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TRIBAL CONSULTATION

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P R O C E E D I N G S

PRESIDENT PATTERSON:

(Invocation).

CHAIRWOMAN STEVENS: Thank you,
President Patterson.

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

STATEMENT BY JEFFERSON KEEL

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

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

As tribal government, it is
important that we be a part of any dialogue that
impacts our tribes and the people that we

1 represent. When tribes aren't at the table in
2 any type of consultation, in any type of
3 discussion about our business interests and the
4 things that matter to our people, then the
5 results can be devastating to our tribal
6 economies and to the governments that we
7 represent.

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

23 Regardless of how each Tribe may
24 feel or each tribal leader may feel about
25 on-line gaming and how it may impact our current

1 operations, it's important that we never place
2 our interest behind anyone else's or back away
3 from exercising our sovereign rights by managing
4 our own affairs.

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

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

18 Second, they're focusing their
19 attention on providing more technical
20 assistance, with the understanding that the more
21 tribal regulators understand the federal
22 expectations on the front end, the lower the
23 infractions on the back end, when it's more
24 costly for both the Tribe and the Agency. Both
25 of these initiatives are commendable, but I want

1 to throw in a word of caution in these
2 proceedings.

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

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

25 Another item of serious

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

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

22 I want to end with the same as in
23 the beginning. We should never place our
24 interest behind anyone else's or back away from
25 exercising our sovereign rights by managing our

1 own affairs. I want to thank you again for the
2 opportunity to provide these opening remarks.
3 We look forward to another opportunity to work
4 with you and a productive year in Indian gaming.

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

9 STATEMENT BY TRACIE STEVENS

10 CHAIRWOMAN STEVENS: Thank you,
11 President Keel.

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

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

25 Before I begin with my comments, I

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

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

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

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

20 Lashon Wilson, also with our
21 administrative staff.

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

25 And one big round of applause for

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

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

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

1 other places, are as follows:

2 One, consultation and relationship
3 building.

4 Two, technical assistance and
5 training.

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

8 Four, Agency operations review.

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

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

19 This group format allows for an
20 open dialogue and an exchange of ideas. It
21 let's us hear -- let's tribes hear other tribes'
22 concerns that they may not have known or to come
23 up with some solutions together that we might
24 not have thought of had we been separated and
25 apart.

1 So today is meant to be your day
2 to tell us what your priorities are in terms of
3 regulatory review.

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

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

22 I want to let everybody know this
23 isn't the only time you can talk to us about
24 that, we're are open at any time to talk to
25 tribes about their individual concerns.

1 So this forum, and you're going to
2 hear me say this again and again, this is how
3 we're going to collaboratively solve problems.
4 This is where we're going to collaboratively and
5 work together to identify our agenda and our
6 properties by listening to what you tell us your
7 priorities are. That's our first initiative.

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

1 hear from you.

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

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

24 Finally, regulatory review, that's
25 why we're here today. The Notice of Inquiry

1 went out on November 18th. It basically asked
2 three questions: Which regulations, in what
3 order, and how do you want to go about
4 addressing these regulations.

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

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

21 I had -- I can't think of who it
22 was. It was a Midwest alliance a couple months
23 ago. The question was posed, why does the NIGC,
24 why do you feel like you need to keep doing more
25 regulations. Just because we're here talking

1 about regulations doesn't necessarily mean we
2 want more regulations. We want to make sure
3 that the regulations that exist right now, or if
4 there is the need for more or different or
5 changed or new regulations, that they meet the
6 needs of protecting this industry. Are they
7 relevant for today's industry. Are there
8 changes that are outdated?

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

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

25 We won't always agree, but if we

1 don't we're going to be very open about why.
2 We're going to hear everything you have to say,
3 consider everything that's being said, and if
4 there's a point where we disagree and we have to
5 make a decision, we're going to let you know why
6 and you'll know that decision was fully informed
7 by your comments and why we did come to the
8 decision that we've come to.

9 So before we go on, just so you
10 know, the format for today, we've had some
11 opening comments and I'll turn it over to Lael
12 Echo-Hawk who has been charged with heading up
13 this particular initiative because of her
14 background, having been on the other side,
15 sitting back in those seats for years and years
16 through many of the technical advisory
17 committees. She'll go through the Notice of
18 Inquiry rather briefly, and then really this is
19 going to be your day to tell us what your
20 priorities are, ask us questions, clarify
21 anything in the Notice of Inquiry or our intent,
22 or if you're unclear, let us know. It is all
23 being recorded and these transcripts will be put
24 on the web as soon as we have them so everybody
25 can see what everybody else is saying. We have

1 a surprising amount of interest by tribes to
2 know what other tribes are saying, and we think
3 that's a good thing. Sorry, I sounded like
4 Martha Stewart, didn't I, it's a good thing.

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

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

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

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

24 Any opportunity that I have to sit
25 at a table and hear the words from tribal

1 leaders about what's important to you means a
2 lot to me. I intend on being a good listener.
3 I intend on being present with your words and
4 listening very carefully to what you have to
5 offer us, because we are going to make decisions
6 that will impact you and we need to make sure
7 those are done in the best way we know how.

8 Thank you for coming to D.C. I
9 see a lot of the staff here. I haven't seen
10 many of you in almost two weeks now, I hope
11 somebody is watering my plants. Thank you.
12 Thank you for being here as well. I look
13 forward to our conversation and I'll turn it
14 over to Commissioner Little.

15 STATEMENT BY DANIEL LITTLE

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

22 Also, President Keel, thank you
23 for that introduction. It's always -- I
24 appreciate the reminder that NIGC are partners
25 in this process here. All us come from a tribal

1 background, so we remember that and it is always
2 good, you know, to have that reminder.

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

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

18 CHAIRWOMAN STEVENS: Thank you.
19 Today is meant to talk to tribes about the need
20 for changes before we make changes. If you read
21 the Executive Order, and Lael will touch on this
22 again, but I'm a big advocate of this, we talk
23 about it before we start doing. We talk about
24 it before we set the agenda and that you have
25 legitimate input into the agenda and the path we

1 take and the course we set out on. We're going
2 to talk about that before we embark and, as I
3 said, Lael will go over that and the Notice of
4 Inquiry, briefly, and the next steps what you
5 can expect as we move along through this
6 process.

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

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

22 STATEMENT BY LAEL ECHO-HAWK

23 MS. ECHO-HAWK: Good morning. I
24 want to echo the sentiments of the Commission
25 and express my gratitude for Lieutenant Governor

1 Keel and President Patterson for being here and
2 giving us a welcome.

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

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

25 So logistically I'm going to run

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

14 So -- wrong button -- why
15 regulatory review?

16 Obviously, the Indian Gaming
17 Regulatory Act tasked the NIGC with implementing
18 appropriate regulations to implement the Act.
19 In addition, there's the Executive Order 12866,
20 which is Regulatory Planning Interview and the
21 Regulatory Flexibility Act, which requires every
22 Agency to submit semiannually an agenda to the
23 administration that says these are the
24 regulations we're going to take a look at, kind
25 of here's why.

1 In addition, President Obama
2 issued another memorandum last week, I believe,
3 that told agencies again, take a look at your
4 regulations.

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

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

16 A section of major importance to
17 the Commission is Section 3(c)(3) that says, in
18 determining whether to -- in determining whether
19 to establish federal standards, that the
20 agencies shall consult with tribes. This is
21 before -- before we start drafting, before we
22 start issuing notice of the proposed rules we're
23 making we need to consult with you about whether
24 those standards are needed or not. That's what
25 the NOI, that's what this process is about.

1 What is a Notice of Inquiry? I
2 apologize. Liz, she's heard me do this several
3 times. The Notice of Inquiry is a process used
4 by a number of agencies across the
5 Administration; Copyright Office, FCC, Library
6 of Congress, those are the top three I saw when
7 I was going through this. I haven't seen it
8 used when it comes to Indian Country,
9 necessarily, but it's a way for an Agency when
10 they have issues that come up in front of them
11 to go out to their constituency or people
12 affected in that industry, say this is what we
13 heard, help us work through this problem
14 together, so before we begin enacting some
15 regulation we get all the relevant information
16 and that you truly have some input. That's what
17 the Notice of Inquiry is about. We want to talk
18 to you before we start making policy and before
19 we start making changes to regulations. It asks
20 three primary questions:

21 What, is what regulation?

22 When? That means what order of
23 priority, which regulations should we take a
24 look at first, because this time is rather
25 short, we want to get as much done as possible.

1 And then finally, how. We've
2 had -- do we use a tribal Advisory Committee or
3 someone appropriate to do Notice of Proposal
4 Rulemaking, negotiating rulemaking we've heard
5 about. There's a number of ways to do it.
6 That's the other question that's asked in the
7 NOI.

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

20 The NOI was published in November,
21 November 18th. The comment closes on
22 February 12th. This is a week after the last
23 consultation in Florida on February 3rd. It was
24 an 86-day comment period. I know 86 seems like
25 a strange number, as Commissioner Little pointed

1 out to me, but it was a week after the last
2 consultation, that's why we did that. All
3 written comments and consultation transcripts
4 are going to be posted on the web. Again, in
5 the spirit of transparency and accountability to
6 you we want to make sure all the information we
7 use to base our decisions on how we move forward
8 is accessible to all of you, so when we make a
9 decision we can point back to comments that were
10 made, comments that were submitted, and say this
11 is what we heard from you, this is why we went
12 that direction. If we didn't go that direction
13 this is why we didn't go the direction that was
14 pointed out. Again, to be accountable and
15 transparent to you. Again, suggestions only.
16 This is not the end of the universe, this is not
17 written in stone. This is just suggestions.
18 And if you have other comments that are not
19 related to things that are specifically in the
20 NOI we want to hear those, as well. We don't
21 know everything. We certainly don't operate
22 facilities. I do come from representing a
23 facility, but I know on the operations side it
24 can be very much different than the tribal
25 regulatory side, and we're up here at 30,000

1 level foot level and we want to make sure the
2 things we do are relevant and they make sense
3 for the industry.

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

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

14 One of the things we've heard from
15 our audit department and from the financial
16 office is that calendar year versus fiscal year.
17 Right now the regulations say that fees are
18 calculated on a calendar basis. Well, most
19 tribes operate on a fiscal year of some kind and
20 oftentimes that's different than the calendar
21 year, so it can make that calculation different
22 and can result in audit findings. This is one
23 issue we thought would be resolved rather easily
24 if that's something tribes wanted to take a look
25 at.

1 Using industry standards. One
2 thing we've heard people seem to like over the
3 past five consultations is coming up with some
4 sort of ticketing type system for when late fees
5 are submitted, instead of going straight to an
6 enforcement action. That's been done by the
7 NIGC I know tribes weren't happy about it.
8 We're trying to think of a way that makes sense
9 to address with late fines that doesn't rise to
10 the level of enforcement action because, as you
11 all know, that's a very severe punishment and
12 it's something that shouldn't be used lightly.

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

22 There is a couple regulations that
23 perhaps may be obsolete. Quite a number of
24 concerns and thoughts about management contracts
25 and collateral agreements background

1 investigations. Proceedings before the
2 Commission.

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

12 MICS and technical standards.
13 This is the giant elephant that's in the room.
14 It's got the most press. This is something we
15 have heard over and over again needs addressed,
16 and we just need to know how to address it. In
17 light of the CRIT decision we know that the
18 NIGC, that Court told the NIGC that it did not
19 have the authority to enforce or promulgate
20 Class III regulations. We have Class III
21 regulations on the books. What do we do with
22 that? How do we address the fact some tribes,
23 tribes and states have incorporated the
24 Class III MICS into their contracts, they've
25 incorporated by ordinance, they have

1 specifically given the NIGC the authority to
2 Class III MICS in their operations. So we have
3 to figure out how to balance all of those things
4 and come up with a good solution. We've heard a
5 guideline might be appropriate, we've heard a
6 clearinghouse of Class III MICS, even
7 suggestions about the various trade associations
8 working on regional solutions and perhaps coming
9 up with some models that are appropriate for the
10 region. There's a number of things we've heard,
11 and I think we're really given an opportunity
12 right now to be innovative and to come up with a
13 solution or solutions that are maybe outside of
14 the box that we've been operating in and
15 hopefully can meet the needs of the industry.

16 So Class 3 MICS very important.
17 Class II MICS, we have had a Class II tribal
18 working group. We have a draft on the website
19 pending. What do we do with that? The
20 technical standards adopted a few years ago in
21 2008, do they need updated already? We've heard
22 they do. What do we do with those things and
23 how do we do it? Do we use a Tribal Advisory
24 Committee again? Do we -- you know, do we
25 negotiate a rulemaking? There's a number of

1 options available, but we do need help from you.
2 We need to know what your thoughts are so we can
3 do it in a good way and as -- and as least
4 controversial as possible and really come up
5 with a good solution for Indian Country.

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

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

24 Facility license. We have heard
25 about facility licensing since facility

1 licensing came up. I was on the other side of
2 the table when that regulation was sort of -- it
3 just appeared, and then it was regulation, so
4 we've heard quite a bit about it and we need to
5 know what your thoughts are and whether or not
6 we need to take another look at that regulation.

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

15 Enforcement proceedings. We've
16 heard when this came up in the office we were
17 like, well, should the Chair have the express
18 authority to withdraw a Notice of Violation once
19 it's been issued. You know we all thought
20 that's a good question to ask. As we've gone
21 out into the community we've noticed that we're
22 hearing quite a bit more. Ms. Homer has pointed
23 this out to us. Perhaps the enforcement
24 proceedings need to be even clearer. Perhaps
25 there needs to be a system of pre-enforcement

1 procedures that happen so that an NOV,
2 Chairwoman says an NOV should never be a
3 surprise. We should have talked to you
4 previously. We should have tried to work out
5 some compliance assistance. An NOV should never
6 be a surprise.

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

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

1 need to put this in a regulation form? We need
2 to know from tribes what you think about this
3 particular process.

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

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

1 information they need.

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

14 And then, finally, sort of a kind
15 of a feel good one that I like, the Buy Indian
16 Regulation. I know that NIGA, NCAI, and a
17 number of associations have this initiative for
18 gaming operations to buy Indian from each other.
19 And we are an Indian specific Agency, we are
20 funded by your dollars. And so it's appropriate
21 for us to, when we go out into procure hotel
22 space, conference space, that we try to do that
23 with Indian owned facilities or buy Indian
24 products. So this was something we thought
25 about formalizing into a regulation.

1 Once again, suggestions only.

2 These are just a way to get the conversation
3 started. We love to hear input on all of those.
4 We are looking for guidance from tribes. Again,
5 what are your priorities?

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

17 Finally, we go back to the
18 Executive Order. Again, Section 3 (c) but, too,
19 this is something the Commission has also really
20 latched on to. It says when agencies are
21 formulating and developing, implementing
22 policies that have tribal implications, agencies
23 shall -- there's no may -- shall, where
24 possible, defer to Indian tribes to establish
25 standards.

1 If you have an idea for
2 regulations, for standards, for a policy you
3 think is appropriate and would fit the need of
4 the Agency, then, if possible, we're mandated by
5 the Executive Order to consider that and to
6 defer to your tribes with those standards. It
7 is something that's important to this
8 Commission. We really want input as much as
9 possible from Indian Country. This is a good
10 way to bring this to us and we hope we do see
11 those kind of things.

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

19 Mark Gaston and Mavis Harris,
20 we've got a great website duo who, as soon as I
21 get them something they get it up, so you guys
22 know almost as soon as we know what the comments
23 are, because we really to want to be accountable
24 and as transparent as possible.

25 The commitment from the

1 Commission, the commitment from myself is that
2 every comment that we receive will be reviewed
3 and considered. I'll look at every document you
4 send me and I'll review every consultation
5 transcript, even though I was here. When we
6 make those decisions regulatory review agenda
7 will come out with a -- like a summary of the
8 decisions that we made and why we made them.
9 You're going to know what our decision-making
10 process is and, again, another way for us to be
11 transparent and accountable to you.

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

18 Again, our commitment to you,
19 we'll get as much done as possible. I'm been
20 concerned how do we handle the MICS issue and
21 address other things, as well. The MICS is
22 important, but there are a number of other
23 things that are important but have been left
24 behind because we have all been concerned about
25 what to do about the MICS. If there is any way

1 to avoid that I will do my best to the make that
2 happen. If I give up my apartment and I'm on
3 the road for the next year-and-a-half or
4 whatever we have to do, that's what we'll do.
5 We're willing to do the work and we want to hear
6 from you so the work is done in a good way and
7 we accomplish as much as we can.

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

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

21 CHAIRWOMAN STEVENS: Jefferson
22 Keel.

23 PRESIDENT KEEL: My name is
24 Jefferson Keel. In the consultation, the
25 schedule. I noticed that the upper Midwest;

1 Wisconsin, Minnesota, Michigan, those areas were
2 not listed. Was there a consultation session
3 held in that region?

4 CHAIRWOMAN STEVENS: Thank you.
5 For your question, President Keel. We're going
6 to Rapid City, South Dakota. We are trying to
7 spread ourselves out as we move along and we --
8 I actually noticed that when I worked at DOI,
9 the upper Midwest; Michigan, Wisconsin,
10 Minnesota were areas that's actually one of our
11 most challenging regions because of the
12 geography that it covers. To get anywhere -- in
13 some places they can drive; Oklahoma, Northwest,
14 California, they can drive usually to get
15 around, our regional folks or our tribes can.
16 The Midwest is the most challenging because of
17 the number of tribes and how spread out they
18 are. We on this round are hitting Rapid City.
19 In subsequent consultations we're going to move
20 around. For example, we went to New Mexico this
21 time for the Southwest we may go to Arizona the
22 next time. We'll move around and try to hit and
23 bring the NIGC to tribes but, you know, there
24 are some that we can't get to in that particular
25 area where it is the most challenging. Thank

1 you for that question. We will try to get out
2 into each of the areas as we can.

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

19 STATEMENT BY KEITH MARTIN

20 COUNCILMAN MARTIN: My name is
21 Keith Martin, I'm tribal council member Poarch
22 Band of Creek Indians. Like to thank you all
23 for having us. We have Steffani Brian, is our
24 vice-chair and chairs our Games Commission and
25 she was supposed to come but she bailed out on

1 me at the last minute. The tribe appreciates
2 the position that the Gaming Commission is in
3 and its proverbial rock in a hard place. I
4 think you all are working for the feds, but
5 y'all come from tribal backgrounds and know our
6 problems on the rez. We believe you're trying
7 to do the right thing by us. We're working on
8 comments and we do have some issues with
9 Sections 518, 547, 559, but we will have all
10 those comments finalized by our deadline on --
11 when's the deadline? On the 12th of February.
12 That's it. Thank you.

13 CHAIRWOMAN STEVENS: Thank you,
14 Councilman Martin.

15 COUNCILMAN MCGHEE: Tracie, let me
16 just follow up -- Robert McGee, Councilman with
17 Poarch Band of Creek Indians. The first thing I
18 would like to point out is the new direction
19 you're going with the National Gaming
20 Commission. We appreciate this new open
21 dialogue. I think that the concerns that you
22 raised regarding tribal advisory committees, we
23 personally had the opportunity to have
24 representation on that committee because we do
25 know that there's a small number of Class II

1 tribes out there now. It seems like a lot of
2 individuals are having the opportunity to
3 negotiate compacts, so we appreciate from the
4 Class II perspective having individuals that
5 serve on that committee, but I think the general
6 direction you're going now with the Tribal
7 Advisory Committee, I would be respectful of the
8 Commission actually listening to that committee.
9 I think the prior Commission's concerns we had
10 were a lot of in fighting between the Commission
11 and they would submit comments based upon tribes
12 and they weren't really being adhered to. I
13 think this is a great process we're going.
14 Keith mentioned -- we have the background, the
15 fingerprinting issues, the things that we're
16 constantly fighting with the State of Alabama
17 technical standards with Class II. We hope when
18 we look at the possibility of where we're going
19 to go forward with any type of adjustment or
20 looking at the regulations that we take into
21 consideration the issues that affect the tribes
22 within those states that have these very strong
23 issues that you guys hear about every day. I
24 think you got something else from the Governor
25 from the State of Alabama. I know you're always

1 being looked at. I wouldn't say criticized, but
2 looked at, the regulation issues, that the tribe
3 is in compliance. Now, the tribe is not a
4 certificate, self-regulating tribe. The
5 concerns we have is knowing whenever you make
6 those decisions or looking at the regulations
7 you're always going to take into account and be
8 in accordance with what the tribal perspective
9 is. When it came to the path Commission, even
10 though you would not have regulations that were
11 final, personal opinions would be aired
12 regarding their perspective on those
13 regulations, and once those personal opinions
14 were aired that got into the public, especially
15 within the State of Alabama it became, they felt
16 law, because the Commissioner or the Associate
17 Commissioner felt this is the way it should be,
18 and all of a sudden they were trying to apply
19 those standards onto the tribe, when those were
20 not in fact standards. They were not
21 regulations that were issued, they were personal
22 opinions. So one of the things I can only ask
23 as we go forward, any comments made or in
24 association with the actual regulations we have
25 in place, not be made until the processes are

1 approved. We look forward to working with you
2 guys in the future when any of those come up
3 discussion. Thanks.

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

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

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

22 You know, there's an upside and
23 downside of transcripts, and I am always mindful
24 of what I say on the record, because I'm a
25 public official, we all are. We all are public

1 officials that represent the Federal Government,
2 so we appreciate that comment.

3 MS. ECHO-HAWK: Just in response
4 to the earlier comment about the Commission,
5 actually listening to the Tribal Advisory
6 Committee, in Albuquerque last week we heard
7 quite a lot from tribes they say, hey, we
8 submitted comments where is that black hole they
9 all went to? Someone was, I think they're with
10 my socks, the socks you lose in the dryer. I
11 will go back to the office and look around, but
12 I submitted comments and I spent hours and days
13 drafting comments on regulations that I never
14 received a response that my comment was
15 received. It was never posted on the website.
16 I have no idea where those comments were, who
17 looked at them, if anyone looked at them. We
18 are really making a concerted effort to change
19 that. Anything you submit to us it will be on
20 the website. This week we'll talk about what is
21 going to be our process when we receive
22 something from tribes, letting tribes know we
23 got it we actually have it. Someone is looking
24 for it. Here's a contact person if you want to
25 find out what's happening to this. We do want

1 to be responsive. We don't want you to think
2 there is a black hole with socks and the change
3 from your pockets that handed in the drier and
4 your comments submitted to the NIGC. So we
5 really are prying to be responsive that way.

6 CHAIRWOMAN STEVENS: The floor is
7 open for comments.

8 CHAIRMAN NAMODOKA: Chairwoman
9 Stevens. It's a pleasure to be here and what I
10 want to do just openly kind of discuss a little
11 bit and share with you is the sharing of
12 information as in your PowerPoint between the
13 Tribal Council and a Gaming Commission
14 authority. From my experience what I've seen
15 that works better than the unknowns out there is
16 a collaboration of sharing information at the
17 same point in time. Quite typically when one,
18 either the Council or Gaming Commission doesn't
19 know, that's usually an area that creates
20 friction and everybody wants to know and doesn't
21 like being without that knowledge of what's
22 going on. It triggers so many knee jerk
23 reactions that once the dust is settled and
24 everyone has a chance to look at it, quite
25 typically we find out there's a common

1 understanding as Council has created gaming
2 commissions with their independent authority,
3 has set down the ordinance for it, and
4 communication with NIGC. It is a matter of
5 sometimes connecting the dots and making sure
6 the communication flow is proper there. That's
7 a unique challenge. You know, I've heard of
8 other situations sometimes going foul and, you
9 know, somewhere else in the country. Not that
10 we don't deal with ours, but it's a matter of
11 getting both bodies together and talking out
12 issues at least from a policy standpoint. And
13 that's beneficial to us helping out that our
14 Council members and our Gaming Commission
15 members actually sit down together in a monthly
16 joint session to talk out policy issues. And
17 sometimes there's very little to talk about, but
18 it's about the relationship building and
19 relationship sharing that's the benefit of it
20 and, you know, at least both sides have a common
21 understanding of what the goal is of the program
22 they're trying to achieve. I just wanted to
23 share that with you as everything unfolds, you
24 know, getting the information out there and
25 sharing it, having that transparency, you know,

1 it's kind of a key phrase right now, but
2 actually putting it together can be a little bit
3 of a challenge because it's the logistics of it,
4 you know. We've taken it one step further. We
5 commit to having monthly meetings those help
6 out. From time to time we'll disagree on
7 something from a point of view, even on a policy
8 matter because of a little verb in there, but
9 it's just a matter of at least we're sitting
10 down and talking it out. I think that's
11 probably the most important thing, and having a
12 consultation like this, that's what you're
13 emphasizing, we have to be able to take that
14 back home and do it on our own fronts.

15 CHAIRWOMAN STEVENS: Thank you for
16 your comment. While we consider how best to the
17 communicate with tribes, something we are doing
18 is casting a very broad net of communication.
19 So you may get information from us repeatedly,
20 but that's all in an effort to be as inclusive
21 as we can so we don't miss anyone. So we may
22 send information to your leadership, to your
23 council chambers, to your commissioners, to your
24 operations. You may be getting faxes, snail
25 mail, e-mail, press releases. We had received

1 some criticism about the narrowness of the
2 outreach by the NIGC to only the regulators at
3 your tribe, when in fact our responsibility as a
4 government agency is to your government. So in
5 the meantime please be patient with us if you
6 get repeated communication.

7 Also, I would like to say we will
8 not be so presumptuous to tell you who is
9 allowed to speak for you. That's your decision,
10 not ours. I'm not going to tell you certain
11 people can't sit at the table or certain people
12 can't speak for you, that's your decision as a
13 tribal leader and a government whether that is
14 you or someone you designate. We just need to
15 know who you're designating so we know who to
16 receive comments from or direction from because,
17 believe it or not we actually get competing
18 comments from within one tribe, and we try not
19 to get in the middle of that only to the extent
20 that, you know, we need to know which comment is
21 officially the authorized comment of the tribe.
22 That's the extent of why we care, but we're not
23 going to get in the middle of that. We're not
24 going to tell you who speaks for you, that's
25 your decision not ours. Why would I want to do

1 that?

2 MR. HOLST: Jon Holst, H-O-L-S-T.

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

4 Again, I want to start off by saying thank you
5 for having hosted this meeting this morning and
6 I'm with the Tribal Council. My previous
7 experience has been in gaming. I was in our
8 Class III gaming for multiple of years running
9 the slot departments, so I do have some
10 background and knowledge of the internal
11 controls. And I guess, you know, I appreciate
12 the opening comments this morning in regard to
13 communications because, as we all know, those
14 are such important matters or such important
15 factors in getting something done and always
16 seems to be the first thing to break down.

17 I recall reading previous internal
18 controls and wondering why or I shouldn't say --
19 the Federal Registry and seeing that there had
20 previously been a lot of attempts to allow
21 tribes to have input into them, and I often
22 wondered why it didn't seem to work that well,
23 because then I've seen a lot of comments from
24 tribes after the rules were made in regard to
25 their objection to some of them. But I guess in

1 just making some notes, I think the best
2 suggestion in the future for better
3 communications between the Commission and the
4 tribes would perhaps be as already mentioned,
5 designate certain individuals from each tribe
6 and have that in a written form, but to maybe
7 use technology and have teleconferencing,
8 whether that be once a month or every other
9 month, understanding from our tribal standpoint
10 I think that would work out, for example, it
11 would be at least a tribal council member,
12 perhaps somebody from executive gaming and
13 perhaps legal counsel if need be, that
14 understood we set a calendar of meetings we
15 would have through teleconference. I think that
16 might assist in the future. It makes it a lot
17 easier for everyone trying to travel. As you
18 mentioned earlier, it's hard to get to a lot of
19 the Midwestern tribes. I think it would be
20 easier to use those methods in the future.
21 Thanks.

22 CHAIRWOMAN STEVENS: Thank you.

23 CHAIRMAN BARBRY: I'm with
24 Tunica-Biloxi Tribe, Earl Barbry. Could I ask
25 what the definition of qualified business is?

1 MS. ECHO-HAWK: The definition of
2 qualified business for Buy Indian Act, the same
3 used by the BIA or HHS. You have to reach the
4 procurement standards. If you meet those
5 standards, just like you do in procurement over
6 at the BIA, we would have to use their manual
7 and their definition.

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

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

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

25 MS. ECHO-HAWK: Well, the

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

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

23 I'm not sure that the NIGC should
24 regulate and demand -- excuse me -- I'm not sure
25 that the National Indian Gaming Commission

1 should form a regulation that demands or
2 mandates a tribal government to procure any type
3 of goods from anyone. I think, again, this
4 impedes or it gets into the sovereign rights of
5 a tribal government to decide who they can
6 purchase goods from, regardless of the vendor.

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

17 CHAIRWOMAN STEVENS: Thank you,
18 President Keel.

19 I do want to clarify this is for
20 our operations. I think our limited -- we're
21 going to be as an agency, very limited with what
22 kind of services we would procure from qualified
23 Indian businesses. It's meant for just us.
24 Just so you know, we're not going down that
25 road. It may not necessarily be a regulation.

1 Maybe it's a policy. We've heard that while
2 we've been on the road, it's an internal
3 practice. I know there are some who think if we
4 put it in regulation form that it's a bit more
5 solid and binding on future commissions to do
6 this. Whether it's this policy or Indian
7 preference. You know, the question is whether
8 it's a regulation or policy, but certainly we
9 would not impede on the Tribe's right to run
10 their own government. It's meant for only how
11 we as a federal agency, you know, procure
12 business products, services. Like I said, right
13 now, except for two of the consultations, all of
14 these are being held on Indian land. They
15 should be in Indian facilities, whether those
16 are casino operations or other facilities that
17 tribes have to offer us, and it always has to be
18 in the context of what is financially
19 reasonable.

20 We have to be mindful of the money
21 that we expend to reach that objective that
22 we're in Indian facilities. Not only Indian
23 facilities may not be the most inexpensive
24 places to hold meetings or consultations and
25 there's a reason for that. It could be their

1 location. It could be the time of year. It
2 could be the market. But it's not necessarily a
3 foregone conclusion, but we do have to balance
4 it with our financial responsibility.

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

11 (Discussion off the record.)

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

14 (A brief recess was taken.)

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

19 STATEMENT BY BRIAN PATTERSON

20 PRESIDENT PATTERSON: Madam chair,
21 I would like to begin by extending a warm heart
22 felt invitation to you, your staff, your full
23 team to the United South and Eastern Tribe
24 Cultural Reception on February 8th, Crystal
25 Marriott. It is a cultural night. It certainly

1 fits NIGC 's agenda. So it's a great
2 opportunity to network to build upon the
3 relationships and to advance in the timeline as
4 you identified. I think if -- if I may also
5 extend as President of the United South and
6 Eastern Tribes a platform podium to extend to
7 NIGC for your efforts here.

8 So, again, good morning. Brian
9 Patterson. I am Bear Clan representative over
10 the Oneida Nation. We appreciate the outreach
11 and platform which you have advanced. Your
12 message that was put forth through Indian
13 Country today, your letter, your editorial to
14 Indian Country today built upon the fore found
15 principals that you mentioned, I think is a
16 platform that Indian Country could respond to.
17 I think it is a platform that could be
18 supportive of Indian Country and I'm glad to
19 hear some of the dialogue that took place this
20 morning at the table. I am, you know, it is
21 concerning as we, Indian Country moves forward
22 in an effort to protect its sovereign interest
23 in working with this administration in
24 identifying specific areas of consultation to
25 advance. To me there is no big C, no little C

1 of consultation, it is the capital C of
2 nation-to-nation of tribal governments to other
3 governments and that ability to sit down with
4 one another in advance. So while we speak of
5 collaboration and consultation there is only
6 really one true form of consultation, and that's
7 with a capital C. So it is the integrity of
8 that relationship and that spirit in which I
9 believe your platform and your approach to
10 Indian Country can build some measurable
11 success, and I express my gratitude for that
12 effort.

13 The true government-to-government
14 relationship with Indian Country in the federal
15 agencies is crucial, is crucial. Indian Country
16 has sat for far too long for far too many years
17 with NIGC with the appearance of being talked
18 down to or being talked to period, rather than
19 in a meaningful exchange of dialogue and
20 collaboration, and that's what really excites me
21 about this round and this effort. Consultation
22 is not simply checking a box to say that you did
23 it, it is a matter of process. It is all about
24 the relationships that you develop and the trust
25 in that relationship. I commend you for

1 establishing an ongoing dialogue with Indian
2 Country to extend the opportunity to address the
3 issues affecting the Indian Country, whether
4 it's through the regulation process or
5 addressing the appeal process and so forth.

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

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

17 I think the first thing is
18 Councilman McGee from Poarch Creek has spoke of
19 the Tribal Advisory Committee. That is
20 certainly a large area which I think we should
21 re- examine, consider in advance with. I think
22 that is a forum that the Commission should
23 advance within Indian Country, but I would
24 caution the committee against using the
25 establishment of a Travel Advisory Committee in

1 place of any meaningful or fulsome consultation.
2 I say that because it needs to be simply on the
3 record as such.

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

22 In regards to the comment and
23 appropriate method of communication or the
24 establishment of policy regulation identifying
25 when and how NIGC communicates with Indian

1 Country with Indian tribes, I think that is, you
2 know, perhaps the greatest accomplishment in the
3 term that is remaining is the ability to
4 collaborate and establish meaningful
5 communication with tribes and a relationship and
6 respect for -- and respect for other governments
7 the NIGC should be communicating with the
8 federally recognized tribal leader and with his
9 or her designees. It should be for each tribal
10 government to determine who the NIGC should
11 consult with and on what issues. Then the
12 federally recognized representative is the
13 appropriate person or entity to identify who
14 should be communicating with NIGC on behalf of
15 the tribes on what issue. Requiring an annual
16 resolution from elected tribal council, however,
17 would be unduly burdensome and unnecessarily
18 intrusive. The Oneida Nation men's counsel, for
19 example, we operate by consensus, so we do not
20 operate through a resolution process. So any
21 attempt requiring annual resolutions from our
22 council would be inconsistent with the form and
23 operation of our Oneida Nation government in our
24 roles and responsibilities and how we advance,
25 but, nevertheless, I think that effective -- the

1 establishment of effective communication could
2 go a long way in addressing those areas.

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

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

1 counsel for Oneida Nation, Megan Beakman.

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

4 COMMISSIONER GUSTAFSON: I have no
5 questions.

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

11 On thing I want to re-emphasize,
12 as you collect the information and look for
13 regulations for improvement will there be an
14 opportunity to have a summary of the
15 consultations provided to us? And it is our
16 hopes that out of the many pounds of paperwork
17 that you're going to be receiving is that
18 hopefully there's some mainstreaming with the
19 objectives out of it that we can at least seek
20 clearly on, you know, a few pages as opposed to
21 going through all the documents and trying to
22 dissect it. I think it would be of benefit to
23 all the tribes to see something of that effect,
24 especially with the licensing and implications
25 thereafter just so we can see that.

1 At this point in time I would like
2 to introduce our Gaming Commission Chairperson,
3 Brad Simmons, and he's going to offer some
4 comments for you if that's okay.

5 CHAIRWOMAN STEVENS: Yes.

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

11 I'm mostly going over the MICS and
12 technical standards on this. I guess our goal
13 is to see that it's more as a guideline than it
14 is a set of regulations or standards. Given the
15 fact that across the Nation each state has their
16 own different ways of negotiating out compacts.
17 Ours is a little more thin in their paperwork
18 than it is other states where they incorporated
19 Class II and Class III, ours does not. In those
20 points they should be provided as guidelines
21 more than as a set of regulations. At that
22 point the NIGC should be able to provide the
23 support that individual tribes need as it comes
24 down to violations with management companies or
25 inside the enterprise and operations versus our

1 regulatory authority. And also the other part
2 is, too, the communication forms that we have
3 with the NIGC, I believe they both should be the
4 executive and the Gaming Commission itself
5 should be included in those communications
6 throughout. That eliminates any sort of
7 miscommunications, anything not spoken that the
8 Commission would -- the individual tribal
9 commissions would need to take control over, not
10 what council would need to handle and also would
11 be able to give us better advisement to council
12 if there was a need for it and we could have
13 better time to prepare our responses to anything
14 the NIGC would wish to have. Thank you.

15 CHAIRWOMAN STEVENS: Thank you.

16 All good comments. Yes. Tina.

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

20 Chairwoman, I would like to
21 discuss the formation, it was in 2004, it was
22 the Commission seated at that time the formation
23 of the Indian Gaming Working Group. It was a
24 group of enforcement agencies, federal
25 enforcement agencies including the FBI, the

1 Treasury, et cetera. It's called a working
2 group, but being a tribe who was actually
3 approached by this group, investigated by this
4 group, it was more of a task force, an
5 enforcement task force. So do you feel that --
6 do you know, has its usefulness been outlived?
7 Does it plan on -- does the Commission still
8 plan on using this working group? And if so do
9 you think it should be something defined in the
10 reg's so tribes can learn how to work with this
11 group or understand the scope of this working
12 group, because it really operated more like a
13 task force. And knowing the difference between
14 a law enforcement task force versus a working
15 group.

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

25 MS. OSCEOLA: BIA.

1 CHAIRWOMAN STEVENS: I'm not sure
2 they were. Certainly can take your questions as
3 we examine that working group. What their
4 purpose was originally, how it worked over the
5 years, and what our role is. I don't know if
6 it's exclusive of this working group or not, but
7 as part of President Obama's Good Government
8 Initiative, agencies should be working together
9 collaboratively. Does that necessarily mean
10 having enforcement tasks? I don't know about
11 that, but we do communicate and are trying to
12 improve our relationships with other agencies
13 like FBI and like Treasury and like the
14 Department of Interior so that there is a better
15 coordinated effort when we establish, especially
16 as political appointees when we establish
17 policies and certainly I as Lael had said, we
18 encourage our staff to work with others and, you
19 know, there's certain authorities that we have
20 and there's certain authorities we don't have
21 that other agencies have. And knowing where
22 that line is and then how to, you know, how do
23 we communicate with those other agencies when
24 something moves over into their authority and
25 their jurisdiction.

1 So certainly we'll take your
2 comments and your questions about that group
3 into consideration as we look at that group.

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

14 CHAIRWOMAN STEVENS: Thank you,
15 President Patterson.

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

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

22 I would just like to commend NIGC
23 for holding consultation and your approach of
24 it. The Eastern and Southern tribes that namely
25 make up the tribes of USET, oftentimes we have

1 to outreach to federal agencies to get
2 consultation held east of the Mississippi.
3 Thank you for your foresight to address the
4 tribes, specific the South Region and Northern
5 Region of the South and Eastern tribes, as well
6 as well as our brethren from Michigan and
7 Wisconsin that are here. Thank you.

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

24 As I said before, I really feel
25 seriously that the enforcement regulations need

1 a fresh look and we need to build in the notice
2 and opportunity to cure before going straight to
3 an enforcement action, because I can assure you
4 having now sat on not two sides of the table,
5 but multiple sides of the table looking at these
6 issues that, you know, Indian Country is going
7 to make corrections. Tribal government is going
8 to make corrections if they are advised that
9 there is a concern. I can promise you just
10 politics are going to ensure that things are
11 going to get looked at and corrected, and I
12 think that if we build in those voluntary
13 compliance principles into the NIGC's
14 enforcement regulations and that people have
15 notice of NIGC's concerns that there are going
16 to be corrections. And I think that -- and
17 other federal regulatory schemes are exactly
18 like that, notice and opportunity to cure before
19 you ever go to that next step. So that's very
20 important.

21 Now, the issue with the Class II
22 regulations and the Class II MICS, I hadn't
23 talked about those before, but one of the things
24 that I think we all need to take into account,
25 it's really a good thing for us to have these

1 Class II regulations and the Class II technical
2 standards because it makes it perfectly clear
3 that electronic Class II gaming is lawful, one,
4 and, two, regulated, and that takes away huge
5 political arguments that pushed us back for many
6 years on the Class II front. So I want to thank
7 you for your willingness to take a look at those
8 regulations, but I also want to re-emphasize
9 with you and the rest of Indian Country that
10 those regulations are very beneficial to us and
11 would not like to see those kind of get flushed
12 out along with the Class II MICS, which are much
13 more problematic from a legal perspective --
14 Class III. Part 542. With respect to the
15 class -- the part 542 is the fact that, you
16 know, it is good and you save tribes a lot of
17 money by providing these kind of guidance. It's
18 never been an issue of are the MICS needed,
19 everyone agrees with that. That was never the
20 issue. And I know all three of you are very
21 cognizant of that.

22 I think the same thing is true
23 with IT standards. I don't -- I know that this
24 hasn't come up at least in the meetings I've
25 gone to, but during the last advisory committee

1 meeting one of the sections that got addressed
2 were the, you know, the IT standards. And the
3 IT standards really went into every kind of
4 peripheral system that you have connected to
5 your gaming system. And it looked like it was a
6 major increase in NIGC authority over
7 back-of-the-house systems. Over accounting, you
8 know, software systems and those, you know,
9 automated jackpot systems and all of those kinds
10 of things. So my clients, in particular, we
11 were pretty upset about those IT standards. We
12 were thinking that's really taking NIGC's
13 authority a long way.

14 However, having said that, we do
15 see the benefit of the NIGC addressing these
16 issues because individually it would cost us
17 tens of thousands, if not hundreds of thousands
18 of dollars to bring to bear the expertise that
19 the NIGC can assemble around these issues. And
20 if you were publishing and promulgating
21 standards, as opposed to regulations, you get
22 out of that question of authority and into
23 really doing us a favor, you know, because you
24 do have that ability to bring together expertise
25 at relatively reasonable low to no cost and

1 that's a wonderful, wonderful thing you can do
2 for tribes. Anyway, those are my comments.
3 Thank you.

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

8 MS. HOMER: Right.

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

12 MS. HOMER: I think that they do.
13 I think there are some big gaps in the MICS.
14 And with respect to the technical standards
15 there were a couple of items that stayed in the
16 technical standards that, you know, half the --
17 really need to be thought about being removed,
18 such as the regulation of the entertaining
19 display. An entertaining display is an
20 entertaining display. Why there are standards
21 to regulate an entertaining display, that has no
22 effect whatsoever on the outcome of the game, is
23 a big issue. It's putting us through more steps
24 and more hurdles than need be. The regulations
25 need to go into that software system itself, but

1 the hardware being merely an electronic aid, you
2 want basic standards. The door needs to lock.
3 You want to make sure it doesn't electrocute
4 anybody, those kind of things, but with respect
5 to the peripheral stuff that doesn't have any
6 effect on the outcome of the game, it doesn't
7 make any sense keeping that in there.

8 Then there's the grandfather
9 issue. The grandfather issue has always been a
10 big one. I used to liken it, when I was
11 commenting on this a long time ago to, you don't
12 make Detroit start adhering to the new air
13 quality standards to cars that were built
14 10 years ago. You know, regulation is
15 prospective, not retroactive. And that these
16 games, especially the games the courts have
17 already said this is Class II gaming, or these
18 are just electronic aids, that's a done deal,
19 but they're nonetheless affected by that
20 grandfather provision and they had to have had
21 immediate compliance with that grandfather
22 provision, you know, for certain parts of the
23 software and then it's only a five year
24 grandfather. So once that five years is up you
25 kind of are losing your grandfathering system.

1 So, you know, that needs to be rethought, as
2 well, you know. And those are really the two
3 big things. I think all of the rest of the
4 technical standards that are truly technical
5 standards, they help us as tribal regulators to
6 say, okay, if they meet these technical
7 standards that's Class II gaming. We have these
8 technical standards to apply and that's a good
9 thing. I think everyone agrees with having
10 technical standards as long as they are
11 reasonable and they go to preserving the
12 integrity of the game. I think we're all going
13 to be on the same boat with that.

14 CHAIRWOMAN STEVENS: Great.
15 Thanks.

16 MS. HOMER: Thank you.

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

25 CHAIRWOMAN STEVENS: Oh, yeah. I

1 can see the light going on.

2 MS. HOMER: Thank you for asking
3 that question. You know, kind of going back in
4 history a little bit. I was the -- when I was
5 the vice-chairman of the NIGC my job was to deal
6 with the environment public health and safety
7 issue and figure out some reasonable thing to do
8 about that, and it was pretty controversial, as
9 you all might recall. And finally what we got
10 to was promulgating basically an advisory
11 regulation that said, okay, as long as these
12 things are taken care of the NIGC is not going
13 to step in and usurp tribal authority with
14 respect to the environment public health and
15 safety. Of all the things that is the most --
16 the highest tribal interest, not the highest
17 federal interest. That was really -- that
18 worked out good. Everyone got happy about that
19 after I got pounded for a couple of years in
20 working on it. Everyone got on board with
21 having that kind of rule. What has subsequently
22 happened in the next administration is a coming
23 together of the language in Section 2710 with
24 respect to what has to go in a gaming ordinance
25 and then the language that says you have to

1 license your gaming facilities. And suddenly we
2 have this comprehensive regulation on the
3 licensing of gaming facilities that has now
4 sucked into it this environment public health
5 and safety stuff. You know, with this oversight
6 function that the NIGC has to perform and so on
7 and so forth, this 160-day notice requirement
8 which is completely unreasonable. I see no
9 reason why a tribe should have to give 160-day
10 notice they're going to issue a gaming license.
11 First of all, that could have market
12 implications. You may want to have low profile
13 about what your plans are that far out, and
14 there may be a good economic reason that a tribe
15 doesn't want to give that kind of public notice.
16 So there's a lot of stuff, you know, in that
17 particular regulation that is pretty
18 questionable, and I think it's not beneficial to
19 the NIGC, either. You know, I mean do you want
20 to be the deep pockets liability? You know,
21 what if your inspections don't reveal something
22 that ends up being some big disaster somewhere?
23 Does the federal agency want to have the
24 liability for that? Does the agency have the
25 expertise to do those kind of things? I would

1 suggest that's a pretty high level of liability.
2 Those are things other agencies can do and
3 tribes first and foremost are responsible for.
4 I think very strongly those the regulations need
5 to be revisited.

6 CHAIRWOMAN STEVENS: Another thing
7 we've heard a lot about in other consultations
8 is the self-regulation regulation. We're
9 wondering if another light goes on, Liz? You
10 know, it's in the act we have some reg's that go
11 to that point, allows tribes to become
12 self-regulated from certificate from us, but we
13 only have two tribes that are -- have the
14 certificate for self-regulation. One of them is
15 mandated by statute, so we have one tribe out of
16 233 that are self-regulated by the NIGC, and
17 that's where the question comes up in the
18 PowerPoint about the burden versus the benefit.
19 So if we have any tribes that have comments
20 about self-regulation and, you know, is this a
21 priority for us to address and how would you
22 like to see, you know, that prioritized and any
23 thoughts on self-regulation?

24 MS. HOMER: Thank you. Yes. I
25 will say that one of my clients, in particular

1 the Chickasaw Nation of Oklahoma, is extremely
2 interested in seeing the self-regulation
3 regulation be reviewed. Our view is that the
4 regulation is of virtually no benefit, you know,
5 and it's basic, you know, law of construction
6 that statutory language has to mean something,
7 you know. And the way that the program has been
8 implemented it's basically meaningless to get a
9 certificate of self-regulation. In fact, it's
10 even worse. The reporting requirements for a
11 self-regulating -- a tribe with a certificate of
12 self-regulation is actually greater than with a
13 tribe that doesn't have a certificate of
14 self-regulation. So that's like a major
15 problem, I think. And I also think that the
16 self-regulation program, if modeled more after
17 the way self-governance is operated at the
18 Interior Department might prove beneficial to
19 the NIGC, as well as to tribes, in working out
20 some of these other issues, some of these kinds
21 of issues that are beneficial for the agency and
22 the tribe to work out. So I -- my clients,
23 especially the Chickasaw Nation feel very
24 strongly this is a regulation that needs to be a
25 high priority review.

1 CHAIRWOMAN STEVENS: Not
2 necessarily directed to just Liz or the
3 Chickasaw Nation, but something to consider is
4 when you do submit comments let us know what
5 kind of priority is this; high, medium, low.
6 However you want to rank them to us to indicate
7 which is most important. We, as one tribe said,
8 I don't have a dog in that fight, you know, so
9 they may not have any comment but, you know,
10 clearly for us what we're hearing is MICS, MICS,
11 II and III technical standards facility
12 licensing. And then when you come into
13 self-regulation. Where do these fall? So
14 something to keep in mind as you move your
15 comments forward, what priority. That way we
16 know what to take on first and how to take them
17 on.

18 Mr. Burris.

19 MR. BURRIS: Tracey Burris, Gaming
20 Commissioner for Viejas Indians. First, I've
21 always loved the concept and I understood what
22 the framers were trying to do, but I thought
23 that in the process when reviewing what the NIGC
24 had implemented as the reg was too egregious.
25 No one could ever pass it. It would be too

1 arbitrary and capricious. You would be subject
2 to the reviewer of its content. In other words,
3 one could pass because the reality, especially
4 then, no one could pass it. That's why 18 years
5 no one trampled on there. Even then, if you
6 look back at that role at that time, if you were
7 small and simple you could have gone through it
8 for a Class II. But as we progressed this
9 doesn't reflect the progress and that as you
10 increase size, increase transactions when
11 handling money, things are going to change.
12 There is nothing to give us an indication that
13 that would be considered. In other words,
14 it's -- I look at it all the time because I
15 think it has great potential for merit. Again,
16 the framers did it for a reason. It was to give
17 us credibility, but it wasn't to be so egregious
18 going through the process to be criticized. No
19 one loves to be criticized. There's going to be
20 flaws. Look at my audits, I'm not perfect. I
21 handle way too many transactions on the floor.
22 Too many things occur to be perfect. That could
23 be construed as not meeting the standard. As
24 progress has come along there has been no
25 equalization in that. I personally think it has

1 great potential as a regulator, spending my life
2 as a regulator these last 24 years, it is very
3 important, it could be a benefit. It's how to
4 make sure it's a benefit and not a black eye.
5 Not just to the tribe that chooses to do it.
6 Obviously, if only two have done it in this time
7 it's been talked about and re-looked at. It's a
8 great model to set up where you want to get.
9 It's the reality is can you get there. And I'm
10 not sure you can in this day and age. So thank
11 you very much.

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

14 PRESIDENT PATTERSON: Yes. If I
15 may, I think that is -- it is all relevant to
16 discussion as we look at the full scope of the
17 reg's. It's hard to look at just regulations
18 facing MICS and not realize the existing MICS
19 have been outdated and are too rigid to be able
20 adapt to the changing developing gaming
21 industry. I think the example of a GM car
22 10 years ago fits truly here. I think it is all
23 relevant and has potential merit, especially
24 when we look at the self-regulation section. We
25 pulled it up over here and it's quite -- there's

1 no -- there's no way to ensure due process and
2 set expectations and clear lines of scope within
3 that process. I think it does merit to have
4 that discussion to discuss areas that are
5 outdated, et cetera. Thank you.

6 CHAIRWOMAN STEVENS: Yes, sir?

7 CHAIRMAN SIMMONS: Go along with
8 those lines. When you look at the technical
9 standards in the Class II I do agree they need
10 to be looked at. They need to be revised for a
11 broader scope. It does allow for openness for
12 advanced technology, a way for the operations
13 and for the tribes to go and be able to expand
14 out with a little more ease inside of it, but
15 when you have very narrow limitations on
16 technical standards and also in regards to Class
17 II, even Class III, that's inhibiting the
18 business practice, not trying to allow it to
19 grow. I do think they need to be revised and
20 that's more our top priority looking to make
21 sure Class II, Class III technical standards due
22 to be revised, those need to be revised. Those
23 need to be looked at. That's more of a high
24 priority for us.

25 CHAIRWOMAN STEVENS: Thank you for

1 your comment and setting the priority, as well.

2 Yes, Mr. Burris.

3 MR. BURRIS: Tracey Burris again.

4 A comment to the last two technical standards,
5 something that should be considered. Two years
6 ago James Maida said at the G2E conference, that
7 Indian Country had developed a lot of technology
8 that's being used in Class III, take it in take
9 it out, back-of-the-house systems. The Class II
10 systems created that. I think for the future if
11 the downloadable becomes reality this is a
12 platform for that. So we don't want to hurt
13 ourselves for the future, but they don't need to
14 be so narrow that we can't broaden technology
15 and that we don't limit it to proprietary
16 interest of certain manufacturers or designers
17 or whatever. It has to be to the benefit of the
18 tribe they can still progress and choose who
19 they think would be the best provider for their
20 system. So we do need to look at these and be
21 cognitive of -- and I think Mr. Maida said it
22 well, it's not what Indian Country has brought
23 to this industry, but has been given no credit
24 for. We need to look at that very carefully,
25 but also look to the future where we are

1 10 years from now with, who knows, virtual
2 reality? They'll be putting head sets on and
3 doing their gaming and sitting there doing this.
4 It's a reality. It's something you may do for
5 high rollers. It's something you may do for
6 other portions of your market. We have to be
7 careful not to leave that out, but we also have
8 to be cognitive that Indian Country has already
9 established a lot of this criteria for both the
10 mainstream Class III, as we know. I always
11 crack up. Isn't it hilarious when we talk about
12 Class III, the only thing Congress ever intended
13 that for was Indians. It wasn't for commercial
14 industry. It is amazing how everyone has
15 gravitated to Class II and Class III and that
16 distinction. If we're going to be that
17 distinction we need to be cautious and careful
18 how we do it, and be constructive. And I
19 appreciate this Commission attempting to do. As
20 I said before in San Diego, my direction for
21 council is be as helpful as possible as part of
22 the solution and we do not curtail our future in
23 any way. Thank you again.

24 CHAIRWOMAN STEVENS: Thank you,
25 Mr. Burris.

1 Something I want to put out there,
2 too, to think about, not with just placing
3 priorities in your comments but the how. And
4 we've heard some comments about the advisory
5 committees, but the change in the technology and
6 how do we stay on top of that, whether it's
7 technical standards, Class II or Class III MICS,
8 there might be separate paths we have to take on
9 II and III. How do we -- what's the process
10 that we use so that we can change as the
11 technology changes or, you know, we're not
12 having to revisit these all the time because the
13 technology changes at the blink of an eye.
14 Something to think about. We've heard standing
15 committees in some of the other regions. Some
16 thought how do we -- how do we stay on top of
17 these changes without bogging down. Just
18 something to consider.

19 If we don't have any comments, we
20 are at the lunch hour. Commissioners, any
21 comments? Okay. We are at the noon hour.
22 We're scheduled for lunch. Lunch is on your
23 own. We'll resume at 1:30 and I think -- I
24 don't know what the process is. Interior has a
25 new cafeteria, but I'm not sure how we get in

1 and out of the building over there. There are
2 other places past main Interior there's a
3 Subway.

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

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

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

18 CHAIRWOMAN STEVENS: Were there
19 others in the audience representing their tribes
20 that had comment? Certainly that's why we have
21 this open format. We know you are all very,
22 very busy and come with prepared statements.
23 Rather than going line by line on the
24 regulations and having to wait your turn to have
25 a comment we left it open so you could say what

1 you needed to say and many times tribal leaders
2 have very busy schedules and there's something
3 else in your day or many several things going
4 on. If you all need to go we appreciate that.
5 You've attended this morning, look forward to
6 your written comment. We will come back in case
7 we do have people whose schedule didn't allow
8 them to be here this morning. Yes?

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

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

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

1 February 12th deadline.

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

5 CHAIRWOMAN STEVENS: Thank you.
6 President Patterson, we did receive your
7 generous invitation and we're in the process of
8 getting approvals to attend. So thank you. All
9 right. Let's break for lunch.

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

(1:53 p.m.)

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

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

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

(Adjourned at 1:55 p.m.)

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