NEW YORK CITY

TAXI AND LIMOUSINE COMMISSION

CREDIT CARD SURCHARGE RULES

PUBLIC HEARING

Held on May 15, 2014
33 Beaver Street
New York, New York
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Reported By:

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ELIAS AROUT, Commissioner
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NORA CONSTANCE MARINO, Commissioner
CHRIS WILSON, General Counsel

SPEAKERS:

CHRIS TORMEY, Director of Applicant Licensing, TLC
JO RAUSEN, Director of Technology Programs, TLC
RICHARD THALER, OMNI Media
BILL LINDAUER, NYTWA
BHAIRAVI DESAI, NYTWA
PETER MAZER, MTBOT

CHAIRWOMAN JOSHI: Good morning. The time now is 10:15, and I'm going to make a motion to go into Executive Session to discuss an appeal from a discretionary revocation.

All in favor?

(Chorus of ayes.)

CHAIRWOMAN JOSHI: So, with that, we'll go into Executive Session and probably resume the public meeting in about 15 to 20 minutes.

(Whereupon, the Commission retires to Executive Session and returns.)

CHAIRWOMAN JOSHI: The time now is 10:40, and we're going to start our public -- the public portion of our meeting.

First, to report back from Executive Session, we, the Commission, reviewed an appeal from a discretionary revocation and decided to modify the penalty to rescind the revocation and instead order a reinstatement with a mandatory program attendance for three to six months.

Next is the adoption of the minutes. We have the minutes from April 30th, 2014. Those in favor of adopting?

(Chorus of ayes.)

CHAIRWOMAN JOSHI: And, with that, the minutes are unanimously adopted.

Just a note from -- we had a meeting not that long ago, so there's not too much to report, other than we've been doing a lot of town hall meetings on Vision Zero, and they've been extremely informative with input from the communities in Queens, Staten Island and the Bronx, and we have several more scheduled. So we'll continue the process to gather input to inform our policies on Vision Zero.

We also attended a Vision Zero hearing following last month's Commission meeting on several bills that will increase enforcement tools of the TLC against licensees who are unsafe on the road. And in the budget that's finalized, we received $1.1 million towards our Vision Zero initiatives, which will include funding for a safety squad that will target speeding drivers. So we think these are all important steps in the right direction towards the Vision Zero goals.

On the enforcement side, we've been busy. Year to date, we've seized 221 vans and, other than vans, 2,861 vehicles. So things have been extremely busy on that end.

We also have a few new employees that I'd like to announce: Community Assistants Hashim O. Haynes and Gabriel Vasquez, Clerical Aide Ann Valdez, and Assistant Commissioner Izabella Vais.

And finally, since it is Throwback Thursday, just a little shout out for people that like the Checker Cab, there is going to be a car show in Greenpoint, Brooklyn on June 20th, which will feature 50 vintage Checker Cabs. And if anybody needs more information, Allan Fromberg is available to give that to you.

So, with that, I think we're going to move on to the other portions of our meeting. And first, starting with the base approvals. Chris Tormey.

MR. TORMEY: Good morning. My name is Chris Tormey, director of Applicant Licensing at the Taxi & Limousine Commission. This month we have three new bases for approval with none for denial.

CHAIRWOMAN JOSHI: All those in favor?

(Chorus of ayes.)

MR. TORMEY: Thank you.

CHAIRWOMAN JOSHI: Next, we're going to move to our E-Hail presentation. On the agenda, we have a resolution in front of the Commission to extend the E-Hail Pilot Program for an additional year. It would expire by the end of May 2014, and this resolution would extend the pilot for another year, till the end of May 2015. And Joanne Rausen is going to do a presentation on the third quarter findings of the E-Hail Program.

MS. RAUSEN: Good morning, Commissioners. I'm Jo Rausen, and I'm the Director of Technology Programs here at TLC. I'm going to be giving you an update on the

E-Hail Q3 program, or Pilot Program. We're going to be looking at numbers from the first nine months of the E-Hail Pilot thus far.

So E-Hail adoption continues to rise. We're seeing more and more passengers and drivers using E-Hail apps, and we're actually up to almost one and a half million E-Hail requests. At the same time, as we're seeing the E-Hail is increasing in numbers of users and requests, we're also seeing that users seem to be a little bit smarter about where they're using E-Hail apps and when they're using E-Hail apps. So this chart actually shows over time both the adoption as well as the success rate. And we can actually see that this orange line, which is the fulfillment rate for E-Hail requests, has gone up steadily over the program. We're all the way up to around 38 percent. At the beginning of the program, we saw it was a little bit less than 20 percent. So folks seem to be smarter about where it makes sense to use E-Hail apps.

If we look at where passengers are using E-Hail and where those fulfillment rates are actually happening, we're seeing that, on this map in yellow, is where the highest fulfillment rates are happening. And those are actually in northern Manhattan, in Brooklyn and in Queens. And actually the lowest fulfillment rates are actually being seen in kind of the outer edges of the five boroughs as well as in central Manhattan. So we're really seeing that these success rates are more happening in the outer boroughs and in northern Manhattan.

I do want to point out that, in the grand scheme of things, E-Hails are only accounted for less than half a percent of all taxi trips. So only a few taxi trips are actually originating from E-Hail requests in the grand scheme of things. If we look at where those taxi trips are that have originated from E-Hail versus where the general pool of taxi trips are, we're seeing that it's very pronounced that this is in northern Manhattan and the outer boroughs. 75 percent of all E-Hail trips were picked up either north of Manhattan, or north of 110th in Manhattan, and in the outer boroughs, excluding the airports. That's compared with less than 6 percent of all taxi pickups. So what we're really seeing is a continuation of the trends of what we saw in the first two quarters, but just more pronounced, that people are really using E-Hail in areas that are typically under-served by taxis.

Of particular note on this chart, Brooklyn, north of Prospect Park, represented 52 percent of all E-Hail pickups versus only 2, almost 3 percent of all taxi pickups.

Looking at when passengers are using E-Hail, we're seeing very cyclical patterns that kind of mimic the overall taxi pickup patterns in terms of the days of the week and times of day. With E-Hails, actually, distributed a little bit earlier in the morning, we're seeing 22 percent of E-Hails are early in the morning versus only 15 percent of all taxi trips, but generally mimicking the overall taxi patterns.

Turning now to the impact on

our TLC's regulated industries, looking at yellow taxicabs, the average number of daily trips has decreased just a little bit compared to same time last year. We're actually seeing that the average farebox amount is actually up slightly. So while there are fewer trips, drivers are taking home a little bit more than they were compared to same time last year. When looking at drivers that used E-Hail apps, compared to their peers, we're actually seeing that they're averaging approximately the same number of trips per shift as their peers that did not use E-Hail. This is actually a change from the previous two quarters where we saw that they were actually doing about one more trip per shift. We did, however, see that overall drivers have been more highly utilized in this quarter; in at the end of February, they were doing around 27 trips per shift versus early in the year, only 22, 23 trips per shift. So it may be that E-Hail is not making that much of a difference because they're having no trouble finding trips on their own.

Turning to the FHV industry, across the board, we're seeing a continuation of the trends that we had seen previously, and that is that the number of licensed bases, vehicles and drivers has increased from 2012 to 2013, 2014. This seems to indicate that the industry is still growing and very healthy. We still got people that are interested in becoming licensees here with the TLC.

If we dig into that a little bit, we actually have been surveying passengers over the full pilot thus far about opinions about

E-Hail, where they're using E-Hail, et cetera. And one of the questions we asked them is how they would have gotten to their destination if they had not used E-Hail. 51 percent indicated that they would have hailed a taxi even if they hadn't used an E-Hail app. And the next biggest category was passengers that said that they would have used some sort of alternate, non-TLC transportation route, like biking or public transportation. Only a minority, 13 percent, indicated that they would have called or hailed a car service. So if we're looking at the less than half million successful E-Hail trips that have happened and we apply that across all of our FHV licensed vehicles, this is actually well less than one trip per day per FHV. So we already know that the number of trips is not a lot and it's not likely that these trips have really had any sort of impact because there just aren't that many of them.

Digging more into the passengers' side, passengers continue to be split over the value of E-Hail, with a quarter of them reporting that E-Hail trips were more convenient and another quarter of them reporting that street hails were more convenient, and even more reported that the convenience really varies by trip. Relatively few trips originated from E-Hail, as we mentioned, so wait times were not really likely to have been impacted by E-Hail because there's just plenty of taxis that are available and people are still street-hailing for the majority of trips.

E-Hail apps are being used

by passengers of all ages, so we're seeing a nice distribution there with a quarter of them being aged 65 or older.

Compared to same time last year when we start looking at complaints, refusal complaints were pretty similar to what we saw last year, and unsafe driving and cell phone use complaints actually dropped by almost 11 percent. Obviously, safety is a big topic in New York City right now, so we have been really clear that E-Hail apps need to make sure that they're operating in a safe manner. We have requirements that they have to be locked down while the vehicle's in motion to discourage distracted driving. The only thing they can do is a one-touch acceptance. And so we dug in a little bit into the collision data that we received from DMV and we're seeing that actually only 2.7 percent of the drivers who participated in E-Hail were involved in collisions over the pilot versus 6.2 percent of drivers who did not participate in E-Hail during that same time period. So it doesn't look like E-Hail is leading to increases on safe driving as well. It may actually be that once a driver is able to accept an E-Hail, they are able to pay more attention to the road and where they're going rather than scanning for their next fare.

So, in conclusion, the data that we've evaluated over the first nine months of the pilot has indicated that E-Hail apps are increasing the efficiency that passengers and drivers can find each other, particularly in certain low-trafficked areas, and it looks like it's doing so without negatively impacting the FHV industry or the general taxi-hailing public.

And so we definitely are interested in continuing to monitor this. We've got the next quarterly report that should be coming out at the end of the first year, which is at the end of May. Once we get all of that data in, we are excited to tabulate it for you guys and share it with you and look forward to giving you those results.

If you have any questions, I'm happy to answer them.

MS. MARINO: I have a question. What are the main companies that are doing E-Hail? There's Uber and who else?

MS. RAUSEN: Uber was the first one, followed by Hailo, is the second one that was approved. Taxi Magic is the third one, and then we actually just approved in April a fourth company, Mobile

Knowledge Corporation. To my knowledge, they have not yet launched. They got their approvals, and now they're, you know, working with folks to actually get users, et cetera, but they haven't launched yet. So there are four.

MS. MARINO: And what is the criteria to approve these companies?

MS. RAUSEN: They've got to meet all of the terms that are outlined in the pilot proposal and in the MOU. This includes going through an application process at Licensing to make sure that they have all of the requisite insurances. And then my team actually goes out and reviews their documentation and tests the systems to make sure that they're in compliance with all of the things, like the vehicle -- or being locked down when the vehicle's in motion. I think we have some radius restrictions that make sure you can only hail with E-Hail within a half-mile radius within Manhattan and a one-and-a-half-mile radius in the outer boroughs. So we check all of those requirements and make sure that the apps are in compliance. And if everything is in line, that's when we'll approve them.

MS. MARINO: Are they monitored? I mean, for example, when you first say, okay, everything checks out and they have these radius limits, are they followed up on or --

MS. RAUSEN: We actually require, similar to all of our other technology programs, like T-PEP and L-PEP, that we have access to test credentials and test versions of the app so we can go

out at any time. And we do --
occasionally they'll push an update
to an interface and we'll, you
know, test and make sure that it's
still in compliance with the rules
and we have access to do that at
any time.

MS. MARINO: Okay. Thank
you.

MR. RAUSEN: No problem.
Any other questions?

MS. POLANCO: I'm sorry, but
I missed -- the refusal complaints,
you say it has to remain constant
or --

MR. RAUSEN: Yeah, it's been
pretty -- it's pretty similar to
the same levels as last year and --

CHAIRWOMAN JOSHI: Jo, I'm
sorry, is it -- when it's refusals,
it's all refusals, it's not --

MR. RAUSEN: Yes.

CHAIRWOMAN JOSHI: -- a
subcategory of refusals related to

E-Hails, right?

MS. RAUSEN: Correct. I'm looking at all refusals.

CHAIRWOMAN JOSHI: All refusals.

MS. RAUSEN: We do have separate categories for E-Hail. We've actually only received a handful of complaints that have actually been categorized as E-Hail; I think it's something around 25 or 26 total complaints over the nine months. And the ones that we do, I think a couple of them have actually been related to refusals. But because all of this is logged, we have, you know, information from the E-Hail apps about what happened on the passenger and driver side, and then we have information from the T-PEP about when the driver is going on and off duty, because that's now controlled through T-PEP, and the roof light, we're actually able to research those pretty rigorously and find out whether or not they're valid complaints and prosecute them.

MS. POLANCO: Thank you.

MS. RAUSEN: Any other questions?

(No response.)

MR. WILSON: Okay. So for Commission action today is a resolution to extend the E-Hail Pilot. But you originally approved the pilot in December 2002 and modified the pilot slightly in February of 2013 --

MS. MARINO: 2012.

MR. WILSON: 2012, I'm sorry. And modified the pilot in February 2013. It didn't actually begin until the first participant was approved in April of 2013. The pilot will expire on May 31st, 2014 so the staff is proposing that the, and the resolution proposes, that the pilot be extended for one year until May 31st, 2015. All requirements of the pilot will remain unchanged as originally approved, except the quarterly reporting the staff is doing. We believe they've proposed that we just do semiannual reporting. We think that that will give a fuller picture of what's actually happening.

The final resolution for actions was posted on the Commission's website and transmitted to the Commissioners on May 12th of 2014 as required by local law.

MS. WEINSHALL: Madam Chair, can I ask a question?

CHAIRWOMAN JOSHI: (Indicating.)

MS. WEINSHALL: When does this stop being a pilot and when does it begin to be permanent?

CHAIRWOMAN JOSHI: We would -- to make it permanent, we have to do permanent rule-making. So this gives another year extension to the pilot within which we can do permanent rule-making. So it could end earlier if the Commission approves permanent rules before the end.

MS. WEINSHALL: And what would be the impetus to make it permanent rule-making?

CHAIRWOMAN JOSHI: The impetus would be that it is a program that is successful, that's working, that's not impacting negatively the other industries, that is, you know, an easier way for passengers to get for-hire transportation. So it would make sense to do permanent rules because the pilot has been deemed a success.

MS. WEINSHALL: Seems to me the statistics are pretty impressive --

CHAIRWOMAN JOSHI: They're pretty impressive as they are --

MS. WEINSHALL: -- as they are.

CHAIRWOMAN JOSHI: -- and I doubt that we're going to need a full year of analysis to, you know, develop permanent rules. And, in fact, we've already drafted permanent rules. So there's probably some modifications that would be necessary to the permanent rules, but this is merely a way to give us some additional time because otherwise the pilot would end at the end of May.

MS. WEINSHALL: Okay, thank you.

MS. MARINO: So when you say it could be -- I'm not sure if this is on -- when you say it could be less time, we don't have to wait out a year to actually visit this --

CHAIRWOMAN JOSHI: Exactly, yeah. And it, you know, from all indications, it's not -- it doesn't seem that waiting a full year would actually give us anything more, it's just that we should at least have the benefit of four quarters of reporting, which would give us the full year of a pilot. And this extension will allow us to do that.

MS. WEINSHALL: You know, I just want to say that when we first embarked on this pilot, we thought the world would come to an end, that everybody --

CHAIRWOMAN JOSHI: It hasn't.

MS. WEINSHALL: Right. -- that everybody would just use E-Hail, that you wouldn't be able to go on the street and hail a cab, that they'd all be involved. And I think the data has shown that that is not the case and that part of the pilot was to show that certain neighborhoods, we believed, were being under-served by the yellow cab industry. And I think many of those neighborhoods have shown that they are using E-Hail, obviously, because that's one of the many -- only options available for them.

So I would encourage the staff to move quickly to make this permanent.

CHAIRWOMAN JOSHI: And I think some of -- a lot of the fears about the program have been dispelled thus far about whether it would have a discriminatory effect against certain segments of the population, whether there would be refusal complaints. And I think one of the sort of fundamental understandings at the beginning, that the strong tradition of hailing within Manhattan was not going to be undercut, has proven to be true. This is sort of an addition to the ability to hail, but the core of taxi business is still going to revolve around the hand in the street in Manhattan.

MR. WILSON: So we can bring the resolution for a vote. I can do a roll call.

Commissioner Arout.

MR. AROUT: For it.

MR. WILSON: Commissioner Joshi.

CHAIRWOMAN JOSHI: For.

MR. WILSON: Commissioner Weinshall.

MS. WEINSHALL: For.

MR. WILSON: Commissioner Gonzales.

MR. GONZALES: For.

MR. WILSON: Commissioner Polanco.

MS. POLANCO: For it.

MR. WILSON: And Commissioner Marino.

MS. MARINO: For.

MR. WILSON: Thank you.

The next item on the agenda is a resolution to extend another of the Commission's pilots, the Electric Vehicle Taxi Pilot, for one year. The pilot was originally approved in October 2011, but did not begin until the first vehicle entered service in June of 2013.

The staff proposes to continue the pilot with the three current participants so that it can better and more fully study the innovative technology and the advantages and disadvantages of the technology represented.

The final resolution for action was posted on the Commission's website and transmitted to the Commissioners on

May 12, 2014, as required by local law.

And if there are no questions...

MR. AROUT: Move it.

MR. WILSON: Thank you.

So I'll call for a vote, again, by roll call.

Commissioner Arout.

MR. AROUT: Yes.

MR. WILSON: Commissioner Joshi.

CHAIRWOMAN JOSHI: Yes.

MR. WILSON: Commissioner Weinshall.

MS. WEINSHALL: Yes.

MR. WILSON: Commissioner Gonzales.

MR. GONZALES: Yes.

MR. WILSON: Commissioner Polanco.

MS. POLANCO: Yes.

MR. WILSON: And Commissioner Marino.

MS. MARINO: For. Yes.

MR. WILSON: Okay, thank you.

Okay. And then the next item on the agenda today are the Commission's rules to increase the credit card surcharge payable by medallion lessees under the Commission's lease cap rules. The current TLC rules call for review of credit card usage every six months in a formula for considering whether the existing credit card surcharge should be increased or left unchanged.

Based on the most recent review, the Commission is recommending an increase in the surcharge of $1 for daily shift leases, $6 for weekly shift leases, and $12 for weekly medallion only and DOV-type leases.

The rules were originally published in the City Record on

March 21st, 2014, with a comment deadline of April 21st, 2014. One written comment was received and has been forwarded to the Commissioners. No changes were made to the rule for consideration today from the rule originally proposed back in March. The final rule for action, which was unchanged, was posted on the Commission's website, and transmitted to the Commissioners on May 12th, 2014.

We have a number of speakers today. I will call the speakers in order. I would ask you, when you begin to speak, to state your name, and if you're affiliated with an organization, to state for the record the name of the organization. And I would remind people that they have three minutes to speak.

The first speaker we have

listed is Richard Thaler.

MR. THALER: Chair Joshi and Commissioners, good morning.

Full-time lease drivers are now required to pay over $3,000 annually to receive their fare revenue from card fare payments after paying all operating costs. This proposed rule will increase the cost to lease drivers by 10 percent, or over $300 annually. If it is likely that the percentage of card fare payment continues to approach the rate in express checkout retail environments, drivers will be paying over $5,000 annually.

The T-PEP rule passed on March 31st, '04, based on Mayor Bloomberg's review and approval of the original T-PEP reference design in February 2004, was compliant with Payment Card Industry and MasterCard Visa Rules for merchant payment card acquiring that requires each independent, contracted driver to either choose or become the merchant of record and be charged the competitive Interchange Plus rate for qualified cards usually under 2 percent.

Other than taxis, no other TLC [sic] business license, whether a barber shop or a restaurant or any retail business, is required to process credit and debit cards payments only with processes specified by the New York City licensing agency.

The Commission's unprecedented T-PEP 2005 implementation procurement conflicted with and violated Payment Card Industry and MasterCard Visa Rules, which define the merchant as the individual or entity providing the product or service. Under the procurement, the original T-PEP rule, which set the drivers' surcharge cap at 5 percent, violated these lease drivers' right to choose or become the merchant of record and benefit from open-market competition.

While hundreds of certified card-processing gateways compete in a very competitive card-processing industry, without justification, the TLC has created a barrier to entry for certified payment gateways by bundling card payment with other T-PEP features, denying drivers access to the lowest competitive processing charges.

Before any increase in the lease cap for card processing is considered, the Commission should reexamine its policy and properly separate card processing from other T-PEP features and functions in order to achieve compliance with Payment Card Industry rules and practices and make available the latest advances in no-fee, person-to-person mobile payments, as reported in yesterday's Wall Street Journal and the subject of a recent mobile payment provisional patent filing.

As comments regarding this issue have been previously presented to resolve this violation, once a driver has logged on to the T-PEP system, fare payment processing can be routed by the T-PEP vendor to the payment gateway of the drivers' choice using the standard payment card message format, ISO 8583.

However, until compliance with Payment Card Industry merchant rules is adopted and integrated with approved T-PEP vendor systems, the excessive card-processing cost to drivers can be remedied in two ways: applying common point-of-sale debit/credit payment practice in compliance with Dodd Frank card payment rules, a discount for cash payment could be applied to a new rate of fare increased by 5 percent. Alternatively, a 5 percent surcharge could be applied to credit/debit card fare payment under Federal Judge Rakoff's decision enjoining New York State from preventing passenger credit/debit card-holder surcharges.

In any event, lease drivers should at least be given the option to either be charged 5 percent for each card fare payment transaction or choose the flat charge added to the lease cap.

Hope you give this consideration. Thank you.

MR. WILSON: Thank you.

MS. MARINO: I have a

question. Didn't -- I thought that drivers didn't want the 5 percent. I thought -- didn't we have this whole thing last year, that they didn't want the 5 percent?

MR. THALER: There are two issues here. The question is, as I discussed, of 5 percent was mandated as a lease -- as a cap in the original T-PEP procurement. What I claim is that open competition would allow various -- there are hundreds and hundreds of payment gateways that process cards for retail.

CHAIRWOMAN JOSHI: So, Mr. Thaler, the issue of what the appropriate percentage is is not actually the subject of this rule.

MR. THALER: Well, it causes you to evaluate the increase.

CHAIRWOMAN JOSHI: It is part of the review process, but the 5 percent is a separate TLC rule.

MR. THALER: Oh, totally.

CHAIRWOMAN JOSHI: Yes.

MR. THALER: Totally. I'm just suggesting that open market would allow competition, and so that could be reexamined, or you could change the rate of fare in the two ways I mentioned.

CHAIRWOMAN JOSHI: Okay. Thank you very much.

MS. MARINO: Thank you.

CHAIRWOMAN JOSHI: And to your question, Nora, there were -- previous -- prior to the fare and lease cap rules that went into effect at the end of -- 2012, right?

MR. WILSON: (Indicating.)

CHAIRWOMAN JOSHI: -- the end of the 2012, the drivers paid 5 percent of all their credit card revenue --

MS. MARINO: Right.

CHAIRWOMAN JOSHI: -- as --

at the end of the shift to cover transaction costs. In order to encourage drivers not to refuse credit card fares, because they were reluctant to give -- pay the transaction cost --

MS. MARINO: I remember all that. We agreed on a flat --

CHAIRWOMAN JOSHI: -- we changed it to an upfront flat fee based on the then percentage of credit card usage, which was probably between 40 and 50 percent. But I'll rely on one of our good policy analysts in the back to give me the exact percentage, but closer to 40 percent.

The credit card usage rate has gone up; it's now closer to 55 percent. So the review process is a method of reevaluating the flat fee, which is -- you're correct -- based on a rule that requires --

MR. THALER: Yeah. May I --

CHAIRWOMAN JOSHI: -- 5 percent as the understood transaction fee costs.

MR. THALER: May I add, concerning my last remark, if you read the rule about the lease cap for this purpose, $10 going to $11, the way it's written, it seems like the lessor has the right, 105 plus 10, has the right to apply that card-fixed rate to the lease cap. But I think that the driver should also have the option of whether to pay 5 percent on each transaction and pay the basic lease rate or pay the bundled. I think they should have -- it should be two ways.

CHAIRWOMAN JOSHI: Okay. Thank you very much for your input.

MR. WILSON: And the next speaker is Bill Lindauer.

MR. LINDAUER: Good morning, everybody. I'm Bill Lindauer. I'm with the New York Taxi Workers Alliance. We represent the 50,000 licensed drivers, as opposed to the trade associations that represent a handful of taxi tycoons and do not work in the drivers' interest, for the most part -- well, virtually, not at all. I'm giving the benefit of the doubt.

When the TLC passed this rule, it was not the Commission's finest moment. It was because you were afraid of a lawsuit, a meritless lawsuit, just like the ones they filed against us for the health and disability fund.

Incidentally, remember last time, there was a disabled cab driver here last hearing? He would be getting money if that fund wasn't in effect now. But, hey, because they weren't for the drivers' interest, right, so he didn't get any money.

Congratulations.

MR. FROMBERG: Stay on topic, Bill. Stay on topic.

MR. LINDAUER: Okay.

Getting back to the -- so these people do not need the money. Warren Buffet doesn't need a tax cut, he says. These people do not need a percentage increase out of the drivers' pocket. This is an insidious way -- not insidious, actually -- a diabolical way of grabbing a lease cap increase by the backdoor route. And this is unconscionable and morally repugnant. Thank you.

MR. WILSON: Thank you.

The next speaker is Bhairavi Desai.

MS. DESAI: Good morning. I am Bhairavi Desai, executive director of the New York Taxi Workers Alliance.

Actually, if I may, I'd like

to answer Commissioner Marino's question. I think that is the question of the hour.

At the time that the rule was passed from 5 percent per transaction to a fixed amount, you know, it was part of an overall fare raise. And, you know, there was an expectation and a belief that the amount, that that $10 amount would only be negotiated as part of, you know, another fare raise. And as Bill said, what we're doing today is basically -- it is a form of a lease cap increase without the context of the fare raise, which is really unheard of in this industry.

Imagine, you know, the $10. Once it's on the lease, that means that if you had a bad day, the car's broken down and maybe you've had very few credit card fares, you're still going to be paying that $11. If you're a weekly driver, if the car's been in the shop, if you're a driver in an owned vehicle operator who is responsible for those vehicle repairs and maintenance, if that car is in the shop, you still have to pay for your lease up front, and that includes the $11, which is now going to be -- you know, your debt is fixed while your income is not guaranteed in this industry.

MS. MARINO: Yeah, but, if I can just interrupt, that was the whole thing we did -- was it 2012? My God, time flies. That was the whole thing. Before, it was a percentage only of the credit card receipts --

MS. DESAI: Right.

MS. MARINO: -- and you guys didn't want that, you wanted the flat fare. So I'm -- I don't know why now you don't want the flat fare.

MS. DESAI: At the time that the flat fare was discussed and, you know, that rule was promulgated, it was part of a broader fare raise. And so the understanding was that that base amount would only be increased, you know, in relation to a subsequent fare raise.

MS. MARINO: That wasn't in the rule, was it?

MS. DESAI: No. But that was part of the logic, that was part of our understanding when that rule was debated and publicly discussed. It was only undone, as Bill said, about six to eight months later, you know, as a result of a lawsuit, right? And that --

MS. MARINO: Well, I think it's a result of the data too. There's a much --

MS. DESAI: Actually, the --

MS. MARINO: There's a much greater increase in credit card use. I mean, I know as a -- I mean, every time I swipe a card for my business, I have to pay a percentage to a company.

MS. DESAI: Sure, but which is probably closer to 1.5 to 2 percent.

MS. MARINO: No, it's actually closer to 3 percent.

MS. DESAI: Maybe even 2 per -- okay, 3 percent. It's still not 5 percent --

MS. MARINO: Yeah, but -- well, I'm not going to --

MS. DESAI: -- which is what we have to pay. And on top of that, the revenue that comes in from advertising, from the technology, that goes only to the owners, none of that goes to the driver. So the owner's already getting the ad revenue to offset the cost of the technology on top of that.

Now, drivers are paying -- you know, imagine the volume, the volume in taxicab -- you know, the amount of credit card-based fares collectively within the industry. So, of course, when that volume is that high, they could easily negotiate. Square came in at one point and was charging 2.75 percent. So it's not at 5 percent, but that's what the drivers -- that's the rate that drivers are having to pay.

And now that we're increasing this amount and because it is fixed on the lease, it means that even on shifts that you're not completing, you know, that, you know, because there's a problem with the car, you may have fallen sick mid shift, whatever it is, because that cost is added on to the lease, you're still paying that entire amount, you know.

And, as Mr. Thaler said, I mean, the thing to do here is to make it either, you know, a percentage, you know, it should be going back to percentage based if the amount, you know, the fixed amount is not going to be evaluated as part of an overall fare raise. And as far as the data, what is that data? Where is that data? We don't get to see any of it.

CHAIRWOMAN JOSHI: The data is generated from our T-PEP records. It is subject to FOIL. So, you know, it's available for the public pursuant to a FOIL request.

And also, I mean, you mentioned the 5 percent and Mr. Thaler mentioned the 5 percent. Odd number years, in April, we have to have, by rule, a fare and lease cap hearing, and that's the type -- that's the forum for us to gather evidence about the percentage rate for transaction -- for credit card transactions. So we look forward to hearing your testimony especially then on that issue.

MS. DESAI: Thank you. I would just like to say for the record, though, I do think it would have warranted a public presentation on the data because the TLC has it and the vendors have it and the fleets get to have it through the vendors. We're the only ones at the table who don't have full access to that data. And I do think that should have been publicly released as part of this -- as part of this rule-making process.

CHAIRWOMAN JOSHI: I appreciate that, but I also encourage you to take advantage of FOIL, which will give you the data that was underlying the calculation.

MS. MARINO: Madam Chair, I do -- I will say, the FOIL requests do take quite some time. So even if you make --

CHAIRWOMAN JOSHI: We have a good record with FOIL responses, so --

MS. MARINO: Okay. That's good to know. That's good to know, okay.

MS. DESAI: So, again, in closing, we're strongly opposed to this rule. And we do, you know, we do hope that the Commissioners who voted in favor for a raise to go to the drivers, in that spirit, that they would vote against this rule. Thank you.

CHAIRWOMAN JOSHI: Thank you.

MR. WILSON: Thank you.

The next speaker is Victor Salazar.

MS. DESAI: We'll be the only two speakers for TWA.

MR. WILSON: Actually, also Beresford Simmons and Mohan Singh signed up to speak.

MS. DESAI: Yeah, they won't be --

MR. WILSON: That's it? Okay.

The last speaker will be, then, Peter Mazer.

MR. MAZER: Good morning, Commissioners. My name is Peter Mazer, general counsel to the Metropolitan Taxicab Board of Trade, which represents taxi businesses that operate more than 5500 yellow medallion taxicabs, leasing to more than 25,000 drivers, and directly employing thousands of mechanics, dispatchers and other personnel who mostly live and work in the five boroughs.

Most people will agree that the acceptance of credit cards in yellow taxicabs, which began full scale in 2006, is one of the best service innovations in New York City taxi service, both for passengers and for drivers who, according to the TLC, have seen tips increase as a result of credit card usage. It's simply much easier to choose that 20, 25 or 30 percent suggested tip on the payment screen than when cash was the only option. Today, credit cards account for 64 percent of all taxi fares.

Taxi owners are, in almost all cases, the merchant account holders with the credit card companies. Therefore, taxi owners pay all credit card-related fees to the credit card companies and they are responsible for the credit card equipment. TLC rules require that fleet owners pay drivers in full at the end of each shift, even though the credit card companies often take two to four days to release these funds to the fleet.

When the TLC eliminated the 5 percent credit card fee that merchant account owners could recoup from taxi drivers, it replaced it with a $10 flat surcharge based on the credit card usage at the time. Subsequently, the TLC passed Rule 58-21(c)(5), which set forth a formula that allows for the credit card surcharge to increase if credit card usage increases. The Commission voted to approve that formula on June 20th of 2013.

The TLC has now determined, based upon the credit card data that the TLC has obtained and the formula that this Commission has approved, that credit card usage has increased and that a $1 per shift increase in the credit card surcharge is necessary.

To be clear, this is not a lease cap increase, this is data- and formula-based upward adjustment of a surcharge that goes entirely to offset the increase of credit card usage. In fact, the 5 percent credit card surcharge was eliminated and a flat fee approved in the same fare and lease rule package that provided the 17 percent fare increase to drivers and a 0 percent increase in the lease caps to owners.

The small increase in the credit card surcharge is necessary to meet the data-proven increase in credit card usage in yellow taxicabs; it's necessary to comply with the TLC rule that you passed and approved on June 20th of 2013; it's based on a formula that TLC staff presented and that the Commissioners voted to approve last year.

And MTBOT respectfully requests that you approve this measure. If you have any questions, I'd be happy to answer them.

(No response.)

CHAIRWOMAN JOSHI: Okay. Thank you.

MR. MAZER: Thank you.

CHAIRWOMAN JOSHI: And also, Bhairavi Desai, in prior testimony, requested credit card data. We do, you know, need to go through the FOIL request process, but we actually have the data available for you now. So we can share it with you today.

MS. DESAI: Okay. Thank you.

CHAIRWOMAN JOSHI: Rodney Stiles in the back is available to speak with you after the meeting with the data.

MS. DESAI: Okay. Thank you.

MR. WILSON: So that was our last speaker. If the Commissioners have any questions?

(No response.)

MR. WILSON: Otherwise, I can call it for a vote. So we'll just -- all in favor, say "aye."

(Chorus of ayes.)

MR. WILSON: Okay. The rule passes.

CHAIRWOMAN JOSHI: And, with that, the meeting is adjourned at 11:20, thank you very much.

(Time noted: 11:19 a.m.)

C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, MARGARET CRANE, a Notary Public within and for the State of New York, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of May, 2014.

____

MARGARET CRANE

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