QUAPAW TRIBE OF OKLAHOMA

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March 30, 2012

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

Re: Joint Comments on Discussion Drafts of Class II MICS and Technical Standards and Proposed Rules Submitted by the Quapaw Tribe of Oklahoma (O-Gah-Pah) and the Quapaw Tribal Gaming Agency.

Dear Chairwoman Stevens and Commissioners:

The following comments are made on behalf of the Quapaw Tribe of Oklahoma and the Quapaw Tribal Gaming Agency. To begin, we would like to thank the members of the Commission for engaging in professional dialog with tribal governments, with regard to this very important regulatory review effort. We continue to be hopeful as the NIGC's commitment to accommodate tribal concerns and propose revisions possibly bring the regulations closest to the purposes and goals of IGRA.

As noted below, the NIGC has offered some excellent ideas with regard to revisions to the regulations that are currently under review. Nevertheless, we would like to take this opportunity to offer our comments on a number of outstanding issues that we believe warrant additional consideration.

Our comments are summarized and divided into separate sections addressing the discussion drafts for the Class II MICS and Technical Standards as well as the most recent Notices of Proposed Rulemakings.

PART 543 -- CLASS II MINIMUM INTERNAL CONTROL STANDARDS

As an initial matter, we would like to thank the NIGC for undertaking this extensive regulatory review of the Class II MICS. We appreciate the outreach efforts and the extensive discussions conducted by the NIGC on this important regulation, which reflect the NIGC's commitment to incorporating tribal input in its decision-making processes. We especially appreciate that the

NIGC is seeking comments before issuing a Notice of Proposed Rulemaking through the publication of its preliminary discussion draft of the Class II MICS.

We would like to take this opportunity to share some preliminary thoughts on the discussion draft and a few general problems that we have identified during our initial review of the draft. We note that we have not yet completed a thorough, in-depth review of the draft and that we will be submitting a more comprehensive set of written comments in the near future.

- As a general matter, we believe the purpose of the MICS should be to establish the overall regulatory goals of Class II gaming, not the detailed procedures necessary to achieve such goals. To that end, we ask that the NIGC minimize procedural steps and tasks so that tribal gaming regulatory agencies are afforded maximum flexibility in establishing appropriate controls and policies and procedures for a variety of operations. To be effective and efficient, policies and procedures need to take into account various factors such as the size of the gaming operation, the level of gaming activities, and the configuration of the gaming floor. While all of these factors may entail different procedures by different gaming operations, the main point should be to ensure that each gaming operation is able to achieve the same outcome and regulatory goal.

- As a general rule of construction, the MICS should not be interpreted to limit the use of technology or preclude the use of technology not specifically referenced. As new technology becomes available, it is common practice for tribes to develop new policies and procedures to accommodate the specifications of that new technology.

- We noticed that the severability clause has been removed from this draft, which causes some concern. Without a severability clause, the entire MICS regulation could be overturned if one of its provisions is held to be invalid.

- As a general rule of construction, only applicable standards should be held to apply. While this may seem obvious, we believe the MICS should contain an express statement clarifying that not all standards will apply if inapplicable, and that gaming equipment and software will only be subject to applicable standards.

- We noticed that some of the definitions have been removed and that new definitions have been added to the discussion draft. We intend to address this issue in greater detail when we submit our written comments.

- In general, it appears that the discussion draft borrows, in variety of pieces, language and requirements from the various documents that have been prepared and redlined over the past few years by advisory committees and working groups. As a result, there are

inconsistencies and misplaced provisions throughout the draft. We intend to address these issues in greater detail when we submit our written comments.

- We are alarmed by what we perceive to be an unnecessary and inappropriate distinction between "manual bingo" and "Class II gaming system bingo." We question the need and purpose for drawing such a distinction and urge the NIGC to reconsider this approach.

- To the extent that promotions are non-gaming activities, we do not believe they should be regulated by the NIGC. We believe that tribal gaming regulatory agencies should be responsible for establishing and enforcing proper standards to govern promotional activities.

PART 547 – MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES

As is the case with our comments above on the discussion draft of the Class II MICS, we intend to provide more detailed response on the discussion draft of the Technical Standards in our written comments. Nevertheless, we would like to share our preliminary thoughts on the discussion draft and offer some initial response on the changes proposed in the draft.

- The grandfathering provisions in the Technical Standards are severely problematic and require significant revisions. First, as a general matter, the grandfathering provisions in the discussion draft create a "catch-22" situation by requiring software systems to have been submitted for certification based on standards contained in *this* discussion draft. This means that all of the systems that have been properly certified must be re-certified to comply with the new standards contained in this draft. We do not believe the NIGC intended for such a result as it is illogical and contrary to the purpose of having a grandfathering provision in the first place.

- Second, the discussion draft still contains the 5-year sunset clause which appears to require the removal of grandfathered systems from the market after five years. We believe it is illogical and erroneous to require such a removal, especially given the fact that some systems have been court-sanctioned and that most, if not all, of the grandfathered gaming systems have been operating without safety or integrity issues for many years.

- We strongly support the proposed removal of the provisions requiring Underwriter's Laboratory testing of player interfaces. We do not believe the NIGC is authorized to establish or enforce electrical safety standards and we question the propriety of an agency to specify the particular laboratory to conduct such product safety testing.

PART 559- FACILITY LICENSE NOTIFICATIONS, RENEWALS, AND SUBMISSIONS

The Tribe is highly supportive of the following proposed changes to the facility license regulations:

- The elimination of unduly burdensome environmental and public health and safety reporting requirements in favor of a simple tribal attestation. This proposed change will ensure proper oversight and enforcement of environment, public health and safety requirements, which we believe fall within the purview of tribal governments.

- The proposed notice exemption for temporary or seasonal closures not exceeding 180 days. If implemented, this exemption will help reduce administrative burdens for tribal governments in the event of temporary closures.

- The proposed removal of the three-year facility license renewal requirement, which recognizes the role of tribes as the primary regulators of their gaming activities and respects their authority to establish the duration of facility licenses as a matter of tribal law.

The Tribe encourages the Commission to give favorable consideration to what we perceive to be remaining issues of concern:

- The requirement that a tribe give 120 days' notice before opening a new gaming facility seems unreasonably long given the scope of the NIGC's review during this period. The NIGC has clarified that the proposed regulation does not require a verification of whether the property is eligible for gaming on Indian lands and that there is no legal requirement for an Indian lands determination prior to gaming on that land. Therefore, it appears that the purpose of the notification process is simply to provide notice of a new gaming facility opening. Therefore, it is unclear why the NIGC is still requiring notice as far back as 120 days from the opening date. Since the scope of the NIGC's review during this period is limited to verifying that the notice submission contains the requisite information, then the notice period should be amended to reflect this.

- The proposed rule does not address temporary facility licenses that are issued following a temporary closure due to a natural disaster or some other unforeseeable event. We believe that the notice exemption for temporary closures should be applicable to temporary openings as well. This is especially important for tribes located in areas that are particularly vulnerable to natural disasters such as floods, hurricanes, and tornadoes. If a temporary facility license is issued by the tribal gaming regulatory agency for a temporary facility that is estimated to operate for less than one year, such issuance should

- The proposed rule suffers from the same deficiency as the current regulation in that the criteria is still based on overly vague and subjective standards that give the agency tremendous discretion in the certification process. The regulatory criteria for receiving a certificate of self-regulation should instead be based on clear, objective standards so that petitioning tribes have a clear understanding of how to meet the criteria to the agency's satisfaction. The regulatory criteria should not simply mirror the statutory criteria, but rather explain and shed light on how the statutory criteria will be implemented by the agency.

- One of our primary concerns with the self-regulation program is the rigid approach to approving or denying petitions without consideration of more informal and collaborative measures that encourage tribes to continue working towards the goal of eventually becoming certified as a self-regulating tribe. Under the proposed rule, a final determination denying a petition becomes a final agency action of the agency, and as such, forecloses the possibility of further collaborative efforts or meaningful consultation between the NIGC and the petitioning tribe. We ask the NIGC to remove the provision designating a final determination as a final agency action and include additional procedures such as meetings and intergovernmental agreements that will facilitate a more informal and collaborative process.

In closing, we would like to reiterate our appreciation for this opportunity to provide the above comments on the discussion drafts and proposed rules. We hope that you will accept our comments in the positive spirit in which they are intended.

Sincerely,

John L. Berrey
Chairman, Quapaw Tribe of Oklahoma

Barbara Kyser-Collier
Director, Quapaw Tribal Gaming Agency