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August 1, 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 Seminole Tribe of Florida (the "Tribe"), we offer the following comments in response to the National Indian Gaming Commission's ("NIGC" or "Commission") Proposed Rule, 25 C.F.R. Part 547 - *Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games.* The Tribe appreciates the Commission's efforts to make this Regulatory Review initiative a collaborative process in which tribes have a number of opportunities to share their concerns and to suggest revisions. Additionally, the Tribe is pleased to see that many of the revisions that it suggested to the Discussion Draft of Part 547 have been incorporated into the Proposed Rule.

As the Tribe has previously commented, it believes that, as a whole, the proposed changes to Part 547 are a vast improvement over the existing regulation. We note that the Commission has addressed the bulk of the concerns raised by the Tribe both in its April 24, 2012 comments on the Discussion Draft and in the Tribe's March 7, 2008 comments on the existing version of 25 C.F.R. Part 547. However, there are a few remaining issues, which are detailed below.

Proposed Rule 25 C.F.R. Part 547

During the NIGC Regulatory Review consultation in San Diego in April, the Commission requested suggestions to possibly revise the name of Part 547. The Tribe believes the existing title, *Minimum Technical Standards for Gaming Equipment Used With the Play of Class II Games,* could be simplified. We suggest "*Minimum Technical Standards for Class II Gaming Systems*". In the existing title, the phrase "gaming

equipment used with the play of Class II games" is superfluous and could be replaced with a term that is already included in the definitions at Proposed Rule § 547.2. The definition of "Class II Gaming System" encompasses all components of the Class II System, including "gaming equipment used with the play of class II games" as well as accounting functions.

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

The Tribe agrees with the added or amended definitions of *EPROM, Electromagnetic interference, Patron, Advertised Top Prize, Audit Mode, Enroll* and *Unenroll.* It also agrees with the Commission's reinsertion of the definition for *Electrostatic discharge,* since that term is used in several places throughout Part 547. The Tribe believes that these additions and revisions add to the overall clarity of the Proposed Rule.

The Tribe supports the removal of the term *Proprietary Class II Gaming System* at Discussion Draft § 547.2 as it was unnecessary and led to confusion. Similarly, it agrees with the removal of the word *proprietary* from definitions of *Cashless system* and *Voucher system.* In the preamble to the Proposed Rule, the Commission 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). The Tribe strongly agrees with the comment made by the Commission at the June 27, 2012, Regulatory Review consultation - that this statement of intent should be further clarified in the preamble to the final rule, or at least in a NIGC Bulletin.

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

The Tribe appreciates the NIGC's response to tribal comments on Discussion Draft 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). Understandably many tribes submitted comments on this language because it seemingly minimizes the importance of tribal regulators in the overall Class II regulatory scheme. The Tribe is pleased that the objectionable language noted above has been removed from § 547.3(a). However, the Tribe believes that in the preamble to the final rule, the Commission should address this point again and affirmatively acknowledge the primary role that tribal regulators have, particularly in Class II gaming 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 Commission 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). However, the Tribe notes that this language may result in violation of the "no limitation of technology" provision at Proposed Rule § 547.3(b), and throughout Part 547. With the growing spectrum of applications available to consumers on handheld electronic devices, the Tribe is 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, the Tribe recommends 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 the § 547.7(f) language concerning *financial instrument storage components* the Tribe again suggests that the words "designed to be" should be inserted at the beginning of this section indicated by the underlined language as follows: "Any Class II gaming system components that store financial instruments and that are not designed to be operated … ."

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. The Tribe agrees with this revision and the Commission'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. §§ 547.9 - 547.13.

The Tribe acknowledges and appreciates the NIGC's direct response to its concerns 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 Commission noted that "[n]othing in this section prohibits the TGRA from requiring its approval of downloads." 77 Fed. Reg. 32470-71.

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

The Tribe's Discussion Draft comments indicated that the revision to § 547.14(f) – *Scaling algorithms and scaled numbers* requiring any bias in the algorithm to be reported to the TGRA and removing the "1 in 100 million" algorithm bias measurement may be unworkable or simply impractical. The Tribe suggested that the RNG must be capable of measuring and reporting bias to the TGRA; however without a range for measured bias, it seems that requiring any bias to be reported would be an unworkable standard that is not a minimum technical standard. The Tribe suggests that the word "any" be removed and replaced with "material", and that the "material bias" standard detailed in NIGC Bulletin 2008-4 be adopted.

The Commission in the preamble to the Proposed Rule and during a recent regulatory review consultation requested further comments on "why a nonspecific number is not a testable standard."

First, the non-specific number that the Commission is asking the RNG to be capable of reporting to the TGRA is "any bias." That standard means anything greater than "no bias" and is a standard that is not a minimum but a maximum. It is theoretically testable, however since there will always be bias this standard will require continuous reporting to the TGRA, no matter how insignificant the measure of bias may be.

Second, 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 Commission 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. 32470-1 (left hand column, first incomplete paragraph). 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. *See* NIGC Bulletin 2008-4, which 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 Tribe agrees with the NIGC's removal of the word "continually" from § 547.16(c) – *Odds notification* of the Proposed Rule. The Discussion Draft language 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." The Tribe previously noted that this requirement was redundant as 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 ... ."

While the Commission removed the requirement to "continually display" the *Odds notification* at § 547.16(c), there 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 by § 547.16(b). This continuous display portion of this requirement is unnecessary, as the player should be able to *acknowledge* the disclaimer *once* - not continuously. For example, many non-gaming online applications that people use every day require that the application user acknowledge one or more disclaimers prior to using the application.

The Tribe's Discussion Draft comments indicating it had no objection to this language were directed at the understanding that the required notifications need not be made on the video screen, but could be displayed elsewhere on the player interface. In the event the disclaimer is displayed on the video screen, rather than elsewhere on the player interface, the Tribe believes that acknowledging the disclaimers provides the necessary protection to the Tribe, 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?

The Tribe believes that proposed § 547.17 is a vast improvement over the existing regulation. The Tribe agrees with usage of the term "alternate standard" rather than "variance." Additionally the Tribe agrees with the removal of the appeal procedure and the consolidation of all appeals procedures throughout the Commission's regulations into one location at 25 C.F.R. Subchapter H.

The Tribe notes that the proposed rule at § 547.17(b)(3)-(4) – *Chair Review* is an improvement over previous language. The language providing a deemed approval in the event that the Chair does not "approve or object in writing within 60 days" is a vast improvement that simplifies this process.

On behalf of the Seminole Tribe of Florida, we appreciate the opportunity to comment on the Commission's proposed changes to Part 547.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

By: Joseph H. Webster

cc: Jim Shore, Esq.