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Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street Northwest
Washington, D.C. 20240

ATTN: Vanice Doulou, via email (Vanice_Doulou@nigc.gov)

Re: 25 C.F.R. 547.5
2008 Class II Gaming Systems
Notice of Discussion Draft

Dear Chairman Chaudhuri:

The Oklahoma Tribal Gaming Regulators Association (OTGRA) is a professional association of Tribal Gaming Regulators in the state of Oklahoma. OTGRA's mission is to support and promote knowledge and education in tribal gaming regulation, to share information among its members regarding important regulatory issues, and to provide technical support to its member regulators in order to ensure best regulatory practices under Tribal gaming laws and regulations, the Indian Gaming Regulatory Act, the National Indian Gaming Commission (NIGC) Regulations, and the Oklahoma Tribal Gaming Compacts. In this capacity, the OTGRA has been closely engaged with member regulators and the NIGC regarding the status of Class II Gaming Systems that were in operation when the NIGC Technical Standards were implemented and which have been grandfathered under 25 C.F.R. 547.5 until a sunset of November 10, 2018 (Class II Systems). Specifically, this letter follows up on OTGRA's May 10, 2017 letter to you on this topic and provides further comment on the Discussion Draft of proposed amendments to the Class II System technical standards that the NIGC issued on June 14, 2017 (Discussion Draft).

At the outset, OTGRA thanks NIGC for the opportunity to provide further comment on the Discussion Draft. The effective regulation of Indian Gaming, and the success of the Indian Gaming industry as a result of effective regulation, is best served by the kind of collaborative regulation that the NIGC has engaged in with the affected Tribes. We hope that OTGRA's comments on the Discussion Draft are received in the spirit of advancing that collaborative approach. To that end, OTGRA offers the following substantive comments on the Discussion Draft.

First, OTGRA welcomes the consolidation of "grandfathering" provisions and the elimination of the sunset provision in Subsection (a) of the Discussion Draft. This step recognizes that over the 10-year grandfather provision no compliance issues or incidents have been reported and that many, if not all, of

the Class II Systems in operation today have been subject to system modifications under the provisions of the Class II technical standards, which allow for modifications designed to maintain or to advance the overall compliance and integrity of these systems. Under the primary jurisdiction of our member regulators, the grandfathered Class II Systems have improved their performance and compliance over time.

The amendment to Subsection (a) also appropriately balances the regulatory performance of these systems and the rigorous regulatory oversight of our member regulators with the enormous potential economic impact of eliminating these systems, which total approximately 24,000 Class II Systems currently in operation, collectively comprising and estimated 41% of total units in play. The proposed amendments achieve the NIGC's goal of seeking a "potential alternative that minimizes both the economic impact of the sunset provision and the risk to the gaming operation and the public of systems that are not compliant with the full set of technical standards." As indicated below, the other changes proposed in the Discussion Draft serve well the overall intent of the technical standards of "providing a means for TGRA's and operators to ensure that the integrity and security of Class II games played with technologic aides are maintained and that the games and aids are fully auditable." 73 Fed. Reg. 60,508, 60,509 (Oct. 10, 2008).

With respect to record keeping requirements, OTGRA suggests that NIGC review and conform all requirements to provide for maintenance by Tribal Regulators and access and availability to the NIGC upon written request. Specifically, OTGRA questions whether the submission of compliance and performance reports to the NIGC is something that the NIGC wants to undertake, and proposes instead that the access and review role may best be fulfilled by NIGC Regional staff. Further, OTGRA is concerned that the proposed submission of technical performance reports for Class II Systems (Subsection (g)) risks exposing sensitive and proprietary information to the public and possible nefarious use by third parties. While the NIGC commits in Subsection (g) that it will only make available for public review records or portions of records subject to release under the Freedom of Information Act, experience demonstrates at both the state and federal level that the recipients of such information cannot always protect that information from disclosure once it is included in an agency's record, irrespective of the recipient's stated intention to do so. OTGRA members are willing to make testing and compliance records available for NIGC access and review, but is reluctant to expose sensitive and proprietary information to possible public disclosure.

OTGRA further suggests that NIGC reconsider Subsection (a)(2)(iii), which can fairly be read to require TGRAs to make compliance reports on all Class II Gaming Systems. This provision, if applied in this fashion, would treat Class II Gaming Systems to compliance auditing that exceeds the industry standards for rolling compliance testing for all other gaming devices by a magnitude of 10%. OTGRA believes that this treatment is inconsistent with the NIGC's determination to remove the "grandfathered" label from Class II Systems and to eliminate the sunset provision, which collectively recognize that these Systems are compliant. As our May 10, 2017 comments indicate, OTGRA believes that audit requirements for

these systems should be subject to, among other things, a minimum rolling compliance certification of 10% of the electronic layer interfaces in operation at each facility where a Tribe has Class II Gaming Systems in operation. These audit findings would be made available to the NIGC upon request along with approved testing laboratory reports for all Class II Gaming System components in operation, and, of course, member regulators would document and resolve all instances of non-compliance and maintain records of their actions for NIGC review. These industry practices would continue to ensure that the Class II Gaming Systems are operated in a compliant manner, without the need for a special testing regimen.

Finally, upon reissuance, OTGRA respectfully requests that the NIGC address the equivocal use of “compliant” in its Notice. Specifically, the Notice in some instances implies that all Class II Gaming Systems are non-compliant - e.g. “the standards...allowed for non-compliant games” (p. 1, para. 1, l. 5); “The overall goal is to...incentivize all systems to move toward[] full compliance.” (p. 2, para. 1, ll. 2-4). In other instances, the Notice summarizes steps that must be taken where Class II Games are found by a Tribal Regulatory to be actually non-compliant – e.g. “...the discussion draft provides for an annual review of all 2008 Systems designed to identify...what component modifications are necessary for the 2008 System to be brought into full compliance (p. 2, para 2, ll. 7-9) and “...TGRAs...may only approve the modification so long as the modification maintains or advances the system’s overall compliance with the full standards.” (p. 2, para 4, ll. 6-9). The varied use of “compliance” and “non-compliant” is confusing and could be misleading to some. The NIGC’s notice following this round of consultation should be revised to address this issue and to reflect that – 1) the amendments proposed in the Discussion Draft recognize that the Class II Gaming Systems in Oklahoma have been operated in a compliant manner; and 2) the amendments proposed in the Discussion Draft reflect the NIGC and the Tribes’ continuing commitment to ensuring that Class II Gaming Systems remain compliant.

OTGRA hopes that these comments are helpful to the NIGC in its continued consideration and offers them with all due respect and, again, OTGRA offers its thanks to the NIGC for its engagement with Tribal regulators on this important issue. If you have any questions, please feel free to contact me at Kelly-Myers@Cherokee.org and/or (918) 207-4914 or OTGRA legal counsel, Joseph F. Halloran at jhalloran@thejacobsonlawgroup.com and/or (651) 644-4710.

Respectfully,



Kelly Myers, Chairwoman

cc. OTGRA Board Members & Members
Joseph Halloran