



Temecula Band of Luiseño Mission Indians
PECHANGA GAMING COMMISSION

August 13, 2012

National Indian Gaming Commission
1441 L Street, NW
Suite 9100
Washington, DC 20005

Re: NIGC Proposed Rule for 25 CFR Part 543, Class II Minimum Internal Control Standards

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

On behalf of the Pechanga Gaming Commission, I would like to thank the National Indian Gaming Commission ("NIGC") for the opportunity to comment on the NIGC's Proposed Rule for 25 CFR Part 543, the MICS for Class II Gaming. I would also like to express our appreciation again for selecting John Magee, Pechanga Gaming Commissioner, to serve as a member of the NIGC's most recent Tribal Advisory Committee ("TAC") for class II gaming.

As the Tribe expressed in a letter sent earlier this year, we were somewhat disheartened with the manner in which the TAC was utilized. And unfortunately, a primary outcome of this process – the proposed class II MICS – fails to represent the immense amount of time and effort invested by all of Indian country to develop a set of regulations more appropriate for the class II industry.

We note that at the suggestion of the NIGC, the TAC began its work with the drafts developed by the Tribal Gaming Working Group, or the "TGWG." The TGWG's proposed approach to the MICS – the establishment of true minimum standards at the federal level and comprehensive internal control standards at the tribal level – is consistent with the policy goals underlying the Indian Gaming Regulatory Act ("IGRA") and the respective tribal and federal regulatory roles. It is clear from the limited powers and resources delegated to the NIGC by Congress that there was no intent to create an all-inclusive federal regulatory presence in the day-to-day regulation of tribal gaming activities. It would simply be too costly and impracticable to adopt such a top-heavy approach. Instead, Congress placed the regulatory authority squarely in the hands of tribal governments.

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The TAC agreed with the TGWG approach and the two bodies worked hard to separate the true minimums from superfluous standards. Over the years, information has been added to the MICS that while informative, is outside the realm of minimum controls. The TAC/TGWG recommendation that this additional information be removed from the MICS and placed into a set of advisory documents is therefore a legitimate one, and the Tribe was disappointed that the NIGC rejected this approach. As a result, we believe the Proposed Rule both ignores the federal framework and fails to recognize that tribes are the primary regulators of class II gaming. The Tribe continues to support the drafts developed by the TGWG and the TAC as they are better aligned with federal law. Given that a major statutory goal of IGRA is to strengthen the capacity of tribal governments to fully exercise their governmental rights and powers, we encourage the NIGC to abandon the Proposed Rule and rethink its approach.

On a positive note, we thank the NIGC for revising the Discussion Draft such that the MICS contains only one bingo section. Doing so is appropriate both for practical and legal reasons. From a practical perspective, applying different standards to different forms of the game was confusing, and from a legal perspective, it chipped away at the foundation of what makes bingo a class II game. Bingo is bingo regardless of whether it is played electronically or with paper cards and an ink dauber. Accordingly, bingo should remain as one section in any future version of the MICS.

Next, the Tribe reiterates its position that the NIGC does not have the authority to enact and enforce MICS for non-gaming activities, such as promotions, complementaries, and player tracking systems. While the NIGC continues to argue that it is so authorized, this simply is not the case. MICS relating to activities that are ancillary to the conduct of gaming should be removed from the MICS and placed within non-binding guidance documents.

Finally, the Tribe has been participating in the TGWG's latest review of the MICS and understands that a redlined version of the Proposed Rule will be submitted under separate cover. This redlined version contains extensive comments on the Proposed Rule. The Tribe supports these comments and respectfully requests that they be given due consideration.

On behalf of the Pechanga Gaming Commission, I again thank you for the opportunity to provide comment on these important topics. Please let me know if you need any additional information or have any questions.

Sincerely,



Jason Maldonado
Chairman

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