Testimony of David J. Qualls
Chairman, Oklahoma Indian Gaming Association
before the House Committee on Natural Resources
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in Miami, Oklahoma

Chairman Rahall, Ranking Member Young, and Members of the Committee, my name is David J. Qualls, and I am the Chairman of the Oklahoma Indian Gaming Association ("OIGA"). On behalf of the twenty six (26) member Tribes of the OIGA, I am honored to have this opportunity to provide testimony to you today on a matter of such vital importance - the potentially devastating impact of the National Indian Gaming Commission's (the "Commission") proposed Class II regulations (the "Regulations").

Because the Committee will be hearing of the direct financial impact on Tribes from a number of Tribal leaders, my testimony today will not rehash the significant financial impact of the proposed Regulations. As the Commission's own Economic Impact Study noted, the costs of the proposed Regulations could be up to $1.8 billion annually, and the other tribal leaders have more than capably talked about the tribal services that will be lost, and how the lost revenue will impact the Tribe's relationships with their local communities.

Thus, my testimony will take a slightly different tack. Today I would like to talk about some of the ways in which the proposed Regulations will have a significant chill on the Class II gaming industry, how the Commission's Economic Impact Study doesn't provide a complete picture of how the proposed Regulations will affect the our Tribes and the communities in which they do business, and of how the Commission's efforts are failing to meet their stated goal of creating "clarity" – one that the member Tribes of the OIGA contend does not need to be met. It is my hope that you will see, by the end of my testimony, that the proposed Regulations are not necessary, and that you will encourage the Commission to withdraw them.

The proposed Regulations are a bundle of four different regulations. There is a revised Facsimile definition (Definition), a proposed set of Game Classification Standards outlining requirements that must be met for a game to be considered Class II (Classification Standards), a proposed set of technical standards for Class II game operation (Tech Standards); and a revised set of Minimum Internal Control Standards governing how Class II gaming operations should operate (MICS).

While all four of the proposed Regulations are problematic, they really fall into two categories. As Chairman of the OIGA, I feel that the majority of our Tribes are willing to accept the Tech Standards and MICS if several changes can be made so that they better reflect the practical operational and legal needs of Class II gaming operations. The OIGA Tribes, and indeed, the entire Tribal gaming industry is in favor of efforts to improve the safety, security and accountability of gaming operations, and these two

proposed Regulations – if several changes are made – will do much to achieve our mutual goals.

Unfortunately, the other proposed Regulations – the Definition and Classification Standards – are far more problematic. Representing a departure from what are the current accepted legal parameters for technologic aids in the Class II gaming industry, the language of these proposed regulations dramatically increases the risk of participating in Class II gaming, and is likely to devastate the existing Class II industry. As such, the OIGA member Tribes oppose the promulgation of the Definition and Classification Standards, and we hope you will ask the Commission to withdraw these two proposed regulations.

As drafted by the Commission, the Definition is particularly troublesome. It removes the existing facsimile exemption for bingo played in the wholly electronic format, and replaces it with language that makes electronic bingo a facsimile unless it meets a number of requirements contained in the Classification Standards, Tech Standards and MICS. Such an approach has profound implications for the industry, as the determination that a game is a facsimile makes it a Class III gaming device – and subject to the criminal penalties of the Johnson Act.

This change dramatically impacts the future of Class II gaming. Under the current Definition, Class II manufacturers and Class II gaming operators know they are reasonably protected from criminal charges if they play bingo in the wholly electronic format. Failure to meet particular standards may result in civil penalties and fines; but as long as the game meets the requirements of the current definition manufacturers and operators are relatively safe from criminal prosecution.

The proposed Definition replaces the current satisfactory language with new language that would functionally work backwards. It presumes that a technologic aid is a Class III Johnson Act device, until it satisfies the language of all of the proposed Regulations. Essentially, a Tribe, operator or manufacturer of a technologic aid is presumed guilty until they can prove themselves innocent. Currently, the language presumes, logically, that a technologic aid is just that – a technologic aid to a Class II game, until the Commission determines it to be a Class III Johnson Act device. Essentially, a Tribe, operator or manufacturer of a technologic aid is presumed innocent until, through the full panoply of due process guaranteed by the Constitution, proven guilty of using a Class III Johnson Act device.

This flawed approach destroys the existing certainty of the current regulations, and replaces it with a burdensome framework ripe for multiple, conflicting interpretations. Applying the definition to its logical conclusion; a game that is clearly bingo, displaying only a bingo card and ball draw; and meeting every other MICS, Tech Standard and Classification Standard; but that fails to say “This is a game of bingo” as is required by the Classification Standards, would cause the device to be a facsimile – and result in criminal as well as civil exposure. Such a result exposes Tribes, Class II manufacturers and Class II operators to multiple risks. Not only may one be called before a Tribal

Gaming Commission or the Commission for a potential violation, but the proposed Definition also exposes these parties to prosecution by the Department of Justice and/or local United States Attorneys who may have their own political agendas.

Such an outcome is sure to have a significant chilling affect on the industry – and dramatically limit the number of manufacturers and operators who choose to participate. We at the OIGA are concerned that the proposed Definition will cause the large, publicly traded Class III manufacturers to abandon the Class II industry – much to the detriment of the Class II industry. These Class III manufacturers have done much to improve the Class II industry's safety, security and accountability; and the proposed Definition is likely to cost Class II gaming the benefits they have brought. Similarly, we believe Class II operators will be hesitant to take the risks created by the proposed Definition, and that the Class II industry will be dramatically reduced as a result.

The OIGA believes the existing facsimile definition is more than adequate to establish the bounds of Class II gaming – it is a position supported by the Federal Courts. At least two Circuit Courts have favorably cited the existing definition, and the Commission has been able to make a number of game classification determinations within the current Definition's framework. None of the Federal Courts that have reviewed the Class II language in the Indian Gaming Regulatory Act ("IGRA"), or the Commission's regulations, have found that language to be vague or confusing; in fact, there appears to be no justification for the proposed Definition.

Because of the potential chilling affect on the Class II industry, and the lack of justification for a change, we encourage the Committee to ask the Commission to withdraw the proposed Definition.

Our review of the proposed Classification Standards raises concerns similar to those created by the proposed Definition. As drafted by the Commission, the Classification Standards dramatically affect the playability of Class II games; essentially create a new class of games by focusing on technology, rather than the legal elements of game-play; add a number of extra-statutory requirements that go far beyond the definition of bingo established in IGRA; and fail to provide any real Grandfathering protection for existing Class II games. Combined, these factors have a chilling effect on the future of Class II gaming.

As a starting point, the OIGA believes the proposed Classification Standards will have a profound impact on the playability of Class II gaming systems. By adding a number of additional requirements to the play of the game of bingo, the proposed regulations add additional time to game-play and require player actions that will dramatically impact the overall player experience when playing the game. For example, the proposed standards require that there be either a 2 second delay prior to the start or a minimum of 6 players before a bingo game can begin;[1] require the game to continue if a player "sleeps" the

[1] §546.6 (a)

game-winning pattern;[2] require the game to remain open an unlimited length of time to allow a player to cover, or to declare a game void and return wagers to players;[3] requires prizes to be held until the game-winning prize is won;[4] and require all players in the game, and not just the winning player, to daub the bingo card.[5]

These provisions, combined, have a stunning affect on how the games will be played. Under the proposed scheme, there would be times the games are played quickly, and times that games would drag on for significant periods. A requirement that every player daubs creates situations where literally hundreds of players could be held hostage if just one player leaves prior to daubing. Most manufacturers are concerned that the requirements will result in a game that is inconsistent, and that takes too long to complete. The manufacturers believe that this inconsistent game play is the most significant factor and that it will have a significant negative impact on revenue;[6] as players will be uncomfortable playing games that do not follow a predictable, consistent pattern.

While somewhat difficult to visualize, an example in another medium might be attending a movie with a faulty projector. No matter how much one wanted to see the movie, or how much they liked the story, a person would become quite frustrated if it were interrupted every 5 minutes for different reasons. One time it would be because the lens was out of focus. Other times would be because the audio wasn't working or the picture quality was bad, and one time it might be delayed for 20 minutes to fix the film when it broke. Such an experience would ruin the trip to the movies, and if these were ongoing problems, it would destroy the theater's customer base. The proposed Game Classification standards do much the same thing to Class II games. With the timing delays, daubing requirements and other burdens, consistent game-play cannot be maintained. Thus, the manufacturers have expressed concerns that the format created by the proposed standards will make it essentially impossible to create an entertaining game.

The OIGA is also concerned that the proposed Classification Standards look to technology rather than the inherent game characteristics to establish a regulatory division, and create an inherently unfair regulatory structure. Because the focus of the proposed

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[2] §546.5 (j)
[3] §546.5 (l)
[4] §546.6 (g) this provision is poorly worded, but the likely interpretation appears to be that interim prizes may be awarded prior to the game-ending pattern being achieved; but that they cannot be claimed until a game ending pattern is awarded.
[5] §546.5 (h)
[6] Manufacturer research has shown that a key to a successful game is one that will follow a comfortable pattern, allowing players to get into a "rhythm" as they play the game. The proposed regulations make this impossible. As drafted, sometimes a game may be instantaneous. Sometimes it may take 2 seconds to start. Sometimes it may take several seconds to end; and with the requirement that all players daub, in §546.5(h), there will be times where a game may stay open indefinitely. There is no way to guarantee a consistent experience as the proposed standards are currently drafted.

Classification Standards is on technology, the framework prohibits a number of activities in the electronic, computer or technologically aided medium that have been used in traditional paper bingo for years – and that would continue to be allowed in traditional games under these regulations. Such a distinction simply cannot be supported under IGRA; under whose language all bingo is treated the same. If activities are allowed in paper, they should be allowed in technologically aided games; if not, they should be denied in both. The failure of these proposed Classification Standards to treat bingo the same whether aided or not creates a new class of games that cannot be supported.

A prime example is the requirement that prizes be awarded solely on the outcome of the game of bingo.[7] Under this language, technologically aided games cannot use wheel spins, random drawings or other mechanisms to determine the size of prizes awarded to bingo players; yet these techniques are used today in traditional paper bingo games (in games like "pick a pet," etc); and would presumably still be allowed in traditional paper bingo games under the proposed regulations since they do not apply to games played without a technologic aid.[8]

In many traditional paper bingo games, players can continue to buy cards for a game after play begins – the issue is traditionally a house rule – and based on the language in §546.2 it appears the practice would continue to be permitted in traditional paper bingo under the suggested scheme. But under the proposed standards, technologically aided games would require that all cards be purchased prior to the start of the game.[9]

And perhaps the most egregious bifurcation of the proposed standards is the requirement that, when played in a technologically-aided format, that all players be required to daub as an indication of their participation in the game.[10] The OIGA is aware of no game played anywhere that is not in the wholly electronic, computer or technologically aided format that currently requires, or that has ever required, all players to daub to indicate their participation in a game. Rather, the player's purchase of a bingo card has traditionally been sufficient to "participate," and whether a player chooses to daub or not is irrelevant to the outcome of the game for other players.[11]

Allowing these inconsistencies between the wholly electronic, computer or technologically aided format and formats that fall outside the bounds of these regulations essentially creates an entirely new class of gaming; one that could be described as Class 1.5. It is a class more limited than Class II, and one for which there is no statutory authority in IGRA. These limitations create confusion, stifle innovation, and further chill the Class II industry.

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[7] *See* §546.4 (n)
[8] *See* §546.2
[9] *See* §546.4 (a)
[10] *See* §546.5 (h)
[11] The only known ramification is that the player who does not daub will not win.

The OIGA is further concerned that the proposed Classification Standards go far beyond the bingo definition in IGRA, and create a number of "extra-statutory" requirements for Class II games that have nothing to do with bingo. It is our belief that these regulations represent an improper attempt by an agency to use rulemaking to alter clear statutory language, as already recognized by the courts. In so doing, the Commission has attempted to usurp the power of Congress, as expressed in IGRA, to define the parameters of the relationship between the Tribes and the Federal government concerning tribal gaming. The result is both unlawful and destructive to tribal gaming operations and the benefits to tribal programs which Congress intended.

The proposed regulations require a label on player terminals that says "this is a game of bingo,"[12] that player terminals be able to disable any entertaining alternative displays,[13] that there be a minimum of 6 players in a game of bingo, or an up to 2 second delay from the start of the game,[14] a requirement that all players – winners, losers, everyone playing – daub all cards before a winner can claim his prize;[15] a requirement that the bingo card be at least 2"x 2",[16] and a requirement that a bingo game meet the technical standards and Minimum Internal Control Standards in order to be considered Class II under the proposed Classification Standards.[17]

None of these requirements are essential to the play of the game of bingo; yet the regulations create a framework in which a bingo game is not Class II if any one of these requirements are not included. Thus, a bingo game utilizing a player terminal that meets every other requirement, but doesn't say "this is a game of bingo,"[18] would not be a Class II game of bingo under the proposed regulations. Such an outcome cannot be supported by the court decisions interpreting IGRA, and clearly goes far beyond the limitations intended by Congress. The OIGA believes that these extra-statutory requirements simply cannot be supported in the proposed regulations. They will chill participation and investment in the industry, and dramatically impact the economic viability of Class II gaming.

It has been the experience of our Tribes, that good regulatory policy and fundamental fairness requires a medium-neutral legal structure. The elements of what constitutes the game of bingo should not change when the game moves from purely paper formats to electronic formats utilizing technologic aids. Because of the potential chilling affect on the Class II industry, and the fundamental unfairness of having different legal requirement for bingo based on the medium of play, we encourage the Committee to ask the Commission to withdraw the proposed Classification Standards.

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[12] See §546.4 (d)
[13] See §546.4 (o)
[14] See §546.6 (a)
[15] See §546.5 (h)
[16] See §546.4 (b)
[17] See §546.8 (b) 3
[18] Or other language as defined by §546.4 (d)

A final area I want to address on the proposed Classification Standards is the safe-harbor or so-called "Grandfather" provision. While the Commission has placed significant emphasis on the grandfather provision of the proposed standards, the OIGA believes it has no value. It is poorly worded, and does little to accomplish its stated intent of providing protection from prosecution for Class II games that are currently being played.

The OIGA believes that the language cited as a Grandfathering provision is confusing, at best. Found in §546.10 (b) of the proposed Classification Standards, it provides that games covered by Section 546.1 et seq. and in play 120 days prior to the effective date of the regulation may continue to be operated for 5 years from the effective date. As worded, there is no clear exemption for games that do not meet all of the requirements of Section 546 – one could easily conclude that it only covers games that are already fully compliant. This would provide no protection for games in the field prior to the effective date, and the Commission's own economic impact study admits the proposed Classification Standards would affect more than 30,000 player terminals.[19] Such an interpretation would result in devastating economic consequences, as the economic impact study acknowledged it could take upwards of two years to bring all of the current games into compliance with the proposed Classification Standards.[20]

Even if one were to receive a favorable interpretation of the language, that it does allow games that are not fully compliant, the preamble of the proposed standard makes clear that the protections are minimal. It states, ". . .the proposed regulations make clear that this grandfather provision will not provide a safe harbor to those machines that could be considered Class III under any standards."[21] Thus, there is no protection from being declared a facsimile, or from the resulting Johnson Act enforcement, in the proposed grandfathering language.

The failure to provide an adequate grandfathering provision has significant ramifications for Tribes and Tribal gaming operations. Without adequate grandfathering or delayed implementation of the proposed standards, hundreds of millions of dollars of investment in gaming equipment and gaming systems will be lost.[22] And the loss in revenue to Tribal Gaming operations would be enormous.

Without a delay in implementation, Tribes and Tribal gaming operators will be left for a significant period without any games that can be offered using technologic aids.[23] And even if games using technologic aids can be developed more quickly, Tribes and Tribal gaming operators would be required to replace an estimated 30,000 Class II player terminals in just 120 days. Replacing that many games in that short of a window is practically impossible; and will create a situation in which Tribes will be forced to go

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[19] See, *Potential Economic Impact of the Proposed Class II Regulations*, released on February 1, 2008.
[20] Id.
[21] See, Federal Register, Vol. 72, No. 205, Wednesday, October 24, 2007, page 60487
[22] Assuming 30,000 games at just $7,500 per game (a below market value figure), the investment in Class II devices is $225,000,000.
[23] *See, Potential Economic Impact of the Proposed Class II Game Regulations*, February 1, 2008. It indicates it could take manufactures up to two (2) years to bring all games into compliance with the proposed standards.

dark for some period of time – with no games to offer – and suffer both immediate losses from the loss of revenue,[24] and long term losses from the loss of customer confidence.

Finally, the losses from the lack of a Grandfathering provision are certain to be regressive, affecting the poorest Tribal gaming operations disproportionately. Considered pragmatically, Class II manufacturers are certain to focus on the most profitable operations first, as they affect the manufacturer's revenue stream as much as the operators; meaning the least profitable Tribes and operators could face delays of up to two years before they can offer a Class II game using technologic aids that complies with the proposed Classification Standards. We believe such an outcome is contrary to the purposes of IGRA, that such an outcome will chill Class II gaming, and that such an outcome must not be allowed to happen.

Based upon the OIGA's concerns about how the proposed Classification Standards will affect the playability of Class II games; how they will create an essentially new class of games unsupported by IGRA; how they add a number of extra-statutory requirements that go far beyond the definition of bingo established in IGRA, and how they fail to provide a meaningful grandfathering provision, we would ask that the Committee assist us in our efforts to have the proposed Classification Standards withdrawn.

The OIGA is clearly concerned about the impact of the proposed Regulations. And as my testimony has already discussed, we are concerned that at least one of the tools relied upon by the Commission in their economic impact study may be flawed. This flawed tool, and the failure to conduct an in-depth analysis of the potential loss to tribal governments and the local communities where Class II gaming operations are located raises serious concerns as to whether the Commission's Economic Impact Study shows a complete picture of the economic impact of the proposed Regulations.

The fact that the study looks only at the direct impact on Tribal gaming operations; and does not consider the downstream impact on tribal services, local businesses and local governments; creates what we see as an incomplete picture of how the proposed regulations will affect both Tribal and local economies should they become final. The lack of a downstream analysis, that considers the indirect impact of the proposed regulations, ***results in the study potentially missing billions of dollars in potential economic impact***. The analysis of indirect/downstream impact is common in many economic impact studies, and the fact that such an analysis is not made in the Study is a glaring omission. Because the potential impact could be in the billions of dollars, we believe this gaping hole deprives the Committee and the general public of a full understanding of the impact of the proposed Regulations.

The study also relies heavily on the Grandfathering language contained in the proposed Game Classification regulations to reduce the potential costs to Class II gaming operations. While appropriate if the provision was universally acknowledged to create a

[24] *Id*. The study projects total direct gaming revenue from Class II at $3 billion annually. Obviously, if the proposed regulations cause Tribal gaming operators to cease the play of Class II games for any significant period, the financial cost will be devastating.

five year implementation window, the particular provision is clouded with problems I have detailed above, resulting in many respected legal experts arguing that the provision is simply ineffective. The Study indicates a number of factors that would make it impossible to comply with the standards within the 120 day timeframe that would be required should the proposed regulations not receive the benefit of the Grandfathering language.

As I indicated earlier, we believe that the costs would be significant and that they would devastate smaller gaming operations. The Economic Impact study details a number of potential problems that would occur should Grandfathering not be available. It notes that it would likely take manufacturers two years to fully comply with the proposed Regulations, and that there are more than 30,000 Class II games using technologic aids currently being played. Unfortunately, one cannot determine those costs from the data provided by the Study. Again, we believe this missing data in the Commission's analysis deprives the Committee and the general public of a full understanding of the impact of the proposed Regulations.

The Commission's economic impact study detailed a significant economic impact should the proposed Regulations be implemented. A cost of up to $1.8 billion dollars a year would be a huge cost to the Tribes who operate Class II games. Unfortunately, the costs that weren't included – with no examination of the additional costs to Tribal governments and the communities in which they operate, and no examination of the costs should the Grandfathering provision not be effective – ***result in potentially billions of dollars in costs each year not being reported***.

I will note here, that concerns about the size of the economic impact and questions regarding the incomplete nature of the study could have been addressed in an open and fair manner if the study had been completed and provided to the Tribes before the proposed Regulations were published. Publishing the proposed Regulations and stating that the study was included, knowing that it was not yet complete, certainly raises questions regarding the mode of operation of the Commission and does not increase the level of trust that the Commission will be open and honest with us.

Until these issues can be resolved, and the Commission can fully report on the potential costs of the proposed Regulations, we ask that the Committee request the Commission to extend the comment period.

There have been many who have questioned why the Commission has undertaken the proposed Regulations, and the answer from the Commission has consistently been that we need "clarity" in Class II gaming. Apparently the Commission believes that there is not enough information available to tell the difference between Class II and Class III gaming. It is a position the OIGA finds baffling, since the Commission and courts have been more than able to apply the existing IGRA language and existing Commission regulations to determine whether games are Class II or Class III. Not only has the Commission been able to make classification determinations, but so have Federal court

judges, who have little if any gaming experience. Their reliance on the game, rather than the technology, has allowed sound decisions to be made, and the industry to grow.

In fact, we in the OIGA argue that the existing framework has allowed the industry to enter a "golden age." Because of the regulatory certainty, Class II gaming has experienced significant growth in Native American gaming markets. Relying on the certainty created by the existing Definition and the resulting stability in the types of games available, Class II gaming has attracted a whole new class of players.

Today Native American gaming operators can offer Class II games using technologic aids built by established Class III manufacturers;[25] and attract experienced Class III gaming operators to work in Class II gaming. Perhaps best of all, Class II gaming operations have been able to attract hundreds of millions of dollars of investment at market rates; free from the penalties associated with high-risk investments.

The net result has been a dramatic increase in the safety, security and certainty of Class II games, with a corresponding increase in the profitability of Class II gaming operations. The competition created by the established Class III manufacturers has forced questionable manufacturers out of the Class II market, and has dramatically improved the capabilities of the remaining Class II games – making features like on-line accounting and industry-standard security features the norm in Class II gaming. Dealing with established manufacturers who are licensed in many Class III jurisdictions, Native American operators and their customers are far more certain about the integrity of the gaming platforms they offer in Class II gaming facilities. Thus, the certainty of the existing regulations has done much to improve the quality of games available in the Class II market.

The certainty has also made it far easier for Class II gaming operations to attract experienced gaming operators to the market. These new staff have been heavily vetted by the Class III licensing process, bring years of experience with the unique needs of a gaming operation to the Class II market, and have dramatically improved internal controls and accountability at the various Class II gaming operations. Again, the certainty has done much to improve the offerings of Class II gaming.

And the certainty has attracted institutional investors to the Class II industry. These investors have provided hundreds of millions of dollars in financing for Class II gaming operations at "market" rates, without the financial charges normally associated with high-risk investments.[26] Such investments have allowed Native American operators to make

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[25] Since 2004, Class II gaming operators have been able to choose games built by International Gaming Technologies, Inc (IGT) and Bally Gaming, who combined dominate the world's slot machine market. Class II operators have also found other leading Class III manufacturers, like Aristocrat and Williams (WMS) willing to partner with Class II manufacturers to convert popular titles to Class II games and bring them to the Class II market.

[26] One should note that these investments have come prior to the approval of Class III gaming in States like Oklahoma, where the Cherokees secured upwards of $100 million in financing for their Catoosa facility prior to the passage of State Question 712 in 2004; and in States where Class III gaming is impractical or

long-term investments that put an emphasis on safety, security and the integrity of gaming operations. As Tribes protect their long-term investments, many have noted the improved controls and operating standards executed at these financed gaming operations. Similarly, institutional investors have also provided financing for Class II gaming equipment. The result has been more robust and more secure platforms that protect not only the properties where they are installed, but also the fiduciary rights of the institutional investors. This financing, for both the facilities and games is yet another way the current certainty has done much to improve the safety, security and integrity of Class II gaming.

We are greatly concerned that the proposed Regulations will upset the "clarity" we now have, and work against the industry. If things become less certain, we already know the likely outcome. By looking at what happened prior to the creation of regulatory certainty through the existing Facsimile definition, one can see the results of the market destabilization should the Commission's proposed Regulations be enacted.

Established Class III manufacturers did not participate in Class II gaming, because of the legal and regulatory uncertainty. At the time most industry insiders said the Class III manufacturers didn't participate because of the potential impact an adverse Class II ruling could have on licensing in the many Class III jurisdictions. A return to uncertainty would in all likelihood cause the established Class III manufacturers to leave the Class II marketplace.

Similarly, experienced Class III operators were unavailable to tribes in the period before certainty came to the Class II marketplace. They either refused to enter the marketplace because the risk was too great; or charged such a premium that most Class II gaming operations could not afford their services. Because the proposed Facsimile definition creates a framework where operators can be charged criminally for even minor violations, it is more than reasonable to expect the experienced Class III operators to flee the Class II marketplace.

And obtaining investments for Class II facilities was quite difficult prior to certainty being established in Class II gaming. Very little money was available for Class II gaming, and what was available carried the penalties associated with high-risk investments; requiring, in addition to interest, revenue sharing and other highly taxing mechanisms to acquire the funds. If uncertainty returns, it is highly likely that Tribes will find it much more difficult to obtain financing.

Such an outcome does little to create clarity. Rather, it returns the industry to the dark ages prior to regulatory certainty – and jeopardizes all that we have gained through Class II gaming. Such an outcome would be devastating, and runs against the intent of IGRA and sound public policy. It is an outcome we simply cannot support, and it is the reason I come before you today and ask for your help.

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not permitted; *see* the Kickapoo Traditional Tribe of Texas' Lucky Eagle Casino development in Eagle Pass, TX and the Blackfeet Tribe's Glacier Peaks Casino in MT

On behalf of the members of the OIGA, I ask your support to encourage the Commission to:

1) withdraw the proposed Definition and proposed Classification Standards;
2) engage in meaningful consultation with the Tribes, including an appropriate time period for comment, with the goal being to put the Tech Standards and MICS in a format that is in the best interests of the industry; and
3) use the collaborative process created in the Tech Standards and MICS drafting process as a model for future work with Tribal gaming operators.

Such an outcome would continue to move the industry forward, and prevent the devastating economic impact possible should the proposed Regulations go to final promulgation. That is something none of us can accept, and I hope we can count on your help.

Thank you again for the opportunity to provide testimony today on behalf of the member tribes of the Oklahoma Indian Gaming Association. I stand ready to answer any questions you may have.