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NATIONAL INDIAN GAMING COMMISSION
Class II Classification Standards Consultation
Meetings with:
POARCH CREEK TRIBAL GOVERNMENT;
GUN LAKE TRIBAL GOVERNMENT
ST. REGIS MOHAWK TRIBAL GOVERNMENT

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Radisson Hotel
2020 Jefferson Davis Highway
Arlington, Virginia

July 12, 2006
10:34 AM

Government to government Discussion held
pursuant to notice as published in the Federal
Register, May 25, 2006.

1 NIGC Consultation Meetings

2 A P P E A R E N C E S :

3 NATIONAL INDIAN GAMING COMMISSION

4 Phil Hogan, Chairman

5 Chuck Choney, Commissioner

6 Joseph M. Valandra, Chief of Staff

7 Natalie Hemlock, Special Assistant to

8 the Commission

9 Alan Phillips, Enforcement Division

10 John Hay, Staff Attorney

11 Penny Coleman, Acting General Counsel

12 Michael Gross, Senior Attorney

13

14 ON BEHALF OF POARCH CREEK TRIBE

15 Buford Rolin, Tribal Chairman

16 Stephanie Bryan, Vice Chairman

17 Mr. Daniel McGhee, Secretary

18 Mr. Arthur Mothershed, Treasurer

19 Patricia Hodges, Council Member

20 Eddie Tullis, Council Member

21 Venus Prince, Tribal Attorney

22 Teri Poust, Esq. HOLLAND & KNIGHT

23

24

25

1 NIGC Consultation Meetings

2 D I S C U S S I O N :

3 MR. CHAIRMAN: Decide that this is
4 the time and the place set for Government
5 to Government consultation here in
6 Washington, DC on the 12th of July, 2006.
7 And the National Indian Gaming Commission
8 is convened here with the Poarch Creek
9 Tribal Government to discuss their views,
10 their comments with respect to the
11 proposed regulations that the National
12 Indian Gaming Commission published in the
13 Federal Register on May 25th, dealing
14 with changes to the definitions of the
15 term "electronic or electronic
16 facsimile," as it's used in the NIGC
17 regulations and then a new set of
18 regulations, Part 546, Classification
19 Standards Class II Gaming, Bingo, Lotto,
20 etcetera, Proposed Rule. And we are
21 convening here in the Radisson Hotel in
22 Arlington Virginia -- I think we're in
23 Arlington, aren't we?

24 SEVERAL SPEAKERS: Yes.

25 MR. CHAIRMAN: And I'm Phil Hogan,

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2 and why don't we each, from NIGC on the
3 record here, introduce ourselves, and
4 then we'll ask Poarch Creek to do the
5 same.

6 MR. CHONEY: Chuck Choney,
7 Commissioner.

8 MR. GROSS: I'm Michael Gross from
9 the Office of General Counsel.

10 MR. HAY: John Hay from the Office
11 of General Counsel.

12 MS. COLEMAN: Penny Coleman, Acting
13 General Counsel.

14 MR. VALANDRA: I'm Joe Valandra,
15 Chief of Staff.

16 MR. PHILLIPS: Alan Phillips,
17 Enforcement Division.

18 MS. HEMLOCK: Natalie Hemlock,
19 Special Assistant to the Commission.

20 MS. HODGES: Patricia Hodges --

21 MR. CHAIRMAN: We have two interns
22 with us. Why don't you folks introduce
23 yourselves as well?

24 MS. HENRY: Aubrey Henry, I'm an
25 intern from Oklahoma.

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2 MR. KINCHELOE: Ken Kincheloe, also
3 an intern from Oklahoma.

4 MR. ROLIN: Okay, let me begin, I'm
5 Buford Rolin, the Tribal Chairman. And
6 with me is, to my right here is the Vice
7 Chairman, Stephanie Bryan. Also, we have
8 our Secretary, Mr. Daniel McGee and our
9 Treasurer, Mr. Arthur Mothershed. We
10 have council members that are represented
11 here, Patricia Hodges and then, of
12 course, a former chairman, Eddie Tullis,
13 is a council member. And to my right is
14 our tribal attorney, Ms. Venus McGhee-
15 Prince and to my left is Teri Poust, a
16 legal firm that we have employed, Holland
17 and Knight and Mark Borison. I think
18 most of you or some of you know her.

19 And, Mr. Hogan, if I can begin, just
20 continue on the agenda -- what we'd like
21 to do is, as is shown there, is just to
22 give you some recent developments which
23 is going to lead to the very thing that
24 we're talking about, these Class II
25 activities. And there's several things

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2 you see in the next agenda item there,
3 there's pending submission before the
4 NIGC and then, of course, the proposed
5 rule. And that's going to be the bulk of
6 our comments and all here this morning.
7 We just briefly wanted to just add, we're
8 not going to get into any conversation,
9 we'll take your advice as to how to
10 handle that, but we would just, if we
11 could just for the record just make those
12 comments.

13 MR. CHAIRMAN: That would be very
14 useful.

15 MR. ROLIN: Okay, thank you. And
16 then, I'll refer to our former Chairman,
17 Mr. Tullis, who is going to begin.

18 MR. TULLIS: Good morning to all of
19 you. We think it's critically important
20 that everyone understand the problems
21 that we're facing in Alabama as it
22 relates to the changes in definitions and
23 the expansion of gaming and all. And,
24 your staff is well aware, and as well as
25 you commissioners are to the fact that we

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2 face some unique situations in Alabama,
3 in the fact that, under Alabama law there
4 is a tremendous amount of gaming going on
5 within our state now. There -- our
6 legislation has chosen to ignore the
7 statewide problem and let it become an
8 absolute local problem where they've
9 passed local legislation that allows
10 gaming very extensively to go on in
11 certain counties and -- without
12 regulations, but then took and used the
13 fact that they only authorized it in
14 certain locations to prevent it from
15 happening in other locations. And we
16 need to be sure that people understand
17 that gambling in Alabama is probably the
18 most rapidly expanding enterprise there
19 is in the state right now. And we kind
20 of go through cycles. Every now and
21 then, when it gets close to an election,
22 we'll have some activity to slow down
23 some of it, but for the last six months
24 machines are being installed all over the
25 State of Alabama. You can find them in

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2 every country club, you can find them in
3 every hunting lodge, you can find them in
4 every county, almost, in the state now.
5 There's very few exceptions to where you
6 can find machines now, that are more
7 sophisticated than the machines that we
8 have in our halls. That we have went
9 through this year, we went through a very
10 extensive discussion publicly and all
11 about what kind of machines can be
12 allowed in certain places. And I'm sure
13 all of you realize that the machines that
14 they now have in Birmingham, in order to
15 get -- technically to get by the law they
16 call them "sweepstakes machines."
17 They're different very little from what
18 they've got at other locations, but if
19 they call them a sweepstake machine both
20 the governor -- well, all, the governor
21 and the attorney general have said that
22 they're not going to move against those
23 sweepstake machines. Well, those
24 machines take up an awful lot of our
25 customers because they're everywhere you

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2 can look now, those machines are there.
3 And so we need to be sure that people
4 understand, we're facing some unique
5 problems. Some problems that we don't --
6 we wouldn't mind competing with them if
7 you guys would let us have the same thing
8 the state's got. But between the
9 Commission and the US Attorneys and all,
10 we're much more restricted than what the
11 general public is. And so, if those
12 machines were owned on an Indian
13 Reservation they'd definitely be
14 classified as a Class III machine, but
15 right outside our reservation they can
16 sit there and be played by anybody that
17 wants to play them. So it is a unique
18 situation unto us in the fact that we're
19 having to face competition that no other
20 tribe that I know of is having to face on
21 the level we are. And still it is a
22 growing problem; it's getting worse every
23 week that it goes on. And so, we just
24 want to be sure you all understand the
25 uniqueness of it, and the fact that it is

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2 growing so fast. Probably the gaming
3 machine manufacturers probably don't have
4 a more lucrative market anywhere than the
5 State of Alabama right now. And so, we
6 want you all to be aware of that, because
7 changing the definitions and everything
8 is going to further restrict us, but it's
9 not going to have any effect on our
10 competition. And we just want to be sure
11 everybody understands that.

12 MS. POUST: And if I could emphasize
13 something that Eddie said, because this
14 is a new -- more recent development that
15 I didn't even know about until just a few
16 days ago, but the sweepstakes games that
17 were, I guess legalized, authorized in
18 the Birmingham Racetrack are now
19 spreading throughout the state.

20 MR. TULLIS: They're everywhere.

21 MS. POUST: And there's what,
22 Arthur, like fifteen different places in
23 Montgomery, now that --

24 MR. MOTHERSHED: That's true.

25 MS. POUST: -- that are operating

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2 same thing. So that's what -- I think, I
3 can't remember what judge ruled on it,
4 he's basically said that's the reason why
5 he felt they were legal. They could
6 enter not just by being at the facility,
7 but also by going on the internet -- that
8 the machine was not part of the game, so
9 to speak.

10 MR. CHONEY: That credit card is
11 your personal credit card or one you
12 purchase?

13 MR. MOTHERSHED: No, no, no, they
14 give you a card --

15 MS. PRINCE: It's a Q card, I think.

16 MR. MOTHERSHED: They call it a cue
17 card.

18 MR. VALANDRA: It's a Q card, Yeah.

19 MR. MOTHERSHED: Quincy Sweepstakes,
20 Yeah.

21 MS. PRINCE: A multimedia machine.

22 MR. MOTHERSHED: Multimedia, yeah.
23 They were basically developed
24 specifically for that track, is my
25 understanding.

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2 MS. POUST: And essentially, I
3 think, Penny, what it does, I kind of
4 think of it more -- I have not seen the
5 games, but from the descriptions I've
6 seen, I think of it as somewhat of a --
7 like a pull-tab game. You end up with
8 this card that's got all your, kind of
9 predetermined pull-tabs and you stick it
10 in the machine and it just reveals the
11 outcomes. Which is basically what the
12 judge is saying, well, it's not gambling,
13 because you're just revealing what the
14 outcomes of what these particular games
15 are.

16 MS. PRINCE: But they look like slot
17 machines, when they're reading.

18 MR. CHAIRMAN: And, with respect to
19 the State of Alabama's attitude toward a
20 Class III compact that remains --

21 MR. MOTHERSHED: Hasn't changed.

22 MR. CHAIRMAN: And where are you, if
23 at all, with respect to the secretarial
24 procedures?

25 MS. PRINCE: Well, that's where

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2 I'm -- I mean --

3 MR. MOTHERSHED: We were going to
4 talk to --

5 MS. PRINCE: Yeah. Because really,
6 I think my point -- or the point of
7 having the agenda item on the pending
8 submissions is not really to discuss
9 those in detail but just to sort of, you
10 know, highlight the status so that you
11 guys know why the proposed rules are so
12 important to us. You know, we submit,
13 you know, for the Tallapoosa lands
14 determination, you know, over two years
15 ago, you know, so, you know, we're
16 really, we, and I understand that there
17 have been some further questions and
18 you've been in touch with Sinosky
19 Chambers who been helping us out with
20 that. So we're really, it's necessary
21 for us to sort of set a lot of these
22 things like secretarial procedures and
23 the lands determination and all of that.
24 Preferably, you know, before, I think
25 these proposed rules are going final, I

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2 mean, if they're looking like they are
3 now, and with -- and you know our status
4 with the management contract which is the
5 other thing that we have. I mean, I know
6 we're waiting for that Section 106
7 consultation, you know, we're still
8 trying to work that out, which is
9 everything is just sort of, creeping
10 along, it seems. I mean the secretarial
11 procedures we have that into Interior,
12 but of course, the state requested a
13 thirty-day extension, you know. So their
14 deadline is now July 27th. So hopefully
15 they will get their comments back by July
16 27th and we can move forward with
17 interior. But I think we -- part of our
18 goal, I think is, if you guys can help in
19 any way, you know and helping us --
20 because I think procedures really is, you
21 know, they're crucial to us, especially
22 if the rules go forward as planned.
23 Because otherwise we're in a really,
24 really tough position. We're between a
25 rock and a hard place as you know.

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2 And I think, the other thing I know
3 we have other -- not only do we have
4 expansion of gaming within the state, you
5 know, I know other tribes are sort of
6 trying to move into our area and that
7 type of thing. So we're really needing,
8 you know, we're needing some help from
9 NIGC and sort of trying to sort out some
10 of these issues and -- so that we are --
11 our tribe is not going through a very --
12 I mean, sort of a disastrous situation.

13 MS. POUST: Yeah, and if I can add,
14 I mean with regard to the secretarial
15 procedures, I mean, we tried to keep our
16 request as simple as possible. And at
17 this point, you know, we just want to be
18 able to play what's already being played
19 in the state. So we're very hopeful that
20 it's going to be able to move through
21 Interior very quickly. I mean, we're
22 well aware of the fact that the
23 Department has yet to issue procedures
24 under this part of the act. So we are
25 very concerned about that, because we are

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2 at such a disadvantage. But we tried to
3 keep our request as basic as possible.
4 If we can just be brought up to a level
5 playing field with those in the state,
6 and hopefully that will help to provide
7 some relief. But anything that you can
8 do to support the tribe on that, we would
9 be very grateful. Because we are at a --
10 I think that Poarch Creek is in a very
11 unique situation and I think impacted
12 much more by these regulations than any
13 other tribe in the country. And just --
14 you know, any assistance that you can
15 provide with regard to that we would be
16 very grateful.

17 MS. PRINCE: And speaking of our
18 impact, Arthur, I guess you were going to
19 discuss -- how the proposed rules might
20 impact our current operations.

21 MR. MOTHERSHED: Well, just quickly
22 talk about the electronic bingo that's
23 going on in the state, outside of what we
24 do, I mean, the dog tracks, as Mr. Tullis
25 talked about earlier, in both Macon

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2 County and Green County were allowed to
3 open up facilities playing electronic
4 bingo. Troy King made a tour of Alabama,
5 came back with his definition of bingo
6 that was approximately four to five
7 sentences long, basically saying that
8 they had to have a five-by-five card, a
9 couple of players in the game and that's
10 it, it's bingo.

11 As we look through your proposed
12 regulations, I mean, we can point out a
13 lot of differences in your proposed
14 regulations as opposed to their very few,
15 it's going to make our game extremely --
16 just, I mean we're going to be at a
17 complete competitive disadvantage with
18 Milton and his guys at Victoryland. I
19 mean, Victoryland is twenty to thirty
20 miles from both of our northern sites.
21 They're constantly trying to get
22 something in the Mobile area that would
23 also affect that more. So, you know,
24 some of the regulations you guys
25 proposing as far as like the bingo card

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2 itself taking up, you know, half of the
3 display. That's -- that in itself might
4 not be as big a problem, but what I'm
5 reading into the regulations is now the
6 prominent display, which I'm assuming is
7 the one directly in front of you would
8 have to be the bingo card with
9 entertainment value or graphics above
10 that.

11 It's just, I mean, I think, some of
12 these regulations are just trying to slow
13 down technology. And I know you guys
14 talk about blurring the line because of
15 technology, but I think technology has
16 hit every aspect of our life and to
17 single out one, you know, this is our
18 life. Chairman, I read some of your
19 comments yesterday. And as far as Indian
20 Gaming and how it's risen and how Indian
21 Gaming funds were being used to
22 supplement tribal gaming programs. We
23 have several programs that will go away
24 if these -- I really believe if these
25 proposed regulations come in we're going

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2 to have to tell the kids that have
3 education scholarships that we feel are
4 in the bank now, I'm sorry, we told you,
5 we made that promise, but we can't
6 fulfill it now, because our revenues are
7 going to be hit that drastically.

8 And it is about entertainment value.
9 And I guess one of my questions to the
10 commission would be, what makes the
11 entertainment value of this game so
12 important? I mean, you say it makes it a
13 facsimile of a Class III game. I'd like
14 for someone to explain to me what 777 has
15 to do with a Class III game? This is
16 just a depiction of what happens behind
17 the scenes even in a traditional slot
18 machine. There are not sevens rolling
19 around in the back of that slot machine
20 that all of a sudden appear on the
21 screen. It's a random-number generator;
22 they've just made it entertainment value.
23 Because they knew customers didn't want
24 to sit there and watch numbers rolling
25 around in a box. Bingo's the same way.

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2 don't really understand what the twenty
3 percent came from? The one cent -- I've
4 always had a problem with a fraction of a
5 cent, myself, because it's very confusing
6 for the customer. I think there needs to
7 be some value put on that game-winning
8 pattern. But where the twenty percent
9 came from, I'm still not sure, because
10 you're talking now where customers are
11 playing twenty-five dollar games of
12 bingo. And twenty percent of that would
13 be a lot if they're playing consecutive
14 games, which is going to make the interim
15 and the consolation prizes much smaller.

16 The pull-tab games. We, you know,
17 when you made your visit and I've talked
18 a little bit more about that in '04.
19 When you made your visit, one of the
20 things that came up was the electronic
21 pull-tabs and how you guys at the time --
22 and still do feel that those electronic
23 pull-tabs shouldn't be permissible and
24 that made them a Class III game. So we
25 immediately went in and made all of our

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2 vendors that used those either change out
3 to electronic bingo or dispense the paper
4 tab. Now they have to take that paper
5 tab to a pay station. My question again
6 is, why? What makes a paper pull tab --
7 the fact that you have to take that to a
8 prominent change or cashier's station.
9 What would make that any different from
10 accumulating prizes anywhere else. I
11 don't understand where that clarifies a
12 Class II game and a Class III game. The
13 play of the game should be what's
14 important, not where the customer
15 actually receives their monies.

16 That kind of falls in line with, you
17 know, autodaub. And I understand where
18 you guys are coming from with autodaub
19 because, you're saying, in bingo you have
20 to daub. Well, you know our competitor
21 doesn't. One of the only games that we
22 have that is a one-touch game, so-to-
23 speak is our electronic pull-tab
24 dispenser. But now, if that game will be
25 taken and put at a disadvantage, because

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2 now I have to worry about all these
3 losing tabs, if I'm a customer. Because
4 they're all spit out. I have to sort
5 through and make sure that I hold that
6 winning tab. They know that they won a
7 hundred dollars, but they don't know,
8 sometimes, which tab it may or may not
9 have been. Now, we're asking them,
10 retraining our customers to go back,
11 separate those tabs, and then go up to
12 the counter and cash out. Now, that game
13 is not competitive with the one stud
14 autodaub games.

15 And, you know, I guess from a
16 business standpoint, if I was running a
17 bingo, I probably wouldn't start a game
18 with two players, but I could. So,
19 again, you know, the fact that we're
20 asking for a delay to -- for additional
21 players to join in, I mean, you can play
22 the game of bingo with two players.
23 Initially that's what you guys said.
24 Now, it's no, we want to wait and allow
25 six players to join in. Where did that

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2 magic number come from? Player
3 participation -- players competing
4 against each other -- I can compete
5 against you or I can compete against this
6 whole room -- it's still a player-
7 participation game. I'm just curious to
8 know where that six -- number six came
9 from?

10 In essence, when we calculated up,
11 if, to start your game or to play the
12 game that you're proposing -- a very
13 savvy customer would take them at least
14 ten seconds. A savvy customer to go in
15 and do all the things that an electronic
16 bingo game that these proposed
17 regulations would require. Our
18 competitors could probably play their
19 electronic bingo game in three seconds.
20 My question to you is if you're an
21 electronic bingo player, where are you
22 going to go? Are you going to come to
23 our facility and have to wait ten, twelve
24 seconds for your game to be over? And
25 even if I am a savvy player and you are

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2 not, I have to wait -- if you win I have
3 to wait on you to daub your prize which
4 also slows down my game. Where are you
5 going to go? Where are you going to go
6 play? And the answer to that is obvious.
7 You're going to go drive an additional
8 ten miles up the road and you're going to
9 go and play with my competitor. Those
10 are some of the things that happened back
11 in 2004. You know, you came in, we
12 toured the facilities, you guys listed
13 some games as questionable. Never said
14 they were Class III, but they were
15 questionable. We immediately tried to --
16 we immediately set the ball in motion to
17 get those games replaced. I think it was
18 five months later we had all those games
19 out of our facility. replaced with games
20 that at least had an advisory opinion
21 letter or some letter from an attorney
22 saying that they met specifications at
23 the time.

24 We -- the result of that was, that
25 we immediately took about a thirty-four

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2 percent hit in revenue. Because December
3 of that year is when our competitor -- of
4 '03 is when our competitor opened up on
5 us. So now our games weren't nearly as
6 competitive, we've changed them, we take
7 a thirty-four percent hit, which equated
8 to about a fifty-six percent hit in net
9 income because we didn't want to lay off
10 people and take other people. Our
11 revenue dropped but we tried to maintain
12 our people and payroll because we didn't
13 want to just push them to the side. We
14 also had a game that somewhat mirrored
15 the DOJ's initial game -- or regulation
16 proposal which was called eight-way
17 bingo. Well, we monitored that game for
18 several months and it produced about
19 twenty percent of the floor average of
20 win per unit. That leads me to believe,
21 if I had to change out all my games to
22 mir -- and some of these regulations are
23 fairly close to the DOJ's initial
24 proposals. We'd take an eighty percent
25 hit. And that was pre-sweepstakes

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2 and the things that we're doing now.
3 Those programs will have to be cut, some
4 of them will have to be eliminated.

5 So when you guys are moving forward
6 with this -- I mean, in my personal
7 opinion I think this affects,
8 immediately, very few tribes. It doesn't
9 affect a lot of tribes. It affects us
10 tomorrow. If these go into effect today,
11 tomorrow we suffer.

12 MS. PRINCE: And I think for us,
13 it's like, we're really just, on all
14 fronts it seems like we're encountering
15 sort of postponements and issues, you
16 know, from the lands determination to
17 getting our management contract approved,
18 which, of course I don't -- you know,
19 we'll see if how much Harrah's still
20 like, if our revenue and everything is
21 going to drop dramatically the moment the
22 proposed rules go final, you know, it
23 sort of threatens us in a host of
24 different ways.

25 So, we really - and when the

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2 secretarial procedures -- I mean, we know
3 the Seminoles had theirs pending forever.
4 So, I mean, if these rules go final
5 first, before, which could be -- you
6 know, could be likely -- we're -- I mean,
7 then, I guess you guys are in the
8 position of having to decide whether to,
9 you know, crack down on us. I mean, so
10 we're really, I think, we're just coming
11 to you and saying -- you know, we need
12 NIGC's assistance, you know, somehow some
13 way. Whether it's working with Interior
14 to try to, you know, help us get through
15 the whole secretarial procedures process.
16 You know, amending the proposed rules,
17 whatever you guys can do, I think, we're
18 just coming to you asking for your
19 assistance.

20 MS. POUST: What's the status of the
21 technical standards? Were you still
22 going to be moving forward on that part
23 of the regulation as well?

24 MR. CHAIRMAN: Yes, the technical
25 standards which, of course, were a

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2 companion to the classification standards
3 when we had our advisory committee help
4 us and so forth. It got a little stale
5 and so we had to go back and try to bring
6 them up to date with the assistance of
7 the Gaming Standards Association. And
8 Michael is working closely to try and get
9 those out the door sometime soon. It's
10 our hope and expectation that if we
11 finalize some classification standards
12 the technical standards will be ready at
13 that same time and they can go forward as
14 a package.

15 MS. POUST: Because a concern that I
16 have is -- and I don't know how the two
17 relate at this point, but previously
18 there was a lot of overlap. And a big
19 part of my concern is, you know, if these
20 go final and then those come out for a
21 comment period, I mean, how are the two
22 going to relate? I mean, are there
23 provisions within the game classification
24 regulation that we would have perhaps
25 commented on differently if we had seen

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2 the technical standards at the same time?
3 I mean, I would really encourage the
4 Commission, if there's any way possible
5 to have, at least the comment periods on
6 the two regulations overlap in some way.
7 Because they are so over related, or
8 interrelated.

9 MR. CHAIRMAN: Two things. One,
10 that is the intention --

11 MS. POUST: Okay.

12 MR. CHAIRMAN: -- that if we remain
13 on schedule we should -- what we're
14 attempting to publish the technical
15 standards as a proposed rule at the end
16 of the month.

17 MS. POUST: Okay.

18 MR. CHAIRMAN: -- with the idea
19 that -- instead of a ninety-day comment
20 period there would be a thirty-day
21 comment period, since these have been
22 heavily betted by the tribes and by the
23 industry beforehand, we're not adding a
24 whole lot. But the comment periods end
25 at the same time or approximately the

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2 same time.

3 MS. POUST: Okay.

4 MR. CHAIRMAN: The other part of the
5 answer is, in going back through them we
6 tried very hard to separate them. Those
7 things that bear directly on
8 classification properly live in the
9 classification standards. And those
10 things that bear just on how you build
11 the box and how you plug it into the
12 wall, those properly go into the
13 technical standards. So the intention is
14 that they stand alone.

15 MS. POUST: Okay.

16 MR. CHAIRMAN: The only possible
17 overlap is where you're describing a
18 procedure for sending a machine to a lab.
19 And we figured we didn't need to describe
20 that twice.

21 MS. POUST: Uh-huh.

22 MR. CHAIRMAN: But if we've missed
23 anything. And if there -- you know, if
24 the presence of the technical standards
25 somehow created an ambiguity that's

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2 can't you follow that definition of the

3 state that's already out there? You

4 know, instead of these being imposed on

5 us and a different set of rules being

6 imposed on the state. So, I don't see

7 where, possibly, you know, until

8 secretarial procedures are in place that

9 certain tribes could go fall underneath

10 the definition that the state's already

11 allowing. Or if they are allowing bingo,

12 electronic bingo to operate this way then

13 a state should be able -- I mean that

14 tribe should be allowed able to operate

15 bingo on the same field, you know, until

16 they get secretarial procedures or

17 something. Because this, you know, like

18 Arthur said and Eddie said, you know,

19 this is just going to put us out of

20 gaming altogether. I mean, there's

21 really -- wouldn't be any reason to keep

22 a facility open. I mean, because I can't

23 even imagine what -- based on all the

24 things I've read -- what this machine

25 would end up looking like, you know?

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2 Because you've got -- it's got to say:
3 this is a game of bingo in two-inch
4 letters, which you know are about that
5 big, so where is that all going to fit on
6 the game, much less your actual bingo
7 card and your entertainment display? You
8 know, I would be -- it would have been
9 nice to have at least seen some kind of
10 prototype of what you expected it to
11 actually look like, you know, or some
12 picture, so that we would know what
13 you're talking about. The -- as you look
14 through -- with our facility, and I know
15 a lot of, maybe what you're seeing when
16 you go out and you go to see a Seminole
17 reservation, if you go there, then they
18 have the autodaub bone so they're just
19 hitting the one thing and it's over with.
20 But when you come to our facility, you
21 know, it's much different because people
22 genuinely need to be told how to play
23 this game. Because they realize when
24 they walk in that it's not a slot
25 machine. Because they come in there and

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2 they see the bingo card and then they go
3 to push the button and nothing happens.
4 Sometimes they really just go and go and
5 go because they haven't claimed their
6 win, they haven't daubed, they haven't
7 done anything. Are they sitting at the
8 machine? Say, I've been sitting here two
9 hours and I haven't won anything. I'm
10 like, well, have you been claiming your
11 wins? Well, what do you mean "claiming
12 my wins?" So, to say that, when you come
13 in and look at our machines, that they're
14 not readily distinguishable between bingo
15 and slot, well, when they sit down to
16 play it's obvious to them because it's
17 not working like the slot machines work
18 in Biloxi. So my attendants are
19 constantly going around explaining to
20 people, well, this is a bingo card, and
21 when this hits you're going to have to
22 claim -- you're going to have to hit this
23 button to daub, you're going have to hit
24 this button to claim your win, if you
25 don't, you're going to lose your -- how

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2 am I losing? Well it's because you're
3 sleeping, it's bingo. I mean, so it's
4 very obvious in our facility, it's not
5 like -- I mean we've done every rule that
6 your government have imposed. You know,
7 as far as you come in and you say well,
8 this machine's a little sketchy. All
9 right, so we try to figure out what we've
10 got to do to make it not so sketchy. And
11 then, so, if you walk into what we've
12 got, I feel like we're fitting the mold
13 that other tribes technically should be
14 following when it comes to Class II
15 bingo. I mean, I don't know what else we
16 could do based on the Court decisions,
17 based on the stuff that you guys have
18 seen and told us should be this way or
19 that way. But so far playing by those
20 rules aren't -- it's not getting us
21 anywhere, you know? I mean, people are
22 going up the road and we, you know,
23 technically if Seminole's getting away
24 with -- we could say -- we'll just turn
25 our autodaubs on, they're not doing

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2 We try to anticipate some of these
3 questions and I'm sure they aren't all
4 fully answered there. But with respect
5 to the two-inch letters, that I see as a
6 piece of tape or something probably a lot
7 more attractive than that, but that
8 wouldn't have to be on the video display.
9 That's not going to further constrain the
10 opportunity to see the -- you know,
11 what's on the screen. But it needs to
12 prominently say on the device someplace
13 so that it's, you know, legible, you're
14 playing bingo, you're not playing a slot
15 machine, in other words.

16 So -- and I assure you that to the
17 extent that we can be of assistance with
18 the Department of the Interior moving in
19 the direction of secretarial procedures,
20 you know, consistent with our role as
21 regulators, we want to help you get
22 there. And we've been useful, I think,
23 in that process elsewhere. Up on the
24 Wind River Reservation in Wyoming, the
25 Northern Arapaho are going down that

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2 avenue now. We have a special kind of
3 unique role with respect to that
4 regulation, given the fact that the State
5 of Wyoming basically said at the outset,
6 we don't want to get in this deal, so we
7 are more engaged there.

8 I am cautiously optimistic that
9 secretarial procedures will do two
10 things: a) move forward in a number of
11 instances, but secondly bring some states
12 to the table that haven't been there
13 before, because they know, one way or
14 another, the tribes are going to get
15 there.

16 And, certainly, this would be the
17 poster child for why it was supposed to
18 work the way it was written to work in
19 the Indian Gaming Regulatory Act. Why a
20 state should sit down and negotiate with
21 the tribe if they're going to let
22 somebody or everybody else do it.

23 With respect to these lands issues,
24 back when you and I wondered, who thought
25 it could have been so complicated as it

1 NIGC Consultation Meetings
2 has become? But history was pretty
3 tangled there, and we're trying to get
4 all of that sorted out.

5 So, your comments are well received
6 and very well stated and we will
7 certainly take them into serious
8 consideration as we move forward. You
9 have a very delicate, fragile situation
10 there, you've been doing great things
11 with the revenues you've generated, but
12 you've sure been good soldiers in terms
13 of we've asked -- you told us you'd fix
14 the machines and you very quickly went
15 about it and did it and we are very
16 appreciative of that.

17 So, we've learned much and we don't
18 just throw these comments into the waste
19 bin. It may -- you know, we grapple with
20 them very seriously and hopefully, at the
21 end of the day, the product that we come
22 up with will accommodate proper to fair
23 gaming. But the act intended to be --
24 there was going to be a recognizable
25 difference between Class II and Class

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2 III. You know, the bank game concept,
3 you know, doesn't apply across the board,
4 but, they said you can't play roulette
5 and slot machines and so forth without
6 the compact, but you can play bingo and
7 these non-banked card games. Well, we're
8 trying to be consistent with that spirit,
9 yet have a workable intelligible rule
10 there, that will have some general
11 application.

12 So we'd be happy to hear anything
13 further you might have to say.

14 MR MOTHERSHED: When you bring up
15 non-bank card games, I mean, this seems
16 ironic unless -- I mean, we're okay with
17 looking at state laws from a federal
18 perspective, you know. The state law of
19 Alabama says poker's illegal, so you guys
20 can't do it. State law of Alabama says
21 that what Milton's playing is legal. We
22 can't do it. So, I mean, when you bring
23 that up and we're caught in both ways, I
24 mean, you guys want to impose -- and when
25 I say "you guys" I mean from, not

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2 specifically you guys, but from a federal
3 perspective. You know, you can't -- you
4 have to abide by state laws unless it
5 benefits you and then you have to --
6 well, which is the stricter of the two,
7 and that's what we're going to hold you
8 to. State law allows autodaub features
9 and a much more friendly game of
10 electronic bingo but we don't, so you
11 guys have to abide by the stricter law.
12 They don't allow poker, in our eyes, you
13 just said non-bank poker games are a
14 Class II game. But state law doesn't
15 allow it so you can't do it.

16 So, again, I mean that's just -- it
17 just seems like everywhere we turn we're
18 pushed into a corner.

19 MS. BRYAN: There's opposition
20 everywhere we go --

21 MR. MOTHERSHED: You know. And just
22 quickly, also on the -- when you guys
23 talk about the certification of the
24 games, I mean you -- obviously I'm not a
25 technical expert. I mean, I don't claim

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2 to be, I don't profess to be. So if you
3 sent a game to me and asked me to
4 technically tell you if it one hundred
5 percent complied with these regulations,
6 I can't do that. I assume you guys are
7 going to send some sort of checklist or
8 some matter that these labs will be able
9 to go down and actually verify yes, no,
10 they meet these requirements and put
11 their stamp on it. But then you guys
12 have the opportunity -- and I'm going to
13 make an assumption here that maybe I
14 shouldn't -- I'm going to assume you guys
15 aren't technical experts either. You
16 have the opportunity in sixty days to say
17 no, that's not good enough. So, I'm
18 curious as to why that particular part is
19 in there. If we're going to entrust
20 these labs to test the games, then why
21 would you have the ability to come back
22 later and say, no, we object.

23 MR. CHAIRMAN: Well, we will do our
24 very best to certify labs that will be
25 very good at what they do. And, you know

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2 there are some of them out there that do
3 that now. But they aren't infallible,
4 and we feel that as regulators we need to
5 be in that kind of last check-off
6 approval spot, so-to-speak. You know, if
7 GLI or BMM, Nick Farley tells us it meets
8 the checklist, I will have a great deal
9 of confidence in their report. But if
10 we, who have spent two years writing
11 these rules look at it and say, wait a
12 minute, we think that in this respect
13 that's in error, we think it's our -- we
14 have an obligation to step forward and
15 say it. Otherwise the lab becomes kind
16 of the regulator rather than the
17 commission.

18 MS. POUST: And I would also say, I
19 think we would also request that the
20 commission reconsider the time for coming
21 into compliance with the final reg. I
22 just think six months is way too short.
23 I mean, I think most, if not all of the
24 games that are out there are going to
25 have to be reconfigured in some way. And

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2 I think it's even going to take the
3 vendors just a couple of months to even
4 do that. And then you're going to have a
5 flood of orders. I just think, for
6 somebody like Poarch Creek who's going to
7 have to change out every single machine,
8 either completely replace or reconfigure
9 every machine, I just -- six months is
10 just not really feasible.

11 MR. CHAIRMAN: Yeah, there will be a
12 lot of people at the vendor's door that
13 next day, you're absolutely right. We
14 need to accommodate that.

15 MR. MOTHERSHED: And we don't just
16 deal with the big guys of gaming, I mean,
17 we have several smaller members that
18 were, you know, the innovators in the
19 Class II market that still are on our
20 floor. These guys certainly couldn't
21 turn around software changes in six
22 months, I mean, it would just be
23 impossible.

24 MR. CHAIRMAN: We will take what you
25 have told us under advisement here and

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2 hopefully at the end of the day we'll do
3 the right thing. Please keep us in the
4 loop with respect to your efforts with
5 Interior, and to the extent that we can
6 be of assistance, we certainly will.

7 MR. MCGHEE: And, just if you can
8 consider -- because if it ends up taking,
9 say, I don't know, two years or something
10 to get these secretarial procedures done,
11 and then, in the meantime, you know, this
12 is happening in Alabama then our only
13 option is to turn them off and not fool
14 with them. Is the feeling we're in here
15 you can put something that might, would
16 consider people in that situation, you
17 know, some kind of clause or, I don't
18 know if it would be a waiver or it says
19 something that, as long as you don't rise
20 above what the state regulates then you
21 can do this at least until your
22 secretarial procedures have become final,
23 or something. Otherwise the only option
24 that we have is we just shut it all down.
25 Because they're not going to compete, the

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2 way we're looking at these. I mean, we
3 could try it for a little while, but I
4 think very soon we'll realize that we're
5 just going to have to turn them off
6 because we're losing more money than
7 making money. So he'll, somehow in here
8 you could, at least, put some option
9 until -- I mean, as long as you're doing
10 the right thing, you're trying to go by
11 the secretarial procedures, I mean,
12 you're doing all the steps, but something
13 until that becomes final. Because that
14 could take a long time, from what I can
15 tell with these things. I'm not real
16 optimistic that it's going to be like
17 that (snaps fingers).

18 (Laughter.)

19 MR. CHAIRMAN: There is some
20 justification for your concern.

21 MR. MCGHEE: So maybe you all can
22 discuss this and see if there's some way
23 you all can figure something out.

24 MR. CHAIRMAN: We will keep that
25 concern in mind.

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2 MR. CHONEY: Well, you're the first
3 tribe that we've met with in regard to
4 this, so we're taking these notes down,
5 because these are some concerns that we
6 haven't heard before. And I've got a
7 suspicion we're going to be hearing them
8 more today and then next week and then
9 the week after.

10 MS. PRINCE: Well, obviously if you
11 guys wanted to speak to any of us we
12 would be happy to talk to you at any
13 time.

14 MR. VALANDRA: And I would encourage
15 you to submit some written comments so we
16 understand the points --

17 MS. PRINCE: Well, we're planning
18 to.

19 MR. CHAIRMAN: Please do, please do.

20 MS. BRYAN: Your direction and
21 assistance would be greatly appreciated,
22 I'm sure, because of all of the
23 oppositions that we do face, and as
24 Arthur said, it would be devastating to
25 our tribe, you know, to tell these

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2 children, hey, the education fund has
3 been depleted, you know, because of the
4 revenue. So any direction or assistance
5 would be definitely greatly appreciated.

6 MS. HODGES: Our governor made a
7 statement at a banquet just a couple of
8 months ago when he stated that the State
9 of Alabama is in the bottom five, all
10 across the country with education. And
11 if we lose what we already have and we're
12 not allowed to grow with what we have,
13 we're only going to be in a lot worse
14 shape next year than we are now. And our
15 goal, each of us as tribal council
16 member, one of our number one priorities
17 is education. And if we lose that --
18 well we just can't, we just can't. We
19 can't be in that position, so we need all
20 the help that you can give us.

21 MS. PRINCE: Right.

22 MR. CHAIRMAN: We understand how
23 important it is.

24 MR. ROLIN: We thank you very much
25 Chairman Hogan, for this opportunity.

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2 And I want to reiterate that some of the
3 comments that were made. I guess it's
4 evident now, we're not the -- we are the
5 competitor. We don't have what our
6 friends do within the state. Our friend,
7 or -- and what's happened around the
8 state, so, we just appeal to you to be
9 considerate of us and our needs. And we
10 certainly look forward to working with
11 you. Hopefully that maybe as Diane said,
12 some of this is going to happen.

13 We want to be optimistic because
14 certainly it would make our facilities
15 much easier to manage and work with.
16 Because we're already hearing now, from
17 some of the customers: I'm not going
18 there to play anymore, that's too
19 complicated, when I can walk -- go up the
20 street. Yes, I'll drive a hundred miles,
21 I'll go a hundred and ten miles to
22 Biloxi, but I'd love to stay home, I'd
23 love to support the tribe, but why should
24 I when their games are so complicated.
25 So, that's what we're dealing with and

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2 all. We just ask that you be considerate
3 of that.

4 MR. CHAIRMAN: We'll do what we can.

5 MR. SPEAKER: And we thank you for
6 the opportunity.

7 MR. CHAIRMAN: Okay, any comments
8 from anyone else?

9 MR. TULLIS: Thank you for your
10 time. I'd just love to know if there's
11 any activity going on from the
12 Commission's point on the reservation
13 shopping. Are you all looking at the
14 movement of tribes? Are some of the
15 other tribes going to try to move into
16 different areas if these new regulations
17 go into place? I'm just wondering if
18 there's any activity going on on a
19 national level there now?

20 MR. CHAIRMAN: Well, you know, one
21 of the things that's going on, of course
22 is the legislation that's pending before
23 Congress that would change the Indian
24 Gaming Regulatory Act with respect to the
25 two-part determination and so forth.

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2 Fortunately for the NIGC, we're not in
3 the front row, rather Interior -- the
4 Department of the Interior is in the
5 front row with respect to most of those
6 questions. But, nevertheless we still
7 get instances where a tribe will send us
8 a site-specific tribal gaming ordinance
9 saying we are going to do our gaming on
10 these lands, and, gosh are those -- and
11 they really do it there. And so we
12 really have to, you know, go through the
13 historical review and some of those might
14 fall under the reservation shopping
15 category. But it's all kind of up in the
16 air right now until Congress decides if
17 they are or aren't going to change the
18 rules.

19 MR. VALANDRA: Also, the Department
20 of the Interior's working on Section 20
21 regulations that will have some impact on
22 that, but -- I know George's has been
23 working on them -- we're working with
24 them, but I don't know what the timing
25 for that exactly is, so --

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2 MR. TULLIS: Is there discussions
3 going on amongst you people, and, I
4 guess, to be a little bit specific, I'd
5 rather go off the record, if I could ask
6 a question off the record?

7 MR. CHAIRMAN: Certainly. Why don't
8 we -- if there's no further comment with
9 respect to the classification or
10 definitions regulation we'll call this
11 session a success and bring it to a
12 conclusion so we can go off the record.

13 (Recess: 11:22 AM to 11:37 AM)

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2 A P P E A R E N C E S :

3 ON BEHALF OF GUN LAKE TRIBE

4 John Shagonaby, Treasurer, Tribal Council

5 MONTO PEEBLES & CROWELL

6 BY: CONLEY SCHULTE, ESQ.

7 MICHAEL ANDERSON, ESQ.

8 PETER LEPSCH, ESQ.

9 D I S C U S S I O N :

10 MR. CHAIRMAN: Government to
11 government consultation session between
12 National Indian Gaming Commission and the
13 Gun Lake Tribe focusing on NIGC's
14 proposed definitions and classification
15 regulations as they were announced in the
16 May 25th, 2006 edition of the Federal
17 Register. We're convened here at the
18 Radisson Hotel in Arlington Virginia and
19 we agreed that we would do this and we'll
20 spend part of the morning talking about
21 the regulations that we have proposed.
22 In that connection, I'll ask the rest of
23 NIGC delegation to introduce themselves
24 so that we'll have a record of who's
25 here.

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2 MR. CHONEY: Chuck Choney,
3 Commissioner.

4 MR. GROSS: I'm Michael Gross from
5 the Office of General Counsel.

6 MR. HAY: John Hay from the Office
7 of General Counsel.

8 MS. COLEMAN: Penny Coleman, Acting
9 General Counsel.

10 MR. VALANDRA: I'm Joe Valandra,
11 Chief of Staff.

12 MS. HEMLOCK: Natalie Hemlock,
13 Special Assistant to the Commission.

14 MR. PHILLIPS: Alan Phillips from
15 the Enforcement Division.

16 MR. CHAIRMAN: And we have a couple
17 of interns with us that are observing
18 what we are doing here today as part of
19 their duties. Why don't you introduce
20 yourselves?

21 MS. HENREY: I'm Aubrey Henrey.

22 MR. KINCHELOE: Ken Kincheloe.

23 MR. SHAGONABY: I'm John Shagonaby,
24 I'm elected treasurer of the tribal
25 council. I also head up the economic

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2 development arm of the tribe. I also
3 bring with me Conley Schulte, with Monto
4 and Peebles, Mike Anderson and Peter
5 Lepsh. Thank you for having the meeting
6 with us today. I bring greetings from
7 our chairman, David Sprague, he had every
8 intention of being here today, but we had
9 a member pass away within our tribe, so
10 he's tending to that business. But he
11 will be out here tomorrow and maybe he
12 will see you around the Hill or something
13 and introduce himself. But I think he's
14 met the Chairman numerous times and
15 Commissioner Choney, so --

16 The reason I'm here today is to talk
17 about the Class II technological
18 standards, but just for a little
19 background, I want to give you on our
20 tribe -- we don't really have an
21 operating facility right now. We were
22 finally recognized in 1999 through the
23 BAR process, it took us about ten years,
24 which is kind of a land speed record when
25 you consider the BAR, so we're very

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2 fortunate to get through that process and
3 then, be on kind of equal footing on --
4 with the twelve tribes of Michigan.
5 We're not quite there yet, as far as
6 economic development. There are eleven
7 tribal state compacts within the state --
8 we're the twelfth tribe and we're still
9 working through that process. The scope
10 of gaming is clear in Michigan, crystal
11 clear, and so one of the biggest concerns
12 that we had is that we -- a year ago we
13 did get the final positive determinations
14 to take the land in the trust to the
15 bureau. It took us, you know, about four
16 years to do that. And now we are in a
17 situation you're not -- you're probably
18 familiar with Pokagon, meaning our sister
19 tribe to the south that we are in a court
20 litigation right now with the anti-Indian
21 gaming group and we're probably going on
22 a year anniversary -- just past the year
23 anniversary of that litigation. We are
24 defending that vigorously with the
25 Department of Justice, we've intervened.

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2 We feel that we're going to win that,
3 especially with Pokagon's Court decisions
4 recently.

5 So, with that, one thing that really
6 concerns us is that we have done
7 feasibility studies telling us that Class
8 II gaming would be a viable alternative,
9 because what we're essentially getting is
10 the state saying that, yeah, we have
11 eleven compacts in the state, we have
12 commercial gaming in Detroit, we've
13 expanded the lottery numerous times, but
14 some people in the legislature in the
15 position of power are saying to Gun Lake
16 Tribe is that -- we're just going to say
17 no to a compact. Even though there's
18 eleven tribes, there's commercial gaming,
19 we're going to say no. So what the
20 tribe -- you know, obviously we have a
21 considerable amount of resources tied up
22 into getting the land in trust and
23 opening the Class III facility, that we
24 need Class II as a viable alternative to
25 us at this point.

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2 We want to provide comments to you
3 and, basically that's the foundation.
4 That's why we're sitting here, why we're
5 interested in Class II gaming. Because
6 we feel that it is a viable alternative
7 to us, and then, with that being said, I
8 mean, you know, if they see us operate
9 and be successful with the Class II, then
10 maybe they'll think about treating us
11 fairly when it comes time for that.

12 And I echo other statements of the
13 past Chairman about there being a need
14 for a Seminole fix. It kind of makes
15 everyone's life a little bit harder and
16 we're not on a level playing field. So,
17 Gun Lake's has always advocated for a
18 Seminole fix and we have done due
19 diligence and we have done a lot of work
20 and we feel Class II, as it is today,
21 would be a viable option to that.

22 So, I guess that's kind of my
23 opening remarks, and if you want to go
24 through -- turn it over or do you want to
25 get into substantive --

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2 experts to see what the impacts of these
3 regulations are, whether it's the
4 provisions on autodaub or alternative
5 displays. And we're going to need some
6 time to do that. To talk with
7 manufacturers and other to see, primarily
8 what the economic impact is going to be,
9 what kind of technology changes would be
10 needed for these machines. That's going
11 to take some time.

12 So, and also what's been raised by a
13 number of people -- while these
14 individual consultations are helpful and,
15 I think, are valuable as John has pointed
16 out there is a -- I think, a need to have
17 at least one global kind of public
18 hearing that focuses on issues that
19 perhaps are raised from the four series
20 of consultations that you are going to
21 have. And, if that could be arranged in
22 a timely manner, I think that would be
23 really helpful to the educational efforts
24 of the tribal leaders but also for the
25 Commission as well.

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2 So we and a number of other tribal
3 governments are going to be urging that
4 there be one generic kind of a plenary
5 session on these regulations, with hope
6 that you all would consider that
7 seriously, Mr. Chairman, that take that
8 under advice.

9 The other is the extension of the
10 comment period. I believe that today is
11 the first day that a lot of tribal
12 leaders -- and we were at the NIGA
13 meeting today, as well -- are getting a
14 full sense of what the impacts might be,
15 in terms of their operations. And so,
16 while this consultation may not be well-
17 attended, I think that the temperature
18 level and the interest level has been
19 raised quite a bit. So I think that
20 there's going to be a lot of interest and
21 probably requests to have more time.

22 I know the Commission has a view to
23 moving these quickly. We appreciate
24 that. But if there could be some
25 compromise in terms of the extension,

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2 that would be welcome.

3 I want to ask a few questions about,
4 just the -- and then I'm going to jump
5 right on to several of the provisions,
6 but -- want to focus on kind of the
7 methodology and thinking of the
8 Commission on some of these issues. For
9 example on the alternative displays, that
10 you're asking that it take up no more
11 than forty-nine percent of the games'
12 display.

13 Have you all consulted with
14 technical experts in terms of the costs
15 that that's going to kind of create for
16 Indian Country. What would be needed in
17 terms of time to change these machines,
18 you know, are there any games currently
19 that would be -- that would meet that
20 standard and, is this more of a lawyer's
21 regulatory exercise or have you all
22 talked with experts to come up with this
23 figures like forty-nine percent? And
24 what we're concerned about at Gun Lake is
25 that, you know, we may have to go to

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2 Class II even in a Class III state if we
3 have twelve or fifteen hundred machines
4 operating for Class II, you know, twenty-
5 four hours a day, 365 days a year, and
6 we're not able to get machines, or
7 there's a long lag time in terms of the
8 industry getting those machines, that's
9 going to be a big problem for us. So,
10 Mr. Chairman, could you share with us, or
11 staff, the thinking, and what kind of
12 impacts you might think, nationwide this
13 would have in terms of making these
14 changes to the machines?

15 MR. CHAIRMAN: We've seen in the
16 process of writing advisory opinions over
17 the years, quite a large number of
18 different models and approaches. And not
19 all of those, of course, do what is
20 currently configured to accommodate half
21 the screen to be the bingo card, or half
22 the display area. Although there are
23 others that do. So it's I think an
24 answer to the question, are there any out
25 there? Yes, I think there are some.

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2 Have we made an inquiry into this area?
3 Yes. Have we completed that exercise?
4 No. What we want to, not only in this
5 process but as we, you know, reach out
6 elsewhere trying to get our arms around
7 this and gather more information and, you
8 know, if we find that this just can't be
9 done or it can't be done economically in
10 an economically viable fashion we need to
11 rethink it. And so we will, you know,
12 give that some thought. But we didn't
13 just throw it out there and, you know, we
14 did it with the thought in mind -- we've
15 seen some of those that can do it --
16 perhaps they all can.

17 MR. ANDERSON: Well we've been told
18 that with a changeover to change
19 contracts to repay vendors to change
20 their machines to meet this standard and
21 then to get the machines ordered and then
22 online it can be, you know, up to a year
23 even, to do that transition, so -- which
24 would be a big cost to us. You know if
25 we order machines next year and then we

1 NIGC Consultation Meetings
2 have to change over it would be a big
3 economic impact for us and if there is
4 information that you all could share in
5 terms of what you think the real world
6 costs are, that would be helpful to us,
7 because we think they may be real.

8 MS. COLEMAN: I was going to say,
9 Michael, the alternative display
10 discussion and where the game is -- I'm
11 sure you've seen these games. The bingo
12 is on the top, the alternative display is
13 on the bottom. That's it.

14 MR. ANDERSON: Uh-huh.

15 MS. COLEMAN: And it's no different
16 than that with respect to the half of it
17 being -- no more than half of it being
18 the alternative display. So if it's just
19 like many of these games are being
20 considered to be bingo right now, where
21 you have bingo on the top and alternative
22 display on the bottom, that should be the
23 requirements.

24 MR. ANDERSON: If -- in the display
25 is the primary rational to appeal to the

1 NIGC Consultation Meetings
2 player, that they may, that there may be
3 confusion that it's a Class III game?
4 Because if the hardware is the same,
5 what's the connection between having a
6 larger display that's -- or a fifty-one
7 percent bingo display. What is the
8 rationale for that?

9 MR. CHAIRMAN: Well, I think the
10 rationale is clarifying to the player
11 that they're not playing a slot machine.
12 They will get a lot of the feel and the
13 thrill of a slot machine by virtue of the
14 alternative display, but we think that
15 there was intended to be a recognizable
16 difference between the two forms, the two
17 classes. And this would insure that
18 isn't lost.

19 MR. ANDERSON: Is there any doubt,
20 though, that someone who goes into a
21 Class II facility -- that they wouldn't
22 know that that's a Class II machine
23 verses a Class III machine? I mean, you
24 know, when you go to Florida or you go to
25 Oklahoma or you go -- you know you're in

1 NIGC Consultation Meetings
2 a Class II facility, you know that slot
3 machines are not allowed, there's not
4 coins coming out a slot machine so, is it
5 just the confusion that is the main issue
6 that you're getting at for the rationale?

7 MR. CHAIRMAN: Well we think this
8 would insure there wouldn't be any
9 confusion.

10 MS. COLEMAN: But the other thing,
11 too, is that when these games started
12 out, you'll remember the bingo card, the
13 whole bingo game consisted of, maybe a
14 one-by-one card in the corner, with a
15 one-daub feature. You could not tell you
16 were playing bingo. And with the change
17 that has been made over the years, where
18 the whole game of bingo is being shown,
19 where you see the balls coming out, you
20 see your cards, you see -- you know who
21 wins, or whether you're winning or
22 losing. You see all of that in the
23 display. You can actually participate in
24 the game of bingo verses just being told
25 whether or not you've won or not. And so

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2 that's part of it, is, it allows you to
3 really participate and really to compete
4 in a contest of bingo or being able to
5 see that it's going on. At the same
6 time, not eliminating the possibility of
7 continuing to have an alternative display
8 so that, if you don't really care, you
9 can just --

10 MR. ANDERSON: Do you all have any
11 substantive data that there's player
12 confusion in terms of their playing --
13 they think they're playing a Class III
14 game verses a Class II or is this more
15 anecdotal?

16 MR. CHAIRMAN: I don't remember
17 who -- we have not --

18 MR. ANDERSON: Customer surveys
19 or --

20 MR. CHAIRMAN: -- conducted a study
21 or a survey to be used --

22 MR. CHONEY: I've been to Florida,
23 you know, something on the Commission
24 every time we, you know, go to a place
25 we'll walk around, we'll observe the

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2 players at the Class II machines and
3 we'll actually talk to them. They don't
4 know that they're at a Class II or Class
5 III machine and they don't even care.
6 All they know is that they're putting
7 their card in or their money in. All
8 they know is that it's a machine and that
9 they're watching the reels. And I ask
10 them, I said, do you realize you're
11 playing a bingo machine? And they kind
12 of look at me like, don't bother me, I'm
13 playing this machine. I've never seen
14 anyone actually confused.

15 MR. ANDERSON: Can we -- I will just
16 say, that's a fundamental difference,
17 then, I think maybe in the view here is
18 that if the hardware is a bingo machine
19 and the player's confused or thinks that
20 it is a Class III, so what? I mean, the
21 game itself is a bingo machine and if
22 they think they're playing a III machine,
23 that's fine. I would still venture to
24 say that most people at the Florida
25 casino, knowing that the tribe is

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2 actively trying to get a Class III in a
3 compact, would know that they're not in a
4 Class III facility, but they're --

5 MR. CHONEY: Nor have we received --
6 I don't think we've received any
7 complaints or information on the Indian
8 tribes, gaming tribes that have a large
9 amount of customers complaining that
10 they're confused. So --

11 MR. ANDERSON: We might be saying
12 the same thing, we're just taking
13 different views of that -- that
14 information. I'm sorry, Conley?

15 MR. SCHULTE: I'm sure not a lot a
16 people know -- don't know the difference
17 between the Class II and Class III in
18 legal terms --

19 MR. ANDERSON: But if the hardware
20 is Class II and they're confused,
21 legally, so what? I mean, I guess what
22 I'm hearing you saying is that the
23 Commission doesn't like that confusion,
24 that people need to know that they're
25 playing a Class III machine and we're

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2 saying that, it really doesn't make that
3 much difference if they're -- if the
4 technology is Class II. It's like on
5 the --

6 MR. SCHULTE: I'm wondering has he
7 have you done or do you know any
8 manufacturers that have done any player
9 participation studies based upon the size
10 of the alternative display or the
11 relative size of the alternative display
12 in the bingo cards? Because I think that
13 that's an element of what the case law
14 says. The case law says well, adding
15 entertainment value doesn't change the
16 game of bingo, but it does increase
17 player participation so it's a good thing
18 and that's part of what makes it a
19 technologic aid. So I'm wondering if you
20 know of any studies that have studied
21 whether the relative size of the
22 alternative display affects player
23 participation or not?

24 MR. CHAIRMAN: I don't. That may
25 well be useful and that might be

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2 something we ought to consider as we
3 continue our review of --

4 MR. ANDERSON: Do you all have
5 someone you can contract with the terms
6 of providing information and getting, I
7 guess, data that people could examine,
8 expert opinion data in terms of player
9 participation or -- we'll get to the time
10 to play in a second -- but the economic
11 impact. And that's the main thing that I
12 found with a lot of government
13 regulations, both from being in
14 government and outside, that there is a
15 judgment made by the agency as to what's
16 the correct view of the law or policy.
17 But rarely is the economic impact
18 assessed. And it's been a failure on,
19 you know, many, many agencies. But here
20 it seems like there's not been an
21 assessment, really of what the cost is
22 going to be. And I know from this tribe,
23 it seems to me that there is going to be
24 an enormous cost in terms of player
25 appeal, and time to get machines --

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2 MR. CHAIRMAN: Uh-huh.

3 MR. ANDERSON: -- it seems like it's
4 just a gaping hole in the agency's

5 approach that there's not an assessment
6 regionally or state-by-state or machine,
7 tribe-by-tribe of that analysis.

8 MR. CHAIRMAN: Well, we have what
9 seriously at the impact, particularly
10 with respect to the timing of the play,
11 how many games you can play in a day and
12 so forth. We aren't finished with that
13 exercise, we will continue that and yes,
14 we can contract folks and we do have a
15 contract with BMM which is a gaming lab,
16 but that isn't exactly their main area of
17 activity but they have data that would be
18 useful in that connection. But we would
19 welcome, you know, anybody else's input.

20 In terms of what kind of an economic
21 impact analysis have we done, should we
22 do? The concern that I have expressed
23 before and still have is, I'm not sure
24 it's useful to study something that might
25 currently be unlawful. That is, if

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2 devices are being played purportedly as
3 Class II, but in reality, under almost
4 any test, wouldn't fall into the Class II
5 area -- should it make a difference that
6 enforcement of the law would, you know,
7 curtail and make that less profitable?
8 And, but certainly we need to be
9 realistic. We don't want to put
10 something on paper that just devastates,
11 ruins the Class II industry. We don't
12 think we're headed in that direction, but
13 certainly it could have an impact.

14 MR. ANDERSON: Uh-huh.

15 MR. CHAIRMAN: And we'll need to
16 carefully evaluate the degree or the
17 significance of that impact as we go
18 through this process.

19 MR. ANDERSON: Because I've heard it
20 presented that this is, in some ways,
21 minimal impact and -- particularly when
22 the DOJ was going through their proposals
23 that there's not -- and then from the
24 tribal end you hear it's going to be
25 hundreds and millions of dollars. And it

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2 seems that, at least from our perspective
3 the tribes have the better view of that.
4 But there's no independent way to gauge
5 this without some data out there.

6 Now, we are talking to manufacturers
7 and others will try to find out what the
8 plays by minute are going to be with
9 these new regulations, but we have heard
10 that the transition to this technology
11 even though you're saying some machines
12 are out there, there are a lot of
13 manufacturers who are going to have to
14 rewire both the display and the internal
15 hardware of their machines which is going
16 to cost time and money. And then the
17 other is on the autodaub, the player --
18 the slowdown in player time is something
19 that's going to be real. And whether
20 it's current machines that have been
21 authorized by the case law takes us down
22 from fifteen plays per minute to eight or
23 ten, that is going to have an impact on a
24 tribe that has, you know, a thousand or
25 fifteen hundred machines. That's going

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2 to have a lot of market over the next
3 year. That is a big impact to them. And
4 we've not seen that that's been assessed.
5 On the tribal end there is some need to
6 assess that impact, but it well could be
7 in the hundreds of millions of dollars.
8 And, I don't know, maybe you disagree
9 with that that's the impact, but do you
10 have a sense what the impact is going to
11 be in terms of reduced player time based
12 on these changes?

13 MR. CHAIRMAN: No, I can't quantify
14 that at this point. I assume that if it
15 takes a little longer to play the game
16 there aren't going to be as many games
17 played, and wouldn't make as much money
18 as if more games were being played. Will
19 gamblers start spending more money per
20 visit or less money per visit to the
21 facility, and of course, are the machines
22 going to be busy all day every day?
23 Those are the kinds of things that would
24 have to go into that kind of an analysis.
25 And we are trying to crunch some of those

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2 numbers.

3 MR. ANDERSON: If there -- I know
4 the deadline's at August 23rd right now,
5 is there any way to -- the sooner the
6 better on that. And if it's closer to
7 the deadline, it's just, I think you're
8 going to see a lot of requests for
9 extensions to analyze that. We are
10 trying to get manufacturers and others
11 more involved in having experts look at
12 this. I know that Conley wanted to
13 address just a little bit about just the
14 relationship between the case law -- the
15 cases that have been decided and the
16 application of these new regs to games
17 that have already been litigated. If you
18 could --

19 MR. SCHULTE: Yeah, and I've already
20 touched a little bit upon it on the
21 entertaining displays, you know the Mega
22 Mania cases and the Santee District Court
23 Case that said that the entertaining
24 displays actually make them more of a
25 technological aid to the extent then a

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2 Class III game and it doesn't have any
3 impact on the traditional form of bingo,
4 whatever that may be -- which is that
5 will be decided. But it gets back to the
6 point that -- sort of an overall point
7 that the case law seems to be making is
8 that -- you know, in Congress as well --
9 didn't intend to limit bingo to the
10 existing technology or this sort of very
11 traditional form of bingo. But what it
12 seems to me what these new regulations do
13 though is sort of locks tribal Class II
14 gaming into a static position and
15 prevents any further evolution beyond,
16 say 1995 technology.

17 Meanwhile, the non-Indian gaming
18 industry is not so limited. We're seeing
19 movements in many states to have bingo
20 machines, even Maryland up in San Harbor
21 have a proposal to have machines --

22 MR. SHAGONABY: Michigan.

23 MR. ANDERSON: In Michigan as well.
24 So what we're going to have is a tribal
25 gaming industry that's static -- can't

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2 progress with technology, while the non-
3 Indian industry zooms right past them.
4 And my fear is that we're not going to
5 see a fifty or sixty percent drop, it's
6 just going to put the Class II gaming
7 business for tribes -- it's just going to
8 put them out of business. And so I want
9 to -- I guess I'd like to get your
10 thoughts on how locking these regulations
11 into sort of a static gaming position
12 squares with those Mega Mania
13 decisions -- the lower case decision in
14 Santee and the Congressional Senate
15 Report that accompanied that.

16 MR. CHAIRMAN: Well, I hope that
17 this Commission and future Commissions
18 would continue to monitor and revisit
19 regulations that might get adopted that
20 become obsolete because of technology.
21 That's kind of why we are doing what we
22 are doing here. Had technology not come
23 along, way of Mega Mania and Lucky Tab II
24 and so forth, we probably wouldn't be
25 doing what we are doing.

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2 And I think the law relating to
3 bingo and player-stations is evolving.
4 Whether that evolution is consistent with
5 the division Congress made between a
6 Class II format and Class III were not,
7 probably is arguable. That is, you can
8 use a technology game but you can't use
9 an electronic facsimile. And that's not
10 a very bright line, and that's what we're
11 trying to come up with, is a bright line.

12 So I would expect that a couple of
13 things would happen if and when we
14 finalize this generation of these
15 regulations. We'll get sued. And the
16 issue will be, were we arbitrary and

17 capricious? Did we, you know, do
18 something inconsistent with the
19 congressional intent. And that would be
20 a good thing, not a bad thing. You know,
21 we need some finality to this and so we
22 can get on with it and, you know and then
23 new technology will come along and
24 somebody will say, hey, you've got to
25 change the regulations and hopefully we

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2 or they, probably some new commissioner
3 will presumably do that. And maybe
4 somebody will say in Congress, this thing
5 isn't working as well as it was when we
6 drafted it, and maybe we need to tweak
7 Class II, Class III.

8 Ideally tribes will get compacts
9 they deserve and this won't be as
10 significant an issue as it is right now.
11 But it is a very significant issue,
12 certainly with the Gun Lake situation.
13 Alabama, who we just spoke with can't get
14 a compact, Florida's struggling. So we
15 appreciate how important this is.

16 MR. ANDERSON: There's a couple --

17 MR. LEPSCH: Sure, Mr. Chairman, I
18 think that there's a -- at least
19 conversations that the tribe has had with
20 others in Indian Country and going to Mr.
21 Schulte and Mr. Anderson's statements
22 about, sort of, one locking sort of the
23 games into a specific era, as well as,
24 sort of, the economic viability issues.
25 There's a consistent message and this

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2 tribe also believes that, you know, the
3 display issues somehow by themselves, in
4 terms of proposed changes, lock some of
5 the games into an old nostalgic era. The
6 five-by-five requirement, for example and
7 sort of even that -- this is a bingo
8 game. From a tube sort of a perspective
9 of economic viability, the five-by-five
10 bingo is an evolving game and it has
11 been. Conley suggested that this is a
12 game that folks in the non-Indian gaming
13 industry may be moving this technology
14 forward to a way that people still know
15 it's a bingo game -- still
16 technologically functions as a bingo
17 game, but doesn't necessarily act like a
18 bingo game. And, to some extent, we may
19 have established here today -- does it
20 really matter? It's certainly a question
21 that will continue to raise its head.

22 I think that there's a perception
23 that even that things like "this is a
24 bingo game" displayed prominently on a
25 Class II, somehow strikes as

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2 overprotective, maybe even, some people
3 might say paternalistic by the National
4 Indian Gaming Commission in terms of, you
5 know, is that really the role of the
6 Commission and, are they protectors of
7 the consumer or are they protecting the
8 regulation of Indian gaming by itself.
9 And so, at least from the tribe's
10 perspective, if the Commission would like
11 to move forward with those sort of
12 display proposals, probably some
13 substantial evidence that there's
14 consumer confusion. Some things need to
15 be, I think, presented to the tribe. And
16 I would imagine, presented with the
17 correct and, sort of, appropriate
18 evidence I bet tribes would be more
19 willing to buy into those sort of ideas.

20 MR. CHAIRMAN: These are other
21 legitimate points and concerns and we
22 will consider them as we try to move
23 through this.

24 MR. ANDERSON: I know that we're
25 over time now, but how much flexibility

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2 do you think you have in terms of your
3 timing for either a plenary session and
4 also an extension?

5 MR. CHAIRMAN: Well we are -- we've
6 been at this a long time. And some of us
7 are not getting any younger and we'd like
8 to get this done in our lifetime so-to-
9 speak. I expect we probably will have
10 some flexibility. But rather than me
11 doing this again next summer, I'd sure
12 like to be done with it before then, if
13 possible. But, yeah, I mean, this is the
14 second government to government
15 consultation session we've had in this
16 round and we're going to learn a lot.
17 We're going to go back and, you know,
18 talk about how to do it and, very
19 possibly we'll say, the train's moving
20 too fast, we need to slow it down.

21 MR. ANDERSON: John, do you have a
22 final?

23 MR. SHAGONABY: No, I kind of concur
24 with what Conley said about the advance
25 in technologies, and that we're seeing

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2 that in Michigan all the time, you know,
3 with states trying to find revenue
4 sources, they're looking to gaming to do
5 that. And their technology is just
6 getting way out there. And we were
7 fortunate to have some discussions on a
8 tribal state compact. No commitments
9 but, that's a huge issue with us is,
10 scope of gaming and how the technologies
11 are advancing and what's coming down the
12 pike and then trying to compete with not
13 only states, you know, we're going to
14 have to compete with Class III. So I
15 think that we're going to need the
16 strongest possible revenue generator,
17 attractive game in Class II technology
18 that we can get. And still meeting, you
19 know, the bingo table games.

20 So, I would just think to stress
21 that point is that, you know, tribes need
22 to be competitive just to maintain market
23 share and then trying to restrict Class
24 II games even further and make them less
25 appealing is going to be devastating

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2 economic impact to those already
3 operating and then, might be barriers to
4 entry for our tribe. So I just wanted to
5 close on that.

6 MR. ANDERSON: We have a written
7 statement too that we'll submit to the
8 record.

9 MR. CHAIRMAN: Very good. That will
10 be very --

11 MR. VALANDRA: I'd like to make one
12 comment about the plenary session, if I
13 could. So you will think about this and
14 if you think about it. If we did that, I
15 think we would like it to be as useful as
16 possible and wouldn't like to just see
17 just a stream of people coming to the
18 microphone and trying to out-sovereignty
19 one another if you will, because that
20 happens frequently at the plenary
21 sessions. Do you have some idea of how
22 that type of session could be more
23 constructively put together, that might
24 help us decide --

25 MR. ANDERSON: Sure, I mean there's

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2 a lot of ways -- you can have panels that
3 would, I mean, besides the plenary part
4 of it, you could have panels that would
5 discuss, you know, the features of the
6 bill as well and, I'm sure the Commission
7 and the tribes could agree on a few
8 things that would make it more focused.
9 There's a lot of strategies that would --

10 MR. VALANDRA: well, if you would
11 want to show us that would be helpful.

12 MR. ANDERSON: Sure, no problem.

13 MR. VALANDRA: Great.

14 MR. CHAIRMAN: Not to say that
15 sovereignty is not -- (laughter.)

16 Mr. VALANDRA: No, I wasn't saying
17 that in a derogatory manner, I was just
18 using it as one example of --

19 MR. ANDERSON: We weren't taking it
20 that way.

21 MR. LEPSCH: Are we finished here
22 Mr. Chairman, or --

23 MR. CHAIRMAN: Yeah.

24 MR. ANDERSON: All right. Thank you
25 for your time.

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2 MR. CHAIRMAN: All right, thank you
3 so much.

4 SPEAKERS: Thank you.

5 MR. CHAIRMAN: And we wish you well
6 in your endeavors, Class II, Class III
7 Michigan and otherwise.

8 (Whereupon the Commission took a
9 recess from 12:10 PM to 1:05 PM.)

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2 A P P E A R E N C E S :

3 ON BEHALF OF ST. REGIS MOHAWK TRIBE

4 Chief Lorraine White, Tribal Chief

5 Stacy Adams, Tribal Subchief

6

7 ON BEHALF OF THE TRIBAL GAMING COMMISSION

8 Todd Papanau, Executive Director

9 Mark Garrow, Inspector/Manager

10

11 D I S C U S S I O N :

12 MR. CHAIRMAN: Good afternoon, I'm
13 Phil Hogan, Chairman of the National
14 Indian Gaming Commission and we are
15 assembled here, pursuant to the notice
16 that the National Indian Gaming
17 Commission published in the Federal
18 Register on the 25th of May of this year
19 announcing a proposed set of regulations
20 dealing with the classification Class II
21 gaming equipment and a revision of the
22 definitions that currently exist in our
23 regulations. And we're meeting with St.
24 Regis Mohawk Tribe. We'll introduce
25 ourselves for the record here. I'm the

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2 Chairman, Phil Hogan.

3 MR. CHONEY: Chuck Choney,
4 Commissioner.

5 MR. GROSS: I'm Michael Gross from
6 the Office of General Counsel.

7 MR. HAY: John Hay from the Office
8 of General Counsel.

9 MS. COLEMAN: Penny Coleman, Acting
10 General Counsel.

11 MR. VALANDRA: I'm Joe Valandra,
12 Chief of Staff.

13 MS. HEMLOCK: Natalie Hemlock,
14 personal assistant to the Commission.

15 MR. PHILLIPS: Alan Phillips from
16 the Enforcement Division.

17 MR. CHAIRMAN: And if you folks
18 would like to note your appearances?

19 CHIEF WHITE: Thank you Mr.
20 Chairman. I am Chief Lorraine White,
21 Tribal Chief with the St. Regis Mohawk
22 Tribe and, by way of introduction I'd
23 like to introduce Stacey Adams, our
24 newly-elected Tribal Subchief from the
25 Tribal Council and also our Tribal Gaming

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2 rules that you are proposing don't --
3 aren't really what we, as regulators, are
4 most concerned about. For example, that
5 the size of the bingo Card on the screen
6 has to be a certain size. We agree that
7 the bingo Card should be on the screen,
8 but to actually say it has to be a
9 certain size -- fifty percent of the
10 screen, or forty percent of the screen --
11 I, we really don't agree with that. But
12 what we do agree with you is that it must
13 be on there somewhere. It must be
14 legible. And we do have some other
15 points that we'd like to make at this
16 time.

17 As Gaming Commission representatives
18 for the tribe, we really want to make
19 sure that these Class II devices we offer
20 on our properties are fair to the
21 patrons. That is our number one concern.
22 And, in being fair we also hope that they
23 are, you know -- well actually, we're
24 pretty certain that they are Class II.

25 We relied heavily on the opinions of

1 NIGC Consultation Meetings
2 your General Counsel for two of the
3 systems we currently play. For the third
4 system that we play, there was not an
5 opinion letter yet. So, we had concerns
6 as the Gaming Commission on that game, so
7 we requested the manufacturer, AGS
8 Systems, to forward a complete game
9 system to our independent test lab, which
10 is Gaming Laboratories International.
11 They tested the game, spoke quite often
12 with the manufacturer and after some
13 several weeks -- after several weeks they
14 came and gave us a verbal report that it
15 did operate as they described. That it
16 was fair. And that the random-number
17 generator was, in fact, meeting their
18 standards for randomness. And, based on
19 their results we came to a conclusion
20 that it is, basically, a Class II game.
21 Applying a lot of the same standards that
22 you did in the opinions of the other two
23 games we offer.

24 Now getting back to -- as
25 regulators, what we really, really like

1 NIGC Consultation Meetings
2 to see promulgated when you're looking at
3 rules like this -- we made a list here --
4 is, you have to really involve a lab, an
5 independent test lab. They are the
6 experts. As much as we like to think
7 that we know what goes on in these
8 machines, they are the experts that can
9 tear apart the machine that really can
10 tell us, yes, the math is right. Yes,
11 the random number generates in fact
12 random. We'd like to see requirements
13 that they get involved.

14 We'd also like to see requests for
15 testing of the random-number generator.
16 You don't really mention it in your
17 rules. We would like to really see that,
18 yes, it meets certain randomness. We
19 also --

20 MR. GARROW: One of the concerns
21 that we have with the proposed rule is
22 that it -- I believe that it does not
23 address what, as a regulatory agency, we
24 would be looking for. Rather it concerns
25 itself with the definition of the game.

1 NIGC Consultation Meetings
2 also hope that the technical standards
3 will be just that, similar to what we
4 have in our negotiated compact with the
5 State of New York for our other games or
6 our other devices. What we address the
7 actual electronics in the system,
8 automechanics. And that would include
9 peripherals, bill acceptor monitors,
10 printers, that sort of thing.

11 MR. PAPINEAU: That it not be
12 susceptible to cheating devices such as
13 static discharge, electrical discharge --

14 MR. GARROW: -- liquid spills. So
15 that the device would be safe for the
16 players, so that it's proper security
17 encryption for information is being sent
18 from the player station to the server and
19 back to the player station. To insure
20 that accounting functions within the
21 device are operating properly. One thing
22 that we would look for would be an access
23 port for my inspectors to be able to go
24 in and test these games. If the software
25 that was submitted to Gaming Laboratory

1 NIGC Consultation Meetings
2 checked to make sure that it doesn't
3 corrupt any of the basic functionality,
4 so it doesn't make any changes to the
5 game itself. Well this is something that
6 we also need to do in the Class II world,
7 so that when the manufacturer says, we're
8 making these minor changes and that's
9 all, I need a method, then, that I can go
10 in and I can verify that.

11 So, our hope is that we're working
12 towards that end.

13 MR. VALANDRA: Well, maybe it's --
14 I'm going to interrupt you just for a
15 second, and Michael can pick up on this,
16 but they are -- we are working on
17 updating the technical regs, as you've
18 probably seen them about a year ago.
19 Michael, if you want to talk to us just
20 for a second about this?

21 MR. GROSS: Sure. They get a little
22 stale sitting on the shelf. So, we're,
23 right now -- and we're talking about a
24 separate collection of regulations that
25 address precisely the issues that your

1 NIGC Consultation Meetings
2 Gaming Commission is concerned with.
3 We're dusting them off and making
4 sure that they are current from a year on
5 the shelf. And they address all the
6 things that you've listed. They address
7 in detail the requirements for random-
8 number generation, for example. Not only
9 that the random-number generator create
10 random output but that once that output
11 is grouped together or scaled at that
12 scaling or grouping is, itself, random.
13 Encrypted communications, all of the
14 things that you mentioned -- the
15 durability of the peripheral devices, so
16 as not to be susceptible to smoke and
17 liquids and so on and so forth; the
18 durability of the box to quite -- it
19 specifies in considerable detail how many
20 kilo-bolts they have to withstand and so
21 on and so forth.

22 The Commission's plan is to publish
23 those as a proposed rule at the end of
24 this month. And they will be there for
25 everyone's consideration. And if you

1 NIGC Consultation Meetings
2 have any comments about those, and see
3 things that you think that we have missed
4 and would like -- would need to see, by
5 all means, we need to know that. If
6 there are things in there that go a
7 little too far, that are unnecessary, we
8 need to know that too. In a sense,
9 though, it's a separate and distinct
10 project from the --

11 CHIEF WHITE: -- presently proposed
12 regs.

13 MR. GROSS: Exactly. And then
14 they're built to be separate.

15 CHIEF WHITE: Uh-huh.

16 MR. GROSS: That is a collection of
17 regulations on how to build safe and fair
18 boxes. But they stand on their own.

19 CHIEF WHITE: Right.

20 MR. VALANDRA: Regard timing point
21 of view --

22 MR. GROSS: Yes.

23 MR. VALANDRA: The consultations and
24 the timing will all dovetail so that the
25 close of consultation for the

1 NIGC Consultation Meetings
2 classification regs and the technical
3 regs went at the same time. So they'll
4 go into effect at the same time as --
5 CHIEF WHITE: So, August 23rd for --
6 MS. COLEMAN: It's on or before.
7 CHIEF WHITE: On or before.
8 MR. VALANDRA: Yeah, that's our
9 current timetable as to -- with those --
10 CHIEF WHITE: For both?
11 MR. VALANDRA: For both of them,
12 yes.
13 CHIEF WHITE: Okay.
14 MR. GROSS: And the involvement of
15 the labs, I'm sorry, I forgot about that
16 as well.
17 CHIEF WHITE: Okay.
18 MR. GROSS: Have to say, yes, you
19 know, before they go on the floor these
20 things have to be sent to labs. As for
21 Mark your -- the verification by your
22 inspectors, the tack that the regulations
23 take is essentially -- leaves it as open
24 as possible. Basically we don't care
25 what kind of mechanism you use to verify

1 NIGC Consultation Meetings
2 the software, provided that it meets
3 certain mathematical conditions of the
4 reg but, and you have to provide to the
5 tribal gaming regulatory authority, that
6 tool. And as long as it can check the
7 identity and the validity of all of the
8 software, however that software happens
9 to be stored.

10 CHIEF WHITE: Uh-huh.

11 MR. GROSS: Great. Then it serves
12 the function that you need. So that is
13 also included in considerable detail.

14 CHIEF WHITE: Okay. Thank you for
15 that clarification. I know that in our
16 prep meetings, with respect to today's
17 discussion, we had discussed some
18 specific points that are raised in the
19 proposed regs, namely, the definition of
20 "facsimile."

21 MR. PAPINEAU: Uh-huh.

22 CHIEF WHITE: And, I know that both
23 of you had some pretty grave concerns
24 with respect to that area of the
25 regulations. And, if you could just

1 NIGC Consultation Meetings

2 discuss that just a little bit.

3 MR. PAPINEAU: Sure, I think the
4 Commission, the NIGC is trying -- it's a
5 very tough job you're trying to do right
6 now, but I believe that you're going a
7 little too far in classifying the game of
8 bingo as a facsimile when played in

9 certain electronic forms. The Indian
10 Gaming Regulatory Act allows us to use
11 electronics, computers and technological
12 aids. And they don't place any limits on
13 that. I think, as long as we basically
14 have the game of bingo, whether it be, as
15 you say, a live session played with all
16 these same aids, or happening in a server
17 and peripheral boxes, I don't see the
18 difference. I have a hard time seeing
19 rules governing the machine side that we
20 can play on the so-called live side. And
21 I also have a lot of problems with trying
22 to separate the two. I mean, we're
23 trying, I think you're trying to make a
24 game that really is bingo, not bingo
25 anymore. I think your rules as they

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2 stand, if you build a machine that just
3 fails, ever so slightly, will then be
4 deemed: not bingo. And therefore, I
5 think you are really redefining the term
6 "bingo." Even though you say you
7 don't -- you're not -- your intent is not
8 to do that. I think what will come out
9 the back end of these regulations will be
10 a game that, to me is bingo, but if it
11 doesn't meet certain timing standards or
12 anything else, then it will be deemed not
13 playable in a Class II environment. And,
14 to me, if it's not playable in a Class II
15 environment, then it is not the game of
16 bingo. And that's my take on it.

17 MR. GARROW: On my end, field
18 inspections, I would much prefer even a
19 live session be played with electronics.
20 Replacing the ball draw. There are
21 certain advantages to us, rather than
22 going and viewing the equipment daily,
23 rather than inspecting the bingo balls
24 daily, I think that the ability to go and
25 test software and verify that it's the

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2 correct version is much simpler and
3 lessens the likelihood that there will be
4 manipulation by either an employee or by
5 a patron of the facility to make changes
6 to the bingo balls, to weight them, to
7 introduce foreign objects into the game.
8 I mean, on my end it makes sense that, in
9 an electronic version it's much safer for
10 us than if we allow -- I guess what I'm
11 trying to say is the fewer human hands
12 that you have touching this equipment,
13 the better someone in my position likes
14 to see it. So --

15 MR. CHAIRMAN: I think that I agree
16 with that rationale. The problem we
17 have, and we've had some of these
18 discussions before, is they've created
19 two classes, and they said there's to be
20 a recognizable difference. And when
21 technology goes -- when that aid becomes
22 so sophisticated, that recognizable
23 difference is hard to distinguish. And,
24 hence, we're engaged in this exercise and
25 trying to get it right and it's

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2 challenging. But, just as is the case, I
3 think, with electronic pull-tabs,
4 electronic pull-tabs would be a whole lot
5 more foolproof or tamperproof than paper-
6 pull tabs. But it becomes an electronic
7 facsimile of a game of chance. And the
8 Court has said, therefore, it's Class
9 III. And that's where we -- so we got to
10 take that step with respect to when the
11 aid does so much of the game it falls
12 into that electronic facsimile category.
13 And we're trying to take advantage of
14 technology but not to the extreme that we
15 can no longer distinguish it. And
16 therein lies the challenge. Your point
17 is certainly well-taken, and we're
18 continuing to grapple with this.

19 CHIEF WHITE: Another area that we
20 have questions about revolves around the
21 gaming-related contracts. And I know
22 that our earlier discussion a few weeks
23 back, you had mentioned that you're
24 working on a definition internally with
25 respect to gaming-related contracts. And

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2 now -- I mean, you've been operating
3 under a pretty tight determination with
4 respects to those types of contracts.
5 And now it seems that all gaming-related
6 contracts. So, does that include vendor
7 contracts all the way down to buying
8 bread for the deli? That type of -- I
9 think, grey area is really where we're
10 kind of scratching our heads and
11 wondering, well, how far is this intended
12 to go?

13 MR. CHAIRMAN: You're absolutely
14 right. It's pretty limited now, as to
15 what NIGC does. We review and approve
16 management contracts. And often, those
17 are easy to recognize.

18 CHIEF WHITE: Uh-huh.

19 MR. CHAIRMAN: The vendor, the
20 developer comes to the tribe and said we
21 will build and run your casino, that's a
22 management contract.

23 CHIEF WHITE: Okay.

24 MR. CHAIRMAN: There have been other
25 contracts that have been styled as

1 NIGC Consultation Meetings
2 consulting contracts or financing
3 arrangements or, whatever where, when you
4 really got down to it, that outside party
5 was involved in the management of the
6 gaming.

7 CHIEF WHITE: Uh-huh.

8 MR. CHAIRMAN: And under the current
9 restrictions, we sometimes couldn't reach
10 those folks, and that proved to be to
11 some tribes' disadvantage. They got
12 taken for a ride and they were doing
13 business with people who shouldn't have
14 been in the gaming business and, so, if
15 that gaming-related contract scope is
16 broadened, hopefully we could reach that.
17 That's the good news. The bad news is,
18 we don't want to get involved in buying
19 bread and things that tribes know a whole
20 lot more than the National Indian Gaming
21 Commission.

22 CHIEF WHITE: Uh-huh.

23 MR. CHAIRMAN: We shouldn't be, you
24 know, backgrounding Chase Manhattan Bank,
25 probably, they're already a regulated

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2 industry. If a tribe wanted to borrow
3 fifty million dollars to buy gaming
4 equipment, why -- and so, the approach in
5 the legislation would be to permit
6 categorical exclusions. To exclude
7 certain, you know -- you put dollar
8 limits on the nature of the --

9 CHIEF WHITE: Okay.

10 MR. CHAIRMAN: -- transaction. And
11 I think it -- and there would be ample
12 opportunity to craft -- I think there
13 would be a two-year regulation-writing
14 period that would prevent that.

15 MR. CHONEY: What we would envision
16 is forming an advisor committee, much
17 like the MICS advisory committee, we'll
18 call upon some of the tribes who already
19 have well-established vendor-licensing
20 programs. And there are a lot of tribes
21 out there who do, yours is one of them --

22 CHIEF WHITE: Uh-huh.

23 MR. CHONEY: -- and there's others
24 that are excellent. And we're going to
25 call upon them to help formulate these

1 NIGC Consultation Meetings
2 policies. Like the Chairman said, we
3 have -- once the -- this thing is enacted
4 we have two years to do this.

5 CHIEF WHITE: Right.

6 MR. CHONEY: And we're going to go
7 out and have meetings, receive comments
8 from the tribes and we're definitely
9 going to have to have exclusions,
10 otherwise it would just be too broad, it
11 would be too expansive. So, we will call
12 upon you and your expertise.

13 CHIEF WHITE: Okay.

14 MR. VALANDRA: Of course all that
15 assumes that the legislation passes.

16 CHIEF WHITE: Right. Well, I know
17 that I had referenced earlier, also, that
18 we're going to be preparing our written
19 comments for submission. And I know, in
20 that document, we certainly will be
21 including what we perceive would be a
22 devastating impact on the economy of the
23 tribe, if, in fact the regulations were
24 to go through as it relates to our
25 existing gaming machines and our Class II

1 NIGC Consultation Meetings
2 facility, the Bingo Palace, on the
3 territory. And so, I mean, we're
4 compiling those numbers and that
5 information for you. And we'll have
6 that, in written format for your review
7 as well as an extensive discussion on
8 some of the issues that we highlighted
9 today. And that's not to the exclusion
10 of others. And there's certainly -- we
11 do have others that we'll be including in
12 that submission. But I don't know if
13 there are other areas that you really
14 want to stress today, other than the
15 items we've already discussed.

16 MR. PAPINEAU: I think we've touched
17 on just about everything.

18 MR. GARROW: Well, I think it's
19 important to note that we favor stronger
20 regulation. We've made every attempt on
21 our end to do things right. We hope to
22 continue to do that. Our concern is
23 that, perhaps, some tribes will be
24 punished for misdirection by other
25 operators. Now, I don't know

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2 specifically where the problems lie. My
3 hope is that, rather than being
4 prohibitive and being punishing to our
5 tribe specifically, that we could offer
6 our assistance to others. Now, I
7 understand that, with most tribes there
8 is a -- sometimes can be a problem
9 between the relationship with the council
10 and their Gaming Commission and the
11 operator. But that aside, I think that
12 if the offer is made, and if people who
13 are having difficulties are offered
14 assistance by those who are really trying
15 to do their own thing, and can vocalize
16 the reasoning for it, I think that
17 probably is a goal that we should be
18 looking towards, as well.

19 MR. CHAIRMAN: Well, in that
20 connection, we'd be remiss if we brought
21 this session to a conclusion without
22 thanking St. Regis for the expertise that
23 Mark Garrow brought to our effort here.
24 Oftentimes, sitting around a table
25 pounding it, Mark Garrow would be the

1 NIGC Consultation Meetings
2 voice of reason, bringing us back to some
3 practical consideration that we kind of
4 lost site of. And so, I'm sure that
5 happens at St. Regis as well, that Mark
6 will go bring new focus to it --

7 CHIEF WHITE: His soft, soft
8 unassuming voice. You can barely hear
9 him at times.

10 MR. CHAIRMAN: Well in this effort
11 you're the third tribe that we've talked
12 to and we've got about, right now we've
13 got about forty more and I'm sure it's
14 going to be -- when all is said and done,
15 it's probably going to be more. We're
16 going to different parts of the
17 country --

18 CHIEF WHITE: Right.

19 MR. CHAIRMAN: To get all these
20 viewpoints and we welcome your comments
21 as well as -- especially your written
22 comments.

23 CHIEF WHITE: Uh-huh.

24 MR. CHAIRMAN: And we will take
25 those into consideration.

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2 CHIEF WHITE: Okay. Thank you very
3 much Commissioner, Chairman, everyone
4 else on behalf of the tribe. We look
5 forward to working together. And, to
6 that end -- and, hopefully the
7 regulations -- there will be a meeting of
8 the minds as opposed to the perception
9 that, you know, there's a heavy hand
10 coming down over our heads. And I mean,
11 I think right now we're being -- as
12 Indian Country we're being reactionary
13 and reactive. But we're certainly
14 willing to be a part of the process.

15 MR. CHAIRMAN: We appreciate that.

16 CHIEF WHITE: Thank you very much.

17 MR. GARROW: Thank you.

18 MR. CHAIRMAN: Thank you.

19 (Whereupon these proceedings were
20 concluded at 1:32 PM.)

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

2

3 I, Rebecca Kahn, hereby certify that the
4 foregoing is a true and correct transcription,
5 to the best of my ability, of the sound-
6 recorded proceedings submitted for
7 transcription in the matter of
8 Class II Classification Standards Consultation
9 Meetings with:

10 POARCH CREEK TRIBAL GOVERNMENT;

11 GUN LAKE TRIBAL GOVERNMENT

12 ST. REGIS MOHAWK TRIBAL GOVERNMENT

13

14 I further certify that I am not employed
15 by nor related to any party to this action.

16

17 In witness whereof, I hereby sign this
18 date:

19 July 20, 2006.

20

21

22

Rebecca Kahn

23

24

25