

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC-19-062
Bally Technologies, Inc.)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission" or "MGC") is a state commission created under Chapter 313, RSMo (2006),¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. Bally Technologies, Inc. ("Bally" or the "Company") is a supplier of gaming machines, progressive systems, and casino management systems.
3. The Commission issued a Supplier license to the Company to provide gaming machines, progressive systems, and casino management systems, or other items directed by the Commission to a Class A or Class B licensee or to the Commission.
4. As the holder of a Supplier license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS²

5. On November 9, 2018, Bally shipped critical software to River City Casino, which had not been tested, certified, or approved for use in Missouri.
6. During a regulatory inspection on November 14, 2019, MGC identified two installations of the unapproved critical software.
7. This shipment was the fourth incident in 2018 of Bally shipping unapproved software for use in Missouri.

LAW

8. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation or penalties of an amount determined by the Commission.

¹ All statutory references are to RSMo (2016), unless otherwise specified.

² 20181119005

9. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, the following acts or omissions may be grounds for such discipline.

- (1) Failing to comply with or make provision for compliance with sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state or local law or regulations;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming[.]

10. Title 11 CSR 45-5.190 states, in pertinent part, as follows:

(4) Electronic gaming devices shall—

- (A) Be subject to testing prior to implementation within the state and at any time thereafter by the commission or an independent testing laboratory designated by the commission, and subject to review and approval by the commission for adherence to the regulatory and technical standards adopted or approved by the commission;

* * *

- (C) Utilize a communication protocol that is compatible with and interfaces with the communication protocol used by all online computerized data monitoring, data management, and ticket validation systems approved by the commission for use at licensed gaming establishments. Electronic gaming devices and any peripheral equipment or devices, including the equipment's or device's operating systems and software, shall, prior to approval for use within the state, be tested for interoperability by a commission-approved independent testing laboratory to ensure compliance with this subsection. Once approved, no modifications shall be made to said gaming devices, peripheral equipment, systems, or software that would cause them to be non-compliant with this subsection[.]

11. Title 11 CSR 45-5.225 states, in pertinent part as follows:

- (1) Prior to any new technology being certified for the Missouri jurisdiction, the manufacturer shall consult with the commission to assure such new technology would be compliant with Missouri's regulations.
- (2) Effective September 30, 2014, the commission will become the sole approval authority for all gaming devices and associated equipment and slot accounting systems. Suppliers, Class A, and Class B licensees must receive an authorization letter from the commission before such gaming equipment and slot accounting systems are considered "approved" for use in the state of Missouri.
- (3) Effective September 30, 2014, gaming equipment and slot accounting systems actively in service at Class B licensees' facilities will remain in an approved status. Supplier, Class A, or Class B licensees must notify the commission prior to placing any gaming equipment or slot accounting system into service which has been previously certified by an ITL, but was not actively in service in Missouri on September 30, 2014, to be reviewed for approval by the commission. The commission will issue approval for such request, provided such gaming equipment or slot accounting system does not contain any known malfunctions or anomalies.

12. Under 11 CSR 45-5.237(2), "critical program storage media shall be approved for use in the state prior to shipment and shall be shipped separately from electronic gaming devices unless otherwise approved in writing by the commission."

VIOLATIONS

13. The actions or omissions of employees or agents of the Company as described above constitute the shipping of operating system software to River City Casino which had not been previously tested or certified, which is a violation of 11 CSR 45-5.190, 11 CSR 45-5.225 and 11 CSR 45-5.237.
14. The Company is therefore subject to discipline for such violations under §§ 313.805(6) and 313.812.14 (1) and (2), RSMo.

PENALTY PROPOSED

15. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company, as the holder of a Supplier license.

16. THEREFORE, it is proposed that the Commission fine Bally Technologies, Inc., the amount of \$5,000 for the violations set forth herein.

Brian Jamison
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this 30th day of May, 2019, to:

Michael Fries
VP / Regulatory Affairs / Deputy CCO
Bally Technologies, Inc.
6601 S. Bermuda Rd.
Las Vegas, NV 89118

Brian Jamison
Chairman
Missouri Gaming Commission