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TRIBAL CONSULTATION

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P R O C E E D I N G S

PRESIDENT PATTERSON:
(Invocation).

CHAIRWOMAN STEVENS: Thank you,
President Patterson.

Now it's my pleasure to turn over
the microphone to Lieutenant Governor of the
Chickasaw Nation. President Keel.

STATEMENT BY JEFFERSON KEEL

PRESIDENT KEEL: Thank you. Good
morning. Chairwoman Stevens, Vice-Chairman
Cochran, Commissioner Little. Thank you for the
opportunity this morning to be here and give
some opening comments.

It's important that we take a look
today at where we are in this whole process. I
want to thank Brian for that beautiful prayer.
Thank you. It is always great to get the day
started in the right way. That way we cannot
stumble over words and get personalities in the
way of important business.

As tribal government, it is
important that we be a part of any dialogue that
impacts our tribes and the people that we
represent. When tribes aren't at the table in any type of consultation, in any type of discussion about our business interests and the things that matter to our people, then the results can be devastating to our tribal economies and to the governments that we represent.

I want to also recognize a person who is not here, Chairman Ernie Stevens, Jr., and I want to thank him for leading the advocacy on tribal gaming in this country. Just about a month ago during the Lame Duck Session of Congress, the National Congress of American Indians and the National Indian Gaming Association jointly pushed back efforts that would have forced tribes to take a back seat to commercial gaming interest in a form of on-line gaming. The bill that was drafted, it did place the interest of Las Vegas and Atlantic City ahead of tribes, and clearly assumed tribes were not able to regulate or manage our on-line poker in our facilities.

Regardless of how each Tribe may feel or each tribal leader may feel about on-line gaming and how it may impact our current
operations, it's important that we never place
our interest behind anyone else's or back away
from exercising our sovereign rights by managing
our own affairs.

These are the same guiding
principles we should use when considering any
change that's proposed by the National Gaming
Commission, which are the topic of this
consultation today.

Under the leadership of Chairwoman
Stevens the NIGC has been approaching their
regulatory responsibilities of two ideas. First
they're reaching out to Tribes as much as
possible to hear directly from tribes about the
issues and concerns that should or need to be
addressed, and that's very important, and tribal
leaders appreciate that.

Second, they're focusing their
attention on providing more technical
assistance, with the understanding that the more
tribal regulators understand the federal
expectations on the front end, the lower the
infractions on the back end, when it's more
costly for both the Tribe and the Agency. Both
of these initiatives are commendable, but I want
to throw in a word of caution in these proceedings.

The questions and issues raised in the Federal Register for discussion today and throughout the extensive consultations should be considered very cautiously and very seriously. Changing the definition of net revenue and considering additional measurements like cash flow will have serious implications. It's imperative that we have a clear understanding of the potential impacts. When tribal leaders hear about these types of suggested changes, the first question that usually comes to mind is who will benefit from these changes. In other words, will this mean more of our money goes to benefit bank accounts of non-Indians or who directly benefits from these changes.

Does that mean that our tribes will have less money to provide government services to their citizens? After all, that was the primary purpose of the National Indian or the Indian Gaming Regulatory Act. That's the whole purpose of having this is so that our tribal members will benefit.

Another item of serious
consideration would be any regulatory changes that would expand the authority of the NIGC, such as NIGC authority to approve contracts that are collateral to management agreements. We would ask the NIGC to remember that tribes are subject to three levels of regulation; tribal, state and federal. Tribes need to be able to enter into the contracts they think are best for their gaming facilities, without any additional layer of oversight.

In Indian countries there's no one-size-fits-all approach to any type of regulations. Tribes have proven in many cases that they are more than capable of managing their own affairs, regulating themselves, and they don't need any other layers placed upon them of bureaucratic delays and regulations. NCAI will be monitoring the consultations and working with the NIGC as these issues are considered and will provide any support and help that we can in the process.

I want to end with the same as in the beginning. We should never place our interest behind anyone else's or back away from exercising our sovereign rights by managing our
own affairs. I want to thank you again for the opportunity to provide these opening remarks. We look forward to another opportunity to work with you and a productive year in Indian gaming.

Once again, I want to thank Chairwoman Stevens for her work. The NIGC thank you for what you do. We look forward to working with you.

STATEMENT BY TRACIE STEVENS

CHAIRWOMAN STEVENS: Thank you, President Keel.

Thank you all for attending. My name is Tracie Stevens. I'm a member of Tulalip Tribes out of the Washington state. I'm the new chairwoman of the NIGC. I was appointed in June of last year, and really started work in July when I moved into my office.

I want to thank you all for being here, this is stop number six on our consultation tour. We've been joking that we might get some like rock T-shirts, like when you follow a rock band around, but it will be for good reasons on this tour that we're having to talk about your regulatory priorities.

Before I begin with my comments, I
do want to recognize our staff that are here
from our Washington, D.C. office, and most of
them are sitting behind me here. Many of you
know who they are because you've worked with
them. From our Office of General Counsel,
JoAnne Shyloski, Mike Hoenig. General Counsel
Larry Roberts. Also many of you know Cindy
Altimus, right over here, she's the regional
director for the Eastern Region.

We have other folks here that you
may or may not know from our enforcement
division. Nimish Purohit, he's the master of
all electronic gaming, and he does a lot of our
training, some of you may know him.

Deputy Chief of Staff Dawn Houle,
she's new to us.

Shawn Pensoneau right behind us
here, you see a lot of press releases come out
from him.

Lashon Wilson, also with our
administrative staff.

Lael Echo-Hawk right here who will
also be going through the Notice of Inquiry
here.

And one big round of applause for
Rita Homa, because she has been -- she has been working really hard with us. She's the executive secretary for the Commission and she's been sort of the master behind all of our coordination at all of these stops that we're making. So it has all appeared seamless, although I'm certain there have been problems that we just didn't know about, but she's managed to correct. So I wanted to give acknowledgment to our staff.

Where I come from you have to recognize and thank the people that work to help you do your job. So I want to thank all of our staff.

Today, and as was the case in the five other consultations that we've done over the past couple of weeks; San Diego, Sacramento, Seattle, Oklahoma City, Albuquerque, today in D.C., is part of what this new NIGC Commission has embarked on, which is improving how we communicate with tribes, and we have four major initiatives that we'll be heading up. We're going to be kind of hitting on two of those today, but those four major initiatives, and many of you have heard me talk about this in
other places, are as follows:

One, consultation and relationship building.

Two, technical assistance and training.

Three, regulatory review, which is sort of the crux of why we're here today.

Four, Agency operations review.

So this, as I said, this is just the beginning of a new approach and it's not the end, it's just beginning. You'll see more of these types of consultations as we move along in this process.

Now, in terms of consultation relationship building, that's one of the things we're here to achieve today, or at least to begin a new way to consult with tribes in this group format.

This group format allows for an open dialogue and an exchange of ideas. It let's us hear -- let's tribes hear other tribes' concerns that they may not have known or to come up with some solutions together that we might not have thought of had we been separated and apart.
So today is meant to be your day
to tell us what your priorities are in terms of
regulatory review.

Now, this is different than the
previous consultations where there were one on
one, sign up for an appointment and talk about
policy and talk about your individual tribal
concerns. We, and I certainly don't expect,
this Commission doesn't expect that tribes take
up their individual issues in this group forum.
This group forum is meant for broad overarching
policy that affects tribes across the Nation.

Individual tribal needs, we've
been meeting at tribes' requests as we go around
the country, whether it's here in D.C. or when
we go out in the field or by conference call.
When tribes have an issue they need to talk
about what's specific to their tribal facility,
their regulatory body. Whatever their issue is,
it is just for their tribe. We meet privately
for that.

I want to let everybody know this
isn't the only time you can talk to us about
that, we're are open at any time to talk to
tribes about their individual concerns.
So this forum, and you're going to hear me say this again and again, this is how we're going to collaboratively solve problems. This is where we're going to collaboratively and work together to identify our agenda and our properties by listening to what you tell us your priorities are. That's our first initiative.

The second initiative, which has been headed by Vice-Chairman Cochran is technical assistance and training under the Act, but it should be more than that. We should be out providing the training that you need and as, you know, going to that point, we've put up a survey on our website, we've mailed it out, we e-mailed it, we faxed it, we put a press release out. It is up on the website so we can hear from tribes, tribal leaders, regulators, commissioners, you know, everyone involved with gaming to tell us what would be helpful for you to better regulate your operations. So that's out there. We encourage everyone to fill out that survey so we can refine and target our training program to your needs. If we're providing training that doesn't do any good, then we're not doing our job. So we need to
hear from you.

Agency operations review, and I'm doing this out of order for a reason, that's us taking a look at ourselves, at how the NIGC operates. If we're going to be concerned about your operations, we're going to be concerned about how we run ours. And we will be more transparent in what we're doing, how we're budgeting, and the decisions we make. That's part of what we're doing here is being transparent and open. That's being headed up by Commissioner Dan Little, with a bigger staff.

We're doing what many of you do as tribal operators and you're looking at your operations, you're looking at your government, you're looking at your budget, and you're looking at your work flow process to make sure you're operating at an optimal level with the amount of funds you have available to you. We all come from tribal governments and had to go through this exercise repeatedly, so we felt the NIGC needed a bit of that tribal government background brought into the Agency.

Finally, regulatory review, that's why we're here today. The Notice of Inquiry
went out on November 18th. It basically asked three questions: Which regulations, in what order, and how do you want to go about addressing these regulations.

Today is not meant for a line-by-line drafting session, it is really what comes first, what are your priorities.

Again, I want to say these are just suggestions. I know that it can be interpreted, NOIA can be interpreted as that's what we're suggesting. We're just putting questions out that we've heard from tribes and from our staff. Most of what we've heard from our staff are mechanisms that would make our work flow go more smoothly, but some of the other questions are surprisingly questions we've heard from tribes about contracts and about net revenue. And so, you know, these are based -- and Lael will go into this more deeply, but they're just suggestions.

I had -- I can't think of who it was. It was a Midwest alliance a couple months ago. The question was posed, why does the NIGC, why do you feel like you need to keep doing more regulations. Just because we're here talking
about regulations doesn't necessarily mean we want more regulations. We want to make sure that the regulations that exist right now, or if there is the need for more or different or changed or new regulations, that they meet the needs of protecting this industry. Are they relevant for today's industry. Are there changes that are outdated?

So I just want to say that and I had said that there, too, it is not necessarily because we are trying to overreach, but to streamline our regulations and make sure that they're suitable to today's industry.

So, again, what regulations and what priority and how do we want to go about addressing these. We have a very limited amount of time. I'm six months, seven months into a three year term. In government time that's pretty short. In regulation that's short, that's very short. So we're going to be looking to you to help us put this agenda together and stay with us at the table and provide us solutions and help us get through this in the short amount of time that we have.

We won't always agree, but if we
don't we're going to be very open about why.
We're going to hear everything you have to say,
consider everything that's being said, and if
there's a point where we disagree and we have to
make a decision, we're going to let you know why
and you'll know that decision was fully informed
by your comments and why we did come to the
decision that we've come to.

So before we go on, just so you
know, the format for today, we've had some
opening comments and I'll turn it over to Lael
Echo-Hawk who has been charged with heading up
this particular initiative because of her
background, having been on the other side,
sitting back in those seats for years and years
through many of the technical advisory
committees. She'll go through the Notice of
Inquiry rather briefly, and then really this is
going to be your day to tell us what your
priorities are, ask us questions, clarify
anything in the Notice of Inquiry or our intent,
or if you're unclear, let us know. It is all
being recorded and these transcripts will be put
on the web as soon as we have them so everybody
can see what everybody else is saying. We have
a surprising amount of interest by tribes to
know what other tribes are saying, and we think
that's a good thing. Sorry, I sounded like
Martha Stewart, didn't I, it's a good thing.

Before we go on, I do want to turn
over the microphone to Vice-Chairman Cochran and
also Associate Commissioner Little for any of
their remarks they might want to bring this
morning before we begin.

VICE-CHAIRWOMAN COCHRAN: Good
morning. Good morning to the tribal leaders
that are here and thank you for joining us this
morning.

I need to pay particular attention
and respect to my Lieutenant Governor from my
tribe who sits here as President of NCI, but who
I have seen most of my life as Lieutenant
Governor. So thank you Lieutenant Governor for
coming this morning and being with us.

I also see there are a lot of
other tribe members from our tribe here, which
is interesting, given we're in D.C., welcome and
thank you.

Any opportunity that I have to sit
at a table and hear the words from tribal
leaders about what's important to you means a lot to me. I intend on being a good listener. I intend on being present with your words and listening very carefully to what you have to offer us, because we are going to make decisions that will impact you and we need to make sure those are done in the best way we know how.

Thank you for coming to D.C. I see a lot of the staff here. I haven't seen many of you in almost two weeks now, I hope somebody is watering my plants. Thank you.

Thank you for being here as well. I look forward to our conversation and I'll turn it over to Commissioner Little.

STATEMENT BY DANIEL LITTLE

COMMISSIONER LITTLE: Good morning everyone. I want to welcome everybody here today. President Patterson, I want to thank you for that warm welcome. Working for USET Tribe for nearly 11 years, it is always great to hear from you.

Also, President Keel, thank you for that introduction. It's always -- I appreciate the reminder that NIGC are partners in this process here. All us come from a tribal
background, so we remember that and it is always good, you know, to have that reminder.

I want to quickly point out as the Chair said and as Lael will point out, these are only suggestions, that the Commission hasn't taken a position yet. We're just throwing the questions out to start some points of discussion and what we're looking for, we're all on a short timeframe here, we're looking for solutions. In all honesty, working for the tribe, I know part of the process was to run out the clock. Now's the time we really need to sit down and work with the tribes and have come up with some real solutions we can get down.

Once again, thank you everybody for coming. Once again, I welcome our staff. We have former NIGC Commissioner Liz Homer.

CHAIRWOMAN STEVENS: Thank you.

Today is meant to talk to tribes about the need for changes before we make changes. If you read the Executive Order, and Lael will touch on this again, but I'm a big advocate of this, we talk about it before we start doing. We talk about it before we set the agenda and that you have legitimate input into the agenda and the path we
take and the course we set out on. We're going
to talk about that before we embark and, as I
said, Lael will go over that and the Notice of
Inquiry, briefly, and the next steps what you
can expect as we move along through this
process.

Again, thank you for attending.
Thank you for taking the time today. I
recognize that tribal leaders have a far more
challenging and the difficult job than I will
ever have, because you have entire communities
for which you are responsible and so I
appreciate the time you've taken today.

Again, I look forward to your
comments, your solutions. Any of your
questions. And, as I said, this is just
beginning. There's going to be more of this.
This is going to be an ongoing dialogue and
ongoing discussion, so I look forward to
collaboratively working with all of you. Thank
you and I'll turn this over to Lael Echo-Hawk.

STATEMENT BY LAEL ECHO-HAWK

MS. ECHO-HAWK: Good morning. I
want to echo the sentiments of the Commission
and express my gratitude for Lieutenant Govenor
Keel and President Patterson for being here and giving us a welcome.

My name is Lael Echo-Hawk I'm a member of the Pawnee Nation of Oklahoma. As Tracie mentioned, I worked for about six-and-a-half years as in-house counsel for a tribe in Washington state where I got to be a part of rewriting numerous tribal ordinances, including Tracie and I worked together in the Gaming Ordinance, Civil Procedure, Child Welfare. I've been on the other side of the tribal table. For those of you have written tribal Code, you know how difficult it can be.

As I started working on this process I was like, wow, at least at the tribe you can wrap your hands around it a little bit easier. That's what we're trying to do. We're trying to take another look, not necessarily rewrite, but take another look at the regulatory structure that governs Indian gaming and make it better, however that works, whether it's new regulation, whether it's, you know, taking a look at old regulations, but that's the goal today.

So logistically I'm going to run
through this fairly quickly. If I talk too fast, just wave me down. Logistics, my name, reg.review@nigc.gov. You can reach me with any questions regarding the regulatory review. They go to that e-mail, it's a dedicated e-mail box. As soon as your comments come in they go up on the web. I have several hard copies we'll be scanning in this afternoon and they should be up on the web by tomorrow. All the consultations are recorded and transcribed, and we'll talk a little bit about what that means for logistics, in a little bit. Those will also be up on the website as soon as we get them.

So -- wrong button -- why regulatory review?

Obviously, the Indian Gaming Regulatory Act tasked the NIGC with implementing appropriate regulations to implement the Act. In addition, there's the Executive Order 12866, which is Regulatory Planning Interview and the Regulatory Flexibility Act, which requires every Agency to submit semiannually an agenda to the administration that says these are the regulations we're going to take a look at, kind of here's why.
In addition, President Obama issued another memorandum last week, I believe, that told agencies again, take a look at your regulations.

So that's what we're trying to do here.

As the Chairwoman mentioned, we have studied, we all walk around, and if you notice on our tribal Consultation portion of our website we now have the Executive Order posted on there because for this Commission that Executive Order has sort of been our guiding light in terms of how we deal with going forward in all of our initiatives, including the regulatory review.

A section of major importance to the Commission is Section 3(c)(3) that says, in determining whether to -- in determining whether to establish federal standards, that the agencies shall consult with tribes. This is before -- before we start drafting, before we start issuing notice of the proposed rules we're making we need to consult with you about whether those standards are needed or not. That's what the NOI, that's what this process is about.
What is a Notice of Inquiry? I apologize. Liz, she's heard me do this several times. The Notice of Inquiry is a process used by a number of agencies across the Administration; Copyright Office, FCC, Library of Congress, those are the top three I saw when I was going through this. I haven't seen it used when it comes to Indian Country, necessarily, but it's a way for an Agency when they have issues that come up in front of them to go out to their constituency or people affected in that industry, say this is what we heard, help us work through this problem together, so before we begin enacting some regulation we get all the relevant information and that you truly have some input. That's what the Notice of Inquiry is about. We want to talk to you before we start making policy and before we start making changes to regulations. It asks three primary questions:

What, is what regulation?

When? That means what order of priority, which regulations should we take a look at first, because this time is rather short, we want to get as much done as possible.
And then finally, how. We've had -- do we use a tribal Advisory Committee or someone appropriate to do Notice of Proposal Rulemaking, negotiating rulemaking we've heard about. There's a number of ways to do it. That's the other question that's asked in the NOI.

This is our road show, this will be on our T-shirts, but the Commission really wanted to make sure we were out in Indian Country. We made it a point to go to tribally owned facilities and we wanted to be out in Indian Country. We wanted the burden of the travel to really fall on us and let us get out in Indian Country let tribal leaders go about their business, come see us for a day, but not have to come to D.C., necessarily. So we do appreciate all of you who are here today and we hope this location was convenient for you.

The NOI was published in November, November 18th. The comment closes on February 12th. This is a week after the last consultation in Florida on February 3rd. It was an 86-day comment period. I know 86 seems like a strange number, as Commissioner Little pointed
out to me, but it was a week after the last consultation, that's why we did that. All written comments and consultation transcripts are going to be posted on the web. Again, in the spirit of transparency and accountability to you we want to make sure all the information we use to base our decisions on how we move forward is accessible to all of you, so when we make a decision we can point back to comments that were made, comments that were submitted, and say this is what we heard from you, this is why we went that direction. If we didn't go that direction this is why we didn't go the direction that was pointed out. Again, to be accountable and transparent to you. Again, suggestions only. This is not the end of the universe, this is not written in stone. This is just suggestions. And if you have other comments that are not related to things that are specifically in the NOI we want to hear those, as well. We don't know everything. We certainly don't operate facilities. I do come from representing a facility, but I know on the operations side it can be very much different than the tribal regulatory side, and we're up here at 30,000
level foot level and we want to make sure the
things we do are relevant and they make sense
for the industry.

So quickly we'll just run through
the NOI, the issues that we heard. All of these
issues came out of the tribal Consultations that
we held over the summertime or from meetings we
had from tribes or suggestions from staff who
have been working with you over the past number
of years.

Part 502 we heard President Keel
mention the net revenue definition, management
contract definitions, fees.

One of the things we've heard from
our audit department and from the financial
office is that calendar year versus fiscal year.
Right now the regulations say that fees are
calculated on a calendar basis. Well, most
tribes operate on a fiscal year of some kind and
oftentimes that's different than the calendar
year, so it can make that calculation different
and can result in audit findings. This is one
issue we thought would be resolved rather easily
if that's something tribes wanted to take a look
at.
Using industry standards. One thing we've heard people seem to like over the past five consultations is coming up with some sort of ticketing type system for when late fees are submitted, instead of going straight to an enforcement action. That's been done by the NIGC I know tribes weren't happy about it. We're trying to think of a way that makes sense to address with late fines that doesn't rise to the level of enforcement action because, as you all know, that's a very severe punishment and it's something that shouldn't be used lightly.

The self-regulation regulation. We've heard a lot about this, as well. The self-regulation regulation, most people tend to think the burden of getting that certificate doesn't -- doesn't outweigh the benefit of self-regulation, and so taking a look at that and seeing if we can adjust it or if there's a way we he can make it more advantageous to tribes to actually obtain that certificate.

There is a couple regulations that perhaps may be obsolete. Quite a number of concerns and thoughts about management contracts and collateral agreements background
investigations. Proceedings before the
Commission.

I'm an attorney, I like to know
what the process is when I go in front of a
Court, and right now the proceedings before the
Commission, if you file an appeal there is
nothing in the regulations that's clear that
tells you what your time frames are or what the
process necessarily is, so if that's something
you're interested in seeing then we would like
to hear about it.

MICS and technical standards.
This is the giant elephant that's in the room.
It's got the most press. This is something we
have heard over and over again needs addressed,
and we just need to know how to address it. In
light of the CRIT decision we know that the
NIGC, that Court told the NIGC that it did not
have the authority to enforce or promulgate
Class III regulations. We have Class III
regulations on the books. What do we do with
that? How do we address the fact some tribes,
tribes and states have incorporated the
Class III MICS into their contracts, they've
incorporated by ordinance, they have
specifically given the NIGC the authority to
Class III MICS in their operations. So we have
to figure out how to balance all of those things
and come up with a good solution. We've heard a
guideline might be appropriate, we've heard a
clearinghouse of Class III MICS, even
suggestions about the various trade associations
working on regional solutions and perhaps coming
up with some models that are appropriate for the
region. There's a number of things we've heard,
and I think we're really given an opportunity
right now to be innovative and to come up with a
solution or solutions that are maybe outside of
the box that we've been operating in and
hopefully can meet the needs of the industry.

So Class 3 MICS very important.

Class II MICS, we have had a Class II tribal
working group. We have a draft on the website
pending. What do we do with that? The
technical standards adopted a few years ago in
2008, do they need updated already? We've heard
they do. What do we do with those things and
how do we do it? Do we use a Tribal Advisory
Committee again? Do we -- you know, do we
negotiate a rulemaking? There's a number of
options available, but we do need help from you. We need to know what your thoughts are so we can do it in a good way and as -- and as least controversial as possible and really come up with a good solution for Indian Country.

The pilot program for background investigations, I think most tribes, a large portion of tribes participate in this program. It's sort of been in a memorandum agreement between the NIGC and the tribe format, and so we're thinking about just formalizing that, putting it into a regulation.

Fingerprinting. Providing access perhaps to the NIGC 's fingerprinting process, and that involves our NOI with the FBI, so whether it's possible, I don't know. I know it's an issue tribes have raised with us. In fact have raised with us at every consultation so far. If it's something you're interested in we need to hear about it. We'll send our general counsel to the FBI and hopefully talk them into giving the tribes the same access or more access.

Facility license. We have heard about facility licensing since facility
licensing came up. I was on the other side of
the table when that regulation was sort of -- it
just appeared, and then it was regulation, so
we've heard quite a bit about it and we need to
know what your thoughts are and whether or not
we need to take another look at that regulation.

Access and inspection to records
that are housed off site. We've had tribes come
to us and say we can't get our management
company or old management company to provide us
our records they have stored in their facility
in Reno or Las Vegas. Do we need to clarify
what our authority is to subpoena those records,
either on behalf of NIGC or on behalf of tribes.

Enforcement proceedings. We've
heard when this came up in the office we were
like, well, should the Chair have the express
authority to withdraw a Notice of Violation once
it's been issued. You know we all thought
that's a good question to ask. As we've gone
out into the community we've noticed that we're
hearing quite a bit more. Ms. Homer has pointed
this out to us. Perhaps the enforcement
proceedings need to be even clearer. Perhaps
there needs to be a system of pre-enforcement
procedures that happen so that an NOV,
Chairwoman says an NOV should never be a
surprise. We should have talked to you
previously. We should have tried to work out
some compliance assistance. An NOV should never
be a surprise.

Those are the old regulations.
Those are the current regulations, I should say.

In terms of potentially new
regulations, as the NOI points out the Tribal
Advisory Committee process. As I'm sure all of
you are very aware, sometimes painfully aware,
the Tribal Advisory Committee has been extremely
controversial. It's been very difficult. We've
heard a lot of concerns from tribes about how
that -- how that committee is structured, how
the committee members are selected, how there's
been inadequate representation of all areas of
the industry, large facilities, small
facilities, Class III, industry, manufacturers,
labs. How do we get, when we're working on
something like a major regulation like the MICS,
how do we make sure all the voices that need to
be at the table are at the table? Is this
something we need to put in a policy? Do we
need to put this in a regulation form? We need to know from tribes what you think about this particular process.

Sole proprietary interest. This has been a big big issue in our office. We have tribes coming in asking us to make determinations about whether or not a particular agreement or a set of agreements violates proprietary interest of IGRA. A comment that was made in San Diego is if we are taking a look at that, we also need to take a look at the definition or lack of definition for primary beneficiary. And that might be one way to address it, but if this is a concern to you we do need to hear about it and we need tribal input on this.

Finally, a communication process. Not finally, but one of the issues we have in our office, how do we communicate with you? I know working at the tribe a lot of times the Gaming Commission would receive notice from NIGC, not in-house counsel, not Board of Directors, or if they did it got lost in a stack of papers. How do we communicate with you that 's appropriate, that gets everyone all the
information they need.

You know, when we have sort of these formal meetings how do we make sure the appropriate people are at the table? Because I know that sometimes we even get competing comments from the commissioners versus the tribal chair or tribal council members. For us that's very difficult because then we need to make a decision, and our responsibility is to the tribal government and elected government officials. I know there can sometimes be that conflict. We need to figure out a way to address it appropriately. That's a huge issue.

And then, finally, sort of a kind of a feel good one that I like, the Buy Indian Regulation. I know that NIGA, NCAI, and a number of associations have this initiative for gaming operations to buy Indian from each other. And we are an Indian specific Agency, we are funded by your dollars. And so it's appropriate for us to, when we go out into procure hotel space, conference space, that we try to do that with Indian owned facilities or buy Indian products. So this was something we thought about formalizing into a regulation.
Once again, suggestions only.
These are just a way to get the conversation started. We love to hear input on all of those.
We are looking for guidance from tribes. Again, what are your priorities?

There is a -- just for the structure part on the website, the format that they put it in was very easy for me to read.
This is the regulation, this is what we think about it. Notice of Proposal, Tribal Advisory Committee, the format was very easy for us to go through. If you're trying to think of a way how do you respond to this monster I landed on your desk, I apologize for that, take a look at that. That might help you see how you can structure your comments if you're concerned about that.

Finally, we go back to the Executive Order. Again, Section 3 (c) but, too, this is something the Commission has also really latched on to. It says when agencies are formulating and developing, implementing policies that have tribal implications, agencies shall -- there's no may -- shall, where possible, defer to Indian tribes to establish standards.
If you have an idea for regulations, for standards, for a policy you think is appropriate and would fit the need of the Agency, then, if possible, we're mandated by the Executive Order to consider that and to defer to your tribes with those standards. It is something that's important to this Commission. We really want input as much as possible from Indian Country. This is a good way to bring this to us and we hope we do see those kind of things.

The comment period closes February 12th. Again, that's in about two weeks, two weeks from this Friday. Again, all written comments and consultation and transcripts will be posted on the website. You can submit your comments to me at reg.review@nigc.gov.

Mark Gaston and Mavis Harris, we've got a great website duo who, as soon as I get them something they get it up, so you guys know almost as soon as we know what the comments are, because we really to want to be accountable and as transparent as possible.
Commission, the commitment from myself is that every comment that we receive will be reviewed and considered. I'll look at every document you send me and I'll review every consultation transcript, even though I was here. When we make those decisions regulatory review agenda will come out with a -- like a summary of the decisions that we made and why we made them. You're going to know what our decision-making process is and, again, another way for us to be transparent and accountable to you.

The agenda will be finalized in April, likely will be announced at the NIGA conference, published in the Federal Register at the same time. That's when this line-by-line work begins. That's when things get really substantive and the real work happens.

Again, our commitment to you, we'll get as much done as possible. I'm been concerned how do we handle the MICS issue and address other things, as well. The MICS is important, but there are a number of other things that are important but have been left behind because we have all been concerned about what to do about the MICS. If there is any way
to avoid that I will do my best to make that happen. If I give up my apartment and I'm on the road for the next year-and-a-half or whatever we have to do, that's what we'll do. We're willing to do the work and we want to hear from you so the work is done in a good way and we accomplish as much as we can.

So, again, this is being recorded and transcribed, so when you speak, please state your name, the organization you're with, the tribe you represent, so that we can get that all into the transcript.

Please use a microphone. I believe there's a handheld microphone somewhere. I think Jaime has it back there somewhere. If you see we waiving at you, I apologize. Stop, repeat your name again, the tribe you're with, the organization you represent. With that I'll turn it back over to the Chairwoman to turn it over to you.

CHAIRWOMAN STEVENS: Jefferson Keel.

PRESIDENT KEEL: My name is Jefferson Keel. In the consultation, the schedule. I noticed that the upper Midwest;
Wisconsin, Minnesota, Michigan, those areas were not listed. Was there a consultation session held in that region?

CHAIRWOMAN STEVENS: Thank you.

For your question, President Keel. We're going to Rapid City, South Dakota. We are trying to spread ourselves out as we move along and we -- I actually noticed that when I worked at DOI, the upper Midwest; Michigan, Wisconsin, Minnesota were areas that's actually one of our most challenging regions because of the geography that it covers. To get anywhere -- in some places they can drive; Oklahoma, Northwest, California, they can drive usually to get around, our regional folks or our tribes can. The Midwest is the most challenging because of the number of tribes and how spread out they are. We on this round are hitting Rapid City. In subsequent consultations we're going to move around. For example, we went to New Mexico this time for the Southwest we may go to Arizona the next time. We'll move around and try to hit and bring the NIGC to tribes but, you know, there are some that we can't get to in that particular area where it is the most challenging. Thank
you for that question. We will try to get out
into each of the areas as we can.

Before I turn the microphone over,
basically it's going to be open mike. In
respect to tribal leadership we'll defer to
tribal leaders first and elders who have
comments, questions, anything they wish to
clarify, and then after that any folks that are
designated by their tribal official or, you
know, have representatives or clients that they
represent, just out of protocol and being
proper, so I think that's it. Unless there's
something pressing I've missed I think we've
covered it. I appreciate your time and sitting
and listening to us for the past 45 minutes, but
the rest of the day is for you to just let us
know what you think. So with that who's first
up to bat?

STATEMENT BY KEITH MARTIN

COUNCILMAN MARTIN: My name is
Keith Martin, I'm tribal council member Poarch
Band of Creek Indians. Like to thank you all
for having us. We have Steffani Brian, is our
vice-chair and chairs our Games Commission and
she was supposed to come but she bailed out on
me at the last minute. The tribe appreciates
the position that the Gaming Commission is in
and its proverbial rock in a hard place. I
think you all are working for the feds, but
y'all come from tribal backgrounds and know our
problems on the rez. We believe you're trying
to do the right thing by us. We're working on
comments and we do have some issues with
Sections 518, 547, 559, but we will have all
those comments finalized by our deadline on --
when's the deadline? On the 12th of February.
That's it. Thank you.

CHAIRWOMAN STEVENS: Thank you,
Councilman Martin.

COUNCILMAN McGHEE: Tracie, let me
just follow up -- Robert McGee, Councilman with
Poarch Band of Creek Indians. The first thing I
would like to point out is the new direction
you're going with the National Gaming
Commission. We appreciate this new open
dialogue. I think that the concerns that you
raised regarding tribal advisory committees, we
personally had the opportunity to have
representation on that committee because we do
know that there's a small number of Class II
tribes out there now. It seems like a lot of individuals are having the opportunity to negotiate compacts, so we appreciate from the Class II perspective having individuals that serve on that committee, but I think the general direction you're going now with the Tribal Advisory Committee, I would be respectful of the Commission actually listening to that committee. I think the prior Commission's concerns we had were a lot of in fighting between the Commission and they would submit comments based upon tribes and they weren't really being adhered to. I think this is a great process we're going. Keith mentioned -- we have the background, the fingerprinting issues, the things that we're constantly fighting with the State of Alabama technical standards with Class II. We hope when we look at the possibility of where we're going to go forward with any type of adjustment or looking at the regulations that we take into consideration the issues that affect the tribes within those states that have these very strong issues that you guys hear about every day. I think you got something else from the Governor from the State of Alabama. I know you're always
being looked at. I wouldn't say criticized, but looked at, the regulation issues, that the tribe is in compliance. Now, the tribe is not a certificate, self-regulating tribe. The concerns we have is knowing whenever you make those decisions or looking at the regulations you're always going to take into account and be in accordance with what the tribal perspective is. When it came to the path Commission, even though you would not have regulations that were final, personal opinions would be aired regarding their perspective on those regulations, and once those personal opinions were aired that got into the public, especially within the State of Alabama it became, they felt law, because the Commissioner or the Associate Commissioner felt this is the way it should be, and all of a sudden they were trying to apply those standards onto the tribe, when those were not in fact standards. They were not regulations that were issued, they were personal opinions. So one of the things I can only ask as we go forward, any comments made or in association with the actual regulations we have in place, not be made until the processes are
approved. We look forward to working with you
guys in the future when any of those come up
discussion. Thanks.

CHAIRWOMAN STEVENS: Thank you.
Are you telling us so watch our tongue? No.
Which is fine.

COUNCILMAN McGHEE: Like I said,
within the state if you don't watch your tongue
then it becomes the law of the state where they
feel the Governor himself will say the
Commission doesn't support this and, in fact,
it's, you know, they don't say it's the
Commission's personal opinion and personally
your personal opinion, not that you individuals
should not be considered at this table or even
in regulation.

CHAIRWOMAN STEVENS: I appreciate
that and actually I'm a big proponent of
watching your tongue and what you write. You
know, there is some benefit to restraint of pen
and tongue, so we appreciate that.

You know, there's an upside and
downside of transcripts, and I am always mindful
of what I say on the record, because I'm a
public official, we all are. We all are public
officials that represent the Federal Government,
so we appreciate that comment.

MS. ECHO-HAWK: Just in response
to the earlier comment about the Commission,
actually listening to the Tribal Advisory
Committee, in Albuquerque last week we heard
quite a lot from tribes they say, hey, we
submitted comments where is that black hole they
all went to? Someone was, I think they're with
my socks, the socks you lose in the dryer. I
will go back to the office and look around, but
I submitted comments and I spent hours and days
drafting comments on regulations that I never
received a response that my comment was
received. It was never posted on the website.
I have no idea where those comments were, who
looked at them, if anyone looked at them. We
are really making a concerted effort to change
that. Anything you submit to us it will be on
the website. This week we'll talk about what is
going to be our process when we receive
something from tribes, letting tribes know we
got it we actually have it. Someone is looking
for it. Here's a contact person if you want to
find out what's happening to this. We do want
to be responsive. We don't want you to think there is a black hole with socks and the change from your pockets that handed in the drier and your comments submitted to the NIGC. So we really are prying to be responsive that way.

CHAIRWOMAN STEVENS: The floor is open for comments.

CHAIRMAN NAMODOKA: Chairwoman Stevens. It's a pleasure to be here and what I want to do just openly kind of discuss a little bit and share with you is the sharing of information as in your PowerPoint between the Tribal Council and a Gaming Commission authority. From my experience what I've seen that works better than the unknowns out there is a collaboration of sharing information at the same point in time. Quite typically when one, either the Council or Gaming Commission doesn't know, that's usually an area that creates friction and everybody wants to know and doesn't like being without that knowledge of what's going on. It triggers so many knee jerk reactions that once the dust is settled and everyone has a chance to look at it, quite typically we find out there's a common
understanding as Council has created gaming commissions with their independent authority, has set down the ordinance for it, and communication with NIGC. It is a matter of sometimes connecting the dots and making sure the communication flow is proper there. That's a unique challenge. You know, I've heard of other situations sometimes going foul and, you know, somewhere else in the country. Not that we don't deal with ours, but it's a matter of getting both bodies together and talking out issues at least from a policy standpoint. And that's beneficial to us helping out that our Council members and our Gaming Commission members actually sit down together in a monthly joint session to talk out policy issues. And sometimes there's very little to talk about, but it's about the relationship building and relationship sharing that's the benefit of it and, you know, at least both sides have a common understanding of what the goal is of the program they're trying to achieve. I just wanted to share that with you as everything unfolds, you know, getting the information out there and sharing it, having that transparency, you know,
it's kind of a key phrase right now, but actually putting it together can be a little bit of a challenge because it's the logistics of it, you know. We've taken it one step further. We commit to having monthly meetings those help out. From time to time we'll disagree on something from a point of view, even on a policy matter because of a little verb in there, but it's just a matter of at least we're sitting down and talking it out. I think that's probably the most important thing, and having a consultation like this, that's what you're emphasizing, we have to be able to take that back home and do it on our own fronts.

CHAIRWOMAN STEVENS: Thank you for your comment. While we consider how best to the communicate with tribes, something we are doing is casting a very broad net of communication. So you may get information from us repeatedly, but that's all in an effort to be as inclusive as we can so we don't miss anyone. So we may send information to your leadership, to your council chambers, to your commissioners, to your operations. You may be getting faxes, snail mail, e-mail, press releases. We had received
some criticism about the narrowness of the outreach by the NIGC to only the regulators at your tribe, when in fact our responsibility as a government agency is to your government. So in the meantime please be patient with us if you get repeated communication.

Also, I would like to say we will not be so presumptuous to tell you who is allowed to speak for you. That's your decision, not ours. I'm not going to tell you certain people can't sit at the table or certain people can't speak for you, that's your decision as a tribal leader and a government whether that is you or someone you designate. We just need to know who you're designating so we know who to receive comments from or direction from because, believe it or not we actually get competing comments from within one tribe, and we try not to get in the middle of that only to the extent that, you know, we need to know which comment is officially the authorized comment of the tribe. That's the extent of why we care, but we're not going to get in the middle of that. We're not going to tell you who speaks for you, that's your decision not ours. Why would I want to do
MR. HOLST: Jon Holst, H-O-L-S-T.

I'm with the Ho-Chunk Nation of Wisconsin.

Again, I want to start off by saying thank you

for having hosted this meeting this morning and

I'm with the Tribal Council. My previous

experience has been in gaming. I was in our

Class III gaming for multiple of years running

the slot departments, so I do have some

background and knowledge of the internal

controls. And I guess, you know, I appreciate

the opening comments this morning in regard to

communications because, as we all know, those

are such important matters or such important

factors in getting something done and always

seems to be the first thing to break down.

    I recall reading previous internal
controls and wondering why or I shouldn't say --
the Federal Registry and seeing that there had
previously been a lot of attempts to allow
tribes to have input into them, and I often
wondered why it didn't seem to work that well,
because then I've seen a lot of comments from
tribes after the rules were made in regard to
their objection to some of them. But I guess in
just making some notes, I think the best suggestion in the future for better communications between the Commission and the tribes would perhaps be as already mentioned, designate certain individuals from each tribe and have that in a written form, but to maybe use technology and have teleconferencing, whether that be once a month or every other month, understanding from our tribal standpoint I think that would work out, for example, it would be at least a tribal council member, perhaps somebody from executive gaming and perhaps legal counsel if need be, that understood we set a calendar of meetings we would have through teleconference. I think that might assist in the future. It makes it a lot easier for everyone trying to travel. As you mentioned earlier, it's hard to get to a lot of the Midwestern tribes. I think it would be easier to use those methods in the future.

Thanks.

CHAIRWOMAN STEVENS: Thank you.

CHAIRMAN BARBRY: I'm with Tunica-Biloxi Tribe, Earl Barbry. Could I ask what the definition of qualified business is?
MS. ECHO-HAWK: The definition of qualified business for Buy Indian Act, the same used by the BIA or HHS. You have to reach the procurement standards. If you meet those standards, just like you do in procurement over at the BIA, we would have to use their manual and their definition.

CHAIRMAN BARBRY: So you couldn't tell me what the definition is?

MS. ECHO-HAWK: We could look it up. It's in the manual, but I can't tell you off the top of my head.

CHAIRMAN BARBRY: My concern there is at the tribal level, there's a number of tribal members at our place that have been approached by vendors that don't want to go through the license procedure, so they'll select a tribal member and they'll work out a deal or propose to him that they could set up their own business and run everything through them, but in actuality all there is, they're a broker or a salesperson. That doesn't seem like it's qualified business for that purpose, and I have some concerns about that.

MS. ECHO-HAWK: Well, the
procurement process for the Federal Government, if some of you are involved in that, is very, very arduous. It's -- it's a process to get through that and to get that certification or the acknowledgment that it is a qualified Indian business, but it is a concern that we'll pay attention to and, you know, in terms of the vendor issue we've heard, you know, similar comments that vendors try to go around being licensed, or if the tribe has a policy they want to buy from Indian owned businesses they're sort of being used as a broker or a front for their business operation. You know, it is something that concerns you. We would like to see your comment on a way we could address it in regulation, but licensing of vendors is something that has come up in a number of these consultations.

PRESIDENT KEEL: Could I ask a follow-up on that? The Buy Indian Act provides an opportunity for tribes to purchase goods or enter into buy goods from another Indian vendor.

I'm not sure that the NIGC should regulate and demand -- excuse me -- I'm not sure that the National Indian Gaming Commission
should form a regulation that demands or
mandates a tribal government to procure any type
of goods from anyone. I think, again, this
impedes or it gets into the sovereign rights of
a tribal government to decide who they can
purchase goods from, regardless of the vendor.

When you talk about the benefits
of purchasing goods or service from someone
there is a lot of cost versus benefit that needs
to be considered. It may be that tribes have a
local vendor that can provide the same service
at a lower cost, even with the benefits of the
Buy Indian Act, you know, the 5 percent or the
contract ability of the Buy Indian Act. So I'm
just not sure that NIGC needs to go down that
road.

CHAIRWOMAN STEVENS: Thank you,
President Keel.

I do want to clarify this is for
our operations. I think our limited -- we're
going to be as an agency, very limited with what
kind of services we would procure from qualified
Indian businesses. It's meant for just us.
Just so you know, we're not going down that
road. It may not necessarily be a regulation.
Maybe it's a policy. We've heard that while we've been on the road, it's an internal practice. I know there are some who think if we put it in regulation form that it's a bit more solid and binding on future commissions to do this. Whether it's this policy or Indian preference. You know, the question is whether it's a regulation or policy, but certainly we would not impede on the Tribe's right to run their own government. It's meant for only how we as a federal agency, you know, procure business products, services. Like I said, right now, except for two of the consultations, all of these are being held on Indian land. They should be in Indian facilities, whether those are casino operations or other facilities that tribes have to offer us, and it always has to be in the context of what is financially reasonable.

We have to be mindful of the money that we expend to reach that objective that we're in Indian facilities. Not only Indian facilities may not be the most inexpensive places to hold meetings or consultations and there's a reason for that. It could be their
location. It could be the time of year. It could be the market. But it's not necessarily a foregone conclusion, but we do have to balance it with our financial responsibility.

Okay. Unless anybody had a pressing comment they wanted to make before we take a break, we do have some refreshments back there, coffee, water, some juice, other nourishment to keep you going. The logistics I believe are downstairs.

(Discussion off the record.)

CHAIRWOMAN STEVENS: 15-minute break. We'll come back at five to 11:00.

(A brief recess was taken.)

CHAIRWOMAN STEVENS: Open up the floor for more comments. Do we have any tribal leaders or designees who wish to speak for their tribe?

STATEMENT BY BRIAN PATTERSON

PRESIDENT PATTERSON: Madam chair, I would like to begin by extending a warm heart felt invitation to you, your staff, your full team to the United South and Eastern Tribe Cultural Reception on February 8th, Crystal Marriott. It is a cultural night. It certainly
fits NIGC's agenda. So it's a great opportunity to network to build upon the relationships and to advance in the timeline as you identified. I think if -- if I may also extend as President of the United South and Eastern Tribes a platform podium to extend to NIGC for your efforts here.

So, again, good morning. Brian Patterson. I am Bear Clan representative over the Oneida Nation. We appreciate the outreach and platform which you have advanced. Your message that was put forth through Indian Country today, your letter, your editorial to Indian Country today built upon the fore found principals that you mentioned, I think is a platform that Indian Country could respond to. I think it is a platform that could be supportive of Indian Country and I'm glad to hear some of the dialogue that took place this morning at the table. I am, you know, it is concerning as we, Indian Country moves forward in an effort to protect its sovereign interest in working with this administration in identifying specific areas of consultation to advance. To me there is no big C, no little C
of consultation, it is the capital C of nation-to-nation of tribal governments to other governments and that ability to sit down with one another in advance. So while we speak of collaboration and consultation there is only really one true form of consultation, and that’s with a capital C. So it is the integrity of that relationship and that spirit in which I believe your platform and your approach to Indian Country can build some measurable success, and I express my gratitude for that effort.

The true government-to-government relationship with Indian Country in the federal agencies is crucial, is crucial. Indian Country has sat for far too long for far too many years with NIGC with the appearance of being talked down to or being talked to period, rather than in a meaningful exchange of dialogue and collaboration, and that’s what really excites me about this round and this effort. Consultation is not simply checking a box to say that you did it, it is a matter of process. It is all about the relationships that you develop and the trust in that relationship. I commend you for
establishing an ongoing dialogue with Indian Country to extend the opportunity to address the issues affecting the Indian Country, whether it's through the regulation process or addressing the appeal process and so forth.

I think in your approach Indian Country has the opportunity to move forward. So with that said this morning I'll make some general comments regarding NIGC gaming regulations, specifically with respect to a few issues that you have identified for comments.

Oneida Nation, we will then take the approach to develop a more specific written comment to address the specific areas of concern, so I'll keep my comments general this morning.

I think the first thing is Councilman McGee from Poarch Creek has spoke of the Tribal Advisory Committee. That is certainly a large area which I think we should re-examine, consider in advance with. I think that is a forum that the Commission should advance within Indian Country, but I would caution the committee against using the establishment of a Travel Advisory Committee in
place of any meaningful or fulsome consultation. I say that because it needs to be simply on the record as such.

In doing so, in establishment of the Tribal Advisory Committee, we need to realize that none of us can speak on behalf of another nation and we need to be -- but I think it is a mechanism in which we can identify the areas of concern that -- and the issues affecting Indian Country if we approach this carefully, solemnly, in every cognizant of the future seven generations. So we frequently speak in a similar voice, but every nation does remain different, has a different view and interest, and that needs to be respected. And that would be the only caution in the establishment of the Tribal Advisory Committee, but I believe it should be adopted and utilized to supplement consultation, not replacing crucial detail, but as a supplement for the work of the Commission.

In regards to the comment and appropriate method of communication or the establishment of policy regulation identifying when and how NIGC communicates with Indian
Country with Indian tribes, I think that is, you know, perhaps the greatest accomplishment in the term that is remaining is the ability to collaborate and establish meaningful communication with tribes and a relationship and respect for -- and respect for other governments the NIGC should be communicating with the federally recognized tribal leader and with his or her designees. It should be for each tribal government to determine who the NIGC should consult with and on what issues. Then the federally recognized representative is the appropriate person or entity to identify who should be communicating with NIGC on behalf of the tribes on what issue. Requiring an annual resolution from elected tribal council, however, would be unduly burdensome and unnecessarily intrusive. The Oneida Nation men's counsel, for example, we operate by consensus, so we do not operate through a resolution process. So any attempt requiring annual resolutions from our council would be inconsistent with the form and operation of our Oneida Nation government in our roles and responsibilities and how we advance, but, nevertheless, I think that effective -- the
establishment of effective communication could
go a long way in addressing those areas.

We're pleased to see that NIGC has
undertaken the review of minimal and internal
control standards. We have several comments
built around the MICS, and we will advance those
with you. I think throughout this morning in
talking of the regulations and reviewing the
information put out, I think one of the -- one
area that excites me greatly is in working with
this Commission is to work towards establishing
formal procedures, regulations, and specific
rules on when and how issues such as appeals
will be conducted. I think this is a necessary
measurement to ensure due progress, set
expectations and uniformity to establish a level
identified playing field in Indian Country. I
think that's an exciting initiative for the
Commission.

As I mentioned, we will submit
more formal remarks. I would like to introduce
to the Commission our new -- well, he's not new,
he's ran the gauntlet a little bit for us in
Oneida Country, but let me introduce to you our
Gaming Commissioner, Daniel, and our general
counsel for Oneida Nation, Megan Beakman.

Megan -- Daniel would you care to add anything
at this point?

COMMISSIONER GUSTAFSON: I have no
questions.

CHAIRMAN NAMODOKA: Chairwoman
Stevens, I'll introduce myself. I believe I
might have skipped over that earlier. My name
is Homer A. Namodoka, I am the chairman for the
Nottawaseppi Huron Band Potowatomi.

On thing I want to re-emphasize,
as you collect the information and look for
regulations for improvement will there be an
opportunity to have a summary of the
consultations provided to us? And it is our
hopes that out of the many pounds of paperwork
that you're going to be receiving is that
hopefully there's some mainstreaming with the
objectives out of it that we can at least seek
clearly on, you know, a few pages as opposed to
going through all the documents and trying to
dissect it. I think it would be of benefit to
all the tribes to see something of that effect,
especially with the licensing and implications
thereafter just so we can see that.
At this point in time I would like to introduce our Gaming Commission Chairperson, Brad Simmons, and he's going to offer some comments for you if that's okay.

CHAIRWOMAN STEVENS: Yes.

CHAIRMAN SIMMONS: Thank you, Chairman Stevens. My name is Brad Simmons and I'm the chairman for the tribal game commission for the Nottawaseppi Huron Band of the Potowatomis.

I'm mostly going over the MICS and technical standards on this. I guess our goal is to see that it's more as a guideline than it is a set of regulations or standards. Given the fact that across the Nation each state has their own different ways of negotiating out compacts. Ours is a little more thin in their paperwork than it is other states where they incorporated Class II and Class III, ours does not. In those points they should be provided as guidelines more than as a set of regulations. At that point the NIGC should be able to provide the support that individual tribes need as it comes down to violations with management companies or inside the enterprise and operations versus our
regulatory authority. And also the other part
is, too, the communication forms that we have
with the NIGC, I believe they both should be the
executive and the Gaming Commission itself
should be included in those communications
throughout. That eliminates any sort of
miscommunications, anything not spoken that the
Commission would -- the individual tribal
commissions would need to take control over, not
what council would need to handle and also would
be able to give us better advisement to council
if there was a need for it and we could have
better time to prepare our responses to anything
the NIGC would wish to have. Thank you.

CHAIRWOMAN STEVENS: Thank you.

All good comments. Yes. Tina.

MS. OSCEOLA: Tina Osceola,
O-S-C-E-O-L-A, from the Seminole Tribe of
Florida.

Chairwoman, I would like to
discuss the formation, it was in 2004, it was
the Commission seated at that time the formation
of the Indian Gaming Working Group. It was a
group of enforcement agencies, federal
enforcement agencies including the FBI, the
Treasury, et cetera. It's called a working group, but being a tribe who was actually approached by this group, investigated by this group, it was more of a task force, an enforcement task force. So do you feel that -- do you know, has its usefulness been outlived? Does it plan on -- does the Commission still plan on using this working group? And if so do you think it should be something defined in the reg's so tribes can learn how to work with this group or understand the scope of this working group, because it really operated more like a task force. And knowing the difference between a law enforcement task force versus a working group.

CHAIRWOMAN STEVENS: Thank you for your question. I think we're still in the process of examining what that working group really does and what the role of the NIGC is. Looking back at the history, I know we've had just a few working group sessions, one of which I attended in Seattle, that included IRS, Treasury, FINCEN, FBI, Justice, Secret Service -- am I missing somebody?

MS. OSCEOLA: BIA.
CHAIRWOMAN STEVENS: I'm not sure they were. Certainly can take your questions as we examine that working group. What their purpose was originally, how it worked over the years, and what our role is. I don't know if it's exclusive of this working group or not, but as part of President Obama's Good Government Initiative, agencies should be working together collaboratively. Does that necessarily mean having enforcement tasks? I don't know about that, but we do communicate and are trying to improve our relationships with other agencies like FBI and like Treasury and like the Department of Interior so that there is a better coordinated effort when we establish, especially as political appointees when we establish policies and certainly I as Lael had said, we encourage our staff to work with others and, you know, there's certain authorities that we have and there's certain authorities we don't have that other agencies have. And knowing where that line is and then how to, you know, how do we communicate with those other agencies when something moves over into their authority and their jurisdiction.
So certainly we'll take your comments and your questions about that group into consideration as we look at that group.

PRESIDENT PATTERSON: Chairman Stevens, that's a great point. Thank you Tina Osceola for bringing that forward. I think that is a point where we should collaborate, communicate, and have effective dialogue with Indian Country on the scope of this working group and the issues they would address. I think that would be an area we could build some synergy with and around Indian Country, as well. Thank you.

CHAIRWOMAN STEVENS: Thank you, President Patterson.

Any other comments? Do we have anyone sitting in the back rows who have comments for their tribe that they represent? Elizabeth? No, just getting coffee.

PRESIDENT PATTERSON: While she is getting settled. Again, Brian Patterson.

I would just like to commend NIGC for holding consultation and your approach of it. The Eastern and Southern tribes that namely make up the tribes of USET, oftentimes we have
to outreach to federal agencies to get
consultation held east of the Mississippi.
Thank you for your foresight to address the
tribes, specific the South Region and Northern
Region of the South and Eastern tribes, as well
as well as our brethren from Michigan and
Wisconsin that are here. Thank you.

MS. HOMER: Madam Chair, members
of the Commission, tribal leaders, my is
Elizabeth Homer. I know I harangued you at two
previous meetings. There are a couple issues
that I would like to re-emphasize. And to begin
that let me say thank you to Lael for repeating
back to me the comments that I had made
previously about the enforcement regulations. I
really appreciate that the NIGC staff is
listening, that the NIGC is listening, and what
a refreshing, refreshing change in tone that is
taking place. And I know and I want to
congratulate and thank all of you for the
grueling schedule that you have been on, I'm
sure at great personal cost, and so thank you
for that and getting out into Indian Country.

As I said before, I really feel
seriously that the enforcement regulations need
a fresh look and we need to build in the notice
and opportunity to cure before going straight to
an enforcement action, because I can assure you
having now sat on not two sides of the table,
but multiple sides of the table looking at these
issues that, you know, Indian Country is going
to make corrections. Tribal government is going
to make corrections if they are advised that
there is a concern. I can promise you just
politics are going to ensure that things are
going to get looked at and corrected, and I
think that if we build in those voluntary
compliance principles into the NIGC's
enforcement regulations and that people have
notice of NIGC's concerns that there are going
to be corrections. And I think that -- and
other federal regulatory schemes are exactly
like that, notice and opportunity to cure before
you ever go to that next step. So that's very
important.

Now, the issue with the Class II
regulations and the Class II MICS, I hadn't
talked about those before, but one of the things
that I think we all need to take into account,
it's really a good thing for us to have these
Class II regulations and the Class II technical
standards because it makes it perfectly clear
that electronic Class II gaming is lawful, one,
and, two, regulated, and that takes away huge
political arguments that pushed us back for many
years on the Class II front. So I want to thank
you for your willingness to take a look at those
regulations, but I also want to re-emphasize
with you and the rest of Indian Country that
those regulations are very beneficial to us and
would not like to see those kind of get flushed
out along with the Class II MICS, which are much
more problematic from a legal perspective --
Class III. Part 542. With respect to the
class -- the part 542 is the fact that, you
know, it is good and you save tribes a lot of
money by providing these kind of guidance. It's
never been an issue of are the MICS needed,
everyone agrees with that. That was never the
issue. And I know all three of you are very
cognizant of that.

I think the same thing is true
with IT standards. I don't -- I know that this
hasn't come up at least in the meetings I've
gone to, but during the last advisory committee
meeting one of the sections that got addressed were the, you know, the IT standards. And the IT standards really went into every kind of peripheral system that you have connected to your gaming system. And it looked like it was a major increase in NIGC authority over back-of-the-house systems. Over accounting, you know, software systems and those, you know, automated jackpot systems and all of those kinds of things. So my clients, in particular, we were pretty upset about those IT standards. We were thinking that's really taking NIGC's authority a long way.

However, having said that, we do see the benefit of the NIGC addressing these issues because individually it would cost us tens of thousands, if not hundreds of thousands of dollars to bring to bear the expertise that the NIGC can assemble around these issues. And if you were publishing and promulgating standards, as opposed to regulations, you get out of that question of authority and into really doing us a favor, you know, because you do have that ability to bring together expertise at relatively reasonable low to no cost and
that's a wonderful, wonderful thing you can do for tribes. Anyway, those are my comments.

Thank you.

CHAIRWOMAN STEVENS: Can I ask you a question, Liz? Going back to Class II, they were finalized back in 2008. They're not due to be complied with until October of this year.

MS. HOMER: Right.

CHAIRWOMAN STEVENS: Do you and your clients think they need to be revisited before they go into that compliance?

MS. HOMER: I think that they do. I think there are some big gaps in the MICS. And with respect to the technical standards there were a couple of items that stayed in the technical standards that, you know, half the -- really need to be thought about being removed, such as the regulation of the entertaining display. An entertaining display is an entertaining display. Why there are standards to regulate an entertaining display, that has no effect whatsoever on the outcome of the game, is a big issue. It's putting us through more steps and more hurdles than need be. The regulations need to go into that software system itself, but
the hardware being merely an electronic aid, you
want basic standards. The door needs to lock.
You want to make sure it doesn't electrocute
anybody, those kind of things, but with respect
to the peripheral stuff that doesn't have any
effect on the outcome of the game, it doesn't
make any sense keeping that in there.

Then there's the grandfather
issue. The grandfather issue has always been a
big one. I used to liken it, when I was
commenting on this a long time ago to, you don't
make Detroit start adhering to the new air
quality standards to cars that were built
10 years ago. You know, regulation is
prospective, not retroactive. And that these
games, especially the games the courts have
already said this is Class II gaming, or these
are just electronic aids, that's a done deal,
but they're nonetheless affected by that
grandfather provision and they had to have had
immediate compliance with that grandfather
provision, you know, for certain parts of the
software and then it's only a five year
grandfather. So once that five years is up you
kind of are losing your grandfathering system.
So, you know, that needs to be rethought, as well, you know. And those are really the two big things. I think all of the rest of the technical standards that are truly technical standards, they help us as tribal regulators to say, okay, if they meet these technical standards that's Class II gaming. We have these technical standards to apply and that's a good thing. I think everyone agrees with having technical standards as long as they are reasonable and they go to preserving the integrity of the game. I think we're all going to be on the same boat with that.

CHAIRWOMAN STEVENS: Great.

Thanks.

MS. HOMER: Thank you.

VICE-CHAIRWOMAN COCHRAN: Madam Chairwoman, I haven't heard much surrounding the topic of the facility licensing standards, and I was curious if anybody had any insight or comments they wanted to offer. I know that's been a hot topic in other areas of the country. I'm curious if anybody here had thoughts on that.

CHAIRWOMAN STEVENS: Oh, yeah. I
can see the light going on.

MS. HOMER: Thank you for asking that question. You know, kind of going back in history a little bit. I was the -- when I was the vice-chairman of the NIGC my job was to deal with the environment public health and safety issue and figure out some reasonable thing to do about that, and it was pretty controversial, as you all might recall. And finally what we got to was promulgating basically an advisory regulation that said, okay, as long as these things are taken care of the NIGC is not going to step in and usurp tribal authority with respect to the environment public health and safety. Of all the things that is the most -- the highest tribal interest, not the highest federal interest. That was really -- that worked out good. Everyone got happy about that after I got pounded for a couple of years in working on it. Everyone got on board with having that kind of rule. What has subsequently happened in the next administration is a coming together of the language in Section 2710 with respect to what has to go in a gaming ordinance and then the language that says you have to
license your gaming facilities. And suddenly we
have this comprehensive regulation on the
licensing of gaming facilities that has now
sucked into it this environment public health
and safety stuff. You know, with this oversight
function that the NIGC has to perform and so on
and so forth, this 160-day notice requirement
which is completely unreasonable. I see no
reason why a tribe should have to give 160-day
notice they're going to issue a gaming license.
First of all, that could have market
implications. You may want to have low profile
about what your plans are that far out, and
there may be a good economic reason that a tribe
doesn't want to give that kind of public notice.
So there's a lot of stuff, you know, in that
particular regulation that is pretty
questionable, and I think it's not beneficial to
the NIGC, either. You know, I mean do you want
to be the deep pockets liability? You know,
what if your inspections don't reveal something
that ends up being some big disaster somewhere?
Does the federal agency want to have the
liability for that? Does the agency have the
expertise to do those kind of things? I would
suggest that's a pretty high level of liability.
Those are things other agencies can do and tribes first and foremost are responsible for.
I think very strongly those the regulations need to be revisited.

CHAIRWOMAN STEVENS: Another thing we've heard a lot about in other consultations is the self-regulation regulation. We're wondering if another light goes on, Liz? You know, it's in the act we have some reg's that go to that point, allows tribes to become self-regulated from certificate from us, but we only have two tribes that are -- have the certificate for self-regulation. One of them is mandated by statute, so we have one tribe out of 233 that are self-regulated by the NIGC, and that's where the question comes up in the PowerPoint about the burden versus the benefit. So if we have any tribes that have comments about self-regulation and, you know, is this a priority for us to address and how would you like to see, you know, that prioritized and any thoughts on self-regulation?

MS. HOMER: Thank you. Yes. I will say that one of my clients, in particular
the Chickasaw Nation of Oklahoma, is extremely interested in seeing the self-regulation regulation be reviewed. Our view is that the regulation is of virtually no benefit, you know, and it's basic, you know, law of construction that statutory language has to mean something, you know. And the way that the program has been implemented it's basically meaningless to get a certificate of self-regulation. In fact, it's even worse. The reporting requirements for a self-regulating -- a tribe with a certificate of self-regulation is actually greater than with a tribe that doesn't have a certificate of self-regulation. So that's like a major problem, I think. And I also think that the self-regulation program, if modeled more after the way self-governance is operated at the Interior Department might prove beneficial to the NIGC, as well as to tribes, in working out some of these other issues, some of these kinds of issues that are beneficial for the agency and the tribe to work out. So I -- my clients, especially the Chickasaw Nation feel very strongly this is a regulation that needs to be a high priority review.
CHAIRWOMAN STEVENS: Not necessarily directed to just Liz or the Chickasaw Nation, but something to consider is when you do submit comments let us know what kind of priority is this; high, medium, low. However you want to rank them to us to indicate which is most important. We, as one tribe said, I don't have a dog in that fight, you know, so they may not have any comment but, you know, clearly for us what we're hearing is MICS, MICS, II and III technical standards facility licensing. And then when you come into self-regulation. Where do these fall? So something to keep in mind as you move your comments forward, what priority. That way we know what to take on first and how to take them on.

Mr. Burris.

MR. BURRIS: Tracey Burris, Gaming Commissioner for Viejas Indians. First, I've always loved the concept and I understood what the framers were trying to do, but I thought that in the process when reviewing what the NIGC had implemented as the reg was too egregious. No one could ever pass it. It would be too
arbitrary and capricious. You would be subject
to the reviewer of its content. In other words,
one could pass because the reality, especially
then, no one could pass it. That's why 18 years
no one trampled on there. Even then, if you
look back at that role at that time, if you were
small and simple you could have gone through it
for a Class II. But as we progressed this
doesn't reflect the progress and that as you
increase size, increase transactions when
handling money, things are going to change.
There is nothing to give us an indication that
that would be considered. In other words,
it's -- I look at it all the time because I
think it has great potential for merit. Again,
the framers did it for a reason. It was to give
us credibility, but it wasn't to be so egregious
going through the process to be criticized. No
one loves to be criticized. There's going to be
flaws. Look at my audits, I'm not perfect. I
handle way too many transactions on the floor.
Too many things occur to be perfect. That could
be construed as not meeting the standard. As
progress has come along there has been no
equalization in that. I personally think it has
great potential as a regulator, spending my life as a regulator these last 24 years, it is very important, it could be a benefit. It's how to make sure it's a benefit and not a black eye. Not just to the tribe that chooses to do it. Obviously, if only two have done it in this time it's been talked about and re-looked at. It's a great model to set up where you want to get. It's the reality is can you get there. And I'm not sure you can in this day and age. So thank you very much.

CHAIRWOMAN STEVENS: Other comments? Lael are we missing anything?

PRESIDENT PATTERSON: Yes. If I may, I think that is -- it is all relevant to discussion as we look at the full scope of the reg's. It's hard to look at just regulations facing MICS and not realize the existing MICS have been outdated and are too rigid to be able adapt to the changing developing gaming industry. I think the example of a GM car 10 years ago fits truly here. I think it is all relevant and has potential merit, especially when we look at the self-regulation section. We pulled it up over here and it's quite -- there's
no -- there's no way to ensure due process and
set expectations and clear lines of scope within
that process. I think it does merit to have
that discussion to discuss areas that are
outdated, et cetera. Thank you.

CHAIRWOMAN STEVENS: Yes, sir?
CHAIRMAN SIMMONS: Go along with
those lines. When you look at the technical
standards in the Class II I do agree they need
to be looked at. They need to be revised for a
broader scope. It does allow for openness for
advanced technology, a way for the operations
and for the tribes to go and be able to expand
out with a little more ease inside of it, but
when you have very narrow limitations on
technical standards and also in regards to Class
II, even Class III, that's inhibiting the
business practice, not trying to allow it to
grow. I do think they need to be revised and
that's more our top priority looking to make
sure Class II, Class III technical standards due
to be revised, those need to be revised. Those
need to be looked at. That's more of a high
priority for us.

CHAIRWOMAN STEVENS: Thank you for
your comment and setting the priority, as well.

    Yes, Mr. Burris.

    MR. BURRIS: Tracey Burris again. A comment to the last two technical standards, something that should be considered. Two years ago James Maida said at the G2E conference, that Indian Country had developed a lot of technology that's being used in Class III, take it in take it out, back-of-the-house systems. The Class II systems created that. I think for the future if the downloadable becomes reality this is a platform for that. So we don't want to hurt ourselves for the future, but they don't need to be so narrow that we can't broaden technology and that we don't limit it to proprietary interest of certain manufacturers or designers or whatever. It has to be to the benefit of the tribe they can still progress and choose who they think would be the best provider for their system. So we do need to look at these and be cognitive of -- and I think Mr. Maida said it well, it's not what Indian Country has brought to this industry, but has been given no credit for. We need to look at that very carefully, but also look to the future where we are
10 years from now with, who knows, virtual
reality? They'll be putting head sets on and
doing their gaming and sitting there doing this.
It's a reality. It's something you may do for
high rollers. It's something you may do for
other portions of your market. We have to be
careful not to leave that out, but we also have
to be cognitive that Indian Country has already
established a lot of this criteria for both the
mainstream Class III, as we know. I always
crack up. Isn't it hilarious when we talk about
Class III, the only thing Congress ever intended
that for was Indians. It wasn't for commercial
industry. It is amazing how everyone has
gravitated to Class II and Class III and that
distinction. If we're going to be that
distinction we need to be cautious and careful
how we do it, and be constructive. And I
appreciate this Commission attempting to do. As
I said before in San Diego, my direction for
council is be as helpful as possible as part of
the solution and we do not curtail our future in
any way. Thank you again.

CHAIRWOMAN STEVENS: Thank you,
Mr. Burris.
Something I want to put out there, too, to think about, not with just placing priorities in your comments but the how. And we've heard some comments about the advisory committees, but the change in the technology and how do we stay on top of that, whether it's technical standards, Class II or Class III MICS, there might be separate paths we have to take on II and III. How do we -- what's the process that we use so that we can change as the technology changes or, you know, we're not having to revisit these all the time because the technology changes at the blink of an eye.

Something to think about. We've heard standing committees in some of the other regions. Some thought how do we -- how do we stay on top of these changes without bogging down. Just something to consider.

If we don't have any comments, we are at the lunch hour. Commissioners, any comments? Okay. We are at the noon hour. We're scheduled for lunch. Lunch is on your own. We'll resume at 1:30 and I think -- I don't know what the process is. Interior has a new cafeteria, but I'm not sure how we get in
and out of the building over there. There are other places past main Interior there's a Subway.

PRESIDENT PATTERSON: Chairman, for your consideration, I would put on the floor if there's a need to continue after lunch. Can we wrap up in summation the points before adjourning for the day?

CHAIRWOMAN STEVENS: I leave that to the tribal leaders. We may as a Commission come back in case there wasn't somebody here that wasn't here in the morning that may come back in the afternoon?

COUNCILMAN McGHEE: We'll have people at the February. If we miss something here we have statements down in Florida. I don't have a problem with wrapping up.

CHAIRWOMAN STEVENS: Were there others in the audience representing their tribes that had comment? Certainly that's why we have this open format. We know you are all very, very busy and come with prepared statements. Rather than going line by line on the regulations and having to wait your turn to have a comment we left it open so you could say what
you needed to say and many times tribal leaders have very busy schedules and there's something else in your day or many several things going on. If you all need to go we appreciate that. You've attended this morning, look forward to your written comment. We will come back in case we do have people whose schedule didn't allow them to be here this morning. Yes?

COUNCILMAN McGHEE: I would like to follow up and say thank you, especially for taking this new approach to the Notice of Inquiry. I think that's an approach I think most of the governments and agencies could take those approaches in the future. I think it's a positive way for tribes to move forward.

CHAIRWOMAN STEVENS: Brian, I'm not sure if that answered your question to the group or not.

PRESIDENT PATTERSON: Whoever shows up after. As you indicated, going to break, the door is that way. We appreciate that. Let's see. Again, I would just like to extend to you a platform for the United South and Eastern tribes, if you so desire to advance any last round or thoughts as you approach your
February 12th deadline.

Also, the invitation is genuine to the cultural night reception which takes place on Tuesday of February 8th. Thank you.

CHAIRWOMAN STEVENS: Thank you.

President Patterson, we did receive your generous invitation and we're in the process of getting approvals to attend. So thank you. All right. Let's break for lunch.

(Whereupon, at 12:02 p.m., a lunch recess was taken.)
AFTERNOON SESSION

(1:53 p.m.)

CHAIRWOMAN STEVENS: Well, I think we only have one new newcomer, but from what I hear he doesn't have anything to say. On the record, Kevin Wadinsky.

Otherwise, unless someone has something pressing, Seminole, Chickasaw, we'll close out the meeting. And, please, if you have comments submit them in writing on behalf of your client, on behalf of your tribe. Let us know which reg's, what priority and how we should go about that process. Or anything else you want to comment on. The net revenue bulletin we talked about, feel free to put comments on there. That's why we talk about net revenues.

Other than that we'll let everybody go. We appreciate you coming in. Look forward to working with you. See you all next week.

(Adjourned at 1:55 p.m.)
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