

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON TRANSPORTATION

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January 14, 2009

Start: 1:20 pm

Recess: 4:30 pm

HELD AT: Council Chambers
City Hall

B E F O R E:
JOHN C. LIU
Chairperson

COUNCIL MEMBERS:
Daniel R. Garodnick
Vincent Ignizio
Robert Jackson
G. Oliver Koppell
Jessica S. Lappin
Miguel Martinez
Darlene Mealy
Diana Reyna
David I. Weprin

A P P E A R A N C E S [CONTINUED]

Charles R. Fraser
General Counsel
Taxi and Limousine Commission

Ira Goldstein
Chief of Staff
Taxi and Limousine Commission

Gary Roth
Mr. Goldstein's Assistant
Taxi and Limousine Commission

Bhairavi Desai
Executive Director
New York Taxi Workers Alliance

Ed Ott
Executive Director
New York City Central Labor Council

Franchie Muniz
Executive Director
New York State Federation of Taxi Drivers

Jose Vilorio
President
New York State Federation of Taxi Drivers

Peter M. Mazer
General Counsel
Metro Taxicar Board of Trade

Jesse Davis
President and Chief Technical Officer
Creative Mobile Technologies

Ethan Berger
Director
New York Taxi Association

Malcolm Ratner
Fleet Owner

A P P E A R A N C E S [CONTINUED]

Double Shifted

Richard Thaler, PhD

Osman Chowdhury
Member
New York Taxi Workers Alliance

Beresford Simmons
Owner-Operator
New York Taxi Workers Alliance

Valvinder Singh
Taxi Driver

David Pollack
Committee for Taxi Safety

Victor Salazar
Owner Operator
New York Taxi Workers Alliance

Ryan Richardson
Research Intern
New York Taxi Workers Alliance

Mamnun Ul Haq
Executive Board
New York Taxi Workers Alliance

Jahangir Alam
New York Taxi Workers Alliance

John McDonald
New York Taxi Drivers Alliance

Bill
Taxi Driver

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[Gavel Banging]

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[Background noise]

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CHAIRPERSON LIU: Good afternoon.

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Welcome to today's Committee on Transportation of the New York City Council. My name's John Liu and I have the privilege of chairing this Committee. I apologize for the slight delay. We had a hearing that started earlier that went over time a slight bit.

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Nonetheless we're happy to convene this hearing today for the purpose of considering two pieces of legislation related to the Taxi and Limousine Commission. Intro 705 would remove any restrictions on a taxi driver's ability to choose a credit or debit card processor. Intro number 880 would require For-Hire Vehicles to display a Passenger's Bill of Rights. Intro 705 is sponsored by Council Member David Weprin. And Intro 880 is sponsored by Council Member Daniel Garodnick.

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In 2004 the TLC approved the Service Improvement Package, part of this package required taxi cabs to be able to accept credit cards. The ability to pay for a taxicab right

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2 with credit cards has had mixed reviews. Some
3 passengers like the option of being able to pay
4 with plastic and some drivers have reported higher
5 tips. However some drivers do not like the credit
6 card requirement contending that the technology is
7 as of yet unreliable and that a 5% processing fee
8 has been onerous. Intro 705 attempts to address
9 this issue by allowing taxicab drivers to choose
10 their own credit card processors which some have
11 argued would lower processing fees.

12 The second bill on today's agenda
13 would require For-Hire Vehicles to display a Bill
14 of Rights. For-Hire Vehicles or sometimes,
15 they're sometimes called Community Cars, or car
16 services, provide most of the on demand
17 transportation services for people in Upper
18 Manhattan and the Boroughs outside of Manhattan.

19 Many times when you ride a taxicab
20 there will be a Passenger's Bill of Rights posted.
21 However there is no such requirement for For-Hire
22 Vehicles which are such an important part of New
23 York City's transportation network. Intro 880
24 would require all of these For-Hire Vehicles to
25 post such a Passenger's Bill of Rights, protecting

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2 the large number of riders who use For-Hire
3 Vehicles.

4 We are joined by the sponsors of
5 the two bills before us today. We have Council
6 Member Dan Garodnick, a member of this Committee,
7 who I'll turn the floor over to for brief comments
8 on Intro 880.

9 COUNCIL MEMBER GARODNICK: Thank
10 you Chairman Liu and to my fellow members of the
11 Transportation Committee for hearing Intro 880
12 today and for allowing me to say a few brief
13 words.

14 Today as you noted Mr. Chairman
15 when a passenger gets into a Yellow Cab, they
16 should see a Taxicab Rider Bill of Rights posted
17 conspicuously in the back seat of the cab. This
18 Bill of Rights serves as a reminder to both the
19 rider and the driver that there are certain rules
20 and expectations put forth by the Taxi and
21 Limousine Commission regulating that car ride and
22 that cab ride.

23 The purpose of these rules is to
24 ensure a safe, fair and comfortable ride. It also
25 reminds riders that they can file a complaint if

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2 they feel that any of those rights have been
3 violated. Crowded streets filled with yellow
4 taxicabs are an iconic symbol of Manhattan, the
5 area where I represent, known to people across the
6 country and abroad. However these yellow taxicabs
7 are not the only or even the predominant form of
8 car service in the City.

9 Many New Yorkers rely on For-Hire
10 Vehicles such as Community Based Liveries and
11 Black Cars, particularly in areas of the City
12 where there are comparatively few transportation
13 options. New Yorkers who use For-Hire Vehicles
14 are entitled to the same rights as those who ride
15 in taxicabs. In fact in Chapter 6 of its rules,
16 the TLC established clear rules for For-Hire
17 Vehicles. And they're very similar to those that
18 regulate the Yellow Cabs and that are publicized
19 in that Taxicab Rider Bill of Rights.

20 But there is no equivalent Bill of
21 Rights to ensure that For-Hire vehicle riders are
22 aware of their rights as passengers and how
23 specifically to file a complaint when those rights
24 have been violated. Those, of course, include
25 going to any destination in New York City,

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2 Westchester, Nassau or Newark Airport, to direct
3 the route taken, safe and courteous driver, you
4 know, the absence of a cell phone or to decline a
5 tip for poor service and other things. Perhaps
6 also significantly to pay a pre-approved fare
7 quoted by a dispatcher in the case of For-Hire
8 Vehicles.

9 Many of these are already
10 guaranteed for us as For-Hire vehicle passengers
11 by the TLC. And what this bill does is to bring
12 the For-Hire vehicle and taxi rules into greater
13 alignment and ensures that as For-Hire vehicle
14 passengers, we are aware of our very basic rights
15 as well.

16 So thank you Mr. Chairman for
17 hearing this bill. And I very much hope it has
18 the support of the TLC and hope that we will be
19 able to pass it through this Committee and beyond.
20 Thank you.

21 CHAIRPERSON LIU: Thank you Council
22 Member Garodnick. We've also been joined by
23 Council Member Diana Reyna, a member of this
24 Committee. And we turn the floor over to Council
25 Member Weprin for his introductory remarks on

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Intro 705.

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COUNCIL MEMBER WEPRIN: Thank you Chairman Liu for holding this hearing today. The Taxi and Limousine Commission now requires that all yellow taxis must be equipped with credit/debit card processing units to facilitate fast and easy payment as well as to expedite service.

I applaud the TLC for taking this proactive measure to make paying for a cab fare an easier experience. Paying by credit or debit card allows the payment to be processed faster and gives more time to the driver to pick up additional fares. I think we could all agree that this is a good thing.

However I take issue with the fact that the financial institutions chosen by the Taxi and Limousine Commission to process the payments charge an exorbitant amount in fees for every process payment. 5% may not seem like much but when you consider that every cab driver processes dozens of credit and debit payments on a weekly basis, that money adds up to an amount they can't afford to pay in these turbulent economic times.

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2 As it currently stands in the
3 negotiated contract between the TLC and the fleet
4 owners, the financial institutions that process
5 the payment charge a 3.75% fee for every payment
6 and the fleet owners get 1.25% for a total
7 surcharge fee of 5%. Drivers whom I have met
8 believe this amount is too high and I agree.

9 Something ought to be done to give
10 cab drivers some reprieve and Intro 705 would
11 accomplish this goal. This legislation gives
12 drivers something that the TLC does not; it gives
13 them a choice, the choice to choose their own bank
14 to process their credit and debit payments and the
15 opportunity to negotiate a lower, more affordable
16 surcharge rate.

17 It is my hope that the TLC with
18 work with the Council in making this legislation a
19 reality. Thank you Mr. Chairman.

20 CHAIRPERSON LIU: Thank you Council
21 Member Weprin. We've also been joined by Council
22 Member Vincent Ignizio from Staten Island. Now we
23 are delighted to be joined by officials of the
24 Taxi and Limousine Commission, Gary Roth, Ira
25 Goldstein and Charles Fraser. Gentlemen, thank

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2 you for joining us. And would you like to present
3 some testimony?

4 MR. IRA GOLDSTEIN: Which bill
5 would you like to start with?

6 CHAIRPERSON LIU: It's totally up
7 to you.

8 MR. CHARLES FRASER: Good afternoon
9 Chairman Liu, members of the Transportation
10 Committee. My name is Charles Fraser. I'm the
11 General Counsel of the Tax and Limousine
12 Commission. I'll be talking about Intro 880
13 today. To my right is Ira Goldstein. He's the
14 Chief of Staff to the TLC. He'll be talking about
15 Intro 705. And to his right is a Staff Analyst on
16 Mr. Goldstein's staff who is involved in the TPEP
17 project.

18 MR. FRASER: Thank you for the
19 opportunity to speak to you today about the
20 proposed amendment to the Administrative Code to
21 create a Bill of Rights for For-Hire vehicle
22 passengers. As an agency that licenses 50,000
23 vehicles and 100,000 drivers who collectively
24 transport 1,200,000 passengers a day, we agree
25 that a clearly stated Passenger Bill of Rights is

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2 an important tool.

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The TLC has maintained a Passenger Bill of Rights in the yellow taxi industry for many years. In fact we are nearing the conclusion of the development of a major revision of our For-Hire Vehicles rules that will be accompanied by the promulgation of a Livery Passenger's Bill of Rights. We expect to complete that process in the next two to three months.

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Given that the Taxi Passenger's Bill of Rights is not statutory, and given our current work on a comparable Livery Passenger's Bill of Rights, we do not think that legislating a Bill of Rights for For-Hire vehicle passengers is the best approach. The TLC Bill of Rights being rooted in TLC rules, carries with it administrative penalties needed to enforce it. And being rooted in TLC rules, our Bill of Rights can be revised and updated without further legislative action.

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The TLC welcomes the opportunity to work with the Council to finalize and promulgate a Livery Passenger Bill of Rights. Thank you for your time and I would be glad to try to answer any

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2 questions you might have.

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CHAIRPERSON LIU: Thank you Mr.
Fraser. Mr. Goldstein.

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MR. GOLDSTEIN: Good afternoon
Chairman Liu and members of the Transportation
Committee. My name is Ira Goldstein and I am the
Chief of Staff of the Taxi and Limousine
Commission. Thank you for the opportunity to
speak to you today about the proposed amendment to
the Administrative Code to remove the restrictions
on a taxicab operator's choice of a credit/debit
card processor.

I would like to again provide a
brief history of the project that includes the
credit card initiative. The credit card system in
taxicabs is part of a larger project known as the
Taxicab Passenger Enhancement Program, what we
refer to it as TPEP. In addition to the
acceptance of credit cards, TPEP includes the
electronic collection of trip sheet data, allows
every taxicab available to receive text messages
regarding important information that needs to be
shared quickly, facilitates recovery of lost
property, and delivers information which includes

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2 a digital map to passengers via a screen located
3 in the rear compartment of the cab. Medallion
4 owners contract with one of three approved vendors
5 who provide a completely integrated or all
6 inclusive system.

7 The actual implementation of the
8 TPEP program involved the development of a truly
9 custom made and fully integrated mobile system
10 available to taxicab medallion owners through one
11 of three approved vendors. The actual process
12 from concept to complete implementation which was
13 just completed this past December took just under
14 four years.

15 During this time the TLC performed
16 the necessary due diligence and procurement steps
17 to ensure the final product meets the need of all
18 stakeholders. In developing a business model and
19 subsequent Requests for Proposals, the TLC sought
20 extensive public and industry input through the
21 issuance of an RFI, a Request for Information, a
22 technology summit which was open to any potential
23 prospective interested vendors and taxi industry
24 representatives, and focus groups with passengers
25 and drivers. An RFP was issued in March of 2005

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2 and the TLC awarded contracts to four vendors, of
3 which three are still active.

4 The TLC and each vendor signed
5 detailed contracts which set the minimum technical
6 and service level requirements along with maximum
7 prices that could be charged. Through these
8 contracts the TLC was able to leverage the entire
9 medallion Taxicab Industry and its 13,000 plus
10 vehicles to ensure that drivers, owners and
11 passengers received maximum benefits and the
12 highest quality of service. To further reduce the
13 cost of the system, the TLC authorized paid media
14 on the rear seat passenger screens.

15 The security of the credit card
16 transactions in a mobile environment was of
17 particular concern to the TLC. In addition
18 drivers indicated that they did not want to wait
19 for the estimated 48 to 72 hours for credit card
20 transactions to clear and wanted the cash paid for
21 credit card payments at the end of their shift.
22 For these reasons the TLC paid special attention
23 to the credit card systems to ensure that the
24 driver and the owner could not only easily operate
25 the system but be able to trust the accuracy and

1 security of the handling of credit card
2 transactions.
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4 Built into the program were
5 mechanisms to ensure that drivers were able to
6 receive cash at the end of each shift. Currently
7 about 20% of all trips are paid by credit card.
8 As the TLC developed the overall structure of the
9 program it was clear that all parties involved
10 would have some burden. The passengers were
11 receiving these enhancements as a part of a 26%
12 fare increase, the medallion owners were required
13 to install and maintain the systems in the
14 vehicle. Fleet owners and agents were required to
15 pay drivers cash at the end of the shift and
16 drivers were paying for their transactions, for
17 the credit card transaction costs associated with
18 their shift.

19 A critical component of this
20 program is the fully integrated turnkey solution
21 each vendor is required to offer. Upon contract,
22 each vendor provides and installs the equipment
23 along with a mechanism to maintain the systems,
24 the wireless connections necessary to conduct
25 credit card transactions, to update the content on

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2 the passenger screens, receive and send driver-
3 based text messages and collect necessary trip
4 information using sophisticated GPS equipment,
5 that also updates taxicab location on the
6 passenger screen, and credit card processing to
7 ensure a speedy transaction. All of this on the
8 credit card side conforms with the payment card
9 industry security standards.

10 Local Intro 705 seeks to rewrite
11 the years of work by the TLC. While the language
12 of the Bill is a little confusing and difficult to
13 follow, it does appear at its core to address the
14 maximum 5% fee being charged to drivers who
15 receive cash at the end of their shift. This fee
16 is a charge that approximately covers the costs
17 associated with processing a credit card within a
18 taxicab. The processing not only includes
19 confirmation of the credit card transaction but
20 also includes the wireless line necessary to
21 complete the transaction, the security of the
22 hardware and wireless services, the capabilities
23 of performing credit card transactions when there
24 is no cellular signal, the payment of cash at the
25 end of the shift, and any accounting and

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2 reconciliation which can be quite extensive given
3 the multitude of credit card rates today.

4 The language of the Bill appears to
5 only address the charges associated with being a
6 merchant which are limited to the confirmation of
7 a credit card transaction and back office
8 processing. While it can be argued a 5% charge
9 for this service may seem high, the TLC believes
10 that actual services being provided are worth the
11 5% charge.

12 As for saving the drivers money by
13 allowing them to arrange for their own merchant
14 account, the Bill ignores the other services that
15 a taxicab will still need to provide. The driver
16 will now, under the Bill, will now have to pay for
17 wireless services and the lease or purchase of a
18 credit card machine at his or her own expense.
19 They will also have to pay for their new merchant
20 processor, standard for each credit card
21 transaction fee. They will lose the protection of
22 the Store Forward capability as well as the TLC
23 negotiated preferential credit card rate. And
24 they will no longer be able to cash out at the end
25 of the shift.

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2 The passenger will also lose out on
3 many conveniences including the passenger
4 information monitor technology which allows for
5 the popular suggesting tipping function, as well
6 as the speed of transactions allowing for the
7 passenger to just tap and go. The additional
8 confusion that would ensue with different drivers
9 having different merchant accounts for drivers,
10 agents, fleets and vendors would turn a clear
11 turnkey solution into an almost unsolvable puzzle.

12 Further the implementation of a
13 program based on language in the Bill would
14 require the vendors to fundamentally alter the
15 contracts with their merchant banks as well as
16 with the City and with medallion owners, which
17 raises constitutional concerns. We believe that
18 the proposed legislation would not assist the
19 Taxicab Industry and would in fact cost drivers
20 money.

21 The Committee should be aware that
22 the TLC has begun to take steps to begin exploring
23 the second generation of the TPEP systems. In our
24 judgment the TPEP program has been a tremendous
25 success in New York. And it is being copied in

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2 several cities around the county. Having proving
3 that our concept of TLC is serviceable, we are
4 working on, right now, on a Request for
5 Information seeking ways to improve on the first
6 generation of TPEP.

7 In the meantime changing the
8 existing contracts and our vendors' now well
9 established business practices would be
10 detrimental to the drivers, the owners, the
11 vendors and ultimately the passengers, in other
12 words the entire industry. Thank you for your
13 time this afternoon.

14 CHAIRPERSON LIU: Thank you. I
15 have a number of questions but I'm going to defer
16 to the prime sponsors first but I will mention
17 that we've also been joined by Council Member
18 Darlene Mealy of Brooklyn and Council Member
19 Oliver Koppell of the Bronx.

20 Questions from Council Member
21 Garodnick.

22 COUNCIL MEMBER GARODNICK: Thank
23 you Mr. Chairman. And I'm going to direct my
24 questions to Mr. Fraser on the subject of Intro
25 880. First of all let me just say how pleased I

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2 am to hear that the Taxi and Limousine Commission
3 is taking a look at the possibility of creating or
4 formalizing the Bill of Rights for For-Hire
5 Vehicle passengers. I did want to, since you are
6 the General Counsel, I'll focus my questions, sort
7 of more of a statutory or legal angle for you.

8 In your testimony you said that the
9 current Taxi Passenger's Bill of Rights is not
10 statutory. And therefore you don't think
11 legislating a Bill of Rights for For-Hire Vehicle
12 passengers is the best approach. Now just to be
13 clear, you don't take the position that the
14 Council does not have the power to do this, is
15 that right?

16 MR. FRASER: No, that's correct.

17 COUNCIL MEMBER GARODNICK: Okay.

18 So in your view the Council has the power.

19 MR. FRASER: Yes. I didn't mean to
20 say that.

21 COUNCIL MEMBER GARODNICK: Okay.

22 And is it the position; is it your position or the
23 position of the Taxi and Limousine Commission that
24 any of the proposed rights that are set forth in
25 Intro 880 should not be afforded to passengers?

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2 MR. FRASER: I think I can say
3 this, that I see no objection to any of the
4 particulars that you listed in the legislation.
5 You also have to understand I don't speak for the
6 Commission. We have nine Commissioners who vote
7 on these things. And I'm not in a position to
8 commit them to something. But I can say I see no
9 objection to any of the particulars you've listed.

10 COUNCIL MEMBER GARODNICK: Okay.
11 If this were established statutorily or put in the
12 Administrative Code, it seems to me that that
13 would make it therefore impossible for the Taxi
14 and Limousine Commission to abridge any of the
15 rights afforded through its own rulemaking
16 procedure, is that right?

17 MR. FRASER: Well certainly not to
18 remove any. The question that I would be
19 concerned with would be whether fixing them into
20 law would preclude us from updating or revising
21 them, or for that matter even expanding them as
22 time goes on.

23 COUNCIL MEMBER GARODNICK: Well let
24 me ask you that question 'cause that was my next
25 one. It would seem to me that if the Council and

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2 in the Administrative Code were to afford certain
3 basic rights, nothing would prohibit the Taxi and
4 Limousine Commission from adding rights, isn't
5 that true?

6 MR. FRASER: If the law was clear
7 about that, yes.

8 COUNCIL MEMBER GARODNICK: Do you
9 believe that this law is unclear on that point?

10 MR. FRASER: I do, yes.

11 COUNCIL MEMBER GARODNICK: Okay.
12 What makes this law unclear on that point--

13 MR. FRASER: [Interposing] It
14 doesn't specifically say that the Taxi and
15 Limousine Commission has rulemaking authority to
16 expand or any kind of thing like that.

17 COUNCIL MEMBER GARODNICK: Okay.
18 If it were to make that additional amendment would
19 this be a Bill that the Taxi and Limousine
20 Commission would support?

21 MR. FRASER: Still no, because our
22 position is twofold. And my objection as you may
23 recall from my testimony was not just the
24 inability of the TLC to revise the particulars,
25 but also the particulars come with no penalties.

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We must have rules that implement the rules. In order to have a right to something there has to be a remedy for violating that right, at least for that right to have any meaning.

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And our rules need to create those rights and obligations, essentially, on drivers and bases, and as of now they don't in all respects. And so the law would not be self-effectuating, in other words, we must have rules to implement it.

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But in addition--

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COUNCIL MEMBER GARODNICK:

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[Interposing] And let me just stop you there for a second. Because I think that's an excellent point and I wanted to just ask the same question again, is there anything in this Bill, in your view that prohibits the Taxi and Limousine Commission in its rulemaking authority from establishing what would be the penalties for failing to abide by these rights?

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MR. FRASER: No.

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COUNCIL MEMBER GARODNICK: Okay.

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MR. FRASER: If I may though, I did

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have--

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COUNCIL MEMBER GARODNICK:

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[Interposing] Yeah go ahead and finish your point.

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MR. FRASER: --one other point

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which was since we regulate four different types

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of drivers, and this Bill of Rights only applies

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to For-Hire Vehicles, putting that in statute but

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not the others strikes us as singling them out in

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some fashion.

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COUNCIL MEMBER GARODNICK: I think

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that's also an excellent point. It raises the

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obvious question as why we should not statutorily

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establish the rights for all of the other vehicles

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as well.

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MR. FRASER: And that may well be

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something to do. I would be very concerned. I

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mean our development of the Bill of Rights for

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Livery Passengers that we're working on involved

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intensive consultations with industry groups and I

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would be very concerned--and incidentally our

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proposal will be Liveries, not For-Hire Vehicles,

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in other words, not Black Cars and not limousines.

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For the main reason I think that the indications

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we have are that the concerns are not just

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primarily but overwhelmingly Liveries, not Black

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Cars and not limousines.

But in any event there are variations among the industries and even more so when you get to Para-transit Commuter Vans which we also regulate, that we would want to be very careful, have been fully explored before we even did rulemaking let alone legislation.

COUNCIL MEMBER GARODNICK: Well that's the purpose of the hearing that we're having today which is to consider what you or members of the public consider to be the potential benefits or pitfalls on this proposal. And so if you all have vetted that issue carefully, what did you learn?

MR. FRASER: Well I did not do the vetting. I am not the program person. We have an Assistant Commissioner for Constituent Affairs who headed that up.

COUNCIL MEMBER GARODNICK: Is that Commissioner here?

MR. FRASER: I don't believe so, no.

COUNCIL MEMBER GARODNICK: Okay. Well I mean it, huh, you bring to us an expression

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2 of we would rather you all not do this because we
3 want to do this. But without, in my view, the
4 appropriate backup and I realize you're the
5 General Counsel, you're not the person who's doing
6 al this stuff, but it doesn't really give me any
7 basis to say that we should halt or stop or not
8 proceed. In fact, to the contrary, it suggests to
9 me that what we're trying to do here is establish
10 the equivalent of a Constitutional basis, some
11 sort of rights which are inherent to any passenger
12 in a vehicle that is licensed by the Taxi and
13 Limousine Commission, not to limit your rulemaking
14 authority, not to limit the penalties that you can
15 impose, not to limit the additional rights that
16 you might thereafter want to afford to passengers,
17 but rather just to establish a baseline.

18 So I've heard nothing in your
19 testimony today that should preclude us from going
20 forward there but let me just--I don't know if
21 these are the questions appropriate for you. I
22 must admit I'm disappointed that the TLC would not
23 bring the person who's responsible for gathering
24 all the information which is purportedly so
25 relevant to the piece of legislation which is

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2 before this Committee today. But I will ask you,
3 you know, what the response has been. Let's go to
4 the Yellow Cabs for a second on the subject of
5 complaints.

6 When the TLC first put the Bill of
7 Rights into the Yellow Cabs, did the TLC get more
8 complaints from taxi riders and if so what do you
9 think was going on there?

10 MR. FRASER: I'm not in a position
11 to answer that. That Bill of Rights predates my
12 tenure by at least a decade.

13 COUNCIL MEMBER GARODNICK: Okay.
14 Well I am going to--unless somebody else on the
15 panel wants to answer any of these questions, do
16 you? Okay, no. The answer is no. So as far as
17 I'm concerned the Taxi and Limousine Commission
18 has presented no information today that
19 establishes any reason for us to stop or not go
20 forward with this legislation. We've made it very
21 clear that our doing this or even including this
22 for additional taxis--

23 [Applause]

24 COUNCIL MEMBER GARODNICK: --is not
25 something that interferes with or precludes the

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2 TLC's ability to add or create penalties for these
3 things. So Mr. Chairman I will just say that my
4 support for this legislation has gotten stronger
5 and I certainly hope that the members of this
6 Committee feel the same way. And I thank you for
7 the opportunity to ask a few questions.

8 CHAIRPERSON LIU: Thank you Council
9 Member Garodnick.

10 [Applause]

11 CHAIRPERSON LIU: I think you will
12 have support from this Committee in terms of
13 pushing forward with your Bill, shockingly so; the
14 TLC's position basically is that they are opposed
15 to your Bill because they don't want to be
16 regulated. That is the main argument. And I will
17 ask you. Mr. Fraser, because you are representing
18 the TLC with regard to this Bill, you state in
19 your testimony that in fact the TLC is nearing the
20 conclusion of the development of a major revision
21 of our For-Hire Vehicle rules that will be
22 accompanied by the promulgation of a Livery
23 Passenger's Bill of Rights.

24 That major revision of For-Hire
25 Vehicle Rules, how long has that been going on?

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2 MR. FRASER: I guess the beginning
3 of it goes back close to two years. It--

4 CHAIRPERSON LIU: [Interposing] Mr.
5 Fraser--

6 MR. FRASER: --I may finish
7 Council--

8 CHAIRPERSON LIU: --you're telling
9 me that that started two years ago?

10 MR. FRASER: No, I need to be clear
11 here. You need--

12 CHAIRPERSON LIU: [Interposing]
13 Please. Be very clear.

14 MR. FRASER: --let me finish my
15 answer.

16 CHAIRPERSON LIU: I think it's more
17 like ten years.

18 MR. FRASER: No that's not--

19 CHAIRPERSON LIU: [Interposing] I
20 think it's more like ten years.

21 MR. FRASER: Well I can't say what
22 may or may not have happened before I got to the
23 Commission four years ago. What I can say is that
24 we have to keep two things straight. What I
25 testified to was that the rules have been in

1
2 development, not the Passenger Bill of Rights.
3 And what I intended to say just now is that the
4 major rules revision has its genesis about two
5 years ago.

6 The Passenger Bill of Rights was an
7 idea that was part of the evolution of that
8 development of rules, was started much more
9 recently. The Passenger Bill of Rights is a
10 relatively simple package. The rules, revisions
11 that we're doing for the For-Hire Industry are
12 very complicated and have been the subject of, as
13 I said, of intensive consultations with the
14 industry. And we are hopefully near the end of
15 that but you never know for sure.

16 CHAIRPERSON LIU: Over the years
17 and it has been closer to ten, this is an issue,
18 the issue of a Driver's Manual for For-Hire
19 Vehicle Drivers, which would be certainly part of
20 the revision, the major revision of For-Hire
21 Vehicle Rules. That's been an issue that this
22 Committee has talked about with Chairman Daus and
23 the rest of the TLC for years, for many years.
24 Certainly, long before two years ago.

25 MR. FRASER: I don't think though

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with all due respect a Driver's Manual and a Bill of Rights for Passengers are the same thing. To my knowledge--

CHAIRPERSON LIU: [Interposing] The point, the point--

MR. FRASER: --the Passenger Bill of Rights--

CHAIRPERSON LIU: [Interposing] The point here--well--

MR. FRASER: --is a recent development at TLC.

CHAIRPERSON LIU: --you're trying to--you're trying to say that this is a much larger issue but then now you're backtracking and you're saying actually this is just a narrow issue--

MR. FRASER: [Interposing] No I'm not backtracking at all Councilman--

CHAIRPERSON LIU: --that was not part of the larger issue. The larger issue here is that we've been waiting for this revision of the For-Hire Vehicle Rules for a long, long time, to include the Driver's Manual, and now Council Member Garodnick has taken up the wisdom to

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2 include this Bill of Rights.

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I mean first of all the Bill of Rights is not, it shouldn't be anything new really. There have been plenty of complaints from passengers of For-Hire Vehicles for a long time. It's not like just recently all of a sudden, complaints started to surface at the TLC on 311 and in our Council Offices. So that should have always been part of it. But the point here is that the For-Hire Vehicle Rules are really late. It's been--

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MR. FRASER: [Interposing] Well.

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CHAIRPERSON LIU: --years and years in the making. How much longer is it going to take--

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MR. FRASER: [Interposing] This is-

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CHAIRPERSON LIU: --and that is why a Bill like Council Member Garodnick's has to be introduced because the TLC, once again, is dragging its feet on this long-standing process--

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MR. FRASER: [Interposing] That-- just--just--

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CHAIRPERSON LIU: --that we've been

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2 waiting for.

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MR. FRASER: --to clarify. The rules to which I referred have nothing to do with the Driver's Manual. I was present at one or more of the hearings where that Driver's Manual was discussed. That has nothing to do with this rules effort. So to say that these rules are late because the Driver's Manual is late is simply not the case.

CHAIRPERSON LIU: The Driver's Manual has not been produced because the TLC has consistently asserted that the rules are being overhauled and revised.

MR. FRASER: That is true--

CHAIRPERSON LIU: [Interposing] So come on.

MR. FRASER: --that's a different thing. We are comprehensively rewriting all of our rules--

CHAIRPERSON LIU: [Interposing] Oh-

MR. FRASER: --which is in a process that will take a considerable amount of time. This revision that I referred to has

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2 nothing to do with that.

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[Audience laughter]

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CHAIRPERSON LIU: Wait, I mean that--I think we're speaking different languages here too. We'll take your testimony under advisement. I will state on behalf of Intro 880 that if we could have confidence that the TLC would go ahead and promulgate such rules and put together a Bill of Rights and it's clearly explained to passengers of For-Hire Vehicles what their rights are, while they're still in the vehicle then we certainly would not put forth a bill.

The problem is that it's taken way too long, as other things. And we're not saying that you're--that the TLC is sitting there not doing anything. You know, in some cases it's doing, huh, it's doing too many things.

CHAIRPERSON LIU: But what we're trying to do is also reflect the needs the priorities that our constituents are bringing to our offices. And so I would ask you to carefully consider Intro 880. It's really not that big a deal. I don't think there's any reason why the

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TLC should fight it that much.

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So with that we'll turn it over to Council Member Weprin who has questions about Intro 705.

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COUNCIL MEMBER WEPRIN: Thank you Mr. Chairman. Thank you Mr. Goldstein for your testimony, I'll direct my questions to you since you seem to be the point person on Intro 705.

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First of all let me state from the outset I appreciate the Taxi and Limousine Commission working out where taxi drivers get paid at the end of the shift because you may remember at the beginning of this process that issue was in dispute. And there was a question about whether they actually would get paid out versus the 48 to 72 hours. And, you know, I think we all agree, living day to day and, you know, with tough economic times, getting paid at the end of the shift, you know, is very important to taxi drivers.

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Having said that though, I'd like, you know, a little information as--I think you testified that it's about 20% of all the fares are paid for by credit card, is that correct?

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MR. GOLDSTEIN: Currently yes.

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COUNCIL MEMBER WEPRIN: Okay. And so how many, on a daily basis, does that come to? How many transactions on a daily basis? On the average.

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MR. GOLDSTEIN: Well I could give you for 2008--

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COUNCIL MEMBER WEPRIN:

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[Interposing] Sure.

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MR. GOLDSTEIN: --that the number

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of credit card transaction fares was over

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22,000,000 fares.

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COUNCIL MEMBER WEPRIN: Yeah but

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how much would that come to on a daily basis, on the average?

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MR. GOLDSTEIN: Well... take the

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total times... approximately 100,000.

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COUNCIL MEMBER WEPRIN: 100,000

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fares?

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MR. GOLDSTEIN: Yes.

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COUNCIL MEMBER WEPRIN: Okay. How

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many firms were sent the--it wasn't an RFP, right?

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It was an RFQ? Is that it for the vendors?

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MR. GOLDSTEIN: No it was an RFP.

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2 COUNCIL MEMBER WEPRIN: It was an
3 RFP.

4 MR. GOLDSTEIN: Um-hum.

5 COUNCIL MEMBER WEPRIN: Okay. How
6 many firms were sent the original RFP for
7 selection to be a credit card/debit card vendor?

8 MR. GOLDSTEIN: Well when we made
9 it available on the City's website, if I remember
10 correctly, I think approximately, maybe close to
11 50 entities downloaded the proposed, the Request
12 for Proposal. Not all were necessarily vendors.
13 I can tell you that we received proposals from 12.
14 We received 12 timely proposals.

15 COUNCIL MEMBER WEPRIN: So of the--

16 MR. GOLDSTEIN: [Interposing] In
17 response to the RFP.

18 COUNCIL MEMBER WEPRIN: --of the 50
19 people that responded, you're saying you only
20 qualified 12 of those vendors to be eligible?

21 MR. GOLDSTEIN: No. Just, let me
22 clarify. What I'm saying is the process with the
23 RFP is that it becomes available to the public.
24 And when it's downloaded from the City's website,
25 it could be anyone. It could have been someone

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from your staff for instance that wanted to download it to see what was there. So out of the list of people that downloaded it, we did receive 12 responses.

COUNCIL MEMBER WEPRIN: Okay. So there were only 12 responses. And of that 12 you selected 4 vendors, is that correct?

MR. GOLDSTEIN: There were five that passed the technical evaluation and 1 during negotiations decided not to pursue this.

COUNCIL MEMBER WEPRIN: Which left four.

MR. GOLDSTEIN: Correct.

COUNCIL MEMBER WEPRIN: And then you said that one of them is no longer eligible or has withdrawn?

MR. GOLDSTEIN: One started on the implementation and they went out of business.

COUNCIL MEMBER WEPRIN: And which firm was that?

MR. GOLDSTEIN: Taxi Technology Corp. They ultimately filed a Chapter 11 that was converted to a 7.

COUNCIL MEMBER WEPRIN: Okay. And

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is it not a fact that the 5% is supposed to be a cap on what the drivers are supposed to be paying as a processing fee?

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MR. GOLDSTEIN: That is correct.

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COUNCIL MEMBER WEPRIN: But isn't it a fact though that in practicality it's not a cap but it's actually a charge of 5%? Do you know of any instance where taxi drivers are paying less than 5%?

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MR. GOLDSTEIN: Not that I'm aware of.

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COUNCIL MEMBER WEPRIN: So then it's really not a cap, it's really just a fee.

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MR. GOLDSTEIN: In terms of our rules it's listed as a cap.

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COUNCIL MEMBER WEPRIN: Listed as a cap. And is there a cap on how much these now three eligible vendors have to pay?

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MR. GOLDSTEIN: That they have to pay or do you mean what they're allowed to charge?

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COUNCIL MEMBER WEPRIN: No, not what they're allowed to charge. Well we've already established that they're allowed to charge 5%, and that's in effect what they're charging,

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MR. GOLDSTEIN: Well the 5%, Council Member, is what an owner in most cases, a fleet owner, is allowed to charge a driver for the credit card transactions that they have during their shift.

COUNCIL MEMBER WEPRIN: Okay. Is there a cap though what the owner has to pay the credit card processor?

MR. GOLDSTEIN: Yes.

COUNCIL MEMBER WEPRIN: And what is that cap?

MR. GOLDSTEIN: Just one clarification is that the medallion owner pays the TPEP vendor, one of the three companies. They have contracts with, in some cases, with subcontractors for different portions of the TPEP solution. So there are caps that the TPEP vendor is allowed to charge.

COUNCIL MEMBER WEPRIN: And what is that cap that the TPEP vendors are allowed to charge?

MR. GOLDSTEIN: It varies by vendor and in some cases there is a fixed component of

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2 that charge as well as a percentage but as a good
3 ball park figure the number that you used is 3.75%
4 is in that ball park.

5 COUNCIL MEMBER WEPRIN: Okay. Are
6 there any TPEP vendors who are charging less than
7 3.75%?

8 MR. GOLDSTEIN: When you calculate
9 that on an average fare I would say yes.

10 COUNCIL MEMBER WEPRIN: What's the
11 lowest percentage that a TPEP vendor is charging
12 an owner?

13 MR. GOLDSTEIN: Well it's difficult
14 to say because it depends on the amount of the
15 transaction and everything but I would say based
16 on what we determine is an average fare and the
17 rate that the different credit card companies
18 charge; I guess it could go as low as on an
19 average of close to 3.25%.

20 COUNCIL MEMBER WEPRIN: 3.25%, so
21 that would actually in effect mean that since the
22 driver is still paying 5% that the owner would be
23 making an additional 1.75% outside of the actual
24 cost to him. Is that correct?

25 MR. GOLDSTEIN: Only in certain

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2 circumstances, it depends on what the average
3 charge on that credit card is. On a larger
4 charge, on a smaller charge it would actually be a
5 higher percentage that the fleet owner is
6 incurring.

7 COUNCIL MEMBER WEPRIN: But it's
8 still capped at 3.75%.

9 MR. GOLDSTEIN: Roughly. There's
10 also there's the owner is not just paying for the
11 credit charge charges, they're paying for the
12 entire TPEP system that's included in that.
13 They're paying for the, in other words, the
14 wireless charges. The wireless is not just used
15 to transact the credit card payments. It's also
16 used to update the content that's on the passenger
17 information monitor and it's used as well to send
18 text messages to the driver monitor. So something
19 like that. It's across--it's used for multiple
20 purposes--

21 COUNCIL MEMBER WEPRIN:
22 [Interposing] Well that's another Bill I have.
23 That's another Bill I have on the text messaging
24 which I won't get into at this point. But, you
25 know, I don't think the best way to communicate in

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the case of cabs that are available to the disabled is through text messaging but that's a whole another issue. I'm not going to get into that at this point. But--

MR. GOLDSTEIN: [Interposing] But also I would just mention on that note Councilman, that the message cannot be retrieved by the driver unless the car is at a stop, so.

COUNCIL MEMBER WEPRIN: All right, just to try to get the numbers straight, but then again those other benefits are permanent benefits to the owners outside of the, you know, processing fee, those are permanent benefits to the taxicabs which will benefit the owners on a permanent basis, isn't that true?

MR. GOLDSTEIN: I would say that it benefits the public. It's a requirement; it's a mandate under our rules that the owners have to provide that. There's costs that they have to provide but it's to provide better service to the public.

COUNCIL MEMBER WEPRIN: So they would have to provide that regardless of whether they were getting a fee for the credit card

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MR. GOLDSTEIN: Yes. And if I could just clarify, the owners are not really getting a fee for the credit card transaction. There a lot of things that go into that portion of the overall 5%. They have to basically; for starters, they're paying for the flow of the cash for the 48 to 72 hour period. They have to keep bookkeepers on staff. They have to deal with any kind of charge-backs or disputes that come in on the credit cards as well. So that's a lot, those are some of the requirements that are put on the owner in that circumstance.

COUNCIL MEMBER WEPRIN: Yeah but these requirements would be there regardless. Wouldn't they?

MR. GOLDSTEIN: If I could ask you just to clarify that? When you say--

COUNCIL MEMBER WEPRIN:
[Interposing] Well I mean there's certain rules that they would have to do regardless of the actual fee that they get for the credit card processing.

MR. GOLDSTEIN: Yes that is a

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requirement but that was considered in coming up with that calculation.

COUNCIL MEMBER WEPRIN: Okay. I'm just going to summarize the math as I see it. It looks to me like every driver is being charged 5% for the credit card processing but the owners are getting a windfall of anywhere from 1.25% to 1.75% on the average.

MR. GOLDSTEIN: Well I think--

COUNCIL MEMBER WEPRIN:

[Interposing] Is that an accurate statement?

MR. GOLDSTEIN: No. Basically. It's not--a windfall, I really do not believe is an accurate word--

COUNCIL MEMBER WEPRIN:

[Interposing] Well an additional fee.

MR. GOLDSTEIN: It, their, this is not--

COUNCIL MEMBER WEPRIN:

[Interposing] An additional fee.

MR. GOLDSTEIN: --I think that as in previous hearings on this I think some of the owners would tell you in very, very detailed numbers that it is not a profit center for them.

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2 It's more of a burden.

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COUNCIL MEMBER WEPRIN: But it would be a burden regardless of any fee is what you're saying.

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MR. GOLDSTEIN: It's a requirement that's on them yes but they're--it's not, when you're saying they're getting a windfall that seems to refer to it being some type of a profit. It's not a profit for them.

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COUNCIL MEMBER WEPRIN: Well, you know, it just seems, my Bill basically says that the drivers should be able to negotiate their own fee arrangement with the vendors so they would actually be paying out of their pockets what the actual cost is which seems to me, you know, to make sense. That why should a driver be forced to pay 5% and you admitted already that even though it's technically a cap, that as a practical matter it's really not a cap, it's really just a fee? And it seems to me especially when you're only dealing with three vendors, it seems unfair to me that a driver should have to pay the 5% as opposed to the actual fee, which seems to be, you know, somewhere between 3.25% and 3.75%.

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MR. GOLDSTEIN: Yes, if I may--

[Audience applause]

[Gavel banging, call to order]

MR. GOLDSTEIN: If I may address that. It's unlikely that an individual driver with the amount of transactions and the dollar volume that they do, if they went in to a bank and attempted to open up their own merchant account that they would be able to get a rate such as 3.25% or 3.75%.

We did some independent research that you could look on the web. Banks normally just when, and Gary could attest to that, walk into a bank and they just don't quote you rates. They want to hear more about your business. But something like Sam's Club and Costco do have published rates on their website. And that essentially based on what the--when you take into account that they would either have to buy or finance a new credit card machine, a point of sale device, the wireless airtime fees that they would incur, there's different charges for the bank statements, to get statements at the end of the month, things like that. Not even talking about

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2 the time that it would take to reconcile. There
3 could be 30 different rates that they would get on
4 a typical monthly statement, the credit cards,
5 there's not just one fee. It really would come
6 down to where we think it would end up being more
7 like, it would be definitely over 4%, more like
8 4.25% to almost 4.75% based on an average fare of
9 \$13.75.

10 COUNCIL MEMBER WEPRIN: Well but it
11 would still be cheaper than 5%.

12 MR. GOLDSTEIN: That's just the
13 credit card portion of the situation. The other
14 thing is that you have a situation where there are
15 other--since set this up as a turnkey solution,
16 there are other benefits that would be lost by
17 allowing that. Drivers themselves, they would
18 lose the benefit, we have something that the TPEP
19 vendors are required to include in their services,
20 is something that we call--it's called Store
21 Forward which essentially they're using a cellular
22 connection to complete that transaction, to go
23 back to the merchant processor.

24 And if they're in a dead zone, just
25 like you may experience with a cell phone, the

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2 systems are required to store forward three
3 transactions. And that way it becomes a seamless
4 transaction for the driver and for the passenger.
5 And in our contract we required that be on any
6 \$25.00 or under fare. The vendors on their own
7 initiative because of the low, their calculation
8 of the low risk there, they've increased it
9 anywhere to \$65.00 or \$70.00, I believe, where
10 they will perform that same function. If a driver
11 were to go open up their own merchant account and
12 they had some type of portable handheld credit
13 card machine, they would lose, they would
14 basically lose that benefit.

15 The other thing is the public has
16 become very familiar and has gotten used to and
17 likes using the passenger information monitor to
18 complete the transaction. They like the idea of
19 there are the--

20 [Audience laughter]

21 --they like the idea that there are
22 the suggested tips on that. That results in
23 higher tips to the drivers. And now if the
24 drivers went out and were opening up merchant
25 accounts, there could literally be dozens of

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2 different machines that would be in a cab. And we
3 think that would negate some of the benefits of
4 the entire turnkey solution and would cause some
5 potential confusion with the public.

6 The other thing is at times we use
7 the credit card receipts, we have access to the
8 last four digits of a credit card number, helps us
9 in recovering lost property to the public. If
10 they paid with a credit card, they give us the
11 last four digits, it helps us narrow down the
12 search that we do.

13 COUNCIL MEMBER WEPRIN: Okay.

14 Isn't it a fact--

15 MR. GOLDSTEIN: [Interposing] Oh,
16 excuse me. And there is one other thing, is that
17 for them to be able to get a merchant account, my
18 understanding is that they will not be able to
19 set--you're not able to set up a merchant account
20 with a personal account for the money to be
21 deposited into. So they would incur additional
22 costs of keeping a commercial or corporate account
23 to be able to do these credit card transactions.
24 So. That's just one more additional point.

25 COUNCIL MEMBER WEPRIN: Okay.

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Isn't it a fact though that there are other cities in the country that allow drivers to have their own arrangements with credit card providers?

MR. GOLDSTEIN: There may be. There might be, yes.

COUNCIL MEMBER WEPRIN: Okay. And it works in other cities as far as you know.

MR. GOLDSTEIN: Yes but none of the other cities, again, have this total turnkey solution, this entire system that we put together.

COUNCIL MEMBER WEPRIN: Okay one last question--

MR. GOLDSTEIN: [Interposing] And as well also, just in the other cities, our research indicated that there is no one that charges any less than 5% on a credit card transaction. And there are even cities that are charging 7%, 8% and 10%, that they're allowing a driver to be charged.

COUNCIL MEMBER WEPRIN: Well I would think if you opened it up to more potential vendors, you'd encourage competition and I think you might have, you know, more competitive rates. That--

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2 MR. GOLDSTEIN: [Interposing] Well,
3 if I may just address that--

4 COUNCIL MEMBER WEPRIN:
5 [Interposing] Sure.

6 MR. GOLDSTEIN: --we also had a
7 situation where through the negotiation process
8 there was a best and final offer that each vendor
9 was required to submit to us which essentially was
10 the maximum price that they were allowed to charge
11 to the Taxicab Industry. Because we were able to
12 bring that buying power of the entire fleet of
13 over 13,000 cabs, the vendors ended up discounting
14 their prices on the total system anywhere from 24%
15 I think up to over 80% of what they said the BAFO
16 was, so there was very intense competition amongst
17 the three vendors and we think it was a successful
18 model.

19 COUNCIL MEMBER WEPRIN: And the
20 existing contract you have now with originally
21 four vendors, now three, by bankruptcy as you
22 pointed out, how long is that in effect until?

23 MR. GOLDSTEIN: I'm sorry could you
24 repeat--

25 COUNCIL MEMBER WEPRIN:

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2 [Interposing] The contract that you have now--

3 MR. GOLDSTEIN: [Interposing]

4 Approximately--

5 COUNCIL MEMBER WEPRIN: --with the
6 three remaining vendors, originally four vendors,
7 one declared bankruptcy you said, how long does
8 that contract go to?

9 MR. GOLDSTEIN: I believe it's
10 August 2010.

11 COUNCIL MEMBER WEPRIN: 2010.

12 MR. GOLDSTEIN: Another example I
13 could give you just where we were able to combine
14 the buying power so to speak of the 13,000 cabs
15 was on the rate that American Express charges.
16 They honored the same rate to the Taxicab Industry
17 that they charge the City and the State, which is
18 well over a point less than what a normal small
19 merchant vendor would incur.

20 COUNCIL MEMBER WEPRIN: Okay. So I
21 assume in theory if the City Council were to pass
22 this legislation and it was to go into effect
23 prior to August 2010, they could still be, that is
24 a potential choice, in addition to additional
25 choices by taxi drivers.

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2 MR. GOLDSTEIN: Well I think there
3 would also be my testimony mentions it but I think
4 there would be a serious issue as far as to the
5 Constitutionality of something like that--

6 COUNCIL MEMBER WEPRIN:

7 [Interposing] Well I don't understand that.

8 MR. GOLDSTEIN: --as far as
9 interference with the contracts. Well if I could
10 turn that to General Counsel--

11 COUNCIL MEMBER WEPRIN:

12 [Interposing] How would it interfere with the
13 contract if I just, as I just stated, it could
14 just provide an additional choice, in addition to
15 the contracts.

16 MR. FRASER: The web of contracts
17 here, I have to go through, there's a complexity
18 of contracts here. We contract with the vendors
19 who in turn contract to sell or rent their systems
20 to taxicab medallion owners. They subcontract,
21 the vendors subcontract with a variety of entities
22 but relevant here, merchant bank providers, which
23 goes to your point early on, we did not select the
24 merchant bank providers. We selected the vendors.
25 They selected the merchant bank providers.

1
2 Each of those contracts is a
3 private contract. The Constitutional question
4 arises under Article I, Section 10 of the United
5 States Constitution, the contract clause which
6 prohibits legislation impairing the obligation of
7 contracts.

8 COUNCIL MEMBER WEPRIN: Yeah but
9 isn't it true by your own testimony that
10 circumstances have already changed because the
11 original contract was with four vendors and now
12 there's only three vendors, due to the bankruptcy,
13 so doesn't that immediately change the
14 circumstances?

15 MR. FRASER: That is of course a
16 change of circumstance but it was not imposed by
17 government legislation. It was imposed by TTC's
18 bankruptcy.

19 COUNCIL MEMBER WEPRIN: Well what
20 would happen if the other three remaining vendors
21 went bankrupt?

22 MR. FRASER: We would be out of a
23 system of all three of them went bankrupt.

24 [Audience applause]

25 COUNCIL MEMBER WEPRIN: Well. It

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2 seems to me that legally if the City Council
3 passed legislation that that would change the
4 circumstances and the contractual obligations at
5 the time were based on the law at the time, and if
6 the law changes, I would think those contractual
7 obligations would have to be amended to comply
8 with the law and would actually not impose a
9 Constitutional problem but really just impose a
10 requirement to change the contract based on the
11 new law.

12 I mean I can imagine hundreds and
13 hundreds of circumstances where laws change which
14 would make an existing contract, you know, have to
15 be changed based on the law.

16 MR. FRASER: Well as I say, our
17 testimony says that it raises substantial
18 questions. The contract clause is a very complex-
19 -it's three words, but the litigation under it is
20 volumes. And it's not a straightforward question
21 in my judgment.

22 We have consulted with the Law
23 Department and we believe that there is a serious
24 question about the Constitutional validity of this
25 legislative proposal. Obviously I would urge that

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you consult with your counsel as well.

COUNCIL MEMBER WEPRIN: We will. I reserve the right to ask questions later Mr. Chairman, but thank you.

CHAIRPERSON LIU: Thank you Council Member Weprin. We've been joined by Council Member Miguel Martinez of Manhattan and he has questions.

COUNCIL MEMBER MARTINEZ: Thank you Mr. Chair. That was quick. First of all I want to apologize for my tardiness but I'm trying to understand. When TLC contracted with the vendor, correct, it was TLC who contracted with the vendor?

MR. GOLDSTEIN: Yes.

COUNCIL MEMBER MARTINEZ: When TLC contracted with the vendor in essence, your contracting with that vendor implied that the driver, in essence, was stuck with the bank, correct?

MR. GOLDSTEIN: Was stuck with the bank?

COUNCIL MEMBER MARTINEZ: For the transaction, that would process the transaction.

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2 MR. GOLDSTEIN: Actually that is
3 not part of the contract.

4 COUNCIL MEMBER MARTINEZ: So then
5 the drivers have the option to select the bank?

6 MR. GOLDSTEIN: No. The contract
7 was entered into with the requirement under our
8 rules is on the medallion owners, to have these
9 systems installed. And it was by rulemaking that
10 the transaction fees be incurred by the driver.

11 COUNCIL MEMBER MARTINEZ: Correct.
12 But the drivers are paying the transaction fee
13 based on a contract signed with TLC who signed
14 with the vendor that's providing the equipment.

15 MR. GOLDSTEIN: If I could just ask
16 what you mean by that.

17 COUNCIL MEMBER MARTINEZ: In other
18 words, let me give you an example, you tell me if
19 this is how it works with TLC. I have a friend
20 who owns a supermarket, right? He buys the
21 equipment. Then he selects which bank he wants to
22 bank with that will charge him the fee for the
23 transaction, is that how it happens with TLC?

24 MR. GOLDSTEIN: It was put through
25 the procurement process, and the evaluation

1
2 process, but ultimately which vendor was chosen by
3 the medallion owner was restricted to those four
4 vendors.

5 COUNCIL MEMBER MARTINEZ: That was
6 because TLC decided it was only these four
7 vendors, correct? And the vendors--

8 MR. FRASER: [Interposing] Yes.

9 COUNCIL MEMBER MARTINEZ: --provide
10 the equipment.

11 MR. GOLDSTEIN: Yes.

12 COUNCIL MEMBER MARTINEZ: But I'm
13 not speaking about the equipment, so you went
14 through the procurement process. You got the
15 equipment. The issue is here the fee for the
16 transaction. And what determined the fee is when
17 you shop around for the bank that would process
18 that transaction, correct?

19 MR. GOLDSTEIN: That was included
20 in the TPEP vendors' proposal to the City.

21 COUNCIL MEMBER MARTINEZ: Which is
22 what TLC agreed to.

23 MR. GOLDSTEIN: Yes.

24 COUNCIL MEMBER MARTINEZ: So in
25 essence the driver never had an option to shop

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around for the banks to process the transaction.

MR. FRASER: Yes.

COUNCIL MEMBER MARTINEZ: You... yes drivers did--never had an option to shop around for a vendor to process the transaction. In other words, what you're saying is this was locked in from the very beginning.

MR. GOLDSTEIN: Yes. Going back to my testimony where it was base don their being a turnkey solution to the entire, for all four--

COUNCIL MEMBER MARTINEZ:
[Interposing] Okay so now--so you answered my question--

MR. GOLDSTEIN: [Interposing] for all four of the improvements that were--

COUNCIL MEMBER MARTINEZ:
[Interposing] You answered my question.

MR. GOLDSTEIN: --included.

COUNCIL MEMBER MARTINEZ: Which is not--you answered my question. I want to ask the Counsel of the TLC, now you just finished--and I want to understand what you said, right now to Council Member Weprin. So you're saying that the procurement laws, right, hold you to having to

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contract--and I want to make the difference

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between the equipment and the actual processing of

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the transaction which is the issue. You're saying

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that when this originally happened the procurement

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laws of the City require you to lock it in?

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MR. FRASER: First of all we didn't

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procure them separately. This is what Mr.

9

Goldstein's referring to by a turnkey solution--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Um-hum.

12

MR. FRASER: --it's one contract

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that we entered into with each vendor for the

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entire system. We don't have a separate contract

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for the credit card reader and then the rest of

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the system. It's one contract. But--

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COUNCIL MEMBER MARTINEZ:

18

[Interposing] Correct. So but--

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MR. FRASER: --second--

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COUNCIL MEMBER MARTINEZ: --uh-huh.

21

MR. FRASER: --yes, the answer is

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yes, although it is not City law, we would--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Yes to what?

25

MR. FRASER: --State law. Yes that

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2 we were required to competitively let these
3 contracts pursuant to the procurement law but--
4 it's actually State law that there's a State case
5 under State law that requires that when you--it
6 isn't when you're just buying goods which we were
7 not doing, but when you're requiring other people,
8 in this case our medallion owners, to buy goods or
9 services from specified people, which we were
10 doing. We were requiring them to buy from no one
11 other than the four, that is a procurement under
12 State law. And we were required to competitively
13 let it, that's correct--

14 COUNCIL MEMBER MARTINEZ:

15 [Interposing] So let me go back because I want to
16 understand. So under State law, you are required
17 that if you're going to make someone buy or
18 purchase an equipment, that they also have to
19 contract with whomever's going to do the
20 processing?

21 MR. FRASER: No. State law doesn't
22 deal with the question of how you contract for a
23 particular good or service. The point being we
24 chose to do the contract as a package for the
25 reasons Mr. Goldstein detailed in his testimony,

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2 it would not be practical. It also would not save
3 drivers money to--

4 COUNCIL MEMBER MARTINEZ:

5 [Interposing] Why not? I mean, supply and demand.
6 I mean if--

7 MR. FRASER: [Interposing] I
8 understand that logic but the other point that has
9 been lost here is that we had the bargaining power
10 and each of our vendors had the bargaining power
11 of bulk. If a taxi driver walked into Citibank
12 and said I'd like to set up a merchant bank
13 account for my taxicab, Citibank would not enter
14 into that contract. And if they did, they would
15 charge a rate something like 20%, 25%.

16 Furthermore, the cab driver would then be
17 responsible for securing the wireless connection
18 to Citibank which--there are Federal standards on
19 securing wireless credit card transactions. It
20 costs each of our vendors \$10,000 each, each taxi
21 driver who selected his own merchant bank would
22 have to bear that cost.

23 MR. GOLDSTEIN: In other words,
24 each vendor, they work with one credit card
25 processor, they have to have one line, one secure

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2 line that went through very stringent testing on
3 standards that are set by the payment card
4 industry itself and by the testing during the
5 acceptance testing that the TLC did. Now if you
6 said that that vendor, the TPEP vendor, had to
7 start working with dozens or potentially hundreds
8 of different merchant account providers, they
9 would have to be incurring this additional cost to
10 be able to have that line to go back to that
11 credit card processor. And the costs would be
12 outrageously prohibitive.

13 COUNCIL MEMBER MARTINEZ: Now wait;
14 I'm trying to understand why. And why, to what
15 you just finished saying, in terms of why would it
16 be so much more expensive for this industry than
17 any other industry to establish that with Citibank
18 or any other bank, particularly--and when I'm
19 saying why, I just want to know is it because of
20 the technology? Is it because it's wireless? Is
21 it because it's not your

22 MR. GOLDSTEIN: [Interposing] I--

23 COUNCIL MEMBER MARTINEZ: --
24 conventional system? Because from my
25 understanding this, if I want to put up, I'll give

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2 you an example. My political committee, if I want
3 to have credit card transactions, all I have to do
4 is buy the equipment and then I am allowed to shop
5 around and get the cheapest rate for the
6 transaction. What's different from that or a
7 bodega owner who is taking credit card
8 transactions, he's allowed to buy the equipment
9 from whatever company--and I understand the issue
10 of having to contract, but I'm going to the second
11 point is the transaction. What's so different
12 about it? Is it the technology that's going to be
13 more expensive for them--

14 MR. GOLDSTEIN: [Interposing] None
15 of those are wireless.

16 COUNCIL MEMBER MARTINEZ: --why is
17 Citibank--

18 MR. GOLDSTEIN: --as I understand
19 your hypotheticals, none of them are not, I mean
20 real examples, none of them are wireless.

21 Wireless credit card--

22 COUNCIL MEMBER MARTINEZ:
23 [Interposing] That's my point. What's the
24 difference?

25 MR. GOLDSTEIN: Wireless credit

1
2 card transactions have very complex Federal
3 security requirements--

4 COUNCIL MEMBER MARTINEZ:

5 [Interposing] That's what I needed to know.

6 MR. GOLDSTEIN: --that have to be
7 met. And our vendor, the value of having the
8 vendor, one of the values of having each vendor
9 have one merchant bank provider is that they only
10 need one secure line. You need to have a separate
11 line obviously for each merchant bank. If a
12 driver were to go out and get his or her own
13 merchant bank, that driver would have to have a
14 separate line. As I said, the cost of securing
15 the line--

16 COUNCIL MEMBER MARTINEZ:

17 [Interposing] Um-hum.

18 MR. GOLDSTEIN: --of doing the
19 setup and testing to prove what you have to do
20 under the Federal requirements--

21 COUNCIL MEMBER MARTINEZ:

22 [Interposing] Um-hum.

23 MR. GOLDSTEIN: --the security, the
24 satisfaction of the security requirements, runs
25 about \$10,000.

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COUNCIL MEMBER MARTINEZ: Got it.

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MR. GOLDSTEIN: And now if I could-

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MR. GARY ROTH: [Interposing] And

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actually one other comment is, as the owner, if he

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set up a merchant account for your store, your

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bodega.

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Um-hum.

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MR. ROTH: A worker who doesn't own

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the store can't come in and say, you know, I want

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to use a different processor.

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COUNCIL MEMBER MARTINEZ: Um-hum.

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MR. ROTH: I want to use Global

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Payments. I know you use Bank of America.

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COUNCIL MEMBER MARTINEZ: Um-hum.

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MR. ROTH: And then another worker,

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the next day, comes in and says I want to use a

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different company.

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COUNCIL MEMBER MARTINEZ: Um-hum.

22

MR. ROTH: And the owner signs up

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with one company, sets up this very secure

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connection to this one company and does all their

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processing. What--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Um-hum.

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MR. ROTH: --your--this Bill

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suggests is that every worker who comes in would say I want to use a different processor. And that would incur a tremendous cost.

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COUNCIL MEMBER MARTINEZ: Thank you

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for clarifying that. That was very important

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point. However, I think Mr. Chair and I have no

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further questions, I think Mr. Chair and Council

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Member Weprin, the author of the Bill, I think

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that we do need to look in further, into the State

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law and both the initial contracting by TLC, which

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in essence is an unfair contract because--

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[Audience applause]

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COUNCIL MEMBER MARTINEZ: --you

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know, you really locked in--and I appreciate the

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answers to my question which I got. But really

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you really locked in these drivers and medallion

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owners into four vendors and from these four

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vendors they have no options to go and look for

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the cheapest rate for transactions. And I

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understand the complicity [sic] of having it to be

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wireless which is what I wanted to hear. But I am

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1
2 sure if there's the demand, there's going to be
3 competition and the rates will go down. So I
4 think that's something that we definitely need to
5 look at and I share the point of view of Council
6 Member Weprin.

7 [Audience applause]

8 COUNCIL MEMBER MARTINEZ: Thank you
9 Mr. Chair. Thank you--

10 CHAIRPERSON LIU: [Interposing]
11 Thank you Council Member Martinez. We've been
12 joined by Council Member Jessica Lappin of
13 Manhattan. And Mr. Roth, you just likened the
14 taxi drivers to workers?

15 MR. ROTH: No, he made the comment
16 of that if he set up a merchant account at your
17 store, how come the--

18 CHAIRPERSON LIU: [Interposing] I
19 know but--

20 MR. ROTH: --costs would be higher.

21 CHAIRPERSON LIU: --I mean you
22 likened the taxi drivers to workers--

23 MR. ROTH: [Interposing] No--

24 CHAIRPERSON LIU: --when in fact
25 the TLC always maintains that they're independent

1
2 contractors. And therefore you don't have to do
3 anything for them.

4 MR. FRASER: With all due respect,
5 we take no position. We do not require drivers to
6 be independent contractors. In fact our rules
7 have specific provisions in them--

8 [Audience noises]

9 MR. FRASER: --for the possibility
10 of a union. The drivers were unionized until
11 relatively recently historically speaking. We
12 have no impact on that.

13 CHAIRPERSON LIU: The issue still
14 is and I know Council Members Weprin and Martinez
15 have asked you with a fair amount of depth on this
16 why can't the credit card processor be--your
17 argument is that--or your--not argument but
18 assertion is that that's part of the deal. Nobody
19 gets a choice. They have to use those
20 predetermined processors. And there's no way to
21 allow that choice. That's basically what you're
22 saying.

23 MR. GOLDSTEIN: Well the choice,
24 the competition was at the level when the
25 medallion owner chose which one of these TPEP

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vendors they wanted to work with.

CHAIRPERSON LIU: Um-hum. I think you actually argued that while they're already doing it, there's not much profit margin in fact, in some cases it should, it could be more like 8%, 10%. And if that were true then maybe there are no other processors that would be available to the drivers. And so it would be a moot point. But I think actually what we're going to hear from people who are going to say that there are in fact processors willing to do it for a lower rate. So the argument that while it's already as low as it can be, I don't think that carries much water. I think that, you know, the drivers actually--

[Audience applause]

CHAIRPERSON LIU: Bill, come on Bill, please. You'll get your time when you get up here. Okay.

MR. GOLDSTEIN: Oh.

CHAIRPERSON LIU: They'll be able to find the processors.

MR. ROTH: Like I said, there's a lot of other benefits of this system that the public got--

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CHAIRPERSON LIU: [Interposing]

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Well the benefits--

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MR. ROTH: --and by packaging this-

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CHAIRPERSON LIU: [Interposing]

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Right. So let's talk about the benefits. Because

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there's, obviously there's, with what Council

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Member Weprin has, I think appropriately

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characterized, it's really a fee. I mean look,

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we're used to calling it, like, you know, caps.

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The lease cap is a cap; actually it's just a fee

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'cause people always get charged the maximum

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amount possible.

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MR. ROTH: No. No in fact--

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CHAIRPERSON LIU: [Interposing] No

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it's not?

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MR. ROTH: --there are--it varies

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by shift but the lease caps are not reached by

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every medallion owner in every shift. They are in

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fact caps, and they do function as caps, the lease

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caps.

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CHAIRPERSON LIU: Okay. Well but I

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think you didn't dispute Council Member Weprin's

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characterization--

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MR. ROTH: [Interposing] Right.

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CHAIRPERSON LIU: --of the 5% as really a fee.

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MR. ROTH: [Interposing] It's a cap under the rules--

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CHAIRPERSON LIU: [Interposing] Okay. All right.

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MR. ROTH: --I did acknowledge I'm not aware--

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CHAIRPERSON LIU: [Interposing] I know. All right. All right. I mean that's not the point I'm trying to make but that's fine. So that, that fee or that cap if you want to call it that, that is supposed to pay for a whole lot of different things. It's not just the actual act of processing the credit card payment.

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MR. ROTH: Overall yes, there's these other benefits that we discussed as having this total, complete, integrated solution.

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CHAIRPERSON LIU: All right. So part of that, you talked about the charge backs. So when there's a charge back on the credit card, does that mean that the driver's not on the hook for that charge back?

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2 MR. ROTH: If the credit card
3 company ultimately upholds the dispute, if the
4 driver is still working at that particular fleet,
5 he would be responsible. If there was a charge
6 back that was upheld.

7 CHAIRPERSON LIU: So in other words
8 if a credit card was bogus and somehow, basically,
9 the driver would not get the money for a charge
10 back. So there's no benefit there. You know,
11 when you talk about charge backs I would imagine
12 that you're talking about the risk and actually
13 the costs of these kinds of charge backs but in
14 fact you're saying that the driver's going to be
15 on the hook for them anyway.

16 MR. ROTH: No, no. I think there's
17 a difference between a dispute that's upheld and a
18 bogus credit card. A dispute that's upheld would
19 be upheld on the ground that the transaction
20 didn't occur. And in that case the charge back
21 would go to the driver. In the case where a
22 credit card is stolen, my understanding is the
23 driver gets paid. The owner does not, but the
24 driver does, that's my understanding.

25 CHAIRPERSON LIU: Um-hum. Okay.

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2 But would you characterize both of those examples
3 as charge backs?

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MR. ROTH: I guess, I guess they
5 are but they're very different circumstances and
6 one accrues to the driver's benefit.

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CHAIRPERSON LIU: I don't think
8 it's clear that in fact the cost of the charge
9 back, you know, the implication of mentioning
10 charge back is that there are a certain number of
11 basis points that kind of average out the actual
12 cost of the charge backs and that the drivers are
13 getting their money's worth.

14

MR. ROTH: The charge back is one
15 of the elements. There are number of elements--

16

CHAIRPERSON LIU: [Interposing]
17 Well I'm focusing on element by element. I don't
18 think the charge back argument is particularly
19 strong here. I think it's very weak actually.

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MR. GOLDSTEIN: [Interposing] Well.

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CHAIRPERSON LIU: [Interposing]

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The--

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MR. GOLDSTEIN: If I may Chairman,
24 just to emphasize something that I had mentioned
25 before, what a driver would lose, opening up their

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own merchant account was one of the requirements that we put on the TPEP vendors about this, this concept of Store Forward.

What that means is that if the cab at the time, when they go to process that credit card, is out of range of a cellular service, depending on the vendor, we require \$25.00 in the contract--they took that upon themselves to raise that to either \$65.00 or \$70.00, the transaction will be approved. And if that comes back and is ultimately either it was stolen, the card was over its limit, then that is the responsibility of the TPEP vendor. And that's something that they're definitely not going to get anywhere--they're not going to get that opening up an account as a small merchant.

CHAIRPERSON LIU: Well, okay.

You're almost hinting to drivers to find the location where there's no signal and tell the credit--

MR. GOLDSTEIN: [Interposing] But it certainly happens. It happens--

CHAIRPERSON LIU: [Interposing]
Okay.

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MR. GOLDSTEIN: --does it ever

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happen to you with a cell phone?

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CHAIRPERSON LIU: [Interposing] All

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right. Well look maybe that is one benefit that can

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be upheld. But you've also talked about the

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float. Now what float are you talking about? How

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much can floats be worth now a days for a float of

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three or four day--

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MR. GOLDSTEIN: [Interposing] I

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think that--

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CHAIRPERSON LIU: --even a week?

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MR. GOLDSTEIN: I think some of the

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larger fleets--

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CHAIRPERSON LIU: [Interposing] Do

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you know interest rates are right now? I mean how

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much of an argument can a float be?

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MR. GOLDSTEIN: Um-hum. I think

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that there are vendors that at any time may have

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tens of thousands if not \$100,000 or more

21

outstanding during--

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CHAIRPERSON LIU: [Interposing] No

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we're talking percentages.

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MR. GOLDSTEIN: --during the--

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CHAIRPERSON LIU: [Interposing]

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You've got to talk about percentages here.

MR. GOLDSTEIN: Um-hum.

CHAIRPERSON LIU: How many basis points do you think a three or four day float is really worth?

MR. GOLDSTEIN: Um-hum. Not sure.

CHAIRPERSON LIU: It's pretty small.

MR. GOLDSTEIN: Um-hum.

CHAIRPERSON LIU: Like maybe, maybe five basis points.

MR. GOLDSTEIN: Um-hum.

CHAIRPERSON LIU: That's the kind of float you're talking about. So that's really not much of an argument either--

MR. GOLDSTEIN: [Interposing] - - for the use of it. They've had to in some cases--

CHAIRPERSON LIU: [Interposing] It's a very tiny piece of it. I mean--

MR. GOLDSTEIN: [Interposing] In one case--

CHAIRPERSON LIU: --the point is that you're--the TLC is arguing that there's all these different reasons, additional benefits in

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2 addition to just the actual act or processing the
3 card that makes the 5%, I think in your words,
4 that the actual services being provided are
5 absolutely worth the 5% charge.

6 MR. GOLDSTEIN: Yes.

7 CHAIRPERSON LIU: I think the
8 drivers are saying that that is in fact not the
9 case and many of the reasons that you cite, the
10 additional bonus services that drivers get,
11 they're not really much of services. And they're
12 certainly not; I don't think they come anywhere
13 close to being 1.25%, 1.75%, even 1% of the actual
14 cost of the charges.

15 MR. GOLDSTEIN: Well in some cases
16 they've had to hire, a fleet would have to hire
17 additional staff as well to be able to do all
18 this, to do the bookkeeping that came with the
19 requirement--

20 CHAIRPERSON LIU: [Interposing]
21 Okay.

22 MR. GOLDSTEIN: --of accepting the
23 credit cards, so.

24 CHAIRPERSON LIU: All right. Well
25 we're going to--I think those are the questions

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2 from Council Members. I think we'll continue this
3 discussion but there is a very solid legislative
4 proposal on the table now. And, you know, to the
5 extent possible, we should work on it. I don't
6 think it's as simple as saying that oh
7 contractually you can't do it.

8 So I think we should look at it
9 very carefully and it would behoove the TLC to
10 look at exactly what benefits are really being
11 provided and whether it really has to be a cap at
12 5%. All right, thank you very much gentlemen.

13 We have, we'll hear testimony from
14 Ed Ott and Bhairavi Desai, to be followed by Jose
15 Vilorio and Franchie Muniz.

16 [Pause]

17 MS. BHAIRAVI DESAI: Hi. Good
18 afternoon.

19 CHAIRPERSON LIU: Please proceed.
20 Yep.

21 MS. DESAI: I'm Bhairavi Desai,
22 Executive Director of the New York Taxi Workers
23 Alliance. Councilman Weprin, we really want to
24 thank you for introducing this legislation.
25 Chairman Liu, we want to thank you for supporting

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it and for holding this hearing.

You know, my head is really spinning from listening to that testimony, quite frankly. We are in full support of Intro 705. It makes absolutely no sense to any--I mean we've been working on this issue for well over a year. I cannot think of anybody in terms of the riding public, certainly not drivers or other working people who can understand why taxi drivers are not able to be the account holders.

As a consequent not only are they having to pay above the processing fee, you know, and a total of 5%, but also it means that they don't get the money directly. Not only are there long delays but they're not even full guarantees that drivers will get the money forwarded to them by the garages and the brokerages.

You know, there have been, from issues of, you know, at the end of each credit card transaction, on some of them, on fares that are over, I believe, \$25.00, there would be a receipt that has to be signed. In addition to the individual receipts that you collect at the end of each transaction, at the end of your shift there

1
2 is also a receipt printed out that totals your
3 credit card transactions.

4 I have seen so many receipts where
5 for example not all of the credit card
6 transactions will be calculated in that end of
7 shift receipt. So when you go to the garage, the
8 garage is using the end of shift receipt to do the
9 reimbursements. So there are oftentimes when
10 drivers are not getting the money.

11 Not only do they not get the money
12 immediately because they're not account holders,
13 but even at the end of the shift and the idea that
14 anybody out there is getting their money at the
15 end of the shift, I have not met a driver who can
16 testify to that. If anything, if you're getting
17 anything at the end of the shift it would work as
18 a credit system. So you know, you go to the
19 garage and they say to you, okay, you've had
20 \$50.00 worth of transactions. They will credit
21 you for your lease for the next day which means
22 that you're dependent to keep returning to that
23 same company to lease.

24 Now during this past holiday season
25 for example during the religious holiday season

1
2 when people wanted to go away on vacation and said
3 well actually I'm not coming back to you tomorrow
4 or even next week. I would like my money in cash.
5 They were turned away. They were told no. Come,
6 you know, come back a few weeks or a few months
7 later, whenever you're back in the City.

8 This is plain and simple robbery.
9 It is such an unfair, inequitable system where you
10 have made an entire workforce dependent on a group
11 of bosses with whom there is no collective
12 bargaining power. And as a result of it, drivers
13 are losing major income. And the idea that the
14 TLC claiming that they use their bargaining power
15 on behalf of the drivers, well they did and you
16 know what they did? They bargained the income
17 away as a result of that.

18 You know, on a good day you lose
19 5%. On a bad day you don't get anything at all or
20 you have to wait long periods of time. That is,
21 no matter how you look at it, fair and simple,
22 that is a wage cut on a group of working people
23 who are laboring 12 hour shifts, 60 to 70 hours a
24 week in an industry that is cash dependent.

25 There are so many drivers where

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2 particular during the time when gas prices were
3 high, when you would have to end up going to the
4 gas station two or three times during your shift
5 because you didn't have enough cash to go and gas
6 up. There's so many people who come forward to us
7 because they fell behind on their rent and other
8 household expenses because even after working 60
9 to 70 hour weeks, they were not seeing their
10 income.

11 And the only remedy to this problem
12 is to allow each individual driver to become the
13 account holder. I think one thing that the TLC
14 fails to understand is perhaps within the context
15 of this industry, yes, drivers don't have any
16 rights, but when you step out of this industry and
17 they function as consumers, well guess what?
18 There are rights that they can access just like
19 the rest of us.

20 And even within the, you know, the
21 laws of capitalism, where, you know, you can go to
22 any processor and you can bargain and you can cut
23 yourself a better deal than losing your daily
24 income. And it is toward a profit. Now if the
25 garages and the brokers would say that, you know,

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that the additional monies, that the amount that they collect is not only a windfall from the processing but it's actually used to pay for the technology as a whole, well drivers' leases have gone up.

Driver owned vehicle operators are not only paying for the medallion lease and the car payment, they're paying separately for the machinery itself. So this 5% is all about the transaction. Drivers are already paying separately for the technology and, you know, for the use of it. And all the excuses that the TLC is making, I mean it seems to me like, you know, by their argument if Intro 705 were to pass, there definitely would be a great depression all throughout the United States of America.

I mean the idea that and practically the entire industry would collapse, you know, if we were actually to bring equity to such an unfair system is completely--it's not only preposterous but quite frankly it's pretty desperate of an agency to keep intact a system which has been failing from the get-go.

We strongly urge you to pass 705.

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2 We believe that there are amendments which are
3 necessary, namely that there should be signs in
4 the back seat that advise the passengers that
5 failure to pay the driver even if the signal
6 fails, it's a violation of the law. We've seen
7 one out of three drivers have reported incidents
8 where they have not received a payment either
9 because a passenger refuses to pay because the
10 signal has failed or because of a charge back or
11 what have you. So we would like there to be some
12 sort of public education to really rival all the
13 propaganda that's been out there blaming the
14 drivers for all the failures of this system.

15 Secondly, that on flat fares, which
16 are, you know, mostly out of town fares which are
17 longer and it's a flat fare, so it's an agreed
18 upon, both sides know what the fare will be at the
19 end of the trip, there should be preauthorization.
20 Because those are also the fares where there seem
21 to be more signal failures and there is less
22 likelihood of the driver being paid.

23 Third, we must close the existing
24 loopholes on the lease caps. You know, we do not
25 want a scenario where the garages and brokers who

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2 don't want to lose the windfall from the 5% turn
3 around and say well you know what? We'll just
4 raise your lease and get it that way. The
5 existing--we're not looking to change the amount
6 of the actual leases although there is, you know,
7 they too are problematic. But what we're seeking
8 from the Council is only to tighten the loopholes
9 in the existing law.

10 This is, you know, this is an issue
11 affecting over 40,000 drivers. I think it is such
12 a common sense issue. It's such a simple issue of
13 fairness and justice. And I plead to you; please
14 do not allow all this nonsense pulling out the law
15 books and rule books 'cause they don't seem to
16 matter when you walk into 40 Rector Street or
17 Queens Boulevard. And I didn't even know people
18 at the TLC knew what the Constitution was until
19 today.

20 Do not allow these nonsense
21 arguments to detract you. This is such a fair
22 Intro. This is such a common sense issue. We
23 applaud you for raising it. And we urge you to
24 move forward as quickly as possible. Thank you.

25 [Audience applause]

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2 CHAIRPERSON LIU: Thank you. Mr.
3 Ott.

4 MR. ED OTT: Thank you Chairman Liu
5 and thank you for holding this hearing. I'd like
6 to thank Council Member Weprin also for putting
7 forward such a simple Bill that does so much.

8 This is a good discussion to have.
9 I mean you guys know my sentiments about how this
10 industry is organized. You know, our general view
11 of it is, you know, it's basically predicated on
12 terrible wages and terrible working conditions.
13 Passengers spend a small amount of time in a taxi.
14 If they had to spend as much time as a driver,
15 they would hate it. It's a terrible work
16 environment.

17 There's a whole historic reasons as
18 to how we got to this hole in the ground but the
19 Taxi and Limousine Commission is certainly not the
20 body that's going to adjudicate the problems in
21 this industry with any sense of fairness. With
22 that I just want to read a simple statement.

23 I mean I'm testifying in total
24 support of Intro 705. Drivers lose 5% of their
25 income on every ride when credit cards are used.

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2 Intro 705 would let every individual driver become
3 the account holder. So the monies would go
4 directly to the driver's account and the drivers
5 would not lose 5% they currently lose on even tip
6 and toll.

7 Even though the banks typically
8 charge 1.5% processing fee, New York taxi drivers
9 also pay surcharges to the garage or the broker
10 they lease the taxi medallion from, as well as the
11 GPS vendor who supply the credit card machines.
12 The 5% loss is on top of the extra costs drivers
13 are paying for the machines and higher leases
14 which gets to the point that TLC was making
15 before. I mean either they don't know how they
16 organize their own industry and how they set this
17 system up or they're lying. Flat out.

18 The Council Bill would overturn the
19 Taxi and Limousine Commission's regulation which
20 lets only medallion owners become the account
21 holder. We have an ongoing discussion for over a
22 year now. And we think that this is the best
23 solution. Several Council Members have already
24 signed onto the Bill and I would like to thank in
25 particular Council Member Weprin and Council

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Member Liu for their leadership on this.

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The New York Taxi Workers Alliance is also seeking preauthorization for all flat fares, and a sign informing passengers that they have to pay the driver even if the machine fails. The 5% is a big cut of our income, especially in this economy where there are fewer passengers. The drivers take the risks. They pay the lease. They do the work for 12 hour shift. Why should the garages get their income?

This is not complicated for us at the Central Labor Council. This is one of the worst, most exploitive industries in the City. This Bill gets at a modicum of fairness on a very small piece of it. But it would be a very, very big step in the City of New York if we could straighten this problem out. I think Council Member Martinez in his questioning was getting at a point, could other people do this cheaper? I think you'll hear testimony from other entities that would be able to do this with much less burden to the drivers and frankly to the industry.

When they set it up, they either made a mistake or there's something else going on

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2 that I don't understand. But we need to get at
3 it. I think the Bill solves the problem. I urge
4 the passage of the Bill.

5 CHAIRPERSON LIU: Thank you. We
6 have some questions from Council Member Martinez.

7 COUNCIL MEMBER MARTINEZ: Thank you
8 Mr. Chair. I'm not on the Bill yet 'cause I'm
9 trying to understand the issue. And obviously,
10 some of Mr. Ott's opening statement alluded to the
11 confusion that there is with the issue. Now I
12 want to ask you specific questions in reference to
13 the industry.

14 When you mentioned that there are
15 40,000 drivers impacted by this, are these 40,000
16 independent medallion drivers? Or 40,000
17 medallion drivers affiliated to a fleet?

18 MS. DESAI: Now I believe there are
19 actually over 46,000 license holders. So they're
20 Hack License holders.

21 COUNCIL MEMBER MARTINEZ: Um-hum.

22 MS. DESAI: Now there is about
23 13,200-odd number of medallion Yellow Cabs. So on
24 any given day there are about 26,000 drivers who
25 would be actively working, covering between the

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2 day shift and the night shift. But there are, you
3 know, over 46,000 people who hold a license and,
4 you know, many--we estimate that about 25,000 of
5 them work full-time in the industry. This is
6 their bread and butter, been doing it for a long
7 time. This is what they do, day in, day out.

8 And there are also thousands of
9 other license holders who will work maybe more
10 part-time or are more seasonal. But either way,
11 whether they work for 1 week, a year or they work
12 52 weeks of the year; they're affected by this
13 system as drivers--

14 COUNCIL MEMBER MARTINEZ:

15 [Interposing] Correct. Now. I want to understand
16 the point of view of the driver.

17 MS. DESAI: Um-hum.

18 COUNCIL MEMBER MARTINEZ: Now if
19 I'm a driver, and I do a day's work in which most
20 of my driving and what I charge was credit card.

21 MS. DESAI: Um-hum.

22 COUNCIL MEMBER MARTINEZ: I go
23 ahead through the transaction, charge the credit
24 card. How do I see that money? When do I see
25 that money?

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MS. DESAI: So there are two ways.

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So let--there are two groups of drivers. One

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would be drivers releasing on a daily shift--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Um-hum.

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MS. DESAI: --so they lease from a

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garage. I believe about 25% of the medallions are

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operated by garages--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Correct.

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MS. DESAI: --and maybe about 15%

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of the drivers are daily operators--

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COUNCIL MEMBER MARTINEZ:

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[Interposing] Um-hum.

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MS. DESAI: --so they go each day.

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Now what we have heard from daily drivers is,

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let's say you're a day shift driver, shift ends at

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5:00 o'clock. You're at the garage. You have

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your receipts. You will not be given money in

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cash when you turn those receipts in. You will

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either be told, okay, we will honor this tomorrow

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through a credit. So let's say your receipts

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equal \$50.00 and maybe your lease for, you know,

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for the next day is \$108.00. So they will say to

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you, come back tomorrow and, you know, pay the difference. Right?

So the \$50.00, they'll credit you. And then \$58.00 you pay out of pocket.

COUNCIL MEMBER MARTINEZ: Um-hum.

MS. DESAI: That's in some scenarios. In other scenarios at the daily arrangement, it won't be within 24 hours; it'll be a couple of days later, when they implement the credit system. But either way, you don't see the cash. So when you go home that night, you don't have the cash on you that you are used to in this industry for how many decades, right?

And the cash that you--now when you have to go and make your payments, whether you're paying the gas, you're paying TLC fees and fines, just recently they started accepting credit cards themselves by the way, or you go to pay to the garage or the broker, they want cash from you.

COUNCIL MEMBER MARTINEZ: Um-hum.

MS. DESAI: And then, I mean I'm putting aside your living expenses where there may be expenses that you can pay only in cash. So the money that's coming to you, even though you've put

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2 in 12 hours' day, the money is actually being
3 delayed by many days before you see any of it.

4 Now if you're a weekly shift
5 driver, you definitely have to wait for an entire
6 week for that whole week, say let's say I pay my
7 lease every Monday. So I paid my lease and, you
8 know, by, maybe by Monday night itself, you know,
9 maybe on Monday itself I had, you know, 50% of my
10 fares were actually credit cards. By the time I
11 go home I may have only literally like \$30.00,
12 \$40.00 worth of cash in my pocket.

13 Well the next day I need to start,
14 I actually need to have cash on me because it's a
15 cash industry. You need to have change on you.
16 If you need to go and gas up, most gas stations do
17 not accept credit cards or you have to pay more to
18 them. You know, if you need to park or you're
19 going in for your break, whatever it may be, you
20 work in an industry where you constantly need to
21 make payments of cash. But again, you're low on
22 that cash because that money has not come to you.
23 At the end of the week when you go to the--or the
24 next week when you go to your broker, or to your
25 garage, because garage drivers can also be weekly

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2 drivers, at that point, again, they will credit
3 you. So you never really, you never see your own
4 money in your own hands.

5 COUNCIL MEMBER MARTINEZ: Hum.

6 MS. DESAI: You know, so you're
7 constantly low on cash, number one. Number two,
8 when you--before you go in, you have to go through
9 all your receipts, you need to do the
10 calculations, so you're doing the paperwork, just
11 as any account holder would do.

12 But instead of, you know, at 1:00
13 in the morning maybe when I've finished my shift
14 on a Sunday night, and I'm sitting at home in my
15 living room, you know, adding up my receipts, and
16 I see a discrepancy, I'd be able to call up my
17 bank on that 24 hour number to work it out, I
18 can't do that because drivers aren't the account
19 holder. They have to take the extra time out to
20 go to that garage or the broker in order to
21 attempt to work it out. And you're attempting to
22 work it out, not with an independent financial
23 institution, but rather an entity with whom you do
24 not have equal bargaining power. You know?

25 So if there's a dispute between you

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2 and the garage, they've given you a car that
3 wasn't good, you know, that's maybe it's broken
4 down or whatever has happened, we've seen many
5 instances where they'll hold onto that money. I
6 know of drivers who've left garages and they've
7 been told well maybe you have some parking
8 tickets, you know, that are going to come up. I'm
9 going to keep this money to pay for that parking
10 ticket since you're leaving me and you're going to
11 another place.

12 So your money, not only are you
13 losing, you know, 5% of it very single day, but in
14 essence, it's being hijacked.

15 COUNCIL MEMBER MARTINEZ: Um-hum.

16 MS. DESAI: You know, so you're
17 seeing it less every day, you don't have the same
18 guarantees that you're going to be getting it.
19 You don't have any control over your own income in
20 an industry where you're an independent
21 contractor.

22 COUNCIL MEMBER MARTINEZ: Thank
23 you. And also when a driver, for example, Council
24 Member Liu alluded to the issue of when you go
25 into a dead zone or the transaction doesn't go

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through or if you need to, if there are issues where you need to get reimbursed for a transaction that didn't go through. How does that work from the driver's perspective?

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MS. DESAI: You lose that money. You know, if the transaction doesn't go through or if the card was declined--

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COUNCIL MEMBER MARTINEZ:
[Interposing] Correct.

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MS. DESAI: --and the passenger doesn't have--the passenger's gone, right, that card was declined, well the person who used a bad card is gone. You don't have any access to them. And so there's nobody who's going to reimburse you that money. They're not reimbursed that amount from the garages and the brokers. Now we believe that there may be financial institutions where as part of the processing there would be indemnification. You know? And then in some scenarios you'd be entitled to that money back. But in this--when the current situation, drivers don't know what their rights are. What they're entitled to because in essence they're a subcontractor without a contract.

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COUNCIL MEMBER MARTINEZ: Um-hum.

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MS. DESAI: It's a relationship of pure dependency where you don't have any information and you don't have any control, you don't have any access, you know?

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COUNCIL MEMBER MARTINEZ: And have you heard of any institution that would, any financial institution, that would take up these types of transactions?

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MS. DESAI: We, I mean there are--

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COUNCIL MEMBER MARTINEZ:
[Interposing] And the \$10,000 that was mentioned here that would be a cost to the driver to open up an account, have you heard of that?

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MS. DESAI: I have never heard of that before, no. I, really, outside of this room, who's every really heard of that before. I don't know--

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COUNCIL MEMBER MARTINEZ:

[Interposing] Thank you--

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MS. DESAI: --that just seems really far fetched to me. That seems to me like basically I'm wanting to put up an obstacle to prevent something from going forward.

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2 COUNCIL MEMBER MARTINEZ: Thank you
3 Mr. Chair.

4 CHAIRPERSON LIU: Thank you very
5 much. We have questions from Council Member
6 Garodnick.

7 COUNCIL MEMBER GARODNICK: Thank
8 you very much. And let me apologize, I stepped
9 out for a couple of minutes to take a phone call
10 when you first started. So if you answered this
11 already, I apologize. But I think I know what you
12 mean when you say the preauthorization of flat
13 fares--

14 MS. DESAI: [Interposing] Um-hum.

15 COUNCIL MEMBER GARODNICK: --you're
16 talking about swiping the credit card before you
17 go anywhere, correct?

18 MS. DESAI: Yes. Right.

19 COUNCIL MEMBER GARODNICK: And
20 that's to avoid which problem?

21 MS. DESAI: Well this would be
22 because most flat fare, I mean outside of the
23 airport flat fare, you know, it's out of town
24 fares. What we have found that one out of three
25 drivers in surveys that we have done since October

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of '07 up until now, we found that one out of three drivers has said that they lose their income often on transactions where the signal fails or the card is declined and the passenger does not reimburse them in cash right then and there. And particularly on flat fares, because they're longer fares and there's no, you know, passenger for you to pick up as you're going back into the City, it's a much more of an economic hit.

So we believe that the fair thing to do would be to do the authorization up front because both parties know how much the fare will be. I mean it's a common practice in every other transportation industry except ours. And, you know, this way if the card would be declined, both the passenger and the driver would actually know up front.

I mean there have been instances where the passenger, it's not out of deviousness that they're using a card that's declined. They themselves may be surprised that they didn't realize that they've gone over their limit, you know. And I think that if many people, if they realize that up front either they could make a

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2 decision of they could access cash by other means
3 or, you know, choose not to take that taxicab for
4 a service that they can't pay at the end.

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COUNCIL MEMBER GARODNICK: Okay.

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Thank you. You're absolutely right about that.

7

That one's an easy issue as far as I'm concerned.

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That is not, as far as I can tell, covered by

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Intro 705 though, is it or?

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MS. DESAI: Not at the moment--

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COUNCIL MEMBER GARODNICK:

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[Interposing] Okay.

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MS. DESAI: --but what we're asking

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for is an amendment and that being one of the

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provisions.

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COUNCIL MEMBER GARODNICK: Okay.

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Got it. And I'm surprised to hear the number of a

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third, because those are big fares and important

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ones for drivers so I think that that's an

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important change.

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Let me just throw a couple of

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comments that the Taxi and Limousine Commission

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gave to us which you heard, and just get your

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reaction to them. I just want to make sure we

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have a clear response. I like to do this so that

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2 it makes it very clear for me as to what exactly,
3 you all would say, I even like to sometimes
4 anticipate what you're going to say and throw it
5 at them at the outset. But I didn't have a
6 chance. So let me just read you what they said in
7 a couple of instances here.

8 They say as for saving the drivers
9 money by allowing them to arrange for their own
10 merchant account, the Bill simply ignores the
11 other services that a taxicab will still need to
12 provide. The driver will now have to pay for
13 wireless services and the lease or purchase of a
14 credit card machine at his or her own expense.
15 They will have to pay for their new merchant
16 processor or a percentage of each credit card
17 transaction fee; they will lose the protection of
18 the Store Forward capability as well as the TLC
19 negotiated preferential credit card rate. And
20 they will no longer be able to cash out at the end
21 of the shift. Can you respond to that?

22 MS. DESAI: Sure. Half if it, the
23 parts that are the benefit, they don't get that
24 now anyway.

25 COUNCIL MEMBER GARODNICK: Okay.

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So tell us which ones they don't get.

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MS. DESAI: Being able to get the money at the end of the shift. That's not happening now. In fact if you were the account holder then you would have access to that money. That access does not currently exist.

In terms of all the "additional expenses" they're already paying for those things now because for example I was saying this earlier, you know, about 40% of the drivers are driver-owned vehicle operators, so they lease the medallion but they enter into contracts to purchase the vehicle from an agent or a broker. In those scenarios, I could show you copies of contract which will clearly state a separate fee for the use of the credit card machine and the technology. Drivers are already having to pay these additional expenses.

COUNCIL MEMBER GARODNICK: I see. So what you're saying is in the situation where they own the car and don't own the medallion--

MS. DESAI: [Interposing] Um-hum.

COUNCIL MEMBER GARODNICK: --that fee is passed on to them at the outset. Is that

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right?

MS. DESAI: Right, as part--it's--
right. And in terms of drivers who are leasing
from the garages, we've seen peoples' leases go
up. You know, it's already the "cost of the
technology"; it's already been built into the
leasing system.

COUNCIL MEMBER GARODNICK: Help me
with just a big picture issue here.

MS. DESAI: Um-hum.

COUNCIL MEMBER GARODNICK: And this
is something which I struggle with a little bit
because the Taxi and Limousine Commission comes in
and they say look we negotiated this whole thing.
We went through this whole process. We tried to
negotiate the best possible deal. It's a
comprehensive system with the Store Forward and
the turnkey solution and all that stuff.

How, you know, how can you now ask
us to sort of disaggregate the system and say okay
we want to pull this portion out and leave the
rest of it in place? Sort of a big picture, sort
of a top of the trees question, maybe you can
address that one.

1
2 MS. DESAI: Sure. I don't mean
3 this in a funny way, but we'd be more than happy
4 if they took out the whole thing. But putting
5 that aside [chuckles], you know, when you look at
6 the technology, all its components, right, so
7 you've got the text message box. You've got the
8 TV in the back seat. You've got the GPS tracking
9 and then you've got the credit card reader.

10 Out of these four components, the
11 credit card is the one that most directly affects
12 peoples' livelihoods. But because it's been made
13 dependent on all these other components it has
14 had, it's produced all these economic hardship on
15 the drivers. It never should have been
16 interconnected to begin with.

17 Having said that we are not talking
18 about the mechanics of the technology, what we're
19 talking about simply is to say if the garage owner
20 or the medallion owner, whether it be the garage
21 or an individual or an owner-operator, if they can
22 be the account holder with all the constraints and
23 benefits of the existing technology, why can't the
24 machinery not allow for individuals, the drivers
25 that are operating those cars, they have to log

1

2 in, there's a hack number put into the system of
3 that technology, why can't that be connected by
4 the vendor to a merchant account-- ?

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COUNCIL MEMBER GARODNICK:

6

[Interposing] Okay.

7

MS. DESAI: --especially when it's

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wireless. I mean this is all computer based.

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COUNCIL MEMBER GARODNICK: Okay so

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your point is that from the perspective of a

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passenger--

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MS. DESAI: [Interposing] Um-hum.

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COUNCIL MEMBER GARODNICK: --it

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wouldn't even necessarily see anything happening.

15

This is just a matter of shifting the holder of

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the merchant account somewhere in the back office

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somewhere. It goes from the medallion owner to

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the driver or owner-operator or whatever it is--

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MS. DESAI: [Interposing] Um-hum.

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COUNCIL MEMBER GARODNICK: --so

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this would not--so on the comment about the

22

turnkey solution and changing that into an

23

unsolvable puzzle--

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MS. DESAI: [Interposing] Um-hum.

25

COUNCIL MEMBER GARODNICK: --which

1
2 is one of the comments of the TLC. As far as
3 you're concerned, if I understand you, a rider or
4 passenger would see no change from this.

5 MS. DESAI: That's right. That's
6 right. I think that honestly, I just think that
7 they have overcomplicated a simple situation. And
8 they have simplified a complicated situation. And
9 by that I mean, you know, in terms of this
10 arrangement, I don't think the walls have to come
11 down if just because through technology, you know,
12 through the computers and data bases and wireless
13 technology, whether it be through the existing
14 technology in the taxis or ever through the use of
15 a cell phone for example, drivers would be able to
16 access that money directly into their own
17 accounts.

18 COUNCIL MEMBER GARODNICK: So there
19 are three vendors, well there are three vendors
20 that provide the overall system, right?

21 MS. DESAI: Um-hum.

22 COUNCIL MEMBER GARODNICK: How many
23 merchant accounts are there, out there?

24 MS. DESAI: From my understanding,
25 so each medallion owner has a contract with one of

1
2 the 3 vendors. And so, you know, I mean there's
3 over 13,200 medallions. But obviously there's, in
4 terms of the number of owners, you know, the
5 number is less than that.

6 COUNCIL MEMBER GARODNICK: Okay.
7 So and it's the vendor that has the merchant
8 account.

9 MS. DESAI: I believe it's the
10 owner that has the account, but it's through the
11 vendor and the vendor's bank.

12 COUNCIL MEMBER GARODNICK: Okay. I
13 guess the question that's on my mind is what
14 amendments to contracts would need to happen if we
15 were to pass this Bill or if we were to make this
16 change? And I guess what I'm trying to understand
17 is whether the big picture contract that the City
18 negotiated over a period of whatever, would have
19 to be amended overall or whether this would just
20 be something more simple than that, the way you
21 said it before, but I just, I'm struggling to
22 figure out what exactly--which contract would need
23 to be amended to allow this to happen.

24 MS. DESAI: They have, the TLC has
25 a master contract with all of the vendors. I

1
2 cannot imagine that the City of New York entered
3 into contracts where they did not have the
4 authority to make changes to the contract.

5 MR. OTT: They've got a bunch of
6 smart lawyers, they'll figure it out.

7 MS. DESAI: [chuckling]

8 COUNCIL MEMBER GARODNICK: Mr. Ott,
9 putting it in probably the clearest terms. Look I
10 hear that. This is just a question that's still
11 in my mind as to what exactly would need to
12 happen. And, you know, what impact this Bill
13 would have on that. Obviously, you know,
14 superceding existing contracts and interfering
15 with that is a difficult thing. But you're right
16 to say that there is probably a way out there,
17 it's just one that is not known to me at this
18 moment in time.

19 MR. OTT: We built the whole legal
20 industry on contract law, come on.

21 COUNCIL MEMBER GARODNICK: You got
22 it. Well, look as a recovering lawyer myself I
23 will appreciate that comment. So thank you and I
24 appreciate your testimony today. Thanks Mr.
25 Chairman.

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[Pause]

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CHAIRPERSON LIU: Thank you very much Council Member Garodnick. And I want to thank you for your testimony and for answering so many questions today.

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MS. DESAI: Sure, thank you.

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MR. OTT: Thanks for the opportunity.

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CHAIRPERSON LIU: Thank you. Next we'll hear from Jose Vilorio and Franchie Muniz. Come on up. To be followed by a panel consisting of Peter Mazer, Jesse Davis and Ethan Gerber.

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[Pause]

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CHAIRPERSON LIU: I think for the next panel, we'll also ask Malcolm Ratner to come up as well. So please head's up, for the next panel. For the next panel.

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MR. FRANCHIE MUNIZ: Good evening Council Members. My name is Franchie Muniz, the Executive Director of the New York State Federation of Taxi Drivers. Next to me is Mr. Jose Vilorio, the President of the Federation of Taxi Drivers. We're going to be making a statement on Intro 880, Passenger's Bill of

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Rights.

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The New York State Federation of Taxi Drivers, it's a nonprofit trade organization founded in November, 1999, founded by a group of concerned industry stakeholders and livery cab drivers. The purpose of the Federation of Taxi Drivers is to promote and further the common interests and goals of people who drive cabs for a living, be it Yellow, Livery, Black Car or any type of For-Hire Vehicle in the State of New York, especially the riding public.

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Throughout the years we have worked closely with City and State officials to accomplish these goals. While we at the New York State Federation of Taxi Drivers don't have any objection to the passage of Intro 880, the Passenger's Bill of Rights, we have recently noticed an increasing of attacks against taxi and livery drivers in the City. And we must do something to protect the rights of taxi and livery drivers.

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For this reason the drivers will also be protected under the Intro, the Federation is asking this Committee and our City Council,

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2 that within the Passenger's Bill of Rights, it
3 should also introduce a notice as to the legal
4 protection of a taxi and livery driver. A warning
5 in relations to the New York State Penal Law 60.07
6 where anyone convicted of crimes against taxi and
7 livery drivers could be sentenced to an additional
8 three to five years in prison for such offense.

9 Let anyone sitting in a livery or
10 taxi vehicle thinking of hurting or attacking a
11 driver know that doing so will be a felony under
12 the laws of New York State. While this warning
13 will not prevent an attack against a driver, more
14 likely it will give a driver more confidence to
15 trust more passengers, be able to take passengers
16 to any destinations, knowing that they are also
17 protected under the Passenger's Bill of Rights.

18 We must realize that taxi and
19 livery drivers are human beings, have families and
20 are also voting residents of this such a fine
21 City. Let's make the drivers feel proud of the
22 job they do. We are willing to work with any
23 agency, public official, for the implementation of
24 rules and regulations that is fair and balanced to
25 the public and to the drivers as well. Thank you.

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2 CHAIRPERSON LIU: Thank you very
3 much Mr. Muniz.

4 MR. MUNIZ: Any question?

5 CHAIRPERSON LIU: That's it.

6 MR. MUNIZ: Thanks.

7 CHAIRPERSON LIU: It was pretty
8 straightforward. WE always appreciate testimony
9 in favor of our Bills.

10 MR. MUNIZ: All right.

11 CHAIRPERSON LIU: It's only when
12 you don't like our bills that we have a lot of
13 questions.

14 [Audience laughing]

15 CHAIRPERSON LIU: Mr. Mazer, Mr.
16 Davis and Mr. Gerber and Mr. Ratner, please
17 proceed. They'll be followed by a panel
18 consisting of Richard Thaler.

19 [Pause]

20 [Witnesses getting settled]

21 CHAIRPERSON LIU: Peter please
22 proceed.

23 MR. PETER MAZER: Good afternoon
24 Chairman Liu and members of the City Council
25 Transportation Committee. My name is Peter Mazer

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2 and I am General Counsel to the Metropolitan
3 Taxicab Board of Trade, a trade association
4 representing 27 fleet owners who operate more than
5 3,500 taxicabs that serve the public 24 hours a
6 day, 7 days a week, 365 days a year.

7 Prior to commencing my service at
8 MTBOT, I served as General Counsel to the New York
9 City Taxi and Limousine Commission and for the
10 past four years, worked as an attorney
11 representing owners, drivers and businesses in the
12 taxicab and For-Hire industries. Today I wish to
13 speak on Intro 705 first and particularly how this
14 Bill will affect taxicab owners who have entered
15 into contractual relationships with one of three
16 Taxicab Technology Service Providers, approved by
17 the Taxi and Limousine Commission.

18 Each medallion owner, from an
19 individual owner who drives his or her own vehicle
20 exclusively, to a fleet owner who dispatches
21 vehicles on a shift basis to different drivers, is
22 required to equip the taxicab with an approved
23 taxicab technology system that complies with TLC
24 specifications. The equipment must be sourced
25 from an entity approved by the TLC as a Taxicab

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2 Technology Service Provider, a vendor that has
3 contracted with the TLC to provide this service.

4 Contracts between the TLC and three
5 currently approved vendors are in full force and
6 effect today. In order to comply with TLC
7 requirements each medallion owner or its agent
8 must enter into a contract with one of these three
9 providers. The standard form of contract between
10 the medallion owner and the vendor has been
11 approved by the Commission and must be used by the
12 parties.

13 These agreements are also currently
14 in full force and effect. The agreements provide
15 that only medallion owners or their authorized
16 agents who must be licensed by the TLC may be
17 parties to the agreement with the Taxi Technology
18 Service Provider. The standard agreement requires
19 that the Taxi Technology Service Provider provide
20 credit card processing services to the medallion
21 owner.

22 The owner and vendor are required
23 under the terms of this agreement to enter into a
24 merchant agreement. Fees that may be charged are
25 limited by this agreement. Each of these

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2 contracts negotiated by the City of New York and
3 the Taxi Technology Service Providers sets forth
4 the rights and responsibilities of the owners, who
5 are required by the Commission to install and
6 maintain mandated equipment.

7 These contracts have been relied
8 upon by the owners who have invested money and
9 other resources such as staff, to comply with TLC
10 rules. The medallion owners, as merchants, are
11 responsible for all merchant fees, bear the risk
12 of any charge back and are required to wait for
13 reimbursement from credit card processors just
14 like any other merchant.

15 Intro 705 would significantly alter
16 the contractual relationship between the owner and
17 the Taxicab Technology Service Provider, as well
18 as the relationship between those providers and
19 the TLC by granting driver the complete freedom to
20 select an approved merchant bank provider. This
21 change would make the driver the merchant,
22 although the driver has no contractual or legal
23 obligation to the TLC to equip or maintain a
24 taxicab with a technology system.

25 The TLC has recognized that credit

1
2 card processors will typically not permit more
3 than one merchant account to exist for a single
4 medallion. However if this Bill is enacted, each
5 medallion, particularly one operated by a
6 different driver each day could have an unlimited
7 number of merchant accounts assigned to it.

8 This is unlawful, violates the
9 terms of existing agreements, is technologically
10 unfeasible and provides no discernable benefit to
11 either the drivers or the riding public. The
12 United States Constitution limits government
13 interference impairing the obligation of
14 contracts. There are existing contracts between
15 vendors and medallion owners, and contracts
16 between vendors and the City that would be
17 significantly impaired by this law.

18 Legislation significantly impairing
19 contracts is permitted only where there is an
20 emergency or other compelling general public
21 policy need that must be addressed. In this case,
22 such a compelling need is not evident. Drivers
23 can already choose from among three merchant bank
24 providers. There are three approved taxi cab
25 technology service providers, each of whom uses a

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2 different bank. A driver can select the agent or
3 owner from which he can lease the taxicab he
4 chooses to drive. Providing additional choices in
5 addition to the three already available offers no
6 assurance that drivers will receive better
7 service.

8 Indeed even if drivers were free to
9 be designated as merchants, there is no assurance
10 that each driver is sufficiently credit-worthy to
11 qualify for an individual merchant account. There
12 have been media reports that frame this Bill in
13 the context of the 5% cap fee that an owner is
14 permitted under TLC rules to charge a driver to
15 recoup transaction costs and risk costs associated
16 with handling credit cards.

17 This Bill will have no, absolutely
18 no effect on the 5% cap because drivers cannot
19 typically become merchant account holders. It is
20 important to note that the 5% cap is in line with
21 other cities. For example in Chicago it's 5%, in
22 Boston and Cleveland, 6%, in Atlanta 10%. In fact
23 many fleet owners have already testified before
24 this Committee on previous occasions that their
25 actual costs far exceed 5% per transaction.

1
2 I must observe that fleet owners,
3 such as MTBOT members, provider services to
4 drivers at significant costs that will not be
5 provided to drivers if they held their own
6 merchant accounts. Drivers receive reimbursement
7 on a daily basis for credit card transactions.
8 Owners typically do not receive the funds for
9 several days and are therefore advancing funds to
10 drivers, interest free. Owners have become
11 bankers in effect, floating tens of thousands of
12 dollars every day before they get paid by the
13 credit card companies. This effort has required
14 infrastructure, everything from personnel to new
15 computers, and represents an additional cost of
16 operation the owners face every day.

17 Owners also incur administrative
18 expenses to provide City mandated services. Were
19 drivers designated as merchants they would bear
20 the cost of any charge back currently borne by the
21 owner. Drivers as merchants would be required to
22 incur all fees relating to handling credit card
23 transaction.

24 Finally, you should take a look at
25 the benefits, if any, to the public that this bill

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2 with offer. With pre-approved Taxicab Technology
3 Service Providers in contract with the City, and
4 standard form contracts between the vendors and
5 medallion owners in place, the public can be
6 assured of the safety, reliability and integrity
7 of every credit card transaction.

8 We have a system that was put in
9 place after years of research and negotiation.
10 There is no need to unravel this entire program
11 when no benefit has been proven for doing so.

12 Before concluding and on a separate
13 note, I would like to state that MTBOT
14 unequivocally supports the other Bill before the
15 Committee today, Intro 880, creating a Livery
16 Passenger's Bill of Rights. The Passenger Bill of
17 Rights that has been a feature in Yellow Cabs for
18 many years has a positive effect on service in the
19 medallion taxicab industry. We wholeheartedly
20 support its extension into prearranged For-Hire
21 transportation industry. Thank you for your time
22 and your consideration. And I would be happy to
23 answer any questions you may have.

24 CHAIRPERSON LIU: Thank you very
25 much Mr. Mazer. We will hear from Mr. Davis.

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MR. JESSE DAVIS: Good afternoon

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Mr. Chair and distinguished members of the

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Council. My name is Jesse Davis and I'm President

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and Chief Technology Officer of Creative Mobile

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Technologies, one of the contractor agents

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approved by the Taxi and Limousine Commission for

8

its Taxicab Enhancement Program which includes

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credit card acceptance, GPS powered passenger

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maps, electronic trip sheets, text messaging and

11

media content. CMT provides its customers with

12

upwards of \$6,000 per vehicle worth of software

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licensing and equipment for free.

14

The intention of Intro 705 is

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unclear but as written it's ambiguous and highly

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problematic. This legislation may violate Federal

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Reserve Bank Regulations that set clear rules as

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to who is able to contract with a credit card

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processor. I'd like to also point out that both B

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and C provisions of Intro 705 seem to rely

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entirely upon an inaccurate assumption that a taxi

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driver has the ability to establish a contractual

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relationship with a merchant account provider. To

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do so would require the driver to become a

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merchant account holder. Drivers who lease cars

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2 from owners cannot normally become merchant
3 account holders because Federal Reserve
4 Regulations and State Banking Rules require
5 merchant account holders to be legal business
6 entities, in this case the taxi medallion owners.

7 If enacted it may also
8 substantially impair as well as abrogate terms of
9 existing contracts that were negotiated in good
10 faith between the TLC and the vendors, between the
11 vendors and their processors, and between the
12 vendors and our customers. These contracts were
13 approved by the Law Department of the City of New
14 York and the parties have relied upon these
15 contracts in developing business models.

16 Moreover from a public policy
17 perspective this Bill offers no benefit to owners,
18 drivers or the riding public. Intro 705 seeks to
19 remove what it refers to as a restriction on a
20 taxicab operator's choice of "merchant bank
21 provider" and it's defined in paragraph 19.537 as
22 "an entity approved by New York State Bank
23 Department and/or Controller of the currency of
24 the United States to provide credit/debit card
25 processing services and authorized by the

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2 Commission to provide such services to enable the
3 in cab payment of taxicab fares, surcharges, tolls
4 and tips". Operators already have this choice, in
5 fact they have three.

6 When they choose my company, CMT,
7 they are choosing Bank of America merchant
8 services. When they choose either of the two
9 other companies, they are choosing the merchant
10 bank provider of that company as each provides its
11 own credit/debit card processing services. This
12 competition among vendors has driven all of us to
13 deliver a better, more affordable product for the
14 City of New York, our customers and the riding
15 public.

16 The issue of competition however
17 has already been adequately addressed. The
18 business models developed and the contract signed,
19 any entity wishing to enter the program had every
20 opportunity to submit its best proposal three
21 years ago when this process began. The City
22 provided an expanded contract that each vendor
23 would contract with a single credit card
24 processor. And that's currently the case.

25 This Bill effectively seeks to

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2 rewrite existing contracts. To be in compliance
3 with this bill, vendors would be forced to violate
4 exclusive contracts with their own credit card
5 processors. Its implications on the contracts
6 that exist between the City of New York and the
7 vendor is equally troubling and would likely have
8 a chilling effect on all future contracts with the
9 City as the sanctity of the contract would be
10 lost.

11 If this Bill were to be
12 implemented, it may very well bankrupt the City's
13 program. Our business model which was--

14 [Applause]

15 --which was largely informed by the
16 City's requirements for this program, did not
17 anticipate the need to support multiple credit
18 card processors. In fact by contracting with a
19 single entity, Bank of America Merchant Services,
20 which provides both our acquiring and our
21 processing services, thus eliminating costly
22 middlemen and ISOs that are traditionally found in
23 merchant relationships, we were able to negotiate
24 the best rates and the highest level of service
25 for our customers which ultimately helped the

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2 City's program succeed.

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Being forced to change our business model to accommodate an unbounded number of merchant bank providers would prevent an extraordinary technical and financial burden to CMT and it would increase costs and reduce service levels to CMT customers. I have detailed these extraordinary impacts further in my written testimony and I'd be very happy to spend additional time with the Committee today or at any later time to discuss them.

The Taxicab Passenger Enhancement Program also known as TPEP has been a resounding success. Taxi passengers have become more and more confident using credit cards to pay for their fares. As the program took off, taxis saw more passengers and drivers saw higher tips. Other aspects of the program including text messaging, media content and electronic trip sheets have improved the riding experience and the business of operating cabs.

Over the last 12 months, CMT has recorded over 71,000,000 trips of which over 10,000,000 were credit card fares. The average

1
2 credit card meter fare has gone from \$20.32 in
3 October 2007 down to \$14.71 today. CMT's average
4 time for credit card authorization processing is
5 under 2.4 seconds.

6 CMT's transaction process is so
7 secure that there has not been a single case of
8 compromised credit card data. And in fact, CMT
9 was recognized for our swift adoption of the
10 VISA/USA/PCI Compliance Acceleration Program.

11 My company has invested millions of
12 dollars into delivering the City's vision. And we
13 believe we've exceeded our contractual obligations
14 by providing an ever evolving state of the art
15 product for taxi passengers and the taxi industry.

16 Now the Bill suggests that the
17 opening bidding process that gave birth to this
18 program and the business models that all vendors
19 crafted to fit the program can be suddenly and
20 drastically changed. This is wrong. For these
21 reasons I oppose the Bill. Thank you for your
22 time and I'd be more than happy to answer any
23 questions.

24 CHAIRPERSON LIU: Thank you. Mr.
25 Gerber.

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2 MR. ETHAN GERBER: Thank you. Good
3 afternoon Chairman Liu, members of the Committee.
4 My name is Ethan Gerber; I'm the Director of the
5 Greater New York Taxi Association, a group of the
6 most progressive owners of taxis in the region.
7 Our members control approximately 1,500 taxis.
8 There are two Intros before you and I wish to
9 briefly address both of them.

10 First, Intro 880 which applies to
11 For-Hire Vehicles Bill of Rights, it is important
12 to note that the TLC lingo, by the TLC lingo, this
13 Bill does not cover Yellow Medallion Taxicabs,
14 that For-Hire Vehicles or FHV's are limited to
15 livery cars and so called Black Vars.

16 A few points I'd like to bring up.
17 First it is gratifying to learn that the City
18 Council believes that FHV drivers need to be as
19 accountable as Yellow Cab drivers. For far too
20 long the Yellow Cab industry has been micromanaged
21 while the FHV industry and its drivers have gotten
22 a pass. This Bill sets the right tone.

23 Second, although we are glad to see
24 the Council involve itself here, it is important
25 to note that the two groups, that these two groups

1
2 are kept distinct industries. FHV's do not have
3 all the obligations that Yellow Cabs do, which is
4 fair, as Yellows have the exclusive right to pick
5 up street hails. Respectfully this Committee
6 should do more to ensure that FHVs respect that
7 distinction.

8 For too long, For-Hire Vehicles
9 have blatantly ignored the laws forbidding street
10 hails without repercussions to their base licenses
11 or even to their drivers. Stand in Midtown on any
12 evening and stick out your arm and you will be
13 approached by several FHVs. The TLC has announced
14 a zero tolerance program but it has sporadic
15 enforcement and little effect. We respectfully
16 urge this Committee to give teeth to enforcement
17 to these violations.

18 Third and importantly to us is Rule
19 number 4 of the Driver's Rule which grants a new
20 right to passengers of FHVs, one that should also
21 be in a Taxi Rider's Bill of Rights, and is long
22 past due. That is the right not to have a driver
23 text message while driving. This is very
24 important because, one, it's extremely dangerous.

25 Last summer there was an incident

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2 in Albany involving the death of five people
3 because a driver was texting. This past fall
4 there was an incident in California involving the
5 death of many dozens because a train conductor was
6 text messaging while in motion.

7 Studies show that text messaging is
8 worse than alcohol or cannabis use while driving.
9 Text messaging forces drivers to not only take
10 their hand off the wheel and divert attention from
11 the road, but to actually take their eyes off the
12 road as well. Recently the TLC not only allowed
13 drivers to use Blackberries but mandated their use
14 in accessible taxis.

15 We strongly urge the TLC to
16 reconsider this directive and I'm happy to report
17 that with the help of the Mayor's Office of
18 Operations and the help of the members of this
19 Committee, such as David Weprin, the TLC
20 reconsidered the program and allowed us to work
21 with them to develop a new safe GPS technology
22 that will not involve handheld texting.

23 Section 4 of the Passenger Bill of
24 Rights will actually save lives. It should also
25 be extended to the Taxicab Industry. I do want to

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2 correct something because when Mr. Goldstein was
3 here, he stated on the record to you and Mr. Liu,
4 Chairman Liu, that the vehicles must stop when
5 they receive a text message, that they cannot
6 receive a text message unless they are stopped.

7 That is actually not true. In fact
8 it's quite the opposite. Under the TLC directive
9 the cab driver has two minutes to respond to a
10 text message or he is in violation. Therefore he
11 must respond while the cab is in motion. Again I
12 applaud the Committee for this Bill and I hope it
13 extends this particular right to the Yellow Cab
14 Industry.

15 As to Intro 705 I join with my
16 colleagues at MTBOT and urge rejection of 705.
17 The credit card program implemented by the TLC is
18 an expensive program which imposed an expensive
19 system on the owners. The owners are responsible
20 for the costs of installing and maintaining this
21 new technology, for maintaining the mountains of
22 records it generates and for advancing payment to
23 the drivers well before they receive reimbursement
24 from the credit card companies.

25 It is only fair that they choose

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2 the merchant bankers they will have to deal with
3 and that they receive some compensation for their
4 troubles and their expenses. All data indicates
5 that credit cards have provided increasing costs
6 to the owners and increasing revenue by the
7 drivers.

8 Ridership, despite the recession,
9 is up. Largely because business passengers can
10 now easily keep track of their expenses for
11 reimbursement by their companies or for tax
12 purposes. They are no longer dependent on
13 accounts with livery services.

14 Similarly data shows that tips are
15 up substantially. Not surprising since it is far
16 easier to add some dollars on the technology
17 platform than dispense with cash that may be
18 needed during the day. At the same time,
19 technology for many owners is getting more
20 expensive. Many of the contracts for the
21 technology contain offset provisions based on
22 advertising revenue. That is, if certain amount
23 of advertising revenue is generated the owner's
24 cost of equipment is diminished. Because of the
25 recession advertising across the board has

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2 decreased and many of the owners will experience a
3 spike in their costs of maintaining and servicing
4 the credit card technology. They should be able
5 to maintain their fees to offset the costs.

6 Finally Section C which prohibits
7 owners from the closing restrictions on merchant
8 and bank accounts, despite contracts entered
9 previously by them, is probably a violation of law
10 and the Contracts Clause of the U.S. Constitution.

11 I'd like to address just a couple
12 of the points that were raised by TWA, by the Taxi
13 Workers Alliance. It stated that the drivers pay
14 for the equipment. Of course that's not true in a
15 shift operation. It is the owners that pay for
16 the equipment, completely 100%, in the double
17 shift operation.

18 They say that they don't get the
19 money at the end of the shift but the TLC has
20 taken care of that by a rule. And it is the
21 owners that must pay for that float. I think it's
22 a little disingenuous to say from the taxi
23 workers, that the float is valueless since they
24 lobbies so hard to get that payment up front.
25 They worked very hard to get that payment and now

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that they've got it they say it's valueless.

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It has a value. They not only pay for the float, they pay for the transportation of the cash up front and the owners have to advance that cash to the drivers at the end of every shift. These costs were imposed on the owners; the owners should be able to deflect some of those costs. Thank you Mr. Chairman.

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CHAIRPERSON LIU: Mr. Ratner.

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MR. MALCOLM RATNER: My name is Malcolm Ratner and I'm really here to tell you the truth. There are two different groups of taxi drivers. One is a DOVE [phonetic] operation which I have nothing to do with whatsoever. They decided to go out and lease a medallion and buy a car and enter into a contract with a broker. That's one operation. I know nothing about it except for what I can tell you. They signed the papers.

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In my operation, I run a fleet operation, and I'm speaking for many fleet owners in the City of New York. I don't know of one fleet owner in a garage where a cab driver could walk in and does not get his money. I personally

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2 am there at 4:00 o'clock in the morning. I go
3 home at 7:00 o'clock. Ever driver who comes in
4 gets paid immediately. If a driver decides he's
5 sick and he has to go home and he comes in at
6 10:00 o'clock in the morning at 8:00 o'clock in
7 the morning and he did 1 job or 2 jobs, he gets
8 paid immediately. I don't understand what these
9 people here were saying. I ask any one of the
10 members of the Transportation Committee to come
11 into my garage and watch this operation.

12 As far as they're telling you that
13 in the operation they're charged more money for
14 the shift of the lease, let me explain that we're
15 governed by caps. I cannot charge more than the
16 cap. My rates are posted on the wall. If the
17 machinery breaks down, I have to send it to CMT.
18 I fix it. I pay for it. As far as what you heard
19 here about the fleets, that when the driver comes
20 in he does not get paid for his slips, many
21 drivers hit the wrong button. But what she didn't
22 tell you... what she did not tell you was this, that
23 the fleets can correct that immediately. And it's
24 done.

25 In other words, we can go back into

1
2 the system and correct it for him. If they're in
3 a dead area in the City, and I'm really here to do
4 battle for the truth, if they're in a dead area in
5 the City, the system still monitors that receipt
6 and that card in the credit card machine.

7 Therefore the minute he enters into an area where
8 the system is picked up again, that receipt is
9 entered back into the system. He doesn't have to
10 enter it; it's done automatically by the machine.

11 I have in my office over \$60,000
12 worth of computers. All right. \$20,000 of them
13 are hooked up to CMT. If any driver has any
14 problem whatsoever, or wants to go back into the
15 system a week, a year, six months, I could do that
16 for him. All right.

17 I never had a driver walk out
18 without his money. Even when a driver is beat on
19 a fare, all right. And they run out of the car
20 and what we have is called a charge back and
21 there's people here that know me. The driver gets
22 the money. If the driver gets beat on a fare
23 which means a charge back where the person said
24 his card was stolen and the company doesn't want
25 to pay or whatever happens, the fleets pay them.

1

2 These are our customers these drivers. We don't
3 want to lose these drivers.

4

[Audience reacts negatively]

5

6 We need these drivers. And as far
7 as what Mr. Ed Ott said, I was very hurt about the
8 doldrums of the fleets. If you walk into any
9 fleet today you will see they invest a tremendous
10 amount of money in their vehicles, in their
11 equipment, in their parts and everything else.

12

13 And as far as not floating money,
14 when I say float money, I lay out a lot of money
15 to the drivers when they come in. If the cards
16 are good, if they're not good, they get paid
17 immediately. I have to wait myself three days at
18 the end of the month to collect three days for the
19 month, at the end.

20

21 The banks don't pay us immediately,
22 that's true. The banks don't run and say here
23 Malcolm here's the money. No. We have to wait
24 for it to come in. But we pay them. The fleets
25 lay out the money and pay these drivers. You've
been very misled here today. And you usually
don't hear me talk like this but I have to tell
you, I'm hurt, I'm hurt over it. That's the

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truth.

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And I ask you again, anyone of you gentlemen sitting out there, please enter my place any time you want unannounced, I had to hire three more people just to do credit cards, including Easy Pass. And I'd like you to come in and see what we go through. And I'd like you to see all the computers that we had to buy to put in.

This is not a nickel and dime, a mommy and poppy operation. This is a real operation. And I have to tell you something, I have held a hack license for 38 years now. And every so often I go out and check myself. The drivers are making more money with this system than they ever made before. And the truth of the matter is the tips are up fro them and the truth of the matter is people are going to the airports now and not calling the black cars because they could charge it to a credit card. And that's the truth. That's it. Thank you for your time.

CHAIRPERSON LIU: Thank you Mr. Ratner. How do you, Mr. Ratner, both you and Mr. Gerber have contended along with the TLC for a long time now that the tips are up? Do you have

1
2 any evidence of that? Because the TLC has never
3 been able to produce any evidence.

4 MR. RATNER: My evidence is myself-

5 -

6 CHAIRPERSON LIU: [Interposing]

7 Okay.

8 MR. RATNER: --I talked to the
9 driver all right. And the drivers tell me they
10 had wonderful days where the drivers used to make
11 \$190 a day, now there's some of them bringing in
12 \$300 a day, \$350. Chairman Liu please. Don't
13 listen to these people. I have it on slips. I'd
14 like you to come in any morning, any evening and
15 look just at the slips that they're booking. It's
16 incredible. It's incredible the amount of money
17 that taxi drivers today are making. I'm very
18 proud of it. Remember I started driving a cab.

19 CHAIRPERSON LIU: All right Mr.
20 Ratner, thank you. How about you Mr. Gerber--

21 MR. GERBER: [Interposing] Yes I--

22 CHAIRPERSON LIU: --do you have--

23 MR. GERBER: --I've actually seen
24 the data and I'm sure the TLC--

25 CHAIRPERSON LIU: [Interposing]

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Well, the data from where?

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MR. GERBER: The data from CMT from other vendors because there's printouts on the receipts that show which portion is tip, which portion is the base fare based on the metered fare. And what they show is that the tips are verging on the 18% range which I think we sometimes overestimate what cash tips were. Cash--there was no system before this technology came in to measure what the cash tips were.

But common sense tells you that people were not paying 20% on a \$10.00 fare or they just weren't. And anyone who takes cabs routinely knows that that's not true. They just simply were not paying 20%, the average person was not paying 20%, 15% on a cash tip. They aren't now. In fact the screen prompts an option which prompts a very high level of tip. This is not a typical service that passengers were accustomed to tipping 20% in the past. But they're verging on 18%.

Now and there is data and there is hard data that can be accumulated that actually shows that tips have in fact gone up. More so

1
2 than that, the rates have gone, the amount of
3 fares have gone up. And one thing that Taxi
4 Workers Alliance mentioned which I think is
5 interesting is that the number that was mentioned
6 was that there were 46,000 drivers in the City of
7 New York.

8 We actually, according to the Taxi
9 and Limousine Commission, we have actually more
10 driver currently than we ever had before which
11 seems to suggest that the market is attracting
12 taxicab driver, not turning them away--

13 CHAIRPERSON LIU: [Interposing]
14 That doesn't suggest that at all--

15 MR. GERBER: [Interposing] Well--

16 CHAIRPERSON LIU: --it suggest
17 that--

18 MR. GERBER: --there was a time--

19 CHAIRPERSON LIU: --there are fewer
20 opportunities overall.

21 MR. GERBER: --but there was a time
22 where there was a taxicab shortage, that the same
23 group came and said if we had a significant rate
24 of fare increase and the caps were lowered and the
25 caps were kept there'd be more drivers--

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CHAIRPERSON LIU: [Interposing]

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Well--

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MR. GERBER: --well there are more

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drivers now.

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CHAIRPERSON LIU: Mr. Gerber, there

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are lots of the parts of our economy where there

8

is a shortage at some point of people doing the

9

work. And immigrants come and follow the American

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dream and they fill in the labor void. But I'd

11

like to see if you can provide us with some

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examples of documentation that--

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MR. GERBER: [Interposing] I think

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that...

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MR. DAVIS: To elaborate on the

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effect of, I guess, the technology on increased

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business which I can provide you, very clearly,

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and just to show--

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CHAIRPERSON LIU: [Interposing]

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I'm--

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MR. DAVIS: --but--

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CHAIRPERSON LIU: --specifically

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asking for documentation that validates this long

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standing claim that the ability to use credit

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cards actually produces a significant increase in

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the level of tipping.

MR. DAVIS: It produces a significant increase in the level of income. The reason you can't go to tipping is there is no data collected on cash tips. It's strictly what a driver is willing to report because it's not recorded. You only have credit card trips reported.

However for income is different. What we've clearly seen over the past year of the program, we looked at, if you look at the month of March and the month of August of this past year, March is a traditionally strong month in the taxi industry, August is traditionally one of the worst months. More lost shifts, fewer drivers working--

CHAIRPERSON LIU: [Interposing]

That's--

MR. DAVIS: --the same number of trips, and the same revenue was booked in those two months--

CHAIRPERSON LIU: [Interposing]

That's not necessarily a function of the credit card use.

MR. DAVIS: What it is it is

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2 absolutely a factor--

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CHAIRPERSON LIU: [Interposing] The fact is the TLC--

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MR. DAVIS: --of more people are taking cabs.

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CHAIRPERSON LIU: The fact is the TLC and two of you just now made clear assertions that the ability to use credit cards results in an increase in tips. Now lots--you've been making this claim, the TLC's been making this claim, and yet--

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14

MR. DAVIS: [Interposing] Well Chairman--

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CHAIRPERSON LIU: --I find no proof of that--

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MR. DAVIS: --the only proof--

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CHAIRPERSON LIU: --in fact there are anecdotes to the opposite. And your contention that while the revenue was increased, that could be a function of the economy. I wonder what the comparison would be if you compare October 2008 to October 2007?

24

MR. DAVIS: I can.

25

CHAIRPERSON LIU: Okay. Well why

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2 don't you provide us with that documentation. All
3 right. But I would, you know, I mean, just for
4 credibility's sake, I mean that's what we need it
5 for. Mr. Rather you want to add something?

6

MR. RATNER: Yeah I do.

7

CHAIRPERSON LIU: The honest truth-

8

-

9

MR. RATNER: [Interposing] The

10

honest truth--

11

CHAIRPERSON LIU: --the whole truth

12

and nothing but the truth.

13

MR. RATNER: That's the way I am

14

believe it or not.

15

CHAIRPERSON LIU: Well.

16

MR. RATNER: All right? I call a--

17

CHAIRPERSON LIU: [Interposing] I

18

don't think other people are liars either. I mean

19

you have your perspective--

20

MR. RATHER: [Interposing] I would

21

never say--

22

CHAIRPERSON LIU: --I don't think--

23

MR. RATNER: --I would never say

24

people don't tell the truth. All right--

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CHAIRPERSON LIU: [Interposing]

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Well you very clearly--

MR. RATNER: --but I will--

CHAIRPERSON LIU: --said that
before.

MR. RATNER: --well I don't know
where she's coming from. I don't know where he's
coming from either. I invested over \$1,000,000 in
my place.

CHAIRPERSON LIU: [Interposing]
Well that doesn't mean you have to call them liars
but go ahead--

MR. RATNER: [Interposing] Al
right. Well--

CHAIRPERSON LIU: --tell us your
version of the truth.

MR. RATNER: They tend to--they
tend to bend the truth--

CHAIRPERSON LIU: [Interposing]
Just tell us what you think.

MR. RATNER: --for their - - .
Okay. In a fleet operation, all right, you're not
forced to come in. You come in if you want to
come into work. And you can go out and you can
make good money. Guys go home with \$300 on the

1

2 night shift to \$400 on the night shift.

3

[Booing]

4

MR. RATNER: Guys go home; guys go
5 home on the day shift with close to \$200 or \$250
6 on the day shift--

7

CHAIRPERSON LIU: [Interposing]

8

[Speaking to the audience] Hey, you know. You're
9 not helping the situation really.

10

Go ahead please Mr. Ratner.

11

MR. RATNER: Go ahead. Can I still
12 talk?

13

CHAIRPERSON LIU: Please.

14

MR. RATNER: In a fleet operation
15 you just come in with your hack license you go to
16 work. You don't have to buy a car, fix a flat,
17 repair a transmission or even go out and have the
18 car painted. Simply when you're through with
19 work, you bring the car back and your day is over
20 with. If you want to stay home the next day, you
21 stay home the next day. If you want to come in,
22 you come in.

23

Nobody asks you for any extra
24 money. Nobody bends you over the hood to fix an
25 engine. Nobody threatens you that if you don't

1
2 pay for a tax stamp or you don't pay for the stuff
3 inside we're going to take away the car. And a
4 fleet operation is the simplest, easy to go. And
5 that's what I have to tell you. And again, I ask
6 you to come down and see the operation.

7 CHAIRPERSON LIU: Thank you. Yes.

8 MR. DAVIS: If I may, there was one
9 issue of confusion throughout the day with
10 specific to the Bill that I would like to talk
11 about. The Bill is talking about a driver
12 entering into a relationship with a processor.
13 And CMT currently has no relationship with
14 drivers, only operators of medallions by the
15 contract rules.

16 From a just practical and legal
17 standpoint of operating the equipment in the car
18 belongs to CMT, that's the point of sale device, I
19 provide the network to route credit card
20 transactions for payment. I'm not a processor.
21 My customers have no relationship with me for
22 processing services.

23 What I did is I negotiated out, I
24 went through the processors, the large ones and
25 the small ones, and I negotiated out to find the

1 best rates that I could bring into the program.
2 My customers enter into a contractual relationship
3 directly with that processor. So for me to
4 provide that physical connection to a processor, I
5 had to undergo significant expense in hardware,
6 software and licenses fees. I have a significant
7 requirement on certification in order to maintain
8 credit card standards and accreditation that I go
9 through quarterly.
10

11 Every processor that needs to go
12 through my solution would require me, CMT, to
13 enter into another contractual relationship,
14 establish another physical connection with no
15 benefit to the end customer. So from a
16 processor's perspective I can confidently say that
17 unless someone brings - - there isn't another
18 financial institution that provides credit card
19 services that will provide a lower price to
20 customers for this program.

21 And the reason I can say that is I
22 entered into negotiation after nine months when
23 the program started and I switched the entity that
24 I originally put in with my RFP because I was able
25 to find a less expensive processor that provide a

1
2 higher level of service. This past summer I had
3 to renegotiate that contract so I went out and I
4 competitively bid for the services for the
5 industry.

6 So a driver is unable to bring a
7 processor, what the--the Bill is mis-worded. What
8 you're asking for in the conversation today is to
9 allow a driver to be a merchant account holder.
10 That's a different argument than the driver
11 choosing a processor. That would mean if a driver
12 was in a CMT equipped cab, that driver, if he is
13 able, he would open up an account with my
14 processor, 'cause it's the physical equipment in
15 the car, for him to get the money directly.

16 There's nothing in the CMT program
17 that prevents it. There is nothing in my
18 contracts that prevent it. It's prevented by the
19 Banking Rules and Regulations. We've tried for
20 the last two years to get drivers, when there's a
21 guy who owns a cab and shares it with his friend,
22 to get them both merchant account, Banking Rules,
23 especially since 9/11 will not allow an
24 independent contractor or an individual to open up
25 a merchant account. That's not my decision--

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CHAIRPERSON LIU: [Interposing]

3

We've got it. We've got it.

4

MR. DAVIS: --that's the bank's

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decision.

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CHAIRPERSON LIU: Thank you. Thank

7

you very much Mr. Davis. Thank you gentlemen for

8

your time. I'm sorry, I'm sorry we have some

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questions from Council Member Garodnick.

10

COUNCIL MEMBER GARODNICK: Thank

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you Mr. Chairman, and it's just one question. I

12

appreciate the comments on the contract rules and

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the legality and banking rules and all the rest of

14

it and I think that we're going to have to take a

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hard look at that issue but I just wanted to float

16

one issue by you all that was raised before and

17

that's the issue of preauthorization of the flat

18

fares. Seems perfectly reasonable to me. But I

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wanted to just get your reaction to that. Thank

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you.

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MR. DAVIS: I can comment. During

22

the original contract negotiations with the City,

23

we the vendors brought that up to the table on a

24

preauthorization and at the contract times

25

negotiation, preauthorization was not allowed to

1
2 be introduced into the program. So what has been
3 done for the drivers today and at CMT, we train
4 the drivers in it, there is a flat fare concept,
5 you start a fare, you negotiate a fare, passenger
6 approves, at that point, what we do is we advise
7 drivers to, once they've approved the fare, just
8 end it, have the passenger swipe, you'll have an
9 approval, but until you get to your destination
10 you don't complete the transaction. So it
11 accomplishes the flat fare, given the program.

12 COUNCIL MEMBER GARODNICK: Hum.
13 Okay let me just understand that. So you're
14 saying that today, today--

15 MR. DAVIS: [Interposing] Today.
16 In a cab today.

17 COUNCIL MEMBER GARODNICK: If I
18 were to take a cab from Newark Airport into
19 Manhattan--

20 MR. DAVIS: [Interposing] Well I'll
21 give you a real life example. Person in New York--
22 -

23 COUNCIL MEMBER GARODNICK:
24 [Interposing] Okay. I was going to give you a
25 real life example--

1
2 MR. DAVIS: --Orangeburg, New York--
3 -you can't get a cab from Newark.

4 COUNCIL MEMBER GARODNICK: Go with
5 my--okay, all right.

6 MR. DAVIS: So--

7 COUNCIL MEMBER GARODNICK:
8 [Interposing] Go to Kennedy, go with Kennedy.

9 MR. DAVIS: --passenger gets in the
10 cab.

11 COUNCIL MEMBER GARODNICK: All
12 right.

13 MR. DAVIS: He's in a cab going to
14 Orangeburg, New York for \$150--

15 COUNCIL MEMBER GARODNICK:
16 [Interposing] Wait I'm sorry. Sorry unless I'm
17 messing up--

18 MR. DAVIS: [Interposing] A flat
19 fare.

20 COUNCIL MEMBER GARODNICK: --
21 there's a flat fare from Kennedy right?

22 MR. DAVIS: [Interposing] Has to
23 originate from--yeah--

24 COUNCIL MEMBER GARODNICK:
25 [Interposing] Okay so let's just use this as my

1
2 example. I arrive in Kennedy Airport and I want
3 to go home, I live in Manhattan on the East Side.
4 I wait in line. I get in the cab and the question
5 for you is this: can the driver have me swipe my
6 credit card today and figure out whether or not my
7 credit card is working?

8 MR. DAVIS: Yes.

9 COUNCIL MEMBER GARODNICK: Okay.

10 So, just so I understand, what does the driver
11 need to do in order for that--

12 MR. DAVIS: [Interposing] For the
13 flat fare situation--

14 COUNCIL MEMBER GARODNICK:
15 [Interposing] That would be a flat fare situation
16 right.

17 MR. DAVIS: --and again--the flat
18 fare, they start, they register the fare on the
19 meter, well--

20 COUNCIL MEMBER GARODNICK:
21 [Interposing] They register the fare. Wait, stop
22 for a second.

23 MR. DAVIS: --you start the meter
24 in a Kennedy rate class, it comes up \$45.00.

25 COUNCIL MEMBER GARODNICK: Okay so

1

2 they push a button and 45 bucks comes up--

3 MR. DAVIS: [Interposing] \$45.00

4 fixed rate--

5 COUNCIL MEMBER GARODNICK: --on the
6 meter, right?

7 MR. DAVIS: --comes up.

8 COUNCIL MEMBER GARODNICK: All
9 right.

10 MR. DAVIS: Now I'm sure there'll
11 be a toll, so they can record the toll even before
12 they hit it.

13 COUNCIL MEMBER GARODNICK: Okay.

14 MR. DAVIS: They're going to be
15 driving into the City. So now they're up to an
16 \$8.00 toll, they've got \$53.00 on the meter. They
17 can end the meter; it stays lit up and engaged,
18 they can't rehire it. It goes into an end of fare
19 state; the payment screen comes up to the
20 passenger. He swipes his card, it says approved.
21 The transaction hasn't completed. You could
22 always go back. It's a completed transaction.
23 The driver has an approval. The receipt's there.
24 When he gets to the destination he hits the done
25 button. It completes the transaction, sends it

1
2 in, it records as a done trip, and then payment
3 will occur.

4 COUNCIL MEMBER GARODNICK: Okay.
5 What you're saying is that the technology is there
6 today--

7 MR. DAVIS: [Interposing] Right--

8 COUNCIL MEMBER GARODNICK: --the
9 problem--

10 MR. DAVIS: --the rule doesn't
11 support it.

12 COUNCIL MEMBER GARODNICK: Okay
13 what does the rule say?

14 MR. DAVIS: No--you are not allowed
15 to do a preauthorization--

16 COUNCIL MEMBER GARODNICK:
17 [Interposing] Okay.

18 MR. DAVIS: --if a driver got
19 caught, technically doing that--

20 COUNCIL MEMBER GARODNICK:
21 [Interposing] Okay understood. So. Everything
22 you just said is prohibited under the rules today.

23 MR. DAVIS: Yes.

24 COUNCIL MEMBER GARODNICK: But the
25 technology allows it. Is that a yes? Yes, the

1

2 answer's yes--

3 MR. DAVIS: [Interposing] Yes.

4 COUNCIL MEMBER GARODNICK: Okay

5 great.

6 MR. MAZER: I just want to add to
7 that the rules of the Taxi and Limousine
8 commission generally prohibit any driver from ever
9 requesting payment in advance, preauthorization,
10 any passenger in your scenario if he walked into
11 the cab at Kennedy Airport and the driver said I
12 want to check that your credit card is good before
13 I take you, the passenger could file a complaint,
14 the driver would be fined.

15 COUNCIL MEMBER GARODNICK: Okay.

16 So--

17 MR. MAZER: [Interposing] That's a
18 TLC rule.

19 COUNCIL MEMBER GARODNICK: Okay.

20 That is the rule today.

21 MR. MAZER: Um-hum.

22 COUNCIL MEMBER GARODNICK: My
23 question for you is should that be the rule?
24 Today. Because it seems to me that on a big fare
25 and if we accept that one in three of these big

1

2 fares are lost for a variety of reasons.

3 MR. MAZER: That's a misstatement.

4 COUNCIL MEMBER GARODNICK: Well
5 whatever the--well first of all comment on the
6 number, I'll be happy to hear a different number
7 if that's the case but the question is should
8 there not be something in there that protects a
9 driver on those big fares and should the TLC
10 change its rule so as to allow for a
11 preauthorization and check at the outset in a flat
12 fare?

13 MR. GERBER: Absolutely the TLC
14 should allow the drivers to check the card.
15 Drivers come in with many stolen cards. I don't
16 understand why the TLC did this. This is mind-
17 boggling to me. That's about what I can say.

18 COUNCIL MEMBER GARODNICK: Okay.
19 Thank you. Anybody else on that one?

20

21 MR. MAZER: I think we're all
22 agreed--

23 COUNCIL MEMBER GARODNICK:
24 [Interposing] You all agree on that point?

25 MR. MAZER: Yeah and I just want to

1
2 add that we've talked earlier about parity between
3 the For-Hire and the Livery and the Taxicab
4 Industry, there's nothing in the rules of the TLC
5 that would preclude a livery driver from asking
6 for payment in advance. That's not prohibited by
7 TLC rules. For a taxicab driver to do it is
8 prohibited by TLC rules.

9 COUNCIL MEMBER GARODNICK: Thank
10 you for that distinction. Mr. Chairman, thank
11 you.

12 CHAIRPERSON LIU: Thank you Council
13 Member Garodnick. Thank you very much gentlemen.
14 I'd like to invite Mr. Thaler, Richard Thaler to
15 testify.

16 [Witness settling in]

17 DR. RICHARD THALER: Why don't you
18 take out these four...? I guess Chairman Liu,
19 Committee Council, is Member Garodnick still here?
20 Yes, no?

21 CHAIRPERSON LIU: Why don't you
22 just proceed Mr. Thaler?

23 DR. THALER: Well in my written
24 comments that I'm submitting, I've included a
25 resubmission of my comments for the January 4th,

1
2 '07 Oversight Hearing. I've included my comments
3 for the Taxi of Tomorrow RFI where the relevant
4 comments have been highlighted in addition to the
5 current view since those comments to today.

6 Before I read a very brief
7 introduction to those comments, I'd like to
8 comment on a couple of remarks made previously by
9 the previous panel and by the speakers for the
10 TLC. The previous panel and the TLC speakers have
11 demonstrated a complete lack of understanding to
12 the merchant acquiring business, its economics,
13 its technology and all other related matters. And
14 if you look at my submission, I think that will be
15 supported.

16 I want to make a remark about the
17 additional 1.25% as a minimum which is added on as
18 a fee over and above the nominal transaction
19 processing cost. I don't see how you could view
20 it as anything else but a finance charge. And if
21 you view it as a financing charge, you're looking
22 at an annual percentage rate, an APR of about
23 200%. I think that you might not even see that as
24 a believable fiction on The Sopranos. So I don't
25 know how those remarks have been made to

1
2 substantiate the need for a 1.25% as a minimum
3 surcharge over a transaction fee.

4 In addition I'd just like to go
5 into the introduction of my submitted comments.
6 The TLC and the industry's narrow special
7 interests have exploited the TLC's policy of
8 restricting market entry for Taxi Technology
9 Passenger Enhancements Program vendors, TPEP
10 vendors, at the passenger's and driver's expense.
11 As a result TPEP has been unable to achieve the
12 cost benefits and system performance which can
13 only be realized by means of open market
14 competition.

15 Ironically none of the approved
16 vendors is itself a financial institution
17 authorized to provide electronic fare payment
18 merchant acquiring credit card processing
19 services, the most important TPEP feature. Yet
20 the TLC in an unprecedented restriction of the
21 market locked out the Federally and State
22 regulated credit card processing financial
23 industry providers to all but one subcontractor
24 provider, for each approved TLC vendor.

25 As a result drivers are force to

1
2 pay a noncompetitive usurious transaction fee and
3 are unable to become the merchant of record which
4 is likely a violation of the card issuers'
5 requirements for independent contractors. Under
6 card issuer's rules, an independent contractor
7 accepting card payment in consideration for
8 products or services, without being a party to the
9 merchant processing agreement, may be committing a
10 factoring violation with the merchant of record.
11 The TPEP vendor contracts also fail to ensure that
12 driver revenue funding is provided and protected
13 by regulated financial institutions and not by
14 medallion lessors or agents.

15 It's now time to address these
16 failures and as a first step begin to open the
17 market to competition in electronic fare payment
18 merchant acquiring credit card processing
19 beginning with the passage of Intro 0705.

20 In addition, reported remarks by
21 the TLC suggesting that the City's vendor's
22 contracts will be jeopardized by the passage of
23 Intro 705 are without merit. The contracts grant
24 the City wide latitude in the City's sole
25 discretion to cure operational problems and

1
2 enforce contract modifications which may be
3 required by subsequent legislation in the best
4 interests of the City and the taxi industry.

5 And on that note, while a few of
6 the previous speakers have taken the time to cite
7 the Constitutional protections of contracts, I
8 would hope that this Committee would ask the same
9 speakers to cite in the City Charter, I guess it's
10 Chapter 65, where the authority is granted to the
11 TLC to procure for a private party instead of
12 simply posting standards of operation. Thanks for
13 your time.

14 CHAIRPERSON LIU: Thanks for that
15 important input Dr. Thaler, thank you.

16 DR. THALER: Thank you.

17 CHAIRPERSON LIU: We have a--

18 [Applause]

19 CHAIRPERSON LIU: We have a large
20 number of drivers who have, once again, given
21 their time to testify today. Osman Chowdhury,
22 Beresford Simmons, John McDonald and Valvinder
23 Singh [phonetic], please join us at the witness
24 table.

25 [Pause]

1
2 CHAIRPERSON LIU: They'll be
3 followed by David Pollack. Osman, please proceed.

4 MR. OSMOND CHOWDHURY: Good
5 afternoon everybody. My name is Osmond Chowdhury.
6 I'm a member of New York Taxi Alliance. I have
7 been driving these last 12 years. First of all,
8 Sir, I have to say I've have - - out of the way of
9 Intro 705. This morning, this afternoon, the Taxi
10 and Limousine Commission described, they gave you
11 the 2004 Fare Act, 26 person [phonetic] and that
12 fare hike I got will get after 8 years, not more
13 than 5 years surrounding, like 13 years we get the
14 Fare Act, 26 person, but every time they're saying
15 they're getting fare hike, what they give the
16 driver? The driver, nothing to get it with. And
17 now I'm going to Intro 705.

18 First thing I driving the garage.
19 If I pay, my garage, before we pay the deliver the
20 driver to pay at end of shift, but now we have to
21 pay up front, go into work you pay your shift
22 money, and then you come back you don't get the
23 money--our money back.

24 Gentleman said they're giving the
25 money back. I give challenge, anybody want to me

1

2 come, I show you my garage. They don't pay the
3 money; they don't pay it back right away. Even I
4 pay the weekly garage, this is Monday, I have to
5 wait one week to get it. So what is that? That
6 is the law? But it is not a law.

7

Even sometime at my end of shift,
8 my total credit - - like a 7 fee but the total
9 print out there, 1 disappeared. And then even at
10 the garage they say you don't get money because
11 you don't have a computer. What is that? This is
12 a law the TLC said? I invested in my times; I
13 don't get my money back.

14

Even, and sometimes the technology
15 failed. We called the garage; they say okay open
16 the hood. But I'm not the mechanics. I'm the
17 driver. I pay in the front of the garage and then
18 I open the hood. They said they have a tripped
19 fuse, but I don't have anything technical things
20 there. They said look at the fuse up underneath
21 that and reconnected it. The driver doesn't know
22 and sometimes the hard engine drivers, go bang
23 their hands. Okay.

24

That's not working, so come to our
25 garage. We are in the garage, they are trying,

1
2 it's not working. You finish your shift and what
3 happen? The credit card things, they are saying?
4 And not only for that, because here they say
5 they're lying, the taxi workers not lie, see what
6 I'm saying, all the good things but they are
7 saying the drivers are making money, \$290.00, I'm
8 giving a challenge. You can--they cannot prove
9 it. If they say the driver is making the \$290.00
10 but we have been booking \$500.00, the money not
11 come by the casino, this is taxi.

12 You know how many hour driver
13 working. I need to work 12 hour shift. I have to
14 work 16 hours because I have to go 2 hours before
15 to go to garage, make a line. What is that? And
16 I heard the guy say \$290.00 driver making, I offer
17 you, give me a job the \$150.00 a day I'm going to
18 work your company. You're making more money, you
19 have \$150.00 - - you give them all rich.

20 Okay. Don't say the driver's
21 making more money. This is all the lies too that
22 we are hearing. I'm tired, two things. And all
23 the things driver not get any benefit, even
24 sometime I have my fare, I have to go Long Island,
25 over there, the credit card is not working, I lose

1
2 my \$150.00. That sometimes they give me--say I'll
3 give you my phone number, they don't like the
4 driver, they don't give the phone number, they
5 took our number it's okay. I'm going to call you
6 give you the money, no guarantee that thing.

7 Lot of clever happening, every, the
8 last Thursday I had my GPS failed. I called the
9 garage. They said come to our garage. First of
10 all I opened the hood. I fixed all the fuse, not
11 coming, high on the glass, the glass mechanism is
12 tight, not failed, is not sending, another person,
13 another company to go there. They did not fix it.
14 I finish my shift, even. They are, also, GPS
15 fail, they have it there, my company, there's a
16 sign, morning 5:00 A.M. to 8:00 P.M. only GPS
17 company is working. I thought there is no company
18 there. If it say, my shift is finished, who going
19 to pay those things. And also TLC, Taxi
20 Commissioner say they're--

21 CHAIRPERSON LIU: [Interposing]

22 Osman. Osman. Hold it, slow down for a second.

23 MR. CHOWDHURY: Okay I'm sorry.

24 CHAIRPERSON LIU: Can you testify
25 about Intro 705?

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MR. CHOWDHURY: Okay sure.

2

CHAIRPERSON LIU: Thank you.

3

MR. CHOWDHURY: Okay well first of

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all end of shift driver, like last shift, two

5

nights I work I get a seven credit card - -

6

completion, but when the payout came one

7

disappeared there, no show up on the six, what

8

happened to one. This is the one that go to the

9

driver, there I have six, I have it listed. They

10

say no we have to come to our computer. Our

11

computer don't show up, their computer they don't

12

give you this thing, the credit us.

13

And sometime, they call the vendor,

14

then company, the vendor but I'm not the

15

authorized person to call the vendor because I

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have a receipt. I receipt, they don't care. They

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said our company don't have it. That's why I need

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the driver, their own merchant because I need to

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call the company, the vendor, I'm missing my

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credit, credit - - , why I'm not responsible for

21

that. I have a receipt to go, my authorize the

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gone. But you're kidding, I don't call my

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company, the company doesn't know me who I am.

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I'm not authorized person to call the vendor does

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give me credit.

And that's why I need Intro 711, even if flat fare things like I have to go here to JFK, \$35.00 plus \$5.00 tolls. But then knows the passenger how much fare. Before they go the TLC make allow the \$50.00 fares. They cannot swipe it, \$50.00 don't finish but that way they check, the - - good or bad, it's not any wrong things because the passenger knows they don't have it signed, the \$45.00 flat fare, \$5.00 tolls--

CHAIRPERSON LIU: [Interposing]

Okay.

MR. CHOWDHURY: --the \$50.00, that's going to finish. That's not any problem to check the TLC and the wrong things. Thank you very much.

CHAIRPERSON LIU: Thank you Osman.
Mr. Simmons.

MR. BERESFORD SIMMONS: Good evening Sir. Good evening and thank you for this hearing today on Intro 705.

CHAIRPERSON LIU: No offense, but it's really late. After Osman's speaks--

MR. SIMMONS: [Interposing] Yes.

1
2 CHAIRPERSON LIU: --and then
3 listening to you, it's just... it's--

4 MR. SIMMONS: [Interposing] That's
5 what I'm here--

6 CHAIRPERSON LIU: --you know what
7 you guys make a good combination.

8 MR. SIMMONS: --to calm you down--

9 CHAIRPERSON LIU: [Interposing] All
10 right Good.

11 MR. SIMMONS: Anyway. I've been
12 driving a cab; I don't know if I said it, my name
13 is Beresford Simmons. I've been driving a taxicab
14 for about 35, maybe a little more, but I'm
15 embarrassed to say.

16 Since 1970 until today, 1970 I
17 could say I was making about \$20,000 a year.
18 Today, due to the credit card transaction system,
19 if I'm making \$10,000 I'm making a lot. As a
20 matter of fact, I'm taking away from my household
21 to maintain the taxicab business. And the company
22 that we deal with, they're supposed to be open 7
23 days a week, 24 hours a day. No such thing.

24 My situation broke down last week
25 on a Saturday night at 10:00 o'clock. And I

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couldn't go back to work until Monday morning.
And he's sitting right there. He knew that.
Anyway on Intro 705 it would be a big help to the
drivers because cash is necessary in the industry
with the stringent tests that we have to go
through with the Taxi and Limousine Commission.

I'm what you call a DOVE driver, so
I have to maintain my car. I have no cash to
maintain my car because the credit card
transaction is taken away all of the cash out of
the industry. And it's putting a very serious
economic strain.

And again on 880, it's a very good
thing because I've had many a people come into my
cab, women especially complaining that they've
been harassed, sexually harassed by drivers and
they have no identification in those livery car
services.

So I'm just here to day today Sir
that I thank you very much for bringing this 705
forward and I wish you would look into it very
seriously. I just want to make it short. Thank
you.

CHAIRPERSON LIU: Thank you. I

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will point out though that Intro 705 will not necessarily bring back all cash transactions.

MR. SIMMONS: No I don't really need all cash transactions but I need my money where I can go to my bank and say well then I need to do some repairs on my car and I--

CHAIRPERSON LIU: [Interposing]
Okay.

MR. SIMMONS: --can get my money from my bank.

CHAIRPERSON LIU: Fair enough.
Thank you.

MR. VALVINDER SINGH: This is Valvinder [phonetic] Singh, good afternoon ladies and gentlemen. I'm here, just going to tell about a couple of things. So thanks for everyone's, I have a very good friend here, and they give us the money, the people not pay the stolen credit card. The people not have a like good transaction, go clear, I'm very good, I'm very proud of the person, we are a very good friend. If anybody don't pay so we can go. We have a good friend go and see him to get the money back.

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2 So I have last month, the lady from
3 New Jersey, like \$65.00 fare, the sign says no
4 connections. She wasn't able to pay. She was
5 unable. She told me she would see what she could
6 do. I give us a couple of option, I say okay you
7 can mail me a check if you want otherwise I'm
8 surrendering myself to you because I'd done my job
9 already. So I'm waiting for her since one month
10 and she no give me any check. I call a couple of
11 times. She no answer it. She gave me the wrong
12 phone numbers, answers somebody else. That's all
13 I can say.

14 But I really, this City is not
15 situation is so bad this times, we don't need any
16 fancy stuffs in our own taxi, even the limousine,
17 private limousine people, they have just little
18 things, they just slide the credit card. Nothing
19 else. We are suffering from the noise violations,
20 we don't need any noise from our car, we don't
21 need any fancy stuff. We are very poor peoples.
22 We not the rich.

23 So we are sorry to say that we
24 really don't to pay to 5%, this is hurting us.
25 Even we get the customer from the JFK to here and

1
2 they charge the credit card, they put the tip like
3 \$00.00, they just walk away, even they charge like
4 \$200.00, for \$2.45 my own pocket, we don't have
5 even \$45.00 from the JFK. So that's all I say. I
6 thank you very much for giving me some time to do
7 this.

8 CHAIRPERSON LIU: Thank you Mr.
9 Singh. And with that, Mr. Pollack. Yep. Thank
10 you gentlemen.

11 MR. DAVID POLLACK: Thank you Sir.

12 CHAIRPERSON LIU: Go ahead Dave.
13 After Dave Pollack testifies, we'll hear from
14 Francisco Rodriquez, Jahangir Alam, Ryan
15 Richardson, and Mamnun Ul Haq, and Richard
16 Salazar. Dave, please proceed.

17
18 MR. POLLACK: Good afternoon
19 Chairman Liu. There's currently at 5% charge on
20 credit card fares which is used to try to offset
21 the various credit card related expenses and I
22 just wanted to make it clear. Some drivers think
23 that the 5% is pure profit. And that Intro 705
24 will totally eliminate a 5% reimbursement, and
25 that is a falsehood.

1
2 It would be noted that the 5% in
3 question does not totally cover all the expenses
4 associated with credit card fares. There are per
5 charge fees in addition to various percentages
6 each credit card company charges. There's also an
7 airtime fee necessary for required text messaging
8 and personal information monitors. The in-house
9 expense of tracking and distribution of credit
10 card monies and the manpower associated dealing
11 with customer complaints like double charges and
12 other customer disputes.

13 Additionally it should be noted
14 that no member of the Committee for Taxi Safety
15 has yet to recover their initial down payment paid
16 for each of the TPEP units installed in every
17 Yellow Cab. Once again the 5% was not enough to
18 totally cover our overhead.

19 Most members of the Committee for
20 Taxi Safety and other management companies have
21 hired additional staff to deal with daily issues
22 associated with credit cards. Some members have
23 purchased additional software and/or additional
24 computers to help track credit card payments and
25 to assure drivers the availability of monies can

1
2 be attained as soon as credit card fares are
3 posted.

4 I just wanted to make a comment to
5 something that was said before. DOVE drivers
6 driving for the Committee for Taxi Safety get
7 their money within 24 hours. Ask for it, I've
8 seen checks written while I've been in various
9 offices, I don't know what happens in other
10 places, I do know what happens in my members'
11 offices. Just like Malcolm knows what happens in
12 his office.

13 Most members of the Committee for
14 Taxi Safety and other management companies have
15 hired additional staff, I told you that. If
16 drivers were to switch to TPEP vendors, the
17 purchase of a point of sale device is an obviously
18 necessity. Existing contracts aside, as an
19 independent merchant there will also be additional
20 expenses they'll have. Charges for air time, for
21 the text messages and PIN monitors. And there'll
22 be a percentage charged by each credit card
23 company. Actually the percentage is something the
24 TLC should really be commended for, because they
25 really did negotiate excellent percentages on

1
2 behalf of the entire New York City Taxi Industry.
3 They weren't lying when they sat here and said
4 that.

5 And we just suggest that all
6 parties review the financial information available
7 from the Taxi and Limousine Commission and I think
8 you'll find that there's no real benefit in the
9 long run to drivers by passing this Intro. You
10 know, if you remove our agent supervision right
11 now, making each driver an independent merchant
12 then the liability would have to follow each
13 driver. Okay. The driver would also then be
14 required to purchase the necessary equipment and
15 if there are customer disputes, the driver would
16 have to deal with those public disputes, not the
17 agent. If there is some question, there may be
18 some question possibly about drivers qualifying to
19 be merchants that were brought up at this,
20 earlier, at today's hearing.

21 And, you know, and on a personal
22 note, you know, I just... I have a problem, you
23 know, it says up there, a government of the
24 people, by the people, for the people, and it's
25 not an easy job if you're a politician, elected

1
2 and you appoint regulatory bodies, to satisfy
3 everybody. It's a hard thing going out there.

4 But, you know, we have to consider
5 the public. We have to consider businessmen
6 who've made investments. We have to consider the
7 drivers. And this is what we have. You know.
8 It's not cut and dry, good guy, bad guy, looking
9 to rip people off. You know. Stealing 5% from
10 you. There are other expenses involved.

11 And I think when you do see the
12 additional expenses that you'll have with
13 equipment and air time etcetera, and things that
14 were mentioned here today, 1.5%, Councilman
15 Weprin, who's not here, is certainly not a
16 windfall. It may not, in some cases, be enough.

17 You know, if things change, could
18 the drivers save money? Possibly. Could they
19 spend more money? Probably. Is it the answer?
20 We're not in support of 705. Thank you.

21 CHAIRPERSON LIU: Thank you very
22 much. Francisco Rodriguez, Jahangir Alam, Ryan
23 Richardson, Mammun Ul Haq and Victor Salazar.

24 [Pause]

25 CHAIRPERSON LIU: Please proceed.

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2 Push the button.

3

4 MR. VICTOR SALAZAR: Okay. How are
5 you doing? My name is Victor Salazar. I am an
6 owner-operator of New York City Yellow Cab and I
7 know that I'm fast, going to go straight to the
8 point. As an owner-operator I do have certain
9 advantages which is that each transaction goes
10 straight to my account which happens to be just a
11 regular personal account. I never had to go
12 through any Homeland Security checkout or anything
13 to just to get that money from each transaction
14 like it was sort of like implied here before.

14

15 The problem that I have right now
16 as it is, is that I have two other drivers in the
17 medallion. And the transactions that they come
18 into, into the account, are all from them, it
19 takes me a lot of time and a lot of effort to
20 fully distinguish which transaction belongs to
21 whom. So if every driver becomes their own
22 merchant account, definitely it will alleviate the
23 time and effort from my, that I am at the moment
24 experiencing, and I'm sure it would be more
25 cheaper for the big fleets and companies as well.

25

And I don't see why there should be

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2 any problem for every driver to become their own
3 merchant account. I call numerous reasons, some
4 of the processors that I have, I have a processor
5 Moneries [phonetic] which charge me 3.75% per each
6 transaction but additionally they also charge me
7 \$.40 per each authorization that are domestic
8 credit cards but if they are international credit
9 cards they charging me only \$.18 per
10 authorization. I don't understand why is that
11 extra fee but in any case it average approximately
12 between \$40.00 and \$50.00 per, the percentage that
13 I get discounted every month, plus the extra fee
14 of the authorizations average between \$15.00 and
15 \$18.00 on--per authorizations.

16 American Express is the cheapest
17 one at the moment, it charges me only 2.15% for
18 every transaction and there is no extra fee on any
19 authorization. And when I talk to them they say
20 that if I could make, if I could make below
21 \$5,000.00, at the moment, I could transfer to a
22 standard fee a month which would be \$5.99 which is
23 very reasonable to me, but yet I cannot do it
24 because I'm hooked with this vendor, in my case
25 DDS, and I have to go through them before I reach

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to that particular benefit and save some money on the way.

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But let's say if I make between \$5,000.00 and \$20,000.00 a month the fee would be approximately \$8.00, which would mean more savings for me. And if, in the case that it would be impossible to make over \$20,000.00 a month for, you know, in transaction fees in my cab, that way if that would be the case the savings would be much more significant to me. But obviously I only have one medallion.

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But I'm sure that the fleet owners which have hundreds of medallions, I'm sure they exceed the \$20,000.00 mark, so I'm sure they're saving much more money than they are actually saying that they are spending a lot of money. I'm sure they're probably qualified to get this particular benefit because they exceed \$20,000.00 since they have a lot of medallions. I want to make that point very clear. And I'm sure that, you know, they're saying that this equipment is costing them a lot of money and there has been a lot of investment on it.

25

But actually the drivers who are

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2 paying this investment, every day by losing 5% of
3 their salaries. Like in my case, I pay to DDS,
4 \$43.35 every single month just for that equipment
5 that actually I never wanted to begin with; it was
6 just imposed on me. I never had any rights to
7 read the contract before I signed in--

8 CHAIRPERSON LIU: [Interposing] All
9 right. Thank you--

10 MR. SALAZAR: --I was supposed to
11 sign the contract.

12 CHAIRPERSON LIU: Thank you Mr.
13 Salazar. Let's hear from the other gentlemen.

14 MR. SALAZAR: Support this 705
15 please.

16 MR. RYAN RICHARDSON: Thank you for
17 your time Chairman Liu. My name is Ryan
18 Richardson. I'm a Research Intern for the New
19 York Taxi Workers Alliance. And I've worked on a
20 series of surveys of which the first couple I know
21 you've seen. And just, you have the information
22 from the most recent one which is based off of the
23 TWA's GPS problem hotline.

24 And I don't, I'm not going to, you
25 know, go through all those numbers right now. But

1
2 just to kind of reiterate that the problems that
3 other drivers have been talking about in dealing
4 with the systems, whether they be mechanical
5 failures or reimbursement issues or nonpayment of
6 fares due to credit card problems, those aren't
7 isolated anecdotes and there's, you know, it's a
8 pattern of occurrences that we've seen
9 consistently from the inception of the system to
10 the present day.

11 And in support of Intro 705 we can
12 see that these systems have overall been a source
13 of economic hardship for the drivers. And this,
14 the reduction of the fees on credit card
15 surcharges, while it doesn't remediate all of the
16 economic hardship to the drivers, it would
17 certainly start to alleviate some of the issues
18 that drivers are facing using this systems. So.
19 We appreciate your support of Intro 705.

20 MR. MAMNUN UL HAQ: Thank you Mr.
21 Chairman. My name is Mammun Ul Haq. I'm the
22 member of the Executive Board of New York Taxi
23 Workers Alliance. I was a full-time driver, last
24 few months I've worked part-time. And I thank you
25 at the beginning of my talk. I know it's a very

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2 long day for you all up here. And you heard
3 everything from everyone. And I just thanking you
4 this to hold this hearing today and Councilman
5 Weprin, he's not here, and he introduced this
6 Intro 705.

7 From the bottom of my heart and on
8 behalf of the drivers, I support this Intro 705
9 because the reason is here; the drivers are losing
10 quite a lot of money. It's absolutely a waste for
11 the drivers. And the current, the system, the
12 credit card and the cab, drivers, Sir, I mean the
13 handling less cash and their money stuck in the
14 broker or garages.

15 And I am a lease driver, personally
16 what I know, I work on one of the companies and I
17 bought the cab and lease the medallion. And every
18 Monday I have to pay like earlier the whole amount
19 to the broker. And then once I get out from the
20 broker office then I start to swiping the credit
21 card and all the money's stuck for the whole week
22 in their account. This is absolutely unfair.

23 End of the day or end of the week,
24 I don't have enough cash, and this is not only me,
25 I know lots of drivers in New York City handling

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2 the same problem, because having less cash, having
3 problem to paying their rents, their bills, and
4 there is no certainty when I get out from my home
5 to work that I need \$200.00 maybe I have to put in
6 the account tonight because of my credit card
7 bills or other bills. But there is no certainty
8 that I can go home with that \$200.00 cash. This
9 is absolutely unfair.

10 And I'm really, I would be really
11 happy if you, you know, pass this legislation and
12 make all the drivers, you know, their own
13 merchants so the transactions and whatever the
14 money goes to the credit card, directly can go to
15 the driver's account and they will be able to get
16 this money within 24 hours or 48 hours, whatever.
17 They don't need to wait for a week to get this
18 money.

19 They are out there to make their
20 living, not to losing their money, losing their
21 living. And I hope you'll take this driver out of
22 this, you know, the hardship, ad there's economic
23 hardship going on in this country now and in this
24 City, and there's too much pressure going on with
25 the taxi industry because lots of the driver now

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on the street, and more competition.

And I want to add something for a little item, I did not but now I want to. The gentleman, I forgot his name, one of the garage owners. He mentioned like the night driver making \$400.00, and I usually drive night and I never made like \$400.00. I couldn't take \$400.00 home. And if a driver can make \$400 a night, I believe a lot of people take off their suits and grab a jeans a t-shirt and a sneaker and, you know, sit behind the wheel of the Yellow Cab. Thank you so much.

CHAIRPERSON LIU: Thank you very much.

[Applause]

MR. RICHARDSON: And Chairman Liu if I could just add one more thing. I think it's interesting that with all the alleged support of drivers for these systems, that the brokers and the garage owners say that there is, there aren't drivers here testifying in favor of it, whereas we've had a number of drivers coming out opposed to it. And I think that's kind of says something about how the system's working for drivers

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themselves.

CHAIRPERSON LIU: Any reaction

Bill?

[Off mic]

CHAIRPERSON LIU: [Laughing] Get

this guy on video. Put him on the video. All

right. This is your 15 minutes, take it Bill.

Stand right there and do it. Right there Bill.

BILL: - - the TLC provides more

laughs than Jim Carey and my - - .

CHAIRPERSON LIU: With that...

BILL: Why do these people,

brokers--

CHAIRPERSON LIU: We'll let the

witnesses...

BILL: --against 705 it's such a

terrible burden. They don't make a dime from it.

Maybe they're going to ask the TLC to make the

percentage 8% or 9% as Fleet Owner Mike Levine

wanted and testified before your Committee. You

know. This is definitely a boondoggle, not a

boon; it's injurious to the public. The public

deserves a system that works first of all and this

system doesn't work. You can have a simple

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device. They don't watch the TV screen. Text messaging as done, as David Weprin was saying, is dangerous. So what's the point of all this gross technology that's a burden--

CHAIRPERSON LIU: [Interposing]

Thank you Bill.

BILL: Thank you.

CHAIRPERSON LIU: With that, this hearing of the City Council's Committee on Transportation is adjourned.

[Gavel Banging]

C E R T I F I C A T E

I, Laura L. Springate certify that the foregoing transcript is a true and accurate record of the 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.

A handwritten signature in cursive script that reads "Laura L. Springate". The signature is written in black ink on a light-colored background.

Signature _____Laura L. Springate_____

Date _____February 5, 2009_____