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NATIONAL INDIAN GAMING COMMISSION

CLASS II CLASSIFICATION STANDARDS

GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

WITH THE CHOCTAW NATION

HELD IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 8, 2006

22

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25 REPORTED BY: TRENA K. BLOYE, CSR

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1 APPEARANCES

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4 NATIONAL INDIAN GAMING COMMISSION:

5

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 Marcy Pate Olber, Senior Field Investigator

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18 ON BEHALF OF THE CHOCTAW NATION:

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20 Mike Bailey, Assistant Chief

21 Paula Penz, Gaming Commissioner

22 Tommy Thomas

23 Tony Thorton

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1 COMMISSIONER CHONEY: For the
2 record, we are going to record these
3 proceedings. It will be a matter of public
4 record that we will eventually put on our
5 website. The transcripts will also be
6 available to anyone who wishes to send in for,
7 which I am sure there is going to be
8 organizations that's going to get everybody's
9 comments and questions on all of our tribal
10 consultations we have been having.

11 Also for the record, we would like
12 to introduce Phil Hogen. He is the chairman
13 of the National Indian Gaming Commission. My

14 name is Chuck Choney, commissioner with the
15 National Indian Gaming Commission. This is a
16 tribal consultation hearing in Oklahoma City
17 on this date August 8th of 2006.

18 Also by way of introduction, this
19 is Michael Gross from the Office of General
20 Counsel. We have Tim Harper, who is the
21 region director from the Tulsa region, and
22 Marci Pate Ober, a senior field investigator.

23 We have John Hay from the Office
24 of General Counsel, and Joe Valandra, our
25 chief of staff. And sitting next to me is

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1 Natalie Hemlock, an assistant to the
2 commission.

3 Who is going to be your
4 spokesperson?

5 MR. BAILEY: There is going to be
6 two if you don't mind.

7 COMMISSIONER CHONEY: Okay. If
8 you could introduce yourselves, you know, for
9 the record.

10 MR. BAILEY: Mike Bailey,
11 assistant chief, Choctaw Nation of Oklahoma.

12 MS. PENZ: I'm Paula Penz, Gaming
13 Commissioner for the Choctaw Nation of
14 Oklahoma.

15 MR. THOMAS: And I won't be a
16 spokesman. I'm Tommy Thomas. I represent the
17 Choctaw Nation as their lobbyist.

18 COMMISSIONER CHONEY: Chairman
19 Hogen?

20 CHAIRMAN HOGEN: Okay. We will
21 commence our government-to-government
22 consultation here between NIGC and the Choctaw
23 Nation of Oklahoma. We're here pursuant to
24 notice National Gaming Commission published in
25 the "Federal Register" on the 25th of May

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1 wherein we proposed amending some of the
2 definitions and proposed a set of
3 classification regulations that will help
4 distinguish the differences between electronic
5 and technological aides to the play of Class

6 II gaming, which tribes can play without
7 compacts, of course, and those slot machines
8 of any kind and electronic and technologic
9 facsimiles of games of chance, which require
10 Class III compacts.

11 We know this is a longstanding
12 issue that's had a high profile in Oklahoma.
13 It is what can you do and what can't you do
14 with or without a compact. We know that
15 Choctaws have been the forefront here in terms
16 of gaming development in Oklahoma. We know
17 you have your new facility at Durant. And
18 things are getting bigger and better in terms
19 of gaming for Choctaw. We are very interested
20 in hearing your comments, your questions with
21 respect to what we have proposed.

22 Once we have heard from tribes
23 we're going to have a public hearing in
24 Washington, DC, on the 19th of September where
25 we will have several panels of presenters,

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1 tribal panels, probably have some

2 representatives from state governments,
3 manufacturers and vendors, and try to get all
4 of this information before us. And then we
5 will close the door, look over the comments we
6 have received, the advice we have been given,
7 and decide are we going to go forward with any
8 regulations and, if so, what they will look
9 like.

10 Hopefully we can conclude this
11 long exercise this fall. We have been at it
12 for awhile and there have been times when we
13 have moved forward and times when we have kind
14 of spun our wheels. But we now have these
15 proposed and we are interested in hearing your
16 views on the subjects.

17 MS. PENZ: Yeah. I think we're
18 probably like any tribe in Oklahoma. We don't
19 feel like this is going the right direction
20 that we would like for it to go, just because
21 I think that we are taking a major step back
22 in Class II development with the new
23 regulations.

24 You know, I think you are almost

25 going to have a game that may not even be

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1 viable to play for our customers, to offer to
2 our customers. So, I think that's definitely
3 something we are always concerned about. We
4 have a compact now, which we are thankful for.
5 You know, we know at some point that compact
6 is going to be ended.

7 You know, I think as a tribal
8 regulator probably one of the more frustrating
9 things for us is, you know, just like you all
10 sorting through all of these regulations --
11 and I can't imagine your job to write the
12 regulations -- but the constant
13 interpretations that everybody has that's
14 involved. And, you know, it's so frustrating
15 because the last commission, they made the
16 changes that they thought were best at that
17 time. You know, they interpreted IGRA a
18 certain way and, you know, the way that they
19 thought was best. And then, you know, now we
20 have got new commissioners, and they have come

21 in and, "No, this is the way we interpret it
22 and we are going to change things the way the
23 previous commission has done." And, you know,
24 whose to say the next commission is not going
25 to make their own changes.

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1 So it's really hard as a regulator
2 to ever, you know, form your own, kind of,
3 opinion or stance about something, when you,
4 you know, I consider you guys the ultimate
5 regulators, and you guys can't even make a
6 determination and kind of stick with it. I
7 think that's probably a hard thing.

8 We don't like the direction that
9 these regulations are going. You know, but
10 with that said, you know, and I don't know
11 there's a whole lot we can do about it. We
12 have a compact and we know we can start
13 playing more compact games. So that's kind of
14 what I feel about it.

15 MR. BAILEY: Well, I think one of
16 the big issues that we have when we get into

17 it, and I don't know how you even start when
18 you line up and everybody lines up with
19 attorneys and you argue whether this is a
20 Class II or Class III, and there is really
21 nothing to go by. And I know that's what
22 you're trying to prevent.

23 We are very fortunate of the fact
24 that we have a compact and we are grateful of
25 that. One thing we have to be cautious of,

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1 and as your role of representing Indian tribes
2 is not to set us up where when that compact
3 comes due again, we have no alternative but to
4 let the negotiations go however the state
5 wants. We support the state. We are grateful
6 where our money is going to in education, and
7 we supported that all the way from the house,
8 the senate, to a vote of the people. And it
9 did pass, and it passed at a good majority
10 vote.

11 I think one of the things you may
12 consider to protect us on this, and I really

13 don't care what you do with which games or
14 what, because we have an avenue now that we
15 already have sat down with the state and a
16 means to allow and to get the better games on
17 the floor. We are doing very well. We are
18 vere grateful for that. And we are very
19 thankful it's helping our school children,
20 which it is.

21 But if you could think about, as
22 you are dealing with the McCain bill and Pombo
23 bill, and all of those things that are
24 happening right now, to figure out somewhere
25 down the line in all of your dealings to

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1 figure out a way where when you come back to
2 renegotiations with the tribe that there is
3 some way there could be a cap where they can't
4 jump from a certain percentage and maybe
5 triple it or something. That would be
6 devastating for the tribes.

7 We put everything else in these
8 laws. We should have something in there to

9 where there is a cap where it can't just go
10 over a certain percentage. And I don't know
11 what that is. But that's something in the
12 minds that we have at the table can figure out
13 to protect us down the road. If that
14 were there, I wouldn't worry about this at
15 all.

16 My concern is we diminish the game
17 to the point that nobody plays it. And then
18 if you don't reach a compact with the state,
19 then you're dead, because you have got a game
20 that nobody will play. Or the other
21 alternative would be you give away all the
22 dollars you profit where you couldn't make
23 anything on that. And I think it's all about
24 a dollar. So that concerns me tremendously.

25 You do a wonderful job. I don't

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1 know how you decide whether this is one way
2 or -- you can't. And it's almost like
3 everybody lines up. And the biggest problem
4 we have got out there are the lawyers out

5 there that are trying to come in with vendors
6 and everybody else. And we are not going to
7 let them from our standpoint, because of the
8 fact that we have another alternative.

9 But we just ask that you protect
10 us down the road and not let something happen
11 where we get the percentages so high that we
12 can't reach that. And then the other
13 alternative is we come back to a game that you
14 go out here like you play in a restaurant with
15 a crane and a toy that nobody is going to
16 play.

17 Let me tell you, our tribe has
18 benefited tremendously. We have no argument
19 where the money has to go in the areas of
20 health and education. That's what we're all
21 about. It's working very well. And we're
22 pushing to get all of our games compacted with
23 the state.

24 Because I feel like if we have the
25 option to do that, and we are arguing about a

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1 game down here that's far inferior to that, we
2 are going to make more money by giving part of
3 it away and helping the school children. And
4 I think it all boils down either you give the
5 money to the children at the schools or you
6 give the money to attorneys.

7 So if you can help us, we would
8 support you on this and say nothing else about
9 it, if we could figure out some way to cap
10 them to where nobody takes advantage of us 15
11 years down the road.

12 CHAIRMAN HOGEN: Well, we share
13 your concerns about the future. Right now my
14 mindset is that a good way to do that is to
15 bring some clarity to this area that has been
16 so controversial, and perhaps so
17 misunderstood.

18 Right now tribes that don't have
19 anyplace to go, and there are places where
20 they can't get compacts, are going to be
21 investing millions of dollars in gaming
22 equipment, Class II gaming equipment. And
23 maybe Oklahoma tribes will be there again when

24 these compacts expire, we don't know. But I
25 am hopeful that the day will come when

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1 everybody in that situation will know for
2 certain that they are making a good
3 investment, that somebody isn't going to come
4 along the next day and say, "Sorry, that
5 doesn't comply with the rules. You are out of
6 business."

7 Now, as you point out, commissions
8 can change and rules can change. Over the
9 past six or seven years we've had six members
10 of the National Indian Gaming Commission.
11 Four of those members have said, "We think
12 that regulation change that was made in 2002
13 was wrong," that is when it said you can be an
14 electronic facsimile of a game of chance and
15 still be Class II if it's bingo.

16 I don't feel that's consistent
17 with what the Indian Gaming Regulatory Act
18 says and the legislative history and so forth
19 was. But I don't think, you know, taking that

20 position means you can't have a fast, fun,
21 profitable Class II game.

22 The cases that, you know, much of
23 this argument is focused on dealt mainly with
24 the Mega Mania game, which had its birth place
25 in Oklahoma. And as you probably know, it was

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1 kind of a clunky terminal that had four bingo
2 cards and you had to have twelve people to
3 play and it took about a minute to play the
4 game. People loved it. They played it as
5 fast as they could.

6 What we are proposing would permit
7 games that could be played in as little as ten
8 seconds that you can play with as few as two
9 people. We don't think that's taking Class II
10 gaming back to the stone age. You know, I
11 think an electronic facsimile of a game of
12 chance is a game where the machine basically
13 does it all. It replicates all of the
14 functions.

15 I think you have to have the

16 players involved. I think that's what the
17 cases said. It can't be in the machine. It's
18 got to be just aiding the players. If you
19 just touch the button once and the machine
20 automates everything else, I think that's a
21 facsimile.

22 But if you step back a little bit,
23 allow the players, require the players to
24 participate. If they are asleep at the wheel,
25 if they don't do their card just like those

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1 paper bingo games you used to have people play
2 in droves, you can lose the game, you lose
3 your chance.

4 So I think that concept needs to
5 be preserved. And I think it can be and still
6 have a fast, fun game. But where we draw that
7 last line will be important.

8 And we know that a day may come
9 when tribes will have to go back to the
10 negotiating table with the states, and I think
11 clarity will help. In terms of setting that

12 limit, where do you draw the line as to how
13 much states can get? I think congress thought
14 they did that when they wrote the act in 1988.
15 They said, "States, you can't tax Indian
16 gaming." Well, then this idea of revenue
17 sharing came along and said, "Well, it's not
18 taxation. This is kind of a quid pro quo. We
19 will give you something. You can have the
20 only game in town, but we have got to get part
21 of the action."

22 And so I expect there will come a
23 time when congress looks at that. This is a
24 point in time, first time in 15 years there's
25 been a real serious effort to make some

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1 substantive changes to the Indian Gaming
2 Regulatory Act with the legislation that's
3 before the United States Senate right now. It
4 won't dramatically change things, but it will
5 make some changes.

6 And I expect those windows of
7 opportunity will open again, and maybe

8 congress will say something more specific
9 about revenue sharing. Either you can't do it
10 or you can do it, but you can't go beyond such
11 and such point. And I think Class II is
12 important to be there, be available so that
13 there is a fallback position for tribes should
14 states be too hard to deal with.

15 Finally, if a state is going to be
16 too greedy and say, "We won't come to the
17 table unless or until you give us so much of
18 the action," I think you come to a point where
19 they are not negotiating in good faith. While
20 the Seminole decision by the United States
21 Supreme Court took away one of the very
22 valuable tools of tribes, I think we are
23 seeing that secretarial procedures, whereby
24 the Secretary of the Interior in the absence
25 of, you know, getting a court to order a state

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1 to do something will be an avenue for tribes
2 to look to. But that's still being written as
3 we speak. We will see if that is effective as

4 time goes by.

5 COMMISSIONER CHONEY: I would like
6 to remark on your concern about what happens
7 when we leave. In reality, ten years ago,
8 what the advent of all of this computer
9 technology that kind of muddied all of this
10 area, this is one that these changes should
11 have been made ten years ago, but they
12 weren't. There was an attempt sometime after
13 that, and that's what we're trying to do now.

14 Mine, Chairman Hogen's terms were
15 up this past December. I should be at home
16 right now sitting in front of the
17 air-conditioner; however, we are still here
18 trying to see this initiative through. And
19 we're going to stay until it gets through.
20 We're going to stay not only until it goes
21 through, but we're going to stay until it
22 looks like it's going to work. And then if,
23 by some chance, it's obvious that it's not
24 going to work, we will take some corrective
25 action.

1 Now, once we leave, we're not the
2 commission anymore. The new commissioners
3 come in, just like your position. When you
4 leave your position, your successor comes in,
5 whatever they do is out of your hands. Like
6 when we leave, the new commissioners come in,
7 if they want to change everything around, it's
8 their commission. If they want to leave it as
9 is because it's working again, that's them.

10 So, I wish we could pass a
11 regulation that, "Hey, this is going to be it
12 forever," but, unfortunately, we can't.

13 MS. PENZ: Right. The only other
14 thing to keep in mind that when you said maybe
15 at the time Mega Mania was a viable game.
16 It's because it was the only game in town.
17 And, you know, now it's obviously going back
18 to even something a little better than that,
19 it wouldn't be. There is a lot more
20 competition out there now.

21 And, you know, when the compact is
22 over and you have to resort back to that, the

23 player, I don't think, is going to come back
24 to that type game. I mean, it's going to be
25 very hard, you know, after tribes have spent

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1 millions of dollars in economic development to
2 get their people there to, you know, to play a
3 certain type of game, it's going to be very
4 hard to go back to a game and, you know, keep
5 the tribe's economic value to where it was or
6 they almost got used to providing their tribes
7 services on a certain amount of dollars.

8 When that's taken away, it's going
9 to be hard to get the player back to a
10 different type game. You know, whatever
11 degree of that we are saying, we all agree
12 it's, at some point, turning back. So it's
13 hard to get the player back to, I think, used
14 to something else. That's just something else
15 to keep in mind.

16 CHAIRMAN HOGEN: Yeah. And that's
17 very important. We are not unmindful of the
18 economic impact that these changes of

19 regulations --

20 MS. PENZ: I know you're not.

21 CHAIRMAN HOGEN: -- will have in

22 terms of tribe's needs and fulfilling those

23 needs. But if a tribe is doing something

24 today that, you know, you couldn't really say

25 with a straight face that it wasn't Class III

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1 gaming, and they are doing it under the guise

2 of Class II, I don't know that we can say we

3 have to grandfather that in or make it legal

4 if it wasn't legal to begin with.

5 When congress wrote the act in

6 1988, they didn't have a crystal ball. They

7 didn't know where this was going to go. And

8 they wanted tribes to, you know, be able to

9 make technical advances. But I think they had

10 a view, a paradigm of what was Class III

11 gaming. And if that was going to go on a

12 reservation in the midst of a state, they were

13 going to give the state some say in that.

14 They were going to say, "You have got a

15 compact."

16 With respect to that bingo
17 activity that was being played, they said,
18 "No, tribes, you can do that." Now that line
19 has been blurred by technology, and we are
20 just trying to preserve what was intended.

21 I'd be happy as could be if
22 congress would come along and say it doesn't
23 have to be any different. You can play II or
24 III and do it with or without the state. I
25 think there would be a long-term risk in that,

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1 in that states might say, "Hey, why are we
2 just letting the Indians do this without any
3 participation on our part?" And then they
4 legalize it for everybody. And who is going
5 to go out to the reservation when you can do
6 it in downtown Oklahoma City?

7 MS. PENZ: Right.

8 CHAIRMAN HOGEN: So I think having
9 the franchise to do the gaming in the state is
10 the critical part of this.

11 80 percent of this nearly \$23
12 billion is Class III gaming, and the Choctaws
13 are onto that. You know that that can be
14 very, very profitable. So we have a challenge
15 before us. We are going to take your comments
16 into consideration. And if you have
17 additional comments that you want to send to
18 us, we're going to have this public hearing in
19 Washington on the 19th of September, and we
20 are going to extend the comment period to --

21 COMMISSIONER CHONEY: The 30th.

22 CHAIRMAN HOGEN: -- the 30th of
23 September, and we need all the advice we can
24 get. And, hopefully, at the end of the day we
25 can come down the right place.

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1 MR. BAILEY: Mr. Chairman, first
2 of all we want to say we appreciate the jobs
3 that you do. You have a tremendous
4 responsibility. I'm not seeing anyone out
5 there right now who knows what a Class II or
6 III is. I would hate to get in that debate.

7 You can't win like that. You are doing the
8 right thing to approach that.

9 I think as you would protect for
10 your kids, and as you put back for your
11 grandkids, watch closely where we don't get
12 into something we can't negotiate when those
13 compacts are up. You made a good point about
14 having another alternative there if
15 negotiations break down at the state level.

16 You have to realize that gaming
17 means so much to tribes in the areas of
18 economic development, education, health, and
19 all having to use it provides us seed money
20 for, basically, everything we have done. It's
21 provided a job for every young person, Indian
22 and non-Indian, in our area that needs one.

23 But again, you take a lot of heat
24 for a lot of things. We have always been able
25 to work our differences out. We appreciate

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1 you for that. We appreciate your time and
2 effort and the leadership that you provide for

3 these tribes. Thank you.

4 CHAIRMAN HOGEN: Thank you.

5 (Proceedings concluded.)

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1 C E R T I F I C A T E

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3 STATE OF OKLAHOMA)

) SS:

4 COUNTY OF OKLAHOMA)

5 I, Trena K. Bloye, Certified Shorthand

6 Reporter for the State of Oklahoma, certify that the

7 foregoing transcript of proceedings taken by me in

8 stenotype and thereafter transcribed is a true and

9 correct transcript of the proceedings; that they

10 were taken on August 8, 2006, at the Cox Convention

11 Center, Oklahoma City, State of Oklahoma; that I am

12 not an attorney for nor a relative of any said

13 parties, or otherwise interested in the event of

14 said action.

15 IN WITNESS WHEREOF, I have hereunto set my

16 hand and seal of office on this the 11th day of

17 August, 2006.

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

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