



Miami Tribe of Oklahoma

P.O. Box 1326-Miami, Oklahoma 74355

Ph: 918-542-1445 Fax: 918-542-7260



The Honorable Tracie L. Stevens, Chairwoman
The Honorable Daniel J. Little, Associate Commissioner
National Indian Gaming Commission
1441 L. Street N.W., Suite 9100
Washington D.C. 20005

Via e-mail to
reg.review@nigc.gov

**RE: Comments on “one touch bingo” system classification. 78 Fed Reg. 37998
(June 25, 2013)**

Dear Chairwoman Stevens and Commissioner Little:

Thank you for the opportunity to provide comments on the Commission’s proposed reinterpretation of the classification of certain server-based electronic bingo games commonly referred to as “one touch bingo”. 78 Fed. Reg. 37998. We applaud the Commission’s willingness to address this important issue and we strongly support the Commission’s proposed reinterpretation.

We also applaud the Commission’s approach; its publication of the proposed interpretation and its use of the consultation process to develop a full and complete administrative record. The conclusions ultimately reached by the Commission as a result of this process will, for the first time, have general application to all gaming operations in Indian Country.

While the Commission characterizes this process as a “reinterpretation” of the one touch bingo issue, we submit that this constitutes the first time the Commission has issued a formal interpretation regarding the proper classification of one touch bingo that is applicable to all gaming tribes. In 2008, the former NIGC Chairman issued a decision disapproving a Gaming Ordinance submitted by the Metlakatla Indian Community in which he concluded that the use of an auto-daub (one touch) feature on an electronic aid to bingo would convert a Class II bingo game to a Class III facsimile of an electronic game of chance. The former Chairman’s decision was issued in the context of an Ordinance review process, the effect of which is circumscribed by 25 U.S.C. §2710 (B)(1) & (2), and upon an agency record that was limited both in scope and to the particular ordinance under review.

Moreover, the Commission’s one touch interpretation constitutes the first time that this policy determination will have been made in a manner that is consistent with the

Administration's Tribal Consultation Order, Executive Order 13175 (Fed. Reg. Vol. 74, No. 215,) in which President Clinton ordered all federal agencies to adhere to certain criteria when formulating and implementing policies that have tribal implications. Section 3(c) of the Executive Order specifically provides:

When undertaking to formulate and implement policies that have tribal implications, agencies shall:

1. encourage Indian tribes to develop their own policies to achieve program objectives;
2. where possible, defer to Indian tribes to establish standards; and
3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

The classification of one touch bingo is exactly the type of policy question that should be addressed through the Tribal Consultation Policy. It is unquestionably a "policy that has tribal implications" in that it "refers to regulations, legislative comments or proposed legislation, and *other policy statements or actions that have substantial direct effects on one or more Indian tribes*, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes." EO 13175, section 1 (Emphasis added). The collaboration inherent in the consultation process will inform the Commission's decision and will result in the development of a full and complete agency record that will permit the Commission to make a fully-informed policy decision on the classification of one touch bingo that can appropriately have general applicability to all gaming tribes.

The one touch bingo issue has a substantial direct effect on the Miami Tribe of Oklahoma (MTOK). Class II bingo systems are an integral part of the MTOK's gaming operation, comprising the overwhelming majority of the games offered at both of the Tribe's gaming facilities, and are vital to our tribal economy. Success in a highly competitive gaming market is dependent on our ability to offer Class II games that embrace modern technology and meet player demands. Class II gaming systems that employ the one touch feature are examples of such modern technology. Electronic bingo devices are used in non-Indian (typically charitable) bingo games across the country and most utilize an "auto daub" or one touch feature. The feature has become, for the most part, commonplace in electronic bingo systems. This technology has developed and expanded outside Indian country despite many state bingo statutes containing language comparable to IGRA; language that requires a player to "cover" the numbers on a bingo card as similarly numbered objects are drawn. State regulatory agencies recognize that the use of a one touch feature does not change the fundamental characteristics of the game of bingo, nor render an electronic bingo device a facsimile of a game of chance or a