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August 12, 2013

Ms. Tracie L. Stevens, Chairwoman
Mr. Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Comments on One-Touch Bingo Reinterpretation

Dear Commissioners:

On behalf of the Quapaw Tribal Gaming Agency ("QTGA"), I am pleased to submit the following comments on the National Indian Gaming Commission's ("NIGC") proposal to reinterpret its position regarding the classification status of one-touch bingo games. The NIGC's proposal seeks to bring to an end years of controversy concerning the proper classification of bingo games utilizing "auto-daub" or "one-touch" electronic aids. We welcome the proposal and strongly support the NIGC's initiative to bring greater clarity and certainty to the tribal gaming industry, particularly in relation to technological aids used in conjunction with Class II games.

Following the NIGC's 2008 determination classifying one-touch bingo as a Class III electronic facsimile, there was substantial uncertainty among Indian tribes, states, and regulatory bodies as to which electronic bingo games should be classified as Class II under the Indian Gaming Regulatory Act ("IGRA"). In the June 4, 2008 letter to the Metlakatla Indian Community, former Chairman Hogan opined on the legality of one-touch bingo games and determined that they lacked the requisite "competition" element essential to meeting the statutory definition of a Class II bingo game. Chairman Hogan's determination was based, in part, on the fact that players were not required to press an additional button or take any other further action to cover the numbers on the cards.

Under IGRA, however, the game of bingo is bingo so long as the game meets the statutory elements. The possibility that more than one player can simultaneously get "bingo" does not turn a Class II bingo game into a Class III game. Nor does the fact that a button is pressed only once transform a game of bingo into a Class III electronic facsimile. Moreover, the number of potential winners is not an element of the game of bingo. Neither is a manual "cover" requirement an appropriate criteria for classification. In fact, none of these criteria represent appropriate legal elements determinative of the class of a game under IGRA. In spite of this, the 2008 letter improperly focused its game classification analysis on the number of times a button was pushed.

The QTGA commends the NIGC for recognizing the flawed analysis on which the 2008 letter was based and for proposing a more legally sound approach to classifying electronic bingo games. The NIGC's proposal effectively rebuts the assertions made in the 2008 Decision, relying primarily on authoritative case law to conclude that one-touch bingo indeed meets the statutory definition of the game of bingo. In so doing, the proposal is more in keeping with federal court decisions that have repeatedly affirmed that it is permissible for an aid to a Class II bingo game to assist the player by automatically covering number for the player. Although IGRA requires that a player cover drawn numbers, federal courts have deemed the mode of covering to be irrelevant for game classification purposes. Thus, nothing in IGRA or judicial interpretations of IGRA prevents a game of bingo from employing an auto-daub feature.

We applaud the NIGC for proposing a reinterpretation of IGRA that will assure tribal governments the full benefit of the law. As recognized in the proposal and reflected in the legislative history of IGRA, Congress not only anticipated, but in fact intended to facilitate the use of modern technology in the play of Class II games. In enacting IGRA, Congress was well-aware that Class II gaming technology would continue to advance and that the industry would likewise evolve to keep up with emerging technologies. We therefore strongly agree with the NIGC's position that "the Commission should give consideration to an interpretation of bingo that embraces rather than stifles technological advancements in gaming."

For the reasons set forth above, we urge the NIGC to adopt this proposal to reinterpret its position on one-touch bingo. We welcome this proposed change and believe that it will bring much-needed clarity, certainty, and stability in relation to the law pertaining to Class II gaming.

Sincerely,



Barbara Kyser-Collier
Director, QTGA