



CROW TRIBE EXECUTIVE BRANCH

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November 14, 2006

Honorable Philip Hogen, Chairman
National Indian Gaming Commission
1441 L Street, N.W.
Washington, D.C. 20005

Re: Proposed Rules Class II Classification Standards

Dear Chairman Hogen:

I write on behalf of the Crow Tribe of Indians to provide comment on the National Indian Gaming Commission's (NIGC) proposed rules for Class II Classification Standards and Definitions. Initially I note the Crow Tribe objects to several aspects of the Proposed Rules beginning with a strong objection to the overall process NIGC utilized developing these proposed regulations to date. Based on the Tribe's consultation with NIGC that took place on November 2, 2006 in Billings, Montana, it is readily apparent the NIGC intends to adopt the Proposed Rules as Final, notwithstanding the severe economic damages it will cause Tribes in Montana and across the United States.

Second, the Crow Tribe objects to many of the provisions of the Proposed Rules as arbitrary, capricious and well beyond NIGC's statutory mandate. Specifically, the Crow Tribe's objections are as follows:

Proposed Rule §502.8 Re-definition Effort.

The proposed re-definition of "electromechanical facsimile" is arbitrary and capricious. The Indian Gaming Regulatory Act (IGRA) defines Class II Gaming clearly, broadly and with flexibility. The intent of Congress through IGRA was to provide Tribes the opportunity to take advantage of the modern methods of conducting Class II games. The clear language in the statute regarding technology was certainly intended to provide maximum flexibility for Tribes.

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As a consequence, the Crow Tribe objects to NIGC's proposed definition of "electromechanical facsimile". Further, the Crow Tribe does not concur with NIGC's assertion that bingo, lotto and other games similar to bingo are facsimiles when played in an electronic medium. That assertion is plainly wrong and inconsistent with IGRA. The current definition is plain and understandable. So long as the electronic format broadens participation among players and is not played against the machine, the games are not facsimiles. The proposed definition is completely arbitrary. The Crow Tribe requests its removal from the Proposed Rules.

Proposed Classification Standards.

NIGC's proposed classification standards were intended to clarify the existing regulations. However, the proposed classifications fail that purpose. To the contrary, the proposed classifications renounce most of the accepted alternative forms of Bingo allowed under IGRA and legally affirmed by the courts. NIGC proposes to restrict the game display, ball draw, daubing, prize amounts as well as player interaction. Further, NIGC proposes to significantly slow the play of the game without any rationale. These regulations will render the majority of existing Bingo operations illegal. Further, the regulations will negatively impact the handful of games that are able to remain legal under NIGC's proposed classifications. The Crow Tribe objects to NIGC's restrictions since the restrictions taken individually or as a whole, appear completely arbitrary and capricious. In short, the restrictions contain no reasonable or rational relationship to the purposes of IGRA. Further, the restrictions go completely beyond the duties and responsibilities Congress provided NIGC when it adopted IGRA. IGRA provides the three requirements for Bingo. NIGC has no statutory authority to change the statute through these proposed rules. As a consequence, the Crow Tribe requests the above regulations be removed altogether.

Attempted Redefinition of the Statutory Term "Game of Bingo."

The Crow Tribe is quite concerned with NIGC's attempt to redefine "game of bingo". When Congress adopted IGRA, it placed only three requirements on the game of bingo. Subsequent to IGRA, federal courts have consistently held that the three congressionally imposed requirements constitute the sole legal requirements for the game to qualify as Class II Bingo. NIGC completely disregards the statute and federal court decisions that have provided Tribes the right to operate games "similar to bingo". NIGC's proposed rule is clearly contrary to IGRA.

Proposed Restrictions on the Game of Bingo.

In addition to being contrary to statute, the following proposed restrictions appear arbitrary and without any legal or rationale basis:

1. Required use of five by five grid cards (25 spaces) (§546.4(c));
2. Restricting games to use of ball draws numbered 1-75 (§546.5(a));
3. Complete elimination of “pre-drawn balls” completely prohibiting “Bonanza Bingo”, even as a game similar to Bingo;
4. Mandatory two second time period to play of the Bingo Game, unsupported by current law, (§546.5(i));
5. Required multiple ball releases, prohibiting instantaneous releases and requiring each release to take two seconds again arbitrary and contrary to the statute, (§546.6(c)); and
6. Elimination of the auto-daub and requiring two seconds of daub time before permitting a subsequent release, (§546.5(i).

Removing Tribal Regulators and Replacing with NIGC-Approved Laboratories

The Crow Tribe asserts that Tribal Gaming Commissions are the primary regulating entities in accordance with IGRA, see 25 U.S.C. 2710(b)(1). NIGC proposes to shift the primary regulation responsibility from the Tribal Gaming Commissions directly to NIGC. The proposed regulations directly intrude upon the sovereign right of the Tribe to regulate its Class II operations with limited oversight by NIGC. As proposed, the regulations explicitly exclude both the Crow Tribe and the Crow Gaming Commission from any significant participation in game classification. If adopted, NIGC, with the assistance of NIGC licensed private laboratories would certify games as regulation compliant. In short, the Crow Tribe and its Gaming Commission are completely divested of their previous primary authority. Certainly, Congress never intended NIGC’s authority to completely supplant Tribal regulation with NIGC regulation. If so, Congress would have provided such authority in IGRA. Congress did not.

Proposed Rules Contradict Congressional Intent Under IGRA, Tribal Sovereignty and Due Process Rights.

The Crow Tribe as a Class II Gaming Tribe is additionally concerned that NIGC has provided no grandfather provisions in the proposed regulations. The result is that the regulations, if adopted, will cause the majority of existing games to become immediately illegal, notwithstanding the fact that many of the existing games have been upheld or declared legal by courts and NIGC. At this point, NIGC’s regulations have made expansion or development of Class II Gaming impossible even though Tribal self-determination and economic development were express purposes and goals of IGRA.

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Once again, the proposed regulations appear beyond NIGC's statutory purposes and powers.

The Crow Tribe further objects to the fact that, under the proposed rules, only the NIGC Chairman may object to a classification decision. Tribes have no right to appeal or object to the decision unless the Tribe is defending itself in an enforcement action. Based on this provision, the Tribes have absolutely no right of due process. Certainly, this provision is illegal and beyond IGRA.

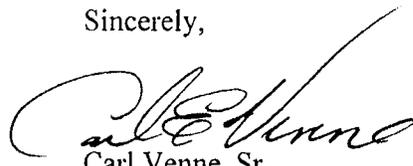
Conclusion

Overall, the Crow Tribe objects to NIGC's proposed regulations for numerous reasons. First, the regulations attempt to arbitrarily redefine established regulatory terms and place limits on what Congress intended to provide the Tribes when it adopted IGRA. Congress clearly provided Tribes the right to utilize electronic equipment or "technological aids," in the operation of Class II Games.

A review of the Legislative History supports the conclusion that Congress intended to provide Tribes the benefit of technology. In fact, Congress specifically noted technology continues to advance. Consequently, Class II Gaming should similarly continue to advance for the benefit of Tribes. As specifically noted in the Senate Report, "*The Committee intends that Tribes be given the opportunity to take advantage of modern methods of conducting Class II Games and the language regarding technology is designed to provide maximum flexibility.*" The proposed regulations completely ignore Congress and deprive Tribes of their intended benefits and rights under IGRA. As described herein, many of the proposed regulations appear arbitrary and capricious. Further, NIGC appears to have acted beyond the powers provided it under IGRA. As a consequence, the Crow Tribe requests NIGC withdraw the proposed rules and work with Tribes and Congress to devise solutions instead of further problems and certain litigation that will arise if and when the proposed rules become final.

Thank you for accepting and considering the comments submitted on behalf of the Crow Tribe of Indians of Montana.

Sincerely,



Carl Venne, Sr.
Chairman of the Crow Tribe of Indians