

# The Confederated Tribes of the Grand Ronde Community of Oregon

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November 23, 2004

Mr. Philip N. Hogan, Chairman  
National Indian Gaming Commission  
1441 L Street NW, Suite 9100  
Washington, DC 20005

*via facsimile and U.S. mail*

RE: Comments to the proposed Class II Technical Standards

The Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde) appreciates the opportunity to comment on NIGC's proposed Class II technical standards. Our comments primarily address the overall impacts of the proposed standards rather than the specific details of the proposed standards.

As you know, IGRA separates gaming into three mutually exclusive categories each of which has a distinct regulatory scheme. As defined by IGRA, Class II gaming refers to the game of chance commonly known as bingo, games similar to bingo, and certain card games. These games can use electronic, computer, or other technical aids in connection with their play. All other games are generally classified as Class III. The primary distinction between Class II and Class III games is that in Class III games the casino "banks" the game or the games are referred to as "casino style games."

IGRA is clear that tribes, with oversight by NIGC, regulate Class II games while Class III games are regulated by tribes and states under tribal/state compacts. The regulatory scheme for Class II games under IGRA enables tribes to determine game classifications and to install Class II devices without a compact and oversight of a state, which in turn furthers the intent of IGRA by enhancing tribal self-determination and economic autonomy.

Tribal regulatory agencies are responsible for and ultimately must decide if devices in play in their bingo halls and gaming facilities qualify as Class II technical aids. In June 2002, NIGC amended its definition regulations and declared that the Johnson Act did not bar the use of Class II technical aids. That amendment clarified what constituted a Class II technical aid.

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NIGC has also been helpful by issuing bulletins and advisory opinions that have assisted Grand Ronde in making the final determination of game classification. NIGC's bulletin titled "Indian Gaming Regulatory Act Overview" and the opinion letter to Sierra Design Group (SDG) dated September 26, 2003, provided guidance for Grand Ronde to determine that SDG products meet the criteria for classification as a Class II technical aid.

The existing criteria developed by NIGC to assist tribes in determining if a game is Class II and if it complies with the accepted definition of "technological aid" have been and are very useful. As described in NIGC's opinion letter of September 26, 2003 to SDG, it makes our decision easier when applying the current standards to determine classifications of games.

Because of the technical advances in Class II gaming, it appears that NIGC is seeking to expand regulation of Class II rather than keeping with the current practice of assisting tribes in the proper classification of gaming devices through advisory bulletins and opinion letters. Grand Ronde agrees that new advances in gaming make the interpretation and understanding of "technological aids" versus "electromechanical facsimiles" more difficult. However, there are clear articulate differences which can be applied by tribal regulatory agencies. NIGC's effort to develop standards through a NIGC regulation dilutes the authority of tribal regulatory agencies in this arena.

We have Class II technological aids to bingo in our gaming facility. Although not required by NIGC, Grand Ronde took the initiative to have the devices tested by Gaming Labs International (GLI). GLI did not test the Class II gaming devices for the purposes of classification, but tested the devices to its Standards 15, 19, and 22 related to electronic gaming devices. The purpose of having the devices tested was to ensure the gaming devices comport with the features and operational characteristics as described by the manufacturer/vendor of the devices. This testing by an independent party ensures the public is being treated to honest games and to ensure the integrity of our gaming operation.

Grand Ronde adamantly opposes NIGC making the final determination of whether a specific game or device is Class II or Class III. Tribal regulatory agencies should retain this right, with the assistance of NIGC's bulletins and advisory opinions. IGRA defines class III gaming as "all forms of gaming that are not class I gaming or class II gaming." By NIGC proposing to classify/define Class II games it implies that all other games not specifically defined by NIGC as class II are class III. This places tribes in non-negotiable positions with states. Currently tribes have the authority to make their own determinations regarding game classifications with the burden on the states to challenge those determinations.

In addition to the above, Grand Ronde offers the following significant concerns and questions regarding the proposed Class II technical standards:

- Overall, Grand Ronde was expecting general, yet sufficient, Class II standards which tribal gaming regulatory agencies could use to evaluate and approve machines. The level of detail and reach of the proposed standards impinges upon and impairs the

independence and autonomy of tribal regulatory agencies. NIGC, through the proposed standards, is assuming much of the role of the tribal regulatory agencies.

- Forging technical standards as regulations hampers the flexibility to modify standards as technology changes. As advances are made in technology, standards may require revision to address new devices and control of those devices. Section 3(d) under Objectives of the Technical Standards states "Matters or incidences arising from evaluation of Class II Player Device submission that have not been addressed in this document (e.g., due to omissions or new technology) will be resolved on a case-by case basis as part of the approval process." This language suggests there will be unpublished standards that are not subject to the same scrutiny as published standards. This should not be the vehicle to propound new standards.
- Does NIGC expect to regulate independent testing labs? Labs should have the leeway to identify what is necessary to obtain from the vendor to conduct competent testing of submissions.
- The proposed technical standards impose arbitrary limitations on the speed of play of Class II games by requiring the following: "a minimum time period of two seconds, from the time that the first player elects to play, is required to enable six or more players to enter" (3<sup>rd</sup> draft page 5, 3.a.iv). IGRA does not impose a speed of play requirement, nor does it require six or more players for a class II game. In NIGC's opinion letter of September 26, 2003, to SDG, page 15, NIGC informs SDG that NIGC approval is based upon SDG meeting the statutory requirements for an electronic bingo game: "System must allow for and encourage multiple players and require a minimum of two players." The proposed technical standards are contrary to your own opinion and are contrary to the requirements of IGRA. Tribes decide to use electronic aids for many reasons, one of which is speed of play. Players want to play "electronic devices" because they are fast.
- The proposed technical standards add multiple requirements to the game of bingo that are in conflict with IGRA and federal court decisions which clearly state that the three criteria established by the IGRA constitute the sole legal requirements for class II bingo.
- Grand Ronde is concerned if NIGC plans to redefine the term "house banked" for the purposes of "other games similar to bingo" and that definition causes a game not to be eligible for class II determination (5.a & b).
- The elimination of a "free space" for bingo is contrary to how the game has traditionally been played. It should be left to tribes to determine if they want to eliminate the "free space" and not NIGC. NIGC's proposed standard (3.a.viii) "Cards assigned to players may not have pre-daubed (pre-covered) numbers or designations" implies that "free spaces" are no longer permitted. However in 3.b.iv, it states "The card may contain one free (covered) space..."

Comment Letter to Chairman Hogan

November 23, 2004

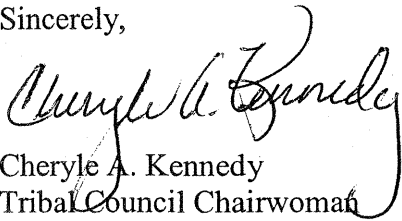
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- NIGC requires that games certified as meeting the classification and technical standards must be submitted to a testing laboratory recognized by NIGC. Grand Ronde is not familiar with any independent gaming laboratories that NIGC has previously approved or plans to approve. This standard also appears to require the testing laboratory to test to the NIGC standards not the tribes. What are the standards the game must meet?

Grand Ronde has also reviewed information from the National Indian Gaming Association (NIGA) outlining its position on the proposed Class II technical standards. It is apparent that the proposed standards have caused significant concern with tribes across the country and the specific impacts of the proposed standards need to be analyzed.

Grand Ronde encourages NIGC to take whatever time is necessary to thoroughly review and seek input on the proposed standards before pursuing any formal rulemaking. If you have any questions about our comments, please call Lynn Hillman, Executive Director of the Grand Ronde Gaming Commission, at (503) 879-2360.

Sincerely,



Cheryle A. Kennedy  
Tribal Council Chairwoman

cc: Tribal Council  
Gaming Commission  
Tribal Attorney's Office  
R. Sitton, NIGC