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August 15, 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 Proposed Rule, 25 C.F.R. Part 547 – Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games (77 Fed. Reg. 32465 (June 1, 2012).

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

On behalf of the Navajo Nation Gaming Enterprise (the "NNGE"), we offer the following comments in response to the National Indian Gaming Commission's ("NIGC") Proposed Rule for 25 C.F.R. Part 547 - *Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games* (the "Proposed Rule"). We are pleased to see that several of the revisions that we suggested in our April 26, 2012 comments for the Discussion Draft of Part 547 were accepted and incorporated into the Proposed Rule. Our remaining concerns with the Proposed Part 547 are set forth below with additional comments.

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

We have no issues with the added or amended definitions of *EPROM*, *Electromagnetic interference, Patron*, *Advertised Top Prize*, *Audit Mode*, *Enroll* and *Unenroll*. We also approve of the NIGC's reinsertion of the definition for *Electrostatic discharge.* These additions and revisions add to the overall clarity of the Proposed Rule.

We support the removal of the definition for *Proprietary Class II Gaming System*. As mentioned in our April 26th comments, this term was not used in the Part and the inclusion of a definition for it was confusing. Similarly, we support the removal of the word *proprietary* from definitions of *Cashless system* and *Voucher system*. In the preamble to the Proposed Rule, the NIGC indicated that its intent "was to distinguish the common back of the house component systems that communicate with all of the Class II gaming systems, regardless of the manufacturer, from those components that work exclusively with one manufacturer's Class II system." 77 Fed. Reg. 32467 (June 1, 2012). At the June 27, 2012, Regulatory Review consultation the NIGC said that this statement of intent should be further clarified in the preamble. We agree with this approach.

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

The Discussion Draft included language at § 547.3(a) *Minimum Standards* which provided that "[t]hese are minimum standards and, recognizing that TGRAs also regulate Class II gaming, …." (emphasis added). TGRAs are Tribal Gaming Regulatory Authorities. We objected to the language because it minimized the importance of tribal regulators in the overall Class II regulatory scheme. We are glad that this objectionable language has been removed from § 547.3(a). We ask that in the preamble to the final rule, the NIGC address this point again and affirmatively acknowledge the primary role that tribal regulators have pursuant to the IGRA.

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

The NIGC has proposed that the "supplier" affix a "label" to each player interface containing information that conforms to 547.7(d). Proposed Rule § 547.5(a)(7). This language, however, may result in a violation of the "no limitation of technology" provision at Proposed Rule § 547.3(b) and throughout Part 547.

We recommend that the Proposed Rule be modified to clarify that such a label is not required in the case of consumer devices such as mobile devices and tablets. With the growing spectrum of applications available to consumers on handheld electronic devices, we are concerned that the *supplier* of a device containing technology that may allow Class II game play at a tribal facility may not be the game manufacturer. In that scenario this regulation eliminates the potential use of a consumer handheld device or tablet that is not distributed by the Class II game manufacturer or *supplier*. For example, some tribal facilities are making "apps" available that allow free play via a mobile device or tablet. Conceivably this technology eventually could allow Class II game play when the user of the device is in the tribal facility. However the manufacturer of the mobile device likely will not be the game manufacturer. Thus, we recommend that the proposed rule be modified to clarify that such a label is not required in the case of consumer devices such as mobile devices and tablets.

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

In our April 26th comments on the Discussion Draft, we recommended amending the § 547.7(f) language to read as follows: "Any Class II gaming system components that store financial instruments and that are not designed to be operated … ." Our April 26th comments explained that existing language could be construed to be an operational control which should be a minimum internal control standard rather than a technical standard. We make this recommendation again since the NIGC did not make this change in the Proposed Rule. We do not see discussion of this issue in the preamble to the Proposed Rule.

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

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. We agree with this revision as mentioned in our April 26th comments. We also agree with the NIGC's statement in the preamble to the Proposed Rule that "[t]he game of bingo is dictated by the ball draw and the bingo card, not the entertaining display. … [which has] no bearing on [the game's] outcome." 77 Fed. Reg. 32470.

Proposed Rule 25 C.F.R. § 547.12.

We previously asked for a statement that acknowledged that the removal of the requirement at § 547.12 that the tribal gaming regulatory authority authorize all downloads did not limit the ability of a TGRA to continue to impose its own requirements for download approvals. The NIGC noted that "[n]othing in this section prohibits the TGRA from requiring its approval of downloads." 77 Fed. Reg. 32470-71. We support this statement.

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

Our April 26th comments on the Discussion Draft said that the revision to § 547.14(f) – *Scaling algorithms and scaled numbers* removing the "1 in 100 million" algorithm bias measurement and requiring that any bias in the algorithm be reported to the TGRA may be impractical. We suggested that without a range for measured bias, requiring any bias to be reported would be an unworkable standard that is not a minimum technical standard. With this, we recommend that the word "any" be replaced with "material," and that the "material bias" standard which is detailed in NIGC Bulletin 2008-4 be adopted.

In the preamble to the Proposed Rule and in a recent regulatory review consultation the NIGC asked for further comments on "why a nonspecific number is not a testable standard." The non-specific number that the NIGC is asking the RNG to be capable of reporting to the TGRA is "any bias." This standard really is anything greater than "no bias." While it is theoretically

testable, there will always be bias and, therefore, this standard will require continuous reporting to the TGRA, no matter how small and insignificant the measure of bias may be. Further, a TGRA cannot impose a different and more stringent requirement for testing randomness than "any bias" because there is no stricter standard than "any bias" – which in practice means "all bias." As the NIGC noted for other provisions, the Proposed Rule at § 547.3 allows the TGRA to implement additional and more strict technical standards. *See* Proposed Rule at 77 Fed. Reg. 32470. Yet, for this standard the TGRA could not devise a more stringent standard.

Finally, the NIGC has already addressed the issue of why requiring an RNG to report an "insignificantly small" measure of bias is unnecessary, and that a measure of bias that is so small does not affect the fairness of the game. NIGC Bulletin 2008-4 reads in part as follows:

> … Paragraph 547.14(f)(4) requires that scaling algorithms be *unbiased*, defined to mean a measured bias no greater than 1 in 100 million. However, many, if not most, industry-standard bingo RNGs are 32-bit RNGs – they produce a universe of 2^{32} results. *Using the most common scaling algorithm to scale those results down so that the RNG draws numbers from 1 to 75 produces a measured bias of 1 in 57,266,230, a bias greater than 1 in 100,000,000. …*
>
> This was not the NIGC's intent. A requirement of a bias no greater than 1 in 100 million is unnecessarily stringent. The Technical Standards were not meant to exclude industry-standard 32-bit RNGs scaled to 75 numbers. *The bias present in such RNGs is insignificantly small and does not affect the statistical randomness of the RNGs or the fairness of games played using them. …*
>
> *… NIGC will regard a gaming system using a 32-bit RNG scaled to 75 numbers as eligible for grandfather status, provided that the RNG meets all of the other requirements of 547.14 and the system meets the requirements of all of the other sections specified in 547.4(a)(2).*

(Emphasis added).

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

The Discussion Draft language for § 547.16(c) – *Odds notification* provided 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." We stated previously that this requirement was unnecessary because 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 agree with the NIGC's removal of the word "continually" from § 547.16(c) in the Proposed Rule.

There, however, remains a requirement to "continually display" disclaimers on the player interface. The "[m]alfunctions void all prizes and plays" disclaimer and the "[a]ctual prizes determined by Bingo…. Other display for Entertainment Only" disclaimer are required to be continually displayed on the player interface per Proposed Rule § 547.16(b). This requirement is unnecessary. The player should be able to *acknowledge* the disclaimer *once,* not continuously. For many non-gaming online applications that people use every day there is a requirement that the application user acknowledge one or more disclaimers prior to using the application. It is common to acknowledge the disclaimer once, not continuously. If the disclaimer is displayed on the video screen, rather than elsewhere on the player interface, we think acknowledging the disclaimers provides the necessary protection, rather than requiring the disclaimers to be "continually displayed".

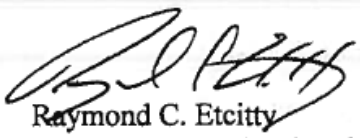
Proposed 25 C.F.R. § 547.17 – How does a tribal gaming regulatory authority apply to implement an alternate standard to those required by this part?

We believe that Proposed Rule § 547.17 is better than the existing regulation. We agree with use of the term "alternate standard" rather than "variance." Additionally, as stated in our April 26th comments, we agree with the consolidation of all appeals procedures throughout the NIGC's regulations into one location at 25 C.F.R. Subchapter H.

We specifically note that Proposed Rule § 547.17(b)(3)-(4) – *Chair Review* is an improvement over previous language as it provides a deemed approval in the event that the Chair does not "approve or object in writing within 60 days." This simplifies the process.

On behalf of the NNGE, we appreciate the opportunity to comment on the NIGC's proposed changes to Part 547.

Sincerely,



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