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NATIONAL INDIAN GAMING COMMISSION
ST. PAUL REGION
REGULATORY REVIEW CONSULTATION
(Group 2, 3 and 4)

MYSTIC LAKE CASINO and RESORT
PRIOR LAKE, MINNESOTA
JUNE 8, 2011

TRANSCRIPT OF PROCEEDINGS

Reported by: Mary P. Mitchell, RDR, CRR, CLR
Job No. 331340
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APPEARANCES

NATIONAL INDIAN GAMING COMMISSION:

- Steffani A. Cochran, Vice-Chairwoman
- Lael Echo-Hawk, Counsel to the Chair
- Jo-Ann Shyloski, Office of General Counsel NIGC
- Linda Durbin, NIGC Field Investigator
- Shawn Ellis, NIGC, St. Paul
- John Guerber, NIGC Region Director
- Jim Bistis, Auditor, NIGC, St. Paul

Jerry Danforth, Oneida Indian Nation of Wisconsin;
Miami Business Development Authority

Robin Lash, Attorney; Gaming Commissioner,
Miami Tribe of Oklahoma

Dee Ann Mayo, Lac du Flambeau Lake Superior Chippewa
Vice President; Interim Gaming Commissioner

Charlie Lombardo, interested party

Ron Harris, Chief Executive Officer, Miami Tribe of
Oklahoma Business Development Authority

1 APPEARANCES (Cont'd.)

2

3 Oscar Schuyler, Oneida tribal member in Wisconsin;

4 Osage AVS, American Video Security

5

6 Brad Anderson, Internal Compliance, Bois Forte Band of

7 Chippewa in Northern Minnesota

8

9 Judy Shapiro, lawyer; appearing on behalf of Rosebud

10 Sioux Tribe

11

12 Joe Valandra, Rosebud Sioux Tribe; interested party

13

14 Dennis Puzs, Staff Attorney, Mille Lacs Band of

15 Ojibwe Corporate Commission

16

17 Marty Davis, Turtle Mountain Band of Chippewa,

18 Belcourt, North Dakota

19

20 Dan Blumer, Ho-Chunk Nation Gaming Commission

21

22 Kyle Funmaker, Black Bear Falls Ho-Chunk Nation

23 Gaming Commission

24

25 Lydia Twinn, Ho-Chunk Nation, Gaming Commissioner

1 APPEARANCES (Cont'd.)

2

3 Elliott Milhollin, Esq., Hobbs, Straus, Dean & Walker,
4 Washington, D.C.

5

6 Debra Morrison, Mille Lacs Band of Ojibwe
7 Gaming Commission

8

9 Becky Majzner, Mille Lacs Band of Chippewa OGR&C

10

11 Lynnette Miller, Executive Director, Menominee Tribal
12 Gaming Commission

13

14 Aindry De La Campa, Miccosukee Tribe

15

16 Diana Manrique, Senior Gaming Agent, Miccosukee Tribe
17 of Miami, Florida

18

19 Elizabeth Lohah Homer, Osage Nation of Oklahoma;
20 Special Regulatory Counsel to NIGC

21

22 Mark Van Norman, NIGA

23

24 Lisa Gast, Menominee Indian Tribe of Wisconsin;
25 Internal Auditor Gaming Commission

1 APPEARANCES (Cont'd.)

2

3 Patsy Hesse, Menominee Tribe Gaming Commission

4

5 Tracy Burris, Chickasaw; Viejas Band of

6 Kumeyaay Indians

7

8 Ken Lynchard, Multimedia Games Vice President of Sales

9

10 Sheila Morago, Gila River Indian Community;

11 Oklahoma Indian Gaming Association

12

13 John Tahsuda, Navigators Global; Kiowa Band Nation

14

15 Frank Conners, Bad River Tribal Council

16

17 Lil Pehrson, Shakopee Mdewakanton Gaming Commission

18

19 Kurt Luger, Great Plains Indian Gaming Association

20

21 Kevin Roberts, Sisseton-Wahpeton Oyate Tribal Council

22

23 Michael Wacker, General Counsel Mille Lacs

24 Corporate Commission

25

1 PROCEEDINGS, JUNE 8, 2011, 9:22 A.M.

2

3 VICE-CHAIR COCHRAN: Good morning. Okay,
4 can everybody hear me? We were waiting on a few more
5 people, but I think we're going to go ahead and get
6 started. If we have other elected leadership or
7 appointed leadership or representatives, delegates from
8 tribes that want to come sit with us, please come sit
9 up here. I feel so far away from you.

10 Is there anybody else or that will be here to
11 present on behalf of clients or tribes or?

12 We were also waiting on a representative to
13 open our meeting. And we're going to go ahead and
14 start, and then once he arrives we'll ask him to -- we
15 may stop and ask him to do a proper opening for us. So
16 but I don't want to continue to let the time pass
17 without going ahead and starting the meeting.

18 So let me say good morning. My name is
19 Steffani Cochran, I'm the vice-chairwoman of the
20 National Indian Gaming Commission. I'm a member of the
21 Chippewa Nation from Oklahoma. That's home for me.
22 Home for me is also Santa Fe, New Mexico, where I spent
23 the last several years, raised my son, prior to coming
24 to New Mexico.

25 So DC is my temporary home. And I appreciate

1 the opportunity to get out of DC for a little bit and
2 come to a very beautiful area of the country.

3 So thank you for having us out today. And I
4 appreciate everyone who's taken time from your very
5 busy schedules to come meet with us today to continue
6 our rounds of consultations on the regulatory review
7 process that we first introduced back in April.

8 I want to begin with some introductions. And
9 I'm going to go around the table. I'll start with
10 Lael, and then we'll go around. I'd like to know who
11 else is here with us. So if you'll introduce yourself
12 and identify if you're representing somebody. Or if
13 you're here just to listen, that's fine, if you'll tell
14 us who you're with, we'd appreciate it, so we have the
15 attendance right.

16 MS. ECHO-HAWK: Good morning. My name is
17 Lael Echo-Hawk, and I am a member of the Pawnee Nation
18 of Oklahoma. Currently counselor to Chairwoman
19 Stevens. And working with the Commission on this
20 regulatory review process. Very happy to be here
21 again. We were just here a couple weeks ago, and it's
22 always nice to be back in this area. I didn't even
23 mind the heat yesterday. But looking forward to
24 hearing all your comments.

25 MR. DANFORTH: Good morning. My name's

1 Jerry Danforth. And I'm here on two parts. One is I'm
2 from the Oneida Indian Nation of Wisconsin. But I also
3 am here as a member of the board of directors for the
4 Miami Business Development Authority. It's a
5 corporation that was established by the Miami Tribe of
6 Oklahoma. And also that corporation is the owner of
7 Rocket Gaming Systems, of which I'm an employee.

8 MS. LASH: Good morning. My name is Robin
9 Lash. I'm an attorney and gaming commissioner for the
10 Miami Tribe of Oklahoma. And I'm here today on behalf
11 of our chief, Thomas Gamble.

12 MS. MAYO: Good morning. I'm Dee Ann
13 Mayo. I'm from Lac du Flambeau Lake Superior Chippewa,
14 vice president. And I'm here to represent our tribe as
15 the vice president and also as an interim gaming
16 commissioner.

17 MR. LOMBARDO: Good morning. My name is
18 Charlie Lombardo. I'm here as a just interested party.
19 Thank you.

20 MR. HARRIS: My name's Ron Harris, I'm the
21 chief executive officer of the Miami Tribe of Oklahoma
22 Business Development Authority.

23 MR. SCHUYLER: My name's Oscar Schuyler.
24 I'm an enrolled Oneida tribal member in Wisconsin. And
25 I'm here on behalf of Osage AVS, American Video

1 Security.

2 MR. ANDERSON: My name is Brad Anderson.
3 I'm internal compliance for the Bois Forte Band of
4 Chippewa in Northern Minnesota.

5 MS. SHAPIRO: Good morning. I'm Judy
6 Shapiro, I'm a lawyer in DC, and I'm here on behalf of
7 the Rosebud Sioux Tribe.

8 MR. VALANDRA: Good morning. I'm Joe
9 Valandra, I'm a member of the Rosebud Sioux Tribe, but
10 I'm here representing myself as an interested party.

11 MR. PUZZ: Good morning. Dennis Puzz,
12 staff attorney, Mille Lacs Band of Ojibwe Corporate
13 Commission.

14 MS. DAVIS: Good morning. My name is
15 Marty Davis. I'm here on behalf of the Turtle Mountain
16 Band of Chippewa, Belcourt, North Dakota.

17 MR. BLUMER: Dan Blumer, Ho-Chunk Nation
18 Gaming Commission.

19 MS. FUNMAKER: Good morning. My name is
20 Kyle Funmaker, from the Black Bear Falls Ho-Chunk
21 Nation Gaming Commission.

22 MS. TWINN: Hello, my name is Lydia Twinn.
23 I also represent the Ho-Chunk Nation. I'm a member of
24 the Gaming Commission there.

25 MR. MILHOLLIN: Good morning. My name is

1 Elliott Milhollin. I'm with Hobbs, Straus, Dean &
2 Walker in Washington, D.C., here to request the civil
3 tribal court.

4 MS. MORRISON: Good morning. My name is
5 Debra Morrison. And I'm representing the Mille Lacs
6 Band of Ojibwe Gaming Commission.

7 MS. MAJZNER: Good morning, I'm Becky
8 Majzner. And I'm here from Mille Lacs Band of Chippewa
9 OGR&C.

10 MS. MILLER: Good morning. I'm Lynnette
11 Miller. And I'm the executive director of the
12 Menominee Tribal Gaming Commission.

13 MS. DE LA CAMPA: Good morning, my name is
14 Aindry De La Campa. I work for the Miccosukee Tribe.

15 MS. MANRIQUE: Hi, my name is Diana
16 Manrique. I'm senior gaming agent of the Miccosukee
17 Tribe of Miami, Florida.

18 MS. HOMER: Good morning. I'm Elizabeth
19 Lohah Homer. I'm a member of the Osage Nation of
20 Oklahoma. And I'm here today as special regulatory
21 counsel to the National Indian Gaming Association.

22 MR. VAN NORMAN: Mark Van Norman, NIGA.

23 MS. GAST: Lisa Gast. I'm from the
24 Menominee Indian Tribe of Wisconsin, Internal Auditor,
25 Gaming Commission.

1 MS. HESSE: Patsy Hesse, Menominee Tribe,
2 Gaming Commission.

3 MR. BURRIS: Tracy Burris, from Chickasaw.
4 I'm here representing the Viejas Band of Kumeyaay
5 Indians.

6 MR. LYNCHARD: Good morning. Ken
7 Lynchard, Multimedia Games, vice president of sales,
8 here to listen and take notes.

9 MS. MORAGO: Sheila Morago, Gila River
10 Indian Community, representing the Oklahoma Indian
11 Gaming Association.

12 MR. TAHSUDA: John Tahsuda, Navigators
13 Global, and representing the Kiowa Band Nation.

14 MR. CONNERS: Good morning. Frank
15 Connors, I'm with the Bad River Tribal Council. This
16 is my first meeting, so take it easy on me.

17 MS. PEHRSON: Good morning. Lil Pehrson,
18 Shakopee Mdewakanton Gaming Commission.

19 MR. LUGER: Kurt Luger, Great Plains
20 Indian Gaming Association.

21 MR. ROBERTS: Kevin Roberts,
22 Sisseton-Wahpeton Oyate Tribal Council.

23 MR. BISTIS: Jim Bistis, auditor, St. Paul
24 office, for the NIGC.

25 MR. GUERBER: And I'm John Guerber, NIGC

1 regional director here in St. Paul.

2 MR. WACKER: Michael Wacker, I'm general
3 counsel for the Mille Lacs Corporate Commission.

4 MS. SHYLOSKI: Hi, I'm Jo-Ann Shyloski,
5 and I'm with the Office of General Counsel of the NIGC.

6 VICE-CHAIR COCHRAN: And John, I know we
7 have two more staff members outside, Linda Durbin and
8 Shawn Ellis. Oh, there she is. Sorry.

9 MS. DURBIN: That's okay.

10 VICE-CHAIR COCHRAN: Who I -- I do want to
11 acknowledge the staff that works very hard to put these
12 together for us in the regional offices. And they
13 always do a fantastic job to make sure that our needs
14 are met and that the meeting goes as smoothly as we can
15 possibly have it go.

16 I want to first and foremost -- I know that
17 there's some elders in the room, and I need to make
18 sure that I acknowledge their presence and also to
19 thank them for allowing me the opportunity to speak to
20 them today.

21 It's always important to me that the elders
22 understand that I respect their opinions and their
23 thoughts. And it's always my privilege to allow them
24 to -- or excuse me, for them to allow me to speak to
25 them. So thank you.

1 We're going to begin with Lael's going to do an
2 outline of the topics that will be on the agenda for
3 discussion today. This agenda, of course, is the
4 agenda that we set forth, but we do not intend to
5 exclude any other discussions that the tribes feel that
6 they need to bring to the table today.

7 So she will give us an outline. This lady has
8 managed to coordinate a massive amount of information
9 and keep it in an orderly fashion for us. So thank you
10 for that.

11 And then also, if there's additional topics --
12 we will take breaks, if there's additional topics you
13 want to add, please feel free to let me know during the
14 break or let Lael know so that we get that on the
15 agenda for discussion.

16 We will have the meeting transcribed, as we've
17 had all of our consultations transcribed. We'll put
18 the transcription up on the Web site so that everything
19 is transparent to the community about what it is we
20 discuss in these meetings. Also, to allow members of
21 any other tribes to see what was discussed, in case
22 they weren't able to be here with us today.

23 So we've got a transcriptionist here. And if
24 there's anything that we can do to make your job
25 easier, please let me know. We will ask that you

1 identify yourself before you speak so that she can
2 attribute the comments to the proper speaker.

3 So Lael, have I covered everything?

4 MS. ECHO-HAWK: Yes.

5 VICE-CHAIR COCHRAN: All right. So with
6 that, we'll begin. And again I appreciate your time.

7 MS. ECHO-HAWK: Good morning again.
8 Trying to keep this in an orderly fashion, but we'll
9 see how we do. Today we are kind of switching things
10 up. For those of you of that attended our past
11 meetings, we were focused on -- we sort of eliminated a
12 group. We're not -- this meeting we're not going to be
13 talking about the regulations, or not specifically
14 focus on the regulations that were in Group 1, which
15 were the fees, licensing, what to do with Class III
16 MICS, Buy Indian Act, and the repeal of 523.

17 So we're not focusing on those. If you have
18 comments on those, we're happy to hear them. But this
19 overview that I'm going to do now is going to be
20 focused primarily on Groups 2, 3 and 4. And we'll get
21 to that in just a second.

22 But first I have to make my computer work. You
23 should have all received in your handouts a copy of the
24 PowerPoint. Do you guys have that? Okay.

25 All right. So follow along if you like, that

1 school book, you know, follow me, turn the page. I
2 apologize; it's a lot of information. And we've got
3 lots of time for questions and answers, so.

4 As most of you know, some of you may have
5 attended other meetings or heard the Commission speak
6 about the commitment that the Commission has to
7 implementing the spirit and intent of the Executive
8 Order 13,175, which is "Consultation and Coordination
9 With Tribal Governments," particularly when it comes to
10 establishing standards that affect the gaming industry
11 and in determining whether to establish those
12 standards, that we consult with you tribal officials,
13 tribal governments affected -- the affected people in
14 this, as we go through this process.

15 And so Section 3(c)(3) has been very important
16 to the Commission. And that's what we're here to do,
17 is consult with you, and as we consider how to move
18 forward in this regulatory review process.

19 Three phases. We are in Phase 1, which is this
20 preliminary drafting phase with consultation meetings
21 and time for written comments. Eventually for a number
22 of these, we look forward to going into a proposed
23 rulemaking stage with more consultations, approximately
24 a 60-day comment period, if a Notice of Proposed
25 Rulemaking is issued. And then finally, Final Rule

1 stage, which would include a 45-day, more or less,
2 written comment period.

3 So we're trying to coordinate all this
4 material. We grouped regulations together in five
5 groups. These group numbers do not indicate priority.
6 And they were developed after considering a number of
7 factors, including amount of resources that were going
8 to be needed, what the subject matter was, estimated
9 time that we would need to really consider carefully
10 the regulations, and then the comments that we received
11 in response to the Notice of Inquiry regarding what
12 priority tribes set on revising some of these
13 regulations.

14 We've been asked a number of times, do these
15 group numbers, is this a priority level? And it's not,
16 it's just a way to manage sort of all of these
17 regulations.

18 For preliminary discussion drafts that you've
19 seen come out, we look forward to having more hit the
20 Web site very soon. But the preliminary discussion
21 drafts that you've seen are only initial working
22 drafts. And so any comments that you have on those,
23 please get them to us.

24 All these meetings are going to be transcribed,
25 as Vice-Chairwoman Cochran mentioned. The comments,

1 any comments that you submit, written or orally, or in
2 the transcripts, they are all posted on the Web site.

3 If you have a hard time -- we're trying to
4 figure out a way to make the Web site a little more
5 user-friendly, so if you're having a hard time finding
6 transcripts or something, please don't hesitate to
7 e-mail reg.review@NIGC.gov, and we'll let you know
8 where you can find those transcripts. We're working on
9 that, that's a work in progress.

10 Commitment by the Commission is that every
11 comment that's received will be reviewed and
12 considered. Any proposed or final rule will include a
13 summary of the comments that we received. And the
14 Commission is committed to a clear and transparent
15 process.

16 I know that during the Notice of Inquiry
17 process, all the commissioners read every comment that
18 I received, they were carrying around these giant
19 binders. And Steffani was putting herself to sleep at
20 night reading them. But it is something that the
21 Commission and all the senior staff are committed to
22 reviewing and making sure that everything is entered.

23 So today we're going to be talking about the
24 regulations in Groups 2, 3 and 4.

25 Group 2 is the enforcement and then the

1 proceedings in front of the Commission, all the stuff
2 that lawyers like, appeal processes and due process
3 issues.

4 Group 3 is the Class II Minimum Internal
5 Control Standards and Class II Technical Standards.

6 And then Group 4 is the Pilot Program;
7 background and licensing issues, and some other issues
8 that apply to management contracts.

9 So I know I talk fast. If I'm talking too
10 fast, let me know. It's a lot of material here. And
11 hopefully we can get through it without too much of me
12 sounding like Charlie Brown's teacher.

13 So Group 2. If you read the Notice of Inquiry,
14 we asked a number of questions related to the
15 enforcement provisions, regulations, and then the
16 regulations concerning proceedings before the
17 Commission.

18 We asked whether or not the NIGC should
19 promulgate a regulation authorizing the withdrawal of
20 the Notice of Violation after it's been issued. We
21 received a number of comments on these, including that
22 it was unnecessary because there's no prohibition
23 withdrawal. That -- you know, then on the other side,
24 we received comments that a specific regulation
25 outlining the process and circumstances for a

1 withdrawal of a Notice of Violation is appropriate.
2 There was different opinions on whether the Commission
3 should be able to withdraw a Notice of Violation, or
4 whether it should be the Chair.

5 We also received some comments related to an
6 expungement process. There was a lot of concern about
7 the Notice of Violation, the settlement agreements and
8 those other documents being posted on the Internet on
9 our Web site and being left up there for years, and
10 that we should take a look at an expungement process or
11 removing identifying information after a certain amount
12 of time. So those were comments that we've heard
13 pretty consistently.

14 With regard to the enforcement regulations, we
15 heard -- we've heard again over and over again that the
16 NIGC should work with tribes to bring any issues into
17 compliance so that a Notice of Violation is never a
18 surprise. And, you know, we had a lot of comments
19 again about that. There was some tribes that indicated
20 that perhaps this didn't need to be put in a
21 regulation, that a policy would work well, as well;

22 If the NIGC and the tribe discussed it, a
23 violation, prior to the issue of a Notice of Violation,
24 then no withdrawal was necessary;

25 Using a voluntary compliance model when it

1 comes to the enforcement proceeding and how you go
2 forward with the Notice of Violation or enforcement
3 action.

4 So we really, we had a very wide variety of
5 comments. And we are internally working to kind of put
6 that together and to try to get some sort of working
7 draft out to you addressing some of these issues. And
8 then talking to our staff internally, looking at the
9 comments that we've received, and coming up with
10 something that would be -- that would work for both the
11 agency, for the regulatory side, and the tribes.

12 With regard to proceedings before the
13 Commission, we -- the Notice of Inquiry asked whether
14 or not the rules, the rules of proceedings before the
15 Commission should be reviewed. And I have to say this,
16 I have to. The lawyers and the agency are like
17 woo-woo, you know, notice of proceedings issues. So
18 we're really having kind of a good time. And I
19 apologize for the nonlawyers, but we're really liking
20 the how you submit something and how many days and
21 we've really been going back and forth on this. It's a
22 sickness that lawyers have. No one thought this would
23 be as exciting, but we're enjoying it.

24 So the comments that we received are that a
25 more formal process may be more burdensome and costly,

1 delay the process when things are coming to the
2 Commission for review. And this has been one of the
3 issues that we are kicking around in the agency: How
4 do we make sure that there's enough due process, but
5 that it doesn't cost the tribe, cost tribes more, that
6 is more fair, that there are not things hanging out in
7 limbo for an extended period of time.

8 Sorry, my sister just came online.

9 We heard comments that we should eliminate the
10 presiding officer, the presiding officer proceedings,
11 and add an informal hearing option to Ordinance and
12 Management Contract approval regulations.

13 There was a lot of concern about this whole due
14 process issues. Mostly in regard to the timelines, the
15 lengths of time. That there was no sort of finality
16 when it comes to hearings that are, that are written,
17 by written submission. Things can kind of hang out
18 there for a considerable amount of time, and so how do
19 we implement timelines so that people know, tribes
20 know, the agency knows when an answer has to be given.

21 And that we should consolidate all the
22 regulations regarding the proceedings before the
23 Commission. Right now they're in a couple parts. And
24 comments we've received have indicated that perhaps we
25 should put them all together so that it's easier for

1 some -- for parties to find those regulations and just
2 sort of walk through them.

3 Okay, so those are the Group 2 comments that
4 we've heard. That's what we're working on internally.
5 If you have any comments to add to this, if you have
6 any additional information that you think we should
7 consider, please let us know. That's what today is
8 for, that's what the written comment period is for.

9 Again, we're trying to have some drafts out
10 very soon. And those will be on the Web site. Please
11 keep your eye on the Web site because we're trying to
12 notify all the tribes, but the Web site is really where
13 you see the things going up and you'll have the
14 quickest information.

15 Okay, so for Group 4. And I've kind of skipped
16 around here a little bit. We're going to come back to
17 Group 3, because that's pretty substance-heavy. And so
18 we're going to skip forward to Group 4, which covers
19 the Pilot Program, access to fingerprint card
20 processing for nonprimary management officials and key
21 employees. Background requirements for management
22 contractors. Access to off-site records held by a
23 third party. Review of collateral agreements. And
24 then a definition for net revenues, the management fee
25 definition for net revenue.

1 So the Pilot Program, most of you know that the
2 Pilot Program has been around for a very, very long
3 time. And it probably no longer fits within the
4 definition of what a Pilot Program truly is. And so
5 the Notice of Inquiry asked whether or not we should
6 formalize that program into a regulation.

7 Tribal comments that we received were
8 unanimously in support of formalizing the program into
9 either a regulation or a policy.

10 The issues that we've sort of identified and
11 that were raised in the comments were how this
12 regulation change would impact current ordinances.

13 We've also noticed and we're sort of grappling
14 with the fact that IGRA requires -- provides that two
15 notifications to the NIGC. The tribe has to submit
16 notice of the background results. And then the tribe
17 needs to notify the NIGC of the issuance of a license.

18 Currently, we may not be doing that. And so we
19 need to address that issue and how can we do it, how
20 that notice should be sent to the NIGC. You know,
21 we're trying to move our technology into at least the
22 20th century, aim it for the 21st century. So how can
23 we do, how can we have this notice go back and forth
24 from the tribes to the NIGC in a least burdensome way,
25 but in a way that gets everything accomplished that we

1 need to get accomplished.

2 With regard to fingerprint processing, we asked
3 whether or not -- whether the NIGC should allow access
4 to fingerprint processing for any employee designated
5 by the tribe.

6 So, for example, if a tribe has in their
7 ordinance that they -- that every, you know, employee
8 who makes, you know, over \$50,000 needs to be
9 fingerprinted, and they want access to the NIGC's
10 fingerprinting processing, we asked whether or not
11 tribes wanted us to do that. And comments support
12 that. That does require some coordination between the
13 FBI and ourselves, but we think that it's something
14 that we should look into if tribes are interested in
15 that.

16 Management contractors. There was some
17 confusion -- when we were drafting the Notice of
18 Inquiry, we heard and our staff indicated that perhaps
19 there might be some confusion about whether or not a
20 management contractor of a Class II and Class III
21 facility should be -- if that person must have a
22 completed background investigation.

23 It was -- this is sort of a, just a clarifying
24 revision. The majority of commenters supported that in
25 this clarification.

1 On the other hand, other commenters stated that
2 the NIGC has no authority to approve Class III
3 management contracts or require background
4 investigations.

5 And then other commenters stated that this is
6 an issue that's covered by compact requirements.

7 So we sort of had a variety of comments here.
8 And again, within the agency we're sort of struggling
9 with whether this is a revision that's necessary, if
10 tribes want it what it should look like. And so we're
11 looking for comments for that as well.

12 We also had some comments related to
13 streamlining the background investigation process. So
14 we're looking forward to some comments on tribes on how
15 you think that can be accomplished.

16 For example, if there's a management contractor
17 who, you know, manages two or three operations, should
18 that management contractor, the management company,
19 have to go through the entire process again? Is there
20 a way that we can streamline it? Is there a way that
21 we can facilitate sharing of information. You know,
22 who qualifies for a streamline sort of process.

23 If you have thoughts or ideas about that, then
24 we're also very interested in hearing those.

25 Collateral agreements. This was a big one. We

1 asked in the Notice of Inquiry whether or not Part 531
2 should be revised to require the submission and
3 approval of collateral agreements, agreements
4 collateral to management contracts.

5 And while the majority of comments did support
6 the submission of collateral agreements with the
7 contractors, there was considerable disagreement
8 regarding whether a collateral agreement should be
9 approved by the Chair. We heard that the NIGC doesn't
10 have the authority to approve collateral agreements.
11 That it gets too far into sort of second-guessing
12 business decisions. That requiring approval of
13 collateral agreements would discourage private
14 investment. And that agreements other than the
15 management agreement should be left to the discretion
16 of the tribe.

17 Then we also heard that the NIGC has a trust
18 responsibility to review and approve the collateral
19 agreements. Approval of the collateral agreements
20 would protect tribes from sole proprietary interest
21 violations.

22 Again, then on the flip side, that approval of
23 collateral agreements could discourage businesses from
24 attempting to take -- well, I guess this goes right
25 along with that, that approval of collateral agreements

1 could discourage a business from attempting to take
2 advantage of a tribe. And then approval of these
3 agreements also reduces the risk to both parties.

4 So we had -- we had, you know, disagreement and
5 viewpoints, and trying to figure out whether it's a
6 necessary, whether or not the NIGC has authority to do
7 this. So we are looking for comments on this issue.

8 Access to off-site records held by third
9 parties. We asked about this in the Notice of Inquiry
10 because we had heard from tribes that, some tribes,
11 that they had been unable to access their own records
12 off-site held by management contractors, CPAs, other
13 parties. And the NIGC, in the course of doing what
14 we're required to do under the Act, needed to clarify
15 that we do have access to these records even if they're
16 off-site.

17 We heard that this was unnecessary because we
18 already do have that authority. And then some of the
19 commenters said well, perhaps a clarifying, just a
20 clarifying statement of the regulation that the NIGC
21 can access these off-site locations for these, for
22 these records might be useful.

23 We had one commenter state that it might
24 just -- you know, that we should just require tribes to
25 maintain all their records on site, that might

1 eliminate the issue. Or that the NIGC, that the
2 regulations should be revised -- we got completely
3 opposite comments: Regulations should be revised to
4 deny the NIGC access to Class III records. And that we
5 can only request records within our statutory
6 authority.

7 So we've got sort of this whole range. And
8 again, we need to figure out whether or not the
9 regulation is necessary -- or the revision of the
10 regulation is necessary. And if it is necessary, then
11 what should it look like.

12 And finally in Group 4, the definition of net
13 revenues when it comes to management fees, how you
14 calculate management fees, whether or not that
15 definition should be defined to be consistent with
16 GAAP.

17 Most commenters supported this kind of
18 revision. However, there was the caveat that the
19 revision needs to remain in compliance with IGRA.

20 And then I think one of the comments that we're
21 kind of looking at is that if the intent is to change
22 the calculation of the management fees, then perhaps we
23 need to use different terminology, because the Act does
24 define very specifically what "net revenues" means.

25 And then there was a recent change of the

1 definition, and another commenter noted that perhaps
2 that a repeal of that recent change of the definition
3 is required to remain in compliance with IGRA.

4 So for us, the issues that we've kind of
5 identified are whether or not the definition needs
6 clarification. Whether or not GAAP would actually
7 provide that clarification. And then how can the
8 definition be clarified while remaining in compliance
9 with IGRA's definition.

10 So if you have thoughts or ideas about that
11 then, we would be very grateful for any comments that
12 you have to offer.

13 Finally, Group 3, which is Part 543 and 547,
14 Class II Minimum Internal Control Standards, or the
15 MICS, and Class II Technical Standards.

16 We asked in the Notice of Inquiry how to
17 proceed with the revisions of these parts. Most of you
18 know that the NIGC has been, at least up until the
19 beginning of last year, of 2010, were working on
20 revising the Class II MICS. And the Technical
21 Standards had been put back into place, but then we are
22 hearing again comments that the Technical Standards,
23 being that they're Technical Standards, needed updated
24 again.

25 And so currently, the 2008 Minimum Internal

1 Control Standards that were published and were
2 finalized, that implementation date is October 13th of
3 this year. And so we're looking to how do we revise
4 the Minimum Internal Control Standards, what process
5 should be used.

6 We've received alternative draft rules
7 submitted by the Tribal Gaming Working Group, which
8 are -- we're reviewing internally. It's a lot of
9 material. So we're working our way through it.

10 The issues that we've identified are sort of
11 what are the, what are the key things, key issues that
12 need to be addressed in the Minimum Internal Control
13 Standards. We've heard comments from tribes that the
14 Minimum Internal Control Standards have come to the
15 place where they were no longer minimum. And perhaps
16 we were addressing issues that didn't need to be
17 addressed in the MICS in the regulation itself.

18 Key issues that need to be addressed in the
19 Technical Standards, there's a number -- we've heard a
20 number of comments written in the transcripts or in the
21 consultations that we held, that there are some issues
22 that need to be addressed in Technical Standards as
23 well.

24 We're very interested in learning how the
25 Technical Standards are working today, where they need

1 to be tuned up. And then how do we, as we go forward,
2 how do we make revisions in the future to address new
3 and advancing technology.

4 Technology changes very quickly. We are a
5 federal agency; we move a little slower. So how can we
6 address these changes in technology, help the gaming
7 industry take advantage of all the technology that's
8 out there, but still working through our regulatory
9 process.

10 So finally, going back quickly to Group 1, Part
11 559, the facility license draft is out there. We are
12 looking for comments. Those written comments need to
13 be in our office by June 17th. You can get them to us
14 by fax, e-mail at reg.review@NIGC.gov, mail them, hand
15 them to us, you know, do Morse Code, whatever we need,
16 however you can get them to us, we'll take them. But
17 we are looking for that.

18 The comment period for the fee draft -- the
19 preliminary draft fee regulation was May 31st. Those
20 comments are on the Web site, the ones that we've
21 received, as are the transcripts. And so if you are
22 interested in reviewing those comments, they're up on
23 the Web site as well.

24 So that was just a data dump. And I will turn
25 the meeting back over to Steffani.

1 VICE-CHAIR COCHRAN: Before we go any
2 further, I have asked Kurt to, if he would be willing,
3 to open up our meeting properly for us. And he's
4 agreed to do so. So if I could take just a moment of
5 your time and step back, receive his welcome, and then
6 we'll go on from there.

7 MR. LUGER: All stand for a quick prayer,
8 please.

9 (All in attendance stand.)

10 Dr. Jason Lightning comes through here. But
11 Con Sha La, we pray for several things today. We're
12 living in serious times.

13 Certainly we want to pray for our elderly.
14 They deserve our respect and prayer.

15 Suffering, those of our tribal members who are
16 suffering from both physical and mental obstacles,
17 something that is greatly needed amongst our relatives,
18 and we pray for your health.

19 We pray for our children, for their health and
20 their sobriety. That's what we have always maintained
21 that our ultimate goal is, is to be able to take care
22 of our families and children and provide a higher
23 quality of life.

24 We want to pray for those who have gone before
25 us to the spirit world.

1 Con Sha La, we would like you to protect our
2 veterans that are currently serving, and remember those
3 that have served in the past.

4 Con Sha La, the other thing that is in great
5 need is clarity. And we hope for that here today in
6 this meeting and meetings in the future.

7 And last, Con Sha La, we pray for the common
8 goal of providing an opportunity for a higher quality
9 of life for our tribal members.

10 And we pray for everybody's safe return to
11 their home and families. Amen.

12 VICE-CHAIR COCHRAN: Thank you. It is a
13 lot of information that we just put up. And I know
14 that we've got quite a bit to cover. So what I'd like
15 to do is to -- what I'd like to do here is to, the
16 tribal leadership here, is to begin the conversation
17 with them. Let them put on the table what they think
18 is a priority that we should discuss first.

19 Then after that we'll take a break. And we'll
20 move through the classes individually -- the grouping,
21 not classes, I apologize, the grouping, so that we just
22 discuss Group 2 for a while, then we'll go on to Group
23 3, and finally Group 4. But that certainly doesn't
24 mean if somebody's under a time constraint, you need to
25 put something on the table in order to leave or

1 something, please do so. We don't want anybody to
2 leave here without having had the opportunity to say
3 what they need to say.

4 So I'm going to turn over -- I think we've done
5 enough talking, it's our turn to listen. So I'm going
6 to turn it over to the tribal leadership first. And
7 then anyone else who wants to open or put something on
8 the table to begin our discussion.

9 MR. LUGER: Thank you. I appreciate the
10 folks from NIGC being here today and the meeting that
11 we had during our Great Plains.

12 First and foremost, I personally feel that
13 attitudinal change in your approach in this, that's
14 greatly appreciated. The young attorney there, you did
15 a fine job this morning. Even I could understand most
16 of it.

17 I have to admit, and I think you're trying to
18 achieve something that many in our region and several
19 of our areas deal with, and that's redundancy. It's
20 been a problem, it's a cost. And I see that you're
21 taking a -- trying to slim some of these reporting
22 procedures down. And that's a great help to us.
23 Because we're hit on the other side as well from, in
24 our compact scenarios, and we have that same fight
25 there.

1 And a quick closing comment on the -- I
2 couldn't agree with you more on the, where did I see
3 it, net revenues and your management fees. I like the
4 comments that you made on that.

5 I also have to comment on your process that you
6 set up on your phases. I think they're doable. And
7 I'm not quick to say too much from a governmental view
8 that things have been fair, but I actually can see how
9 some of these things can be addressed with dialogue so
10 that we can get this right.

11 And so I appreciate the three phases that you
12 put together. And hopefully on our side of the line we
13 will totally take advantage of that first phase and get
14 our work in by June 17th.

15 So with that said, thank you and the rest of
16 you folks for being here. And Marty I know has some
17 specific comments probably from a technical side from
18 our region, she's kind of our expert over there, so
19 I'll leave that up to her.

20 But I do appreciate a more of an open-air
21 policy of the NIGC in my opinion, and the process that
22 you're trying to put together that we can legitimately
23 at least stay together and continue to dialogue to see
24 what redundancies, other authorities that we can get
25 down to what we're really looking for under the

1 original intent of IGRA. So thank you very much.

2 VIDE-CHAIR COCHRAN: Thank you, Kurt.

3 Madam vice president.

4 MS. MAYO: I, too, would just like to
5 convey on behalf of Lac du Flambeau Band -- and I do
6 not prefer to provide any detailed comments right at
7 this point, but I assure you we will submit something
8 in the future. I just wanted to convey the message
9 that we appreciate the consultation process that has
10 been set up and the opportunity to be able to provide
11 comments, input and -- on a governmental relationship.

12 And just going ahead, we support the mechanisms
13 and the grouping that is set up before us. And it's
14 going to allow us to break those areas out and work
15 more efficiently back into our -- back at our tribal
16 level, address those things in a more kindly manner.

17 So again, we appreciate the opportunity to be
18 able to consult in an efficient manner. Thank you.

19 VICE-CHAIR COCHRAN: Thank you for coming
20 out today and sitting with us. I should say on behalf
21 of the Chairwoman and Commissioner Little, who aren't
22 with us today, we take this process very seriously.

23 And it is intended to do exactly what you, the tribes,
24 have asked us to do, which is to have the dialogue.

25 And we know it's a lot of material, we know

1 we're pushing our staff, we know you're pushing your
2 staffs, and we understand that. But it's important
3 that we get the process right. And that can only
4 happen through having the continuous dialogue, which we
5 intend to do. At any point in the process it becomes
6 too cumbersome or if it becomes an issue, then please
7 let Lael know so that she brings it immediately to our
8 attention. We try to keep everything in a methodical
9 way, but there's a lot, and we understand that, a lot
10 of moving parts.

11 MS. LASH: Good morning. I'm Robin Lash
12 again with the Miami Tribe of Oklahoma. And I'm here
13 on behalf of the tribe and Chief Gamble. And I would
14 like to thank you for this opportunity to consult with
15 you. Chief Gamble was unable to make it. And he sent
16 a statement that he asked for me to read into the
17 record. And his statement concerns primarily Parts 543
18 and 547 of the regulations.

19 So with your patience at this time, I would
20 like to read his statement into the record, please.
21 And Chief Gamble anticipated or thought that perhaps
22 all commissioners would be here, so I'll just read his
23 statement word for word:

24 STATEMENT OF THOMAS E. GAMBLE, CHIEF, MIAMI TRIBE OF
25 OKLAHOMA, READ INTO RECORD BY ROBIN LASH AS FOLLOWS:

1 "Good morning, Chairwoman Stevens,
2 Commissioners, and staff. Thank you for this
3 opportunity today to comment concerning Parts 543 and
4 547 of the Minimum Internal Control Standards. My name
5 is Tom Gamble and I serve as Chief of the Miami Tribe
6 of Oklahoma. It would have been my honor to appear
7 before you today in person, however that was not
8 possible, so I am sending my comments in written form
9 and asking that my comments be read into the record by
10 our Attorney and Gaming Commissioner, Robin Lash.

11 "My comments today are respectfully submitted
12 on behalf of the Business Committee and the members of
13 the Miami Tribe of Oklahoma. The Miami Tribe is
14 situated in the far northeast corner of Oklahoma in
15 Miami, Oklahoma - a town named in March 1891 after the
16 Miami people. Before I begin my comments about the
17 important topics at bar, I think it is significant to
18 give some information about the Miami to substantiate
19 the importance of these Class II regulations issues
20 which are before us today.

21 "The Miami people have come a long way in a
22 relatively short time enduring two separate removals.
23 The first removal from our homelands in Indiana/Ohio to
24 Kansas territory in 1846. The second removal in 1873
25 was from Kansas territory to Indian Territory, which

1 would later become Oklahoma upon statehood in 1907.

2 The Miami today are a small tribe with nearly 4,000
3 enrolled members, and a land base of approximately 1500
4 acres. Through use of revenues generated from Class II
5 gaming, the Tribe provides essential tribal government
6 services to its members, and employment for its members
7 and the community. The Tribe currently has 180
8 employees working for its government and for the dozen
9 businesses the Tribe operates.

10 "IGRA's stated goals to allow Indian gaming as
11 a means to promote tribal economic development,
12 self-sufficiency, and create strong tribal government
13 has been achieved with Miami gaming. The impressive
14 growth in the Miami tribal infrastructure, business,
15 and essential governmental services is directly tied to
16 revenues generated by gaming - specifically Class II
17 gaming.

18 "Gaming began for the Miami Tribe in 1993 when
19 the Tribe adopted and submitted for approval its Class
20 II gaming ordinance. In anticipation of a Tribal-State
21 compact, in 1994 the Tribe adopted a Class III gaming
22 ordinance. Fifteen years later, in January 2005, the
23 Miami tribe was the third tribe in Oklahoma to have its
24 tribal-state compact with the State of Oklahoma
25 approved. By this time, however, Class II revenue had

1 already made monumental changes in the economic
2 environment of the Tribe. Today, though the Miami
3 Tribe is compacted with the state to operate Class III
4 games, only Class II games are in place in our Miami
5 Tribe Entertainment casino. Our selection of games
6 offered for play is market-driven. The few Class III
7 machines offered for play in our casino were not
8 popular, thus, they were removed and replaced by the
9 Class II games our patrons want to play.

10 "While our Class II casino was growing in the
11 late 1990s, the Tribe made a unique decision to not
12 only provide Class II gaming, but to make Class II
13 gaming a business as well. The Tribe created the Miami
14 Business Development Authority, a subordinated
15 governmental entity."

16 And as you recall, Mr. Danforth here announced
17 that he is a member of our board -- I should say on our
18 board. So we created the Miami Business Development
19 Authority, a subordinated governmental entity.

20 "And purchased the young WorldLink Gaming
21 Company, also known as Rocket Gaming Systems. This
22 placed the Tribe in a unique partnership with a company
23 that manufactures Class II games and provides gaming
24 services. Over the past 12 years, our business
25 relationship with Rocket Gaming Systems continues to

1 flourish and Rocket continues to grow. The Miami Tribe
2 is very proud of this prosperous and unique business
3 relationship and is proud of the state-of-the-art Class
4 II games that Rocket manufactures.

5 "As a tribe with Class II gaming, and as a
6 manufacturer of Class II gaming equipment, we feel it
7 is extremely important to look out for Class II gaming
8 issues, as it affects not only this tribe and our
9 business, but all of Indian country. For this reason,
10 the Miami have taken a proactive stance and have been
11 heavily involved with the Tribal Gaming Working Group
12 and the proposed revised Class II MICS and Technical
13 Standards submitted to you on May 15, 2011.

14 "On May 16, 2011, I forwarded to this
15 Commission a letter of support for the proposed revised
16 Class II MICS and Technical Standards. It was
17 important to me to contact you immediately in support
18 of the submitted proposed revised standards because of
19 the importance of having in place sound standards for
20 Class II gaming under which Class II may continue to
21 prosper and grow. For this reason, I also felt it was
22 important to submit my comments today during this first
23 consultation concerning Parts 543 and 547.

24 "Regulations by definition are rules, laws or
25 conditions implemented to govern or control procedures

1 or conduct. Here we are discussing regulations that
2 govern the internal controls for Class II gaming, as
3 well as the technical standards that establish
4 parameters for the composition and function of Class II
5 gaming. Since 2006, working groups have addressed,
6 without complete success, the need to revise
7 regulations in these areas. This Tribal Gaming Working
8 Group has completed an exhaustive review of Parts 543
9 and 547 of the NIGC regulations and has developed a
10 sound draft of well-organized, concise regulations that
11 more clearly establish the minimum requirements for
12 Class II internal controls and Technical Standards. As
13 IGRA states, tribes are the primary regulators of Class
14 II gaming, and the proposed regulations submitted by
15 the Tribal Gaming Working Group allow for tribes to
16 clearly understand the minimum standards required, and
17 to establish tribal internal controls to comply with
18 NIGC requirements.

19 "The proposed revised MICS submitted by the
20 Tribal Gaming Working Group is a document reduced in
21 volume from the current regulations. Verbose areas of
22 policies and procedures have been removed from this
23 proposed document, leaving clearly drafted standards
24 only. The Tribal Gaming Working Group continues its
25 work as we speak, finalizing proposed guidance

1 documents and checklists for each section of the
2 regulations. These proposed guidance documents and
3 checklists will serve as guiding documents for Gaming
4 Commissions to utilize in drafting TICS to ensure
5 compliance with MICS requirements.

6 "Indian gaming is the first and only economic
7 tool that has ever worked for tribes. The Miami, like
8 many other tribes, is located in a remote area that has
9 been struggling economically for decades. Revenue from
10 Class II gaming has made a major impact of the ability
11 of the Miami Tribe to make positive changes for the
12 Tribe. For instance, with revenue from Class II
13 gaming, the Tribe has been able to contribute
14 financially to tribal programs affected by federal
15 cutbacks. Class II gaming revenues contribute directly
16 to 54 scholarships offered annually to tribal members.
17 Gaming revenue also has enabled the Miami Tribe to
18 rebuild the Tribe's land base lost in the last century.
19 Most importantly, however, is the impact Class II
20 revenue has made in economic development opportunities
21 for the Tribe, and revenue generated by the Tribe as a
22 result of economic development diversification.

23 "As a tribal leader it is my job to ensure the
24 integrity of our tribal gaming is protected and that
25 revenues stemming from tribal gaming are secure. I am

1 confident that adoption of these regulations will allow
2 for lawful, well-regulated Class II gaming that will
3 serve the interests of the tribes - as the primary
4 regulators of Class II gaming - as well as the NIGC, in
5 its oversight role.

6 "As I mentioned in my May 16th correspondence,
7 I am grateful for the positive and supportive position
8 of your Commission in allowing the tribes to submit
9 proposed regulations that we feel work best for our
10 facilities. IGRA envisioned a close, cooperative
11 relationship between the NIGC and the tribes. With
12 your Commission I know this is possible, and this
13 positive relationship will serve to benefit us both.

14 "Once again, I sincerely thank your Commission
15 both individually, and on behalf of the Miami Tribe of
16 Oklahoma, for this opportunity to submit my comments at
17 this consultation. I look forward to continuing this
18 positive working relationship for the benefit of the
19 tribes and Indian gaming.

20 "Respectfully, Thomas E. Gamble, Chief, Miami
21 Tribe of Oklahoma."

22 VICE-CHAIR COCHRAN: Thank you for reading
23 that. And extend our thanks to Chief Gamble. I know
24 that he is often present during consultations, and I
25 know that he's been very actively involved in

1 everything that the Commission does, monitoring and
2 being aware of what's happening. So thank him for his
3 comments. And we did receive his letter and it is
4 included. So thank you.

5 MS. LASH: Thank you.

6 VICE-CHAIR COCHRAN: Did you have other
7 comments you wanted to offer at this time?

8 MS. LASH: Not specifically towards the
9 other items that we have before us today. I guess as a
10 gaming commissioner for the tribe, I don't know if it's
11 appropriate at this time to make my comments. Or were
12 you just asking for leadership comments?

13 VICE-CHAIR COCHRAN: Leadership comments
14 if you have them.

15 MS. LASH: Not at this time.

16 VICE-CHAIR COCHRAN: You'll have the
17 opportunity for more extended comments. Okay.

18 MS. LASH: Thank you.

19 VICE-CHAIR COCHRAN: Do I have other
20 leadership comments or?

21 MS. MAYO: Madam Commissioner, just go on
22 record, I do have a letter regarding the Parts 543 and
23 547, signed by our Chairman Maulson. So I'd like to
24 give you that for the record.

25 VICE-CHAIR COCHRAN: Would you like to

1 read it in? Or do you want to just give it to us?

2 MS. MAYO: Can I just read it in?

3 VICE-CHAIR COCHRAN: Certainly. Your
4 discretion.

5 MS. MAYO: All right, I'll read it in.

6 LETTER FROM THOMAS MAULSON, LAC DU FLAMBEAU TRIBAL
7 PRESIDENT, READ INTO RECORD BY DEE ANN MAYO AS FOLLOWS:

8 "Dear Commissioners: On behalf of the Lac
9 du Flambeau Band of Lake Superior Chippewa Indians, we
10 wish to convey our support for the proposed provisions
11 to Parts 543 and 547 of the NIGC's regulations recently
12 submitted for your consideration by the Tribal Gaming
13 Working Group. Additionally, we wish to extend our
14 utmost appreciation to the Chair and members of the
15 Commission for being willing to reexamine the NIGC's
16 regulations, particularly in this instance, the Class
17 II regulations.

18 "Class II gaming is extremely important to all
19 of Indian Country, which has played a key role in its
20 development and success. We applaud the Commission for
21 reaching out and seeking tribal input as to how best
22 regulate Class II gaming technology in a manner that
23 ensures integrity in Class II technology without
24 compromising the authority and primacy of tribal gaming
25 regulatory agencies. Indian Country assembled a

1 working group with a high level of expertise from
2 various sectors of the tribal gaming industry with the
3 broad base of knowledge needed to assist the NIGC in
4 developing regulations consistent with its oversight
5 function without compromising the regulatory framework
6 intended in the Indian Gaming Regulatory Act. We are
7 confident that the revisions to Parts 543 and 547
8 proposed by the TGWG provide a strong foundation for
9 government-to-government consultation by the NIGC and
10 tribal governments concerning Class II gaming.

11 "Accordingly, we urge the Commission to give
12 favorable consideration to the revisions as proposed by
13 the TGWG and begin consultation with tribal governments
14 on the proposed Class II regulatory revisions with a
15 goal to timely adopt revised Class II regulations.

16 "Sincerely, Thomas Maulson, Lac du Flambeau
17 Tribal President."

18 VICE-CHAIR COCHRAN: Thank you, Madam Vice
19 President. If you wouldn't mind leaving a copy with
20 Lael, we'll make sure that it goes up on our Web site
21 as well.

22 Any other comments from a leadership
23 perspective? Or any just general opening comments that
24 need to be made?

25 All right, we're going to go ahead and take a

1 15-minute break. And then we'll begin the substantive
2 discussions. The bathrooms are a ways away. So we'll
3 come back at 10:35. And that will give us an hour and
4 a half to begin the first group.

5 (Break from 10:19 a.m. to 10:47 a.m.)

6 VICE-CHAIR COCHRAN: All right, I'm going
7 to go ahead and start. All right, I'm going to start
8 with Group 2. And if you'll recall from Lael's
9 PowerPoint, Group 2 does include Part 573, which deals
10 with enforcement proceedings. And it also deals with
11 regulations concerning appeal to the Commission,
12 including Parts 519, 524, 539 and 577.

13 All right, let's begin with, unless there's a
14 desire to do otherwise, we'll just start with Part 573,
15 which is the regulation that deals with enforcement
16 proceedings following an NOV. And of course, the
17 question we set out in the Notice of Inquiry asked
18 whether or not the Commission should promulgate a
19 regulation authorizing the withdrawal of a NOV after
20 it's issued.

21 We have had some discussions internally within
22 our staff in the Commission about this. We know that
23 there's a wide difference of opinion perhaps that come
24 from a tribal perspective. I'm curious if anybody,
25 first and foremost, has any comments they want to

1 offer. But also we'd like to note this was -- if this
2 is even necessary. If it's necessary for a regulation
3 to be put in place, which would authorize the
4 Chairwoman to withdraw an NOV after it's been issued.

5 Has anybody looked at this? Have any thoughts?
6 I know there's lots of lawyers in this room, I know you
7 have thoughts.

8 Let me throw another question out. If assuming
9 that a regulation is necessary, is there any
10 particularized set of circumstances that need to be put
11 in place in order for the Commission to do that or the
12 Chairwoman in her individual capacity to do that? To
13 withdraw. Time frames? Nothing?

14 All right, let's go to another step. What
15 about expunging NOV's? We did have a lot of discussion
16 with some tribes about -- the request was to expunge an
17 NOV once time's elapsed, the requirements have been
18 met, the terms of any settlement had been fulfilled
19 perhaps.

20 There was also some discussion in other areas
21 about whether or not the Commission should put NOV's up
22 on the Web site perhaps with -- right now we don't
23 redact all the identifying information, so whether or
24 not we ought to redact information from them. Maybe
25 archive older NOV's. There's all kinds of ways that we

1 can look at this. I don't know if anybody has given
2 much thought to that as well.

3 We are very much aware of how NOV's interact
4 with financing, for example, for the tribes. And we
5 understand the long-term impacts they can have. And
6 that's why we've raised this issue with you.

7 MS. ECHO-HAWK: We've also heard that --
8 or we've sort of been thinking about internally, is
9 that even if we were to do something like this, an
10 expungement process, you know, A, the information is
11 still FOIA-able, and B, it may not accomplish what
12 tribes that have suggested are looking for it to
13 accomplish in regard to financing specifically.

14 But that financiers, bankers will simply then
15 ask a tribe have you ever had a Notice of Violation
16 expunged or, you know, submit a FOIA request or
17 whatever.

18 So if that is the primary concern of tribes,
19 then I guess our question is does this accomplish that
20 goal.

21 I know we've also heard, and I think it was the
22 last time we were here, that an NOV also can have an
23 impact on the tribal, on tribal government, because
24 tribal members see them and are concerned about what's
25 happening. And perhaps this might be a way to address

1 those concerns as well.

2 But, you know, that's an issue that we've been
3 thinking about. And we want to make sure that whatever
4 we do it's, if this -- if we need this regulation, then
5 it is as effective as we hope -- the most effective
6 that it can be. So if you have thoughts about that,
7 then that would be helpful.

8 VICE-CHAIR COCHRAN: If you would, Joe,
9 identify yourself for the court reporter.

10 MR. VALANDRA: Sure. My name is Joe
11 Valandra. I think the NOV serves several purposes, not
12 just to address the specific event that gave a rise to
13 the NOV. But they're instructive to the industry
14 overall in terms of issues and policies that the NIGC
15 at least currently and perhaps in the past has found to
16 be a problem or an issue that needs to be addressed.

17 So removing them from the public domain, or at
18 least easy access of public domain here, to me, is a
19 policy question, but are the issues that were addressed
20 still a policy concern of the agency. If they are,
21 then I think perhaps rather than expungement, perhaps
22 an explanation that the terms of the settlement
23 agreement were met, you don't have to say what the
24 terms were, but that they were met, or some other
25 explanation as part of the public record might be more

1 appropriate than just a blanket expungement. That's my
2 view.

3 VICE-CHAIR COCHRAN: Thank you. Any other
4 thoughts? All right. Well, let's move to the area
5 that Lael professes our attorneys are having a good
6 time with. Not including this one.

7 The next area for this group is Parts 519, 524,
8 539, and 577. These are all receiving before the
9 Commission, appeals before the Commission. And right
10 now we do have existing regulations, which many of you
11 I know are familiar with and have worked with for a
12 long time. There has been commentary through the NOI
13 process that we really do need to go back and look and
14 make that process more user-friendly in some respects,
15 make sure that we don't create unnecessary or
16 unwarranted burdens upon the people who wish to appeal.
17 And also to provide some more process and due process
18 protections to respondents that had to go through the
19 appellate process with the Commission.

20 And so we've been working on our own
21 discussions internal within the agency. There's a lot
22 of thoughts on the table. There's a lot of ways that
23 we can look at this. And we want to open it up and
24 make sure that we receive your thoughts, especially
25 because I, again, I know we have a lot of attorneys in

1 the room, on areas that we need to focus on in
2 particular in these regulations, given that it's an
3 important process.

4 One of the things I've been grappling with,
5 I'll put this out there, has to do with the different
6 types of proceedings that our regulations afford. And
7 the question has been raised whether or not we should
8 consolidate into a single type of proceeding within the
9 regulations. We do afford hearing officers, is that
10 the right term?

11 MS. SHYLOSKI: There are different appeals
12 for different issues, such as ordinance appeals are in
13 524. Management contract appeals are in 539. And then
14 enforcement action appeals and voiding of management
15 contracts or modifying of management contracts are in
16 577. And that allows -- 577 allows a respondent an
17 option to either have a hearing before an
18 administrative law judge, a presiding official, or,
19 select to just have their appeal heard on the papers
20 before the Commission.

21 VICE-CHAIR COCHRAN: Does anybody wish to
22 offer some just some general observations on their
23 experience with the process?

24 MR. VALANDRA: This is Joe Valandra again.
25 This is an issue that's near and dear to my heart for

1 many reasons. But I think from an historical point of
2 view, one of the problems that those appearing before
3 the Commission, if you will, had is that there wasn't a
4 formal record that was provided to -- there was one
5 that was created if an appeal was taken, it was created
6 generally by the Office of General Counsel, and so the
7 record was, some could argue, a little uneven at times.

8 I think that a process that creates a record
9 that's more open and certainly inclusive of both sides
10 of the issue would be helpful. And a time frame for
11 that record being submitted to the Commission, if it's
12 an appeal to the Commission or otherwise just an action
13 by the Commission.

14 But to go along with that, I think one of the,
15 one of the policy downfalls of the NIGC historically
16 has been a lack of final decisions. As most people in
17 the room know, there's been a history of advisory
18 opinions that have the same effect as final agency
19 action, except that they're not appealable. There
20 isn't -- due process stops basically at that point.

21 So my view is that a uniform process for
22 creating a fair record is important. And that a
23 process for achieving final agency action so that the,
24 the due process rights of the person appearing before
25 the Commission, the Chairwoman or the full Commission,

1 are better defined by the APA and others so that
2 there's some certainty in the outcome.

3 VICE-CHAIR COCHRAN: Thank you. Tracy, if
4 you would identify yourself for the record.

5 MR. BURRIS: Tracy Burris, Gaming
6 Commissioner for the Viejas Band of Kumeyaay Indians.

7 I'm going to reemphasize what Joe just said,
8 that it's the process. But I think even more so I
9 think is that to make myself -- being a regulator now
10 for 21 years on the tribal side, is that it shows us
11 the role that we have to play as tribal regulators, the
12 transparency, not only the transparency but the
13 responsibility that we have to manage our office. And
14 I think what is being done now by this current
15 Commission administration is being transparent about
16 management or its intent of managing that agency.

17 And we all have that responsibility because all
18 of our critics would be -- it reduces criticism from
19 our critics, if you will. And I think that what's
20 happening is extremely important. And I think we're
21 all going to learn from it, as you guys are learning as
22 you go along in the process, we as tribal TGRAs are
23 learning along the same way.

24 So I'm looking forward, continue to look
25 forward to this dialogue. And also very interested in

1 the final product obviously and how we're going to
2 measure or complete these tasks. Because it is an
3 aggressive task. And I'm sure that at some point some
4 will be a little back and some will be addressed at a
5 later time. But I think the success of this first
6 series of what you -- that agency lays out there is
7 going to be extremely important to all of Indian
8 Country in terms of regulators. Which is, I think, the
9 rest of the country is watching. I've said it before,
10 I'll say it again, they are. You can't go anywhere to
11 different non-Indian gaming activity and it always
12 comes back to, in the United States, it comes back to
13 something that Indian Country is doing.

14 So the irony of it is that we went to the rest
15 of the country 20 years ago to do this business.
16 We've, we've drawn from that. And now the reality is
17 they're looking back at us. Because its role is harder
18 because it doesn't look at just one state. Your role
19 is to try to encompass all 29 states the tribes are in
20 that are doing it. And then you have the breakdown of
21 that version of game play in all of them.

22 And so I think it's -- your final product and
23 trying to cover a blanket of the United States will be
24 interesting and obviously give your agency more
25 credibility. And in doing so, will give Indian Country

1 more credibility. Thank you.

2 VICE-CHAIR COCHRAN: Thank you.

3 MR. BURRIS: Keep up the good work.

4 VICE-CHAIR COCHRAN: Thank you. Let me
5 throw out a couple more questions on this section
6 before we go on, just to see if there's any response
7 back. Because again, these are issues that are being
8 discussed within the agency, and we want to make sure
9 that that discussion is brought out to you.

10 Speaking in generality, if you will, and about
11 appeals, couple questions have come up regarding
12 confidentiality that -- I'm sorry, not confidentiality,
13 ex parte communications with the Commission and
14 employees of the Commission, if you will.

15 Another question in general that we've
16 discussed is whether or not the chair should continue
17 to sit on appeals before the Commission.

18 And I want to throw out those kind of general
19 topics to you to see if there's any thoughts or
20 comments that you wish to offer or questions you want
21 to pose back to us as we look at this particular, these
22 particular sections.

23 We're interested in whether or not we need to
24 promulgate a new section that would prohibit ex parte
25 communications with the Commission, its employees and

1 presiding officials in appeals.

2 We do work very hard to preserve the integrity
3 of the process internally regarding the commissioners,
4 but this would be a broader policy statement, if you
5 will, regarding communications whenever there's an
6 appeal pending. John.

7 MR. TAHSUDA: I have a quick question on
8 that.

9 VICE-CHAIR COCHRAN: Would you identify
10 yourself, please.

11 MR. TAHSUDA: I'm sorry, John Tahsuda.
12 How would you handle that in the context of a
13 whistle-blower situation involving an action, appeal,
14 et cetera?

15 I guess, generally speaking, as a lawyer, I
16 would be supportive of, you know, no ex parte
17 communications during a formal proceeding and appeals.
18 But, I mean, there is an issue with that I believe.

19 MS. SHYLOSKI: And I'm trying to
20 understand your question better. Is your question
21 whistle-blower type evidence given in one of the
22 appeals that the Commission is authorized to hear under
23 IGRA?

24 MR. TAHSUDA: Yes.

25 MS. SHYLOSKI: I think we would like to

1 hear your ideas on how that can be handled. That would
2 be my first response. And I think that's a unique
3 issue.

4 Our administrative law judge/presiding official
5 regulations now talk about the submission of
6 confidential evidence. And there is a provision for
7 that. And that type of evidence may fall under that
8 provision. But we would need to look at that closer.

9 MR. TAHSUDA: I guess -- and I don't
10 really have a, I don't have a thought-out response. I
11 just -- because that becomes an issue particularly as
12 we know sometimes there are politically charged issues
13 that arise out of these as well. And I think it, you
14 know, makes it difficult for you guys and for any
15 process. But it is, I think, often an important source
16 of evidence that comes forward as well. And so, you
17 know, the validity of it, you know, may be subject to
18 later, but I think it's certainly a valid source of
19 evidence. And having I think -- I would think your
20 ability to consider all the evidence ultimately is, you
21 know, to come to an ethical, you know, solution is
22 important to -- you know, we wouldn't want that to be
23 excluded. But I think there certainly has to be
24 some -- again, the protections provided to a
25 whistle-blower also needs to be maintained as well.

1 VICE-CHAIR COCHRAN: Right. Thank you,
2 that's another aspect again that we need to look at
3 when we're considering these. Judy?

4 MS. SHAPIRO: Hi, my name is Judy Shapiro.
5 And I'm speaking on my own behalf and not -- this is
6 not embedded with a client.

7 I think that when you consider these questions,
8 before you get an answer you have to decide what
9 interest you're concerned with. In many agencies, the
10 ex parte communication provisions are to protect other
11 parties in an adversarial proceeding. You don't
12 normally have those, I don't think, before you. Most
13 of the hearings and appeals are between the Commission
14 and the outside party. Unless we're talking about ex
15 parte communications from someone not a party to the
16 case.

17 So before you decide what you need to restrict,
18 I think you need to decide whose interest you're trying
19 to protect with that restriction. And how does that
20 compare to what other agencies, the work of other
21 agencies. That's sort of one question.

22 And then argument from the other side.
23 Argument from the other side. If you are trying to
24 make a record for a proceeding which may thereafter be
25 reviewed by a court, it is in your interest I think

1 that all evidence be available to the record and not ex
2 parte.

3 Now, you could have ex parte submissions. You
4 could have informal submissions. But you're going to
5 need to have in place something which incorporates, as
6 John says, all the relevant evidence for your decision
7 so that the record, if it goes to another forum, is
8 complete.

9 VICE-CHAIR COCHRAN: Thank you, Judy.

10 MR. VALANDRA: Is the question about
11 whether the Chairwoman should be -- should not
12 participate in an appeal before the Commission still?
13 Is that one of the questions you asked?

14 VICE-CHAIR COCHRAN: Yeah, again, not a
15 position or anything, it's just a question.

16 MR. VALANDRA: Well, I think I'd like to
17 raise an issue. There was a case decided in 2009,
18 Sound Exchange versus the Library of Congress, and
19 there's been some other cases that follow that line
20 about the appointments clause. And one of the concerns
21 with the NIGC, because of the way the structure is
22 statutorily, is that the only presidential appointee is
23 the Chairwoman, and therefore, the only primary officer
24 of the United States is the chairperson. The other two
25 commissioners are inferior officers of the United

1 States under the Constitution, and therefore do not
2 technically constitutionally have the right to override
3 any decision of a principal officer.

4 And I think that's something, as you make
5 decisions about hearings, that it's sort of the
6 10,000-pound elephant in the room whenever these kinds
7 of things come up, but it's something that can
8 structurally have a big problem for the NIGC if a
9 decision were challenged on that basis, because I think
10 constitutionally the Commission is flawed in that way.

11 So if you're looking at solutions, I think you
12 need to look at a broader solution to the whole hearing
13 issue and overriding a decision, or potentially
14 overriding a decision of the chairperson.

15 VICE-CHAIR COCHRAN: Thank you. The only
16 other area that I think is of direct interest to other
17 areas of consultation that we're involved with, and
18 that has to do with late payments, and has to deal with
19 assessments and whether or not those actions should be
20 brought under the process that we have for enforcement
21 appeals right now.

22 If we move to a ticketing system, if you will,
23 that's been discussed on the late payment of fees,
24 whether or not those late payment of fee tickets or
25 assessments would be pulled in under the enforcement

1 appeals or whether or not they should be under some
2 other process. Any thoughts? Any concerns?

3 MR. VALANDRA: Yeah, I guess I have one.

4 VICE-CHAIR COCHRAN: You're welcome to
5 have --

6 MR. VALANDRA: That's okay, I'm trying not
7 to speak too much. But these are issues of vital
8 importance.

9 VICE-CHAIR COCHRAN: They're important
10 issues.

11 MR. VALANDRA: This is Joe Valandra. I
12 think the issue, the primary legal issue that you
13 confront: Is the chair able to delegate authority to,
14 say, a regional director to write that traffic ticket.
15 I think so personally, but I, you know, I don't have
16 the brief in front of me. But I think so. It's just
17 that there needs to be a very structured process for
18 how that happens and the appeals and all that sort of
19 stuff.

20 But I think if you, if you properly address the
21 delegation of authority to, say, a regional director, I
22 think it's, I think it's a good idea.

23 VICE-CHAIR COCHRAN: Thank you. All
24 right. Joe, that leads to a follow-up question, which
25 is: If that authority is delegated, then how should

1 the appeal be handled?

2 MR. VALANDRA: Well, since it would
3 technically be a decision of a delegated -- decision of
4 the chair, then it would follow the normal appeal
5 process I would think.

6 Now, you could structure it differently. I
7 mean, you could have some interim steps along the way I
8 suppose. I haven't really thought all the way through
9 that. But technically, since it's a decision of the
10 chair, then it would follow, it could follow the normal
11 process. So. Although it could, I suppose, be
12 appealed directly to the chair first for
13 reconsideration.

14 VICE-CHAIR COCHRAN: Okay. I'm looking to
15 the lawyers I know who have spent countless hours
16 discussing all this to make sure that I've asked
17 everything I can.

18 Another discussion has come up about service,
19 how we communicate with or are involved in the appeals.
20 And the real fundamental question that has come up has
21 to do with whether or not we should continue to or
22 should -- excuse me, should not allow service of e-mail
23 for documents filed after the initial documents.

24 So once a tribe has made its initial appeal and
25 we've secured e-mail addresses, valid e-mail addresses

1 and who we're going to communicate with, is there some
2 reason that would suggest that we shouldn't be allowed
3 to do that. Judy.

4 MS. SHAPIRO: Most courts and I think
5 substantially all agencies are now either permitting or
6 requiring filing by Internet communication. So you
7 shouldn't require it perhaps because of other
8 technological priorities.

9 VICE-CHAIR COCHRAN: Thank you. By that
10 same token, is there any reason that we should or
11 should not remove a fax option, since fax is not as
12 readily used anymore? Yeah.

13 I think one of the things we want to be mindful
14 of is, of course, any tribe which may not have a real
15 secure method of communicating via the Internet with
16 us.

17 I've seen commercials of dialogue service, but
18 we want to make sure that that's not an issue that we
19 need to be mindful of. And maybe the idea is if the
20 parties consent and agree, then that's what we'll use.

21 MS. SHAPIRO: I'm back. I think the key
22 is to not require it. Because there's still a lot of
23 places that issues divide us is still very real. And
24 there have been some places where there's not going to
25 be secure Internet, so don't require it. And I don't

1 think you need anything very formal to allow the
2 parties to engage in Internet services as long as
3 they're available.

4 VICE-CHAIR COCHRAN: Thank you. All
5 right. That is Group 2.

6 I want to move on to Group 3. But if there's
7 any follow-up or if there's anything that hasn't been
8 said you want to bring out, then please.

9 We also anticipate having draft discussions --
10 documents out for you within the next couple of weeks.
11 So it will -- the Web site will be your primary source
12 to get those quickly. But we will get it out.

13 And so we're going to go to Group 4. In Group
14 4 is Part 556, background investigations for primary
15 management officials. Part 558, again licenses for key
16 employees and primary management officials. Part 556,
17 background investigations for the Pilot Program. Part
18 571, monitoring investigations. Part 531, collateral
19 agreements. Part 537, background investigations for
20 persons or entities with a financial interest in or
21 having management responsibility for management
22 contracts. And lastly, part 502, definitions.

23 Let's start with the Pilot Program. Does
24 anyone want to begin?

25 MS. ECHO-HAWK: One of the issues that

1 we've identified, and it's up on the screen, is the
2 two-notification process. Currently tribes just send
3 the NIGC, typically tribes just send a notice of
4 results after they've completed a background, the
5 background investigation. They only notify the NIGC of
6 that, just sending the notice of results. However, as
7 we've looked more at the regulation -- or we looked
8 more at the Pilot Program itself with the provisions of
9 IGRA, we've realized that we've perhaps missed a step.
10 And that is, that IGRA requires that the tribes also
11 have to notify the NIGC of the issuance of a license.

12 So it's a two-step process instead of one. And
13 that is a deviation from what the current -- what's
14 current practice, which is just that tribes send in the
15 notice of results.

16 So we want to, we want to highlight that issue,
17 hear if tribes have any concerns about it. If there's
18 a way we can streamline that so that it's a simple, you
19 know, either an e-mail or, you know, if we got real
20 fancy at the NIGC, maybe an online form or something.
21 Again, we're working on the Web site. But just to
22 provide tribes with that notice that it is a two-step
23 process and how can we accomplish that in the most
24 efficient way.

25 MR. VALANDRA: It's Joe Valandra again. I

1 have two comments. I think just two comments. One, I
2 think that the notification really was variable region
3 to region. As I recall, there were some regions who
4 the tribes generally send notice to the regional office
5 that licenses had been issued so that on the periodic
6 review that the regional staff went out to do, they
7 would look at those licensees and see if there were any
8 issues or problems or things. So that's what I recall,
9 I'm not sure if that's, if that's right, but I think
10 so.

11 I guess from that, I would suggest that, to the
12 extent notification is required, that notification on a
13 region-by-region basis is probably going to be much
14 more efficient administratively and otherwise and more
15 relevant, frankly, than if you have it all sent to
16 Washington and then disseminate it. Because you're
17 going to have two or three steps in the way there that
18 make tiny differences much larger than they might
19 otherwise be.

20 So I think that the requirements of IGRA for
21 notification can be -- should be uniform, but that can
22 be handled sort of region, at the regional level much
23 more efficiently. Because the only time that becomes
24 an issue, as I understand it, is when NIGC wants to
25 object to a license that's been issued. And then even

1 then, what happens when that objection is lodged is a
2 little unclear, frankly. But that's why region by
3 region that it probably makes more sense, even given
4 the situation when the NIGC wants to object to a
5 license issuance.

6 MS. ECHO-HAWK: And we've also discussed
7 that. We found several different types of forms for
8 submitting the notice of results. So we're trying to
9 develop one. And also make sure that the regions know
10 what their responsibilities are to communicate back to
11 the tribes once a license has been issued.

12 And I know, you know, out here in this region,
13 John and Linda, their staff does a really great job of
14 getting back to tribes.

15 I think in other regions, it just hasn't sort
16 of been a requirement, so it may not be done as, just
17 as a matter of course. So we're trying internally to
18 streamline what our processes are, and address those,
19 that specific issue. Because it is one that we want to
20 make sure that what happens in one region happens in
21 all regions, so that there's -- everything is routine,
22 everything is standardized, doesn't matter what region
23 you're in, you know what the process is going to be.

24 VICE-CHAIR COCHRAN: All right. In
25 general, the response to the NOI's question of whether

1 or not the Commission should allow access to
2 fingerprint processing for any employee designated by
3 the tribe was supportive.

4 Is there any additional discussion that needs
5 to be offered? Or is there somebody who has concerns
6 about this, if we were able to secure the proper
7 agreements with the other federal agencies?

8 Liz, if you would identify yourself.

9 MS. HOMER: I think that that is an issue
10 that needs really careful thought. You know, I think
11 that access to fingerprint information or access to
12 criminal history information is, you know, is one of
13 those things that really needs a high level of privacy
14 act protection.

15 It can be, you know, it can be misused. You
16 know, in tribal governments we have separations of
17 powers. I think that employees designated by the
18 Tribal Gaming Regulatory Authority would be one thing.
19 But to open that up to anyone who wanted to take a look
20 at somebody's fingerprint processing or the criminal
21 history or, that that is something that you probably
22 want to be very, very careful about. And I would be
23 surprised if the FBI, frankly, would be agreeable to
24 that.

25 MS. ECHO-HAWK: I think the concept is

1 that, for example, compacts or ordinances may require a
2 higher level of background information for nonprimary
3 management or key employees as defined by the Act, and
4 they include those provisions in their ordinance. Once
5 they're included in the ordinance, if the state doesn't
6 handle it, then we've been asked by tribes to allow
7 them -- it would be through their regulatory authority
8 in the course of a licensing application and processing
9 that that they would submit it to the agency.

10 Again, you know, we've got some coordination to
11 do, if that's what tribes want to have happen. And
12 certainly understand your concern about privacy and it
13 shouldn't be something that you can just sort of do
14 willy-nilly.

15 We also have sort of another sort of -- or
16 another I guess point. And that is, that the Law and
17 Order Act now allows tribal police stations to utilize
18 the FBI's database and processing fingerprinting. So
19 some tribes may choose to address it that way. Other
20 tribes may choose to continue doing it through the
21 NIGC. And I guess our question is how broad should we
22 make that.

23 And if tribes want to allow the tribal
24 regulatory through their ordinance, through compact.
25 If it's a requirement of the compact to utilize the

1 NIGC, it's more cost-efficient perhaps, whatever the
2 reasons are, then should we, should we be accommodating
3 those requests.

4 But again, certainly understand the privacy
5 concerns. And it shouldn't be something that's done
6 without, you know, making sure that it goes through the
7 proper channels of the tribe, whatever those channels
8 are, as they're identified by the tribe either through
9 regulation or ordinance or the compact.

10 MR. VALANDRA: This is Joe Valandra again.
11 I think that it may go without saying, but I think one
12 of the issues is that the NIGC can facilitate, but it
13 can't -- shouldn't require, probably doesn't have the
14 authority to require beyond what IGRA says in terms of
15 requiring fingerprint background checks.

16 But further, I think that to the extent that
17 it's authorized by a compact or other tribal ordinance,
18 at least arguably under the Act, the NIGC has the
19 ability to enforce the provisions of the compact and/or
20 ordinances. Therefore, you might have an argument with
21 the FBI that in those limited circumstances you can
22 utilize their services for fingerprints.

23 But I happen to agree with Elizabeth. I think
24 any broader than that, you're probably going to get a
25 big pushback from the FBI.

1 VICE-CHAIR COCHRAN: Well, I know that the
2 staff has begun the dialogue with the FBI, so I'm sure
3 that's part and parcel of their discussions. They
4 haven't brought anything up to us directly. But it is
5 absolutely something that we're discussing with them.

6 Any other concerns? Comments?

7 All right, background and licensing for
8 management contractors. Part 537. All right. Again,
9 this is an area that the Commission has given a lot of
10 consideration to as pursuing, trying to gather
11 information from our staff, so that we get a thorough
12 analysis in addition to the tribes' commentary.

13 But we want to put it back out on the table
14 today to talk about whether or not the Commission --
15 one of those, again, broad-based questions that have
16 come up is whether or not the Commission should require
17 a Class III management contractor to submit background
18 information when the contract is only for Class III
19 gaming.

20 Any thoughts? Does this need to be clarified
21 at all, this particular section, to specifically
22 require Class III management contractors to submit
23 background information?

24 Ms. Homer, you're shaking your head. Did you
25 have a comment or a thought? That you wish to share?

1 I don't want to put you on the spot, I just see you
2 nodding your head and so.

3 MS. HOMER: Well, you know, I think that
4 Section 2711 of IGRA gives the NIGC the authority to
5 approve all management contracts. And it's not
6 predicated on whether it's Class II or Class III
7 gaming. Class III gaming, of course, is a compact
8 issue. But, you know, I don't -- and I think that some
9 compacts do have provisions with regard to licensure
10 for all key employees and primary management officials,
11 and some even broader than that. So it would seem to
12 me that, you know, if you were going to tackle this
13 issue with respect to the NIGC's own regulations, that
14 you might make that exception, that if it's covered in
15 the compact and it's, you know, otherwise being done
16 that, you know, the provisions of the compact comply,
17 but otherwise, you know, you definitely want to make
18 sure that management contractors are properly and
19 adequately backgrounded. I guess split the baby is
20 worse.

21 VICE-CHAIR COCHRAN: Well, your comments
22 also kind of allude to a streamlined process, whether
23 or not we need to streamline the process itself and
24 just focus in on the management contract itself and
25 improving that. Again, which raises all kinds of

1 issues, like who. I mean, what circumstances could we
2 do that. You know, and a big broader base is can we
3 really streamline.

4 MS. HOMER: Yeah, well, kind of based on
5 my experience, I think that one of the big holdups has
6 just been the size of the staff, you know, and the
7 internal capacity to, you know, to move this along in
8 an expeditious fashion. I know that -- and I don't
9 know if the NIGC still does this or, you know, you use
10 other federal agencies to, you know, like OPM or
11 another agency like that to conduct the backgrounds.

12 But I think that most of the problems in that
13 historically have just been in the limited size of the
14 staff, you know, in performing the background
15 investigations, which has been the primary part of the
16 delay.

17 Oh, and you had earlier -- since nobody else is
18 talking I'll come up here. And you had earlier
19 mentioned, you know, if you've got a management
20 contract, say you've got Harrah's and -- you know, and
21 they're everywhere, you know, and they are, you know,
22 there's a number of those facilities that Harrah's
23 manages. It does seem that, you know, that that could
24 be collapsed, you know, so that -- you know, with a
25 reasonable time frame.

1 So if you, if you've been -- if your company,
2 if the management contractor's been licensed, you know,
3 by the NIGC -- or not licensed, but backgrounded and
4 determined to be suitability, that maybe that
5 suitability determination could last for a particular
6 length of a time before it had to be updated. You
7 don't have to repeat it, you know, for every single,
8 you know, for every single management contract, you
9 know, as though the world just started over again, you
10 know. But, you know, you definitely want to keep those
11 updated at some period of time.

12 VICE-CHAIR COCHRAN: And that is part of a
13 conversation again that's been going on amongst our
14 staff, is can we -- if we head down that path, that
15 precise example that you gave, can we streamline the
16 process for the entity, is it Harrah's that we're
17 streamlining for, or should it be based on the persons
18 that are being backgrounded, time limits, how long,
19 once you get an approval, how long might it last, or
20 can we condition on the -- triggering conditions that
21 might say if Harrah's does X, then it will trigger a
22 new background next time they have to -- or have a new
23 contract. These are exactly the questions that are
24 being bantered around, with the idea of a streamline
25 process.

1 Any other thoughts? You guys are making this
2 easy. Let's talk about collateral agreements. This is
3 Part 531. This one, as Lael's PowerPoint outlined for
4 you a little bit earlier, in the Notice of Inquiry, we
5 had 39 comments on collateral agreements specifically
6 offered as to whether or not we should amend, in
7 particular amend 531 to require the submission and
8 approval of collateral agreements.

9 About half of them, a little over half of the
10 comments explicitly stated that the Commission should
11 continue to require the submission of collateral
12 agreements with the management contracts.

13 There was also some specific comments made back
14 that the NIGC should not amend its regulations to
15 require approval. And they offered very distinct
16 reasoning behind it.

17 One, of course, being that it's outside the
18 scope of our authority.

19 We shouldn't second-guess the tribe's business
20 decisions, of course, being another one that was
21 offered up.

22 It would be an expansion of our authority for
23 nonmanagement business relationships of the tribe was
24 another reason given.

25 There's been comments that we are mixing up

1 approval of management contracts and collateral
2 agreements with a sole proprietary interest
3 requirements that the agency has.

4 And those in favor of some mandate specifically
5 mentioned that we have a trust obligation to review and
6 approve their agreements, providing that additional
7 protection to the tribes and their business dealings.
8 In particular, to assure that the tribes are not in
9 violation of some proprietary interest requirements.

10 So we put this out for you, asking: Should we
11 consider whether or not we have the authority. Should
12 we spend more time in this area and consider whether or
13 not we have the authority to approve collateral
14 agreements to management contracts. And if so, what is
15 our authority, what is our basis of authority for doing
16 that. Liz?

17 MS. HOMER: You know, these are all really
18 -- really good questions. And, you know, you're trying
19 to balance a couple of competing interests here.

20 You know, one is that there have been incidents
21 in the past where management contractors have prepared
22 agreements that are amended or significantly changed by
23 subsequent or collateral agreements. And provisions
24 have been put in that, you know, that change the very
25 basic nature of the agreement that has been either

1 approved by the NIGC or has been proposed by the NIGC.

2 And so if you have like three separate
3 agreements, that when taken together, you know, make a
4 management contract, I think that that was, that was
5 the thinking, you know, when these regulations were put
6 into place, you know, at the beginning.

7 By the same token, we live in a world where
8 tribes are increasingly sophisticated, and are
9 represented by company counsel, and they make business
10 decisions that, you know -- and there have been cases
11 where I think that the NIGC has been, you know,
12 somewhat internalistic in its approach toward, you
13 know, reviewing tribal agreements. You know.

14 So the root question that you face in this
15 issue is, one, what is a reasonable interpretation of
16 the law, you know, with respect to the NIGC's authority
17 to review these agreements.

18 And then secondarily, you know, what exactly is
19 a collateral agreement. You know, in the past, I think
20 the approach has been taken that a collateral agreement
21 is any agreement you have with the same person with
22 whom you have a management contract. And not all of
23 those agreements are going to be technically collateral
24 to that company. There may be some kind of completely
25 independent sort of agreement. And just because you

1 have the same identity of contracting party does not
2 necessarily make all of those agreements collateral to
3 the management contract.

4 And I guess on the flip side of that, you know,
5 if some of these agreements are ending up where there's
6 a participation at a higher level than that which is
7 permitted under law, you know, and the -- you know, so
8 therefore the tribe is not getting the full benefit of
9 the, you know, of the protection of the law, you know,
10 in terms of the basically bottom line 60 percent, you
11 know, return to the tribes with still the primary
12 beneficiary of the gaming revenue. You know, that's an
13 issue, too.

14 You know, I'm not prepared today, you know, to
15 say this is the best way or the only way. But I do
16 think that, you know, there needs to be a really good
17 definition of what is a collateral agreement. And not
18 all of those agreements are going to require a
19 quote/unquote "approval." It may just be a -- a tribe
20 may wish to submit an agreement for the NIGC's review.
21 You know.

22 And I think that those permissive processes are
23 good. Like in the R contracts, the permissive nature
24 of submitting agreements to the NIGC for, you know,
25 kind of a quick legal opinion is a good thing. It's

1 been a service that the NIGC has long provided. And,
2 you know, you might want to formalize something like
3 that so that rather than, you know, putting in specific
4 regulations, you're putting in permissive regulations
5 that allow those kinds of decisions -- to allow tribes
6 more control over those types of decisions.

7 Now, under IGRA, you know, the NIGC's entitled
8 to see anything it wants. I mean, the statute
9 specifically does permit a review of all papers,
10 records, books, you know, I can't remember the whole
11 litany, but, you know, you do have that review
12 authority.

13 It's when you're exercising approval authority
14 I think is where the tension is. It's one thing to
15 review and express an opinion back and let the tribe
16 make the decision on a business basis.

17 Versus, you know, a turndown saying that you
18 can't do this because we've disapproved it. So I think
19 those are the, those are the big issues.

20 VICE-CHAIR COCHRAN: Thank you. It is a
21 very difficult rub, if you will, that you brought out,
22 which is, what's our statutory authorities. And where
23 does that intersect with the federal trust
24 responsibility. And it's evident in this, this
25 particular part. Joe, hi.

1 MR. VALANDRA: Hi, Joe Valandra again. I
2 think it's clear that the agency has the ability to
3 review any documents, as Elizabeth says.

4 You talk about authority, the only authority
5 that the chairperson has is to approve or disapprove a
6 management contract. Now, the question becomes the
7 totality of the review. Do all the documents make up
8 the management contract.

9 I think the Lac du Flambeau case has brought
10 many of those collateral agreements into sharp focus,
11 at least for review purposes anyway.

12 To me, it's more of a policy question. In the
13 past, I think the agency left a lot unsaid, so that it
14 in effect held management contractors and tribes, too,
15 but mainly the contractors, sort of they -- because of
16 the uncertainty that was created by the review process
17 itself. That was a tool.

18 In fact, Elizabeth and I used a tool that
19 tribes used very effectively to sort of negotiate with
20 management companies and saying well, you know, this
21 has to be submitted to the NIGC for review, so you
22 better be fair, or you better watch what we say in the
23 management contract.

24 Again, I bring it up in the policy context. I
25 think the bigger issue is not -- I mean, ultimately it

1 boils down to the reviewing authority. But it boils
2 down to what you're trying to accomplish in the
3 marketplace.

4 Are you trying to dictate terms of a contract
5 by being so specific that there's very little room to
6 negotiate? Or trying to create an environment where
7 there's lots of negotiation, but ultimately there's a
8 review that will say you did a good job or you didn't
9 do a good job and be less paternalistic.

10 And I think it's a pretty broad range, but to
11 me that's the more important question in the
12 marketplace, is what sort of review environment are you
13 trying to create.

14 VICE-CHAIR COCHRAN: Thank you.

15 MS. HOMER: I also think that a major
16 issue with respect to management contracts has just
17 been the length of time it takes from moving from point
18 A to point B. And quite frankly, I think that some of
19 that, some of that has been a reluctance on the part of
20 the agency to just express its views, you know. You
21 know, you get into this game where, you know, there's
22 this back and forth and back and forth and the -- you
23 know, there's a few issues raised here and then next
24 time there's a few issues raised there. And I think
25 that, you know, to expedite that process is to just

1 kind of be blunt, you know, and do it in a, in a time
2 frame. Rather than -- you know, rather than have all
3 of this go -- because it can drag on for two or three
4 years, you know.

5 I think, to me, that is a more chilling effect
6 on the community, you know, on the investments and the
7 business dealings than anything else. And it very much
8 discourages tribes I think from going the management
9 contract route, or in some cases, to circumvent it
10 through other types of arrangements and things. I
11 think that, you know, if the, if the process were kind
12 of more transparent with respect to what the NIGC's
13 views are and major concerns.

14 I think the regulations, they do set out all of
15 the statutory criteria quite clearly. I think that
16 that's a good thing. You know, I mean, you can show
17 that to the lawyer on the other side and say look, this
18 is what federal law requires, boom boom boom boom,
19 those things are really clear.

20 It's these other things that are less, you
21 know, that are less clear, that are unspoken, kind of
22 internal agency process. And I think that that's what
23 -- that would be a good thing to do, is to review that,
24 that process itself.

25 VICE-CHAIR COCHRAN: Thank you. Any other

1 thoughts, comments?

2 MR. VALANDRA: Yes, just one more thing.
3 I think the process has been adopted since Lac du
4 Flambeau with the declination letters. Making them
5 public, making them available as soon as possible is a
6 good idea. I think that accomplishes a lot of what
7 Elizabeth just suggested in that there's guidance based
8 on decisions that have been made to decline or not
9 decline based on certain structure to a transaction.
10 That gives a great deal of guidance to the marketplace.

11 VICE-CHAIR COCHRAN: Thank you.

12 MR. TAHSUDA: This is John Tahsuda again.
13 I think there is a little bit of tension built into the
14 statute, built into the regulations, which is, you
15 know, obviously a good thing.

16 There's also I think some tension between
17 different viewpoints on the tribes itself on this
18 particular issue. It's been one of the troublesome
19 ones over the years.

20 So I would agree I think that probably a lot of
21 tribes think that there is a trust responsibility here.
22 The question is, is how -- what is that and where do
23 you go with it.

24 I think going down the road of review but not
25 having to approve, actually approve things, is

1 probably, you know, more agreeable to a lot of folks.

2 When you step, you know, as you sort of step
3 away from, you know, the cynical notion of a management
4 contract to the periphery of collateral agreements and
5 further out now. And there's a lot of discomfort, as
6 Liz pointed out, with the time framing. That's
7 obviously one issue. If you had to review all these
8 other agreements as part of that, you know, that delays
9 things even more.

10 But I think the real, the real question
11 becomes, in part, as we talked about more the tools
12 that the Commission needs and then the tribal
13 regulatory authorities need as well, when you don't
14 have an actual management contract at the heart of
15 this. I mean, it's one thing to say you have a
16 management contract and there are other sort of related
17 agreements and you want to review those. What if there
18 is no management contract. And then to say, but in the
19 worst circumstances you have a collection of agreements
20 that, all told, may amount to a management contract,
21 you know, involving a party or related parties. And
22 how do you get to that.

23 Because I think there is a lot of discomfort
24 with tribes and with tribal operators that the NIGC
25 should be heavily involved in reviewing matters in

1 which there is no management contract, that's, you
2 know, at root here. I mean a formal management
3 contract.

4 But I think the tension in that is then when
5 you have the situation where you have a lot of
6 interrelated agreements among one or more parties that
7 add up to a significant relationship, a contract
8 relationship, and whether that collection of agreements
9 amounts to it. And I think that's, to my mind, that's
10 the difficult question is then where do you get your
11 information from and how do you proceed with, you know,
12 in looking into an investigative matter in which you
13 don't have a formal management contract submitted for
14 your review that you can immediately launch into.

15 MS. HOMER: I think that Mr. Tahsuda makes
16 really good points here.

17 And, you know, I think that the other, the
18 other thing that, that kind of factors in here is
19 there's a kind of a caveat emptor. If people are
20 entering into business relationships with tribes and
21 trying to circumvent federal regulations, and do not
22 have the proper federal approvals, then they're the
23 ones that are in jeopardy. Because the tribe can
24 repudiate those contracts. They will end up being null
25 and void because they haven't received the, you know,

1 the approval, or at least the management contract has
2 not, has not gotten approval. And so the operation of
3 the law to some extent takes care of some of those,
4 some of those issues that -- that were, in my view,
5 policy issues that were driving the NIGC's views that
6 collateral agreements need to be reviewed as well. You
7 know, if, if -- if those end up being management
8 contracts, then it is, the risk is on the contractor.

9 VICE-CHAIR COCHRAN: Thank you. Anything
10 else? Well, thank you for the dialogue. Because these
11 are exactly the conversations that we're having. And
12 you've raised some more considerations for us.

13 All right. We've got two more parts under this
14 group. 571, which deals with the access to off-site
15 records held by a third party.

16 The NOI, the comments that were received in
17 response to the NOI, included 34 comments in particular
18 were received on this part. And the supporting -- or
19 the comments supporting amendments to clarify access
20 identified, in particular, that the regulation should
21 be revised to provide clarification of the NIGC's
22 authority to access documents. We should have access
23 to gaming records no matter the location of the
24 records.

25 Offering amendments to clarify and to grant or

1 to assure access ensures the integrity of the gaming,
2 was one of the comments.

3 In the comments that we received expressing
4 opposition, the comments included that the section
5 should be revised to explicitly deny the NIGC access to
6 Class III records. That it wasn't necessary. NIGC
7 already has the right to access all records of the
8 tribal gaming enterprise regardless of location.

9 The NIGC does not have authority to examine
10 records that are located at off-site locations
11 maintained by a third party.

12 Is there any comments you'd want to begin the
13 dialogue?

14 MS. HOMER: Could we go back to the
15 previous subject matter for just a second? Because,
16 you know, we were talking about the NIGC exercising its
17 trust responsibility. And, you know, that is in
18 Section 2711. And on the issue of that, you know, the
19 exercise of the NIGC's trust authority cannot just be
20 kind of an arbitrary catchall for a contract that the
21 NIGC doesn't, you know, doesn't like or doesn't think
22 is a good deal.

23 And, you know, at the Department of the
24 Interior, when the Secretary is exercising their
25 authority, their contract review authority, you know,

1 there is a much longer process and an economic analysis
2 that goes with that. So that there are factors that
3 you can point at that, you know, that you point out
4 what is, you know, what is the specific reason or bases
5 for determination that a reasonable trustee would not
6 approve this agreement.

7 And I think that because there isn't a process
8 -- or hasn't been, I don't know if there is now, but
9 there hasn't been a process in previous years, and it
10 wasn't a very, you know, often-used reason, but I was
11 always fearful, and I remain that way, that it could be
12 used as just kind of that catchall.

13 And that's not -- I don't think that that
14 comports with due process. There really needs to be
15 more fleshed out on what, you know, kind of what
16 analyses and what bases the NIGC would use in
17 exercising its trust authority to deny a management
18 contract. So that was what I would say.

19 VICE-CHAIR COCHRAN: Thank you for
20 returning to that. Thank you for your thoughts. The
21 comments on the NOI on the tribal side on the trust
22 obligations of the agency were interesting in that
23 respect. So I appreciate you coming back to it.

24 MR. VALANDRA: I guess one other thing on
25 that, too. This is Joe Valandra.

1 Because the question has been asked and
2 discussed by the Commission, and it has such a profound
3 or a potential profound impact on the marketplace, if
4 for some reason the Commission decides not to act on
5 this, not to make any changes, to let the status quo
6 stay where it is, a statement of reasoning would be
7 very helpful to the marketplace. So it isn't just, it
8 doesn't continue to churn, as it likely will, unless
9 there's some sort of reason given for no action.

10 VICE-CHAIR COCHRAN: Thank you, that's a
11 great idea. Anything else on collateral agreements?
12 Or we can come back. I mean, another point, just
13 because I move on, just in terms of an agenda, doesn't
14 necessarily intend nor do I intend to cut off dialogue
15 if there's something else that needs to be returned to.

16 MS. ECHO-HAWK: One point I wanted to add,
17 returning back to the off-site records issue. And
18 somehow this came up sort of collateral to this here,
19 actually I think here at one of the consultations we
20 had here, and then within the agency itself, about
21 whether an investigation closure letter should be sent
22 to a, to a tribe once an investigation has been closed
23 for whatever reason.

24 I think last time we were here we spent a
25 substantial amount of time talking about investigations

1 and investigation closures. And I think it had to do,
2 some of it had to do with, you know, financing. A
3 financier may ask if you're currently -- you know, your
4 tribe has an obligation to disclose that they're under
5 investigation. And they may be under investigation or
6 think they are, the investigation is closed, but nobody
7 knows.

8 So it's something we've been kicking around at
9 the agency level about if these letters should be
10 issued, when they should be issued, under what
11 circumstances. Those kind of, those kind of letters,
12 whether or not we should send them out.

13 We've taken a look at other agencies, like the
14 FAA, the FCC, the SEC, those kind of other regulatory
15 agencies to see what they do. And so we're still in
16 the process of reviewing those other agencies'
17 materials.

18 But it's an issue that's come up and so I --
19 again an issue I wanted to raise in the course of these
20 consultations, if that's something that tribes want us
21 to look at, and then give us some guidance on when it's
22 appropriate and when it is not appropriate.

23 MR. TAHSUDA: I'll offer one comment.
24 This is John Tahsuda again.

25 On the issue, the question requiring tribes to

1 maintain all the records on site. One, I would
2 question sort of the authority for that. Two, I'm not
3 sure, I guess I wouldn't -- I'm not sure that that is
4 the best business practice anyways. I mean, given
5 where we are today, you know, computers and the vendors
6 that are, the tribes that are engaged on any level.
7 But I think that would be, one, difficult. But two, I
8 think there's a certain level at least of duplication,
9 having records maintained by vendors, you know, at
10 their place of business as well. That serves a useful
11 function.

12 And I guess my only thought would be it might
13 be helpful for some tribes in coming out of this if
14 there was, you know, some guidance that they've
15 expressed, or maybe post a bulletin, but to suggest
16 that tribes require their vendors if they are -- to
17 maintain their records for a certain period of time at
18 their place of business for the tribe's purposes as
19 well.

20 VICE-CHAIR COCHRAN: Thank you.

21 MS. HOMER: Well, just to add to that. I
22 can't agree with this because, you know, one thing,
23 IGRA gives the NIGC subpoena power. You can get
24 records from anywhere. You know, if there's one thing
25 that IGRA is clear about, that is the provision that,

1 you know, the NIGC can review all books, records, da da
2 da da da. And you were given subpoena power on top of
3 that.

4 So specifying a specific location, especially
5 since we're all going into electronics now, I mean I
6 just -- I have my big Homer Law accomplishment of the
7 year, I now have a cloud. I'm not quite sure about
8 clouds but, you know, all my records are now in a
9 cloud. And I supposedly, if I learn how, can access
10 them from anywhere.

11 And, you know, I mean -- and I have a client
12 that right now we're hauling off thousands of pounds of
13 records at a great cost because we're about to be
14 flooded by the Missouri River. So, I mean, that's,
15 that's another gee, I wish our records were electronic
16 and in a cloud somewhere and not, you know, on the site
17 of our casino, because they're in jeopardy.

18 So I think that this is one of those
19 requirements -- you know, I can see the five-year
20 retention but, you know, we -- and almost everybody is
21 at that point now that, you know, they have electronic
22 storage and a backup and those kinds of things. And so
23 this to me is one of these kind of increasingly
24 becoming a dinosaur sort of issue and will be obsolete,
25 you know, at some point.

1 And if it's with respect to in the custody of a
2 third party, you know, you have subpoena power. And
3 you can get records from -- you know, you approve the
4 management contracts, right? You know, so you can get
5 it from the management contract, they're the operator.
6 So wherever they are, you have access. In my view -- I
7 don't know, I hate to offer a legal opinion, but in my
8 view, that that's really not a problem for the NIGC.

9 VICE-CHAIR COCHRAN: NIGC is looking for
10 our cloud, too. We'd love to have a cloud.
11 Unfortunately, we have a dinosaur.

12 Subpoenas or not. Another question that's come
13 up is anytime the NIGC accesses records held by a third
14 party, whether or not we ought to have an obligation to
15 notify the tribes that we've done that. And how should
16 we. I mean, how, how might that look. Any thoughts?

17 MS. HOMER: Well, you know, I think that
18 one of the things that's going to be -- that would
19 really help me and my clients is if the NIGC would put
20 a notice on the letterhead and then send it to both,
21 you know, the chief executive of the tribe, and the
22 Gaming Commission, and counsel of record for that
23 tribe. You know. That way, things don't get lost in
24 the mail or, you know, routed to the wrong, you know,
25 to the wrong people and those kinds of things. That

1 that would be useful.

2 VICE-CHAIR COCHRAN: That's a good idea.
3 All right. Let's finish up this group and then we'll
4 break for lunch.

5 The final regulation in Group 4 has to deal
6 with the definition of net revenues. And we in the NOI
7 asked whether the definition of net revenues -
8 management fees be defined to be consistent with GAAP.
9 And there's been a lot of discussion internally about
10 that.

11 And the comments that we received back, most
12 were supportive of doing that.

13 Is there any additional discussion that wasn't
14 offered in the NOI comments that you wanted to offer
15 today?

16 MS. ECHO-HAWK: These were the issues that
17 we've identified: Whether or not GAAP actually
18 provides that clarification was an issue we raised in
19 the fee, when we were talking about the fees and
20 whether or not we change the definition of net gaming
21 revenue there. It was specific. And the PowerPoint
22 shows you that the definition of gross gaming revenues
23 -- or the definition of net revenue and how that's
24 defined by the Act.

25 And so I guess our question is do we, do we

1 even need to address this issue?

2 We did get a comment that the current, the way
3 it was currently defined in this section is not
4 consistent with IGRA. If we need to go back and take a
5 look at that.

6 I think the issue came up more in the context
7 of, you know, we've got all these definitions in net
8 revenue, our compact says something, you know, we've
9 got it calculated for our management fees. IGRA says
10 this, you know, then tribes are -- and I think we've
11 been hearing pretty consistently like can we figure out
12 what the definition is. And it sounds simpler than
13 we're finding out it really is.

14 Because compacts do have different definitions.
15 Sometimes, you know, compacts vary state to state,
16 sometimes tribe by tribe. And the -- what, you know,
17 has to be consistent with IGRA. But when it comes down
18 to calculating, say, revenue sharing or percentages,
19 they have to go back for mitigation. All those things
20 are considerations. And sometimes it can be confusing.
21 And whether or not this -- the changing the NIGC's
22 regulation is the appropriate place to do that is
23 something we're grappling with internally. And I know
24 that we've heard tribes have been kind of been
25 grappling with that as well.

1 So something to think about. And if you have
2 thoughts then, again, we'd love to wrestle with this
3 issue with you.

4 MS. HOMER: Well, one of the I think
5 simplest solutions to this issue is to narrow what we
6 mean by "net revenue." So we're stuck with the
7 statutory definition. You know. You can't change the
8 statute by regulation. But what you could do is say
9 for purposes of management contracts, net revenue
10 means. And then you could have a -- you know, because
11 that's what is intended, you know, that definition of
12 net revenue is intended to go with that management
13 contract section, Section 2711 of IGRA.

14 But for purposes of calculation of NIGC fees,
15 you might want to, you know, for purposes of
16 calculation of NIGC fees, and Section 2711, net revenue
17 means. And that way, it's specific to what is intended
18 by the statute. And if I have a different way of
19 calculating my compact fees, then for purposes of my
20 compact fees I follow my compact. And, you know, we're
21 kind of out of the problem I think.

22 You know, I think the problem is people see the
23 regulation or the, or the statute, and they think that
24 that's net revenue for all purposes. And then when it
25 conflicts, we get all kind of freaky about it. But if

1 we narrow it to what is intended to be captured, then
2 we avoid all of those conflicts, and we just do for our
3 compact stuff what our compact says.

4 VICE-CHAIR COCHRAN: Thank you, Liz.

5 Anything else? Any other thoughts? All right,
6 I know you're probably starving, so let's break for
7 lunch. And we'll meet back at 1:30, we'll finish up
8 the final group. And if you want to revisit anything
9 at that time, please let me know before we get into
10 Group 3, and we'll revisit it quickly, and then we'll
11 go into the final group.

12 (Lunch break taken at 12:12 p.m.)

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1 AFTERNOON SESSION, 1:39 P.M.

2 VICE-CHAIR COCHRAN: We'll go ahead and
3 reconvene. Well, welcome back. I hope you enjoyed
4 your lunch. And hope you're ready to focus for a
5 little bit longer on the final group for discussion,
6 which I know is of concern to -- great concern to many
7 of you sitting in this room. So let's go ahead and
8 jump right back on in.

9 We're on Group 3, which is the Class II MICS
10 and Class II Technical Standards. And as Lael
11 initially introduced this in her presentation, the NOI
12 asked how to proceed with the revisions to these two
13 parts. And the current implementation date for the
14 MICS, the 2008 MICS, is October 13, 2011. So we are
15 under a deadline to do something, if not to respond,
16 but to do something, to do some type of an action by
17 then.

18 There were existing draft regs. out there that
19 we put up on the Web site. And I know that the Tribal
20 Gaming Working Group also prepared something and we put
21 that on the Web site as well.

22 So I am going to just open this up for a
23 discussion. Because like I said, I know that many of
24 you sitting here have a great amount of interest in
25 this. And I'm going to let you start the conversation

1 and we'll fill in the gaps. So whoever wants to be the
2 first out, please take the floor.

3 MS. LASH: Yes, I'm Robin Lash with the
4 Miami Tribe, gaming commissioner. And on behalf of the
5 Gaming Commission for the Miami Tribe, I would just
6 like to make a few comments on the regulations, on 543
7 and 547. I also have been an active participant on
8 behalf of the tribe in working with the Tribal Gaming
9 Working Group. And I think that some very important
10 changes were made in our proposed revised regulations.

11 Primarily what I want to emphasize is that no
12 standards as they're written now have changed. We --
13 we're not shortening or taking away from the
14 regulations that are in place. I know that there's
15 some concern out there that perhaps, you know, that
16 that may be happening. But it is -- what we did
17 primarily was go through and organize, reorganize the
18 regulations. I think that as they are now, they're
19 voluminous and they're rather confusing. Some of the
20 subparts reference other subparts within them. Like,
21 for instance, I think it was drop and count in
22 surveillance. There are parts of those subparts
23 sprinkled in other subparts.

24 So we pulled those out of the subparts and
25 reorganized them and even created some new subparts,

1 like gaming promotions. We added accounting to audit.
2 We have a patron deposit cash and cashless systems.

3 So we've created some subparts. And I think
4 that it was important that this was done.

5 I think again also pulling out a lot of
6 procedural things that were a part of -- that are a
7 part of the regulations in place right now. As I
8 stated earlier, and as Chief Gamble stated in his
9 statement, tribes are the primary regulators. And I
10 think that it's fair to allow the regulators to
11 implement in their tribal internal control standards
12 the procedures to implement the standards required by
13 the MICS.

14 So I think that those are some primary areas
15 where we have worked. And I think that it's a very
16 well reorganized document. I think it will read easy
17 for commissioners.

18 In addition to this, we're still working on the
19 guidance documents and checklists that will
20 substantiate the proposed revised MICS, as well as, you
21 know, giving the gaming commissions ideas on how to
22 implement the regulations. I think that will be really
23 helpful to the commissions. And will leave us with
24 regulations that are simply standards and not standards
25 and procedures.

1 As far as the Technical Standards, on behalf of
2 the Commission, I think one of the important things,
3 one of the important changes that was made was getting
4 rid of the sunset clause. We feel that these machines
5 have already been tested and they're safe machines,
6 there's no question about it, so we don't see why
7 there's a five-year grandfathering situation. So I
8 think that change was made.

9 I know that there was also some clarification
10 in terminology in the Technical Standards.

11 And I think I'll let some of the other parties
12 in the room speak to more of the technical aspects of
13 the Technical Standards.

14 But the Gaming Commission for the Miami Tribe
15 wholeheartedly supports the proposed revised MICS. And
16 we'd like to thank you for your willingness to accept
17 the document and to review it and to let the tribes
18 give their perspectives on what the regulation -- what
19 should be in place to regulate our casinos. Thank you.

20 VICE-CHAIR COCHRAN: Thank you. The
21 agency, as you know, has received the documents. And
22 we have farmed part of it out to our staff, different
23 sections, for their internal analysis and review. And
24 we're waiting to hear back from those. It's very
25 voluminous. It's a very important document. So we

1 want to make sure that our analysis is thorough and
2 complete. And so we don't have at the Commission
3 level, of course, any comment yet. But it is very
4 important and we understand how much work went into
5 this document for us to spend some time with.

6 Any other general comments or comments that
7 represent a leadership perspective? Any other
8 generalized comments? All right. Want to talk about
9 something in specific?

10 Was there a discussion or is there any
11 perspective on whether or not the grandfather systems
12 that are out there right now would be fully compliant
13 with the existing Technical Standards? Anybody?

14 I know that the request is to remove the
15 provision, but I was curious for how long. By 2013 --
16 oh, I'm sorry, will they be fully implemented by 2013?
17 Anybody?

18 MS. SHAPIRO: I'm going to speak to
19 (inaudible). This is Judy Shapiro. I think the
20 request to remove the grandfathering reflects the fact
21 that there are a number of what people might call
22 heritage games out there that might not comply with the
23 smaller details of the Technical Standards, which is
24 why this request to remove the grandfathering deadline.

25 But any game which has been grandfathered still

1 has to meet those threshold criteria for fairness and
2 integrity of the game. So that if a game was already
3 grandfathered or would in some theory have been
4 eligible to be grandfathered if the application got in,
5 does meet those three special criteria. And I think
6 they are just old technology issues for some of these
7 grandfather games. I'm looking to Charlie for
8 confirmation on that. Yeah, I think that's right, is
9 that some of the boxes are old. And to bring them into
10 compliance is not economically feasible, but there are
11 tribes that are relying on those. Or would like to be
12 able to rely on those if somebody else upgrades them
13 and the game moves somewhere else.

14 So that I think that the request to lift the
15 deadline on the grandfather games reflects the fact
16 that they're not going to be in compliance. Because if
17 they were, then we wouldn't have to put the deadline.

18 MS. ECHO-HAWK: It was also my
19 understanding that a number of the systems, the games
20 that are not, that are not grandfathered today, it
21 might have been simply because they were not on the
22 floor or in operation at that time. And so it was sort
23 of an arbitrary line in the sand. And had they been at
24 somebody's operation at the time that this provision
25 kicked in, then they would have been eligible for

1 grandfathering. Is my understanding of that correct?

2 MS. SHAPIRO: Yes.

3 MS. ECHO-HAWK: Okay.

4 MR. VALANDRA: One other thing I think.
5 An important philosophical point, policy point that
6 came up five years ago when all of this started, is
7 that that deadline sort of focused on the box. And in
8 reality, if you focus on the system and make sure that
9 the fairness of the system is intact, what's at the box
10 level matters less, so long as there's minimum security
11 issues with the box. But otherwise if you focus on the
12 box, then the deadline is important. If you focus on
13 the system, it's a lot less important.

14 VICE-CHAIR COCHRAN: Thank you.

15 MS. ECHO-HAWK: Sticking with the
16 Technical Standards, we also noticed that there's a
17 change in the variance provisions. Is anyone able to
18 kind of walk us through that change, kind of give us an
19 understanding for why the change was made and what it
20 might mean to the tribes and also the NIGC?

21 In the Technical Standards, there's been a
22 change made to when a tribe grants or a variance sent
23 into the NIGC, NIGC has got I think 30 days to send it
24 back or something. But it's certainly a significant
25 change. It's different than what's in the current reg.

1 And so I'm just wondering if you can kind of expound on
2 the rationale, what it means on the ground, why the
3 change was made, just so that we get kind of an idea
4 for that.

5 MS. HOMER: Hi, I'm Elizabeth Homer. You
6 know, I have been participating in the working group.
7 And I think the main issue with the variance is, you
8 know, one, to ensure that there's due process so that,
9 you know, so that there's a clear understanding of how
10 a variance can be issued, and to clarify the authority
11 of the tribal gaming regulatory agency to grant those
12 variances, subject to concurrence. There was an
13 opportunity for concurrence by the NIGC.

14 I mean, the way that things have been -- have
15 been kind of working under the old MICS or the Part
16 542, nothing -- you know, nothing could be, no variance
17 could be granted without ultimately the NIGC weighing
18 in on that. And that can be a very, very slow process.
19 And, you know, and you may need a variance today in
20 order to take care of a technical issue or the event of
21 some kind of a crisis or an emergency or those kinds of
22 things.

23 And so the ability to provide that flexibility
24 to the tribal gaming regulatory agencies, and then
25 follow up with kind of the NIGC bias to that, can, you

1 know, can be very important.

2 So those were the basically the two kind of
3 primary reasons for making the change the way it was
4 proposed in the TGWG's work product.

5 VICE-CHAIR COCHRAN: Thank you. Are there
6 areas in particular that you would suggest that we
7 focus on, at the policymaking level of course, that you
8 really want us to have our attention focused on?

9 MS. HOMER: In terms of the Class II?

10 VICE-CHAIR COCHRAN: The tech standards.

11 MS. HOMER: The tech standards. Well, I
12 think that -- you know, and others please join in to
13 the discussion here. But I think the grandfather
14 provision is one of the, one of the major areas.

15 And the other is the fact that there were odds
16 that were put -- built into the Technical Standards
17 that do not provide for -- that were basically
18 arbitrary. And I think that the former commissioners
19 actually even said that; yes, we know that it's
20 arbitrary, but we picked an arbitrary standard because
21 it felt very much that they needed an arbitrary -- or
22 they needed some kind of odds built in.

23 There was really little discussion that -- that
24 I saw in the original preamble to the, to the Technical
25 Standards that discussed, you know, a reasonable basis

1 for why that particular number was fixed, whether or
2 not there was even any kind of a, a look-see into the
3 charitable bingo market or into, to see -- or state
4 lotteries, to see if we're kind of in that same
5 ballpark. That we were perhaps -- what was happening
6 is that a competitive disadvantage was built into the
7 Technical Standards, or that there wasn't an adequate
8 analysis with respect to that.

9 And the fact that bingo math is different.
10 It's different than a slot machine math or those kinds
11 of things. And there's variables in bingo that don't
12 exist in the Class III gaming world.

13 So, you know, looking at the odds, or looking
14 at what the mathematical expectations are, the group I
15 think has the consensus that that's very important.
16 We'd like to see that language changed to be more
17 reflective of bingo technology as opposed to slot
18 machine technology.

19 MS. SHAPIRO: Piling on. Judy Shapiro
20 again. Elizabeth and I have both been with this
21 working group for longer than we hope to admit. We'd
22 like to stress that this group, and I think we should
23 put this on the record at some point, this group was
24 heavily controlled by tribal gaming regulators. It was
25 heavily attended by tribal gaming regulators. There

1 were some operators or other resources brought in by
2 gaming labs and also by some manufacturers. But on the
3 whole, this is a tribal product and this reflects the
4 requests and desires of those tribes that participated
5 or sent their representatives to participate. It was,
6 it was done in that way to get you the most efficient
7 consolidated thought-through product that we all could.

8 In terms of what to focus on, and I think Joe,
9 when he spoke before, highlighted the problem that
10 permeated the earliest and even the most recent version
11 of the Technical Standards, is to focus on the box
12 rather than the system.

13 Historically, the original tech standards as
14 proposed by NIGC were entirely box-driven. And the
15 earlier gaming working group pushed a lot of that back.
16 But there's still residue there. And the flaws that
17 permeate the tech standards, and to some extent the
18 MICS, as originally proposed by the NIGC, flowed from
19 that misunderstanding and the perpetuation of that
20 misunderstanding, that the regulation of bingo is
21 different from the regulation of slot machines. And it
22 has to be.

23 There is some technology in common because
24 things light up and you plug them into the wall. But
25 the math is different. The technology is different.

1 The fact of interaction among players is different.
2 The fact of networking is different. Networking has
3 only recently come to Class III, and it brings its own
4 issues. It is the core and center of Class II, and it
5 brings its own issues.

6 And the attempts of the Tribal Gaming Working
7 Group is to bring their experience with this very
8 different system to bear, and to try and resolve that.

9 The issue of minimum odds and maximum odds was
10 entirely arbitrary and entirely proposed by the
11 previous Commission and has no bearing on this. It's
12 not relevant. You know, there are not many things that
13 we would recommend saying that's silly, take it out.
14 But that's there, that's one.

15 Entertaining display. Entertaining display.
16 The regulation of an entertaining display is focusing
17 on the lights and the whistles without focusing on the
18 innards. And to say that an entertaining display must
19 do any X or any Y or any Z and to enthrone that in a
20 regulation, is misguided. It suggests that there is
21 substance in the entertaining display, when there is
22 none.

23 An entertaining display could be nothing but a
24 field of flowers saying, "Congratulations, you won."
25 It doesn't have to show something which looks like a

1 slot display. It doesn't have to show anything. There
2 doesn't even have to be one.

3 Back when we were first designing things to get
4 through advisory opinions at the NIGC, we would design
5 a game which says look, you can do nerd play, the only
6 thing you're going to see is a video card. And it's
7 going to light up and it's going to show you the
8 patterns. That's all we have to have.

9 If there's an entertaining display, as long as
10 it doesn't mislead the player in some way, how it
11 transmits information is entirely irrelevant.

12 The Gaming Commission may require of vendors
13 that that information be available so that they can
14 resolve disputes, so they can determine winners, all of
15 those things. But the entertaining display should not
16 be the subject of a technical standard regulation by
17 the NIGC.

18 MR. VALANDRA: If I can give just a little
19 more color to that, too. I think it's important to
20 note that the provision in the current Technical
21 Standards 547 requires that the outcome displayed on
22 the entertaining display be stored and be available for
23 review. And that was the center of the controversy, is
24 that by requiring that, you're giving significance to
25 the entertaining display that it doesn't or shouldn't

1 have, as Judy just described. And I think that's an
2 important point. And again, it was introduced
3 without -- I happened to be part of those debates at
4 the time, without getting into too much about that, but
5 it was really an attempt at -- it was an attempt, and I
6 think an honest attempt, to provide more information to
7 tribal gaming commissions to resolve disputes. And
8 that's the context in which most of the argument or
9 debate within -- that I was part of, came up. But by
10 taking that view, you really broaden and give more
11 significance to the entertaining display than it should
12 or ought to have. That so long as the outcome of the
13 bingo card and the bingo game itself is available to
14 resolve disputes, that's all that's really required.

15 MS. SHAPIRO: And this was discussed at
16 painful length within the Tribal Gaming Working Group.
17 So that if there is a gaming commission that wants that
18 regulation, they can ask for it. That was the other
19 focus of the Tribal Gaming Working Group, was to
20 separate out a requirement that is appropriate to be
21 imposed by the National Indian Gaming Commission, and a
22 requirement to meet the needs of the specific tribal
23 gaming commission.

24 I mean, it would be delightful, if you were the
25 manufacturer and you want to know that there's only one

1 standard, that's great. But that's not the focus of
2 this. The focus of this is does the gaming commission
3 have the information that it needs. And the minimum
4 internal controls are the information it needs. If a
5 tribal gaming commission says well, we want to have the
6 past ten games as shown in the entertaining display,
7 then it has the power to say to its vendor we want the
8 past games shown in the entertainment display and if
9 you won't produce it then we'll go to another vendor.

10 The tribe has the ability to get what it needs
11 in addition to the minimum standards. And then it can
12 ask for it. And it should not be something that is set
13 in stone by the National Commission in such a way as to
14 mislead the outside world into thinking that that is
15 part of the critical core of what a Class II game is.

16 MR. BURRIS: Just a little clarity on what
17 Elizabeth was saying, too, about the --

18 VICE-CHAIR COCHRAN: First, would you.

19 MR. BURRIS: I'm sorry. Tracy Burris, the
20 Gaming Commissioner of the Viejas Band of Kumeyaay
21 Indians.

22 Trying to do a little bit more clarity on the
23 distinction between bingo and a slot machine. Bingo
24 does consist of numbers, but it has numbers
25 specifically to a pattern. The letter X, the six-pack,

1 nine-pack, four-pointers, postage stamp. That's what
2 its distinction I'm trying to get to. It isn't
3 necessarily trying to get to three cherries or whatever
4 variance into the slot world, if you will. Even though
5 it is used for entertaining display to carry on from
6 that bingo pattern.

7 You can go across the hallway to Epic
8 University, if you want to know the bingo probability
9 on achieving the letter X, the probability has a range
10 of numbers that have to be drawn. In other words, it
11 may be between 16 and 24 that you achieve that letter
12 X, as opposed to similar on a slot machine, it has a
13 specific, because it's geared mathematically and
14 symbolized.

15 The difference is that bingo, as close to the
16 math science as it is, it can miss it by a variance of
17 numbers. That's the reason why we say in our mini
18 games, you know, 16 numbers or less, or a blackout, and
19 certain percentages are based on numbers being hit.
20 But we know about probability of going back to our
21 patterns series going back. I mean, like I said,
22 that's the distinction what makes it so much more
23 difficult and it makes it distinguished from bingo
24 itself, not to the probability of the slot machine
25 based on those mathematical coordinates.

1 So that's the important part to understand,
2 that it is about, it's about bingo game and nothing
3 else.

4 VICE-CHAIR COCHRAN: Thank you.

5 MS. HOMER: I think, you know -- just to
6 kind of back up a little, talk about the working group
7 a little bit. You know, the working group is very in
8 favor of good technical regulations. So don't, you
9 know, don't think that there's anything but a desire
10 for good technical regulations. They benefit us. They
11 benefit our industry in a number of ways.

12 And, you know, and I think that there were some
13 things that were initially put in the Technical
14 Standards because, again, the NIGC is kind of wanting
15 to take care of us out here in Indian Country, and so
16 there were some provisions written in, you know, about,
17 you know, having our machines tested at the Underwriter
18 Laboratories and, you know, that kind of thing.

19 You know, well, one, the NIGC -- you know, the
20 authority for that, for issuing product standards, has
21 to be in your statute. If you're going to issue
22 product standards, you know, it needs -- you need to
23 have the statutory authority to do that. And nothing
24 in IGRA suggests that the NIGC is going to be issuing
25 these kinds of product standards, you know.

1 And, you know, to select a particular vendor,
2 you know, a particular place where the testing has to
3 take place, you know, that's probably something that,
4 you know, on hindsight, the NIGC did not want to do.
5 You know, Underwriter Laboratory standards are used by
6 all kinds of laboratories. It's not just the, you
7 know, Underwriters Laboratories that uses that. I
8 mean, the UL standards are virtually, what, universal
9 in the United States.

10 But the additional testing is, is basically
11 what we're talking about. Sort of like yes, we believe
12 that our machines should not electrocute people. But
13 our machines have not electrocuted anybody. And we've
14 been operating them for a long time. And that those
15 kinds of product testing are covered by other federal
16 statutory regimes that apply to manufacturers of
17 products, you know, that do have the authority, the
18 regulatory authority and the appropriate standards for
19 the testing of electronic or electrical, you know,
20 equipment use in the United States.

21 So we think that the Underwriter Laboratory
22 stuff should probably be deleted out of here. And if,
23 you know, if the NIGC says choose, you can
24 cross-reference to other statutory regimes in your
25 preamble to explain what you're doing. But in IGRA,

1 that is not there, that authority is not there.

2 VICE-CHAIR COCHRAN: Thank you, Liz. Can
3 I ask a follow-up question that's somewhat related to
4 that. I do believe I saw the recommendation to remove
5 the provisions regarding independent laboratory
6 testing. Do you want to -- can you walk us through
7 what the thought process was there as well.

8 MS. HOMER: Well, we're not talking about
9 removing independent laboratory testing. The issue is
10 that basically when you read the existing regulations,
11 it sounds as though the -- it makes it clear that
12 tribes can't have their -- can't be conducting testing
13 on their own, you know, on their own tribal casino's
14 equipment.

15 And, you know, the question is the
16 appropriateness of presuming that there could not be an
17 adequate independence by a tribally operated
18 laboratory. Which we think is, you know, is an
19 inappropriate, is an inappropriate conclusion.

20 But I think that in the end we all agreed on
21 the language that was finally agreed to, is we'll take
22 out the -- we'll change the language that makes it
23 sound like a tribe can't have its own laboratory, to,
24 you know, saying that it can't have its own laboratory
25 but it will use an independent laboratory for its own

1 testing. You know.

2 So we think that we kind of struck a balance
3 there in the language that was offered back to the
4 NIGC. We tried to balance those competing interests in
5 that independence. And that was basically it.

6 MS. SHAPIRO: (Inaudible.)

7 MS. HOMER: Well, that kind of goes to the
8 IT standards. We're not on that subject matter right
9 now.

10 You'll notice that there has been quite a
11 reduction in the text of the IT standards. And at some
12 point, I don't know if this is the proper forum to talk
13 about that, but going back to the MICS, you know, that
14 is, that is a kind of an important issue in the MICS.

15 VICE-CHAIR COCHRAN: Okay, can you hold up
16 for just one second and we'll move into that.

17 Here's another question I'd like to throw out
18 again for anybody who has something to offer. Do the
19 standards have enough language to address remote access
20 technologies? Anybody have a thought or?

21 MS. HOMER: Yeah, remote access is a MICS
22 issue. It should be addressed in the IT in the MICS,
23 as opposed to the Technical Standards.

24 MS. ECHO-HAWK: And this is a question
25 that came up. We're doing a lot of Class II 101s at

1 the agency level. And one of the issues that has come
2 up is the location of the server. I don't know if this
3 is in the tech standards or in the MICS, but Indian
4 gaming must occur on Indian lands. And one of the
5 issues that was raised by our staff is that sometimes
6 servers are located at the manufacturer's site, and
7 Vegas, and Hong Kong, wherever it is. And because
8 Class II is a server-based technology, is there or
9 should there be a requirement that that server be on
10 Indian lands, whether it be, you know, some game that's
11 operated at Chickasaw but the server is located at
12 Seminole, whatever it is, how do we make sure that
13 that -- because if you focus on the system, making sure
14 that the system itself, or the game actually, all that
15 stuff actually happens is located on Indian lands.

16 MS. HOMER: If you strictly applied that,
17 Lael, we couldn't have progressive games, which have
18 long been authorized. I think it's the gaming activity
19 has to occur on Indian land. But we have the ability
20 under IGRA, and it's clear in the, it's clear in the
21 legislative intent of IGRA, that we can use these
22 modern forms of gaming, you know, and use telephone and
23 communication lines, all of those things are
24 specifically. If you took that theory to its nth
25 degree, it would -- that's never been the NIGC's

1 position, you know.

2 I mean, yes, it is true that, you know, that
3 there's computer equipment that are linked to, you
4 know, off-site locations. But it's within -- what is
5 it, Judy knows all the technobabble for this, the etho
6 -- ethernet.

7 MS. SHAPIRO: Pardon me while I babble.
8 So the relevant question is, you've got a lot of
9 technology. That means there are a lot of servers.
10 Servers just mean you're sending information out over
11 the ethernet, as they say, over wires, over air,
12 whatever it is.

13 The question that you need to be concerned with
14 for the purpose of Indian gaming is whether the -- was
15 whether the game-determining events are happening at
16 the reservation. The game-determining events are the
17 ball drop, the card distribution. And that's the basic
18 part. That's the basic part.

19 I mean, you can have somebody else assess
20 whether -- someone else assess whether there's been a
21 match. But the random events, which is the drawing of
22 balls or other objects, you know, with numbers or other
23 designations, all of that stuff, that has to happen on
24 the res. The same thing for the distribution of the
25 cards. That happens on the res. The player has to

1 play on the res. Or on one res. You can link them
2 together. We had that before IGRA. You can link
3 together players at different locations and they can be
4 doing it someplace where the server isn't, so long as
5 the server that makes all these happens, that
6 determines what the outcome is going to be, is on the
7 reservation.

8 Now, you can have lots of computers elsewhere
9 that are not on Indian land that are doing things like
10 accounting, that are tracking things, that are
11 tracking -- you know, that are managing and
12 communicating. But the outcome determination happens
13 on Indian lands.

14 UNIDENTIFIED SPEAKER: You scared us on
15 that one.

16 MS. ECHO-HAWK: Well, as issues come up,
17 you know, I think we need to be able to have this
18 dialogue. And because, you know, it is something that
19 was -- we've talked about internally, and it's -- you
20 know, we're still wrapping our brains around
21 technology.

22 MS. SHAPIRO: I don't know all of the
23 manufacturers and how they do this. But the ones that
24 I'm familiar with, their game-determining servers are
25 on tribal land.

1 MR. LOMBARDO: Let me -- this is Charlie
2 Lombardo. Let me just add that there are masters and
3 there's slaves. And most of the master computers are
4 really just storing information. And they may be
5 storing information from many sites. And that could be
6 something that -- that probably is something that is
7 maintained at the manufacturer's level.

8 And what Judy says is absolutely correct.
9 Wherever the game outcome comes from is located on
10 tribal land. And those are, those are oftentimes just
11 links.

12 VICE-CHAIR COCHRAN: I think we've covered
13 what we needed to cover. And you offered up a lot of
14 discussion on those, so I appreciate that.

15 What else should we bring to the table on the
16 tech standards?

17 MR. LOMBARDO: Charlie Lombardo. Again, I
18 think that if we look at where the tech standards
19 started when we initially started this process, I'm a
20 part of the Tribal Working Group now for about, oh, I
21 think I actually go back to being appointed to the
22 original one back in 2004, by Chairman Hogen.

23 But anyways, if we look at -- and you mentioned
24 earlier the technical standards or the technology,
25 gaming technology is advancing quickly. And most of

1 what was done in this last working group was really to
2 bring the Technical Standards and the MICS up to where
3 we are today technology-wise. And I think that that's
4 important. And we not maintain -- be maintained as
5 dinosaurs, but come forward to where we are today.

6 MS. SHAPIRO: Judy Shapiro again. What
7 Charlie reminds me, is that in 2004, the battle over
8 Technical Standards was the battle to keep Class II
9 Class II, from our perspective, from the perspective of
10 the tribes who were operating Class II. That the prior
11 Commission was proposing technical standards which
12 would have either regulated slot machines, which was
13 inappropriate, or would have essentially regulated
14 Class II out of existence, i.e., by making demands that
15 were not visible to Class II. Or would have
16 reclassified Class II as an impossibly small category.

17 We don't think that's what you want to do. But
18 let's put on the record that we really don't want you
19 to do that. Don't go backwards.

20 You know, we've been assuming that we're at
21 least not going to be worse on tech standards as
22 presently promulgated. But rather than have a gap in
23 the record, we don't want the tech standards to do
24 anything but technical standards. We don't want them
25 to attempt to classify, we don't want them to attempt

1 to abolish Class II. We want them to be adequate to
2 make sure that there is technical integrity to the
3 systems that are in place. But not interfere with the
4 ability to place systems, if you follow me.

5 VICE-CHAIR COCHRAN: Thank you, Judy.

6 Lael raises a good point. Do you think that the
7 standards that have been proposed offer enough room for
8 the market to grow, the industry to grow in this area?
9 Do you feel comfortable? Because the technology is
10 changing. Sometimes not always to the benefit of the
11 industry, but it changes nonetheless. Do you feel
12 comfortable or confident that what you propose will
13 allow room for growth?

14 MS. SHAPIRO: I think we do. I think, I
15 think we had enough input from people with a lot more
16 technology than the lawyers sitting in front of you.
17 We don't propose to have that.

18 Invariably there will be new technology five or
19 ten years down. And invariably you'll hear oh, wait,
20 wait, wait, we can't do that. At that point we'll have
21 to have further discussions. And you may want to be
22 thinking about amending by bulletin rather than a whole
23 new promulgation of regulations. You may want to be
24 thinking in terms of regulating by variance. That's
25 what happens in other technological areas.

1 You know, I know folks who have worked in the
2 area of new technology that is not Indian gaming. And
3 in that context, the regulatory agencies are always
4 caught with regulations that are out of date by the
5 newest microchip. And rather than promulgate the
6 regulations every six months, the agencies have to be
7 receptive to arguments for why this perhaps
8 noncompliant device in fact meets all the goals of the
9 existing regulation and therefore it is appropriate.

10 And so if you keep in mind a waiver or bulletin
11 or whatever is necessary for what we can't anticipate
12 by new technology, then we're fine.

13 MS. HOMER: Didn't see any fistfights on
14 the subject matter. I can't say that was necessarily
15 true the first time the working group got together to
16 do tech standards. But in this last group, I think
17 people have been pretty agreeable.

18 MS. SHAPIRO: Yeah, there was an effort to
19 bring in the non-mainstream forms of technological
20 bingo. Which is to take the people who are working on
21 handhelds, to take the people who are thinking about
22 what they might do with globals, to have all of that
23 present in the room, so that in the MICS and in the
24 Tech Standards, you'll see some changes which seem
25 awkward, but are intended to make room for technology

1 that might be coming in down the road.

2 MS. ECHO-HAWK: So devil's advocate here.
3 We publish the -- we put out a Notice of Proposed
4 Rulemaking that includes all the changes that have been
5 made to the Technical Standards as presented by the
6 Tribal Gaming Working Group. What sort of comments are
7 we going to hear to the best of -- like hypothesis. I
8 mean, we have, you know -- well, from whomever. I
9 guess, you know, when it comes to grandfathering issue,
10 when it comes to the odds, when it comes to the
11 reflexive software or the variances, does the variance
12 section, is it adequate, I mean does it give enough
13 time frames for everybody involved.

14 When it comes to the changes that were made to
15 the security, like the storage devices, all the things,
16 all the changes that have been made to the tech
17 standards, which, you know, we've gone through and
18 truly are -- certainly are not as sort of overwhelming
19 as the MICS changes. But if we were to put them out in
20 the proposed rulemaking, you know, what are the
21 arguments that are going to be made, what are the
22 comments that are going to be made, pros and con?

23 MS. HOMER: Well, kind of at the risk of
24 second-guessing, you know, we have really tried to be
25 comprehensive and include both the, you know,

1 regulatory and the, you know, and the manufacturers in
2 this process. And there was a lot of consensus in the
3 group. Now, our group is about 400 people, more or
4 less. And, you know, it's rare to get, you know,
5 basically a consensus in 400 people. But I don't --
6 none of this, the issues that we went over, you talked
7 about the reflexive technology. We did a revision to
8 that. But we did that revision because there had been
9 some litigation -- or was it litigated? There was some
10 kind of big scandal, and so we added the language that
11 would put a fix into the harm that was identified with
12 respect to the reflexive technology.

13 So we were actually intending to kind of beef
14 that up, you know, by making it really clear that you
15 can't, you know, that you can't have reflexive
16 technology that would take away a win from a player
17 that they were otherwise entitled to for some random
18 reason. So we had put that specific language in there.
19 I think that that is good language.

20 Somebody, you know, somebody who doesn't
21 understand reflexive technology or has a different
22 opinion of it may say something about that, I don't
23 know.

24 But I think that, you know, our proposals are
25 fairly contained to the issues that the working group

1 raised the last go-around, you know, and were basically
2 ignored.

3 So I, you know, I don't know -- and speaking
4 specifically and solely to the Technical Standards, I
5 don't anticipate, you know, a lot of pushback on
6 everything. I think that there may be some tweaks here
7 and there. I don't see a big major issue there.

8 With respect to the MICS, I don't know. You
9 know, that might be different. Because the MICS appear
10 differently, you know, on the TGWG's draft. And we've
11 definitely tried to bulletize it, make it easier to
12 read. You know, we tried to clarify it. We've, you
13 know, cut some things back. And in others where the
14 NIGC has adopted industry standards, we, you know,
15 we've deleted a lot of language, but only because
16 you've adopted industry standards that are in volumes
17 this big (indicating). So putting two or three
18 provisions in the MICS out of the industry standards
19 just seemed, you know, why do that, why just pick out
20 two or three things. I mean, you've adopted the AICPA
21 standards, they're this big. So, you know, a lot of
22 that language is, you know, superfluous. So that's my
23 take on it.

24 I don't know, Judy, you might have something.

25 MS. SHAPIRO: Well, construing the devil's

1 advocate question more broadly. That, you know,
2 Elizabeth is talking to what kind of pushback are you
3 going to get from the working group. And, you know,
4 you might get a little. Because we all have different
5 minds. We had 400 people, there are plenty of other
6 people out there. Some of them are tribal, some of
7 them are not tribal. Some of them are enemies of
8 tribal issues. And you may find people who are going
9 to say this is scandalous here, deregulating -- we're
10 trying to echo that, you're deregulating an industry.

11 And the answer to that is to draw attention to
12 what were the flaws in the previously promulgated. And
13 I think that we've tried to lay out those flaws as we
14 understand them. That some of them were interference
15 with tribal prerogatives, some of them are just
16 arbitrary and capricious and unrelated to the subject
17 matter. Some of them were sideways attempts to
18 infringe an industry that bore no relation to the
19 Commission's authority or the statute it's purported to
20 implement.

21 There are always going to be people who are
22 going to take shots at something which are perceived to
23 be overly favoring tribal gaming and deregulating
24 tribal gaming.

25 It's your authority to regulate tribal gaming,

1 but not to do so at the expense of the tribes as
2 primary regulators. And not to do so in excess of your
3 statutory authority.

4 So that while you have to make sure that things
5 are fair and safe and all of the integrity issues are
6 satisfied, it's only to the extent that you rather than
7 tribes do that. You have an oversight authority on
8 that, but not the entire authority. And you do not
9 have authority to do cosmetic things, what are
10 basically cosmetic things that make people feel better
11 about tribal gaming but are not really core issues.
12 And that's what we're talking about in terms of
13 entertaining display and what has to be shown when.
14 That's not critical. That's not your job. The issue
15 of odds. That doesn't improve, it only goes sideways.
16 It only makes things more difficult and more
17 complicated.

18 I think it's our intention to say Class II
19 gaming and bingo generally have the following three
20 criteria. That's what the statute says, that's what
21 the courts say. There are Technical Standards which
22 are different which make sure that you are delivering a
23 game which follows those criteria. But anything else
24 is surplus, and what you're going to do is you're going
25 to cut away the surplus and leave the Class II

1 regulation in place.

2 And I think, again, if you want to preempt some
3 of those negative comments, you should be saying that.
4 If you were to adopt in whole cloth, and I can't
5 imagine you're going to take every word as gospel, but
6 if you were going to take the structure of our
7 suggestions and adopt them in principle, then obviously
8 you're going to have to do that with a long preamble
9 and explain why. So that you're not saying well, you
10 know, we came to the tribes, but we understand that
11 there were flaws to be fixed and we undertake to fix
12 them for the following reasons. And that will have a
13 lot to do with the kinds of comments you get.

14 VICE-CHAIR COCHRAN: Thank you, Judy. All
15 right. Well, thank you, that's an excellent
16 discussion. And we appreciate the positions that have
17 been put forth. So let's go to MICS.

18 MS. SHAPIRO: We're not done.

19 MS. HOMER: Going to the MICS now. Okay.
20 All right, that's where I wanted to go.

21 VICE-CHAIR COCHRAN: All right, MICS it
22 is. The final cherry on the ice cream sundae that I
23 had for lunch today.

24 Part 547 -- 543, sorry. I'm looking at the
25 wrong sheet. Get the right piece of paper in front of

1 me.

2 MS. ECHO-HAWK: So obviously MICS is one
3 of the big issues. I'm surprised -- you know, I guess
4 I'm sort of positively surprised by the lack of, you
5 know, there's not too much discussion on the tech
6 standards, so that's, you know, an interesting
7 observation I guess.

8 But when it comes to the MICS, we know that
9 there are -- well, currently we're looking at sort of
10 three different sets of MICS. We have the current
11 regulations. And their implementation has obviously
12 been postponed until October of this year.

13 We have the drafts of the Class III MICS -- I
14 mean the Class II MICS -- slip, Class II MICS, that are
15 also on the Web site that were being drafted up until
16 about May or June of last year.

17 We also had the draft that's been proposed by
18 the Tribal Gaming Working Group.

19 All three of those drafts contain similar
20 subject matter, different maybe approaches in how to
21 resolve that.

22 I think as we move forward we need to sort of
23 set the stage on how we're going to, how we're going to
24 address this. I would be interested in hearing from a
25 very 30,000-level-foot perspective where tribes think

1 those drafts are separately; how any given draft might,
2 you know, have a better resolution than another; why,
3 and maybe from the Tribal Gaming Working Group's
4 perspective, why the draft that was submitted to the
5 NIGC looks the way that it does; what the pros and cons
6 are.

7 I think if we start from the, start from the
8 30,000-level-foot, because it is a lot, and we work our
9 way down, that might help us maneuver through all this
10 material.

11 We have a lot of time. We have a number of
12 consultations to do this in. And I think that the
13 Commission has indicated they're going to be very
14 flexible on how we work this.

15 If you have suggestions on how we handle the
16 meetings when it comes to dealing with this specific
17 subject matter, because it is so voluminous and covers
18 so many issues, do we break up, do we allow -- I mean,
19 we can do this any way. And we have time to do it.
20 But I think we need to think about that at the
21 beginning instead of sort of mish-mash our way through
22 it and maybe miss important sections, even if it's just
23 working through it methodically.

24 So if we can kind of get that stuff out and on
25 the table and on the record so that we can figure out a

1 way to drill down so that these meetings are productive
2 and that we're not sort of going back and forth and not
3 looking at this, you know, sort of more methodically.

4 Because this is essentially drafting. And we
5 need to figure out how to do that. I know the Tribal
6 Gaming Working Group has I'm sure figured out how to do
7 that within their group. And we're going to have to
8 figure out how to do that in these meetings, too.

9 So any thoughts on any of those issues from a
10 very general perspective I think is going to help us
11 get started, which this is the kickoff session.

12 MS. HOMER: Well, either just speaking
13 from the TGWG perspective, you know -- and actually
14 going back further. You know, the problem always with
15 Part 542, which is basically the kind of progenitor of
16 Part 543, is that, you know, it's basically the Nevada
17 Gaming Control Board's regulations for state-operated
18 gaming. And it doesn't really fit our structure where
19 you have a federal agency, then you have tribal
20 regulatory agencies, and then you have the casino with
21 its system and internal controls.

22 So from the very get-go, it's not a perfect
23 match. And I've spent a large part of my career over
24 the last ten years of going in and fixing legal
25 structures that are not a match to the institutions

1 trying to employ them.

2 And I think that that's where we start with the
3 MICS. It doesn't fit our institution, our legal
4 infrastructure, our institutional framework.

5 Now having said that, we nonetheless didn't
6 throw away, you know, the history and the, and the
7 utility of looking at a regulatory framework that's
8 been in place for a long term.

9 And so where our group started was with the
10 federal respond, a federal draft of the last working
11 group's product, you know, and what the federal
12 proposal was. And so we started with that and a
13 comparison document with the existing Part 542. So we
14 had these, like this big spreadsheet that had all of
15 these different iterations of the MICS, including the
16 latest proposal for revision, and we started there,
17 with that latest proposal for revision.

18 And it made a lot of -- you know, I think the
19 most obvious differences are going to be the bulletized
20 structures. I mean, reading -- I don't know, I've been
21 reading the MICS for so many years now and you just
22 kind of can't even bear it. You know, you read it and
23 you go, what does this mean? You know, in the real
24 world, what does this language mean? And, you know,
25 even though I was part of the NIGC that, you know,

1 adopted the first revision of the MICS, and I've been
2 reading the MICS since then, there were provisions I
3 would read and I would go, I don't know what this
4 means, I better call Joe. It was just -- you know, we
5 have the most user-unfriendly regulation in the world
6 in those MICS.

7 Well, you're not going to find that anymore in
8 the TGWG working group. These are going to be easy to
9 wrap your arms around. We could argue until the cows
10 come home whether they should be more comprehensive or
11 less comprehensive, you know, but nothing has been
12 omitted, you know. It's just a lot of additional --
13 you know, we've just synthesized it and gotten it down
14 to bullets that are easy-to-follow language.

15 Then the other thing we did, this is again at
16 that 30,000-foot altitude, is everything was in the
17 bingo section. You know, IT was in the bingo section,
18 I mean, everything was in the bingo section. Well, we
19 pulled a bunch of that stuff out of the bingo section
20 and gave it its own section. You know, so that you
21 could find it.

22 You know, one of the things with the MICS was
23 that they were never drafted for people that actually
24 have to use the regulations. You know, they're very
25 unfriendly in that regard. And you have to search and

1 search to find something.

2 Well, you're not going to see that problem
3 anymore. You know, you've got new headings, it's going
4 to be easy to find with that provision. If I'm the
5 head of surveillance, I can take my little piece out
6 and it will live independently. You know. So I don't
7 have to go searching through this document to find my
8 little, my little piece of it, and I can work with it
9 as a technical person. So that's another big change.

10 But, sensitive to this concept that we've been
11 talking about earlier, that the people that are maybe
12 unfriendly to the Indian gaming world or still think
13 that we're all a bunch of poor dumb Indians out here
14 that don't know what we're doing, you know, that that
15 crowd exists. And so we thought well, let's supplement
16 that with really good guidance.

17 So instead of just having -- you know, we make
18 the Minimum Internal Control Standards the minimum
19 standards, but then we embellish that with a set of
20 industry standards or industry guidance that's going to
21 give that level of detail that, you know, that some may
22 wish or some may desire, but that's not in the federal
23 regulation, that's in the federal guidance documents.

24 And these documents can be highly, highly
25 detailed. I mean, we can draft complete, you know --

1 you know, complete sets of regulations that can easily
2 and readily be adopted by a tribal government if they
3 wanted to, if they were so inclined, that will meet or
4 exceed what the federal minimum is. And that includes
5 checklists, audit checklists that can, you know, that
6 can be applied.

7 Now we, you know, we haven't finished that
8 process. We're, right now we're trying to draft these
9 guidance documents and make those so that those would
10 also be available to the NIGC when we, you know, when
11 we submitted our original work product.

12 But, you know, you guys had a schedule. And we
13 wanted to get it to you before this meeting so that you
14 all could take a look at it. So you haven't seen that
15 piece. But you will see that piece. And we're hoping
16 to finish that up this summer, along with all the
17 checklists.

18 So you will actually have a better package than
19 the NIGC has ever had. And you will have guidance
20 documents that are created by subject matter experts in
21 these various, you know, in these various areas. And
22 you'll have a regulation that you can write in the
23 preamble, "This is how Indian gaming law works." You
24 know, that we're not just borrowing from a state
25 regulatory structure, but we're actually building a

1 system the way it's supposed to be interpreted and the
2 way that Indian gaming was, you know, originally
3 intended by the Congress.

4 And we think that that is a very important step
5 forward, you know, in making our regulatory system
6 work. Which is really in the end what we all want,
7 both the NIGC and tribes. And so we're not always
8 like, you know, pounding our heads against each other,
9 but really have a regulatory structure that works
10 together with our tribal regulatory agencies, our
11 federal regulatory agencies, and our operators. And,
12 of course, our boards and those kinds of things.

13 VICE-CHAIR COCHRAN: Thank you, Liz, that
14 helps explain a lot. We were curious, you know, where
15 you all started so we'd know how to approach it and
16 analyze it as well.

17 MR. DANFORTH: I have a comment that I'd
18 like to add at this point. Jerry Danforth.

19 And my comments are more about the process as
20 opposed to the content. And I think that -- I observed
21 the TGWG's work from a distance. I participated on
22 occasion with them. But I think that the work product
23 is really an enormous task that they undertook with a
24 lot of vigor from time to time. But now in taking that
25 product or another draft back to a tribal council, I'm

1 just recalling my experience as a chairman of the tribe
2 and how do we deal with that, how do I get my comments
3 of our tribe on the records of the NIGC.

4 And quite honestly, I guess I would say that I
5 really don't expect that a tribal council itself,
6 because of all the things that they do, have to do, are
7 going to actually break those documents out and go
8 through it line by line, such as the work that the TGWG
9 did.

10 MS. HOMER: Well, that's because they're
11 not crazy, like we were.

12 MR. DANFORTH: But I would expect that our
13 gaming regulators do that very thing. And I noticed
14 this morning that we had a very good showing of
15 regulators in the room for this session. And I would
16 defer or appeal to the regulators. Because we have
17 regional regulators associations across the country.
18 And within each state also. And I would encourage the
19 regulators to really grab ahold of one of these drafts
20 and just start working your way through it and really
21 come up with -- pick it apart, pick apart the things
22 that you see that work and those things that you think
23 won't work, and get those, as the working group did,
24 they prepared a transmittal letter, which is really I
25 thought an excellent written document that covered all

1 of the meat within the content of that work.

2 And I go back to what I did, if our Gaming
3 Commission of Oneida were to have gone through the
4 document and provided a transmittal letter or executive
5 overview of that document, our council would take that
6 and go through it. And they would, they'd get briefed
7 on it, you know, the strong points, the weak points,
8 the desirable points and the undesirable points. And
9 with that, we can make some solid, well-founded
10 recommendations to the federal agency to help get these
11 documents acted, in force.

12 So I guess I would just ask for those members
13 present on the tribal regulators forums and the
14 regional representatives and those who have an
15 influence over reaching out to those regional groups
16 and say hey, we need your help. Because I really think
17 that we're off to a great start with this enormous
18 task.

19 MS. MORAGO: Sheila Morago. I'm just
20 speaking for myself right now. Based on the fact that
21 we've done this in Arizona quite a few times.

22 And what I would add to Chairman Danforth's
23 comments is that it would also be applicable to do that
24 very same thing with the operators boards, large and
25 small. Because regulation without the operators being

1 able to do them in a timely fashion in their current
2 working environment, they won't do. And so unless
3 those operators get a chance to sit there and go
4 through those every single time breaking down to see
5 how those fit into their normal course of a daily work
6 day, you know, and make comments on that part, that's
7 where we seem to be able to pull those two -- you know,
8 the healthy environment between regulatory and
9 operations, they can do that and come up with some
10 good, solid -- they've done a lot of work on this. And
11 having a huge document like that, having operators that
12 can't do it for whatever reason, they just won't.

13 So you want to make sure that you balance those
14 two entities of the operations and the regulatory
15 structures so that you come out with a document that's
16 doable and can pass the smell test when it comes to
17 regulatory requirements.

18 MR. HARRIS: My name is Ron Harris, I'm
19 the chief executive officer of the Miami Tribe of
20 Oklahoma Business Development Authority. We say MBDA
21 for short, that's a big mouthful.

22 You asked a very good question. Which is, how
23 should the government look at reviewing these
24 regulations. I think a good example was back in 2007,
25 when the NIGC at that time had gone through a review to

1 a certain level, and they were -- they had their list
2 of questions. And basically reached out to the
3 industry and said -- basically said look, here's our I
4 think it was 16 points they had, so we can narrow this
5 down to 16 issues that we have. And they reached out
6 and said bring your subject matter experts and we'll
7 bring our subject matter experts. And we sat down in a
8 room and we went through every one of those points.

9 Now, certainly the point was made right out of
10 the box by the Commission at that time, which is, this
11 isn't a democracy, we have the final vote. But it was
12 a very good exchange. So it would be, just like we
13 have done with the TGWG group, we tried to schedule
14 this to say this is what we're going to cover, and we
15 broadcast it out; all tribes show up to look at this.

16 And we did reach out to not just the attorneys,
17 but on this, on this group, you had tribal regulators
18 certainly, manufacturers, gaming laboratories, and you
19 had operators. Pardon?

20 MS. HOMER: Accountants, auditors,
21 internal auditors.

22 MR. HARRIS: Mm-hmm. So we had a very
23 wide mix. And certainly you bring up a great point,
24 Sheila, and that was where there was a lot of vigorous
25 debate was between the tribal gaming regulators and the

1 operators. Right? You want us to do this, but this is
2 what it's going to cost. And we found that when we
3 wrote the Technical Standards, the main focus was
4 flexibility, maximum flexibility, which basically
5 that's your interpretation what the law should have
6 done, maximum flexibility on the Technical Standards.

7 The MICS were written in my opinion more along
8 the lines of outcome-driven. Which a lot of the states
9 are moving in that same direction. What is it that
10 you're trying to protect? What is it that you need?
11 And then paper it in a way that is outcome-driven and
12 leaving the maximum flexibility up to the person who's
13 got the primary regulatory authority, is the TGA,
14 through their TICS or whatever the issue is. But
15 that's where the primary maximum flexibility is, is on
16 that back side.

17 Now, when we go through these dialogues, it is
18 an iterative process. Ms. Echo-Hawk brought up a great
19 point. One that personally I believe will probably
20 cause especially in the TGA to discuss, and that is,
21 what about that RNG. It should be on Indian land. It
22 probably should be in the MICS. It probably should be.
23 It's not. I don't think it really occurred to any of
24 us.

25 But when we were -- if you'll remember, too,

1 547 was certainly written in vast majority by the
2 industry. At that time the NIGC had no idea, no desire
3 to have a 543. It was the industry that came forward
4 and said look, you've got to have a separate set of
5 MICS to properly implement these Technical Standards.

6 Again, I think the metaphor that's used a lot
7 in our industry is the Technical Standards basically
8 can tell you how to build a rifle. The MICS tell you
9 how to use it; as a club or as a guide. All the little
10 nuances in between.

11 So that kind of dialogue, when you hear
12 something like this, the industry really has to get
13 back together. And we found most effective when we
14 were doing the 543 with the government was to look at
15 Joe Smith and say what is it that you're trying to get
16 to? What do you want? And then we could basically
17 deliver it in a way that provided maximum flexibility
18 to both all the facets of the industry, regulatory
19 community, operators, manufacturers, everybody. That's
20 where the maximum flexibility bit came in.

21 But it was geared in that we had to understand
22 what the government's concerns were. We already knew
23 what the private industry's concerns were, because we
24 had so many needs.

25 But I would suggest breaking it down certainly

1 in sections, giving enough notice to where we can bring
2 in subject matter experts from all over the country,
3 from all disciplines. Thank you.

4 VICE-CHAIR COCHRAN: Thank you.

5 MS. HOMER: Just to add a couple of things
6 to what Ron is saying. Now, I think the beauty of our
7 work product is, because we didn't just abandon the
8 MICS and start all over and do something completely
9 brand-new, is that I don't see that internal control
10 standards are necessarily -- you know, what's existing
11 today is necessarily going to have to change. I think
12 that, you know, that we've maintained the integrity of
13 the internal control standards such that, you know,
14 this is not going to be a major sea shift, you know, on
15 the ground. So that, you know, so that's one factor
16 that I think will -- people will appreciate, it's not
17 going to be a huge cost to do the revision that we're
18 proposing.

19 I think that the other thing about this
20 approach is that it's a way to solve some of our
21 long-standing conflicts. Like, for example, take
22 promotions. You know, I mean the big fight, you know,
23 ever since the promotions language was going to be
24 added to the MICS is that the NIGC doesn't have
25 authority over non-gambling activities. And if it's

1 truly a promotion, it's not a gambling activity.
2 Right? Now, does that mean you shouldn't have internal
3 control standards governing that at the tribal level?

4 Heck no, you need tribal internal control
5 standards to govern your promotions. The question is,
6 you know, that's not within the -- it's really whose
7 turf are these issues.

8 So now we go back to develop the industry that
9 -- when we go back to, you know, to do the guidance
10 documents, we don't have that fight anymore. You know.
11 And we can address things without necessarily getting
12 into a big fight over jurisdiction and authority and
13 those kinds of things. When you give guidance to the
14 industry, here are some things that you might want to
15 think about, you know, in developing your own internal
16 control standards.

17 So that is another beauty of the approach I
18 think that's been taken here, is that while it may
19 appear, you know, kind of shorter or more succinct at
20 this level, now we can offer something that is broader
21 and more in depth without having a huge fight all the
22 time, without it always being a conflict.

23 MS. SHAPIRO: I'm going to do a couple
24 cleanup comments. Reinforcing what Elizabeth is
25 saying.

1 MS. HOMER: You're cleaning me up?

2 MS. SHAPIRO: No. Oh, I'm cleaning him
3 up. Just wait. Wait.

4 You know, you commented on how much the MICS
5 looks different. It does look different. And what
6 Elizabeth is pointing out -- I'm just doing a fire line
7 thing, is not that there's a revolutionary change in
8 how they would be implemented, but a revolutionary
9 change in how they're presented.

10 The intent I think of this revision, one of the
11 principle intents of this revision, was to make it more
12 accessible to the tribal regulator. And to the
13 auditors and to everyone else. So that similar items
14 are grouped together rather than spread out.

15 I think the people who have been implementing
16 the existing MICS are not going to find it difficult
17 once they track through the changes to do very much the
18 same sort of things they've been doing. Because these
19 MICS were developed in consultation with the people who
20 are implementing the old MICS. It would go through the
21 room, "How do you do that? How do you handle this
22 problem? Well, we do this, we do that, we do this, we
23 do that." And then the idea was to say okay, so best
24 practices would be the following. And how much of that
25 should be left to the discretion of the tribes, add on.

1 But start from this level, this is what we're already
2 doing, we recommend others, and that may be in the
3 bulletins or the guidance memos.

4 But the idea was not to do violence to the idea
5 of Minimum Internal Control Standards, but to make them
6 less violent in terms of trying to implement them.

7 And particularly to make them accessible to
8 those tribes that may be just entering into it. We had
9 a roomful of seasoned Class II operators, regulators,
10 labs and vendors. But there are still tribes that are
11 entering into Class II. And the idea is to remove some
12 of those barriers to entry to make it more
13 user-friendly. So that's one thing.

14 And now my thing for Ron, and he knows better
15 than this, when you --

16 MR. HARRIS: You don't like my jacket.

17 MS. SHAPIRO: I love your jacket. It's
18 very familiar.

19 MR. HARRIS: Worn it too often.

20 MS. SHAPIRO: He said that, you know, we
21 would do what's necessary. He said we know what the
22 government -- we know what -- we need to know what the
23 government wants. We know what private industry wants.

24 We're not talking about private industry.
25 We're talking about government. We're talking about a

1 different level of government. We may not know
2 entirely what the Federal Government, how it wants to
3 implement these things. But we really know what tribal
4 governments and their regulators and their staff want
5 to do. And we would like to make sure that we can
6 bring those two together.

7 MS. HOMER: And that was another issue
8 that you'll see different, is we make it really clear,
9 you know -- and we used to have arguments with the NIGC
10 about this, is you make it clear that this is the
11 TGRA's authority. And that also helps take away fights
12 at the TGRA and operations level, too. You clarify
13 who's, you know, who's doing what.

14 So we see the structure like this (indicating).
15 There's the federal standard, then there's the tribal
16 regulations, their standards and their regulations, and
17 then there is your system of internal control, which is
18 -- so you have an increasing, an increasingly more
19 comprehensive set of documents. You've got the Feds.
20 You've got broad tribal regulations. But the system of
21 internal controls at the tribal level is the handbook
22 or the manual process where every little thing, every
23 little thing is spec'd out how you do this, how you
24 clear your hand, all of those kinds of things is at
25 that level.

1 And I think that that is true to the Indian
2 Gaming Regulatory Act in what was envisioned, you know,
3 in the Indian Gaming Regulatory Act.

4 MS. LASH: This is Robin Lash with the
5 Miami Tribe. I would just like to add on to some of
6 these comments, looking at it from 30,000 feet, as you
7 say.

8 As Elizabeth spoke a few minutes ago, you know,
9 we started with a huge document. We had two screens at
10 every meeting. We had a legal-sized document that was
11 560 pages long. And that was the MICS. And that, you
12 know, with the columns of the current regulations, the
13 2010 regulations, and then some comments that were made
14 by former working groups.

15 And we went through everything sentence by
16 sentence. And any changes that we made, we made a
17 comment on it. So we can answer today, even though we
18 went through so many pages and so much information, we
19 can tell you exactly why we made a change. And so have
20 confidence in that, if you see something that you're
21 concerned or you wonder why the change was made, we can
22 tell you that.

23 And I also serve as the vice chairperson of the
24 Oklahoma Tribal Gaming Regulators Association. We have
25 31 member tribes. And I've sent this information out

1 to the OTGRA membership. They've been reviewing our
2 proposed revised regulations. And I've received
3 information from many of the tribes supporting this.

4 We have a meeting tomorrow in Tulsa at the Hard
5 Rock Casino. And our group, as a group, are going to
6 be voting to submit to you a letter of support from
7 OTGRA, as well as the tribe sending letters of support
8 as well. So just to let you know from the people that
9 I've spoken with in Oklahoma, 30 some tribes, that
10 these are very well received. Thank you.

11 VICE-CHAIR COCHRAN: You know, a couple of
12 observations that I have to offer. One of the comments
13 that was made had to do with being outcome-driven in
14 the MICS. And I think the Chairwoman has said -- well,
15 I know she's said, and I think the Commission, we all
16 agree, that the MICS should be drafted in such a way
17 and we should know exactly what it is we're trying to
18 achieve, and draft the regulation around that desire.
19 If we can't justify it or can't explain it, then it
20 probably shouldn't be in that format.

21 So I suspect and have full confidence that
22 you'll hear that consistently from us throughout. And
23 that's going to be the lens we're looking at as well.

24 So the other thing is I also appreciate the
25 multiple levels of tribal input that's happening. And

1 it gives me personally, and I'm sure that, again, that
2 the Commission will have confidence that tribes have --
3 have had to participate, they're going to have their
4 associations. There's multiple points all the way up
5 until sitting with us, to have the input, to get the
6 perspectives. Because we understand completely how
7 diverse they can be. And not every group is going to
8 represent. The Oklahoma Indian Gaming Association
9 isn't going to represent a tribe's perspective out of
10 Arizona.

11 So, you know, we get this. And we appreciate
12 the amount of work and the avenues for tribal voices or
13 input to occur is happening on multiple levels. Yes?

14 MS. SHAPIRO: One thing, again following
15 up with what Robin said. That we were working with
16 these interstitial comments throughout. We didn't burn
17 you with those. What we did burn you with was an
18 extensive transmittal memo that tried to encapsulate
19 some of the choices that we made. And we hope that
20 that helps to explain some of the philosophies that
21 were guiding it.

22 VICE-CHAIR COCHRAN: It will. I believe
23 it will. This whole process is, from our perspective,
24 is we attempted to be transparent. We will continue to
25 be transparent, to get everything out to you to explain

1 why we're asking questions, why the decisions that are
2 made are going to be made. We appreciate the same
3 reciprocity in that respect by explaining to us how you
4 got where you're at. And I think that only enhances
5 value. So thank you.

6 MS. HOMER: Back to the one area I've been
7 meaning to get to, which is the IT, the IT piece of
8 the, of the MICS, of the Class II MICS.

9 You know, what had been proposed by the prior
10 Commission was a much broader IT section that was going
11 to include like kiosks and back-of-the-house systems
12 and this and that and the other. And, you know, you
13 will see that the group pretty much dropped that out
14 and said no, no, the gaming system itself is where, you
15 know, the line is drawn here.

16 Now I want to talk about that a little bit.
17 Because it's not that we don't think integrity in these
18 other systems is important. We do. But we also don't
19 want it to become -- you know, once the Feds set a
20 standard and everyone has to do it, the cost of doing
21 all of these things goes up with it. You know. The
22 cost of, you know, the laboratory testing and all of
23 those kinds of things.

24 We believe that -- that yes, integrity in all
25 of these systems is important, and that those kinds of

1 standards, you know, should be adopted at the tribal
2 level. But we will include those kinds of things in
3 the guidance documents, as opposed to into the
4 mandatory sections of the MICS. You know.

5 And we think that that -- you know, we just
6 want to explain that. Nobody is trying to get out of
7 having integrity in those things. But it is a -- there
8 is a jurisdictional issue, there's an authority issue
9 on the part of the NIGC to be doing those kinds of
10 standards, which I don't think you have when it comes
11 to the Technical Standards for the gaming systems. I
12 think that your authority over Class II gaming systems
13 is probably unimpeachable. But I think that the
14 farther away you get from the gaming system itself and
15 you get into the peripheral technology, even though
16 there are risks involved with that technology, we all
17 agree with that, we understand that, but I think that
18 those are the kinds of risks that we're going to have
19 to bear at the tribal, you know, at the tribal level,
20 and put our own tolerances on those kinds of things,
21 with hopefully good guidance from the federal agency.

22 MS. LASH: And one other formatting
23 difference was the tiering. You know, there's a
24 repetitive tiering in A, B and C on those same topics,
25 on A, B and C. And what we did is we just addressed

1 tiering in the topic itself. So for like for
2 surveillance, you know, we say well, it's like this for
3 tier C, you know, this for tier B, and this for tier A,
4 all in one section of surveillance, instead of having
5 surveillance in A, B and C separately.

6 MS. HOMER: Yeah, you know, when you
7 really thought about that, I mean, it was our position
8 that -- that put in that tiering structure into the,
9 into the MICS. And I don't think that we realized at
10 that time how redundant and how much additional paper,
11 you know, it took for what basically amounted to two
12 differences between, you know, tiers, you know, A, B
13 and C. It was ridiculous really. I mean because the
14 only real differences were in the surveillance, you
15 know, in the surveillance section and in the card table
16 section. And that was basically it.

17 And so I think a lot of paper is eliminated
18 because of what Robin just said. I mean, for no other
19 reason than you don't have all of that duplication of
20 language, you know, in three different sections instead
21 of, you know, in kind of one section.

22 VICE-CHAIR COCHRAN: One of the questions
23 Lael was asking has to do with the way we continue the
24 process. And I know the suggestion was made to maybe
25 break it down in topical interviews or subject matter

1 areas. Would it be useful and would it, of course, be
2 beneficial financially with your time and otherwise for
3 us to do that, beginning with some of our
4 consultations. So that we're sitting here maybe having
5 30,000-foot level conversations with leadership, but at
6 the same time bringing our experts with us to meet with
7 you at the same time. I'm throwing something out
8 process-wise, you know, just an idea. Would it be
9 cost-effective for you, beneficial? No? Should it be
10 done completely separate?

11 MS. HOMER: I think that you're going to
12 find that the hard core group will, you know, kind of
13 show up wherever you say to show up and do whatever has
14 to be done to get from point A to point B.

15 VICE-CHAIR COCHRAN: Sure.

16 MS. HOMER: I gotta tell you that, you
17 know, to go through this line by line, even though it's
18 a shorter version, you know, it's a shorter document,
19 is it's a big process. I mean, you know, getting
20 through one section is, you know, no, you know, no easy
21 matter.

22 So I think that having some kind of -- I don't
23 know, you know, if you really need to establish another
24 advisory committee on the MICS and kind of use that as
25 a forum. Or we could do it in this particular kind of

1 session.

2 If you didn't want to do it in this particular
3 kind of forum, you might want to call a special one,
4 you know, just for this subject matter and give it a
5 two and a half day, you know, time frame. Maybe a
6 couple or three of 'em, you know. I mean, just
7 depending on what your resources are, we could have one
8 on the east, you know, kind of something central or,
9 you know. What we used to do is we'd have three. We'd
10 have one for the West Coast, one for the central U.S.,
11 and then have something in DC. So that, you know, to
12 try to cover everyone could get to one of those fairly
13 simply.

14 But, you know, it is quite a process to walk
15 all the way through it. It's still a pretty big
16 document.

17 VICE-CHAIR COCHRAN: I'm looking at the
18 task organizer. She keeps us all on track. The
19 airlines had misplaced her luggage yesterday and if she
20 were to misplace anything that we -- I feel like she
21 felt yesterday with the luggage. We really do rely on
22 her to keep us where we need to go, so I keep looking
23 at her.

24 MS. ECHO-HAWK: I'm just saying that I
25 think the process question is really important. We've

1 set aside a lot of time to cover this. And I think as
2 we go back today and we talk about this tomorrow and
3 perhaps for next week's meeting, we'll think about this
4 some more and probably ask similar questions in
5 Milwaukee.

6 Because I think these first two meetings are
7 our prep work, laying the foundation for how we're
8 going to move forward with these -- with this review
9 and looking at the revisions.

10 And then I think the work really is going to
11 start. And, you know, I know the Commission has
12 dedicated the resources, significant number of
13 resources, there's like 28 meetings include just this
14 issue.

15 And so think about how to put that together in
16 a way that, you know, maximizes all the resources and
17 gets through the product, gets through the sections in
18 a way so at the end we've got something that everyone
19 can -- if they're not in love with, at least they like
20 it or they can deal with it.

21 So I expect probably the next meeting we'll do
22 some more of this 30,000 level discussion, and then we
23 start to drill down.

24 I think the tech standards, seems like
25 everyone's got a pretty good -- at least everyone here

1 has got a pretty good handle on it. You know,
2 optimistically maybe that's something that won't
3 require 28 meetings.

4 MS. HOMER: I hope not.

5 MS. ECHO-HAWK: Twenty-eight more
6 meetings. I apologize.

7 So, you know, as you think about things, please
8 contact us, let me know what your thoughts are of the
9 process. If we start down the road and it's not
10 working, you know, we can make this look however we
11 need it to look to get it done. I think that's the
12 important thing. We've got, you know, a lot of
13 flexibility, you know -- as much flexibility as a
14 federal agency has to work with. And we've got time
15 sort of, 28 meetings, so, yeah.

16 MS. HOMER: That was way more generous
17 than what I was thinking.

18 MS. ECHO-HAWK: Well, you know, this has
19 been an issue for a long time, so hopefully we can get
20 it resolved. So if you have ideas, please let us know.
21 I don't have any other.

22 VICE-CHAIR COCHRAN: Judy?

23 MS. SHAPIRO: Yeah, I guess I do. To the
24 extent that we've submitted a proposal, and as I
25 understand your sort of consultation structure,

1 somewhere in the process would be your making public
2 what you're thinking about. And if you can share that
3 with us enough in advance of another consultation
4 session, we can probably get you more meaningful
5 comments back.

6 I understand that it gets shared on the Web
7 site. But if you can just pop somebody an e-mail and
8 say look, it's out, it's out, we would be delighted to
9 be able to respond meaningfully and keep this
10 conversation going.

11 MS. HOMER: Or even if, you know, I mean,
12 it's a lot to ask somebody to draft a regulation and to
13 get the NIGC -- the commissioners to approve and all of
14 that. But if we just get some kind of feedback, you
15 know, what the concerns are, you know, these are our
16 areas of concern, you know, rather -- you know.

17 MS. SHAPIRO: Yeah, if you tell us where
18 the hot button items are and things that need some
19 learning. We want to have a good product. We want to
20 have one that you can live with, as not just one that
21 we can live with.

22 VICE-CHAIR COCHRAN: As I said, I know
23 that we've broken it out and it's been sent out and
24 it's being analyzed. And I don't have a deadline
25 obviously that I could offer up of when we expect

1 hearing back. But I don't suspect that it's going to
2 be too long before we get that feedback in. And you're
3 absolutely right, we should have a better sense coming
4 from the policy perspective to give you some feedback.
5 Because we do want you to be able to respond. We do
6 want to give you time. I think that's more than fair
7 for you to ask.

8 MS. SHAPIRO: I'm also mindful of what
9 either you or Lael said, that the old MICS are slated
10 to be operative as of October of this year. And that
11 would not be too soon.

12 VICE-CHAIR COCHRAN: No. So we're working
13 very diligently. We've only had the product now for
14 what, almost three weeks now. So we're working very
15 hard to make -- to get through it, analyze it. Like I
16 said, I want to be thoughtful, I know the Chairwoman
17 wants to be thoughtful, Dan wants to be thoughtful as
18 well, in our analysis. Because whatever comes out is
19 going to impact you when we're gone. And we're aware
20 of that eventually.

21 And no, I don't subscribe to the philosophy
22 that a bad regulation is better than no regulations.
23 That one took me by surprise. Anything else?

24 I think there was some -- or was a gaming
25 commissioner here from Shakopee? I'm sorry, did we

1 introduce? Were you here when we were doing
2 introductions?

3 MS. PHERSON: Mm-hmm.

4 VICE-CHAIR COCHRAN: Ah, okay. Well,
5 thank you.

6 Just a reminder, the facility licensing
7 comments, the period closes on the 17th.

8 MS. HOMER: How strict are you on these
9 closing days, by the way? Are you like really strict
10 on these or?

11 MS. ECHO-HAWK: Yeah, because, you know,
12 we've got -- we're in this giant machine right now, and
13 we're trying to, as we take the comments in, then we
14 send them to whoever is working on them at the staff
15 level, and then they put them together so that
16 hopefully -- the idea is that as we move forward, we're
17 going to have Notice of Proposed Rulemaking and Final
18 Rules. And that everything is going to keep moving.
19 And if we keep postponing, things don't move. So I'm
20 sort of the deadline police.

21 MS. HOMER: You know, I've got two clients
22 that are dealing with natural disasters right now. And
23 I'm working on the TGWG. And, you know, it is so hard
24 for us to, you know -- literally, though, natural
25 disasters. I'm not exaggerating.

1 MS. ECHO-HAWK: Yeah. And we did have
2 that issue come up during the fee -- around the time
3 the fees were, the closing the time for -- now this is,
4 you know, and again, just remember, this is just the
5 preliminary draft.

6 MS. HOMER: Right.

7 MS. ECHO-HAWK: There's also time to
8 comment during the Notice of Proposed Rulemaking. But
9 by the same token, we did -- I think it was we had
10 floods, and so we had, down in the south, and we had a
11 couple tribes say we're flooded out and we can't
12 comment. And certainly we take that stuff into
13 consideration. And that e-mail box is always
14 available, but. And, you know, we're really, I'm
15 trying very, very diligently to stick to our time
16 frames because we are just trying to keep things moving
17 consistently so that there is work product being moved.
18 And new stuff is going to keep coming out.

19 I know it's more work, apologize. But if we're
20 going to get this done, we gotta stick to our time
21 frames. Sorry. But if you have natural disasters and
22 things that are, then, you know, sure.

23 MS. HOMER: Because I can't get tribal
24 council resolutions, I mean they're just --

25 MS. SHAPIRO: Sandbagging.

1 MS. HOMER: Yeah, they're literally
2 sandbagging the school right now. We already
3 sandbagged the casino. Just kidding. It's all being
4 done simultaneously.

5 VICE-CHAIR COCHRAN: Well, Liz, certainly
6 communicate with Lael, even if you've got situations
7 like that that we need to be aware of, so that she can
8 talk to you to try to figure out how we can make this
9 work.

10 And you're such an intelligent woman, I have no
11 doubt that if there's something truly pressing that you
12 need to get in there, although we're at the preliminary
13 stage right now, then get our attention. You know, if
14 it's really just an issue you wanted to -- something to
15 support, then maybe it's okay to let the preliminary
16 draft deadline go and then comment later.

17 You know, we're not here to shut any tribe out
18 of a comment based on things that are outside their
19 control. And so just talk with us.

20 MS. HOMER: Appreciate it. Thank you.

21 VICE-CHAIR COCHRAN: (To Lil Pherson) And
22 would you please extend to the chairman, "Thank you for
23 such a wonderful facility." We really have enjoyed our
24 time here. This is the second time we've been back.
25 And the facility is absolutely fantastic. So thank

1 you.

2 Minneapolis. Going to Minneapolis -- yeah, the
3 Commission won't be in Minneapolis, I understand.
4 We'll be in Milwaukee on the 21st and 22nd. So we're
5 going to be on the road quite a bit more this month.

6 We are going to adjust the agendas. We put up
7 kind of a generic agenda for the consultations, we're
8 going to adjust those, so keep an eye out for them so
9 that we get them in line with the number of topics that
10 we're dealing with.

11 I know it's also been, in the past it's been
12 one commissioner that's come out. Depending on
13 process-wise how we go, you may start to see two of us
14 out there if we need to break things out.

15 We've tried to minimize the expense to the
16 Commission on flying a bunch of us out. But it may
17 become necessary that you see one or more of us. So
18 we'll look forward to being out.

19 Thank you for your time. Thank you for being
20 here today and your comments.

21 Is there any other thing I need to close or are
22 we considered to be closed? Okay, safe travels going
23 home. And I appreciate it. Thank you.

24 (Hearing concluded at 3:16 p.m., June 8, 2011.)

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REPORTER'S CERTIFICATE

I, Mary P. Mitchell, a Registered Diplomate Reporter, Certified Realtime Reporter, and Certified LiveNote Reporter, do hereby certify that the foregoing pages of typewritten material constitutes an accurate verbatim stenographic record taken by me of the Proceedings of the National Indian Gaming Commission on the 8th day of June, 2011, at the times and place specified.

DATED: June 16, 2011.

Mary P. Mitchell
Registered Diplomate Reporter
Certified Realtime Reporter
Certified LiveNote Reporter

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