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August 16, 2013

**COMMENTS OF THE OSAGE NATION ON THE  
NATIONAL INDIAN GAMING COMMISSION'S  
PROPOSED INTERPRETATION OF 25 C.F.R. PART 502 –  
ELECTRONIC ONE TOUCH BINGO SYSTEM JULY 22, 2013**

VIA E-mail to [reg.review@nigc.gov](mailto:reg.review@nigc.gov)

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

Re: *Comments on proposed interpretation of 25 C.F.R. Part 502: One Touch Bingo*

Dear Chairwoman Stevens and Commissioner Little:

The Osage Nation ("Nation") submits the following comments to the National Indian Gaming Commission (NIGC) 25 C.F.R. Part 502 request for comment on the Electronic One Touch Bingo System, which was published in the *Federal Register* on June 25, 2013. 78 Fed. Reg. 122, 37998-38000 (June 25, 2013). The Nation appreciates the opportunity to be a part of the consultation process and to submit these comments and hopes that the comments from this Nation and others result in fair and effective regulation and interpretation of the law.

History of Electronic One Touch Bingo System

There has long been debate if an electronic one touch bingo machine should be classified as a Class II or Class III gaming system. However, the electronic one touch bingo system is nearly identical to other electronic bingo systems. The one touch bingo machine is electronically connected to other bingo machines by a computer link, just as other bingo systems are. A player then presses a button once to play the game of bingo instead of more than once as with other bingo systems. The law is clear -- bingo is bingo, no matter if you touch the button once or three times, if you are competing against other bingo players for a prize.

The Metlakalta Indian Community interpreted the electronic one touch bingo machine as a Class II system in its 2008 submission of an amendment to its tribal gaming ordinance submitted to the NIGC. The Metlakalta specifically defined Class II gaming as "an



electronic, computer, or other technologic aid to the game of bingo that, as part of an electronically linked bingo system, assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player." Phil Hogen, the NIGC chairman at the time, disapproved the Metlakalta's amendment to its ordinance by concluding that one touch bingo does not meet the Indian Gaming Regulatory Act's definition of Class II gaming because it requires a player to cover the drawn numbers on a bingo card and that the game be won by the first player to do so. *Id.* at 2703 (7)(A)(i)(II) and (III). Mr. Hogen reasoned that the language of "first person covering" is an element in a multi-player competition of bingo to be the first person to cover a pattern, and that one touch bingo does not include such competition through player participation as required by the statute. Mr. Hogen also found that one touch bingo is not a "game similar to bingo" in that it does not "permit players to compete against each other." Finally, Mr. Hogen incorrectly determined that because one touch bingo allowed the gaming system to "cover" the bingo card and not the player, that such incorporates all bingo game characteristics into an electronic system and machine and thus is a Class III electronic game of chance.

The Hogen interpretation of the Metlakalta's proposed amendment of its tribal gaming ordinance was met with extreme disapproval in Indian Country. It created confusion in the industry with regard to classifying similar games. Therefore, the current NIGC's proposal to reinterpret the one touch bingo system is vastly supported by Indian Country in general and the Osage Nation.

#### Re-Interpretation of Electronic One Touch Bingo System

The intent of Congress to promote tribal economic development and self-sufficiency is clearly set out in the language of the Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2702(1), which states the goal is "to promote tribal economic development, tribal self-sufficiency, and strong tribal government." *Id.* Promotion of tribal Class II gaming helps tribes meet that goal and strengthens their positions with regard to gaming compact negotiation with state governments. The Hogen interpretation of the one touch bingo system was a hindrance at best to this stated goal.

This Commission's proposed re-interpretation reintroduces reasonableness and the advent of gaming technology into the definition and finds that one touch bingo meets the three elements for Class II bingo according to IGRA, 25 U.S.C. 2703 (7)(A)(i)(I)-(III). First, the game must be played for prizes, including money, with cards showing numbers or other designations. Next, the card holder must cover the numbers or other designations when they are drawn or electronically determined. Finally, the first person who covers a previously designated arrangement of numbers or designations on the card wins the game. The fact that it takes just one touch of the one touch bingo game to cover the numbers as they are drawn does not change its classification to Class II in this re-interpretation, and the Commission correctly finds that requiring an extra step to manually cover the bingo card with second touch of a button is not required by IGRA and in fact would be an additional requirement



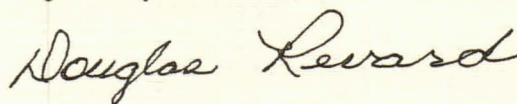
not within the statute. Such is also supported by relevant case law. See *United States v. 103 Elec. Gambling Devices*, 223 F.3d 1091, 1096 (9th Cir 2000); *United States v. 162 Megamania Gaming Devices*, 231 F.3d 713, 719 (10th Cir. 2000). This Commission correctly recognizes that active and actual player participation and competition in an electronically linked bingo game is occurring, regardless if it is a one touch or two touch game. Players do not compete with the machine, as they do in Class III gaming, but rather with each other for a prize. The Nation also supports the Commission's finding that simultaneous bingos by more than one player is permissible in Class II gaming systems, just as in traditional bingo where interim prizes and simultaneous winners can occur.

Finally, the Nation applauds the Commission for recognizing that technological advancements in Class II bingo systems should not automatically render them as Class III games, noting the Senate Select Committee on Indian Affairs' report that supports "maximum flexibility" for modern methods of conducting Class II play. If Tribes are to continue to improve the gaming experience for its players, then such technological aids cannot automatically be considered to change a game's status from Class II to III without a reasonable analysis.

#### CONCLUSION

We appreciate your consideration of our comments regarding the proposed interpretation. We commend you for understanding the critical need in sustaining the viability of Class II gaming to all tribal nations.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas C. Revard". The signature is written in dark ink and is positioned above the typed name of the signatory.

Chairman Douglas C. Revard,  
Osage Nation Gaming Commissioner