



OFFICE OF THE GOVERNOR

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Submitted Electronically and by US Mail

National Indian Gaming Commission
1441 L Street NW, Suite 9100
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**Re: 25 C.F.R. Part 502 (Electronic One Touch Bingo System)
Response to Request for Public Comment
Comments due August 26, 2013**

The following constitutes the State of California's comments on the National Indian Gaming Commission's (NIGC) proposed reinterpretation of its 2008 decision that rejected the Metlakatla Indian Community's request for approval of a gaming-ordinance amendment that would have classified electronic one touch bingo systems as class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA). The NIGC's proposed reinterpretation would classify such systems within the definition of class II gaming provided by 25 C.F.R. Part 502.

While the NIGC characterizes its proposed reinterpretation of the classification of one touch bingo devices as more in keeping with IGRA and avers that it will bring clarity to the industry, the NIGC is in fact stretching the definition of bingo beyond all reasonable limits. This will result in the evisceration of the joint federal-state-tribal regulatory structure contemplated by IGRA and undermine the fundamental basis of the 70 California Tribal-State gaming compacts. The change will severely threaten the well-being of the vast majority of California tribes, because it threatens the long-term viability of the exclusivity for casino gaming currently provided to California tribes by the California Constitution, an exclusive avenue of tribal-economic development that tribes and the State have been careful to preserve. These consequences arise because technology has eliminated the functional differences between one touch bingo devices and class III slot machines, and if one touch devices are given preferential treatment as class II, incentives will exist for tribes to replace existing class III machines with these new class II machines.

The distinction between class II and class III gaming is fundamental to the California Tribal-State compacts and provides the basis for revenue sharing by large-gaming tribes with small-

gaming and non-gaming tribes, as well as gaming tribes' mitigation of the off-reservation impacts of gaming. The substitution of one touch bingo devices for class III slot machines is projected to reduce payments into the Revenue Sharing Trust Fund (RSTF), from which payments of \$1.1 million per year are made to each of California's 72 small and non-gaming tribes, by more than 50 percent within the next ten years. If this occurs, it is almost certain that revenue sharing payments to those tribes will be curtailed. Further, California's most recent compacts have created an additional revenue sharing fund for these tribes, the Tribal Nation Grant Fund, which is projected to begin sharing \$100 million or more per year commencing approximately three years from now. That fund would face budget elimination if this proposal is accepted. Most of these tribes are located in areas that are inaccessible, remote, or otherwise unsuitable for gaming operations, whether class II or III. The deregulation of one touch bingo devices will not provide these tribes with a means to offset reductions in RSTF and Tribal Nation Grant Fund payments. The substitution of one touch bingo devices for class III slot machines is also projected to reduce payments into the Special Distribution Fund, which provides mitigation to local governments of off-reservation impacts and pays for state regulation, by 18 to 42 percent within the next ten years.

At the present time, the number of electronic gaming devices in California is constrained by the combined regulatory structure of IGRA and the California Tribal-State compacts. If tribes are able to offer functionally equivalent one touch bingo devices in place of regulated class III devices, it is projected that the number of electronic gaming devices in California will increase dramatically, with accompanying dilution that may reduce average per device net win—whether class II or class III—by from 17 to 41 percent over a ten-year period, depending on the degree of substitution of one touch bingo devices for class III devices that occurs. This and the other projections referred to in this letter are conservatively based on a maximum substitution rate of only 54 percent over ten years. Because one touch bingo devices are already available that provide a gaming experience that is virtually indistinguishable from a class III slot machine (essentially all slot machine games and themes are currently available in one touch bingo format), and that provide casinos with per device returns that equal or exceed class III devices, it is clearly possible that the substitution of one touch bingo devices for class III devices may exceed 54 percent and may occur over a shorter time period. Accordingly, the dilution of net win may be worse than stated above. A decrease in the profitability of gaming devices will offset the benefits received by tribes by avoidance of compact-based fees, and may severely stress existing tribal gaming operations with high debt loads.

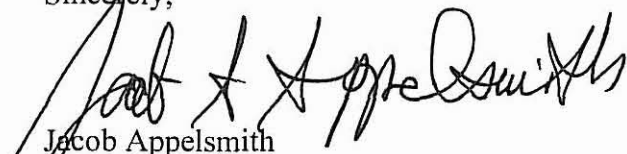
Finally, the willingness of the California electorate to facilitate tribal gaming through the provision of tribal exclusivity arose at a time when it was assumed that tribal gaming would mostly be a small-scale activity conducted at relatively remote locations. Tribal gaming in California has already dramatically exceeded that expectation. If electronic gaming devices proliferate to the extent that has been projected if one touch bingo devices are deemed class II, the reality of tribal gaming will be very different than was envisioned in 2000, when the California Constitution was amended to permit only compact tribes to operate formerly outlawed casino-style gaming. The State will have little, if any, ability to mitigate the negative impacts from expanded gaming and will experience substantial off-reservation burdens. Most

importantly, the opportunity for non-gaming and small-gaming tribes to benefit from shared revenues from profitable operations will be severely diminished, thus undermining the purpose of tribal gaming to assist all of California's native people. Given these consequences, it is reasonable to anticipate that the public's continued willingness to support the exclusivity of tribal gaming will decline in favor of opening casino gaming to non-tribal entities that can be regulated and taxed. Such a change would be, to say the least, disastrous for California tribes.

The NIGC's proposed reclassification of one touch bingo devices as class II games will certainly benefit the gaming-device industry, and may benefit some tribes with favorable market locations by allowing them to avoid compact-based revenue sharing and gaming device limitations. These benefits, such as they are, will come at the expense of the states, in particular California, and at the expense of many differently situated tribes. The reclassification of one touch bingo devices as class II games will arguably turn the regulatory structure of tribal gaming on its head by eviscerating not only the compacting process envisioned by IGRA, but many existing tribal-state compacts. The additional clarity the NIGC believes its proposed reclassification may bring to the industry will be overshadowed by the uncertainties this change will bring to the entire enterprise of tribal gaming. We urge the NIGC to carefully consider the function of the distinction between class II and class III gaming in IGRA and in existing tribal-state compacts, and the interests of all stakeholders, including all tribes, the states, and the American people, before reclassifying one touch bingo devices as class II gaming.

Thank you for the opportunity to comment on this proposed action.

Sincerely,



Jacob Appelsmith

Senior Advisor to the Governor

cc: The Honorable Eric H. Holder Jr., Unites States Attorney General
Mythili Raman, Acting Asst. Attorney General, US Department of Justice
The Honorable Kamala Harris, California State Attorney General
California Nations Indian Gaming Association
Tribal Association of Sovereign Indian Nations
California Association of Tribal Governments