New York Taxi Workers Alliance

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NYTWA Calls on TLC to Enact a Meaningful Raise for All Drivers

On Wednesday, October 3rd at 10am at 1 Bowling Green, the Museum of the American Indian, the Taxi and Limousine Commission is holding a public hearing on a set of rule proposals regarding driver incomes, including a first-ever regulation of the minimum which App companies must pay drivers per trip. As part of its historic bills package in response to driver mobilizations for App sector regulations, the City Council passed legislation requiring the TLC to pass rules on App driver earnings. A TLC-commissioned study released in July found 85% of App drivers earn below the Minimum Wage of $15 per hour. A J.P. Morgan Chase Institute study out last month reported that on average App drivers made 53% less in 2017 compared to 2013. Over the summer, Uber began payments to drivers as part of a settlement with the Federal Trade Commission over false advertising claims as less than 10% of drivers earned at the advertised rates; in New York City, the average earnings were one-third less than advertised. Drivers say the TLC regulation is long overdue, but it's not enough.

About the TLC App Driver Payment Proposal

TLC is proposing to regulate the minimum App companies must pay drivers on every trip. Uber, Lyft, Via, Juno won't be able to cut rates anymore! *This is a first-time protection for App drivers in the country that we won through our City Council campaign! TLC's yellow and green driver proposals are all from NYTWA's petition!* ***It's a start. Now we fight for more!***

The TLC is proposing $1 per mile and 49.5c per minute. No minimum and initial base rate (also called, flag drop) and nothing on out-of-town fares. The TLC expects these fare rates to raise driver net pay by 14%. We disagree.

1) The TLC commissioned report underestimates actual driver expenses by as much as $10,000 per year.

- TLC's report measures expenses on an average, rather than actual maximum industry expenses.
- 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 $17.22in hourly pay.
- The report assumes 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 the TLC 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.

2) *Gross* fares will, <u>on average</u>, 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.
- TLC commissioned report did not analyze per trip data or separate out Pool trips from non-Pool trips.
- The report assumes requiring companies to make up for trips where drivers gross less than a minimum wage standard, something which the TLC's current rule proposal does not require.

Understanding Upfront Pricing and Driver Payments

The TLC's approach allows companies to charge passengers one rate of fare and pay drivers at a different rate of fare for the trip. This is referred to as Upfront Pricing. The practice started in May 2017, just as Uber started charging passengers more, and has left drivers with the lowest percentage of the fare.

<u>Historical Pricing and Driver Pay Structure- New York City UberX Rates</u>

	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.

NYTWA Research

The TLC commissioned report did not analyze per trip data, or compare what the passenger paid vs. what the driver received. We did.

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

1) Current Upfront Pricing fares are 24% higher compared to what Uber charged in 2016
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.

Here is Our Proposal:

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.

- Require companies use following rates per trip and pay drivers 80% of total:
  - Initial 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)
- If customer agrees to pay Upfront Pricing (flat fare before trip starts), the driver is entitled to 80% whichever is higher, the Upfront Pricing or fare calculated on driver payment rates
- Set Minimum Fare so despite meter rate, a driver cannot make below $10 amount on any trip
- If after getting 80%, the driver is left under TLC established minimum wage (right now, it's $25 gross per hour), then the App company has to pay the rest to the driver
- Double the meter (similar to Rate 4) on out of town fares
- Use drivers' maximum expenses, not averages, when calculating potential driver income based on fare proposals
- Between January – March, study the impact of Congestion Pricing on number of trips and fare revenue and impact of fare raise with these rates for the yellow and green meter so that all drivers can get a raise.

The TLC's approach locks drivers into minimum incomes per fare even when the company's revenue grows.

NYTWA's proposal gives all App drivers a proper raise, prevents the minimum (the floor) from becoming the maximum (the ceiling) of what drivers can earn, lets App driver incomes to grow alongside corporate revenue; and allows for ALL drivers to eventually get a raise. App driver gross payments would go by 31%. Drivers would still have a floor so their incomes wouldn't go lower.

What we support that the TLC is proposing:

APP:

1. TLC regulation of minimum rates per trip
2. $1 per passenger shared ride bonus

YELLOW AND GREEN:

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

Our Amendments to Driver Protection Rules:

The TLC is also proposing a number of regulations to protect drivers' right to information from the companies, and the TLC's right to data and documents as the regulator. Many are proposals also from NYTWA's April Rulemaking Petition. Below are our amendments to the Driver Protection Rules as proposed:

1. The requirement that owners maintain records for three years should be extended to six years.
2. 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.
3. NYTWA supports the proposed rules' requirement that base agreements must contain all terms.
4. TLC rules should incorporate the relevant provisions of state and local law regarding requirements for valid electronic signatures.
5. The proposed rules for FHV driver pay must prohibit unauthorized charges and not merely prohibit excessive charges or underpayment of driver earnings.
6. 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.
7. 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.
8. Increase civil penalties for owner/base/agent violations that lead to a financial loss for drivers.
9. Remove The Collective Bargaining Exemption. TLC rules should function as the minimum requirements.
10. Limits a cancellation fee to $500; and Provide that such a fee cannot be charged where the fee amount exceeds a lessor's actual damages.
11. The TLC must also correct what appears to simply be an error in the rulemaking proposal. In Section 10