

OREGON RACING COMMISSION

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Special Commission Meeting Minutes November 2, 2005

Individuals below are listed in order of speaking:

Stephen Walters, Chairman, Oregon Racing Commission
Jodi Hanson, Executive Director, Oregon Racing Commission
Victor Gallo, Vice President, International Racing Group
Julianne Davis, Commissioner, Oregon Racing Commission
Todd Thorne, Commissioner, Oregon Racing Commission
Lisa Metcalf, Commissioner, Oregon Racing Commission
Raul Ramirez, Assistant Attorney General, Oregon Department of Justice
Carol Morgan, Executive Assistant, Oregon Racing Commission
Brad Higbee, Representative, OHA
Jeff Gilmour, Commissioner, Oregon Racing Commission
Roger Nyquist, Self
John Hindman, General Counsel, TVG

Agenda: International Racing Group (IRG) Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Following is a transcript of the discussion:

Walters: I'm calling to order a special meeting of the Oregon Racing Commission on November 2nd, 2005. This meeting has been called for further consideration of the application for a Hub license by IRG, a subsidiary or an affiliate of Youbet.com. Before Commissioners Gilmour and Davis got on the line, I pointed out that one of our Commissioners has a severe time crunch and we need to move us to be in a position to have a vote by 10:30. What I'm going to emphasize in the time that we have are the follow up reports from our legal counsel and from our Executive Director concerning the assignments that they were given. And, if we have some time for public comment, we will take that, but we do have written materials; comments both for the application, against the application and some which simply ask questions regarding the application that will be part of our public record. And, I would ask Carol or Ginger to make sure that that occurs. So, just quickly to recap where we are. We had at the Commission's regularly scheduled October meeting, we had an agenda item that had been on the agenda for the 10 days since the agenda came out concerning this application. Our staff had done a considerable vetting of the application (unintelligible) that meeting took place we had a rather extended meeting and discussion of the application at that meeting. At the conclusion of that presentation, we called for a public comment or testimony received (unintelligible) time the Commission did not, however, reach a consensus on whether or not we should vote on the application at that point. But, in subsequent conversations with members of the Commission who were present at the meeting and in light of various financial and business reasons that required, or, at least, justified action by the Commission before the next regularly scheduled meeting, we agreed to hold this special meeting. First, we were going to try to hold it last week, but couldn't do that so it was postponed to this week. The assignments that were given or the issues that were discussed at the last meeting was the need for members of our staff to actually visit the call center for IRG in Curacao, to do the sort of inspection that we normally do with a Hub application. Jodi is there. Jodi if you could please give us a report on what you have found and please make it as descriptive, but as succinct as possible.

Hanson: Thank you, Chair Walters. In brief, I've spent a considerable amount of time with Victor Gallo and also at the IRG call center. I've looked at and discussed, basically, all capacities of the operation; the training, the security, the details, the itemization and reports of the customers. And basically, it's on par with any of our other licensed call centers that we have. The call center's been at this location for approximately five years. The security is excellent; it's locked, it's got security cameras, it has a back-up generator which is tested every Tuesday - the system shuts down the generator kicks in. There's dual lines - telephone lines for each caller. There's a business component of this in having the call center located here due to the employees who are multi-lingual and the expansion into the international market. Basically, I guess I could say that the level of transparency that's been demonstrated by IRG and Mr. Gallo is very high. I mean I commend them for that. I appreciated just the attention to all the details that I've looked at. I am very confident in our ability to regulate this operation based on the transparency as well as the tote operation being based in Oregon. The employees that work here have been here for, at least, three and a half years, long term. They've developed good relationships with the customers. At this point, I just stick with my former recommendation that this should be a licensed operation.

Walters: Jodi, this is Steve. Have you asked for access to any records of IRG?

Hanson: Yes.

Walters: And what sort of things - have you been able to review records, and if so what sort of things have you been able to review?

Hanson: Today's actually a really good day to be here because they're working on the monthly audit report that gets sent to Las Vegas. I've also looked at reports of customers, the credit for customers and have been privy to the system that they have set in place for monitoring the deposit and withdrawals of customers daily. Every time something happens, an e-mail is generated to Mr. Gallo and a number of other folks all the way up to the CFO level. Youbet (unintelligible) office when they purchased it, so there's good oversight as far as that goes. Does that answer your question?

Walters: Have you had access to account holder information?

Hanson: Yes.

Walters: Any problems getting access to that?

Hanson: None at all. None whatsoever. Like I said, the degree and level of transparency here has just been extremely high. These are reports that we can get in Oregon. This is information that is available easily to us.

Walters: Have you had any discussions with Mr. Gallo about the credit issue and about things they might be willing to do regarding that?

Hanson: Yes.

Walters: What have you found out?

Hanson: We've discussed the fact that with our rules and laws, at this point, issuing credit cards is probably an option that would fall within our rules and they're willing to do that.

Walters: Is that correct, Vic?

Gallo: That is correct, Chairman Walters.

Walters: Anything else to your report, Jodi?

Hanson: No, that's it in a nutshell. I'm very impressed with the operation.

Walters: Any questions by members of the Commission?

Davis: None further from me.

Thorne: I have just a couple of things, Chair Walters. This is Commissioner Thorne. I had just a couple notes and thoughts regarding the app. First off, my opinion of this application is of high standard. I commend IRG and Youbet for the material that they put together and I'm impressed by that material and I think that there – seems to me that there commitment to phone rules, etcetera, they've - in my mind, have certainly met that. With me, there's just a couple questions and one of them is: I want to be pretty clear on the legality of what we are doing here. I'm interested in what the AG's office has to say in regards to that.

Walters: That was going to be our next report, but if you want to go to that or do you want to ask another q-?

Thorne: Just one more – this isn't so much a question as it is just a note. I am one that my perception in regards to this is that the pari-mutuel industry faces a lot of competition from other gambling venues. And, I've always been of a mind that if there's a way to help us compete in that environment, I will tend to - my bias will tend to sway that way. That being said, I think there's always a balance that we strive for in terms of just making sure that our due process on the regulatory side and looking at applications like this, we go through the due process and make sure that in light of my bias, in this case, to be pro business minded with regards to the hub industry. I always seek the balance of making sure that we do due process with respect to our statutes and rules. That's one issue. The thing that has – I've always been interested, and it's more in my own mind, as I read through this. In approving, if we were to approve this application, I have a concern, which I'm not going to let it bother me too much, but the concern is we're dealing with precedent in regards to the competitive environment out there amongst all hubs. I applaud the supplemental information that we received. My question before I read the supplemental information was: How do we define a high volume player and how do we assure that that definition remains in tact? The reason I say that: this is a, I think, a competitive model that's going to be good for the industry. But, in terms of it being good for the industry, I don't want to set up – we got to make sure that we're - provide equal footing for all the competitors. I hate to have discussions where rules and statutes and law impedes fair competition. So, that's my note that I wanted on the record with regards to how IRG defines their niche. And, I will continue to be extremely interested in monitoring and making sure that that definition remains in tact.

Walters: I think those are very good points, Commissioner Thorne. I think that concerns all of us. That we are, if we approve this, we are talking about a niche industry as discussed at the last meeting. All those materials that were submitted are going to be part of the operating plan and any deviations from that, including changes of threshold levels or anything like that, would have to be approved by us. I think that's a very astute comment. Are there any other questions of Jodi, about her findings at the call center?

Metcalf: Not for me. This is Lisa Metcalf.

Walters: Let's go, then, to the legal issues. And, I think, everyone knows that there were some legal issues raised in a letter we received from the General Counsel for TVG. We sent that to our counsel at the Attorney General's office. And I'd like, Raul, if you can give us, again, a full, but succinct analysis of the (unintelligible).

Ramirez: I'll do my best and I'll try to be brief. I will qualify that with saying that there's still some work that needs to be done on the research. Basically, there are a couple of issues that I was

seeing and addressing. One has to do with the Interstate Horse Racing Act which was referenced in the TVG letter. That is an issue that we have addressed before with another application. Basically, I think what I can say on that is that, by its very terms, the Interstate Horse Racing Act doesn't apply. And so, the notion that IRG would not be able to comply with the act – that has no application. So I -

Morgan: Excuse me, Raul?

Ramirez: Yes?

Morgan: Can you speak up a little bit louder, please?

Ramirez: Yes. I'm speaking right into the phone. Do you want me to repeat that?

Morgan: I think we got it, but it was just hard to hear a little bit.

Ramirez: Okay. The second issue that I looked at has to do with the statement that IRG made that the Commission is acting beyond its scope of authority by licensing a hub that is not located in Oregon. Of course, the reference is made to the authorizing statute under 462.725. That is one interpretation of the statute that could be stated as TVG has done so. Another interpretation of the statute is that when you look at the authorizing statute in context, there seems to be, at the very least, the possibility that the legislature recognized that some or all of the operation of the hub would be outside of the state. What I refer to is that subsection two requires those hub employees and certain officers who are in Oregon to be individually licensed. So, that's the section that I think recognizes the fact that the entire hub, whatever that term is defined as under the rules, has to be here. So, that's another interpretation. The next step that I am taking is to review some legislative history to see if that sheds any light on the issue of the locality question. I don't believe that I will find much guidance there, but it's something that I feel I need to look at. So, that being said, the question that would remain for the Commission is: How is it going to interpret its statutes? And, obviously, you have some history in the past with interpreting the statute in a manner that is different from what TVG suggests. There is, at least, one other hub that has a call center, I believe, in Ohio or Pennsylvania.

Walters: -sylvania, that would be Xpress Bet.

Ramirez: Right. And – Excuse the train – You've done that in the past. You have some precedent. Basically, the issue of the legality and of a potential court interpreting this, the statute on review, the court would be looking at your interpretation of the statute to make sure that it's reasonable, to make sure that it's not inconsistent with your authority. On its face, I don't see that it is inconsistent. Although, I do recognize that there are various interpretations that are not all together – they're not all implausible either.

Walters: Raul, in situations such as this, where the statute is ambiguous, courts defer to the interpretation by agencies as long as they are reasonable, isn't that right?

Ramirez: Yeah, I think that's true, Mr. Chairman. There is some deference that would be given to an agency in interpreting its statutes and its rules. And, in particular, one thing that I would note here is that the authorizing statute is a very broad delegation of authority to the Commission in so far as all of the specifics of the regulation of the hubs really is left up to the Commission to develop the rules.

Walters: And, just so we're clear, the tote for this hub would be located in Oregon. The logistics of doing that is one of the reasons that we have had this hearing today. That is the case with respect to Xpress Bet and, I believe, Youbet.com. So, I believe, we have two precedents where we have, in fact, approved hub applications under similar, if not identical circumstances. And, of course, we have hubs such as TVG, which have their backup

centers in places like Colorado. Which for some reason they had to use that backup center, we would have a similar situation there. Any questions of Raul? Any other questions or comments by members of the Commission?

- Thorne: Mr. Chairman, this is Commissioner Thorne. My thought on the legality side: It seems to me that we have room to interpret that. We've done it before. There's probably precedent for it. My question is: In regards to this application, does it make sense for us to get a written opinion from the AG?
- Walters: Well, my thought about – we have oral advice from our Assistant Attorney General. In terms of asking for a formal opinion, that's a process that takes a long time. We have never done it before on situations like this. Raul referred to the interpretation of the Interstate Horse Racing Act that was offered by TVG. And, it basically goes to the question of whether the only reason hubs can simulcast is because it is authorized by the Interstate Horse Racing Act. The conclusion of the advise that we got before from the Attorney General's office was that that was not the proper interpretation of it. And if it were, for example, there could be no greyhound simulcasting which has been going on for some period of time. So, our practice in the past has not been to ask for formal opinion, among other reasons because that takes a long period of time, but to get either oral advice which now is on the record of our hearing or a memorandum. I suppose we could get Raul to summarize what he's (unintelligible) memorandum and make it part of our record.
- Davis: This is Commissioner Davis and as we've been speaking here, I've been looking through my statutes which, of course, I have read previous to our meeting, this meeting. Going back and making sure that what I remember is actually what was written. Looking at the authorizing portions of this statute, my interpretation is that the Commission does have broad discretion with respect to this particular issue. It is my opinion, as a Commissioner, that we do have the discretion to grant this license, if we so choose. That we are so prevented under the statutes and the authorizing portions of the statutes and that the oral advice that we have received from our counsel is sufficient to satisfy me that the legalities of our ability to license, should we so choose. I would not be opposed to having Mr. Ramirez summarize what he said in written form and submit it if the other Commissioners thought that was necessary. But, I'm satisfied from a legal point of view.
- Thorne: Chair Walters, this is Commissioner Thorne. I would - perhaps, recommending an AG opinion isn't what I'm after. What is the process if Raul's going to do a little bit more research in regards to language and statute - I'm sorry, statute and our rules. I think that's what I understood he was going to do. He does that and puts together a memo that would be part of the record on this issue. What's the process if Raul, in doing some more research, comes back with a detrimental opinion-?
- Walters: I suppose if we were to grant a license, we could say it's subject to confirmation by our Assistant Attorney General. As I understood what Raul was talking about was researching the legislative history of the hub legislation, not further research of our rules or statutes, and seeing if there was something in the legislative history that had any bearing on that.
- Thorne: Okay.
- Walters: But, certainly, we could make it, if we were to act favorably on the license, we could make it subject to a condition that the legal authority was confirmed by the research of the Attorney General. As I understand what he's saying right now, he's pretty satisfied we have the authority and I'm inclined to agree with Commission Davis, that we do.
- Thorne: Okay. I would appreciate that being part of this. The reason being, again, I applaud this approach towards making horse racing industry and pari-mutuels competitive given the back drop of the competitive environment. In doing so, I just want to make sure every one of our

"i's" and "t's" are crossed and dotted so that our perception industry wide remains fairly solid, if you know what I mean?

Walters: I agree with you and we can do that. Obviously, if he came up with an adverse conclusion, it would affect the licenses of Youbet and Xpress Bet, as well. But, I think that's appropriate.

Thorne: I appreciate that. Thank you.

Walters: Other questions or comments by members of the Commission? I think, at this point, given our time, I'm going to ask if there is a motion.

Davis: I move we vote.

Higbee: Chair Walters, Brad Higbee, one quick thing.

Walters: Brad, I'm not going to take public comment.

Higbee: I just need to correct the record from last meeting. A miss statement by the Director about US Off-track maintaining foreign tellers and operators: That isn't the case.

Walters: -kay. Fine. Thank you.

Higbee: There's no precedence for that.

Walters: You can submit it in writing, Brad. Is there a motion?

Davis: I move that, this is Commissioner Davis, I move that we approve the license of IRG with the caveat that it is subject to further review of the legislative history by our counsel and, of course, it will include the addendum, and the other – what's the word I want – the other limitations that Chairman Walters set forth in the record at the last meeting.

Walters: Which, I think, they have satisfied with the supplemental material. But, I think you're right, that would be considered part of the operating plan that we approve that could not be changed without our further approval. And, I would also ask, if you would be willing to add to that, a requirement that incorporates Mr. Gallo's agreement that they will issue credit cards to their (unintelligible) to deal with the credit issue. I, also, would like to have a quarterly report on the source market fees that are paid and the other activities that IRG undertakes to encourage its players to go to the race tracks which are described in the supplemental materials. Would you accept those, as well?

Thorne: Chairman Walters, Todd Thorne. Just one more note: Also, on an annual basis, I would like to have, sort of, a review, if you would, the IRG's betting base in regards to their niche market, if you know what I mean?

Walters: I think that makes a lot of sense and that certainly can be done. They have to get a license every year.

Thorne: That's fine.

Walters: And that can be done as part of their license application.

Thorne: Excellent.

Walters: But now, just so we're clear, the limits that they described to us are part of their operating plan.

Thorne: Correct.

Walters: So, unless they get our approval, that's the niche we're talking about which is a very high level of play and it's a very limited number of customers, telephone betting only; no computer robotic wagering, etc., etc.

Thorne: Excellent.

Walters: Is there discussion on the motion? I think we ought to probably call the role, Carol, since we're doing this by phone.

Morgan: Okay. Commissioner Gilmour?

Gilmour: No.

Morgan: Commissioner Thorne?

Thorne: Aye.

Morgan: Commissioner Davis?

Davis: Aye.

Morgan: Commissioner Metcalf?

Metcalf: Aye.

Morgan: Commissioner Walters?

Walters: Aye. Thank you all very much. I appreciate the Commissioners making themselves available. I appreciate the information that we got. I apologize very much for having to push this along, as I did, but I did think it was crucial for all of the members of the Commission to be able to express their views, hear the reports and to vote on this application. Thank you all very much and we are adjourned.

Nyquist: Commissioner Walters?

Walters: Yeah?

Nyquist: Now that we're done.

Walters: Unintelligible

Nyquist: I'll just send you an email.

Walters: Okay. Thank you. And Roger, you know, you can revise and extend your remarks if you would like to put something written in our record.

Hindman: This is John Hindman. I will take the opportunity to do that as well. Thank you.

Walters: Thank you very much.

Unknown: We all can? Cool.

Walters: - right. Thanks a lot.