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NATIONAL INDIAN GAMING COMMISSION
CLASS II CLASSIFICATION STANDARDS
GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING
WITH THE SAC & FOX NATION
HELD IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 9, 2006

REPORTED BY: TRENA K. BLOYE, CSR

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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 Marcy Pate Olber, Senior Field Investigator

16 Jeanette Ross, Field Investigator

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19 ON BEHALF OF THE SAC & FOX NATION:

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21 Kay Rhoades, Principal Chief

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1 COMMISSIONER CHONEY: Welcome to

2 this Class II Regulation Consultation meeting.
3 We're recording this meeting. The results
4 will be a matter of public record. If at a
5 later time you wish to see the results, a
6 transcript, you can obtain a transcript from
7 our website, and any other transcriptions you
8 would like to see, because we are putting them
9 all on the web page.

10 MS. RHOADES: Now, are you also
11 going to include the written statements?

12 COMMISSIONER CHONEY: Yes.

13 MS. RHOADES: I'm here today to
14 just kind of do a preliminary report and then
15 we will submit a written one as well.

16 COMMISSIONER CHONEY: Yeah. We
17 will take that and make it part of the record.

18 I also want to introduce Phil
19 Hogen. He's the chairman of the National
20 Indian Gaming Commission. My name is Chuck
21 Choney. I'm a commissioner with the National
22 Indian Gaming Commission.

23 This is Penny Coleman. She's our
24 acting general counsel. Michael Gross, senior
25 attorney from the OGC. And then Tim Harper

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1 from the region, and Marci Pate Ober, also
2 from the region in Tulsa. This is Natalie

3 Hemlock, special assistant to the Commission.
4 Joe Valandra, he's our chief of staff. And
5 John Hay, he's also senior attorney with the
6 Office of General Counsel.

7 And also for the record, if you
8 could identify yourself.

9 MS. RHOADES: I'm Kay Rhoades,
10 Principal Chief of the Sac and Fox Nation of
11 Oklahoma.

12 COMMISSIONER CHONEY: Also, at any
13 time after you conclude your Class II remarks,
14 if you want to discuss anything with the
15 Commission pertaining to your tribe and your
16 gaming activities, feel free to do so, but we
17 will have to go off the record.

18 With that, welcome to this
19 meeting. Chairman Hogen?

20 CHAIRMAN HOGEN: Okay. Welcome,
21 Chief. On the 25th of May of this year we
22 published in the "Federal Register" some
23 proposals. One was going to amend or modify
24 some definitions and one was going to set out
25 a set of regulations that would hopefully

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1 better distinguish electronic and technologic
2 aids the tribes can use to play Class II
3 uncompact gaming from that Class III gaming
4 that employees electronic facsimiles of games

5 of chance.

6 This has been a long exercise. We
7 have been at it a couple of years now. We
8 formed a Tribal Advisory Committee. And in
9 addition to proposing these classification
10 standards, we have been working on some
11 technical standards, the details that would
12 say what kind of software and hardware had to
13 be employed so hackers couldn't access the
14 gaming, things like that.

15 When we went to the "Federal
16 Register" this spring, we realized that the
17 technical standards had gotten a little stale.
18 There had been some technologic developments
19 that we needed to include in those. And so it
20 won't be until this Friday that we will be
21 publishing those technical standards. They
22 will be in the "Federal Register" then.

23 And the comment period for those
24 standards will conclude on the 30th of
25 September. So we are extending the comment

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1 period with regard to these companion
2 classification standards to that same day. On
3 the 19th of September we are going to hold a
4 public hearing in Washington, DC to address
5 these subjects. We are going to assemble

6 several panels. We will hear from some tribal
7 spokespeople. We will hear from some state
8 folks. We will hear from representatives of
9 the manufacturers and vendors of these kinds
10 of machines, hear about economic impact that
11 these changes might have. And we will hear
12 from some regulators.

13 At the end of the comment period
14 we will close the door and look at all that's
15 been said to us and sent to us, look at what
16 we have written, and see if we should go
17 forward with these or not, and if we do, what
18 they ought to look like when we get done
19 should the proposal be changed.

20 So we are eager to hear what the
21 Sac & Fox Nation has to suggest or offer with
22 respect to these proposals.

23 MS. RHOADES: Well, I think we've
24 probably heard all of the comments that I'm
25 going to say, because we are one of the last

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1 groups to speak to the NIGC.

2 But, essentially, what we are
3 looking at is the changes in the regulations
4 as it impacts the tribes in Oklahoma in
5 particular. Some of the states, of course,
6 will not recognize Class III gaming. And
7 Oklahoma is one of those that has not fully

8 implemented full Class III gaming.

9 We argued that whenever the
10 compacts were originated. And the Sac and Fox
11 in particular has gone on record to say that
12 our compact that we signed is -- our
13 understanding is that we are operating with
14 Class II games. And if we sign the compact,
15 we are going to sign it for full Class III
16 gaming.

17 Now, the State of Oklahoma does
18 not include all Class III types of games,
19 which ends up being a hindrance to the tribes
20 here in the state in particular. By changing
21 the requirements in Class II it is going to
22 hinder the economic development of our tribes,
23 because of the state's reluctance to move
24 forward on this. And I have no idea when or
25 if that will ever occur, if they will go into

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1 full Class III gaming.

2 But in the meantime, so many of
3 our tribes will be devastated by the types of
4 machines that we're operating right now that
5 the people enjoy playing and that could
6 possibly be deemed as non-Class II. With the
7 amounts of money that we're having to pay the
8 state and the revenue sharing and such,

9 it's -- it puts more control into the hands of
10 the State in particular.

11 My concern is that because the
12 State of Oklahoma in particular was created
13 within their constitution stating that they
14 would honor the sovereignty of the tribes, I
15 don't feel that we were given a fair hearing
16 and fair negotiations whenever these compacts
17 came through in the first place.

18 By you coming in now and setting
19 stiffer regulations on Class II, it's going to
20 take away our negotiating power to negotiate a
21 full Class III compact with the State of
22 Oklahoma and encourage Class III gaming in the
23 State of Oklahoma.

24 It's going to also -- with Indian
25 gaming as it is, it's going to put more of an

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1 economic burden on the State of Oklahoma in
2 particular. Because if other surrounding
3 states are allowed to do Class III gaming,
4 because their states allow them to do it,
5 that's going to take away from our population,
6 our playing crowds as well and destroys the
7 integrity of what it was all about, that to
8 create money, an economic venture for us and
9 help us with the management of our own
10 sovereignty status.

11 In addition, we're going to end up
12 with, if those games are reduced, and we're
13 not able to do the types of play now, we're
14 going to end up losing, again, the clientele,
15 which is going to, in fact, cause loss of
16 jobs. My tribe in particular is very
17 concerned about the number of jobs that's
18 being created for our people at this point.
19 And reduction in those types of games,
20 reduction in the patrons that would
21 participate at our casinos is also going to
22 hinder our tribe economically from a job
23 category.

24 COMMISSIONER CHONEY: Have you
25 done an estimate as of yes, you or your staff,

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1 as to how much the economic impact will affect
2 you.

3 CHAIRMAN HOGEN: We are getting
4 ready to do the feasibility study now, in
5 fact. I just got off the phone with a
6 gentleman a few minutes ago to actually do
7 that study for us.

8 COMMISSIONER CHONEY: Have you got
9 a preliminary report yet?

10 MS. RHOADES: No. We're working
11 on that, and he said within 30 days he will

12 have --

13 COMMISSIONER CHONEY: Could you
14 let us know? We're hearing this from tribe
15 after tribe, you know, that it's going to
16 affect them economically. They are going to
17 have to lay off workers, but no one has really
18 told us how much. So, once you determine, if
19 you can let us know, I think that's going to
20 help us. I think we would like to have that
21 information.

22 MS. RHOADES: Okay. Yeah. Well,
23 we are. We're looking at that in particular.
24 He said that he would have the study completed
25 within 30 days, so we can have that to you.

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1 I think the biggest thing is that,
2 you know, I fought long and hard against the
3 compact here in Oklahoma, because -- not
4 because I didn't want a compact, a Class III
5 compact, but because I wanted a full Class III
6 compact. Again, I think that's the thing
7 that's really going to hurt us the most, is
8 our ability to negotiate with the State of
9 Oklahoma.

10 The State of Oklahoma right now is
11 not keeping up their end of the compact in the
12 first place. They have electronic games out
13 there within the different restaurants or bars

14 and places. And whenever those are reported,
15 nothing is being done about that. So it's
16 going to cost the tribe a lot of money to go
17 in there and actually enforce those rules with
18 that compact. No tribe in particular is going
19 to be able to sustain that fight.

20 It's kind of like the same
21 situation that you guys are in. Would you
22 rather fight the tribes or the DOJ? Well, we
23 know what your position is on that, because
24 they have more money and they can hold out a
25 lot longer than most of the tribes. Well,

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1 we're going to be in the same situation when
2 it comes to the state. And so we need you to
3 really consider that.

4 The other concern that we have, of
5 course, is the limitations that you're putting
6 on the Class II games. You know, the
7 definition, of course, is that they are not
8 stand-alone games themselves. But -- and I
9 know that this has been an issue with you and
10 your board for a long time about the speed of
11 play.

12 Well, you know, we're in the 21st
13 century. Computers are fast. I mean,
14 nobody -- I have dialup internet at my house,

15 because they don't have DSL out there. It is
16 absolutely driving me crazy.

17 People operate quickly. They want
18 things that happen fast. We are in a very
19 speed oriented society now. And a few seconds
20 is going to make a difference on those games.
21 And to put a time limit on that with today's
22 technology doesn't make sense. And I think
23 you're going to -- and I'm sure the other
24 tribes have voiced that concern over and over
25 again to you, that it doesn't really

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1 determine, you know, that it is not a Class II
2 game just by the speed of play alone.

3 I mean, if I had to go back to
4 paper bingo -- I watch those little ladies,
5 and they have them all over the place and they
6 can go down the line. They can probably move
7 that to dobber faster than some of those
8 machines. But not me. I would only be able
9 to play with two cards. But you need to look
10 at that speed, the speed of play, and not hold
11 back as one of the criteria to make that
12 determination.

13 The card, the size of the card,
14 the lettering that is going to be on the
15 machine. I mean, those are things that I
16 think they're an attack on the Class II games

17 and the Class II industry. And we certainly
18 don't want to create monopolies. And that is
19 the appearance that is being portrayed, is
20 that it's an effort to eliminate Class II all
21 together and only have the Class III machines.
22 And we're opposed to that and in support of so
23 many of the vendors.

24 There's other things that we can
25 talk about, but I'm sure that you have heard

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1 all of those before. I don't want to delay
2 any more of your time. Because we will be
3 sending a followup letter addressing all of
4 those issues and concerns and spelling it out
5 specifically.

6 CHAIRMAN HOGEN: All right. You
7 said very well what your concerns are, and
8 they did mirror, echo a number of the other
9 statements that we have heard. It's not our
10 goal to force everybody into the Class III
11 arena. I know how difficult it has been in
12 Oklahoma, and I appreciate the frustrations of
13 those tribes who would like to sit across the
14 table from the Governor and negotiate their
15 own compacts. I know how difficult that's
16 been.

17 We want to continue integrity in

18 the Indian gaming system. And part of that
19 system is distinguishing what's Class II and
20 what's Class III. It appears to me from my, I
21 think, thorough study of what the act says and
22 how it gotten enacted and what the court cases
23 have said since that is one of the
24 characteristics of the play of bingo is that
25 it can't all be in a machine. The players are

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1 all integral to that activity.

2 And once you automate
3 everything -- and I know how slow dialup is
4 and what a frustration that is, but once you
5 kind of take the player participation out of
6 it, then I think you have crossed that line
7 and it's become that electronic facsimile game
8 of chance. Not that that's bad or not that
9 that's not technologically advanced, but there
10 was a line there that congress drew that said
11 you can't cross and still be Class II.

12 So we're trying to design a set of
13 rules that will permit fast, fun, and
14 profitable play that people will come to play
15 at bingo halls and Class II facilities to
16 play, but preserve that player to play. But
17 to do that there has to be a little interval
18 there to let the player do it. We're not
19 slowing it down for the sake of being slow.

20 We're slowing it down to accommodate that
21 human element, that player participation.
22 Maybe we should tighten those time frames up.
23 We are looking at that and talking about that.

24 But we understand how important it
25 has been to Sac and Fox and how important it

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1 will be as you continue to try to negotiate
2 and maybe one day renegotiate the compact.

3 The compacts that we're
4 negotiating were negotiated in this
5 environment of uncertainty. Nobody knew for
6 sure where you drew the line for Class II.
7 Maybe if we bring a little more clarity,
8 certainty to where Class II is, maybe it will
9 be easier, it will be better. But I guess
10 history will tell us that.

11 So, thank you very much for
12 sharing your thoughts with us, and we look
13 forward to your written comments as well.

14 MS. RHOADES: Thank you.

15 (Proceedings concluded.)

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1 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 9, 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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