

April 27, 2012

Via Electronic Mail: reg.review@nigc.gov

National Indian Gaming Commission
Attn: Regulatory Review
1441 L Street, NW – Suite 9100
Washington, DC 20005

**RE: Discussion Drafts for 25 CFR Part 543 and 25 CFR Part 547:
Comments Submitted by Board Chairman, Jim Malatare on Behalf of
the S&K Gaming, LLC**

Dear Chairwoman Stevens:

The S&K Gaming, LLC, respectfully submits our comments on the National Indian Gaming Commission (NIGC) discussion drafts for 25 CFR Part 543 (Minimum Internal Control Standards for Class II Games) and 25 CFR Part 547 (Minimum Technical Standards for Gaming Equipment Used in the Play of Class II Games). First, we must commend you for the outstanding job you have done since being appointed as the Chair of the NIGC. Your commitment to consultation with Indian Country is refreshing and reorganizing the NIGC by hiring the most competent staff member that includes Native Americans is especially commendable.

The S&K Gaming, LLC, is a tribally-owned limited liability company formed under tribal law by the Confederated Salish & Kootenai Tribes to oversee the two (2) tribal governmental gaming operations, KwaTaqNuk Resort & Casino and Gray Wolf Peak Casino, on the Flathead Reservation. As the NIGC finalizes the regulatory review process, we ask that you please keep in mind that a viable Class II game is the only leverage many tribes, like the CSKT, have in the wake of the Seminole decision. We also recommend the NIGC continue its work with the DOI and DOJ to develop a collective and coordinated approach which will ensure tribes are in the position that Congress intended when states refuse to negotiate in good faith.

We have worked in collaboration with the CSKT Tribal Gaming Commission, who participated in the Tribal Gaming Work Group (TGWG) discussions and reviews pertaining to both sets of NIGC discussion drafts. We wish to be placed on record that S&K Gaming, LLC supports the recommendations and comments that the TGWG has made as they relate to discussion drafts for both 25 CFR Parts 543 and 547.

In addition, the S&K Gaming LLC, strongly recommends that the NIGC reconvene the Tribal Advisory Committee (TAC) to write Part 543 in a manner that combines Manual and Electronic Bingo regulations together, as well as the technology used to run them. The NIGC discussion drafts for Part 543 is confusing and more importantly, the "bingo is bingo" concept seems to be lost in the proposed language. It is our understanding that the NIGC worked with information/language provided by the TGWG (which we heartily

applaud), but unfortunately, used it in piecemeal fashion, often out of context, creating proposed regulations that are often not practical or just doesn't make any sense. We wholeheartedly recommend that Part 543 be completely re-written.

In addition, we wish to specifically comment on the following:

1. **25 CFR 547.5 (Grandfather provisions):** We are opposed to the newly added grandfather provisions. At a minimum, we ask that you add the following language to 25 CFR 547.5(a)(1): “(i) Nothing in this rule is intended to prohibit the continued use of any Class II Gaming component that was previously certified against the current or any pre-existing Part 547 technical standards or judicial ruling.” Overall, these provisions are patently unfair. We are very concerned that current certifications (grandfather and technical standards in full) would be invalidated and suggest the change in wording to ensure that modified technical standards in this document would apply only to Class II gaming system components submitted after the effective date of this document. We are likewise concerned that these provisions improperly attempt to invalidate court decisions that allowed use of certain games. Neither these standards nor the NIGC should be able to overturn a judicial decision of a federal court. Also, it is impossible for anyone to meet this requirement today because they can no longer be achieved since the time has passed. As well, NIGC’s proposed changes are unquestionably inconsistent with other forms of business regulation. Here, legacy equipment should not be needlessly rendered obsolete, especially that which has been subject to judicial decisions. By including these new requirements, the regulation will operate to render prior laboratory testing results invalid. In short, nothing in this rule is intended to prohibit the continued use of any Class II Gaming component that was previously certified against the grandfather provisions or judicial ruling.
2. **25 CFR 547.2 (Definition of Proprietary Class II System Components):** We recommend that you remove this newly added definition principally because the term is not used anywhere in the technical standards and thus no definition is needed. Under the circumstances, defining this term will only cause confusion.
3. **25 CFR 547.2 (Definition of Reflexive Software):** We recommend that you add the following language to the end of the definition: “or deprives a player of a prize to which the player is otherwise entitled based on the random outcome of the game.” We believe the addition of this language will provide clarity on the intent of the provisions that refer to this term. Further, the added language makes the definition more consistent with industry understanding of reflexive technology. The proposed language operates to clearly identify the harm the provision is intended to prevent.
4. **25 CFR 547.7(d) (Player Interface):** We recommend that you replace the word “display” with “bear” to clarify that this standard applies to hand-held components as well as other components that may not otherwise be able to comply with the “display” requirements.

5. **25 CFR 543.7:** We are very concerned that the Manual and Electronic Bingo are separated. Technology used for Manual vs. Electronic Bingo must not be distinguished. We foresee problems such as:
- **543.7(b)(3):** Requires number of bingo cards from a system; however, the technical standards do not require number of bingo cards; this should be changed to “Amount In” to be consistent with Part 547.
 - **543.7(c)(2):** References \$1200 regarding a payout threshold. This reference should be deleted. Instead a proposal of reference that external regulation should be used, so MICS don't have to change when external regulations change.
 - **543.7(c)(3):** All objects eligible for the draw are available to be drawn prior to the next draw. This is applicable only to paper bingo.
 - **543.7(d)(1)(iv)(E)(3):** Requires two agents to validate and verify payout prior to paying; remember, this section is for "electronic bingo". The language used suggests that two agents must verify and validate EVERY win before it is paid, this would require having two people standing at every player interface to verify every play that included a win. Change the language to require two agents for significant payouts.
 - **543.8(b)(5) - (6):** refers to inventory and storage of physical bingo cards. Instead of the proposed NIGC language, we recommend that management determine exact procedural requirements based on the specific operation needs and size, such as what is logged and when.
6. **25 CFR 543.8:** This Part deals with "Manual Bingo". The proposed NIGC language distinguishes manual and electronic bingo technology, and should never happen. We strongly recommend that manual and electronic bingo technology not be distinguished.
7. **25 CFR 543.12:** The Tribe agrees with the TAC recommendation of deleting "Gaming Promotions" and "Player Tracking" sections completely.
8. **25 CFR 543.13:** The Tribe agrees with the TAC recommendation of deleting the Complimentary Services section completely.