7/24/06

Dear NIGC Commission:

Please accept the comments & testimony from the Chippewa Cree Tribal of the Rocky Boy's Reservation. I apologize for not presenting this in person but I have a early flight out this morning. My scheduled time to meet w/the Commission is today at 4:15 pm but I must leave earlier. If you have any questions please give Daniel Belcourt, tribal attorney a call at (406) 265-6934. Thank You

Daniel Belcourt

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-4478 or 4210 - Finance Office
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TESTIMONY FOR CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION ON THE PROPOSED RULES FOR CLASS II DEFINITIONS AND CLASSFICATION STANDARDS

PRESENTED TO THE NATIONAL INDIAN GAMING COMMISSION

BY JOHN C. HOULE, CHAIRMAN
CHIPPEWA CREE TRIBE

JULY 24, 2006

SHERATON HOTEL
TACOMA, WASHINGTON

I. INTRODUCTION

- Good morning Mr. Chairman and Commission Members, my name is John C. Houle and I serve as the Chairman for the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana.

- I thank you for the opportunity to present testimony on the proposed rules for Class II Definitions and Classification Standards – on behalf of the Chippewa Cree Tribe, we oppose the proposed regulations as written because they impose greater restrictions on Class II gaming than what currently exists under the law and regulations

- The proposed NIGC regulations threaten the economic viability of Class II gaming by imposing arbitrary requirements to slow the Class II games down, require multiple bingo draws and releases, create significant time delays in bingo games, require a certain size for the bingo cards including half of a video display screen, mandate written notifications that a device is a bingo game and emasculate any electronics in the game of pull tabs

- The NIGC proposes these restrictive regulations even though there are no such restrictions on Class II games within IGRA

- The first thing I wish to impart to the National Indian Gaming Commission is the intent of the Indian Gaming Regulatory Act passed in 1988. The purpose of the Act is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."

- I would like to re-iterate that IGRA's purpose is to promote tribal economic development, self-sufficiency and strong tribal governments and with the publication of these regulations, the NIGC violates the intent and purpose of IGRA by unduly infringing upon tribal governmental gaming

- In Montana, tribes are attempting to improve the economic prosperity of our reservations and our people thru the operation of legitimate tribal governmental gaming operations using both Class II and Class III gaming machines. We have relied on the current interpretation of

Class II games under the IGRA which promotes the technologic advancement of Class II games – not arbitrary, bureaucratic restrictions.

- The Chippewa Cree Tribe, like other tribes in Montana, is currently constructing a new expanded casino relying on the use of Class II gaming devices. The Class II games are the centerpiece of our tribal governmental gaming operation since our Class III compacts with the State of Montana are limited to the same machines that are offered by all casinos in the state.

- In Montana, Class II gaming is critical to our tribal governmental gaming operations since we have no competitive advantage with the other private taverns that offer the same type of gaming throughout the state. Tribes have not been able to negotiate meaningful Class III gaming compacts that do not severely restrict the type and number of games we can offer.

- In Montana, tribal governmental gaming operations have successfully been downgraded or equated to those that are operated as private, individual gaming establishments under state law. This is because tribal governments have

not been afforded the respect and the potential that drafters of IGRA envisioned for us. The State of Montana enjoys unparalleled success in their governmental gaming operations under the State Lottery Act, while tribal governmental gaming operations are equated to that of ordinary operators.

- This must change and we must elevate our legitimate governmental gaming operations to that of the State of Montana's. Class II gaming is making the change for us and allowing tribes to achieve economic prosperity as envisioned by the IGRA. In addition, to the State run lottery profits, the State licenses and profits from well over 20,000 machines they are regulating in Montana.

- Mr. Chairman and members of the Commission, please excuse my frustration, however, the current economic situation on the Rocky Boy's Reservation is as depressed as it has ever been during my lifetime. Our unemployment rate is well over 75%. I have members coming to my office everyday looking for assistance that isn't there. More and more members are returning to the reservation because they cannot make it off the reservation since the situation in our State is equally as depressing.

- I am here today to ask you to leave the Class II gaming regulations alone by not restricting the interpretation of Class II games under the IGRA. This will allow tribes to reach our economic potential in terms of tribal governmental gaming. Our goal is to be as successful as the market will allow us to be, if given the opportunity. So far we have not had the opportunity because of the interpretation the State of Montana takes on gaming activity in Montana that is prohibited from play in our State.

- The Commission holds the key too many changes on our reservation and I ask that you continue to work with us to elevate our tribal governmental gaming operations to that of the State of Montana and the State Lottery Act which enables the State to supplement governmental programs for the citizens of our State. We only ask that tribal governments have the same level playing field as the State of Montana because the Indian Gaming Regulatory Act mandates that we use any profits from governmental gaming to supplement our social and health programs on the reservation.

II. TRIBAL RECOMMENDATIONS

- The NIGC must comply with its own consultation policy and engage in real government-to-government negotiations with tribes over these regulations. The current rulemaking lacks meaningful tribal consultation. In Montana, our tribes are requesting that the NIGC come to our state and consult with our tribes. I hope the Commission will grant this request and hold tribal government-to-government consultations with the tribes in Montana.

- Most troubling is that tribal comments submitted to the NIGC during the drafting process were never made public by the NIGC and it is unclear if any of the comments were considered during the drafting process

- We ask that the agency refrain from placing arbitrary restraints on Class II gaming. Although we have no strong objection to removing the term "house banked" from the definition of a "game similar to bingo," we oppose the proposed definition of "electromechanical facsimile." We disagree with the NIGC's claim that bingo, lotto, and other

games similar to bingo, are facsimiles when played in an electronic medium. The current definition is clear on its face, so long as the electronic format broadens participation among players and is not played against the machine, such games are not facsimiles. Please delete the proposed re-definition.

- The classification standards are arbitrary and contrary to established caselaw. Please delete the proposed restrictions on the game display, ball draw, daubing, prize amounts, and player interaction. These new requirements, rather than clarifying the existing regulations, appear to repudiate most variants of bingo, slows the play of those that remain, and prevents any meaningful electronic play of pull tabs.

- We also object to the redefinition of the statutory term "game of bingo." In enacting IGRA, Congress placed only 3 requirements on a game of bingo. Notably, the federal courts have continuously held that these 3 requirements "constitute the sole *legal* requirements for a game to count as class II bingo." The NIGC's current imposition of additional requirements prohibits the growth

of class II gaming and micromanages tribal business judgment and regulatory responsibilities. The proposed regulations would eliminate virtually all games that Congress intended to allow as "similar to bingo."

- The following proposed provisions place arbitrary restrictions on bingo and games similar to bingo and must be deleted:
    1) the required use of 5 by 5 grid cards (25 spaces) (§546.4(c));
    2) games can only use ball draws numbered from 1 through 75 (§546.5(a));
    3) elimination of "pre-drawn" balls (if allowed to become law, this would prohibit the electronic play of "Bonanza Bingo," even as a game similar to bingo);
    4) mandatory time periods (2 seconds) to play of the bingo game (a requirement wholly unsupportable under current law) (§546.5(i));
    5) the requirement for multiple ball releases; the releases may not be instantaneous, and each release must take 2 seconds (§546.5(i))

- We are also concerned that the regulations fail to resolve the basic problems associated with the NIGC's game classification process and omit a meaningful role for tribal regulators. Under the proposed regulations, independent gaming laboratories, as licensed by the Commission, would certify games as complying with the regulations. Without "grandfathering," few, if any, existing games would comply the proposed regulations, even those already approved by courts or by the NIGC itself. In the interests of fairness, the NIGC should permanently "grandfather" all of the games it has approved as well as the games that the Federal Courts have approved.

- Finally, under the proposed rules, only the NIGC Chairman may object to a classification decision. Tribes have no such option, except in defense of an enforcement action. Laboratories must be approved annually, and may lose that approval if the NIGC is dissatisfied with their certification decisions. As the primary regulators of class II gaming, Tribes should be afforded the opportunity to challenge such an opinion on a government-to-government basis, without having to first object to the enforcement action.

- In sum, the regulations arbitrarily redefine established regulatory terms and limit what Congress clearly intended to permit. Under IGRA, Congress clearly permits the use of electronic equipment, or "technologic aids," in the play of class II games. Legislative history shows that Congress was alert to the fact that technology would continue to advance, and that class II gaming likewise should be allowed to evolve and grow through technological advancement. As 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."

III. CONCLUSION

- Mr. Chairman and Commission members, I thank you for allowing the Tribe to present our concerns and recommendations. By working together I firmly believe we can come up with solutions to elevate the economic conditions on our respective reservations which definitely

will impact the prosperity of the State of Montana directly and indirectly

- Mr. Chairman and Commissioners, the NIGC should honor both the spirit and the language of IGRA, the Tribes' hard-fought federal court victories, and the NIGC's own regulatory framework: most prominently, the current 2002 definition regulations. The Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana respectfully urges the NIGC to give these comments serious consideration and refrain from placing unwarranted restrictions on class II gaming. Thank you.