

3 panelists here, the tribal leaders on this first  
4 panel, thank you so much for coming, and we know  
5 that you came here at some expense and that you  
6 have given this a lot of thought and we're much  
7 appreciative of this.

8         We have Brian Campbell, the  
9 Administrator of Commerce with the Chickasaw  
10 Nation, present. We have Tracie Stevens,  
11 Governmental Affairs with the Tulalip Tribe.  
12 Charlie Lombardo, Senior Vice President of Gaming  
13 Operations with the Seminole Tribe of Florida.  
14 Marjorie Mejia, the Lytton Band of Pomo Indians.  
15 Ray Halbritter of the Oneida Nation from New  
16 York.

17         We are ready to proceed. We'll start  
18 with Brian Campbell. If you would make your  
19 opening statement, please.

20                 Panel 1 - Tribal Leadership

21         MR. CAMPBELL: Thank you, Chairman  
22 Hogen, Commissioner Choney. Governor Anoatubby

1 sends his regards and apologies that he could not  
2 be here today. As I mentioned, a tribal  
3 legislator passed away and he attended her  
4 service.

5 Thank you for this opportunity to  
6 comment on the NIGC's proposed rule establishing  
7 game classification standards.

8 Since the Indian Gaming Regulatory Act  
9 was enacted in 1988, the Chickasaw Nation has  
10 undergone an economic transformation of a  
11 magnitude hardly imaginable a generation ago.  
12 Eighteen years ago, the entire staff of the  
13 Chickasaw Nation consisted of a handful of tribal  
14 employees. Today, the Nation has emerged has one  
15 of Oklahoma's leading employers with more than  
16 10,000 employees.

17 Without exaggeration, it is Class II  
18 gaming that has fueled the economic growth of the  
19 Nation in 13 Oklahoma counties which surround the  
20 Nation Indian lands by providing the means for us  
21 not only to develop economically but to deliver a  
22 broad range of essential governmental services,

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1 educate our young, care for our elders, and  
2 improve health care services for all.  
3 The investments we have made in turn  
4 have made an immense difference in the lives of  
5 our people and communities in which they reside.  
6 Before us today is a proposed rule that  
7 would fundamentally alter the legal underpinning  
8 of Class II gaming and render unlawful Class II  
9 gaming as we know it today. We are disappointed

10 that the NIGC has elected to publish this  
11 proposal over the virtually unanimous objections  
12 of the tribal leadership.

13 We do not expect such a deeply-flawed  
14 proposal, given the investment of time, the  
15 number of drafts, and the mountain of comments  
16 from tribal leaders and industry representatives.

17 We do not offer such criticism lightly. It is  
18 the policy of the Nation to endeavor to be  
19 constructive in our comments and to work  
20 cooperatively with federal agencies in the best  
21 spirit of the government-to-government  
22 relationship.

2 the rule, we offered what we believed to be a  
3 constructive suggestion as well as a possible  
4 alternative approach. While we did not  
5 necessarily anticipate that all of our  
6 suggestions would be embraced, we did anticipate  
7 that the final draft would reflect at least some  
8 of the elements common to the comments submitted  
9 by tribal governments. What we did not  
10 anticipate is that the proposed rule would be  
11 even more objectionable than the initial draft.

12 We note from the preamble of the NIGC's  
13 desire for clarity and certainty in relation to  
14 this distinction between Class II and Class III  
15 gaming. While we recognize these interests, at  
16 stake there is an equally compelling interest in  
17 stability and consistency.

18 Under the proposed rule, not a single  
19 electronically-aided Class II game in play today  
20 anywhere in Indian Country would remain lawful,  
21 including those games affirmed by the federal  
22 courts and those games previously authorized by

1 the NIGC. Literally millions of dollars have  
2 been invested in reliance on the courts and the  
3 NIGC and literally millions of dollars in future  
4 earnings will be lost if this regulation is  
5 adopted.

6 This regulation jeopardizes contractual  
7 arrangements, financing decisions, jobs,  
8 ancillary businesses, scholarships, police, fire,  
9 and other emergency services, health care  
10 benefits, grants to schools, charities, and the  
11 list goes on, and it deprives tribal governments  
12 of the full benefit of the law as enacted by  
13 Congress.

14 As an independent agency of the United  
15 States, the NIGC possesses the authority to

16 interpret IGRA independently of the views of any  
17 other federal department or agency and to do so  
18 in a manner that will not deprive tribal  
19 governments of the full benefit of the law in a  
20 critical economic engine.

21 In the proposed rule, the NIGC has opted  
22 for the least favorable, most injurious

1 interpretation of the law from the tribal  
2 perspective. In the text of the preamble, the  
3 NIGC make clear that it has done so at the urging  
4 of another cabinet-level department. That agency  
5 had its day in court, actually several, and its  
6 legal theories were rebuffed by no less than four  
7 federal circuit appeals courts.

8 The NIGC is under no obligation to

9 vindicate another agency's theories about Indian  
10 gaming. Neither does another federal agency have  
11 the right to impose its views on the NIGC.

12       On the other hand, the NIGC is under an  
13 obligation to adhere to the interpretation of the  
14 courts, to consult meaningfully with tribal  
15 government officials and to apply the law fairly.  
16 We urge the NIGC to exercise its authority to  
17 change its direction and work collaboratively  
18 with tribal leaders to resolve its concerns about  
19 the classification of games in a manner that  
20 fairly takes into account the interests of tribal  
21 governments.

22       We believe that there are many

1 alternatives that have not been adequately  
2 explored. We would urge the NIGC to work through  
3 these issues and explore alternatives on a  
4 government-to-government basis in order to avoid  
5 an economic catastrophe in many parts of Indian  
6 Country.

7       The Indian Gaming Regulatory Act was  
8 enacted as a means to facilitate and strengthen  
9 tribal government capacity and economic  
10 development. It is unreasonable to construe IGRA  
11 as requiring Class II gaming to be substantially  
12 less lucrative than Class III gaming as some have  
13 continually urged.

14       In fact, the committee report  
15 accompanying IGRA at the time of enactment  
16 specifically stated that the committee  
17 specifically rejects any inference that tribes  
18 should restrict Class II games to existing game  
19 sizes, level of participation or current  
20 technology.

21       The committee intends the tribes be  
22 given the opportunity to take advantage of modern

1 methods of conducting Class II games and the  
2 language regarding technology is designed to  
3 provide maximum flexibility.

4       Nonetheless, the policy choice reflected  
5 in the proposed rule is to so restrict the use of  
6 technology as to strip electronically-aided  
7 games, Class II gaming of its economic viability.

8 It is simply unreasonable to classify an  
9 electronically-aided Class II game as Class III  
10 gaming based on superficial features.

11       Under IGRA, the game of bingo is a bingo  
12 so long as the game meets the statutory elements.  
13 Class II bingo does not become a Class III game  
14 just because the cabinet does not have two-inch

15 letters stating that the game is a game of bingo  
16 nor does a player terminal transform the game of  
17 bingo into a facsimile just because there's an  
18 entertainment display simulating spinning reels.

19       The amount of the prize is not an  
20 element of the game of bingo. A requirement that  
21 a game must be prolonged for at least eight or 10  
22 seconds in order to qualify as Class II bingo is

1 not an appropriate criteria for classification.  
2 In fact, none of these criteria represent  
3 appropriate legal elements determinative of the  
4 class of a game under IGRA.

5       Also, the NIGC desires by proposed  
6 regulation to create an ongoing relationship  
7 between the NIGC and gaming laboratories. No

8 statutory authority exists for the NIGC to assert  
9 the Indian government authority and become the  
10 sole selector of gaming laboratories. In fact,  
11 such a position is contrary to court decisions  
12 previously taken by the NIGC.

13 Vendor relationships, whether between a  
14 laboratory or game software vendor, need to  
15 remain between the Indian sovereign who license  
16 vendors and the vendor's license.

17 Attempts by the NIGC to grant itself  
18 day-to-day license authority for game  
19 laboratories has no statutory basis and is  
20 contrary to the sovereign authority of the tribal  
21 government.

22 Because of time limitations, this oral

1 statement is a summary and we will be providing  
2 more detailed written comments to be submitted by  
3 September 30th.

4 CHAIRMAN HOGEN: Thank you very much.

5 MR. CAMPBELL: Thank you.

6 CHAIRMAN HOGEN: Tracie Stevens?

7 MS. STEVENS: Thank you, Mr. Chairman,  
8 and Commissioner Choney.

9 My name is Tracie Stevens, and I'm the  
10 Senior Policy Analyst at the Tulalip Tribes'  
11 Governmental Affairs Department.

12 I'm standing in for my chairman, Stanley  
13 Jones, who could not attend today's hearing due  
14 to an emergency back at home. He does send his  
15 apologies and his regards. However, I am  
16 prepared to make his statements and comments in  
17 his place.

18 We appreciate the opportunity to provide  
19 testimony here today on the Commission's  
20 classification and technical standards proposed  
21 rule. My testimony will highlight our greatest

22 concerns, but for the sake of time, we will

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1 submit our written comment later, by the  
2 September 30th deadline, which will include all  
3 of our concerns.

4 Before I talk about the proposed rule, I  
5 would like to take a moment to tell you a little  
6 bit about Tulalip. The Tulalips are the  
7 signatories to the Point Elliott Treaty of 1855,  
8 and we're located about 35 miles north of  
9 Seattle, and we have about 3,800 tribal members.

10 Tulalip opened its bingo hall in 1983  
11 which at the time provided a significant source  
12 of revenue and jobs for our tribe, although the  
13 operation was small. We were the first tribe in

14 the State of Washington to negotiate the first  
15 tribal state compact.  
16 At that time, we negotiated only for  
17 house bank card games and later, through what is  
18 referred to as a "friendly" lawsuit, negotiated  
19 Class III tribal lottery system, a machine system  
20 that's modeled after the state's lottery system  
21 where players play against each other for  
22 predetermined prizes and they are not slot

1 machines.

2 As a part of this lawsuit, a specific  
3 and unique compact appendix was negotiated which  
4 limits the number of these Class III machines  
5 allowed each tribe and their gaming facilities.  
6 This limitation is of significant importance to

7 Tulalip, which I will elaborate on later in my  
8 testimony.

9       Our first concern with the rule concerns  
10 the Commission's consultation process. We  
11 believe that the proposed regulations disregard  
12 NIGC's duty to adequately consult with tribes.  
13 In reviewing the preamble of the Commission's  
14 proposed classification and technical standards  
15 as published in the Register, the three-year  
16 process of consultation is described wherein a  
17 tribal representative advisory committee was  
18 established with the intent to collaboratively  
19 work with the Commission on the proposed  
20 regulations.

21       However, later in the Register, the  
22 Commission admits to dismissing the advisory

1 committee's revisions or suggestions. We do not  
2 find such disregard meets consultation standards.  
3 Also, these meetings were not recorded in any  
4 manner for public consumption.

5 Further, it stated that the Commission  
6 consulted with the Department of Justice over a  
7 five-month period in which tribes were not  
8 included.

9 At the end of this collaborative  
10 consultation between the two agencies, the DOJ  
11 attempted to change the classification standards  
12 but rescinded after being met with great  
13 opposition from tribes.

14 It appears to us that the Commission has  
15 had a more meaningful consultation with the DOJ  
16 than they did with the tribes, as indicated by  
17 the Commission's acquiescing to the concerns of  
18 the DOJ by drastically changing the fifth draft  
19 without the input of the tribes and incorporating  
20 much of the DOJ's previously-failed attempt to

21 reclassify Class II machines.

22 This drastic shift in the fifth draft

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1 alone negates the three years previous  
2 consultation efforts with tribes and cannot be  
3 mitigated with the one-month time period for  
4 consultations that the Commission required which  
5 was both inadequate and unrealistic.

6 Our second concern is with the financial  
7 impact of such regulations. There's no evidence  
8 that the Commission complied with the  
9 requirements of the Unfunded Mandate Reform Act  
10 of 1995 to assess the financial impact these  
11 proposed regulations may have on tribal  
12 governments.

13           The Commission, as a federal agency  
14 promulgating a regulation, has a duty to prepare  
15 and consider estimates of the budgetary impact of  
16 regulations. Although the preamble to the rule  
17 does state that the "Commission has determined  
18 that this proposed rule does not impose an  
19 unfunded mandate on state, local, or tribal  
20 governments or on private sectors of more than a  
21 100 million per year," the Tulalip tribes have  
22 not yet seen the assessment required by UMRA.

1           We know that the proposed rule will  
2 adversely affect Tulalip. Combining our economic  
3 impact with countless other tribes across the  
4 nation would likely exceed the Commission's  
5 estimate of a 100 million per year. Therefore,

6 we believe that it is the duty and the obligation  
7 of the Commission to provide an assessment of the  
8 proposed action as mandated by that Act.

9 Finally, to speak specifically to  
10 Tulalip, the proposed rule would have a  
11 detrimental effect on Tulalip. It would  
12 eliminate the tribe's only avenue of expansion  
13 and would require a drastic reduction in the  
14 current Class II gaming operation.

15 The changes in the fifth draft were so  
16 drastic that all currently-approved Class II  
17 machines would become Class III machines. This  
18 is of paramount concern to us because Washington  
19 State's compacts with tribes utilizes a system  
20 whereby each tribe is allocated a certain number  
21 of player terminals that can be used by the  
22 tribes in a gaming facility or leased to another

1 tribe. At this time, there are no more player  
2 terminals available by use by any of the tribes  
3 because of these limitations.

4 Today at Tulalip Bingo, the Class II  
5 player terminals in operation bring in more  
6 revenue to the Tulalip Tribes than do the paper  
7 bingo games. As stated previously, none of the  
8 Class II games currently on our bingo floor would  
9 qualify as Class II machines under the proposed  
10 rule.

11 If the proposed rule is promulgated as  
12 final, the Tulalip Tribes would have no choice  
13 but to remove those machines from the Class II  
14 facility which would cut our bingo operation by  
15 more than half.

16 The Tulalip Tribes of Washington are  
17 limited to two Class III gaming facilities per  
18 tribe and we would not be able to use these  
19 machines any longer. The survival of the Tulalip

20 bingo operation as its operates today depends on  
21 the combined revenue generated from both the  
22 Class II machines and bingo. The loss of the

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1 Class II machines and resulting deterioration of  
2 the bingo operation would have a significant and  
3 detrimental cultural impact as well.

4 We would lose approximately 40 jobs that  
5 are held primarily by Tulalip tribal members, and  
6 due to the restrictions on Indian gaming  
7 facilities and the machine allocations in the  
8 state, there's no option to replace these  
9 machines. The loss of these games would limit  
10 the tribe's ability to expand further and would  
11 in fact diminish the gaming operation.

12 More importantly, the services and  
13 programs we provide to our people would diminish  
14 as a result of the loss of bingo revenue. This  
15 counters the intent of IGRA which is to promote  
16 tribal economic development, self-sufficiency,  
17 and strong tribal governments.

18 In sum, we respectfully request the  
19 Commission to provide meaningful consultation  
20 with tribes by holding more meetings in more  
21 locations throughout the country, to give as much  
22 consideration to the tribes' suggestions and

1 recommendations as was given to the DOJ, by  
2 working collaboratively to exchange ideas and to  
3 make record of all consultation proceedings, and  
4 lastly, we request that an economic assessment be

5 conducted to conform to UMRA to indicate the  
6 potential economic impacts tribes would expect if  
7 this rule is promulgated.

8 Thank you.

9 CHAIRMAN HOGEN: Thank you. Mr.  
10 Lombardo?

11 MR. LOMBARDO: Thank you, Chairman.

12 Good morning. My name is Charlie  
13 Lombardo. I'm the Senior Vice President of  
14 Gaming for the Seminole Tribe of Florida. In  
15 that capacity, I have significant responsibility  
16 for the Class II gaming conducted by the tribe at  
17 its seven gaming facilities located on tribal  
18 lands in the state of Florida. Among these  
19 responsibilities is to ensure that the games  
20 offered are fun and entertaining for the guests  
21 and profitable to the tribe.

22 Before coming to work for the tribe in

1 September 2002, I held various positions with  
2 Park Place Entertainment in Las Vegas, including  
3 Senior Vice President of Site Operations for  
4 Caesar's Palace and Bally's Las Vegas. I opened  
5 the Paris Las Vegas also as Senior Vice  
6 President, Slot Operations. Before that, I  
7 worked for the MGM Grand Las Vegas.

8       During my career, I have helped design  
9 many electronic gaming machines, including the  
10 Class II electronic games currently used by the  
11 Seminole Tribe of Florida.

12       The Seminole Tribe has been a leader in  
13 the area of Indian gaming. The tribe was the  
14 first tribe to open a commercial bingo hall and  
15 has been conducting gaming to provide revenue for  
16 tribal programs for over 25 years.

17       Although the tribe has the right to  
18 offer slot machines, since slot machines are

19 extremely permitted under the state law, the  
20 tribe has been limited to Class II gaming due to  
21 the failure of the state and the federal  
22 government to follow federal law by refusing the

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1 compact issues or issue procedures in lieu of a  
2 compact.

3       Since the tribe has been forced by the  
4 state and the federal government to rely on Class  
5 II gaming, the tribe has, of necessity, worked  
6 with the gaming industry to maximize the  
7 commercial viability of Class II gaming.

8       The tribe has been a leader in helping  
9 to promote standards to ensure game integrity and  
10 compatibility between games and related back

11 office systems. For these reasons, both the  
12 tribe and I were encourage when, in 2003, the  
13 NIGC announced plans to develop common technical  
14 standards for Class II games.

15       Because of my technical background with  
16 electronic games, the tribe nominated me to serve  
17 on the advisory committee established by the NIGC  
18 to assist with the preparation of these Class II  
19 standards.

20       While the NIGC listened to our comments  
21 and concerns with each draft of the proposed  
22 classification regulations, it became

1 increasingly clear that the NIGC reigned in Class  
2 II gaming and restricted it to games that would  
3 be very little commercial viability. Thus,

4 decisions about various restrictions included in  
5 the drafts appeared to be driven by whether  
6 change would help to slow game or otherwise make  
7 the game less attractive to the players.

8 I am advised that this is contrary to  
9 the plain language of the IGRA, the case law, and  
10 even IGRA's own prior decisions. I think that it  
11 is highly important to note that not one of the  
12 significant comments made by me or other members  
13 of the advisory committee was accepted by the  
14 NIGC. In fact, we had no role in the actual  
15 drafting of the proposed classification  
16 regulations.

17 The members of the advisory committee  
18 frequently and usually unanimously objected to  
19 the language developed by the NIGC. We were told  
20 repeatedly by the Commission that its decorum  
21 restrictions were necessary to provide a clear  
22 line between Class II and Class III gaming.

1           We agree there needs to be a clear line  
2 between Class II and Class III. However, we  
3 believe that the line was drawn by Congress and  
4 that there's no need for a basis for the NIGC to  
5 draw a different and more restrictive line.

6           In the case of bingo, there's a simple  
7 test. One, the game must meet the three IGRA  
8 requirements of bingo and, two, if the underlying  
9 game is bingo, then it can be played with  
10 electronic aids, as long as the aids do not make  
11 the game into a facsimile by permitting a player  
12 to play the game with or against the machine  
13 rather than with or against other players.

14           Applying this test is very simple.  
15 Tribes are free to use technology, including  
16 auto-daub, to aid in the play of bingo and other  
17 Class II games, as long as the aid does not

18 permit the player to play alone, with, or against  
19 the machine.  
20       Granted, this gives tribes a great deal  
21 of flexibility in game design, but that is what  
22 Congress intended. In contrast, the NIGC's

1 proposed regulations would impose numerous  
2 additional and arbitrary requirements on what it  
3 takes for a game to be bingo and on the type of  
4 electronic aids that can be used to play bingo.

5       Based on my many years of experience in  
6 the gaming industry, I can tell you that the  
7 games that would be permitted under the proposed  
8 regulations would be extraordinary expensive to  
9 produce and have little, if any, commercial

10 viability.

11 In my opinion, the present major  
12 manufacturers of these games would abandon this  
13 platform and exit from Class II, leaving only  
14 those game manufacturers that operate in gray  
15 areas, the same individuals that the NIGC  
16 originally intended to eliminate when it started  
17 this process.

18 The proposed regulations, by  
19 dramatically restricting Class II gaming, would  
20 also be very unfair to tribes in states, such as  
21 Florida, where the tribes are forced to compete  
22 with Class II games against Class III games

1 permitted under state law. By denying Class III  
2 gaming to the tribes, the states are able to

3 generate significant tax revenue from non-Indian  
4 gaming while largely leaving the tribes out in  
5 the cold. It is hard to believe that Congress  
6 intended such a situation.

7 For all these reasons, the NIGC's  
8 proposed Class II regulations are fundamentally  
9 flawed and should be withdrawn. Rather than try  
10 to rewrite and limit the scope of Class II gaming  
11 permitted by the IGRA, the NIGC should work with  
12 tribes to refine and finalize technical standards  
13 that will help ensure game integrity and  
14 compatibility.

15 Thank you.

16 CHAIRMAN HOGEN: Thank you. Chairwoman  
17 Mejia?

18 MS. MEJIA: Good morning. My name's  
19 Marjie Mejia. I am the Tribal Chair of Lytton  
20 Rancheria of California, known as the Lytton Band  
21 of Pomo Indians, and currently, I serve as the  
22 CEO for Casino San Pablo located 20 miles from

1 San Francisco.

2 Our facility opened a year ago August  
3 1st, and it has had a major impact with what  
4 we've been able to do with the revenue generated  
5 from our business. We've been able to provide  
6 education benefits to our members. We've been  
7 able to implement programs, such as health care  
8 and in-home assistance, for our elders, and these  
9 are really important to my people because they've  
10 gone without these services.

11 We were a terminated tribe, landless for  
12 over 40 years, and now my members are starting to  
13 see something positive in the future, and these  
14 proposed regulations are a great concern to my  
15 people because it could strip them away from  
16 that.

17 In addition to what the benefits of  
18 Casino San Pablo do for my people, it also  
19 supports the communities surrounding the casino.  
20 The casino provides 90 percent of the San Pablo  
21 City budget, General Fund budget, and that has  
22 allowed them to implement programs, like reduce

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1 the utility tax.

2 Casino San Pablo employs over 500  
3 people. City of San Pablo is a very impoverished  
4 community in the East Bay and these jobs are of  
5 the utmost importance to them. We also support  
6 the San Pablo Community Foundation and the  
7 Brookside Community Health Center which funds  
8 health care for the unfunded members of San Pablo

9 Community.

10 So, these are very significant efforts  
11 being done with the revenue generated from this  
12 casino, and these proposed regulations will not  
13 only stop the benefits to the community but it's  
14 really termination for my people again, and I am  
15 going to submit written testimony before your  
16 September 30th deadline.

17 However, I came here personally to look  
18 you in the eye and tell you that this is serious.  
19 This is people's lives that are at stake here,  
20 and I strongly urge you to consider these  
21 regulations and what you're going to do to the  
22 people in my community and the community in the

2 So, I thank you.

3 CHAIRMAN HOGEN: Thank you. Chairwoman

4 Mejia, let me just ask you a couple of questions

5 here, lest I forget.

6 If memory serves me, there was a lot of

7 discussion before your facility opened with

8 respect to the machines that were going to be

9 placed in the place. If I understand it

10 correctly, those are multiple-touch games as

11 opposed to games you just push the button once

12 and the game is over.

13 MS. MEJIA: Yes, sir, you're correct.

14 We tried twice. We negotiated a compact in good

15 faith with the governor of California. We

16 believed that it was in good faith, and the

17 legislature refused to ratify that, leaving us to

18 exercise the option in IGRA to do Class II

19 gaming, but my people wanted to do things right

20 and they searched and researched, our technical

21 team. We worked with the manufacturer and we

22 talked with all of you, and our machines are

1 three touch. Our machines do not have automatic-  
2 daub and with everything that I stand before you  
3 with today, I believe those are truly Class II  
4 machines.

5 CHAIRMAN HOGEN: Okay. And if you can,  
6 can you tell us how they would have to be played  
7 differently from how they're being played now if  
8 these rules would go into effect?

9 MS. MEJIA: If they're played, from what  
10 I understand, and I'm not a technical person, --

11 CHAIRMAN HOGEN: Sure.

12 MS. MEJIA: -- but I am told that this  
13 will slow the game down and basic math tells you  
14 that you only have so many hours in the day and  
15 if it takes twice as long to play the game or a

16 third longer, you're cutting the revenue by that  
17 much.

18 CHAIRMAN HOGEN: Okay. We will look  
19 forward to your written comments, and if you're  
20 able to crunch some numbers and project the  
21 difference, based on what the proposal is and  
22 what you're doing now, that would be useful to

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1 us.

2 MS. MEJIA: Well, part of my team's out  
3 here, so they're already working on it. Right,  
4 guys?

5 CHAIRMAN HOGEN: Okay. Thank you. Mr.  
6 Halbritter?

7 MR. HALBRITTER: (Indian Language.) I

8 bring you greetings of peace from the Oneida

9 people.

10       There were screams one night that awoke  
11 our people in the middle of a summer night in  
12 June of 1975 on Oneida Nation Territory that has  
13 been our homeland since time immemorial. Just  
14 across the road from my own mobile home, a brutal  
15 fire raged totally engulfing another mobile home  
16 where two Indian people were trapped inside and  
17 were being consumed by the flames.

18       Frantic, desperate calls were made to  
19 the City of Oneida Fire Department, the city, by  
20 the way, that bears the name of our people, but  
21 they refused to respond and they never responded  
22 to our cries for help. My aunt and uncle, Sam

1 and Janice Winder, burned to death in that fire.

2 No words imaginable can describe how we  
3 felt in this country as remnant Indian nation, a  
4 small 32-acre tract of land, all that was left of  
5 our original six million-acre territory.

6 At that point in our existence, we lived  
7 on dirt roads, failed septic and water systems  
8 and dilapidated mobile homes. Rather than  
9 looking for the government for handouts, after  
10 200 years of failed government policies, we  
11 decided to try something different. We decided  
12 to do something to raise money for our own fire  
13 protection, something that many non-Indian  
14 communities can take for granted.

15 We did what many communities have done  
16 through the years in New York State. We began to  
17 conduct bingo games to raise money to protect our  
18 homes and families. Our high-stakes bingo game  
19 ultimately led to a series of legal disputes with  
20 the State of New York about conducting a bingo  
21 game without a state license. We did not have

1 games ended for a time.

2 Then the Seminole Tribe of Florida heard  
3 about our high-stakes bingo games and this  
4 resulted in the Foundation for Indian Gaming,  
5 starting with *Seminole v. Butterworth*, 1979,  
6 *California Cabazon v. Cabazon Band of Mission*  
7 *Indians*, 1987, and culminating in the passing of  
8 the Indian Gaming Regulatory Act of 1988.

9 We've come to Washington today to  
10 testify because once again the federal government  
11 seeks to change the nature of its relationship  
12 with sovereign Indian nations and tribes  
13 unilaterally and in a manner which adversely  
14 affects our successful Indian economic

15 opportunity.

16       We could have opened any number of  
17 federal hearings over the years with that  
18 sentence. Today is just the latest instance  
19 relating to the proposed Class II gaming  
20 regulations. America has a long history of  
21 striking deals with Indian governments and then  
22 changing the deal as it pleases. Oftentimes the

1 relationship's changed simply because the United  
2 States no longer likes the deal it entered into  
3 with an Indian nation or tribe, so the government  
4 conveniently changes the relationship to one that  
5 it wants, until it no longer likes its new  
6 relationship and again makes its changes.

7           The U.S. has the power to do that, has  
8 the might to do what it wants with Indian people,  
9 but unfortunately the American Indian experience  
10 has never lived up to Justice Black's famously  
11 quoted standard that great nations like great men  
12 should keep their word.

13           Moreover, the way a nation treats its  
14 friends says a lot about the nation. In  
15 particular, the Oneida people have witnessed  
16 firsthand throughout America's history the record  
17 of the U.S. entrance into treaties, making  
18 promises and defining relationships only to have  
19 it change without much regard for the effect on  
20 Indian people.

21           Even after our nation fought on the same  
22 side as the Colonists, the new United States

1 entered into a series of treaties, the most  
2 significant being the Treaty of 1794,  
3 Canandaigua, where each side agreed to defend and  
4 protect each other's use of their lands. That  
5 treaty was violated. Unfortunately, history  
6 shows that America did not live up to that end of  
7 the deal either. Oneida people were cheated, our  
8 land was stolen, our culture was devastated. Our  
9 people became poor, homeless, hungry, and  
10 uneducated in our own land.

11 America stood by and witnessed all of  
12 these injustices, despite the special  
13 relationship it was supposed to have by treaty  
14 agreement with the Oneida Nation. It seems we're  
15 getting a lot of attend these days with the  
16 gaming opportunity.

17 Even in the fact of these hardships, the  
18 Oneida people never wanted government handouts or  
19 dependence upon others, then or now. All we want  
20 or all we ever have wanted is for the United

21 States to live up to its word, allow us a chance

22 to rebuild our lives, to live in peace on our

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1 homelands and retain our culture and our home,

2 without federal or state interference.

3 In many ways, the Indian Gaming

4 Regulatory Act has been a successful and rare

5 example of America's effort to help us do just

6 that. IGRA's allowed new opportunities to

7 improve the federal tribal relationship that

8 allows us to rebuild our communities, our

9 families and our lives with minimal federal or

10 state interference, without handouts.

11 The Oneida people and others recognize

12 this opportunity. We are succeeding at building

13 our lives. We use gaming revenues to provide

14 health insurance for our people, to acquire lands  
15 and to build our cultural legacy. It's a  
16 workable deal, and we're trying to rebuild our  
17 nation under that.

18       We've created a gaming commission. All  
19 our employees are drug-tested and background-  
20 checked. One of the most secure employment  
21 opportunities in the state of New York. We've  
22 used for nearly three decades, we've used Class

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1 II gaming to rebuild our culture in a responsible  
2 fashion, and we've used it to help our people,  
3 and even in the face of these hardships, we've  
4 tried to help our people have a better life  
5 today, and we hope that, you know, in particular,

6 Congress intended for Indian nations to have  
7 maximum flexibility to utilize technology in  
8 playing non-banking games.

9 If the intent of Congress is maximum  
10 flexibility, then the regulations must reflect  
11 maximum flexibility. For those Indian nations  
12 not even able to obtain a compact after Seminole,  
13 the restrictive nature of Class II regulations is  
14 just an example of a broken promise of  
15 opportunity to Native America.

16 Regulation of Class II gaming being more  
17 restrictive is a retreat towards a day when  
18 America changes the rules simply because the  
19 original deal no longer served its interest.  
20 Regulations are designed or may be interpreted to  
21 assist Indian nations to be either more self-  
22 determining and independent or self-sufficient or

1 more dependent upon handouts.

2       It's been no secret that from the  
3 outset, Indian gaming has been opposed by  
4 mainstream gaming as mainstream gaming has used  
5 its wealth and influence to attempt to erode and  
6 restrict the gaming opportunity to Indian people.

7       We're one of America's first allies.  
8 Our relationship is fundamentally important. We  
9 wish to enter into meaningful government-to-  
10 government relationships with the federal  
11 government that would help achieve retaining the  
12 opportunities for Indian people.

13       The proposed amendments would erode and  
14 break the balance of the relationship with a one-  
15 sided decision. America can and should do better  
16 than that. In behalf of the Oneida people, I  
17 respectfully urge the Commission not to adopt the  
18 proposed amendments and as always remain willing  
19 to sit with you to negotiate rules that work for

20 all parties.

21 Would it not be better for everyone's

22 sake to work together to craft a solution that we

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1 can all live with than to unilaterally impose

2 rules that detract from the promise of

3 opportunity that IGRA provided, both recognized

4 and provided?

5 Again on behalf of the Oneida people, I

6 thank you for your time.

7 CHAIRMAN HOGEN: Thank you. At this

8 time, we would open the floor to questions of the

9 Commission or panelists regarding the testimony

10 we've heard to date, and we're a little behind

11 schedule. We'll try and do this long enough to

12 entertain the questions but try to wrap it up in

13 10 or 15 minutes, if it takes that long.

14 Are there questions or comments from the  
15 floor at this point in time?

16 MR. COLEMAN: (Indian Language.) I  
17 greet you and I thank you in the language taught  
18 to me by my grandparents. My family name is  
19 Yemshikal. My Christian name is Bill Coleman.  
20 I'm here as a councilman for the Nooksack Indian  
21 Tribe from Washington State.

22 I'm here to speak for our kids. I'm

1 here to represent our elders. I'm here to ask  
2 that we not put a chokehold on regulations. As  
3 councilmen, we took and decided to generate  
4 another economic engine for our tribe.

5           The Nooksack Indian Tribe in Washington  
6 State seven years ago was only 800 members.  
7 Today, we're just coming close to 1,900 members.  
8 Our economic engines are helping us with health  
9 care, services to our elders, services to our  
10 children.

11           We want to make sure that the decision  
12 that the Council makes on economic engines by  
13 rules and regulations that we received in the  
14 past are correct and will help us because we feel  
15 that Class II is going to make another option for  
16 us to better the lifestyle of our tribal members,  
17 to better the lifestyle of our community.

18           So, starting another Class II facility  
19 is one where we hope to again increase support to  
20 our medical facilities, to help support and to  
21 keep the momentum of our children in their  
22 educational pursuits.

1           The Nooksack Tribe, in the last five  
2 years, every senior in high school that has  
3 started their senior year has graduated because  
4 we encouraged them to do that, and we also have  
5 been able to give them support.

6           So again, I thank the panel for their  
7 comments. Very well spoken. I ask the  
8 Commission don't put a chokehold on this economic  
9 engine that we have. Be here to work for us, not  
10 against us.

11          So, thank you.

12          CHAIRMAN HOGEN: Thank you.

13          MR. YANITY: Good morning, Chairman  
14 Hogen. My name's Shawn Yanity, Chairman for  
15 Stillaguamish Tribe of Indians in Washington  
16 State.

17          We flew about 2,300 miles here for two  
18 minutes of testimony. Commissioner Choney stated

19 that he did not want to be here till 12:30  
20 tonight. We wanted to go on the record stating  
21 that Stillaguamish Tribe would gratefully stay  
22 until all can testify on this important issue to

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1 the Commission and how many folks need to tell  
2 the Commission that these proposed rules are  
3 foolhardy and have a truly negative impact to our  
4 tribes and economics.

5 Our tribe is a small tribe. We only  
6 have a 192 members, and around 1995, we only had  
7 a 135 acres of land, 32 of those acres were pre  
8 '88. We had to move houses in order to put in a  
9 facility. We had no economic capabilities  
10 without land, without any kind of backing  
11 financially. We had a lot of great ideas, but no

12 bank or anybody wanted to come in and back any  
13 ideas that we had because we didn't have land, we  
14 didn't have no way to back up if that business  
15 failed.

16       So, we purchased 80 acres of land to  
17 replace the housing that we tore up, and our  
18 casino right now has helped pave the way for  
19 purchase of over another 500 acres of land as  
20 well as start a methadone clinic, dentist clinic,  
21 behavior health clinic. If it wasn't for our  
22 facility, we wouldn't have those things.

1       So, we urge you to reconsider because  
2 small tribes like our tribe and myself as a  
3 leader looking at what that facility has done for

4 our people has really got us up to speed because  
5 we were drowning. We weren't going anywhere. We  
6 didn't have the opportunities, no land. So, for  
7 us, this is very important.

8 Thank you.

9 CHAIRMAN HOGEN: Thank you, Chairman.

10 If there are no other questions at this  
11 time, we will thank -- I'm sorry. There will be  
12 opportunity to comment from the public following  
13 other panels. So, if we bring this to a  
14 conclusion and you haven't had an opportunity,  
15 we'll try to get to it later.

16 Yes, sir?

17 MR. REID: Good morning. Thank you for  
18 being here for us and letting us here to do some  
19 public comments on the issue of Class II gaming.

20 My name is Morris Reid. I'm the Vice  
21 Chair of Picayune Rancheria. I'm from Corskill,  
22 California. I live in Fresno, and on this

1 occasion here, I thought it was very important  
2 that we be represented here today.

3 I'd just like to make a comment on the  
4 issue of this Class II gaming and the amendments.

5 I have down here that clearly the good  
6 intentions of past administrations is now being  
7 reversed. Termination of economic prosperity for  
8 the tribes. This is a list of what our tribe  
9 feels is happening in this reversal. Termination  
10 of economic prosperity for tribes, deteriorating  
11 sovereignty and the Department of Justice attempt  
12 to move monies, power and control to state and  
13 local governments, three Class II compacts will  
14 be used against tribes, not for the benefit of  
15 the tribes for economic self-sufficiency and  
16 stronger governments but for outrageous prices,  
17 through licensing prices taken out of the air to

18 do this just to pull monies and control away from  
19 the tribes, and this also closes the door on  
20 negotiations in good faith, and by that I mean  
21 that, say if California, we do go before the  
22 governor and legislation to have compacts passed

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1 and it seems that when you do this, the  
2 outrageous prices being given out that you have  
3 to take is something that's like strongarm  
4 tactics and without Class II gaming to leverage  
5 yourself in a way that would make them come to  
6 the table in good faith, it seems like that will  
7 disappear.

8 It seems that we're returning to the  
9 1950s and '60s in enacting laws that would wipe  
10 out court decisions of regulations and

11 congressional legislation history, undermining  
12 legal existence of Indian tribes and accede  
13 jurisdictional and tribal sovereignty to the  
14 state.

15       Clearly, the good intentions of the past  
16 administration are now being reversed. We feel  
17 that termination of prosperity for the tribes,  
18 dictating sovereignty and Class II compacts being  
19 used against tribes, not for the benefit of  
20 tribes. I may have read that before, but we feel  
21 that these are really taking away that,  
22 especially in California where monies for the

1 states are really tight. They've gone into  
2 deficit. These local governments are also in

3 deficits and it seems like the good intentions of  
4 the administration and yourselves will be  
5 reflected through this amendment that would give  
6 more stronger leverage to counties and states,  
7 that it would deteriorate, say, tribe sovereignty  
8 in coming to the table in good faith and try to  
9 build up the tribes sufficient for self-  
10 government and also for stronger government.

11         We've run into this through the 1A of  
12 our compacts in California. We took 1,800  
13 machines. We're now trying to get 200, but  
14 that's not now available. It seems like they  
15 want to have you to come to the table and  
16 amendments of that compact and with that comes  
17 high prices and different prices on the amounts  
18 of games and different regulations that you have  
19 to now change in order to get these and in that  
20 way, it seems like it's just a deterioration of  
21 the sovereignty of the tribe in coming to the  
22 state and local governments for any type of good

1 faith negotiations.

2 With that, I'll conclude. Thank you

3 very much.

4 CHAIRMAN HOGEN: Thank you. One more

5 comment before we break, please.

6 MR. PARKER: Gentlemen, I'm Kevin

7 Parker. I'm the Director of Gaming for the

8 Stillaguamish Tribe. I'm also a registered

9 member of the Chippewa Cree.

10 There's so many parts of this proposal

11 that we find egregious, but with only two

12 minutes, I thought I would just lock into one of

13 them.

14 Between legislation regarding trust

15 reform, off-reservation gaming and legislation

16 currently being proposed with the changes

17 regarding IGRA, that would be 2070(a), I don't  
18 think there should be any question that folks in  
19 Indian Country feel like they're under attack.

20 With regard to that, this comes up. All  
21 right. This is a tough, tough egg for these  
22 tribes to deal with. Is there any question on

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1 the Commission's part that eight seconds between  
2 spins, games, will completely destroy the  
3 technological aids to bingo? Because it will, at  
4 least from my point of view.

5 We have 90 machines within our facility  
6 that are Class II. Ms. Stevenson from the  
7 Tulalip mentioned earlier that we had a compact  
8 in the State of Washington. We do not have true  
9 Class III games on our Class III side.

10           On the Class II side, we followed all of  
11 your rules. We got our letters. We made sure  
12 the vendors that we used had your letters. We  
13 followed every single rule and now all those  
14 rules are changing. The economic impact to this  
15 is going to be devastating in Indian Country,  
16 devastating, and we wanted to go on the record as  
17 stating just that.

18           Thank you.

19           CHAIRMAN HOGEN: Thank you. With that,  
20 we will conclude this first panel.

21           I want to thank the panelists. I know  
22 how sincere you were in the presentations that

1 you made. Please appreciate that we receive it

2 with that same sincerity and we will consider

3 very seriously what you have said.

4 We may have some questions we'd like to  
5 submit to you following this proceeding and if  
6 you would please respond to those, we would be  
7 much appreciative.

8 So, at this time, we will thank this  
9 panel and we'll reconvene here with the other  
10 panel in five minutes, about 11:15, and be ready  
11 to proceed. So, we'll break for just a couple of  
12 minutes.

13 (Recess.)

14 CHAIRMAN HOGEN: I think this is the  
15 first time I've ever used a gavel. It's kind of  
16 fun.

17 Okay. We are moving now to Panel 2.  
18 Panel 2, I guess, is kind of a mixed bag in that  
19 there isn't necessarily any common ground between  
20 the two groups that we have represented here, but  
21 because of the time constraints and so forth,  
22 this was a good place to put both groups.