COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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November 15, 2006

VIA FAX TRANSMISSION and VIA FIRST CLASS MAIL

Penny Coleman, Acting General Counsel
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, D.C. 20005
Facsimile Number: (202) 632-0045

Re: Comments on Class II Classification Standards

Dear Ms. Coleman:

On behalf of the Colorado River Indian Tribes ("CRIT"), I write to comment on the Commission's proposed Class II Classification Standards ("Proposed Standards"), as published in the Federal Register on May 25, 2006.

As always, we open with a cautionary note on the Commission's Class III authority. We of course recognize that the proposed Classification Standards pertain to Class II gaming only. Nonetheless, we must take issue with the statement in the Preamble that "the NIGC also exercises regulatory authority over Class III gaming under IGRA ...." 71 Fed. Reg. 30238. That Class III authority, while real, is much more limited than the Commission has asserted in the past.

With respect to the proposed Class II Classification Standards, many other tribes have submitted comments taking issue with particular provisions, and there is no need for us to restate what has been well stated elsewhere. We concur with virtually all of the tribal comments thus far submitted. In this letter, we address the broader issues to make sure the record reflects our concerns.

1. The Proposed Standards Exceed the Commission's Statutory Authority. Section 2703(7)(A)(i) of IGRA establishes a three-pronged definition of "bingo." The Courts of Appeals have uniformly held that those three elements are the *sole legal* requirements for the definition of "bingo." In the guise of "clarifying" these definitional elements, the Proposed Standards instead redefine the term. The Commission does not have the statutory authority to so burden a statutory definition with additional regulatory criteria that the resulting game bears no resemblance to what Congress thought it was legislating. Nor does it have the authority to marginalize the Class II role of tribal regulatory authorities.

2. The Proposed Standards are Arbitrary and Capricious. As well documented by other tribal comments, the Proposed Standards not only impose unnecessary limitations on the play of bingo, but impose limitations that are arbitrary and capricious. There is no rational reason for requiring that bingo played on a video screen have a defined maximum-sized grid, occupy a defined minimum portion of the screen, or be subject to a mandatory speed of play. These rigid, unnecessary requirements are inconsistent with the "maximum flexibility" Congress intended the Tribes to have with respect to advancing technology in the Class II sphere.[1]

A further indication of arbitrary unfairness is found in proposed Section 546.9(e), which grants only to the Chairman the right to object to the certification of and reports concerning testing labs. Tribes and the labs themselves should have the right to challenge decisions made in connection with testing lab certification. This objection, of course, begs the question of whether the Commission has the statutory authority in the first place to regulate this particular class of vendor through certification. CRIT doubts that such authority exists.

Finally, the arbitrary nature of these Proposed Standards is highlighted by the fact that they conflict with the Commission's own previous interpretation (as well as the courts' conclusions) on whether certain games constitute Class II or Class III gaming. Other than increasing pressure from the Justice Department, there has been no change in circumstance that would warrant such an abrupt change in position.

3. The Proposed Standards are Bad Policy. Perhaps the most egregious aspect of the Proposed Standards is that they effectively legislate Class II video gaming out of existence. It appears that no currently approved or existing games can meet the standards the Commission would impose in these regulations. Tribes are therefore left with the choice of either converting their machines or abandoning Class II video gaming entirely. While conversion can presumably be accomplished through technological improvisation, it can be so only at great cost, in an unrealistically short time period (the six month deadline for conversion is unrealistic), and with resulting machines that are far less appealing to patrons. The consequences of abandoning Class II video gaming are worse still. Abandonment would imperil a tribe's contractual obligations; lay waste to substantial investments; destroy tribal credit worthiness; result in massive unemployment of both tribal and non-tribal members; and, most devastating of all, destroy the revenue stream that has enabled tribal governments to care for their people and lands. The threat to meaningful Class II activity would also eliminate the one weapon the Tribes possess as leverage against states that refuse to negotiate in good faith or extort "revenue sharing" payments.

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[1] "The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility." S. Rep. No. 100-446, 100th Cong., 2d Sess. 9 (1988).

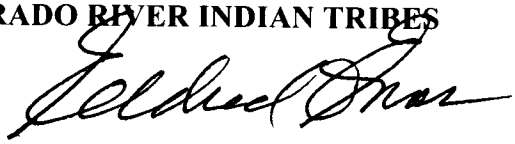
The Commission cannot assume the mantle of reasonableness by pointing to its appointment of the Class II Advisory Committee. The lack of meaningful tribal input is evident from the fact that the seven tribal members on that Committee felt compelled to send a letter to the Commission expressing their unanimous opposition to the Proposed Standards.

In short, the proposed Class II Classification Standards and proposed revised definitions are ill-conceived and contrary to both the letter and spirit of IGRA. We strongly urge the Commission to step back and look at its proposal with a fresh eye and more meaningful tribal input. Conduct an Economic Impact Study. Five federal Courts of Appeals have ruled on the statutory definition of "bingo" and have approved Class II video-enhanced bingo games based on that definition.[2] The Proposed Standards would improperly overrule by regulation those decisions and, in the process, make it virtually impossible for Class II gaming tribes to reap the intended benefits of IGRA.

We thank the Commission for the opportunity to submit these comments.

Sincerely,

COLORADO RIVER INDIAN TRIBES



ACTING Daniel Eddy, Jr., Chairman

cc: Armando Barley, Executive Director (CRIT TGA)
Eric N. Shepard, Attorney General (CRIT)
Philip Hogen, Chairman (NIGC)

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[2] *Senaca-Cayuga Tribe of Oklahoma v. National Indian Gaming Commission*, 327 F.3d 1019 (10th Cir. 2003), *cert. denied*, 540 U.S. 1218 (2004); *United States v. Santee Sioux Tribe of Nebraska*, 324 F.3d 607 (8th Cir. 2003), *cert. denied*, 540 U.S. 1129 (2004); *Diamond Game Enterprises v. Reno*, 230 F.3d 365 (D.C. Cir. 2000); *United States v. 162 MegaMania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000); *United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000).