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April 24, 2012

VIA E-mail to reg.review@nigc.gov

Tracie L. 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:

On behalf of the Seminole Tribe of Florida (the "Tribe"), we offer 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*. The Tribe believes that allowing tribes the opportunity to comment on preliminary discussion drafts leads to a much more efficient rulemaking process.

The Tribe's comments on the Part 547 Discussion Draft are largely favorable, although we highlight some areas of concern below. The Tribe commends the Commission for making many revisions throughout this Part that make it read more clearly as a technical standard, rather than arguably as a minimum control standard more appropriately addressed in 25 C.F.R. Part 543. The Tribe also acknowledges that the ongoing consultation through the Commission's Regulatory Review initiative has resulted in a draft regulation that addresses most of the primary concerns expressed in the Tribe's March 7, 2008 comments ("2008 Comments") on the existing version of 25 C.F.R. Part 547.

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

The Commission's newly added definition of *Proprietary Class II System Component* means "[a] system component that is only interoperable with a single manufacturer's Class II system. Examples include vouchering systems, accounting systems, and cashless systems." However, this term is not used elsewhere in the draft regulations. If the definition is meant to address a particular concern of the Commission,

we request that the concern be explained so that tribes can provide input as to whether this term should be more accurately defined. As it stands we recommend striking the definition in its entirety since it does not add clarity to the technical standards.

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 this Part." (Emphasis added). The Tribe objects to the underlined language above, which is inconsistent with the IGRA and with the NIGC's prior position on this issue. The IGRA at 25 U.S.C. § 2701(5) specifically says that "Indian tribes have the *exclusive right to regulate* gaming activity on Indian lands ...". Although the NIGC has the authority to enforce any violation of the MICS, tribal regulators have the primary role in enforcing the MICS and regulating Class II gaming in their casino operations. Accordingly, tribes are considered the primary regulators of Class II gaming. The NIGC repeatedly recognized that tribes are the primary regulators of Class II gaming in the preamble to the current Technical Standards rule, and there is no reason the NIGC should change its position in this Discussion Draft.

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 an "identifying plate" to be affixed to the player interface consistent with existing § 547.7(d). The Tribe suggests that the Discussion Draft § 547.5(a)(6) be revised as follows: "Have required the supplier of any player interface to designate with a permanently affixed label each player interface with information consistent with § 547.7(d)"

The Tribe supports the removal of the minimum probability requirements from existing § 547.5(c). As noted in the Tribe's 2008 Comments, 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 placed tribes at a competitive disadvantage to state lotteries, which routinely offer much higher odds.

Discussion Draft § 547.5(c)(4) requires 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." While the Tribe understands the intent behind the new language, we question whether such a requirement is practical. We are not sure that a testing laboratory can "certify" that the player interface will not be compromised by

"*any other risk* identified by the TGRA." (Emphasis added). This language deserves further discussion of the intended scope of 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 all numbering throughout the document should be reviewed for accuracy.

We note that the Commission has favorably addressed the concern expressed in the Tribe's 2008 Comments concerning the existing regulations at § 547.4(f), which 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"

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

The Tribe has no comments in this section, other than the terms "enroll" and "unenroll" should be defined, at least within the text.

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

The Tribe's sole concern with this section noted in the 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 suggest again that the words "designed to be" should be inserted into this section indicated by the underlined language as follows: "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?

Two of the Tribe's 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 the 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*, that the Class II gaming system must be able to recall any alternative

display ("entertaining display") has been removed. The Tribe agrees 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.

Draft 25 C.F.R. §§ 547.9 - 547.13.

First, we note that § 547.12(a)(2) has been amended so as to no longer require that any downloads be authorized by the tribal gaming regulatory authority. The Tribe would like to confirm that this deletion does not in any way limit the ability of a tribal gaming regulatory authority to continue to impose its own requirement for pre-approval of any downloads.

The Tribe also agrees with the revisions to §§ 547.12(a)(5) and § 547.12(b) of the Discussion Draft, which now includes the terms "must be capable of", which addresses the concern that the existing language was incorrectly worded as a MICS, rather than a technical standard.

Second, it appears that the Commission has erroneously deleted the word "power" in the Discussion Draft at § 547.10(c)(1)(i) – *Non-Fault Event*, and it should be re-inserted. The event being described here is the "Player interface power off during play."

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

The Tribe agrees with the Discussion Draft revisions to § 547.14(e) – *General Requirements* which removes the reference to "entertaining displays." However, the revision to § 547.14(f) – *Scaling algorithms and scaled numbers* requiring any bias in the algorithm to be reported to the TGRA and removing the "1 in 100 million" algorithm bias measurement may be unworkable or simply impractical. This language deserves more discussion and consideration. We suggest that the RNG must be capable of measuring and reporting bias to the TGRA, but without a range for measured bias it seems that requiring any bias to be reported would be an unworkable standard that is not a minimum technical standard.

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

The Tribe has 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 the Tribe is pleased with the removal of the minimum probability standards at § 547.5(c) noted previously, it does have a concern with the new language at § 547.16(c) – *Odds notification*. The new 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 redundant as the existing regulations at § 547.16(a) already require that the game rules and prize schedules be displayed "at all times" or be "made readily available to the player upon request"

We also note that the Discussion Draft proposes to change the existing regulations so as to require the Player Interface, rather than the Class II Gaming System, to continuously display "Malfunctions void all prizes and plays" or equivalent and "Actual Prizes Determined by Bingo [or other applicable Class II game] Play. Other Displays for Entertainment Only" or equivalent. The Tribe has no objection to this change, with the understanding that this requirement does not mean that the required notifications must be made on the video screen, but could be displayed elsewhere on the Player Interface. The NIGC should clarify this understanding in the preamble when this rule is issued as a proposed rule.

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?

The Tribe agrees with the Discussion Draft revisions to this section that remove the term "variance" and instead use the term "alternate standard." Additionally the Tribe agrees 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 much cleaner and streamlined appeals process.

On behalf of the Seminole Tribe of Florida, we appreciate the opportunity to comment on the Commission's proposed changes to Part 547.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

Joseph H. Webster /s/

By: Joseph H. Webster

cc: Jim Shore, Esq.