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NATIONAL INDIAN GAMING COMMISSION
CLASS II CLASSIFICATION STANDARDS
GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING
WITH THE UNITED KEETOOWAH BAND
HELD IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 9, 2006

REPORTED BY: TRENA K. BLOYE, CSR

2 this Class II regulation consultation. For
3 your information we're recording this meeting.
4 And after recording it will be a matter of
5 public record. If you would like to have a
6 transcript you can obtain it from our website.
7 We will be putting it, as with all the other
8 meetings, on our website.

9 If at any time during the course
10 of your meeting here, the time allotted, if
11 you want to talk about anything other than
12 Class II standards, you want to talk about
13 internal tribal matters or external tribal
14 matters pertaining to gaming, we will have to
15 go off the record. Just let us know.

16 For the record, I want to
17 introduce Phil Hogen, chairman of the national
18 Indian Gaming Commission. My name is Chuck
19 Choney. I'm a commissioner. Seated next to
20 Phil is Penny Coleman. She's our acting
21 general counsel. Next to her is Mike Gross,
22 senior attorney with the General Counsel's
23 Office. And Tim Harper, he's the regional
24 director out of our Tulsa office.

25 Seated next to me is Natalie

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1 Hemlock. She's a special assistant to the
2 Commission. Joe Valandra, our chief of staff.

3 And John Hay, another senior attorney for the
4 Office of General Counsel. We have other
5 staffers that are going to be in and out.

6 Also, for the record, if you could
7 identify yourselves.

8 MR. BYRD: My name is Joe Byrd,
9 consultant for the UKB.

10 MS. HARROLD: Diane Barker
11 Harrold, general counsel for UKB.

12 MR. McMILLIN: Jim McMillin,
13 attorney.

14 MS. SHAPIRO: Judy Shapiro,
15 attorney for UKB.

16 ASST. CHIEF LOCOST: Charles
17 Locost, assistant chief, United Keetoowah
18 Band.

19 COMMISSIONER CHONEY: Phil Hogen.

20 CHAIRMAN HOGEN: Yes, welcome to
21 this government-to-government consultation.
22 We're here today because on the 25th of May
23 NIGC published in the "Federal Register" some
24 proposals, a proposal to modify a definition
25 and to adopt a set of regulations that,

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1 hopefully, would better distinguish the
2 differences between the electronic and
3 technologic aids tribes can use to play
4 uncompact Class II games from those

5 electronic facsimiles games of chance and slot
6 machines of any kind that tribes are required
7 to have a Class III compact to play.

8 This is the most recent step in
9 our long process. We assembled a Tribal
10 Advisory Committee and probably several drafts
11 of where we needed to go. And we also worked
12 on a set of technical standards. We didn't
13 publish those technical standards in May,
14 because we found that they had sat on the
15 shelf a little too long and we needed to
16 modernize them to make sure some recent
17 developments with respect to technology had
18 been addressed.

19 That's been done now, and Friday
20 we will be publishing in the "Federal
21 Register" our technical standards of the
22 proposal for technical standards.

23 The comment period on those
24 proposals will end the 30th of September, and
25 we are extending the comment period for these

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1 classification standards on that same day.

2 On the 19th of September we're
3 going to hold a public hearing in Washington,
4 DC with respect to both of these projects. We
5 will be assembling a number of panels. There

6 will be presenters on those panels from
7 various perspectives. Some tribal leadership.
8 There will be some regulators. We will hear
9 some economic impact discussions.
10 Manufacturers and vendors of these kind of
11 machines will make presentations. And we will
12 also hear from some state folks with respect
13 to a state perspective.

14 After that 30th of September date
15 comes and goes, we will close the door and
16 look at all that has been said to us and
17 written to us and decide should we go forward
18 with these proposals and, if so, could we
19 modify what we have proposed. And if we
20 decide we should, well, then we will publish
21 those as final regulations.

22 And in the process, of course, we
23 want to hear tribal input and that's why we
24 are here. So, we invite your comments and
25 questions and we will take those into

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1 consideration as we move forward with this.

2 ASST. CHIEF LOCOST: I will go
3 ahead and start off. I represent the United
4 Keetoowah Band as assistant chief. First of
5 all, I would like to give you a little bit of
6 history on our tribe. If you are not familiar
7 with the word, it has been fully recognized

8 since 1946. But we're a very unique tribe,
9 because we are landless. We are still trying
10 to get our first acre of trust land given to
11 us, awarded us that we feel like has been long
12 overdue. We understand the federal
13 recognition process. Sometimes it gets a
14 little confusing for us, as well as some of
15 the government entities that we have to deal
16 with.

17 But we want you to know that 65
18 percent of our members still practice our
19 traditional cultural ways, as do myself. I
20 practice in our ceremonial grounds each time I
21 get a chance, every time I get a chance.

22 But also, 60 percent of our tribal
23 members still speak our language, our
24 Keetoowah language. We have around 12,000
25 members in our tribe. We still are working

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1 towards trying to get in our gaming to where
2 it can be in compliance with the NIGC. We
3 practice that at our facility.

4 We still are working toward a
5 compact. But at the same time, a compact
6 wouldn't do us any good, we couldn't get one
7 without any trust land. So it wouldn't be
8 worth us trying. We have tried. But without

9 that trust land, we just -- there's no way
10 that the state would work with us on that.

11 Also, the tribe understands that
12 these Class II standards could affect our
13 gaming and our tribe in an enormous way. 90
14 to 95 percent of our funding for our tribal
15 programs come from gaming.

16 Being that we don't have trust
17 land eliminates us from some funding levels
18 that we have pursued. So we have to really
19 stress that we utilize our gaming money in the
20 most important and priority areas.

21 We fund a lot of elderly programs.
22 We fund children's vouchers, clothing
23 vouchers, school vouchers. We fund
24 scholarships for our children. We also have
25 community rehabs, and we look at the elders'

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1 needs.

2 In the elders programs that goes
3 toward a lot of their heat and air, because a
4 lot of them are on limited income. And a lot
5 of them cannot afford their medical needs, so
6 we help with this assistance twice a year. We
7 provide this type of funding from our gaming
8 areas. It also works toward any water and
9 sewer needs.

10 One thing that's happened to us is

11 we have been affected by not having any trust
12 land in different areas, such as housing and
13 with HUD. We have had our funding cut to
14 almost zero. So we have to utilize a lot of
15 our gaming money for that. We are trying to
16 identify a community service program where we
17 can put gaming money into that so we can
18 provide rehabilitation to housing for our
19 people. Right now that's the only source we
20 have.

21 Medical. We are trying to
22 devise, possibly, a clinic for our people,
23 because there is a lot of contract services
24 that our people can't get through IHS because
25 of the jurisdictional issues that we have to

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1 confront every day.

2 So we're a very unique tribe at
3 this time, and it's all due to the landless
4 situation. And we've been like that since
5 1946. We've constantly fought this. We have
6 asked for it. The congress has approved our
7 constitution in 1946, but sometimes it appears
8 that nobody wants to recognize that. So we
9 constantly have to educate people on these
10 issues.

11 So if we do implement these type

12 of standards where it affects our gaming
13 facility, because we can't get a compact, we
14 can't have compact games. So it's going to
15 eliminate anything we are doing with the
16 tribe. We will lose 300 employees right off
17 the top if you put in these standards and we
18 have to close our facilities. We will lose
19 all those programs we have. We can't support
20 our elders. We can't support our children.
21 We can't support their vouchers for going to
22 school or their scholarships.

23 These are the kind of things that
24 you are going to effect us. We are in a very,
25 very unique situation. So it's hard for us to

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1 come and support these type of standards
2 that's going to effect the only revenue source
3 we have.

4 So, like I said, we provide 90 to
5 95 percent of our program, our tribal funding,
6 our tribal annual budget comes from gaming.
7 So it's going to be very detrimental if our
8 facility has to close.

9 Like I said, if you do implement
10 these standards, and the only choice we have
11 is compact games, we can't get a compact. So
12 that's how it's going to affect us.

13 And I have been in gaming for

14 about 18 years. I used to work for a gaming
15 vendor. When I first went and visited NIGC,
16 Chairman Hogen, I think, was a commissioner in
17 '96. When I first came we were introducing a
18 lot of these electronic games to Indian
19 country and especially Oklahoma.

20 The first time I went up there
21 with the gaming company that I worked with,
22 NIGC more or less told us if we plugged into a
23 wall it was Class III. So we had to educate,
24 more or less, to people, that technology was
25 available that was going to allow us to make

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1 more money for our tribes here in Oklahoma,
2 because we didn't have compacts at that time.

3 So a lot of this technology that's
4 been introduced has helped the tribes
5 enormously. And we are still having that
6 effect where it's helping us. But without
7 this, we can't go forward. The land trust
8 issue is what's holding us back. So, with all
9 of that said, if these standards are
10 implemented we feel like it's going to be very
11 detrimental to our tribe. Like I said, 300
12 people will lose their jobs if our casino
13 closes today.

14 And I'd like to turn this over to

15 one of our attorneys, Judy Shapiro, so she can
16 comment.

17 CHAIRMAN HOGEN: Let me follow up
18 here with a question. If these regulations
19 became official in the law of land tomorrow,
20 what application would that have to your
21 operation?

22 ASST. CHIEF LOCOST: Well, we
23 couldn't compact.

24 CHAIRMAN HOGEN: Pardon me?

25 ASST. CHIEF LOCOST: We couldn't

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1 compact, because we don't have trust land. If
2 compact games are the only thing that's
3 available --

4 CHAIRMAN HOGEN: Okay. I know
5 there is a colorful history here with respect
6 to UKB's gaming and NIGC's view of it, and
7 there is litigation ongoing.

8 ASST. CHIEF LOCOST: Yes.

9 CHAIRMAN HOGEN: But correct me if
10 I am wrong, Counsel, but I think it's NIGC's
11 view that you are not conducting gaming under
12 the Indian Gaming Regulatory Act currently.

13 MS. COLEMAN: I think we issued an
14 advisory opinion to that effect.

15 ASST. CHIEF LOCOST: Yes, you
16 issued that. But as a tribe we are regulated

17 by our own Tribal Gaming Commission that takes
18 your standards without your knowledge. We
19 utilize those standards and we practice them
20 every day. If we could send it to you, we
21 would, but you have returned our checks.

22 You will not regulate our
23 facility. We've tried to get you to. We want
24 you to. We invite you to. But you will not
25 without that trust land. That's the issue

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1 that you pointed out, I think, in previous
2 letters.

3 CHAIRMAN HOGEN: Yeah. And we
4 take no joy in the confusion that is reigned
5 here with respect to that.

6 ASST. CHIEF LOCOST: Yes.

7 CHAIRMAN HOGEN: But, I mean,
8 if -- I guess as I view the current situation,
9 if you started using Class III machines, as we
10 use that terminology, I don't know that NIGC,
11 under its current approach, would or could do
12 anything about that, or if you continued to
13 use.

14 ASST. CHIEF LOCOST: A lot of the
15 vendors will not deal with us. They say it
16 would be detrimental to their licensing if
17 they deal with a tribe that does not have

18 trust land or is not regulated by NIGC. So,
19 therefore, compacting vendors that have
20 compact games will not deal with us. We have
21 tried to do that.

22 We have tried to go to Bally's,
23 IGT, and some of these. They won't even talk
24 to us, because we don't have that trust land
25 that they have that guarantee that somebody is

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1 not going to come in and close us down.

2 MS. SHAPIRO: I think, and we will
3 discuss it later off the record, the tribe
4 still holds a hopeful resolve in the trust
5 land issue.

6 ASST. CHIEF LOCOST: Yes.

7 MS. SHAPIRO: In due course, if
8 the tribe can resolve the trust land issue,
9 resolve the jurisdictional issue, it would
10 like to be among the other tribes in Oklahoma
11 doing business under the Indian Gaming
12 Regulatory Act. When that happens they are
13 still without a contract, and there is no
14 guarantee they will ever get one.

15 So, even if we can cut the Gordian
16 knot on the issue of the trust land, they
17 still need Class II gaming and they need it to
18 survive, and they need it to be a viable
19 source of revenue and one that can at least

20 hold its head up a little bit in the face of
21 what their neighbors might be operating.

22 COMMISSIONER CHONEY: This land
23 that you have got requested to be put into
24 trust, where is it?

25 ASST. CHIEF LOCOST: It's located
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1 where our administrative offices are right in
2 Tahlequah.

3 MS. COLEMAN: Where you have been
4 for how many years?

5 ASST. CHIEF LOCOST: We have been
6 operating the gaming facility since '86,
7 before the IGRA was even implemented.

8 COMMISSIONER CHONEY: Was it
9 private land you purchased?

10 ASST. CHIEF LOCOST: Yes, the
11 tribe purchased. We have several tracts of
12 land we purchased throughout the northeastern
13 part that we consider our jurisdiction.

14 MS. SHAPIRO: This is within the
15 boundaries of the reservation that the
16 Keetoowah have.

17 ASST. CHIEF LOCOST: It's been
18 approved by the constitution congress approved
19 in 1946, our nine districts.

20 MS. SHAPIRO: This is not

21 reservation shopping. This is homeland
22 recovery. There is no credible question about
23 the ancestral ties here or the treaties of the
24 United States that brought them there.

25 CHAIRMAN HOGEN: Okay. Well, we
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1 have probably digressed.

2 MS. SHAPIRO: Yeah, well it's
3 important. It's important context. Because
4 we hope to be in a position of having to fret
5 over Class II games, it is important to us
6 when we have the opportunity to do so that it
7 be within a system that works. I think that
8 one of the issues that concerns the UKB is the
9 way that the certification process works.
10 I've been reading some of the transcripts, and
11 I see that you have reassured I think it's the
12 representatives from Bishop that were you to
13 object to a certification, then that could be
14 appealed to the full Commission and then that
15 would go to the district court.

16 But there is no such appeal if the
17 lab itself reaches a negative determination.
18 In that event, the tribe has no recourse. And
19 in the event that some years down the road a
20 commission is in place with somewhat less
21 familiarity with the intent that some of these
22 ambiguous provisions may have, there may be

23 certifications or denials of certifications
24 that are not what you intended. And in that
25 event, the tribe has no challenge. There is

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1 no surety.

2 There is no surety in that if a
3 determination is positive, the chairman has 60
4 days to undo it for any reason. That's a long
5 time. That's twice as long as the FCC has to
6 undo a certification of new technology under
7 its rules. And then there is no time limit on
8 overturning a positive certification for good
9 cause. Good cause is not defined. There is
10 nothing that suggests that good cause -- I
11 suppose if it's overturned for a good cause,
12 then we would have the same appeal right, but
13 it's not clear to me that we would.

14 But even if we do, in parallel
15 proceedings again before the FCC, that good
16 cause is an automatic. There is a hearing,
17 because at that point there is a vested
18 property right. There is a hearing before it
19 can be overturned after that first 30 or 60
20 day towing has happened. And we are concerned
21 to make sure that, with the major economic
22 interest at stake, if we get into the position
23 of being able to put in place certifiable

24 Class II games, we want to know that once we
25 have done it, we can rely on it, and that we

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1 won't find out a year or two years later
2 someone is going to look at it and say, "We
3 want to pull that certification."

4 So we would look to address that.
5 We are concerned there is not a final order of
6 the Commission in place as whenever the lab
7 acts under the Commission's auspices. We
8 think that there should be some appealable
9 event and the tribe has process, and it should
10 be able to move forward on that.

11 That's our primary concern today.
12 We have also -- we're not going to parrot back
13 all the other concerns. We will have them in
14 our written comments. But we know that there
15 are still significant ambiguities in the way
16 the regs are set out, and there is significant
17 arbitrary restrictions that we just don't
18 think need to be there.

19 When UKB comes into its own, has
20 its land, has its tribal gaming ordinance, and
21 is able to conduct gaming under the IGRA
22 without question, at that point the tribe
23 wants to know what it can put in and it wants
24 to be able to know that it can continue to
25 have a revenue industry. It's vital. They

1 can't do without it, and that's why they have
2 to keep fighting at this level.

3 Anything you need to add to that?

4 CHAIRMAN HOGEN: Let me just
5 respond to your very appropriate comments.

6 You know, at the end of the day we
7 think that UKB and anybody or everybody
8 similarly situated, as well as the rest of the
9 tribal gaming community, will be better served
10 if there is some certainty here, and so you
11 don't have to wonder, "If we buy these
12 machines, are we on sold ground?" "Are we
13 going to have to pay a higher interest rate,
14 because our lender is not going to know if we
15 can do this?" and so forth. So we think there
16 is a useful purpose to be served by that
17 clarity.

18 With respect to these points you
19 make regarding the appeal process and who can
20 and can't do it, we're concerned about that.
21 We will look carefully at that. And I agree
22 that you shouldn't have to forever more look
23 over your shoulder and wonder, "Will they
24 sweep down here one day and say, 'Whoops, we
25 were wrong. These machines are bad now.'"

1 Should something like that happen. That's not
2 beyond the realm of possibility given
3 technology as complicated as it is.

4 I believe if I were on the
5 Commission at that time, I wouldn't rush out
6 to, you know, grind everything to a halt. But
7 I would sit down with the vendor and the tribe
8 and say, "Look, how can we reconfigure this
9 and make it work so it's as painless as
10 possible?"

11 But having a little more certainty
12 or process wouldn't be a bad idea.

13 MS. SHAPIRO: Well, we would like
14 to know why it would be overturned. If it
15 were fraud, that's understandable. If it's a
16 mistake, that's a little less understandable.
17 There should be a clear criteria for what
18 justifies an after-the-fact overturning.
19 Because that certainty, the same certainty
20 that you want to have in the regulations, we
21 want to know that once we think we have
22 complied with the regulations, we are done.
23 That we have accomplished it and go forward.
24 Otherwise, wonders won't want to go without
25 either.

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1 If they read this carefully and

2 they realize that there is no certainty in
3 having a certification, then what can we tell
4 our lenders.

5 So I think those are our specific
6 Class II issues. If it will be helpful we
7 will try to provide other modes of due
8 process.

9 CHAIRMAN HOGEN: That would be
10 extremely useful.

11 MS. SHAPIRO: Yeah. I'm working
12 to gather that together.

13 ASST. CHIEF LOCOST: We are
14 finished.

15 CHAIRMAN HOGEN: Okay. If you
16 have said all that you have to say with regard
17 to this classification, we will call this
18 session concluded and let the record remain.

19 (Proceedings concluded.)

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C E R T I F I C A T E

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