

Testimony of Chairwoman Tracie Stevens
National Indian Gaming Commission
Senate Indian Affairs Oversight Hearing
July 26, 2012

Thank you, Chairman Akaka, Vice Chairman Barrasso, and members of the Committee for inviting me to testify today. It is an honor to appear before you in my capacity as Chairwoman for the National Indian Gaming Commission (NIGC or Commission).

During our tenure with the Commission, the Commissioners have established four major priorities: consultation and relationship building; training and technical assistance; regulatory review; and agency operations. We have made significant progress on each of these four priorities since I was sworn into office in June 2010. Meaningful consultation and relationship building are paramount in maintaining strong regulation of the industry by Federal, tribal and state regulators. NIGC-sponsored training opportunities and technical assistance provide early resources to address potential regulatory issues, thereby maintaining the integrity of Indian gaming. Regulatory review improves the industry by establishing clear, effective standards. Finally, review of our internal operations promotes efficient and effective regulation by eliminating redundancies, work silos, and unnecessary processes.

Each of the four priorities aids NIGC's administration of its statutory responsibilities as set forth in the Indian Gaming Regulatory Act (IGRA). As I have discussed in prior testimony, this Commission has established the "ACE" approach to enforcement consistent with the four priorities: assistance, compliance, and enforcement. This approach prevents foreseeable problems through effective communication, training and technical assistance, and compliance efforts. When necessary, the Commission takes enforcement action to ensure compliance and protect the integrity of Indian gaming.

Today I will discuss the status of tribal gaming and provide an update on the Commission's progress in achieving its four priorities.

The Current Status of Indian Gaming and Regulatory Oversight

Gaming revenue provides resources for many tribal services as well as thousands of jobs for tribal members and surrounding communities. Currently, gaming operations employ tens of thousands of individuals across the United States, mostly in areas that, historically, suffer from high unemployment. Over the past few years, gaming revenue has remained roughly stable, collectively generating approximately \$27.2 billion in gross revenue for tribes. In 2011, 237 tribes engaged in gaming as a means of tribal economic development, with 421 active gaming operations.

There are over 6,500 tribal, state, and Federal regulators working together to maintain the integrity of Indian gaming. NIGC is the Federal civil regulatory agency primarily responsible – along with tribal and state regulators – for regulation of Indian

gaming on Indian lands. Tribal governments employ approximately 5,900 gaming regulators and states employ approximately 570 regulators. In addition to working with tribal and state regulators, at the Federal level, NIGC works with Federal agencies such as the Federal Bureau of Investigation, the Department of the Interior, the Department of Treasury and the Department of Justice, to promote compliance with all Federal laws.

During the last 12 months, the NIGC has successfully implemented the ACE approach. In addition to providing informal day-to-day technical assistance, our auditors, compliance officers and attorneys work closely with tribes to resolve compliance issues in a manner that takes into account unique aspects of a particular gaming operation. If compliance steps are unsuccessful, we take enforcement action. ACE has effectively reduced the number of notices of violations (NOVs) by proactively addressing potential compliance issues and proceeding with enforcement action only for substantial regulatory violations that were not, or could not, be corrected through technical assistance and compliance efforts.

As the Committee is aware, six years ago the D.C. Circuit held that the NIGC does not possess authority to promulgate regulations establishing Minimum Internal Controls (MICS) for Class III gaming. As I have discussed in my previous testimony, Class III MICS are essential to protect the integrity and security of gaming operations. During my tenure as Chairwoman, we have examined the real world impact of the court's decision on the regulation of Indian gaming.

Through research and working with tribes and tribal regulators, we have learned that all tribes engaged in Class III gaming pursuant to a tribal-state compact have Class III MICS. Of the 24 states that allow Class III gaming, 15 require stringent MICS specifically in their compacts, and the other nine states require tribes to develop comprehensive MICS of their own. Therefore, every such tribe has a system of internal controls that governs procedures for Class III operations.

The Commission has never taken an enforcement action for failure to comply with MICS. Prior to the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006), (*CRIT*) if NIGC identified an issue with a particular tribe's Class III MICS, the agency worked with the tribe to achieve compliance. Although we do not have independent authority to promulgate or enforce Class III MICS, tribes continue to request our assistance and we continue to work with them to strengthen the effectiveness of their Class III MICS.

We have also consulted with tribes regarding how the Commission should address the D.C. Circuit's decision. While there does not appear to be a tribal consensus, many tribes support publication of Class III MICS as guidance for their own regulations and compacts. We continue to utilize the MICS to provide technical assistance and training, and many tribes utilize NIGC's Class III MICS as part of their own regulatory schemes or as part of their tribal-state compacts.

Consultation and Relationship Building

Meaningful and transparent consultation with tribes is integral to the success of NIGC's mission. As the primary Federal civil regulatory agency, the Commission conducts government-to-government consultations regarding changes to its regulations. This government-to-government dialogue is crucial in maintaining the integrity of the industry given the tribal, state and federal regulatory roles under IGRA.

We make every effort to consult throughout Indian country and bring NIGC to tribal communities and widely-attended gatherings, in an effort to be mindful of both tribal and NIGC resources. In the past 12 months, we have conducted 19 consultations in every region of the United States regarding regulatory review. Tribal leaders and representatives from approximately 179 tribes attended, totaling approximately 345 individuals.

We have also been working collaboratively with Federal, tribal and state officials to ensure roles under IGRA are coordinated. This promotes effective inter-governmental communications regarding gaming issues and helps ensure that the appropriate agency has the information and support needed to perform its duties. As such, the Commission has reached out to the Federal Bureau of Investigation, the Department of Justice, Financial Crimes Enforcement Network, and other agencies, to develop inter-agency practices and to participate in inter-agency work groups.

Technical Assistance and Training

The Commission views training and technical assistance as a critical tool in bolstering industry security and maintaining compliance with regulatory and statutory requirements. Therefore, consistent with express mandates contained in IGRA and the goals of the Commission, the NIGC offers training and technical assistance to tribal governments, tribal regulators and gaming operations personnel. Successful regulation depends on a well-trained workforce and well-targeted training to ensure compliance with Federal regulations. Our goal is to achieve compliance with IGRA before issues arise, which will serve to preserve the integrity of tribal gaming and preempt the need for enforcement actions.

Last year, we conducted a survey of our program, which helped inform our review and revisions to our course catalog. As a result, requests for training and technical assistance, as well as participation in trainings, have risen.

In 2011, the NIGC provided 83 training programs, totaling 659 training hours. Over 2,300 individuals attended training sessions, representing 209 (87%) of all gaming tribes. So far this year, 1069 individuals from 132 tribes have attended our training programs. The NIGC has offered 51 different types of training. As more tribes learn about training opportunities, we expect trainings and attendance to continue to increase.

Training and technical assistance will be an on-going initiative in our mission to achieve full compliance and serve the needs of the industry.

Internal Agency Operations

As part of our effort to optimize regulation of tribal gaming, we have removed work flow silos, eliminated redundant functions, streamlined and implemented better processes to improve the functioning of the Agency. Further, in accordance with requirements of the Government Performance and Results Modernization Act of 2010, P.L. 111-352, we are in the process of drafting a strategic plan, which will outline the NIGC's priorities over the next several years. The plan also will detail processes and methods by which the NIGC will achieve its goals, including performance measurements to assess the success of each initiative. In addition, consistent with Executive Order 13589, "Promoting Efficient Spending," we are continuously examining how to promote the cost-effective use of resources, including the hiring of staff to build upon NIGC's capabilities to perform mission-critical functions efficiently.

To maximize efficiency within the Agency, we have adopted or revised internal policies to provide clarity to our employees. We are fully utilizing existing contracts with other agencies, which are cost effective. Tribal revenues are the sole funding source for the NIGC, and it is imperative that NIGC utilize these revenues efficiently and effectively. This means a smarter, better-equipped Agency that is more responsive and better adapts to its regulatory responsibilities and needs of the tribal gaming industry.

In addition to its efforts to increase internal efficiency, the NIGC has continued its commitment to transparency by holding public meetings on the state of the Agency and important issues. Our most recent public meeting was held on May 23, 2012 in Prior Lake, Minnesota. These meetings provide tribes, as well as the public, an opportunity to learn about Commission business and to address the Commission. We will continue to hold public meetings to inform the community of the NIGC's progress toward achievement of its four priorities and other operational issues.

Regulatory Review

We embarked on this important initiative in November 2010. Review of our regulations focused on maintaining a regulatory framework that is efficient and effective. Through internal deliberation, tribal consultation, and public comment, we are promulgating improvements that streamline processes while maximizing the NIGC's ability to regulate the industry effectively.

After consulting with tribes and considering public comment in response to a Notice of Intent, the Commission established a Regulatory Review priority list and consultation schedule. This initiative has been conducted in accordance with Executive Order 13563, "Improving Regulations and Regulatory Review," issued on Jan 18, 2011. Over the past year, we have discussed 20 regulations or potential regulations, and circulated 13 discussion drafts to date. Since I appeared before you in 2011, the

Commission has published 10 Notices of Proposed Rule, two Notices of No Action and two Final Rules. Of the 10 Notices of Proposed Rule, the Commission is working diligently to conclude those rulemakings by issuing final rules in the Federal Register.

This Commission is dedicated to strong and efficient regulation of Indian gaming. Therefore, a large portion of our effort has been focused on reviewing and updating the Class II Minimum Internal Control Standards (MICS) and Technical Standards for Gaming Equipment Used With the Play of Class II Games, 25 C.F.R. Parts 543 and 547. These regulations outline minimum standards designed to protect the security and integrity of Class II gaming operations, as well as minimum standards for equipment used to play Class II games. Through internal deliberations and consultation with tribes, we are reviewing the current regulations to ensure that they provide for advances in technology and continue to be relevant to current state of the industry. Updating the MICS and Technical Standards for Class II gaming are integral to protecting the industry and patrons alike.

As part of the review process for Parts 543 and 547, we developed a Tribal Advisory Committee (TAC) to advise and make recommendations to the Commission regarding the Class II MICS and Technical Standards. The TAC is comprised of diverse group of tribal government representatives whose expertise assisted the Commission in its review of Parts 543 and 547, and aided in the development of a discussion draft, which was published on March 16, 2012.

We consulted with tribes in nearly all regions of the United States and reviewed over 50 written public comments to the discussion drafts. Although many tribes expressed opposition to potential changes to current regulations, the Commission's regulatory role is to take a hard look at the issues and make well informed decisions, even if those decisions ultimately are unpopular with the regulated community. The Commission is dedicated to promulgating strong regulations that maintain the integrity of Indian gaming.

The Commission's proposed rules, which were published on June 1, 2012, are based on careful consideration of comments received on discussion drafts. Since the proposed rules were published, we have conducted five consultations in various regions of the country and continue to receive written comments. The comment period for the proposed rules will close on August 15, 2012, after which we will review all public comments, allowing the NIGC to make a well informed and fully considered decision regarding final regulations.

Conclusion

This concludes my testimony. I hope this summary of activities and initiatives provides the Committee with valuable information regarding the regulatory role and goals of the NIGC.

Thank you, Chairman Akaka, Vice-Chairman Barrasso, and members of the Committee for your time and attention today. I am available to answer any questions you might have for me.