



Iowa Tribe of Oklahoma

335588 E. 750 Rd.
Perkins, Oklahoma 74059-3268
(405) 547-2402

August 15, 2013

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 Proposed One-Touch Bingo Reinterpretation

Dear Commissioners:

The Iowa Tribe of Oklahoma ("Tribe") is pleased to submit the following comments on the National Indian Gaming Commission's ("NIGC") proposal to classify one-touch bingo as "Class II gaming," as that term is defined in the Indian Gaming Regulatory Act ("IGRA") and its implementing regulations. The proposal is a welcomed step towards resolving the uncertainty regarding electronic one-touch aids used in conjunction with Class II bingo games. For the reasons set forth below, we support the proposal in its present form and encourage the NIGC to move forward in its implementation.

For years, there has been significant disagreement between tribal governments and the NIGC concerning whether Class II bingo includes electronic bingo games in which the player must only press one button to wager and play. For tribal governments, the classification of such games seemed straightforward and unambiguous. The one-touch feature had no bearing whatsoever on the essential character of the game, which remained the same regardless of the number of times a button was pressed. Moreover, the one-touch feature was merely a product of evolving technology designed to aid in the play of Class II games. In enacting IGRA, Congress not only anticipated, but in fact intended for the game of bingo to evolve with changing technology, as evidenced by the statement that tribes be permitted "maximum flexibility" in utilizing advancements in Class II gaming.

In spite of the foregoing, the NIGC issued a decision on June 4, 2008, which classified one-touch bingo games as Class III electronic facsimiles. The NIGC's classification decision was based, in large part, on the fact that players were not required to take a separate step to "cover" the numbers as they were called.

According to the 2008 letter, the game did not come within the meaning of "Class II bingo" because it did not require players to participate and compete with each other by taking an additional step to cover drawn numbers. Without the requisite element of "competition," the game fell outside the Class II bingo definition and operated as a Class III electronic facsimile.

The NIGC's 2008 decision was the cause of growing concern and unease throughout the tribal gaming industry, particularly for those tribal governments looking to use Class II games as leverage in compact negotiations. The NIGC's current proposal, however, seeks to bring an end to this controversy by clarifying that bingo is bingo, regardless of the underlying technology or the number of times a button is pressed. We therefore welcome this proposal and commend the NIGC for its efforts to bring greater clarity and certainty to the legal framework governing Class II gaming.

In particular, we commend the NIGC for articulating a more principled basis for distinguishing between Class II electronic aids and Class III facsimiles. One of the primary objections to the 2008 classification decision was that it imposed requirements substantially beyond that which was required under IGRA. However, as stated in the proposal and affirmed by various federal circuits, "IGRA's three explicit criteria . . . constitute the sole legal requirements for a game to count as class II bingo." Thus, the superficial or electronic features of a bingo game are irrelevant for purposes of classifying games under IGRA. The sole and dispositive question is whether the game meets the three statutory requirements for Class II bingo.

We also commend the NIGC for recognizing that a manual "cover" requirement is not an appropriate criteria for classification purposes. Such recognition is consistent with federal court rulings allowing Class II aids to assist the player by automatically covering numbers after they are drawn. Nothing in IGRA or its implementing regulations prescribes the method by which a player must cover drawn numbers. To the contrary, the NIGC's regulations expressly permit a Class II aid that "[a]ssists a player or the playing of a game."

In closing, we wish to reiterate our strong support for the proposed reinterpretation, which seeks to bring the NIGC's policy on one-touch bingo games more in line with IGRA, legislative history, federal case law, and the NIGC's current regulations. We are encouraged by the NIGC's responsiveness to tribal concerns regarding the one-touch bingo controversy and its willingness to adopt the tribal position on this issue. We hope the NIGC will continue its outreach efforts to engage tribal governments on these and other matters of common importance.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Pratt". The signature is written in a cursive, flowing style.

Gary Pratt
Iowa Tribe of Oklahoma
Chairman