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Via e-mail: reg.review@nigc.gov

August 23, 2013

Tracie L. Stevens, Chairwoman
Daniel J. Little, Associate Commissioner
National Indian Gaming Commission
1441 L. Street N.W., Suite 9100
Washington D.C. 20005

**RE: Comments on “one touch bingo” system classification. 78 Fed Reg. 37998
(June 25, 2013)**

Dear Chairwoman Stevens and Commissioner Little:

These comments, pertaining to the National Indian Gaming Commission (“Commission”) proposal to classify certain server-based electronic bingo games commonly referred to as “one touch bingo” (78 Fed. Reg. 37998), are submitted on behalf of the 29 member tribes of the Oklahoma Tribal Gaming Regulators Association (OTGRA), a non-profit 501(c)(6) association.

The OTGRA would like to express its appreciation for this opportunity to comment on such an important topic, and extends its thanks to the Commission for taking this formal approach through publication and consultation to develop a complete administrative record to support the Commission’s recent determination concerning one touch bingo as a Class II system. The OTGRA is in full support of this determination that Class II server based electronic bingo system games can be played utilizing only one touch of a button, and do not, through one touch, somehow convert into a Class III facsimile of an electronic game of chance.

The Commission’s proposed reinterpretation is consistent with the Indian Gaming Regulatory Act (“IGRA”) and its legislative history. The statutory requirements of Class II bingo set forth in IGRA are the sole legal requirements of a game to qualify as bingo. *United States v. Electronic Gambling Devices*, 223 F.3d 1091, 1093 (9th Cir. 2000). One touch bingo meets each of these requirements. See, 25 U.S.C. §2703 (7)(A)(i)(I)-(III).

- The game is played for prizes on a card bearing numbers or other designations.
- The holder of the card, with the assistance of the computer (or technological aid), covers the numbers or other designations when objects similarly numbered or designated are sequentially drawn or electronically determined.
- The game is won by the first person to cover the pre-designated winning bingo pattern.

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It is vital to note that the one touch feature, whether used or not, has absolutely no impact on the game or the outcome of the game. It is clearly in error then, that the former NIGC Chairman, in 2008, following his review of the Metlakatla Indian Community Gaming Ordinance, determined the use of auto-daub (one touch), in lieu of manually covering the numbers in a card (by pushing a button), would convert a Class II bingo game to a Class III facsimile of an electronic game of chance. It is important to note that this conclusion is not supported by IGRA, and that this decision, limited in scope to the specific Ordinance under review, constituted only an informal decision with no formal agency review and administrative record to substantiate the interpretation.

As you are aware, Class II gaming systems are very important to Oklahoma gaming tribes. You may recall the comments from the OTGRA in August 2012 concerning the proposed rule for both 25 CFR 547 and 543, and the very detailed financial information provided by Oklahoma Tribes concerning the high number of Class II games on the floor of Oklahoma tribal casinos which would be impacted by keeping in place the sunset clause for grandfathered games. Twenty OTGRA gaming tribes reported floor space between 35% and 100% filled with Class II gaming systems. Many, if not all of the Class II systems reported in that communication are one touch Class II systems and substantiate the huge financial investment Oklahoma tribes have made in these Class II systems.

The OTGRA applauds the Commission for its work to clarify this important issue. The OTGRA supports the Commission's determination that one touch bingo is a Class II game employing technologic aid, which is provided for under IGRA, and is supported in the legislative history of IGRA. The OTGRA again extends its thanks to the Commission for this important opportunity to provide remarks on behalf of its member Tribes.

Best regards,

Brett Barnes Robin Lash Traci R. Atkinson

Wes Pappan Jon Arrasmith