

Comments of the iDevelopment and Economic Association on the  
North Carolina State Lottery Commission Proposed Rulemaking as applicable to Sports Wagering  
Marketing Affiliates & Licensing

November 17, 2023

## Introduction

The members of iDevelopment and Economic Association (“iDEA”), by and through its counsel, submit these comments on the North Carolina State Lottery Commission’s Proposed Rules (the “Rule(s)”). The North Carolina State Lottery Commission (“Commission”) is seeking input from the public, the sports wagering industry, and other stakeholders regarding the Rule. At this time, iDEA’s comment letter is focused on a specific provision that impacts sports wagering affiliate advertisers (also referred to as marketing affiliates or affiliate marketers) and the organization is also seeking clarity on what type of entities will be required to obtain a Sports Wagering Supplier license.

iDEA is a trade association organized exclusively to support and conduct research, education, advocacy, and informational activities to increase public awareness of the online gaming industry and the economic benefits. iDEA seeks to “grow jobs and expand online interactive entertainment business in the United States through advocacy and education.”<sup>1</sup> iDEA’s members represent all sectors of the internet gaming and entertainment industry, including operations, development, technology, marketing, payment processing, and law. Many of iDEA’s members will be participating in the North Carolina market. Members share the common goal of expanding American consumers’ access to secure and regulated online gaming.

As of the date of this submission, iDEA is comprised of twenty-three members, including: Anaxi, Bet365, Better Collective, Boyd Interactive, Catena Media, Continent 8 Technologies, Digital Gaming Corporation, DraftKings, Entain, Evolution Gaming, Fanatics Sportsbook, FanDuel, Gambling.com Group, Gamesys, Gamewise, GeoComply, Ifrah Law, Kindred, Light & Wonder, Playtech, Saiber, Sportradar, and Worldpay.

iDEA appreciates the Commission’s time and effort to create a regulatory framework for sports wagering and the opportunity to comment on the Rules. iDEA submits that the Rules can be improved if amended and clarified. Both industry stakeholders and consumers in North Carolina will benefit from the removal of unnecessary restrictions on third-party advertising

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<sup>1</sup> About iDEA, <https://ideagrowth.org/about/> (last visited Nov. 15, 2023).

contracts and rules that clearly define the types of entities which are required to be licensed as a supplier by the Commission.

Moreover, for the reasons explained below, iDEA urges the Commission to (i) do away with the restrictions on how third-party advertisers may be compensated; and (ii) provide clarification on the required licensing for affiliate marketers and other suppliers of services to sports wagering operators.

**A. The Rule 11-004(g) Effectively Prohibits Affiliate Marketers from Providing their Services to North Carolina Consumers**

i. What/Who is a Marketing Affiliate and their Advertising Strategy

Sports wagering marketing affiliates, commonly referred to as affiliates, are entities that promote or direct customer traffic to certain gaming operators. Affiliates, across all industries, provide and publish informational content to interested parties and are used as a common marketing practice and tool. Affiliate marketing is not unique to the sports wagering industry. Although, within the legalized sports wagering industry, consumers looking for sports betting options turn to affiliate websites, such as [Actionnetwork.com](http://Actionnetwork.com), [Gambling.com](http://Gambling.com), and [Legalsportsreport.com](http://Legalsportsreport.com), to assist them in finding the legal options available to them and evaluating deals or best odds being offered at any given time. Affiliate websites provide links and informative content such as expert reviews, comparisons of the products offered by gaming operators, available player incentives and other informational content such as gaming industry news and “how to” guidance. The affiliate sites typically also include information and resources on responsible gaming, including compulsive gambling self-tests. Successful affiliates act as gateways to the legal gaming operators with whom they choose to work, pulling individuals away from entering the illegal market.

As opposed to traditional “push” advertising, affiliates engage in “pull” marketing. Push advertising, such as TV ads, radio ads, social media ads, etc., is designed to entice consumers to a product. Otherwise stated, push advertisements push or encourage consumers to buy or engage with a certain business unprompted. It advertises to all, regardless of age demographics and product/service interest. Affiliates, however, do not generally engage in direct or push marketing.

Conversely, pull advertising, a strategy used by nearly all affiliates, is designed to provide information to consumers who are proactively searching for sports betting information. A prime example in a different industry is a travel website such as Expedia or Travelocity. When a potential traveler visits these websites, they already intend to book a trip. They are using these websites to evaluate all their options and learn about new offers or places they could stay. Like potential travelers visiting these websites, consumers that visit affiliate websites primarily do so through unpaid channels, including search engine optimization. Search engine optimization is the process of optimizing websites to make them more appealing to search engines, so they rank favorably in search engines' results pages for certain queries. It would be rare for a consumer to be shown advertisements from a marketing affiliate unless they were already interested in making a wager or learning more about legal sports wagering.

In an affiliate/operator contractual relationship, affiliates receive performance-based marketing compensation, such as revenue share and cost per acquisition (“CPA”).<sup>2</sup> Some form of performance-based marketing is permissible in all states where sports wagering is legal except Connecticut.<sup>3</sup> Operators either compensate affiliates on a performance metric basis, such as CPA on deposit, CPA on first wager, or revenue, because they allow for the most efficient marketing spend. Without such predictability and ensured results from affiliates, operators would have little to no reason to outsource marketing efforts.

A revenue share model, however, is not too different from CPA. In a CPA model, affiliates receive a one-time payment for each customer that “clicks through” from the affiliate site to the operator’s platform. This is a “one time” payment to the affiliate, irrespective of the customer’s spend on the operator’s site. In the revenue share model, operators have the option to pay affiliates over time for that same customer based upon the revenue that customer brings. The type of compensation is “agnostic” to the consumer – in other words, the consumer “clicks through” from the affiliate site to the operator’s regulated wagering site, and engages in sports wagering, without further interaction with the affiliate. Some have a misconception about the revenue share affiliate

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<sup>2</sup> Note that these are the same compensation models available for affiliates in other industries, the models are not unique to sports wagering.

<sup>3</sup> There have been discussions with regulatory authorities in Connecticut to remove this restriction. To date, we are not aware of an opposition to this regulatory change. Further, none of the states that restrict CPA and/or revenue share require vendor registrations or affiliate licensing.

compensation model – that it entices affiliates to promote their content to certain individuals more than others. However, this is not true and impossible. As explained below, the marketing affiliates are incapable of knowing who these individuals are and targeting them with any further content. Only the operator is aware who the customer is and what their wagering behavior is.

Marketing affiliates do not engage in direct marketing – they do not “target” any specific group of persons. Further, regardless of the compensation model, marketing affiliates only get paid for customer referrals after the customer is verified by the operators and determined to be eligible. Affiliates receive no benefit or compensation in connection with a restricted or ineligible person. Therefore, they have zero incentive to ever target such individuals.

Importantly, in the CPA or revenue share compensation model marketing affiliates never know who the customers are – meaning they have no ability to retarget their content. Once a customer engages with the marketing affiliate’s content in a manner to trigger their compensation, only the sports wagering operator will know anything about who that customer is. In the CPA or revenue share model, operators only provide marketing affiliates with randomized identification numbers for their customers and the associated compensation figures tied to that customer. Operators provide no other information to marketing affiliates. Prohibiting such forms of compensation will have no impact on the individuals targeted by marketing materials because the marketing affiliates are not engaged in the business of direct or targeted marketing and have no ability to target the vulnerable.

Further, responsible gaming experts have pointed out that marketing affiliates are beneficial for the industry because of their responsible gaming resources and information provided on their websites.<sup>4</sup> It is vital that the Commission understand and appreciate that marketing affiliates’ content is found by customers that are *proactively* searching the Internet for related content. Marketing affiliates are not engaged in the business of targeting people they think are

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<sup>4</sup> See *Responsible Gambling Resources & Tools For Sports Bettors*, THE ACTION NETWORK (last visited Sept. 22, 2023), <https://www.actionnetwork.com/general/responsible-gambling>; *Responsible Gambling*, LEGAL SPORTS REPORT (last visited Sept. 22, 2023), <https://www.legalsportsreport.com/responsible-gambling/>; *Responsible Gambling Center*, GAMBLING.COM (last visited Sept. 22, 2023), <https://www.gambling.com/responsible>.

more likely to place wagers. Their content is found on the Internet organically by individuals who have questions or concerns on where to place a wager.<sup>5</sup>

ii. Benefits of Marketing Affiliates in a Legal Market

Affiliates provide crucial aid in a legal and competitive market for two key reasons. First, one of, if not the ultimate, major challenge all legal wagering states face is aiding their licensees to capture market share from existing, entrenched offshore operators who have been active in states like North Carolina for decades. Offshore illegal sportsbooks have been able and continue to advertise freely to customers in all 50 states. Even today, offshore sportsbooks continue to obtain a significant share of customers. Offshore sportsbooks and those that advertise on their behalf frequently appear in search results like “North Carolina online sports betting”. A top priority and goal of affiliates is to reduce or fully eradicate offshore sportsbooks, ensuring that customers who wish to participate in a regulated and approved market do so only with North Carolina licensed operators.

Second, affiliates assist in facilitating and providing a competitive sports betting market. Restrictions on revenue share and CPA compensation limits competition by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful.<sup>6</sup> For instance, some smaller operators are unable to work with affiliates in Illinois, which prohibits revenue share, because their marketing spend is too low to pay affiliates a CPA.

Marketing affiliates are a neutral informational source for consumers to explore all licensed options in the market. Without affiliates present in a legal market, it is harder for consumers to be educated on brands that are less front facing or with smaller advertising budgets; thereby consolidating the power at the top and stifling the natural abilities for the market to be competitive. Such consolidation will hurt the North Carolina legal sports betting economy over time as much of the market share remains concentrated to one or two operators, with the true victims being North Carolina consumers who will be uninformed and left with fewer choices.

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<sup>5</sup> The conduct marketing affiliates engage in is like those provided by Consumer Reports that a potential consumer would find and review once they were interested in the product within the Consumer Report.

<sup>6</sup> Note that this may be part of the reason that Connecticut has not yet struck its restrictions. Connecticut law only currently permits three online sports betting operators.

iii. Current Impact of Rule on Marketing Affiliates Compensation

The current regulation prohibits revenue share and CPA compensation to affiliates, stating that “[n]o Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, such Operator *when compensation for such service is dependent on, or related to, the volume of Players, Wagers placed or the outcome of Wagers.*” From the outset to those unfamiliar with affiliates and their benefits, such prohibition could seem reasonable, but it will have detrimental effects to the North Carolina sports betting marketing. Consequently, the Rule makes it infeasible for an affiliate to enter into agreements in North Carolina.

Additionally, by prohibiting revenue share and CPA, the likely result will be that those that have a true interest in being educated and placing a wager in the legal market will not be able to effectively do so as takes place in other regulated jurisdictions. Additionally, as explained above, offshore sportsbooks will be more likely to continue prospering, and the market is likely to become consolidated and anti-competitive.

iv. Recommendations for Amending

Most states that have legalized sports betting do not regulate the compensation structures available to affiliates. In fact, most states have limited to no regulations at all in regard to marketing affiliates, with most not even requiring affiliates to register or obtain a license. It is our recommendation that the Commission strike sub-section (g) of Rule 1I-004, and instead focus on ways it can effectively license and register such affiliates.

As has been done in other legal wagering states, we suggest that if the Commission has concerns on certain compensations structures, then they effectively regulate and monitor those entities through elevated licensing requirements. For example, of the legalized states, Colorado, Michigan, New Jersey, and Pennsylvania have explicit elevated licensing requirements for affiliates receiving a revenue share compensation as opposed to the more traditional CPA compensation. Other states such as Kansas and Maryland only require licenses or elevate the level of license if a vendor/affiliate’s annual expected revenue from the state exceeds a certain dollar

threshold. Other states with registration or licensing requirements, like Virginia as one example<sup>7</sup>, demand the same level of registration/licensing from affiliates regardless of their compensation structure.

Marketing affiliates are vital to a legal sports wagering market. Through appropriate licensing any and all of the Commissions third-party advertising concerns will be assuaged. Therefore, we recommend striking Rule 1I-004(g) and instead providing a more structured licensing scheme for affiliates, perhaps being elevated, or differentiated depending on their payment structure.

## **B. The Rule’s Licensing Requirements are Unclear**

The proposed Rules lack meaningful clarity on who or what entities are subject to licensing requirements. Particularly, what types of businesses are considered Suppliers versus Service Providers.

### **i. The Commission Should Specify What Sorts of Entities Require Each License**

The Rules specify that Sports Wagering Operators, Service Providers, and Suppliers are required to be licensed by the Commission. However, the Rules insufficiently dictate what entities or types of businesses would qualify for each license. The Rule refers to the North Carolina Sports Wagering Law for the applicable definitions.

N.C. Gen Stat. § 18C-901(15) defines a Service provider as “a business entity that provides covered services to an interactive sports wagering operator and holds a service provider license.”<sup>8</sup> Covered services is also a defined term under the law and consists of:

Any service creating sports wagering markets and determination of sports wagering outcomes that involves the operation, management or control of sports wagering authorized by this Article. The term shall not include any of the following:

- (a) Payment processing and similar financial services.

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<sup>7</sup> Note that Virginia not only permits the relevant forms of affiliate compensation, but the definition of an affiliate recognizes that these are the foreseeable and feasible means of compensation. *See* 11 VAC § 5-70-10 (“‘Affiliated marketer’ means a person that is involved in promoting, marketing, and directing business to online gaming sites and has an agreement with a permit holder *to be compensated based on the number of registrations, the number of depositing registrations, or a percentage of adjusted gross receipts.*”) (*emphasis added*).

<sup>8</sup> N.C. Gen Stat. § 18C-901(15).

- (b) Customer identity, age verification, and geolocation services.
- (c) Streaming or other video and data that does not include the determination of odds or line information.
- (d) Telecommunications, internet service providers, and other similar services not specifically designed for sports wagering.
- (e) Other goods or services designed for use in connection with sports wagering.
- (f) Odds or line information provided by a sports wagering supplier to an interactive sports wagering operator or to a service provider.
- (g) Sports wagering platforms.<sup>9</sup>

Perhaps, and assumptively, the above listed categories of servicers would be considered Suppliers under the Law. Although, that also remains unclear. A “sports wagering supplier”, under the Law, means:

A person that provides services, goods, software, or other components necessary for the creation of sports wagering markets and determination of sports wager outcomes, directly or indirectly, to any interactive sports wagering operator or service provider involved in the acceptance of sports wagers, including any of the following: providers of data feeds and odds services, internet platform providers, risk management providers, integrity monitoring providers, entities engaged in facilitating or enabling sports wagering activities on behalf of, or in affiliation with, interactive sports wagering operators in places of public accommodation, and other providers of sports wagering supplier services as determined by the Commission. The term does not include a sports governing body that provides raw statistical match data to one or more designated and licensed providers of data and odds services.<sup>10</sup>

The Law is not clear on what designation is appropriate for each stakeholder in the industry, and unlike other state’s rules and regulations for sports wagering the Rule provides no further clarity on how the Commission would designate an applicable entity. We, therefore, request that the Commission reconsider the wording of its definitions and information within the Rule’s licensing sections to provide clarity and dictate to whom the licensing category applies. Providing clarity on the licensing distinctions will be beneficial to all entities engaged in the industry. Further, it will help Commission staff when they are asked upon launch and in the years to come how a certain entity should be categorized.

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<sup>9</sup> N.C. Gen. Stat. § 18C-901(4).

<sup>10</sup> N.C. Gen. Stat. § 18C-901(22).

ii. The Commission Should Reconsider Licensing Fees

As the Commission is considering which category is appropriate for industry stakeholders it should be cognizant that its licensing fees are proportionate to the services being provided. As currently contemplated in the Rule a Service Provider's License application fee would be \$50,000, and a Supplier's License application fee would be \$30,000.

The Commission should appreciate that, for many suppliers, these fees are not proportionate to the services they provide or the anticipated compensation they would obtain from activities in North Carolina. For instance, if North Carolina proceeded with licensing marketing affiliates these licensing fees would be an outlier: of the ten states that require CPA affiliates to be licensed the average licensing fee is \$5,715; and of the twelve states that require revenue share affiliates to be licensed the average licensing fee is \$10,170. Notably, North Carolina's neighbor to the north, Virginia, requires all marketing affiliates, regardless of the compensation structure, to obtain a vendor registration with a \$500 registration fee that is renewed every three years.<sup>11</sup>

As the Commission reconsiders and provides clarity on what types of entities fall into the intended licensing scheme, we encourage it to not require unduly burdensome and disproportionate licensing fees so that all suppliers, regardless of size, will find it economically feasible to participate and invest in the North Carolina sports wagering market.

**Conclusion**

iDEA thanks the Commission for considering its comments concerning improvements to the Rule. Please do not hesitate to contact the undersigned for additional information or clarification on the issues raised herein.

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<sup>11</sup> 11 VAC § 5-70-80.