PIT RIVER GAMING COMMISSION

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August 8, 2012

National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, DC 20005
Via email to: reg.review@nigc.gov

Re: NIGC Proposed Rules for 25 CFR Parts 543 and 547

Dear Commissioners,

The Pit River Tribe ("Tribe") appreciates the opportunity to comment on the NIGC's Proposed Rules for the Class II Minimum Internal Control Standards and Technical Standards. We have been following the work of the Tribal Gaming Working Group ("TGWG") and the NIGC's Tribal Advisory Committee ("TAC") for the MICS and Technical Standards and first want to say that we support their efforts.

With regard to the MICS, we liked their idea of having a set of NIGC MICS that includes actual *minimum* controls, and then having a set of more detailed guidance documents that tribes could use in the event they wish to supplement those minimums. The Tribe was therefore disappointed to see that the NIGC chose not to follow this approach. The Proposed Rule instead contains controls far in excess of minimums, is difficult to follow, contains many internal contradictions, and ignores the fact that tribes are the primary regulator of class II gaming.

We therefore strongly encourage the NIGC to abandon this Proposed Rule and adopt the TGWG's approach. Over the years, information has been added to the MICS that while informative, is outside the realm of *minimum* controls. This additional information must be removed from the MICS and placed into optional guidance documents. It is our belief that this approach is consistent with the regulatory framework envisioned in the Indian Gaming Regulatory Act and that it also serves to protect and advance the integrity of class II gaming.

Finally with regard to the MICS, the Tribe reminds the NIGC that it lacks the authority to regulate non-gaming activities. This includes areas such as promotions, player tracking systems, and complementary services or items. While providing non-binding guidance in these areas is appropriate, mandatory controls for these activities must be removed from the MICS.

With regard to the Class II Technical Standards, we begin by stating our opposition to a "sunset" clause. We note that under the current regulation, the existing grandfather period is set to expire (or "sunset") next year. At that time, any grandfathered games that have not been brought into compliance with the new standards will have to be removed from operation. We oppose setting an arbitrary date after which

certain games are deemed unsuitable, particularly as no information has been provided to suggest that these games are somehow defective or harmful.

We also request that the NIGC include language clarifying that nothing in the regulation is intended to prohibit the use of any game or system found to be class II by any court. Such games and systems must remain available for use by tribes as they deem warranted. Accordingly, the following language should be added to the regulation: "Nothing in this Part is intended to prohibit the continued use of any class II gaming system or component certified against any earlier version of these grandfather provisions or to outlaw play of any game ruled to be class II by any judicial ruling."

We are also concerned with sections 547.5(a) and (a)(1) of the Proposed Rule. As currently drafted, these sections provide that *all* class II gaming system software – even software manufactured *after* November 2008 – would have had to be submitted to a testing lab *before* November 10, 2008, in order to be used. Of course it is now impossible to submit such software for testing *before* 120 days after November 10, 2008, regardless of when it was manufactured or placed into operation. Because it would be impossible for anyone to comply with these sections, the language should be modified. We suggest that §547.5(a)(1) be modified in relevant part to read: "… all Class II gaming system software that affects the play of the Class II game *and that was manufactured before November 10, 2008,* be submitted, together …."

The regulation of course should continue to recognize tribes as the primary regulator of class II gaming. The following language should therefore be reinserted at §547.3 just before the section titled "State Jurisdiction": "TGRA Authority. Recognizing that the TGRA is the primary regulator of Class II gaming, nothing in this part is designed or intended to diminish TGRA authority."

With regard to section 547.17 and the granting of variances, it seems that Indian country would be better served by reverting to the language presented by the TGWG, or at a minimum by developing language that combines the NIGC's ideas with the TGWG proposal. The TGWG approach allowed the TGRA to grant the variance and then notify the NIGC and provide an opportunity to comment on the variance. The NIGC draft requires that the NIGC approve the variance. A suitable compromise should be developed that better reflects tribal primacy in regulating class II gaming.

Finally, the Tribe opposes any attempt to treat existing gaming systems in the same manner as those manufactured after the effective date of this regulation. While is seems appropriate to require new class II equipment to satisfy the new technical standards, the Tribe believes it is inappropriate to require the same of existing equipment. We therefore urge the NIGC to rewrite the technical standards such that equipment *manufactured* after a certain date must comply with these standards. This option seems the most fair and does not impose an unfair burden on either the manufacturer or the current operator of the game.

On a positive note, the Tribe appreciates and supports the changes made to the definition of "electromagnetic interference." This revised definition was supported by the TGWG and the TAC and ensures consistency with gaming jurisdictions throughout the world. The Tribe is also pleased to see the change made to §547.16(b) regarding disclaimers. Requiring that certain information be "continually displayed" to a patron would have been impossible on most smaller class II devices, and as such, this revision is also a positive one. These changes should remain in any final rule.

Thank you again for the opportunity to provide these comments. Because of the leverage it provides to tribes in negotiations with the state, class II gaming is very important to our Tribe. It is critical that we have the option of reverting to class II gaming, and that class II gaming remains a strong, viable industry. Unless a tribe's compact never expires, class II gaming is one of the few real vehicles we have in maintaining balance during negotiations.

Sincerely,

David Hawkins

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Gaming Commission Chairman

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