



COMANCHE NATION GAMING COMMISSION
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Via Email Transmission: reg.review@nigc.gov

Tracie Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Re: Comments on Preliminary Discussion Draft of 25 C.F.R. Part 547 – Minimum Technical Standards for Gaming Equipment Used With the Play Of Class II Games

Dear Chairwoman Stevens, Vice-Chairperson Cochran and Commissioner Little:

The Comanche Nation of Oklahoma (the "Nation") respectfully submits the following comments in response to the National Indian Gaming Commission's ("NIGC" or "Commission") Preliminary Draft of 25 C.F.R. Part 547 - *Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games*. Initially, we thank you for seeking tribal input through release of a discussion draft. We hope this will allow for the elimination of any errors and improvement to the proposed Technical Standards prior to their publication for comment as part of a formal rulemaking effort. We would also like to express our appreciation to you for our opportunity to participate on the recent Tribal Advisory Committee ("TAC"), and urge you to carefully consider the work and concerns expressed by the TAC in review of the Technical Standards.

As we have expressed to the Commission in prior comments and through the TAC correspondence, we strongly support the protection and preservation of Tribal Gaming Regulatory Authorities ("TGRA's") as the primary regulators of Class II gaming, consistent with the Indian Gaming Regulatory Act ("IGRA") and our sovereign right of self-governance. And, as part of our own effort to continue to build a strong tribal government – a primary objective of Congress in passing IGRA – we fully support the use of technology, to the greatest extent feasible, for the advancement of Class II gaming, again in accordance with the objectives of IGRA.

We note that our comments on the Part 547 Discussion Draft are generally favorable, although we do have some areas of concern expressed below. We commend the Commission for making many revisions throughout this Part to clarify that these are in fact, technical standards,



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rather than minimum controls that would more appropriately be addressed in 25 C.F.R. Part 543. We were pleased to find that the proposed Technical Standards address a number of our concerns expressed in our March 6, 2008 comments ("2008 Comments") on the current version of 25 C.F.R. Part 547.

Draft 25 C.F.R. § 547.2 – What are the definitions of this part?

The Discussion Draft includes the following definition:

Agent. A person authorized by the gaming operation, as approved by the TGRA, to make decisions or perform tasks or actions on the behalf of the gaming operation.

The Nation is concerned that, by defining an agent as a "person," NIGC appears to allow only human agents, and would not allow for an electronic agent. We believe that TGRAs should have the flexibility to authorize, and operations should have the flexibility to utilize, electronic agents when appropriate for particular circumstances.

Additionally, the Commission developed a new definition:

Proprietary Class II System Component. "[a] system component that is only interoperable with a single manufacturer's Class II system. Examples include vouchering systems, accounting systems, and cashless systems."

A number of current back office products, like accounting systems, are specifically designed for use with more than "one manufacturer's Class II system." We are concerned that this is an unwarranted and impermissible limitation, both under the IGRA and § 547.3(b) of this Discussion Draft, on technology in that the definition appears to limit vouchering, accounting, or cashless systems to only be interoperable with a single manufacturer's Class II system. Moreover, the term "proprietary" is only used in this Discussion Draft in the definitions of "cashless system," "voucher system," and in §547.7 when referring to "proprietary" or specially-manufactured "printed circuit boards." We urge the Commission to remove this definition or provide an explanation of the concerns it is attempting to address by the inclusion thereof, so that the Comanche Nation and other tribes can have meaningful input in addressing the concerns.

Draft 25 C.F.R. § 547.3 – Who is responsible for implementing these standards?

The Discussion Draft at § 547.3(a) *Minimum Standards* states that "[t]hese are minimum standards and, recognizing that TGRAs also regulate Class II gaming, a TGRA may establish and implement additional technical standards that do not conflict with the standards set out in



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this Part." (emphasis added). We noted at the outset our objection to the underlined language above because the IGRA at § 2710(5) specifically states that "Indian tribes have the *exclusive right to regulate* gaming activity on Indian lands..." The powers of the Commission regarding class II gaming, on the other hand, are far more limited and include the power to "monitor", and "inspect and examine." See IGRA at 25 U.S.C. § 2706(b)(1)-(2). The underlined language should be revised in accordance with the IGRA to read as follows "recognizing that TGRAs are the primary regulators of Class II gaming... ."

Section 547.3(a) also describes TGRAs as entities that merely "also regulate Class II gaming." TGRAs are, as the IGRA intended, the primary regulators of Class II tribal gaming, and the language of Part 547 should accurately reflect the critical role that TGRAs play.

Draft 25 C.F.R. § 547.5 – How does a tribal government, TGRA, or tribal gaming operation comply with this part?

The Discussion Draft at § 547.5(a)(6) requires a "plate" to be affixed to the player interface consistent with existing § 547.7(d). We suggest that the Discussion Draft § 547.5(a)(6) be revised as follows, adding the underlined language for clarity: "Have required the supplier of any player interface to designate with a permanently affixed label each player interface with an identifying plate or similar label containing information consistent with § 547.7(d)" There is no requirement in § 547.7(d) for a "plate", however specific information is required by that section and we believe the suggested revision adds clarity. Also, the existing § 547.5(b)(1) and the Discussion Draft refer to the grandfathered systems continuing in operations "for a period of five years from November 10, 2008." We suggest removing this sunset clause from Part 547.

We note that there appears to be great potential for unintended consequences with further revision to the grandfathering provisions following passage of the initial time period for grandfathering games. The Comanche Nation recognizes the importance of past efforts to clarify and preserve the realm of Class II gaming and is opposed to any portion of the grandfathering provisions which would have the effect of eliminating or prohibiting a Class II game or any system component thereof, where such game or component has been previously certified under the existing grandfathering regulations or determined valid by a court decision. Accordingly, we urge you to adopt a savings clause to so reflect.

We applaud the removal of the minimum probability requirements from existing § 547.5(c). As we noted in our 2008 Comments and during the TAC discussions, there was not a rational basis for setting minimum required probability odds at 50,000,000-to-1 for all progressive prizes, and 25,000,000-to-1 for all other prizes, and further, these odds placed tribes at a competitive disadvantage to states, which routinely offer odds of at least 250,000,000-to-1.



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Discussion Draft § 547.5(c)(4), provides that "[t]he testing laboratory's written report certifies that the operation of each player interface *must not be compromised or affected* by electrostatic discharge, liquid spills, electromagnetic interference, or any other risk identified by the TGRA." We are not sure that any testing laboratory can or would be willing to "certify" that the player interface "*must not be compromised or affected*" by the specific risks identified, much less by "*any other risk* identified by the TGRA." (emphasis added). Perhaps the testing laboratory's report should certify that the operation of each player interface "is not subject to compromise or affected by electrostatic discharge, liquid spills, electromagnetic interference, radio frequency interference, or any other risk required by the TGRA to be tested." In any event, this language deserves further discussion in order to avoid potential uncertainty and inability to obtain the required certification.

The Discussion Draft at page 19 contains a subheading incorrectly numbered as § 547.5(e) – *Compliance by charitable gaming operations*. This section number should be revised to § 547.5(f) and §547.5(f) should become §547.5(g).

We note that the Commission has addressed the concern expressed in our 2008 Comments, with the existing regulations at § 547.4(f) that effectively prohibit a tribe from using its own testing laboratory, even if that test laboratory is independent from the tribe. The Discussion Draft at § 547.5(f)(1)(iii) now provides that a tribe may utilize its own testing laboratory but "it must be independent from the manufacturer and gaming operator... ."

In our 2008 comments, we also expressed concern that existing § 547.4(f)(iv), puts tribal testing laboratories in a competitive disadvantage against non-tribal laboratories. Specifically, non-tribal testing laboratories will already have suitability determinations from non-tribal jurisdictions which will likely have nothing to do with tribal gaming experience, while tribal gaming laboratories lacking non-tribal suitability determinations are subject to the stringent background investigation required of gaming management companies.

Draft 25 C.F.R. § 547.6 – What are the minimum technical standards for enrolling and enabling Class II gaming systems?

We urge the Commission, for the sake of clarity, to define "enroll" and "unenroll."

Draft 25 C.F.R. § 547.7 – What are the minimum technical hardware standards applicable to Class II gaming systems?

We applaud the removal of references to the Federal Communications Commission and Underwriters' Laboratories, consistent with the TAC's recommendations. We recommend that the Commission replace the word "display" with "bear" in the initial phrase of § 547.7(d) of the



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Discussion Draft so that hand held mechanisms are not inadvertently disqualified. We do also note that our primary concern with this section raised in our 2008 Comments remains unaddressed in this Discussion Draft at §547.7(f). The existing language concerning *financial instrument storage components* appears to be an operational control more appropriately addressed in the minimum internal control standards ("MICS"), rather than a technical standard. We again recommend that the Commission insert the words "designed to be" as indicated here: "Any Class II gaming system components that store financial instruments and that are not designed to be operated"

Draft 25 C.F.R. § 547.8 – What are the minimum technical software standards applicable to Class II gaming systems?

We are pleased to see that two of our most serious concerns with the existing regulations have been favorably addressed in this Discussion Draft. First, the words "[f]or bingo games and games similar to bingo" in the existing § 547.8(b)(2) have been deleted and replaced with the phrase, "The Class II gaming system... ." This revision addresses our concern that these technical standards were not drafted to address "games similar to bingo" and therefore this language was unnecessary. Second, the requirement in existing § 547.8(d) – *Last game recall*, to be able to recall any alternative display ("entertaining display") has been removed. We agree with this revision, as the alternative display has no relevance to the game of bingo being played, or to the outcome of the game being played. We appreciate your response to our prior concerns as a Nation and as part of the TAC to make this revision. Finally, we urge you to consider removing the phrase "automatic or" from the sentence in § 547.8(b)(1): "There must be no *automatic or* undisclosed changes of rules." We agree that undisclosed rule changes should be prohibited but are concerned that the phrase in question may not add further protection to a tribe and its patrons, but rather introduces ambiguity and potential unintended consequences with respect to Class II games offering automatic bonus features.

Draft 25 C.F.R. §§ 547.9 - 547.13.

We generally agree with the minor edits in Discussion Draft §§ 579.9 – 579.13. We do note specific agreement with the Commission's revisions to Discussion Draft § 547.12 – *What are Minimum technical standards for downloading on a Class II gaming system?* These revisions adding the terms "must be capable of" in § 547.12(a)(5) and § 547.12(b), thereby resolving our concern that the existing language was incorrectly worded as a MICS, rather than a technical standard.

Draft 25 C.F.R. § 547.14 – What are the minimum technical standards for electronic random number generation?

Similar to our comments above, we agree with the Discussion Draft revisions to § 547.14(e) – *General Requirements* which removes the reference to "entertaining displays." Additionally, we



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agree with the revision to § 547.14(f) – *Scaling algorithms and scaled numbers* which now require any bias in the algorithm to be reported to the TGRA, removing the "1 in 100 million" algorithm bias measurement. As a general comment, we urge the Commission to consider further revision to the random number generation provisions where it is the overall consensus of technical experts in the field that language in the Discussion Draft is inaccurate, contrary to industry standards, ambiguous, or otherwise introduces potential confusion or limitations regarding standards for Class II games that would unnecessarily limit or burden game availability or function.

Draft 25 C.F.R. § 547.15 – What are the minimum technical standards for electronic for electronic data communications between system components?

We have no comments on Discussion Draft § 547.15.

Draft 25 C.F.R. § 547.16 – What are the minimum standards for game artwork, glass, and rules?

Although we are pleased with the removal of the minimum probability standards at § 547.5(c) noted previously, we are concerned with the new language at § 547.16(c) – *Odds notification*. That language provides that "[i]f the odds of hitting any advertised top prize exceeds 100 million to one, the Player Interface must continually display 'Odds of winning the advertised top prize exceeds 100 million to one' or equivalent." This new requirement is duplicative of the existing regulations at § 547.16(a) which already require that the game rules and prize schedules be displayed "at all times" or be "made readily available to the player upon request... ." This requirement may also have the practical effect of unnecessarily alarming and/or driving away patrons from the play of such games, simply because of the new odds notification requirement. Moreover, the word "hitting" should be replaced with "winning."

Draft 25 C.F.R. § 547.17 – How does a tribal gaming regulatory authority apply to implement an alternate standard to those required by this part?

We agree with the Discussion Draft revisions to this section that replace the term "variance" with the term "alternate standard." Additionally we agree with the removal of the appeal procedure language in this section which is currently under the sub-heading "*Commission Review*." The consolidation of all appeals procedures throughout the Commission's regulations into one location at 25 C.F.R. Subchapter H provides for a streamlined appeals process.

Thank you for the opportunity that you have afforded to tribes to respond to your inquiries. We look forward to working with you in the coming months to develop new regulations to benefit our collective efforts to enhance and protect the integrity of Indian gaming. If you have any questions concerning these issues, please contact me at (580) 595-3300.



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Sincerely,

Jill Peters

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Executive Director

Comanche Nation Gaming Commission