THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
E-mail: csktcouncil@cskt.org

EXHIBIT
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eph E. Dupuis - Executive Secretary
n L. Clairmont - Executive Treasurer
in Bourdon - Sergeant-at-Arms

February 7, 2005

TRIBAL COUNCIL MEMBERS:
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Jami Hamel - Vice Chair
Carole Lankford - Secretary
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Ron Trahan

Hon. Philip Hogen, Chairman
National Indian Gaming Commission
1441 L Street, N.W.
Washington, DC 20005

RE: Draft IV Classification Standards

Dear Chairman Hogen:

On behalf of the Confederated Salish and Kootenai Tribes, I write to express our concern regarding the NIGC process for the development of Class II classification and technical standards.

Lack of Meaningful Consultation

We remain concerned about the lack of meaningful consultation with tribal leadership. Specifically, we remain concerned that: no tribal leaders are a part of the NIGC Tribal Advisory Committee, our comments to draft 3 were not provided to the Tribal Advisory Committee members until the time of the meeting to discuss the draft, and nobody on the Tribal Advisory Committee represents our interests--in spite of our September 30, 2004, written request for a tribal leader from our state to be appointed and that request remains unanswered. In November of 2004, our Vice-Chair personally requested time to further review draft 3—again that request also went unanswered. In December of 2004, we had a letter hand-delivered to you that extended an invitation to the NIGC's Tribal Advisory Committee to host a meeting in Montana to allow us better access to the process—that request has also gone unanswered. We do not accept that the members of the NIGC selected advisory committee to be in lieu of meaningful government-to-government consultation. It has been relayed that the NIGC may schedule time for consultation sometime in March, 2005—which is scheduled *after* the NIGC has published this proposed rule in the Federal Register.

It is further troubling that the NIGC has not provided tribal leadership with advance notice of the advisory meetings, documented meeting minutes, that the advisory members

have had to request the NIGC's permission to bring a tribal leader and/or attorney to participate in the process, and that no information (such as the draft technical standards) is provided to tribal leaders that are "observers" of the advisory meetings. The Tribal Advisory Members selected by NIGC are not tribal leadership, nor empowered to act on behalf of the Tribes that they are employed by. Further, the NIGC appears to be soliciting input regarding the draft technical standards from everyone except tribal leadership. It is the tribal government-to-government consultation process that exempts the NIGC from compliance with the Federal Advisory Committee Act. Clearly, the NIGC is usurping its responsibility to comply with the Federal Advisory Committee Act. We are requesting that the NIGC reverse its prior decision that the Federal Advisory Committee Act is inapplicable and require an immediate set-aside of draft 4 and any further efforts with the draft technical standards until there is compliance with the Federal Advisory Committee Act.

The NIGC consultation policy commits the NIGC to "initiate steps to consult and collaborate directly with the Tribes regarding the proposed regulation and its need, formulation, implementation, and related issues and effects." Our Tribe looks forward to the NIGC's follow through with its commitment.

Specific provisions that we have concern are as follows:

1. Auto-Daub Prohibition. The IGRA specifically authorizes the use of technological aids to Class II play. Auto-daub is a standard technological aid in the bingo industry. Charitable bingos use auto-daub. The prohibition of auto-daub does not allow Tribes the same access to technology used in the industry. The definition of "Electronic or electromechanical facsimile" needs to remain status quo and in accordance with IGRA and supporting case law. The proposed amendment inappropriately equates a bingo-minder to a Class III slot, rather than as an electronic aid to bingo.

2. Prize Limits. The amounts and types of prizes we offer are marketing decisions. IGRA only specifies that a game of bingo must be played for prizes. The NIGC should not restrict the amount or types of prizes that can be offered. The "20% of the amount wagered" as the percentage is arbitrary number—the market will naturally control the number.

3. Bingo Card Specifications. IGRA requires only that bingo be played with cards, but these proposed regulations seeks to regulate all facets of an electronic bingo card, including its size, number of squares, and the range of numbers that may appear on the card. The proposed regulations require that a bingo card contain 25 squares, and that each square measure 2 inches by 2 inches or 4 square inches, and that each space measure .4 by .4 inches. These regulations lack legal support and serve only to limit the technological flexibility—contrary to the intent of Congress and contrary to current technological capabilities. It is also contrary to NIGC's previous guidance which provides that cards with three squares that measure 2 1/8 inches square.

We urge the NIGC to keep its existing standard that an electronic bingo card must be "readily visible."

4. Timing of Card Selection. The timing of card selection is an unnecessary restriction that is contrary to industry standards and outside the scope of IGRA.

5. Multiple Bingo Ball Draw Requirement. The multiple ball draw requirement violates settled law and is unnecessary. The NIGC is attempting to require that balls be released to players in close proximity to the time at which they were generated. Games such as Bonanza Bingo, which uses "pre-drawn balls", predate IGRA and such games were not intended to be eliminated by the enactment of IGRA. Thus, these provisions should be removed.

6. Multiple Bingo Ball Release Requirement. This proposed regulation purports that a game of bingo cannot be won after only one "release" of balls. This requirement violates the holdings of the 9th and 10th Circuit Courts of Appeal in the MegaMania cases.

7. Prohibition on Diverse Interim Patterns. Bingo has diverse interim patterns, as a marketing and practical tool to keep the players interested in the game of bingo. Nothing prohibits players who are competing for the same game-wining pattern from competing for different interim patterns—yet this is what the draft regulation proposes. The legal threshold is met—as "the game as a whole" meets the IGRA definition of bingo.

8. Arbitrary Uniformity Standards for Broadening Participation. Not all technological aids require broaden participation. Arbitrary standards such as either 6 players or 2 seconds between games are unlawful and unnecessary. Timing and player participation are marketing rather than regulatory issues. The standard should focus on the requirement that a player cannot play against a machine. This standard can be met by requiring two or more players.

9. Tangible Pull-Tab Requirement. The requirement of a "tangible" or paper pull-tab is outdated with technology and requiring a tangible medium is not supported by IGRA or recent Court decisions and should be omitted.

10. Testing Labs. This regulation shifts the classification process from being primarily conducted by tribal regulators and NIGC to private sector gaming laboratories. The private lab makes the decision and NIGC reserves the right to "object" to the private lab—which seems to be the tail wagging the dog and

a serious integrity issue for the NIGC to consider. Tribes need the ability to receive a prompt answer from the NIGC Commissioners as to the NIGC classification and the right to appeal the decision to the entire Commission and Federal Court, if necessary, prior to an enforcement action. The NIGC Advisory Opinion process needs time limits for the NIGC to make a decision, and an feasible way to arbitrate the NIGC decision. It may be helpful to Tribes and the NIGC if the NIGC add technical expertise in an in-house capacity and permanent basis.

11. Annual laboratory testing. The method and frequency of testing is and should remain the responsibility of the Tribal Regulatory Authority. Annual laboratory testing is a increased cost that may be unnecessary.

Conclusion

Based on the foregoing comments, we recommend that the NIGC 1) maintain the amended 2002 regulations, 2) continue to work with Tribes as the primary regulators, 3) allow for a meaningful consultation process, and specifically include Tribal Leadership in the consultation and rule-making development, 4) inform Tribal Leadership of TAC meetings, discussions and results of TAC meetings, and provide advanced notice of meetings, 5) propose standards in a form of a NIGC Advisory Opinion or Bulletin; 6) provide due process to the classification determinations—such as providing an immediate appeal process for NIGC classification agency action rather than only enforcement actions, and 7) leave marketing decisions (such as prize payouts) to the Tribe and to be controlled by the market.

Thank you for your consideration to our comments.

Sincerely,

Carole Kanthard

D. Fred Matt, Chairman

cc: