New York Taxi Workers Alliance

AFL-CIO, Intel. Transport Workers' Federation

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Acting Chair/Commissioner Bill Heinzen
NYC Taxi & Limousine Commission
33 Beaver Street, 22nd Floor
New York, NY 10004

Dear Acting Chair Heinzen and TLC Commissioners:

On behalf of the 21,000-plus members of New York Taxi Workers Alliance, I write to call on the Commission to pass the proposed *High Volume For Hire Service Congestion rules*, without delay.

These rules, which continue Local Law No. 147's limitations on For-Hire Vehicle (FHV) licensing, are critical to maintaining stability for a workforce that is still in crisis. App drivers are still empty 41% of the time, yellow cab drivers have seen a loss in revenue in real numbers by 40% since 2011 and eighty percent of green cab licenses are still on the shelf. The App companies themselves are not taking new drivers, deactivating drivers and logging drivers off. The companies' number of trips is not growing. Even then, the proposed rules would still give them access to 30,000 FHV's not currently affiliated with them, and would allow growth in driver-owned vehicles while expanding accessibility. At this point, there really is no rational basis to fight the vehicle cap, or the CBD utilization rule, after leaving drivers empty for 41% of the time and becoming 30% of overall traffic in Manhattan. Passenger wait times have not come down and have in fact gotten better since the cap went into effect last August. The city, meanwhile, is grappling with how to stabilize an industry fractured and in turmoil and a workforce driven into poverty. The Council just announced a Taskforce for at least one of the sectors, medallion yellow taxis, where a record high number of foreclosures and bankruptcies have left owner-drivers penniless and in in life-long debt. We want to secure a living wage, job security and a raise for all drivers. The proposed cap and utilization rules let us build a foundation for the way forward. There is no rational reason to oppose these basic rules, but a number of moral ones to pass them. We urge you to vote yes.

Continuation of Vehicle Cap, Proposed CBD Utilization Rules and Proposed Cross-dispatching

A cap on new FHV vehicle licenses is crucial to protecting app-driver pay and preventing the dilution of fares across an unsustainably large number of FHVs. Nearly one year after Local Law No. 147 of 2018 took effect, drivers in all sectors are still struggling. Although the limited vehicle cap began in August, a backlog of applications meant that there are now 120,000 licensed FHVs, 5,000 more than a year ago.

TLC's driver pay rules were a much-needed and important first step in improving app-based drivers' working conditions, yet these rules were designed only to bring drivers to a minimum-wage equivalent, far shy of a true New York City living wage. While the pay rules are a welcome relief, drivers still need enough trips, and an equitable division of the fare, in order to earn a living wage. Preventing more unlimited FHV growth prevents further dilution of total driver income and ensures that current and any future driver pay rules actually have the effect of creating a living wage, and not merely equitable per-trip pay that falls short of the mark, because drivers just can't get enough work.

Continuing a cap on non-WAV FHV licenses also protects drivers in other sectors by limiting congestion allowing all drivers to move more freely and service more fares per shift. The TLC's proposed utilization rules also help ensure that drivers will receive enough work when they are online, and work hand-in-hand with the vehicle cap to ensure that High-Volume For-Hire Vehicle (HVFHV) companies have enough work for their drivers.

True stability and protection of livable income has always depended on City regulation of three main factors: 1.) Driver revenue (the fare amount, or pay formula); 2.) Driver expenses (Lease and financing caps); and 3.) Limiting the number of vehicles that can compete in the market for a limited number of fares. Creating stability in the taxi and FHV industries, by limiting further saturation of FHV cars creates the foundation on which drivers can achieve job security and a living wage, as the TLC and the City Council add to and improve driver pay and expense regulations.

Moreover, there is no rational basis to oppose the FHV licensing limitation rules. Uber and Lyft, the two largest HVFHV companies have stopped hiring new drivers, and Lyft has begun logging drivers out of the app to manufacture good utilization rates. Further, HVFHV trip growth has stabilized, while wait times for passengers have reduced in significant parts of the city. Clearly, the companies simply do not need more vehicles or drivers, but they just don't want to be told what to do by a regulator.

The proposed rules would allow HVFHVs to dispatch to vehicles affiliated with livery and black car bases. Of the 120,000 FHV's in the city, 86,000 are affiliated with Uber, Lyft, Via or Juno; leaving another 34,000 at their disposal. The rules also provide drivers seeking to own their own car with three significant exceptions to a complete cap: wheel-chair-accessible cars, electric cars, and new vehicle licenses for drivers who have been in a lease-to-own arrangement since the cap went into effect in 2018.

NYTWA also supports the proposed utilization rules which should help further reduce congestion in the CBD and ensure sufficient outer borough FHV service. App companies will be forced to dispatch drivers to where there is work, rather than keeping them cruising or sitting idle in Manhattan. Drivers should see more work and be subject to less money out of pocket for gasoline. The city's study indicates that the requirement will mainly reduce traffic and produce only slight increases in yellow cab trips within Manhattan. More will still need to be done to bring all drivers to a living wage.

The proposed rules are a foundation. Our rulemaking petition compels the TLC to do more to establish living wages, job security and raise for all.

Cap FHV Finance and Lease Rates to end predatory lending
On Thursday, July 18, 2019, NYTWA filed a petition to the TLC to Initiate Rulemaking, for, among other things, a regulated maximum cap on FHV rental and financing leases. We won such protections for yellow cab drivers in 2012, when the TLC passed first-time regulations, including a maximum cap, on how much agents could charge drivers for the car. Agents who lease or finance a TLC-plated vehicle to FHV drivers must be under the same regulations.

While Uber and its lobbyists have attempted to create fear among drivers around scarcity of vehicles and rising lease costs, the reality is, there is no scarcity problem as lots are full of TC-plated black cars, and predatory rental and financing costs actually skyrocketed in the FHV sector with the entrance of these companies and during the height of their saturation. Uber, in fact, settled a fine with the Federal Trade Commission for $20 Million after the company was found to have engaged in false advertising to drivers as to how much they could earn and encouraged drivers to enter into predatory lending terms with the false confidence that they would earn enough to pay off the cars.

A cap on FHV lease and financing is the solution to predatory lending – one we have needed at the height of saturation, and continue to need to protect driver earnings. The TLC's ability to increase driver payment rates as driver costs go up is a landmark regulation, and it must function as a safety net. An actual regulated cap is the strongest deterrent.

Protections against deactivations

We are also calling on the TLC to support protections for drivers against one of the consequences of oversaturation - unjust firings – or, in Silicon Valley fancy-speak, deactivations. As long as the door has been kept wide open for more and more cars, these companies have known that for every one driver they deactivate – all without notice, cause or appeal – there will be hundreds waiting in the wings.

Protections against "log offs" or tampering with utilization rates

While our petition also calls on the TLC to regulate one minimum rate of fare across the industry, and guarantee App drivers whichever is higher – 85% of the passenger fare or total of the fare under driver payment rates, we also call on the TLC to strengthen its enforcement and rulemaking around utilization rates. Whether permanently, over several months or for hours in a shift, companies should not be allowed to toy around with drivers' ability to earn a living through deactivations or log-offs. These companies saturated the streets with cars and lured drivers in with false promises of work. The consequence of those failed promises should lie on them, not on drivers. The companies should also not be able to avoid their pay obligations by manipulating the TLC's utilization rates.

- The TLC should use its current power under Rule 59D-16(d)(2), to investigate the increase in instances of drivers being made ineligible to receive dispatches by the companies' actions.
- The TLC must also update its reporting requirements to include driver log-off time because the company logged them out. Yellow cabs, for example, must indicate through TPEP (Taxicab Passenger Enhancement Program technology) why they are going off-duty.
- The TLC must prevent companies from giving preferential treatment to drivers who are leasing cars directly from them, after having recruited tens of thousands of drivers with no expectation of such restrictions.
- The TLC could retain an industry-wide utilization rate, forcing the companies to "police" each other against bad actors.
- The TLC's could also require companies to evidence the availability of enough work before adding additional drivers.

Finally, while the NYTWA supports the intent of TLC rules to allow cross-class dispatching, which would allow livery drivers to continue working for their local car services while also earning money through HVFHS trips, we have deep reservations about the regulatory implications of allowing for cross-class dispatching and the effect such rules would have on drivers' continued eligibility for workers' compensation through the Black Car Fund, if they are dispatched by livery bases. Cross-class dispatching would also create confusion around the taxability of trips which are subject to tax when provided by black cars, but not by liveries.

We look forward to working with the Commission on moving forward with the mission to secure and maintain a living wage for the city's 100,000+ professional drivers. Thank you.

Respectfully Submitted,

Bhairavi Desai

Bhairavi Desai, Executive Director
New York Taxi Workers Alliance