NATIONAL
INDIAN
GAMING
COMMISSION

OCT 26 2000

Robert A. Rosette, Esq.
Monteau, Peebles & Crowell
555 Capitol Mall
Suite 1440
Sacramento, CA 95814

Re: Lac Vieux Desert Internet Bingo Operation

Dear Mr. Rosette:

Thank you for visiting our office on June 21, 2000, and explaining the position of the Lac Vieux Desert Band of Superior Chippewa (LVD) on its proposed Internet Bingo operation. The LVD's position, as articulated during that meeting, is that the internet is an aid to the play of class II bingo and, consequently, that LVD may legally offer Internet Bingo to patrons nationwide pursuant to the Indian Gaming Regulatory Act (IGRA). During our meeting, we indicated that we were skeptical, but that we would consider your theory. Having carefully considered the LVD proposal, we have determined that Internet Bingo is not authorized by IGRA. We reach this conclusion because the play of Internet Bingo does not necessarily occur on Indian lands.

Pursuant to IGRA, a tribe may engage in, or license and regulate, class II and class III gaming on Indian lands within the tribe's jurisdiction if (1) the Indian gaming is located within a state that permits such gaming for any purpose by any person, organization, or entity, (2) such gaming is not otherwise specifically prohibited on Indian lands by federal law, and (3) the tribe adopts an ordinance or resolution which permits gaming that is then approved by the Chairman of the NIGC. For class III gaming, a tribe must, in addition, obtain a tribal-state compact that authorizes the games. See 25 U.S.C. §§ 2710(a)(2) and (d)(1).

Indian lands, as defined by IGRA, are lands within the limits of any Indian reservation and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by an Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. See 25 U.S.C. § 2703(4).

Obviously, the concept in using the internet is to draw players from a wide area. Internet Bingo apparently seeks to draw any player who can log on to the internet site from any location and who is willing to pay the fee. The game itself does not depend on the player

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being located in a tribal bingo facility or even on Indian lands. As explained in a recent case in the U.S. District Court for the District of Idaho, IGRA preempts state laws that purport to regulate Indian gaming. The scope of this preemption, however, is limited to the reach of IGRA. Thus, IGRA allows only gaming that occurs on Indian lands. AT&T v. Coeur d'Alene Tribe, 45 F.Supp.2d. 995 (D. ID. December 17, 1998) (Memorandum Decision and Order), *appeal docketed*, No. 99-35088 (9th Cir. January 14, 1999).

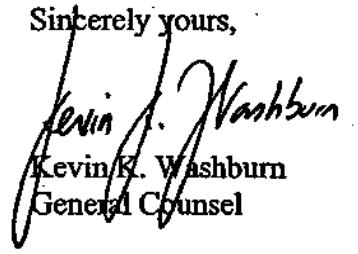
Because not all of its gaming activity occurs on Indian lands, Internet Bingo lies outside IGRA's safe harbor for class II gaming or compacted class III gaming. Accordingly, the game operators may be subject to criminal prosecution for violation of state or federal law if 1) any of the states in which players are located prohibits conduct of an internet gambling business or 2) the underlying gaming activity is itself a violation of state law. As the court notes at page 6 in the Coeur D'Alene decision, "[b]ecause the Tribes' Lottery consists of gaming activities that occur out-of-state and outside the limits of any reservation, state law applies to regulate that conduct." Several states are active in the prohibition of Internet gaming activity.

Based on our conclusion that the IGRA does not authorize Internet Bingo, we need not address whether Internet Bingo is a class II technological aid under the IGRA, as put forth in your proposal. We understand LVD's argument that the internet is being used in this instance only to extend the play of bingo. Assuming *arguendo*, that the internet could appropriately be characterized in this case as a technological aid to the play of bingo, the principle of extending play has limits. In essence, we are confident that Congress did not intend to allow the play of bingo to be extended outside Indian lands.

In summary, a tribal gaming operation is not authorized to operate under IGRA if all or part of the gaming occurs at locations that do not fall within the definition of "Indian lands." Further, such action may violate other federal and state laws.

If you have any question regarding this matter, please do not hesitate to contact Staff Attorney Maria Getoff at (202) 632-7003.

Sincerely yours,



Kevin K. Washburn
General Counsel

cc: Charles Gross, Assistant United States Attorney, Western District of Michigan
Kevin DiGregory, Deputy Assistant Attorney General, United States Department of Justice, Criminal Division