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BEFORE THE NATIONAL INDIAN GAMING COMMISSION
TRIBAL CONSULTATION
July 21, 2011
Route 66 Casino Hotel
14500 Central Avenue, SW
Albuquerque, New Mexico

Members of the Commission:

- Ms. Steffani A. Cochran, Vice Chair
- Ms. Lael Echo-Hawk, Counsel to the Chairwoman
- Ms. Jennifer Ward, Office of the General Counsel
- Mr. Lance Vallo, Field Investigator

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Job No. NJ340550
(1470K) KLC

1 VICE CHAIR COCHRAN: Good morning. If there
2 are people who wish to come sit at the table, please do.
3 I feel like some of you are so far away. But you're
4 welcome to come and join us. If there is a tribal
5 leader that wants to join us, even if you can't stay the
6 entire time, then I certainly understand that.

7 Where is Lance?

8 All right. We are going to go ahead and get
9 started. I'm hoping today we might be able to end a
10 little bit earlier and let you get on with your day,
11 although there are some very important groups that we've
12 got on the agenda today.

13 Is there anyone here today that wasn't here
14 yesterday?

15 Can I ask you to introduce yourself for us,
16 please.

17 MR. HESSE: I'm George Hesse, attorney for
18 White Rock.

19 MS. ORTIZ: Theresa Ortiz, Pueblo of San
20 Felipe.

21 MR. LUCERO: Joseph Lucero, Vice President of
22 the Tribal Council, Isleta.

23 MR. SCHADER: Myron Schader for the Pueblo of
24 Acoma.

25 MR. WEST: Anyone else? I think that's it.

1 VICE CHAIR COCHRAN: Can you get Lance to come
2 in? He needs to sit with the reporter.

3 Well, welcome to the people who joined us
4 today. And -- and thank you for coming out.

5 I will just introduce myself briefly to you.
6 My name is Steffani Cochran. I'm the Vice Chairwoman of
7 the National Indian Gaming Commission. I am a member of
8 the Chickasaw Nation of Oklahoma, where I was born and
9 raised, and I have spent most of my professional life in
10 the pueblos. Santa Fe is home for me. And I had the
11 privilege and the pleasure of serving the Pueblo of
12 Isleta as their associate judge a few years ago, and the
13 Pueblo of Pojoaque as general counsel just prior to
14 taking my appointment with the NIGC.

15 So I'm a lawyer by trade, but I don't wear
16 that hat right now, which is kind of a relief. I will
17 leave it up to the lawyers.

18 Good morning. So welcome, and thank you for
19 joining us.

20 We do have a court reporter with us. She is
21 going to record everything that's presented here today.
22 As with all of our consultations, the recordings get
23 transcribed and put up on our website so that tribes in
24 other areas of the country have access to see the
25 discussions, and that you have something, also, to -- to

1 refer back to, as I know many of you will report back to
2 your gaming commissioners and your leadership. And so
3 that's there if you need it as a tool.

4 I'm going to turn it over to Lael and ask her
5 to do an overview for us this morning. And then, I
6 would like to give an opportunity for any statements
7 that need to be made this morning.

8 MS. ECHO-HAWK: Good morning. Thanks for
9 coming back.

10 This morning, and the rest of today, we're
11 going to cover two groups. We're going to cover group
12 five and -- and group -- and group three. So this
13 morning we're going to start off with group five.

14 Now, group five covers the self-regulation of
15 Class II gaming regulations. We always say
16 "self-regulation regulation," but then I feel like I
17 have a stutter or something. So proprietary interest, a
18 potential -- the possibility for regulation, or a
19 policy, how do we address the sole proprietary interest
20 concerns that tribes have? And, then, finally, then
21 we'll go to internal controls for Class III gaming
22 again. We did some discussion on this yesterday and
23 we'll continue that discussion this morning.

24 So the Notice of Inquiry that we put out in
25 November asked tribes whether or not the Commission

1 should review the process for obtaining a Class II
2 self-regulation cert -- for obtaining a Class II
3 certification, self-regulation certification.

4 We heard a lot of comments. We heard that the
5 administrative burden of completing the process
6 outweighed the benefits that were obtained. We know
7 today that only two tribes have obtained the self-reg
8 certification. The submission requirements, commenters
9 said, were duplicative and -- and burdensome,
10 particularly, the annual -- the annual reporting
11 requirements undermined the purpose of the
12 certification. And we also heard that wherever --
13 however we address it, we need to make sure that the
14 high standards are maintained.

15 We heard the benefits and recognition for
16 self-regulating tribes should be greater, but that
17 self-regulation is a hallmark of tribal sovereignty, and
18 that we need to address that so that more tribes are
19 able to take advantage of this certification.

20 So as we begin looking at it, we -- we've sort
21 of come up with some questions, and that is -- some of
22 them are, you know, "How many tribes are interested in
23 pursuing self-regulation?" I think there is -- you
24 know, I -- we've heard tribes say over and over again
25 that they would like to be self-regulated, however,

1 self-regulation is for Class II gaming activities only.
2 And so we're interested in hearing from tribes that have
3 Class II gaming facilities. We're also interested in
4 tribes that have a hybrid.

5 I know a number of -- many tribes have some
6 Class II machines on the floor. They've got three
7 machines on one floor, there's bingo operations, and
8 those types of activities that are Class II. And if
9 you'd like to pursue self-regulation for those
10 activities, then we would like to know what that
11 universe looks like.

12 We would also like your ideas on what
13 additional responsibility or incentive could be
14 available to self-regulating tribes, and whether or not
15 the self-regulation -- the annual reporting requirements
16 should be amended.

17 The submission requirements for obtaining
18 self-certification -- self-regulation certification
19 are -- are pretty onerous. And if you think about it in
20 context, these regulations were drafted in 1998, which
21 was before the MICS were put in place. It was before
22 tribes had really begun to have -- expand their gaming
23 operations. And so it appears to us that -- that there
24 was things included in the -- in the petition process
25 that, perhaps, might be already accomplished through

1 other means, such as ordinance submission, through the
2 development of the NIGC MICS.

3 But the petition requirements include all
4 of -- the submittal of all of this information, history
5 of gaming operations, closures, composition and
6 authority of the regulatory bodies, composition of
7 gaming operation, use of net gaming revenues, accounting
8 systems for the government, as well as for the gaming
9 operation, internal controls, recordkeeping system, it's
10 issuance of gaming licenses, gaming relations. There's
11 a plethora of -- of materials requested.

12 This -- the next part, 518.4, then, sets out
13 some criteria that tribes can -- that tell how tribes
14 might satisfy the criteria set forth to -- in order to
15 receive the certificate of self-regulation. It includes
16 the statutory requirement that the NIGC find that the
17 tribe has conducted gaming with an effective and honest
18 accounting of all revenues, has a reputation for the
19 safe, fair, and honest operation, if the operation is on
20 a fiscal -- is fiscally and economically sound, and that
21 there has been no criminal or dishonest activity.

22 Additionally, the NIGC has to find that the
23 tribe has adequate systems for accounting of all
24 revenues; that it investigates, licenses, and monitors
25 gaming employees; and that there is investigation

1 enforcement and prosecution of violations for -- of the
2 gaming ordinance and regulations. It also has -- the
3 NIGC -- currently in regs, it also has to find that the
4 gaming activity has been conducted in compliance with
5 IGRA, NIGC regulations, and the tribe's gaming
6 ordinances and regulations.

7 Then, the indicator of -- for this criteria --
8 this is all in the reg -- the indicators, it looks like
9 here, include adoption and implementation of the MICS
10 that are at least as stringent as the NIGC MICS,
11 evidence that the suitability requirements for gaming
12 employees are the same as -- or the same or -- or more
13 stringent for -- as for primary management officials or
14 key employees; that there's a permanent and stable
15 funding for the tribal regulatory body; there's a
16 conflict-of-interest policy for the regulators, and that
17 the -- evidence that the operation is -- is financially
18 stable.

19 Additionally, there has to be a tribal
20 regulatory body that monitors gaming for compliance,
21 promulgates regulations, monitors the accounting system,
22 performs audits, inspects the premises, that there's an
23 adequate system that investigates the licensing and
24 monitoring of employees, standards -- clear standards
25 for the vendor licenses, adequate systems for

1 investigation and enforcement.

2 So this regulation is -- is quite long.
3 There's lists of things that need to be submitted. And
4 as we've looked at it, and we've looked at sort of
5 the -- you know, the two tribes that have actually
6 received the certification, it seems to us that this
7 regulation is not utilized as effectively as it could,
8 or that this process is not utilized as effectively as
9 it could. And if there are changes that we can make in
10 the regulation to streamline the process, to remove some
11 of the duplication and redundancy, that makes this more
12 accessible to tribes that are interested, then we'd like
13 to hear your thoughts on how we can do that.

14 The next issue in this particular group of
15 regulations is the sole proprietary interest. The
16 Notice of Inquiry asked whether or not the Commission
17 should consider a regulation defining "sole proprietary
18 interest" and outlining or providing a process by which
19 the tribe can request a review by the NIGC.

20 We've received many, many comments that --
21 they included that the Commission should provide --
22 should set a regulation that provides for review only at
23 the request of tribes; that the percentages contained in
24 IGRA, the 60/40, 70/30 percentages, are clear, and
25 that -- that those are -- that those should be the

1 definitions that define what "sole proprietary interest"
2 is. If "sole proprietary interest" is defined, then we
3 should also consider defining "primary beneficiary."

4 We also heard that a clear definition of "sole
5 proprietary interest" might provide stability and access
6 to financing for tribes. On the other hand, we heard
7 that the definition might limit tribal access to
8 capital, and, then, finally, that the determination of
9 what sole proprietary interest is should be left to the
10 courts.

11 While we don't have a slide up, we had it up
12 earlier, and I had it up yesterday, about the Class III
13 MICS, that's the other issue that we're thinking about
14 and talking about. I think we'll address that in more
15 detail this afternoon as we discuss MICS generally.

16 But to carry on that conversation, to -- to
17 bring that conversation forward from yesterday, one of
18 the issues has been, and continues to be, "What will --
19 what should the Commission do about Class III MICS?" We
20 had some discussion on that yesterday. We'll have more
21 discussion on that today.

22 But that's the overview of the group five
23 regulations and what we'll spend this morning talking
24 about.

25 VICE CHAIR COCHRAN: Thank you, Lael.

1 Before -- I see that we've had some other
2 people join us initially.

3 Can I ask you to identify yourselves, please,
4 for the court reporter.

5 MR. TORINO: Good morning. My name Kino
6 Torino. I'm with the White Mountain Apache Tribe.

7 VICE CHAIR COCHRAN: Thank you.

8 MR. HERRERA: Good morning again. Isaac
9 Herrera, representing the Tesuque Pueblo.

10 VICE CHAIR COCHRAN: Thank you.

11 GOVERNOR ROMERO: Good morning. Former
12 Governor Ramos Romero, Pueblo of Tesuque.

13 MR. HINTON: Good morning. Timothy Hinton,
14 Vice Chairman of the White Mountain Apache Tribe.

15 MR. BEACH: Good morning, again. My name is
16 Arnold Beach, White Mountain Apache Tribe, Tribal
17 Council.

18 MR. SIOW: Good morning. Virgil Siow, Pueblo
19 of Laguna, tribal council member.

20 MR. CHIWIWI: Good morning. Antonio Chiwiwi,
21 Second Lieutenant Governor for Isleta.

22 GOVERNOR GARCIA: David Garcia, First
23 Lieutenant Governor, Pueblo of Acoma.

24 VICE CHAIR COCHRAN: Governors and councilmen,
25 thank you again for joining us.

1 And before we get into the substantive
2 discussion, I wanted to give an opportunity, because I
3 know there's a lot of other things going on in this
4 state right now that is requiring time constraints on
5 leadership. So if any of you have a statement you want
6 to offer, if you have to leave early, I want to give you
7 that opportunity now, if any of you -- if you want, or
8 any of your staff, to talk, to make a statement?

9 Thank you. Thank you, again, for joining us.

10 I'm going to start with part 518, group five.
11 And this is the self-regulation of Class II gaming. And
12 I don't know how familiar some of you may be with this
13 particular regulation. I know that it's more sought
14 after in other areas of the country.

15 But this particular regulation does allow for
16 tribes to self-regulate in the area of Class II. And
17 the benefit, as Lael mentioned, is that there is a
18 reduction of the fee. And it's -- they're not assessed
19 right now. Tribes that are self-regulated are not
20 assessed a fee in excess of one quarter of one percent
21 of gross gaming revenue. And for the calendar year of
22 2011, of this calendar year, tribes that have obtained
23 the certificate will be charged a fee that is one half
24 of what is assessed to tribes that have not obtained a
25 certificate. So that is the monetary benefit that flows

1 from self-regulation.

2 The -- the other benefits that flow, again, as
3 Lael mentioned, has to do with the reduction in
4 oversight activity that occurs from the NIGC. And that
5 includes monitoring of Class II gaming on a continuing
6 basis, inspections and examination of all premises in
7 which Class II gaming is being conducted, conducting
8 background investigations, demanding access to and
9 inspection, examination, and photocopying and auditing
10 of all papers, books, and records respecting gross
11 gaming revenue, Class II gaming conducted on Indian
12 land. So those things are no longer a part of the
13 routine interaction between the tribes and the Agency.

14 The two tribes that are self-regulating, one
15 of them I have had an opportunity to spend quite a bit
16 of time with, and that is the Confederated Tribes of
17 Grand Ronde up in Oregon. The other one is the nominee
18 who I have not had an opportunity to spend as much time
19 with.

20 But their general consensus is their -- right
21 now, the way the regulation is written is the -- the
22 burden to obtain the certificate is not necessarily
23 outweighed by the benefits that flow from it. It's
24 really for them, kind of a badge of honor kind of thing.
25 And they -- they agreed that the process to get the

1 initial certification is intrusive. So we share that
2 concern, obviously, and wanted to open up this
3 particular regulation for comment to see if there isn't
4 a way that we can more or better utilize -- I should
5 say, open it up to more tribes to take advantage of
6 because it is something that IGRA does directly provide
7 for and should be of benefit to the tribes.

8 So I'll leave it to you all to open it up for
9 conversation, and we'll go from there.

10 Mr. Green, I know you're interested in
11 something in this.

12 MR. GREEN: Again, I -- I apologize for taking
13 New Mexico's time. I know many of y'all are wanting to
14 be involved in Class II gaming.

15 But in Oklahoma, even though we have a
16 compact, most of our tribes still have between 50 and
17 30 percent of their games Class II gaming. And as our
18 compact will approach its expiration date, if the State
19 of Oklahoma does not negotiate, I expect those numbers
20 to start going up.

21 The fact that you've only had two tribes in
22 25 years go through this self-regulation process should
23 tell you that something's wrong, is wrong at the NIGC
24 regulatory level.

25 Now, I have been participating, since the days

1 of Tony Hope, who was the NIGC chairman, and I have been
2 trying to get them to consider -- back then, they
3 wouldn't even take applications -- to consider
4 self-regulation. And, again, their argument was, "We
5 haven't been in business long enough to know how to make
6 the determination." Well, we've all been in business
7 now long enough to know how to make the determination.
8 With as many tribes, as large as some of them are around
9 the nation, that participate in Class II gaming, the
10 self-regulation piece should be something that is easy
11 for us to do.

12 Now, it should have a very lengthy history
13 requirement, so we do fill up your file with why it is
14 justified, but it needs requirements that, once we give
15 you that information, we don't ever have to give it to
16 you again. We've got your file full, so if you get
17 challenged over your decision at some point, it's well
18 justified.

19 And it would appear to me the focus after that
20 should not be on regulatory reporting. The current
21 regulation puts entirely too much -- too many
22 requirements on the tribe, once you get certified, to
23 continue reporting to the NIGC. The regulations then
24 should focus on if the NIGC wants to question the
25 self-regulation, there is a key request. Number one is

1 you make general inquiries about topics, and they're --
2 in which they're government-to-government
3 communications, and then, after that, you can set a
4 series of hearings to inquire and see if you are still
5 meeting the requirements.

6 There has been a lot of discussion about how
7 to address this. I really think this is a topic -- and
8 as bad as I hate the NIGC tribal task force concept, I
9 think this is one of those things that, if you selected
10 a large number of Class II tribes' gaming commissioners
11 that have been doing a good job to participate with you,
12 and/or gaming management -- and there are -- I mean
13 there's Lytton in California, and there's the Poarch
14 Creek in Alabama, and there's several in Oklahoma -- I'm
15 confident you could get a group of folks that would be
16 willing to sit down with NIGC representatives who would
17 understand that you have to have a good file background
18 because this is an issue that a third party might
19 challenge you in federal court.

20 And for those of you that don't understand, in
21 the gaming world, the attorneys live in fear, not of
22 challenges occurring against the tribe, because we have
23 sovereign immunity, but of challenging the federal
24 agency's decision and leaving us out of the discussion.
25 And so if we don't fill their file full of

1 justification, they don't have anything to defend
2 themselves with.

3 So I -- I fully understand that the initial
4 application needs to be full of information. But I
5 really think the way to approach this is with a joint
6 group to revamp it that -- that is focussed on this.
7 And I -- I think even a three- to five-day conference
8 that you schedule with these folks, you might come out
9 at the end of that time with a product that everyone can
10 be proud of.

11 Thank you.

12 VICE CHAIR COCHRAN: Thank you, Jess.

13 Did -- did you have any thoughts, or does
14 anyone have thoughts, on what might make it more
15 beneficial? What might make the benefit outweigh?
16 Because the initial -- I -- I -- as I understand your
17 comments, the initial application to achieve the
18 certification may still require some work. And -- and
19 we -- I know we've talked internally about what's
20 currently in the regulation. In some areas it's
21 duplicated in other areas. We've already asked for this
22 information. It's already accounted for in other ways,
23 so the duplicity we want to take out.

24 So given that there's still a -- perhaps a
25 need for the initial burden, to me, can we make it more

1 beneficial? Do you have ideas, or does anyone have
2 ideas, on how to make it more beneficial?

3 MR. GREEN: I don't see the initial -- Jess
4 Green again.

5 I don't see most of your initial requirements
6 that you answer questions like those -- I don't see
7 those as being overwhelming because you're going to get
8 to cut your fee. I mean that will justify the expense
9 you use. It is imperative on us that we give you that
10 initial justification that you do meet the criteria.
11 And I don't think it will be a problem, at all, for our
12 gaming commissioner to certify that, "We meet criteria
13 number one. Here are the 25 pages to prove it. We meet
14 criteria number two. Here are the 25 pages that prove
15 it. We meet criteria number three. Here are the 25
16 pages to prove it." And I think you create a list, and
17 I -- I think the tribe can do that.

18 Once you meet the self-regulation requirement,
19 there should be virtually no communication required with
20 the NIGC. The current rules require -- give the NIGC a
21 lot of input, and still require a lot of communication.
22 That's the reason you don't have many people that have
23 participated. It's because of that.

24 You know, from the very beginning, that
25 reduction in fee and the concept of self-regulation has

1 always been in the Act. It was there when we passed it
2 to begin with. There were several of us that really
3 insisted that, once we know what we're doing, we don't
4 need near as much federal -- federal oversight. And
5 Congress agreed. And then, the regulations have been
6 written so that, even after we meet the criteria, we
7 still have to make all the reports. That's the problem,
8 that the secondary part of this -- of this regulation
9 where tribes still have the burden to communicate with
10 the NIGC. That's the reason you do not have tribes
11 meeting the criteria because, as you point out, it is a
12 big plus for tribes to be able to say, "We are
13 self-regulating. We know how to do this ourselves, and
14 they've certified that we were."

15 That is also why I said there needs to be a
16 fairly complex challenge. If you're having difficulty,
17 or you believe there are some difficulties, there should
18 be government-to-government communication, and then
19 there should be hearings before there is a recitation
20 because those issues need to be addressed especially,
21 not in the general annual reporting requirements to the
22 NIGC.

23 I -- I support the strong initial requirements
24 because it allows us to have your file full of the
25 information that needs to be there for you to defend

1 yourself both in Congress and in the federal court.

2 VICE CHAIR COCHRAN: Thank you, Jess.

3 Are there other comments?

4 MR. CHIWIWI: In the scenario of if we're not
5 providing information, being self-regulated to the NIGC,
6 the challenge was made, then who would be solely
7 responsible? What -- what part would the NIGC have at
8 that point?

9 MR. GREEN: The challenge by the NIGC would be
10 to our continuing self-regulation. There is one tribe
11 that has not been mentioned, and this is the Mississippi
12 Choctaw, that have a self-regulation certificate issued
13 by Congress. They were, last week, raided by 60 FBI
14 agents that came to get two servers. Now, why it took
15 60 days to get two servers out of a gaming facility,
16 only a -- only a federal agency would understand that
17 law, and one US Marshal.

18 Well, and we've all had that experience at one
19 time or another where there was federal overkill on
20 something. But I would think that kind of circumstance
21 happening to a self-regulated tribe would cause
22 government-to-government communication with the NIGC.
23 And then, if they weren't satisfied with the resolution
24 of that inquiry, that there may be hearings about
25 self-regulation and whether you were doing it properly.

1 You know, if, in fact, they show that you were
2 taking wagers in a manner, on your off-track betting,
3 that indicated organized crime had infiltrated your
4 location -- again, two, three years ago, maybe four,
5 they were -- they closed a -- a gaming facility in
6 Oklahoma for that. Certainly, that's going to -- that's
7 going to take your self-regulation from you. That's the
8 concept I was saying where you would have them
9 communicating with you, is if they had some kind of
10 indication.

11 There are regular reports, of course, that
12 would still be sent in so they could continue to keep
13 their counts and report accurately to Congress. They
14 would probably still get your annuals -- annual audit to
15 drop in their file so they could say that you were still
16 meeting your annual audit requirements. Again, that's
17 not terribly burdensome just to send them a copy.

18 But you wouldn't have the -- the 2706(b)(1)
19 through (4) requirements that they drop by and inspect
20 and copy every darn thing in your facility any time, any
21 day they wanted, that they just basically demand you
22 stand and deliver copies of any contract they want to
23 scrutinize. That's really important to a lot of tribes.

24 VICE CHAIR COCHRAN: Well, and I want to
25 reiterate, because I know that there's not a heavy

1 influence of Class II activity in this area. This would
2 only apply to the Class II activities. So I know that
3 what Jess has described is some other Class III, but I
4 just want to reiterate this is Class II.

5 I do know, however, that in this area of the
6 country there is some discussion about Class II and the
7 benefits that could be put from Class II to the tribes.
8 And so I do believe this is a regulation that should
9 capture your attention because it could be something
10 that has more of an impact or import to you at a date in
11 the future.

12 I just want to share one other thought that I
13 had, or was given in Washington. There was a suggestion
14 at that time that we consider an exemption from some of
15 the auditing requirements, which have been tossed out in
16 the public discussions, so that was something that came
17 out, something that may be worthy of discussion, or
18 additional discussion.

19 Is there any other comments, thoughts,
20 concerns?

21 Lael just reminded me of a discussion that
22 we've also had internally about, right now, the
23 regulation requires the tribes to submit an annual
24 report. And Jess mentioned the annual report. One of
25 ideas that we've floated around for discussion has to do

1 with whether or not we should require the submission of
2 the annual audit and just a complete list of the resumes
3 and have that suffice in -- in lieu of the annual report
4 because the audit, itself, gives us almost everything
5 that's in the existing requirements. So that was one of
6 the things that -- that we had to try to, again,
7 streamline what we're asking for, not be duplicative.

8 So does anybody have thoughts or -- I just
9 toss it out for your consideration, or to think about as
10 you look at this regulation and the way it is currently
11 set up, and where we can get it reduced to, not only a
12 more manageable level, but a more responsive level, to
13 get at what we need to have and not go above and beyond.

14 MR. CHIWIWI: On that incentives for
15 self-regulating tribes, does that impact the fees?

16 VICE CHAIR COCHRAN: Yeah. It is would impact
17 the Class II. There is already -- the current incentive
18 reduces the fee amount. And, as I said, for this year
19 it would be about half of -- one half of what is
20 assessed to tribes that haven't obtained it. So it's --
21 right now, it is a fee not to exceed one quarter of one
22 percent of gross gaming revenues, Class II, right?

23 So if your facility doesn't engage in a lot of
24 Class II, that may not be your primary incentive today.
25 There may be other incentives, but financially, perhaps

1 not.

2 MS. ECHO-HAWK: One of the issues that we are
3 really struggling with at the Commission, and we'd
4 really like to hear comments on, is how do you -- for
5 many tribes, I think we -- we did a quick survey.
6 There's between 30 and 35 stand-alone Class II
7 facilities in the country. And then, the other is sort
8 of this hybrid where you've got Class II machines on the
9 floor, and they're -- they're mixed up with your Class
10 III machines.

11 In that instance, you still -- if you have a
12 Class III operation that has Class III gaming activities
13 going on, as well as the Class II, in that instance, you
14 still have to comply with the regulatory requirements in
15 your compact. So the burden in that instance is not --
16 we can't lessen it because you still have this compact
17 obligation.

18 So it's been difficult for us to figure out
19 how can we structure this so that there's actually
20 benefit derived because we still have the same
21 enforcement authorities. We still have this 2706(b)(1)
22 through (4) authority over those when it comes to that,
23 those other activities. How do we -- how is there --
24 how can we create a tangible benefit for tribes who,
25 beyond just the gold star and the piece of paper that

1 Commissioner Little signs off and says you have a
2 certificate? How can we make this be a regulation
3 that's utilized effectively and something that garners
4 an actual benefit for tribes and -- and we are able to
5 lessen the burden, somehow, of the reporting?

6 I know that this is new. It's something to
7 think about. I'd certainly advise you to have your
8 counsel take a look at the regulation, look at the list
9 of information that's contained in there because it is
10 old. There's -- there's a number of things that are --
11 that we now have MICS. MICS are referenced in the
12 petition.

13 You know, one of the things that kind of
14 alarmed us all was that, in submitting a petition, the
15 tribe has to post, give public notice to their local
16 community that they're considering being -- considering,
17 or they've applied or put forward a petition for
18 self-certification.

19 Now, I know the tribe that I represented
20 previous to coming to the Commission would certainly
21 never want to put -- put that out into the public
22 because of the -- some of the -- you know, the -- the
23 bad kind of concerns the community might come, then,
24 forward with if there is a seat at the table for those
25 non- -- those -- those other community groups to come

1 and -- and sue or come and -- and talk with the federal
2 agency about the certification process.

3 I don't know why that particular provision was
4 included in there, but it is something that we're
5 talking about. And I don't know if that concerns you.
6 We would like to hear about it. But I would certainly
7 advise you to talk to your counsel and have them look at
8 it and send us your comments because we really are kind
9 of struggling internally with, "How can we make this
10 better?"

11 If we could hear from Mr. Green, please, if
12 you have any issues?

13 Oh, thank you.

14 MR. GREEN: I've turned it off.

15 We keep talking about financial, you know,
16 that it is on the financial incentive. Let me point out
17 that when IGRA was an issue, then when you got the
18 self-regulation, the reduction in fees was across the
19 board for everything. There were no fees for Class III
20 gaming initially. There was an amendment. And the
21 reason for that was because there were so many
22 management contracts submitted that it was overwhelming
23 the budget. And they were submitted for Class III
24 gaming facilities. And the Class III gaming facilities
25 helped pass that amendment through Congress.

1 There was nothing intended, and certainly no
2 tribal consensus that you were self-regulation that that
3 ought to increase that self-regulation fee. Once you
4 were determined to be self-regulating, that reduction
5 was initially across the board; in other words, all the
6 way across for all the fees. And I would encourage you
7 to do that again. That would certainly help give the
8 financial incentive that you need.

9 And I differ with you that 2706(b)(1) through
10 (4) continues for Class III. 2706(b)(1) through (4)
11 pertains only to Class II gaming. The ability to make
12 regulations pertains only to Class II gaming. Again, I
13 know there are some -- some differences in legal
14 opinions here. But those differences have been
15 maintained for many years and are actually shared with
16 the initial NIGC chairman and were reiterated in the
17 CRIT decision, which pointed out that Tony Hope, had
18 some direct statements that were very pointed about
19 where the authority of the NIGC lay.

20 Thank you.

21 VICE CHAIR COCHRAN: Thank you, Jess.

22 Do we have additional comments?

23 The next area or topic in this group has to do
24 with sole proprietary interest. Lael pointed out that
25 the NOI asked whether the Commission should consider a

1 regulation defining "sole proprietary interests" and
2 provide a process whereby tribes may request review.

3 This is -- had quite a bit of feedback, and so
4 I would like to open it up for discussion and hear from
5 you.

6 Most of you may be aware that IGRA doesn't
7 define this term. The definitions have really kind of
8 come from opinions and language in NOV's to try to give
9 definition to it. I don't know if there's someone here
10 that wants to offer up their experience in that area?

11 We've heard different levels of feedback from
12 the tribes. Some say, you know, "The statute is clear.
13 Don't tinker with it." Some have also suggested that
14 this is something that should be left to the courts to
15 decide. Others have said, "It is very much needed."
16 This is something that they could use to help them in
17 their negotiations with management companies or entities
18 and in their financing agreements. Others have said the
19 exact reverse, that it could have a chilling effect on
20 the financial market.

21 So there's this clear rainbow of concern out
22 there and differing opinions on this. And it's one of
23 the reasons why we haven't proposed something, but
24 wanted to continue the dialogue throughout our
25 consultations to -- to get more feedback to see what

1 you -- what you think about this.

2 Good morning, Mr. Van Norman.

3 MR. VAN NORMAN: Good morning.

4 VICE CHAIR COCHRAN: It's nice to see you.

5 Here are -- I know you just came in. Would
6 you identify yourself for the court record -- court
7 reporter? Excuse me.

8 MR. VAN NORMAN: Oh, sure.

9 Hi. Mark Van Norman, Apache Gaming
10 Association.

11 VICE CHAIR COCHRAN: Is there anyone else that
12 has come in today that wasn't here yesterday that would
13 like to introduce yourself?

14 Good morning.

15 MR. EBONA: Good morning. My name is Andy
16 Ebona, Tlingit, from Alaska.

17 VICE CHAIR COCHRAN: Good morning. You've
18 traveled a long way. If the Commission's -- oh. I'm
19 sorry. Good morning.

20 MS. BECENTI: No problem. Good morning. My
21 name is Latonia Becenti, and I'm an attorney with the
22 Navajo Nation.

23 VICE CHAIR COCHRAN: Some of the factors that
24 have come out have been quite voluminous in this area.
25 Some of the things that have been looked up included a

1 percentage share of gaming revenues by a third party, a
2 high percentage or amount of net or gross revenue by a
3 third party, the risk involved, and the business
4 transaction, which is a very subjective criteria, the
5 terms of the contract, the degree of control by the
6 third party over the gaming activity of the tribe, the
7 availability of other sources of financing. These are
8 things that have come up in looking at this term and the
9 way that the Agency has interpreted it.

10 This is something we can, perhaps, see in a
11 regulation format. It has been suggested maybe a
12 bulletin would be more helpful, just to put the comments
13 together, summarize them, and put them out in a manner
14 that the tribes can have reference to as they engage in
15 their negotiations with various entities.

16 MS. ECHO-HAWK: We've -- internally we've,
17 again, looked at this issue because we -- we get --
18 often we get requests from tribes to take a look at the
19 cumulative effect of a couple agreements, several
20 agreements. And -- and the Agency, we've done -- we've
21 gone back through history and looked at a number of
22 opinions issued. And we've issued over -- and this was
23 kind of surprising to all of us, even the staff that had
24 been at the NIGC for a while. We've issued over 90
25 advisory opinions or opinions on sole proprietary

1 interests, including in management contract agreements,
2 approvals, disapprovals. So there is sort of a
3 significant body of interpretation from the Commission,
4 at least, on the -- from the -- from the Office of the
5 General Counsel, which has been an issue, as well.

6 We've issued two, now three, NOVs. There was
7 a notice of violation issued last week for Fond du Lac
8 and the City of Duluth agreements, which is on the
9 website, if you're interested in looking at the factors
10 that we considered while -- while -- while the -- the
11 Chairwoman considered while issuing that notice of
12 violation.

13 But we've gotten concerns across the board
14 about what the "sole proprietary interest" means. Does
15 it include revenue shares? Does it include exclusivity
16 agreements? Does it include agreements that tribes have
17 with the state and local governments? Does it only
18 include agreements relating to the gaming operation,
19 such as development agreements, management agreements,
20 facility agreements, consulting agreements, lease
21 agreements?

22 We see tribes come to us, and they say, you
23 know, after we've -- five years down the road,
24 "We've taken a look at the effect of all of these
25 agreements, and it means that we received 10 percent of

1 net. We make no profit, even though our casino is doing
2 very, very well. Can you help us please?" And, you
3 know, sometimes that's the other issue. Sometimes the
4 Agency said, "Sure. We'll take a look at your
5 documents." Other times, it didn't. And there's not
6 been any certainty given to tribes in the form of a
7 regulation or a policy or guidance how you can get these
8 documents reviewed from the Agency.

9 One of the goals of the Commission has been to
10 create this consistency and transparency in processes.
11 And so that's one of the things that we're looking at.

12 We've heard a number of tribes say that this
13 sole proprietary interest is too fact specific. And as
14 we go back through the documents that we have and the
15 reviews that we've done, we can certainly see that it is
16 very -- the facts all vary, and the situations are all
17 different. And -- and we are wondering, can we address
18 all of those issues with a -- I hate to say it -- a
19 bright-line, a regulation that defines "sole proprietary
20 interest" in -- in a rule, or is it -- is it a matter of
21 us taking a look at the process by which tribes get
22 submitted so there is consistency and response from the
23 Agency, and then, if the Agency does make a decision,
24 and there is final Agency action so that their -- so
25 that a tribe can move forward. That's the other

1 concern.

2 We've heard that there's been no opportunity
3 for a court to weigh in on what a sole propriety
4 interest is. And is it appropriate for the Agency to
5 decide and then let the courts weigh in?

6 We've heard the -- sort of just from one side
7 to the other and everything in between on -- on this
8 issue, and we're trying to figure out a direction to
9 move forward that -- that clarifies processes and
10 identifies, you know, with some specificity what this --
11 what the "sole proprietary interest" means.

12 VICE CHAIR COCHRAN: To give you a little bit
13 of insight, too, into what the Agency looks -- or is
14 faced with in this area, we'd ask the lawyers to give us
15 some feedback on the volume. And Lael said -- as you
16 see, issued 16 letters in the first month -- the first
17 six months of 2011. So the first time this year we had
18 16 that were issued that specifically we were asked to
19 examine documents for a violation of the sole
20 proprietary interest requirement. In 2010, there was a
21 total of 16 issued. So we've had a great number. And
22 that's probably due to some litigation that's occurred
23 since then and decisions that have come down. In 2009
24 there were only four. In 2008 there were only two
25 letters.

1 So it is -- it is an activity that occurs, and
2 a request that comes into our office quite frequently
3 necessitating, as Lael pointed out, the need for us to
4 be consistent in our response to the tribes.

5 MR. GREEN: IGRA has a hole in it. Other
6 gaming operations that do not meet their projections can
7 file a Chapter 11 bankruptcy -- Donald Trump has done
8 it -- and have their debt written down. We -- we don't
9 have that capability. Without a lot of regs, with just
10 the statute, the sole proprietary interest remains one
11 of those mechanisms we have to get our debt written
12 down.

13 When you make an examination of sole
14 proprietary interest, you make it at a fixed point in
15 time. It is very possible, with today's current
16 economic environment, and, indeed, with the coming of
17 the Internet, which may take 20 to 30 percent away from
18 our facilities, or may take nothing. Again, the numbers
19 are all over the place about what could happen when --
20 when this takes over. And it may train the people. We
21 may get all of them shut. I mean we really do not
22 understand what's going to happen to our facilities.

23 But the bottom line is, if there is an
24 economic downturn that affects our facilities, we could
25 find ourselves in a position that the tribe is making no

1 money, that all it is doing is paying interest, period;
2 that there is no money coming to the tribe; that it's
3 just paying interest on its existing debt.

4 You know, there ought to be a point at some
5 point in time that that violates the sole proprietary
6 interest. If you make a number of fixed rules and
7 regulations, if you make final agency decisions that are
8 not -- that do not give caveats for the situation may
9 change based on the profitability of the location, you
10 put tribes in a position that they may have no financial
11 interest in the casino operation. And there are places
12 that have those issues. You know, fortunately, there
13 aren't many.

14 But as the economy turns up and turns down, as
15 the states try to whittle more money out of our pockets,
16 we're -- we're going to be continually faced with, "Can
17 we make money in these economic environments?" The sole
18 proprietary interest is a means for us to address a
19 situation when we have too much debt. And in every
20 other situation, the lenders go into Chapter 11. And
21 they all -- and everybody writes down their debt in the
22 same percentage, and the operation continues to operate.
23 The issue is not that it's not financially prudent, it's
24 that with this much debt, it can't be financially
25 prudent. If everybody takes 80 cents on the dollar, we

1 all get paid back something, and -- or we extend the
2 debt for a longer period of time. There are compromise
3 issues that are made generally.

4 And this mechanism is clearly, written as it
5 is, one of those mechanisms that lets us address our
6 debt.

7 I would also point out that I think you have
8 the right concept, that you have a number of legal
9 opinions that you've written over time, though not
10 binding, helps shape the NIGC's position. And we are
11 now having a number of court cases that make some or --
12 or -- or some slight or other reference to the tribe's
13 proprietary interest when you're dealing with an
14 accumulation of agreements.

15 And, again, whether the tribe has a sole
16 proprietary interest today, and whether it has a sole
17 propriety interest two years from now, may depend on how
18 many 10-percent contracts it signs off on. In other
19 words, the accumulation of the tribe's obligation over
20 time can deprive it of its sole proprietary interest, as
21 well. And it may not be with any one vendor. It's
22 simply you no longer have that, and so you've got to cut
23 back and restructure.

24 And so I would be very, very cautious in
25 writing any regs because I don't think you can see all

1 of the problems that might be out there that we're going
2 to have to deal with.

3 VICE CHAIR COCHRAN: Is there a way, though,
4 to streamline, or make the process, the process, itself,
5 more certain? I understand what you're saying, Jess,
6 about the substantive issues that come up, and how we
7 look at the substantive issue. But we've heard a lot of
8 feedback on the process, how long it takes. I'm trying
9 to think of some of the other things. It's too early in
10 the morning.

11 There are some -- do you envision -- does
12 anyone have -- envision a process of how we can do the
13 process better to get more consistency out of the
14 feedback that comes to the tribes once we have completed
15 our review?

16 MR. GALLEGOS: Manny Gallegos, Pueblo of
17 Tesuque Gaming Commission.

18 I agree with Jess that we do have to be
19 careful in putting a regulation out. Once a regulation
20 is out, it is set in stone, and the only way we can get
21 rid of it is either through compromise with the Agency
22 or actually challenging it in court. I don't think we
23 want to do that.

24 You have mentioned several things of how to
25 streamline it. Maybe one of the best things is to do a

1 guideline saying, "Here is what we are looking for.
2 Here are some of the examples that have come up." That
3 would give all the tribes at least something to look at
4 when they are structuring their agreements or going back
5 through their own internal audit or external audit to
6 review to see how that is being impacted.

7 The sole proprietorship, I don't think you
8 really want to start messing with the percentage
9 involved in that. I think it's almost on ownership
10 where you want to use the percentages. It's Indian
11 owned or non-Indian owned. That is the only time you
12 should use the percentages. It is not sole
13 proprietorship.

14 "Sole proprietorship," by definition, is only
15 one owner, period. You know, I think that maybe a
16 guideline to the tribes saying, "If you're going to do
17 this, here is something you need to look at. Here are
18 some of the examples we've come up with."

19 VICE CHAIR COCHRAN: Thank you.

20 I just am reminded that one of the requests
21 that our general counsel made before we got on the road
22 this last week before last was to ask the tribes to,
23 please, allow them at least six weeks to review these
24 documents. Some of the tribes, you're putting them in
25 and having very, very short timelines. And I know the

1 OGC is doing its very, very best to try to keep up with
2 those timelines.

3 But it goes back, again, Jess, to my question,
4 and I -- to my question about process. Can we do -- can
5 we put something in place? Would it be helpful to put
6 something in place that would identify what point in the
7 process the tribe should be consulting with us about
8 these agreements, so that we're -- we get the time we
9 need to do a proper -- once the request has come in from
10 the tribe?

11 You know, some of the ideas we were looking at
12 prior -- or asking the tribes to let us know prior to
13 execution of the agreements. After -- you know, should
14 they be required to come in after the deal has gone bad?
15 Should they wait until a dispute has occurred and the
16 tribe is in litigation? Is that the proper point to
17 come back to the Agency? These are things, I think,
18 that can help the tribes on a process level, but also
19 help the Agency be more mindful of its -- how are we
20 getting stuff back to the tribes, so that we prevent --
21 and Jennifer can probably speak to this better, but I've
22 heard the stories come out of OGC. You know, the tribe
23 is coming in with mountains full of paper and saying,
24 "We have to know in two days." And that just isn't --
25 isn't going to happen. We don't have the resources or

1 time to do that.

2 MS. WARD: As we talk about sole proprietary
3 interest, one of the things that -- out of OGC that I'm
4 concerned with is a possible chilling effect on the
5 market. If you have a tribe that comes in six years
6 into a seven-year agreement, and, now, they want OGC to
7 take a look at it and use us as leverage saying, "Sure.
8 This violates the sole proprietary interest. This isn't
9 good," and then the tribe takes it to court, and, now,
10 you have -- it's great for that tribe. Now, they have
11 leverage. But what happens to the other tribes in the
12 market that are, now, trying to get financing,
13 especially, since we don't have anything that clearly
14 defines what sole proprietary interest is?

15 With the Torches case with Wells Fargo -- and
16 I don't know if any of you are aware of that, but that
17 was determined to be a management contract. And it was,
18 therefore, void. It's working its way through the
19 courts. But so far, Wells Fargo is out of a lot of
20 money because the contract was void. And it chilled the
21 market. Luckily, we had enough guidance on what a
22 management contract is that we were able to put it out
23 there to lenders and tribes so everybody has clear
24 guidelines, and you could work from there. But I don't
25 know that we have the same environment and the same base

1 of knowledge, consistent knowledge, with sole
2 proprietary interest.

3 So if anyone has any comments on what they
4 think about the market, the chilling effect, what they
5 think sole proprietary interest should be and what we
6 should do about tribes that come in so late in a deal, I
7 would really like to hear comments on that, as well.

8 Thank you.

9 GOVERNOR GARCIA: David Garcia of the Pueblo
10 of Acoma.

11 I was thinking along the same lines. But I
12 mean in -- given this situation, I know a couple of
13 tribes, or a couple of gaming tribes in the State of New
14 Mexico, that are in that situation. But looking at the
15 scenario from my perspective as a gaming tribe, we don't
16 have debt that would influence issues of sole
17 proprietorship. But I would think that those kind of
18 issues should be thoroughly addressed up front, either
19 identifying, "Here are the terms. Here is the
20 identification of a management contract versus another
21 form of mechanism." That, I think, would -- could be --
22 you could write it so that terms and conditions could be
23 addressed down the road that both the tribe and the
24 third party could most certainly weigh in on if the
25 economy came to a situation, or maybe the debt was

1 becoming too high.

2 But, of course, the other issue when you're
3 talking about a bank, you're talking -- you're not
4 talking a fixed rate. You're talking a fluctuation in
5 varying rates, so I mean that could go from -- anywhere
6 from 5 percent, 8 percent, 10 percent. So you're having
7 inconsistencies.

8 But, again, I would think -- my opinion would
9 be it comes down to the financial statements of the
10 tribe or the entity when you're looking at all of these
11 issues. But I mean, to me, I don't know that -- because
12 we are not -- we've never been in that situation of
13 looking at and identifying, deliberating on an issue of
14 sole proprietorship, not that I'm aware of within the
15 state of New Mexico. And I could be wrong.

16 But one gaming tribe that comes to mind is one
17 where they were trying to sell their assets, but because
18 the casino was on tribal property, it could not pass
19 that to a third party or other individual of a third
20 party. So I think these were all concerns that were
21 taken into it.

22 But I mean not knowing the true relationship
23 behind, I guess, maybe, all of the issues NIGC is facing
24 regarding the sole proprietorship, it's very hard to
25 comment on because, you know, we don't know. I mean

1 unless you indicate like, "Okay. Here is kind of the
2 scenarios in some of these situations," then I think we
3 could better address -- in my mind, I would -- I would
4 -- I would feel comfortable if it was an issue of
5 guidance, a bulletin, as opposed to a regulation,
6 enhancing the regulation because, again, the very issues
7 of sole proprietary interests fluctuate with all -- I
8 mean the other side of it is, within the state of New
9 Mexico we have tax bonds. That's an issue that I don't
10 think tribes have ventured on as of yet, not within the
11 state of New Mexico. But maybe in other areas.

12 So I mean I don't know. It is very difficult
13 to comment on -- on this specific issue, but --

14 VICE CHAIR COCHRAN: Thank you, Lieutenant
15 Governor.

16 There is a growing, as most of you know,
17 complexity to the issue because of the number of
18 agreements, and the type of agreements. The areas where
19 a potential violation can show up are just not in --
20 necessarily contained in any management contract
21 anymore. You can find them in many other areas; hence,
22 another reason why we're seeing the numbers go up.

23 And this also -- there are trends, a small
24 trend coming up, where you're having not just a tribe
25 and contractor, or it's not just a tribe and a lending

1 institution, but, now, you have tribes that are having
2 issues with other tribes who were performing and acting
3 as -- providing financing opportunities and other types
4 of things.

5 So it's given that the arena is -- is becoming
6 increasingly more complex in this area, which is, again,
7 yet another reason why it's kind of a reason why it's
8 topic of the discussion for us so that we can try to
9 bring some clarity while we have the regs open for
10 consideration.

11 Are there any other comments?

12 All right. Why don't we take a quick break?
13 And we'll come back, and we'll begin with the MICS at
14 10:45.

15 (Recess.)

16 VICE CHAIR COCHRAN: We'll go ahead and get
17 started so that, hopefully, we can get through some more
18 topics and maybe have an early afternoon.

19 I'm going to turn over the microphone, again,
20 to Lael and have her walk through group three, which is
21 543 and 547, and see if we can't get some of the
22 discussion underway before lunchtime, and, then, as I
23 said, perhaps get us out of here early this afternoon.

24 So, Lael, if you would?

25 MS. ECHO-HAWK: Okay. So the final sort of

1 sensitive area that we're going to be covering this
2 morning is -- and for the rest of the day is group
3 three. Group three addresses Class II and -- Class II
4 minimal internal control standards and Class II
5 technical standards. We're also kind of throwing in a
6 little bit of Class III here because the MICS do overlap
7 in a number of areas, at least some of the proposals do.
8 And -- and so we do talk about them a little bit, as
9 well.

10 So when we sent out the Notice of Inquiry, the
11 Commission asked, "How should we proceed with updating
12 Class II minimum internal control standards and the
13 technical standards?" The technical standards have been
14 adopted and were put into place a couple of years ago.
15 And we heard that there were some updates that need to
16 be made and addressed.

17 And we've got some experts in the room, here,
18 on audits and technical standards. We have some over
19 here and the rest over there, so if we have questions,
20 they can help respond, as well.

21 But there was -- there was -- you know, within
22 the Agency, we -- we know, we've heard that the MICS
23 certainly need to be updated, that there are gaps, that
24 the technology and things have moved along. In the
25 industry we haven't really kept up. And we have some

1 MICS that are currently on the website that were being
2 drafted at the time that the Commission came in, but we
3 haven't done a lot of work on them because -- since then
4 because we wanted to go -- the Commission wanted to go
5 through this process of amending and revising those and
6 updating those, and doing it in a way that includes the
7 most people possible representative of the industry.
8 And we've been talking about how do we do that.

9 We -- we had a tribal gaming working group
10 submit their information to us. And we understand that
11 they're still in the process of finalizing some
12 documents and getting them to us. That is an
13 alternative standard that, perhaps, we can -- that the
14 Commission is interested in looking at and seeing if
15 that addresses some of the concerns and resolves some of
16 the issues that are in the current MICS, as well as the
17 technical standards.

18 We've received -- over the course of the past
19 consultations, nine and a half, I guess, consultations,
20 we've heard from tribes that -- that they would like
21 another shot at a tribal working group, a tribal
22 advisory committee. That particular -- that issue of a
23 tribal advisory committee is complicated. There has
24 been kind of a history with that, working with that type
25 of advisory committee at the Agency, but it is something

1 we're hearing tribes say they would like to see again.

2 So one of the questions that comes -- several
3 questions that come up with that, then, is, "Okay. If
4 we decide to use a tribal advisory committee to work on
5 the minimum internal control standards and the technical
6 standards, perhaps, depending on what happens with
7 the -- updating the Class II minimum internal control
8 standards, how do we do that?" "What factors should be
9 considered in selecting that kind of committee?"

10 Region -- just our ideas have been region,
11 size of operation, regulated and operators, Class II,
12 Class III, experience, the background experience of
13 representatives, how many members should be on that
14 committee so it has enough representation but is not
15 unwieldy, whether or not we should use a facilitator,
16 and then, how tribes participate that may not be
17 officially on the committee. But how do we get that
18 external participation that we need in order to make
19 sure that all of the voices are heard and that we come
20 up with the best product possible?

21 And then, what sort of product are we looking
22 for from a tribal advisory committee? Are we looking
23 for a new set of regulations? Are we looking for
24 guidance? Documents? What are we -- what is it that
25 the tribal advisory committee would actually create?

1 And then, if we do a tribal advisory committee
2 to address these issues, how do we build in the
3 consultation components, because we recognize that a
4 tribal advisory committee is more of a technical,
5 working committee. And while it is very helpful, it is
6 not subject to -- for consultation with tribes, like
7 what we're doing here.

8 So we've got this -- this -- this idea that's
9 been thrown out by tribes, and we're thinking internally
10 about how do we, perhaps, taking the MICS, the Class II,
11 Class III MICS, and the technical standards and putting
12 them on separate tracks so that we can get done all of
13 the things we've talked about over the past day and a
14 half. We can get those out of the way. We can address
15 those issues that are just as important as the MICS,
16 without getting bogged down in the very technical
17 auditing requirements and the technical IT requirements
18 of the actual MICS and technical standards.

19 So that's kind of what we're interested in
20 hearing about right now. I will let the Vice Chair take
21 it away.

22 VICE CHAIR COCHRAN: This -- this group
23 includes the two items I know that the Commission has
24 very clearly made public statements that we intend to
25 bring resolution to, or to finalize discussions that

1 have been ongoing for years and years and years on this.
2 There is -- as the PowerPoint that Lael put together
3 pointed out, there is another effective date on the
4 Class II bingo MICS coming up on October 13th. It's
5 already extended twice because it's -- it's an
6 end-result issue.

7 And the Commission internally has agreed to,
8 perhaps, pull off these two issues because they are
9 interrelated in many respects, pull them off of our
10 regulatory review track, if you will, and to address
11 them separately so the remainder of the train doesn't
12 get stopped with -- with the other -- these other areas,
13 which are very complex and very detailed in their
14 discussions, so that we allow the work of the other
15 regulations to continue to go forward so that they don't
16 get stuck.

17 The question that went out and that the tribes
18 responded to was "How should we do this? How should we
19 look at those? If we put a TAC together, what should it
20 look like?"

21 And so I want to reopen that question in case
22 somebody wants to respond and hasn't responded to date,
23 or has thoughts on this, the process, how to -- to
24 approach the MICS.

25 There was an attempt, as you know, many of

1 you, I know, were part of that process after CRIT, to
2 break out the MICS into separate parts. And there was a
3 lot of work that went on in that work, that, actually,
4 continued to go on until May of last year, at which time
5 the Commission said, "We're not going to pursue that
6 right now until we've talked to the tribes."

7 So I'm going to turn it over and let you have
8 an opportunity to comment.

9 MR. GREEN: Thank you. This is Jess Green.

10 Part of the -- my communication is more
11 informational since I have worked with the group that is
12 actually putting together these -- these proposed
13 replacements.

14 We have worked for about the last six months.
15 We've had conference calls that lasted half a day to
16 last up until this last week, about three times, half a
17 day every day. We've had several face-to-face meetings,
18 including one earlier this month in Las Vegas, in which
19 we spent four days. We would start at 8:00 and go to
20 6:00. Literally, they'd bring food to us. Lawyers do
21 actually work like that sometimes.

22 There are currently three lawyers, basically
23 in a single room in California, that are working to make
24 sure all of the things that we've done over the last six
25 months have the same style and format. Their work

1 product will be released as the work product of the
2 group I participated in either Friday or Monday.

3 And what I would tell you is the work groups
4 that put these together were industry people, i.e.,
5 people that work in the industry, that make reports to
6 tribes, that participate in meeting the MICS standards,
7 and have had problems meeting them, or fear problems
8 meeting them in the future. Again, vendors -- vendors
9 have a great financial interest in what the standards
10 are going to be so they don't restrict their future
11 development. And we have had representatives from a
12 number of very profitable Class II tribes. Again, they
13 have a huge interest that the MICS they're working
14 under, that they have gotten variances and other things,
15 that it be accepted.

16 As Mark Van Norman and I discussed in the
17 hall, the biggest concern I have is that the tribes that
18 do Class II gaming, and do only Class II gaming, have
19 come up with these MICS. They basically have copied
20 what they're doing in their casinos. Now, these are the
21 tribes that are doing most of the volume.

22 My concern is that, because those of us that
23 participate are all doing the same thing, we're in
24 tunnel vision. I really need those of you that are
25 venturing into the market, that have a different set of

1 eyes -- I need you to come in and look because I don't
2 want to have made these too restrictive.

3 What we basically have done is taken one
4 tribe's minimum internal control standards and approved
5 them with modifications for everybody in the room. At
6 their current operations it fit in because we had
7 operational people, we had gaming commission people.
8 And we took all of those considerations, and made
9 everybody's thoughts MICS, and we tried to make them as
10 simple as possible.

11 And then we took the guidance documents, which
12 are much more voluminous, from a -- from one of the
13 tribes that had very voluminous guidance documents
14 because we said, "MICS without guidance documents are
15 not real helpful if you're just moving into this." And
16 so there is also a secondary piece, that our guidance
17 documents are -- that are very voluminous. And so you
18 end up with about an inch and a half thick, if you print
19 it out, of material that reads like assembling stereos.

20 Now, those of you that work in the gaming
21 commission are used to reading stereo instructions, but
22 it is still the kind of thing that puts you to sleep
23 when you work on it three or four hours, unless you get
24 some kind of hot debate going on.

25 I -- I generally think that that product

1 certainly needs to be on its own track. That product
2 needs to be reviewed by those of you that are
3 anticipating participating in a Class II gaming
4 industry, and if you -- if your fresh set of eyes have
5 any suggested changes, they're not going to be rejected.
6 We know we were victims of tunnel vision because we all
7 do -- we've done these things this way for years and
8 years. We have been making changes and variances
9 because we've become more modern. We're trying to
10 update the standards.

11 And, again, what happened is, our experience
12 has led us to make changes, work on it, and assemble
13 those changes in new and updated MICS. We expect this
14 will need to be done every four or five years. The
15 group that has done this has spent an enormous amount of
16 time and money that is not paid by the NIGC. If we had
17 written our own reg -- and we are capable in the business
18 industry, and we've done so because we wanted to be
19 useful.

20 We have tried the other way around, and it's
21 really been frustrating when somebody is trying to take
22 Class III regulations and squeeze them into Class II
23 when our operations originated someplace else. And,
24 again, I have been in those discussions that terminated
25 last May. Whenever I have asked NIGC to represent to

1 me, "What does this reg mean?" and have him respond, "I
2 don't know. I just pulled it out of the New Jersey
3 regs," or "the Nevada regs." And -- and -- and my
4 response was, "Why did you put something in if you don't
5 know what it means, because I can't understand what it
6 means?" And none of my people in operations knew what
7 it means.

8 And, again, I've not ever been on NIGC's task
9 force, but I've always sat in the audience and bided my
10 time. And those of you that have not observed the
11 previous Commission's task force, initially, they
12 wouldn't let anybody in. Then you could get in, and
13 couldn't comment. And you had to sit in the back of the
14 room. Then we finally put enough pressure that we
15 started getting to comment at the end of the meeting.

16 And then there were some meetings that we were
17 told, "If you get three strikes, you're out." And
18 basically if you said three things that the person
19 running the meeting didn't like, you had to leave the
20 room. And, of course, that meant I couldn't ask any
21 questions at all because my questions would cause me to
22 have to leave the room.

23 The current commissioners are all very, very
24 well educated. Some of them actually participated on
25 the tribal side in that and have assured me in this task

1 group that they're considering using, those concepts
2 won't be there. It was made very clear by the former
3 NIGC group that "This is our group. We're running it.
4 We're making the final decisions. All you're making is
5 suggestions."

6 I would suggest that if -- when you make any
7 suggestions as to how these task groups ought to be,
8 that they be co-chaired. Those of you that have
9 participated in rulemaking in other forums, in housing
10 and in other areas, know that lots of times there are
11 co-chairs. And there is -- there are discussions, not
12 declarations, about how things ought to be, and you
13 reach consensus.

14 And if we had co-chairs, we had an elected
15 tribal leader that was willing to serve as co-chair for
16 this type of a TAC, and we had a representative from the
17 NIGC, we would then have two representatives that would
18 make sure both sides were heard, in, hopefully, some
19 reasonable fashion in a very swift -- at a very swift
20 pace.

21 The other thing about having elected tribal
22 leaders, my experience is y'all move things along.
23 Y'all have things to do back home. And you won't let
24 these TACs go on and take years and years. You make
25 them -- you make them all take weeks or months.

1 And I think that is the other issue is when
2 they put that task force together, they are going to
3 have to assemble a deadline date. And there will be a
4 lot of material to evaluate. It will be technical and
5 complex. Again, keep in mind we are not -- when that --
6 when that agreement comes forward, those of us that have
7 participated, we're not trying to cram anything down
8 anyone's throat. We are suggesting that these updates
9 will work.

10 Thank you.

11 VICE CHAIR COCHRAN: Thank you, Jess.

12 Before you hand the microphone back, would you
13 be willing to -- those who are not -- who may not be
14 familiar with the TCRG -- and who made up the TCRG, just
15 explain that to us?

16 MR. GREEN: The previous Tribal Regular --
17 Tribal Commission Regulatory Group, the -- you made
18 submissions to the chairman of the NIGC, and then they
19 selected who they wanted. And they selected a lot of
20 Class III people to do the Class II stuff, which didn't
21 make a lot of sense to us.

22 The tribal regulatory group that we have
23 assembled are volunteers from tribal gaming commissions
24 that have tribes willing to spend their budget for that.
25 Tribal operations, again, it's been my experience that

1 if you just assemble lawyers and accountants, you make a
2 heck of a mess with regulations because you have to have
3 the people that actually do them.

4 I wrote a set of regs once that I thought were
5 really good. They were drop regs. And I was called to
6 the casino at 6:30 and said, "Watch the drop. This is
7 how we used to do it." And they finished in about an
8 hour and a half. Three hours after they finished, they
9 were finished with the regs, I -- I got together with
10 the other half of the casino, and they said, "Now, are
11 you going to tell the governor of the tribe that we
12 can't open the casino for three more hours, or are you
13 going to revise your regs?" at which point I relented
14 and said "I have taken" -- the 15 seconds I had for the
15 drop, for the percentage of the drops doesn't work. And
16 so you need those sort of people that work every day in
17 the industry, and they have been a part of it, the
18 people that actually work in management.

19 And the people that actually do the audit work
20 from our own gaming commissions have been there. So you
21 have industry people in this -- in this group that's
22 been putting these together. You've got -- that have a
23 financial interest. You've got tribal gaming
24 commissions. You've got elected tribal leaders that
25 have participated who have Class II operations and know

1 this is what their tribe runs on. You've got
2 operational people, and then you've got lawyers and
3 accountants who have participated because we do have
4 legal requirements we have to meet.

5 And then, the audit requirements for the
6 tribal gaming facilities are really our most stringent
7 things that we do. They're the hardest rules for us to
8 -- to meet. And so we've had a large amount of
9 participation from -- from tribal accountants and audit
10 people.

11 Is that the explanation you were looking for?

12 VICE CHAIR COCHRAN: Thank you.

13 The work product that has come out of this
14 group, the initial work product, was sent to the NIGC.
15 And we sent it out for review without the bulletins. We
16 don't have any of the guidelines. We just have the
17 initial work product, which was not a lengthy amount of
18 material. But they did share that with us, and did say
19 the bulletin is coming. And that's kind of the
20 heartbeat of the set of draft MICS.

21 MR. GREEN: We've moved a lot of material that
22 was in the MICS to the guidance documents.

23 VICE CHAIR COCHRAN: Yeah.

24 And so we've been asked -- we -- we, the
25 Agency, have been asked to share, or put it up on our

1 website so that people have access to -- to the product
2 of the work group. We have not done that because it was
3 an incomplete product, and we did not want to confuse
4 people who may not be familiar with it. I know the
5 journey will continue, you know, once a complete product
6 is put in, to consider whether or not we should put it
7 up there. Is it appropriate? Is it appropriate in that
8 forum, or -- but my understanding -- and anyone who has
9 participated can correct me -- is that if somebody wants
10 to see what they have been working on, the group has
11 been willing to share it. It's not a product that's,
12 you know, off limits to those other than who
13 participates. So there is access to it, if -- if you
14 have an interest in seeing what they're working on.

15 And that product and the efforts of the group,
16 the MICS revisions that have been pending, now, for a
17 couple of years, that they stopped working on in 2010,
18 there's all kinds of work that has been done in this
19 area. And there's some -- process aside, there are --
20 my understanding, there are some good things that are in
21 the proposed MICS for those who have looked at it more
22 closely. I understand there are some really good things
23 that are coming out of this work group. So we have the
24 foundation that the -- a lot of the hard work has
25 already been done. And the tribes have undertaken quite

1 a bit of that -- that effort.

2 So if a TAC is put together on this issue,
3 we -- we take some comfort in knowing that, hopefully,
4 those two products will be of use to the group, and the
5 hard work in that regard will be done, so that the group
6 can focus on making decisions and making agreements and
7 compromises where it needs to happen. So the hope is,
8 as we talk about a TAC, is that we can move the work
9 along faster. It's not going to get bogged down for
10 months and years like the prior efforts did.

11 So that's the kind of thinking that we have.
12 And I know that the Commission and the Chairwoman have
13 sat down with people with the Interior who have
14 expertise in this area, in other topics. The -- we
15 recently talked about one of them who has a lot of
16 experience in how do you get those complex issues
17 resolved in an efficient manner?

18 They have resources available to us, which the
19 Agency, of course, greatly welcomes, because we don't
20 have facilitators or negotiators or other experts like
21 that, and we don't have the money, necessarily, for
22 that. So we're really trying to -- to find those
23 resources to come up with the best idea to do a TAC.
24 And it will not look like the previous ones in many,
25 many regards. We understand the frustrations that

1 occurred during that -- that last process.

2 MR. GREEN: Again, that product should be
3 available Friday or Monday.

4 VICE CHAIR COCHRAN: Thank you, Jess.

5 MR. APODOCA: Is it going to be online?

6 MR. GREEN: Yes. It -- it -- it will be
7 available. If you have no other way to get it, you can
8 contact my office. We'll give you a link. Matthew
9 Morgan, the gaming commissioner for the Chickasaw
10 Nation, was the chairperson from like January to May.
11 And he basically said, "I've got to go back to work."
12 And he sent representatives thereafter.

13 Those of you that have contact with Rocket
14 Gaming, Rocket Gaming was -- was some of the
15 participants. Multimedia Games sent some participants.
16 There are probably 80 to 95 people that were on the list
17 that were receiving our products as we moved along.

18 Any of us can be contacted, and we will
19 forward you the links. Other attorneys who -- who have
20 been working on this are Ms. Homer, who was a former
21 NIGC Vice Chair, and Gary Faust, who is a former NIGC
22 commissioner. Either of those people, certainly, could
23 forward those to you if you have their names or their
24 phone numbers. They are both attorneys. And, of
25 course, I'm sure that NAGA will be able to -- would you

1 not? If I can get his attention? We've got dual
2 tasking over there.

3 Would NAGA be able to forward the copies if
4 they were requested?

5 Would NAGA be able to forward the copies?

6 MR. VAN NORMAN: Sure. Sure.

7 MR. GREEN: They ought be available by Monday
8 or -- by Monday, don't you think?

9 MR. VAN NORMAN: Yeah, Ms. Homer represented
10 us.

11 MR. GREEN: And she is the person, one of
12 those three people that is working. And so, if you
13 haven't got a way to communicate within the National
14 Indian Gaming Association, I'm sure we will be able to
15 forward those to you. We would advise you to
16 participate, but we're done.

17 VICE CHAIR COCHRAN: I.e., they need new
18 bodies.

19 MR. APODOCA: Albert Apodaca.

20 Are -- just the New Mexico tribes are at a
21 distinct disadvantage because we've had very little
22 experience with Class II, but I mean as far as the
23 gaming commission part. And that's -- that's,
24 obviously, a concern because I think we would be
25 dependent on those with more experience to say, protect

1 the -- say, the interests of the tribes and that sort of
2 thing, in the Class II MICS, and that sort of thing. So
3 I mean we're learning as we go, and I know, like for us,
4 we're looking at it right now.

5 My concern is, obviously, if you have -- like
6 the same thing. If you had the -- the -- your remark
7 was you had Class III operators serving on the tribal
8 advisory committee, the TAC, and they made the rules for
9 the Class II, right? And it didn't quite fit. Now,
10 you've got kind of the opposite occurring and because
11 most of us will keep Class III, won't be a dedicated
12 Class II, for the most part, you know, a Class II gaming
13 operation. So there's some concerns there. Like -- and
14 we don't know because of our lack of experience -- and
15 I'm just talking about our tribe. We don't know what's
16 good and what's bad.

17 I mean that's just something that we're going
18 to have to kind of trust that -- the work that -- that
19 came out. I would -- I would probably feel more
20 comfortable with -- with the work that this group put
21 together than the previous NIGC, or the TAC, you know.
22 But just comments.

23 VICE CHAIR COCHRAN: Thank you.

24 The -- your comments actually feed into the
25 question that I wanted to pose to the group.

1 Again, the Commission, in our discussions, we
2 discussed very lengthy about the make-up of the former
3 group, why that didn't work in the sense that Class II
4 and Class III are not identical in their needs. And
5 this -- especially in the MICS. And we agree that --
6 very, very much so -- that there is a need for us to
7 also call upon the right experts in the industry.

8 Just as, you know, you say you're relying upon
9 others who may have more experience, you know, we have
10 the same need, too, in putting a TAC together, which
11 leads to questions -- leads us to questions about ideas
12 on how might the TAC look, who -- who may or may not be
13 the right people to put on it. There's discussions
14 about whether or not manufacturers and other types
15 should be on it, or should it be limited to the
16 operations and the gaming commissions and people
17 specifically designated by a tribe to represent their
18 expertise on behalf of tribes.

19 And the other thing is that I should be very,
20 very clear, if a TAC is put together, first of all, that
21 decision will be made very quickly because we don't have
22 a lot of time. But beyond that, it will not replace
23 consultation. The advisory committees cannot replace
24 our obligation to consult with the tribes, ultimately.
25 But the TAC can do all the legwork to make the decisions

1 very clear once we sit down to the table to consult. So
2 I want to -- I want to make sure that that's conveyed
3 properly.

4 Does anybody have any thoughts on the make-up?
5 Size? We are dealing with different regions who have
6 distinct ideas and needs. We, of course, deal with
7 different-sized tribes, different-sized operations. You
8 know, we welcome your thoughts, experts.

9 We are having our general -- our Office of
10 General Counsel very clearly look at and give us
11 feedback on what federal law requires of us under FACA.
12 We believe it was used as a barrier last time, and
13 that's really, perhaps, not the best interpretation. We
14 think that there's a different interpretation of FACA
15 that will give us more flexibility so that we stay
16 within the confines of the law that limits our actions,
17 but does not violate our obligation to -- to work
18 closely with the tribes in this area. So we've asked
19 for a better and different interpretation than was
20 provided in previous years.

21 We also understand and have discussed, again,
22 with Interior, talking about ideas, creative ideas,
23 different ideas, you know, "How can we put a group
24 together and get that group to manage their workload in
25 the shortest time possible?" because we know so much

1 time has already been given up. You know, "Can we do
2 some creative idea which says, the work of this group
3 will be done by a date certain?" because the time frame
4 that we're working in is very, very small.

5 Those are the questions, you know, I wanted to
6 put out and discuss. I certainly want to open up the
7 floor, though, to other questions on part number 3.

8 Anything else on part 5?

9 All right. I want to give one final
10 opportunity, again, because I know that we have
11 leadership here, we have attorneys here, and other
12 regulators here. Give you an opportunity, if there is
13 anything that you haven't said that you wanted to say,
14 that you want to just bring to the table for us to
15 consider, the -- the floor is yours. Your time is
16 valuable. And I certainly want to make sure that
17 everybody has had their opportunity.

18 Well, I think we're done. I appreciate very
19 much your time. I appreciate your comments, your
20 thoughts. Please know that you can e-mail us any
21 written comments, if you want to submit them. We hope
22 to have the transcript up pretty soon. I wish you very
23 safe travel going home.

24 And Albert, you have something you want to
25 say?

1 MR. APODOCA: I just wanted to say thank you
2 for taking the time to spend with us and listening to
3 us. I'm sure you've heard a lot of this repeated over
4 and over, and this thing and that sort of thing. But we
5 appreciate the attention and -- and the fact that you're
6 taking into consideration our remarks, our statements,
7 and taking some issues that we have.

8 I -- I would just like the National Gaming
9 Commission to be a little bit more transparent, and --
10 and being able to share some information, like I brought
11 up the issue about the management, you know. The
12 investigation of background is just one example. But
13 even the website, like having the directory so we know
14 who to send what to. And I use an example of like
15 Elaine, you know, who do you send the audited financial
16 statements to if you only deal with them once a year,
17 you know? Just things like that. But I really do
18 appreciate you taking this time.

19 VICE CHAIR COCHRAN: Thank you for your
20 comments. And we are working towards becoming as
21 transparent as we can. Most of us have been on the
22 other side, so we know how difficult it can be to get
23 information. And some day, we will get our technology
24 updated. So that will support that transparency,
25 electronic equipment with digital format.

1 So thank you for those comments.

2 And this means I get an early start to
3 enjoying the next 48 hours at home, which I always
4 welcome.

5 So please, again, safe travels, and thank you
6 for your time.

7 (Whereupon, the proceedings were adjourned
8 for the day at 11:17 a.m.)

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1 STATE OF NEW MEXICO)
)
2 COUNTY OF BERNALILLO)
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4 REPORTER CERTIFICATE

5 I, Karen Lee Clark, RPR, CCR No. 277, Certified
6 Court Reporter in the State of New Mexico, do hereby
7 certify that the foregoing pages constitute a true
8 transcript of the proceedings by National Indian Gaming
9 Commission, held in New Mexico, in the matter therein
10 stated.

11 In testimony whereof, I have hereunto set my hand
12 on August 4th, 2011.

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