



Navajo Nation Gaming Enterprise

Ph: 505.905.7100 Fax: 505.905.7240

Post Office Box 1700 Church Rock, NM 87311 • Shipping Address: 249 E. NM 118 St. Hwy • Church Rock, NM 87311

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, D.C. 20005

Re: Comments on Proposed Rule, 25 C.F.R. Part 543 – Minimum Internal Control Standards for Class II Gaming (77 Fed. Reg. 32444 (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 on the National Indian Gaming Commission's ("NIGC") Proposed Rule on 25 C.F.R. Part 543 Minimum Internal Control Standards ("MICS") for Class II Gaming (the "Proposed Rule").

At the outset, we support the following changes from the Discussion Draft which are set forth in the Proposed Rule: (1) NIGC's decision to consolidate the two sets of bingo MICS into a single set of controls in the Proposed Rule; (2) NIGC's agreement that dedicated camera coverage of the Class II server is unnecessary; and (3) NIGC's clarification that a Class II gaming system may serve as the sole verifier and validator for automatic payouts; that there is no need to have an agent verify every automatic payout verified and validated by a Class II gaming system. We set forth specific concerns with the Proposed Rule as follows.

Proposed Rule 25 C.F.R. §§ 543.3(h)(1), (2) and 543.2 (SICS)

As we stated in our April 26, 2012, comments on the Discussion Draft, we oppose the System Internal Controls (SICS) requirement. The SICS are duplicative of the Tribal Internal

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
August 15, 2012
Page 2

Control Systems (TICS) and unnecessary. The SICS, it appears, would usurp the primary role of the Tribal Gaming Regulatory Authorities (TGRAs) to enforce its TICS and regulate its gaming operations. As a result, we oppose the inclusion of the SICS in the Proposed Rule.

Proposed § 543.3(h)(1) states that the gaming operation must implement a "SICS that complies with the TICS," and that failure to do so will subject the tribal operator to enforcement action by the NIGC. Proposed § 543.3(h)(2) provides that the NIGC can institute enforcement for "deficiencies in the SICS" after allowing the operation for a reasonable time to cure any such "deficiencies." The NIGC, however, has not provided any guidance as to what a SICS must contain. The Proposed Rule only includes a vague definition of "SICS" which appears to duplicate what TGRAs implement through their TICS. SICS are defined as follows:

System of Internal Controls (SICS). An overall operational framework for a gaming operation that incorporates principles of independence and segregation of function, and is comprised of written policies, procedures, and standard practices based on overarching regulatory standards specifically designed to create a system of checks and balances to safeguard the integrity of a gaming operation and protect its assets.

The existence and implementation of TICS by a TGRA already accomplishes the stated goal. We cannot determine what, if anything more, would be required in a "SICS." Further, unlike TICS, the SICS definition does not provide guidance on what exactly a SICS should contain. With this, a gaming operation will not know what the NIGC will determine constitutes a compliant SICS and what will not. The provisions in §§ 543.3(h)(1) and (2), however, allow the NIGC discretion to institute an enforcement action against the gaming operation if it believes that the SICS are "deficient." The proposal would allow the NIGC to enforce these ill-defined and vague standards against a gaming operation. Tribes should not be subject to NIGC enforcement against a standardless standard.

We believe the NIGC should reconsider the SICS proposal. We think the proposal will only lead to a level of regulatory uncertainty for tribal gaming operations without adding any level of additional controls.

Proposed Rule 25 C.F.R. § 543.2 (Sufficient Clarity and Surveillance Systems)

We believe that use of the phrase 20 frames per second in the proposed definition of "sufficient clarity" may unintentionally limit technology. "Sufficient clarity" is defined in the Proposed Rule to mean "20 frames per second and at a resolution sufficient to clearly identify the

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
August 15, 2012
Page 3

intended activity, person, object or location." As a MIC, the control should set forth the goal the NIGC seeks to achieve, rather than the means of accomplishing that goal. If the goal of the NIGC is to ensure that the "intended activity, person, object or location" is clearly identified, then the MICS should simply read "at a frames per second rate (or equivalent) and at a resolution sufficient to clearly identify the intended activity, person, object or location." With this, the NIGC would state what the goal is and allow the TGRA to adopt the technology needed to achieve that outcome. This language would ensure that the NIGC's goal is met without limiting the technology used to achieve that goal.

The use of the term "surveillance system" may be similarly limiting. It uses the term "video" throughout. This, however, could be interpreted to mean video tape, rather than digital recorders. This definition should be revised to not include examples of particular forms of surveillance technology that must be used.

Proposed Rule 25 C.F.R. § 543.20(e)(4) (Information Technology)

Proposed § 543.20(e)(4) would require that "Communications to and from Network Communications Equipment must be physically secured from unauthorized access." The term "Network Communications Equipment" is defined to include "A device or collection of devices that controls data communication in a system including, but not limited to, cables, switches, hubs, routers, wireless access points, landline telephones and cellular telephones." We are not sure what the NIGC means by ensuring physical security for these devices, specifically for something like a cellular telephone. We request additional clarification on the intent and purpose of this control.

We also ask for additional clarity for the requirement in Proposed § 543.20(f)(2) that "Unused services and non-essential ports must be disabled whenever possible." It is unclear what "unused services" is intended to cover and what disabling such services and non-essential ports would entail. Clarifying that disabling does not require physically disabling all non-essential ports on all computers used by the gaming operation would be helpful.

Proposed Rule 25 C.F.R. § 543.8(g)(8) (Dispute Resolution/Operations)

We note that the Proposed Rule appears to contain an error at the beginning of page 32453. There is a single line that reads:

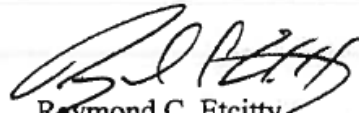
"(8) Dispute resolution (h) Operations."

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
August 15, 2012
Page 4

The NIGC should clarify this prior to finalizing the rule. If NIGC meant to propose language concerning Dispute Resolution, it must provide notice and an opportunity for comment on the language prior to finalizing the rule.

On behalf of the NNGE, we appreciate the opportunity to comment on the NIGC's proposed changes to Part 543.

Sincerely,



Raymond C. Etcitty
General Counsel/Acting COO