

**NATIONAL
INDIAN
GAMING
COMMISSION**

August 1, 1997

Mr. Gary W. Watkins
Worldlink Gaming Corporation
1789 E. 71st Street
Tulsa, OK 74136

Dear Mr. Watkins:

This letter is in response to your inquiry as to whether the National Indian Gaming Commission regards the game "Rocket Bingo Ante Up Game" (Rocket Bingo) as a Class II or Class III game under the Indian Gaming Regulatory Act (IGRA). We have reviewed the game and conclude that you may play your game, as discussed below, as a Class II game.

This opinion is based on my understanding of the game to be played as described below and will continue to be subject to our review and further site visits by our field investigators. If there are any changes made to the game as described or significant factors not discussed, such changes or differences might materially alter my opinion.

Rocket Bingo is generally understood to be a game whereby not less than two players, situated in one or more of several Indian bingo halls, each of which have Customer Computer Stations (CCS), which are electronically interconnected, may simultaneously play the same game. A CCS unit is a structure with a computer, computer monitor and a card reader. The player of Rocket Bingo must pay the cashier as much as he or she chooses to have credited to his or her account. The cashier enters the amount paid by the player into the computer system and gives the player a card to enter into the CCS. The player then sits in front of the CCS. This is a live game where balls are drawn for the bingo game with a traditional style bingo blower, with or without barcoded balls. The balls are read by a scanner and/or the bingo caller, the numbers are verified by the bingo caller, and the information is immediately transmitted to the tribal halls.

The CCS monitor indicates when the bingo game will start, the amount of credit available and the game pattern to be played, and displays up to thirty-six bingo cards. Before play is started, the player may change cards. To start play, the player touches each card or touches "select all" to choose all thirty-six of the cards. The monitor also projects images of three balls with numbers on them in the center of the screen and which represent

the three balls drawn. The corresponding numbers are daubed on each card by the player touching each card or touching the daub all button. Each time three balls are drawn, a chip up or ante up system for payment is used. In other words, each time three balls are drawn a certain amount of money is required from the player's credit for each card played. If a player fails to daub the card, the card is automatically deleted and no more money is required to play that card.

The game includes different traditional patterns and includes traditional interim bingo patterns such as two, three, and four corner games played on the way to completion of the patterns. The amount a player wins on the interim games is dependent upon how many balls have been drawn. The monitor indicates when the player has won an interim two corners, three corners or four corners game. The monitor shows how many cards are in play and previous numbers that have been drawn. In addition, the monitor will indicate that a bingo has occurred, at what site the bingo has occurred, the serial number of the winning cards, and the amount won. A player cashes out by pressing the cash out button on the screen and taking their card to the point of sales clerk. There the card is read and the player is presented with his or her cash.

The player must touch the screen, within 5 to 15 seconds, to indicate a bingo to win. If a player fails to touch the screen the game will continue until there is a winner. The interim games will also continue until there is a winner or until all players drop all cards.

ANALYSIS

"IGRA established the Commission to regulate Indian gaming, and specifically authorized the Commission to promulgate regulations and guidelines necessary to implement the provisions of the Act. See 25 U.S.C. §§ 2704, 2706(b)(10)." Shakopee Mdewakanton Sioux Community v. Hope, 16 F.3d 261, 263 (8th Cir. 1994). In April 1992, the Commission issued definition regulations.

Those definition regulations establish:

Class II gaming means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations:

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined, and

(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo

25 C.F.R. § 502.3.

Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

* * * *

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance

25 C.F.R. § 502.4.

Electronic, computer or other technologic aid means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used--

(a) Is not a game of chance but merely assists a player of the playing of a game:

(b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) Is operated according to applicable Federal communications law.

25 C.F.R. § 502.7.

Electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. 1171(a)(2) or (3).

25 C.F.R. § 502.8.

Games similar to bingo means any game that meets the requirements for bingo under Sec. 502.3(a) of this part and that is not a house banking game under Sec. 502.11 of this part.

25 C.F.R. § 502.9.

The term "gambling device" is defined in the Johnson Act at 15 U.S.C. Sec. 1171(a) as:

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

GAMES SIMILAR TO BINGO

As discussed in Shakopee Mdewakanton Sioux Community v. Hope, 798 F.Supp. 1399 (D.Minn. 1992), aff'd 16 F.3d 261 (8th Cir. 1994), to be a game similar to bingo, we must determine whether the statutory elements of bingo are essential to the game being presented. In this instance, it is clear that the statutory elements are key to the game.

The game clearly requires the players to use cards bearing numbers and requires the player to cover the numbers, by daubing the cards, when the three balls are drawn. Furthermore, the interim and final game of each play require a predesignated pattern.

Finally, a question has been raised about the ante up feature of your game. While I am cognizant of the similarities between such a feature and slot machines, this feature is not essential to the Rocket Bingo game nor does it appear to impact negatively on our

analysis of the statutory and regulatory criteria for "bingo" or a game "similar to bingo." The feature is essentially similar to the paper card "speed bingo" or "chip up bingo" games played in halls where the player antes up money for each number called. Therefore, while not traditional bingo, the ante up aspect does not change the game so fundamentally that it prevents me from ultimately determining that this is a game similar to bingo.

GAMBLING DEVICES UNDER 15 U.S.C. § 1171

Specifically included within the regulatory definition of Class III is "any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance." Facsimiles is defined as any gambling device under 15 U.S.C. §§ 1171(a)(2) and (3). Therefore, if the game similar to bingo is using a gambling device, it would be transformed under NIGC regulations into a Class III game.

We are not prepared, at this time, to decide whether the game uses gambling devices. Furthermore, we believe that the manufacturer has made every effort to develop this game with the aid of technology rather than by using gambling devices. Therefore, we have determined that the tribes may play Rocket Bingo without risk of an enforcement action by the NIGC.

Please be advised that this legal opinion is advisory in nature only and that it may be superseded, reversed, revised or reconsidered by a subsequent General Counsel or Chairman of the Commission. Furthermore, if there are any changes made to the game as described, such changes might materially alter our conclusion.

Finally, by issuing this opinion, we do not speak on behalf of the Department of Justice or the United States Attorneys who share enforcement responsibilities with the NIGC over gambling devices.

Sincerely,



Kevin W. Meisner
Acting General Counsel