Seneca Cayuga Tribe of Oklahoma
Gaming Commission
23701 S. 655 Rd
Grove, OK 74344
918-787-9703

April 27, 2012

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Discussion Draft of 25 C.F.R. Part 547: Class II Technical Standards

Dear Chairwoman Stevens:

On behalf of the Seneca-Cayuga Gaming Commission (SCGC), I am pleased to offer the following comments on the proposed changes contained in the Discussion Draft of 25 C.F.R. Part 547: Class II Technical Standards. The SCGC commends the NIGC for seeking tribal input at this early stage of the rulemaking process. The SCGC further commends the NIGC for pursuing a more collaborative rulemaking approach that draws upon the knowledge and technical expertise of tribal governments, regulators, operators, and other industry representatives. The NIGC's utilization of Tribal Advisory Committees and the Tribal Gaming Working Group is particularly noteworthy as it demonstrates the NIGC's commitment to ensuring that the final rule is at least minimally acceptable to tribal governments.

In the comments below, we express our support for a number of changes being proposed in the Discussion Draft, which we believe will result in a more fair and balanced regulatory framework for Class II gaming. In addition, we address several outstanding issues that we believe would benefit from additional clarification and revision. It is our hope that you accept the comments below in the positive spirit in which they are intended.

Definitions

Proprietary Class II System Component. A definition for a Proprietary Class II System Component has been added to the Discussion Draft, despite the fact that it is not used anywhere else in the Draft. It is thus unclear what the NIGC intended in including this definition or how this defined term will be used, if ever, in future drafts. The definition only causes confusion and adds absolutely no value to the Technical Standards. We therefore ask that this definition either

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be removed or clarified in the preamble so that tribes are better informed as to the scope and application of the term.

Reflexive Software. The term *reflexive software* should be amended to clarify that the term is intended to address instances when a prize is denied to a player who is otherwise entitled to such prize based on the random outcome of the game. Our concern is that the term may be misinterpreted to cover existing Class II games that award prizes such as "good neighbor" payouts, which we note have always been a part of the game commonly known as bingo.

Exclusive Regulatory Authority of Tribal Governments

The Discussion Draft misstates the regulatory authority of tribal gaming regulatory agencies (TGRAs) by stating that "TGRAs *also* regulate Class II gaming." (Emphasis added). This proposed language, which suggests that TGRAs share their regulatory responsibilities with some other entity, runs contrary to the explicit statement in the Indian Gaming Regulatory Act (IGRA) that states that "Indian tribes have *the exclusive right to regulate gaming activity on Indian lands.*" (Emphasis added). Class II gaming thus comes within the primary regulatory authority of tribes, subject only to the NIGC's specific oversight responsibilities as set forth in IGRA. We ask that the NIGC revise the statement in § 547.3(a) of the Discussion Draft to more accurately reflect the role of TGRAs as the primary regulators of their gaming activities.

Minimum Probability Requirements

The SCGC strongly supports the proposed removal of the minimum probability requirements from existing § 547.5(c). The minimum probability standard of 1 in 100,000,000 for progressive prizes and 1 in 50,000,000 for all other prizes was an arbitrary requirement that placed tribes at a competitive disadvantage to state lotteries, which typically offer higher odds. Furthermore, while we do not question the benefits of requiring a manufacturer to disclose to the TGRA the mathematical expectations of a game, we believe that such issues should be addressed and handled by at the tribal regulatory level.

Grandfather Provisions

The SCGC is disappointed that the Discussion Draft does not resolve any of the issues raised by tribes regarding the grandfather provisions in the current regulation. To the contrary, the Discussion Draft exacerbates existing problems by threatening to invalidate currently compliant systems. The Discussion Draft adds new testing standards and requires that all previously

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certified systems to have been tested against these new standards, despite the fact that such standards were unavailable at the time of testing. It is now virtually impossible for *any* gaming system to remain certified under the Discussion Draft.

In addition, the newly added language restricting the applicability of the grandfather provisions to only those gaming systems "*available for use* at any tribal gaming facility that were manufactured or placed in a tribal facility on or before November 10, 2008" is problematic because it creates an unfair competitive disadvantage for those who had the systems *available for use* at that time. In effect, this excludes other operators from utilizing the same systems, simply because they did not have it *available for use* at the right time. We ask that the phrase *available for use* be removed from § 547.5(a).

As noted above, the Discussion Draft continues to suffer from the same problems as the existing regulation. For instance, the Discussion Draft still contains the controversial five-year sunset clause, which effectively requires the removal of all grandfathered Class II gaming systems by November 10, 2013. This provision applies to *all* grandfathered systems, including those that have been sanctioned for use by federal court decisions. If implemented, we caution that this provision may cause serious economic harm on tribes and their interdependent economies and have a devastating effect on a vitally important sector of tribal gaming. Significant investments have been made by tribes to develop and maintain Class II gaming systems in their gaming facilities based on the lawfulness and availability of the systems. The mandatory recall of grandfathered systems unnecessarily interferes with tribal investments and reliance on those systems.

Since the overall objective of the Class II Technical Standards is to protect the security and integrity of Class II gaming, a mandatory recall could be justified upon a showing that the continued use of such systems poses a potential or real threat to the Class II gaming industry. However, most, if not all, grandfathered systems have been operating without any safety or integrity issues for many years. In addition, we are unaware of any evidence of a defect or flaw in the systems that pose a threat to the public health and safety. In light of this, the five-year sunset clause seems unwarranted, arbitrary, and unrelated to the regulatory objective of the Class II Technical Standards.

We therefore ask that the NIGC remove this five-year sunset clause and include language that will authorize the continued use of any Class II gaming product that has been previously certified under current or any pre-existing Technical Standards or approved by a judicial ruling of a

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federal court. We believe such change will ensure the continued success and viability of the Class II gaming industry, and assure tribes that their grandfathered Class II gaming systems will be protected during compact negotiations with states.

Underwriter's Laboratory Testing

The SCGC strongly supports the proposed removal of the provisions requiring Underwriter's Laboratory testing of player interfaces. While we do not question the benefits of requiring manufacturers to provide certification as to the safety of their products, we believe the establishment and enforcement of such standards should be handled at the tribal regulatory level. We further believe that statutes administered by other federal agencies concerning electronic product safety standards provide adequate protection in this regard.

Entertaining Displays

The SCGC strongly supports the proposal to remove references to entertaining displays in relation to Class II player interface display requirements. Requirements relating to entertaining displays should not be set by regulation, as the *entertaining display* itself is irrelevant for regulatory purposes and has no legal significance whatsoever to the outcome of the game.

Odds Disclosure Requirement

The SCGC is concerned by the proposed language requiring player interfaces to "*continually* display 'Odds of winning the advertised top price exceeds 100 million to one.'" (Emphasis added). As a practical matter, the *continual* display of this disclosure statement could become an issue with handheld devices that have a much smaller screen than traditional terminals and player stations. In any event, we question the need for this requirement given that § 547.16(a) of the Discussion Draft already requires that the game rules and prize schedules be displayed "at all times" or be "made readily available to the player upon request…."

In closing, the SCGC wishes to thank the NIGC for allowing us to share our views and concerns regarding the proposed changes in the Discussion Draft. We ask that you give favorable consideration to our comments above as you proceed with your deliberations.

Sincerely,

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Richard Wood
Gaming Commissioner
Seneca-Cayuga Gaming Commission