Act which had previously been interpreted expansively. The opinion applied three elements to determine whether a machine was a gambling device under the Johnson Act, namely, consideration, chance and prize. It then interpreted the law on each element narrowly. The opinion found there was no consideration, ignoring the fact that people could not operate the machine without a pull-tab and could not

obtain a pull-tab without paying for it. The opinion then found there was no element of chance despite the fact that the machine determined the outcome of the chance for the player. Last, the opinion found there was no prize despite the fact that the machine would deliver a voucher to winners. The opinion cited no authorities for its narrow interpretation of the Johnson Act.

In 2000, three appellate courts issued rulings on game classifications, and all three, in following the 1992 rule, completely lost sight of the statutory prohibition on classification of "slot machines of any kind" as Class II games. *Diamond Game Enterprises v. Reno*, 230 F.3d 365, 369 (DC Cir. 2000); *U.S. v. 103 Electronic Gaming Devices*, 223 F.3d 1091 (2000); and *U.S. v. 162 Megamania Gambling Devices*, 231 F.3d 713 (2000). The thrust of inquiry in all three cases was to pursue a false dichotomy, whether the machines at issue were "facsimiles" or "aids". The issue should have been whether the machines were facsimiles or "slot machines of any kind," on the one hand, or aids, on the other, but none of these cases engaged in such analysis. The courts were misled by the regulation which subsumed "slot machine" within "facsimile" and the Senate Report which contrasted aids with facsimiles. The courts then reversed the order of inquiry, asking if the machines could be defined as "aids." If so, the courts either did not question whether the machines were facsimiles or slot machines (the *Diamond Game* case) or considered the issue only in a dismissive fashion (*103 Electronic Gaming Devices* and *162 Megamania Gambling Devices*). In the later case, the courts held that the machines were not facsimiles because the terminal links players at various reservations, ignoring the broader regulatory definition and ignoring the statute, and then ruled that since the machine was allowed under IGRA (a faulty conclusion resulting from the courts' failure to consider the full statute), the Johnson Act did not apply. Thus, the courts avoided what should have been the main question, whether the machines were "slot machines of any kind." The 1992 regulations had in effect hidden the statutory prohibition, and these courts never found it. The lack of analysis is a major defect and greatly limits the precedential value of these decisions.

Based in large part upon these misguided cases, in 2002, NIGC adopted new regulations which dramatically reversed its interpretation of IGRA. The 2002 regulations, adopted by a split vote of 2 to 1, narrowed the definition of "facsimile." However, the new regulations failed to reenact a blanket prohibition on the classification of slot machines as Class II games. The statutory prohibition on classification of "slot machines of any kind" as Class II games was lost. The result was to allow single player electronic games to be classified as Class II, contravening Congress' intent.

The 2002 Rule attributed the change to intervening court decisions. However, as already seen, none of the court decisions supported such a result. The Rule claimed that the *Cabazon*, *Sycuan* and *Diamond Game Enterprises* decisions had "implicitly rejected the Commission's definition" of facsimile in the 1992 rule. However, the *Cabazon* and *Sycuan* decisions had held that pull-tabs were facsimiles, and had endorsed the classification of all "gambling devices" as

Class III games. The *Diamond Game Enterprises* decision had failed to consider the statutory prohibition against "slot machines of any kind" and is not authority on that issue. The Rule also claimed that the courts in *103 Electronic Gaming Devices* and *162 Megamania Gambling Devices* had reached results at odds with the 1992 regulations. However, neither case considered the prohibition on classification of "slot machines of any kind" as Class II games, and neither considered whether the machines violated the Johnson Act. Therefore, none of the cases support the blatant disregard of section 4 of IGRA by the NIGC's 2002 rule.

One Commissioner, Montie Deer, strongly disagreed with the 2002 action to amend the Class II regulations and submitted a dissent. Chairman Deer believed that the 1992 regulations were correct and proper interpretations of the law, and he wrote:

> In summary, my vote against changing the definition of facsimile and technological aid reflects my belief, and my agreement with Judge Lamberth of the United States District Court for the District of Columbia, that the definition of facsimile which the Commission chose in its initial rulemaking in 1992 was the only definition possible in order to implement Congress' explicit intent, as expressed in IGRA.
> 67 FR 41172

The results of the 2002 regulations have become notorious. The line has become blurred, and gaming machines that have the same look and feel as slot machines, offer the same gaming experience as slot machines, generate the same revenues as slot machines, and cause the same socio-economic impacts as slot machines have been classified as Class II games, resulting in no independent government control. NIGC has flagrantly defied Congress' intent, and Indian gaming is out of control. The public has taken notice and demanded reform.

The solution should be to readopt the 1992 regulations but to fix the glitch that they contained. Define facsimiles as games which electronically replicate bingo and other games of chance, and equate "slot machines of any kind" with gambling devices as defined in the Johnson Act. Unfortunately, the proposed regulations fail to do that. In particular, the regulations fail to implement the prohibition on classification of "slot machines of any kind" as Class II games.

I comment below on specific statements in the Summary and Preamble to Part III and to the specific proposed regulations.

Summary

The Summary indicates that "the proposed rule clarifies the terms Congress used to define Class II gaming," listing first the term "electronic or electromechanical facsimile." 71 FR

30238. However, what is needed is not clarification of the term "facsimiles," which we agree was defined overbroadly in the 1992 regulations, but attention to the statutory prohibition against classification of "slot machines of any kind" as Class II games which was ignored in the 2002 regulations. However, the proposed rule again ignores the statutory prohibition. Instead, the Summary invokes the false dichotomy between "aids" and "facsimiles," ignoring that facsimiles is just one-half of the prohibition, with the other half being "slot machines of any kind."

Preamble

The Preamble fails to provide needed background and to offer a full perspective to the proposed regulations. The Preamble fails to discuss the popularity of slot machines, their profitability, and their addictiveness. It omits any general discussion of the social and economic impacts of gambling and of slot machines in particular, and the desire to control these impacts through governmental regulation.

The Preamble then fails to discuss the interplay between IGRA and the Johnson Act, and how Congress intended to treat all gambling devices as Class III gaming. The Preamble fails to disclose that section 11 excepted only Class III games from the Johnson Act. Regarding Class II, the Preamble should quote section 11 which permitted only those Class II games "not otherwise specifically prohibited on Indian lands by Federal Law" and should quote the Senate Report which made clear that this referred to the Johnson Act. The Preamble should also discuss the expansive definition of gambling device in the Johnson Act.

The Preamble fails to contrast the gaming experience at the paper game of bingo with the gaming experience at slot machines and to compare both to the gaming experience of "bingo" machines. The paper game of bingo offers a communal experience. Numbers are called one by one to the whole assemblage, and all players search for the numbers at the same time. When a player calls bingo, all hear it and the game stops. In contrast, slot machines offer a solitary gaming experience. A player pulls a lever or pushes a button and either wins or loses. No other players are involved.

So called "bingo" machines have the look and feel of slot machines and offer the same solitary gaming experience. The machine game does not involve the search for numbers and recognition of patterns. It involves merely the pushing of a button. Further, the gaming experience does not include other players. This is so even when machines are linked. One player has no awareness of other players playing the same game. Other player involvement is only in the machinery, and does not change the gaming experience. The claim that linked machines "broaden participation" as Congress used the term in the Senate Report is incorrect. Further, no one who plays at these machines thinks they are playing bingo. Players consider them slot machines.

The Preamble fails to discuss that since the "bingo" machines offer the same gaming experience as regular slot machines, the socio-economic impacts of these machines on a community are the same as the impacts of slot machines. Therefore, for purposes of public policy, there is no reason to treat them differently.

Although the Preamble cites the statute prohibiting both "facsimiles" and "slot machines of any kind," when the Preamble frames the issue, it continues to draw the false dichotomy between "aids" and "facsimiles" and leaves out the issue whether the game is a "slot machine of any kind." The Preamble reads:

> Currently, the distinction between an electronic "aid" to a Class II game and an "electronic facsimile" of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. (71 FR 30239.)

The problem is not advances in technology. Rather, the problem is lack of enforcement of Congress' prohibition against "slot machines of any kind" from being classified as Class II games. A little further on, the Preamble details three statutory criteria for Class II bingo, but does not repeat the separate requirement that no facsimiles or slot machines of any kind be classified Class II games. (71 FR 30241.)

The Preamble then approaches the task of classification exactly the opposite of the way the statute reads. The statute is clear that the Johnson Act must be applied to determine if a machine is a "gambling device" and that no gambling device can be classified as a Class II game. The Preamble, instead, following the false premise that a machine is either a prohibited facsimile or an allowed aid, seeks to determine if a machine is an "aid," a term defined so broadly that it overlaps with gambling devices, and if the machine is an aid, no question is raised whether it is a facsimile or a slot machine. This fails to implement the statute.

The Preamble fails to discuss the 1992 regulations which effectively classified all "gambling devices" under the Johnson Act as Class III games. The Preamble also fails to discuss the 2002 regulations, and the dissenting opinion by Montie Deer. The fact that the Preamble discusses the rule proposed in November 1999 makes these omissions the more striking.

The Preamble fails to question the validity of the court rulings to date, and to note that they left out consideration of the statutory prohibition against classification of "slot machines of any kind" as Class II games. Instead the Preamble uses these invalid cases as authority. However, only by ignoring the prohibition on slot machines was the Ninth Circuit able to say that bingo is not necessarily the "traditional game that "was played in our childhoods or home towns." *103 Electronic Gaming Machines*, 223 F.3d at 1096, cited at 71 FR 30241.

The Preamble proposes to cure the problem of the lack of distinction between machines simply by slowing down Class II machines. The Preamble requires machines to give players two seconds to push the daub button, and to wait at least six seconds before allowing a game to proceed. This is a quantitative distinction, not a qualitative one. The distinction is in the amount of gambling allowed, not in the type of gambling. These criteria do not constitute the type of broad distinction Congress contemplated between Class II and Class III games, and they fail to conform to either the letter or spirit of IGRA.

The Preamble (section VII) states that a Class II machine will be allowed to cover the numbers called upon the push of a button, and that players will not be required to daub numbers themselves. No authority is given for this, and it would offer a very different gaming experience than does the game commonly called bingo. In bingo, numbers are called one by one, and the player searches for them on his or her game card. If the player has a number, he or she covers it. That is the essence of playing bingo. If the player can just push a button, the player no longer has to pay attention to the specific numbers. At that point, the player is just playing with or against the machine.

The Preamble (section VIII) requires that machines be linked in a network so as to facilitate broad participation. However, as discussed, the mere linking of machines does not change the gaming experience. Players still have no awareness of other players playing the game, and the gaming experience is still player versus machine, not player versus player. The proposed regulations continue to misconstrue Congress' comments. The technical linking of terminals through a computer server where the players are oblivious to the existence of other players does not change the nature of the game. The game experience still consists of a player versus the machine and should be classified a Class III game.

The Preamble (section X) allows alternate display of the results of a game in addition to the display of the game. Thus, a machine can have a small display of a bingo game in a bland color out of the line of sight, while in the line of sight is a colorful well lit slot machine display. Further, since the player can just push a button, the player can keep pushing the button, oblivious to the "bingo game" being played on the bingo screen, and intent on the reels spinning. The player is only aware of playing against a machine, and is oblivious to any bingo game. To call this a Class II game is to make a mockery of the law. These machines are clearly slot machines, and any lay person would recognize that these are slot machines.

502.8 Electronic or electromechanical facsimile

The original version of this regulation adopted in 1992, defined facsimile broadly as "any gambling device as defined in [the Johnson Act]." The 2002 regulations narrowed this definition

considerably, and then failed to adopt any regulations to implement the statutory prohibition against classifying "slot machines of any kind" as Class II games. Such a regulation is needed.

Subsection (b)(1), in Part II of the regulations, would provide that a game is a facsimile only when it incorporates "all of the fundamental characteristics of the game." The term "all" is too strict. An electronic game could omit a fundamental characteristic and still constitute a facsimile.

Subsection (b)(2), in Part II of the regulations, raises the issue whether the game's format allows players to play with or against a machine or among competing players. This sentence misconstrues the statute. The question is whether the player's gaming experience is that of playing a machine or that of playing against other players. The mere linking of machines through a server does not mean that players are aware of other players playing in the game.

New subsection (c) in Part III of the regulations requires compliance with Part 546 to negate classification as an electronic or electomechanical facsimile. However, Part 546 fails to enforce the statutory prohibition against classification of "slot machines of any kind" as Class II games, as will be seen below.

546.1 Purpose

This section states that the purpose of Part 546 is to clarify the terms Congress used to define Class II gaming under IGRA. However, the proposed regulations fail to address the statutory prohibition against classifying "slot machines of any kind" as Class II games.

This section further states that the specific purpose of the Part is to explain the criteria whether a game of bingo meets statutory requirements for Class II games "when these games are played primarily through an 'electronic, computer or other technologic aid." However, under the statute, first, the machine must not be a facsimile or a "slot machines of any kind." This section draws the false dichotomy between "aids" and "facsimiles" and seeks to distinguish one from the other. However, the section ignores the companion prohibition on "slot machines of any kind." This section sets the stage for the continued confusion of Class II games, which are largely unregulated, with Class III games, which Congress wanted states to co-regulate.

546.2 Scope

This section indicates that part 546 addresses games played "exclusively through electronic components." This conflicts with the prior section (546.1) which said the part addressed games played "primarily through" electronic components. This conflict is confusing.

546.3 Definitions

This section defines the term "game of bingo" (subs. a) but fails to exclude from the definition "electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." As a result, the definition is not consistent with the statute.

546.4 First Statutory Requirement: Play with cards

This section allows electronic cards, meaning a video display of a card. However, a video display of a card is a facsimile. When other sections allow the draw of numbers to be made electronically, the whole game experience would be a facsimile of the game on a machine and a kind of slot machine, prohibited from classification as a Class II game. Therefore, this section violates the statute.

Subsection (d) requires that technologic aids display the following message, "THIS IS A GAME OF BINGO" or "THIS IS A GAME SIMILAR TO BINGO." Of course, the machines are not bingo games or even similar to bingo games. They are facsimiles of bingo. These are a type of slot machine, and this regulation would require the machines to be mislabeled as an Orwellian example of government attempted to lie and to brainwash people to believe the lie.

Subsection (o) would allow an alternative display that includes "game theme graphics, spinning reels, or other imagery." This essentially allows slot machines, and is completely inconsistent with the letter and the spirit of IGRA. The slot machine display changes the gaming experience completely, and likely would greatly increase the popularity of the machines as well as their socio-economic impacts. These are exactly the type of machines that require the most governmental control and regulations.

546.5 Second Statutory Requirement: Covering numbers on card when drawn

In the game commonly called bingo, numbers are called one by one to everyone in the room at once, and players search their cards for the numbers and cover the numbers they have. It is a communal event, with everyone playing the same game at the same time.

Subsection (a) allows a common draw "for separate games that are played simultaneously." The game "commonly known as bingo" does not involve separate games played at the same time. Bingo is a communal gaming experience. This section contemplates some sort of private gaming experience inconsistent with the game "commonly known as bingo." Rather, it involves a private gaming experience with a machine, not other players, and the machine is a "kind of slot machine" prohibited from classification as a Class II game.

Subsection (e) allows players to cover numbers by pushing a "designated button on the player station." However, this is not consistent with bingo. In bingo, players themselves cover their numbers. The challenge of the game is to hear the number called, to find it on the bingo card, and to cover it. If a player can simply press a button and a machine will cover the numbers, the gaming experience is completely transformed. There is no awareness of numbers called and no search for numbers on the card. The game becomes simply pushing buttons, and the game is with the machine. Congress did not intend to include this in Class II.

Subsection (e) also allows for drawings of sets of numbers. This is also not common to bingo and violates the statutory requirement that the game allowed is the one "commonly known as bingo." Rather, numbers should be called one-by-one.

Subsection (f) provides that a player "need not touch each specific space on the electronic bingo card where the called number or designation is located." As stated, players should be required to locate numbers and touch them. That is the essence of the game "commonly known as bingo."

The regulation omits an essential element implicit in the statute, the need for a call of numbers made to all players in the game. A person cannot cover numbers unless he or she is told what numbers have been selected. How numbers are determined and how the draw is communicated to players determines much of the gaming experience.

Subsection (i) requires that there be two seconds after a release of numbers for players to push the button. As discussed above, this rule makes a mockery of the statute. Daubing by a button involves a completely different gaming experience than the game "commonly known as bingo," and involves a gaming experience that is essentially the same as a slot machine. Such a game must be classified as a Class III game.

546.6 Third Statutory Requirement: First person covering numbers wins

Subsection (a) requires that players in an electronic game be linked through a networked system. However, as discussed above, linking of machines does not mean that players are aware they are playing against one another and does not transform a Class III gambling device into a Class II aid. If the machine is a "kind of slot machine" and the gaming experience is the individual versus the machine, the game is a Class III game.

Subsection (a) also provides that games cannot begin until two seconds have elapsed unless six players have joined. However, this delay does not change the gaming experience. A player in a room full of 1,000 bingo slot machines has no knowledge against whom he or she is playing, and the perception is still of playing against the machine.

Subsection (c) also provides that there must be two or more releases and that each release must take a minimum of two seconds. This delay also does not change the gaming experience. A player still has no perception of playing against other players. The perception is the individual against the machine, and the game should be classified Class III.

Subsection (o) allows alternative display options for entertainment. However, when combined with the other proposed regulations, this amounts to allowance of slot machines, in complete contravention of the statute.

This section omits a needed requirement that all players be informed who won the game. Thus, when some players are outside the hall, all players should know where the player was who won. This is necessary to ensure the veracity of the game.

546.7 Pull-tab games not facsimiles

Subsection (c) allows a technologic aid to dispense pull tab tickets and to display the contents of the ticket. A machine that takes in the money, determines the chance, and awards the money is a "kind of slot machine," and is prohibited under the Johnson Act. Further, it is prohibited from Class II casinos by section 11 of IGRA and should be classified as a Class III game under section 4.

Subsection (f) allows pull tabs to be displayed on video screens using game-theme graphics, spinning reels, or other imagery. This regulation, especially when combined with the other regulations, would allow slot machines, in violation of the statute. The gaming experience is to pay your money, watch reels spin and get a payoff based on the symbols that are shown when the spin ends. The gaming experience is the individual against the machine. The game is solitary, not communal. This is not bingo, and the regulations should not continue to blur the line. These machines are slot machines, and the regulation violates the statutory prohibition against classification of "facsimiles and slot machines of any kind" as Class III games.

Subsection (j) requires certain technologic aids to display the message "THIS IS THE GAME OF PULLTABS." This is another Orwellian example of government trying to legitimize a lie. It is only because the machine is obviously not pull-tabs that NIGC even thinks of labeling the machine such. If the machine were a pull-tab, people would not need to be told that.

546.8 Pull-tab games as facsimiles

This section poses the question when is pull tab or instant bingo game an "electronic or electromechanic facsimile." However, this section ignores the broader prohibition in the statute

on classification of "slot machines of any kind" as Class II games. Based on the statute, the section should consider both questions.

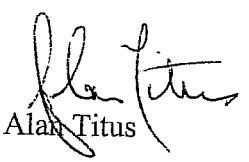
Further, as noted above, if a pull-tab machine sells tickets, determines whether they are a winner, and settles the transaction, it is a facsimile. Whether the machine issues a paper ticket or not is irrelevant.

* * *

In conclusion, the proposed regulations disregard the statutory prohibition on classification of "slot machines of any kind" as Class II games, and that basic defect serves to invalidate the proposed rule in whole and in all its parts. Congress clearly desired to classify all slot machines of any kind as Class III games and to make them subject to state regulation. The current regulations fail to implement the statute, and these regulations fail to cure that fundamental defect.

Thank you for the opportunity to submit these comments and for your consideration of them.

Sincerely,



Alan Titus