



A Smart Solution for Smart Phone Mobile Gaming on Indian Lands

By Jennifer Carleton

In April, 2018, the National Indian Gaming Commission (“NIGC”) signaled a new era in gaming technology on Indian lands. Before the pandemic made it a priority for other gaming operators, the Agua Caliente Band of Cahuilla Indians wanted to offer mobile wagering to their casino patrons. But the NIGC Regulations that govern Class II and Class III gaming did not address mobile wagering. Thus began a collaborative and innovative process between the NIGC and the Agua Caliente that resulted in the first alternative technical standards for Class II mobile wagering on Indian lands.

IGRA and the NIGC Regulations governing Class II and Class III Gaming

The present system of regulation of Indian gaming grew out of the division of jurisdiction among the federal government, the states, and the tribes. The Indian Gaming Regulatory Act (“IGRA”)¹ establishes the jurisdictional framework that currently governs Indian gaming. The regulatory scheme under IGRA represents the most direct and comprehensive involvement of the federal government in gaming regulation. IGRA occupies the field of Indian gaming regulation and also provides for the application of state law to a significant degree.

IGRA establishes three classes of games with a different regulatory scheme for each:

Class I Gaming

is “traditional” Native American gaming and social gaming for minimal prizes. Regulatory authority over Class I gaming is vested exclusively in tribal governments.

Class II Gaming

is bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and, if played in the same location as bingo, pull tabs, punch board, tip jars, instant bingo and other games similar to bingo. Class II gaming also includes non-banked card games, that is, games that are played exclusively against other players rather than against the house or a player acting as a bank. IGRA specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of Class II games.²

The definition of **Class III Gaming**

is extremely broad. It includes all forms of gaming that are not Class I or II. Generally, Class III is referred to as casino-style gaming.³

The NIGC was created with the passage of IGRA to regulate and support tribal gaming as a means of generating revenue for tribal communities. The NIGC is authorized to promulgate regulations and guidelines to implement IGRA’s provisions. These regulations, including the Minimum Internal Control Standards (“MICS”) for Indian gaming, can be found in the Code of Federal Regulations at 25 C.F.R. part 501 *et seq.*

Class II Technical Standards

Class III games must be the subject of a compact under IGRA. Consequently, a tribe and a state would need to address the concept of mobile gaming in their compact in order for a tribe to offer Class III mobile wagering. The Agua Caliente chose to focus on Class II wagering, which does not need to be addressed in a tribal-state compact. Class II gaming is instead governed by the NIGC Regulations and MICS.⁴ In addition, the Tribal Gaming Regulatory Authority or “TGRA” for each tribe offering Class II gaming has the jurisdictional authority to authorize and regulate Class II gaming on the tribe’s Indian lands, provided that regulation is consistent with the NIGC’s guidance.

The Agua Caliente and the NIGC recognized that players would want



to use their smart phones for mobile wagering. However, a smart phone used for Class II wagering on Indian lands would be part of a “Class II Gaming System” under the NIGC’s current MICS, which is defined as “All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.”⁵ All parts of a Class II Gaming System are required to be tested and monitored for compliance with the NIGC MICS as well as the tribe’s internal regulatory requirements. Testing a player’s smart phone for gaming compliance purposes is certainly not an optimal regulatory approach.



Alternate Standards for Mobile Wagering

The NIGC and the Agua Caliente identified specific areas of the technical standards that could be enhanced to address Class II mobile wagering, including the adoption of newly defined terms:

Authentication process – A method used by a system to verify the validity of software. Such method requires the calculation of an output digest, which is compared to a secure embedded value. The output digest shall be of 128-bit complexity, at a minimum. Software shall be deemed to have been authenticated if the calculated digest equals the secure embedded value.

Authorized mobile game – Any game authorized by the TGRA for use with a Class II Gaming System.

Class II Mobile Device (C2MD) – A communications device, whether owned by the Tribe or a patron, that functions as a player interface by connecting to a Class II Mobile Gaming System via a secure wireless network, and which allows play in a Class II game if the patron is located within a TGRA approved Class II Mobile Gaming Area.

Class II Mobile Gaming – Class II gaming that occurs on a Class II Mobile Device located within a TGRA approved Class II Mobile Gaming Area.

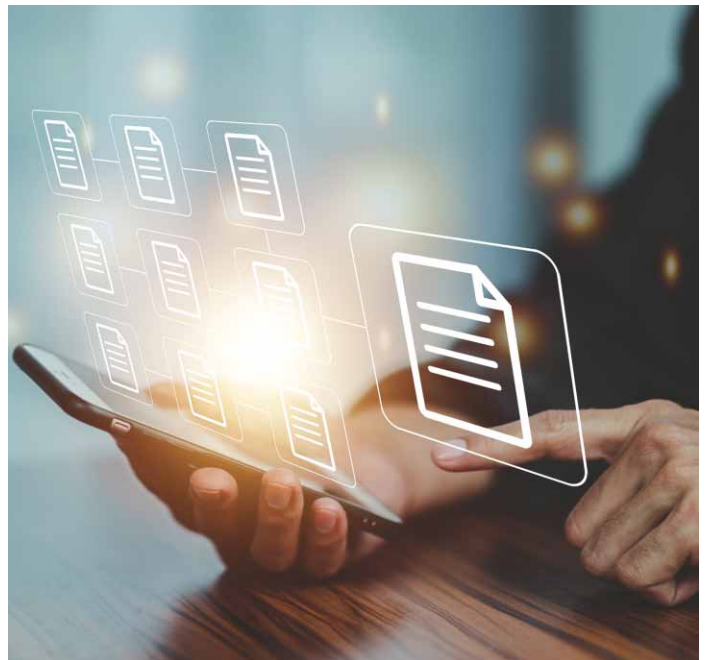
Class II Mobile Gaming Area (C2MGA) – The specifically defined geographic area solely comprised of “Indian lands” as that term is used in 25 U.S.C. §2703(a)(4), as amended or renumbered from time to time, once such area is authorized by the TGRA for the use of Class II Mobile Devices to participate in Class II Mobile Gaming.

Class II Mobile Gaming System – A type of Class II gaming system that includes all components that utilize communication technology and function together to aid the wireless play of Class II games, including accounting and geolocation functions, within an authorized Class II Mobile Gaming Area.

Communication Technology – Any method used and any components employed to facilitate the transmission of information, including, without limitation, transmission and reception by systems based on wireless network, wireless fidelity, wire, cable, radio, microwave, light, optics, or computer data networks. This term does not include the Internet.

Mobile Wagering Account – An electronic ledger operated and maintained by the Tribe for a patron for use in connection with the patron’s gaming using a Class II Mobile Device. The ledger shall record information and provide printable reports relative to such play including, but not limited to the following types of transactions: Deposits; Withdrawals; Debits; Credits; Service or other transaction-related charges authorized by the patron; and Adjustments to the wagering account.⁶

In addition to the definition of a Class II Gaming System, the Agua Caliente and the NIGC identified other internal control standards that required an alternate solution in order for the tribe to implement Class II mobile wagering. These included the definition of “player interface,”⁷ the approval of gaming equipment and software,⁸ the contents of the testing lab’s written report,⁹ player interface requirements,¹⁰ the disclaimers displayed by the player interface,¹¹ and the odds notifications.¹²





As the NIGC noted, “it would be difficult for an Independent Testing Laboratory (ITL) to test player owned devices such as cell phones and tablets. However, having the devices be FCC accredited (or similar) along with TGRA approved game software running on the device, we retain security and integrity of the gaming system. The requirement for the game software to be identical to a prototype tested by an ITL will remain the same.”¹³

Conclusion

The alternate standards adopted by the Agua Caliente Gaming Commission and approved by the NIGC have since been used as a model for other tribes, including the Flandreau Santee Sioux (“FSST”) in 2019, the Chickasaw Nation in 2022, and the Muscogee Creek Nation and the Choctaw Nation of Oklahoma in 2023. The NIGC has enhanced its alternate regulations process with each tribe that seeks to offer Class II mobile gaming on its lands. This process serves as a model for innovative collaboration between the NIGC and gaming tribes. ■



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¹ P. L. 100 - 497, 25 U.S.C. § 2701 et seq.

² 25 U.S.C. § 2703(3).

³ 25 U.S.C. § 2703(8).

⁴ 25 C.F.R. § 542 et seq.

⁵ 25 C.F.R. § 547.2.

⁶ www.nigc.gov/compliance/alternate-standards

⁷ 25 C.F.R. § 547.2.

⁸ 25 C.F.R. § 547.4(b).

⁹ 25 C.F.R. § 547.5(b)(I)(iv).

¹⁰ 25 C.F.R. § 547.7(d).

¹¹ 25 C.F.R. § 547.16(b).

¹² 25 C.F.R. § 547.16(c).

¹³ www.nigc.gov/compliance/alternate-standards

