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

Re: 25 C.F.R. 547.5
Grandfathered Class II Gaming Systems

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 to ensure best regulatory practices under the Tribal Gaming Laws, the Indian Gaming Regulatory Act (IGRA), the National Indian Gaming Commission (NIGC) Regulations, and the Oklahoma Tribal Compacts. In this capacity, the OTGRA has been closely engaged with its 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.

The grandfathering provision was designed to ensure that the Class II gaming systems then operating in the field met minimum technical requirements, --including game math, random number generation, signaturability and version control, help screens, game rules, history and payglass, -- in order to ensure the integrity of operation and, ultimately, fairness to the gaming public. These critical compliance provisions are covered by the testing requirements of the grandfather provision and have been overseen and enforced by our member regulators and the independent testing labs that those regulators use in fulfillment of their primary regulatory responsibility under IGRA.

You know the history of this issue, but it bears repeating in a summary fashion. The historic struggle that Oklahoma Tribes endured in developing government gaming in the state led directly to the development of a robust Class II gaming industry and market. Gaming patrons have supported these games and, thereby, helped Tribes to generate crucial governmental revenue, despite the difficulty in engaging the state in Class III compacts. As a result, the

grandfather provision carries with it an enormous potential impact on tribal gaming operations across the state and tribal governmental revenue that must be considered when evaluating the appropriate regulatory action on these games. It is estimated that approximately 24,000 Class II gaming systems are currently in operation throughout tribal casinos in Oklahoma, comprising an estimated 41% of total units in play. These gaming systems represent the majority of the most profitable Class II games in play in the state, and are particularly important to smaller tribal gaming enterprises, where the percentage in play and the importance of the revenue that they generate is only magnified.

As indicated, one of OTGRA's essential functions is as a central clearinghouse for information about regulatory concerns including, especially, gaming device problems. When problems are reported the information is shared with member regulators to allow them to determine whether there are similar experiences in the field so that all our member regulators can work collaboratively to address those issues. Over the last 8 years since the grandfather provision was extended to a term of 10 years, there have been no reported compliance issues or incidents. Moreover, many, if not all of the grandfathered systems in operation today have been subject to system modifications under the provisions of the Class II technical standards, which allow for modifications to game software and hardware provided that those modifications maintain or advance the overall compliance of the gaming systems. So it is fair to say that under the primary jurisdiction of our member regulators, the grandfathered Class II gaming systems have improved their performance and compliance over time.

OTGRA respectfully suggests that its member regulators have fully and effectively fulfilled their responsibilities as the primary regulators of Class II gaming systems in Oklahoma, and that the grandfather provision should be extended indefinitely, subject to their continued role in ensuring full compliance with the IGRA and the technical standards and their determination of when such machines should be removed from play. If the NIGC's goal is to ensure ongoing compliance of these gaming systems, a sunset provision is an unnecessary and overbroad approach which really has nothing to do with actual compliance. Moreover, the economic impact of such an action on Tribes in Oklahoma will be enormous. It seems that the NIGC and the Tribal regulators' mutual desire to ensure a robust, fair and compliant Class II market can be achieved through a tailored regulatory amendment, which recognizes the Tribes' primary role in regulating the games, implements technical standards that ensure ongoing rigorous evaluation of these games, and avoids traumatic economic impact.

Specifically, OTGRA submits that the following modest amendments can achieve these goals:

1. Grandfathered Class II gaming systems may continue in operation for a period of ten years from November 10, 2008 or, at the discretion of the Tribal Gaming Regulatory Authority, for so long as the following provisions are met on at least an annual basis:

- a. Tribes operating grandfathered Class II gaming systems manufactured on or before November 10, 2008 or submitted to a testing laboratory recognized

pursuant to paragraph (f) of this Section within 120 days after October 22, 2012 must perform the following:

- i. An audit of the grandfathered Class II gaming system:
 1. Servers;
 2. Management consoles;
 3. Local, multi-Site or Wide Area Progressive controllers.
 4. A minimum of 10% of the electronic player interfaces in operation at each of the facilities where the Tribe has grandfathered Class II gaming systems in operation;
 5. Financial instrument acceptors;
 6. Financial instrument dispensers;
 7. Financial storage components; and
 8. Game software
- ii. Audit findings must be made available to the NIGC upon request along with approved testing laboratory reports for all Class II gaming system components in operation at each location the Tribe conducts Class II gaming.

When the sunset provision was extended for a term of 10 years, the provision was offered as a “take it or leave it” solution based on the industry’s best guess at the life expectancy of the games then in the field. Simply put, that estimate missed the mark, and these games have proved popular, durable, and complaint and Tribes should not be economically penalized because of this positive track record. Instead, OTGRA suggests that, as regulators, we should be focused on ensuring that the grandfathered Class II gaming systems continue to be operated in a complaint manner. OTGRA suggests that the foregoing proposal is a common sense regulatory approach that ensures compliance and transparency and avoids the unnecessary and traumatic economic impact of simply allowing an arbitrarily-set sunset provision to take effect.

OTGRA hopes that these comments are helpful to the NIGC in its continued consideration of this important issue and offers them with all due respect. 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 (651) 644-4710 and/or jhalloran@thejacobsonlawgroup.com.

Respectfully,



Kelly Myers, Chairwoman

cc. OTGRA Board Members & Members
Joseph Halloran

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