



New York Taxi Workers Alliance

National TWA, AFL-CIO, Intl. Transport Workers' Federation

31-10 37th Avenue, Suite 300 LIC, New York 11101

Phone: 718-70-NYTWA (718-706-9892) E-mail: MEDIA@NYTWA.ORG / www.nytwa.org

September 30, 2018

Commissioner / Chair Meera Joshi
NYC Taxi and Limousine Commission
33 Beaver Street, 22nd Floor
New York, NY 10004

Dear Chair Joshi,

Greetings. Please find submitted our response to the TLC's proposed rules regarding driver incomes. A real raise for drivers across the industry is long overdue. In April 2017, we testified before you and this Commission that the race to the bottom had produced a crushing economic crisis and we feared for drivers' health and futures. Bankruptcies, evictions and foreclosures have been at record numbers. Drivers are miserably overworked and underpaid, and we warned of the growing despair. Between November 2017 and July 2018, six drivers are known to have committed suicide, citing the crisis of poverty and the despair of knowing it had risen out of corporate greed remaining unchecked. The rules before the Commission we know are just a start. So much more has to be done. We thank you and your staff for all of the work behind these proposals, and call on you to incorporate our amendments if this rulemaking exercise is meant to produce real change for a workforce in crisis. Please do not waste this opportunity. A failure to pass the right measures will mean a failure to serve your 180,000 licensees in their darkest hour. You can't get this wrong. Drivers simply can't afford it.

There are two main gains for drivers in the TLC's proposed App driver pay regulations. First, the companies will not be able to continuously cut the rates of driver pay. Gone will be the days of bottomless fares at the heart of poverty among App drivers. Second, the Utilization Rate is a significant step toward compensating drivers for cruising time, especially in a business model predicated on saturation. The proposal is a start. However, the proposed rates leave drivers grossing per trip pretty much what they are already being paid on average per trip by Uber and Lyft. Projections for drivers' take-home pay are further exaggerated given driver expenses are underestimated significantly. The 14% raise which the economists' project in their report seems to assume a mandatory supplement the companies would have to pay whenever the driver's fare revenue falls short of leaving them with net \$17.22 per hour. While the TLC's proposed rules do not even mandate the supplement, it should be noted that if fares require a supplement to bring drivers to a minimum wage, then the rates are effectively a ceiling on driver incomes, not just a floor. That's not acceptable. The main increase per fare for drivers under the TLC's proposal, compared to their gross earnings per trip now, will really be for shared rides, such as Uber POOL and Lyft Line. While the group rides increase is long overdue, it does not make up for the lack of a meaningful raise for non-shared trips, the majority, or for the drivers who pay much higher expenses than the estimated \$20,000 per year. To make the proposal effective at ending poverty wages, more must be done.

We thank you for proposing for action a number of proposals in our Ruelmaking Petition, submitted in April. The FHV transparency rules, and the cap on FHV lease and financing which we confidently expect the City Council will empower the TLC to regulate – were some of our most important demands to both bring drivers out of the crisis, and to protect them against wage theft. We are heartened to see the TLC propose what is currently within your power. We ask you to pass the following proposals from our petition for yellow and greencab drivers:

1. Reduce Credit Card fees for lease AND owner-drivers from \$11 per shift to \$7
2. Brokers cannot charge a driver the credit card rate for two shifts if they are the only driver
3. Broker must pay back a driver any insurance claim where the driver paid the for repairs
4. Garage must pro-rate lease if car is dispatched late; and can pro-rate if car is brought back early
5. Meter must show total fare end of trip

The road to recovery for yellow and green cab drivers, radio-dispatched livery and corporate black car drivers, will in many ways depend on how you handle App driver payment rules. While the economist study commissioned by the TLC was limited to App drivers, finding that 85% earn below \$15 per hour, drivers across this industry are hurting, and the answer is not to hasten monopolization by one sector at the expense of everyone else. Many drivers in the other sectors formerly drove for the App companies and returned when they painfully experienced that the work simply wasn't there. Many other drivers never transitioned out either because of the working conditions or because they had financial obligations to the medallion or vehicle. The transportation they collectively provide every day is vital. If our unity campaign of the past six months – organizing which the Mayor himself said was of likes never seen before in the city – and City Council leadership has illustrated anything – and did so in vivid color - it's that we don't need a Zero-Sum approach. We need transportation options for the public, safety nets for workers caught in the industry transitions, fair and equal regulation, and a viable chance at all drivers to earn more and have dignified days of work – without risking food and shelter or their health or their future. To stop the foreclosures and bankruptcies and evictions; to stop food shortages and early deaths, the TLC must seize the courage to regulate for all drivers during this critical time.

Based on your unprecedented initiative to have the App sector be studied, tireless work with the City Council and continued public role in advocating for drivers, we have confidence that this Commission will meet a historic challenge and put all drivers on the road to recovery.

We call on you to adopt our recommendations to meaningfully lift tens of thousands of families out of poverty.

NYTWA Driver Pay Amendments:

- **Increase proposed rates in the current per-mile and per-minute formula to achieve the level of take-home pay proposed by NYTWA, equaling 80% of the taximeter rate of fare.**

Companies must calculate Driver Payment per trip using the following rates:

Initial Flag Drop	\$3.30
Distance	\$0.60 per 1/5 mile (Or \$3.00 per 1 mile)
Time	\$0.60 per minute (if applied only to stop/slow time; to be adjusted if applied to whole time)

Drivers must be paid 80% of the generated fare.

- **Institute a “flag drop” in addition to distance and time rates**
- **Institute a minimum fare**
- **Create a standard for out-of-town pay similar to Rate 4**
- **Evaluate proposed driver take-home pay now and in the future against a real measures of drivers’ maximum expenses, as has been TLC’s practice when establishing taxicab driver pay rates.**
- **Apply these fare rates to the yellow and green meter so that all drivers can get a raise.**

We fully support the per-passenger pay increase for shared rides, a demand we presented in our April Rulemaking Petition to the TLC.

Under our proposal, App drivers will gross 31% more compared to now. If the fare rates are applied to the taxi meter, yellow and green drivers will gross 16% more per fare. With the rates under regulation and no fear of companies dropping out the bottom, livery and corporate black car fares could also be increased by the self-regulating companies to give all drivers a fighting chance at recovery and a path out of poverty. Make no mistake: if the TLC does not regulate these rates to bring App drivers out of poverty, no other sector of drivers will have a chance either. Given that App companies are the dominant market players, their rate of fare becomes the standard for all driver incomes.

Background: App-Based Driver Earnings and How We Got Here

Since its entry into the New York market, Uber has consistently reduced the amount of pay drivers earned per fare. This began through lowering the rate of fare, while increasing the rate of commission, but has culminated in the past year with a formula that pays drivers low fixed rates per minute and mile, while Uber charges passengers at a different rate under Upfront Pricing. At each step As Uber changed its rates, other app-based FHV companies followed suit.

Historical Pricing and Driver Pay Structure- New York City UberX Rates

	2013 (Pre-Sept.)	September 2013	September 2014	April 2015	January 2016	May 2017
Base Fare	\$6.00	\$6.00	\$3.00	\$3.00	\$2.55	Upfront pricing
Per Mile	\$3.00	\$3.00	\$2.15	\$2.15	\$1.75	Upfront pricing
Per Minute	\$0.75 (stopped or slow)	\$0.75 (stopped or slow)	\$0.40	\$0.40	\$0.35	Upfront pricing
Uber % Fee	10% (after sales taxes deducted)	20%	20%	25%	25%	Driver paid set mile/minute rates equivalent to 2016 earnings.

TLC's Proposal Leaves Drivers Locked into Static Pay while Companies Profit Off of Upfront Pricing

Upfront Pricing is where the company quotes a fare, pre-trip, to the consumer. Once accepted, the rider is locked into that fare amount. Meanwhile, once the trip starts, the cost of the time and distance of the trip is calculated to determine how much the driver is paid. Uber claimed drivers would be paid at the static rate of fare so they wouldn't have to take the gamble if the quoted Upfront Pricing rate turned out to be lower than the actual distance and time cost of the trip. Of course, what drivers began to discover is that they were getting the short end of the stick, with UP fares being much higher. Lawsuits were filed or amended across the country, including a federal lawsuit filed by NYTWA members in 2016, *Haider v. Uber Technologies, Inc.* Drivers were being cheated out of the opportunity to earn more just as passengers started paying more.

NYTWA had implored the TLC to look into the vast delta between company fare revenue and driver fare pay during the April 2017 public hearing. In late 2017, we started to randomly analyze UberX trips. We presented our dataset to TLC last month. According to NYTWA's analysis, Uber has significantly increased consumer fare prices under Upfront Pricing, while locking in drivers at static pay rates, leaving them with less take home pay than what they earned before and leaving them with a lower percentage of the fare paid by the passenger than ever before.

NYTWA analyzed 183 UberX fares taken within New York City since 2017 and, in the aggregate, found the following:

- 1) The current Upfront Pricing fares are 24% higher compared to what Uber charged in 2016, before the introduction of upfront pricing

- 2) The real commission paid by Uber drivers on these fares would be 29.17%.
- 3) The current Upfront Pricing fares are 12% higher than the regulated taxi fare for the same trips.

Passengers are paying more but drivers are earning less. And it's this very practice – separating out driver pay from passenger fares, just as fares have gone up – which the TLC's current proposal – without having study the impact of Upfront Pricing on driver incomes - seeks to codify.

TLC's Proposed Rates Underestimate Driver Expenses

Drs. Parrott & Reich have proposed a \$0.58/mile allowance, as part of the proposed earning standard, to cover driver expenses. This rate falls short as expenses are measured on an average, rather than actual maximum industry expenses.

Any drivers whose expenses are more than the averages used by Parrott and Reich in computing the per-mile reimbursement rate would not even reach the \$17.22 minimum wage equivalent. Assuming that average expenses are similar to median expenses, this proposal would seem to allow 49% of drivers to fall below the \$15/hour standard, if the formula would otherwise produce \$17.22 in hourly pay. The proposed standard here fails to work like a minimum wage in that it does not actually establish minimum take home pay at the rate it purports.

This is significant because large groups of drivers obtain vehicles at prices significantly higher than the average cost assumed by Parrott and Reich. Most significantly, Parrott and Reich assume an average weekly cost for a vehicle and insurance at \$239/week. Many drivers are referred by Uber to Uber partner-dealers who charge significantly higher rates. For example, at one such dealer, prices for financed vehicles range from as low as \$295/week for a 2015 Hyundai Elantra to \$425/week for a used 2015 Camry Hybrid or a 2018 non-hybrid Camry. Rental rates range from \$345 a week for the 2015 Elantra to \$475/week for a 2015 Camry Hybrid. The website advertises that prices "start as low as" these rates.

For a driver paying \$390 a week for a vehicle, the annual difference between their actual expenses and the vehicle expense average baked into Parrott and Reich's pay formula is \$7,852. Assuming a 40-hour, 50-week annual work schedule, paid under the TLC's proposed driver pay rates, this driver's net pay, would only be \$11.08, not \$15, per hour.

TLC's Proposed Rates Are Close to What Uber Is Already Paying Drivers, So Where is the Raise?

While underestimating expenses leaves drivers with lower take home pay, NYTWA's analysis of standard Uber trips (UberX) show that driver *gross* fares will, on average, remain close to the same as what Uber is already paying drivers per trip. The 14% raise projected in the report assumes both Pool trips which are affected differently by this formula than non-Pool UberX

trips, and assumes a mechanism for supplemental hourly pay, something which the TLC's current rule proposal does not mandate.¹

In Parrott & Reich's initial proposal it is unclear whether the projected \$17.22/hour in net earnings incorporates the wage supplement required to reach hourly pay, even if their net fare earnings do not rise to that level.² Because the TLC's current rule proposal does not include Parrott & Reich's hourly pay supplements, if drivers do not organically net \$17.22/hr, it is unclear what the true floor for driver take-home pay is under the proposed rule. It is essential to know what drivers would earn organically, before any wage supplement, in order to know the extent to which the \$17.22 standard will act as an effective ceiling.

For example, if 50% of drivers will net less than \$17.22 per hour through the fare payment formula alone, then the TLC's minimum pay standard does have the effect of a cap on earnings for that class of workers. More data is needed to understand how drivers would earn under Parrott and Reich's proposal without wage supplements. The published report, opaque in its discussion of driver revenue and expenses does not provide sufficient background for drivers to feel any confidence that the diluted version of its proposal would produce anywhere near the projected \$17.22/hour in net earnings.

NYTWA'S PROPOSED AMENDMENTS

NYTWA proposes that the TLC mandate rates similar to what customers are already being charged by Uber so that drivers can benefit from a real raise, and also apply those rates to the yellow and green taxi meter, so drivers across all sectors can earn more and rise out of poverty.

The proposed TLC structure locks drivers into static rates of pay, and the proposed rates will leave a large class of drivers well below the projected \$17.22 per hour or lock them into minimum wage incomes while the revenue ceiling grows for the companies. But there is another way which would actually give all App drivers a proper raise, prevent the floor from becoming the ceiling, and allow driver incomes to grow alongside corporate revenue.

We believe drivers' right to a percentage of the fare should be preserved and protected. TLC should regulate the payment rates to be at nearly what the companies are already charging passengers, and require that companies charge no more than a 20% commission on each fare. Given that the TLC is required by Council legislation to wait for one year before the agency can regulate how much the companies charge passengers, we recognize that, currently, the TLC can only regulate Driver Payment Rates. If the companies continue to quote base fares to passengers at the start of the trip under Upfront Pricing, then the driver should receive 80% of whichever fare is higher, the amount calculated under the Driver Payment Rates or the amount under the pre-trip quoted Upfront Pricing fare.

¹ Parrott & Reich, at 4, 36.

² A chart on page 31 shows anticipated driver earnings as a flat line at \$17.22/hour for the majority of drivers it would seem impossible for almost all drivers to earn

Before Upfront Pricing became Uber’s default practice, in May 2017, when Uber was charging passengers by quoted rates of fare, the default UberX charges consisted of a \$2.55 base charge, \$1.75 per mile, and \$0.35 per minute. NYTWA’s review of UberX trips since May 2017 showed that, on average, UberX trips are now 24% higher than these 2016 rates. We would additionally propose a raise in the distance rate from \$0.50 to \$0.60 per 1/5 mile:

Initial Flag Drop	\$3.30
Distance	\$0.60 per 1/5 mile (Or \$3.00 per 1 mile)
Time	\$0.60 per minute

NYTWA’s proposed rates are only 3.8% higher than what Uber is already charging passengers. Given that drivers are being paid at such a lower rate than their traditional share of what the customer is paying, drivers would actually see an increase of 31% in gross fare revenue under our proposal. Although fare increases typically result in a decrease in the number of trips as some riders opt not to pay higher prices initially, any such impact would be lessened here, because passengers are already paying rates similar to those to be charged under the NYTWA’s proposed rates.

NYTWA proposes amendments to the proposed driver pay standard that would create an immediate and meaningful raise:

- **Increase proposed rates in the current per-mile and per-minute formula to achieve the level of take-home pay proposed by NYTWA, equaling 80% of the taximeter rate of fare.**

Companies must calculate Driver Payment per trip using the following rates:

Initial Flag Drop	\$3.30
Distance	\$0.60 per 1/5 mile (Or \$3.00 per 1 mile)
Time	\$0.60 per minute (if applied only to stop/slow time; to be adjusted if applied to whole time)

Drivers must be paid 80% of the generated fare.

In the alternative, the TLC can still ensure an equivalent pay metric using the per-mile and per-minute rate, divided by Utilization Rate method applied in Parrott & Reich’s study. The amounts merely need to be adjusted to achieve the same rates of pay that NYTWA proposed, by increasing them to an equivalent of 80% of the metered taxi fare for any given trip.

- **Institute a “flag drop” in addition to distance and time rates**
- **Institute a minimum fare**

The current TLC proposal, which does not include an initial charge for each trip, or a minimum fare payment per trip would lead to significantly lower pay for High-Volume FHV drivers on short trips. By not providing for payment of a “drop,” the formula neglects the significant amount of time and labor that goes into starting a trip. More so

than taxi drivers, FHV drivers currently spend several minutes of uncompensated time driving to the pick-up point from the point of dispatch and waiting for a passenger before the in-app meter starts and compensable time begins. Inclusion of a “drop” that would net \$2 in driver pay per trip is essential.

- **Create a standard for out-of-town pay similar to Rate 4**

The TLC should create a pay structure similar to Rate 4 on the taximeter that provides drivers with additional pay for trips beyond the City limits. App drivers should not be left miles from where they can possibly find another fare, without being compensated for the additional time it will take them to venture back to the city, likely without a fare.

- **Evaluate proposed driver take-home pay now and in the future against real measures of driver maximum expenses, as has been TLC’s practice when establishing taxicab driver pay rates.**

When the TLC sought to achieve a take-home pay standard of \$16/hour in 2004 for yellow cab drivers, the TLC did so by ensuring that even the drivers with the highest lease expenses could do so. The TLC did this by assuming expenses charged at the maximum vehicle and medallion lease rates allowed by TLC rules. Similarly, the TLC must establish driver pay rates by analyzing driver expenses based on a reasonable maximum lease amount, and, after the establishment of maximum FHV lease rates, based on the maximum allowable lease expenses per TLC rules. Such a process would ensure that a minimum pay rate is in fact a floor for driver pay.

- **Apply these fare rates to the yellow and green meter so that all drivers can get a raise.**

App-based services often advertised UberX as being cheaper than a taxi; after Uber’s 2016 rate cuts, this was certainly the case. However, since the full-scale implementation of upfront pricing, average UberX pricing has surpassed taxi rates by far.

NYTWA’s review of UberX trips since May 2017 showed that, on average, UberX trips are 12% more expensive than the yellow or green taxi fare for the same trip. The TLC must engage in a study on the impact on taxi fares following the January implementation of App Driver Payment Rules and Congestion Pricing, and determine the impact of essentially a 16% increase from the current metered rates.

Moving Forward: Codifying Long-Term Fair Pay Standards:

To properly understand how various, alternate regulatory approaches would affect driver pay, the TLC should immediately begin studying fare data, and applying NYTWA’s initial fare proposal to the data to see how the proposal would affect 1) consumer pricing; 2) driver income as a share of each fare, and; 3) driver take-home pay. If NYTWA’s initial analysis were to be borne out by a more thorough and scientific review of data, driver pay could be raised substantially, and in line with a taximeter fare raise, while keeping app-based consumer pricing static, and reducing

driver commission or “service fee” rates back to the industry standard 20%. This proposal is a win-win for workers and consumers and deserves the TLC’s immediate study and attention.

DRIVER PROTECTION AND TRANSPARENCY RULES

Contracts, Trip Records and Transparency.

The NYTWA wholeheartedly supports the creation of rules creating transparency in written agreements and pay terms and establishing minimum requirements for both FHV bases and vehicle owners, and we look forward to the expansion of these rules to cover FHV leasing and financing costs, pending legislative action. The NYTWA proposes the following limited amendments to the proposed rules on driver protection and transparency.

Currently, TLC FHV purchasers and lessees are stuck in a regulatory vacuum: not covered by rules that apply to other TLC-licensed vehicles, but also not covered by consumer protection laws that apply only to non-business goods. FHV drivers are left with few of the protections typically associated with vehicle leases and purchases. Over the last few years, NYTWA has seen FHV drivers pay \$78,000 for cars that retail for \$28,000, with no explanation of the sales price or financing costs. Drivers have been charged numerous fees that would be clear violations of similar rules applicable to TLC licensed taxicabs. Drivers have been charged for owners’ TLC summonses, owners’ legal fees, and signed contracts requiring them to only perform repairs at the owners’ repairs shops. Receipts and payment records provided by FHV leasing companies do not provide lessees with a clear understanding of their account balance, nor do they make it clear what each payment is for.

TLC regulation in this area is crucial and long overdue. Other protections must be added to safeguard driver rights.

The requirement that owners maintain records for three years should be extended to six years. This extension would allow drivers access to their contracts throughout the six-year statute of limitations period for breach of contract. Further, as many long-term vehicle lease and conditional sales agreements often extend for three years or longer, mandating TLC and driver access to contracts and records after the three-year period will allow drivers access to their records, even after the end of the longest lease terms. This extension is critical as many drivers hesitate to bring enforcement actions to the TLC during the pendency of a lease for fear of retaliation; a longer record maintenance requirement would allow drivers to access records and make complaints after the end of lease terms, without such fear.

TLC rules must require that bases provide static and contemporaneous payment statements to drivers, at the time of each payment in PDF or similar format. The proposed TLC rules must also specify that base agreements be provided in a static form. The proposed rules must be more specific about the form that required documents must take in order to ensure that drivers have access to accurate, original documents. Over the last few years, app-based drivers have not had access to reliable, static versions of their pay documents. While drivers for some of the larger companies have been able to view their per-trip and weekly earnings by logging into online portals, the companies have never provided drivers with a static document describing driver pay at the time of payment. That is, while drivers could go online

and print or save a statement, the companies did not e-mail drivers a permanent and unchangeable statement of earnings at the time of payment. Some drivers who accessed their online earnings statements for the same pay period at various times have found different numbers every time they accessed the statement. Other drivers found that deductions for pay were described one way at the time of payment, and had been re-labeled to represent a different type of deduction when the same record was revisited months later. The same problem applies to contracts or “base agreements.” Drivers for some companies were never provided with copies of their contracts but only told where they could access their contract on the company’s website. When the terms of those contract changed online, drivers had no record of their rights under previous contract terms.

NYTWA supports the proposed rules’ requirement that base agreements must contain all terms. Currently, drivers’ terms may be scattered among several documents, including addenda for pay terms, or pay terms may only be found on a website, where they may change from time to time.

TLC rules should incorporate the relevant provisions of state and local law regarding requirements for valid electronic signatures. While the codification of electronic signatures makes sense in the digital era, the TLC must ensure that safeguards against fraud are in place to ensure that drivers understand which documents they are attaching their electronic signatures to.

Driver Protection Rules

The extension of TLC rules that protect driver licensees from the bad acts of corporate licensees is welcome and long overdue, but the TLC must strengthen these rules and penalties to have a greater deterrent effect. In the taxi industry, a thorough regulatory framework exists, but penalties are not severe enough to meaningfully deter violations. The NYTWA has seen the same bad actors commit the same violations time and again, with no fear that the penalties from the few violations that drivers actually report will outweigh the benefit of getting away with wage theft most of the time. In addition to more robust enforcement practices, the TLC must increase fines for corporate respondents to deter unlawful behavior.

To this end, the TLC should take the following steps to create a more robust and meaningful enforcement scheme for violations committed by corporate licensees:

- **The proposed rules for FHV driver pay must prohibit unauthorized charges and not merely prohibit excessive charges or underpayment of driver earnings.**
 - Specifically, this means that the TLC must amend proposed rule 59B-18(f) to include a provision analogous to current Rule 58-21(c)(5), that explicitly limits the types of additional charges a taxicab owner or agent may charge a driver.
 - As written, Rule 59B-18 would require bases to pay drivers, but nowhere addresses what types of deductions would be permitted from FHV driver pay. Both minimum pay standards and protection from unfair or arbitrary deductions are essential to ensuring fair worker pay. As it stands, the integrity of the proposed fair pay rule is compromised by the TLC’s allowance of any deduction that the company would contract for, with few exceptions contained in subsection (f)(3).

- By contrast, TLC's taxicab owner rules provide more clarity for drivers and owners alike as to what terms and deductions are permissible. More simply, the TLC enumerates which deductions are allowed, and prohibits any other kind.
- **The proposed rules, and any rules related to drivers' financial loss caused by base/owner/agent rule violations, must provide for restitution for all violations.** For example, currently proposed rule 59B(18)(f)(i) only provides for restitution after a third offense; this must be amended.
- **Provide for double damages in restitution for any willful violation of TLC rules that creates a financial loss for a driver.** As with similar provisions of the New York Labor Law providing for double damages, such a rule would strengthen the deterrent effect of TLC rules.
- **Increase civil penalties for owner/base/agent violations that lead to a financial loss for drivers.**
 - Fines related to non-payment of drivers and transparency in financial relationships must be significantly higher than those for similar violations committed by drivers.
 - For example, the current penalty for a taxicab owner or agent who does not return a driver's deposit within 30 days is \$50. The penalty for not paying a driver's credit card fares (avg. \$~650/week) is only \$200.
 - By contrast, the TLC assesses a minimum driver penalty of \$500 for any overcharge, and charges drivers \$50 for *de minimis* violations such as not having a five-borough map in the cab.
 - The proposed rules for High Volume FHV driver pay perpetuate and magnify this problem; the penalty for a HVFHV base not paying a driver their wages is merely \$200 for a first violation. We note here that the TLC assesses a higher fine for drivers who use the wrong "tone of voice" under the TLC's Courtesy rule.
 - It is simply absurd that driver fines for similar conduct would be less than the fines imposed on multi-million dollar taxi corporations and Wall-Street funded, multi-billion dollar, multinational FHV companies. The TLC can easily correct this.
 - The TLC must address its long-held institutional bias against drivers that affects not only its unwillingness to prosecute owner violations but is even codified in a rulebook that simply doesn't take owner violations seriously.

The TLC must also correct what appears to simply be an error in the rulemaking proposal. In Section 10 of the rulemaking proposal, in attempting to edit the penalty provision to create mandatory restitution for violations of rule 58-21, the penalty provision box has also been edited to indicate that its language only applies to 58-21(c)(7), without indicating changes from the rule's current format which seems to apply to all of rule 58-21(c). The current penalty provision box applies to all violations of 58-21(c), except where other penalties within the rule are more particularly specified. By limiting the penalty provision's application to 58-21(c)(7), the TLC would inadvertently vitiate its authority to provide specific penalties for the main substance of rule 58-21(c), lease overcharges. In any case, it would make little sense to have a penalty provision apply solely to 58-21(c)(7), which does not require any licensee conduct, but merely exempts parties to a collective bargaining agreement from following 58-21(c).

The Collective Bargaining Exemption

TLC rules creating exemptions for parties to a collective bargaining agreement, whether in the taxi or FHV sector, should be removed. TLC regulation of the taxi and for-hire vehicle industries creates essential *minimum* standards for the treatment of drivers. In the event that a group of drivers reaches a CBA with a TLC-licensed employer, TLC regulations should remain the floor from which parties may begin bargaining, but which cannot be waived.

Cancellation Fees

Proposed rule 59A-21(b) provides welcome clarity to the requirements for for-vehicle leases, and providing lessees with adequate notice of when specific fees may be charged. Currently, in the taxicab context drivers often find themselves subject to litigation due to opaque "liquidated damages" clauses that don't specify the amount of such fee, or clearly explain when such fees apply. The protections contained in section 59A-21(b) of the proposed rules should be extended to lessees of taxicabs, under Chapter 58 of the TLC rules as well.

While the TLC has proposed welcome additions to contractual protections for FHV drivers, the rules should go further to protect drivers from excessive charges. Currently, in the taxicab sector, agents charge in excess of \$5,000 in fees to drivers who have allegedly breached contracts; this occurs even where the contracts fail to comply with existing TLC rules regarding cancellation fees and could be on top of damages. Such fees are plainly unreasonable, in violation of TLC rules and contract law, where the charges bear no relation to a lessor's actual damages, which are easily determinable. Several of our members have been made to pay \$5,000 cancellation fees, even where a lessor re-leases the car two days after the first driver returns it, the lessor keeps the first driver's deposit, and sustains no actual damages. Both Chapters 58 and 59A should include language that:

- Limits a cancellation fee to \$500; and
- Provides that such a fee cannot be charged where the fee amount exceeds a lessor's actual damages.

We look forward to working with the Commission on this historic rulemaking and the implementation of the full Council package. Thank you.

Respectfully Submitted:



Bhairavi Desai, Executive Director
New York Taxi Workers Alliance