



Navajo Nation Gaming Enterprise

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April 26, 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 Preliminary Discussion Draft Part 543 - Minimum Internal Control Standards for Class II Gaming

Dear Chairwoman Stevens, Vice-Chairperson Cochran and Commissioner Little:

On behalf of the Navajo Nation Gaming Enterprise (NNGE), we offer the following comments on the National Indian Gaming Commission's (NIGC) Preliminary Discussion Draft Part 543 - Minimum Internal Control Standards (MICS) for Class II Gaming. We understand that the MICs are in draft form and more work needs to be completed prior to their being published as a proposed rule. With this in mind, we raise the following concerns with the Discussion Draft as it stands.

Bingo

We note that there are two sections addressing MICS for bingo: §543.7 – *Class II Gaming System Bingo* and §543.8 – *Manual Bingo*. We have concerns about implementing both of these sections. “Class II Gaming System” is defined as “[A]ll components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games,” “Class II Gaming System Bingo,” however, is not defined. Neither is “Manual Bingo.” Significantly, §543.8 – *Manual Bingo* contains provisions that allow the use of technologic aids. With this, we think it could be hard for tribal gaming operations to determine which MICS section applies to which bingo games at the facility. The way the Discussion Draft is set up, tribal gaming operations would have to

distinguish between a “manual” bingo game being played with technologic aids and a “class II gaming system” bingo game being played with technologic aids. This could prove difficult. All class II bingo games are played on a system regardless of the technology used.

In addition, the Indian Gaming Regulatory Act (IGRA) allows a broad range and various combinations of technologic aids to be used in the play of bingo. There could be a system with an electronic ball draw but otherwise manual or a system with an electronic ball draw and electronic cards or a wholly manual system. Given this, it seems more workable to have one set of operational MICS for bingo. There is no easy and practical way to distinguish controls for bingo based on the type of technologic aid that is being used. We recommend that the NIGC review these sections and consider a different approach to ensure the final provisions work readily on the ground.

System of Internal Controls (SICS)

We object to the System Internal Controls (SICS) requirements in the Discussion Draft as they would add an unnecessary level of federal bureaucratic control. The Discussion Draft would require each gaming operation to develop and implement a SICS that comply with the Tribal Internal Control Standards (TICS) (§543.3(c) and §543.3(h)(1)). Yet, tribes already necessarily have a system of operational controls they use to comply with the TICS and the MICS, and the NIGC already has the authority to ensure that a tribe is meeting the MICS. The SICS would be an additional and unnecessary layer of federal bureaucracy.

Further, we object to the imposition of SICS because they are beyond the NIGC's regulatory authority. The IGRA does not authorize the NIGC to dictate how a tribe must staff its operations, which specific personnel should have which function required by the TICS and MICS, or how they should interact in order to comply with the MICS. The IGRA grants the NIGC the authority to ensure that the MICS are met. It is for the tribes to create a system to meet them. We are concerned that the vagueness in the SICS definition would lead to unauthorized augmented NIGC regulatory power. Discussion Draft §543.3(h)(1) would authorize the NIGC to impose penalties on a tribe for "deficiencies" in its SICS. Yet, the SICS definition lacks specificity to determine what would be proper SICS. With this, the NIGC's authority to penalize a tribe pursuant to Discussion Draft §543.3(h)(1) would be subjective, and the NIGC would be able to threaten a gaming operation unless the operation implemented the MICS in the manner NIGC wants. The SICS would stretch the NIGC's power beyond the NIGC's regulatory authority. We ask that the concept of SICS in the Draft be removed.

Gaming Promotions

The NIGC lacks authority to regulate a promotional activity. A promotional activity is not gaming, as there is no consideration involved. Thus, we do not support the controls in the Discussion Draft for regulating promotional activities.

Surveillance

We believe the requirement in §543.21 to have dedicated camera surveillance of the Class II game server is unnecessary. Often, these servers are located in a secured location, and may even be located off-site in a secured location. Requiring a dedicated camera that provides continuous coverage of an immobile server box in a secured location seems unwarranted.

Agents

The term "agent" as used throughout the MICS should be reviewed. The definition of "agent" in the Discussion Draft requires the agent to be a person. Yet, as used in the Draft the term could be intended to include a computer or system control. For example, in §543.7(d)(4), the MICS would require two agents to verify that the winning pattern has been achieved. As the term is defined, this would appear to require two persons to watch each Class II bingo player station to verify a winning pattern. We do not think this is the NIGC's intent. We recommend that the NIGC review the Discussion Draft carefully and modify it to ensure clarity for when the presence of a person is required and when controls are more appropriately addressed through the bingo system itself.

Technical Standards

The Discussion Draft includes requirements that may implicate the technical specifications of the games and gaming systems being used. Requirements in §543.20 – *MICS for Information Technology and Information Technology Data* may or may not already be addressed in the Technical Standards. We believe that the NIGC should carefully review the Discussion Draft MICS to ensure that technical standards are appropriately included in Part 547 (Minimum Technical Standards For Gaming Equipment Used With The Play of Class II Games). We also think the NIGC should ensure that games authorized for play under the Technical Standards can meet new requirements set forth in the Draft such as requiring that unused services and non-essential ports are disabled.

We appreciate the opportunity to comment on the Discussion Draft for Part 543. We look forward to continuing to work with the NIGC as its regulatory review moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Etcitty', is written over a horizontal line.

Raymond C. Etcitty
General Counsel/Acting COO