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Via Email to Vannice_Doulou@nigc.gov

Chairman Jonodev Chaudhuri
Vice Chair Kathryn Isom-Clause
Commissioner E. Sequoyah Simermeyer
National Indian Gaming Commission
1849 C St. NW
Mailstop #1621
Washington, DC 20240

Attn: Vannice Doulou

Re: Comments on Draft Standards for Class II Wireless Player Interfaces

Dear Chairman Chaudhuri, Vice-Chair Isom-Clause, and Commissioner Simermeyer:

On behalf of the Lytton Rancheria of California (the "Tribe"), we offer the following comments concerning the National Indian Gaming Commission's ("NIGC" or "Commission") draft technical standards for Class II wireless player interfaces, also known as mobile gaming. The draft standards would add a new section (Draft § 547.18) to 25 C.F.R. Part 547, Minimum Technical Standards for Class II Gaming Systems and Equipment.

The Tribe, which operates a Class II gaming facility on its reservation in San Pablo, CA, strongly supports the NIGC's effort to provide guidance to tribes on the use of mobile devices as part of a Class II gaming system. While mobile gaming is a relatively recent development, the NIGC's recognition that this "modern" method of playing Class II games is available to tribes is consistent with legislative history of the Indian Gaming Regulatory Act ("IGRA"). In enacting IGRA, Congress was clear that it intended for tribes to have "maximum flexibility" to use "modern" technology to conduct Class II games. S. Rep. No. 100-446, at 9 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3079.

From a practical standpoint, the use of mobile/wireless devices for Class II gaming could be very beneficial to tribes. Mobile gaming provides an opportunity for tribes to increase their gaming revenue without the high costs associated with building or expanding bricks-and-mortar gaming facilities. Instead, patrons can participate in Class II games from anywhere on the tribe's lands that is eligible for gaming under the IGRA. Other jurisdictions in the United States have recognized that gaming via mobile devices can be a safe and lucrative method for gaming facilities to offer games to their patrons. In recent years, states such as Nevada (Standard 4), New Jersey (N.J.A.C. 13:690) and

Indiana (68 IAC 25) have adopted standards for mobile gaming. Further, Gaming Laboratories International, LLC has issued detailed standards for wireless gaming systems (GLI-26).

For these reasons, the Tribe applauds the Commission's efforts to provide guidance on minimum standards for mobile gaming. However, the Commission's initial draft of § 547.18 fails to address apparent inconsistencies with other provisions in Part 547 and contains language that should be revised or removed to more accurately apply to patron-owned mobile devices.

As an initial matter, the Tribe believes that a definition of "wireless player interface" should be added to Part 547, since the phrase is open to a number of different interpretations. Adding a definition such as the following would help to provide clarity:

"Wireless player interface" means a communications device, whether owned by the gaming facility or a patron, that functions as a player interface by connecting to a Class II gaming system via a secure wireless network, and which allows play in a Class II game if the patron is located on lands eligible for gaming under the Indian Gaming Regulatory Act.

While the NIGC's current Part 547 Class II Technical Standards regulations do not preclude the use of mobile devices, they do create some uncertainty about the testing requirements for a mobile device that is owned by a patron rather than by the tribal gaming facility. For example, the definition of "player interface" is broad enough to include patron-owned mobile devices: "Any component(s) of a Class II gaming system, including an electronic or technologic aid (not limited to terminals, player stations, handhelds, fixed units, etc.), that directly enables player interaction in a Class II game." However, the regulations suggest that all player interfaces must be tested to confirm compliance with certain standards, 25 C.F.R. § 547.5(c)(4), § 547.7(b). Many of these standards simply do not make sense in the case of a patron-owned mobile device that is used only incidentally for gaming, and even then only when (1) necessary software is downloaded to the device and (2) the device is linked to the Class II gaming system via a secure wireless connection. Also, some provisions are unworkable in the context of a patron-owned device, such as the requirement that the "player interface must exhibit a serial number and date of manufacture ... ", 25 C.F.R. § 547.7(d), and the requirement that the player interface "must continually display (1) 'Malfunctions void all prizes and plays' or equivalent; and (2) 'Actual Prizes Determined by Bingo (or other applicable Class II game) Play. Other Displays for Entertainment Only' or equivalent," 25 C.F.R. § 547.16(b).

The Tribe believes that Part 547 should be revised to clarify that testing in the context of a "player interface" that also is a patron-owned mobile device is limited to the gaming-related software that is downloaded to the device in order to participate in the game. Standards and requirements, such as hardware requirements, that would apply to other types of player interfaces should not apply to patron-owned mobile devices. The

Tribe believes that this is the intent of the Commission's proposal, as the Commission has stated at various consultation sessions that patron-owned mobile devices are permitted by the rule.

Additionally, the draft does not include language addressing how the "wireless player interface" will interact with the patron deposit accounts and cashless systems to deposit or redeem credits. The standards should, at a minimum, prohibit patron account access information from being stored on the wireless player interface.

In addition to the changes discussed above, the Tribe believes that some aspects of the proposed § 547.18 should be revised. For example, the requirement to "[d]isable all exposed network connectivity ports," draft § 547.18(a)(2), is not necessary or practical in the context of a mobile device and should be eliminated. Further, the requirement that a "wireless player interface must be designed or programmed such that it may only communicate with authorized gaming systems," draft § 547.18(b)(3), should be revised so that it excludes patron-owned devices.

Also, as discussed at the consultations, some items found in the draft § 547.18 could be addressed in a guidance document rather than in the regulation. Such items might include the provisions dealing with audit logs and printable reports (draft § 547.18(b)(6) and § 547.18(c)). Both are important, but do not need to be included in a regulation intended to govern technical standards.


Finally, the Tribe suggests that the Commission engage in a parallel effort to update the minimum internal control standards for Class II gaming (Part 543) to specifically address those issues that are unique to mobile gaming. In doing so, the Tribe strongly recommends that such updates be developed with the assistance of a tribal advisory committee that includes representatives from tribes that have experience with Class II gaming issues.

Conclusion

On behalf of the Lytton Rancheria, we appreciate the opportunity to comment on the Commission's proposed standards for Class II wireless player interfaces.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP


By: Joseph H. Webster

cc: Larry Stidham, Esq.
Kathy Ogas, Esq.