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NATIONAL INDIAN GAMING COMMISSION
CLASS II CLASSIFICATION STANDARDS
GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING
WITH THE CADDO NATION TRIBE
HELD IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 8, 2006

REPORTED BY: TRENA K. BLOYE, CSR
NIGC CONSULTATIONS - CADDO NATION TRIBE

1 A P P E A R A N C E S

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4 NATIONAL INDIAN GAMING COMMISSION:

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6 Philip N. Hogen, Chairman

7 Cloyce "Chuck" V. Choney, Commissioner

8 Natalie Hemlock, Special Assistant to the
9 Commission

10 Penny Coleman, Acting General Counsel

11 Michael Gross, Senior Attorney

12 John R. Hay, Staff Attorney

13 Joseph M. Valandra, Chief of Staff

14 Tim Harper, Region Chief, Region V

15 Jeanette Ross, Field Investigator

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17

18 ON BEHALF OF THE CADDO NATION TRIBE:

19

20 Mary Lou Davis

21 Richard Grellner, Attorney

22 Todd Goodman

23 Joyce Hines

24

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1 COMMISSIONER CHONEY: Welcome.

2 Just for the record, our proceedings will be
3 recorded. We have a court reporter here. And
4 it will be a matter of public record. The
5 fact is we are going to put these proceedings
6 on our website and also make a transcription.
7 So if anyone wishes to send in for these
8 transcripts, they can do so. I'm sure there
9 will probably be some organizations that's
10 going to pay to have all of these transcripts
11 sent to them, because they want to see what
12 the questions and comments that were made of
13 all of the set of five consultation hearings
14 we have had so far.

15 But with that introduction, I
16 would like to introduce Chairman Hogen,
17 National Indian Gaming Commission. I am Chuck
18 Choney, Commissioner with the National Indian
19 Gaming Commission.

20 I would like to introduce Penny
21 Coleman, our acting general counsel. Seated
22 next to her is Michael Gross, senior attorney
23 from our Office of General Counsel. Sitting
24 on the far left is Tim Harper, the region
25 director of our Tulsa region.

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1 Sitting next to me is Natalie
2 Hemlock. She is special assistant to the

3 commission. Joe Valandra, our chief of staff,
4 just stepped out. He will be returning
5 shortly. Jeanette Ross, also from our region
6 headquarters in Tulsa. And then John Hay,
7 senior attorney from our Office of General
8 Counsel.

9 So, if at any time during these
10 proceedings, you know, if you would wish to
11 bring up anything other than the Class II
12 matter at hand, feel free to let us know and
13 we will conclude and go off record. So, if
14 you could introduce yourselves for the record.

15 MS. DAVIS: Mary Lou Davis,
16 treasurer, Caddo Tribe. Todd Goodman, gaming
17 liaison, Caddo Tribe. Joyce Hines, vice chair
18 for the Caddo Nation.

19 MR. GRELLNER: I'm Rick Grellner,
20 the attorney for the Caddo Nation.

21 CHAIRMAN HOGEN: Welcome. We are
22 conducting these government-to-government
23 consultations pursuant to NIGC publication in
24 the "Federal Register" of a proposal to amend
25 the definitions and to promulgate some

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1 regulations that would be used to better
2 distinguish the difference between Class II
3 electronic and technologic games that tribes
4 can conduct without compacts and those

5 electronic facsimiles of games of chance, slot
6 machines of any kind that would require a
7 tribe to have only with a compact.

8 We began this exercise, actually
9 years ago. We have had a tribal advisory
10 committee help us draft these. And this
11 spring we decided we just can't wait any
12 longer. There is too great a need to bring
13 clarity here, so we published those proposed
14 regulations. Since that time we have been on
15 the consultation circuit consulting with
16 tribes.

17 We are here in Oklahoma here
18 today, the 8th of August, 2006, in Oklahoma
19 City. And when we are done with this, we are
20 going back to Washington. And on the 19th of
21 September we will have a public hearing. We
22 will have various panels that will appear
23 before the commission. Not only will we have
24 tribal points of view represented there, but
25 we will have manufacturers and vendors of

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1 gaming machines, as well as some other
2 regulators and states as well.

3 The comment period on these
4 regulations, as well as some technical
5 standards that we are publishing in the

6 "Federal Register" on Friday will be kept open
7 until the 30th of September. So, after you
8 have had an opportunity to look at those, and
9 they will look very much like the proposals we
10 published on our website here more than a year
11 ago, as well as additional comments you might
12 have regarding these classification standards,
13 we would be very interested in hearing from
14 you.

15 So that's what we're doing. We
16 are very eager to get additional input from
17 tribes. You know that you folks have been in
18 the gaming business, that you are currently
19 out of the gaming business, that you are
20 looking forward to getting back in. And if we
21 can accommodate that, we want to try and help
22 you get there the right way.

23 So, having said that, we will turn
24 it over to you, and please share your thoughts
25 with us.

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1 MR. GRELLNER: This is the
2 proposal, obviously, that we are looking at
3 behind you all on the changes, plus everything
4 that's been published in the --

5 CHAIRMAN HOGEN: Yeah.

6 MR. GRELLNER: So you guys know
7 it's basically what is and what isn't Class II

8 has been in flux for years. There has been
9 regulations going on in '93, and there was one
10 that was published in 2002. In my opinion, it
11 just confused things more than they originally
12 were.

13 But this one seems to be on the
14 path to clear things up. And, you know,
15 during all this time, all these states have
16 now went to Class III. Most all of them are
17 Class III, so the issue is not near -- it's a
18 big issue for sovereignty and leverage and
19 negotiation things. But from strictly
20 economics, the tribes now tend to have
21 options.

22 So, in order to save the issue for
23 going forward, there needs to be
24 clarification, and that's what they are
25 proposing to do.

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1 And what I see is the regulation
2 is set up to kind of, you know, put together
3 things that have happened legally over the
4 past six or eight or ten years and clarify and
5 put them into one document. So that's kind of
6 what it seems to be appearing to do here.
7 Separate the wheat from the shaft between what
8 is a Class II game and what isn't.

9 There's been need for that all
10 along. The question for this is whether or
11 not this is the right way to do it. I think
12 everybody agrees this is one way to do it.

13 So that's kind of the bottom line.

14 MR. GOODMAN: Do you expect to
15 have a more definitive answer after the 19th?

16 CHAIRMAN HOGEN: Well, after the
17 comment period closes, basically, we will
18 close the door and look at all that's been
19 said to us and all that's been written to us
20 and look again at the Indian Gaming Regulatory
21 Act, the legislative history, the cases that
22 have addressed these machines and decide,
23 first of all, are we going to go forward with
24 these regs and, if so, what will they look
25 like in their final form.

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1 You know, we are getting criticism
2 some tribes saying we are slowing things down
3 too much, that we aren't going to allow tribes
4 to take advantage of technology. We are
5 concerned about that. We don't want to take
6 us back to the stone age.

7 The bingo machine that was
8 addressed in most of the court cases that
9 talked about this was the Mega Mania machine
10 that started here in Oklahoma and was kind of

11 a clunky bingo terminal that had four bingo
12 cards on it. And you couldn't start playing
13 until there were twelve players playing the
14 game. And they are able to link bingo halls
15 around the state and even the nation together.
16 And it took about a minute to play that game.
17 All you saw was bingo. You didn't see any
18 bells or whistles or slot machine reels or
19 whatever.

20 And the Justice Department said,
21 "Hey, wait a minute. That's a gambling device
22 that the Johnson Act says you can't have
23 unless you have a compact." So they took the
24 tribes to court, and the tribes won one. The
25 Court said the tribes are right, this is an

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1 aid to help them play, but you can't play the
2 game if the players aren't there playing.
3 It's kind of like, you know, paper bingo. If
4 you don't do your card, you are going to miss
5 out and somebody else is going to win.

6 And the game that could be played
7 under these regulations that we have written
8 will take a little longer than a slot machine.
9 That is, a slot machine, you pull the lever,
10 you push a button, and the game is over. Here
11 you have to get involved. And it can take up

12 to ten seconds to play each one of these
13 games. You can play six of these games in the
14 time it took you to play one Mega Mania game.
15 And you could play if just two people were
16 playing. You don't have to wait for twelve.

17 We don't think we are slowing
18 things down too much. But the whole reason
19 that drives why it takes longer to do this
20 than the slot machine is player participation.
21 The players outside the box, so to speak, are
22 critical of the game.

23 If you just push the button once,
24 and it's all over, then I think you have
25 become a facsimile of a game of chance. It's

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1 all automation, it's not player participation.
2 So, have we gone too far? Have we gone far
3 enough? Those are the kinds of things we are
4 dealing with. We are eager to consider what
5 tribes think about this and the impact this
6 will have.

7 We know that Oklahoma tribes have
8 negotiated Class III compacts. We know there
9 will be a time when those come to an end and
10 they will have to go back to the table to
11 negotiate again. We think they will be better
12 served if it is clear what you want to do. So
13 you won't be investing millions of dollars in

14 equipment and somebody comes along and says,
15 "Hey, that's against the rules. You can't do
16 that."

17 Another thing I'm certain of is as
18 soon as the ink is dry on anything that we
19 finalize, somebody is going to have to look at
20 it again, because technology will move along
21 and you have to keep up with it. But that's
22 the nature of this business.

23 MS. DAVIS: Well, we're just
24 interested in expediting everything that comes
25 along, because this is really our first big

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1 thing into gaming. And we need to get it
2 going. We don't want it slowed down. We're
3 not particularly interested whether the
4 electronic is on or off. We want, when
5 something comes, like our management contract
6 and those sorts of things, those are covered
7 as fast as possible, approved, so we can get
8 on with getting our hall built.

9 CHAIRMAN HOGEN: Well, we are very
10 eager to get this part of it done, because
11 then we can spend more time focusing on
12 management contracts and things like that.

13 But this has been an issue that's
14 been plaguing NIGC and the Indian gaming

15 industry for literally years. And it's time
16 to --

17 MR. GOODMAN: This administration
18 and the DOJ have been all over the Johnson
19 Act, too, with this, haven't they?

20 CHAIRMAN HOGEN: Right. The
21 Johnson Act is administered by the Department
22 of Justice, and they just this spring
23 announced they are seeking an amendment to the
24 Johnson Act to carve out a legitimate place
25 for these Class II electronic and technologic

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1 aids.

2 But those proposals then direct
3 the National Indian Gaming Commission to write
4 regulations. So we decided, "Let's get on
5 with it. Let's write these regulations,
6 because this has long become a law that
7 requires it." And even if it doesn't, I think
8 this needs to be done.

9 MR. GOODMAN: Are you getting help
10 and support from the vendors in terms of
11 clarifying this? I would think it would help
12 streamline their operations as well.

13 CHAIRMAN HOGEN: Yeah. The
14 vendors very much would like to know they need
15 to build to. They hope that they build
16 something that a lot of people will buy. They

17 don't want to build something that's a
18 dinosaur and nobody will want to invest in it.

19 You know, getting to this place
20 where we are now was, in large part, by
21 looking at proposals the vendors sent to us
22 and said, "Please give us an advisory opinion.
23 Tell us we can play this." So we would
24 struggle and argue with them, and they change
25 it. Eventually, we come up with an advisory

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1 opinion.

2 The next week, we get a new one,
3 and it would have a wrinkle in it. And we
4 thought, "Well, we didn't think of that when
5 we did that last one." We just need a set of
6 rules to go by. We think everybody would be
7 served.

8 MR. GRELLNER: We have kind of
9 discussed this. I can encapsulate it a little
10 bit. Obviously, clarification is important.
11 If the state is not getting any money and we
12 don't make them a partner, because we are
13 arguing everything out here is Class II,
14 eventually they are going to say, "Well, then
15 why are we giving you Class III." So that
16 argument is going on now. Obviously,
17 clarification needs to happen.

18 But Wake (ph.), the guy that was
19 one of the plaintiff's in the Lucky Tab case,
20 to me, this all goes back ten or twelve years
21 ago in the report. What we have done is we
22 have gotten off on what we can have
23 electronically and how fast they can play and
24 all of that. And the real issue came down to,
25 if you read the report, what are the

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1 fundamental characteristics of the games. You
2 guys have tried to always put that in the
3 regulation, player participation, and all of
4 that.

5 But what I think we have missed on
6 the whole thing all along is the reason why
7 the Johnson Act required Class III compacts is
8 in the report in saying the Class II games can
9 have the aid as long as the fundamental
10 characteristics were there, was that what was
11 important about the Johnson Act in this
12 stand-alone unit was that it was a dispenser.
13 And that if it was a dispenser, as dispensers
14 are defined, then it couldn't meet the
15 definition of the fundamental characteristic
16 of the game. We know that was overturned in
17 Lucky Tabs. We were all part of that issue.

18 But it seems to me that now what
19 we're trying to do is reconcile that decision

20 with the other decision, which is Mega Mania,
21 which was put, in our opinion, twelve years
22 ago in a live game. Those are real people in
23 our back room that were calling balls in
24 supposedly real time. That changes.

25 Now what we are trying to do is

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1 say, "Okay. We can have a bingo game that is
2 fully electronic that is a dispenser. But our
3 pull-tab games have to be on paper." To me,
4 we are trying to reconcile two decisions that
5 aren't really reconcilable, when at the end of
6 the day the real issue was all Class II games
7 have to be labor intensive, because they have
8 got to be one human to another in real time,
9 186,000 miles per second. I know that we are
10 all on the path on that.

11 But to me it seems like a lot of
12 this could be dealt with. We can just say a
13 dispenser is a facsimile and define it as a
14 dispenser. We're not headed that way. I
15 don't think we're going to get that way. But
16 at the end of the day, if we can make Class II
17 about labor, and even if we are spending 20,
18 25 percent of our net on labor, the players
19 would still play the game. We would just have
20 a lot of people in the back room delivering

21 the game pieces through a server or whatever.
22 It would just be a live game that's very labor
23 intensive instead of worrying about the
24 player's perception all the time.

25 That, to me, seems to be where
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1 this all went somewhere. We were right in
2 Mega Mania. We may have been wrong in Lucky
3 Tab. And at the end of the day, who knows
4 where we're headed. But that's why Justice
5 can't give up on the decision, because it is
6 so fundamental to what is the Johnson Act. I
7 don't know if can walk back from that, but we
8 are where we are.

9 CHAIRMAN HOGEN: And the pieces
10 don't always fit neatly together, and that
11 complicates our challenge. When congress said
12 no electronic facsimiles of games of chance as
13 Class II, that covers a lot of territory. And
14 we're trying to carve out just what it means
15 and what it doesn't mean. There's no question
16 you can play pull-tabs probably better, safer
17 and so forth if you do it all electronically.
18 And pull-tabs start out in electronic form on
19 computer these days.

20 But, nevertheless, when congress
21 wrote those magic words, if you do it all
22 electronically, it becomes a facsimile

23 electronic game of chance, and that's when you
24 have got to back up to include that tangible
25 media as some of the courts have said. So

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1 we're trying to put it all together and we'll
2 be working on it.

3 MR. GRELLNER: Yeah. It's not
4 easy.

5 CHAIRMAN HOGEN: Any other
6 comments or questions for us?

7 (No response.)

8 CHAIRMAN HOGEN: All right.
9 Well, we thank you very much for meeting with
10 us. Keep your eye on what's going on, because
11 it will be important to you.

12 MR. GRELLNER: Are there any other
13 issues?

14 MS. DAVIS: Well, we have some
15 concerns, because we are just trying to get
16 going.

17 MS. COLEMAN: Before we go into
18 those concerns, why don't we go off the
19 record.

20 CHAIRMAN HOGEN: Okay. So we will
21 bring to conclusion this consultation session
22 relating to classification.

23 (Proceedings concluded.)

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C E R T I F I C A T E

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4 STATE OF OKLAHOMA)
) SS:
5 COUNTY OF OKLAHOMA)

6 I, Trena K. Bloye, Certified Shorthand
7 Reporter for the State of Oklahoma, certify that the
8 foregoing transcript of proceedings taken by me in
9 stenotype and thereafter transcribed is a true and
10 correct transcript of the proceedings; that they
11 were taken on August 8, 2006, at the Cox Convention
12 Center, Oklahoma City, State of Oklahoma; that I am
13 not an attorney for nor a relative of any said
14 parties, or otherwise interested in the event of
15 said action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and seal of office on this the 11th day of
18 August, 2006.

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Trena K. Bloye
Certified Shorthand Reporter
for the State of Oklahoma

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