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NATIONAL INDIAN GAMING COMMISSION
SOUTHERN GAMING SUMMIT AND BINGO WORLD CONFERENCE
AT MISSISSIPPI COAST COLISEUM AND
CONVENTION CENTER

BILOXI, MISSISSIPPI

MAY 5, 2011

Reported by:

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LAUREN SCHECHTER, CSR

1 VICE-CHAIRWOMAN STEFFANIE COCHRAN:

2 Good morning and thank you for joining us this
3 morning. We're going to go ahead and get started
4 with some introductions and some basic material.
5 Our Court Reporter is on the way. It's most
6 important that the tribal comments be captured, so
7 we're going to go ahead and get started and then
8 hopefully by the time the reporter gets here, they
9 can set up and then they'll be present to record
10 the actual conversation from the substantive side
11 of things.

12 So, my name is Steffani Cochran. I
13 am the vice Chairwoman of the National Indian
14 Gaming Commission and I'm a member of the
15 Chickasaw Nation. I am joined with the Chairwoman
16 Tracie Stevens who is a member of the Tulalip
17 Tribes in Washington. And also I'm joined by
18 associate Commissioner Dan Little who comes to us
19 via the Mashantucket Pequots. He spent ten years
20 as their Director of government relations. So I
21 am here representing the Commission today, and
22 it's my honor to be here today with you.

23 Before we go any further though,
24 Miko Denson, I understand you're going to do an
25 opening for us this morning. And thank you for

1 doing that, and thank you again for being with us
2 today. I know you have quite a very busy
3 schedule, so I appreciate your time, and I'll turn
4 it over to you.

5 MIKO DENSON: Thank you,
6 Vice-Chairwoman. To you and the Commission people
7 and the visitors today, I say Halito, and welcome
8 to Mississippi. Alabama and Mississippi have
9 something in common, most notably, lately, many
10 people have gotten killed with the tornados
11 affecting our area. An additional thing that
12 Mississippi and Alabama have in common, that is,
13 that's why we think that, we're here to talk about
14 and make our statements. What I say about what we
15 have common ground in both states are run by folks
16 who have not or never really appreciated in the
17 first place that Indian tribes are sovereign
18 nations. As many of you know, our Tribe recently
19 opened a casino in Jones County, the Bok Homa
20 Casino. The facility is really serving us well
21 and we are servicing some of the areas surrounding
22 us. And initially we had problems getting it
23 started, not getting the support. But we also
24 understand our rights as Tribes, and we were able
25 to put the project together.

1 And today that effort has proved to
2 be very, very beneficial to us. The thing I want
3 to talk about, again, is just across the border
4 with the Poarch Band. The Governor has made an
5 effort to shut it down. And that's what we're
6 saying about both States, you know, both
7 Mississippi and Alabama, they have appealed to
8 NIGC, in order to, urging the NIGC to take action
9 against our sovereign tribes. And in both cases
10 I'm glad what position they took. A simple
11 message that NIGC said no; no to bullying, no to
12 threats, no to ignoring federal and tribal law.
13 We appreciate that. We must also reject the
14 blatant racism that has been hurled against NIGC.

15 The reason I say that is that the
16 realtor get is our sovereignty and our right to
17 exert control and responsibility over our town.
18 (Inaudible). We stand firm on that. That's what
19 a so-called gaming expert from Alabama said, and
20 I'm going to quote him. "NIGC executives are all
21 members of Indian Tribes. This is Indians
22 regulating Indians." This same person went on to
23 say that NIGC was inclined to ignore illegal
24 gaming operations because they want to protect the
25 Commission's funding, and they don't want to

1 alienate their Indian relatives and friends.

2 In other words, this opponent of
3 Indian gaming is trying to say that Indians cannot
4 regulate Indian tribal gaming because our race
5 will trump our integrity. Many people said that
6 the same thing in 1988 when they argued against
7 the rights of tribes to operate, manage and
8 regulate our gaming operations. While we will not
9 always agree with the NIGC on every issue, we must
10 stand up in their defense when their
11 professionalism and integrity is attacked.
12 Especially when it's quoted in anti-Indian
13 bigotry.

14 I would like to thank the
15 Commission for taking a fresh approach at these
16 consultations with tribes, and we will be, many
17 tribes, including my own, have criticized NIGC for
18 ignoring the concerns of tribes. Particularly
19 when some of us did not agree with every aspect of
20 the Commission's agenda. I am hopeful that recent
21 dealings with the Commission are evidence of a
22 bright future of cooperation between the tribes
23 and NIGC. I am grateful to Chairman Stevens,
24 yourself, Cochran, and Commissioner Little for
25 their dedication and service, and I'm pleased to

1 welcome them and all of you to Mississippi for
2 what I hope will be a productive round of
3 consultations. And I welcome all the other tribes
4 that are here and represented, and my friends from
5 the jena band, Poarch that I see that's here.
6 It's nice to see friends. (Speaking in Choctaw.)
7 Thank you.

8 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
9 Thank you. Thank you for the kind comments. That
10 was an interesting article. It did make our list
11 of news clips for the day. So thank you Miko
12 Denson for those thoughts and those words. And
13 again, we appreciate your time as we do appreciate
14 all the time of the tribal leadership that have
15 come out today. I'm going to ask -- I know we got
16 some people at the table -- if we got tribal
17 leadership or people who have been authorized to
18 speak on behalf of a tribe, if you want to come
19 join us, please do so at the table. There's
20 plenty of room, so we want to make sure that we
21 have everybody here that wants to be here. I'm
22 going to go around the table and I'd like to ask
23 the tribes to introduce themselves so that we know
24 who we're listening to today. And then I'm also
25 going to spend just a moment and introduce our

1 staff that's with us. I know we've heard from
2 Miko Denson, so why don't we start with you?

3 LENORE SHEPARD: Lenore Shepard
4 (inaudible) Minneapolis, outside legal counsel to
5 Miko and the Mississippi band of Choctaw.

6 RANDY DOYLE: I'm Randy Doyle,
7 compliance officer with the Coushatta tribe of
8 Louisiana.

9 BEVERLY PONCHO: Beverly Poncho,
10 Coushatta tribal gaming Commissioner.

11 SCOTT CROWELL: Scott Crowell,
12 Crowell offices. I'm here today on behalf of the
13 Rincon band.

14 ELLIOTT MILHOLLIN: Elliott
15 Milhollin, with Hobbes, Straus, Dean and Walker.
16 I'm here for the Seminole tribe.

17 STEPHANIE BRYAN: Stephanie Bryan,
18 Vice Chairman of the Poarch band of creek Indians.
19 And I have with me today Christopher Gibson who is
20 our regulatory relations liaison as well as our
21 facility license. Daniel McGhee, who is the
22 Gaming Commission Administrator. And Ms. Sharon
23 Smiley, who is a Commissioner Secretary of the
24 Gaming Commission. And myself as the Vice Chair
25 as well as the Chairman for the Gaming Commission.

1 DANIELLE PERKINS: My name is
2 Danielle Perkins, representing the Shoshone
3 Bannock Gaming Commission.

4 (Inaudible).

5 NATASHA MCGHEE: I'm Natasha
6 McGhee. I'm with the Poarch Band of Creek Indians
7 Tribal Gaming Commission. I am the administrative
8 assistant of Daniel and Chris Gibson.

9 SHANE YORK: Shane York. I'm with
10 the Mississippi Band of Choctaw Indians. I work
11 with the Gaming Commission.

12 WINNIE EAGLE: My name is Winnie
13 Eagle. I work for the Indigenous Gaming
14 Regulators in Canada.

15 BRYCE WARREN: Hello, everybody.
16 My name is Bryce Warren, and I am the general
17 manager for the Bok Homa Casino for the
18 Mississippi band of Choctaw Indians.

19 RAYMOND HICKMAN: Raymond Hickman,
20 Mississippi band of Choctaw Indians, casino
21 operations.

22 TERRY RENAULT: Terry Renault, Bok
23 Homa Casino, slot manager, Mississippi band of
24 Choctaw Indians.

25 CINDY ALTIMUS: A whole group of

1 people who didn't want to put the name on the
2 record.

3 PETER STEINER: I'm Peter Steiner
4 from Cover All Entertainment.

5 CINDY ALTIMUS: This is Linda
6 McGhee. She's the compliance Director for the
7 Poarch Band of Creek Indians, and she has
8 laryngitis today.

9 JUDY FARMER: Good morning,
10 everyone. My name is Judy Farmer. I'm from the
11 Seneca nation of Indian Tribes, and I work in a
12 Class II gaming facility.

13 RENEE JIMERSON: Hi, I'm Renee
14 Jimerson from the Seneca Nation. And I work as a
15 Manager in Class II gaming.

16 KENNETH YORK: Good morning. My
17 name is Ken York. I'm the Director of Development
18 for the Mississippi band of Choctaw Indians.

19 TERI POUST: Good morning. I'm
20 Teri Poust. I'm an attorney, and I'm here today
21 on behalf of the Poarch Band of Creek Indians.

22 JUDY SHAPIRO: Good morning. I'm
23 Judy Shapiro. I'm also a lawyer. I'm here today
24 on behalf of the United Keetoowah band of Cherokee
25 Indians, and the (inaudible).

1 JASON GILES: Good morning. I'm
2 Jason Giles, National Indian Gaming Association,
3 Deputy Executive Director.

4 ANGELA DENSON-VAUGHN: Halito and
5 good morning. My name is Angela Denson Vaughn. I
6 just recently got married, and I'm one of the
7 Associate Commissioners for the Mississippi band
8 of Choctaw Indians, on the Choctaw Gaming
9 Commission.

10 TRINA JIM: Halito and hello. My
11 name is Trina Jim. I'm one of the associate
12 Gaming Commissioners with the Mississippi band of
13 Choctaw Indians with the Choctaw Gaming
14 Commission.

15 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
16 Good morning. I have two staff members up here
17 with me. I'm going to come back to them. But I
18 know Cindy Altimus is here, and Cindy is the
19 regional Director for the D. C. Region of the
20 NIGC, and just an all around great person. And
21 then we also have Keith Hicks. Where's Keith?

22 CINDY ALTIMUS: He's out guarding
23 my computer.

24 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
25 Keith Hicks is also here. Keith is out of

1 Flowood, Mississippi. And Lael Echo-Hawk. Do you
2 want to introduce yourself, or Michael?

3 MICHAEL HOENIG: Should I start?

4 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
5 Yes.

6 MICHAEL HOENIG: Hello. I'm
7 Michael Hoenig. I'm an attorney in the office of
8 general counsel at the NIGC, and I primarily work
9 in the D. C. Region.

10 LAEL ECHO-HAWK: Good morning. My
11 name is Lael Echo-Hawk. I'm a member of the
12 Pawnee Nation of Oklahoma, and I am the counselor
13 to Chairwoman Tracie Stevens.

14 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
15 All right. Just a few details. Cindy, do we have
16 a Court Reporter yet?

17 CINDY ALTIMUS: No.

18 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
19 If we get the Court Reporter here soon, when they
20 record, they really need to know who is speaking,
21 so even though it doesn't come naturally, just
22 identify yourself before you offer your comments
23 so that they are properly attributed, and you must
24 properly identify yourself.

25 The other thing is I know it's a

1 little dark in here. I apologize. We are going
2 to try and up the lights at some point, but in
3 order to see the PowerPoint, it just makes sense
4 for us to leave it down for now. And then we'll
5 have them turn it up.

6 I'm going to turn it over to Lael
7 Echo-Hawk. Lael Echo-Hawk has been the master
8 mind behind this entire process. She really does
9 keep the Commission moving forward in what is a
10 very complex process that we're going to undertake
11 the regulatory review in the next year or two that
12 we have. And so I'm going to turn it over to her
13 to give some background so that we start from a
14 common place this morning. And at some point
15 we'll take a break and we'll figure out where to
16 go from there as far as the process goes. So Lael
17 Echo-Hawk, I'm gonna turn it over to you. Thank
18 you.

19 LAEL ECHO-HAWK: Okay, here we go.
20 This is the third of 33, what will be 33
21 consultations around the country. And this is the
22 -- we're starting out -- we have a series of five
23 groups and I'm going to go over that briefly.
24 This is the last one where this is going to be the
25 only group one. At our next meeting we're going

1 to be adding in what will be known as group two,
2 and then we'll continue the same way throughout
3 the rest of the year. So this is just a little
4 contact information, reg.review@nigc.gov. You will
5 see in the next couple of days a Federal
6 Registered Notice go out that invites written
7 comments for these group one consultations. That
8 written comment period will close on May 31st. So
9 just a little heads up there. We are accepting
10 written comments, of course. They will all be
11 posted on the web site as they come in. You can
12 E-mail them, fax them, smoke signal them, do what
13 you need to do. We want to see them. We need to
14 see them in order for us to achieve the best
15 product for the industry, and for Indian country.
16 We really need your help. So please don't be shy.
17 If you are uncomfortable speaking at a mic here,
18 you can have a conversation with any of us. You
19 can call this telephone number and ask for any of
20 us, or you can E-mail us at reg.review@NIGC.gov.

21 So this process in terms of the
22 process it's led really by one of the initiatives,
23 the primary initiative of the Commission. And
24 that is consultation. Improving the NIGC's
25 relationship with the tribes through consultation.

1 A section of the Executive Order on consultation,
2 C(3) is one that's really important, and it's what
3 we're doing here. And that is in determining
4 whether to establish federal standards, the
5 agencies need to come and consult with tribes. So
6 before we set forward a standard, we are talking
7 to you, and we are in that phase of preliminary
8 drafting. We have -- the process will encompass
9 three phases; where we're at today, which is
10 preliminary drafting with consultations and
11 written comments. We do have a discussion draft
12 on part 514, which is the fee regulation on our
13 website, and it should be in your handout as well.
14 It's a red line version. It is just a discussion
15 draft. It's not -- we haven't set anything in
16 stone. We just need some info from the tribes.

17 The discussion draft is based on
18 comments that we received from tribes during the
19 Notice of Inquiry process over the past about six
20 months. So hopefully you see some things in there
21 that you like. If you see some things in there
22 that can be improved, please let us know. So as
23 we move forward, we -- if during that preliminary
24 drafting phase, we collectively come up with what
25 we think will be a good rule, will begin the

1 Notice of Proposed Rulemaking Timeframe; with
2 again more consultations and approximately 60-day
3 comment period.

4 So as you look at our ginormous
5 list of -- I know, my nephews have infiltrated my
6 mind, I'm making up words. You'll see that
7 there's just the list of consultations and group
8 listings with it. What is not included there
9 because we wanted to keep flexible timeframes is
10 when one phase stops and another begins. So we
11 will have consultations. Those consultations will
12 occur during the first phase, which is the
13 preliminary drafting phase, and the second phase
14 which is the notice of proposed rulemaking phase.
15 So there will be comments. There will be time for
16 face-to-face consultations like this during both
17 of those phases.

18 The final phase is the final
19 rulemaking phase. And at that point if we've come
20 up with what we think to be a good final rule, we
21 will publish it in the Federal Register, and have
22 approximately 45-day written comment period. That
23 phase likely will not have the consultations,
24 these type of consultations. There are five
25 groups of regulations as you can see in the

1 Federal Register notice. These group number do
2 not indicate priority. They were developed as I
3 was kind of struggling through all of the
4 regulations that tribes indicated we needed to
5 look at, and trying to figure out a way to put
6 them together in groups by subject matter,
7 estimated time and resources that were going to be
8 needed to make the changes to these particular
9 regulations. Things like separating the Class III
10 MICS issue from the class II MICS issue. Trying
11 to put the regulations forward to you in some sort
12 of order that you know hopefully moves this along.
13 So group one, we like these regs. We think
14 they're going to be -- they're going to be some
15 changes likely. But it doesn't indicate their
16 priority by any means. So we just want to
17 emphasize that.

18 So then in our discussion draft, as
19 I said, these are initial working documents,
20 initial working drafts. They are not set in
21 stone. We need your input on them. This meeting
22 is not yet being transcribed but it will be
23 shortly. And any written comments received and
24 the transcript of these proceedings will be posted
25 on the website.

1 I anticipate next week we'll have
2 the one back from Oklahoma, and I'm applying
3 pressure to the Court Reporter from California, so
4 hopefully we'll have those up. If you go to our
5 website, there's a new button. It's called Tribal
6 Consultation. And if you click that button, then
7 we have a number of subjects come up, and we're
8 working on this reg review 2011 to 2012. If you
9 hit that button, there's another button for group
10 one, group two, group three, group four, group
11 five, and all the materials that are associated
12 with those groups are located in those areas. It
13 might be a couple of clicking trial and errors.
14 If you need the link, just let me know.
15 Reg.review@NIGC.gov. And we'll point you in the
16 right direction.

17 What we are in the spirit of
18 President Obama's administration and transparency
19 and accountability, we are putting all this stuff
20 up on the website. The committment by the
21 Commission is, I don't know if you were in the
22 panel earlier, you heard Vice Chair Cochran say
23 every comment received will be reviewed and
24 considered. And this was her -- the Notice of
25 Inquiry comments were bedside reading, and it was

1 my, like, 24-hour reading over and over again.
2 But the Commissioners are committed, the senior
3 staff are committed to reviewing the comments and
4 to making sure that they're considered
5 thoughtfully; that we look at it and we evaluate
6 what you have to say so that, again, we come up
7 with a product that is the best for Indian country
8 and the industry.

9 Any proposed or final rule will
10 include a summary of the comments received. If
11 you look at the Notice of Regulatory Review
12 schedule that we put out on April 1st, you'll see
13 that we summarize the comments and we talked
14 about, gave a discussion about why we were going
15 one direction and not another. And so you'll see
16 that. That will be a very similar format.

17 Again, in the spirit of
18 transparency, the decision-making is open and
19 transparent. You can see the rationale for why
20 the Agency goes one direction or another. And
21 again, the Commission is committed to a clear and
22 transparent process.

23 So group one, this is what we're
24 going to discuss. We're looking at the fee
25 regulation, a possible repeal of Review and

1 Approval of Existing Ordinance or Resolutions,
2 Facility Licensing Regulations, proposed new Buy
3 Indian Act regulation, and then Minimum Internal
4 Control Standards for Class III, for Class III
5 gaming. This is -- while the first four are going
6 to be a substantive review, group or number five
7 which is the Minimum Internal Control Standards
8 for Class III is all about process.

9 What do we do with this issue that
10 we're facing with Class III in light of the CRIT
11 decision? And so it's different. It's not a
12 substantive review. If you move forward onto
13 substance with that particular issue, that will be
14 addressed in group five consultations. This is
15 just a process question. So I'm going to go
16 through this. It's sort of the 30,000 level. So
17 I'm going to go through the discussion draft and
18 the red lines for the part 514, and then discuss
19 what we're doing with the other regulations that
20 don't have discussion drafts out yet.

21 I anticipate in the next week or
22 two we'll have discussion drafts available.
23 Again, they'll be on our website. We make contact
24 with the Regional and National Associations as
25 well as the Region Directors to make sure that

1 they contact each Tribe individually so you know
2 what we have new information about. We're trying
3 to make sure we hit everybody, but please do be
4 checking our website because we do put that up
5 there.

6 Okay. So in your packet you did
7 have -- you should have received a red line
8 version of part 514, and I will just walk through
9 the changes here starting at 514(a)(1). The fee
10 calculations are going to be based on the gaming
11 operation's fiscal year rather than the calendar
12 year. This is a change that we discussed in the
13 Notice of Inquiry. It's one that Tribes are
14 generally supportive of. And it should make the
15 calculation cleaner, easier, and it doesn't matter
16 if your Tribe is on a fiscal year that is also a
17 calendar year. Whatever your fiscal year is, that
18 is what the fee calculation will be based on. The
19 fee rate will be published on March 1st rather
20 than February 1st to allow time for us to receive
21 in all of the audited financials, and get a good
22 picture for where the fee rate was for last year
23 so that we can have a more accurate preliminary
24 rate. Removing amortization from 514(b)(2)(ii)
25 to reflect the existing practices. Quarterly

1 payments moving from the biannual -- a couple of
2 years ago the Agency went from having quarterly
3 payments to biannual payments. We heard from our
4 staff internally as well as some Tribes externally
5 that that system was causing accounting problems,
6 and that we should go back to a quarterly payment
7 system. And so that's what the discussion draft
8 proposes to do.

9 The regulation at 514(c)(4) also
10 clarifies that when computing fees, the gaming
11 operation uses the part 14(b) calculation to
12 determine assessable gross revenues from the
13 previous fiscal year. Now this is very difficult
14 to figure out and put this in a PowerPoint.
15 Basically all it does is take 514(c)(4), and it
16 points you back to the actual formula. The
17 regulation was less than clear. I know that this
18 point here is not as clear. But really, it's
19 trying to clarify the regulation for the reader so
20 that instead of just saying, you know, assessable
21 gross revenues, it actually refers you back to the
22 section of the reg that contains the formula. It
23 doesn't change anything. It just tries to clarify
24 the regulation.

25 The draft regulation provides a

1 notification period. So if your gaming operation
2 goes from a calendar year fiscal year to a
3 September fiscal year, there's some way that you
4 can notify the Agency. And then if we need more
5 information, then we request it. This is a new
6 section, and this is something that we put out in
7 the Notice of Inquiry and Tribes were very
8 receptive to. So we've attempted to draft this
9 new section, and it is one that we do need some
10 comment on. And that is a late payment system for
11 when the Tribe submits their fees to the NIGC late
12 in lieu of a Notice of Violation.

13 Some of you may recall several
14 years ago that the Agency was issuing notices of
15 violation for late fees that were submitted to the
16 Agency. And we've heard over and over again that
17 this was -- that this sort of sledge hammer
18 approach was not necessary; that it did affect
19 Tribes negatively to have a Notice of Violation,
20 particularly now that financing is important to
21 Tribes, and a Notice of Violation can affect your
22 bond rating, et cetera. So we attempted to create
23 a late payment system, and we have the author over
24 here, Mike. He's our expert. So it includes some
25 appeal options, or if you know if you end up in

1 this process what your appeal options are. It
2 defines a late payment, what it does is it
3 distinguishes between a late payment which is a
4 payment made within 91 days of the end of your
5 fiscal year. It distinguishes that late payment
6 from the failure to pay your annual fees which is
7 the payment made after 91 days. So on the 92nd
8 day forward, you then fall into this category
9 called failure to pay your annual fees. A late
10 payment, which is making your payment within 91
11 days, results in a fee. The failure to pay an
12 annual fee is a substantial violation, and can
13 result in a Notice of Violation and possible
14 closure order. So we tried to make a distinction
15 between when, you know, like we heard, I think it
16 was in South Dakota, one of the Tribes was saying
17 hey, my CPA had a heart attack and he wasn't able
18 to finish it, and we were late and we got an NOV
19 because of something that was completely outside
20 of their control. And so we've heard stories like
21 that, and we wanted to provide an opportunity then
22 for Tribes to avoid the Notice of Violation and to
23 really just, you know, do what you do if you pay
24 your ticket late -- your parking ticket late. You
25 get a fee based on something. We need to figure

1 out what that rate will be.

2 So another new section is the
3 fingerprint processing fees. And this clarifies
4 how the NIGC collects the fees. And it also sets
5 the fee rate. We're going to tell the Tribes what
6 that rate will be biannually on the same days that
7 we tell you what the fee rates -- the preliminary
8 fee rate and the final fee rate will be.

9 There are some questions that we
10 posed that are unrelated to the process that may
11 be a little confusing here. Something that we
12 raised in our internal discussions, and that was
13 whether or not the term admission fee that's
14 contained in the current regulation should be
15 changed to entry fee to comport more with the
16 industry standards. We would get questions.
17 People would call the Agency and say "hey, your
18 regulation says that I have to use -- I have to
19 include admission fees as part of my gross
20 revenues for the purposes of computing the fees
21 that I submit to the Agency. But my admission
22 fees are for our concerts, and I have entry fees
23 for Poker Tournaments, et cetera."

24 So the question that we're posing
25 to Tribes is whether or not we can make the

1 change, change admission fee to entry fee. And
2 then perhaps we don't anticipate that it's a
3 substantial change, very substantive, just that
4 we're utilizing what is common industry
5 terminology. And then another issue similar to
6 that is whether or not tournament fees should be
7 included in the example of either admission or
8 entry fees depending on what that term will be. So
9 those are questions that came up. They're not
10 included in the discussion draft, although we are
11 interested in hearing Tribes' thoughts on that.
12 And you guys should all have a copy of the
13 PowerPoint in your packet. And it's not up on the
14 website yet, but it will be. So if you have
15 thoughts or questions, or can't remember what I
16 just said, these will be online as well.

17 So another issue, this one was
18 actually asked on an inquiry. We asked Tribes if
19 the term gross gaming revenue should be defined to
20 be consistent with GAAP for the purposes of
21 calculating the fees. We did not make that change
22 in the discussion draft for a number of reasons.
23 One, the GAAP is changing how they make the
24 calculation; two, there -- the -- what is
25 currently in GAAP and what is proposed to be in

1 GAAP is in some ways inconsistent with the
2 definition of gross gaming revenue in IGRA, which
3 is basically wager less pay out. So it didn't --
4 some of the ways that GAAP defined gross gaming
5 revenue was inconsistent with that, and so we
6 didn't make the change.

7 What we are asking Tribes is
8 whether or not we should then define what a wager
9 is and what pay out is. And if that's a way to
10 get to clarifying how gross gaming revenue is
11 calculated for the purposes of then calculating
12 your NIGC fees. Those terms are not defined, and
13 it is something that may be helpful. It may not
14 be helpful. I know that we have a fee training
15 course that we use. We actually did it because,
16 you know, we needed a little fee 101. I'm not
17 that up on how to calculate NIGC fees. It's very
18 interesting because it is complicated. When does
19 free play -- does free play count as being towards
20 the calculation of gross gaming revenue? Or can
21 you deduct that from the calculation? I mean,
22 it's very complicated. We have a matrix that
23 looks like something from the Matrix movies. I
24 didn't understand it at first. You have to kind
25 of go through that little course to figure out

1 about what is deductible, what should be included.
2 But if there's a way that we can take that
3 document and help define the terms so that it's
4 easier for Tribes to do these calculations, then
5 we're interested in hearing from Tribes on that.

6 So that's the change from a very
7 high level. The changes to the fee regulation,
8 which is the red line version that you have.

9 Moving on, part 523, which is
10 Review and Approval of Existing Ordinances or
11 Resolutions. This part only applied to gaming
12 ordinances enacted by Tribes prior to January 22,
13 1993 that were not submitted to the Chair for
14 review and approval. None of these exist anymore.
15 So it is obsolete. This doesn't apply to
16 anything. So we're again asking Tribes whether or
17 not we should just repeal this part.

18 Part 559, which is Facility
19 Licenses, Notifications, Renewals and Submissions,
20 we heard from Tribes very, very soundly, and
21 around the board we heard that the process that
22 was used to create this regulation was flawed;
23 that there was not appropriate consultation and
24 discussion between the Tribes and the Agency, and
25 that we need to open this back up for discussion.

1 And so we have opened it back up for discussion.
2 Should it be revised? What are the issues that --
3 I mean, we have -- we've heard that the comments
4 -- and if you read the letters, you can see some
5 of the issues that were highlighted. And so we're
6 aware of that. But you know, we need to know
7 again from Tribes what are the additional issues,
8 if any, which sections should be reviewed, further
9 revisions. We anticipate that we'll have a
10 discussion draft out again, within the next week
11 or two, so keep your eye on our website. And
12 hopefully some of the issues that were identified
13 during the Notice of Inquiry period, and that were
14 identified at the time that the rule came out can
15 be resolved through this process.

16 So Buy Indian Act, this is a new
17 proposed regulation. Comments from the Notice of
18 Inquiry were generally supportive of the
19 regulation, and I need to emphasize that this only
20 obligates that we, the NIGC, to buy Indian. It
21 doesn't place a burden on Tribes to buy Indian.
22 This is just for the Agency when we're making
23 purchases of goods and services when we're on or
24 near an Indian reservation. This allows us to
25 kind of go outside of the procurement process

1 which is a huge process all by itself. Buy Indian
2 Act is a federal set aside much like, you know,
3 there's set asides for small disadvantaged
4 businesses or veteran owned businesses or women
5 owned businesses. But it allows the federal
6 Agency, when making purchases, to have this set
7 aside fund to go through this other federal
8 procurement process which can be quite, quite
9 comprehensive. Again, we intend to distribute a
10 draft regulation -- a draft regulation soon.

11 One of the concerns that we've had
12 from the Tribes is that -- and you'll see, you've
13 seen it over the course of the past six months,
14 and you'll see it over the next year as well --
15 we're really making an effort to go to tribal
16 owned facilities. There was none in Biloxi, so
17 we're staying at other areas -- but other
18 properties -- but you'll see as we go out -- if at
19 all possible -- and if it's within the budget --
20 that's the other thing -- we need to be fiscally
21 responsible for the fees, for the Tribes' money
22 that you submit for operation, balancing those two
23 things out and going to tribal facilities and
24 putting Tribes' money back into Indian country.
25 So again, there should be a discussion draft soon.

1 And then, sort of, the last one --
2 and I know one that a lot of you are interested in
3 -- and it certainly has been the elephant in the
4 room for a number of years, and something that
5 we've all kind of tried to tiptoe around and not
6 come to a resolution on since the CRIT decision
7 was decided. And that is do what we do with the
8 Minimum Internal Control Standards for Class III
9 gaming. What structure do we use to address this
10 issue? It impacts regions, Tribes, states all
11 differently. What is it that the Agency can do to
12 meet the needs of the industry to come up with a
13 solution that addresses the concerns, but again,
14 within our legal authority and within the
15 authority that we have under IGRA?

16 So today and at these group one
17 meetings, that's what we're talking about. What
18 do we do? What is the process that we use to
19 address Class III MICS? And then once that
20 decision has been reached through this group one
21 process, then in group five we'll begin the
22 practical implementation, whatever that looks
23 like. So obviously CRIT -- the Commission did not
24 have -- does not have the authority to promulgate
25 regulations establishing Class III MICS.

1 And so, you know, we're left with
2 that. And there hasn't been a resolution to date
3 on what do with the regulation part 542, which is
4 the Class III MICS. We need to figure that out.
5 These are suggestions that we have heard from
6 Tribes over the Notice of Inquiry process; we've
7 heard replace part 542 with recommended
8 guidelines; we've heard that we could address this
9 through some sort of fee for service-based
10 Agency/tribal compacting process; applying a
11 different fee rate for those Tribes with tribal
12 ordinances that incorporate part 542, and then
13 authorize the NIGC to enforce those regulations at
14 their Tribes. Then we've heard keep part 542 and
15 start a Tribal Advisory Committee to update the
16 current regulation. And then completely at the
17 other end of the spectrum, we've heard that just
18 repeal part 542 in its entirety. So we've got a
19 number of options that have been presented to us.
20 And I'm sure that there are more that we haven't
21 heard. But it is an issue that we look forward to
22 coming to a decision on how to address it, at
23 least during the first group one consultations.

24 So with that, that is the very
25 30,000 level split rundown of what group one looks

1 like today, and what the information that we're
2 trying to get from Tribes is. I do want to go
3 back briefly to the Notice of Violation, or the
4 late payment system in part 514. On page 6 of the
5 draft regulation -- I'm sorry, it's page 5. On
6 page 5 we have, starting on line 13 and then going
7 down, we have sort of increments, steps where the
8 late fee, the fees would increase. So if you're
9 one to 30 calendar days late, there may be a late
10 fee of blank. 31 to 60 days, late fee of blank.
11 And so on. And so we are looking for some input
12 from Tribes what is that blank. Is it a set
13 dollar amount? Is it \$5 to \$15? Elliott? Is it
14 a sliding scale? Is it a percentage rate of the
15 amount due? We're asking for input from Tribes on
16 that, so I do want to point that out. We really
17 have left blanks there, and we're interested in
18 hearing from Tribes on that.

19 So with that I will give this back
20 to the Vice-Chairwoman.

21 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
22 Thank you, Lael. As I said, she keeps us moving
23 forward, and explains everything or boils it down
24 to something that we can present in a quick
25 manner. So this is -- we've set the table. We're

1 going to ask you to come join us. We've set the
2 table for you. We're done talking for a while.
3 We're here to listen, and it's more than that.
4 Particularly as the Vice-Chairwoman, I want to
5 spend some time listening to what you've brought,
6 what you'd like to say, and answer your questions.
7 So I'm going to turn it over to the Tribes now.
8 We ask you for your comments. Cindy, is the Court
9 Reporter here?

10 CINDY ALTIMUS: Not yet. Let me
11 see if I can get a location of where he's at.

12 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
13 Okay. Let me do this. I'm going to check this
14 recorder. If we're at least getting it recorded,
15 I'm going to go ahead and move forward.

16 Apparently it's picking up pretty
17 well, so hopefully we'll be able to turn it over
18 and get a transcription done.

19 Good morning. Would you like to
20 introduce yourself?

21 JULIE WILKERSON: Yes. I'm Julie
22 Wilkerson. I'm tribal attorney for the Jena band
23 of Choctaw Indians. We met in D. C. previously.
24 You braved the storm, the snow storm, although I
25 heard you did walk several blocks.

1 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
2 Yeah, I did.

3 JULIE WILKERSON: We drove in last
4 night. We got in about 12:30, so we've been --

5 CHERYL SMITH: It's my fault. I'm
6 Cheryl Smith. I'm tribal chief for the Jena band
7 of Choctaw Indians, and I'm looking forward to
8 learning all of the stuff that we're going to be
9 needing to know real soon because (inaudible).

10 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
11 Thank you, Chairwoman, for joining us. We haven't
12 gotten into the substantive discussion yet. We
13 have laid out just a presentation for setting the
14 tone for the discussion. We just turned it over
15 to the Tribes. As I said, it's really my job to
16 listen right now, and I'm sure you got things that
17 need to be said. So I'll open it up to the floor.

18 STEPHANIE BRYAN: Stephanie Bryan,
19 Vice Chair for the Poarch band of Creek Indians.
20 I just wanted to say thank you to staff and the
21 Commissioners for the consultation process, and
22 you know, I know you have an expedient schedule
23 here and lots of consultation to do. There are a
24 lot of important things that need to be addressed,
25 of course, and after reviewing the red line

1 version of the fees, that was one of our comments
2 as far as implementing something in case of an
3 emergency for the late fees versus the Notice of
4 Violation. The NOV system we thought, you know,
5 that that was, you know, a little stringent, you
6 know, especially in cases where there is an
7 emergency. So looking at the red line version, we
8 will also in our written comments make comments of
9 reference to the percentages for late fees, you
10 know, after so many days. And there are so many
11 things that are factored in that, you know, we
12 would need to take into consideration before
13 making a comment. So we will, you know, in our
14 written comments make sure that that's included.
15 And one thing I would like, you know, maybe from
16 the Commission -- I know you have all the various
17 groups that you're doing the consultation process,
18 but at the end, I mean, I know everything is very
19 important. I know all the groups are very
20 important. But, I mean, do you -- have you gotten
21 those prioritized as far as, you know, is there a
22 priority set or will you do that and then let the
23 Tribes know? Because I said I know they're all
24 very important. But once you receive comments
25 from the various Tribes and the input from them,

1 and we're very thankful for you guys, you know,
2 look at all those comments because they're very
3 important if the Tribe submits those comments.
4 But I know as far as time, I just know that, you
5 know, there are a lot of things that need to be
6 addressed in proposed regulations. And then of
7 course, once they're proposed regulations, then
8 there's a comment period for that. So you know,
9 I'm very gracious. Our Tribe is very gracious
10 that you guys are holding the consultations and
11 doing that. But also I want us to -- some things
12 to come to reality that's been lingering for
13 years.

14 LAEL ECHO-HAWK: The Commission
15 hasn't set out a priority for each regulation, but
16 if you look at our schedule, I think you can see
17 the regulations that are going to require the most
18 work, and the ones we've dedicated the most
19 resources to. The -- I -- I am being as
20 aggressive as I can with the current Commission
21 who have been very patient because I'm, you know
22 -- and I know in speaking with the vice and the
23 Commission and Chairwoman Stevens, Commissioner
24 Little, we spent time on the other side beating
25 our heads against the wall, can we just get this

1 resolved. And so we have sort of dropped dead
2 lately in terms of what we can do regulations, and
3 we're going to be moving very fast and very hard
4 towards meeting those deadlines. My personal
5 goal, this is just me speaking as a staff person
6 here, is that we resolve these issues; that we get
7 final rules where we need final rules; that we
8 have issues resolved. And that's why you'll see
9 the groups that the timeframes, a significant
10 amount of time dedicated to class II, Class III,
11 what to do with sole proprietary interest, fixing
12 that, self-regulation regulation. There are some
13 things that are going to require a lot of time,
14 and we have dedicated the time and resources to
15 doing that so that we do have (inaudible).

16 STEPHANIE BRYAN: Also, just to
17 comment on the Buy Indian Act. I think that is
18 absolutely wonderful. We support that
19 tremendously. Within our Tribe, we actually have
20 TERO preference, so we strongly believe that we,
21 you know, should support the Indian Tribes, you
22 know. We try to do that as well when we're
23 working with a tribal gaming working group, you
24 know, if there is a, you know, place where the
25 Tribe owns, we make our accommodations there. So

1 we strongly support the Buy Indian Act. That will
2 be in our comments as well.

3 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
4 Thank you.

5 DANIEL MCGHEE: I'm Daniel McGhee
6 with the Poarch Creek Tribal Gaming Commission.
7 I'm the Commission Administrator. I do have a
8 couple of specific comments to make, and these
9 will be in the written comments, and we will
10 expand upon them also. Just (inaudible). We were
11 talking about the fees, the late payment, and I
12 notice the language is that "the Chair may impose
13 a fee" so it seems like it could be kind of
14 subjective to whatever reason the Chair wants to
15 fine you or to not. If the Tribe gives us a hard
16 time (inaudible), you know, I would hate to hear
17 about one Tribe getting a penalty that was this
18 knowing that I got charged this. So I noticed
19 that there's some of that language and was
20 wondering the reason behind it (inaudible). Also
21 I noticed that it says here, following "the Chair
22 may adjust a proposed late fee based on history"
23 and other stuff and that another same kind of
24 situation, where they may do it, you know. I
25 think you should -- that here's the fee that

1 you'll be charged for the first time. And if
2 you've been late before, here's the fee that
3 you'll be charged. (Inaudible). And then on
4 fingerprint fees, you talk about kind of the same
5 thing that -- it says Tribe may submit fingerprint
6 cards to the Commission for processing and I think
7 that's kind of a requirement, you know. I didn't
8 know there was an option, you know, every key
9 person and key management positions, so you may
10 want to look at that. And then it says the
11 Commission may charge a fee for processing. So
12 you're not saying that they are. And then I
13 noticed something here that you are going to start
14 evaluating the statement of fees every year, and I
15 want to ask that you not do it every year because
16 we base the licensing fees that we charge on the
17 fees we pay to you (inaudible). That's changing
18 our fees every year. (Inaudible). So if you
19 could make that a little bit longer, like every
20 three years or something. For the longest time it
21 stayed the same, and then it dropped. (Inaudible)
22 not so often as a year. And those would be the
23 only comments I have on the fee regs.

24 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
25 Thank you. Let me go back a little bit and answer

1 some of your concerns. We do have Tribes that
2 submit in all fingerprints so it's not just on key
3 management officials. So the way I think is
4 intended to get at those Tribes that do use our
5 services. We can certainly take a look at it and
6 make sure that it's as clear as we can be without
7 unduly or unintentionally burdening a Tribe. And
8 I like your idea on the fees that we look at it
9 annually. It's set by the FBI. We do have our
10 processing fee, but it's not significant and I
11 don't know that the FBI modifies. I know we were
12 charging a lot for a while. One reason it went
13 down is that because somebody finally went, did
14 the numbers check, said this is what we're
15 charged, and this is what our administrative costs
16 are. So let's get it down to that. The intent is
17 to make sure that we're not overcharging Tribes.
18 But that's a very legitimate concern that we not
19 interfere unintentionally again, interfere with
20 your budget process.

21 DANIEL MCGHEE: One additional
22 comment. Facility Licensing. We do have some
23 comments to make here today. One thing I have is
24 we don't have a problem when you ask us to submit
25 this, submit that information, and with us as a

1 Tribe. We went out and contracted, hired somebody
2 as a consultant to do all this work, spent a lot
3 of time on it, make sure it's right, and then
4 submitted it. And there was nothing in the regs
5 that required anything else, but there was no
6 response from the NIGC. So we're like did we get
7 a good job? Did you get it? Basically it was if
8 you don't hear from us, you're good. And it's
9 like it took a lot of effort. It was obviously
10 important to them. So maybe something here, some
11 kind of feedback. If we're going to have to do
12 it, give us some feedback so we know we're doing
13 it right or something.

14 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
15 I was speaking earlier today on a panel about the
16 fact that our Agency, what we came into just is
17 severely lacking in processes, and we don't have a
18 mail tracking process. I mean, that sounds very
19 simple. I've worked for some of the smallest
20 Tribes in this country that have mail tracking
21 systems. So you know it's important. Is it hard?
22 No, but it's important for the reasons that you
23 describe. Tribes go through a lot of effort to
24 prepare their materials, and we need be responsive
25 to make sure you know you've done your job where

1 it's now in our court (inaudible) take it from
2 there. So I appreciate those comments as well.

3 DANIEL MCGHEE: I would like to
4 officially comment that the NIGC has no tracking
5 system.

6 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
7 Thank you.

8 SCOTT CROWELL: I'll go ahead and
9 start unless there's some tribal officials that
10 wish to go ahead of me. I'm here today on behalf
11 of the Rincon band of Luiseno Indians. We
12 intended to provide these comments at the Palm
13 Springs session, but we called it into other
14 matters so the Chairman wanted me to 1) apologize
15 that we weren't in Palm Springs to give you our
16 preliminary reviews; and 2) to make a presentation
17 of Rincon's comments here today. [Reading from a
18 written statement.]

19 Thank you for the opportunity to
20 address the NIGC on the important issues
21 identified in group one. On behalf of the Rincon
22 band, I am submitting a preliminary written
23 statement. I say "preliminary" because this
24 session is only the third of seven sessions
25 scheduled for group one. Rincon will observe and

1 listen to the consultation sessions. The band
2 anticipates drafts to be circulated before the end
3 of the group one consultations, and will likely
4 submit supplement comments at that time.

5 I will focus on Rincon's comments
6 today on two issues. However, the band and those
7 two issues are the Class III MICS and facility
8 licenses. However, the band expresses support for
9 the NIGC draft changes to 25 CFR, part 514
10 regarding fees. The draft is sound and
11 appropriately addresses the comments submitted by
12 the Tribes in the initial NOI stage. Depending on
13 how the NIGC addresses the Class III MICS
14 provisions, there may be need to add additional
15 language regarding assessment of fees for Tribes
16 looking to the NIGC to maintain Class III MICS
17 and/or audit Class III MICS, and I'll comment on
18 that more in a moment.

19 The band apologizes in advance for
20 some redundancy between the comments today and the
21 comments submitted in response to the NOI. But
22 the band believes many of these points deserve
23 being repeated many times as this process evolves.

24 So the first topic Placing the
25 Class III MICS and Facility License Regulations in

1 Their Proper Historical and Legal Contests. First
2 I'd like to talk about the Hope Commission.
3 Someone, Keller George told me that Tony Hope was
4 here today? First time I've seen him in probably
5 18 years. The Tribe had their issues with
6 original NIGC Chairman Anthony Hope. He was
7 certainly hostile to the Tribes, and the present
8 opportunity to revisit his regulations promulgated
9 by the Hope Commission is welcome and overdue.
10 Still Anthony Hope got one key principle correct,
11 which all subsequent commissions except the Montao
12 Commission, got wrong, and which the Hogan
13 Commission got seriously wrong. The regulation of
14 Class III gaming is to be governed by the compact
15 agreements reached between tribal and state
16 governments at the negotiation table. It is not
17 the province of the NIGC.

18 The hostility of the Hope
19 Commission should not be forgotten. The work done
20 here will empower and/or limit the work of future
21 commissions. Future elections could very well
22 result in the future administrations that are
23 outright hostile to Indian interests generally,
24 and to Indian gaming interests specifically. This
25 Commission should be cognizant of that fact as it

1 proceeds with this process.

2 The Hogan Commissions took a
3 product of the NIGA/NCAI Task Force which was
4 inspired by the Tribe's self-governance desire to
5 pursue the goal of self-regulation, and to share
6 resources and information amongst Tribes. The
7 Hogan Commission converted that into NIGC
8 mandatory regulations with the ever present threat
9 of severe enforcement action. Tribes warned Mr.
10 Hogan at the time that he was exceeding his
11 statutory authority. He did it anyway. While
12 imploring with Tribes to refrain from suing over
13 the regulations, he stated that this would be the
14 outer boundaries of NIGC's encroachment into Class
15 III gaming. CRIT sued the NIGC, and Rincon
16 weighed in as amicus beginning with the initial
17 decision of the ALJ, along with a growing number
18 of Tribes at the District Court. And ultimately
19 NIGA weighed in before the D. C. Appeals Court.
20 It was my honor to work with Frank Lawrence of
21 Holland and Knight firm in authoring the NIGA
22 amicus brief.

23 At every level of the litigation,
24 the ALJ, the Federal District Court, and
25 ultimately the D. C. Court of Appeals concluded

1 that the IGRA was straightforward in defining the
2 parameters of the NIGC authority, and that did not
3 include regulation of Class III gaming. The Hogan
4 Commission was so frustrated with the bright line
5 drawn by the appeals court, it filed a motion for
6 reconsideration alleging the NIGC could still
7 assume that authority through approval of gaming
8 ordinances and incorporation into tribal state
9 compacts, and possibly other avenues. Motion for
10 reconsideration denied. Despite that clear
11 decision, the Hogan Commission's continued an
12 illegal agenda of circumventing the decisions and
13 direction of the federal courts. This includes
14 the present practice of promulgating Class III
15 MICS anyway, approving ordinances that fiat
16 regulatory authority to NIGC that is not based in
17 this statute, and using tribal fees paid to the
18 NIGC for unauthorized and improper purposes.

19 Hogan promised Tribes that his
20 intrusion into Class III gaming would end with the
21 Class III MICS only to take thereafter two
22 unsuccessful stabs at positioning the NIGC to be
23 the over Lord of tribal law regarding health and
24 public safety. Hogan's third effort succeeded
25 when he attached such requirements to the current

1 facility licensing regulation. NIGC is currently
2 positioned to compel Tribes to change their laws
3 to meet NIGC's unqualified and arbitrary
4 standards. These regulations go far beyond NIGC's
5 authority under IGRA, and far beyond the direction
6 and decisions of the federal courts.

7 Former Chairman Hogan dismissed the
8 Tribes' fears. He suggested that except in
9 extreme circumstances, the NIGC would not actually
10 use the self-appointed authority to compel Tribes
11 to adopt or amend laws in a long laundry list of
12 areas: Emergency preparedness (accidents,
13 injuries, and medical emergencies, natural and
14 other disasters, fire and security threats);
15 construction, maintenance and operations; drinking
16 water and food; hazardous materials; and
17 sanitation and waste disposal. That sounds
18 hauntingly familiar to his statements that NIGC
19 would not aggressively enforce the Class III MICS.
20 Such a position is scary in that he was not
21 contemplating the potential abuses of future
22 commissions. IGRA allows the NIGC to require
23 facility licenses; IGRA does not empower the NIGC
24 to impose the govern -- its govern -- the NIGC --
25 the IGRA does not empower the NIGC to impose its

1 governance preferences upon Tribes.

2 Let's talk about the Class III
3 MICS. How does the NIGC get out of this mess
4 created by the Hogan Commissions? Class III MICS
5 took on a life of their own. The NIGC approved
6 ordinances expressly empowering the NIGC to
7 promulgate and enforce them. Several compacts
8 refer to the NIGC MICS as a baseline for compact
9 standards. The Rincon band even gave testimony
10 years ago suggesting a level of tolerance to NIGC
11 continuing down this road so long as it was clear
12 that the MICS were purely advisory, and that NIGC
13 staff be limited to providing technical
14 assistance.

15 In hindsight, that testimony was
16 wrong. In hindsight, it is clear that the Hogan
17 Commissions had a deliberate and zealous agenda to
18 circumvent and riddle the bright lines drawn by
19 IGRA, and the federal courts, such that the NIGC
20 is the over Lord of Class III MICS.

21 This Commission should run away
22 from the agenda of the Hogan Commissions and stay
23 clearly within the parameters of the authority set
24 by Congress and the courts. Those states and
25 Tribes that embraced NIGC Class III MICS in

1 compacts and ordinances did so at their own peril.
2 I often hear that the NIGC had the authority to
3 promulgate the MICS until it lost in the D. C.
4 Circuit. That is pure nonsense.

5 The court ruled correctly; NIGC
6 never had such authority. Every tribal regulator
7 and every tribal attorney who followed the issue
8 knew that NIGC's legal position ranged from weak
9 to totally devoid of merit.

10 So where should the NIGC go from
11 here? Rincon proposes that NIGC establish a clear
12 late -- a clear date to withdraw Class III MICS
13 from its body of regulations, notices and
14 bulletins. The NIGC should provide those Tribes
15 with defective ordinances or compacts an
16 opportunity to take correcting measures as a
17 matter of exercising tribal self-governance,
18 and/or through government-to-government compact
19 amendment negotiations.

20 Rincon rejects the idea that NIGC
21 must step in to fill an alleged void in
22 regulation. Rincon poses this question: If the
23 NIGC is to take on the role as chief watchdog of
24 the regulation of Class III gaming, then why do
25 Tribes need to negotiate compacts with states?

1 Congress intended that the regulation of the games
2 be the very crux of compact negotiations. That
3 states have embraced the Seminole decision and
4 used that leverage to extract gaming taxes and
5 unreasonable encroachment on tribal
6 self-governance instead of seriously negotiating
7 the manner in which Class III games should be
8 regulated does not justify NIGC to venture outside
9 of its statutory authority. If this Commission in
10 any way intends to follow its predecessors and go
11 to Congress with an agenda of amending IGRA to
12 empower the NIGC to regulate Class III games
13 and/or continue the practice of promulgating Class
14 III MICS, and to assume oversight authority by
15 means of approving tribal gaming ordinances,
16 fiating such authority to the NIGC, it should be
17 at the same time advocate for removing states from
18 the process all together. Perhaps that is
19 unrealistic or unreasonable, but no more than
20 subjecting tribes to the heavy paternalistic
21 oversight by both the state compact and the NIGC,
22 which in many cases conflict with one another.

23 Despite the NOI process, we heard a
24 small but vocal group of Tribes insist they want
25 to see the Class III MICS continue in some form

1 because they made some deal in a compact or state
2 regulation. They made those agreements at their
3 own peril knowing the NIGC did not have such
4 authority, or at best, that the question was in
5 serious dispute. This Commission should not
6 perpetuate that problem. NIGC Class III MICS are
7 illegal and have always been illegal.

8 Additionally, we challenge the
9 allegation that some are at peril if the NIGC no
10 longer promulgates Class III MICS. A number of
11 tribal-state gaming compacts in North Dakota,
12 Arizona, Oklahoma, Wisconsin, and Florida referred
13 to Class III MICS. That being said, the reference
14 within those compacts is not impacted by whether
15 the NIGC continues Class III MICS on a prospective
16 basis. Many of those compacts only refer to MICS
17 as they existed on a date certain. If the Class
18 III MICS were repealed today, they still would
19 have existed on a date certain. Thus, is the
20 class... That baseline would still exist. Other
21 compacts refer to compliance with Class III MICS
22 that are found in NIGC regulations (without a
23 reference to a date). Rincon's position is that
24 even if the Class III MICS were to be repealed, it
25 would not result in a violation of any of those

1 "incorporation by reference" compacts unless those
2 individual compacts require Class III MICS to be
3 continued to be published on a forward going
4 basis. We are not aware of any compact which has
5 such a publication requirement.

6 Beyond a short phase out period,
7 the Rincon band strongly opposes the perpetuation
8 of illegal MICS simply because it conveniences
9 some Tribes that have built a house of cards on a
10 faulty foundation. Those Tribes can transition
11 into some other type of default MICS through a
12 regulatory -- regulators organization, or amend
13 their compacts, or defer to some other industry
14 entity. Indeed, the NIGA/NCAI task force subgroup
15 of regulators which authored the initial Class III
16 MICS could be revived. Perhaps more
17 appropriately, the National Tribal Gaming
18 Commissioners and Regulators could assume the
19 task. Indeed, it would be a logical extension of
20 the excellent services provided to date. Bottom
21 line is that there are other ways to skin that cat
22 rather than have the NIGC continue to violate the
23 clear orders of the federal courts.

24 Calling the Class III MICS
25 "guidelines" rather than "regulations" does not

1 work either. NIGC has a limited budget on fees
2 paid by the Tribes. The Rincon band certainly
3 objects in the strongest terms to having its fees
4 be used by the NIGC for an improper and illegal
5 purpose that former Chairman Hogan should never
6 have pursued to begin with. We hesitate to
7 suggest any action that perpetuates the illegal
8 Class III MICS. But if the NIGC does capitulate
9 to the vocal minority of Tribes insisting on NIGC
10 Class III MICS, then the fee structure should be
11 changed to make sure that only those Tribes
12 advocating for Class III MICS pay for every dime
13 from promulgation to auditing to enforcement.

14 Now let's talk about facility
15 licenses. Amend now to jettison the paternalistic
16 intrusions into tribal self-governance. The
17 Rincon band has no quarrel in requiring each
18 gaming facility to be licensed. Rincon has a
19 serious quarrel with the NIGC second guessing the
20 Tribe's governmental decisions regarding the form
21 and substance of tribal law.

22 Unlike the Class III MICS, this
23 regulation has yet to take on a life of its own
24 such that merely repealing these provisions of
25 part 559 is the best and quickest way to correct

1 this defect. Fundamentally, the Rincon band
2 disagrees with the expansive view of the NIGC's
3 regulatory and enforcement jurisdiction reflected
4 in the existing rule. In enacting the IGRA,
5 Congress vested the NIGC with limited well-defined
6 regulatory jurisdiction over Indian gaming. The
7 current rule improperly vaults the NIGC into the
8 exercise of sweeping regulatory authority over
9 tribal governance as opposed to the limited
10 well-defined role of regulating tribal gaming
11 intended by Congress. In enacting IGRA, Congress
12 never intended to exalt federal Agency
13 over-regulation above the tribal
14 self-determination, a notion that lies at the core
15 of the current rule.

16 The primary purpose of IGRA is to
17 "provide a statutory basis for the operation of
18 gaming by Indian Tribes as a means of promoting
19 tribal economic development, self-sufficiency, and
20 strong tribal governments." Congress went to
21 great lengths to respectfully allocate regulatory
22 authority between Tribes, the NIGC, and states.
23 IGRA clearly states that a "separate license
24 issued by the Indian nation, Indian Tribes shall
25 be required for each place, facility, or location

1 on Indian lands." The rule effectively strips
2 Tribes of their express facility licensing
3 authority by authorizing the NIGC to force a Tribe
4 to change tribal law. While we agree that IGRA is
5 quite clear that the Tribe must issue a license
6 for each facility, and that the NIGC has the
7 authority to review the authorizing tribal
8 ordinance, the NIGC does not have authority to
9 force Tribes to change tribal law.

10 The rule risks the creation of a
11 new bureaucracy within the NIGC to evaluate
12 emergency preparedness -- worth repeating,
13 emergency preparedness, accidents, injuries, and
14 medical emergencies, natural and other disasters,
15 fire and security threats; construction,
16 maintenance and operations; drinking water and
17 food; hazardous materials; and sanitation and
18 waste disposal. Tribal governments as with any
19 government exist to protect their citizens from
20 harm. In emergencies, Indian Tribes already work
21 with FEMA with regard to facility construction.
22 Tribes work with licensed inspectors to ensure
23 that the work conforms to tribal building codes.

24 To ensure safe drinking water and
25 Sanitation and waste disposal, Indian Tribes work

1 with the EPA under the Safe Drinking Water Act,
2 and the Resource Conservation and Recovery Act
3 among other laws. The FDA provides oversight of
4 food and beverage safety. Finally, Tribes work
5 with the Departments of Justice and Interior as
6 well as state and local enforcement and other
7 agencies to ensure adequate protection for public
8 health and safety. Any additional requirements
9 unduly burden tribal governments and directly
10 conflicts with IGRA's primary purposes of
11 promoting tribal economic development,
12 self-sufficiency, and strong tribal governments.

13 A close reading of the explanation
14 accompanying the Federal Registered Notice of the
15 proposed rule reveals with the NIGC expected.
16 That the NIGC expects Tribes to enact positive
17 laws if the NIGC determines the laws documented by
18 the Tribe are to be insufficient. And I quote:

19 One-time costs may be incurred by
20 tribal governments drafting and adopting laws if
21 there are none in the identified areas...
22 Potentially a few Tribes will have to make
23 significant changes to their infrastructure before
24 a certificate of compliance can be issued.

25 That's the NIGC's own words in the

1 Federal Register.

2 In addition to forcing Tribes to
3 enact environmental and public health and safety
4 laws to its liking, the rule gives the NIGC
5 seemingly unbridled discretion to require Tribes
6 to document ongoing compliance with these laws.
7 Section 539.7, a Tribe shall provide Indians lands
8 or environmental and public health and safety
9 documentation that the Chairman may in his or her
10 discretion request as needed.

11 Congress did not bestow the NIGC
12 with the sweeping authority it asserts in the
13 current rule which includes authority to compel
14 Tribes to enact laws covering broad substantive
15 areas, and subsequently take severe enforcement
16 actions against Tribes for failing to comply with
17 these NIGC mandated laws. Congress intended the
18 NIGC to have a limited role in regulating tribal
19 gaming, not the sweeping role in regulating tribal
20 governance as asserted in the current rule.

21 Congress expressly acknowledged the
22 tribal sovereignty doctrine in enacting the IGRA:
23 "The committee recognizes and affirms the
24 principle that by virtue of their original tribal
25 sovereignty, Tribes reserved certain rights when

1 entering into treaties with the United States, and
2 that today tribal governments retain all rights
3 that were not expressly relinquished." This is
4 the Senate Report from IGRA. Neither IGRA or its
5 legislative history mentions a Congressional
6 intent to abridge tribal sovereignty by besting
7 the NIGC with authority to require Tribes to
8 revise tribal law as deemed appropriate by the
9 NIGC. Indeeds, the NIGC advocated that it has no
10 such obligation in the litigation in the North
11 County Community Alliance, Inc. v Kempthorne,
12 where the court flatly rejected the plaintiff's
13 argument that the NIGC "had an ongoing obligation
14 to make formal findings as to whether the
15 construction and maintenance of the gaming
16 facility and the operation of that gaming facility
17 is conducted in a manner which adequately protects
18 the environment and the public health and safety."

19 Fortunately, the NIGC does not have
20 a track record of substituting the Tribe's
21 decisions on self-governance with its own. Rincon
22 respects the professionalism and expertise of the
23 NIGC staff. But with all due respect, that
24 expertise is not in the areas set out by the
25 current facility licensing rule. The Tribe's

1 fears regarding the facility licensing rule have
2 not come to fruition. At least not yet. The rule
3 is the hook on which a future NIGC can hang its
4 hat to massively expand its bureaucracy to add
5 staff of supposed experts to second guess tribal
6 governments. A future NIGC may not have the
7 respect for tribal self-governance exercised by
8 the current NIGC. The restraint shown by this
9 Commission, and even the Hogan Commissions, is the
10 only reason that the current facility licensing
11 rule has not yet been the subject of litigation.
12 If the rule is not changed, it will suffer the
13 same fate as the Class III MICS suffered in the
14 CRIT litigation. You cannot guarantee that future
15 NIGC's will exercise the same restraint, however.
16 Accordingly, you should act now to gut the current
17 rule of its paternalism.

18 Thank you for your consideration.

19 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
20 Thank you. I want to make two observations. One,
21 I appreciate very much the candor and the amount
22 of work that goes into formulating a response, a
23 very thoughtful response. We have seen it
24 throughout Indian country during this time, and
25 it's evident to your comments and it's clear in

1 your thoughts and what you put forth on behalf of
2 the Tribes. So I want to acknowledge that. The
3 other thing is I appreciate your time here today.
4 I've seen it in other areas of the country, and I
5 want to make sure that I say it publicly because
6 it is very different than the way the Commission
7 was conducting itself in the past.

8 Just because we're in a region
9 doesn't mean we're in a region of Tribes only in
10 that region. If you're in the area or you want to
11 travel to another area, come. This is not -- not
12 -- we don't do things one on one. You hit it
13 exactly on the head, Scott, when you said support
14 might be by many Tribes here have a lot going on.
15 Because it does formulate your thoughts, it does
16 formulate your responses. It does help you think
17 about things that are on a more global scale how
18 it might affect our Tribes. So I'm glad you're
19 here and thank you. Even though you weren't at
20 Palm Springs, I get you here and they didn't get
21 you in Palm Springs, so I'm -- I appreciate that.

22 You had a couple of things that I'm
23 going to go back to. I have some questions I want
24 to share with the larger group, and I want to
25 listen to whoever wants to bring comments to the

1 table.

2 BEVERLY PONCHO: I'm not a big fan
3 of regulations. I think it just makes everything
4 so much more complicated. The fees that the
5 casinos have to pay -- is it -- I didn't do my
6 homework. Our CFO does that. So the fees that we
7 submit to NIGC, could it be made simpler by just
8 going according to the Gross Revenues instead of
9 adding all these other things that's added to it,
10 like the pay outs, the losses and all this stuff
11 we have to submit; just have the CFO only adjust
12 our Gross Revenues, and submit the fee to NIGC.
13 Or is this something that has to be complicated
14 like you all have it?

15 LAEL ECHO-HAWK: Well, it's kind of
16 complicated because it's complicated. You know,
17 one of the things that we all sat through this fee
18 101 because I've never done the fees right. And
19 when you calculate the fee, you calculate it on
20 assessable gross gaming revenue. And how you
21 reach that number is currently based on the
22 formula that includes things like free play, match
23 play, like certain expenses, things that you can
24 deduct, and things that you have to include. And
25 you know, if the wager -- how much of the wager

1 has to be included when the player has a \$10 match
2 play at the table, and then what's the pay out if
3 you deduct -- want to deduct the \$10. So it's
4 sort of complicated because it's complicated.

5 The Agency perspective though has
6 been -- this is from the audit department. And
7 when we were doing our 101, is that if you're
8 playing with the casino's money, you shouldn't
9 have to. It's like match play. That's casino
10 money and you shouldn't have to pay your fees
11 based on the fact that you essentially gave a
12 player \$10 in match play or however. You should
13 be able to deduct that because that's your money.
14 Now, how you go about deducting that and how you
15 go about calculating the pay out is where it gets
16 complicated. And that's why the question comes up
17 from us do we need to define those better so that
18 it is less complicated and a little more clear?

19 BEVERLY PONCHO: Well, I'm a simple
20 person. I like simple answers. Who made these
21 rules? Was it NIGC? Is it an accounting
22 principle? Or where did it come from? And to me
23 the bottom line is Gross Profits is Gross; it
24 doesn't matter where it comes from. The bottom
25 line is the gross receipts. And if you just put

1 that, you don't have to add all these other
2 things. It just makes it so much more
3 complicated, and that's where all these
4 regulations come in. It seems like someone just
5 sits there because they have a job and they make
6 up these regulations because they have that, you
7 know. They want to keep their job, these
8 regulations. That's just like the federal
9 government. They just bring in regulations after
10 regulations which astound people. Just like in
11 nursing, you have to write all these things, you
12 know. You can't take care of patients. That's
13 how it is in the regulatory field. And I'm just
14 wondering if these things could be made more
15 simpler where you just tell the Tribe or the
16 gaming operation to figure out their gross profits
17 and submit the fee to you all, whatever the
18 percentage is, whichever percentage is agreed
19 upon.

20 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
21 Having sat through the class as well, and I'm not
22 an auditor, I'm a lawyer by trade, a lot of this
23 stems from the Tribe's request for us to define in
24 order to get those fees set at a fair amount. So
25 if we set it at -- of course gaming revenue

1 without any deductions, I think many Tribes would
2 be concerned about that kind of a move. But again
3 I'm going to defer to auditors. You do raise a
4 very good point, and it's one that this Commission
5 discusses all the time. The administration has
6 made clear, President Obama has made clear that in
7 agencies looking at the regulations, we are to be
8 mindful of inefficiencies, redundancies. We're
9 actually directed to look for innovative
10 approaches to regulations. And that's part and
11 parcel. Kind of goes back to the question that
12 was asked earlier by the Vice-Chairwoman, which
13 is, you know, you're looking at a lot. How do we
14 place priority? Part of our analysis is to be
15 innovative because many of our regulations haven't
16 been looked at. There are innovative ways for us
17 to do this. And so I appreciate your comment, and
18 we will take that back. And I think it needs to
19 be posed to our auditors. I think we need to
20 respond why is it complicated? The burden doesn't
21 fall on us. I mean, we come up with regulation.
22 The burden though as far as you're asking about
23 keeping people employed, it really keeps your
24 auditors employed, to be honest. But that's, you
25 know -- it's a fair question that needs to be

1 addressed absolutely.

2 ANGELA DENSON-VAUGHN: This is just
3 a comment I would like to make on behalf of the
4 Mississippi band of Choctaw Indians. It's just
5 that NIGC did have a stand with our Governor of
6 Mississippi, and we did open up our newest casino.
7 I hope that you all have an opportunity to stop
8 by. It's about a two-and-a-half hour drive from
9 here. Just hit 49 and 59, and that's it. It's
10 out in the boonies, but we're thankful for the
11 NIGC for standing up for the Tribe, for our Tribe,
12 and for all the other Tribes. I believe that you
13 all have done a tremendous job, and I want to
14 applaud for what you all did for us. Stand by our
15 internal controls, and so forth, to make it
16 happen. It's the Tribes that have to stay
17 together to unite, to make sure that we stay
18 strong in our sovereignty (inaudible). Thank you.

19 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
20 Thank you.

21 LAEL ECHO-HAWK: Scott, this
22 question is for you and for any of the other
23 people who have thought about this. In regard to
24 the facility license regulations, one of the
25 things that we've heard over and over is that,

1 well, we have a number of Tribes, particularly in
2 California, who have included in their ordinance,
3 compact and ordinances -- the -- basically
4 affirmatively giving the NIGC authority to come in
5 and enforce Class III regulations at their Tribe.
6 The NIGC has taken a position previously that this
7 then gives this sort of -- this -- since in the
8 ordinance because the NIGC is authorized by the
9 IGRA to enforce provisions of tribal ordinances
10 that then -- because it's included in their tribal
11 ordinance, that they now can be -- the Tribe says
12 it's in our tribal ordinance, NIGC gets to enforce
13 provisions of tribal ordinances. Then that
14 permission gives the NIGC the authority to do
15 this, even though CRIT says NIGC has no Class III
16 authority. So can you respond to that at all? I
17 know this is -- it's something that we've
18 discussed at the Agency level, whether it can be
19 done because of what IGRA says the Agency is
20 authorized to do it.

21 I know there's still debate
22 internally. There's debate externally. But I'd
23 like to hear your thoughts on that, and anyone
24 else that has a comment on that.

25 SCOTT CROWELL: Thanks. That's a

1 good question, and I think that there are at least
2 a couple of dozen ordinances that have been done
3 that way. First, I think that, you know, that was
4 one of the basics on which the NIGC asked the DC
5 circuit for reconsideration. Reconsideration was
6 denied. It was very clear in its statement that
7 no authority means no authority. And trying to
8 boot strap it through other means is the house of
9 cards that I referred to in the comment. I do
10 think as a legal basis you can use the ordinance
11 approval, or the ordinance enforcement provision
12 of the IGRA to fiat authority to the NIGC that
13 Congress did not otherwise provide the NIGC in its
14 original statutory mandate. And I think that's
15 where you'll have -- you would have a legal defect
16 in those in that providence was challenged in any
17 litigation. I mean, if you took the other view,
18 you could come with absurd hypotheticals in terms
19 of what a Tribe might put into a tribal ordinance,
20 and say well, now that we've approved the
21 ordinance, the NIGC has no power to do all of
22 these things that Congress could, would otherwise
23 never have envisioned NIGC to do. I mean, use the
24 facility. If you take the same logic that Phil
25 used here and you play out that someone sues over

1 the existing facility licensing regulation, and
2 you get the same result where the court says, you
3 know, just like the court did in the CRIT
4 decision, it says show me in the statute where you
5 have the authority to second guess a Tribe's
6 governance decision on all these areas of tribal
7 law. So Phil says well gee, you know, this is a
8 void and we need to fill it, so we're going to
9 encourage you to start submitting ordinances that
10 give us that authority. Well then, suddenly we
11 have a NIGC now that is the enforcer of a
12 delegation made by the Tribe back to the NIGC to
13 start guessing all of these, all these tribal
14 government decisions.

15 Actually it's easy to take that and
16 extrapolate it out to the old Army Commissioner
17 days where they're just going to make all of the
18 decisions for you. Bottom line is you can't fiat
19 and create authority out of thin air that you
20 don't have in the statute. And by saying, well,
21 we're going to do it by approving the ordinance so
22 that the Tribe is giving the NIGC authority that
23 it otherwise does not have, it's a faulty premise
24 and I think, you know, that if you continue down
25 that path you ultimately get a court decision

1 saying you don't have it. And all those Tribes
2 that say, you know, well, we really want to do
3 that, and I understand some of the motivation.
4 Like I know that the people in this room probably
5 aren't familiar with the California circumstance,
6 but... I know some of the California Tribes did
7 it specifically to avoid the state doing it under
8 the Compact.

9 Well, the first time you take a
10 harsh enforcement action against one of those
11 Tribes that did that, I see you being the
12 defendant in that lawsuit brought by the Tribe
13 saying yeah, we did that. But you should never
14 have approved it to begin with.

15 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
16 There are several people, several lawyers running
17 around, and I don't know if you want to offer in
18 or weigh in. We certainly welcome your comments
19 if you're prepared to offer them. If not, we
20 understand that as well.

21 ELLIOTT MILHOLLIN: I'd like to add
22 one comment on facility licensing, and it's an
23 observation, I guess, not a question. The
24 statutory requirement is simply that the Tribe
25 adopts an ordinance that ensures that the facility

1 is constructed, operated and maintained in a
2 manner that protects the environment, public
3 health, and safety. There are a number of
4 different ways of doing that. There's nothing --
5 there's no positive requirement in the statute
6 which requires the Tribe to adopt certain
7 environmental, public health, and safety issues.
8 Many Tribes in the construction process, for
9 example, will do contracting wherein their
10 contracts they require the developer to comply
11 with international fire codes, international
12 building codes, and all of that. That is
13 adequately insuring for protection of
14 environmental, public health and safety standards
15 during the construction of a facility.

16 Now on maintenance. An operation
17 can ensure Tribes will have certain standards and
18 operation standards that they will comply with.
19 However, those standards may be very different,
20 and particular to a facility itself rather than
21 their environmental laws which apply throughout
22 their territories. And so this regulation which
23 requires the Tribe to submit all its laws to the
24 NIGC for review, and defacto approval goes, is a
25 classic example of Agency overreaching. So that's

1 my observation.

2 My question is with regards to some
3 of these other standards, there's a proposal where
4 the question has been posed to Tribes whether the
5 regulation should be rescinded. And my question
6 is why is that not a question that has been asked
7 with regard to facility licensing regulations?

8 LAEL ECHO-HAWK: I think that
9 question has a lot to do with the process. It is
10 -- that is part of the comments that we heard back
11 from Tribes. We do have a very real issue with
12 facility license regulation in terms of land
13 determination. That right now is one of the big
14 concerns. I know -- I think from the General
15 Counsel's perspective, one good reason for keeping
16 at least, you know -- we're doing that part, but
17 we're maintaining the requirement that the Agency
18 make that Indian land determination. And you
19 know, I know there's been some discussion about
20 the 120 days. That's one of the things that seems
21 sort of -- if you look at the comments received on
22 the facility licensing proposed rule and final
23 rule, a lot of Tribes were like what is this
24 120-day business?

25 Sometimes we, you know -- the

1 Agency needs to take some time because we do work
2 with the Department of the Interior in making
3 those Indian land determinations. But if you look,
4 say, at like a large land-based Tribe, for example
5 Navajo, if they were, you know, making that
6 determination and saying yes, this is Indian land
7 and it's Indian land eligible for gaming, it's a
8 fairly simple determination to make if it's right
9 in the middle of their reservation. So there are
10 nuances when it comes to that. But that is one of
11 the reasons why that question (inaudible) concern
12 of the Agency that we have a mechanism to address
13 making that determination on whether the land is
14 eligible for gaming.

15 VICE-CHAIRWOMAN STEFFANIE COCHRAN:

16 One of the questions I've -- the Tribes can
17 certainly comment. Actually I welcome the
18 comments -- is what would be sufficient to satisfy
19 2710 little b two. I hope I have the cite right
20 -- what would be the minimum that would be
21 sufficient for submission requirements. And just
22 because we didn't ask the question doesn't mean
23 that we're not interested in feedback. Certainly
24 it's a legitimate question from the Tribes. Maybe
25 we could tie it into some discussion back into

1 what was required for 2710 b 2 (inaudible) get an
2 answer and be responsive to it.

3 JUDY SHAPIRO: My name is Judy
4 Shapiro. I'm here on -- these comments are not on
5 behalf of my tribal clients because they do not
6 send me here to make (inaudible) comments. But in
7 response to the Vice-Chairwoman's question of what
8 do you think about the issue of the Commission's
9 authority in CRIT, and I also think related to the
10 facility licensing. I think you have to keep in
11 mind that the NIGC is a creature of Congress. It
12 has the power only that Congress gave it in the
13 statute, and they cannot extend beyond that
14 statute. We are actually discussing backstage
15 there -- well, can the Tribe delegate it? Well,
16 it can't. It really can't. The Tribe -- the
17 question of tribal -- the regulation of Class III
18 gaming is established by Congress. There is a
19 reserve sovereign power of the Tribe. There is a
20 congressionally legislated requirement to let the
21 states in insofar as the states negotiate that.
22 And there is no role for the Commission. So as
23 long as there is no role for the Commission and
24 it's the law that says there is no role for the
25 Commission, I think that's the end of the story.

1 Whether the Commission can maintain a resource in
2 terms of technical training may be another
3 question. But I'm inclined to agree that once you
4 start saying well, we're going to have regulations
5 and they're only for guidance, once you call it a
6 regulation, it takes on a different life. It
7 takes on a different status. And you can't really
8 have something which calls itself a regulation
9 from a regulatory Agency and that the Agency has
10 clearly no power to enforcement. And so whether
11 you call it a regulation, whether you call it
12 guidance, it's going to take on a life that
13 someone is going to ask the Agency to do something
14 with, and it can't. And that makes the Agency
15 look silly. Probably not a good thing. Probably
16 not a good thing because to the extent that the
17 NIGC exists, and that Congress has created that
18 role, it needs to look like it's done everything
19 that's for real and not a pretend regulation, and
20 not an advisory regulation, and none of those
21 things that really can be done much more
22 effectively by trainers, by the tribal gaming
23 regulators who exist for exactly that purpose.
24 And as Scott points out, the original NIGC MICS
25 were adopted wholesale from the Tribal Gaming Task

1 Force. These are the guys who knew what they were
2 doing and put it together, and did it so that the
3 Tribes would have that resource. And there is
4 that resource for the tribes, and it doesn't need
5 the Commission to take on something that it can't
6 do by law. So that's item one.

7 As to what should the Commission be
8 doing about protecting health and safety, it
9 should perhaps look and say, well, we have this
10 role. We are oversight -- we are an oversight
11 Agency. Please tell us that you're doing it.
12 Show us that you're doing it. And to the extent
13 that you show us that you're doing it, it's not
14 our business to know how many times each week you
15 check water quality, how many times a week you
16 check the status of the fire stations and the
17 extinguishers. We need to know that you do it.
18 That's our responsibility as an Agency, to know
19 that you do it. And if you do it, that's the end
20 of our job. If someone points out a failing, if
21 someone says hey, this Tribe says that it has a
22 fire station and it really doesn't, then it's your
23 business to investigate. But to the extent that
24 the Tribe has undertaken to protect its people, to
25 protect its patrons, and to do the job that it's

1 required to do under its own sovereignty, step
2 aside. And I don't think you need to regulate
3 that. I don't think you need to be looking beyond
4 that. And that's my comment.

5 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
6 Thank you, Judy.

7 ELLIOTT MILHOLLIN: Let me just
8 clarify like Judy did that my observations and my
9 question were my own.

10 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
11 Thank you.

12 SCOTT CROWELL: I suppose I
13 probably need to make the same caveat for my
14 response.

15 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
16 Please identify your name.

17 SCOTT CROWELL: Again, this is
18 Scott Crowell. Today I'm here on behalf of
19 Rincon, but you know, we've discussed these
20 issues, you know, with great detail with all of
21 our tribal government, the clients that we
22 represent. And so I think that this most likely
23 does reflect their views, especially with the
24 facility licensing issue. And the answer to your
25 question, you know, I think that requiring a Tribe

1 to certify that it has taken measures to
2 adequately protect the public health and safety as
3 part of a facility licensing requirement would be
4 fine. But as Judy suggests, that you know -- you
5 know, we've had certification there should be a
6 strong presumption that the certification is made
7 in good faith, and on a reasonable basis. If
8 there's going to be enforcement action, you know,
9 based on against the Tribe for not adequately
10 protecting the public health and safety, I think
11 it should be a, you know, a burden upon the NIGC
12 to establish that that certification was made in
13 bad faith or that there had been material changes
14 in circumstances that have created a problem. You
15 know, I gave the laundry list in my statement for
16 a number of reasons. My laundry list in the
17 statement was only referring, you know, to other
18 federal Agencies that we deal with on these very
19 same issues. I don't know of a compact since the
20 original Michigan compacts that doesn't have some
21 type of provision in the compact as it relates --
22 as it relates to Class III facilities or
23 commingled Class II and Class III facilities where
24 those provisions, you know, are also governed by a
25 compact. If, you know -- if you -- and there's

1 examples out there, you know. I mean, if there's
2 a Tribe in southern California to where its waste
3 water is spilling over the bank of its treatment
4 plant and down, down the ravine, you know, you're
5 going to know about it. Nobody is going to object
6 to your stepping in and saying hey, we need to
7 work with you to get this problem fixed. But that
8 is a far different genre of -- of relationship
9 between the NIGC and Tribes as one as suggested by
10 Chairman, former Chairman Hogan in putting out
11 these facility regulations which is -- is you have
12 to do this by means of tribal law, provide us
13 copies of all those tribal laws, and we will
14 second guess that. Now I guess Phil, you know,
15 all the credit in the world that he -- I think he
16 was sincere saying I'm only going to assert our
17 authority in the most egregious circumstances.
18 But you know, I've -- and I'm thrilled now that,
19 you know, we have, you know, you know -- and NIGC
20 that's at least listening to us.

21 But, but you know, I've been at
22 this now since the passage of the Act. I was
23 there when Tony Hope was sworn in as the first,
24 the first Chairman. You know, you can't
25 promulgate these regulations from the premise of

1 how would I, Steffani Cochran, or how would I
2 Tracie Stevens, or how would I Dan Little, you
3 know, implement and interpret them. You have to
4 promulgate these regulations with a -- and ask
5 yourself, you know, what would a very hostile
6 Chairman and a very hostile Commission do with
7 these regulations if it inherits the position in
8 the future?

9 VICE-CHAIRWOMAN STEFFANIE COCHRAN:

10 Thank you. I know it's just now after noon, and
11 I'm wondering because it's a smaller group this
12 morning, if there were other comments, if you want
13 to try to wrap it up for the day, or if you want
14 to adjourn for lunch and come back. If you have
15 other things you need to accomplish today, I'm
16 certainly willing to go along with the group's
17 perspective (inaudible).

18 JULIE WILKERSON: I just wanted to
19 say, reiterate what chairperson Bryan said. The
20 Jena band will be submitting some written
21 comments. I didn't come prepared as well as I
22 usually like to be, or hope to be, because I'm
23 happy to say this lady here is just grinning from
24 ear to ear beside me because we will be legal
25 submitting some documents today that are -- we

1 have documents. They are loan documents for the
2 construction of the facility. So the facility
3 license does affect us greatly having been going
4 through loan documents. And one of the things
5 that we've been -- one of the real concerns for
6 the lenders is permitting, and the licenses
7 required and getting there. And it's been several
8 months of diligence trying to give a feeling of
9 comfort, a warm, fuzzy feeling for that, and
10 concrete evidence of our process and permits.
11 Especially waste water treatment seems to be one
12 of the ones that they really, really hone in on.
13 But hi, Michael. I didn't see you sitting there.

14 MICHAEL HOENIG: Hello.

15 JULIE WILKERSON: He knows about
16 this. But we will be submitting, because we're --
17 in looking at some of our covenants and
18 agreements. And if it's in default we could side
19 step and step in something not realizing exactly
20 what we've done wrong, and trigger some things in
21 our lending document. So we definitely -- from
22 just being very recently in discussions with the
23 lesser on the loans are things that we're
24 initially looking at that can create some problems
25 there too. That's just a comment from our recent

1 working group trying to get a facility opened up.
2 We're happy, Cindy. We're very happy.

3 CINDY ALTIMUS: If you build it, I
4 will come.

5 JULIE WILKERSON: You've been
6 telling us that. And I go back several years and
7 appreciate the Poarch Creek band because they've
8 been, one, very successful. I saw one of their
9 first operations and was fortunate to watch
10 fireworks with the Chairwoman at their grand
11 opening. And I've been several times. So I want
12 to talk to you about picking your brain again
13 soon. And thank you for the NIGC because they
14 have been very responsive when we've called and
15 had questions, and for their assistance. I know
16 Elaine is elated to hear that we'll be. She's
17 been kind of waiting on these, I believe. So
18 thank you.

19 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
20 You're very welcome. The written comments are
21 really crucial, especially in light of what's
22 happened with our recorder. We think we got our
23 recording, but the written comment is becoming
24 more important to us so that we can get something
25 out. So if you have written comments, would you

1 please submit them?

2 In this particular case, they take
3 on even more meaning to help us create a public
4 record. We'll do our best to get this
5 transcribed, but I have no idea how this is going
6 to turn out. So all the best technology in the
7 world, but it doesn't help when your Court
8 Reporter doesn't show up. Anything else?

9 STEPHANIE BRYAN: I would just like
10 to say once again thank you all. Especially for
11 being down south, it's been our pleasure. But of
12 course, we will be at all consultations because I
13 think when you add group three, actually group two
14 and three, we will need to be at those
15 consultations. Once again, thank you to the
16 Commissioners and the staff for the job that
17 you're doing on behalf of Indian country.

18 VICE-CHAIRWOMAN STEFFANIE COCHRAN:
19 You're very welcome, Chairwoman. Thank you. And
20 we understand your time and your resources are
21 limited (inaudible). One of the reasons when we
22 go out now -- oh well, who is coming? It will be
23 probably one Commissioner at each consultation
24 because it just doesn't make any sense to send
25 three of us across the country to 33 groups. So

1 you get one of us. If that's how you want to pick
2 your attendance, that's fine too. But we're
3 mindful of resources. We are absolutely mindful
4 of resources. And as you see, I have very limited
5 staff with me as well. We're trying to really
6 just bring what we need to get through the
7 meeting. If it means we fall, we fall. That's
8 okay. I'm not adverse to saying I wish we had an
9 auditor here today, but we don't. But I'll get
10 you an answer. That's law school 101. I'll get
11 back to you. Anything else? Well, I will close
12 then.

13 I just want to thank you for your
14 time, your attention. I know we got tribal
15 leaders here (inaudible) lawyers. Teri, thank you
16 for coming. I have a tremendous amount of respect
17 for the former Commissioners, and I always welcome
18 the opportunity to have you in the audience
19 because I know you got a lot of history to offer.
20 And so thank you for coming. Safe travels. My
21 greatest wishes, and I look forward to seeing
22 everyone again soon. Thank you.

23

24

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