

STATE OF CALIFORNIA
GAMBLING CONTROL COMMISSION

**CERTIFIED
COPY**

COMMISSION MEETING

California Gambling Control Commission
2399 Gateway Oaks Boulevard
Suite 100
Sacramento, California 95833

THURSDAY, MAY 7, 2009
10:00 A.M.

Reported by: Desiree C. Tawney, CSR No. 12414



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APPEARANCES:

DEAN SHELTON
Chairman

STEPHANIE SHIMAZU
Commissioner

ALEXANDRA VUKSICH
Commissioner

JOY CALKIN
Staff Services Analyst

EVELYN MATTEUCCI
Chief Counsel

Public Speakers:

James Allen
Jesica Pandika
Greg Peterson
Rebecca Aragon
David Fried
Jonathan Stein
Doug Bergman
Tom Hope
Bill Williams

1 BE IT REMEMBERED, that on THURSDAY, MAY 7, 2009,
2 commencing at the hour of 10:00 A.M., at the California
3 Gambling Control Commission, 2399 Gateway Oaks Drive, Suite
4 100, Sacramento, California, before me, DESIREE C. TAWNEY,
5 Certified Shorthand Reporter in and for the county of
6 Placer, state of California, the following proceedings took
7 place:

8
9 (The following proceedings were held on the record.)

10
11 CHAIRMAN SHELTON: Call the meeting to order. Please
12 stand and state the Pledge of Allegiance.

13 (Pledge of Allegiance.)

14 CHAIRMAN SHELTON: Roll call, please.

15 MS. CALKIN: Chairman Shelton?

16 CHAIRMAN SHELTON: Here.

17 MS. CALKIN: Commissioner Shimazu?

18 COMMISSIONER SHIMAZU: Here.

19 MS. CALKIN: Commissioner Vuksich?

20 COMMISSIONER VUKSICH: Here.

21 CHAIRMAN SHELTON: Mr. Allen.

22 JAMES ALLEN: Good morning, Mr. Chairman,
23 commissioners.

24 For the record, I'm James Allen, the regulatory
25 actions manager for the Commission.

1 Before we begin, I'd like to take care of just a
2 couple little housekeeping items for today.

3 First of all, for those in attendance, if you have not
4 already done so, we'd like you to sign in at the register
5 even if you don't intend to make any comments. This is
6 purely voluntary. We appreciate having a complete record
7 of all of those in attendance.

8 In addition, if you do plan on offering comments
9 today, we'd also like you to complete one of the cards at
10 the -- by the register titled "Speaker Card." That will
11 allow us to follow up if we need to contact anyone for
12 further clarification or provide additional information.

13 So this entire process is being recorded. When the
14 chairman opens up the agenda for public comment, we'd just
15 like each person who wants to make comments to come up to
16 the podium and use the microphone to ensure that all
17 comments are recorded and entered into the record
18 correctly.

19 Before you begin your comments, please identify
20 yourself by name and spell your last name for the record.

21 All I have. Thank you.

22 JESICA PANDIKA: Good morning, Chairman and
23 commissioners.

24 For the record, my name is Jesica Pandika,
25 P-a-n-d-i-k-a. I'm staff counsel with the Commission. I

1 am here to present agenda Item Number 3 relating to
2 adoption of emergency regulations concerning assistance to
3 bingo players with disabilities.

4 In order to provide reasonable accommodations for
5 disabled players in the play of bingo games, the Commission
6 staff is providing the proposed emergency regulation for
7 Commission's consideration: The proposed emergency
8 regulation will implement one element of the California
9 Remote Caller Bingo Act as authorized by Penal Code,
10 Section 326.5.

11 As the commissioners are aware, the proposed emergency
12 regulation has been revised upon consideration of
13 additional information and comments received between April
14 15, 2009 and May 1st, 2009.

15 It is the revised proposed emergency regulation that
16 is before the Commission before consideration today.
17 Copies of the revised proposal are available at the back
18 table. These copies include the clean version of the
19 regulation, as proposed for adoption today, and a
20 strike-out underlined version showing the changes made to
21 the April 15, 2009 text.

22 To briefly summarize, Commission's staff has made the
23 following changes: First, the requirement to reserve two
24 card-minding devices for use by disabled players under
25 Section 12482(a)(1)(a) is now limited to operators of a

1 bingo game that already offers card-minding devices.

2 In other words, operators that offer traditional paper
3 bingo only are not required to comply with the reservation
4 requirement.

5 Second, we added the last sentence to Section
6 12482(a)(1)(b) to clarify that disabled players are still
7 required to pay fees and comply with any minimum purchase
8 requirements imposed on all players.

9 The waiver applies only to fees and requirements
10 associated solely with the use of rental of card-minding
11 devices.

12 Third, we deleted the phrase, quote, from a
13 card-minding device, end quote, in Section 12482(a)(1)(c)
14 to avoid any confusion and clarify a printout of a winning
15 card did not come from the card-minding device itself but
16 that any printout of a winning card or other evidence of a
17 winning card approved by the Commission shall be allowed by
18 operators to be used by players with disabilities to claim
19 prizes.

20 And, finally, Section 12482(b) has been deleted since
21 organizations that do not utilize card-minding devices are
22 no longer required to comply with the reservation
23 requirement. Therefore, this provision is no longer
24 needed.

25 We also want to note for the record that although the

1 statute permits the use of card-minding devices, specifies
2 that such devices must be hand-held and portable. We have
3 no discretion to permit use of devices that fail to satisfy
4 the requirement.

5 The proposed regulation has been noticed in advance;
6 and if approved by the Commission at today's meeting, would
7 be filed with OAL tomorrow, May 8, 2009, and could become
8 effective early as May 18, 2009 if approved by OAL.

9 Staff recommends the Commission, one, adopt and
10 approve filing with the Office of Administrative Law the
11 revised proposed emergency regulation as previously noted;
12 and, two, authorize staff to make any non-substantive
13 changes to the regulation required by OAL, during its
14 review process.

15 We're available to answer any questions you may have.

16 Thank you.

17 CHAIRMAN SHELTON: Commissioners?

18 Waiting for public input. Open up to public input,
19 Item Number 3.

20 JAMES ALLEN: We have three individuals who wish to
21 make comments. And whoever wishes to go first can come to
22 the podium now.

23 CHAIRMAN SHELTON: Have a gentleman here stepping up.

24 GREG PETERSON: Good morning. My name is Greg
25 Peterson. I represent El Camino Charity.

1 I have submitted written comments and tried to take a
2 look at all of the ones you've been given. I'm not going
3 to repeat what I had to say.

4 I am interested, since I know this is an emergency
5 regulation, I -- I wonder if it would be appropriate for
6 staff to comment on the procedure for the enactment of the
7 permit regulations that follow up on this; and if not, we
8 can find out about that later.

9 And, of course, our main areas of concern as
10 charitable operators are: How do we identify people who
11 are disabled or who have disabilities, as it indicates,
12 "consistent with" -- not sure what that means -- the
13 definition under the Americans with Disabilities Act. That
14 is an area that is a problem.

15 I just don't know in the practical application of the
16 regulations how we're going to be able to identify those
17 persons. They don't have badges or cards or anything like
18 that. And in this gaming environment there is a potential
19 for abuse by people who are not. And trying to tell who is
20 and who isn't is potentially a problem. I pose that as an
21 issue for your consideration.

22 This latest change that -- that applies, the
23 card-minding provisions to providers of bingo using
24 card-minding devices, really presents a problem, too, in
25 terms of accommodating the disabled. There are no

1 requirements for the providers that do not use
2 card-minders. That is potentially discriminatory under the
3 Americans with Disabilities Act. Also, there are no
4 criteria or threshold requirements for the number of games,
5 players, number of machines you have to have, if you're
6 going to be one of these operators that is caught up now in
7 the scheme for what applies to offering card-minders.

8 The restrictions on the card-minders that are in the
9 regulation -- and they're well-documented. I think you
10 have a lot of letters, especially the companies that
11 provide these. But just to summarize them, one that is
12 important is we sell these typically pre-loaded with a
13 number of games. We don't have the option if someone comes
14 up and says, "I want to play a card" or "I want to play ten
15 cards." Most of the people seem to want to play the
16 maximum number allowed. That is often governed by County
17 regulation. But we don't have the ability to on-site
18 regulate that, as I understand, as how the machines work.

19 There are problems with manually daubing the small
20 hand-held devices and also with the use of small screens
21 for visually impaired people.

22 One other concern is the staffing. We don't have,
23 with volunteers, the ability to have a staff of people to a
24 assist disabled people. It is just not feasible or
25 realistic in a charitable environment where volunteers are

1 hard to come by anyway. Unless people come through the
2 door with their own, we can't offer them that.

3 Then the last thing is the fatigue factor I mentioned
4 in my letter. It is important. You've heard a lot of the
5 charities mentioning that. With the price that people are
6 paying for the cards, with or without the card-minders,
7 they want to play four- or five-hour sessions. And but
8 with disabled people what they typically have to do is they
9 have to take three or four bathroom breaks or they just
10 can't last four or five hours. They need to be able to -- to
11 play for an hour or whatever they want and leave. They get
12 their enjoyment out of being able to play that way.

13 The card-minders and paper cards are typically played
14 by people who want to sit there full session, 27 games or
15 whatever, or even more often.

16 That is all I have to offer -- to say.

17 CHAIRMAN SHELTON: Thank you. Any questions?

18 COMMISSIONER SHIMAZU: No.

19 GREG PETERSON: Thank you very much.

20 CHAIRMAN SHELTON: Thank you.

21 REBECCA ARAGON: Good morning, commissioners.

22 Rebecca Aragon with Venable on behalf of the Irving I.
23 Moskowitz Foundation.

24 I submitted my comments in a six-page letter. I won't
25 go through --

1 CHAIRMAN SHELTON: May I ask -- I didn't do it for
2 Mr. Peterson -- spell your last name for the record.

3 REBECCA ARAGON: Rebecca Aragon, A-r-a-g-o-n, of the
4 law firm Venable, V-e-n-a-b-l-e, in Los Angeles.

5 CHAIRMAN SHELTON: Thank you.

6 REBECCA ARAGON: On behalf of the Irving I. Moskowitz
7 Foundation.

8 Again, I won't repeat the various points I submitted
9 in my comments to you. However, I applaud the Commission's
10 deletion of the provision making the card-minding device
11 reservation applicable to bingo operators that do not use
12 card-minding devices.

13 For whatever reasons, the logistical, financial, some
14 charities have chosen not to go that route. Small
15 charities just can't afford to contract with a card-minding
16 device manufacturer to provide those devices to its players
17 or even to have two. There is no way they're going to be
18 able to find a manufacturer who will contract with them and
19 just give them two devices. Even if they are able to find
20 someone who can provide them just two devices, it is going
21 to cost -- it will be very, very expensive. There isn't
22 that volume issue.

23 The Commission's allowance of having bingo players
24 bring their assistance to help them play bingo and
25 participate in the games is an -- is a wonderful way to

1 have our disabled patrons participate in the games fully.

2 And they can choose to play as many games or have
3 their assistance be there as long as they can.

4 I do echo Mr. Peterson's comments regarding how a
5 charity is supposed to determine whether someone is
6 disabled. That is very, very difficult. Under the ADA
7 there isn't any guidance regarding verification or the
8 signs or indicia that would prompt someone to say someone
9 is disabled. With a parking space, you have a California
10 plate which allows you to signify you are disabled and you
11 are allotted a parking space. But as bingo operators, we
12 don't have that ability and we have to make that call on
13 the spot. We can't question someone if someone is
14 hobbling. We can't say you're feigning that disability.
15 If we, in our opinion, they don't appear to be disabled but
16 claim they are, do we take them on and expose ourself to
17 the legal challenge? It is a very problematic issue. We
18 hope to see some guidance from the Commission with respect
19 to that.

20 But for people that are disabled, we do support the
21 idea of allowing disabled to bring assistance to enable
22 them. But we don't want to allow all players to bring
23 assistance. Again, that is unfair to have two people
24 playing one bingo card. One might fall asleep and the
25 other one stays awake. We don't want people committing

1 fraud in that regard.

2 If any of you have questions, I'd be more than happy
3 to respond to the questions.

4 COMMISSIONER SHIMAZU: Question. Those places that
5 don't use card-minding devices, what would happen if
6 someone with a disability comes in and needs assistance?

7 REBECCA ARAGON: The option is they can bring someone,
8 a friend, family member, who can assist them to play bingo.

9 And the card-minding device does not address all kinds
10 of disabilities. If you're blind, if you're
11 hard-of-hearing, if you have Parkinson's, the card-minding
12 device won't help you because you do have to do something.
13 You have to hold it, press a button. If you're paralyzed
14 or you have Parkinson's, you won't be able to do that and
15 participate fully in the game.

16 If you are blind, you won't be able to see the device.
17 If you're hard-of-hearing, you won't be able to hear it.

18 For now, the only real way to accommodate people with
19 disabilities is to have them bring an assistant of their
20 choice. And we can set aside a room in the bingo hall for
21 them and their assistance to sit and play bingo as they
22 wish.

23 COMMISSIONER SHIMAZU: Thank you.

24 EVELYN MATTEUCCI: If I can make one point of
25 clarification. Evelyn Matteucci, chief counsel. I want to

1 mention in the regulation it says that it is only people
2 who have disabilities -- I'll read it -- which would
3 restrict a player's ability to mark cards. If someone
4 comes hobbling in, I don't think they have a disability
5 that causes them not to be able to mark cards unless
6 they're marking it with their foot.

7 I want to make it clear it is not just anybody with
8 any kind of disability.

9 REBECCA ARAGON: That is a good point. Well, if
10 someone comes in and claims they have arthritis, we can't
11 challenge it. We can't ask for verification. Or they say
12 they have Parkinson's, do we require a doctor's note?

13 EVELYN MATTEUCCI: We understand your concern. I
14 wanted to make it clear. It is not just every disability
15 that could be disabilities under the Americans with
16 Disabilities Act. It has got a limitation to it already.

17 REBECCA ARAGON: Yes. Thank you.

18 CHAIRMAN SHELTON: No questions?

19 COMMISSIONER VUKSICH: I have a follow-up on your
20 comment.

21 Someone with dyslexia or dysphagia would be out? I
22 mean, it is not a problem then?

23 EVELYN MATTEUCCI: They would -- would they have a
24 problem with marking cards with dyslexia?

25 COMMISSIONER VUKSICH: Yeah. You'd be mixing up the

1 letters or whatever.

2 EVELYN MATTEUCCI: That would be a disability that
3 would be --

4 COMMISSIONER VUKSICH: Covered under this?

5 EVELYN MATTEUCCI: Right.

6 REBECCA ARAGON: Thank you.

7 JONATHAN STEIN: Mr. Chairman, Madam Commissioners,
8 Madam Executive Director, Madam Chief Counsel.

9 I'm Jonathan Stein, Law Offices of Jonathan Stein in
10 Santa Monica, California, S-t-e-i-n, representing GameTech,
11 International, Inc., NASDAQ listed manufacturer of
12 electronic card-minders, as well as slot machines and other
13 electronic devices in the heavily regulated gaming field.
14 They place these devices in gaming jurisdictions across the
15 United States, Canada, Mexico, Europe and Latin America.

16 We brought the General Counsel, James Robertson, as
17 well as the technical director, Derek Smith, to ensure any
18 questions you have may be answered while making the
19 presentation. The presentation is in writing. It takes 20
20 minutes orally. I'd like to add it to the record.

21 Mr. Chairman, how would you wish me to get it to the
22 podium?

23 CHAIRMAN SHELTON: Submit it to the legal counsel.

24 JONATHAN STEIN: Happily, only the first four pages
25 are relevant for the hearing. But what I would like to

1 do -- you know, I'll tell you, I'm usually arguing to a
2 judge. It has its advantages and disadvantages. In the
3 last 17 years, I have won 48 cases and lost 5. There is
4 one guiding principle I think that I've always counted on.
5 That is the idea of making sure the decision-makers get it.
6 Whatever your decision is made, your clients are the people
7 of California. My client is a manufacturer. My only
8 concern is not what you decide. It's just that you get it
9 before deciding.

10 In this particular field you are dealing with an
11 extremely flawed piece of legislation. You're dealing with
12 a highly complex matter. It is already in federal courts.
13 It is already in state courts. It has garnered a great
14 deal of attention. There is an editorial in the LA Times
15 of what a bad piece of legislation it was before it was a
16 adopted. I was actually part of the group of lobbyists on
17 either side. Must have been 70 lobbyists involved in this
18 piece of legislation. But it was adopted without the
19 normal review of the legislative committee. It was adopted
20 without a lengthy amendatory process. It was adopted in
21 the dead of the night at the end of the session.

22 And having attended the floor debate, I can say with
23 certainty, ninety percent of the facts given on both sides
24 for and against were simply false. So this is now in your
25 hands.

1 There are three separate branches of government.
2 Obviously, the legislature has done its thing. They don't
3 have to be reasonable. They do the law. They don't have
4 to be reasonable.

5 It moves to the executives, checks and balances. We
6 have a system of checks and balances. The balance on the
7 unwise action is the part of government that does have to
8 follow the law.

9 There is substantive due process rights that
10 manufacturers and operators have. They're enforceable via
11 damages under Section 1983 of the Federal Civil Rights Act.
12 The substantive due process rights, separate from the
13 procedures you are religiously following, mean you can't
14 take away something in the marketplace arbitrarily.

15 So if the legislature has already acted somewhat
16 arbitrarily and has delivered to you a flawed piece of
17 legislation, you have to act as that balancing mechanism to
18 make sure that you don't do something that is unlawful and
19 costly to the State of California, which gets sued.

20 The last piece of this three-part system of the checks
21 and balances is judiciary. They're the traditional check.
22 If the legislature acts unwisely, the executive fails in
23 its job to balance that action with careful consideration,
24 then the judiciary comes in and checks the government.
25 That is what make us all free.

1 GameTech has three devices in the marketplace. Two
2 have already been approved. The third device, if you turn
3 to Exhibit A, there is a good picture there just so we know
4 what we're talking about.

5 On the left is a table-top console. And it is
6 an -- it is an -- it is not hand-held and portable
7 obviously.

8 On the right is a hand-held and portable device
9 already approved. They operate exactly the same software.

10 You guys are facing a conundrum that is as old as
11 government itself. It is when societal or technological
12 change outstrips the ability of the government to keep up.
13 That is happening right now.

14 You guys probably are half as good at using your cell
15 phones as your kids are, right? I have a BlackBerry. If
16 you all pulled yours out, you'd find five different cell
17 phones doing five different things, e-mail, text. You can
18 even talk on them, play games on them.

19 That same torrent of electronic invasion has hit the
20 gaming industry. Big time. GameTech is in the middle of
21 it. There are amazing things going on in the gaming field
22 and here is government trying to figure out what to do.
23 And you're now addressing in this particular day, bingo.

24 Well, bingo, when the game became very popular,
25 baseball was the most popular sport, leisurely sport, loved

1 by all. Football was a minor thing. Basketball, even more
2 minor. Hardly on the sites of people.

3 Nowadays, if you look at what the players are paid, it
4 is football that is in the lead, basketball and then
5 baseball. It is the fast-paced games that are demanding
6 people's attention, drawing the crowds. It is the
7 slower-paced games that are falling in attendance and have
8 problems covering costs.

9 The same with bingo. The old paper bingo is having
10 trouble covering costs. It is the fast-paced bingo, the
11 electronic version, that people want to play. They want
12 you -- who is the gentleman here before talking about
13 everybody ordering the maximum number of cards?

14 CHAIRMAN SHELTON: I have to interrupt you. Seems to
15 me you're arguing your case for the Court on electronic
16 bingo over paper bingo and what the Court's reaction was.
17 That is not what we're here for. We're here to talk about
18 the Disabilities Act and approve it and I prefer you focus
19 on that.

20 JONATHAN STEIN: Page 2, the legal standard for
21 disabilities is the reasonable modifications.

22 Once again, what we're looking for, is a basic
23 understanding of the Commission of the legal framework.
24 The reasonable modification, what they say is, that you
25 don't fundamentally alter the legislative intent. But you

1 modify it a little bit to provide for people with
2 disabilities. That reasonable modification, the
3 legislature in subsection (p) (6) has already anticipated.
4 They said you can make reasonable modifications in our
5 definition of how bingo is to be played. You can do that
6 but just don't allow Class II slot machines to be used.
7 That is the basic division. They divided this torrent of
8 the electronic innovation into two groups: Good
9 card-minding devices; bad slot machines.

10 When making reasonable modifications, likewise, they
11 said, okay, you can make reasonable modifications in good
12 card-minding machines but you can't have a modification
13 that turns it into and allows a Class II slot machine.
14 That is what (p) (6) says.

15 Well, what you have is a problem from a legislative --
16 a regulatory point of view. These regulations don't look
17 at the ideas that a card-minding device can comply with
18 most of the requirements of the card-minding device but not
19 all and still be a reasonable modification. When you add
20 that to the fact there is no grandfathering clause, no
21 delayed implementation, it's a severely flawed piece of
22 legislation.

23 What you have is the need to get outside of the box.
24 You've got to get outside of the box and say, hey, we're
25 going to approve certain machines on an interim basis that

1 are not fully compliant with the legislature's direction
2 but are reasonable modifications of that direction. That
3 is the key here. And that is what the regulations fail to
4 do because they're written in a cautious step-by-step way.
5 They are written inside of the box.

6 To comply with the ADA -- which the legislature didn't
7 have to worry about but in fact did look at -- to comply
8 with that you have to say: What is -- what is reasonable
9 modification? A reasonable modification, we believe, would
10 be something that complies with some of the statutory
11 requirements but not all.

12 In the case of the (b) (3), which is our point of
13 contention -- we won't bother you with hearing about that.
14 That is more of a staff level concern. You're here to
15 adopt regulations.

16 But in looking at the regulations, you have to adopt a
17 system that provides for reasonable modifications where
18 machines might be a table-top or console and therefore not
19 comply with the hand-held and portable requirements. That
20 is a classic example of reasonable modification.

21 The legislature said in subsection (p) (6), listen
22 guys, you can do reasonable modifications but you can't
23 allow in slot machines. That is the basic division.

24 These regulations are inconsistent with that division.
25 That division says: Modifications, okay. Class II slot

1 machines are not.

2 Regulations say: Modifications are not okay. Class
3 II slot machines, not even mentioned.

4 That is a basic inconsistency that violates the
5 government code.

6 The other thing I think is important, if you go to
7 Page 4, you'll see it all in a nutshell in a bolded part in
8 the middle of the page. Page 4 of 6 of the first page. It
9 starts -- the bolded section starts with "these safeguards
10 in place."

11 Let me, first of all, applaud the staff and the
12 Commission for adopting a cautious interim approach. What
13 they've done is say, listen, the legislature didn't provide
14 for delayed implementation to allow the marketplace to
15 adjust. We'll do something, create an interim approval.
16 But you can't boot strap this interim approval into a
17 permanent approval. That approach does what the
18 legislature failed to do, which is, applies leeway in the
19 regulatory system.

20 That leeway is important. That protects substantive
21 due process rights. It keeps the State of California from
22 violating people's rights that already have rights in the
23 marketplace when they make a change in how they regulate
24 the marketplace.

25 It is overkill to disprove any card-minding device

1 that, number one, is obviously not a Class II slot machine.
2 And number two, it is currently in use in California and
3 therefore it has substantive due process rights.

4 And three, it is a machine that fails to meet all of
5 the requirements but it is arguably a reasonable
6 modification of those requirements.

7 Four, the disabled.

8 Why is it that you can look at some reasonable
9 modifications and approve them and look at other reasonable
10 modifications and disapprove them? First of all, what is
11 the nature of the problem? If you look at Exhibit A, this
12 machine is widespread in use. You know why it is
13 widespread in use? It uses the exact same software as the
14 hand-held on the right. It is the exact same software.
15 Exactly the same game. It is in use because of all of the
16 people like seeing a bigger screen. You ever kind of
17 squint at your BlackBerry and tried to read the web on the
18 BlackBerry? It is terrible. You grab the kids iPhone and
19 you can read the web screen and you can make it out.

20 You see in the picture that is the exact same screen
21 generated by exactly the same software. You can see the
22 difference. How many visually impaired people in
23 California?

24 By the way, the regulations, which I'll turn to next,
25 don't address visually impaired people. We provide

1 substantive substantial evidence for the record in Exhibit
2 D to this package that there are 12 million Californians
3 that suffer from visual impairment. One in three. Of
4 those, 1.8 million Californians have visual impairment
5 which cannot be solved by corrective lenses.

6 In other words, 1.8 million Californians can't look at
7 you and all of the sudden see your faces. Just no lenses
8 that can correct it. That's five percent of all
9 Californians.

10 What is interesting is of those 133 Californians are
11 classified as legally blind. Legally blind people can make
12 their way around the room. They won't bump into tables
13 often. They just can't drive. That is 133,000.

14 Each year, 774,000 new cases of eye diseases are
15 diagnosed. There are seven major eye diseases.

16 My mom has age-related macular degeneration. She lost
17 the sight in one eye. The other eye is sort of halfway
18 there. And the interesting thing is all of the people
19 don't all fit the federal statutory definition of the
20 disabled persons. It is obviously a substantial segment of
21 California's society. And when you realize eye disease
22 skews towards the elderly and charity bingo heavily skews
23 towards the elderly, you have a big community of bingo
24 players suffering from visual impairment. That is what the
25 (b) (3) talks about. That is what your regulations, as

1 well-written and well-structured as they are, do not. They
2 do not address the visually impaired.

3 Let's turn to the text. Because the text is very
4 easily understood. Once again, it is extremely
5 well-organized, extremely well-written. But it has a snag.

6 So if you go to Page 4, under ADA regulation text,
7 you'll see the Division 1 addresses players whose
8 disabilities would restrict the player's ability to mark
9 cards. What are you talking about there? Talking about
10 Parkinson's disease. The guy cannot mark his card because
11 his hand shakes or maybe he had a stroke and can't use his
12 hand at all. This happened to my dad. He had a stroke and
13 could not use his hands.

14 Second, they have a second division for players whose
15 disability restricts player's ability to verbally announce
16 "bingo." Might be somebody who mumbles or maybe had
17 esophageal cancer. My grandfather died of esophageal
18 cancer. Unable to speak the last years of his life but
19 understood everything fine.

20 What is absent is a new Division 3 for players whose
21 disabilities would restrict players ability to visually
22 recognize bingo numbers and symbols. Once again, players
23 whose disabilities would restrict the player's ability to
24 visually recognize bingo numbers or symbols.

25 So that would be the category that needs to be added

1 to the very well-structured division as a new Division 3.

2 Now, once you have that division, how is it that you
3 approve the card-minding devices in an objective manner
4 that does not put you at risk, does not make decisions look
5 controversial when you're just trying to do your best? How
6 does it get accomplished?

7 On Page 5 we suggest five different language ways.
8 You guys have your ways you like drafting things. Choose
9 one you think is best.

10 But let's talk about the first one that the operator
11 of the bingo game shall provide at least two card-minding
12 devices that shall be console or table-top devices so long
13 as such console or table-top device are otherwise approved
14 pursuant to Section 12486. That is your interim approval.
15 You're addressing interim approval this afternoon. I have
16 a separate handout to make the record on that issue. But
17 the two are intertwined.

18 How do you approve something that has to meet all
19 statutory requirements if, in fact, you're allowing
20 something over here that allows a reasonable modification
21 of those requirements but by definition they don't meet all
22 of the requirements.

23 Those two regulations are joined at the hip. And I
24 think it is very intelligent of Commission and its staff to
25 have put both matters on the same agenda.

1 Let me mention there are two fundamental ways where
2 you can look at table-top or console devices and make sure
3 they're the same as a card-minding device, just easier to
4 see. What are the two ways? Number one, you can look at
5 the four objective requirements in subsection (p)(1), A
6 through D. Those are the objective requirements of what a
7 card-minding device has to do to be a card-minding device.

8 Number two, it has got to meet the objective
9 requirements in subsection (p)(2). Those are the four
10 requirements it can't do to maintain its identity as a
11 card-minding device. You've got your do's and don'ts.
12 Obviously, it has to comply with the two sections.

13 And number two, it can't be prohibited by (p)(6). In
14 other words, the legislature has indicated its intent on
15 what reasonable modifications they want to make sure don't
16 happen; namely, Class II slot machines coming in under the
17 adage of being a card-minding device. That is one way to
18 do it.

19 A second way to do it would be to simply say that the
20 software is identical to the software used in portable and
21 hand-held card-minding devices. That is something you guys
22 have to consider because it is sort of a sub rosa type
23 issue, reading in between the lines.

24 The way gaming works in this electronic age that we're
25 in is it is the software that drives it. The legislature

1 and the history of this Commission is to regulate the
2 hardware. Look at it. Feel it. If you can't pick it up,
3 it ain't a card-minding device. That is not what is
4 important any more. What is important is its brain. What
5 does it do inside? That is the way regulations have to
6 work. They don't work that way yet. Obviously, it is
7 something that's sub rosa under the surface. Everybody has
8 to be aware of it to properly do their job as a regulator.
9 Seems there is a great deal of concern to do that in this
10 Commission.

11 So again, the second way to do this would be, number
12 one, to use identical software to the portable and
13 hand-held card-minding devices previously approved. It's a
14 nice, easy, safe harbor to reach.

15 Thank you very much. And I'm available for questions.
16 And our technical people and general counsel are also
17 available.

18 CHAIRMAN SHELTON: Commissioners, any questions?

19 COMMISSIONER SHIMAZU: No.

20 CHAIRMAN SHELTON: I have none.

21 Thank you very much, sir.

22 JONATHAN STEIN: Thank you.

23 CHAIRMAN SHELTON: State your name and spell the last
24 name.

25 DOUG BERGMAN: Doug Bergman, B-e-r-g-m-a-n, United

1 Cerebral Palsy of Greater Sacramento. I'm president and
2 CEO.

3 And I was just taking a head count back there. We had
4 three attorneys speak so far and no laymen. I'm a layman.
5 But I do play judge and jury once in a while with my kids.
6 I do qualify once in a while.

7 I do want to address a couple things for the
8 regulations. I've been in the nonprofit world for about 17
9 years back -- dating back to 1992 in Phoenix, Arizona.
10 Been in Sacramento since '96, all affiliated with United
11 Cerebral Palsy.

12 Couple of regulations I wanted to address is -- and a
13 lot has been expressed already. But for the record the
14 requirement of the minimum of the two card-minding devices
15 be reserved for players with disabilities. You know, more
16 than two players per session, that is a pretty tall order
17 to try to meet. How do you determine who gets the devices?
18 As it was communicated earlier, how do you determine who is
19 disabled and not disabled? And who is a more disabled
20 individual than another disabled individual that they
21 should get the card-minding devices?

22 We cannot allow volunteers to make those decision.
23 You're subjecting the bingo operators and providers to
24 potential litigation at that point. That is a big problem
25 for our bingo hall and our operations currently.

1 There is also a regulation being proposed to require
2 bingo operators to waive the fees of the minimum purchase
3 requirement imposed on all players and waive the rental fee
4 and remove the financial barriers. The disabled community
5 wants to be inclusive. They want to play and want to pay
6 for bingo. They want to get married, have kids. And
7 believe it or not, many have jobs and want to contribute
8 back to the community. That is a way they do that. And it
9 is very important they be part of that community, whether
10 it is bingo, whether paying for groceries, whether it is
11 banking fees or whatever. But they don't look for
12 handouts. They do want to pay to go into a bingo hall and
13 play bingo.

14 Printing out the winning card from the card-minding
15 devices in order to claim a wining prize, no card-minder or
16 hand-held device are available to perform that function.

17 Disabled cannot daub due to the complexity of today's
18 game. The use of electronic bingo aide helps the disabled
19 to play on a very equal footing with the able-bodied
20 players. It requires the operator of bingo games to allow
21 players with disabilities to verbally announce "bingo"
22 signaling a winning pattern.

23 Many disabled or developmentally disabled cannot keep
24 up with the live caller and required manual daubing. It is
25 just impossible today. Disabled cannot sit for hours,

1 which is how long the typical bingo session runs today.

2 Many cannot lift a flag, paddle, turn on a light,
3 etcetera. How are we going to equip their equipment or
4 bingo hall to be able for them to provide this to signify
5 they are a bingo winner?

6 The use of electronic bingo aides allows the disabled
7 to play at their pace and not at the non-disabled pace and
8 that can come and go as much as they -- and they can come
9 and go as much as they want in the session.

10 Another reg requires the operator of the bingo game to
11 bring in another individual to assist them in playing
12 bingo. Most of the days these individuals are assisted in
13 many activities they do. They are probably -- most of them
14 are looking for non-assistant ways so that they can be --
15 continue to be independent. And having somebody come with
16 them to a bingo hall to play bingo and -- that is not
17 something that is ideal for them. We're always looking for
18 volunteers. Most nights we're very shorthanded in
19 volunteers. So providing a volunteer up at the bingo hall
20 is not realistic, also.

21 There is a couple of things that -- the accommodations
22 for the disabled are important and necessary but if they --
23 but not at the expense of the charity bingo operations who
24 are expected to provide free use of machines upon request
25 and somehow verify people's status as disabled persons

1 under the ADA.

2 Further, the regulations that qualify individuals
3 under ADA will be able to utilize another individual's
4 assistance to put them in an unfair advantage over the
5 other players. The concept of electronic bingo events
6 evens the playing field for all.

7 Also, please do not discount the fact that individuals
8 with disabilities are also very intelligent. However, many
9 are cognitively delayed and need time to process.

10 I want you guys all to think back when you -- remember
11 as kids when you used to take a baseball bat and maybe some
12 of you still do it as adults today but you take a baseball
13 bat and spin around and around and around. And then what
14 happens when you try to walk away or try to run someplace?
15 You fall down, right? So you are dizzy, cannot process and
16 you end up on the ground a short distance from where you
17 started to spin. Your mind said "get up and start walking"
18 but your body said "not yet." So your mind gave you time
19 to make that decision when you're ready to act.

20 Has anyone been to -- if anybody has been to the local
21 charity bingo hall, the game is no longer played like it
22 was when I was a kid when you went down to the VFW with
23 your mom and dad. They gave you one bingo card and some
24 coins to cover up the number when the number was called.
25 It is not played that way anymore. People have five, ten,

1 bingo cards in front of them, five different color daubers.

2 Picture yourself in front of the scenario I just
3 described in your mind, spinning, trying to daub not only
4 one card but ten cards at one time every ten seconds.
5 Picture somebody with a disability trying to do the same.
6 That is what they're going through. They can't process --
7 can't process the -- process that card that's in place with
8 them with the ten cards. But bingo -- electronic bingo
9 allows that individual time to react. They can play at
10 their pace, not someone else's pace. It is their rules.
11 They can play whenever they want to. They can get up and
12 walk away whenever they want to. It is at their pace.
13 That is what is important.

14 The new regs proposed will not provide reasonable
15 accommodations in my opinion for disabled players and would
16 pose undue hardship on the bingo operators.

17 Anybody have any questions?

18 CHAIRMAN SHELTON: Commissioners?

19 COMMISSIONER VUKSICH: Mmm, thank you for coming. I
20 had made a note about wanting to hear from someone from the
21 disabled community. You fit that bill.

22 How are the disabled currently accommodated in a
23 charitable bingo game?

24 DOUG BERGMAN: There could be -- they could have
25 assistance that could come in with them. If they're coming

1 in with -- there is an option of them to still play the
2 paper bingo, if they choose, and cognitively if they can
3 play the paper bingo. But most are playing the electronic
4 bingo today.

5 So it is a process where they can come in and purchase
6 a certain dollar amount they want to play. They can sit in
7 front of the e-bingo, electronic bingo machines for four,
8 five, six, seven hours, 15 minutes and play at their pace.
9 They can play at the pace -- or the screen dictates. The
10 screen waits for them to make an -- an -- I guess the
11 screen is set up, you know, waits for them to make the next
12 move. They're not process -- the screen isn't timed out.
13 You know, they can't -- you've got 15 seconds, 10 seconds,
14 one hour to make a decision. They can play at the pace
15 their mind and body allows.

16 COMMISSIONER VUKSICH: How does it sync with the rest
17 of what is going on in the hall?

18 DOUG BERGMAN: I don't know if I understand your
19 question.

20 COMMISSIONER VUKSICH: If you've got a bingo game that
21 is paced --

22 DOUG BERGMAN: Yeah, the bingo --

23 COMMISSIONER VUKSICH: They're moving at their own
24 pace?

25 DOUG BERGMAN: Yeah, the bingo is played at a separate

1 part of the hall. The hall is broke out in two separate
2 sections.

3 COMMISSIONER VUKSICH: They're not integrated with the
4 rest?

5 DOUG BERGMAN: That's correct. There is a paper bingo
6 game section and an electronic section of the hall.

7 COMMISSIONER SHIMAZU: When you say e-bingo, it's not
8 talking about the card-minding devices; you're talking
9 about --

10 DOUG BERGMAN: That's correct.

11 COMMISSIONER VUKSICH: Table-top?

12 DOUG BERGMAN: That's correct. Thank you.

13 CHAIRMAN SHELTON: Anybody else? Mr. Fried?

14 DAVID FRIED: Good morning, commissioners. David
15 Fried, F-r-i-e-d, for LIF Capital Group, which is a
16 supplier of card-minding devices.

17 The regulation may be only a page and quarter but
18 obviously the problems are complex that underlie it. And I
19 am particularly struck by the comments others have
20 submitted, things that we didn't think of when we first
21 read the regulation and, particularly, comments by
22 operators about the problems they may have implementing
23 this in what is says. It does not address the disabilities
24 of people that they may see. And we support and defer to
25 those comments. They're in a better position than we are

1 to know what the practical problems are going to be with
2 implementing the regulation.

3 What I thought I would do from the perspective of a
4 manufacturer is just make a couple of informative comments
5 about the devices and also draw your attention to something
6 in the statute that we're all struggling with. For our
7 purposes, the statute has what I'd say, you know, is two
8 parts.

9 Part number one is saying that players can't use
10 electronics, except for card-minders; and there are four
11 things the card-minders have to do and four things they
12 can't do. Then there is a whole separate section for
13 people with disabilities. And if it was legislature's
14 intention that they have to use card-minders the same as
15 other folks in the hall, that section wouldn't be
16 necessary. But instead, what the legislature said is you
17 have the discretion to implement the regulations for people
18 who are disabled. And the only restriction on those
19 regulations -- and I'll -- if you don't mind, I'll just
20 read it. It is part of a single sentence. "Provided that
21 the means of providing that assistance shall not be through
22 any electronic, electromechanical or other device or
23 equipment that accepts the insertion of coin, currency,
24 token, credit card or other means of transmitting value and
25 does not constitute and it is not part of a system that

1 constitutes a video lottery terminal, slot machine or
2 devices prohibited by Chapter 10."

3 What the legislature did not say is "provided that
4 they're using a card-minder."

5 Your discretion with respect to the people that are
6 disabled is far broader. You do not have to restrict
7 people that are disabled to card-minders. You can specify
8 a means for addressing their disabilities so long as it is
9 not a slot machine that accepts coin, currency, etcetera.

10 Now, again, if the legislature wanted to restrict
11 people with disabilities to card-minders, they wouldn't
12 need this section at all. Or they would of said "provided
13 that they're using a card-minder." That is not what this
14 section says. This section gives you broad flexibility to
15 determine technologically or otherwise how you want to
16 address the needs of people with disabilities.

17 From a technical perspective, we do not do this in
18 California but our machines and I know the fixed-base
19 machines and other machines other suppliers make are
20 capable of what are called "automatic daubing." There are
21 six states in which we do business that that is legal and
22 our machines can do it. And what that means is the
23 players, if they have a manual disability, do not have to
24 recognize the numbers being called. Their cards can get
25 marked automatically.

1 Now, bingo is defined as a game of chance, not a game
2 of skill. And, therefore, it is not necessary legally to
3 construct a bingo system where we're testing people's
4 skill. It's not necessary for regular players and not
5 necessary for disabled players. It is a game of chance.
6 Therefore, there is no reason why a player cannot have a
7 device that mark cards for them. I believe you have that
8 ability under the statute to say those devices would be all
9 right for disabled people.

10 Secondly, fixed-base products are common. We make a
11 fixed-base product that is similar to our card-minder that
12 plays the regular session bingo game along with paper. The
13 reason that device is popular with some people is the
14 17-inch screen is much easier to read than a screen that is
15 seven and a half inches.

16 So I don't think there is anything in this section
17 dealing with people who are disabled that prevents you from
18 using a table-top console with a large screen to play
19 bingo. Again, it does not say that disabled people are
20 restricted to card-minders. It says "provided it is not a
21 slot machine that accepts coin or currency."

22 And while there may be other solutions in some places
23 such as having somebody come along with a disabled person,
24 not every disabled person is going to have that luxury.
25 There are some counties that do prohibit by local ordinance

1 assistance. Perhaps they just weren't thinking of disabled
2 people. They prohibit having somebody else play bingo for
3 you.

4 With those comments in mind, I'm happy to answer any
5 questions you have. I think the approach you've taken in
6 this regulation is far narrower than the statute allows.
7 There's a lot more discretion in terms of what devices can
8 be used with disabled person's.

9 CHAIRMAN SHELTON: Commissioners, any questions?

10 COMMISSIONER SHIMAZU: No.

11 CHAIRMAN SHELTON: Pardon?

12 COMMISSIONER SHIMAZU: No.

13 CHAIRMAN SHELTON: Thank you. Sir?

14 TOM HOPE: My name is Tom Hope, H-o-p-e. I represent
15 Bingo Vision & Gaming which is a distributor of bingo
16 products, paper and electronic games. I was also a bingo
17 manager for a charity bingo hall here in Sacramento for
18 over 20 years.

19 I think the legislation you have written and was
20 proposed and up to today is fine. I think it addresses the
21 things that the legislature wanted to do.

22 A couple of the pieces of information, one, is that
23 our company is able to provide to any charity that wants
24 to, for less than \$100 a session, two to five card-minders.
25 It wouldn't be a financial problem for those who currently

1 don't use card-minders.

2 And I really think once this starts if you limit it to
3 only those who currently have card-minders that we are
4 asking for a problem. As for a disabled person to come in
5 and say: I cannot do this; you have the ability to provide
6 me with an instrument that will do this, as a card-minder.

7 The second thing is that the card-minder that we offer
8 will allow you to purchase one, two, three games -- one,
9 two, three to the 72 cards in Sacramento County. So you
10 could be a disabled person, come in and play the first five
11 games and leave and pay for those games. That is the way
12 our system works. Other people's don't work that way but
13 that is what we sell by the -- by the ones. And we have
14 that ability to sell first half, second half, early birds
15 only, late birds only. We do that in our clients here in
16 California today. They allow people to play little short
17 sessions. I think that is important.

18 The last thing is we have a couple of devices
19 available besides the table-tops that are not currently
20 allowed. We have one that is a 7-inch screen, a 10-inch
21 screen and 12-inch. 12 is not 17. The reason we can't do
22 the 17 as a portable and hand-held is because of the
23 battery life and the physical -- have to carry it around.
24 We have a 7-inch that is used.

25 I think I sent you a picture of a nice lady that is

1 blind. She is very excited that she has equipment now.
2 She can play bingo again. She's 93 -- 97 years old. There
3 are a lot of those people out there. She can put her hand
4 there with a magnifying glass and touch the screen and mark
5 her cards.

6 The other thing is that the bigger screens are easier
7 to see. And we currently have one that goes to 12 inches.
8 So that will fit that. It is still portable and hand-held
9 and it will run twelve hours on one battery charge.

10 So I -- I personally was excited about the legislation
11 from a business standpoint. It is going to open up some
12 more business opportunities for us. But more importantly
13 as a bingo manager in my former life is that now my
14 handicapped people -- and I always had some in every hall
15 that I've ever been involved with that could only play a
16 card-minder and could not do this for -- for various
17 reasons, either sight or physically handicapped. And we
18 did not have a problem with allowing them, even though it
19 was not appropriate under the local jurisdiction, we sold
20 them -- at the normal cost of anybody else -- we sold them
21 a handset so they can play. And we did not make them buy
22 the paper. That was not -- as a bingo manager, that is not
23 what we were told to do but we felt it was only right for
24 the handicap people that did come to our halls.

25 I have other clients in Sacramento, Northern

1 California -- Sacramento and in Northern California that do
2 the same thing today. If someone can't do this whole thing
3 or can't play for four hours, that we -- they make
4 accommodations. Those clients make accommodations for
5 those people.

6 Any questions?

7 CHAIRMAN SHELTON: Thank you very much.

8 Any further public input, Item Number 3?

9 BILL WILLIAMS: Hello. My name is Bill Williams,
10 W-i-l-l-i-a-m-s, with the Attorney General's Office, the
11 Indian & Gaming Law section. I'm representing the Bureau
12 in the BGT case. I'm not really here to comment on the
13 substance of the regulations.

14 I don't think any of the speakers have said that the
15 Commission cannot move forward but I want to make clear it
16 is our position that the Commission can move forward with
17 its regulatory action in this case under Article 3, Section
18 3.5 of the California Constitution. It is also not
19 precluded at all by the current litigation in the BGT
20 matter.

21 So that is really the only comment I have. Again, I
22 don't have any comments on the substance of the regulation.

23 CHAIRMAN SHELTON: Thank you, Mr. Williams. Any
24 questions here?

25 Thank you.

1 BILL WILLIAMS: Thank you.

2 CHAIRMAN SHELTON: Staff? Any commentary on what has
3 been said this morning on Item Number 3?

4 COMMISSIONER SHIMAZU: Can I ask a question with
5 respect to the visual disabilities?

6 The current language says -- when it says "restricted
7 player's ability to mark cards." I kind of assume it is
8 included if -- I mean, if you couldn't see it to mark it,
9 that would be -- a visual disability would be included?

10 JESICA PANDIKA: Right. I agree. I think that was
11 the intention.

12 CHAIRMAN SHELTON: Commissioners?

13 COMMISSIONER SHIMAZU: Can I also ask staff, assuming
14 it is passed, what are the next steps? These are emergency
15 regs.

16 JAMES ALLEN: The emergency process would involve
17 filing the emergency regulations with the Office of
18 Administrative Law. If approved today, we can do it
19 tomorrow. OAL has ten days in which to consider the
20 regulations and our statements that will accompany them.

21 In the first five days, OAL will accept written
22 comments from public and then give us an opportunity to
23 respond before they make their determination.

24 Following that, assuming that OAL were to approve the
25 regulations, then we commence the regular rulemaking

1 process shortly after the emergency regulations would
2 become effective. And that involves the normal rulemaking
3 process where we file the 45 days written notice. Publish
4 that. Allow 45 days for public comments.

5 At the end of the public comment session, the written
6 comment session, we hold a hearing and allow interested
7 parties an opportunity to present oral comments on the
8 record and then prepare summaries of the comments and final
9 Statement of Reasons.

10 If, due to those comments, substantive changes were to
11 be made, then we notice the modified language of the
12 regulation for an additional 15-day comment period on those
13 modifications.

14 And, ultimately, when the record is completed and
15 we're satisfied with the language, all of the comments have
16 been summarized and final Statement of Reasons is prepared,
17 then the matter comes back before the Commission for final
18 adoption; after which, we would file the rulemaking file
19 and the final Statement of Reasons with the Office of
20 Administrative Law for their review.

21 COMMISSIONER SHIMAZU: Trying to make the point, we're
22 going to -- there will be a commencement of a regular
23 rulemaking process after the emergency process.

24 JAMES ALLEN: Yeah. I went beyond that. Sorry. Too
25 much detail.

1 EVELYN MATTEUCCI: Evelyn Matteucci, chief counsel. I
2 wanted to mention we anticipate having a workshop with any
3 interested manufacturers, vendors, operators, the disabled
4 community so that we can hear from everyone, work with
5 everyone to see what we can do to make the regulations --
6 make them permanent and what we can do to accommodate
7 everyone's concerns.

8 COMMISSIONER VUKSICH: When you find your interested
9 parties for the workshops, do they find you or do you find
10 them?

11 JAMES ALLEN: We would use our contacts. We have a
12 regular rulemaking interested parties list. We have a
13 separate list of individuals that we've been in contact
14 with regarding bingo issues, specifically. We use those
15 kinds of lists.

16 COMMISSIONER VUKSICH: I have a concern. We're going
17 to a group we don't normally contact. That is the disabled
18 community. I want to make sure they're captured.

19 JAMES ALLEN: All those who presented comments today
20 or in the past would be included. There is always
21 opportunity. We'll accept requests to be added to those
22 mailing lists at any time.

23 COMMISSIONER VUKSICH: Thank you.

24 EVELYN MATTEUCCI: We can also do some outreach and
25 try and reach out to disabled communities, associations. I

1 would think probably, you know -- I think Mr. Hope
2 mentioned places. Mr. Bergman. We can try and reach out
3 to people who are here who have commented and see if they
4 can also give us names of the people that might be
5 interested in this.

6 COMMISSIONER VUKSICH: Thank you.

7 CHAIRMAN SHELTON: Entertain a motion?

8 COMMISSIONER SHIMAZU: Move to approve staff's
9 recommendation.

10 COMMISSIONER VUKSICH: Second it.

11 CHAIRMAN SHELTON: Call for the vote.

12 JOY CALKIN: Commissioner Shimazu?

13 COMMISSIONER SHIMAZU: Aye.

14 JOY CALKIN: Commissioner Vuksich?

15 COMMISSIONER VUKSICH: Aye.

16 JOY CALKIN: Chairman Shelton?

17 CHAIRMAN SHELTON: Aye.

18 JOY CALKIN: Motion carried.

19 CHAIRMAN SHELTON: Moving to Item Number 4.

20 JAMES ALLEN: Mr. Chairman and commissioners, Jim
21 Allen, regulatory actions manager for the Commission.

22 Agenda Item 4 concerns the adoption of the emergency
23 regulations that will implement several elements of the
24 California Remote Caller Bingo Act as mandated by Penal
25 Code Section 326.3 in order to comply with statutory

1 requirements to provide for approval of the remote caller
2 bingo equipment, standards of play, requirement for
3 organizations participating with remote caller bingo,
4 requirements for organizations co-sponsoring remote caller
5 bingo and auditing responsibilities.

6 Commission staff is submitting the proposed emergency
7 regulations for Commission's consideration. Based upon
8 consideration of additional information and public comments
9 received between April 17 and May 1st, Commission staff
10 revised the text of the proposed emergency regulations.
11 And that revised text draft is dated May 1st, 2009. And
12 that is the text that is before the Commission for
13 consideration today. It is also available at the back
14 table.

15 The proposal before you has been noticed in advance
16 May 1st, 2009, in order to allow the emergency regulations
17 to be filed with the Office of Administrative Law tomorrow,
18 May 8th. And they could then become effective as early as
19 May 18th, if approved by OAL.

20 Staff recommends the Commission adopt and approve for
21 filing with the Office of Administrative Law the proposed
22 emergency regulations concerning interim approval of remote
23 caller bingo equipment, remote caller bingo requirements
24 and standards of play and audits, as previously noticed;
25 and, two, authorize staff to make any non-substantive

1 changes in the file required by OAL during its review
2 process.

3 CHAIRMAN SHELTON: Anything further? Public comment,
4 please.

5 Hearing none --

6 JONATHAN STEIN: May I approach?

7 CHAIRMAN SHELTON: Please.

8 JONATHAN STEIN: It is a formality that since you have
9 two separate items on the agenda, much of that is repeated.
10 Comments will be short.

11 By the way, you'll notice a little black dot on the
12 top of that one. They look a lot alike. This has a little
13 black dot on it.

14 Turning to the definition of the interim approval,
15 which is in subsection (a)(14), that is on Page 4 of 5.
16 We're dealing with Section 12480. Let me introduce myself.
17 Law Offices of Jonathan Stein, S-t-e-i-n, on behalf of the
18 manufacturer GameTech International, Inc.

19 The definition of the interim approval, as I said, is
20 joined at the hip with the last agenda item. And may it
21 please the Commission if my comments from that item can be
22 incorporated by this reference into this agenda item.

23 The interim approval, the current definition states
24 "approval by the Commission of the card-minding device for
25 use in the play of bingo based on certification from the

1 manufacturer that the device complies in all respects with
2 the provision of the Penal Code 326.5 subsection (p)
3 paragraphs one and two, including the requirement that the
4 device be both portable and hand-held."

5 This is now the crux of the matter we spoke about
6 before. On the one hand you have the federal level that
7 says you have to have -- allow reasonable modifications.

8 On the other hand, you have an interim approval that
9 by definition says the device complies in all respects with
10 the provisions of the Penal Code. Well, a reasonable
11 modification is not going to comply with all aspects of
12 that code. That is where these two matters, the ADA
13 regulation and this regulation, belong together. I applaud
14 the Commission and staff for putting them on the same
15 agenda so they can be discussed and thought about -- more
16 importantly, thought about by the commissioners at the same
17 time.

18 It seems to me a proviso is needed. The proviso does
19 one of two things. On the one hand, it would comply with
20 all requirements other than being hand-held and portable.
21 On the other hand, it could just use the same software. As
22 I stated before, it is the software that really runs these
23 machines in the time of explosion of the electronic device
24 innovation, not the hardware.

25 So we've given two separate attempts at that proviso.

1 Obviously, the Commission will write it in whatever format
2 they feel most comfortable with and most uniform with the
3 other regulations out there they've already written. But
4 the first one would say that, well, there are four
5 requirements of subsection (p)(1). Those things that a
6 card-minding device has to do to be qualified to be a
7 card-minding device. Those are objective. You have to
8 comply with those.

9 Second, there are four things you can't do in (p)(2).
10 You have to comply with that. And further, you would not
11 be prohibited by subsection (p)(6).

12 You have to have some sort of mechanism for interim
13 approval for some devices that are not fully compliant with
14 the statute the way the regulation is written. You have to
15 be fully compliant with the statute. That is the crux of
16 the difficulty. It is a draftsman's chore. In many ways,
17 just a draftsman's chore. But it substantively impacts the
18 marketplace.

19 As Mr. Fried noted before, there is no necessary
20 limitation that card-minding devices, as reasonably
21 modified, remain card-minding devices. My manufacturer's
22 does. There are others out there that would not be
23 considered card-minding devices but still might be highly
24 appropriate for the disabled community and, in addition,
25 still not be the Class II slot machine.

1 Once again, to be consistent with the legislation, the
2 big difference is the legislature tried to get rid of the
3 Class II slot machines, which are found in Indian casinos
4 in playing bingo, but allowed the card-minding device. If
5 you look back at your 20 years of history in regulating
6 electronic bingo, we have Department of Justice opinion
7 letters, you'll never find the term "card-minding device."
8 You're really writing a fresh slate.

9 Thank you.

10 CHAIRMAN SHELTON: Any questions? Further public
11 input?

12 Commissioners? Nothing? Silence. Entertain a
13 motion.

14 COMMISSIONER VUKSICH: Approve staff's recommendation.

15 COMMISSIONER SHIMAZU: Second.

16 CHAIRMAN SHELTON: Call for the vote.

17 JOY CALKIN: Commissioner Shimazu?

18 COMMISSIONER SHIMAZU: Aye.

19 JOY CALKIN: Commissioner Vuksich?

20 COMMISSIONER VUKSICH: Aye.

21 JOY CALKIN: Chairman Shelton?

22 CHAIRMAN SHELTON: Aye.

23 JOY CALKIN: Motion carried.

24 CHAIRMAN SHELTON: You folks have done a lot of the
25 work. It is a new territory for all of us.

1 I think I can speak on behalf of the commissioners.
2 We appreciate the input and education we're going through
3 with this. I think you realize that.

4 I think what I found lacking in the presentations is
5 more concern -- and some of you are going to take it the
6 wrong way, usually the way I affect people -- for the
7 disabled.

8 I know you're doing things out there in the bingo
9 halls today to accommodate the disabled. I didn't hear
10 what you were doing, except for a few things in the
11 electronic status.

12 If you're going to help this Commission with these
13 Acts in coming through with these devices, you have to be
14 more productive in your input on how we get there with
15 that. Maybe you said it and I just missed it and you need
16 to refine your presentation with staff when we're rewriting
17 and when we come back for the permanent regulations.

18 Believe me, the commissioners up here are very
19 open-minded for consideration.

20 Thank you very much for coming today. We appreciate
21 your input.

22 And I make a motion to adjourn.

23 COMMISSIONER SHIMAZU: Second.

24 CHAIRMAN SHELTON: Call for the vote.

25 JOY CALKIN: Commissioner Shimazu?

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COMMISSIONER SHIMAZU: Aye.

JOY CALKIN: Commissioner Vuksich?

COMMISSIONER VUKSICH: Aye.

JOY CALKIN: Chairman Shelton?

CHAIRMAN SHELTON: Aye.

JOY CALKIN: Motion carried.

(End of proceedings.)

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter of the state of California does hereby certify:

That the foregoing Commission meeting was taken before me at the time and place therein set forth;

That the testimony of the public and all objections made at the time of the hearing were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date May 15, 2009.

Desiree C. Tawney

Desiree C. Tawney

Certificate Number 12414