



## INITIAL COMMENTS FROM ADVISORY COMMITTEE MEMBERS TO DISCUSSION POINTS REGARDING CLASS II CLASSIFICATION STANDARDS

### 1. BINGO

*Class II gaming is defined in IGRA to include the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) which is –*

- *played for prizes including monetary prizes*

#### **Agua Caliente Band of Cahuilla**

True; however, the term “prizes” may be better defined to separate Bingo played as Class I charities i.e. “The term "class I gaming" means social games solely for prizes of minimal value....”?

- *with cards bearing numbers or other designations*

#### **Agua Caliente Band of Cahuilla**

Numbers or designations are OK in their pure form (five lines across, five or more in each line). However, various designations may attract other players and does not affect the game.

It may be attractive to offer a variety of bingo games by altering the patterns to be covered or even more “Free Spaces”.

- *in which the holder of the card covers such numbers or designations*

#### **Agua Caliente Band of Cahuilla**

Yes, duplicate cards should not be allowed in same game.

- *when objects similarly numbered or designated are drawn or electronically determined, and*

### Agua Caliente Band of Cahuilla

“Drawn”

Class I: A person at a charity event may draw numbers

Class II or higher, the ball draw must be random and done by some form of equipment.

- *which is won by the first player to cover a previously designated pattern of numbers or designations on such [bingo] cards.*

### Seminole Tribe of Florida

In promulgating new Class II regulations the NIGC is constrained by the following limitations: (1) to the extent that the regulations are intended to resolve ambiguities in the IGRA, those ambiguities must be resolved in favor of the Indians<sup>1</sup>, and (2) requirements cannot be added for Class II bingo that go beyond the three criteria set forth by Congress.<sup>2</sup>

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<sup>1</sup> As stated by the Tenth Circuit in United States v. 162 MegaMania Gambling Devices, 231 F.3d 713, 716-717 (10<sup>th</sup> Cir. 2000):

In conducting our *de novo* interpretation of the statutes at issue, we apply the canons of construction germane to issues arising under Indian law. "The canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 85 L. Ed. 2d 753, 105 S. Ct. 2399 (1985) (quotation marks, citation, and alteration omitted). In issues arising under Indian law, "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Id.* (citing *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174, 36 L. Ed. 2d 129, 93 S. Ct. 1257 (1973)); *Choate v. Trapp*, 224 U.S. 665, 675, 56 L. Ed. 941, 32 S. Ct. 565 (1912).

<sup>2</sup> The courts have held that the three statutory criteria of bingo are the only the requirements that Congress intended to be applied in determining if a game is Class II bingo.

The Government maintains that because IGRA uses the phrase 'the game of chance commonly known as bingo' before spelling out the three criteria, *other* features that have traditionally characterized bingo games are also pertinent in determining whether or not a game is a class II bingo game. . . .

The Government's efforts to capture more completely the Platonic "essence" of traditional bingo are not helpful. Whatever a nostalgic inquiry into the vital characteristics of the

### Agua Caliente Band of Cahuilla

First player should be change to player(s). There are often multiple winners which share the jackpot.

**In evaluating the attributes of "electronic computer or other technologic aids" used in electronic bingo, how should a bingo "game" be further described?<sup>3</sup>**

- **What is a "game"? Is a "game" a ball draw and release of the numbers drawn until a winner is determined, or can a "game" be a multiple series of ball draws and releases?**

### Seminole Tribe of Florida

A game is a competition among two or more players to be the first to achieve a pre-designated game-winning pattern as a result of matching numbers or other designations that have been drawn or electronically determined. As is permitted in many states, a "game" can be a series of sessions (each with a new ball draw) until a game-winning pattern is achieved. See, e.g., K.S.A. § 79-4701(v)("Progressive bingo' means a game of call bingo in which either the

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game as it was played in our childhoods or home towns might discover, IGRA's three explicit criteria, we hold, constitute the sole *legal* requirements for a game to count as class II bingo.

There would have been no point to Congress's putting the three very specific factors in the statute if there were also other, implicit criteria.

United States v. 103 Electronic Gambling Devices, 223 F.3d 1091, 1096 (9<sup>th</sup> Cir. 2000).

All told, § 2703(7)(A)(i)'s definition of "the game of chance commonly known as bingo" is broader than the Government would have us read it. We decline the invitation to impose restrictions on its meaning besides those Congress explicitly set forth in the statute. Class II bingo under IGRA is not limited to the game we played as children.

Id. at 1097. See also 162 MegaMania Gambling Devices, 231 F.3d 713, 720-23 (10<sup>th</sup> Cir. 2000). The NIGC is bound by the prior court determinations that the three statutory requirements are the sole requirements for a game to qualify as Class II bingo. See Lechmere v. NLRB, 502 U.S. 527, 536-37 (1992) ("Once we have determined a statute's clear meaning, we adhere to that determination under the doctrine of stare decisis, and we judge an agency's later interpretation of the statute against our prior determination of the statute's meaning.")

<sup>3</sup> In addition, such "technologic aids" can and should be used by tribal operators to protect the integrity of the bingo game. See, e.g., In the Matter of Disabled American Veterans Chapter 30, Petitioner, v. State Bingo Control Commission, 246 N.Y.S.2d 234 (1963).

established prize amount or the number of bingo balls or objects called, or both, may be increased from one session to the next scheduled session if no player completes the required pattern within the specified number of bingo balls or objects drawn."(Emphasis added.); MO ST § 313.013("A progressive bingo game may include, but shall not be limited to, any coverall or blackout game or other game where a stated quantity of numbers are called and, if no winner occurs, prizes are added to the next session's occasion conducted by that charity."); M.C.L.A. § 432.105c("Once a Michigan progressive jackpot bingo game has been started, the progressive jackpot shall be increased by 1 number on each successive bingo occasion in a particular progression.") Significantly, the NIGC has agreed that progressive bingo is a Class II game under the IGRA. 57 Fed. Reg. 12382 (April 9, 1992).

#### **Muckleshoot Indian Tribe**

The ball draw is purely an operational issue.

If the operation employs a pay table or interim prize, the approach of the ball draw may be adjusted to reach an expected pay schedule or conclusion.

#### **St. Regis Mohawk Gaming Commission**

According to the IGRA, the game commonly known as bingo requires "the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined..." There is no specific wording that requires the holder of a card to cover as individual balls are drawn, therefore I believe that the game of bingo can be played with either an individual ball draw and release, or a multiple series of ball draws and releases (in sets) until the winner of the game is determined. That stated, the game as we know it also includes the use of a pool of 75 numbers and the same number cannot be drawn more than once in any game.

#### **Viejas Band of Kumeyaay**

I believe that it could be a multiple series of draws with the possibility of winning interim prizes until the final game winning pattern is hit. Provided that the numbers are drawn from a pool of 75 numbers and the same numbers cannot be drawn more than once in a game.

#### **Agua Caliente Band of Cahuilla**

It can be both, Games like Bonanza Bingo draw and call a set number of balls at the beginning of an occasion/session. The number of balls drawn depends upon the amount of the top prize. When the balls are drawn they are placed in a separate board which lights a separate light board which stays lit until the game is played to its conclusion, usually the last game of the occasion/session. Players purchase concealed face cards and then open them to see if the cards they purchased contain the numbers already called in the predestinated pattern necessary to win the game.

Progressive Jackpot games employ the series of multiple drawing and call system. These games should always include a consolation prize. It's the tease that keeps the players coming back. Never leave the player feeling that they just lost it all.

#### **Cherokee Nation Gaming Commission**

A game can consist of both scenarios; a game can consist of multiple series of ball draws (e.g. multiple/interim patterns) until the game winning pattern is

achieved. The rules of the game should be clearly stated to the patrons prior to beginning the game.

- **In a "game" of bingo, can all the numbers (balls drawn) be released in a single set or must there be something less that is inherent in the game of bingo?**

#### **Seminole Tribe of Florida**

As in progressive bingo (which the NIGC has agreed is Class II), all of the bingo numbers in a session or game can be released in a single set, as long as the balls are used in the sequence drawn. Nothing in the IGRA definition of bingo suggests that multiple ball releases are required. Further, nothing in the IGRA precludes the use of multiple separate ball sets in the same. Contrary to previous guidance issued by the Office of General Counsel, there also is nothing in the IGRA that prevents games with pre-drawn balls from qualifying as bingo or games similar to bingo.

#### **Muckleshoot Indian Tribe**

Operational issue again. Example; if the designated numbers or pattern required is 24 why not pull 24 numbers, another, wild numbers often employed in the game requires covering all odd or even numbers or all number ending in #1.

Also, when played with bingo, lotto is determined a class two game and its method of ball draw varies per operation guidelines.

#### **St. Regis Mohawk Gaming Commission**

As previously stated, a multiple release may occur provided the statutory requirement that "the game is won by the first person(s) covering a previously designated arrangement of numbers or designations on such cards..." is met. Although some may disagree, I believe a required element of the game is that the holder participates in a contest of sort in order to qualify as being the first person to cover. Additionally, if the number of balls drawn and released in a set is equal to or greater than the number required to cover a previously designated game-ending pattern, the element of a contest is removed from the game.

#### **Viejas Band of Kumeyaay**

Not sure what you mean here. In my humble opinion whether in multiple sets/series. Or a single set they should be released in single number sequence one at a time to allow the first one to hit a winning pattern to be the first winner.

#### **Agua Caliente Band of Cahuilla**

I do not feel that the balls should be released in a single set. I would need more information on this to comment further.

#### **Cherokee Nation Gaming Commission**

It is conceivable that a single release of balls could be an option in a bingo game provided the balls are used in the sequence in which they are drawn or by other previously stated rules.

**What are the prizes played for?**

- **Are payouts supposed to be pari-mutuel or is a payout table designed to return a standard Return to Player (RTP) acceptable?**

### **Seminole Tribe of Florida**

If the game is bingo, then the question of whether the payout is pari-mutuel is irrelevant. In fact, many bingo games are house-banked. As noted by the Tenth Circuit:

Some commenters argued bingo itself is a house banking game. In response to this argument, the Commission concluded "whether a game is a house banking game ... is not relevant to the classification of games that Congress expressly placed in class II: Bingo, lotto, pull-tabs, instant bingo, and tip jars." *Id.* at 12,388.

United States v. 162 MegaMania Gambling Devices, 231 F.3d 713, 721, n. 6 (10<sup>th</sup> Cir. 2000)

### **Muckleshoot Indian Tribe**

Yes, bingo schedules announce what the pattern is and amount won if pattern reached in a certain amount of numbers, if the pattern is not reached a consolation prize may listed.

### **St. Regis Mohawk Gaming Commission**

Both types of payouts are currently offered in traditional paper games. As an example bingo halls can offer 60/40 games as well as pre-determined prize awards. In the context of gaming machine operations, interim prizes are generally standard and listed on a pay table. Game-ending patterns are paid within parameters pre-determined by gaming machine manufacturers. Progressive prizes are paid based on amounts wagered and the mathematical complexities involved in achieving the winning pattern. Interestingly, for the currently approved "Mystery Bingo" game, SDG assures that neither they nor the tribal gaming activity where the system may be placed will win or retain any portion of the progressive pool prize.

### **Viejas Band of Kumeyaay**

The interim prizes could be based on a standard paytable, based on increasingly difficult mathematical probabilities of hitting game winning patterns the final prize for the final game winning pattern should be limited to the pool of money wagered on that game less a percentage to cover the standard interim paytable prizes.

### **Agua Caliente Band of Cahuilla**

Both Electronic or standard bingo should have a minimum RTP percentage. A guaranteed prize schedule sufficient to attract player attention is a must. Para-mutual games add to the excitement but will not maintain a strong door. When a player pays admission they want to know that the prize amount offered is worth their dollar. It's a simple matter of value for the discretionary dollar.

### **Cherokee Nation Gaming Commission**

Either would be acceptable. Both can be seen in typical paper bingo in that the bingo program (patterns by game) are advertised to pay a certain prize,

while the prize is influenced by the number of patrons involved in the game. The bingo hall has the “advantage” in offering player-based prizes whereas the patron is benefited by having pay-table (standard) payouts. Either way, the patron receives a prize for the game/pattern won.

- **Can events other than bingo play determine the prize?**

#### **Seminole Tribe of Florida**

IGRA requires that the game be played for prizes. It does not specify how the prize values must be determined. Thus, other events may be used to determine the bingo prize.

#### **Muckleshoot Indian Tribe**

Second chance elements are the fabric of the game of bingo; spin the wheel, pick a door, pick a pet, good neighbor, Birthday, senior, mothers day. Creativity and originality i.e.; (Best Dressed), drawings, and card games have all been in effect. As long as the second chance element is not an illegal device and individual is not required to risk any of the prize awarded, has been the standard.

#### **St. Regis Mohawk Gaming Commission**

The IGRA requirement that the game is “won by the first person to cover a previously designated pattern of numbers or designations on such (bingo) cards,” suggests a player may not win other than by actual bingo play. However, our colleagues are quick to point out that traditional paper games often include ‘second chance bingo’, ‘good neighbor bingo’ and the use of wheel devices to award prizes.

#### **Viejas Band of Kumeyaay**

As we previously discussed, I don’t believe so. This does not mean that for entertainment value that some sort of display giving the appearance of a random prize selection couldn’t be used provided that the actual prize is determined at the actual time of the win and not by some secondary true random selection.

#### **Agua Caliente Band of Cahuilla**

I’m not sure what is meant by the question.

#### **Cherokee Nation Gaming Commission**

I believe this is not only possible, but probable. For instance, in the case of multiple winners on a bingo game, the prizes awarded can be distributed either by an “even” split (depending on the number of winners) or by some other means (i.e. drawing to determine who gets the higher win). Patrons playing for non-monetary prizes (e.g. vehicles) may opt to have a cash prize rather than the vehicle; said prize could be at the cost of the vehicle rather than the amount paid.

Money machine wins are another example. A patron is given a specified amount of time in which to catch bills circulating. The amount won by the patron is dependent upon his/her eye-hand coordination (and luck in catching a higher denomination of bill).

“Hot ball” wins are also possible where a prize is augmented if the bingo is won on the pre-designated “hot ball” number.

- **Are random (unpredictable) payouts permitted?**

#### **Seminole Tribe of Florida**

Random and unpredictable are not necessarily the same. However, since the IGRA does not require pre-determined prize values, either method is acceptable.

#### **Muckleshoot Indian Tribe**

On most occasions a minimum payment is established. Some games may progress from session to session, before the win or pattern is reached. At times, numerous ball draws are used, prior the completion of the pattern with out a prize being awarded prior a new ball draw.

#### **St. Regis Mohawk Gaming Commission**

The use of a money machine or a wheel device is a well-established practice in some traditional bingo games. The challenge is in how that practice correlates to or is incorporated into an electronic player station. Ever mindful of Department of Justice actions and alleged violations of the Johnson Act, the use of a random number generator when determining secondary, interim or consolation prizes becomes an issue yet to be addressed. I believe the real question is when does an EPS cross the threshold into becoming a Johnson Act device. Additionally, I ask the question, Why make this an issue? Federal Courts of Appeal agree that neither IGRA or NIGC regulations prohibit multiple winners nor “interim” prizes. Further, the Ninth Circuit opined that “(t) he sum of the matter is that the IGRA requirement that a bingo game be won by the first player covering a pre-designated pattern does not mean that the game must end when one person does so, so that everyone else wins nothing”. My contention is that by using entertaining graphic display, manufacturers can present the appearance of random prize availability to a player in a bonus round yet maintain a pre-determined prize award. We avoid the notion that a device violates the Johnson Act and continue to operate within the statutory requirements of the IGRA. The manufacturer is then limited only by minimum regulatory control standards and most importantly by the creativity of their respective program designers.

#### **Viejas Band of Kumeyaay**

No

#### **Agua Caliente Band of Cahuilla**

Permitted is not really the issue. Bingo players generally don’t like surprises. However, there are ways of adding to the guaranteed prize amount i.e., spin the bonus wheel, a period of time in the money cage to catch as much as you can as a bonus.

#### **Cherokee Nation Gaming Commission**

Again, referring to the money machine, the payout is not determined. The prize could also be affected by/adjusted for the number patrons in a game. The NIGC has stated in its advisory opinion for SDG’s “Mystery Bingo” that “unpredictable” payouts are permissible.



- **Are prizes based upon the number of balls drawn to get to bingo acceptable?**

### **Seminole Tribe of Florida**

Yes, this is a common feature in many bingo games. Further, this feature was approved in the MegaMania cases:

The amount the straight-line winners take depends on a variety of factors: the number of cards played; the number of balls drawn; the amount of money carried over from prior games; and the number of simultaneous straight-line winners.

... The amount a player wins at CornerMania is based on a fixed formula that depends solely on the number of corners covered and the number of balls drawn at the time the corners are covered.

United States v. 162 MegaMania Gambling Devices, 231 F.3d 713, 716-717 (10<sup>th</sup> Cir. 2000) (emphasis added). See also United States v. 103 Electronic Gambling Devices, 223 F.3d 1091, 1094 (9<sup>th</sup> Cir. 2000) ("Each player with bingo wins a monetary prize, the amount of which is based on the total number of cards being played in the game, the number of balls drawn since the game began, and the number of players reaching bingo simultaneously.").

### **Muckleshoot Indian Tribe**

Yes, is lotto not defined as a class II game when played with bingo?

### **St. Regis Mohawk Gaming Commission**

Yes, as is common practice in bonanza games.

### **Viejas Band of Kumeyaay**

This sounds like the ability to have interim or progressive prizes/games, in which it would seem to be necessary to have low mathematical probabilities of being able to hit a winning pattern with a limited number of balls drawn.

### **Agua Caliente Band of Cahuilla**

Absolutely, that's how jackpot games are designed. Remember to always award something.

### **Cherokee Nation Gaming Commission**

I believe court rulings on this subject offer the best answer. The 10th Circuit ruled in the MegaMania case that prizes can be based on the number of balls drawn (the four-corners/"CornerMania" argument). Likewise, in paper bingo, some games' payouts (particularly progressives) are dependent upon the number of balls it takes to hit the pattern/win the game. If no pattern is hit, a consolation prize is awarded.

- **Is it possible to award no prizes in a game?**

**Seminole Tribe of Florida**

Yes. For example, in the MegaMania game approved by the Ninth and Tenth Circuits, a game could end without a winner if no player anted-up to buy the next set of bingo numbers.

**Muckleshoot Indian Tribe**

Yes.

**St. Regis Mohawk Gaming Commission**

No, According to the IGRA bingo must be “won by the first player to cover a previously designated pattern of numbers or designations on such (bingo) cards”.

**Viejas Band of Kumeyaay**

No, I don’t believe so in a completed game. I thought that a game could not end until there was a winner of some sort, even if all 75 balls end up being drawn.

**Agua Caliente Band of Cahuilla**

The question needs to be defined.

**Cherokee Nation Gaming Commission**

It may be possible – in that every player could potentially “sleep” their bingo – but I feel it is highly improbable.

- **Is it possible to award a prize in a game that is less than the amount wagered (e.g., the amount bet is \$10, but the prize is \$9)?**

**Seminole Tribe of Florida**

The IGRA only requires that bingo games be played for "prizes, including monetary prizes." 25 U.S.C. § 2703(7)(A)(i)(I). Congress left marketing decisions about the value of the prizes to be awarded to the tribes.<sup>4</sup>

**Muckleshoot Indian Tribe**

YES.

**St. Regis Mohawk Gaming Commission**

Yes, there are no statutory or regulatory requirements regarding the amount awarded for prizes. Consequently, gaming machine manufacturers often award higher interim prizes then are awarded for covering a game-ending pattern.

**Viejas Band of Kumeyaay**

Yes.

**Agua Caliente Band of Cahuilla**

It happens all the time. A player buys \$25.00 worth of boards and hits on a \$100.00 game with five other players.

**Cherokee Nation Gaming Commission**

Yes, I believe it is possible. The IGRA only requires that a prize be awarded. Yet again, the multiple winner scenario comes into play.

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<sup>4</sup> For example, prizes can include new chances to play (as is done in many state lottery games).

- **Are progressive jackpots OK?**

**Seminole Tribe of Florida**

Yes. Again these are common in many bingo games (see above). In fact, the Commission has previously concluded that bingo games with progressive prizes are Class II:

Many commenters questioned whether the requirement in the IGRA that the bingo game "\* \* \* is won by the first person covering a previously designated arrangement of numbers or designations on such cards" excludes jackpot bingo or progressive bingo. The Commission believes that Congress' intent was to include jackpot or progressive bingo in class II as long as: (1) There is eventually a winner (in other words, the house never takes the jackpot), and (2) in each game there is at least a winner of a consolation prize.

57 Fed. Reg. 12382 (April 9, 1992). Different types of progressive structures are permissible, including multiple progressive prizes per game, individual progressives and mystery progressives.

**Muckleshoot Indian Tribe**

Yes. Player selection games require patron to select a group of numbers and covering the those selected numbers determine the amount won.

**St. Regis Mohawk Gaming Commission**

The award of progressive prizes is well established in the traditional game of bingo. In their Mystery Bingo Opinion, the NIGC states that the "Mystery Bingo" progressive prize is not precluded by the requirements for bingo play prescribed in IGRA. The prize is awarded in a manner similar to the award of the regular game prize...it is an ancillary game and not the primary bingo game being played.

**Viejas Band of Kumeyaay**

Yes, they occur in live bingo every day.

**Agua Caliente Band of Cahuilla**

Progressives are great but, you have to be careful.  
They should not be capped and must be paid to a patron.

**Cherokee Nation Gaming Commission**

Most definitely. The accrual and/or awarding of progressive jackpots occur everyday, including in non-Indian bingo operations.

- **What is an interim prize?**

**Seminole Tribe of Florida**

It generally is a prize awarded in addition to the game winning prize.<sup>5</sup> It has no statutory significance under the IGRA. However, regardless of designation, the important point is that multiple prizes are permitted in each bingo game. Games with multiple prizes are common in non-Indian bingo games. See, e.g., MI ADC R. 432.21317 ("Before the start of each bingo game, the name of the game, type or color of bingo card, winning combinations, and the amount of each prize shall be clearly announced to the players. For games that are divided into multiple prizes, the winning arrangements and the amount of each prize shall be clearly announced to the players immediately before each multiple game."); MN ADC 7861.0070 ("Continuation bingo games are permitted. For example, up to three patterns may be played on one bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls are not returned to the receptacle after a winner has been determined and verified.")

#### **Muckleshoot Indian Tribe**

An interim prize or game is part of the "bingo schedule". Reaching a set pattern on the way or in conjunction with, another set pattern where as both prizes has an awarded amount.

#### **St. Regis Mohawk Gaming Commission**

A prize awarded for covering a pre-designated pattern before the game-ending pattern is covered.

#### **Viejas Band of Kumeyaay**

I believe that an interim prize is a prize won for achieving a pre-designated pattern on the way to achieving the final game winning pattern.

#### **Agua Caliente Band of Cahuilla**

Some prizes are offered if a particular pattern is covered by a patron with a limited number of balls being drawn or it can be based on some other rule. Upon completion of the requirements for the interim prize, if there is no winner, the game continues for some other prize.

#### **Cherokee Nation Gaming Commission**

An interim prize is one that is won/awarded prior to the game-winning pattern being achieved.

- **What is a consolation prize?**

#### **Seminole Tribe of Florida**

It generally is a prize awarded after a game-winning pattern is achieved or one awarded to a player who has not achieved the prize associated with the game winning pattern. However, please see discussion above.

#### **Muckleshoot Indian Tribe**

Consolation- a prize that is given to the person not winning the first prize or the amount awarded when a person does not reach a pattern a group of numbers before a predetermined amount of number or symbols drawn.

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<sup>5</sup> Nothing in the IGRA prohibits more than one game-winning pattern. The IGRA refers to the first player to achieve "a" previously designated pattern, not "the" previously designated pattern. The use of "a" rather than "the" indicates that a game with multiple game-winning patterns is permissible.

### **St. Regis Mohawk Gaming Commission**

A prize awarded for covering a pre-designated pattern after the award of the prize for covering the game-ending pattern.

### **Viejas Band of Kumeyaay**

Don't know.

### **Agua Caliente Band of Cahuilla**

In most jackpot games there is a point, usually when the risk to the house becomes uncomfortable, when the prize amount levels out to a mutually acceptable amount. That amount is considered a consolation prize / the players didn't get the big prize and the house consoles them by offering a lesser amount. Consolation prizes can be a set amount or a percentage of the gross from the sale of cards to participate in the game or a combination of both

### **Cherokee Nation Gaming Commission**

A consolation prize could be a couple of things. In the case of a progressive game that is not won in the requisite number of balls, it is the prize paid for achieving the game-winning pattern thereafter. For a regular bingo game, it could be a prize awarded to the patron(s) that would have bingo-ed on the next number (the number being displayed on the monitor, but that has not been called; commonly referred to as a "hard-luck" number) that would have been called had not the game been won on the last number called.

## **What is the degree of player mutuality in "playing" an electronic bingo game?**

- **Should there be more than two players for the game to be active? Can we establish a number greater than two as a minimum?**

### **Seminole Tribe of Florida**

The IGRA permits the use of technologic aids for the play of Class II games. The critical issue is that the device cannot be a self-contained game such that a player is limited to playing the game against the device. S. REP. NO. 100-446 at 9. Thus, a game should not begin unless there are at least two enrolled players. However, participation can drop below two (for example, in an ante-up game). There is no statutory basis for a minimum number of more than two.

### **Muckleshoot Indian Tribe**

No, as long as the house is not one of the players the game is class II.

### **St. Regis Mohawk Gaming Commission**

I am reluctant to suggest the need for other than minimum requirements in any standard we propose. Two players are indeed the minimum number required in order to compete against each other rather than against a machine. That being stated, there is nothing prohibiting the committee from proposing a minimum number of players greater than two. I am very interested in discussing the mathematical advantage to running multiple two-player games vs. a lesser number of games with multiple players.

### **Viejas Band of Kumeyaay**

No, I don't believe so. As previously discussed I believe that this would deprive others of an opportunity to participate in a game. It would probably be within the realm of possibilities for us to require a fixed maximum of more than two players.

#### **Agua Caliente Band of Cahuilla**

Pari Mutuel play only requires two people Electronic Bingo can be percentage much the way slots are. A single player can play for a fixed amount depending or not on their wager, and also compete in the progressive jackpot. I don't think it matters how many players are participating at any one time.

#### **Cherokee Nation Gaming Commission**

As long as you have two patrons playing for a common prize, you have met the minimum criteria to establish a game. There is no statutory requirement, thus there is no need, to say that a number greater than two is necessary.

- **What happens when the number of players drops below the established minimum or to one?**

#### **Seminole Tribe of Florida**

As long as the game began with two or more players, the "game" is not a single player against the machine even if eventually only one player is left. Thus, the game should continue.

#### **Muckleshoot Indian Tribe**

Non issue here there is no minimum.

#### **St. Regis Mohawk Gaming Commission**

Play cannot be initiated until the required minimum number is met.

#### **Viejas Band of Kumeyaay**

Play cannot be initiated.

#### **Agua Caliente Band of Cahuilla**

Depends on the type of game environment being played.

#### **Cherokee Nation Gaming Commission**

Further play should be suspended until such time as a second player elects to enter the game. Notification should be provided to the patron when such action occurs or it should be displayed on the rules of the help screens.

- **How can we ensure that the devices used to aid the play of the game actually "broaden participation"?**

#### **Seminole Tribe of Florida**

Potential participation can be broadened by requiring at least two players in each game and encouraging frequent games. Further, the use of new technology to make bingo games more entertaining and easier to play will help to attract new players and thus broaden participation.

#### **Muckleshoot Indian Tribe**

Broadened participation is "included but not limited to" the determining factor of electronic aids.

### **St. Regis Mohawk Gaming Commission**

By definition a technologic aid includes, but is not limited to, machines or devices that broadens the participation levels in a common game. Considering that the required minimum number of players needed to initiate play is two, does it make good sense to discuss the matter further? However unlikely it may seem that a bingo hall will offer a session with two players in the house, the fact remains two players are the minimum number needed to play against each other rather than playing against the house. That fact aside I am concerned gaming machine manufacturers will push the envelope and offer only multiple two-player games. From our meeting in Washington, I am curious as to what the profitability advantage is for the operator/manufacturer by what some may perceive as limiting rather than broadening player participation in a common game. From a regulatory perspective, should we concern ourselves only with profitability for the operator/manufacturer or might we consider a compromise that truly broadens participation in a common game? It is my understanding that some class II gaming machines currently delay the start of a new game using a mathematical algorithm that varies the enrollment period based on the number of active terminals in play on the system. With fewer active terminals the algorithm lengthens the enrollment period to accommodate more players. Ultimately, the tribal gaming operation will bear the scrutiny of the public's perception of our gaming enterprises. If forced to do so by gaming opponents, tribal gaming operations may or may not face closure while gaming machine manufacturers will undoubtedly refit machines and offer them for play in more favorable jurisdictions.

### **Viejas Band of Kumeyaay**

I don't believe that this is a regulatory responsibility. The concept of broadening participation is in the eyes of the beholder. If there are multitudes of player terminals (or technological aids) available then participation in playing bingo has been allowed to be broadened even though they may not all be playing the exact same game.

### **Agua Caliente Band of Cahuilla**

Count the number of units being used. Talk to the players; find out what they like/dislike about the units. Test market.

It is good business sense to "broaden participation". I do not think you can ensure it; however, Tribes should have the opportunity to try and develop their business.

### **Cherokee Nation Gaming Commission**

By using technological aides, participation is automatically broadened, especially in the case of connections between multiple properties. Technological aides provide a practical means of connecting patrons across a large area, whether under a single or multiple roofs.

- **Can players participate at different denominations or betting levels?**

### **Seminole Tribe of Florida**

Yes. This concept is common in bingo games and has previously been accepted by the NIGC:

One commenter questioned whether the definition of bingo should require that all players participate on an equal basis. The commenter stated that in a traditional bingo game, all cards are purchased for a preset price, notwithstanding limited promotional discounts. The Commission believes that such considerations are marketing decisions and are outside the Act's purview. Therefore, the Commission rejected this suggestion.

57 Fed. Reg. 12382 (April 9, 1992). Further, the Tenth Circuit has held that price issues are beyond the scope of the IGRA: "If Congress wants to add a pricing or payment requirement to the definition of bingo or games 'similar to bingo,' it will do so." 162 MegaMania Gambling Devices, 231 F.3d at 723.

#### **Muckleshoot Indian Tribe**

Bingo schedules often announce level of participation or buy in and pay schedules are adjusted and set operationally.

#### **St. Regis Mohawk Gaming Commission**

Yes, Nova Gaming offer a platform that as denomination or betting levels increase so too do the available number of pre-determined patterns awarding interim prizes.

#### **Viejas Band of Kumeyaay**

I would say yes. However I have seen IGT's game which allows this and found it troubling that (according to their engineer) for example, if one player was wagering \$1.00 a game and another player was wagering 50 cents on the same game either player was entitled to the same prize if declared a winner, even though both were only playing one card in the game. I don't believe this is fair to the player wagering the higher amount, unless either the player wagering the higher amount gets more cards (chances) for their wager, or, the prize amount is somehow prorated to be different and more commensurate with a given percentage based on the amount wagered.

#### **Agua Caliente Band of Cahuilla**

Yes. Silver card \$5.00 – Bronze card \$10.00, - Gold card \$20.00, and with appropriate increases in prize money.

#### **Cherokee Nation Gaming Commission**

This, too, is a common practice across the bingo spectrum – Indian and non-Indian. Patrons can buy-in at different levels knowing that they are competing for different payouts. This is all done while sharing a common ball draw/release. This is yet another means for broadening participation.

- **Can players participate with cards that are not entered in the same contest for a particular set of prizes as those played by other players and still be considered in the "game?"**

#### **Seminole Tribe of Florida**



Players in the same game should be playing for the same game-winning pattern(s). IGRA in no way limits the use of various card types to offer different prizes for achieving that pattern. Such cards also may offer different sets of interim and/or consolation prizes and patterns, and may reflect the multi-denominational play discussed above.

**Muckleshoot Indian Tribe**

The definition of the game has not been determined, but, Example the super jackpot game has multiple card set and ball draws prior to the predetermine pattern and number parameters have been attained.

**St. Regis Mohawk Gaming Commission**

Perhaps in a variant of the game of bingo but I don't have a clue as to how that might work!

**Viejas Band of Kumeyaay**

I don't understand this question.

**Agua Caliente Band of Cahuilla**

This question is confusing. Need an example for clarity.

**Cherokee Nation Gaming Commission**

The wording of this question makes it very confusing and, therefore, difficult to properly address. However, if the question relates to the above question regarding different wagering levels, I think it would be acceptable as long as they shared a common ball draw/release.

- **How does playing with different types of cards affect the issue of player mutuality?**

**Seminole Tribe of Florida**

There is no impact, as long as all players in the game are playing to be first to achieve the same game-winning pattern(s). 25 U.S.C. § 2703(7)(A)(i)(III).

**Muckleshoot Indian Tribe**

The player is not playing against the house they are playing against each other. Situations may involve two individual prizes, two separate patterns using the same ball draw to obtain two separate reward or prizes..

**St. Regis Mohawk Gaming Commission**

This too may be applicable to a variant of the game of bingo.

**Viejas Band of Kumeyaay**

Again, I apologize, but I don't understand the concept.

**Agua Caliente Band of Cahuilla**

There is a certain amount of rivalry between electronic and paper players. It settles down after a while.

**Cherokee Nation Gaming Commission**

What is the question here? Please clarify.

**Assuming in bingo electronic cards are acceptable, what is or should be the significance of the electronic bingo card to the play of the game?**

- **Should the bingo card be the focus of the game or merely incidental to it?**

### **Seminole Tribe of Florida**

If both the electronic bingo card and the additional depiction of the results using a casino or other game theme display are presented simultaneously, then the definition of bingo necessarily requires that the electronic bingo card be displayed in a manner (size, color, etc.) that allows the player clearly to see the numbers or designations on the bingo card and any results of subsequent daubing; the player must be able to actually "play" the bingo card even if he/she prefers to view the results using the additional game theme display.

### **Muckleshoot Indian Tribe**

Operations should announce or display the type of game a person is entering.

### **St. Regis Mohawk Gaming Commission**

The covering of the numbers or designations on the bingo card is one of the statutory elements of the game. When considering the electronic card displayed on an EPS, the current trend is to display the card while focusing the player's attention on entertaining graphics rather than a standard 5x5 grid.

### **Viejas Band of Kumeyaay**

I believe it should be required to have it available either way at the player's option.

### **Agua Caliente Band of Cahuilla**

Depends on the player. Some players like to see the card and daub each number, others like to put it on auto pilot and sit back.

However, it is not incidental. There can be two approaches:

Completely random, any card any time or all cards are randomly shuffled and "stacked". The cards are issued in order until they are all consumed. The cards are full randomly re-shuffled and placed in another stack. Just like a deck of cards with 40,000 cards per deck.

### **Cherokee Nation Gaming Commission**

I feel that the card should be available for the patron to view as the primary display or as a part of an entertaining display of the results of the card.

- **What are appropriate dimensions for a card, how many numbers or designations should a card contain, and should there be a required configuration or grid?**

### **Seminole Tribe of Florida**

The Commission has previously concluded that the IGRA does not require traditional 5x5 bingo cards: "The Commission does not believe Congress intended to limit bingo to its classic form. If it had, it could have spelled out further requirements such as cards having the letters "B" "I" "N" "G" "O" across the top, with numbers 1-15 in the first column, etc." 57 Fed. Reg. 12382 (April 9, 1992). See also NIGC Wild Ball Bingo (Electronic Version) Advisory Opinion

(Mar. 27, 2001). The appropriate dimensions for a bingo card vary based on the configuration of the card (e.g. a 1x3 card versus a 10x10 card). However, a card cannot contain less than two grid elements, since a "pattern" requires at least two elements. Random House Webster's Dictionary 485 (1993)(A pattern is a "design composed of elements in a regular arrangement.") A 1x2 card would allow for a two spot coverall pattern. As is the case with non-Indian bingo games, cards where players pick their own numbers also are acceptable.

#### **Muckleshoot Indian Tribe**

Dimensions would be irrelevant if the game type was clearly displayed on electronic aids.

#### **St. Regis Mohawk Gaming Commission**

The 2"x2" bingo card is reasonably visible and readable by the average player and other persons to verify wins or settle disputes. As for the other two parts of the question, a more clear definition for a "variant of the game of bingo" is necessary before we contemplate regulatory standards for how many numbers or designations should appear and what their configuration must be.

#### **Viejas Band of Kumeyaay**

The dimensions should be at least large enough to make the card reasonably discernable especially by a regulatory agent that may have to settle a dispute. I don't know exactly what size that would be ( perhaps 3"x 3"). I guess it would have a lot to do with the clarity of the video graphics definition. The second part of the question is going to depend greatly upon whether we agree that there should be a live game correlation requirement for the game of "bingo" and other creative variances for "games similar to bingo". The parameters for " games similar to bingo" is going to be the subject of a great deal of discussion.

#### **Agua Caliente Band of Cahuilla**

Assuming you're playing in the US or Canada a single card is five squares by five squares, contains 24 numbers with one free space in the middle square. Size is standard, cards are referred to as "ON's" two cards on a sheet, two on, 12 cards on a sheet, 12 on. Electronic card size varies from manufacturer to manufacturer. The design of the game could be left up to the game designer. Completely flexible. All players must be playing the exact same design per game and the RTP needs to be met. Game design can be a factor in attracting new players. The number of free spaces and where they are located may be flexible as long as it is the same for all players of the game and the RTP percentage is met.

**Cherokee Nation Gaming Commission** The dimension could depend on the size of the monitor being used to display the game results. Regardless, the display should be to such a degree that the results are easily distinguishable (image sharpness, brightness, color contrast, etc.). As for the numbers/designations or a standard grid, the Courts again have declared that Congress did not intend to limit the game of bingo to its classic form. Therefore, "non-standard" numbers/designations and/or grids could potentially be offered. This, however, could also be discussed under the "games similar to bingo" section.

- **Should the player know or be conscious of the fact that the player is playing the game of bingo?**

**Seminole Tribe of Florida**

Bingo information should be available to the player at all times during the game. What the player "knows" is subjective and is not appropriate for regulation.

**Muckleshoot Indian Tribe**

Yes.

**St. Regis Mohawk Gaming Commission**

The player should be afforded the opportunity to realize they are playing bingo but it not practical to think all players will know or care if the game is bingo or something other than bingo.

**Viejas Band of Kumeyaay**

The terminal should have some means of communicating to the player that they are playing an electronic / computerized bingo game. Whether the player reads it or is conscious of it is immaterial.

**Agua Caliente Band of Cahuilla**

Absolutely, (MultiMedia has a great game like that).

**Cherokee Nation Gaming Commission**

While I believe the fact that bingo is the game being played should be readily advertised on the machine, I feel it is impractical to say that each player must "know" they are playing bingo. When presented with the information, it is up to the patron to acknowledge it.

- **How should the card be made visible to the player?**

**Seminole Tribe of Florida**

The card should be displayed on the primary video screen or on a prominently placed dedicated bingo screen.

**Muckleshoot Indian Tribe**

By choice take a look if preferred.

**St. Regis Mohawk Gaming Commission**

The card should remain visible to the player, however the card need not be the main source of visible entertainment for the player.

**Viejas Band of Kumeyaay**

I like the concept of having it constantly displayed somewhere, but it doesn't have to be the predominant visual attraction.

**Agua Caliente Band of Cahuilla**

On a LED screen or on reels if it's the machine version, the requirements should be flexible.

**Cherokee Nation Gaming Commission**

The card could be displayed on the main monitor or on a secondary monitor located in close proximity to the main monitor.

- **Must it always be visible or merely available during the course of the game?**

**Seminole Tribe of Florida**

It must be visible during the course of the game. However, in the case of devices that allow a player to play multiple cards simultaneously, it is permissible to show only the best card(s), as in done with bingo minders.

**Muckleshoot Indian Tribe**

By choice, view it or not.

**St. Regis Mohawk Gaming Commission**

I prefer that the card remain visible during the course of the game with the exception being when bonus round graphics display. A key element is that the bonus prize is pre-determined and is based on the previous covering of numbers or designations on the card.

**Viejas Band of Kumeyaay**

I believe that if it is constantly visible that it helps support the distinction that it is a class II bingo game distinguishing it from class III.

**Agua Caliente Band of Cahuilla**

This could be player selectable. Various options may be offered to the patron for their style of play. However, it should be required that the card be visible if the player wishes to view it. Player preference, give them the option

**Cherokee Nation Gaming Commission**

The card should remain visible.

- **Should the player have the option to only see the result of the bingo game?**

**Seminole Tribe of Florida**

The player always has the option to focus only on the bingo game display. There is no reason to require an option to disable the additional entertaining display.

**Muckleshoot Indian Tribe**

The card available for viewing, it is a person choice to look.

**St. Regis Mohawk Gaming Commission**

Yes, if the player so chooses.

**Viejas Band of Kumeyaay**

Yes, if the player wants that option.

**Agua Caliente Band of Cahuilla**

Sure, some players want to set it on auto pilot and sit back

**Cherokee Nation Gaming Commission**

That could certainly be an option.

**How does a player cover, or daub, the numbers or other designations on the electronic bingo card?**

**Agua Caliente Band of Cahuilla**

The following questions are difficult to answer until a determination on how “skill” effects the classification of the game. Paper bingo is based on a random

selection of the balls but also relies on the skill of the player. I have seen many players lose their prizes because they did not have the skill or ability to keep up with the game.

- **Can daubing be done in general manner by touching some place on the electronic screen or should the player be required to touch a particular spot on the card, for example the number or other designation to be covered?**

### **Seminole Tribe of Florida**

The IGRA permits players to daub by pressing a single daub button. Specifically, the IGRA provides that bingo is a game "in which the holder of a card covers ... numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined ... ." 25 U.S.C. § 2703(7)(A)(i)(II). In the MegaMania game upheld by the Ninth and Tenth Circuits, players electronically daub their cards after balls are drawn from a bingo blower. The Justice Department unsuccessfully argued (in the MegaMania cases) that the player does not actually daub the card, but merely presses a lighted "daub" button. The Justice Department's argument was rejected by both district courts in the MegaMania cases. See United States v. 162 MegaMania Gambling Devices, No. 97-C-1040-K, 1998 U.S. Dist. LEXIS 17293, at \*7-8 (N.D. Okla. Oct. 26, 1998) ("This argument is too weak to bear additional discussion."); 103 Electronic Gambling Devices, No. C 98-1984 CRB, 1998 U.S. Dist. LEXIS 19135, at \*18 (N.D. Cal. Nov. 23, 1998) (nothing in IGRA or the regulations dictate the manner in which a player must cover the numbers). In upholding the lower courts, neither circuit court mentioned the issue.<sup>6</sup>

### **Muckleshoot Indian Tribe**

Electronic aids employed are used to assist in the play of the play of bingo. The player should only be required to claim prize or "bingo".

### **St. Regis Mohawk Gaming Commission**

I believe there should be no requirement for the player to touch a particular spot on the electronic screen in order to daub.

### **Viejas Band of Kumeyaay**

I strongly believe that daubing should be allowed to be automatically done by the "technological aid" just as it is allowed to be done now in bingo halls all over the country with "technological aids" called "bingo minders". However, I also believe that once your card(s) have been declared to contain a bingo, that the player must then take some affirmative action to claim the prize. Whether you call it a final daub or a "declaration of bingo" the player must push a button or touch the screen within a certain amount of time to be eligible for the prize. Otherwise you could not have a sleeper as is common in real bingo.

### **Agua Caliente Band of Cahuilla**

If the electronic game is played in conjunction with other players using paper, then I feel the play of the electronic game must be the same as the paper game

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<sup>6</sup> Also, technologic aids may be utilized with the play of bingo to accommodate disabled individuals as necessary to afford access to the game since doing so would not fundamentally alter the play of the game. See, e.g., PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001).

(there should be no the advantage to the electronic player.) Each card must be daubed just like paper games.

If the electronic game does not include players using paper, Daubing styles could be player selectable as long as all players have the same options available.

#### **Cherokee Nation Gaming Commission**

I believe that “general daubing” (i.e. touching any spot on the screen, pressing a daub button) is permissible and also serves to broaden participation by helping ensure that all patrons have the ability to act in a manner that equalizes those with slower mobile function with others who may be able to act faster.

- **Does a player have to daub after every ball is drawn? Alternatively, every time a daub button is pressed, can it collect all missed balls? As a further alternative, every time a daub button is pressed, can it collect all missed balls in the last group released, assuming the grouping of balls in a ball release is permitted?**

#### **Seminole Tribe of Florida**

The IGRA permits players the use of aid devices that daub for the players automatically after the balls are drawn. Significantly, such auto-daub systems are common in non-Indian bingo halls. As played in such halls, the bingo minder automatically daubs the numbers for the player without any action by the player. Thus, the “modern” way to play bingo is with bingo minders that daub numbers automatically for the players. Congress was clear that it intended to permit tribes to make use of modern methods to play Class II games:

Tribes should be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility.

Senate Report at 9.

#### **Muckleshoot Indian Tribe**

The definition of “when” as addressed in IGRA can be argued as to be “where as” as opposed to a “time”.

Patron playing live bingo may miss a number, leave the area for a moment, or simply not cover numbers for a period, when they return simply “catch up” or cover the numbers when they return.

#### **St. Regis Mohawk Gaming Commission**

I am not convinced of the need to daub after every ball is drawn. In separate game classification opinions, the NIGC recognized that both Multimedia Games, Inc. and Sierra Design Group offer versions of EPS that display balls released in sets. Though the number balls released and displayed to the player differ for each manufacturer, a live ball draw released in sets and displayed immediately to the player has become the norm. In regard to the collecting all missed balls in the last

group, I tend to believe this action eliminates the possibility of “sleeping” the game thus removing the element of a contest. As a result, the statutory requirement to be “won by the first person covering a previously designated arrangement of numbers or designations on such cards” is not met.

**Viejas Band of Kumeyaay**

See above answer.

**Agua Caliente Band of Cahuilla**

Only on integrated systems. Hand held is not that sophisticated.

**Cherokee Nation Gaming Commission**

All of the above scenarios do not detract from the fact that a patron, playing under predetermined and advertised rules for a particular game, is participating in a bingo game. All rules governing the play of the game and how prizes are to be awarded (i.e. must bingo on last ball called; must be daubed in the sequence they were drawn; etc.) should always be available for the patron’s review.

- **Should "auto daubing" be allowed and, if so, under what circumstances?**

**Seminole Tribe of Florida**

Yes, please see above.

**Muckleshoot Indian Tribe**

Yes, when operations declare the function use prior to players involvement. Patrons make the choice of whether to play on not.

**St. Regis Mohawk Gaming Commission**

“Auto daubing” should be allowed covering numbers or designations up to one number less than the number required covering the game-ending pattern. I am of the opinion that in order to meet the statutory requirement “first person to cover” player participation in the game requires an act. Further, “the game of chance commonly known as bingo” implies competition among players in a contest. Again, I agree with the opinion that “if all balls necessary to produce a game-winning pattern are drawn at once, the game will likely end with only one ball draw, thereby removing the contest element”. It is interesting that Multimedia RTB Version 1.2 and 2.0 received a favorable status as a class II device but that subsequent versions do not play in like manner to the approved version. Lastly, in order to meet statutory requirements, the player must daub to claim the prize in order to qualify as “the first person covering” the game-ending pattern on the card.

**Viejas Band of Kumeyaay**

Yes, see above answer.

**Agua Caliente Band of Cahuilla**

Should be the option of the player.

**Cherokee Nation Gaming Commission**

This function could also serve to broaden participation and provide means for those with limited motor skills to actively participate in a game with other patrons without such limitations. However, “auto-daub” should be



differentiated between “auto-claim”. The patron, upon achieving a winning event, should be required to perform a second function of claiming the prize. If they do not, they then fall under another constraint of regular bingo in that they “sleep” their prize and it is awarded to another patron that claims the prize (again, this is assuming that the rules clearly state what it takes to win).

- **In playing the game, should the player be required to react to the ball draw and daub or is a warning that a prize is about to be awarded to all players acceptable to cause a player to daub?**

#### **Seminole Tribe of Florida**

If a separate daub action by the player is used (even though not required), then the warning should be sufficient. The warning benefits the player by providing an alert to the game event that might be difficult to perceive in the absence of a live call. In that context, the electronic daub response is equivalent to the traditional daub.

#### **Muckleshoot Indian Tribe**

The use of an aid is not limited, the requirement for the game to be played non house banked or pari-mutuel is the only legitimate concern

#### **St. Regis Mohawk Gaming Commission**

It is not possible to require a player to react to the ball draw and daub without removing the element of sleeping the game. Provided the draw and release of the balls (whether individually or in sets) is consistent for all participants and all other statutory criteria for the game of bingo are met, a warning that a prize is about to be awarded is sufficient notice to the player. Whether or not the player claims the prize is an individual choice.

#### **Viejas Band of Kumeyaay**

See above answer.

#### **Agua Caliente Band of Cahuilla**

It is the players responsibility to pay attention to the game and declare Bingo if they achieve it. Warning to all players is acceptable but some players will not like it.

#### **Cherokee Nation Gaming Commission**

See above. Further, as a technological aid to the game of bingo, an alert to a possible prize award is perfectly acceptable.

**What are the required features for a draw and release of "objects similarly numbered or designated" or for an electronic determination of numbers?**

- **May other than a random draw or selection be used?**

#### **Seminole Tribe of Florida**

Yes, the IGRA merely provides that bingo outcomes must be "electronically determined." It does not require a purely random draw.

**Muckleshoot Indian Tribe**

The limitation what the patron agrees or accepts

**St. Regis Mohawk Gaming Commission**

I don't know what alternative method might be acceptable but the issue should be contemplated for possible use in a variant of the game of bingo.

**Viejas Band of Kumeyaay**

I wouldn't think so, but I'm not sure what this means.

**Agua Caliente Band of Cahuilla**

No

**Cherokee Nation Gaming Commission**

This will depend on the rules of the game being played. A truly random draw is the most common. However, there could be games in which balls are randomly drawn from individual sets of balls (i.e. a random draw of a ball from a box containing only numbers in the "B" column, a ball from a box containing only numbers from the "I" column, and so forth) until a game winning event is met.

- **May balls or numbers be released in multiple lots or must they be released one at a time?**

**Seminole Tribe of Florida**

The courts have concluded that multiple bingo numbers per release is permitted. 103 Electronic Gambling Devices, 223 F.3d at 1093 ("Once the game begins the players start receiving a series of three-number draws displayed on-screen and announced through audio channels."); 162 Megamania Gambling Devices, 231 F.3d at 716.

**Muckleshoot Indian Tribe**

The ball draw is purely an operational issue.

If the operation employs a pay table or interim prize, the approach of the ball draw may be adjusted to reach an expected pay schedule or conclusion.

**St. Regis Mohawk Gaming Commission**

I believe this issue was resolved with the issuance of the Multimedia RTB version 1.2 opinions.

**Viejas Band of Kumeyaay**

I don't see why there can't be multiple lots released to allow opportunities to win interim prizes along the way to the final winning pattern, provided that the same number cannot be present in more than one lot.

**Agua Caliente Band of Cahuilla**

One at a time is ideal but, there may be games where you can draw as a pre-draw progressive type. How do you determine a winner if there are multiple balls drawn?

**Cherokee Nation Gaming Commission**

The Courts have provided guidance in this area through the MegaMania decision in which multiple numbers can be released at a time.

- **Is there a maximum number of balls or numbers that can be released, compared to the balls or numbers in play?**

**Seminole Tribe of Florida**

No such requirement is imposed by the IGRA definition of bingo. In fact, all balls could be released in a single set.

**Muckleshoot Indian Tribe**

My own belief is that the players should be informed of the method prior to participation.

**St. Regis Mohawk Gaming Commission**

Assuming we agree that the first release is some number less than the number required to cover the gaming-ending pattern, I don't see why any subsequent release(s) should not be to the minimum number required to cover a game-ending pattern on any of the cards in play as detected by the system. To properly correlate to a live game, the maximum number of balls drawn and released should not exceed seventy-five.

**Viejas Band of Kumeyaay**

If it's a live game correlation of the game of bingo, I would think that the maximum number that could be released would be 75.

**Agua Caliente Band of Cahuilla**

As a rule there are only 75 numbers in North American Bingo however, the rule could be flexible, different variations may be developed.

**Cherokee Nation Gaming Commission**

The type and rules of a game will dictate the answer to this question. Unless you want to venture into "games similar to bingo" territory, I would suspect that the total number of balls possible to be called would be 75.

**How should the term "win" be defined in the technical standards?**

- **What does it mean to "win" the game?**

**Seminole Tribe of Florida**

It means the first player to achieve a previously designated game-winning pattern, who is awarded a prize.

**Muckleshoot Indian Tribe**

To reach

- a) predetermined pattern
- b) set amount of numbers
- c) or match symbols
- d) a prize

**St. Regis Mohawk Gaming Commission**

The IGRA defines how the game is won.

**Viejas Band of Kumeyaay**

I thought this was already defined by IGRA i.e. “ the game is won by the first person(s) covering a previously designated arrangement of numbers or designations on such cards”.

**Agua Caliente Band of Cahuilla**

To complete the pre-designated pattern on and declaring same.

**Cherokee Nation Gaming Commission**

Depending on what is agreed to as to what constitutes a “game”, you can look to the IGRA where it states that the game (interim and/or final prize) is won by the first person to cover a pre-designated pattern.

- **Must every game have a winner?**

**Seminole Tribe of Florida**

There is no IGRA requirement that each game end in a winner.

**Muckleshoot Indian Tribe**

Eventually, or no one would play.

**St. Regis Mohawk Gaming Commission**

Yes, IGRA states, “the game is won...”

**Viejas Band of Kumeyaay**

Yes.

**Agua Caliente Band of Cahuilla**

Generally, yes

**Cherokee Nation Gaming Commission**

I believe that every game must have a winner

- **Can a "win" mean a payment back less than originally wagered?**

**Seminole Tribe of Florida**

Yes, if that is the prize designated in accordance with the rules of the game.

**Muckleshoot Indian Tribe**

Yes.

**St. Regis Mohawk Gaming Commission**

Yes, Nova Gaming currently offers games that award “bingo points” that are in turn redeemed for additional credits available for play.

**Viejas Band of Kumeyaay**

Yes.

**Agua Caliente Band of Cahuilla**

Questionable, “Win” refers to the game not the amount

**Cherokee Nation Gaming Commission**

As previously discussed, yes, this is a possibility.

- Does "won by the first player to cover a pre-designated pattern" mean that this "pre-designated pattern" must pay the highest value prize?

**Seminole Tribe of Florida**

No. There is no requirement that the game-winning prize be the highest value prize in a game.

**Muckleshoot Indian Tribe**

It is not relevant. Operational.

**St. Regis Mohawk Gaming Commission**

No, there are no statutory requirements or regulations that prohibit interim prizes or progressive prizes from being greater than the amount paid for a game-ending pattern.

**Viejas Band of Kumeyaay**

No. There should/could be any number of "pre-designated patterns" for interim prizes on the way to the final pattern.

**Agua Caliente Band of Cahuilla**

Depends on how the game is structured. Multi part games usually build up to the largest prize.

**Cherokee Nation Gaming Commission**

No. An interim prize, based on the pay-table concept, can also be awarded for hitting a pattern on the way to reaching the game ending pattern.

- Does a player "win" when the player receives a prize that does not have a value greater than, or at least equal to, the amount wagered on the particular game?

**Seminole Tribe of Florida**

Yes, because the IGRA concept of win is more about being the first person to achieve a particular pattern than about receiving a particular prize amount.

**Muckleshoot Indian Tribe**

Yes.

**St. Regis Mohawk Gaming Commission**

Yes, provided the player has availability to information describing the amount paid for a "win" versus amounts paid for interim or secondary prizes. There is no requirement to pay out maximum prize awards for a game-ending pattern.

**Viejas Band of Kumeyaay**

They could.

**Agua Caliente Band of Cahuilla**

Oddly enough yes, again, win refers to the game not the amount.

**Cherokee Nation Gaming Commission**

When a patron wagers on a particular game, he/she understands that the money/ credit(s) required to purchase that chance is gone ("lost") and that there is the possibility that no prize will be awarded to him/her. If a patron is awarded an amount, even though it may not be at the same amount that he/she wagered, he/she has won a prize.

- Does a player "win" with a pre-designated pattern when the prize awarded is of token value in comparison to the amount wagered?

**Seminole Tribe of Florida**

Yes, please see above.

**Muckleshoot Indian Tribe**

A player may win the chance to participate in an activity, again, as long as it announced prior participation.

**St. Regis Mohawk Gaming Commission**

They could, but with information provided on a pay table I believe players will quickly realize that there may be better gaming options available. The market will drive the player's decision to play or not play any particular game.

**Viejas Band of Kumeyaay**

This is a good question and I think I see what you are getting at here. I guess it seems reasonable that a player should not be able to win less than at least one full "credit" in the denomination for which they are playing.

**Agua Caliente Band of Cahuilla**

Yes, then again no unless it is just an interim win and the game continues awarding additional prizes.

**Cherokee Nation Gaming Commission**

See above answer.

**How should the Classification Standards address limitations/restrictions on the alternative display of bingo results, sometimes referred to as "attractive display"?**

[Note: This same question applies to pull-tabs.]

- Should an "attractive display" of bingo results allow other player interaction, such as a second screen feature, which implies to the player further interaction in the selection of a prize?

**Seminole Tribe of Florida**

Yes, as long as the underlying game is, in fact, a Class II game. This does not preclude the use of secondary game features to determine the amount of the prize.

**Muckleshoot Indian Tribe**

YES.

**St. Regis Mohawk Gaming Commission**

Yes, several gaming machine manufacturers currently use "attractive display" on second screen features. Whether or not the player perceives their further interaction as a determining factor in a prize selection, is not a material concern provided the pre-designated pattern is displayed to the player on the previous screen. Additionally, the true prize available should be pre-determined; not subject to further random selection capabilities within the system.

**Viejas Band of Kumeyaay**

As discussed in our first meeting, for entertainment purposes, I think a player should be able to have some secondary interaction with the terminal in the selection or presentation of the prize, PROVIDED that it is for appearances only and that the actual prize was already determined at the time of the actual win of the game, and not subject to any secondary random selection process.

#### **Agua Caliente Band of Cahuilla**

Player interaction sometimes is seen as being desirable (Video Poker is attractive) this could be allowed however, it still must be within the confines of the regulation/rule.

#### **Cherokee Nation Gaming Commission**

The appearance/display of a game result is immaterial as long as the result is determined by the play of bingo (or pull-tabs). In the case of second screen features, the prize amount ultimately awarded should not be altered from that which results from the bingo (pull-tab) win. Using the pay-table prize award methodology, if an achieved bingo pattern yields a payout of 20 credits, then there could be the “selection” of three “treasure chests” in amounts that add up to the award amount.

- **Should standard casino games such as a simulated Roulette Wheel, Wheel of Fortune, or Craps, be permitted to display bingo results, given that these games themselves are Class III?**

#### **Seminole Tribe of Florida**

The courts have uniformly held that the classification of a game depends on whether or not a game meets the requirements of a Class II game and is not dependent on the game's "appearance." As explained by the Tenth Circuit:

The government points out the MegaMania machines are designed to resemble slot machines, are faster-paced than traditional or manual bingo, require more investment by the participants than bingo, and cause the individual player to run a greater risk of loss than the average bingo player in a traditional bingo parlor. While the speed, appearance and stakes associated with MegaMania are different from traditional, manual bingo, MegaMania meets all of the statutory criteria of a Class II game, as previously discussed. ... We therefore reject the government's argument that MegaMania stations are similar to slot machines.

United States v. 162 MegaMania Gambling Devices, 231 F.3d 713, 723 (10<sup>th</sup> Cir. 2000)(emphasis added). See also Diamond Game Enterprises v. Reno, 230 F.3d 365, 70 (D.C. Cir. 2000) and Seneca Cayuga Tribe v. National Indian Gaming Com'n, 327 F.3d 1019, 1040 (10<sup>th</sup> Cir. 2003). More recently, the Office of General Counsel opined that video reel displays are permissible in its advisory opinions on Reel Time Bingo and Mystery Bingo. NIGC Reel Time Bingo

Advisory Opinion (Sep. 23, 2003); NIGC Mystery Bingo Advisory Opinion (Sep. 26, 2003).

**Muckleshoot Indian Tribe**

As long as the machine itself does not determine the result it is class II. The act of winning is determined by the bingo game not the display image or machine.

**St. Regis Mohawk Gaming Commission**

I don't believe it was ever the intended purpose of this advisory committee to limit the creativity of game designers. Our focus should be on the play of the game and ensuring the critical elements of bingo, pull-tabs and instant bingo, other games similar to bingo, and non-banking card games under specified conditions, are incorporated into the play of the game.

**Viejas Band of Kumeyaay**

Of course this goes back to the consideration of perception. I'm struggling (as I'm sure many of you are) with the notion that we are considering restricting the manner in which a win is displayed for entertainment purposes when it seems that the overriding priority is to ensure that the game play actually follows a bingo format. How the game is actually administered and winners are determined should be the determining factor in defining the game as class II and not the entertaining graphics which indicate that a win has occurred.

**Agua Caliente Band of Cahuilla**

Currently many items are being displayed or marketed via player rating meters or displays.

There should be clear separation/distinction from the game being played and displayed bingo results.

**Cherokee Nation Gaming Commission**

Just because "casino games" are perceived to be Class III, as long as the win/award is driven by the bingo game (pull-tab), the display of the ultimate results has no bearing on and cannot change the game's outcome. The use of entertaining displays should be in no way limited.

- **Can simulated racing games (Horses, cars, etc) be used as an "attractive display of results?"**

**Seminole Tribe of Florida**

Yes, as long as the underlying game is a Class II game.

**Muckleshoot Indian Tribe**

Same. As long as the machine itself does not determine the result it is class II. The act of winning is determined by the bingo game not the display image or machine.

**St. Regis Mohawk Gaming Commission**

See above answer.

**Viejas Band of Kumeyaay**

See above answer.

**Agua Caliente Band of Cahuilla**

The use of "attractive results" is OK.

**Cherokee Nation Gaming Commission**



See above comment.

- **Should the "attractive display" include the use of mechanical reels?**

#### **Seminole Tribe of Florida**

Yes, as long as the underlying game is a Class II game. At least one court has ruled that the addition of a mechanical reel display to an otherwise legal device does not transform the device into a slot machine for purposes of the Johnson Act. United States v. McManus, 138 F. Supp. 164 (D. Wy. 1952).

#### **Muckleshoot Indian Tribe**

If the person is aware of the fact they are playing bingo and that the machine does not determine the prize, yes.

#### **St. Regis Mohawk Gaming Commission**

Nova Gaming currently offers a game using mechanical reels for "attractive display" of game results. Additionally, they display the card in video format on a section of the EPS above the reels. When a review play history is required, the EPS displays the patterns on the card and the mechanical reels re-position to the corresponding "attractive display".

#### **Viejas Band of Kumeyaay**

From a purely practical standpoint I would prefer to see the games be presented in video format. I believe that video is less susceptible to failure than mechanical wheels. Also from a regulatory field agent's perspective video offers better availability for educating the player with help screens, rules and other informational displays; and they offer the inspector more options in looking at historical play when investigating complaints or disputes.

#### **Agua Caliente Band of Cahuilla**

Game design could include this.

#### **Cherokee Nation Gaming Commission**

See above comment. Just because mechanical reels may be used to display the results of a bingo game (pull-tab), the results are still determined through the play of a Class II game.

### **Are there other issues related to the game of bingo that should be addressed in the Classification Standards?**

#### **Muckleshoot Indian Tribe**

Three issues:

The NIGC classification of the "Bonanza" bingo game, definition of lotto, and other games similar to bingo, are very limiting and need more discussion with in this forum.

- **How should the technical standards address the play of bingo that relies on paper or a combination of paper and cards played with bingo minders?**

#### **Seminole Tribe of Florida**

There is no need for technical standards for games played with paper cards. In the case of bingo minders, any such standards must provide tribes, consistent with congressional intent, maximum flexibility to use modern technology to play Class II games.

#### **Muckleshoot Indian Tribe**

It should provide a definition of the apparatus and its function to aid in the play of IGRA approved games, and display its classification.

Manufactured by an approved or licensed company

Display the winning card.

Data retention

Security standards

#### **St. Regis Mohawk Gaming Commission**

I am not familiar with the bingo minder device therefore; I am relying on the expertise of my committee colleagues to educate me regarding their use.

#### **Viejas Band of Kumeyaay**

Good question. I'm concerned about how big and cumbersome this regulation can get depending on where we limit the scope of its coverage. My expectations were that this regulation will be limited (at least at this time) to technical standards for electronic bingo systems which would include such things as playing terminals, servers, accounting systems, etc. Basically everything that has to do with the perceived "bingo slot machine" systems; and similarly with the electronic pull tab dispensers, although those seem to be pretty well defined by the courts at this time. If the scope is going to include "bingo minders" then I will need a little more education in that area. Although it may not be a bad idea to address those soon. I get a number of manufacturers coming into my office seeking regulatory approval to put their "technological aids" in play here and I have found a number of them quite questionable with regard to just how far they are pushing the limits.

#### **Agua Caliente Band of Cahuilla**

If electric play is combined with paper play, the player on the electronic system should not have an advantage over the player using paper.

1. System should not tell player they are a winner or to "Yell Bingo".
2. System should not auto daub for the player.

If all players are on an electric system, then all features of auto daub and auto bingo detection are OK if available to all players.

Limit the number of electronic cards available to a player and analyze the software

#### **Cherokee Nation Gaming Commission**

I do not feel the technical standards need to bother with this issue. Bingo minders are essentially "dummy" pieces of equipment. They neither determine nor influence the bingo game. They merely provide a means for players to play multiple cards. The standards should focus on truly electronic bingo games.

- **What is the role, if any, for a state or industry definition of the term "bingo"?**

### **Seminole Tribe of Florida**

Such definitions helps to show the broad range of games that can be bingo or at least games similar to bingo under the IGRA. Certainly, there is no indication that Congress intended to allow tribes to offer a smaller range of bingo and bingo-type games than are available under various state laws.

### **Muckleshoot Indian Tribe**

None.

### **Viejas Band of Kumeyaay**

None. This should be left to IGRA and how we as Indian gaming regulators of class II games interpret it.

### **Agua Caliente Band of Cahuilla**

Bingo should not be defined at the State level.

### **Cherokee Nation Gaming Commission**

There is no need to look to any state for a definition of bingo. Congress has already done this. Congress, through the IGRA, also stated that bingo is a Class II game under the direct regulation of the Tribes and, therefore, does not require state involvement since Class II games do not have to be compacted.

However, in the case of “games similar to bingo”, there may be some beneficial information that can come from state jurisdictions.

## **2. PULL TABS**

**Pull tabs are Class II gaming when played in the same location as bingo. Pull tabs are said to be in two varieties: paper and electronic. Pull tabs played in wholly electronic medium are electronic facsimiles of the game of pull tabs and are Class III under the IGRA. Some pull tab games use paper but display the results on an electronic video screen.**

### **Cherokee Nation Gaming Commission**

I, personally and respectfully, disagree with the assertion that a wholly electronic version of a pull-tab game is Class III. Case law notwithstanding, I believe the decisions handed down by the Courts at the time the relevant cases were heard were based on the laws, regulations, and technology available at the time. At the very least, I believe the notion that a wholly electronic version of a bingo game can remain as a part of the Class II environment, that a wholly electronic pull-tab game can also be considered to fall under the Class II heading.

This is provided that all things remain equal in the creation and play of a pull-tab game – the creation of a finite set of predetermined outcomes (wins/losses) that are randomly shuffled and randomly dispensed or issued in post-shuffle sequence. If so, the only distinguishing characteristic is that one game uses paper and one doesn't. The machines offering electronic pull-tabs could also be required to be linked so as to broaden participation and ensure

that more than one person have the ability to play from the same pull-tab deal.

I believe the concept, at the very least, warrants further discussion. If the contention is still that such games would remain Class III, I would ask for a position paper be prepared and provided to the committee members.

**What are the classification standards that will define the game of pull tabs as Class II when played in a manner that uses a paper pull tab but displays the results on a video screen?**

- **Must the pull tabs be placed within the unit that sells the pull tab or may they be stored in a separate unit?**

**Seminole Tribe of Florida**

They may be stored in a separate unit.

**Muckleshoot Indian Tribe**

As long the game is not determined by the machine it self, it should be allowed

**St. Regis Mohawk Gaming Commission**

The pull-tab could probably be placed in a separate unit provided the player has the ability to some how retrieve the ticket in a timely manner in order to redeem winners (if any) from their play. Multi-tab tickets present different challenges. How can an operation be certain the correct player is redeeming the correct multi-tab?

**Viejas Band of Kumeyaay**

I have no intelligent opinion on this.

**Agua Caliente Band of Cahuilla**

Same place, if you are at a facility where you intend to buy a pull tab, the pull tab should be dispensed physically or electronically at that facility.

**Cherokee Nation Gaming Commission**

I believe they may be stored in a separate unit elsewhere.

- **May a pull tab purchased elsewhere be placed into the unit for verification (including with "attractive" display of results)?**

**Seminole Tribe of Florida**

Yes. Such devices already have been approved by the NIGC Office of General Counsel in the Tab Force Advisory Opinion (June 8, 1998).

**Muckleshoot Indian Tribe**

YES

**St. Regis Mohawk Gaming Commission**

Assuming the pull-tab is from the same deal and will be verified to determine that deal is available for play on that specific gaming day; I don't see any reason why

this could not happen. In a sense that is what currently approved pull-tab aids do now.

**Viejas Band of Kumeyaay**

I don't see why not. It is my understanding that this is already commonly done.

**Agua Caliente Band of Cahuilla**

Yes, for payment purposes. Example: A person buys three pull tabs. At the end of day, the person goes to a pull tab kiosk for verification and payment. (No jackpot payments at kiosks)

**Cherokee Nation Gaming Commission**

This could be an option. You're talking about a predetermined outcome that is being verified, not affected by a gaming machine.

- **Must the pull tab itself be redeemable for the prize won, if any?**

**Seminole Tribe of Florida**

The pull-tab may be redeemed by the device as it is dispensed or revealed.

**Muckleshoot Indian Tribe**

The aid of electronic verification should be allowed.

**St. Regis Mohawk Gaming Commission**

It is my understanding that both Lucky Tab II and Magical Irish machines receive favorable status due in part to the fact that the pull-tab (not an electronic facsimile) is redeemed for a prize won. Truthfully, I have limited knowledge of any pull-tab devices other than Lucky Tab II.

**Viejas Band of Kumeyaay**

Yes. Well I guess that depends on how you define "redeemable". If redeemable means that it can be inserted into a machine for credits for further play and then accumulated credits can be cashed out for a redeemable ticket from a cashier, then YES. If you mean that each actual winning pull-tab must be retained and handed in to a cashier to "redeem", then No.

**Agua Caliente Band of Cahuilla**

Physical Pull Tab (ticket): The physical Pull Tab must be present to redeem for the prize.

Electronic Pull Tabs: Electronic verification is OK.

**Cherokee Nation Gaming Commission**

The pull-tab could be considered redeemed as it is verified by a machine.

- **May the player accumulate the winning credits on an electronic medium, e.g. an electronically readable card/cash ticket receipt and cash out the accumulated winning credits with a cashier?**

**Seminole Tribe of Florida**

Yes. The aid device can simultaneously sell and redeem pull-tabs for the player.

**Muckleshoot Indian Tribe**

This is still an Electronic aid function.

### **St. Regis Mohawk Gaming Commission**

Provided the player maintains the actual winning tab or has timely access to obtain the winning pull-tab, I don't see why the machine could not utilize some form of accurate accounting and play history software to provide a ticket of some sort. But unless things have changed, the player will still need to redeem the actual winning pull-tab(s).

### **Viejas Band of Kumeyaay**

Yes, PROVIDED that the device has an accounting system that can appropriately provide historical play and accounting data.

### **Agua Caliente Band of Cahuilla**

Yes, however within the rulers that applies in Class III gaming environment.

### **Cherokee Nation Gaming Commission**

I believe this should be considered permissible. I do not see how allowing such transactions to be completed removes the pull-tab game from the Class II arena.

- **May the player accumulate winning credits on an electronic medium, e.g. a credit meter maintained by the technical aid device and then use those credits for additional play?**

### **Seminole Tribe of Florida**

Neither the IGRA nor the implementing regulations bar the use of technologic aids that permit a player to accumulate credits to use for additional play. Under the IGRA, the relevant inquiry is whether the device broadens potential game participation (technologic aid) and does not limit a single player to playing the game solely against a self-contained device (facsimile). This conclusion is supported by the decisions of the Ninth and Tenth Circuit that MegaMania is Class II, notwithstanding the fact that the player terminals allow players to accumulate and play credits resulting from previous outcomes. There is no basis to conclude that a different rule should apply to aid devices that dispense pull-tabs.

### **Muckleshoot Indian Tribe**

Yes.

### **St. Regis Mohawk Gaming Commission**

The irony of the Lucky Tab II device is that a player may receive credit for a winning pull-tab, have that credit electronically accumulated within the device, and play on those accumulated credits without the need to redeem the winning pull-tab to a cashier. In Contrast, Courts of Appeal based their decisions in part on the requirement that players provide the actual paper pull-tab to a clerk to redeem the prize, if any.

### **Viejas Band of Kumeyaay**

I don't see why not as long as the above provision is met.

### **Agua Caliente Band of Cahuilla**

Yes

### **Cherokee Nation Gaming Commission**

The accumulation of credits is acceptable for electronic bingo and, therefore, should easily transition for use in pull-tab games.

### 3. "OTHER GAMES SIMILAR TO BINGO"

**Class II gaming also includes "other games similar to bingo" when played in the same location as bingo. The Commission recently defined the term as a "variant" of the game of bingo so long it is not house-banked and permits players to compete against each other for a common prize or prizes, but has not offered any advisory classification opinions on such games.**

**What is a "variant" of the game of bingo, which may be Class II under the statutory definition?**

**Cherokee Nation Gaming Commission**

As we previously discussed, the debate over what constitutes a "variant" of bingo will take much more time than can be had in providing written comment and is one that could probably never be concluded to everyone's satisfaction.

- **How do the proposed technical classification standards apply to devices used to aid in the play of an "other game similar to bingo"?**

#### **Seminole Tribe of Florida**

Such standards must not unreasonably restrict the broad range of bingo-like games that Congress intended to be available to tribes.

#### **Muckleshoot Indian Tribe**

If the aid does not determine win, it is not house banked, and it is not machine against person it should be determined as Class II, when played with the game of bingo.

#### **St. Regis Mohawk Gaming Commission**

I hesitate to attempt an answer until we as a group reach a majority opinion as to what degree may a "other game similar to bingo" vary from the game of bingo.

#### **Viejas Band of Kumeyaay**

First, as discussed in our first meeting, to put a limitation on the definition by saying that a game similar to bingo cannot be "house banked" seems contradictory to how bingo is really played. It is my humble opinion that all bingo is actually "house banked" to some degree or another. Bingo or games similar to bingo are not purely "pari-mutuel" among the players. Although often the size of prizes is determined by the amounts wagered, it is also not uncommon for a bingo session to pay out more than was taken in by wagers or "buy ins". I'm guessing, but the notion of "pari-mutuel" and "house banked" were terms intended to try to make the distinction of bingo and its variants as class II, as opposed to class III which is typically house banked although not always. Horse and Dog racing are class III however they are purely pari-mutuel. I'm also guessing that the use of these terms was intended to attempt to ensure that a player could not sit down at a terminal and play only against the machine, even though they were playing a bingo game or game

similar to bingo, of course this would then be playing an electronic facsimile of the game which is prohibited. Now, to get back to your discussion point.

Again, I'm no expert in this area, but it strikes me that if we are going to allow deviations from a live game correlation of bingo that such things as cards with more or less than 25 spaces, a pool of numbers to draw from could be larger or smaller than 75 numbers, and many other minor deviations that people with more imagination than I have could dream up, would be conceivable. However, it seems to me that it starts to look dangerously more like a lottery than bingo. I'm sure that this question will warrant much more discussion.

**Agua Caliente Band of Cahuilla**

The same standards should apply.

**Cherokee Nation Gaming Commission**

I'm sure there may be certain aspects/components of such a gaming machine that would also be present in "regular" electronic bingo machines. The relevant standards could then be applied to those aspects/components.

- **Do all "other games similar to bingo" involve active player participation, such a daubing?**

**Seminole Tribe of Florida**

Both bingo and games similar to bingo can be played with aid devices that daub automatically for the player (see discussion above).

**Muckleshoot Indian Tribe**

When aids are in use daubing should not be a factor.

**St. Regis Mohawk Gaming Commission**

Undoubtedly some sort of player participation is necessary; refer to above answer.

**Viejas Band of Kumeyaay**

I would think "Yes". I'm not hung up on a "daubing" requirement, but some player interaction would be appropriate, such as an initiated action to claim the prize.

**Agua Caliente Band of Cahuilla**

No, as long as all requirements are the same for all players in the game.

**Cherokee Nation Gaming Commission**

Without knowing what "all 'other games similar to bingo'" could be, it's not easy to say. It is certainly not out of the realm of possibility to believe that daubing would be part of the game.

- **Can other than ball media be used for "other games similar to bingo" such as horses or wonders of the world, etc?**

**Seminole Tribe of Florida**

Yes, such games share enough similarities to bingo that they could be games similar to bingo.

**Muckleshoot Indian Tribe**



Amount of number or symbols is not defined in definition nor should be here.

**St. Regis Mohawk Gaming Commission**

The IGRA only requires is the use of “numbers or designations”.

**Viejas Band of Kumeyaay**

Since IGRA makes numerous references to “numbers or designations” in its bingo definition, I don’t see why there should be any limitation on what the designations should be. I guess I could stand to see some examples of the application contemplated by this question.

**Agua Caliente Band of Cahuilla**

Yes, however the selection is to be random and is not to require skill i.e. Random Number Generators (RNG)

**Cherokee Nation Gaming Commission**

Bingo balls are the most common and identifiable means used for playing bingo, but for games “similar to bingo”, this may not necessarily be the case. For instance, a wheel with numbers/designations may be used (provided that, unless expressly stated otherwise, duplicate numbers/designations would not be allowed).

**4. CARD GAMES**

**Class II includes card games that are not house banked, although the legality of play of these games at any particular tribal gaming facility is dependent on the law of the state where the facility is located. Also, Class II gaming specifically excludes the play of electronic or electromechanical facsimiles of any game of chance, thereby excluding video poker and blackjack.**

- **Should the classification standards address the play of card games?**

**Seminole Tribe of Florida**

No. There is too much variation between states on the scope of permissible Class II card games for additional regulations to be useful.

**St. Regis Mohawk Gaming Commission**

NIGC minimum internal control standards currently address card games. If the question pertains to cards being displayed for entertainment purposes on bingo EPS the answer is clearly no. The IGRA does not prohibit the use of any “designation”, cards, horses, roulette or other wise.

**Viejas Band of Kumeyaay**

I strongly believe that this regulation should stay away from this subject. The last attempt to do so was met with a great deal of resistance and the proposed rule created more confusion and questions than it answered. The number of variations of non-banked card games is limited only by one’s imagination. I believe that the regulatory definition of “House banked games” is more than adequate to address the scope of what is allowed as “non-banked” or class II card games. I believe that the NIGC should only get involved in this issue where a state challenges the classification of a given card game and agreement cannot be reached between the tribe and the state. To

my knowledge this does not occur that often. Furthermore, I also believe that this regulation should try to stick to establishing specifications for “technological” aids, that’s why we keep referring to them as technical standards. I don’t see where there is any real application for where technological specifications or standards are required in card games.

#### **Cherokee Nation Gaming Commission**

Again, I think the focus of the advisory committee and the process in which we are involved should be on the electronic games rather than card games. There is too much disparity between the respective state laws that cause this issue to be more troublesome. The technical standards, as understood by the majority, if not all the tribes, pertain to technological aids rather than card games.

- **Should the classification standards address the relationship, if any, to the play of a bingo game that also displays the results of the game in a poker hand or blackjack card format?**

#### **Seminole Tribe of Florida**

No. Such displays are not actual card games – they are merely an entertaining display of a bingo game outcome.

#### **St. Regis Mohawk Gaming Commission**

See above answer.

#### **Viejas Band of Kumeyaay**

Again, how the game is actually played should be the determining factor in its classification, and not how the win is displayed for entertainment purposes. The play of the game should remain in a bingo based format that is defensible as correlating to the game of bingo with the use of technological aids.

#### **Cherokee Nation Gaming Commission**

Again, how the results of a bingo game (pull-tab) are displayed is immaterial as long as the outcome is based on the play of the Class II game and is not influenced by any other event.

- **Blackjack, played in tournament format, may be Class II gaming if it is not conducted as house-banked card game. Should the technical classification standards include a definition or description of "bona fide tournament" for this purpose?**

#### **Seminole Tribe of Florida**

This is an Oklahoma issue. In other states, the requirement is merely that blackjack be played in a non house-banked format.

#### **St. Regis Mohawk Gaming Commission**

Unless the question pertains to a bingo game, displaying blackjack cards for entertainment purposes, that happen to be in tournament format, I don’t see the correlation to our committee’s purpose.

**Viejas Band of Kumeyaay**

I guess I'm a little confused here. I thought the whole purpose of this exercise was to set forth specifications regarding "technology" and "technological aids". I would not want to see this regulation get muddied up with trying to address non-technological standards. Real blackjack , tournament or otherwise, is a game that does not include technology requiring specifications.

**Agua Caliente Band of Cahuilla**

Yes

**Cherokee Nation Gaming Commission**

See above comment on card games.

**5. TECHNICAL STANDARDS FOR GAMING DEVICES USED IN CLASS II PLAY**

**Technical standards may be developed as part of the effort to devise classification standards for devices used to aid Class II play. The goal is to ensure there are fair but high quality Class II standards.**

**What are the areas to be covered in Technical Standards?**

**Muckleshoot Indian Tribe**

Other person may be more qualified to answer these questions. I would suggest a mix of proposed standards using the current available models for review.

- **Client-server standards, including encryption, authentication, communications, recovery**

**Seminole Tribe of Florida**

There already are computer industry standards to address such concerns. .

**St. Regis Mohawk Gaming Commission**

I must rely on the expertise of our technical consultants to help address this section.

**Viejas Band of Kumeyaay**

This is a little out of my comfort zone which is why I rely heavily on experienced and competent test labs for guidance in this area. However I would suggest that there also be included in this area some sort of reliable accounting software for metering money or ticket values wagered, amounts paid for each game and cumulatively, correlating revenues to specific terminals, game day, and a host of other accounting history data that I know is commonly relied on by the accounting departments.

**Agua Caliente Band of Cahuilla**

The same technical standards for protection as used in Class III devices should apply and be of the same high standards of protections. There should be no difference in protecting hardware, software, and firmware. Class II is only different in the game programming and game play, not in the protection of the programming or play.

**Cherokee Nation Gaming Commission**

I believe this is best left to the experts to provide guidance on how these areas are included in the technical standards. I believe they should be at least referenced if not generally expounded upon. There are gaming industry standards that could come into play when a game designer/manufacturer is creating a gaming system.

- **Random selection (RNG)**

**Seminole Tribe of Florida**

There are industry standards for RNG.

**St. Regis Mohawk Gaming Commission**

The Lab tests randomness to an industry standard. I rely on the integrity of the testing lab.

**Viejas Band of Kumeyaay**

The RNG must be tested and validated by the lab to ensure true randomness within industry tolerance standards. What those are, I depend upon the lab to guide me on.

**Agua Caliente Band of Cahuilla**

Depending on game being played

- Acceptable in bingo for replacement of ball draw because both events are to be totally random.
- May not be acceptable in pull tabs. RNG may be used to put all possible combinations into a random series but the RNG may not be used to entitle the player to select from the population of possible outstanding pull tabs.
- This raises the question of establishing the true definition of what is a pull tab game and what are the regulations.

**Cherokee Nation Gaming Commission**

This is something that should be made a general requirement, where applicable (bingo v. pull-tabs) and tested for by an independent testing laboratory against accepted industry standards.

- **Hardware – cabinet, printers, coin and bill readers, power supply, video display, physical security, etc.**

**Seminole Tribe of Florida**

Most of these issues are addressed by the NIGC MICS regulations, 25 C.F.R. 542.7.

**St. Regis Mohawk Gaming Commission**

See answer following all bulleted items.

**Viejas Band of Kumeyaay**

I see no reason why the player terminal cabinets cannot and should not comply with the same technical standards as those of a standard slot machine. In fact that would be a requirement in my jurisdiction. Those specifications are too lengthy to go into in this space but I'm sure that BMM is very aware of what those industry standards are. I would include requirements for independently keyed and locked areas that are

privileged or where access to could affect the play of the game or payouts and certainly to the bill accepters and stacker cans.

#### **Agua Caliente Band of Cahuilla**

All should apply with the appropriate protection regardless of game being played, you still need game and asset protection.

#### **Cherokee Nation Gaming Commission**

Again, industry standards can provide guidance on this subject and can be tested to by the testing laboratory. They should be required to the extent that the public health and safety of employees and patrons is not compromised.

- **Software – functionality, logical security, source code review, version control, implementation of games, mathematical analysis, metering, audit mode information, progressive jackpots, etc.**

#### **Seminole Tribe of Florida**

Many of these issues are address by the NIGC MICS. The other issues are appropriately left to individual tribal gaming commissions.

#### **Viejas Band of Kumeyaay**

Again, I must rely on the expertise of the lab’s recommendations. If I knew all about this stuff I would not be a regulator, I’d be making the big bucks in computer engineering.

#### **Agua Caliente Band of Cahuilla**

With Testing Lab Certification and approval by the Tribal Gaming Agency

#### **Cherokee Nation Gaming Commission**

There are current NIGC MICS standards that touch upon these subjects, as well as accepted industry standards. Proprietary software and game development information can be tested by the laboratory should be discussed, but not necessarily require a great deal of detail.

- **Artwork – glass, help screens, buttons (including touch screens)**

#### **Seminole Tribe of Florida**

There is no need for NIGC regulations on these issues, which should be left to tribal gaming commissions.

#### **Viejas Band of Kumeyaay**

Same as above.

#### **Agua Caliente Band of Cahuilla**

With Testing Lab Certification and approval by the Tribal Gaming Agency

#### **Cherokee Nation Gaming Commission**

Aesthetic artwork and glass have no bearing on the technical standards to the extent that the display of a bingo card(s) is not impaired. Help screens delineating the various rules of the game are a must, including any associated pay-tables.

- **Submission – ensure a uniform high standard of submission material to the evaluation laboratory**

**Seminole Tribe of Florida**

Such standards are fairly uniform in the industry and do not require additional regulations.

**Viejas Band of Kumeyaay**

The lab knows better that I what needs to be submitted to adequately test and validate a component, terminal, or system.

**Agua Caliente Band of Cahuilla**

With Testing Lab Certification and approval by the Tribal Gaming Agency

**Cherokee Nation Gaming Commission**

The testing laboratory can probably better address this question than most. As always, tribes have the ability to add to – but not take away from – the requirements promulgated by the NIGC for game submissions.

- **Interface to Monitoring systems**

**Seminole Tribe of Florida**

These issues are addressed by the NIGC MICS regulations, 25 C.F.R. 542.7.

**Viejas Band of Kumeyaay**

Terminals should have this capability for communicating with accounting systems and/or identifying players and tracking their play and for the identification of technicians who enter the cabinets with a record of date and time. I’m not totally convinced that this must be a requirement to install in every jurisdiction, but I do think we should have the technical standards developed for the jurisdictions that wish to opt to require it or for the manufacturer who wishes to offer the technological option.

**Agua Caliente Band of Cahuilla**

With Testing Lab Certification and approval by the Tribal Gaming Agency

**Cherokee Nation Gaming Commission**

Each gaming systems should have the means for ensuring that compliance with the NIGC & Tribal MICS is being met. The technical requirements can be best addressed by the testing lab.

- **Minimum reporting standards for games – verification of correct performance / return to player**

**Seminole Tribe of Florida**

These issues are addressed by the NIGC MICS regulations, 25 C.F.R. 542.7.

**St. Regis Mohawk Gaming Commission**

We might consider including standards for all of the points listed. Certainly, my tribe deals with similar standards with our class III devices. I am not advocate of forcing tribes into compliance with overly burdensome regulation but I don't see how standards for any of the bulleted items will be burdensome. Tribes have the primary role in gaming regulation within their jurisdictions and can add more stringent regulations if they choose.

**Viejas Band of Kumeyaay**

I think I covered this in my above comments on accounting system standards.

**Agua Caliente Band of Cahuilla**

With Testing Lab Certification and approval by the Tribal Gaming Agency

**Cherokee Nation Gaming Commission**

See above comment.

**6. PROCESS FOR APPROVAL, INTRODUCTION AND VERIFICATION OF GAMES UNDER THE CLASS II CLASSIFICATION STANDARDS**

**What process and methods should be provided in the Class II game classification regulations to verify and ensure that games and related technological aids and devices are in compliance with Class II game classification standards?**

- **Should the NIGC and/or Tribes license, certify or otherwise approve independent test labs to test games and related technological devices or aids to make findings or recommendations regarding their compliance with the required standards?**

**Seminole Tribe of Florida**

NIGC approval or certification of test labs is unnecessary and would compromise the independence of such labs. It might, however, be useful for the NIGC to maintain a list of labs approved by other U.S. gaming jurisdictions. Decisions on which labs to use (and whether to license such labs) should be left to the tribes.

**St. Regis Mohawk Gaming Commission**

Labs will not maintain their independence if licensed by either the NIGC or a Tribe whose devices or aids they are testing. Certainly there is a need for either certifying or otherwise approving test labs. I think the tribal regulatory authority has the responsibility to provide a suitability determination much the same as is done for gaming licenses or gaming related service vendors. Beyond that, I would think the issuance of an actual license is not prudent.

**Viejas Band of Kumeyaay**

With all due respect, I would not want the NIGC to get into the business of licensing. Tribes have long been recognized as the licensing authority. Whether a tribe elects to license a lab or not should be left to their discretion. As I mentioned before, I do not believe that a lab should be licensed if we desire to provide them professional independence, just as we don't license attorney firms or CPA firms. Having said all of that, I do believe that some competency standards should exist for use in determining

whether a lab is capable of doing a quality and competent job. I also firmly believe that some due diligence background investigation should be required to determine that the lab is reputable and to ensure that the lab's owners and principals are reputable and free from any significant criminal history. After the standards are established and verified (I'm not sure what those standards should be) and due diligence backgrounds are done the NIGC or a tribal regulatory could then "certify" or "make a finding of suitability" for usage of the lab. I would also suggest that the due diligence background be redone at least every two years.

I would think that competency standards would include such things as:

- No felony convictions for owners or principals
- Computer engineering and mathematical degrees for persons conducting the testing
- "X" - number of years of gaming related experience
- Having sufficient space and equipment to physically test and validate equipment and systems to the technical standards specified for the jurisdiction that they wish to test for.
- Having adequate database capabilities to maintain a history of all equipment, software, and systems ever tested, including date of test certification, version, software capabilities, Manufacturer, jurisdiction(s) approved for, etc.; and a means of readily and efficiently communicating this information to all regulatory jurisdictions upon request.

I also don't believe that a lab should be allowed to serve two masters. I believe that it is a conflict of interest for a lab to have a manufacturer as a client at the same time it is purporting to be the independent representative of a regulatory agency to validate the compliance of a manufacturer's product.

I'm sure that there are many other industry standards that the test labs are aware of and for which they have had to comply in order to obtain credentials in other jurisdictions. Perhaps they could supply us with some samples.

#### **Agua Caliente Band of Cahuilla**

The Testing Lab does not need to be licensed by the NIGC, it needs to remain Independent. If the Tribe does not have the technical ability to test the equipment themselves, then the Tribe should License an independent laboratory to verify the hardware and software.

#### **Cherokee Nation Gaming Commission**

I do not believe that it benefits the process if the testing lab is licensed by the NIGC or the Tribes. In fact, I feel it reduces the effectiveness and tarnishes the credibility intended to be accomplished in that the lab would lose its independence. There are well-established, nationally and internationally recognized testing labs that have been and are being used by Indian and non-Indian jurisdictions.

While I believe the Tribes and the NIGC can come to consensus on a list of readily available, credible labs, the question of how to handle any new labs remains unanswered. Should a new testing lab arise, they should be evaluated against the operating parameters exhibited by existing firms – technical knowledge and formal training in relevant areas (mathematics,



electrical / computer engineering, gaming operations, gaming related legal experience, etc.).

The Tribes should be able to choose a testing lab from an agreed upon list, with the NIGC being able to choose another lab in the event of a disagreement on the test results. Any further disagreement could be settled in other venues.

- **If so, what qualifications must the test lab have to achieve NIGC or tribal accreditation?**

**Seminole Tribe of Florida**

Unnecessary. See above.

**St. Regis Mohawk Gaming Commission**

Much like a gaming license application the lab would need to provide general information on the business and specific information on the principal owners. The IGRA currently outlines the required information for a gaming licensee, the tribal gaming authority has the responsibility for due diligence when conducting the background check. Due to the highly technical nature of the business, the education, experience, and proficiency of the lab technicians needs checking. I am sure others will add to my list of critical checks for testing labs and lab technicians.

**Viejas Band of Kumeyaay**

See above comments.

**Agua Caliente Band of Cahuilla**

Same as Class III which does not require NIGC accreditation.

**Cherokee Nation Gaming Commission**

See above answer.

- **What auditing of performance (Key Performance Indicators) of test labs should be required, and by whom?**

**Seminole Tribe of Florida**

Unnecessary. See above.

**St. Regis Mohawk Gaming Commission**

Auditing of performance could be a function of the NIGC provided Tribes forward all pertinent testing information (including background check information).

**Viejas Band of Kumeyaay**

Perhaps the NIGC or a tribal regulatory agency could or should have a test expert on staff to audit or perhaps there could be a “peer review” performed among all “approved” labs in accordance with an established checklist of criteria or standards.

**Agua Caliente Band of Cahuilla**

Same as Class III

**Cherokee Nation Gaming Commission**

See above answer.

- **What should be required of manufacturers in submitting a game to tribal regulators, the NIGC and/or approved test labs for testing, verification and approval of the game as a Class II game?**

**Seminole Tribe of Florida**

There are industry standards for such submissions. NIGC regulations are unnecessary.

**Muckleshoot Indian Tribe**

The technical standards should be defined and the manufacturer should be required to reach those standards through independent laboratories.

**St. Regis Mohawk Gaming Commission**

Only that the manufacturer will provide to the lab any information deemed necessary by the testing lab in order to facilitate the testing and verification of the game for which approval is sought. The Tribes have the responsibility to provide any other game classification standards adopted in addition to NIGC class II game classification standards, for their respective jurisdiction. The testing lab will then certify the game as compliant or not compliant and issue a letter to the tribal gaming authority and the NIGC.

**Viejas Band of Kumeyaay**

I can't conceive of either the NIGC or tribes doing any testing thereby accepting any submissions from a manufacturer. As discussed further above the lab should define what is necessary for submission by a manufacturer to adequately test and certify a game for compliance with the technical specifications dictated or adopted by any given regulatory jurisdiction. After a given product is tested and certified by the lab as compliant with a given jurisdiction's specifications, I would expect the manufacturer to submit to the regulator the certification documentation for the exact hardware/software expected to be put in play in any given jurisdiction.

**Agua Caliente Band of Cahuilla**

A request from the Tribal Gaming Agency to the Testing Lab for verification/certification. The Testing Lab should have no approval authority.

**Cherokee Nation Gaming Commission**

The Tribe should be provided with a set of basic information including but not limited to:

- ❖ **Agreements (Draft and Final, if applicable)**
  - **Contracts/Agreements**
  - **Letters of Intent**
  - **Documented Verbal agreements**
  - **Any/All modifications/extensions**
- ❖ **Payout Structure**
  - **Pull-tabs**
    - **Creation Process**

- Flare
  - Paper
    - Number of Rolls
    - Distribution Method
  - Electronic
    - No. of Tabs on Cartridge
    - Distribution Method
  - Bingo
    - Card Permutations
    - Patterns
    - Screen shots (e.g. pay table/help screens)
    - Per game type/deal
  
- ❖ **Game**
  - Platform Name & Theme Name(s)
  - Play Description
  - Legal opinion &/or lab analysis
  - Attestation of
    - Game's Class II classification
    - MICS compliance (*where applicable*)
  - Approval documents from other tribal jurisdictions
  - Corporate/Advertising documents
  
- ❖ **Procedures**
  - Ordering (inventory/machines)
  - Delivery (scheduling)
  - Player Tracking
    - Examples of reports
  - Game Monitoring
    - On-line Monitoring System (if available)\*
    - Validation Systems
    - MICS Reporting
    - Progressive (if applicable)
    - Systems Access
      - Cards
      - Passwords
    - Key Controls
  - Maintenance manuals (machine &/or peripherals)
  - Accounting
    - On-line System (if available)\*
    - Sales/Payouts
    - Report histories
    - Examples of reports
  - Operations Manual(s)
    - All Applications
  - Inventory

- Removal of machines/tabs/etc.
- Spare parts
- Game Upgrades/Modifications
  - System Components

While not all game providers have on-line monitoring and/or accounting systems (\*) available, these are becoming the exception rather than the rule.

The game must be sponsored by gaming enterprise management; direct submissions from a manufacturer would not be acceptable.

After an initial review, and if the Tribe feels comfortable that the game could be Class II, the manufacturer could then be notified that a testing lab report must be obtained and provided; the manufacturer bears all testing costs. The manufacturer would also be notified at that time which testing lab to contact.

The testing lab, upon completion of all relevant tests, would then supply the Tribe with a report stating its findings of compliance with the established standards. Again, the Tribal standards can go above those the NIGC, but not below.

A single approval letter should be sufficient for a game thereby allowing a Tribe other than the original “submitting”/”sponsoring” Tribe to expedite the game review and approval process. This information could be made available via the local tribal gaming association website or one maintained by the NIGC. Regardless, copies of the necessary basic information (as outlined above) and the testing lab results (for field inspections, discussed below) must be provided to each Tribe playing a test lab approved game.

Upon receipt of an approval letter/report from the testing lab, a copy of the results could be transmitted by the Tribe to the NIGC documenting compliance with established standards.

- **Should games and related technological devices be allowed to be introduced into play before they are tested and verified compliant with the Class II standards for a period of time after the standards go into effect? If so, under what conditions and requirements?**

**Seminole Tribe of Florida**

Yes, subject to field trial procedures adopted by tribal gaming commissions. Moreover, as tribes are the primary regulators of Class II games under the IGRA, and the NIGC exercises only oversight authority, following adoption of any Class II standards, the NIGC’s role is limited.

**Muckleshoot Indian Tribe**

Not without independent review by approved TGA regulations.

**St. Regis Mohawk Gaming Commission**

I would not think so. For existing games currently played, we might consider a six-month period for testing and verification (allowing for extensions due to backlogs at testing labs).

**Viejas Band of Kumeyaay**

I would discourage that.

**Agua Caliente Band of Cahuilla**

No

**Cherokee Nation Gaming Commission**

I believe that Tribal gaming regulatory agencies (TGA), in reviewing and applying the established standards, and being the front-line regulators, should be able to authorize field tests of games, as provided for by the TGA for a specified time (30 – 60 days), while the game is being tested. Their continued play would be contingent upon receiving an approval letter from a testing lab.

For those machines currently in operation that have not been evaluated under the technical standards, continued operation should be allowed while they are going through the testing process.

- **Should tribes and the NIGC conduct periodic field verification tests and inspections to ensure that Class II games in play operate in accordance with their approved prototype and are in compliance with the Class II classification standards? If so, what should be the field verification process?**

**Seminole Tribe of Florida**

Both tribes and the NIGC have an interest in the integrity of Class II gaming. Tribal regulatory authorities can and do perform such verification tests and inspections. Rather than adopt new regulations, the NIGC should expand training opportunities for tribal regulators.

**Muckleshoot Indian Tribe**

Routine audits should be addressed by TGA's..

**St. Regis Mohawk Gaming Commission**

Definitely tribal regulators have the responsibility to conduct periodic field-testing. The NIGC can audit the results of the testing conducted by the tribal gaming authority. The NIGC may also elect to do random testing if any irregularity is discovered through the auditing process.

**Viejas Band of Kumeyaay**

Certainly the tribal regulators should be conducting field-testing and verification of what they have authorized for play in their jurisdiction. I don't see a need for the NIGC to do redundant work that tribal regulators should be doing. I think that an NIGC field agent could verify sufficiently by asking to review the tribal regulatory agency's documentation on their testing and verification program.

Such documentation could include files of corresponding lab certification papers for the hardware and software in play, records of software versions, checklists for what tests were conducted on the operation and communication capabilities of systems and terminals, records of visual inspections verifying serial numbers, key control internal checks, History records of delivery dates and installations of equipment, etc.

**Agua Caliente Band of Cahuilla**

The verification processes should be similar to class III but under full and sole authority of the Tribal Gaming Agency.

**Cherokee Nation Gaming Commission**

I believe this is considered a “given”. A good number of tribes go to great lengths to track gaming machine activities and maintain detailed paper and computer files associated with the electronic games.

If a game receives a game approval letter from a testing lab, Tribal regulatory staff would be in possession of the necessary technical information needed to determine whether the game hardware and/or software is the same “version” as the one approved by the lab. Many TGAs now maintain, or can obtain at a reasonably low cost, the equipment necessary to conduct field investigations (verifying version numbers, software “signature”, etc.). Likewise, TGAs have established regular schedules (the average being quarterly) for conducting the tests, conduct unannounced tests, and also conduct as-needed special tests (notice of large jackpots, player disputes, investigations, etc.).

Rather than create a level of redundancy, the NIGC regional and/or central office staff could review the TGA field test result or be provided a copy of the results, upon written request.