

Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street Northwest
Washington, D.C. 20240

Re: 25 C.F.R. 547.5
Grandfathered Class II Gaming Systems

Dear Chairman Chaudhuri,

We write concerning the removal of the minimum technical standards for Class II gaming systems built before 2008.

Since the NIGC first decided in 2003 that “it is in the best interests of Indian gaming to adopt technical standards,” vendors have sought to undermine, sabotage, and find exemptions from such standards. We are distressed that some vendors have succeeded in putting off compliance and still do not meet the Commission’s standards, almost 15 years later.

We, the tribes, have fought to establish the Indian Gaming industry and win the trust of players, the federal government, the States, and others. The efforts of vendors to seek special treatment and resist regulation threaten to destroy this trust that we have worked so hard to build. We urge the NIGC to fulfill its mission to protect the integrity of the industry by enforcing the minimum technical standards for *every* machine.

Lack of Safety and Security

The lack of enforcement of modern standards is causing greater harm to tribes and the public than the supposed benefits Grandfathering is protecting. The only entities served by Grandfathering are the vendors, who profit from these older, non-compliant machines, without updating them to meet the standards. The players do not benefit from non-compliant machines, as they pay the same price whether they are playing a compliant machine or a non-compliant machine. The tribes do not benefit from non-compliant machines, as the costs of making the machines compliant is borne by the vendors. But the vendors, the only ones to benefit from old machines, have already benefited from the Commission’s leniency and consideration by being granted nearly 10 years in which to make their Grandfathered games compliant.

Grandfathered machines have many known security flaws, which is why the NIGC created the minimum technical standards in the first place. With new hacks affecting millions of Americans in the news almost every day, it is only a matter of time before hackers successfully target these vulnerable, Grandfathered machines.

The vendors are clearly able to comply with the minimum technical standards. In fact, all of the vendors with Grandfathered machines have introduced new and compliant games in the last 10 years, many of which are more technologically complex and out-perform the Grandfathered games. It is now time for the Commission to turn its attention to protecting the public and the

tribes. It is the Commission's responsibility to create and enforce regulations that meet the risks and threats of today and we urge you to do so.

Fostering Innovation

To protect our sovereign rights as Indian Nations, we must have a strong Class II market. We need a fair, competitive market to foster innovation and provide numerous, high-performing options for Class II products. Given the cost of compliance, manufacturers who comply with the rules are being economically punished and manufacturers who do not comply reap the rewards of the commission's lenience. This has led to a market with a small number of vendors offering old, stale products, many of which are Grandfathered and do not meet modern safety and security standards.

Economic Impact

The same vendors that provide us with Grandfathered machines also provide compliant machines. If Grandfathering were eliminated, we are confident that the vendors would replace their Grandfathered machines with compliant ones under our current lease agreements. Many of our lease agreements require them to do so. In fact, these compliant machines would likely be newer machines and may provide an economic boon to us, instead of the risk posed by Grandfathered machines.

Imposing on Sovereignty

Making Grandfathering permanent imposes upon Tribal sovereignty. If necessary, our Tribal Gaming Regulatory Authorities' (TGRAs) have the authority to create both alternative and additional standards and present them to the NIGC for approval. The NIGC's exemption of Grandfathered machines from most of the Minimum Technical Standards also exempts them from the TGRAs authority to update required safety and security standards.

The proposed rule also puts more burden on the TGRAs, requiring them to (a) perpetually perform an annual review of the testing laboratory reports for each Grandfathered gaming system and their current components, (b) determine whether the machines are approvable by the new regulations and by 25 CFR 543 and by the TGRAs themselves, and (c) make findings on which systems were reviewed, whether they were approved, and which specific components of each system were not compliant with any of the regulations. The regulations were written to give the TGRAs authority to propose new standards, not to have the NIGC give them additional burdens.

Conclusion

For these reasons, we are opposed to exempting anyone from the Minimum Technical Standards of 25 CFR 547. We implore the NIGC to let the Grandfathering sunset on November 10, 2018, and require that all games meet the Commission's minimum standards.

By: _____

Of the _____