



October 24, 2007

Sen. Byron Dorgan, Chairman
Sen. Lisa Murkowski, Vice Chairman
Senate Committee on Indian Affairs
838 Hart Office Building
Washington DC 20510

Re: Proposed regulations

Dear Senators Dorgan and Murkowski:

Senator Dorgan will recall that at your Committee's hearing held on April 27th, 2005, we discussed the growing need to clarify the distinction between the technological aids tribes may use to play Class II games such as bingo, which tribes may offer without compacts with their states, from that equipment used for the play of Class III games, such as slot machines, which may only be played when there is an approved tribal-state. Today after a great deal of writing, talking and listening, as is detailed below, I am pleased to report that the National Indian Gaming Commission (NIGC) has taken a big step toward addressing that concern.

I enclose for your review and consideration four related proposed rules that the NIGC published today in the *Federal Register*. The rules address various aspects of Class II games under the Indian Gaming Regulatory Act (IGRA). Specifically, the NIGC has proposed:

- *Classification standards* to distinguish between bingo, pull tabs and related games played with technologic aids, which IGRA makes Class II, and electronic facsimiles of those same games, which IGRA makes Class III;
- *A modified definition of "electronic facsimile"* to complement the Classification standards;
- *Technical standards* to ensure the integrity and security Class II games and equipment; and
- *Minimum internal control standards* for the operation of Class II games on the gaming floor.

It has been my belief since I became Chairman of the NIGC in December 2002 that technology has blurred the line between Class II games played with technologic aids and

Class III facsimiles. It has been my belief as well that the absence of a clear distinction between Class II and Class III gaming poses a danger to Indian gaming, whether in the form of litigation by the Department of Justice or in the form of more states legalizing casino gambling and competing directly with the tribes.

One of the great challenges of my tenure at the NIGC has been to draft regulations that will draw a bright line between Class II gaming played with technologic aids and Class III facsimiles. We began in early 2004 by establishing a tribal advisory committee to assist us in the development of these regulations. Committee meetings were often contentious, but always instructive and productive.

In mid-2006, we finally went to press. On May 25, 2006, we sent our classification regulations to the *Federal Register* for publication as a proposed rule, and we published our technical standards as a proposed rule on August 11, 2006.

We consulted extensively with Indian tribes about these standards. We consulted in person, on a government-to-government basis, with 69 tribes represented by 362 tribal leaders and representatives in five cities around the nation. In addition to the above, the NIGC has engaged in general consultations with 74 tribes in 2006 and 80 tribes thus far in 2007. Class II was an issue in virtually all of these general consultations. A detailed list of the dates and locations of, and the participants in, these consultations is attached to this letter.

Beyond these consultations, the Commission set extended comment periods for both sets of standards. The comment period for the Classification standards was 203 days long, and the comment period for the Technical standards was 121 days long. In addition, the Commission held a public hearing in Washington DC to accept further public comment. This day-long hearing was attended by 129 registered participants and 26 witnesses.

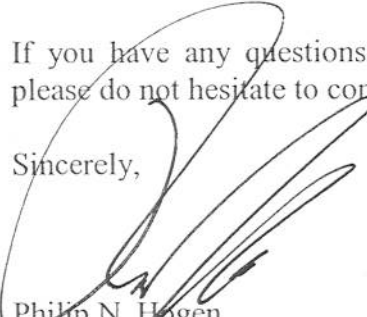
It would be impossible to recount here all of the comments we received, but the sentiment was strongly expressed that the combined effect of the regulations as proposed would make Class II gaming not viable. As a result, in February 2007, the NIGC withdrew the proposed rules and went back to the drawing board.

In the course of this effort, we relied heavily upon two tribal advisory committees, one assembled in 2004 to aid in drafting classification and technical standards, and one standing committee on minimum internal controls. The tribal representatives to these committees drew heavily on a working group consisting of tribal gaming leaders and regulators, as well as gaming machine designers and manufactures. The synergy which evolved from their collaborative process and the working relationship forged between the NIGC and the many groups involved to write these draft regulations has been described as "nothing short of miraculous," and it has been said that Indian country has never seen such an open, honest and collaborative process. Much of the content in the proposed regulations has come directly from the work and suggestions of these groups.

Thus, in the end, we redrafted the classification and technical standards, modified the definition of "facsimile," and broke out some of the technical functions into a third, conceptually distinct, set – minimum internal control standards. It is these redrafted regulations we are proceeding with now.

If you have any questions or concerns, or if you require any additional information, please do not hesitate to contact me.

Sincerely,



Philip N. Hogen
Chairman

Enclosures