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2 NATIONAL INDIAN GAMING COMMISSION

3 CLASS II CLASSIFICATION STANDARDS

4 GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

5 WITH THE KAW NATION

6

7 HELD IN OKLAHOMA CITY, OKLAHOMA

8 ON AUGUST 8, 2006

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24 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

16 Jeanette Ross, Field Investigator

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18

19 ON BEHALF OF THE KAW NATION:

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21 Guy Munroe

22 Bill Kekahbah

23 Ron Frazle

24 Gary Springer

25 Troy Littleax

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1 COMMISSIONER CHONEY: Welcome to  
2 this Class II classification meeting  
3 consultation meeting. Just for the record,  
4 these proceedings are being recorded and once  
5 they have been recorded they will come under a  
6 matter of public record. And we will  
7 eventually put them on our web page, as well  
8 as transcripts will be made and obtained upon  
9 your request. And we feel like there is other  
10 tribes and other organizations that are  
11 probably eventually going to request the  
12 entire, all of the transcripts that we have  
13 made over these last four weeks, consultations

14 that we have been conducting.

15           So, with that, I would like to  
16 introduce Phil Hogen, chairman of the National  
17 Indian Gaming Commission. Seating next to  
18 Phil is Penny Coleman, our acting director of  
19 our Office of General Counsel. Sitting next  
20 to her is Michael Gross, senior attorney for  
21 the office of OGC. Tim Harper. Tim is our  
22 region director out of Tulsa.

23           Sitting over here to your right is  
24 Marci Pate Ober, senior investigator.  
25 Sitings next to me is Natalie Hemlock,

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1 special assistant to the Commission. Next to  
2 her is Joe Valandra. He's our chief of staff.  
3 And John Hay is also senior attorney from the  
4 Office of General Counsel.

5           If you could identify yourselves  
6 for the record.

7           CHAIRMAN MUNROE: Chairman Monroe  
8 from the Kaw Nation. This is Bill Kekahbah,  
9 he's on our KEDA board. Ron Frazle, he is on

10 our KEDA board. Who else have I got? Gary  
11 Springer, he's on our KEDA board. And Troy  
12 Littleax, he's our gaming commissioner from  
13 the Kaw Nation.

14 COMMISSIONER CHONEY: Chairman  
15 Hogen?

16 CHAIRMAN HOGEN: Okay. Welcome to  
17 this government-to-government consultation  
18 session. On the 25th of May the National  
19 Indian Gaming Commission published in the  
20 "Federal Register" a couple of proposals. One  
21 that would modify definitions relating to what  
22 are facsimiles of games of chance. And  
23 another, a set of proposed regulations to  
24 better distinguish electronic and technologic  
25 aides to the play of Class II games, which, of

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1 course, tribes can do without compact from the  
2 state through those electronic facsimiles of  
3 games of chance and slot machines of any kind  
4 that require compacts with states to play.

5 Since publishing those we have

6 been on the circuit here consulting with  
7 tribes. We have been doing that most of  
8 today. And we will be here again in Oklahoma  
9 City tomorrow to do that.

10 We are striving to bring greater  
11 clarity to this issue of what you have to have  
12 a compact for and what you don't. And we're  
13 getting a lot of good advice with respect to  
14 how better do that.

15 As well as drafting a set of  
16 classification standards, we drafted a set of  
17 technical standards that are a companion piece  
18 to these. We didn't publish those back in  
19 May, because we found that they had been  
20 sitting on the shelf so long, they were a  
21 little obsolete given the technical changes.

22 So we brought them up to date.  
23 And on Friday, the 11th of this month, we will  
24 be publishing those in the "Federal Register."  
25 We have extended the comment period for the

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2 period on the technical standards to the 30th  
3 of September. So, by the end of next month,  
4 we hope to have all the written comments.

5 We will also be holding a public  
6 hearing in Washington, DC on the 19th of  
7 September. We will be hearing from several  
8 panels who will give us the various points of  
9 view. We have asked some of the vendors and  
10 the manufacturers of these games that are  
11 being offered and played in Class II  
12 environments to appear and give us their  
13 thoughts. We will be hearing from regulators,  
14 from tribes, again, of course, and from states  
15 that are interested in this, given the fact  
16 that they occasionally enter into compacts.

17 So, once we have all of that  
18 information we will close the door, look at  
19 what we have drafted, look at the comments we  
20 have received, and decide, first of all,  
21 should we go forward with this exercise to  
22 draw a brighter line between what's Class II  
23 and what's Class III. And, if so, should we  
24 change what we have proposed. And if we do

25 that, there will be publication of those final

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1 regulations in "Federal Register", a time for  
2 them to become effective, and then a  
3 compliance time for tribes to come into  
4 compliance.

5 So that's what's on our drawing  
6 board. But a crucial part of this is hearing  
7 from tribes regarding this proposal. So  
8 that's why we are glad you accepted our  
9 invitation and we would very much like to hear  
10 your thoughts.

11 COMMISSIONER CHONEY: Before we  
12 go, I forgot to mention that if you want to  
13 bring up any other subject matter pertaining  
14 to your tribe that's not pertaining to Class  
15 II matters, we'll have to go off the record.

16 MR. MUNROE: No. That's all we  
17 have is Class II.

18 COMMISSIONER CHONEY: Sorry for  
19 the interruption.

20 MR. MUNROE: You messed up my

21 train of thought. I'm very involved here.

22 No. I would just like to see it

23 left alone. I think it's better for the

24 tribes, in our case, because we're out rural

25 America, and the people that play the machines

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1 thinks they are great.

2 I will turn it over to Ron. He

3 can give you a little better idea what we are

4 talking about.

5 MR. FRAZLE: Basically, everything

6 I have got to say is going to gyrate down to

7 that same premise. If you will, sir, pass

8 those out and these as well. We sent the

9 original and mailed them to Ms. Coleman this

10 morning, I believe it was. And then it

11 crossed our mind that it might be good

12 informational things for you.

13 Allow me to further introduce

14 myself a little bit. I am not a board member

15 KEDA. KEDA is Kaw Enterprises Development

16 Authority. It is an authority created by the

17 Kaw Nation for the purposes or mission of the  
18 positive impacting unemployment or  
19 underemployment of Indians residing in our  
20 area as well as tribal members.

21 It provides revenue to the tribe  
22 to address public health, safety, and welfare  
23 concerns. We entice or attempt to entice  
24 industry into our regional area, expand the  
25 tribal land base through economic development.

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1 And amongst our many powers is the management  
2 of ongoing concerns of Kaw Nation of Oklahoma,  
3 which does include the casino.

4 The gentleman to my right is my  
5 chairman of KEDA. And my left is the vice  
6 chairman of KEDA.

7 I dare say that anything you hear  
8 us say today is probably not going to be  
9 inconsistent with what you have already heard.  
10 It may have a little different twist to it,  
11 but it's probably going to be the same song  
12 and dance.

13           We are supportive of the policy  
14 statement by IGRA. We are also supportive of  
15 the mission statement of NIGC.

16           And instead of approaching each  
17 point, which maybe many tribes have, we will  
18 not approach the regulation from the  
19 point-by-point, but how does this apply to  
20 that policy statement? How does it apply to  
21 the mission statement of NIGC?

22           Quite bluntly, maybe too bluntly,  
23 it seems to be this proposed rule is largely  
24 impacted by some of the standards that  
25 Department of Justice had influence with

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1 before. We support NIGC's right as an  
2 independent agency. I believe congress we all  
3 believe congress had that intent, for you to  
4 be the regulator.

5           We do not see them bearing the  
6 same role that you bear. You bear the role  
7 also, a dual function role in our eyes as a  
8 regulator. You also bear the role to promote

9 gaming as an economic enterprise for our  
10 Indian tribes. We clearly see that.

11 We see, you know, the things that  
12 your own mission statement is shielding tribes  
13 from corrupting influences, assurance of  
14 fairness and honesty for the operator and the  
15 players, and to ensure the tribe is a primary  
16 beneficiary. I think these are complimentary  
17 to what IGRA states in its mission statement.

18 We do see your agency. It's very  
19 parallel, to some degree, of the FAA. It has  
20 the role of being both a regulator and a  
21 promotor of the civil aeronautic industry. So  
22 I draw parallels to that at some point in  
23 time.

24 The rules, as we interpret and  
25 generally speaking, return us to the standards

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1 of paper bingo, although it's not  
2 electronically. It essentially goes back to  
3 that process. We feel like it overrides,  
4 disregards presently achieved technical

5 improvements and standards. It effectively  
6 slows the game down. In our opinion, it  
7 causes undue player notification.

8           And here is where I'm going to  
9 draw the paralegal to the aviation industry.  
10 I think they have progressed, or the agencies  
11 have progressed to allow technology to process  
12 and proceed. I think this law or this  
13 proposed rule draws parallel to going back to  
14 the DC3. You can only board one passenger per  
15 minute. You must paint half of that plane.  
16 And you have got to have a four-foot sign on  
17 it that says, "This is a slow-moving plain."  
18 We don't think that does anything for the  
19 industry.

20           In summary, we see the effects of  
21 the proposed rule as neutral in regard to how  
22 does it shield tribes. We do not see that it  
23 enhances or detracts from it. It's neutral in  
24 that position. It does not -- or it is  
25 neutral in the position of fairness and

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1 honesty to the operator and the player.

2           We see it as a negative from  
3 seeing that the tribe is the primary  
4 beneficiary. The reason why I say that, is in  
5 our particular place, we have both Class II  
6 and Class III machines on the floor. We do  
7 not see -- you know, most of the blur that you  
8 are trying to distinguish between is caused by  
9 innovation, technology.

10           In our opinion, that's not really  
11 the American way. We have always progressed  
12 with technology. We do not think that is a  
13 negative connotation that's progressed to this  
14 point. We see the potential of this rule  
15 creating a market shift, because we have both  
16 Class II and Class III machines on the floor.  
17 We let our customer, our patron dictate to us  
18 which machine they like best. We're still not  
19 through with that process.

20           If this is enacted, we see a  
21 market shift because of the negative things  
22 that I have said before of painting the  
23 airplane, what caused the client to shift

24 toward the Class III operations. That, in  
25 turn, will take revenue from us, to our

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1 credit, to the benefit of the state.

2 That, in turn, we perceive will  
3 impede our leverage to negotiate with the  
4 state. Right now, if you look at the state's  
5 methodology of negotiation, it's pretty much  
6 tongue and cheek. It's take it or leave it.

7 But we think if this goes this way  
8 and we're predominantly Class III, we will  
9 have no choice. We will have no leverage with  
10 the state.

11 I guess in conclusion I am going  
12 to draw an analogy from the medical  
13 profession. Do no harm to the patient.

14 Mr. Little Axe?

15 MR. LITTLEAX: The position of the  
16 Kaw Nation Gaming Commission really is that  
17 the visuals are really the difference the  
18 people see. They see the Class II and they  
19 see the slots. But the workings, you know,

20 and some of the machines are clearly  
21 different. The game is played -- Class III  
22 plays faster than Class II as it stands now.

23 The Commission supports  
24 maintaining what's out there now. The Mega  
25 Mania, I think, was approved at one time, and

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1 not going back past that. Not really -- you  
2 know, the bingo card on the face is something  
3 that people are used to looking at.

4 I think doing major changes are  
5 going to affect availability of games. I  
6 mean, you do these changes, I don't think  
7 vendors are really going to innovate into the  
8 Class II market, because now everything wants  
9 to be Class III. This is difficulty with  
10 tribes. This is going to force a lot of  
11 tribes to deal with the state, and that really  
12 affects sovereignty, because they do not want  
13 to deal with the State. They want to maintain  
14 their livelihood and services that they  
15 provide. They will have to go to the state's

16 table with their hat in hand.

17 MS. COLEMAN: Could I ask you a  
18 question about the facility? Could you tell  
19 me more about the kinds of games that are at  
20 the facility? How many are Class II? How  
21 many are Class III? What are you playing  
22 there.

23 MR. LITTLEAX: Well, he might jump  
24 in, but right now we are experimenting with  
25 Class III. We have had the compact since the

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1 beginning just like everybody else. But the  
2 machines, it's more of a bring some in, see if  
3 the customer likes it. And it's being a  
4 unique kind of area. They don't really like  
5 change. They like their machines and they  
6 really stick to the Class II. So, there's  
7 been a limited number of Class III played,  
8 machines played in there.

9 MS. COLEMAN: So you are  
10 predominantly playing Class II.

11 MR. LITTLEAX: Yeah.

12 MS COLEMAN: Is it a very big  
13 facility?

14 MR. LITTLEAX: Yeah. We're  
15 expanding.

16 MR. FRAZLE: We're adding toward  
17 40,000 square feet that is about 95 percent  
18 complete. All total, we are looking at  
19 roughly, including the bingo, we're one of the  
20 few tribes that still plays bingo,  
21 approximately 55,000 games.

22 MS. COLEMAN: So, you get --  
23 you're looking to expand 40,000 square feet?

24 MR. MUNROE: Uh-huh.

25 MS. COLEMAN: And is that going to

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1 expand into Class II.

2 MR. FRAZLE: It could. Right now  
3 it is expanding more into Class II than Class  
4 III. Now, there is approximately -- when I  
5 say expanding, ball park, counting table games  
6 are allowable, poker are allowable, blackjack  
7 and seating for bingo, it's approximately 1800

8 gaming positions, if you want to do it from  
9 that standpoint.

10 MS. COLEMAN: So, with everything,  
11 it's about 1800 gaming positions?

12 MR. FRAZLE: Yes.

13 MS. COLEMAN: And most of that is  
14 Class II?

15 MR. FRAZLE: Yes, predominantly  
16 Class II. One of the points I failed to make  
17 is we recommend the NIGC look at the present  
18 technology that's advanced and adopt that  
19 present technology and encourage future  
20 enhancements as well.

21 CHAIRMAN HOGEN: Well, your points  
22 are well taken. It is useful for those  
23 outside of NIGC from time to time to remind us  
24 of our mission statement. The mission  
25 statement of the Indian Gaming Regulatory Act.

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1 We always need to keep those things foremost  
2 in mind.

3 I certainly don't want to harm my

4 constituents. I'm concerned that if we don't  
5 bring some clarity to this that a day might  
6 come when either the Justice Department, under  
7 their manner of enforcing the Johnson Act that  
8 says you can't have gambling devices in Indian  
9 country without a Class III compact, is what  
10 that amounts to after IGRA was enacted. Or  
11 Congress will say, "Hey, wait a minute. We  
12 had divided this deal into classes. Some you  
13 had to have a compact with and some you  
14 didn't, and you no you can't tell the  
15 difference. Who is supposed to be minding  
16 that store?"

17           And for me to just shrug my  
18 shoulders and say, "Well, they seem to be  
19 getting along all right," I think would be  
20 irresponsible and not doing a service I'm  
21 supposed to do. It would harm my  
22 constituency. It would harm the patient.

23           MR. FRAZLE: And how can we  
24 support you to further your cause that it is  
25 complimentary (sic.) to our desires?

1 CHAIRMAN HOGEN: Pardon me?

2 MR. FRAZLE: How can we support  
3 you to further your cause and still be  
4 complimentary to our desires?

5 CHAIRMAN HOGEN: Well, I think you  
6 can point out how we can have this bright  
7 line.

8 The court case, I'm looking at one  
9 of them right now that deals with those Mega  
10 Mania machines, kind of the foundation of the  
11 game. That was the case where the Justice  
12 Department was saying, "You're playing Mega  
13 Mania. It's a gambling device, thus its  
14 illegal."

15 They said, "While complete  
16 self-contained electronic or mechanical  
17 facsimiles of a game of chance, including  
18 bingo, may indeed be forbidden by the Johnson  
19 Act after the enactment of IGRA, mere  
20 technological aides to bingo such as Mega  
21 Mania terminals are not."

22 They are saying you can convert,

23 you can cross that line using equipment to  
24 play bingo to become a facsimile. But if it's  
25 just an aide to the play, you can keep it on

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1 the Class II side of the line.

2           And if you have studied IGRA and  
3 the legislative history, and the cases like  
4 these, you know, we see that getting a player  
5 involved, having player participation is a key  
6 element. If you are going to have player  
7 participation, you have to have a little  
8 interval there for them to participate. You  
9 can't touch just touch the button once and  
10 have the machine do it all. I think that  
11 becomes this forbidden technology that the  
12 court was talking about.

13           In one of these other Mega Mania  
14 cases the Court says, "Our decision rests on  
15 our determination that the Mega Mania is a  
16 bingo game or a game similar to bingo, and the  
17 Mega Mania machines meet the statutory  
18 definition of an aide to bingo. Our holding

19 in this case is therefore limited to the Mega  
20 Mania form of bingo currently in that issue."

21 That game was a clunky bingo  
22 terminal with four cards on it that you had to  
23 have twelve people to play, and it took a  
24 minute to play. The regulations that we have  
25 drafted two people could play and you could

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1 play ten games in a minute. I don't think we  
2 are going back to the stone age, but I think  
3 we are in keeping with where they are going.

4 MR. FRAZLE: Or perhaps we get  
5 somewhere in between.

6 CHAIRMAN HOGEN: Well, that could  
7 be. That's what we are looking for is, you  
8 know, is advice how to get to the right place.  
9 And we much appreciate you putting in written  
10 form your comments. And if you have more that  
11 you can send to us by the 30th of September,  
12 we will be happy to consider those.

13 MR. FRAZLE: I will be honest with  
14 you -- and do not misconstrue. I'm not

15 argumentative in any form or fashion. I feel  
16 like I have come to the OK Coral here and a  
17 pocket knife. I mean, here you are. So, from  
18 that standpoint, I'm not a great legal mind by  
19 any means.

20           There seems to be a negative  
21 connotation surrounding innovation,  
22 improvement, enhancements. We don't share  
23 that opinion. We think that the dim light you  
24 see is bright enough for our operation. It  
25 enhances our operation, and we want to

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1 maintain that.

2           CHAIRMAN HOGEN: We will try and  
3 get to the right place and have this, you  
4 know -- tribes need Class II. Class II is the  
5 birth place of Indian gaming. We can't give  
6 that a short shrift. Obviously, there are  
7 some limits. And just finding out and saying  
8 where they are is the challenge.

9           MR. LITTLEAX: Has there been any  
10 analysis as far as what games are out there

11 now that this will cause them to be pulled, or  
12 are there some minor changes? Have any  
13 vendors come forward, and said, "Yeah, this is  
14 not a big deal," and we don't have to change  
15 the machines out?

16 CHAIRMAN HOGEN: Well, many of the  
17 machines that are out there are a product of  
18 advisory opinions that we wrote that form the  
19 foundation of what these things say. The  
20 problem with that process, when we didn't have  
21 a rule book, when we didn't have a set of  
22 regulations was we would write one of those  
23 darn things, and then a new proposal would  
24 come in and we scratch our head and said,  
25 "Well, we didn't think of this when we wrote

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1 that last one." It was something we  
2 overlooked. So, we think we would be better  
3 served if we have this.

4 But a lot of the machines are --  
5 the platform is designed to meet our advisory  
6 opinion, but it's not being played that way.

7 They use a one-touch auto dob, when, in fact,  
8 our advisory opinion said you have got to give  
9 players a chance to dob and to sleep, and they  
10 are not doing that.

11 And so I think in some of these  
12 cases a few key strokes, or probably more than  
13 that, can change the program and it will fit.  
14 And some of them we say you have got to have  
15 half the display space the show the bingo  
16 game. Maybe some of them can't be done that  
17 way. We are thinking about how to address  
18 that.

19 Yeah, we know there will be some  
20 economic impact, but that's why these rules  
21 are needed so tribes, once they invest their  
22 money, they will be on solid ground. They  
23 won't have to worry about somebody changing  
24 the rules on us.

25 We are nearing the end of the

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1 allotted time here. Any other comments you  
2 have for us?

3           MR. MUNROE: We appreciate you  
4 giving us the opportunity to tell you about  
5 how we feel. We hope it comes out for the  
6 best.

7           CHAIRMAN HOGEN: Okay. We  
8 appreciate those good riches and we will try  
9 and go to the right place.

10           (Proceedings concluded.)

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1           C E R T I F I C A T E

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3

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.

19

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\_\_\_\_\_

22 Trena K. Bloye  
23 Certified Shorthand Reporter  
24 for the State of Oklahoma  
25