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January 31, 2007

National Indian Gaming Commission
Attn: Michael Gross
1441 L Street, NW
Washington, DC 20005
FAX: (202) 632-0045

Re: Comments on Technical Standards for Class II Games

Dear Mr. Gross:

I write on behalf of Artichoke Joe's, a cardroom in San Bruno, California, about 10 miles south of San Francisco, to comment on the proposed rule governing technical standards for class II games on Indian lands. Artichoke Joe's finds itself in competition with a class II Indian casino as a result of the conversion of Casino San Pablo, in the East Bay, from a cardroom into an Indian casino operated by the Lytton Indians. Over the last year, the Lytton have installed over 1,000 gaming machines at Casino San Pablo, about 20 miles north of Oakland, which they claim constitute class II games. These machines have the look and feel of slot machines and are generating revenue estimated at \$420 per day per machine, well over the average for slot machines on the Las Vegas strip. No one else in the state is allowed to operate machines of this type. At least two other tribes are trying to obtain lands in the Bay Area, and presumably intend to operate class II facilities.

On November 1, 2006, we submitted comments on the proposed classification standards to NIGC, which we incorporate herein by reference. The classification standards ignore the provision in IGRA which prohibits "slot machines of any kind" from being classified as class II games.

The proposed technical standards improperly assume that, contrary to the law, machines commonly considered to be slot machines can and will be classified as class II machines. These proposed standards therefore are inconsistent with IGRA. Further, consideration of them is premature. NIGC should determine classification standards before determining the technical standards.

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The proposed rule essentially sets standards for operations that pertain to class III gaming, namely mechanical devices. The Johnson Act prohibits these devices on Indian country, and IGRA provided an exemption only in the case of class III machines operated pursuant to a compact. In governing random number generation, security of software, and similar issues, the rule treats class III gaming as if it were class II.

Indian casinos cater to customers off the reservation, pulling in millions of dollars worth of gambling. In California, even class II casinos offer a type of gambling not allowed to be operated by anyone else ever. For this reason, these activities have substantial impacts off the reservation. These impacts include social and economic effects.

NIGC, in evaluating the Regulatory Flexibility Act, inappropriately focused exclusively on impacts on Indian reservations and did not consider impacts off the reservation. Because Indian groups have opened casinos in urban areas (either off the reservation or by declaring historically non-Indian areas to be new Indian reservations), and because even rural Indian casinos draw patrons from populating areas, the proposed rule will have direct effects on businesses in those areas, such as cardrooms, non-Indian bingo operations, and a substantial number of other food and entertainment venues. For this reason, under the Regulatory Flexibility Act, those small businesses should have had an opportunity to participate in this rulemaking.

Similarly, NIGC, in evaluating compliance with the Small Business Regulatory Enforcement Fairness Act, again focused exclusively on impacts on the Indian reservations and did not consider impacts off the reservation. Due to new locations of Indian facilities close to urban locations, the rule will also have an annual effect on the economy of \$100 million or more. It will also lead to major increases in costs of consumers, in the form of lower pay back rates on the alleged class II machines. The rule will also have an adverse effect on competition. For all these reasons, the rule should be considered a major rule.

For all these reasons, we urge NIGC to withdraw the proposed rule until issues involving the classification standards are resolved. Thank you for your consideration of these comments.

Sincerely,



Alan Titus