

TESTIMONY OF
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NATIONAL INDIAN GAMING COMMISSION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

June 9, 1999

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission). Thank you for the opportunity to appear before you today to testify on S.692, the Internet Gaming Bill.

The National Indian Gaming Commission defers to the Department of Justice with respect to the desirability and legality of this legislation and its specific provisions. However, if the bill is to be acted upon, we recommend that you consider the following concerns.

The use of the Internet websites to offer gaming entertainment is a relatively new activity. The most common scenario here is John Q. Public logging on to the Internet from his home to place wagers on a gambling website. However, the use of technology such as computers, satellites and telephone lines to offer games such as bingo and progressive slot machines is an activity that is widespread in Indian Country. While the Internet Gaming bill generally prohibits Internet gambling, the impact of this bill on legal gaming activities taking place in Indian Country is significant and substantial.

The Internet Gaming bill contains a blanket prohibition for gambling on the Internet but exempts several areas from the general prohibition. Section 1085(f)(1) provides that the bill would NOT apply to certain bets or wagers, including bets or wagers on (A) intrastate or multi-state lotteries placed on an interactive computer service using a private network; (B) live horse and dog racing placed on a closed-loop subscriber based service; and (C) lawful fantasy sports leagues or contests. However, S.692 does not provide an exemption for similar linked games which are currently offered by Indian tribes and are legal under the Indian Gaming Regulatory Act (IGRA). There are a variety of games legally operated in Indian Country which utilize this type of technology including, among others, linked bingo and wide area network slot-machine progressives. If S.692 was passed without an exemption for Indian tribes, many of the tribes which currently operate these types of games legally pursuant to valid tribal ordinances and Tribal-State compacts, would be in violation of the law. This would be contrary to Congress' intent when it passed the Indian Gaming Regulatory Act (IGRA). Thus, I strongly urge that S.692 contain an exemption for gaming activities operated on Indian lands.

Gaming activities on Indian lands must be conducted pursuant to the Indian Gaming Regulatory Act. Class II gaming must be conducted pursuant to a tribal ordinance approved by the Chairman

of the National Indian Gaming Commission (NIGC) and Class III must be conducted pursuant to a tribal ordinance and valid Tribal-State compact, which generally provides for a state role in the regulation of Class III gaming. While use of the Internet to conduct certain gaming activities in Indian Country is the subject of litigation, we are concerned that legal satellite, computer and telephone communications between and among Indian tribal gaming facilities for purposes of conducting both Class II and Class III gaming are not specifically excepted from the prohibition. I believe that the bill should make clear that such communications are not prohibited.

The National Indian Gaming Commission (NIGC) has approved satellite linking arrangements whereby bingo operations are linked via telephone line and satellite so that multiple facilities may participate in the same bingo game for larger prizes. The NIGC believes that such communications were contemplated by Congress in IGRA and we are concerned that the proposed legislation could detrimentally impact such communications.

Indeed, 25 U.S.C. § 2703 defines Class II gaming as the game of chance commonly known as bingo whether or not electronic computer, or other technological aides are used in connection therewith. In addition, Senate Report 100-446, a report on IGRA states:

The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class II operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take. Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology

S. Rep. No. 100-446, 100th Cong., 2d Sess. 9 (1988) (emphasis added).

Thus, it is clear that Congress intended to allow tribes to use the very technology prohibited in S.692 for purposes of increasing player participation. Further, to this end, the NIGC has promulgated regulations which allow for the use of technology in offering these types of games. Specifically 25 C.F.R. § 502.3 defines Class II gaming as “Bingo or lotto (whether or not electronic, computer, or other technologic aides are used)” Also, under the regulations, electronic, computer or other technologic aid “means a device such as a computer, telephone, cable, television, satellite or bingo blower” 25 C.F.R. § 502.7. Thus, under the regulations, Tribes may conduct bingo using the type of technology that S.692 prohibits.

To be sure, there are many tribes that operate bingo games which utilize this technology to link the games with those games played at other tribal casinos. In addition, there are progressive slot machine games conducted pursuant to valid Tribal-State compacts which utilize computer and

closed-loop technology. The governmental gaming operated by the tribes is markedly similar to that conducted by the states -- such as lotteries. Since S.692 creates an express exemption for state lotteries, a similar exemption should exist for tribal governmental gaming. If states may operate linked lotteries under S.692 there does not seem to be a basis for denying the use of similar technology to tribal governments.

In addition to the technology problems which arise, section 1085(c)(2)(C) of S.692 regarding civil remedies provides that (1) the United States shall have the enforcement authority; and (2) that the enforcement authorities specified in an applicable IGRA Tribal-State compact shall be carried out in accordance with that compact. This section fails to recognize that Indian tribal governments are the first line of regulation of Class II gaming on Indian lands. Under section 2710(b) of IGRA, an Indian tribe may license and regulate Class II gaming on Indian lands provided certain requirements are met. Thus, under current federal law, tribes are the principal regulators of Class II gaming occurring on Indian lands and S.692 should recognize that tribes have the authority to enforce the laws regarding Class II gaming violations occurring on Indian lands.

Finally, 18 U.S.C. § 1304 prohibits broadcast of information concerning lotteries and other games of chance; however, IGRA exempts tribal gaming from this prohibition. Section 1085(b)(1) would prohibit the sending, receiving, or inviting of information assisting in the placing of a bet or wager. This broad prohibition could undo IGRA's exemption of tribes from the lottery information provisions of 18 U.S.C. § 1304. This legislation should not affect IGRA's exemption (25 U.S.C. § 2720) from section 1304 that allows Indian tribes to communicate section 1304 information between Indian gaming facilities located on Indian lands, and it should not prevent Indian tribes from using advancing technology to facilitate such intertribal communication. At the very least, S.692 should not prohibit the communication of gambling information on the Internet which could be disseminated lawfully in some other medium.

The Office of Management and Budget advises that there is no objection to the submission of this testimony from the standpoint of the Administration's program.

Again, I thank you for the opportunity to provide comment on this bill, S.692. I am available to answer your questions.