



COQUILLE INDIAN TRIBE

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Via e-mail to reg.review@NIGC.gov

The Honorable Tracy Stevens, Chairperson
The Honorable Dan Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, NW
Washington, DC 20005

Re: Comments on reinterpretation of agency decision regarding classification of "Electronic One Touch Bingo System." 78 Fed.Reg. 37998 (June 25, 2013)

Dear Chairperson Stevens and Commissioner Little:

The Coquille Indian Tribe (the "Tribe") submits these supplementary comments in support of the National Indian Gaming Commission ("NIGC") proposal to clarify its position with respect to the permissibility of electronic one touch bingo systems. The Tribe strongly believes that the proposal is supported by relevant law and, as a policy matter, is both long overdue and necessary to ameliorate the risk of confusion posed by previous agency actions.

As properly analyzed by the Commission, Class II Bingo, under the IGRA is defined by the statutory criteria set forth in the IGRA at 25 U.S.C. 2703(7)(A)(1)(I)-(III). Those criteria, and those alone, have long been held by the courts to be the only requirements of class II gaming under the IGRA. (See, e.g., United States v. 103 Electronic Gambling Devices, 223 F.3d 1091 1096 (2000). Electronic presentation of Bingo, expressly authorized by the IGRA, adds no additional requirements to the structure or play of the game. Nor do variations on the game play, so long as the statutory criteria are preserved. Over a period of years, electronic bingo gaming systems have prevailed over challenges aimed at speed of play, structure of prizes and simple attacks on a game deemed too fast and too lucrative to be class II under the IGRA. None of these challenges were based in the Statute or in court decisions; all of them violated the express intent of Congress in enacting IGRA that tribes have "maximum flexibility" in the implementation of technological aids. S.Rep. No. 100-446 at p.A-9. All such challenges were rejected by reviewing courts.

The NIGC's precedent is not so unswerving. Over a period of years, the NIGC has expressed concerns that it must somehow impose its own "bright line" between class II and class III games, or subject Indian class II gaming to attack. The Metlakatla ordinance determination was one instance of

NIGC action that had the effect of chilling the implementation of electronic class II bingo as provided by IGRA. That NIGC action was taken during a period that the NIGC was considering, but ultimately withdrawing from consideration, a body of regulations that would have severely restricted electronic class II gaming. During approximately the same period, the NIGC Office of General Counsel issued a series of “non-binding” advisory opinions that included restrictive language, similar in scope to the proposed restrictive regulations that purported to impose additional requirements on electronic bingo gaming systems as a condition of treatment as class II games. Notably, much (but not all) of the focus of the NIGC fabricated restrictions was the assertion that “one-touch” games could not be class II. The NIGC, or its General Counsel, would have imposed a requirement of multiple “touches,” minimum prizes, and a large array of regulatory requirements that were arbitrary and capricious, with no basis in law. The formal regulatory proposal was withdrawn in June, 2008. The Metlakatla Ordinance decision of the same week rests on the same flawed analysis as the withdrawn regulation. So do significant portions of the NIGC General Counsel Game Classification Advisory Opinions. The NIGC has itself laid the foundation for confusion, and for unnecessary attacks on legally supported class II electronic gaming under the IGRA.

The existing NIGC regulations properly track the IGRA in that they permit use of technological aids to the game of bingo, so long as the statutory criteria are met, and the player is, in fact, playing the game of bingo against other players rather than against a machine. The use of technological aids to permit a player to touch a game once to initiate all required daubing actions does not, of itself transform a game into class III, or a prohibited “facsimile” of the game of bingo. Rather than one touch systems, bingo facsimiles would be those that merely give the appearance of a bingo game, but without the necessary elements of the game, including competition with other players.

The Tribe strongly supports the current NIGC proposal to “reinterpret” its position on one touch electronic bingo, as expressed in the Metlakatla Ordinance disapproval. It asks, however, that the reinterpretation be expressed in broader terms, and that the action not be limited to the Metlakatla Ordinance. The NIGC should, additionally fully repudiate inconsistent interpretations that are still extant in Game Classification Advisory Opinions. Only then can its position be clear, consistent, and in accord with Congressional language and the intent of the IGRA. It is apparent, from the comments submitted by the State of South Dakota, that such advisory letters are viewed, from the outside, as Commission decisions. Tribes should not be forced to defend against such misunderstandings, and ask the NIGC now to make its position clear- so that the interpretation of IGRA will be based on the language of the statute and regulations, and not on past errors in staff interpretations.

Thank you for your careful analysis and efforts to protect the integrity of Indian gaming.

Respectfully,



Brenda Meade, Chairperson
Coquille Indian Tribe.