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6 TRANSCRIPT OF CONSULTATION MEETING
7 NATIONAL INDIAN GAMING COMMISSION
8 NOTICE OF INQUIRY FOR REGULATION REVIEW
9 HELD AT THE RIVERWIND CASINO
10 IN NORMAN, OKLAHOMA, ON JANUARY 18, 2011
11 AT 9:00 A.M.
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24 Job No. NJ303773
25 REPORTED BY: D. LUKE EPPS, CSR, RPR

1 CHAIRWOMAN STEVENS: Good morning. If I
2 could have everyone take their seats, we'll go
3 ahead and get started. I apologize for the
4 delay in getting everybody through the line.
5 Okay. Before we begin, I'd like to turn over
6 the microphone to Governor Anoatubby of the
7 Chickasaw Nation.

8 BILL ANOATUBBY: Good morning,
9 everybody. It's a great day to be here in
10 Oklahoma at Riverwind. I'll take this
11 opportunity to welcome everybody to this
12 facility, to this consultation, and particularly
13 a place to welcome the commissioners of the
14 National Indian Gaming Commission. Let's give
15 them a nice welcome.

16 I think they've set a direction here that's
17 very important to all of us, to Indian Country,
18 to the commission by coming to tribal
19 facilities, and to come to the tribal facilities
20 and consult, and I think that's certainly an
21 important thing, and I think it's a move most
22 certainly in the right direction.

23 I won't take too long because I know that
24 you have some very important business to do
25 here. I'm a pre-IGRA tribal leader, and I'm

1 sure there's some other folks in this room that
2 were here before the Indian Gaming Regulatory
3 Act. I remember when we were doing, quote,
4 "bingo," the kind where you move the slots over
5 and you dot the paper or whatever, and we still
6 do that, and our credibility was questioned, was
7 questioned by people around us. In fact, we had
8 some confrontations with some of the local law
9 enforcement over bingo.

10 When IGRA was passed, a lot of that was
11 still confrontational, but not quite the same
12 way. There was a question about the legitimacy
13 of gaming in Oklahoma particularly, and IGRA
14 changed a lot of that, and we had the National
15 Indian Gaming Commission there to help regulate.
16 That was the primary regulation followed by the
17 tribes. Even though it was legitimate before,
18 it's added a level of legitimacy. It's made our
19 life better.

20 Now, there's a fine balance that we have to
21 achieve when it comes to regulation. It's
22 important that we protect the interests of the
23 tribes. It's important that we protect the
24 interests of our patrons, and you could go too
25 far either way. You cannot have enough

1 regulation or you could have too much. I think
2 it's important that we work together such as we
3 will be doing today to help achieve that
4 balance, to reach that mission of -- the tribes
5 rely upon the gaming dollars. It's important,
6 very, very important. Tribal government is
7 important, being able to have a good solid
8 foundation, a good financial foundation, but
9 also, and I guess maybe even more important is
10 the services that we provide as a result of the
11 gaming dollars.

12 So this is a very, very important meeting
13 that we're having here today, and I think it's
14 important that we apply ourselves to do the
15 kinds of things that we need to do to protect
16 the interests of our people, of our credibility,
17 and to achieve that balance that we so desire.
18 And, again, thank you very much for being here.
19 The Chickasaw Nation is honored and is very
20 privileged to be here having this meeting today,
21 and we also feel privileged and honored that we
22 have this group of tribal readers and tribal
23 representatives here in our facility. Thank you
24 very much.

25 CHAIRWOMAN STEVENS: Thank you, Governor

1 Anoatubby. On behalf of the National Indian
2 Gaming Commission, we want to welcome everybody
3 and tell you my name is Tracie Stevens. I'm a
4 member of the Tulalip Tribe. I'm the chairwoman
5 of the National Indian Gaming Commission. I do
6 want to extend my sincere appreciation and the
7 appreciation of the entire commission and the
8 agency for the Chickasaw Nation hosting this
9 consultation.

10 You know, before the meeting we were having
11 a little chat with the governor, and he was
12 saying what an honor and privilege it was for
13 us, for the Chickasaws to have us here, and
14 really the truth is it's really a privilege and
15 an honor for us to come into your home land,
16 into your territory, and have you welcome us in
17 your home. So thank you very much for hosting.
18 This is a fabulous facility, and I understand
19 you have many others, and the invitation has
20 been extended to us to visit others, which we
21 hope we can do in our time in office.

22 I also want to recognize Vice-Chairwoman
23 Stephani Cochran, who is to my left, who is a
24 member of the Chickasaw Nation. We're in her
25 home, and also Dan Little who is the associate

1 commissioner. You'll be hearing from both of
2 them in just a moment. Also I want to recognize
3 our staff who we have here. Over at the end of
4 the table is Lael Echo-Hawk. She is the
5 Counselor to the Chair, and she'll be
6 facilitating the meeting as we go through it.

7 Also from the Oklahoma office, many of you
8 know the staff that are here. We have Tom
9 Cunningham who is the R.D. He's right back
10 here. Y'all know him. Tony Wheeler, field
11 investigator, is back around there somewhere.
12 Dana Freeman, also a field investigator, is at
13 the table. Christie Jamison, who is an
14 administrative assistant.

15 From our Tulsa office we have Tim Harper who
16 is back here next to our transcriptionist, and
17 Marci Ober. I'm sure she's here. So they're
18 here and available if you need to chat with
19 them, but I do want to recognize them because
20 they've been preparing for this meeting and as
21 you saw signing everybody in. Before we move
22 forward with the meeting, I do want to reiterate
23 many of you heard this commission talk about our
24 four major initiatives, and will be the focus of
25 our time in office. We have four major

1 initiatives, and I'll name them quickly and just
2 go over them and talk about how they pertain to
3 what we're doing today.

4 Our first priority is consultation and
5 relationship building. We understand and we
6 have heard some criticism from tribes rightfully
7 so about the NIGC past practices, and in keeping
8 with President Obama's direction to all
9 executive agencies to have meaningful dialogues
10 with tribes and consultations and collaboration
11 with tribes, we're going to be performing our
12 consultations differently than previously has
13 been done.

14 As you see, this is an open format so that
15 we can hear all of the tribes' concerns and
16 priorities, and also provide an opportunity for
17 tribes to give us some solutions together, and
18 just after three consultations last week on the
19 west coast, we are seeing that there are
20 different priorities for tribes or different
21 views from different tribes in different regions
22 naturally because, you know, gaming is different
23 for tribes in various regions.

24 So this also provides -- not only do we get
25 to hear your concerns, and we've heard some

1 tribes who really appreciate being able to hear
2 the concerns of other tribes because they
3 thought maybe they were the only ones who had a
4 concern about something, but also afford
5 everyone the opportunity to provide some
6 solutions that would help all the tribes at the
7 table.

8 So this is an open forum. We do have tribal
9 leaders right around us here. If there are any
10 other tribal leaders that are a little shy back
11 there, we do have a few seats right up here with
12 us, but it's intended to give you the floor
13 today to tell us what your priorities are.

14 Now, before I move on, our other major
15 initiative -- I do want to say that as this is
16 different from our previous consultation
17 formats, the individual meetings, we certainly
18 don't expect tribal leaders or tribes to have to
19 talk to us in this open forum about their
20 specific tribal issues, whether it's a
21 regulatory body or operational concerns, any
22 issues you might have that's only specific to
23 your tribe.

24 We do meet with tribes outside of these
25 meetings at tribal request. We do make

1 ourselves available, but we certainly don't
2 expect nor do we want you to feel like you have
3 to air your particular tribe's issues here, just
4 so you know that, but generally with this new
5 consultation format, it is meant to be
6 collaborative. It is meant for all of us to
7 work together on common ground, and work to a
8 common goal.

9 Our second initiative is technical
10 assistance and training, and that is statutorily
11 mandated as many of you know, but it should be
12 more than that. We should be trying to improve
13 regulatory oversight from the primary regulator
14 standpoint. What can we be doing to help tribes
15 better protect gaming operations and to align
16 our program to the needs of the tribes?

17 Now, this is something that Stephani Cochran
18 is heading up for the commission, and there is a
19 survey out that was posted last Thursday on our
20 website asking tribes and regulators and
21 operators what training do you need and what
22 improvements can we make so you can create a
23 better catalog that fits the needs of the
24 tribes.

25 So that's out, and within 24 hours last

1 Friday, we had 30 responses just within 24
2 hours. So I encourage everybody to go online.
3 It was e-mailed, we faxed it, we put a press
4 release out, it's on the website so you can fill
5 it out on our website and send it in. So please
6 do participate in that particular survey so we
7 can get a better gauge of what it is that you
8 need from us. The third initiative, agency
9 operations review. We're doing an internal
10 review of our operations in the agency.

11 Management of the agency, the organization and
12 structure of the agency, budgeting for the
13 agency, and trying to create some accountability
14 or some transparency to tribes because if we're
15 really concerned about how you're running your
16 operation, you should be really concerned about
17 how we're running our operation, and that you
18 should know that good practice, good government
19 is to allow the public, you, who we serve to
20 know how we're conducting our business.

21 And the final one, which is the topic of
22 today's consultation is regulatory review.
23 During my nomination process, I committed to
24 doing sort of an overview of the current
25 regulations and examination of past regulations

1 that were in effect, to look at the relevance of
2 regulations as we come into office, and that's
3 what we're doing. That's the discussion of
4 today's topics.

5 I do want to say this is not intended to be
6 a line by line drafting session, but more over
7 priorities, which regulations in what order,
8 what level of priority, and how should we go
9 about addressing regulatory change or
10 improvement, and we want to have tribes help us
11 set this agenda and set the priority. We don't
12 want to be off doing something that's not really
13 helpful to you or to the industry. You should
14 have a say right from the beginning about what
15 we're doing, and some of the regulations will be
16 sort of a bigger item to get your arms around
17 like the MICS. Others may be smaller that we
18 can make some technical changes to and move
19 through quickly, but we will be having a
20 transparent process. We want to hear from you
21 today, what your priorities are in terms of
22 regulatory review, or any changes that need to
23 be made so we know where to focus our attention,
24 because after all, we're only here -- this
25 commission technically will only be here for

1 another two and a half years, less time for
2 Vice-Chairwoman Cochran who's already been in
3 office for a year. I was the last one to come
4 in, so I'm going off of the far end of the time
5 that we have, and so setting priorities is
6 important for us, and your inclusion in those
7 priorities is incredibly important to us so that
8 we stay focused.

9 Before we move on to the rest of the
10 comments and Lael actually, I will turn the
11 microphone over to the other commissioners.

12 VICE-CHAIRWOMAN COCHRAN: Good morning.
13 Can you hear me? I'm going to stand up because
14 I'm not a very tall woman. I can't see you.
15 Governor Anoatubby, thank you for allowing us to
16 come out and make us feel so welcome. Thank you
17 for that. There's many chiefs here, many other
18 governors and chairmen and tribal leaders, and
19 it's also an honor and privilege for me to
20 address you. I hope to be a good listener.
21 There's many experts in this room. The Oklahoma
22 tribes here have so much expertise in gaming,
23 and we hope to be good listeners and hear what
24 your needs are, and so I hope to be a good
25 listener to you today.

1 Finally, it's always good to be home. This
2 is home. I live in D.C. now. It's my second
3 trip. It's very different, so it's nice to be
4 home. Chairwoman Stevens and Commissioner
5 Little are amazing people to work with. They
6 have a lot of great ideas. They have a lot of
7 inspirational commitment to the well-being of
8 gaming. It's quite a privilege also to serve
9 with them as well, so thank you for allowing us
10 to be here, and I'll turn it over to Mr. Little.

11 ASSOCIATE COMMISSIONER LITTLE: Good
12 morning, everyone. I just want to be very
13 brief. We are very happy to be here. Governor,
14 thank you for the hospitality. This is a
15 wonderful place, beautiful hotel. If you
16 haven't stayed here, I strongly recommend it. I
17 just want to talk about the NOI very quickly.
18 The questions that are in the NOI are derived
19 from, you know, our staff, the commission,
20 tribal leaders, and one thing I want you to
21 remember as we go through this is that these are
22 just questions.

23 Also if there's a particular issue,
24 regulatory related issue that's not covered,
25 then bring it up. So as we go along, I'm very

1 interested in hearing from the tribes. So once
2 again, thank you for the invitation to come out
3 here. I'm very happy to be here and look
4 forward to hearing from all of you. Thank you.

5 CHAIRWOMAN STEVENS: Thank you, Stephani
6 and Dan for your comments, and I also want to
7 recognize former commissioners that are here,
8 like Liz Homer is here, and before I turn it
9 over to Lael, again, I want to reiterate that
10 today is for us to hear from you. Lael will go
11 through just sort of a 30,000 foot review of the
12 NOI, but we're doing this so that we can talk
13 about the need for changes with regard to tribal
14 priorities, and to talk about that, talk about
15 those priorities before we initiate the meeting.
16 This is a new mechanism for this agency, and
17 Lael will talk about that more, but we do want
18 to hear from you today.

19 Again, welcome. We look forward to your
20 comments, you know, and even if you have some
21 comments about this process, we'd like to hear
22 from you. We were trying to be as inclusive as
23 we could and also to be respectful to tribes by
24 giving the floor the majority of the day to
25 tribal leaders, and to just open it up. We had

1 one person in one of the consultations say that
2 they prefer to go line by line in the Notice of
3 Inquiry, but we also appreciate that tribal
4 leaders have very, very busy schedules, far
5 busier than ours will ever be because you have
6 to take care of an entire community and an
7 entire government, and oftentimes tribal
8 representatives or leaders will come and just
9 provide their comments and go on with the rest
10 of their day, and so we do keep it open for
11 flexibility, but if you do have comments on this
12 process or changes or improvements you'd like to
13 see, we certainly are open to those. So, again,
14 we look forward to working collaboratively
15 together to set this agenda, and we look forward
16 to your comments. I'm going to turn it over to
17 Lael who is down here on the right or my right
18 to bring you through an overview of the Notice
19 of Inquiry.

20 LAEL ECHO-HAWK: Good morning. Can
21 everyone hear when everyone was talking? Okay.
22 Good. Thank you. My name is Lael Echo-Hawk. I
23 am a member of the Pawnee Nation of Oklahoma.
24 I'd like to acknowledge President Howell from
25 the Pawnee Nation. I appreciate him coming down

1 here. I'm very happy to be in Oklahoma. This
2 is stop four on our tour with the commission.
3 We keep joking that we're going to get tour
4 t-shirts or something. I haven't seen them so
5 far. We'll see what happens, but, again, thank
6 you all for coming.

7 I'm going to run really quickly through this
8 so that we can get to your comments. The
9 e-mail, and you'll see this at the end as well,
10 but I emphasize the e-mail address
11 reg.review@nigc.gov. This is where you can send
12 comments throughout this process. You can send
13 us comments, substantive comments about the NOI.
14 That is the best way to contact me directly
15 about the regulations and the NOI review.

16 So why regulatory review? IGRA obviously
17 requires that the NIGC enact -- put together
18 some regulations in order to implement the act.
19 Additionally there are some requirements such as
20 the Executive Order "Regulatory Planning and
21 Review" and the Regulatory Flexibility Act.
22 They require administrative agencies to put
23 together an administrative or a regulatory
24 review every year, and it's been on a
25 semi-annual basis. So realizing that, we

1 thought this would be a good opportunity for us
2 to come out into Indian Country and take a look
3 at our regulations and set the agenda that will
4 come out in April.

5 Consultation, as the chairwoman indicated,
6 consultation is very, very important to this
7 agency. It's our number one priority, and we
8 firmly believe and support President Obama's
9 mandate that we consult with tribes meaningfully
10 and engage in dialogue before we make a decision
11 that will affect this industry.

12 One of the sections of the consultation
13 Executive Order, Section 3(c)3, says that even
14 before -- before we determine whether or not to
15 set federal standards, that the agency shall
16 consult with tribes and to listen, help us make
17 decisions based on input that we receive from
18 you, and this is something that's been very
19 important to the commission, and it's what the
20 intent of this Notice of Inquiry is.

21 So what is a Notice of Inquiry? It's a tool
22 used by a number of administrative agencies.
23 I've never seen it used in the context of an
24 agency consulting with tribes, but it is
25 something that's used often by other

1 administrative agencies like the Federal
2 Communication Agency -- or Federal Communication
3 Commission, the copyright office, et cetera, and
4 what it does is it puts some questions out to
5 the individuals or industries affected by these
6 regulations, and it says, okay, we've heard some
7 issues. We've heard some concerns. Give us
8 your feedback so we can figure out which
9 direction we need to go, and it's really a way
10 to solicit some input, some guidance before we
11 move forward drafting regulations or policies.

12 So this NOI asks three primary questions:
13 What regulations, in what order, and how do we
14 do it. So we're on stop number four. We're
15 here in Oklahoma. Later on this week we'll be
16 in Albuquerque, and then we go to D.C. next
17 week. The following week we'll be in South
18 Dakota and Florida, but we really wanted to make
19 sure that we hit all the regions as we travel,
20 and we came out into Indian Country.

21 The NOI published November 18th. The
22 comment period closes on February 12. That's a
23 Saturday, but that's the last day. It's an
24 86-day comment period. You can, again, get your
25 comments to us any way you need to. You can

1 e-mail, you can fax, you can snail mail, pony
2 express, smoke signal, whatever you need to do.
3 We really want your comments, so please get them
4 to us.

5 All written comments and the consultation
6 transcripts are going to be posted on the
7 website. I've already received one transcript
8 from the transcriptionist from one of last
9 week's meetings, and so I anticipate by the end
10 of this week, we'll have one or two of those
11 transcripts on the website. You can go take a
12 look at those. There are a few comments already
13 posted, but as soon as they come in, we get them
14 on the website so everyone sees what other
15 people are saying and where the comments are
16 going.

17 So as I go quickly through the substance of
18 the NOI, something that's important to remember
19 as Commissioner Little mentioned as well is
20 these are suggestions only. These are issues
21 that we've heard and topic areas that we've
22 heard as we were consulting over the summer as
23 we had individual meetings with tribal leaders
24 and commissioners in our offices or at various
25 conferences, but these are not issues that the

1 commission has taken a position on. That's why
2 we're here. We're here to ask you for some
3 assistance in setting the priorities and coming
4 up with a plan for how we move forward in
5 revising any of these regulations.

6 So the NOI goes through a number of
7 sections. Part 502, which is the definition
8 section, including looking at the definition of
9 net revenues, management contracts. We've heard
10 some comments about the net revenues definition,
11 and some thought is going into whether or not we
12 need to revise or take a look at the use of net
13 gaming revenues bulletin that was issued in
14 2005, and so it's something we're looking for
15 some input from tribes on.

16 The fees section, there's a couple of things
17 in there that we looked at or that we heard
18 about including a certain ticketing system in
19 lieu of NOVs, when late fees are issued. The
20 self-regulation regulation. I like saying that.
21 It's whether or not the burden of getting a
22 self-regulation certificate is worth sort of the
23 benefit and we've heard quite a bit about those
24 over the past three meetings. Part 523, we've
25 heard that that is obsolete and maybe should be

1 just be removed entirely. Management contracts
2 is a very big issue and we've heard a number of
3 comments about these particular sections, and
4 look forward to any comments that you might have
5 as well.

6 Proceedings before the commission. One of
7 the other concerns we've heard is that there's
8 some concerns about due process and about the
9 length of time it takes for someone when they're
10 filing an appeal before the commission, and
11 whether or not we should draft regulations that
12 provide some clear guidance on that process and
13 how it should work and how much time it should
14 take.

15 The big issue, the hot issue is the MICS,
16 Class II, Class III, the technical standards.
17 What should the commission do with the Class III
18 MICS that are now regulatory form in spite of
19 the fact that IGRA never gave the NIGC authority
20 to enforce or promulgate Class III regulation?
21 They are in regulation form now. We need to
22 figure out what to do with them and whether or
23 not we update them. Class III MICS is a very
24 big issue. Class II MICS as most of you know,
25 there was a tribal advisory committee that was

1 reviewing Class II MICS and technical standards
2 over the past couple of years, and it's sort of
3 out there pending. What do we do with that
4 current draft of regulations? So that's the
5 issue that's gotten the most attention over the
6 past couple of years, but it certainly is not
7 the only issue that this commission wants to
8 address over the next couple of years.

9 The pilot program for background
10 investigations for licensing, a number of tribes
11 here in Oklahoma participate in that program,
12 and we've heard -- our staff thought that it
13 might make some sense to put that into a
14 regulation form. Allowing access to tribes for
15 fingerprinting for non-primary management
16 official or key employees. Just access to the
17 fingerprinting process that we have.

18 Part 559, the facility licensing regulation,
19 that's something that we've heard at every
20 meeting needs to be looked at, and perhaps
21 reopened and reconsidered again. Access and
22 inspection of records that may be held off site.
23 For example, management companies often have
24 records from a tribal facility at their location
25 that are not necessarily a tribal facility, and

1 we've heard that perhaps we need to clarify that
2 the NIGC has the authority to subpoena those
3 records at the request of tribes or at the
4 request of the NIGC.

5 Enforcement proceedings, we've heard a
6 number of concerns about these regulations
7 including whether or not the chairwoman should
8 have the authority to withdraw an NOV after it's
9 been issued.

10 So those are sort of the regulations that
11 are currently in our regulations and our
12 structure. We have a couple of other things
13 that kind of came up and may or may not end up
14 as new regulations. Again, looking for some
15 input from tribes. That includes the Tribal
16 Advisory Committee or other methods to include
17 tribal comments when drafting a regulation. As
18 you know, the Tribal Advisory Committee process
19 has been sort of controversial in the past
20 couple of years, and we want to figure out a way
21 to make sure that tribal input is included in a
22 meaningful way, that it's done fairly, and that
23 when that input is received, that it is
24 representative of the industry and the tribes
25 around the country.

1 Sole proprietary interest. This is
2 something that's come up before the commission
3 very frequently lately. We've had a number of
4 tribes coming to us asking us to make a
5 determination about whether or not a contract or
6 a number of contracts violate sole proprietary
7 interest provisions of IGRA, and it's a good
8 question, and we need to figure out a way to
9 address that issue in a way that assists tribes,
10 provide some clarity to vendors and contractors
11 as they come in, and that may also include a
12 definition of primary beneficiary. That's a
13 comment that we heard in San Diego. So that's
14 something that we're also taking a look at.

15 Communication process policy. One of the
16 concerns that we hear, and we really try very
17 hard putting out this NOI to communicate as
18 broadly as possible press releases, mail, tribal
19 leader letters, e-mail, putting things on the
20 website, but how do we communicate with you and
21 who do we communicate with? I worked at a tribe
22 for six and a half years before moving to
23 Washington, D.C., and I know that a lot of times
24 tribal leaders' mail gets -- things sort of get
25 lost in the mail or things that come to the

1 gaming commission may not make it to the tribal
2 council or vice versa. We want to make sure
3 that every person at your tribe who needs to
4 know what's going on at the commission has that
5 information, and so how do we do that? So
6 that's something that we really would love to
7 hear from tribes on because we want to make sure
8 that we're communicating with you in a
9 meaningful way.

10 The Buy Indian Act, most you I'm sure know
11 that the industry, the gaming industry, there's
12 a movement for tribal gaming facilities to buy
13 products from each other, and when it comes to
14 procurement and the federal government, we
15 thought it might be a good idea to formalize
16 this into a regulation much like HHS has done.

17 So once again these are only suggestions.
18 The commission hasn't taken a position on how
19 we're going to do this, on which direction we're
20 going to go, and we really, really are looking
21 for input from you. One of my concerns is, I've
22 sort of been taxed with heading this process up,
23 is how do we address all of the issues that were
24 raised in the NOI or other issues that might be
25 raised by tribes? How do we address all of

1 those without getting bogged down in the MICS?
2 So if you have some thoughts about that, please
3 let us know. We're committed to this process,
4 and we want to make sure that we get as much
5 done in this short amount of time that we have
6 as possible. We want to make sure that we can
7 accomplish a lot, and we don't want to get
8 bogged down on one issue over another even
9 though the MICS, for example, is a very
10 important issue.

11 So going back to the executive order, same
12 section, (c)3 or (c)2, I guess, says that where
13 possible, the agencies shall defer to tribes to
14 establish standards. That's something that
15 we've really been looking at and considering
16 that if tribes submit some sort of alternative
17 to a regulation to us, then we have to defer to
18 them. That's Executive Order 13,175. So we are
19 looking for that from tribes as well.

20 So, finally, comment period closes on
21 February 12th. Everything is going to be posted
22 online. The commission is really dedicated to
23 accountability or transparency, openness so that
24 everything that we have that pertains to this
25 issue is going to be on the website. If you go

1 to the nigc.gov website, on the left-hand side,
2 there's a button called Tribal Consultation. If
3 you click that, it goes to another button called
4 Regulatory Review. When you click that button,
5 everything related to this process is on there,
6 all the press releases, the notice of inquiries,
7 the agenda for this meeting, the PowerPoint for
8 this meeting, comments received, transcripts
9 from these hearings, everything will be online.
10 So please go there and review that information.

11 Again, you can send comments to
12 reg.review@nigc.gov, and that goes straight to
13 me. So the commitment by the commission and by
14 myself, every comment that's received will be
15 looked at and evaluated. We take very seriously
16 the things that we hear from Indian Country.

17 The regulatory agenda does come out in
18 April. It will include sort of like a preamble
19 or an explanatory statement identifying how we
20 came up to the decisions that we came to. You
21 know, if we disagree about some comments that
22 tribes gave some input regarding which, you
23 know, priority or which regulations to address
24 first or et cetera, we'll have an explanation
25 there for why we took the direction that we did.

1 Again, this is trying to be as open and
2 accountable to the industry and to tribes as
3 possible.

4 The agenda will be finalized in April.
5 You'll likely hear about it at the NICA annual
6 meeting. Then that's when the substantive work
7 really begins. That's when we begin going line
8 by line and taking a look at the regulations and
9 doing the substantive work to get these
10 regulations updated and address some issues that
11 have been pending for a while.

12 So logistically these consultations are
13 being reported and transcribed, so that means we
14 need everyone who speaks to speak into a
15 microphone. Please state your name and the
16 tribe or organization that you represent. If we
17 can't hear you, you will probably be asked to
18 restate your name. We have a microphone here.
19 We have a microphone -- two microphones at the
20 table. So this microphone, I'll have it over
21 here, so people in the audience, if you want to
22 make some comments, the microphone will be up
23 here so that you can do that, and we can make
24 sure that it's recorded. So other than that, we
25 will turn the microphone over to you.

1 STEVE ORTIZ: Hi. I'm Steve Ortiz. I'm
2 the chairman of the Prairie Band Potawatomi. I
3 take it at this point after reading your post in
4 the Federal Register, all the comments that you
5 made in the Register, I would just like to point
6 out that it just seems that we need to begin by
7 deciding what the Tribe Advisory Committee is
8 going to be because your actions in here speak
9 of Tribal Advisory Committees. My experience in
10 the past over about the past 13 years with
11 Indian agencies is that with the Interior and
12 HHS, they usually have representatives from each
13 of their regions. They usually have a primary
14 and an alternate and take that on to be their
15 primary focus for these Tribal Advisory
16 Committees. So this way there's inclusion of
17 everybody. In the past, there's only two or
18 three. That's not enough inclusion. So I think
19 we need to begin a discussion on the selection
20 of the Tribal Advisory Committee and how that
21 will be established. Thank you.

22 CHAIRWOMAN STEVENS: Thank you. We may
23 have to turn this microphone down. We've
24 actually heard from other areas that actually
25 brought up the, and many of you may be aware,

1 those that are self-governance tribes, the
2 Tribal Budget Advisory Committee, TBAC. The BIA
3 uses that, and also DOI has it in their
4 consultation team. They follow a similar model
5 where it's left to the regions to decide who
6 will represent their region, and there's no
7 dictating to the region how they select someone
8 and their alternate. We don't get in there and
9 decide for you. That's been one suggestion, and
10 it sounds similar to what you were mentioning to
11 the chairman. We're open to comments on tribal,
12 you know, how to construct them, when to use
13 them. Sometimes we may not need to use them.
14 How do we bring in industry experts? Any other
15 -- and I do want to defer to tribal leaders
16 first just out of respect for their positions
17 and their time today.

18 ASSOCIATE COMMISSIONER LITTLE: Just a
19 follow-up. One of the other I think kind of
20 issues that has -- I don't want to say the
21 commission stumble on is the advisory committee
22 and how do we also make sure that different
23 segments of the industry are represented,
24 whether it be Class II or Class III because just
25 having someone from a region may miss a segment

1 of that, so, I mean, it would be interesting in
2 asking that question and any kind of ideas on
3 that.

4 TOM GAMBLE: Thank you. I'm Tom Gamble
5 with the Miami Tribe of Oklahoma, and many of
6 you know how unique Oklahoma is to Indian
7 Country. You know, a lot of what we're doing
8 today is figuring out really who we deal with as
9 far as Indian Affairs or NIGC because sometimes
10 I feel like it's an NIGC type of an issue and
11 it's not really Indian Affairs. So how closely
12 does the NIGC and staff work with the Indian
13 Affairs? And if there is an up-close
14 relationship with them, should a person from
15 Indian Affairs be included on the consultation?
16 Thank you.

17 CHAIRWOMAN STEVENS: We do work pretty
18 closely with Interior as many of you know. The
19 authorities are divided between the secretary
20 and the chair, and, you know, in terms of what
21 we're doing in this process with regard to
22 regulations, it may just be an agency that will
23 be here. I'm trying to think of instances where
24 Indian Affairs might be involved. They cover
25 the compact approvals. You know, we do partner

1 with them. I know that has not always been the
2 case in the past with regard to Indian land
3 determinations, but in support of President
4 Obama's good government, you know, we should as
5 a federal government be working with other
6 agencies collaboratively and not butting heads
7 with them, and so we should be working together
8 and really so that we're not creating
9 inconsistent guidelines or creating inconsistent
10 policies from one Indian agency to another
11 Indian agency, but certainly would consider if
12 there's a place for them in what we do, although
13 oftentimes they don't in most circumstances.
14 They share information. When they approve a
15 compact, they let us know, and as I said on
16 Indian land determinations, we do have an
17 understanding with them so that we can create a
18 consistent determination rather than competing
19 or getting a contradictory determination from
20 one agency to the other.

21 JAMIE HUMMINGBIRD: I'm Jamie
22 Hummingbird. I'm with the Cherokee Nation
23 Gaming Commission, and I want to say first of
24 all to thank the governor for hosting this
25 meeting in such a fine establishment. Also I

1 want to say thanks to the commission for having
2 this consultation simply because I think this is
3 a process that has been sort of needed for a
4 long time to give the floor to the proper person
5 which is our tribal commissioner, but also to
6 undertake a real listening process and find
7 exactly what it is the tribes need on a
8 day-to-day basis, and as we go through this,
9 you'll see these comments I'm sure across the
10 country.

11 When we look at the questions that have been
12 posed by NIGC, I think you'll find kind of a
13 mixed bag in the sense that there are some
14 things that need to be revisited. There are
15 some things that if it's not broken, don't fix
16 it, okay, but one of the things that kind of
17 stands out maybe as an underlying issue for a
18 lot of these questions is when we're looking at
19 developing regulations or we're looking at
20 developing standards, I think you should keep
21 the actual goal or the actual meaning of what
22 words we're using in mind in the sense that a
23 standard is a standard, a goal to be attained.
24 It is a place that we want to be. How do you
25 get to that place is something that is going to

1 be fairly unique.

2 Oklahoma is very unique, not to say that any
3 other tribe or any other part of the country is
4 not, but one of the things that we have been
5 saying for years, we being tribes, is that when
6 we come to issues such as the Class II MICS or
7 Class III MICS or the technical standards, when
8 we look at those types of documents, it is
9 something that I think the NIGC should consider
10 taking a little bit of a step back from in the
11 sense that the way the MICS are written out, we
12 have a lot of what I call SOPs, standard
13 operating procedures, just a lot of step by step
14 processes and a lot of requirements. Not
15 necessarily standards to be attained, but
16 telling us how we get there, and one of the
17 things that we have voiced for a number of years
18 is the fact that the tribes themselves need to
19 be the voice to decide, okay, how we get to that
20 point because of our unique standards, because
21 of our unique situation, whether it be
22 geographical, economic or otherwise. So when
23 you look at these, I think you need to -- when
24 you see these comments, I'm sure you can take a
25 step back and look at it from that 30,000 foot

1 view rather than the 10,000 foot view.

2 And as you go through this and as you decide
3 what your agenda is going to be, I would also
4 bring up an issue that came up as we were going
5 through the developing of the technical
6 standards, and that is the issue of cost to
7 benefit. When we were looking at the issue of
8 throwing out technical standards for tribes and
9 the vendors to comply with, it was not until
10 close to the very end of that process that
11 everybody called attention to the fact that the
12 proposed standards or rules that were being
13 promulgated would have cost a lot more to the
14 tribes versus the benefit that was going to be
15 gained from that.

16 So as you go through and look at your
17 agenda, I would also encourage you to step back
18 and study is there a cost that's going to
19 outweigh the benefits of this or is it vice
20 versa. If the cost outweighs the benefit of
21 enacting a regulation or a standard, then
22 perhaps a bulletin may be the best way to handle
23 it. Come up with best practices and some
24 suggestions and let the tribes go out and
25 determine what pieces they can use and should

1 use for their respective operations. Thank you.

2 STEVE ORTIZ: I just wanted to make a
3 comment because in talking with tribal council
4 before coming here, you know, since 1988 and
5 prior to the past Bush Administration, the
6 Prairie Band were a little confused. We felt
7 IGRA was working, and it seemed like there were
8 just little quirks in everything that
9 differentiated problems between the tribes in
10 Kansas and the tribes in Oklahoma. Having
11 different versions of gaming was the only
12 difference, so we really haven't seen -- we
13 really don't understand why there's even a
14 review of any due process, but it seems like
15 everything has been working for us, but we
16 understand there's some difference in the Class
17 III down here, maybe some other parts of the
18 country, but what I've seen, you know, like
19 through -- I've gone to Topeka and talked with
20 tribes in Wisconsin. I'm just kind of
21 wondering. Everybody seems to be operating and
22 wondering why are we even doing this, and until
23 the Bush Administration pushing this thing, it
24 just seems like the same thing is at the
25 forefront, and we were constantly battling -- we

1 were battling -- we didn't know what -- joining
2 with other tribes just simply the principle of
3 trying to push it on us, joining with them. So
4 I often wonder, you know, sometimes maybe the
5 Tribal Advisory Committee just to maybe define a
6 purpose of what it is we all even need to be
7 looking at because, like I said, the gaming for
8 us in Kansas is different than the gaming down
9 here in Oklahoma. The issue of bulletins, I
10 have to agree, the bulletin, it's a much more
11 cost-effective way of doing things. So I just
12 wanted to throw that out there because I'm
13 really trying to understand now why we want to
14 change anything if everything has been working
15 already, and I really don't see anything that's
16 broken. I really don't see anybody's casinos
17 getting shut down for violations and not
18 following their practices. The gaming
19 commissions throughout Indian Country seem to
20 have a lot of integrity and enforcing gaming
21 laws and doing their inspections and so forth.
22 So we're not sure if this is just a special
23 interest thing for a few, but as far as the fees
24 and all this good stuff, we've been on both
25 sides of the fence, but under IGRA, the way

1 things are set up right now, we've not seen any
2 issues. So I just wanted to point that out as
3 we started looking at this whole picture
4 overall.

5 CHAIRWOMAN STEVENS: Thank you for your
6 comment, Chairman, and actually that's exactly
7 why we're talking because we know that the last
8 administration, you know, there were certain
9 things that were priorities to them. New
10 administrations come in and have different
11 priorities, and as a result of that there seems
12 to have been a lot of attention on certain
13 issues at the NIGC like MICS. It's not the same
14 across the board, which personally from my point
15 of view, that's always been the issue. It's
16 hard to, you know, aside from Class II, you have
17 28 states, 233 tribes, 400 something facilities
18 with all these different compacts. You know,
19 Class III MICS got a lot of attention, and that
20 attention is still here. If you listened to my
21 nomination hearing and you listened to the July
22 hearing, that was still up here. They were
23 bringing in the former chair to talk about it
24 still.

25 So we do want to address it. We have to

1 address it, but we need to hear from everybody.
2 It's interesting because going -- this is our
3 fourth city in a week. It's different. You're
4 right. There may be some places where, hey,
5 it's not broken. Don't try to fix something
6 that's not broken for us, but it is broken for
7 some tribes. In some areas they've never even
8 heard of that, but we, for example, the Class
9 III, you know, they may not have the best
10 relationship with their state, and, you know,
11 having the NIGC step in is their preference.
12 Not the case when we went to Washington.
13 Washington State said no thanks. We're good.
14 We're happy with our state. We have a good
15 relationship.

16 So we're here today so we can hear all these
17 differences and try to figure this out together.
18 It's really going to be a question of mechanisms
19 on that particular issue, but also so that we
20 don't burn a lot of time getting hung up with
21 something that may not necessarily affect every
22 tribe and have that suck all the air out of the
23 room and all of our time out from under us.

24 So I appreciate your comments and your
25 candor, and, you know, hope that other tribes

1 understand why we're here. Whether you have
2 certain issues with our regulations or you
3 don't, it's good to hear we're good, we don't
4 have a problem, and try to be as inclusive as
5 possible.

6 VICE-CHAIRWOMAN COCHRAN: Mr. Chairman,
7 also there are a few opportunities that we've
8 not capitalized upon fully that I think tribes
9 would benefit from. One of them that comes to
10 my mind right now is the self-regulation regs.
11 They may not be harming you in any way. I'm
12 hoping even if your tribe doesn't have the same
13 distinct issues with something in existence,
14 maybe you'll participate and work with us on
15 capitalizing on some of those untapped areas
16 that I think would benefit.

17 EDMORE GREEN: Good morning. I'm Edmore
18 Greene of the Sac and Fox Nation in Kansas, and
19 I am pleased to be here with some of my fellow
20 representatives and our chairman and our gaming
21 commissioner, and myself as a tribal council
22 member and with our commission chair. Some of
23 the comments, some of them maybe aren't broken,
24 but they need to be reviewed or changed. A lot
25 of our tribes, we rushed into this business

1 because we needed revenue for our tribe, but
2 today we want to sustain the revenue, so we need
3 to rework these things. We need to rework them,
4 and in coming down here, we debated the issue
5 that pertains to us, so we want to go ahead and
6 make that presentation. I'm going to turn it
7 over to our commission chair for the statement
8 that we have prepared for the consultation
9 meeting, Robert Nanomantube, the gaming
10 commission chair.

11 ROBERT NANOMANTUBE: Thank you. First
12 of all, I'd just like to thank the NIGC for
13 having this consultation and letting the tribes
14 voice their concerns, but first of all, before I
15 get started on the statements we have here, I
16 would like to preface those comments with a
17 citation for the Regulatory Act at 25 USC 2701
18 which states, "The Congress Finds That - (5)
19 Indian tribes have the exclusive right to
20 regulate gaming activity on Indian lands." I
21 think is just very vital of Indian tribes and
22 they should always maintain that exclusive
23 right. So hopefully the Sac and Fox experience
24 will assist this formulation of revised or
25 amendments to the NIGC's regulation, and will

1 encourage an enhanced review of the regulations
2 from day to day regulatory perspective.

3 We also have comments with regards to Part
4 502.16, definition of net revenues. The Sac and
5 Fox is of the opinion that the definition of net
6 revenues be revised and be consistent with GAAP
7 and conform to calculations to GAAP. This would
8 provide more uniformity in determining how net
9 revenues are calculated. The Indian Gaming
10 Regulatory Act at Section 2703(9) defines net
11 revenues and any revision to net revenues must
12 maintain conformity to the above language in
13 IGRA.

14 Part 559, facility license notifications,
15 renewals, and submissions. One issue that we've
16 come across recently is that the tribes are
17 required to have a facility license due to the
18 environmental protection requirements, but we
19 also as tribes also have to adhere to EPA
20 regulations and Indian health and those types of
21 things like that in our facilities. So not only
22 do we have to conform to those standards, but
23 also now we're submitting this to the NIGC, the
24 facility licensing.

25 We had an issue recently with a wetlands

1 which are in close proximity to the casino,
2 which are subject to the jurisdiction of the
3 tribe and to EPA requirements, and due to some
4 flooding we had there, the EPA said that we were
5 out of compliance with an EPA requirement
6 concerning inappropriate discharge into a
7 wetlands area. This finding, if proved to be
8 accurate, would also result in the tribe being
9 in non-compliance with the gaming facility
10 licensing requirements. We found that EPA was
11 in error in its findings, and we now have the
12 burden of proving that it is in compliance with
13 both the EPA regulations and the gaming facility
14 licensing requirements. So I think the
15 situation could occur more often than not with
16 other federal agency regulations.

17 As for the MICS and technical standards,
18 Part 542, Class III minimum internal control
19 standards, this particular area is a primary
20 concern to the Sac and Fox. We recognize that
21 internal control standards are extremely
22 important to the Indian gaming industry and more
23 particularly to our tribe, due to its intent to
24 provide the protection of tribal assets as well
25 as providing for the integrity of the tribe's

1 gaming operations. In addition, Sac and Fox
2 recognizes and supports the need for consistency
3 in the auditing process of internal control
4 standards in Indian Gaming.

5 Experience has shown that many tribes that
6 offer Class III gaming have used the NIGC's
7 bulletins as guidelines and have used said
8 bulletins as primary guidelines for purposes of
9 regulating Indian gaming. Sac and Fox believes
10 that tribes that offer gaming are as technically
11 knowledgeable and professional as commercial
12 gaming operations, and are aware that if they
13 did not implement their own tribal internal
14 control standards that they would be opening up
15 their gaming operations to illegal activity.
16 Sac and Fox looks to industry standards in the
17 gaming area and if it does not have the
18 expertise or technical ability in key gaming
19 areas, it retains someone or some entity to
20 carry out what is needed to protect its gaming
21 operation for the benefit of its tribal members.
22 It is my tribe's belief that it performs the due
23 diligence required in relation to following
24 industry standards, whether or not a regulation
25 requires it. Should Part 542 Class III MICS be

1 eliminated and replaced with guidelines, it is
2 Sac and Fox's opinion that the tribes will
3 continue to institute industry standard internal
4 controls in the area of Class III. As to those
5 tribes who have incorporated 542 Class III MICS
6 in their ordinance or it is a part of their
7 compact, there may be resulting challenges, but
8 we believe that most tribes have appropriate
9 internal controls in place and that the internal
10 control guidelines would be used to supplant
11 what is in previously adopted ordinances.

12 Sac and Fox believes that the Class III MICS
13 should be developed by a tribal advisory group
14 process because of the ongoing changes in the
15 gaming industry and the differences in tribal
16 gaming operations, and the importance of
17 considering tribal experiences in internal
18 control guidelines developed. More importantly
19 Sac and Fox would recommend that said internal
20 control standards be issued as guidelines and
21 that they would be provided to the tribes in a
22 bulletin format and be updated on a regular
23 basis. Technology is changing so quickly that
24 governmental notice and the rulemaking process
25 is too slow to keep up with said changes.

1 Possibly internal control standards could be
2 referred to in recommended changes to gaming
3 ordinances. For instance, revised ordinances
4 may include a statement that identifies the
5 requirement, that internal control standards be
6 implemented by the tribal gaming regulatory
7 agency that meet or exceed industry standards.

8 Therefore, Sac and Fox recommends that the
9 Class III MICS issue should be considered one of
10 the top four areas to have NIGC regulatory
11 review, and that said review include the use of
12 a tribal advisory group, with the resulting
13 document issued as a bulletin. So I think that,
14 you know, maybe the Class III MICS could also
15 like the gentleman said previously be issued in
16 a bulletin form as a guideline for tribes. You
17 know, I'm sure that most tribes would adopt
18 those if they haven't already to formulate their
19 own standards, so I think that would be an easy
20 way to go on that.

21 As for Part 522, submission of gaming
22 ordinances for resolution, Sac and Fox believes
23 that this section does not need revision, but
24 that perhaps a bulletin could be issued that
25 addresses recommended changes in an ordinance if

1 the tribe chooses to update their ordinance.
2 For instance, the issue of internal control
3 standards could be identified.

4 As for Part 514, fees, Sac and Fox is of the
5 opinion that the past practice by the NIGC to
6 issue a notice of violation if fees were paid
7 late was kind of an extreme measure to impose
8 upon tribes unless there's negligence by the
9 tribes that can be shown as a pattern. It would
10 seem more reasonable to develop some type of
11 schedule of fines or penalties either based upon
12 passage of time and/or number of times being
13 late to pay. This is a priority issue to be
14 reviewed, one of the top four for us, that could
15 be revised by the regular notice and rulemaking
16 process.

17 A situation in Kansas has become visible
18 within the past three to four years which is
19 causing concern to the Sac and Fox Nation. This
20 is being brought to your attention because it
21 could develop into more than exchange of memos
22 between the NIGC, the state of Kansas and the
23 tribe.

24 The NIGC regulations require tribes to
25 submit investigative reports with each licensing

1 determination made by the tribes for primary
2 management officials and key employees, 25
3 C.F.R. Section 558.3(b). Sac and Fox is a part
4 of the NIGC's pilot program. Therefore, based
5 upon its MOU with the NIGC, it would ordinarily
6 only submit a synopsis and the results of the
7 background investigation for a primary
8 management official and key employee. The
9 Kansas compacts, however, place the
10 responsibility to conduct background
11 investigations for Class III employees on the
12 state and the Kansas State Oversight Act
13 prohibits tribes from disclosing most of the
14 information contained in an investigative
15 report, including to the NIGC. This is the
16 viewpoint of the Kansas officials.

17 As a result of the above, there is a
18 conflict in laws and the Sac and Fox are caught
19 in the middle of potential enforcement action by
20 possibly the state as well as the NIGC. The
21 NIGC general counsel has disagreed with the
22 state's belief that the information cannot be
23 shared. In an opinion letter dated June 18,
24 2008, from the former NIGC acting general
25 counsel, Penny Coleman, to the deputy attorney

1 general, Mike Leitch, she stated "...that under
2 the supremacy clause, where such a conflict
3 exists, state law must give way to federal law."
4 This issue has not yet been resolved. The Sac
5 and Fox would like to thank the NIGC director of
6 enforcement, John Peterson, for attempting to
7 rectify the situation in an amicable manner, but
8 it appears that Kansas is unwilling to change
9 its opinion. There may be no resolution short
10 of litigation, but the fact remains, the Sac and
11 Fox Nation remains in the middle of a conflict
12 of laws that could result in enforcement action
13 against our Nation.

14 So in conclusion the Sac and Fox would like
15 to thank you for this opportunity to provide
16 input into the regulatory review process. Thank
17 you for listening, and if you have any
18 questions, feel free to contact us.

19 CHAIRWOMAN STEVENS: Thank you,
20 Chairman. Do we have any other tribal leaders
21 right now that would like to make a comment or
22 if you have any questions or need clarification?
23 Governor Anoatubby.

24 BILL ANOATUBBY: I have two or three
25 areas. I'd like to address others as they come

1 up. One in particular has been a difficult
2 challenge for us. In Indian Country, it's
3 pretty difficult sometimes to build a facility
4 like this. You need folks that will be willing
5 to take some risk to go along with you. I
6 remember one facility, Winstar, south of here,
7 we first developed that. We had a deal with
8 other authorities as well of the tribal
9 legislature and they had rules. We don't want
10 to waive sovereignty and don't go into debt, and
11 when we built a facility like this, it was sort
12 of difficult to follow that rule, so you look at
13 the unique methods of financing, and I wouldn't
14 say a partner, but somebody who's willing to
15 understand the risk and the gain. So sometimes
16 you enter into financing and development of the
17 type agreements that are not the norm when it
18 comes to financing.

19 When you go to the bank, you sign a note,
20 you get a mortgage, you know. Sovereign
21 immunity. That doesn't work for us. I know
22 some tribes do that and that's their
23 prerogative. So we came up with a way that
24 works a little bit like if you rent a Xerox
25 machine. I don't know. Is Xerox still around?

1 I don't know, but I guess they've got some --
2 that will tell you how old I am, but anyway we
3 rent the machine from someone, from a company.
4 They charge you by the number of copies that you
5 use if you don't own the equipment, and we chose
6 not to own gaming equipment because we felt like
7 we wanted to have the prerogative of having
8 equipment move in and out based on
9 profitability.

10 So after some months of finding someone who
11 would see eye to eye with us, we found a gaming
12 company to provide the equipment, provide the
13 magnets, oversee and make sure that it was
14 operating like it should, and then we decided we
15 wanted to gain. If it wasn't making what we
16 felt like it should be, move it out, and bring
17 in another one. Now, these days you just change
18 the face, but back then, we're talking several
19 years ago, now some seven or so years, it was
20 difficult to find someone that would be willing
21 to do -- put the equipment in and assist with
22 the financing of the facility.

23 We found a company that signed an agreement
24 with us without recourse. Now, that's another
25 thing that you can't find at a bank. No

1 recourse. In other words, if the business
2 fails, they can't come and collect anything from
3 you. You're not assigning any tribal assets to
4 them. Anyway, this is sort of a unique
5 financing agreement. It's a developing
6 agreement. So in order for us to receive the
7 financing and build the facility, they needed to
8 receive in return funds that will help recover
9 what they had in the facility. So it's a
10 financing development agreement. So we chose to
11 use the Xerox approach, a percentage based on
12 the amount of revenue coming through.

13 It is not a management agreement. We manage
14 the facility. We hire all the people. We
15 handle the money. I mean, it's ours much like
16 Riverwind is ours, and there are those who are
17 saying based on the fact that there's a
18 percentage, that it was a management agreement.
19 It's not, it has not been, and it won't be.

20 I think we need to clarify this in such a
21 way as to make sure that financing agreements,
22 developing agreements, those kind of things that
23 help a tribe move forward with their gaming,
24 that they not be characterized as management
25 unless there's management involved. Management

1 will hire the people, handle the money, you
2 know, make the decisions. You know, that's what
3 we do. So we've had some difficulty over the
4 years and we've resolved these difficulties, and
5 we're at a point I think that most people
6 understand our agreements, and we need to
7 protect those of other tribes who may do the
8 same thing. We need to make it clear that there
9 has to be -- not every percentage contract is a
10 management agreement. It's just not true. So I
11 think we need to make sure that the definition
12 of management agreement does not include every
13 percentage contract.

14 I'm going to shift gears now, and it goes to
15 self-regulation, and some tribes are ready for
16 self-regulation, and there should be an attempt
17 to promote self-regulation at every possible
18 juncture. I think that in the past, years past,
19 that perhaps there was an attitude that tribes
20 can't regulate themselves and maybe shouldn't
21 regulate themselves, but the statute provides
22 for it, and I think that attitude needs to
23 soften a little bit, if not go away. The tribes
24 that have the ability to regulate should be
25 allowed to do so.

1 CHAIRWOMAN STEVENS: Thank you,
2 Governor. If we don't have anyone that's
3 immediately going to respond right now, we're
4 scheduled for a break, and we can take 15,
5 refresh your coffee, stretch your legs, get your
6 thoughts together, overcome your shyness of
7 public speaking, and come back and share some
8 more with us. We'll take 15, come back at
9 11:00.

10 (Break)

11 CHAIRWOMAN STEVENS: Okay. Let's go
12 ahead and get started again. We do have -- Lael
13 has a microphone. Tom has a microphone right
14 here. We also have a microphone set up over
15 right next to Governor Anoatubby. Does anyone
16 have any prepared statements they wanted to
17 make, any questions or clarifications that we
18 might be able to answer or provide? Right here
19 and then over here.

20 BARBARA COLLIER: Okay. Hello,
21 everybody. Good morning. It's good to see all
22 your smiling faces. I've been honored and asked
23 to join Chairman John Berrey, the chairman of
24 the Quapaw Tribe Business Committee, on the
25 comments. I do appreciate several of the

1 comments, all of them that you all have made
2 today, and especially going down the same path
3 with Jamie Hummingbird. He and I worked
4 together on several committees, and we kind of
5 feel the -- have the same opinions on some
6 cases, especially concerning the front lines of
7 operators, the front line regulators, claims
8 agents, the licensing agents that have to make
9 sure that these regulations are put in place
10 properly, and oftentimes I think that I would
11 like to recommend that the commission look at
12 the comments or possibly seek comments
13 specifically from gaming commissioners,
14 especially compliance and licensing agents that
15 have to do these daily tasks because it's
16 something that even I as director, I'm not on
17 the floor. I don't know how, you know, things
18 work with machines, and I don't have to deal
19 with that daily. I don't have to daily deal
20 with the requirements that the licensing
21 regulations puts forward and all the vendor and
22 management agreements and things like that that
23 we deal with. So I think that we need to either
24 internally as commissions or agencies direct our
25 comments and perhaps include -- have inclusive

1 comments of our front line regulators as well as
2 making comments ourselves as tribal leaders or
3 business commissions or things like that,
4 commissioners, so we can get the front line an
5 absolute working relationship as they need to
6 be.

7 Also the financial burden that some of these
8 bring, especially working with the Oklahoma
9 Tribal Gaming Regulators Association, we found
10 that oftentimes with smaller tribes, they don't
11 have funding that they could utilize to hire
12 legal counsel or to help them with consultations
13 with contractors or things like that that can
14 bring them more knowledge about changing the
15 regulations or changes that are going to come
16 forward. Now, I'm realizing we do have those
17 training sessions and things, but oftentimes we
18 found in the state of Oklahoma anyway, that even
19 the smaller tribes even did not have the ability
20 to send someone to those trainings and to have
21 it available to them.

22 So I don't know, you know, if that would
23 even be a viable fix to have people go to them
24 to assist them with technical problems and
25 things like that, but I do think there's a need

1 for that. So other than, you know, a lot of
2 comments made by others this morning, we do
3 think that those are some avenues that we can
4 take.

5 VICE-CHAIRWOMAN COCHRAN: Thank you for
6 bringing out training and technical assistance
7 and its relationship to the regulations because
8 in conversations among the commissioners, the
9 intent of our four priorities does overlap
10 specifically in that area in the sense that our
11 training and technical activities should mirror
12 deficiencies that we're finding in compliance
13 with the regulations or deficiencies in audits
14 so that we go back to the tribe rather than
15 using the sledge hammer of an NOV to go back and
16 say your tribe is consistently having
17 deficiencies in X. We'd like to offer some
18 assistance and see if we can't get that
19 eliminated. The two actually have a unique
20 overlap, and that's why these regulations and my
21 revisiting some of these regulations will be so
22 important. So thank you for bringing that out.

23 CHAIRWOMAN STEVENS: Yes, sir. Right
24 over here.

25 TOM GAMBLE: Yeah. I've actually got

1 two questions. I'm Tom Gamble with the Miami
2 Tribe, and one is that February 12th deadline,
3 is that a doable date for comments? And the
4 second question was that, you know, you guys are
5 in on every one of the consultations throughout
6 the country. Is there one main topic that ties
7 all of this together --

8 CHAIRWOMAN STEVENS: I'm sorry. Could
9 you repeat that again? I'm looking at our
10 transcriptionist and he didn't understand your
11 questions.

12 TOM GAMBLE: Okay. Stand up. Okay.
13 One is the February 12th deadline for comment.
14 Is that a doable date? And the other one is the
15 other question is throughout your consultations,
16 is there anything that ties each meeting, one
17 particular subject or number of subjects that
18 may come up all the time? Thank you.

19 CHAIRWOMAN STEVENS: Thank you for your
20 questions. The February 12th deadline, it
21 appears doable to us because we're just asking
22 about what your priorities are in terms of
23 regulations that need to be addressed. We're
24 not asking for a 36-page briefing paper from
25 your legal counsel. We have it on the website

1 right now, and actually it's not a bad example.
2 It's actually a pretty good example that
3 addresses the NOI, the notice of inquiry. It's
4 San Manuel, and they go through reg by reg, and
5 they're brief about it, and they assign for them
6 a priority and how they'd like to see that
7 particular regulation addressed. Some are
8 technical advisory committee. Some just go
9 forward with promulgation of regs. So that's
10 what I mean. I think it's doable if it doesn't
11 become too over -- you know, we don't need for
12 it to be in depth and comprehensive, just what
13 your priorities are.

14 In terms of a common theme, MICS. Not even
15 Class II. I mean, we've had some tribes say
16 leave the Class II MICS alone as it is now.
17 We've had tribes say, no, please change them,
18 but moreover, we've heard more about MICS, Class
19 III MICS, than anything, and tribes are on
20 different sides of the table on this, and we do
21 have to keep in mind the Colorado River Indian
22 Tribe decision set, which we cannot promulgate
23 nor enforce, and so what I've been saying to
24 tribes in these meetings is that we are looking
25 to you to help us come up with some innovative

1 mechanisms to address that specific issue.

2 I think next on that, I would say management
3 contracts and facility licensing, and facility
4 licensing, tribes don't seem to be divided about
5 that. Very similar to the remarks that we heard
6 from the commission chair over here from Sac and
7 Fox. Yes, sir. Right over here. Can you state
8 your name and where you're from?

9 STEVE YORK: I'm Steve York. I'm the
10 tribal gaming commissioner for the Fort Sill
11 Apache Tribe and also the executive director for
12 the Apache Tribal Gaming Commission. I've been
13 hearing a lot of these comments this morning,
14 and basically as a regulator, as a true
15 regulator, the primary regulator in gaming for
16 tribes, you know, our base document is the same
17 base document that you have, and that base
18 document is IGRA itself. The only trouble is
19 when I read your inquiries that you put up here
20 and stuff, even Ms. Echo-Hawk when she started
21 out her statement, she starts out regulations.
22 That's not what IGRA says. IGRA says you guys
23 will develop regulations in management
24 contracts, self-regulation regulations, but IGRA
25 actually says you guys will develop standards

1 and then it says standards or regulations. It
2 doesn't say regulations or standards. The law
3 says standards or regulations.

4 So the way I look at it, when we develop the
5 MICS, whether it be for Class II or III, is that
6 a regulation or is that a standard? I can tell
7 you to me when Joe Smith first come out with the
8 2004 MICS, he created this little deal called
9 variances. You haven't asked for a variance.
10 Why would you ask for a variance? You already
11 have a minimum. So the only way we get anything
12 of a variance, you have to exceed that minimum.
13 So I don't know of any tribe out there that
14 submits variances to you.

15 Well, I knew when Joe Smith did. He just
16 approved them if anybody sent one in. So by the
17 time the first MICS hit paper, it was already
18 changed. So every tribe out there had to comply
19 with whatever variance he granted. So all I'm
20 saying to you guys, the chairman, vice-chair, is
21 read IGRA. Come to fully understand what the
22 language is. Us as tribes have to comply with
23 IGRA. You have to comply with IGRA. I don't
24 have any problem with it. I mean, it's in plain
25 language. It's a beautifully written document

1 even though a lot of tribes don't agree with it,
2 but we bought into it and gaming started, but,
3 like I say, you guys need to read IGRA. IGRA is
4 very clear about the language in there. I mean,
5 I'll just point out a few little issues that the
6 NIGC hasn't followed. Go to the section where
7 it applies GPRA. Does it really apply to you?
8 It didn't apply to you until you reached 25
9 million. You're at that level now. You're at
10 26 million. That's what your funding is, so
11 GPRA applies to you. Previous to that, GPRA
12 applied to you underneath the Department of
13 Interior budget process. So you need to look at
14 GPRA.

15 The next phase underneath GPRA, GPRA is only
16 there for when it was enacted. In other words,
17 when the law was enacted. It doesn't say as
18 amended. So whatever that phase of GPRA was,
19 that's what applies to you. Next phase
20 underneath it, it also says in there that on a
21 two-year basis that the U.S. Commission will
22 address all the tribes asking for technical
23 assistance, two-year plan. Every two years you
24 guys will submit a plan to us on technical
25 assistance.

1 I've been working in games for a long time.
2 I've never seen a plan. Never seen a plan
3 submitted out for technical assistance, but I do
4 congratulate you because you're sending the
5 survey out now asking, well, what kind of
6 technical assistance do you need, but the
7 technical assistance you're sending out to me is
8 not what I've got in my training plan. It's not
9 what I need. I'm going to ask for a lot of
10 different things on that training plan besides
11 what the NIGC currently offers because there are
12 other trainings out there that all of the tribes
13 need, but like I say, I just suggest to you that
14 each one of you need to sit down and read IGRA
15 and become totally ingested to it because I have
16 to do that daily as a regulator for our tribe.

17 I mean, I read IGRA. Next thing I have to
18 read is the tribal gaming ordinance. Is it out
19 today? I don't think so. You guys developed
20 the regs, and regs say I've got to follow this,
21 this and this to get Class II ordinance. If I
22 want to amend it, I've still got to follow this,
23 this and this to get there. So all I'm saying
24 is if we're really going to have a true
25 discussion about trying to change the regs, we

1 need to have a true discussion about what IGRA
2 says because, like I say, Congress has already
3 defined what a proprietary interest is. Two
4 variables of the deal. They're saying it's
5 70/30 in management contracts or 60/40, and then
6 the individual operations prior to 1986 bingo
7 operations was a 60/40 deal, and I congratulate
8 the chairman who was here earlier. His tribe
9 had meetings out there that were doing a 50/50
10 split. That's a violation of IGRA. It sat
11 there for a long time until the tribes took it
12 up. The tribal court ruled. You can't have a
13 50/50 split. It violates IGRA, which I commend
14 the court for that. Sounds like the judge knows
15 how to read IGRA.

16 So like I say, if we're going to have a true
17 discussion about this, let's sit down and talk
18 about IGRA, the base document. Establish the
19 chair and the vice-chair and the third member.
20 There's a few little skips in it. I mean, one
21 of the skips that I thought was kind of out of
22 the ordinary was on self-regulation. Well, I
23 have to pay 25 percent of 1 percent. In your
24 regs at the end, it says I don't have to pay a
25 damn thing. That's a violation of IGRA in

1 itself because the law is wrote that way. It
2 says you will collect 25 percent of 1 percent.
3 It doesn't say that you can forget it.

4 And then let's go ahead and talk about the
5 quarterly fees. Law states quarterly fees. Now
6 we're coming up, you can pay this fee every six
7 months. That's not what the law says. The law
8 says I pay quarterly fees. You collect
9 quarterly fees. I know it makes it easier on
10 your accounting person there and stuff, but I
11 don't understand that, but the other thing is,
12 well, the Buy Indian Act. The real question is
13 does that give me Indian preference for my
14 employment with the National Indian Gaming
15 Commission? That's kind of a dead issue, but
16 last year it was a hot item. Everybody wanted
17 to see the National Indian Gaming Commission,
18 and I commend them for you three Indian tribal
19 members that are representative. I guarantee
20 you it's still important to me. I think that's
21 important to a lot of young Indian people that
22 are looking for careers with the National Indian
23 Gaming Commission to have some kind of Indian
24 preference.

25 I mean, I can talk on and on about this, and

1 I don't want to say a whole lot of words when I
2 get up and talk, but when I talk, I want you to
3 listen because I think a full understanding of
4 IGRA needs to be understood by everybody because
5 I have to live it every day. I mean, when I'm
6 working in a gaming operation, I have to go back
7 and look at IGRA to see what Congress really
8 intended me to do.

9 Like I say, it's a beautifully written
10 document. It's very clear. Like I say, when
11 you read it, if you read it like I do, it says
12 standards or regulations. It only said you guys
13 have to develop regulations for management
14 contracts, basically self-regulation, and follow
15 it all the way down in the regs, except at the
16 end, you say if you qualify for this, you don't
17 have to pay me a fee.

18 And I don't have any problems with the
19 Colorado River Indian Tribes case. I didn't
20 think at the time that you had authority over
21 Class III gaming, and I still think that. It
22 applies to Governor Anoatubby, Chairman Houser,
23 Steve Ortiz, all of the tribal leaders here all
24 understood the Colorado River Indian case
25 applies to them. Is Class III MICS a good deal?

1 I think anybody needs minimum internal controls.
2 Is that the internal controls that the NIGC
3 dictates? I don't think so. As far as I know,
4 everybody you hire can read. So that means if
5 I'm in the state of Arizona or if I'm in the
6 state of California or if I'm in the state of
7 Washington or Connecticut or anywhere else, I
8 should be able to read whatever those minimum
9 internal control standards are.

10 That's all I'm saying is just we need to
11 have a good discussion about what IGRA says,
12 what IGRA intended, because Congress was very
13 clear about their findings, and I'll go back to
14 your net revenue. Congress already defined it.
15 Is there a way out of that? I can guarantee you
16 there is. All you've got to do is change it and
17 I'll sue you, and then we'll have a court decide
18 whether IGRA needs to be changed, and that
19 doesn't have -- I don't think anybody in here,
20 whether it be a tribal leader or regulator or
21 anybody, believes that we need to amend IGRA. I
22 think we need to have a true understanding, and
23 that includes people that represents you and us
24 as tribes that represent the tribes. I mean, we
25 need to have good dialogue. We need to review

1 what IGRA says, and that's all I've got to say.
2 Thank you.

3 CHAIRWOMAN STEVENS: Thank you, sir.
4 Just to address some of the concerns that were
5 brought up, we are in the process of
6 implementing the Indian preference policy. It
7 will be implemented. The Buy Indian Act,
8 something as simple as holding a consultation in
9 a tribal facility should be standard. It should
10 be standard practice for us. We should be
11 trying to go out into Indian facilities for our
12 meetings. That was not something that was
13 practiced regularly in the previous commission.

14 Speaking of the previous commission, you
15 know, the last chairman served a three-year
16 term, and many of the things that you're seeing
17 up there are established regulations that were
18 put in place prior to our arrival. I've been in
19 office for seven months. Stephani has been here
20 for a little over a year. Dan has been here for
21 about nine months. This is a new commission.

22 We hope that your comments will incorporate
23 your interpretation and your understanding and
24 encouragement of using IGRA as a basis. We all
25 come from Indian Country. I worked in my tribal

1 gaming operation. I worked with my tribal
2 leadership on government gaming policy for my
3 tribe. Stephani has worked for the Pojoaque.
4 She's also worked for the state of New Mexico.
5 Dan also has worked for the Mashantucket Pequot.
6 Lael has worked for the Tulalip tribes, and
7 something that Dan has coined is that we're all
8 products of Indian gaming. We have an
9 understanding of gaming because we came from
10 sitting in those seats, but I do want to
11 emphasize that we want to hear everyone's
12 comments. We've heard similar comments with
13 regard to the base underlying foundation of
14 IGRA, and using tribes, for example, as primary
15 regulators, and seeing tribes as primary
16 regulator according to the way the act is
17 written. We certainly welcome comments that
18 provide us your views as they pertain to your
19 comments. So I just wanted to address some of
20 those things that were mentioned. Do we have
21 others that would like to speak, tribal leaders?
22 Right over here.

23 JEFF HOUSER: Hi. I'm Jeff Houser with
24 the Fort Sill Apache Tribe. I want to thank
25 Governor Anoatubby for hosting us. I thank the

1 commission for coming down. I've gone through
2 the NOI and have a few comments, and I want to
3 say that I agree with the Chairwoman that some
4 of the concerns that we have are with the
5 actions that were taken with the previous
6 chairperson. I'll get to those. They're not a
7 priority here. This is a priority list. I
8 think the first is the management contract. You
9 know, our casino has a number of Class II
10 machines, and while it is said that we control
11 the hold of these Class II machines, we don't.
12 Maybe other casinos do. We can ask the Class II
13 vendor to change the hold and they've been
14 getting around to it for a number of years. I
15 think that if, in fact, a Class II vendor has
16 control of hold as a management decision, then
17 it should be a management contract rather than
18 having a -- I think it should be explicit that
19 they have no control over the hold, that the
20 contract shows that the tribe has control over
21 the hold or we consider it a management
22 contract, because sometimes it might be stated
23 that tribes have control over the hold, but they
24 never get around to it, I think, at least in our
25 tribe.

1 The second is the fees, late payment versus
2 NOV. Our tribe received an NOV because of a
3 clerical error and a miscommunication, and I
4 strongly believe that the late payment would
5 have been a lot better. There was no intention
6 on our behalf to be late. A contract payment
7 was not made on time. The second is a question
8 on whether the proceedings before the commission
9 should be formalized. Basically my approach to
10 most of these questions are that these need to
11 be formalized so that everybody can be sure that
12 there's fairness. I think gaming is a highly
13 political industry. It's influenced a number of
14 elected officials. It's involved in various
15 ways. It would just be good in my opinion if we
16 could have any proceedings be formal, more like
17 a court.

18 And, finally, the Class III MICS, you know,
19 I read San Manuel's response. I think that if
20 it was struck down by the courts, it should be
21 turned into a bulletin.

22 And then the facility license, I happened to
23 be in a similar consultation like this in
24 January of 2008, and the previous chairman of
25 the commission said something about finding a

1 facility licensing law in his desk drawer, and
2 that facility licensing would be implemented
3 immediately. There was no consultation. I
4 think that that facility licensing regulation
5 was issued. The regulation should be withdrawn
6 until there can be a full consultation about
7 that.

8 And finally the question about whether or
9 not the chairwoman or chairman should withdraw
10 an NOV, in looking through the regulations, I
11 don't see a prohibition on that, so I'm curious
12 how that interpretation came about, and there
13 needs to be clarification simply that the
14 chairperson has the discretion to issue an NOV.
15 The chairperson should also have the discretion
16 to withdraw an NOV. Thank you.

17 CHAIRWOMAN STEVENS: Thank you very
18 much.

19 TOM GAMBLE: Tom Gamble with the Miami
20 Tribe again. In participating in TBAC, and now
21 we've actually changed the TBAC consultation, we
22 are active members in the budget process, would
23 an advisory committee to that nature be of a
24 benefit, because some of the issues that we've
25 heard today from a lot of people are tremendous

1 issues, and would it be an issue that 12 regents
2 come together with the commission to discuss at
3 length in, say, quarterly meetings or something
4 like that? Would it be of help, and then also
5 how would that affect the budget? Would that be
6 something that you would have to add and how
7 would that particular type of a advisory council
8 be funded?

9 CHAIRWOMAN STEVENS: It's expensive. I
10 can tell you TBAC is very expensive because
11 we're paying for all the staff to go, all the
12 representatives and all the alternates and all
13 -- well, not all their staff. So it can be very
14 expensive, and it's time intensive. It's a lot
15 of time, and anyone who sits on TBAC here knows
16 it's time intensive. There's three or four
17 meetings a year, and then work that's done in
18 between, but, you know, we will defer to tribes
19 on how they might want to put together advisory
20 committees, and I think part of Lael's
21 presentation said, you know, are there areas
22 where we would use an advisory committee, and
23 depending on what the subject is, we might have
24 variations of it because we will need industry
25 experts unless somebody wants to get back into

1 the math behind bingo. If anybody remembers
2 those meetings when we were going through a lot
3 of math, you know, we'll have to think about how
4 we can change as the situation requires.
5 Chairman Berrey.

6 JOHN BERREY: Yeah. Thank you very
7 much. John Berrey, chairman of the Quapaw
8 Tribe. I'm just wondering if you could give us
9 just sort of your thought on the overall process
10 at this consultation, what we'll be reviewing,
11 sort of what you've heard, and then there's sort
12 of -- I just want to know what your goals and
13 your time frames that you're thinking about so
14 we could start maybe with that.

15 LAEL ECHO-HAWK: Well, I can give a very
16 brief summary. As the chairwoman said, sort of
17 the primary topic of the consultations have been
18 for the past several years is Class II and Class
19 III MICS and the technical standards and what to
20 do with those. There's been sort of a swirl of
21 controversy around those issues for the past
22 several years, and one of the things that the
23 commission is really trying to do is to resolve
24 that and resolve it in a good way for Indian
25 Country, and so that has really been a topic of

1 conversation. There are sort of two schools of
2 thought. Southern California was very
3 interesting because it was very clear, the
4 divide between tribes that want Class 3 MICS and
5 they think the agency has an obligation to carry
6 that forward particularly because the Class III
7 MICS have been adopted either in a compact or in
8 their ordinance, and a number of tribes, not
9 many, but a number of tribes had given the NIGC
10 enforcement authority over Class III MICS in
11 their facilities.

12 On the other side you have tribes who
13 absolutely believe that NIGC should repeal the
14 Class III MICS section in the regulations, and
15 perhaps issue bulletins or some sort of other
16 guidance that has those standards and therefore
17 those tribes that are underneath it, but the
18 fees that are paid by tribes that do not believe
19 that the NIGC has Class III regs, those should
20 be used to supplement the Class III audits or to
21 draft the Class III regulations or that small
22 number of tribes that have included either by
23 compact or ordinance.

24 So there is this divide, and I think as you
25 see comments coming forward and the transcripts

1 on the website, you'll be able to see sort of
2 the conversations that those two factions are
3 having, and, you know, to be quite frank, the
4 commission is going to have to make a decision,
5 and so the more input we have on this, the
6 better off we're going to be.

7 Aside from Class III MICS, there of course
8 has been facility licensing over and over as
9 similar to what we've heard earlier today.
10 Facility licensing is the primary complaint in
11 that this regulation was done without proper
12 consultation. It contains a lot of duplicative
13 processes. That's one thing that the
14 administration is very adamant about, that we
15 eliminate those duplicative processes. That's
16 one thing that we're taking a look at, how we go
17 about doing that, facility licensing
18 regulations. Again, we need your input. That
19 is something that's been very important to the
20 tribes at the meetings that we've been to so
21 far.

22 What else? The communication process. It's
23 been very interesting. You've sort of heard,
24 again, two different things. Gaming commissions
25 want us to speak directly to the gaming

1 commissions. Tribal leadership wants us to
2 speak directly to tribal leadership, and we want
3 to communicate the right way and make sure that
4 everybody gets the information that they need,
5 but clearly there's a communication breakdown
6 somewhere and we need to figure out how we can
7 resolve it the best way.

8 Class II gaming industry, again, you know,
9 sole proprietary interests, and primary
10 beneficiary has also been a topic that's been
11 addressed. Pretty much everyone does like this
12 penalty based or fee based kind of on a sliding
13 scale in lieu of notice of violation which
14 tribes pay their fees late. The pilot program,
15 self-regulation, all those have sort of been the
16 primary topics that we've heard over the past
17 week. Tribal advisory committee, that's also
18 been a discussion. What we heard last week or
19 last Friday in the northwest was that whatever
20 we do, we need to do it fast, and then the
21 commission, you know, federal agencies tend to
22 move slowly, and recognizing sort of limitations
23 that we work under, we are trying to move this
24 along as quickly as possible.

25 So I guess in answer to your question, after

1 we receive the comments at the beginning of
2 February, we'll sit down -- I'll sit down with
3 the commission, we'll go through, we'll make
4 sort of a greater -- we'll look at what's come
5 in, listen to priorities, and we'll begin to set
6 the agenda.

7 That agenda will come out in April as it's
8 required to by statute, and it also works out
9 nicely with NICA annual meeting, and at that
10 point, we'll have the priorities set for the
11 regulation, and we'll begin to move forward
12 aggressively and as quickly as we can so that we
13 can get as much accomplished as possible, but I
14 would estimate that by the middle of the year we
15 will actually begin -- we will actually be in
16 the process of making some provisions to
17 regulations, amendments and those type of
18 things. We'll be doing the substantive work by,
19 I hope, May, June, July. We'll be moving as
20 quickly as we can. Did that answer your
21 question?

22 JOHN BERREY: I was just thinking if you
23 had some bulletins maybe (inaudible.)

24 CHAIRWOMAN STEVENS: He said, just to
25 reiterate for the transcriptionist, that

1 bulletins might be good to use as we go through
2 this process to let people know what's going on.

3 JILL PETERS: I'm Jill Peters, the
4 executive director of the Comanche Nation Gaming
5 Commission, and I'd like to say thank you to
6 Governor Anoatubby for having us, and the
7 commissioners for coming and seeing us here in
8 Oklahoma. One of the challenges that I see is
9 that each of our tribes have different levels of
10 regulation as you know. Some of us have, you
11 know, adequate funding where others are
12 struggling to get the amount of funding that we
13 need from the tribal councils, and I think part
14 of that includes educating our tribal leaders
15 on, you know, the capacity that gaming, you
16 know, spans, and I want to thank all the tribal
17 leaders for being here today and taking an
18 active interest and role in the part that we
19 play every day to protect your gaming dollar for
20 the tribe.

21 I have some comments for the bulletin that
22 I'd like to just briefly go down. On part 502,
23 net revenue definition, just to echo what some
24 of the other comments were, that it should be in
25 accordance with the GAAP industry standards, and

1 that also the allowable uses of gaming revenue,
2 the regulation for that may need to be looked at
3 as well.

4 The Class III MICS should be struck, and
5 this will allow the tribal gaming commissions to
6 have more authority over our Class III gaming,
7 and to put into place what works for each of us
8 as individual tribes. The Class II MICS, just
9 to echo, I think, you know, a tax should be
10 developed, and that you should look at having
11 equal representation from each of the regions as
12 well as, you know, each one of -- Oklahoma has
13 more Class II than, say, California, and
14 sometimes I feel like we get left out by not
15 having that equal representation, so take that
16 into consideration as well.

17 Facility licensing, you know, I do agree
18 that that does need to be looked at, but I just
19 want to say for our individual tribe that it
20 really did help us because we did not have the
21 inspections that we needed until this regulation
22 came out. It kind of forced us to get into
23 compliance where we go into the facilities and
24 get IHS out there to help us and to teach us to
25 inspect, you know, food handlers' permits, and,

1 you know, reached out inspections. It really
2 did open us up to a part that, you know, we
3 really just didn't have time for. There's so
4 much that each gaming commission does every day,
5 and you have your priorities, and, you know,
6 facility licensing and EPA, HHS wasn't high on
7 the list, but that kind of just forced us to put
8 it on the forefront and get that under control.
9 So it really did benefit us as a tribe.

10 The NOV process, the chairperson should have
11 the final say on being able to withdraw an NOV
12 because, you know, in the communication process,
13 once you issue it, you may find out that, you
14 know, there are circumstances like Chairman
15 Houser was saying, it may have been a clerical
16 error. It wasn't, you know, ill intent on the
17 tribe's part, but at least take into
18 consideration those circumstances that led to
19 that violation occurring and being able to
20 retract that or, you know, reach a settlement
21 agreement that's not so formal, you know, just
22 relooking at that process altogether, and that
23 basically covers everything I have to say.
24 Thank you.

25 CHAIRWOMAN STEVENS: Thank you very

1 much. Do we have any other comments before we
2 break for lunch? Matthew?

3 MATTHEW MORGAN: Matthew Morgan, gaming
4 commissioner of the Chickasaw Nation. I just
5 wanted to give you an update. I know we've
6 talked a little bit about the MICS process, our
7 tribal working group. We did meet last week in
8 San Diego, myself, Jamie Hummingbird, and
9 Stephanie Brian. We did have a session last
10 week in San Diego. So far we've been very
11 productive. We probably had 40 to 50 people
12 participate, but we've taken your charge very
13 seriously. We're working very diligently to try
14 to get you a product that Indian Country has
15 input into to give you a place to start from on
16 our Class II MICS, and then going farther than
17 that looking into our Class III MICS and
18 technical standards, making sure that those
19 documents flow together not only for regulatory
20 bodies, but for our operators, our
21 manufacturers, and our tribal leaders to make
22 sure that they understand everything, how it
23 works together. I didn't know if you had a
24 report yet back from San Diego, but we're
25 working diligently and getting through that

1 process.

2 Also to speak to Ms. Peters on her comment
3 on the facility licensing, one of the things I
4 really hope that we look at in our facility
5 licenses is, you know, like a lot of the
6 subjects we talk about are our MICS. The cookie
7 cutter approach to facility licensing sometimes
8 hinders, and I give you this property as an
9 example. You know, we have the Show Place
10 Theatre, we have our gaming room, we have a
11 hotel, valet, food services that are third
12 parties. The minute you come in and start
13 describing the parameters of our authority as
14 boxes, that automatically limited my
15 jurisdiction which I had before then, which our
16 tribe saw fit to give me, which was to help
17 alleviate some of our environmental health
18 concerns and some of our problems in the parking
19 areas, in our sewage and water plants, and so if
20 you would keep that in mind as you go through
21 and look at these, and maybe a support for going
22 in and looking at bulletins on some of those
23 things. So if you could keep that in mind, I'd
24 really appreciate it. I think Mr. Green has a
25 couple of other things that he would like to

1 say. Thank you.

2 CHAIRWOMAN STEVENS: Do I need lunch
3 first, Jess? I'm warning you. Dan has duct
4 tape.

5 JESS GREEN: I do appreciate the fact
6 that this NIGC group has at least more willingly
7 listened than the previous ones that I have
8 engaged with. I have looked at what you have
9 proposed primarily here in Oklahoma, and for the
10 Chickasaw Nation in particular. My gaming
11 commission has three lawyers. My gaming
12 commission is capable of being determined to be
13 self-regulated, but your current rules don't
14 give us any advantage whatsoever.

15 I remember when IGRA passed. It was
16 supposed to work into a situation where tribes
17 did exactly that. There was even a special
18 benefit we got by paying less fees because the
19 NIGC didn't need to look at us. The current
20 regulations haven't been utilized. The only
21 tribe that's really had a benefit is the
22 Mississippi Choctaws, and they got Congress to
23 recognize them as being self-regulated.

24 Your current proposal asked about including
25 percentage contracts in all of the management

1 contract reviews. It's beyond your capability.
2 Our realty contracts are percentage contracts.
3 A good deal of our advertising contracts are
4 percentage contracts. Even our cash services
5 contracts are percentage contracts. For the
6 Chickasaw Nation alone, you would be overwhelmed
7 literally. Even Chairman Solpopi's group
8 testified before Congress when they were talking
9 about giving a substantial increase in authority
10 over management contracts by an IGRA amendment,
11 they testified they would be overwhelmed.

12 Please understand your staff has grown five
13 or six times than what it was five years ago,
14 but the number of percentage contracts would
15 simply be overwhelming. Moreover, you charge a
16 real high fee to examine each of the people that
17 are involved. If I had to have all the cash
18 services officers pay \$10,000 a piece, who do
19 you think they're going to make pay for that?
20 They're not going to reach in their pocket and
21 pay for it. They're going to bill that cost
22 either directly or indirectly in the contract to
23 us, and so for a contract that there's only 50,
24 \$75,000 being spent, you're going to have us pay
25 75, \$80,000. This doesn't make sense. It

1 doesn't make sense economically for the
2 definition of management contract to simply
3 include all of the percentage contracts.

4 Your facility license regulations as Matthew
5 pointed out really hinder us now. I'm not
6 saying -- currently they based their
7 infrastructure to limit the license that a
8 gaming commissioner issues to the building.
9 Now, I understand if you're in a PL 280 state
10 like California where you don't have criminal
11 jurisdiction, that's not a big issue, but here
12 in Oklahoma we maintain criminal jurisdiction,
13 and the gaming commissioner likes to reach all
14 the way out to the edge of the parking lot
15 perimeter for some of the tribes. Our gaming
16 commission has always licensed the entire
17 footprint that was in trust as far as they can
18 reach as a part of the gaming facility so we can
19 control health and safety because in our rural
20 areas that's where we put the sewage ponds. If
21 you want us to have health and safety
22 regulations that matter, his authority needs to
23 reach beyond the edge of the building. You have
24 limited the gaming commissioner's authority or
25 your own authority because your authority

1 follows his. Do you grasp what I'm saying with
2 that logic?

3 And this current reg says if I build a
4 facility right next to the next one, in other
5 words, if I've got a service station with 20
6 games in it, and I decide I need another 50 and
7 I pull a trailer in or build a building, if I
8 don't connect it with an awning, you won't
9 assign a new gaming license. Now, if I've been
10 licensing this whole square anyway, why do I
11 need a new license? Why can't one license cover
12 both so I can operate as both?

13 Again, I'm not saying that the people at the
14 NIGC are just ultimately wrong. I'm saying
15 their application didn't consider everything
16 under the sun, and we really need to go back and
17 look at some of these practical applications,
18 and this Regulation 559 would be real easy to
19 clear up.

20 Part 523, the gaming code amendments, 2710
21 of IGRA says that the chairman has a right to
22 approve or disapprove the gaming code. We now
23 have a regulation that says you won't consider
24 an amendment unless it has these provisions in
25 it. You're not invading the authority of the

1 gaming commissioner. You're not even invading
2 the authority of the tribal chief or chief
3 executive. You're invading the authority of the
4 entire tribal government to meet that checklist,
5 and if they can meet it without putting the two
6 things that are in your reg in here, to do so.
7 Indeed we have done that. That's why all these
8 gaming ordinances have already been passed.
9 IGRA doesn't give the NIGC the authority to add
10 requirements, and the fact that it says it only
11 applies to those amendments that are presented
12 perspectively tells me the people who wrote that
13 knew that. That needs to be addressed.

14 There's been a lot of discussion about the
15 Class II MICS. If you recall, the compacts are
16 not approved by the NIGC, but by Interior. In
17 November 2004, Oklahoma gave us a make it or
18 take it compact by a vote of people, and it was
19 approved and signed off by virtually every
20 Oklahoma tribe you have in this room, and what
21 it says is that we will follow the NIGC MICS.
22 It didn't say the NIGC MICS as is amended as
23 other legal references in that document preside.
24 It says the MICS. Your change in the MICS needs
25 to consider that for Oklahoma, technically we're

1 locked in to 2004 because that's what the
2 compact entered, and it was approved by the
3 Interior, not by you.

4 So, I mean, a lot of these things are
5 exceptionally complex. My suggestion is that
6 you adopt standards because, again, I don't
7 think it hurts anybody to have good suggestions,
8 and that in the standards you point out, it's
9 not meant to affect in any way any of the
10 existing compacts. I just want to make sure you
11 consider that we have a compact that tends to
12 lock us into a specific time. The Class II MICS
13 that were adopted two years ago have been in
14 operations, and my bosses over here and this
15 one, have noticed there are things that aren't
16 working. Those of us that are technical people
17 tend to write rules that when they're applied
18 don't work very well, and I appreciate that
19 Matthew is working on the game regulations, the
20 game standards, but I want to emphasize that
21 it's time for you to listen as you have pointed
22 out and make changes to those 2008 MICS because
23 they've been in existence just long enough for
24 us to identify places that have warps, and we're
25 not talking about a complete replacement. We're

1 talking about an improvement, and I appreciate
2 that you've given us the opportunity to do that.

3 One other thing about the MICS and gaming
4 standards, there was no exemption for games that
5 were litigated. Games have already gone to the
6 Tenth Circuit or the D.C. Circuit, and they've
7 been determined to be Class II. I don't think
8 you have authority to tell that circuit court
9 that they have to do something else to be Class
10 II. I think when you do that, that creates a
11 conflict between you and a federal court, and
12 it's not just a district court. It's a circuit
13 court, and it's been my experience they have
14 about as much patience as Governor Anoatubby and
15 speaking of patience, I think I've probably
16 exceeded everyone's patience. Thank you for
17 listening.

18 CHAIRWOMAN STEVENS: Thank you, Jess.
19 That was pretty painless. He was a gentleman,
20 Governor Anoatubby. Thank you. Because I
21 yelled at him the last time I saw him, but those
22 are all good words, and I appreciate your
23 comments and look forward to -- I assume there
24 will be some written comments submitted. If
25 not, we'll have these on record. If you want to

1 expand, you're certainly welcome. We are at the
2 lunch break right now, and what we'll do is
3 we'll come back at 1:30 back in this room and
4 we'll keep the mics open. Thank you and enjoy
5 your lunch.

6 (Lunch break)

7 CHAIRWOMAN STEVENS: Okay. Good
8 afternoon. I hope everybody had a nice break.
9 We'll be getting started, but I want to make
10 sure everybody is back in the room and seated.
11 So we'll open the floor back up to comment. We
12 have microphones in various parts of the room.
13 We know many of the tribal leaders have spoken
14 already. I think at this point if there are
15 others that represent their tribes or their
16 organizations and have comments, we certainly
17 welcome them. Yes, sir.

18 STEVE YORK: Steve York, Fort Sill
19 Apache Gaming Commissioner and executive
20 director of the Apache Gaming Commission. Like
21 I say, I talked pretty essentially about IGRA
22 this morning, and looking at the proprietary
23 interest. Like I say, Congress -- basically
24 proprietary interest basically set forth two
25 parameters, and that's set forth in the 70/30

1 percent on management contracts and the 60/40 on
2 management contracts, and then they went down
3 and looked at both gaming operations that were
4 in place prior to 1986 and were Class II gaming
5 operations run by individual tribal members. In
6 that it basically said a 60/40 on that, but I
7 think like I say when you guys were taking a
8 proprietary interest, Congress has already
9 established what proprietary interest is. So if
10 you're looking at trust standards, you as the
11 trustee, since you're the trustee, you have to
12 look at that particular percentage, nothing
13 else.

14 In other words, if a management contract
15 comes in to you, you and the tribe or the
16 management contractor of the tribe approaches
17 the chairman of the National Indian Gaming
18 Commission for approval. Your only standard you
19 have to go by is 70/30. Now, does that mean in
20 the modern day climate, the economic climate,
21 can you go less than that? Yeah, you can. Can
22 you go more than that? Yeah, you can, because
23 it says 60/40 as long as the investment is
24 there. So I still look at that even on
25 proprietary interest. If I'm doing 80/20 type

1 things or the tribe is doing 80/20 with vendors
2 contracting for them to come in and place their
3 machines in place and I'm going to do an 80/20
4 split, I'm looking at that as a proprietary
5 interest. It falls underneath the 30 percent,
6 so is it okay? Yeah, it is, but you guys
7 realize what you should be realizing that after
8 a year of operation, then I'm going to be
9 looking at their audit to see that them figures
10 are true and correct, in other words, they
11 haven't put any little outside loans or some
12 other stuff in there to increase that
13 percentage. You understand what I'm saying to
14 you? So, like I say, I think Congress has
15 already established a proprietary interest.
16 I've said that. I don't know why we need to
17 address it because you already have that
18 authority basically in there.

19 And there's some other issues that we've
20 talked about this morning or that have come up
21 that I've heard that are basically talking
22 about, you know, several different issues that I
23 basically addressed. Like I say, you guys are
24 in charge. IGRA created you, you know. I'll
25 give you a for instance. IGRA says that the

1 president of the United States appoints the
2 chairperson or the chairman it says. It doesn't
3 say chairperson or chairwoman. It says
4 chairman, and then it says the secretary will
5 appoint the other two members. Then in order
6 for you to be selected to vice-chair, it then
7 says you have to have a meeting of at least two
8 of you members to elect the vice-chair. Did
9 that occur this time around? Okay. So you
10 basically did have a meeting? Well, like I say,
11 in the communication end of it, no one knows
12 when you have a meeting because Congress said
13 you guys are mandated to meet once every four
14 months. It doesn't say you're a full-time
15 commission. It just says you're supposed to
16 meet every four months, mandatory according to
17 the law is what it says.

18 So all I'm trying to do is get other people
19 in here to realize that all of us need to read
20 our base document, read the law, follow the law.
21 Like I say, I'm real concerned because of the
22 standards that we need to develop. Develop the
23 standards, not regulations, but standards. I
24 talked with you about the fact that here we
25 create these MICS deals. Well, by the time we

1 put them in the federal register they're out of
2 date. They're no longer usable, you know. I
3 mean, all of us you go through it every day
4 running the day-to-day operations, the gaming
5 operations. We're having to look at possibly
6 revising PNP's in order to make sure we can meet
7 some kind of minimum control or meet an internal
8 control, and I'm not saying we need minimum
9 internal controls. I'm just saying that in the
10 guidance lines from you guys, we should be
11 looking basically at a minimum concept of what
12 minimally what we can get by with, not call it a
13 minimum, but just call it an internal control.
14 These are the internal controls we really need,
15 you know. These are facts that you really need
16 in order to run because I don't care where the
17 gaming operation is, whether it be Washington
18 state, California, New Mexico, Arizona,
19 Connecticut, whatever, all of us totally realize
20 that we need internal controls. We have to have
21 some kind of internal controls to run our
22 operations. Whether it be a Class II operation
23 or a Class III operation, we have to have
24 internal controls. I think there ain't no doubt
25 about that, but do we need minimum internal

1 controls? I have no idea. That's up to you
2 guys and the tribes to decide what we really
3 need, but if you really read IGRA, it doesn't
4 mention anything about minimum internal controls
5 either in Class II or III. Now, one real
6 important fact that I want to point out to you
7 is the fact that you guys right now, you just
8 passed your fee schedule, is that correct? You
9 just put your fee schedule out just not long
10 ago?

11 CHAIRWOMAN STEVENS: Not yet. Not yet.

12 STEVE YORK: Not yet? Okay. Well, if
13 you look at the fee schedule, Congress, when
14 they passed IGRA, said that your fee schedule
15 will not exceed .080, and if you're at .060 at
16 this time, that means you've only got 20 percent
17 to go, I mean, 20 points to go up. So when you
18 reach that level of .080, that's the maximum
19 fees that your organization can get underneath
20 IGRA. Do you agree with that?

21 CHAIRWOMAN STEVENS: I know that that's
22 what the law says.

23 STEVE YORK: Do what?

24 CHAIRWOMAN STEVENS: I know that that's
25 what the law says, yes. I understand that it's

1 in the statute.

2 STEVE YORK: Okay. Well, like I say,
3 you're fast approaching it, so some planning is
4 going to have to take place. I mean, you're
5 going to have to look at that one real close.

6 ASSOCIATE COMMISSIONER LITTLE: The fee
7 changes from time to time. In the past we look
8 back to, you know, seven, eight years ago the
9 fee was, I think, .80, and it has gone down
10 because of its impact upon the revenue of the
11 industry. So that will fluctuate.

12 STEVE YORK: Okay. Well, like I say,
13 that's the maximum that you can go to underneath
14 what IGRA says. So, you know, I mean, you need
15 to look at all the factors, but, like I say, the
16 true understanding, if I'm looking at all of the
17 questions that you have, if you really look and
18 examine what IGRA says, you know, even the Buy
19 Indian Act, there's no federal agency out there
20 that really has the Buy Indian Act. I mean,
21 even the Bureau of Indian Affairs really doesn't
22 have the Buy Indian Act. They basically
23 coattail underneath that, underneath the AA
24 contract that, I can do this business with small
25 disadvantaged people. That means tribes. If

1 they're an AA contractor that want to buy any
2 goods and services from them, you're more than
3 welcome to do it. You know, that's the only
4 thing about it is we're talking about the tribal
5 advisory groups. There's nothing that prohibits
6 you as a commission, I mean, besides consulting
7 with us, talking to us about it, but you can
8 adopt the Tribal Advisory Committee, the BIA,
9 Indian Health Service or anybody else because
10 the law allows you to talk to other federal
11 agencies, other federal things to allow you to
12 bring those in. I mean, there ain't a problem
13 with that. I mean, it's in the law. It
14 basically says you can do that.

15 And then, like I say, you guys are always
16 mixing apples and oranges up, too, because
17 somebody in California does something different
18 than we do here in Oklahoma. Like we told you
19 with Jess Green, our compact basically applies
20 to the 2004 MICS. Do we use the 2006 MICS?
21 Yeah. I'd say most of us do, you know, but with
22 the state of Oklahoma, if they come in and want
23 to fight with us over the 2004 MICS, say this is
24 what our compact says, you know. It's like the
25 state of California. If the state of California

1 applies the MICS, then the tribes out there can
2 use them, and you guys can use them, but that
3 doesn't extend you beyond what you've already
4 failed to do. You didn't go back and appeal the
5 Colorado Indian River Tribe case. So I can tell
6 you I don't think there's any esquires in the
7 house who will disagree with me. When you
8 didn't appeal -- or the National Indian Gaming
9 Commission didn't appeal the Colorado Indian
10 River Tribe case, that case applies to me here
11 in Oklahoma just as well as it does in Colorado
12 or Washington state or Connecticut or anywhere
13 else because I can tell you that Washington
14 versus Georgia applies to me here in Oklahoma
15 just as well as it does to you in Washington
16 state, you know. I mean, I'm just telling you
17 what the sequence of the law says.

18 So, like I say, we all need to really have a
19 real good conversation and just talk about IGRA.
20 What does IGRA allow me to do, you know. The
21 commission is totally set up by IGRA, you know.
22 Just like it says, the chairman shall appoint
23 their legal counsel. That didn't take place
24 this time. You appointed a legal counsel down
25 here, but that's not the general counsel.

1 CHAIRWOMAN STEVENS: Yes, I appointed
2 general counsel right when I got into office.
3 Penny Coleman left and I appointed Larry Roberts
4 as the new general counsel and I did that back
5 in July.

6 STEVE YORK: You physically -- you as
7 chairman appointed him.

8 CHAIRWOMAN STEVENS: Yes. Chairman
9 appointed. Same thing with chief of staff.

10 STEVE YORK: Okay. Did you have any
11 help?

12 CHAIRWOMAN STEVENS: What do you mean?

13 STEVE YORK: I mean, that's just a point
14 blank question. Did you have any help? In
15 other words, were there politicians helping you?

16 CHAIRWOMAN STEVENS: Well, the chairman
17 has some exemptions from Title 5. The
18 appointments clause, which allows me to appoint
19 -- the chairperson can appoint the general
20 counsel, and that's what I did.

21 STEVE YORK: Okay.

22 CHAIRWOMAN STEVENS: So I'm not sure
23 what you're asking, what kind of help?

24 STEVE YORK: I was just making a
25 statement. I wasn't asking anything.

1 CHAIRWOMAN STEVENS: I hope I was
2 responsive. I did it on my own.

3 STEVE YORK: You answered the question.

4 RICHARD GRELLNER: One thing to clarify.
5 My name is Richard Grellner with the Fort Sill
6 Apache. I assume the issue is between a
7 management agreement determination and the fact
8 that the tribe has had a proprietary interest or
9 a sole proprietary interest under the
10 ordinances. What I heard him say was that the
11 management agreement provision is what really
12 determines what's a sole proprietary interest
13 because it allows in certain situations 30
14 percent of that revenue or however that's
15 defined under the act to go to an outside
16 manager or if there's over 100 -- I think it's a
17 100 million dollar investment. That number goes
18 to 60/40. I guess the question would be is for
19 the commission is how do gross revenue contracts
20 for vendors fit into that and whether or not if
21 they're above 30 percent, there's not a 100
22 million dollar investment, or if there is a 100
23 million dollar investment above 40 percent,
24 whether or not that violates IGRA. I think what
25 I took out of that, maybe in the interest of you

1 all, is that in the current requirement we have
2 out here, we have a lot of 80/20 splits with
3 vendors. Obviously vendors put in a lot of
4 investment into the product, and they spend a
5 lot of money to get themselves into position.
6 The question will be whether or not an 80/20
7 gross deal, if you convert it to net, would be
8 above 70/30 or in a situation where the
9 investment is high enough would be above 60/40.
10 I think those guidelines maybe where we do have
11 some authority is to start looking at that and
12 seeing what is and what isn't, you know.

13 It's one thing for somebody to put a machine
14 on the floor and say I want 20 percent of the
15 revenue, but not have the time base. Another
16 thing, one of my clients has an 83-month
17 contract, 80/20 gross, which in my mind converts
18 to 60/40 net. It's another thing for that to be
19 tied up and have no real consideration for the
20 83-month revenue stream. You can say, well, the
21 tribes can do this or do that, but at some
22 point, you know, the tail is wagging the dog. I
23 think I agree that the only authority for you
24 guys to look at that is within the context of
25 the management agreement and whether or not

1 those percentage guidelines are somewhere in
2 there. The next thing is whether or not it's
3 time based, and that's the issue.

4 CHAIRWOMAN STEVENS: Thank you. Do we
5 have more comments? There we go. Dan was just
6 wondering where is Liz?

7 ELIZABETH HOMER: I couldn't resist.
8 There was a microphone on the floor. Members of
9 the commission, let me just say that this is
10 such a refreshing change in the openness and
11 transparency and opportunity to have a true
12 dialogue. So I wanted to say we've already seen
13 a huge improvement in the kind of relationship
14 that I foresee for the NIGC and Indian tribes.
15 So I want to thank you for that. I want to
16 thank you for being here. I also want to thank
17 you for your horrendous travel schedule that
18 you've undertaken, you know, for these two
19 months. It's really quite remarkable, and
20 you're to be commended to really reaching out
21 into Indian Country on these issues.

22 I speak today not to bind anyone that I
23 might represent, but just say that there are a
24 couple of other issues. One is the enforcement
25 policy at the NIGC. You know, for a long time

1 the NIGC had a voluntary compliance policy, and
2 that changed during last administration, and the
3 enforcement policy became, you know, really
4 based on criminal enforcement law as opposed to
5 a civil regulatory model, and I think that in
6 your regulatory review, it would be -- you know,
7 I would appreciate that getting some attention
8 as well as starting to develop internally in the
9 NIGC, you know, internal institutional
10 structures such as enforcement policy manual and
11 policy manuals for some of these day-to-day
12 functions that staff is performing so we can all
13 rely on that so we know what the processes are
14 going to be both externally and internally. So,
15 you know, I throw that out there.

16 I also want to reiterate a point that I
17 think I've made to you all, you know,
18 previously, which is that, you know, we have a
19 real opportunity now to look beyond the corner
20 that we all locked each other into for the last
21 few years in our relationship with the NIGC to
22 go beyond that and take a look at doing some
23 things using the statutory language in a way
24 that's going to ensure that the tribes have the
25 fullest benefit of the law, you know,

1 self-regulation being one of those, you know.

2 There are a lot of these problems that I
3 believe we can resolve together with the NIGC
4 through the self-regulation process, and I think
5 that that regulation was put in place some time
6 ago, and it hasn't worked. It's probably never
7 going to work. It's a disincentive as opposed
8 to a carrot in terms of compliance, and I think
9 it could solve a lot of our -- a lot of our
10 differences and get some processes in place to
11 follow. So those are a couple of other items
12 that we didn't talk about too much today, but I
13 would really welcome the NIGC's review of those
14 things, and one thing that I did mention
15 previously when I was in San Diego which is the
16 NIGC's view of the National Environmental Policy
17 Act and its applicability to the NIGC's actions
18 with regard to tribal governments. I think
19 that, you know, there's some serious legal
20 issues there, and I think that at least with
21 respect to some of my clients, those are the
22 things that we would really like to work with
23 you on. So thank you very much again, and I
24 hope you enjoy Oklahoma. Thank you.

25 CHAIRWOMAN STEVENS: The general counsel

1 that I did appoint actually came from EPA, and
2 has a very strong background in NEPA, so that's
3 been very helpful to us as we examine as we did
4 and consulted on the tribes over the summer on
5 the NEPA manual that was published in December
6 2009 prior to any of us arriving. So we have --
7 he's actually taking a look at that, and I do
8 want to say that we have heard in the other
9 consultation sessions about self-regulation
10 being a carrot. It should be an incentive
11 rather than a disincentive because we only have
12 just a handful of tribes that are certified for
13 self-regulation, and we welcome some comments on
14 how we could address this.

15 VICE-CHAIRWOMAN COCHRAN: Liz, will you
16 be submitting written comments on behalf of your
17 Oklahoma or Kansas clients?

18 ELIZABETH HOMER: Yes, ma'am.

19 VICE-CHAIRWOMAN COCHRAN: Thank you.

20 KAY BUSBY: My name is Kay Busby. I'm
21 the executive director of the Delaware Nation
22 Gaming Commission, and I, too, would like to say
23 thank you for this open forum. I have been
24 involved with Jess Green and Nancy many times
25 meeting with the previous chairperson, which was

1 not a very pleasant experience I might add. As
2 you see, I still -- I did survive and I still am
3 employed. Thank you. My comment to you is when
4 you're looking at these regulations, would you
5 consider the smaller organizations such as my
6 own, the Delawares, who have a limited funding
7 source when you're passing these regulations,
8 and take into account that we are on a fixed
9 budget, and it's like if we go and ask the
10 tribal leaders, well, we need more money because
11 we have to comply with this regulation, we have
12 no way sometimes like the facility licensing,
13 for example, of knowing that was coming out. It
14 came out. You will do it. That's the end of
15 it.

16 My other comment is I, too, second what
17 other individuals have said about the fee
18 process, the NOV process. We, too, were fined
19 and issued an NOV and issued a fine for a
20 clerical accounting error that we made in our
21 accounting process, but lessons learned from
22 that, of course, and now we have a mark against
23 us and we take that -- we take our regulating
24 very seriously, and we're very proud of what
25 we've achieved to be where we're at, but that,

1 too, looks like a D on us for -- you know, if we
2 could maybe come up with a forgiveness plan,
3 putting that in simple terms, that would be
4 wonderful. When I first started working for the
5 Delawares, I, too, looked into self-regulating,
6 and when I read the regulation for that, there
7 was just no way possible. No way that I could
8 go to my tribal leaders and say I need another
9 complete budget for this amount of money that
10 maybe would be sufficient to fund this
11 self-regulating body, which just never had a
12 second look. It's very overbearing in my
13 opinion.

14 Also I am from Tahlequah originally. I'm
15 Cherokee, and I'm very proud to be an Okie.
16 With that being said, we are unique here, and I
17 know that you hear that word, "we're unique
18 here." Other organizations say, "Well, are you
19 real Indians down there?" Yes. With that being
20 said, our Class II games are unique. Our bread
21 and butter is our Class II games, and our
22 customers like our Class II games. So if we
23 change it to the fact that it is not what our
24 customers like, we're going to have a
25 significant loss of revenue, and if you're a

1 small organization like the Delaware is, we only
2 have one facility. We're fierce at protecting
3 our facility. We do whatever we can to protect
4 to ensure that the money that we receive goes to
5 the tribes, and it has just made our tribe a
6 better organization, helps our elders, helps our
7 children go to school. So there, too, please
8 relook at those Class II, and I, too, agree with
9 the Class III MICS. Because another state has a
10 problem with their state in trying to reach an
11 agreement with their Class III games doesn't
12 mean that it should be everybody. I think it
13 should be a case by case basis. Maybe you could
14 -- like the more experienced regulators said,
15 you could put it in as a suggestion, a bulletin,
16 a standard, and that we as self-regulators can
17 involve that if we need to. We are locked into
18 our compacts. We have a very good relationship
19 with the people, with the state in my opinion,
20 and grandma always said don't mess with it if
21 it's not broken.

22 CHAIRWOMAN STEVENS: Thank you.

23 VICE-CHAIRWOMAN COCHRAN: Thank you for
24 those comments. I just want to say something
25 because every time I keep hearing this story, it

1 just hits me in the gut like the first time I
2 heard it. For whatever justification the NOV's
3 were sent out for late payments for fees, the
4 first time I heard that happened, I didn't know.
5 I had been on the commission for just a short
6 time, and I happened to be in California, in the
7 foot hills of California with a very small
8 tribe, and I was sitting with the leadership and
9 talking with them, and they were very proud of
10 the fact that they had negotiated a settlement
11 with my agency to reduce their fee from \$40,000
12 to \$20,000 on the NOV. This facility employs a
13 total of 40 people. Their fee payment was
14 \$1,400, and I hear the story, and ever since
15 then I'm hearing the story, and, Liz, thank you
16 for your comments because it shouldn't be in my
17 opinion that we use the heaviest handle we have
18 on enforcement to collect fees. There's other
19 civil regulatory ways for us to accomplish that,
20 and that's my opinion on that particular issue,
21 but I just thank you for continuing -- even
22 though it hits me in the gut, thank you for
23 continuing to let us know how many of you here
24 in my home state are affected, because although
25 my tribe does very well, I know that the

1 Delawares, you do fiercely protect your facility
2 as you should, and we should be mindful of how
3 they impact even the tiniest facilities because
4 they're very important to the tribes.

5 VICE-CHAIRWOMAN COCHRAN: I do want to
6 make a comment - thank you, Stephani - about one
7 size doesn't fit all, and that's what I heard
8 you saying, and we've heard that here before.
9 It's different from state to state. It's even
10 different within the states, you know. The
11 state that I'm from. There's very small
12 operations that are in very remote locations,
13 and very large operations that are closer who
14 might be able to handle, you know, more
15 requirements of them or, you know, not have it
16 affect them, but that's one of the reasons why
17 we're having this open forum. A lot of tribes
18 are saying, hey, I didn't know that that was
19 going to be the effect over there, you know,
20 when I propose something for my tribe, it has a
21 ripple effect on that tribe over there and vice
22 versa. To be able to hear or be able to say
23 wait a minute, if you do that, this is what's
24 going to happen to us over here, and to want to
25 hear it and be able to share it, but also to

1 help us come up with some solutions so we don't
2 leave anybody behind. This is going to be the
3 responsibility of all of us by giving us your
4 priorities where the rubber meets the road as we
5 start doing draftings and changes, whatever
6 those changes might be. They might be
7 standards, they might be regulations, they might
8 be bulletins, they might be guidelines. Could
9 be a number of things, but whatever track we're
10 on, you know, I'm going to turn -- I'm going to
11 keep asking all of you how do we come to some
12 happy medium here so nobody is left behind, and
13 then we continue to protect this industry, and
14 we stay within the confines of our statutory
15 authority. Any more comments? Yes, sir. Right
16 over here.

17 JEFF HOUSER: Jeff Houser, Fort Sill
18 Apache Tribe again. I want to make a
19 clarification on the facility licensing. The
20 Comanche regulator made me realize that it's not
21 necessarily the ultimate holding of facility
22 licenses, but the 120-day requirement that was
23 announced, and when those were announced at the
24 consultation in 2008, it coincidentally happened
25 to effect some plans that we had drafted. So I

1 think that while facility licensing in general
2 is good, I'm not quite sure about the 120-day
3 requirement given that there wasn't a
4 consultation. I still think -- there's a reason
5 to think it might not be effective.

6 The other part is -- one thing I left off
7 was the consultation advisory committees have
8 been in office nearly eight years, and I've only
9 been aware of advisory committees for gaming
10 after they had been set up, so it would be good
11 to have a method that all tribes can consider
12 fair and inclusive to allow everybody to have a
13 voice. So thank you.

14 CHAIRWOMAN STEVENS: Thank you, sir. We
15 have heard that from the other consultations
16 about who gets to choose and what the
17 requirements are and who gets to weigh in.
18 Actually, Lael, if there was anything that you
19 wanted to bring up that might not have been
20 brought up before?

21 STEVE YORK: One more thing.

22 CHAIRWOMAN STEVENS: Certainly.

23 STEVE YORK: You guys are looking at
24 vendors. Can you as the NIGC help me conduct a
25 background on a vendor? I'm going to be real

1 simple about it. If my gaming ordinance
2 requires me to license a vendor, then the only
3 mechanism we have -- of course, I understood
4 back in the old days the NIGC basically were
5 underneath manual fingerprints. So in order to
6 do that, you went and visited on the 9th floor
7 up there. You had boxes up and down the floor
8 and up to the ceilings and all sorts of offices
9 filled full of vendor licenses. I mean, well,
10 background licensing or whatever it is, but can
11 I as a tribe, if it's in my gaming ordinance
12 that was approved by the chairman of the
13 National Indian Gaming Commission, can I use the
14 system that I'm paying for to begin with as a
15 tribal regulator? In other words, when I was
16 paying \$35 and now I'm paying \$24 for a vendor
17 license, can I run that person through you guys
18 even though you don't have any regulations
19 dealing with vendor licensing? Can I still do
20 that? Can I run a vendor license if in my
21 gaming ordinance it says I will license these
22 vendors?

23 CHAIRWOMAN STEVENS: I think that was
24 one of the questions that was in the slides.

25 STEVE YORK: Like I say, I think I can

1 do it because I'm giving you a check for that
2 person to begin with, and it has no bearing on
3 your system one way or the other. It's just a
4 little bleep in the space in the electronic
5 format, so it's not a big deal to me, but, I
6 mean, if you found out and sent one of your
7 field investigators and say I'm going to give
8 you an NOV because you're trying to license
9 vendors through this deal, you can't do it,
10 well, it says in my gaming ordinance that you
11 approved that I can, then what kind of catch 22
12 are we going to have?

13 CHAIRWOMAN STEVENS: Well, I think
14 that's one of the questions we have in front of
15 us is there are some tribes who have vendor
16 licensing that's arranged with their state and
17 they work --

18 STEVE YORK: I'm going to take it one
19 step further. You guys license people
20 underneath, what, 502.14, correct? There's ten
21 positions in there that you say they're required
22 to have a license. So if I read that right, if
23 I've got a gaming vendor in there and he's got a
24 server in the house, and he can come in, his
25 technicians can come in and open that gaming

1 machine and stuff even though he doesn't have
2 access to build a separate box, you know, but he
3 still has access to that system through his
4 server or through that individual machine. So
5 I'm saying underneath there he's covered
6 underneath one of your definitions, underneath
7 502.14. So I'm arguing that with you, too. I'm
8 saying that you don't have to have a regulation
9 to say that you can either license vendors or
10 not because it's already covered underneath your
11 current standards or your current regulations.
12 That's all I'm saying.

13 CHAIRWOMAN STEVENS: Okay. Thank you.

14 RON TWOHATCHET: My name is Ron
15 Twohatchet. On Page 685 on the first column
16 there, it says fingerprinting for non-primary
17 management officials. It lists two areas where
18 NIGC is responsible for taking fingerprint cards
19 from primary management officials and key
20 employees. Like you said, your question, your
21 question is addressed here. Should the
22 commission develop or implement rules and
23 regulations to fingerprint vendors, consultants
24 and other non-employees that have access to the
25 gaming operations of the tribe? So the question

1 that addresses it here is that should the
2 commission adopt regulations that would allow
3 tribes, at their option, to submit fingerprint
4 cards to the commission for vendors,
5 consultants, and other non-employees that have
6 access to gaming operations?

7 So in his statement that these regulations
8 already exist under some part of the regulation,
9 is it true, because according to this you don't
10 have those regulations for vendors and
11 consultants in place with NIGC whereas a tribe
12 may have those in place. So I guess what
13 they're asking is that if the tribe has it in
14 place, would NIGC also incorporate that into
15 their regulations so that they could support
16 what the tribes have?

17 CHAIRWOMAN STEVENS: Well, that's what
18 we're looking at right now. We're looking at
19 Lael with regard to what do we do now with
20 management officials or key employees only.
21 Some tribes don't want to have their vendors
22 licensed, but some of them do. Some of them
23 have other mechanisms that they can use. They
24 can use their states, and the question is should
25 we be expanding our scope to include that if

1 it's at the tribe's request and how do we handle
2 that. That's the question. I think the
3 question will turn and what we're looking for is
4 do you want us to do that? Should it be an
5 opt-in for tribes?

6 LAEL ECHO-HAWK: The other issue with
7 that is that we have an agreement with the FBI.
8 They're the ones that actually do the
9 fingerprinting, do that stuff for us, and so it
10 may require an adjustment to the MOU that we
11 have with them, and if it's something that
12 tribes want, then we can certainly look at that
13 as an option, but currently it's my
14 understanding that within the agency, we only
15 review those two categories of fingerprinting
16 for tribes, and if it's something that tribes
17 want, then it's something that we need to hear
18 about and then go forth with that mechanism to
19 do that.

20 JAMIE HUMMINGBIRD: Jamie Hummingbird
21 with the Cherokee Nation Gaming Commission.
22 Just to kind of tail onto this, one of things
23 that popped in my head when I was reading that
24 particular question was, and it goes to
25 Mr. York's statement as well, if under that

1 definition of a key employee or a PMO, and it
2 has any other person deemed to be a key employee
3 by the tribe. So the tribe could theoretically
4 say that a vendor employee is going to be
5 considered as a key employee. However, I'm not
6 sure if the NIGC or even if the tribes or the
7 vendors would want to have the burden of
8 supplying all of their information as a key
9 employee and have that on record with the NIGC.
10 That may be a consideration. Another thing is
11 the backgrounds that we do on vendor employees
12 is not as thorough as I would like it to be. It
13 would be very expensive to do it otherwise, but
14 if we were to have -- if there was a regulation
15 that puts clarity in there that allowed for us
16 to do that, but did not require the person's
17 file to be on file with the NIGC, that may be
18 something that would be important to review for
19 tribes and the vendor employees.

20 BARBARA COLLIER: Barbara Collier with
21 the Quapaw Tribal Gaming Agency. Jamie just
22 made me think about one of my worst nightmares,
23 and that is the onset of us as regulators
24 looking at off-site vendors, Internet gaming
25 possibilities, those kinds of vendors, and to a

1 gaming commissioner, I think that's one of our
2 worst fears is to have someone be able to
3 address our system as a whole that we haven't
4 done a thorough -- very thorough background on,
5 and it's getting more and more difficult to do
6 that as we move forward with these issues
7 because sometimes these companies will -- not
8 sometimes, most often. Even the large companies
9 will say, well, we don't have certain specific
10 technicians that address just your facility.
11 We have people in India or England or, you know,
12 California or Connecticut or wherever they're
13 from, they're located for this company in that
14 area. So they're not on site, but they have a
15 very specific -- they can specifically address
16 your system remotely without your knowledge of
17 whether they were an outstanding citizen. So I
18 think, too, we need to consider what might be in
19 our future, which I think we all know that we're
20 looking at more and more technology out there to
21 put demands on the regulations of gaming
22 commissions and agencies. So it would help us,
23 I believe, to be able to have a better, you
24 know, perhaps some of us that can afford to,
25 utilize companies that are doing background

1 checks and things like that other than the ones
2 that we can send in to NIGC, but if indeed we do
3 have to start looking into these more
4 thoroughly, it makes more sense for us and puts
5 my mind at better ease for an FBI background
6 check than it would be for some state or local
7 organization to give me that comfort zone. So
8 if that's something that we would be able to
9 have, that would be great.

10 CHAIRWOMAN STEVENS: Any other comments?

11 JANICE ROWE-KURAK: I'm Janice
12 Rowe-Kurak. I'm chairman of the Iowa Tribe of
13 Oklahoma. First, I would like to say thank you
14 to Governor Anotubby and the Chickasaw Nation
15 for hosting this. Also I'd like to say thank
16 you to the NIGC. Thank you for bringing this
17 here and hearing from us. We appreciate the
18 opportunity that the NIGC has given us for this
19 dialogue regarding these regulations. As a
20 tribal leader, I believe that we need to hear
21 from these different tribes and these different
22 leaders. It kind of lets us know that even
23 though they're on a day-to-day basis, we feel
24 like sometimes we're experiencing these issues
25 alone. As we hear, we're not alone, and you had

1 said something about reaching a happy medium. I
2 believe these consultations is the way to reach
3 that goal. Thank you for the opportunity.

4 CHAIRWOMAN STEVENS: Any other comments?
5 Don't rile up Jess again. The lights came on in
6 the bar. Well, in the absence of any further
7 comment or additional comments here, that's
8 putting aside written comments that we hope we
9 will receive from everyone here, we might do a
10 last comment from the two commissioners. Any
11 others? Last call for comments. Lael, was
12 there anything in particular? I think we've
13 touched on just about everything. Okay. Dan
14 first.

15 ASSOCIATE COMMISSIONER LITTLE: Well,
16 like I said earlier, before everybody leaves, I
17 just want to thank you for coming today, and I
18 know this is kind of a hard process for us to
19 get used to, you know, and I will say it again.
20 You know, the NIGC, we don't want to be talking
21 to you or at you. We want to be talking with
22 you, and that's how we come together and
23 collaboratively make good decisions for this
24 industry. We've heard a lot of good things
25 here. I never took this job expecting it to be

1 an easy ride, and I do appreciate the poignant
2 and difficult questions, and I look forward to
3 more of them in the future, and this is just the
4 beginning, and once again, thank you for your
5 time today.

6 VICE-CHAIRWOMAN COCHRAN: I just want to
7 say again to the tribal leaders and to the
8 chairmen thank you for your time. Thank you for
9 giving us an opportunity to address you. I
10 always appreciate very much how busy your
11 schedules are. Thank you for carving out time
12 for us. I recognize it's very special, so thank
13 you. Thank you also to the other attendees and
14 the other regulators that are here. I know you
15 all put in a lot of work to protect the assets
16 of the tribe. I know Mr. Morgan, Mr. Green,
17 you're protecting my tribe's assets and you're
18 therefore protecting my child's assets, and that
19 means a lot to me, so thank you. Safe travels
20 to going home. I wish you well.

21 CHAIRWOMAN STEVENS: I think we might
22 actually have one other comment.

23 JOE BUNCH: My name is Joe Bunch, and
24 I'm chairman of the United Keetoowah Band Gaming
25 Commission. When we look at the rules and

1 regulations, just look at it across the board,
2 big tribe, little tribe. We have a very
3 important job, a very serious job. Sometimes
4 our decision making aren't the most popular in
5 the world. What I'm trying to say is let's make
6 it fair across the board, big tribe, little
7 tribe. When you add equipment, when you look at
8 software systems, when you look at changing the
9 MICS systems, to go into those software systems,
10 it costs. It costs a tremendous amount of
11 money, so what I'm trying to say is down the
12 road, when we look at these things, believe you
13 me, we'll be there. We can talk about that, and
14 you can see where the cost goes.

15 The other thing is we have the opportunity
16 to be proactive. We have the opportunity to
17 visit with the commission. We have the
18 opportunity. The last time the chairman was
19 here in Oklahoma, he got a welcome reception,
20 believe you me. When he tried to change the
21 definition of Class II bingo from a 5 second
22 game to a 20 second game, he just about cut out
23 half of our profits so to speak. We're talking
24 about that kind of money when we're looking at
25 these rules and regulations.

1 So ladies and gentlemen, look at your
2 policies, look at your rules and regulations,
3 take note. See what it's affecting, how it's
4 affecting you and your operation. Granted,
5 these folks are willing to listen, and that's
6 part of the administration. The administration
7 said they would come back to the Indians and try
8 to help out, so here's our chance. Thank you
9 very much.

10 DAVID QUALLS: (Comments submitted for
11 transcription) The Oklahoma Indian Gaming
12 Association's membership includes 21 tribes
13 engaged in Indian gaming in Oklahoma. Gaming is
14 a major part of the lives of these tribes and
15 the state of Oklahoma. Indian gaming employs
16 over 14,000 people in Oklahoma and generates
17 gross revenues of over 3.5 billion annually.

18 The OIGA congratulates the new commissioners
19 for initiating the regulatory review. This
20 effort creates an opportunity to rebuild trust
21 between the NIGC and the tribes who fund the
22 agency. The review allows the NIGC to break
23 with the past and demonstrate a true commitment
24 to the regulatory structure and limitations
25 created by Congress and IGRA. Most importantly,

1 this activity allows the NIGC to turn the page
2 and advance that tribal sovereignty embodied in
3 IGRA rather than attack sovereignty through
4 unlawful regulations.

5 As the NIGC conducts its review, the OIGA
6 suggests that the commission evaluate each
7 regulation under consideration in light of
8 specific first principles. Initially the
9 regulatory structure of IGRA must be respected.
10 The tribes are the only regulator of Class II
11 gaming. Each regulation must respect rather
12 than diminish that congressionally mandated
13 role. As to Class III, by allowing tribes to
14 define the regulatory framework in their
15 compacts with the states, Congress effectively
16 removed the NIGC from the vast bulk of the Class
17 III regulation as the courts have confirmed.
18 Accordingly any NIGC regulation should have
19 clear authorization by reciting an identified
20 section of IGRA.

21 Enforcement should reflect the primary role
22 of the tribal gaming regulators. Accordingly,
23 the OIGA encourages an NIGC enforcement process
24 that begins with collaboration between the
25 tribal gaming regulatory authority and the NIGC.

1 Such an approach, founded on dialogue rather
2 than litigation, should be both efficient and
3 inexpensive. Only if such dialogue proves
4 unsuccessful should an NOV be issued. In such a
5 case, the NOV process should follow clearly
6 defined rules designed to promote transparency
7 and fairness resulting in a documented, reasoned
8 decision. We are encouraged by the NOI's
9 mention of that process, along with
10 consideration of discontinuance of NOV's for
11 late fees. We strongly encourage the commission
12 to go one step further, and begin refraining
13 from the use of NOV's except in cases of
14 substantial and ongoing violations of law, or
15 where there is an immediate threat or danger to
16 the tribal operation or assets.

17 Second, because one of the primary statutory
18 purposes of IGRA is for Tribes to develop their
19 economies, and thereby generate funds for
20 vitally important governmental purposes, the
21 NIGC should consider the cost burden on Tribes
22 of each regulation examined. This consideration
23 is of even greater importance in light of the
24 uncertain economic times. As Tribal regulators
25 know, regulatory objectives can be met through a

1 variety of alternatives. The least costly
2 regulation that reasonably meets the regulatory
3 goal should be the first choice. In other
4 words, each regulation should consider the
5 economic cost in relation to the regulatory
6 necessity of the rule.

7 This cost of regulation is of particular
8 interest to OIGA members in the context of
9 self-regulation as allowed by IGRA. Oklahoma
10 tribes spend millions of dollars in high quality
11 effective regulation of their gaming activities
12 each year. In particular, the Oklahoma tribal
13 regulators have developed the highest degree of
14 professionalism in the regulation of Class II
15 gaming. The success of the tribal gaming
16 regulators is confirmed by both the extremely
17 low number of NOV's in Oklahoma and the
18 marketplace confidence expressed by our growing
19 player base. Many OIGA members would qualify
20 for the certificate of self-regulation
21 authorized by IGRA. However, the cost and
22 complicated process of obtaining self-regulation
23 status embodied in existing NIGC regulations
24 impede tribes from receiving that
25 sovereignty-based benefit. We urge the NIGC to

1 streamline its regulations so that the exemplary
2 regulatory environment created by OIGA members
3 will be recognized as Congress intended. We
4 stand ready to work with the commission to
5 finally fully implement this statutory
6 provision.

7 Third, each regulation should be evaluated
8 for its impact on attracting and protecting
9 capital. Tribal gaming is capital dependent.
10 Access to capital is presently limited for
11 nearly all the tribes. However, for many of
12 OIGA's member tribes, it has always been a
13 challenge to attract capital. Thus OIGA member
14 tribes long ago learned to be creative in how
15 they attract capital to grow their business.
16 Particularly when considering management
17 contract, collateral agreement and sole
18 propriety interest regulations, the OIGA urges
19 the commissioners to recognize the economic
20 reality and analyze whether the regulation
21 promotes or diminishes access to capital. The
22 OIGA strongly believes that economic decisions
23 are within the prerogative of the tribal
24 government and, short of violations of law, the
25 NIGC should not seek to usurp that prerogative

1 through regulation or administrative practice.

2 In addition to formal capital investment,
3 the Oklahoma tribes and others around the
4 country have created significant economic
5 capital through technological innovation.
6 Therefore, as part of the primary principle of
7 attracting and protecting capital, NIGC
8 regulations should encourage rather than impede
9 technological innovation. The tribal review of
10 the MICS and tech standards should avoid
11 barriers to entry while not compelling the
12 obsolescence of existing investments.
13 Accordingly, the OIGA supports repeal of the
14 five-year limitation on grandfather provisions
15 in the tech standards.

16 Finally the OIGA tribes strongly urge the
17 commission to remember that the NIGC budget is
18 funded 100 percent by the tribes. We believe
19 that the NIGC budgets and staffing should
20 reflect tribal needs, not bureaucratic
21 convenience. In particular we have seen in
22 recent years the opening of the new offices in
23 areas that did not need them, at great cost to
24 the commission and ultimately the tribes. It
25 would be of much greater benefit to tribes, and

1 lead to better overall regulation if that
2 funding supported more training for tribal
3 regulators and operators. We encourage the
4 commission to consider this idea and stand ready
5 to collaborate in developing more training
6 options.

7 When considering MICS and tech standards, we
8 encourage the NIGC to remember the primary
9 regularly authority of the tribes. We encourage
10 the NIGC to remember the difference between
11 standards which a tribe can meet by operating
12 procedures reflective of particular tribal needs
13 and an imposed, mandatory one size fits all
14 operating procedure as standard. Class II
15 gaming has numerous regulatory procedures and
16 standards that are unique to it. We strongly
17 believe that those rules dealing with Class II
18 gaming require dialogue and focus specifically
19 on them, and we stand ready to work with the
20 commission on addressing those unique standards
21 and procedures.

22 In conclusion, the OIGA applauds the new
23 approach initiated by Chairwoman Stevens,
24 Vice-Chairwoman Cochran, and Commissioner
25 Little. The OIGA values its relationship with

1 you and stands ready to work together to
2 strengthen tribal sovereignty, honor the rule of
3 law, and further increase the benefits of Indian
4 gaming for our member tribes, their people and
5 Oklahoma.

6 CHAIRWOMAN STEVENS: Thank you, sir.
7 So, in closing, I want to say thank you on
8 behalf of the commission. I want to say many,
9 many thanks to the Chickasaw Nation for hosting
10 today and being so gracious to open up their
11 home to us. I also want to -- where I come
12 from, I put my hands up and I say thank you to
13 our staff without which we could not have
14 organized and put this meeting together. I want
15 to thank especially the tribal leaders and the
16 staff that have traveled here today. Even if
17 it's just to sit and listen and bring back the
18 information to your tribe, I want to thank you
19 all for attending. I know many of you have come
20 a very long way to be here today, and I thank
21 you for the time that you've taken. This is the
22 beginning of a new relationship with the NIGC.
23 This is the new NIGC. We're dealing with what
24 we walked into, and we're doing it in a new way,
25 and we want to talk with you as we move forward

1 so that tribes have a place at the table and
2 they can help us set the agenda and that
3 everyone has an ownership in what we do with the
4 decisions we make. We can't be in a vacuum and
5 make decisions. We need to have well-informed
6 decisions. These meetings provide us that
7 information. So thank you all. I look forward
8 to an ongoing dialogue with everyone and this
9 will be continued. This is not the end. This
10 is the beginning. So thank you all and I wish
11 you all safe travels home.

12 (Meeting concluded)

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CERTIFICATE

I, D. Luke Epps, Certified Shorthand Reporter within and for the State of Oklahoam, state that the above and foregoing transcript was transcribed by me to the best of my ability; and that i am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of January, 2011.

D. Luke Epps, CSR, RPR
CSR NO. 1841

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