



Confederated Tribes of the Colville Reservation

1 Colville Street
PO Box 150, Nespelem, WA. 99155
(888) 881-7684 (509) 634-2200 Fax: (509) 634-4116
www.colvilletribes.com

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Via Electronic Submission: reg.review@nigc.gov

Ms. Tracie Stevens, Chairwoman
Mr. Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

**Re: Comments on the National Indian Gaming Commission's Proposed
Reinterpretation of Electronic One-Touch Bingo System Games**

Dear Commissioners:

The Confederated Tribes of the Colville Reservation ("Tribe") appreciates the opportunity to comment on the National Indian Gaming Commission's ("NIGC") proposal to reinterpret its position on electronic "auto-daub" or "one-touch" bingo games, as previously set forth in the June 4, 2008 decision disapproving the Metlakatla Indian Community's gaming ordinance ("2008 Decision"). We commend the NIGC's initiative to adopt a more thoughtful, reasoned, and principled approach to classifying electronic Class II games. By this letter, we wish to express our strong support for this proposed reinterpretation, which clarifies that one-touch bingo falls squarely within the scope of Class II gaming as defined in the Indian Gaming Regulatory Act ("IGRA") and its implementing regulations.

As the NIGC is aware, tribal governments and members of the NIGC have long grappled with the question as to whether Class II bingo includes electronic aids that automatically cover numbers for the player. To the tribal gaming community, the auto-daub features of one-touch bingo merely represented the natural progression of changing technology designed to aid in the play of a Class II game. Congress was, after all, alert to the fact that Class II gaming technology would continue to advance and that the industry would likewise evolve and grow through new technological developments. As reflected in the legislative history of IGRA, Congress intended for tribes to "take advantage of modern methods of conducting Class II games" and sought to provide "maximum flexibility" in this regard.¹

In spite of this, the 2008 Decision concluded that the use of an electronic auto-daub feature transformed a bingo game into a Class III electronic facsimile of a game of chance, even though such feature had no bearing whatsoever on the essential character of the bingo game. Tribal leaders, regulators, and other stakeholders objected to this narrow interpretation of Class II bingo, particularly the implication that the electronic features of a game could be

¹ S. Rep. No. 100-446, at 9 (1998).

determinative in distinguishing between a facsimile and an electronic aid. Such interpretation not only ran contrary to Congress' intent to promote technological advances in Class II gaming, but also contradicted years of established case law on this issue, the outcome of which had been overwhelmingly favorable to the interests of tribal governments.

Expectedly, the uncertain legality of one-touch bingo games has caused substantial unease throughout the Class II gaming industry generally, and particularly for those tribes located in states unwilling to negotiate compacts for Class III gaming. This proposed reinterpretation, however, represents a positive step forward in resolving this long-standing uncertainty and clarifying that bingo is bingo, however played. We therefore welcome this proposed change and believe that it will bring much-needed clarity, certainty, and stability in relation to the law pertaining to Class II. In particular, we commend the NIGC for recognizing that the classification of bingo games turns not upon the electronic features of the game, but upon its fundamental elements and the extent to which such elements satisfy the statutory requirements. We note that this analytical framework is fully consistent with that adopted by various federal circuits that have ruled that "IGRA's three explicit criteria . . . constitute the sole legal requirements for a game to count as class II bingo."²

We also note that the proposed reinterpretation conforms with federal court decisions, which have repeatedly affirmed that it is permissible for an aid to a Class II bingo game to assist the player by automatically covering numbers for the player after they are called. In *United States v. 103 Electronic Gambling Devices*, the court dismissed the argument that a gaming device failed to satisfy the definition of bingo because of its electronic daub feature, stating that "[t]here is nothing in IGRA. . . that requires a player to independently locate each called number on each of the player's cards and manually 'cover' each number independently and separately."³ As the court emphasized, "IGRA merely require[s] that a player cover the numbers without specifying how they must be covered."⁴ The federal courts, thus, have deemed the manner in which a player "covers" numbers as irrelevant for classification purposes.

Federal courts have similarly dismissed the notion that the game of bingo requires that there only be one winner to get "bingo." Despite the fact that the game must be "won by the first person covering a previously designated arrangement," it is recognized that a game of bingo can have more than one winner. The federal courts have determined that there is no requirement that in order to "win" the game, you must "beat" other players.⁵ Players in a game of bingo can tie, and participants can win other prizes on the way to, or even after, the game-winning prize has been won. Simply put, the number or order of winners is irrelevant as long as players are competing with one another to achieve the game-winning pattern.

The NIGC's proposed reinterpretation thus recognizes the flawed analysis in the 2008 Decision and seeks to correct the mistaken assumptions on which the Decision was based. We are encouraged by these efforts to bring the NIGC's bingo policies in line with case law, IGRA,

² *United States v. 103 Elec. Gambling Devices*, 223 F.3d 1091, 1096 (9th Cir. 2000).

³ *United States v. 103 Electronic Gambling Devices*, 1998 WL 827586, at *6 (N.D. Cal Nov. 23, 1998), *aff'd* 223 F.3d 1091 (9th Cir. 2000).

⁴ *Id.*

⁵ *United States v. 103 Elec. Gambling Devices*, 223 F.3d 1097-98 (9th Cir. 2000).

and the NIGC's regulations, all of which support the propositions set forth in the proposed reinterpretation. We therefore urge the NIGC to move forward with implementing this proposed reinterpretation, which will ensure the continued viability of tribal governmental enterprises vital to Indian Country and tribal self-sufficiency.

In closing, we wish to thank you for this opportunity to submit these comments for your consideration. We look forward to working closely with the NIGC on a government-to-government basis in finalizing and implementing this proposed reinterpretation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Finley". The signature is written in a cursive, flowing style.

Michael O Finley
CHAIRMAN