

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
CGCC-GCA-2009-03-C

HEARING DATE: October 20, 2009

SUBJECT MATTER OF PROPOSED REGULATIONS: Assistance to Bingo Players with Disabilities

SECTIONS AFFECTED: California Code of Regulations, Title 4, Section 12482

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information contained therein is complete and no changes have been made in the proposed action that would warrant any changes in that information. However, the following information, taken directly from the Initial Statement of Reasons, is included in this section for convenience:

INTRODUCTION:

Pursuant to its authority under Penal Code Section 326.5(p)(6), the California Gambling Control Commission (Commission) is proposing to adopt regulations that will establish means by which the operator of a bingo game shall offer assistance to players with disabilities. The proposed regulations prescribe options for providing reasonable accommodation to a disabled player, but at the same time do not impose an undue hardship on the operators because the accommodations do not require significant difficulty or expense. The adoption of the proposed regulations will implement one element of the California Remote Caller Bingo Act,¹ as mandated by Penal Code section 326.5.

BACKGROUND:

Senate Bill (SB) 1369 authorizes “remote caller bingo” as a game that would allow specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to conduct live bingo games, if authorized pursuant to a local ordinance and approved by the Commission. The Commission is required to regulate remote caller bingo, including but not limited to, the development of regulations for licensure and registration of persons who conduct remote caller bingo games, or who manufacture and distribute remote caller bingo equipment and supplies. The Commission is also given authority to license manufacturers and distributors of bingo card-minding devices, and to approve those devices for use in the play of both remote caller bingo and traditional bingo games.

¹ Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.).

According to the author, SB 1369 is intended to provide nonprofit organizations an opportunity to increase their fundraising ability by authorizing remote caller bingo, which will allow charities across the State to combine their games and offer larger prizes than allowed under current law. The author states, "The demand for services from California charities is increasing due to the economy, unemployment and our state budget cuts. At the same time, charitable donations are down and charities are faced with turning away people for whom it is their mission to serve. Charities desperately need new tools to increase their ability to raise funds to keep up with the demand for their services."

Penal Code section 326.5, subdivision (o), provides that electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of the numbers or symbols, public display of that drawing, and except in connection with the use of hand-held, portable card-minding devices used by players who are physically present at a bingo game. Subdivision (p) provides that players who are physically present at a bingo game may use hand-held, portable card-minding devices that meet specified requirements to assist in monitoring the numbers or symbols announced in a live game. This subdivision also requires that the Commission approve any card-minding device in advance of its use. Paragraph (6) of subdivision (p) provides that the Commission may adopt regulations specifying the means by which the operator of a bingo game may offer assistance to players with disabilities in order to enable those players to participate in a bingo game. This paragraph further specifies that the means of providing assistance shall not be through any electronic, electromechanical, or other device or equipment that accepts the insertion of any coin, currency, token, credit card, or other means of transmitting value, and does not constitute or is not a part of a system that constitutes a video lottery terminal, slot machine, or devices prohibited by Chapter 10 (commencing with Section 330).

Business and Professions Code section 19850.6 directs the Commission to adopt appropriate emergency regulations as soon as possible, with the initial regulatory action to be filed with the Office of Administrative Law (OAL) by May 1, 2009. The initial regulatory action for the interim approval of bingo card-minding devices was filed with OAL on December 18, 2008² and became effective January 1, 2009. The emergency adoption of Section 12482 was approved by OAL on May 18, 2009³ and became effective on that date. Section 12482 will remain in effect for 180 days, during which time this proposed action is being pursued in compliance with Government Code section 11346.1(e).

PROPOSED ACTION:

This proposed action permanently establishes Section 12482 in Title 4 of the California Code of Regulations, as follows:

- Section 12482 clarifies the statutory authority and purpose for the proposed regulation and requires the operator of a bingo game to provide certain reasonable accommodations for players with disabilities consistent with definitions set forth in the Americans with Disabilities Act (ADA), when those disabilities would affect their ability to participate in the play of bingo games. These provisions are intended to allow players with disabilities an

² See OAL File No. 2008-1218-06 E.

³ See OAL File No. 2009-0508-03 E, which is hereby incorporated by reference.

equal opportunity to participate in a bingo game, as follows:

1. Subsection (a) lists the means by which the operator of a bingo game shall accommodate players with disabilities that affect their ability to mark bingo cards. These means include the use of card-minding devices, the waiver of fees, and alternative methods for claiming prizes. Specifically, those accommodations include the following:
 - (a) Paragraph (1) requires the operator of a bingo game that offers card-minding devices, to reserve a minimum of two card-minding devices for use by players with disabilities. This is designed to assist players with those types of disabilities who may have difficulties playing paper bingo by ensuring that at least two card-minding devices are reserved for their use. The use of these devices will allow these individuals an equal opportunity to participate in a bingo game. If there are no requests for use of the devices by players with disabilities prior to fifteen minutes before the scheduled start of a session, the operator may make the reserved card-minding devices available for use by any player. If there are no requests for use of the reserved card-minding devices by players with disabilities, there is no harm in allowing the operator to make these devices available for use by any player.
 - (b) If the operator of a bingo game charges a fee for the use of the electronic card-minding devices, paragraph (2) requires the operator to waive the fee and to waive any minimum purchase requirement imposed on players utilizing electronic card-minding devices, for players with disabilities described in subsection (a). The requirement to waive the rental fee and any minimum purchase requirement is intended not only to assist players with disabilities by allowing them to use the card-minding devices and therefore participate in a game of bingo, but also to remove any financial barrier resulting from the limitation in their choices of the manner of play. Because of the limitations resulting from a particular disability, a player may have no other option for play but the use of a card-minding device. Thus, requiring the payment of a fee or imposing a minimum purchase requirement may be viewed as discriminatory. Without being subject to additional fees and minimum purchase requirements with no viable alternative, disabled players will be afforded an equal opportunity to participate in the play of bingo games. Disabled players are not relieved of the requirement to pay any fee or to comply with any minimum purchase requirement, imposed on players that do not use card-minding devices.
 - (c) Paragraph (3) requires the operator of a bingo game to allow players with disabilities described in subsection (a) to present a print out of winning cards, or other evidence of a winning card approved by the Commission, in order to claim a prize. This is intended to assist players with disabilities who have difficulties marking tangible paper cards. Those players with disabilities are allowed to present a print out of winning cards, or other evidence of a winning card approved by the Commission, in lieu of marked tangible cards, to claim a prize.
2. Subsection (b) requires the operator of a bingo game to allow players with disabilities consistent with definitions set forth in the ADA, when such disabilities would restrict

their ability to verbally announce “BINGO,” to utilize a form of visual or audible signaling to notify the operator of a winning pattern or “bingo,” which may include a flag, paddle, light, horn, bell or whistle, or other means approved by the Commission. The use of a form of visual or audible signaling device to notify the operator of a winning pattern or “bingo” allows players with disabilities to announce “BINGO” when they are unable to do so verbally.

3. Subsection (c) requires the operator of a bingo game to allow players with disabilities consistent with definitions set forth in the ADA, when such disabilities would restrict their ability to mark cards, or announce “BINGO,” to bring another individual to assist them in playing bingo. The assisting individual shall not count towards the 750-player maximum applicable to remote caller bingo provided in Penal Code section 326.3(i). This is intended to assist players with disabilities by allowing them to bring another individual to assist them in playing bingo. The assisting individual may help players with disabilities to recognize the numbers or symbols called, mark cards, push buttons on the card-minding devices, announce “BINGO,” or claim a prize, when the players with disabilities have difficulties doing so themselves. The exclusion of the assisting individual from the 750-player maximum applicable to remote caller bingo is designed to eliminate a potential reason for denying entry of an individual to provide assistance to a disabled player.

REQUIRED DETERMINATIONS:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Small Business Impact:

The Commission has determined that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting small business.

Consideration of Alternatives:

No alternative which was considered or otherwise identified and brought to the attention of the Commission would be more effective, or as effective and less burdensome to affected persons than the proposed regulation.

The alternatives that were considered and the reasons each alternative was rejected are set forth as follows:

The only alternative brought to the attention of the Commission for consideration was the use of electronic bingo machines. This alternative was suggested in comments made on behalf of the California Charity Bingo Association and El Camino Athletics Boosters Club. This alternative was found not to be reasonable or feasible, as discussed below in response to the specific comments and recommendations of Kim R. Blackseth and K. Greg Peterson.

COMMENTS/OBJECTIONS/RECOMMENDATIONS AND RESPONSES:

The following comments/objections/recommendations were made regarding the proposed action, either in writing or orally, during the public comment period and/or at the public hearing:

45-Day Comment Period Ending September 30, 2009:

The following comments/objections/recommendations were made regarding the proposed action during the 45-day comment period that ended on September 30, 2009. The Commission received written comments from three (3) parties within that comment period. No additional comments, either written or oral, were received at the public hearing held on October 20, 2009. No additional comments, either written or oral, were received at the Final Adoption hearing held on December 3, 2009. As a result, the written comments received are summarized and responded to below.

Preliminarily, it should be noted that the written comments were submitted by two plaintiffs in the pending litigation entitled *Video Gaming Technologies, et al. v. Bureau of Gambling Control, et al.*, United States District Court, Eastern District of California, Case No. 2:08-cv-01241-JAM-EFB (*VGT v. BGC*).⁴ The two plaintiffs submitting written comments are the California Charity Bingo Association (CCBA) and El Camino Athletics Boosters Club (El Camino). Both plaintiffs are represented by K. Greg Peterson of KGP Law Offices, who submitted the written comments on behalf of both plaintiffs. Both written comments included the same ten page expert statement, dated August 23, 2009, and written by Kim R. Blackseth of Kim R. Blackseth, Interests, Inc.⁵

The comments are focused on two issues. The first issue is whether electronic bingo machines are a “reasonable accommodation” for the disabled. The second issue is whether the proposed regulation provides for “reasonable accommodations” for the disabled.

1. Kim R. Blackseth of Kim R. Blackseth, Interests, Inc., an expert hired by plaintiffs in *VGT v. BGC*, in a report dated August 23, 2009, offered the following comments/objections/recommendations:

Comment No. 1: Electronic “bingo” machines provide a “reasonable accommodation” to certain disabled individuals who would not otherwise be able to play bingo in an equal and dignified way.

Response: This comment was rejected. First, Penal Code section 326.5(p)(6) effectively prohibits the adoption of regulations allowing the use of electronic bingo machines to accommodate individuals with disabilities. Second, the electronic bingo machines are

⁴ The Commission is not a party to this litigation.

⁵ Kim R. Blackseth is an expert hired by plaintiffs in *VGT v. BGC* to evaluate whether electronic bingo machines are a “reasonable accommodation” for the disabled, in lieu of live-call bingo games, and whether the proposed regulation provides for reasonable accommodations for the disabled. It should be noted that Kim R. Blackseth may be more appropriately described as an ADA access expert, rather than an expert on gaming technology and the differences between live-call bingo games and electronic “bingo” machines.

inconsistent with the game of bingo, and therefore cannot be considered an accommodation for disabled individuals to participate in live-call bingo.

Title 4 CCR Section 12482 (“Assistance to Players with Disabilities”) was adopted on an emergency basis earlier this year, pursuant to SB 1369, which authorizes the adoption of regulations on that topic. The relevant provision of SB 1369 authorizes the Commission to adopt regulations on this topic, provided that the means of assistance does not involve an electronic bingo machine.

Specifically, Penal Code section 326.5(p)(6) effectively prohibits the adoption of regulations allowing the use of electronic “bingo” machines to accommodate individuals with disabilities. Section 326.5(p)(6) provides in part:

“The California Gambling Control Commission ... may issue regulations regarding the means by which the operator of a bingo game, as required by applicable law, may offer assistance to a player with disabilities in order to enable that player to participate in a bingo game, provided that the means of providing that assistance shall not be through any electronic, electromechanical, or other device or equipment that accepts the insertion of any coin, currency, token, credit card, or other means of transmitting value, and does not constitute or is not a part of a system that constitutes a video lottery terminal, slot machine, or devices prohibited by Chapter 10 (commencing with Section 330).” (Emphasis added.)

The Commission is bound by Article III, Chapter 3.5 of the California Constitution, which provides that a state agency may not decline to enforce a state statute on the grounds that it is in conflict with a federal statute or regulation. Specifically, Article III, Section 3.5 provides in part:

"An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

* * *

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.” (Emphasis added.)

Kim R. Blackseth’s comment is essentially asking the Commission to refuse to enforce a state statute on the basis that federal law (the ADA) prohibits enforcement of the state statute. However, neither the Commission nor OAL has the power to refuse to enforce the state statute unless required to do so by the applicable appellate court (in this case, the Ninth Circuit Court of Appeals (Ninth Circuit)).

In fact, on December 9, 2009, the Ninth Circuit issued a Memorandum in VGT v. BGC, which states that the district court abused its discretion in granting a preliminary

injunction prohibiting California state and local law enforcement “from taking any enforcement action against and/or interfering with the play of charitable bingo on electronic machines in any way.” *See* Memorandum at 4.⁶ The Court determined that the plaintiffs in *VGT v. BGC* failed to satisfy the irreparable harm, balance of equities, and public interest prongs of the *Winter* test, which is used to determine whether to grant a preliminary injunction. Essentially, the Ninth Circuit determined that the ADA does not prohibit enforcement of Penal Code section 326.5(p)(6).

In a concurring opinion, Judge Bybee added that the plaintiffs in *VGT v. BGC* have not demonstrated any likelihood of success on the merits of their claims under Title II of the ADA. *See* Concurring Opinion at 1.⁷ Judge Bybee states that “electronic slot machines are not a reasonable accommodation for disabled persons who wish to play live-call bingo, and the ADA does not require California to permit such slot machines just because they have been titled ‘electronic bingo.’” *Id.* Thus, the proposed regulation may not allow the use of electronic bingo machines to accommodate individuals with disabilities.⁸

Notwithstanding the fact that electronic bingo machines may not be used as an accommodation for individuals with disabilities to play live-call bingo, the electronic bingo machines are inconsistent with the game of bingo, and therefore cannot be considered an accommodation for disabled individuals to participate in live-call bingo.

Title II of the ADA requires only “reasonable modifications” that would not fundamentally alter the nature of the service provided. *Tennessee v. Lane*, 541 U.S. 509, 511 (2004). 42 U.S.C. § 12182(b)(2)(A)(ii) provides as follows:

“Discrimination includes--a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. (Emphasis added.)

The use of electronic bingo machines would “fundamentally alter” the nature of live-call bingo. Such modifications are not necessary under the ADA.

Judge Bybee states that “the electronic gaming machines at issue in this case do not offer live-call bingo, but rather a completely different casino-style game virtually

⁶ The Memorandum and Judge Bybee’s Concurring Opinion are not appropriate for publication and not precedent in accordance with 9th Cir. Rules 36-1 and 36-3. However, the factual and legal analysis contained therein may be appropriately considered when determining whether to adopt this particular proposed regulation. A copy of the Ninth Circuit’s Memorandum is included in the Rulemaking File at tab VII-1.

⁷ A copy of Judge Bybee’s Concurring Opinion included in the Rulemaking File at tab VII-2.

⁸ Judge Bybee also notes that Title II of the ADA applies only where a disabled individual is “excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, or is otherwise discriminated against by a public entity.” *Id.* at 2. Given that charitable bingo is provided in California only by private entities, Judge Bybee states that “any denial of meaningful access to traditional live-call bingo attributable to bingo parlors is not cognizable under Title II.” *Id.*

indistinguishable from a run-of-the-mill slot machine, and thus do not qualify as an accommodation to any service offered to non-disabled persons by the State of California.” See Concurring Opinion at 1-2. Judge Bybee further states that “the casino-style electronic gaming machines at issue in this case fundamentally alter the nature of live-call bingo – the only type of bingo legally available to any individual in California.”

Judge Bybee explains further:

“The electronic devices at issue in this litigation are, by any measure, slot machines. They bear no resemblance to true electronic aids such as card-minding devices that actually assist disabled persons in the play of live-call bingo. The VGT bingo machines pictured in the record feature buttons for “BET” and “BET MAX” as well as three spinning reels adorned with colorful 7s, SPINs, BARs, and cherries, all alongside a ‘payout schedule’ explaining how many credits are awarded when various icons on the spinning reels align. As with a slot machine, a player on one of the electronic bingo machines deposits a sum of money and is assigned a corresponding number of credits, with each credit having a monetary equivalent. The player chooses the size of his or her bet, and a game is completed within a matter of seconds. The game is utterly passive, as it does not require the player to do anything at all except bet. At the conclusion of each game, a graphic interface of slot machine-style reels accompanied by audio informs the player whether he or she has won. The player wins proportionately more money by achieving particular patterns, with some unusually rare patterns apparently paying out at rates hundreds of times the size of a player’s bet. In contrast to live-call bingo, a player on one of VGT’s machines can ‘sleep’ a bingo pattern for several minutes without the threat of losing his or her winnings.” *Id.* at 5-6.

Therefore, Judge Bybee concludes that the casino-style electronic gaming machines at issue “are simply not reasonable accommodations within the meaning of the ADA.” *Id.* at 5.

The Bureau of Gambling Control (Bureau) has retained Desmond C. Ladner as an expert in *VGT v. BGC*. Mr. Ladner is the owner and president of Video Research Labs, which provides expert and consulting services related to hardware, software, and system integration and operation of electronic slot machines, video poker machines and other gambling devices. Mr. Ladner played and observed the play of Video Gaming Technologies (VGT) and Capital Bingo’s electronic gambling devices, including those machines Kim R. Blackseth states are “electronic bingo machines.”

In his August 14, 2009 report, Mr. Ladner concludes that the VGT and Capital Bingo electronic gambling devices are inconsistent with the game of bingo. Mr. Ladner states that the machines’ manner of play, speed of play and method of bingo are not at all like bingo, but rather “mimic the operation of slot machines found in legal casinos in Las Vegas, Atlantic City and the State of Mississippi.” The only differences, which Mr. Ladner determined are insubstantial, are that the VGT and Capital Bingo electronic

gambling devices require multiple button presses to operate them, whereas the slot machines require only a single button press.

Mr. Ladner therefore determined that the VGT and Capital Bingo electronic gambling devices are not a necessary reasonable accommodation for the disabled to play bingo. Mr. Ladner also concluded that the regulations promulgated by the Commission for assisting the disabled in the play of bingo reflect a number of effective methods to assist the disabled in effectively playing live-call bingo.

Commission staff research also determined that the Bureau had retained Beth Brascugli De Lima of HRM Consulting, Inc. as another expert in *VGT v. BGC*. Ms. Brascugli De Lima is CEO and principal consultant for HRM Consulting, Inc., which provides expert, vocational and corporate consulting services related to the ADA. Ms. Brascugli De Lima played and observed the play of live-call bingo and the VGT, Capital Bingo and other similar electronic “bingo” devices, in addition to other research and conducting interviews of various bingo managers.

In her August 24, 2009 report,⁹ Ms. Brascugli De Lima concludes that the electronic video devices¹⁰ do not provide an accommodation for disabled individuals to participate in a live-call bingo game. She states that the players of the electronic video devices are not participating in live-call bingo. The electronic video devices do not mimic the live-call bingo game in the manner of play, speed of play or the environment in which live-call bingo is played. Rather, the electronic video devices are simply an electronic game available for an individual to play when the bingo hall is open. Ms. Brascugli De Lima concludes that the electronic video devices do not meet the criteria of providing an accommodation for the play of live-call bingo.

Therefore, again notwithstanding the fact that electronic bingo machines may not be used legally as an accommodation for individuals with disabilities to play live-call bingo, the electronic bingo machines are inconsistent with the game of bingo, and cannot be considered an accommodation for disabled individuals to participate in live-call bingo.

Comment No. 2: The electronic “card minder” does not resolve the issues faced in “live call paper bingo” including the issues of pace, physical manipulation of the device and daubing the numbers, cognitive recognition of numbers and patterns and sight and hearing limitations. It does not provide the desired “reasonable accommodation” for the “live call paper bingo” game.

Response: This comment was rejected. Section 12482(a) addresses the use of card-minding devices. Section 12482(a)(1) requires that if the operator of a bingo game offers card-minding devices, the operator shall reserve at least two card-minding devices for use by disabled players. Section 12482(a)(2) requires the operator of a bingo game to waive any fee for use of the card-minding devices for players with disabilities. Section

⁹ See documents added to the Rulemaking File October 1, 2009, Tab VI-5.

¹⁰ Ms. Brascugli De Lima’s use of the term “electronic video devices” refers to the same devices referred to as “electronic bingo machines” elsewhere by others.

12482(a)(3) requires the operator of a bingo game to allow a printout (or other evidence approved by the Commission) of a winning card in lieu of a traditional paper bingo card.

Judge Bybee states that “plaintiffs offered no evidence that electronic aids such as card-minding devices could not effectively assist disabled persons in the play of live-call bingo, and the evidence plaintiffs did offer indicated that legally-permissible aids such as card-minders could have accommodated the precise difficulties plaintiffs faced in the play of live-call bingo.” *See* Attachment 2, Concurring Opinion at 4 (emphasis in original).

The electronic card-minding devices contain several characteristics that assist disabled players participating in live-call bingo. The card-minding devices assist the disabled player with the pace of the game by allowing the bingo player to press buttons or a single button to have the called number daubed onto the electronic bingo card; by keeping track of every number live-called; and by alerting the bingo player when the player is close to bingo and has hit bingo.

The card-minding devices assist the disabled player with the physical manipulation of the device and daubing the numbers by allowing the disabled player to press buttons (or a single button) instead of having to hold and apply the dauber to a paper bingo card.

The card-minding devices assist the disabled player with the cognitive recognition of numbers and patterns by keeping track of all of the live-called numbers and alerting the bingo player when the player is close to bingo and has hit bingo.

The card-minding devices assist the disabled player with his or her sight limitations by allowing the bingo player to press buttons or a single button to have the number that was called daubed on the electronic bingo card and by alerting the bingo player, through tones, when the player is close to bingo and has hit bingo. The card-minding devices also assist the disabled player with his or her sight and/or hearing limitations by allowing magnification of the electronic card.

Thus, the card-minding devices provide a reasonable accommodation for disabled players to participate in the live-call bingo game. Further, if there are no card-minding devices available, or if the card-minding devices do not adequately address the disabled player’s inability to mark cards or announce “Bingo,” Section 12482(c) allows the disabled player to have another individual assist him or her in the play of bingo. Section 12482(a) thus assists those individuals with vision, hearing, speech, mobility and cognitive disabilities.

Comment No. 3: Section 12482(b) (which requires the operator of a bingo game to allow a disabled player whose disabilities restrict his or her ability to verbally announce “Bingo” to utilize a visual or audible signal to notify the operator of a winning pattern or “Bingo”) is not an accommodation because it involves watching another person play on your behalf.

Response: This comment was rejected. Section 12482(b) allows the disabled player to

utilize methods other than verbally announcing “Bingo” to notify the operator of a winning pattern or “Bingo,” including through the use of an audible or visual signaling, which may include a flag, paddle, light, horn, bell or whistle (or other means approved by the Commission). This section specifically enables a disabled player who cannot verbally announce “Bingo” to utilize other means to notify the operator of a winning pattern or “Bingo,” which allows the disabled player an opportunity to meaningfully participate in live-call bingo. This provision assists those individuals with speech disabilities.

Comment No. 4: Section 12482(c) (which requires the operator of a bingo game to allow another individual to assist the disabled player in the play of bingo, when the disabled player’s disabilities would restrict the player’s ability to mark cards or announce “bingo”) is not an accommodation because it involves watching another person play on your behalf.

Response: This comment was rejected. This section allows a disabled player to have another individual assist them in the play of bingo. It does not mean that the assisting individual is playing the entire game of bingo on behalf of the disabled player. There may be one or more activities in the play of bingo that a disabled player cannot perform without assistance. Section 12482(c) allows the disabled player an opportunity to get whatever assistance they need to enable them to meaningfully participate in live-call bingo. This provision assists those individuals with vision, hearing, speech, mobility and cognitive disabilities.

2. K. Greg Peterson, of KGP Law Offices, representing the CCBA, in a letter dated August 24, 2009,¹¹ offered the following comments/objections/recommendations:

Comment No. 1: Mr. Peterson states that his clients have concluded that the provisions of the proposed action do not provide a “reasonable accommodation” to the disabled for purposes of allowing them to play bingo.

Response: This comment was rejected. See Responses to Comments Nos. 2-4 from Kim R. Blackseth.

Comment No. 2: Mr. Peterson states that his clients have concluded that the proposed regulation does not address the issues of the vision, mobility and cognitively disabled population.

Response: This comment was rejected. The proposed regulation addresses the visually, mobility and cognitively disabled through the provisions highlighted in the responses to Comment Nos. 2 and 4 from Kim R. Blackseth. Sections 12482(a) and (c) (through the use of card-minding devices and assisting individuals) assist those individuals with vision, mobility and cognitive disabilities.

¹¹ Mr. Peterson attaches the same August 23, 2009 report of Kim R. Blackseth in both his August 24, 2009 and September 21, 2009 letters.

3. K. Greg Peterson, of KGP Law Offices, representing El Camino and the CCBA, in a letter dated September 21, 2009, offered the following comments/objections/recommendations:

Comment No. 1: Mr. Peterson states that his clients have concluded that electronic bingo machines remain the only current manner in which people with certain disabilities can be reasonably accommodated.

Response: This comment was rejected. See Responses to Comment No. 1 from Kim R. Blackseth.

4. William L. Williams, Deputy Attorney General, on behalf of the Department of Justice, Bureau of Gambling Control, in a letter dated September 30, 2009,¹² offered the following comments/objections/recommendations:

Comment No. 1: Mr. Williams states that electronic bingo machines do not constitute a reasonable accommodation as they are inconsistent with the play of bingo and their use is prohibited by law.

Response: This comment was accepted and considered in the adoption of the proposed action. See Response to Comment No. 1 from Kim R. Blackseth.

Comment No. 2: The proposed regulation provides an effective reasonable accommodation without resorting to the use of electronic bingo machines.

Response: This comment was accepted and considered in the adoption of the proposed action. See Response to Comments Nos. 1-4 from Kim R. Blackseth.

There were no further comments, objections, or recommendations received regarding the proposed action within the initial public comment period ending September 30, 2009, or at the October 20, 2009 public hearing.

There were also no comments received in response to the two notices, dated October 1, 2009 and December 23, 2009, regarding the availability of documents added to the rulemaking file.

¹² Mr. Williams attaches the August 14, 2009 report of retained expert Desmond C. Ladner to his September 30, 2009 letter.