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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 543 -- Minimum Internal Control Standards for Class II Gaming (77 Fed. Reg. 32444 (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 on the National Indian Gaming Commission's ("NIGC") Proposed Rule on 25 C.F.R. Part 543 Minimum Internal Control Standards ("MICS") for Class II Gaming (the "Proposed Rule"). The Proposed Rule is a marked improvement over the Discussion Draft Class II MICS the NIGC circulated for comment earlier this year. The Tribe was pleased to see that the NIGC was responsive to many tribal comments and has considerably improved the Proposed Rule. For example, the Tribe was pleased to note that the NIGC's Proposed Rule appears to be a stand-alone set of standards, and it does not appear that the NIGC is considering supplementing the proposed MICS with lengthy draft "guidance" documents, as had been considered. As the Tribe noted in its comments on the Discussion Draft MICS, the "guidance" documents that had been submitted to the NIGC were inappropriately detailed and prescriptive.

The Tribe also supports the NIGC's decision to consolidate the two sets of bingo MICS into a single set of controls in the Proposed Rule and its statement that "bingo is bingo" and there is no need to separate controls for bingo. The Tribe is also pleased to see that the NIGC has agreed that requiring dedicated camera coverage of the Class II server is unnecessary and does not add to existing controls designed to protect against tampering with the device and its software. The Tribe also supports the NIGC's clarification in the Proposed Rule that a Class II gaming system may serve as the sole verifier and validator for automatic payouts, and there is no need to have an agent verify every automatic payout verified and validated by a Class II gaming system.

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The Tribe has several remaining concerns about the Proposed Rule, however. These are as follows:

Proposed Rule 25 C.F.R. §§ 543.3(h)(1), (2) and 543.2 (SICS)

The Proposed System of Internal Controls (SICS) are duplicative of TICS, ill-defined, and constitute a standardless standard which the NIGC may enforce against a gaming operation without providing any guidance whatsoever as to what they must include. These controls would also usurp the primary role of the TGRAs to enforce its TICS and regulate its gaming operations. As a result, the Tribe opposes the inclusion of the SICS in the Proposed Rule.

Proposed § 543.3(h)(1) provides that the gaming operation must implement a "SICS that complies with the TICS," and that failure to do so will subject the tribal operator to enforcement action by the NIGC. Proposed § 543.3(h)(2) provides that the NIGC can institute enforcement for "deficiencies in the SICS" after allowing the operation for a reasonable time to cure any such "deficiencies."

The problem with this regulatory scheme is that NIGC has not provided any guidance as to what a SICS must contain, other than the vague definition of the term SICS in the definition section. The definition of SICS in the Proposed Rule appears to duplicate what TGRAs implement through their TICS. It defines SICS as follows:

System of Internal Controls (SICS). An overall operational framework for a gaming operation that incorporates principles of independence and segregation of function, and is comprised of written policies, procedures, and standard practices based on overarching regulatory standards specifically designed to create a system of checks and balances to safeguard the integrity of a gaming operation and protect its assets.

This goal already is accomplished through a TGRA's promulgation of the TICS, and the gaming operation's implementation of those TICS. It is thus difficult to determine what, if anything more, would be required in a "SICS." In addition, the TICS, based as they are on the MICS, constitute detailed standards and operational controls the gaming operation can refer to ensure compliance. The vague definition included in the proposed rule for SICS provides no such guidance, and as a result the tribal gaming operation will have no idea what the NIGC will determine constitutes a compliant SICS and what will not. The provisions in §§ 543.3(h)(1) and (2), however, grant the NIGC unfettered discretion to institute an enforcement action against the gaming operation if it believes in its judgment that the SICS are "deficient." Tribes should not be subject to NIGC enforcement against what is essentially a standardless standard. Doing so would be the equivalent of the NIGC requiring tribes to comply with MICS, but not

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promulgating any MICS, while allowing the NIGC to enforce the MICS against a tribe on a case-by-case basis.

The Tribe believes the NIGC should reconsider this proposal, which will lead to an extraordinary level of regulatory uncertainty for tribal gaming operations without adding any level of additional controls.

Proposed Rule 25 C.F.R. § 543.8(g)(8) (Dispute Resolution/Operations)

The Proposed Rule appears to contain a typographical or formatting error at the beginning of page 32453. There is a single line that reads as follows:

"(8) Dispute resolution (h) Operations."

It appears that either the NIGC intended to delete Section (8) in its entirety, and the header was left in place, or that language regarding Dispute resolution was inadvertently omitted from the Proposed Rule. The NIGC should clarify this prior to finalizing the rule, and if there is any language the NIGC is proposing with regard to Dispute Resolution, it must provide notice and an opportunity for comment on the language prior to finalizing the rule.

Proposed Rule 25 C.F.R. § 543.2 (Sufficient Clarity and Surveillance Systems)

The Tribe is concerned that the proposed revisions to the term "sufficient clarity," and the addition of the term "surveillance system," may be interpreted to unreasonably limit technology. As defined in the Proposed Rule, "sufficient clarity" is defined to mean "20 frames per second and at a resolution sufficient to clearly identify the intended activity, person, object or location." The Tribe believes that use of the phrase 20 frames per second may be unintentionally limiting. As a MIC, the control should set forth the goal that the NIGC seeks to achieve, rather than the means of accomplishing that goal. If the goal of the NIGC is, as suggested in the second half of the control, to ensure that the "intended activity, person, object or location" is clearly identified, then the MIC should simply read "at a frames per second rate (or equivalent) and at a resolution sufficient to clearly identify the intended activity, person, object or location." This language would ensure that NIGC's goal was met without limiting the technology used to achieve that goal.

The Tribe is also concerned that the definition of the term "surveillance system" may be similarly limiting. For example, it uses the term "video" throughout, which could be interpreted to mean video tape, rather than digital recorders. The Tribe believes this definition should be revised so as not to include examples of particular forms of surveillance technology that must be used.

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Proposed Rule 25 C.F.R. § 543.20(e)(4) (Information Technology)

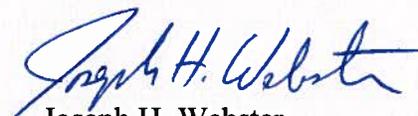
Proposed § 543.20(e)(4) would require that "Communications to and from Network Communications Equipment must be physically secured from unauthorized access." The term "Network Communications Equipment" is defined to include "A device or collection of devices that controls data communication in a system including, but not limited to, cables, switches, hubs, routers, wireless access points, landline telephones and cellular telephones." It is unclear from this proposed control what the NIGC means by ensuring physical security for these devices. How does the NIGC propose that cellular telephones, for example, be physically secured? Additional clarification on the intent and purpose of this control is requested.

The Tribe agrees with the language in Proposed § 543.20(f)(2) that "Unused services and non-essential ports must be disabled whenever possible." The Tribe believes that it is important to have a procedure to find and disable unused services and non-essential ports perceived by the TGRA as a security threat.

Despite the concerns noted above, the Tribe remains encouraged by the approach taken by the NIGC in the Proposed Rule, and supports many of the changes made by the NIGC in these new MICS. As a whole, the Proposed Rule is a marked improvement over the current final (but not yet effective) MICS.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER LLP


By: Joseph H. Webster

cc: Jim Shore, Esq.