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4 Transcript of the Meeting of the

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6 NYC TAXI AND LIMOUSINE COMMISSION

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9 Held on Thursday, November 17, 2005

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11 40 Rector Street - 5th Floor

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13 Borough of Manhattan

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1 Meeting convened at 10:00 a.m.

2 P R E S E N T

3 MATTHEW W. DAUS,
Chairman

4 HARRY GIANNOULIS
5 Commissioner

6 ELLIOT SANDER
Commissioner

7 NOACH DEAR
8 Commissioner

9 IRIS WEINSHALL
Commissioner

10 ELIAS AROUT
11 Commissioner

12 ED GONZALES
Commissioner

13 HOWARD R. VARGAS
14 Commissioner

15 CHARLES FRASER
16 General Counsel

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1 P R O C E E D I N G S

2 CHAIRMAN DAUS: Good morning, everybody.

3 Sorry to keep you waiting. We're going to get started

4 in a second.

5 Good morning, everyone. We have a very

6 hefty agenda here today, we have a lot of people, we've

7 opened up an overflow room from what I understand, so

8 I'm going to get right to the meat and potatoes.

9 The first item on the agenda is the

10 Chairman's report. I'd like to go to that right now.

11 First I'd like to welcome two new

12 Commissioners who have joined us, who have been duly

13 appointed by the Council and the Mayor. First I'd like

14 to congratulate, as we all should, Ed Gonzales, who is a

15 Mayoral appointee.

16 (Applause.)

17 CHAIRMAN DAUS: Welcome, Ed. He has a

18 finance and securities background, he is a mortgage

19 trade specialist for Citigroup and we appreciate you
20 coming on board and joining our team of public servants.

21 MR. GONZALES: Thank you, Chairman.

22 CHAIRMAN DAUS: Also we have from the Bronx,
23 Commissioner Howard Vargas. Howard, welcome.

24 (Applause.)

25 CHAIRMAN DAUS: Howard is an attorney -- we

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1 could use some more on the Board -- who specializes in
2 Workers' Comp and Social Security benefits. Would you
3 gentlemen like to say a few words?

4 COMM. GONZALES: I'd just like to say I'm
5 very grateful to be able to serve on the Commission and
6 hopefully do some good things here.

7 CHAIRMAN DAUS: Howard?

8 COMM. VARGAS: I look forward to filling the
9 good shoes of my predecessors, and doing good works for
10 the TLC.

11 CHAIRMAN DAUS: Those were very lively
12 shoes, by the way, Commissioner Torres.

13 We also have a Commissioner member who has
14 left us, Harry Rubinstein, and I'd like to thank him
15 publicly as we all should for his service. He's been a

16 tremendous asset to this Commission, he did a great job.
17 He can't be here today, but at a future Commission
18 meeting we're going to bring him back and congratulate
19 him for all his years of service. So we wish him well.

20 I'd like to move on to hybrid electric cabs,
21 to give everybody an update. We have six cabs on the
22 road now, they are Ford Escapes. We have an expectation
23 that a total of 20 will be on the road in the next few
24 weeks, according to the reports we've been getting from
25 our safety and emissions division. The breakdown would

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1 be as follows: 18 Ford Escapes, actually, two Priuses,
2 I believe, and one Toyota Highlander, if I'm not
3 mistaken. Two of these -- most of these people are from
4 the medallion sale, but two are our first two voluntary
5 medallion owners who turned in their Crown Vics to get
6 some hybrids. That's good for the hybrid movement.

7 As you know, our next sale will include more
8 alternative fuel medallions for sale in accordance with
9 the local law.

10 Also, I don't have time to go into it now,
11 if you'd like you can check our website. I testified on

12 Monday at the request of the City Council on two Intros,
13 I believe 734 and 735 introduced by Councilmember Yasky
14 who is looking to explore other additional incentives
15 for the purchase of hybrid electrics. I did oppose the
16 bill in terms of how those incentives were being
17 utilized, I thought they were premature, but overall I
18 think we all committed that we're on the same page in
19 terms of the commitment to try to get to the next level
20 and look for incentives. Right now our job is to sit
21 down with Councilmember Yasky and the Council and
22 explore some additional ideas and we committed to do
23 that and if you'd like to view the testimony, it's on
24 our website. We'll keep you apprised of progress in
25 this area, but so far, so good.

6

1 Also, I attended an event last week with
2 Bill Ford, who flew in. He invited the TLC and some
3 other individuals to announce the fact they're going to
4 be ramping up their production of Ford hybrid Escapes.
5 I think we as a Commission should be pleased. If you
6 remember the debate we had when we passed the rules, we
7 talked about sending a message to the manufacturers,
8 this is the wave of the future, we should look into

9 this, the competitive forces and the statement that we
10 sent is now resonating. I think over 200,000 vehicles
11 are going to be manufactured by Ford in the coming years
12 and we know Toyota's commitment and Honda's commitment
13 to the hybrids. This is all good news for the
14 environment and the City and good news for our efforts
15 working with the Council.

16 Also, if you haven't been following it and
17 didn't learn about it, there is something very
18 innovative going on. When I took this job I never
19 thought we would be dealing with architects and
20 designers, but thanks to Andy Salkin our First Deputy
21 and the New School and an entity called the Design
22 Trust, we're actually thinking outside the box as to
23 what we'd like to see a cab look like, and this is
24 something that resulted in an exhibit which is still on
25 display at the Parsons School, the Parsons Manhattan

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1 Gallery, which is located at 2 West 13th Street in
2 Manhattan. It opened a week or two ago and it will run
3 until January 15th of next year. The hours are 9 a.m.
4 to 9 p.m., admission is open to the general public. I

5 would encourage you to check it out. They also have a
6 website, www.DesignTrust.org, I've given a copy to the
7 Commissioners. Some impressive ideas, some impressive
8 designs, some workable, some pie in the sky, but the
9 bottom line is they are ideas and having ideas are
10 better than no ideas. So I've asked them to do what
11 they can to make the manufacturers aware of it. I think
12 we've handed a copy to Bill Ford when I saw him, and,
13 you know, also, one of the things, just jumping back to
14 the hybrids real quickly. I asked Bill Ford, would he
15 look into making a hybrid electric vehicle that is taxi
16 package or taxi ready and he said he'd look into it,
17 which I think is significant. We're talking about what
18 they did with the Crown Victoria that companies in the
19 future may be looking to do with hybrids.

20 There are a lot of ideas, we'll digest them,
21 we're going to ask the Design Trust to make a
22 presentation for us at a future meeting, but for now you
23 have the book to chew on.

24 There's been a lot of rulemaking petition
25 work since the last meeting that we had publicly. Since

1 then I received four petitions. I have denied all of

2 them and I have presented a copy here as required by the
3 City Charter and also our rules to the Commissioners.

4 Let me talking about the insurance petition
5 first. There was a petition that came in from the
6 Livery Owners Coalition asking the Commission to lower
7 the insurance that we put into effect in 1998. If you
8 remember, we held a public hearing in October 2004 and
9 the basis for my denial was that a lot of the questions
10 that the Commissioners had at that meeting, including
11 ourselves, has not yet been answered by the petitioner
12 and it has not yet been answered by the State Insurance
13 Department, so hopefully we can look at this petition
14 further as we get those answers and now really the
15 burden is on the petitioner to come back and give us a
16 good reason, a real good reason why he believes we
17 should be lowering insurance rates, so that's something
18 that that the Commissioners have and we can engage in a
19 further dialogue on that.

20 We also had three simultaneous fuel
21 surcharge and other related items that were on those
22 petitions that came in about two months ago, and I
23 denied them less on the substance, more on the fact that
24 there were so many different fuel surcharge proposals,
25 and many different ways to look at it, plus I didn't

1 feel that the petitioners had all the facts and research
2 that we needed. So rather than making a decision on my
3 own, I felt it would be more appropriate to have our
4 Commissioners weigh in.

5 So I denied it for the purposes of bringing
6 it here for discussion and that's what we're going to do
7 today. Staff has been doing a lot of research. I've
8 personally spoken with and met with most of the TLC
9 Commissioners from the major cities, we've gathered
10 research about what they've been doing, we also gathered
11 research about the price of fuel, we've been monitoring
12 it and tracking it and looking into the way other cities
13 are doing business. So we're going to have a formal
14 presentation by our First Deputy Commissioner and his
15 staff about these matters in a short while.

16 Last but not least, there's a Nassau County
17 ordinance that was recently passed -- this is for the
18 industry's information. A law was passed on
19 October 17th of this year which does a couple of things
20 which may have an impact on our licensees. Number one,
21 it prohibits dropoffs by licensed New York City vehicles
22 in Nassau County. As many of you may or may not know,
23 State law prohibits the TLC from stopping someone from
24 another county or another state from dropping off inside
25 New York City. Our jurisdiction is based upon the

1 pickup, not the dropoff. Apparently, Nassau County has
2 a different view of this. They passed a law that
3 prohibits people who we license from dropping off
4 passengers in Nassau County, unless they have a permit
5 with Nassau County.

6 Number two, they've required that if you
7 want to do what's called, what we call Tier 2 activity,
8 you have to purchase a permit from them. So you will
9 be, if you're a New York City licensed entity, be able
10 to pick up passengers inside Nassau County for a dropoff
11 inside New York City, if you purchase a permit from
12 them. They have a prohibition on licensing outside of
13 Nassau County bases, so if you want to do point-to-point
14 work, meaning you're picking up in Nassau County or
15 dropping off in Nassau County and this applies to maybe
16 bases that are on the board in Queens, you have to
17 actually move and open a base in Nassau, otherwise they
18 won't allow you to get licensed and you'll be enforced
19 against. Also there's a fee structure they put in place
20 that out-of-towners basically have to pay a \$300 fee and
21 Nassau County people will pay \$5.

22 I don't know much about the lawsuit other
23 than the fact that people have told me about it from the
24 Black Car Assistance Corporation, but the trade group
25 that represents the black cars and some of the limousine

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1 industry has filed a lawsuit, they did it on November
2 4th, it's returnable on November 21,2005. They're
3 seeking a preliminary injunction to bar enforcement of
4 that law. They're raising Constitutional and other
5 claims, which is mostly centered on the variation in the
6 fees. I don't have a copy of the lawsuit papers. We're
7 going to get a copy of it and our counsel will analyze
8 it and we'll brief the industry.

9 But there's no stay in effect right now. I
10 would encourage you to visit their website or whatever
11 way you can get in touch with them to learn more about
12 what the obligations are if you do Nassau County work.

13 That concludes my report. Does anybody have
14 any questions or issues?

15 COMM. AROUT: Mr. Chairman, would you tell
16 me what the amount is for a Tier 2, what is the extra
17 money for Tier 2?

18 CHAIRMAN DAUS: For us? Is it \$250, Bill?

19 MR. CARTER: It's \$500 for a two-year

20 license.

21 CHAIRMAN DAUS: So it's 250 per year. Thank

22 you.

23 COMM. DEAR: Mr. Chairman, first of all, I'd

24 like to welcome our new colleagues, Howard and Ed, wish

25 you a lot of luck. Also, I did have this opportunity,

12

1 you know I've spoken about this personally to you and to

2 others, I'd like to welcome our new Enforcement Deputy

3 Commissioner Pansy Mullins. I have tremendous respect

4 for her, and I urge our colleagues to work with her

5 closely, because I think she's a gem.

6 COMM. AROUT: Would you stand up?

7 (Applause.)

8 COMM. DEAR: A few things. One, on the

9 insurance, I know that you denied it and I know that

10 we've had hearings on it, and I think it's something if

11 we're going to kick it back to the industry. It's not

12 going to go anywhere. I've been telling you this, we

13 know there's an issue. The reasons that I believe, and

14 I've done my research from my end, of unlicensed and a

15 lot of LA plates that are all over the place, is because
16 of the insurance problem. We have to take a hard look.
17 There are very good car services out there, liveries
18 that are doing a tremendous job. We had the Deputy
19 Commissioner or Deputy Director of Insurance telling us
20 he had no problem if we lowered it.

21 I'd like you to take a serious look at some
22 other things. Let's take a serious look at this and do
23 something, even if only on a test pilot basis, because
24 this seems to lead to very serious problems we have out
25 there of uninsured cars, unlicensed cars that are out

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1 there rampant and we just can't stop them, can't control
2 them and also a new way of LA plates.

3 COMM. WEINSHALL: Could I -- I was here for
4 that hearing with the State Insurance Department and
5 quite frankly, Noach, unless they're going to be honest
6 with us, and I don't think they were completely honest
7 at the hearing, we don't regulate the insurance
8 industry, and I think that if we're going to really
9 tackle this issue, I would urge you to get
10 Superintendent Mills in here. I know you've met with
11 him and talked with him.

12 COMM. DEAR: Let's bring him here.

13 COMM. WEINSHALL: We don't regulate the
14 industry, they do, and I don't think they were
15 completely honest at the hearing the last time they were
16 here.

17 COMM. DEAR: I agree, I have no problem.
18 I'm not looking to do anything that would jeopardize
19 public safety, but there is a very serious problem and I
20 know that, and this is a very important part of our
21 industry, of our agency, and I want to address it. I
22 know, talking to --

23 CHAIRMAN DAUS: I don't disagree that we
24 should look into the issue further, I don't. I have
25 concerns about safety, I have concerns about --

14

1 COMM. WEINSHALL: But you agree about that
2 the industry has to be honest with us.

3 CHAIRMAN DAUS: I think everybody's got to
4 be -- I heard so many different things in my review of
5 this process that I don't know who to believe.

6 COMM. DEAR: I understand that. I think the
7 Superintendent, we have a Livery Owners Coalition, I

8 mean the advisory board, everybody together and let's

9 rack our brains --

10 CHAIRMAN DAUS: Let's call them in.

11 COMM. DEAR: I don't want to hear stories

12 that this one is going out of business and I want to

13 keep the legitimate guys, a lot of legitimate guys --

14 I'm looking to Commissioner Arout, because I know he has

15 a problem in Staten Island.

16 CHAIRMAN DAUS: I think there are two

17 separate issues to a certain extent. I think people

18 because of the high price of insurance may be looking to

19 commit fraud and what we've been doing since we last

20 spoke about this, and Commissioner Arout is aware of

21 this as well, is we've been cracking down on the LA

22 plates. There have been summonses, people were hauled

23 into court, licenses have been revoked. This is a

24 serious issue. I still don't think it's a reason to

25 reduce insurance because people are looking for a way to

15

1 get around it and commit fraud. But we're looking for a

2 way to do something. We'll call Superintendent Mills

3 in, hopefully he'll come.

4 COMM. DEAR: But the fuel surcharge, I had

5 strong feelings about this, I saw your report, I had
6 discussions with Commissioner Salkin about this --

7 CHAIRMAN DAUS: We're going to have
8 presentations from our staff, so we're going to talk
9 about this shortly.

10 COMM. DEAR: There's also something that I
11 had questions with Commissioner Salkin, it's something
12 that's going to come up very shortly, that's the issue
13 with the Port Authority. The Port Authority, instead of
14 working very closely with us, they want to take matters
15 into their own hands. There's an RFP out right now
16 which will allow for a single contractor to come in to
17 regulate the livery industry in the airports. This
18 happened in Los Angeles, and as a result twelve or
19 fourteen companies went out of business because one won
20 over the other. Not that you can't go in and out, but
21 when a tourist comes and requests a car service, instead
22 of saying we'll give you one -- now they can go to the
23 table, call anybody they want, everybody's brochure is
24 there.

25 They're talking now about having somebody

1 that's a traffic manager that's going to control, that
2 could be a company -- there is a famous company I forgot
3 the name of it in Los Angeles that wants to do it
4 here -- they'll be a car service and all the other
5 livery services that come in and pick up tourists,
6 they're going to lose a lot of money.

7 I appreciate you taking a look at it
8 quickly, please.

9 CHAIRMAN DAUS: I appreciate you bringing it
10 to my attention. We have a copy of the RFP, we're going
11 to look at it and report at our next meeting.

12 COMM. DEAR: It's one thing to stop an
13 RFP --

14 CHAIRMAN DAUS: I think it may be out
15 already.

16 COMM. DEAR: But you can stop it, see what
17 it says.

18 CHAIRMAN DAUS: Well let's look at it. It
19 may not be what we think.

20 COMM. WEINSHALL: There's now an Airport
21 Advisory Board that Dan Doctoroff and I'm a member of, I
22 believe we have a meeting in December -- we have a
23 meeting in December and if the staff will provide me
24 with information, I can bring it up at that airport
25 advisory.

1 COMM. DEAR: Like Commissioner Salkin said
2 to me, they shouldn't be mixing into our business of
3 regulation of taxi industry, that's something we're
4 supposed to do. When other governmental agencies come
5 in and start controlling things, it starts becoming a
6 little bit of a conflict.

7 One last thing, the Nassau County thing. I
8 think again, you know my feelings, this is very serious,
9 something we should fight. If it takes, again, we
10 should use, we have Commissioners here that have the
11 clout, wherewithal with yourself as Chairman, to go to
12 the Nassau County people, talk to Tom Suozzi, say, "What
13 are you doing? Let's stop fighting," because we could
14 start doing things on the other end, the flip side. I
15 think we should take this very seriously.

16 COMM. SANDER: Just to respond to
17 Commissioner Dear, the comment on it, I think the
18 Commissioner's point is correct that this should be done
19 in partnership with the Port Authority. At the same
20 time, contracts get won and lost all the time and the
21 issue is from a public policy standpoint, how do you
22 balance what's appropriate. It may well be from policy
23 perspective in terms of outcomes that this is a better
24 way to go.

25 I agree with you that they should be talking

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1 to us at the same time. I wouldn't necessarily jump to
2 the conclusion that having one vendor as opposed to
3 several, even if it does have an inimicable effect on
4 some companies, shouldn't necessarily be ruled out as
5 something for us to do. I think we should talk to them
6 as they proceed.

7 CHAIRMAN DAUS: I appreciate that, I
8 appreciate you bringing it up.

9 Okay, adoption from the minutes of the
10 September 8, 2005 Commission meeting. Any questions or
11 issues with the minutes or corrections?

12 MR. GONZALES: Make a move we accept them.

13 COMM. WEINSHALL: Second.

14 CHAIRMAN DAUS: All in favor?

15 (Chorus of "Ayes.")

16 CHAIRMAN DAUS: Any opposed?

17 Okay, they pass unanimously. Thank you.

18 Item 3, presentations. We'd like to now
19 conduct a staff presentation on the fuel surcharge
20 proposal and ask our petitioners to share a few words
21 with us. Good morning, Andy.

22 COMM. SALKIN: Good morning, Chair, good
23 morning, Commissioners. We put together a presentation
24 today that's going to focus on information we found
25 useful and helpful in our efforts to analyze the fuel

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1 surcharge petitions as well as kind of understand where
2 the industry is and where it's going.

3 To do this, it's important I think to take a
4 look at where the industry is from kind of an economic
5 perspective, looking at where the impacts of the fare
6 increase and where we've come since the fare increase
7 has taken effect, and to do this part of the
8 presentation --

9 COMM. GIANNOULIS: Could I talk to you for a
10 second? Since we have two new Commissioners, could you
11 just take a few minutes and explain what the fuel
12 surcharge is.

13 COMM. SALKIN: It's not in the presentation,
14 but I'll take a second to talk about that.

15 The surcharge petitions -- and I think you
16 probably all got to read them -- one of the things I
17 will do later on in the presentation is talk about what

18 the different petitions suggest that we do, but the way
19 I think we can look at it is there are surcharges placed
20 on the meter right now.

21 There's an evening surcharge, a rush hour
22 surcharge, the idea is as fuel prices go up, perhaps
23 having an additional surcharge that specifically
24 addresses the additional cost of the fuel so that the
25 drivers who are losing money based on fuel can pay.

20

1 I'm going to as I go through this outline
2 that, because I wanted to catch it all, but thanks for
3 pointing that out. If you do have questions, please, on
4 clarity, let me know.

5 I want to go into the economics of where the
6 industry is. As I do, I'm going to pull information
7 that Bruce Schaller did for the TLC that really looks at
8 the impacts of the fare increase starting from May '04
9 to May '05 and then the staff is going to look at where
10 it is today.

11 In addition, we've done a lot of work
12 looking at trends and fuel prices, understanding why
13 prices of gasoline are changing, going up, coming down;
14 talking to other municipalities not only in this country

15 but around the world, understanding how they've
16 responded to changes in fuel prices.

17 Finally, I'll give a brief introduction to
18 the petitions we've received and kind of show you what
19 we think would happen or what the impacts would be on
20 the industry, focusing mainly on the passengers and
21 drivers of a fuel surcharge.

22 Getting into the economic review, I think
23 it's important to start with what exactly was the fare
24 increase, because that's kind of where the story starts.
25 For the new Commissioners and for those of you who are

21

1 here, to remind you, in May of '04 a new fare went into
2 effect. The fare was basically a 26 percent increase.
3 Highlights of it were the initial drop went from 2 to
4 2.50; the mileage charge went from \$1.50 to \$2 a mile
5 and we saw the addition of the rush hour surcharge. A
6 lot of the others stayed the same. And that represents
7 a 26 percent increase. It's a 26 percent increase to
8 the passengers.

9 What we see is the passenger average fare,
10 this includes tips, went from our estimate of \$7 to

11 \$9.84. That additional 9.84 they're paying represented
12 to the industry an influx of between three, three-fifty,
13 \$400 million of new money. The money gets split
14 basically between those that own the medallions and
15 those that lease the medallions and the drivers.
16 Turning to the owners, taking into effect
17 the change in the lease cap that the Commission also
18 allowed, the owners were seeing more money. That comes
19 to about \$5,000 to \$8,000 per cab, that's basically the
20 equivalent of about \$100 million per year for the
21 owners. That means there's a significant amount of
22 money left for the drivers.
23 If we look at the drivers, this is how our
24 numbers run up. This is based on the report that
25 Schaller did, we drew upon meter runs that we get out of

1 our inspections, so basically this is what the meter
2 said the cab did over the year.
3 What that said is really we saw the drivers
4 earn about \$125 a day before the increase, or the
5 equivalent of \$11 an hour -- this is again May of '04 up
6 to \$167 with an average of about \$15 an hour. This is
7 representative of the DOV drivers. We saw the fleet

8 drivers earning a little less and the DOV drivers earn
9 about 30 percent more. This is an increase to the
10 drivers as well, this represents an increase of about
11 \$250 million to that industry.

12 COMM. SANDER: Andy, what does that
13 translate to in terms of an average annual income for
14 the average taxi driver? I realize there are some
15 drivers who work five days a week, some work six days a
16 week, but just as a general standard, I'm interested in
17 how that translates annually.

18 COMM. SALKIN: It's a question that
19 obviously is difficult to answer, because we don't know
20 exactly how much drivers are driving, but if you take
21 the assumption that a DOV vehicle, kind of the name
22 vehicles and drivers are consistent, we found on average
23 the average vehicle was pulling in \$140,000 a year
24 overall.

25 You figured how much they have to pay. The

1 amount of money that's left for the drivers can be in
2 the 60s, the \$70,000 range, so that's what the vehicle
3 kind of earns. It's a matter of how that gets split up.

4 If a driver is a full time driver, they drive half that
5 time, we're looking at 35 to \$45,000 on average.
6 Obviously, this is something we don't know a lot about,
7 because we don't have specific trip sheet data and can't
8 estimate that.

9 COMM. SANDER: It sounds like previously,
10 from some of the work that Schaller has done, the
11 numbers, and correct me if I'm wrong, were in the 29,
12 30, \$31,000 range and it sounds like that has gone up by
13 about three, four, \$5,000 a year.

14 COMM. SALKIN: Potentially even more. See,
15 drivers -- people drive for many different reasons.
16 Some people drive until they meet a certain dollar
17 value, then they come off the road. Some people drive
18 because they always drive ten hours, they try to make as
19 much money as they can, so it's unclear exactly what's
20 going on. We do believe based on the numbers that the
21 cabs are doing, cabs are making a lot more money and
22 assuming the cabs can only make money when they have a
23 driver, we believe that represents about 34 percent.

24 But overall the numbers that we're talking
25 about, and Schaller's estimates are that the drivers are

1 earning between 65 and 75 percent of the income that was
2 put into the industry, and that's something that the
3 Commission talked long and hard about, and I think it
4 was something you desired was that most of the fare
5 increase go to the drivers as opposed to this
6 fifty-fifty split that was discussed in the past and
7 these numbers do bear that out.

8 One thing, this gets us a little bit away
9 from the overall industry, but to look at what the
10 impacts are to drivers, fuel and how fuel impacts the
11 driver's income. This chart shows as fuel prices
12 change -- this is the way the market is set up. The
13 drivers in the medallion industry pay for the fuel. So
14 if fuel prices change, the drivers have to pay more
15 money or less money, in theory they would make less or
16 earn more, depending on where gas prices are going.

17 What we see is the post fare increase, the
18 \$2.05 is a representative average for the last year,
19 from the year May of '04 to '05 to where they're
20 earning. If you use that as a baseline, they're earning
21 about 34 percent over where they were pre-fare increase.

22 Then we see gas start to rise and we see a
23 peak happen in early September. What you see for that
24 peak price is the driver's income coming in at about
25 \$150 a shift, which is still 21 percent increase from

1 where they were, but it's less than what it is.

2 Obviously -- I hear some hisses in the
3 background. I want to point out there's a lot of
4 different ways you can look at the numbers and do
5 different things. These numbers are based on annual
6 data that we got out of the cabs. I'm not sure what the
7 individual drivers are doing, we matched this against
8 trip sheets and we think these numbers are
9 representative. It's also representative of the numbers
10 we used going forward to do the fare increase, which
11 everyone agreed upon going forward.

12 If there's different models we should use,
13 we're open to that, but nobody has come forward and
14 offered us a different way of doing it, so I would ask
15 for that respect from the background.

16 Today we see gas prices at around 2.34.
17 Now, that's what the reports are saying on line. We see
18 a lot of prices around 2.40, 2.45, all over the city.
19 If you take that number, we're seeing drivers are
20 earning about 29 percent more, \$160 a day. It
21 represents 35 to \$40 a day additional for the drivers.
22 If you slide in and say what exactly has been happening
23 with fuel, we've been tracking the fuel and to try to
24 understand exactly where fuel has been.

25 If you take a look at the fuel, this chart

26

1 is information from the Energy Information
2 Administration. There's tons of websites, we've been
3 following them all. All different websites, the prices
4 range up to 40¢ just for the New York metro area. We
5 chose this because it has good historical data. What it
6 does show is when the fare increase went into effect,
7 May of '04 you see the price relatively stable, going up
8 a little, coming down a little, going back up all the
9 way through March of '05. Then something happens in
10 March of '05, prices start to grow and really go up.
11 Then in July, the slope of the rise starts to gain and
12 we really see the impacts of, effects of the tragedy of
13 the hurricane when we see the supply of gas and the
14 ability of the refineries, really spikes the prices of
15 gas and we see the peak happen September 5th of '05.

16 Now, since that point, the infrastructure
17 that's used to supply fuel has come back on line, we see
18 the prices of gas going down. In fact, on November 7th
19 we actually reached the point where we were pre-Katrina
20 and we've seen the gas prices continue to go down. This

21 is just used to show you what the trend is, but it's
22 clear that the way we currently have the structure of
23 our industry and the market that we've set up, that the
24 drivers have to pay all the fuel. And one of the things
25 we want to talk about, I want to share with you is

27

1 important in terms of being the regulators and exactly
2 who can bear the burden of increased costs of fuel.

3 The way it's currently structured is as fuel
4 prices go up or go down, the driver is the one that has
5 to pay them. That's what this first box represents.
6 The driver pays the cost of fuel solely, and what we've
7 seen is, there's been some suggestions that maybe the
8 driver shouldn't have to pay that, because that cost has
9 been significant enough that maybe they should be
10 relieved of that burden.

11 I'd like to point out there's a couple of
12 ways the Commission could ease that burden. One way is
13 to change the metered fare or in this case through a
14 surcharge as has been suggested. If you make the
15 surcharge large enough, you can actually shift the
16 burden away from the driver and shift it to the
17 passenger, or you can do it somewhere in the middle,

18 where it splits the burden between the drivers and
19 passengers.

20 In addition, you could also change the lease
21 caps and changing the lease caps, making it lower, would
22 also shift the burden away from the driver and to those
23 that lease the medallions. This doesn't impact the
24 entire industry, because some of the industry are owner
25 drivers, but it would affect a significant part of the

28

1 industry.

2 Now, again, if you do it enough, the burden
3 shifts from the driver to the leasing agents and the
4 people that lease, or you could do something in the
5 middle that shares the burden or the Commission could
6 choose to do something that's a combination of all, both
7 choices, a surcharge with a lease cap reduction that
8 would spread the burden among all three parties. That's
9 if you decide that the burden is excessive and something
10 you'd like to do.

11 These are all different methodologies,
12 methods, and we've seen them in the petitions as well as
13 kind of in other cities and what other cities have done.

14 COMM. GIANNOULIS: Andy, how much is a
15 driver paying on an average shift for gas?

16 COMM. SALKIN: What we're using is about
17 12 gallons a shift. There's different arguments to
18 that. Based on the numbers we got for the annual, we
19 believe the drivers are really driving about 120,
20 130 miles. Some people argue it's much more, some
21 people argue it's less, but if you use that number, you
22 see the amount vary from basically pre-fare increase \$2
23 a gallon to about \$24; then you see it go up to \$45, and
24 that's even more.

25 COMM. GIANNOULIS: So at the pre-fare

29

1 increase, they're paying \$1.70 a gallon; if for some
2 reason at the height of 3.40 it stayed there, every
3 dollar they gained in the increase would be gone.

4 COMM. SALKIN: If you go back to the chart
5 before, this chart shows if you look at the highest
6 price of 3.40 a gallon, the peak price, it shows that
7 the drivers would be earning about \$151 a day.

8 COMM. GIANNOULIS: The number on the bottom
9 says "Difference in takehome from pre-fare increase to
10 today."

11 COMM. SALKIN: That's at the 2.34 a gallon.

12 COMM. WEINSHALL: Look at the top one.

13 COMM. SALKIN: It's \$125 was where they were

14 before the fare increase went into effect, so we're

15 using that as kind of a comparison. Then if you look at

16 the peak, even at \$3.40 we see that the drivers are

17 earning about 21 percent more than they did.

18 I think the break-even point for gas, if you

19 want to knock them all the way back to \$125, is

20 somewhere closer to \$4 a gallon, 4.89.

21 COMM. GIANNOULIS: Break-even point, saying

22 any gains would be lost.

23 COMM. SALKIN: At 4.89 we're back where we

24 were pre-fare increase, the entire fare increase is

25 eaten up with fuel costs.

1 One of the things I was curious about is how

2 much does gas cost the driver. The basic formula rule

3 of thumb that we came up with is for every 50¢ that gas

4 costs, it costs the driver 20¢ of a fare. If gas is

5 \$2.00, 80 cents of the fare goes for paying for gas. If

6 gas is \$3 that means \$1.20 goes for paying for gas. We

7 have a sort of rule that we use, and I'll show you that
8 as we go through the presentation.

9 One of the things that's important, besides
10 monitoring fuel trends and trying to figure out about
11 oil refineries and how the whole Gulf states work in
12 feeding New York City, was talking to a lot of other
13 cities, and a lot of that work was done by Samara
14 Epstein and Jen Palmer on my staff, and I'd like them to
15 talk about what's going on around the country.

16 MS. EPSTEIN: I'm going to discuss the other
17 cities that you see up on the screen. This isn't all
18 the cities that do and don't have a surcharge, but it's
19 a sampling of the cities we've spoken with and there are
20 a few I just wanted to highlight.

21 Los Angeles stands out, because their
22 surcharge is based on the consumer price index, the CPI.
23 They're one of the only cities that does that. And they
24 just passed a fare increase recently, but they're still
25 maintaining a fuel surcharge, but their lowering the

1 surcharge.

2 Philadelphia passed a rate increase last
3 summer and that went into effect last July. Around that

4 time gas prices started to go up, so Philadelphia also
5 chose to also do a fuel surcharge of 40 cents per ride.

6 Seattle passed a fare increase, recently but
7 they've had a fluctuating fuel surcharge for a while and
8 they've kept that in effect, but they're starting to
9 talk about changing the baseline they use as gas prices
10 go up for that.

11 St. Louis is interesting, because they just
12 have a straight surcharge. It doesn't fluctuate, it's
13 just indicated by a sticker they have in there.

14 Washington, D.C. is a case of someone that's
15 chosen to do a surcharge rather than a fare increase,
16 because I think they found it's easier to implement for
17 them.

18 Chicago has not done a fuel surcharge. They
19 did a fare increase earlier this year. In their rules
20 it allows for a fuel surcharge, but they've chosen not
21 to do so.

22 Miami had a fuel surcharge in place that was
23 30 cents until October, so just last month a fare
24 increase went into effect and they've taken off the fuel
25 surcharge.

1 Some of these cities, too, are interesting,
2 like Miami. The person there I spoke to said the
3 drivers didn't even use the 30 cent surcharge in
4 general, because they felt it would affect their tips.

5 So in the next slide I'm going to talk a
6 little bit more about the reasoning that go into
7 creating a surcharge. As we spoke to different cities,
8 we found there are really two ways to raise rates to
9 address a surcharge. You could do a fuel surcharge or a
10 fare increase.

11 This slide shows the general framework
12 regulators use to decide how a surcharge should be
13 constructed. Cities like D.C. use a surcharge instead
14 of a fare increase, as I mentioned and then others like
15 L.A., Philadelphia and Seattle decided to do both.

16 As you go down you can see there's a
17 threshold based on gas prices. Some of them rely more
18 heavily on various sources like triple A or the EIA or
19 the CPI and some take an arbitrary number. It depends.
20 The surcharge rates have to be determined. Some do a
21 detailed analysis to determine what those rates should
22 be, using one of these other sources that we've
23 discussed and some pick an arbitrary number and tack
24 that on.

25 Surcharges can expire. There could be a

1 sunset after a particular date or a mandatory review
2 date after a particular period of time. Some don't have
3 an expiration date at all.

4 I'm going to hold on just a minute here
5 while we were figure out what's going on.

6 CHAIRMAN DAUS: I'd like everybody to remain
7 calm.

8 (Pause.)

9 MS. EPSTEIN: So expiration dates,
10 surcharges could have a sunset date, a review date or
11 some have no expiration date at all, which basically
12 means they're a fare increase.

13 The last is implementation, they could be
14 programmed into the meter. Drivers generally prefer
15 this, having spoken with cities and to some of our
16 groups here, because when the surcharge is programmed
17 in, then the passenger isn't going to question that, and
18 it costs the driver money to do that. Here it's about
19 \$40, so if a surcharge were to be put in and taken off,
20 that's \$80 per driver.

21 The surcharge could be added apart from the
22 meter rate, but as I mentioned a lot of drivers don't
23 necessarily like that, because it decreases their tips

24 and passengers may question the validity of that charge.

25 I'm going to turn it back to Andrew now to

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1 cover more of the petition information. Thank you.

2 COMM. SALKIN: I think the thing we did that
3 was interesting with respect to the other cities is that
4 there's no real best practice out there, there's no
5 formula. Some of them, like L.A., following the CPI,
6 having meetings every two weeks based on thresholds is a
7 very onerous and challenging task for them to do.

8 COMM. GIANNOULIS: Do any of the cities have
9 what's called a cost of living annual increase,
10 something like that? Do any cities avoid the fare
11 charge and the rate increase issue?

12 MS. EPSTEIN: There are some cities, they
13 have to do, in their rules they have to review annually
14 whether there's been enough of an increase in the fuel
15 prices and a number of other indexes they use. We saw
16 that in some of the Canadian cities when we looked at
17 them.

18 It really varies by cities what's in their
19 rules whether they have to review or not.

20 COMM. SALKIN: Seattle is interesting,

21 because what they seem to do is set the rate, and they
22 choose a threshold. They say this is our rate, this is
23 what gas costs the day we set this rate. They kind of
24 monitor if gas gets too out of line with what their
25 assumptions were, then different things kick in.

35

1 I think that's an interesting thing to think
2 about. It's when you pass the rate, you kind of protect
3 the entities involved with sharing the burden as things
4 change.

5 It's interesting and it's complex. I think
6 depending on what the Commissioners' course of action
7 is, I think there's a lot of conversation about what the
8 right way to do some of this is.

9 I'd like to highlight what some of the
10 petitions were. I imagine some of the petitioners will
11 get into more detail. We did get three. One is from
12 the New York Federation of Taxi Drivers. Their petition
13 basically says if gas is between 2 and 4 dollars, there
14 should be a dollar fifty surcharge added. It doesn't
15 have an expiration date, which means this is something
16 that's in place as long as gas is in that range. If gas

17 is over \$4 they requested an additional 50 cents be
18 added.

19 League of Mutual Taxi Owners, something
20 similar, they say if gas is between \$1.90 and \$3 there
21 should be a dollar added as a surcharge and that if gas
22 goes above, for every fifty cents there also be a fifty
23 cent increase in the surcharge. Again, there's no
24 expiration date. It's set based on the price of gas.

25 The New York Taxi Workers Alliance submitted

1 a slightly more tiered proposal that really looked at
2 gas between two and three, three and four, four and
3 five. And they suggest that basically for every dollar
4 that gas goes up, they be afforded a fifty cent
5 surcharge.

6 They also requested a couple of other
7 things. They requested that the Commission look at
8 other things that put a -- I guess you could say a price
9 burden on to the drivers. They suggested rolling back
10 the customer service improvements that were also
11 approved as part of this fare increase. Later on they
12 talked about as gas prices go higher to looking at the
13 lease cap and moving the lease cap back so the people

14 who lease also share the burden. They showed a lot of
15 different ways of doing this. Each one is a little
16 different, but they do also kind of imply there should
17 be a surcharge, which implies the burden should be
18 passed on to the passenger by some method.

19 I think we should look at what a surcharge
20 would do today, how it would impact the passenger. This
21 chart shows what it would look like to a passenger
22 riding in a cab. Going from the pre-fare increase, if
23 you added a 50¢ surcharge, the passenger would feel like
24 they're paying an additional 36 percent. If it's a
25 dollar, they would feel like they're paying an

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1 additional 41 percent.

2 This money would go to the drivers and the
3 driver would also feel the impact of that additional
4 money. This chart shows the impact on the driver. We
5 saw right after the first fare increase, we saw a
6 34 percent increase to the driver. We saw that dipping
7 down to about 29 percent today. If we add a 50¢
8 surcharge today, the driver's income would go back up to
9 41 percent, which is higher than the initial 34 percent,

10 but it does go up. Which kind of lends ourself,
11 Commissioner, to the question you asked about where is
12 that break even point.

13 The next chart shows, if you take a look at
14 where the drivers were after the fare increase and where
15 they are today because of the cost of the fuel, we see
16 they're losing about \$6 a day, or the equivalent of
17 3.5 percent of their income and to make that up you'd
18 need to add about 20¢ per ride to make them whole.
19 That's this break-even point. That's where gas is
20 today. If it goes up much higher, that would change.
21 If it goes lower, that number would change.

22 Real quick, this is the data source, this
23 would be available. I believe we'll put this
24 presentation up on the web, if anybody wants to know
25 where we got the information.

1 In summary, I want to highlight, obviously,
2 the fare increase and changes in the fare did lead to
3 more money going to the industry, we see that the
4 drivers are certainly earning more money than they did
5 before, even with gas prices changing and going up, they
6 still appear to be earning more money.

7 If the Commission feels that the burden is
8 too great on the drivers and it's something you'd like
9 us to pursue, we can discuss shifting the burden in
10 different ways, different methods to do that.
11 Obviously, it's been complicated for cities to do, not
12 all cities have chosen to do this. Whether they have a
13 fare increase or just the complexity of it, I think
14 there's discussion we should have about if this is the
15 thing to do, what's the right way to do it.

16 So this concludes the presentation on my
17 behalf.

18 COMM. DEAR: One comment?

19 CHAIRMAN DAUS: Just a quick question.

20 Thank you Andy, I think you guys worked hard
21 on this and did an excellent job. Just in the
22 presentation, were we able to break it down into an
23 hourly average wage for drivers, what they're making
24 now, what they're making at the height of Katrina and
25 what they're making at the time we gave them the fare

1 increase?

2 COMM. SALKIN: If we go to the chart, the

3 one before the fuel, I think the average, we're using
4 the \$11 an hour, so this chart shows up, basically, we
5 figured before the fare increase the drivers earned
6 about \$11.30. Right after the fare increase, it was
7 about \$15.25, then you see it go down to about \$14.50.
8 Then we figure that around today they're at about
9 \$15.75-ish.

10 This is really highlighting the DOV driver.
11 The fleet drivers earn a little bit less. Our estimates
12 are they're earning between approximately 12.50 and \$14
13 an hour, but the DOV drivers can earn between 14 to \$16
14 an hour, and you see individual owners with the ability
15 to lease second shift earning significantly more,
16 potentially.

17 COMM. DEAR: Throwing around some numbers.
18 Not to minimize it, sometimes I feel we have to put
19 ourselves in the shoes of the driver. If you figure out
20 the difference now from post-fare increase into now, the
21 fuel costs extra between, about 12 to \$15 per day it
22 looks like, per shift, whatever they're working, so you
23 times that times five. I had \$16 for some reason, so 16
24 times 5 is \$80. \$80 to a driver is a lot of money. It
25 may not seem like a lot to us.

1 COMM. SALKIN: I think what came across is
2 without a doubt the change in fuel cost impacts the
3 driver and they have to pay that money. That is without
4 a doubt case. As the prices rise, the drivers pay more
5 money.

6 We're sensitive, we really want to look at
7 that, but even with paying more money, it still appears
8 they're earning more money than they were before the
9 fare increase.

10 COMM. DEAR: Again, you talk about more
11 money. Not talking about from 50,000 to 100,000.
12 You're talking about every dollar to them, you're
13 talking about people who are making -- again I don't
14 want to belittle it, it's minimum wage to an extent,
15 they're making money, they're making money. Let's look
16 at it, they were going to make more and the intent to
17 make more. For them, 80 bucks a week, whatever it may
18 be, is a lot of money. I think we have to be sensitive
19 to that.

20 COMM. SALKIN: Absolutely.

21 COMM. DEAR: I don't know how. I know your
22 argument is if you give a fuel surcharge it may hurt
23 them in another way, less of a tip.

24 COMM. SALKIN: I'd like to say I'm not
25 trying to make an argument one way or the other. I'm

1 trying to present the facts.

2 COMM. DEAR: I hear what you're saying.

3 Sometimes we're sitting on this side of the fence, we

4 say, okay, it's only \$10 a day, \$15 a day, they're

5 making more money anyhow.

6 COMM. SALKIN: Without a doubt, the size of

7 the industry, a couple of dollars changes the industry

8 tremendously both ways.

9 COMM. DEAR: I understand. That's why I

10 think we should be sensitive. Would you think of maybe

11 a sign inside the car that we allowed them, authorized

12 them to do, you know, when you're tipping, something

13 like that, something that says, "Fuel costs have gone

14 up," or something like that, so maybe they'll give

15 voluntarily the extra 50 cents, the extra dollar? I

16 want to do something where I want to help the driver.

17 (Applause.)

18 CHAIRMAN DAUS: Any other questions,

19 comments?

20 COMM. SANDER: Just quickly, I want to thank

21 the staff for an excellent presentation, one of the best

22 presentations we've seen. Just great to see us develop

23 the capability to do this kind of work.

24 COMM. SALKIN: Thank you.

25 COMM. SANDER: Chair, any direction you

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1 would like us to consider?

2 CHAIRMAN DAUS: I think we saw some of the
3 facts, some of the research. I'd like to ask the
4 petitioners to speak then we'll get all sides of the
5 story.

6 I agree, Commissioner Dear, it's all about
7 the drivers. That's the end result here, we want to be
8 sure they're earning a living wage and they're
9 compensated for their hard works. I think this is one
10 of the hardest jobs, anyway.

11 COMM. GIANNOULIS: Could I ask Andy a quick
12 question? Was there any clear increase in the lease
13 prices when the gas prices went up dramatically?

14 COMM. SALKIN: Well -- no -- the lease
15 prices changed dramatically, that depends -- with the
16 fare increase, and a lot of them went to maximum for the
17 maximum shifts, so we saw the prices kind of go up on
18 average. We don't have the best data on where exactly
19 the lease prices are, but if you want to go --

20 COMM. GIANNOULIS: I saw, obviously they
21 went up after the fare increase, but you don't know yes
22 or no, whether they --
23 COMM. SALKIN: What you would argue is, if
24 economic factors were in play and the drivers were not
25 earning enough money, some would leave the industry and

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1 you would see demand for vehicles go down, which maybe
2 would force people to drop down, lower their lease
3 rates. The nature of the industry is there are the
4 daily drivers that rely on their work, and there are
5 long term leases, and people tied up in their leases in
6 theory more than a month at a time. The drivers don't
7 have a lot of flexibility to leave the industry if they
8 own the car, just because gas prices went up in the
9 summer. Once you're locked in, you're locked in and I
10 think they hold you to those factors.

11 CHAIRMAN DAUS: Thank you, Andrew. Great
12 job. I want to thank the petitioners for putting a lot
13 of time into this. I know the people you represent, the
14 drivers, basically appreciate all the work you're doing.
15 Since the petitions were filed, in addition to my
16 looking at the paperwork and making decisions, Andy and

17 the staff met with all the organizations.

18 COMM. SANDER: Just one comment before the
19 petitioners come up. The other thing I want to keep in
20 mind before we have this conversation is the issue of
21 the fare increase next May, because there is the issue
22 of us reviewing, we talked about in two years reviewing
23 what we had done, so part of the conversation should
24 also be how often do we want to go to the public and so
25 forth.

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1 CHAIRMAN DAUS: Well, we do have a legal
2 obligation to analyze and hold the public hearing on the
3 lease rates that are being charged by owners to the
4 drivers every two years. So I believe that May, I don't
5 remember what month it is, but I believe we're due for
6 one.

7 COMM. SANDER: I thought it comes up --

8 CHAIRMAN DAUS: They're all related, the
9 issues.

10 COMM. SANDER: I want people to be mindful
11 there's also an aggregate point in terms of when you
12 want to go to the public.

13 CHAIRMAN DAUS: Okay, that's a good point.
14 And without any further ado, I'd like to invite the
15 petitioners, we have two of the three petitioners that
16 have accepted our invitation to speak. I'd like to call
17 up the League of Mutual Taxi Owners, anyone here from
18 LOMTO? We have Vinnie, then we'll get to the Taxi
19 Workers Alliance.
20 MR. SAPONE: Could someone hand these out to
21 the Commissioners for me? Why am I always first,
22 Matthew?
23 CHAIRMAN DAUS: We went in alphabetical
24 order.
25 MR. SAPONE: Normally I don't write anything

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1 down but today I wrote something down.
2 Anyway, I want to set the record straight.
3 I am here on behalf of the small businessman, the owner-
4 driver who owns one medallion, drives himself, but I am
5 here also to support any cab driver out there, whether
6 they're leasing or whether they're DOVs, no matter what
7 they have. You know, Andrew was excellent, he's a great
8 man, and so are the Commissioners, you know what, I
9 salute you. You must have worked with my father on the

10 piers, on the docks down there.

11 Anyway, I can't understand for the life of
12 me, if anyone in this room besides the cab driver had to
13 wait eight years for any kind of salary increase. I
14 really don't know your business, but if I was to bet,
15 and I'm not a betting man, I would bet that most people
16 get a raise every year, two, maximum three. Why is cab
17 drivers -- you know, we talk about the price of gas
18 going up, going down, other cities, other this. Do you
19 know what it is to wait eight years for an increase? To
20 put more food on the table, to buy a car, to do this, to
21 do that, to go to a movie? Eight years. No one
22 discusses what we lost during the eight years. It's
23 only discussed --

24 (Applause.)

25 MR. SAPONE: What we got in the last raise.

1 Now, either I come from another planet or there's
2 something wrong with me. You know, eight years --
3 listen, I don't mean to yell, I love everybody here.
4 But everyone's talking about, oh, you got a 26 percent
5 increase, that's great. Meanwhile, in those eight

6 years, my guys spent thousands of dollars or more to buy
7 a car every five years. My guys spend a thousand
8 dollars more for insurance, more money for repairs. I
9 don't understand it. What has that got to do with the
10 cost of tea in China? It's got nothing to do with it.

11 Okay, I wrote a little something, so I'll
12 calm down.

13 Good morning Commissioners, Mr. Chairman --
14 why is everybody laughing -- at the Taxi and Limousine
15 Commission my name is Vincent Sapone, Managing Director
16 of the League of Mutual Taxi Owners, commonly known as
17 LOMTO. I want to address our petition for a fuel
18 surcharge. By the way, we got one in September, most
19 cities got it in September, I think we sort of missed
20 the boat, but maybe something still can happen if you
21 guys want to be nice and boost up our rating time, as
22 far as I'm concerned you can forget about a fuel
23 surcharge. I don't think that will happen, but that
24 would be nice. From \$12 an hour, bring it to 18 or 20
25 and then everybody will be happy.

1 I want to address our petition for a fuel
2 surcharge submitted to TLC September 2, 2005. At that

3 time the price of regular gas increased from the date of
4 the fare increase by 84 percent, although gas prices
5 have somewhat, have come down, the cost of a gallon of
6 gas is still about 37 percent higher than at the time of
7 the fare increase. Other U.S. cities have given taxi
8 drivers a gas surcharge, and we are the best city in the
9 world, we have the best taxi service in the world, but
10 other cities have given surcharges, that's nice, real
11 cute, all right?

12 In St. Louis, they gave cab dryers a dollar
13 surcharge when the price per gallon hit \$2. In
14 September 2005 they added an additional dollar until gas
15 prices were below \$3 a gallon. I don't want to go on
16 and on who done it. You got it in front of you. A cab
17 driver's gross income after expenses has nothing to do
18 with a gas surcharge request. The Commission can easily
19 get what a driver is grossing today and we all know a
20 cab driver's operating cost goes up every year. From
21 1996 to 2004 the cost of the Crown Victoria went from
22 \$22,000 to \$26,000. Doesn't that count? As per
23 invoices from leading taxi dealerships that I got this
24 information from. A difference of 16 percent.
25 Liability insurance went up. Repairs went up. American

1 Transit difference of \$1,144 since then.

2 During the time the cost of living,
3 according to the U.S. Department of Labor Statistics
4 increased 20.33 percent during those eight years. The
5 cost of living. The 2004 fare increase was generous,
6 when compared to the previous rate fare. However, after
7 eight years of waiting, with the price of everything
8 going up constantly, the average New York City cab
9 driver is not much better off financially. The gas
10 surcharge petition that LOMTO submitted was not
11 excessive or unreasonable. But the long delay in
12 addressing this issue is hurting all New York City cab
13 drivers.

14 I respectfully request the Commission to do
15 something and do something immediately. You know, I
16 shouldn't say this, it looks like maybe the dollar is
17 out the window, but 75 cents would be nice and it's not
18 \$6 a day, I think from what my people tell me, it's
19 between eight to \$10 a day easy, okay?

20 It doesn't matter if a person works six
21 days, seven days or five days, that's his business. If
22 he wants to buy some Hanukkah gifts or Christmas gifts
23 or other gifts from his kids or do whatever he wants and
24 he wants to put in an extra day, doesn't got nothing to
25 do with it. What's it got to do with gas? With all

1 these City rules, okay, something should have been done
2 to cut the red tape like when we bring someone in from
3 somewhere to take their child, some way we would have
4 got their surcharge, maybe by now it would have gone
5 down 20¢ or a quarter, but by the time we get on our
6 foot here, either gas is going to be up to \$4 again or
7 back down to 1.90. We don't know. Give us another fare
8 increase in six months, that we'll probably accept.
9 Give us something.

10 The people who ride cabs today are people
11 like you guys and like me. And don't tell me if it's \$7
12 two years ago that neither one of us can afford \$9 for
13 that fare. I don't want to hear that, because that's
14 ludicrous. The dishwasher doesn't take a taxi. What
15 about when they call the corporate cars? Do you know
16 what that costs compared to taxis?

17 Anyway, I'm sorry for getting upset. I
18 apologize. You know something, my father drove a cab, I
19 drove a cab. It's in my blood. Why are all cab drivers
20 picked on? You guys are supposed to be supporting us as
21 much as you're supporting the public. They can't have
22 it all their way. You got to give some to us.

23 Thank you.

24 CHAIRMAN DAUS: Thank you, Mr. Sapone. I'd
25 like to ask the Taxi Workers Alliance representatives to

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1 talk to us now. Taxi Workers Alliance.

2 MS. DESAI: Good morning.

3 CHAIRMAN DAUS: Could you identify yourself
4 for the record, please?

5 MS. DESAI: I'm Bhairavi Desai from the New
6 York Taxi Workers Alliance.

7 MR. ULHAQ: Mamnun Ulhaq from the Taxi
8 Workers Alliance.

9 MS. DESAI: Before we begin this, I would
10 like to make an announcement that everyone in the
11 Commission should be aware of. On October 2nd, there
12 was a yellow cab driver, Shazadur Ramman who was
13 assaulted while he was on duty by two strangers who had
14 walked up to him and since then Mr. Ramman has been in a
15 coma. He remains in New York Hospital till this day.
16 We ask everybody to please remember him in your prayers
17 as he's struggling for his life and for those of you who
18 have been able to, please visit the family. They've
19 been holding a vigil at the hospital and his wife has

20 not left that room since October 2nd. He has three
21 young children, he's only 35 years of age.

22 So with that said, the Shazadur case is a
23 great example of all the different issues that taxi
24 drivers have to face in this industry. Regardless of
25 the fact that the number of deaths while on duty may

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1 have gone down, assault is still a major issue and on
2 top of that, you're stuck with all of these horrendous
3 economic conditions. I mean, we commend the staff on
4 the presentation, but we shouldn't get lost in the
5 package, we should concentrate on the content and the
6 content, a lot of these numbers are highly exaggerated.
7 For drivers to be earning this much money, they need to
8 be booking approximately \$300 per shift. Per shift.

9 Everybody knows that in this industry the
10 only thing that is guaranteed are your operating costs
11 and even those costs fluctuate like the price of gas.
12 Drivers begin at a negative every single day. That is
13 the only thing that they are guaranteed, the level of
14 debt and the price of gas, which is the only expense
15 that only taxi drivers pay for in this entire industry

16 is the one factor that fluctuates the most.
17 The TLC needs a policy to deal specifically
18 with the cost of the fuel. Of course we have to wonder
19 that if the garages and the brokers had to pay for the
20 cost of gas, would we have had a fuel surcharge by now
21 already, because this is in a completely unfair
22 situation where you only have the workers that are
23 suffering in this industry, and let's not only look at
24 the taxi industry throughout the country. Let's look at
25 other businesses. Businesses like Wal-Mart, the biggest

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1 retailer in the world, businesses like American
2 Airlines, the biggest airline in the country, have
3 passed surcharges. Waterway in New York has passed
4 surcharges. Domino's Pizza, every retailer out there
5 that is affected by the cost of fuel has passed a
6 surcharge. Why is this industry, why are taxi workers'
7 income not valued by this Commission?

8 You passed a raise in May of 2004, you
9 passed it in March and it went into effect in May
10 of 2004. Don't you have a responsibility to make sure
11 that the incomes that drivers were earning after that
12 raise stays intact? Isn't that, doesn't that even just

13 add value to your own policy making? Because at this
14 point every day drivers are at a loss.

15 The handout that we've given you is a
16 similar chart taken from the NewYorkGasPrices.com and if
17 you look at the first sheet, which is a chart looking at
18 the date the price per gallon and the average daily
19 gas-up cost, it's not 12 gallons to gas up, it's on
20 average at least \$16 to gas up.

21 CHAIRMAN DAUS: Do you know how they get
22 this information, how do they compile their data, where
23 they get it from?

24 MS. DESAI: They take samples from the
25 various stations.

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1 CHAIRMAN DAUS: How do they get that? Where
2 do they get it from?

3 MS. DESAI: They have inspectors that they
4 can take it from.

5 CHAIRMAN DAUS: Is it possible someone calls
6 and says, "Hey, I was on the corner of this street and
7 that street and the price is this?" Is that how they do
8 things?

9 MS. DESAI: No, they follow up.
10 CHAIRMAN DAUS: They'll actually go down to
11 the site?
12 MS. DESAI: It's a legitimate website. It's
13 been cited throughout the media, actually.
14 CHAIRMAN DAUS: Have other states relied on
15 this particular --
16 MS. DESAI: It's a New York-specific
17 website.
18 CHAIRMAN DAUS: Got you.
19 MS. DESAI: One of those, even though some
20 of their numbers are actually lower than what certain
21 gas stations were charging, because again, it's an
22 average. I think it's much more accurate of a citation
23 than some of the other sites that you've seen, because
24 those other sites they tend to take the lower average
25 and they look at New York State as a whole, but we know

1 of course that within New York State, New York City has
2 higher cost of fuel than other parts of the state.
3 And so, going back to the chart, when you're
4 looking, basically since March of 2004 at the time that
5 the TLC voted on the raise, up until now, at the very

6 low end drivers have lost at least close to \$2,700, and
7 as Commissioner Dear said, you're talking \$2,700 for
8 working people is not a small thing. There are drivers
9 who have to choose between going to work that day,
10 gassing up for the day or saving that money to pay rent
11 for the end of that month.

12 Throughout the summer, there were many
13 drivers, we had many members come in with eviction
14 notices.

15 CHAIRMAN DAUS: I'm sorry, the \$2,700,
16 you're arriving at that number based upon --

17 MS. DESAI: That's the total loss at the
18 bottom, 2681.12.

19 CHAIRMAN DAUS: That's the difference in
20 terms of the rising price of fuel, according to the
21 NewYorkGasPrices.com info.

22 MS. DESAI: That's right. When you say
23 difference, really, we're talking about a lot. That's
24 the key word that seems to be missing throughout this
25 discussion. We're talking about losses. We're talking

1 about people that are choosing between gassing up so

2 they can go to work every day or saving that money to
3 pay rent. That is a significant issue, and, you know,
4 as we know from many of the Senate reports, the prices
5 of heating bills this winter are expected to go up
6 anywhere from 30 to 60 percent. That's going to have an
7 astronomical effect on people's cost of living. You're
8 talking about working people that are struggling to make
9 ends meet on a daily basis.

10 Again, I want to say, whether drivers earn
11 \$10 an hour, \$14 an hour or \$15 an hour, this is
12 incredibly hard-earned money. We should respect every
13 penny that is earned. People work back-breaking twelve-
14 hour shifts. Taxi drivers have enormous health issues
15 from just the fatigue of the job, people end up working
16 longer to make up that money. So not only is this money
17 valuable in terms of compensating them for their cost of
18 living on a day-to-day basis, but we should value the
19 amount of difficulty and hard work that people put in to
20 earn that income, and so when the TLC does not take any
21 action and sits back and allows the losses to
22 accumulate, what you're saying to 40,000 licensed
23 workers, that you have authorized to operate in these
24 streets, is that you don't care about their working
25 conditions. You don't care whether or not they're able

1 to pay the rent for that month.

2 This is a significant message. As Vinnie
3 said, the role of the TLC is also to be advocates for
4 the industry. You cannot have an industry without the
5 work force. And you know, it's just unbelievable to us
6 that at a time when throughout the country everybody was
7 taking action, this Commission refused to act.

8 (Applause.)

9 MS. DESAI: There's one thing, everything in
10 life is complex, but not everything is complicated.
11 This is a simple matter. We should not complicate it
12 further.

13 CHAIRMAN DAUS: Anything else?

14 MS. DESAI: What I'd like to end by saying,
15 I think all of us at this point have a lot of questions
16 at this point than we do statements. We really need to
17 hear beyond the answer of, you want it to be thoughtful,
18 you want to look out for the public, you wanted to take
19 your time to see what would happen with the gas prices.
20 We need to hear an answer to the question of how can you
21 sit back as the Chairperson, as the Commission and say
22 to 40,000 licensed workers, "We don't care if you're
23 losing up to thousands of dollars per month." We need
24 an answer to that question.

25 CHAIRMAN DAUS: Okay, what I'd like to --

1 because you raised some questions --

2 (Applause.)

3 VOICE: Yay. Yay. The truth, the truth.

4 CHAIRMAN DAUS: Thank you, Ms. Desai. I'd
5 like to call Andy back up briefly to ask him a few
6 questions based on the data you submitted. Thank you
7 for coming.

8 We do care. I also it's normal to advocate
9 for one group, but I think it's our role to balance the
10 interests.

11 Andy, some of our Commissioners here have
12 some questions about the conflicting data. Could you
13 help us out with this, NewYorkGasPrices.com in
14 particular.

15 COMM. SALKIN: One of the things we did do
16 was reach out to other people that submitted petitions
17 and ask them some questions, and we did work with New
18 York Taxi Workers Alliance specifically and we agreed,
19 they indicated that they didn't think our numbers were
20 necessarily good numbers. We're using we think the best
21 numbers we could have used, not only necessarily on the
22 gas prices, but just on the amount that a driver drives

23 a day, which will impact gas prices, so the numbers they
24 were using on the chart I just got, 16 gallons a day
25 which will significantly impact, if you use 16 gallons a

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1 day versus 13 gallons a day, your price changes
2 significantly. It's six, ten, \$12.

3 We've monitored a lot of the websites. I
4 think the best person, I'm going to ask, Jen, could you
5 talk about what you found in different websites? We
6 looked at them all. They basically all go up the same,
7 but it's a matter of choosing what you think is real.

8 Is that what you're asking about; the gas
9 prices?

10 CHAIRMAN DAUS: Yes, yes. Thank you, Jen?

11 MS. PALMER: Good morning. We've been
12 monitoring four different gas price sites: Gas Buddy or
13 NewYorkGasPrices.com, which you discussed. That
14 methodology is basically a website where you can
15 telephone in, consumers from the area can phone in and
16 report low gas prices they find. Their methodology is
17 indicated on the website. There's no indicator that
18 there's followup done in the field.

19 The other websites that we've been following
20 is AAA, fuel gauge report and that's collected on a
21 daily basis, over 8500 sites are reached out to, they're
22 divided into city-specific areas, and then the average
23 is given for the city-specific area.

24 The CPI, the consumer price index we've been
25 watching as well. That is collected on a monthly basis,

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1 and they reach out and it's basically the basket of
2 goods and an analysis done for that and they publish
3 that for the nation.

4 We've been also watching EIA, as in our
5 report, they publish on a weekly basis, they reach out
6 to gas retail outlets in the area and it's based on a
7 daily average, then a weekly average. Those averages
8 are combined and then published on the following Monday.

9 COMM. SALKIN: Talk about what the
10 difference prices are that you find.

11 MS. PALMER: We're finding that GasBuddy.Com
12 is right in the middle. The highest is consumer price
13 index, the EIA tends to follow a little bit lower
14 because they're done on a weekly average and the AAA is
15 sort of a mid-price range as well.

16 CHAIRMAN DAUS: Any questions on that? I
17 know how you all feel. I've heard a lot about this,
18 studied it closely with my staff. I thanked them for
19 their hard work they did.

20 I listened to Bhairavi, I've listened to
21 Vinnie, I've listened to the Federation. I think
22 there's another perspective here, that's the perspective
23 of the regulator, the passenger, trying to balance the
24 interests.

25 This data, which I believe is accurate, a

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1 lot of thought went into it, indicates that when we
2 passed a fare increase, just last year, I mean, this
3 wasn't light years ago, and it was a pretty hefty
4 increase, the biggest one in the City of New York.
5 Let's not forget that. That the Commission for the
6 first time, helping drivers earn for the first time a
7 living wage comparable to what city contractors get.

8 If you look at page 3 or page 4 of the
9 average hourly increase, before the fare increase
10 they're making close to \$11 and now they're making, even
11 with, correct me if I'm wrong Andy, even with the price

12 of Katrina, the prices have come down, they're making

13 still close to 15.75, \$16 an hour. Is that accurate?

14 VOICE: Hell, no, it's lies. Widely

15 inflated.

16 CHAIRMAN DAUS: Could we have order, sir? I

17 didn't ask you, sir.

18 VOICE: I know, but you want to know truth,

19 I'm telling you.

20 CHAIRMAN DAUS: Please, have some respect

21 for the members of the audience.

22 VOICE: I have respect for the truth. You

23 have none.

24 CHAIRMAN DAUS: Andy?

25 COMM. SALKIN: We used the numbers we put

1 together as part of the fare increase exercise. We
2 built the whole model based on assumptions using that
3 model. Then we pushed that model forward and used it to
4 do the analysis for the year.

5 That number is based on the reports that
6 we're getting from the meters, and they don't lie. The
7 meters show how far a cab drives, the meter shows how
8 many trips a cab does, it shows how many clicks of 40¢

9 so you can use it to ascertain how many miles the whole
10 fleet is doing, how many are paid, how many are unpaid.
11 You take that information, you look at your assumptions
12 and build up from there.

13 That got us up to May of '05 and going
14 forward we basically used the same assumptions and
15 changed some numbers. The number that's been changing
16 is really the fuel price. I talked to the New York Taxi
17 Workers Alliance and told them what my numbers were.
18 They didn't think my numbers were right. I asked them
19 to work with me and show you data to show why our
20 numbers or models are wrong. They did not give us
21 anything different.

22 Today I think see they're using 16 gallons
23 per shift, which is pretty high. I think it represents
24 up to 190 miles of driving a shift, which is much more
25 than we thought the cabs did, much more than they do

1 based on the meters. It's possible, something we would
2 be willing to digest. We think the cabs are doing
3 between 120 and 135 miles per shift.

4 So, again, if you use different numbers your

5 analysis could go different ways.

6 CHAIRMAN DAUS: Based upon a worst case
7 scenario, are they still not earning a living wage?

8 COMM. SALKIN: Worst case scenario, using
9 the model we're using is 120 to 135 miles a shift,
10 they're doing 30 rides a shift, for the fare increase we
11 used 28 rides a shift, and then we're using the leased
12 caps, we're using the average, we're coming out with
13 what we show in our report, which would be in between,
14 depending on the price of gas between 13 and \$15 an hour
15 for the fleet drivers and \$14 to \$16 an hour for a DOV
16 driver. That's what our analysis shows.

17 CHAIRMAN DAUS: At this point, I would
18 suggest to the Commissioners that we actually ask TWA
19 and the other groups, because there seems to be some
20 different assumptions, to provide any data that they
21 would like to provide to us to help us come to a better
22 understanding of this, but based upon everything I've
23 seen, they're still earning a living wage.

24 It was a very recent, very large fare
25 increase. Thankfully, we didn't act imprudently. Okay,

1 the prices peaked, I believe there was some gouging

2 going on out there and the prices went very, very, very
3 high. They've come down, they've stabilized somewhat, I
4 think we should keep our eye on it and there are some
5 interesting ideas about surcharges. The next time we do
6 do a fare increase, I would urge the Commissioners to
7 say we should have a discussion about dealing with the
8 contingencies at that time.

9 Commissioner Sander.

10 COMM. SANDER: Yes, I want to express my
11 support for what the Chairman has just said. I know
12 when we passed the increase in May of '04 and appreciate
13 being reminded that the process began in March, so we're
14 getting close to that two-year period, we talked about
15 looking at this issue two years from now. We are
16 getting in the range of that time, certainly early next
17 year, the middle of next year, and if we're going to go
18 back, if we decide to go back to the public for an
19 increase in that time frame, I do not think it would be
20 well received to first have given the numbers that we
21 have seen. I agree that they should be, the dialogue
22 should occur between Commissioner Salkin and TWA, but
23 barring some major disconnect from that conversation, it
24 would seem to be would be better off to look at this
25 issue several months from now in the context of

1 reviewing where we want to be in terms of the overall
2 fare structure and the other point -- there was another
3 point I'll make, but I'll come back to that.

4 CHAIRMAN DAUS: Okay, thank you. Any other
5 comments from Commissioners?

6 COMM. SANDER: The other small point I was
7 going to make is that while it may not be completely
8 comparable in terms of the issue of fuel and what that
9 represents in the driver's wage, if you just look at
10 governmental employees, in their expenses, they have
11 expenses over a two, three-year period, but in terms of
12 their salary increases, most commonly the municipal
13 contracts, the State contracts offer two, three years
14 and what is lost during that intervening period is made
15 when you have an increase after two or three years.

16 So while it's not an exact analogy, there
17 certainly are examples where you have differences in
18 people's income or the expenses that they have, and then
19 having it made up in two or three years when they have a
20 new contract.

21 VOICE: We don't have the benefits they
22 have.

23 CHAIRMAN DAUS: Commissioner Dear?

24 COMM. DEAR: Again, I expressed myself in
25 the sense that I think we should do something for the

1 drivers.

2 (Applause.)

3 COMM. DEAR: On the other hand, you raise an
4 issue about, that if we're going to look at the issue of
5 a fare increase at some time in the near future, then
6 going to the public, like Commissioner Sander raised,
7 twice in a short period of time would not be a good
8 thing.

9 CHAIRMAN DAUS: Right.

10 COMM. DEAR: What I'd like to do, I'd really
11 like to do is see if I could recommend, I'd like we
12 should move if we could soon start the process and from
13 looking at these things, start to examine these issues
14 and to put in something where we have a built-in type of
15 number where if gas goes up to a certain price and
16 everything else, then automatically something kicks in.
17 But I think we really should take a look, and again, not
18 to minimize the \$20, \$50 or \$80, whatever it may be,
19 it's still drivers' money and every dollar they make is
20 something they need.

21 CHAIRMAN DAUS: I think you make a valid

22 point, Commissioner, about having not to revisit things
23 so soon. Whenever the next fare increase might be, I
24 think some of the fruits of our research have shown that
25 other cities can and you can put a rule in place saying

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1 these are our assumptions, this is what we think drivers
2 should be earning, there's a range, and if fuel prices
3 cut into the income there's a trigger, that it doesn't
4 prompt the Commissioners coming back to keep raising the
5 issue. What if prices come down? Is everybody here
6 going to have a movement to come back to the Commission
7 and ask that we lower the fare? I don't think so,
8 ladies and gentlemen. You know that's not going to
9 happen.

10 VOICE: Just take the surcharge off.

11 CHAIRMAN DAUS: Okay, could we please have
12 some respect for the Commission and for the audience,
13 please?

14 COMM. SANDER: In a nutshell, I don't think
15 it's a matter of if, I think it's a matter of when and
16 timing.

17 CHAIRMAN DAUS: But there are some
18 interesting ideas that came from this. I think this was

19 a very, very good exercise. I feel that it was very,
20 very prudent for us not to act so quickly and have a
21 kneejerk reaction and I am happy we did what we did and
22 we will continue this dialogue.

23 COMM. SANDER: One last point, if I may. If
24 we go back, if we decide as a group to go back to the
25 public next year, some time frame, not eight years, but

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1 two, three years -- and we do want to get public
2 acceptance for this, and we did pretty well with public
3 acceptance of a pretty breathtaking increase we did,
4 which was terrific. If we want that same public
5 acceptance if we do something in the foreseeable future,
6 that's really important.

7 As Commissioner Dear echoed as well, if we
8 want the public to feel good about this industry to tip,
9 which is part of the income as well, we need to be
10 mindful of how we have that interaction and it will
11 certainly strengthen our case if we don't do it now, but
12 we do it at some point in the future to say, hey, we did
13 not do this now, we're doing it in a logical and timely
14 way.

15 CHAIRMAN DAUS: Thank you.

16 COMM. DEAR: Whenever they install the new
17 systems in the car, the public service announcement
18 could be, "Remember the driver as gas prices go up."

19 CHAIRMAN DAUS: That would be better than
20 stickers. We're trying to get rid of stickers.

21 Well, thank you, everybody. The next agenda
22 item is base licensing application review. Who is going
23 to be making the presentation? Welcome, Bill Carter, to
24 the podium.

25 The first new application is Discovery

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1 Transportation Corp.

2 MR. CARTER: Commissioner, I would like to
3 take a moment before we start to review the process as
4 it's gone along so far. As you know, back in the
5 beginning of the year we revised the application process
6 for bases, so what we did was, because we realized the
7 new application process was a lot more difficult than
8 the previous one; we set up seminars for the bases
9 coming up for renewals, we sent out numerous mailings
10 explaining the renewal process as well as us having
11 meetings with people from the bases and the owners

12 meeting with our staff. So we've gotten the information
13 out to them to let them know this is a new process and
14 helping them out with the paperwork that was necessary.

15 To that end, on today's agenda as you will
16 notice, there are seven bases which we're recommending
17 for disapproval. This is the first time we've done this
18 before the Commission. Prior to this, most of the bases
19 that we brought before you met the requirements or were
20 just about to meet the requirements, so we asked that
21 they be approved. What we've gotten in the situation
22 now is we've got seven bases that did not meet the
23 requirements over a very long period of time. All these
24 bases are January and February renewals and from January
25 to February until now they have failed to produce the

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1 documents that were necessary for review.

2 COMM. DEAR: I'd like to --

3 CHAIRMAN DAUS: Could we --

4 COMM. DEAR: -- make a comment about that.

5 This is something we've had discussion with you and
6 Commissioner Salkin and I want the others to hear as
7 well. Is what's happening because we're toughening up

8 finally, thank God; the Commission has spoken and is
9 going in the right direction? There might be some
10 bases, in particular this one, I hear the Webster Avenue
11 one, which has 300 cars --

12 MR. CARTER: Yes.

13 COMM. DEAR: It could be because of a
14 language difficulty, cultural difficulty. You know
15 sometimes, when I say "culture," doesn't necessarily
16 mean culture of where they come from. We had a culture
17 here of you do what you want, car services do what they
18 want, and this is changing now. Maybe there's a
19 language barrier they don't know we're taking this
20 seriously. Maybe we should reach out and bring somebody
21 that understands. If it's the Latino community, bring
22 somebody from the Latino community. To say we're
23 working for you, instead of banging them with a hammer;
24 having discussions, you need a lawyer, we can't
25 recommend a lawyer, but we can tell you these are people

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1 that do this type of work. Just to make it more
2 helpful, more user friendly for them, and that's why
3 I'm -- I can't tell you, I know we were screaming in the
4 past on the issues --

5 CHAIRMAN DAUS: Commissioner, we're jumping
6 out of order here. Could we go through the order of the
7 agenda? I appreciate you going there, Bill, but we'll
8 revisit your thoughts, because it's at the bottom of the
9 agenda.

10 The first new application is Discovery
11 Transportation. Can we talk about that base?

12 MR. CARTER: Yes, Discovery Transportation
13 has applied for a new base license. In our review
14 process they provided all the documents that were
15 necessary, as well as an environmental assessment
16 statement which is required of all new bases. The
17 environment assessment statement speaks to the impact of
18 that base on the neighborhood that they're going to be
19 in.

20 The environmental assessment statement, we
21 determined in that statement that this base would not
22 have a negative impact on the community as far as
23 traffic flow, et cetera, was concerned. We received
24 opposition letters as well as support letters from
25 elected officials. What we did with this base, we put

1 it through the normal process that we normally would
2 with the base, which is measuring the documents that
3 we're required to look at and see if these documents met
4 the requirements that we hold as the requirements.

5 CHAIRMAN DAUS: Okay.

6 MR. CARTER: In our review of it, we felt as
7 though this base, we had no negative statement that we
8 could put against this base that we should deny the base
9 from having a license.

10 CHAIRMAN DAUS: So your recommendation is
11 for approval.

12 MR. CARTER: Our recommendation is for
13 approval.

14 CHAIRMAN DAUS: I know there's been a lot of
15 conversation about this; calls, letters, faxes. Does
16 anybody have any comments on this?

17 COMM. GIANNOULIS: My first comment is we
18 have letters of support from elected officials?

19 MR. CARTER: We have an additional package
20 to hand to you right now. These are all items that came
21 out after the base's package had gone down to the
22 Commissioners. There are additional letters that came
23 in. Some are in support, some are against.

24 What you will see in the package that we
25 gave you is the off-street parking was checked and

1 confirmed by our inspector on September 9th; New York
2 City Police Department 34th Precinct submitted a letter
3 of support on November 7th. New York State Assembly
4 Member Adriano Espaillat sent a letter of support dated
5 September 1st and Community Board 12 sent a letter of
6 opposition dated November 1st, but it was postmarked
7 November 14th, after we made numerous calls to them.

8 In their letter of non-support, there's a
9 notation that their Traffic and Transportation Committee
10 objected to the base; however, their Economic and
11 Development Committee had favored the application. So
12 we weighed these things, as well as the EAS that had
13 been submitted and we felt there was not enough evidence
14 to deny the base the right to operate.

15 CHAIRMAN DAUS: Okay.

16 COMM. GIANNOULIS: Just from looking at the
17 letters, we've had a tradition here that in the short
18 amount of time that we've been looking at these base
19 stations, that when there's opposition in the community,
20 we take that into account. The obvious example was a
21 similar project the elected officials complained about
22 and we rejected the application. There wasn't a lot of
23 debate about it, there wasn't a lot of discussion about
24 it, there wasn't a lot of negotiations, there wasn't a

25 big report, it was opposed by the Commission pretty

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1 clearly and pretty quickly.

2 So I think the idea behind that was that the
3 people who represent the community have some sense of
4 issues that we don't necessarily have. So I know that
5 on this project, and this proposal, the Community Board
6 voted against it, 20 votes against, 5 for, and then
7 abstentions. So the Community Board voted against it.
8 The local Councilman is against it. The Borough
9 President of Manhattan is against it. So it seems to me
10 to be there's opposition to it, it's pretty significant
11 opposition, it sounds like and there are some people
12 that support it.

13 So I'm wondering if there's somehow some way
14 that we could have the people who are putting in the
15 proposal try to take a look at maybe another site, a
16 site that's acceptable to the community, the Community
17 Board --

18 CHAIRMAN DAUS: Your first question, Harry,
19 I think is this tradition -- is that something -- what
20 does the law say on this, Chuck? How does that all
21 work?

22 MR. FRASER: Well, it is appropriate to take
23 account of the substance of the community's statements.
24 I don't think -- I cannot see a legal basis for
25 rejecting an application because people have taken a

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1 position against it. As to the reference to VNR, the
2 prior base to which there was opposition, it's my
3 understanding from the lawsuit that ensued that our
4 rejection of that base was based on their violation
5 history and that the opposition of the elected officials
6 was not the basis for this body's rejection. We were,
7 by the way, sued in that case and we did settle that
8 lawsuit.

9 COMM. GIANNOULIS: The opposition -- well,
10 two things. First place, obviously there's nothing in
11 the law that would say that if an elected official asks
12 us to do something, we have to. That's absurd.

13 That's actually not what we're claiming.
14 We're claiming that elected officials, numerous ones,
15 including the Borough President, the Councilmember, the
16 Community Board have all stated substantive reasons.
17 Now, they could be substantively wrong, but they've

18 claimed substantive reasons, but they very well may be
19 substantively wrong, we don't know. In fact, in the
20 project that we talked about, we rejected it very much
21 for the same exact reasons.

22 The questions were surrounding traffic in
23 the shopping center and the elected official who called
24 me about it said one of the things that we're very
25 concerned about is traffic at this particular location,

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1 and there wasn't an ounce of debate. We rejected that
2 proposal without even a discussion. And there's a
3 reason for that. That's because we assume that the
4 elected official who spoke to various members said we're
5 open to -- we're not against these people as people,
6 we're against this site, and I think Matt and I spoke,
7 they went off, I don't know if they resolved their
8 issues. I would hope that they did.

9 CHAIRMAN DAUS: There's also a lawsuit.

10 MR. CARTER: Commissioner might I cite one
11 difference in the two situations. That's in the VNR
12 situation an environmental impact study was not
13 required. In this instance it was required.

14 COMM. GIANNOULIS: Why was that?

15 MR. CARTER: It's a new base.
16 COMM. GIANNOULIS: Do all of them have that?
17 MR. CARTER: Going forward.
18 COMM. WEINSHALL: Going forward they'll all
19 have EIS's. I guess what I look to is the fact that
20 there was an EIS done and in terms of traffic
21 implications, you know, an EIS pretty much talks to
22 those issues and it found that there was no traffic
23 implications.
24 The other thing is that I know Ray Diaz, who
25 is the assistant chief for Manhattan North, and he wrote

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1 a letter in support and basically, he's there on the
2 spot day in and day out, sort of dealing with the
3 traffic issues, and Ray is saying in addition to the EIS
4 that he doesn't see a traffic problem.
5 The other thing is that I'm sort of confused
6 that you cite the elected officials in opposition.
7 There are some elected officials in support as well as
8 there seems to be a split on the Community Planning
9 Board, you know, the Traffic Committee said one thing
10 and I don't know if they had the EIS in front of them,

11 and the Economic Development group came out in support.

12 So there is that sort of difference here and

13 I think really to compare it with the base in Brooklyn

14 is really, in my mind, comparing it to apples and

15 oranges, and because it's a new base and there was more

16 done here than we had done in Brooklyn, so, you know, I

17 just don't see comparing the two.

18 COMM. GIANNOULIS: I mean, I guess the issue

19 is, if, I mean, you know, staff is making a

20 recommendation but the amount of opposition to the

21 project isn't minor. I don't often get calls from

22 Borough Presidents about base stations.

23 CHAIRMAN DAUS: I know that, Commissioner.

24 COMM. GIANNOULIS: Unless there's a grand

25 conspiracy going on that I'm unaware of, it seems

1 there's a certain level of concern about the project.

2 CHAIRMAN DAUS: But we need to go to the

3 merits of it, though. Just because a thousand people

4 sign a petition saying the sky is falling, doesn't mean

5 it's going to fall.

6 COMM. GIANNOULIS: If a thousand people --

7 CHAIRMAN DAUS: Can I finish? You have a

8 lot to say, I have a lot to say here. Because I've
9 looked at this very, very carefully. I've looked at
10 every letter I've received up until late yesterday,
11 consulted with the staff, consulted with the lawyers,
12 and the law makes it very clear what the standards are.
13 Our rules and the Administrative Code, in particular
14 Rule 6-04, I think it's (d)2, it says, in the
15 Commission's review of an application for a license to
16 operate a new base station, the Commission shall
17 consider the possible adverse effects -- possible
18 adverse effects of such base station on the quality of
19 life in the vicinity of the base station, including, but
20 not limited to, traffic congestion, sidewalk congestion
21 and noise. That is the only issue.

22 It's not a popularity contest, in my view,
23 because you get ten politicians, three elected
24 officials, and the Community Board to say, and there are
25 arguments on both sides. Objectively, the way the

1 Commission has set out to analyze what the law requires
2 us to do is the EAS, which is an objective analysis
3 based on State Law and City Law and includes looking at

4 the condition of the streets, the number of vehicles,
5 which is an actual objective standard, not subjective, I
6 like this person, I like that person.

7 While it seems to me the Community Board is
8 doing its job, the Community Board is seeing its
9 residents are upset, but there was a major split in the
10 Community board. It seems that -- this happens all the
11 time in communities. People have a fear of the unknown.
12 It's Government's job to do the right thing, to remove
13 politics from the equation. In my personal opinion I'm
14 looking at the law, looking at the standards. You have
15 four against in the community, you have a scientific
16 analysis performed by Government in accordance with
17 State and City standards to follow the law, I don't see
18 there's any way we could not approve this base.

19 Some of the concerns cited by the community
20 and the Community Board are based on the fact there's
21 going to be a competition for existing bases.

22 (Applause.)

23 CHAIRMAN DAUS: Well, I would encourage the
24 Commissioners on this Board to go to the bases that each
25 and every one of you approved, including myself -- let

1 me finish. With reservations, we approved for renewal
2 bases in the same community where I think you would be
3 abhorred if you passed by those base stations and looked
4 at the traffic conditions in front of those base
5 stations.

6 So to say that -- this is America. Who are
7 we to say --

8 (Applause.)

9 CHAIRMAN DAUS: Who are we to tell them they
10 can't open a business, because they're afraid of
11 competition? This base is providing life insurance,
12 it's owned by drivers. You're telling drivers that are
13 sitting on this side of the room, basically, they're
14 unable to make a better life for themselves and open up
15 their business because of some political dispute in this
16 community. And we all know that's what this is about.

17 (Applause.)

18 CHAIRMAN DAUS: Let me tell you something --
19 Can I have some order, please? Let me be heard on this.
20 Let me finish.

21 COMM. GIANNOULIS: In the first place, lower
22 your voice, Matt, when you're speaking to me.

23 CHAIRMAN DAUS: It's hard to hear over the
24 cheering.

25 COMM. GIANNOULIS: Let's start there,

1 because whatever this thing is, you need to calm down,
2 okay?

3 CHAIRMAN DAUS: It's hard to be heard over
4 the crowd. I wish the crowd would calm down.

5 COMM. GIANNOULIS: Well, calm down, and
6 you'll be able to speak. Now --

7 CHAIRMAN DAUS: Commissioner Giannoulis, I
8 had the floor.

9 COMM. GIANNOULIS: If you want to go down
10 this --

11 CHAIRMAN DAUS: Commissioner Giannoulis, let
12 me finish my statement.

13 COMM. GIANNOULIS: I thought you finished.

14 CHAIRMAN DAUS: I allowed you talk as much
15 as you'd like to talk. You have the ability to address
16 me. I'm asking for the respect, so let me finish my
17 statement.

18 COMM. GIANNOULIS: I thought you were done.

19 CHAIRMAN DAUS: I am disgusted by the
20 politics that I've seen. I've never seen in my years at
21 the Commission nonsense like this, okay, over a base.
22 We had more opposition, quite frankly, and more calls
23 and craziness in 1998 when we passed sweeping reforms
24 that transformed this industry. I've never seen

25 anything like this.

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1 I joined Government as a public service to
2 do the right thing, to apply the law and make decisions
3 in the best interests of the people. Going down the
4 other road and just saying because a couple of people
5 have concerns which are not founded in fact or law,
6 after we've done the right thing, an objective analysis,
7 it disturbs me greatly as a public servant.

8 You know, politicians can make their phone
9 calls and do what they got to do, but we have a higher
10 obligation than politics. And I would like you to
11 consider voting to approve this base.

12 COMM. GIANNOULIS: You should be very
13 careful with these accusations, because you are now
14 completely out of order, and once I leave this meeting,
15 I'm going to speak to people at City Hall, because I
16 think your behavior today was outrageous.

17 CHAIRMAN DAUS: Go ahead, be my guest.

18 COMM. GIANNOULIS: The reality is, just so
19 all the Commission members know, they know what they're
20 voting on, the Community Board voted against this

21 proposal November 1. None of you received that in here.
22 Matt had this in front of him, but he didn't give it to
23 you. He didn't give it to --
24 VOICE: Our association also sent a letter
25 and none of you have seen it either.

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1 CHAIRMAN DAUS: If you continue, you will be
2 removed, okay?

3 COMM. GIANNOULIS: None of us received this
4 resolution.

5 MR. FRASER: It's in the packet.

6 COMM. GIANNOULIS: No, it's not.

7 MR. FRASER: It's in the front.

8 COMM. GIANNOULIS: When I was asked for it
9 to be sent to the Commission members three days ago, it
10 wasn't sent to the Commission members.

11 COMM. AROUT: That's wrong. You're
12 absolutely wrong. I received a package with that in
13 there.

14 COMM. GIANNOULIS: You did? I didn't. What
15 package?

16 CHAIRMAN DAUS: I think we're
17 misunderstanding each other. You're talking about the

18 November 1st letter, Harry?

19 COMM. GIANNOULIS: The resolution of the
20 Community Board disapproving this project.

21 CHAIRMAN DAUS: Now that you're going down
22 this road, and you want bring this up, I have to say
23 this for the record. This was a very sneaky move on
24 behalf of the Community Board, unfortunately. A letter
25 that was written to me was sent and faxed to every

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1 Commissioner but me, and my secretary, as my staff
2 knows, very good at opening the mail, my assistant, and
3 clocking out. This was time stamped. I'll show it to
4 you.

5 COMM. GIANNOULIS: But I never got it. I
6 don't know who it was faxed to.

7 CHAIRMAN DAUS: It was postmarked -- you
8 called me yesterday and as soon as you told me this was
9 out there, and I had to find out from other
10 Commissioners, I made sure every Commissioner had it.

11 So I think if you're looking to point
12 concerns at somebody not giving us the appropriate time
13 frame, it's not right. The Community Board had

14 concerns, some of it was public --

15 COMM. GIANNOULIS: I don't want to get into
16 conspiracy, but when you fax something to my office, you
17 should always be careful to take out the fax dates. It
18 has a fax date on November 13th.

19 CHAIRMAN DAUS: But the truth of the matter
20 is the Community Board and my staff did not receive this
21 letter until yesterday. Look, if this is such an
22 important issue, why did the Community Board chair wait
23 until yesterday to call me and why did other
24 Commissioners receive this before I received it?

25 COMM. GIANNOULIS: Look, at the end of the

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1 day, the amount of opposition in terms of this project
2 would have in any case, any case made us take a step
3 back and ask for the applicant to go do something, to go
4 speak to the Community Board again, to go speak to
5 elected officials, maybe we would have a meeting and we
6 would bring everybody in the room to talk to them. That
7 would to me be pretty normal, a normal, you know, you
8 have this much --

9 COMM. WEINSHALL: I think the staff has done
10 that.

11 COMM. GIANNOULIS: So the staff has met

12 with --

13 CHAIRMAN DAUS: It's part of the process.

14 VOICE: I would second that motion.

15 COMM. GIANNOULIS: The staff met with the

16 Borough President and the Community Board and the

17 elected officials?

18 COMM. WEINSHALL: No, no.

19 MR. CARTER: No, what we do is we meet with

20 the base owner, when he comes in or cannot provide us

21 with a letter of no objection. Then we ask him to go

22 back to the Community Board or back to the Councilman's

23 office and find out whether they can ameliorate the

24 situation.

25 In this situation what occurred was we got a

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1 letter from the Community Board saying that, okay, we'll

2 address those issues at a meeting, and they gave us a

3 meeting date. That's all they gave us. They never gave

4 us back results of the meeting. We got that letter

5 yesterday at my office.

6 COMM. GIANNOULIS: Wouldn't it make sense we

7 would want some kind of better dialogue between the
8 parties to see if there's some resolution we can
9 support, since there's a large amount of opposition?

10 CHAIRMAN DAUS: I never seen an issue
11 studied or debated more since I've been here.

12 COMM. WEINSHALL: Mr. Chairman, could I make
13 a suggestion? Do any other Commissioners have anything
14 else they want to say on this item? Howard, if you want
15 to talk.

16 COMM. VARGAS: Mr. Carter, may I ask you a
17 question? Item number 8 on the briefing material
18 provided, with the fingerprints from DCJS, it says it's
19 pending. Is it still pending?

20 MR. CARTER: No it's not. We found there
21 were no results. It came back after we submitted the
22 package, but the fingerprints came back clear.

23 COMM. WEINSHALL: They came back clean,
24 right?

25 MR. CARTER: Yes.

1 COMM. GIANNOULIS: I don't know if
2 anybody -- I'm sorry, Howard --

3 CHAIRMAN DAUS: Commissioner, I understand

4 your point. Give the opportunity to be heard to other
5 Commissioners. Anybody else? Commissioner Dear.

6 COMM. DEAR: The current concern which we
7 talked about, that we had some discussion about, that I
8 hear everybody say, is, the words, you don't want to
9 call it "precedent," we had sometime before and as a
10 former elected official, you know, there is respect that
11 I have when elected officials call you, and I was
12 surprised when the Councilmember, the Borough
13 President -- I haven't spoken to Virginia Fields in a
14 long time, to call me personally on this, it means
15 something.

16 I don't want to just now say to them, we did
17 not listen to you --

18 COMM. GIANNOULIS: I don't have any
19 different sense.

20 COMM. DEAR: I don't -- I'm concerned about
21 this, if there is opposition -- now, of course,
22 everything is politics and you said it, and everybody
23 says everything we do is politics, but there was one
24 issue that's interesting that the Councilmember said to
25 me. He said, "Listen, I don't care if it's anywhere

1 else, that particular area, because of the traffic."

2 That's what he told me. Is it true about it or not, I

3 got to trust the person at his word. That's what he

4 told me.

5 The issue is, and I think Harry brings it

6 up, Commissioner Giannoulis brings it up, we shouldn't

7 look like we're taking sides. Is there some way we can

8 resolve this?

9 COMM. WEINSHALL: We take a vote. If we

10 take a vote, we're not taking sides, that's our job. I

11 work with the Councilman quite a bit up in that area,

12 and I said that's why we did the environmental impact,

13 that's why we looked at that. With all due respect to

14 the Councilman, I think he's wrong on this particular

15 item.

16 VOICE: The area is under reconstruction for

17 the next week and a half.

18 CHAIRMAN DAUS: Mr. Herrera, you're out of

19 order. This is not a public hearing.

20 I'd like to make a motion -- I'd like to

21 make a motion to approve the base. There's a motion on

22 the floor to approve the base --

23 VOICE: Yes, but the truth is not coming

24 out.

25 CHAIRMAN DAUS: Could you please sit down?

1 COMM. WEINSHALL: Second.

2 CHAIRMAN DAUS: We have a second. All in
3 favor, signify by saying "aye."

4 (Chorus of "Ayes.")

5 CHAIRMAN DAUS: Any opposed? It passes
6 unanimously.

7 COMM. GIANNOULIS: It doesn't pass
8 unanimously.

9 VOICE: Read the letter from the Borough
10 President.

11 CHAIRMAN DAUS: It doesn't pass unanimously.
12 Do a poll. All in favor, raise your hand of approving
13 the base.

14 (Show of hands.)

15 Commissioner Sander, Dear, Weinshall, Daus,
16 Arout and Gonzales.

17 COMM. AROUT: May I say something?

18 CHAIRMAN DAUS: You want to explain your
19 vote?

20 COMM. AROUT: Yes. I would just like to
21 mention to everyone out there, I have received many,
22 many requests on the phone call, pro and con. I have
23 reservations about this base, Discovery, due to some of

24 the community opposition letters that I have read. I
25 believe the TLC should take a look at the increasing

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1 number of bases in our community and consider limiting
2 the number in some way to reduce overall congestion and
3 enhance the environment.

4 I also realize, though, that the law does
5 not currently allow us to do that at this time. I have
6 been advised by the TLC counsel that the agency could be
7 successfully sued if we base our decision on politics
8 only and not the facts.

9 COMM. GIANNOULIS: That's outrageous.

10 COMM. AROUT: TLC assured me the
11 environmental assessment has been completed and based
12 upon their objective expert opinion, traffic congestion
13 and safety are not an issue. I have also been reassured
14 that if this base was approved, that regular inspections
15 would be performed and the congestion and traffic issues
16 would be monitored carefully.

17 Based solely upon the advice of counsel, the
18 strong advice from the staff, the current limitations of
19 our laws and the fact that the Police Department has no
20 objection, I must reluctantly and cautiously approve the

21 Discovery base. I do so with the condition that within
22 one month of the operation, the Commission receive a
23 full report on any community impact and that we take
24 quick and decisive action if there are any problems.

25 CHAIRMAN DAUS: I actually would agree with

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1 that, and I'd like to amend my motion to say that within
2 a month that we'll be out there and we'll take a look
3 and make sure that the community is satisfied that
4 there's not a congestion problem.

5 Do I have a second to that motion to
6 approve? Let's finish the motion. You voted for it.

7 COMM. DEAR: I want to explain my vote.

8 CHAIRMAN DAUS: I amended the motion now, in
9 response to Commissioner Arout, that the Community Board
10 has concerns. I don't want the Community Board to think
11 that we haven't listened to them. I think a lot of it
12 is fear of the unknown and I think it's fair to approve
13 them, give them a chance and in a month or two to go out
14 there and monitor conditions and we come back to the
15 table and discuss it if there are traffic and congestion
16 problems.

17 I would like to repoll and move on that
18 motion and give anyone the opportunity to explain their
19 votes. Okay, let's repoll.

20 All in favor of that amended motion?

21 (Show of hands.)

22 CHAIRMAN DAUS: Commissioner Sander, Dear,
23 Weinshall, Daus, Gonzales and Arout.

24 Anybody who is opposed to the motion?

25 (Show of hands.)

1 CHAIRMAN DAUS: Okay, Commissioners Vargas
2 and Giannoulis. It does pass, but I think some
3 Commissioners want to make some statements.

4 Commissioner Dear.

5 COMM. DEAR: I have some difficulty in some
6 of what was said today, in particularly the way it was
7 stated to elected officials and the Community Board,
8 coming from both, being a former district manager and
9 Councilmember. So I have issues with that.

10 We have to understand, and that's, we have
11 to be truthful to ourselves. We did, I remember this,
12 without any discussion, without any fanfare, we did deny
13 a base. We went back to the community and that base

14 station, by the way, came back to us and we expedited it
15 for them, and they found a new place.

16 What I'd like to ask --

17 COMM. WEINSHALL: Apples and oranges.

18 COMM. DEAR: It's not apples and oranges.

19 That's not fair. Commissioner, I don't have to read
20 into why people oppose things. I have to look at it and
21 then I can make a decision. Then if there is
22 opposition, then we have to find out if it's true
23 opposition or its politics or it's one guy doesn't like
24 the other person. That's something we have to
25 eventually look at.

1 CHAIRMAN DAUS: That was the point I was
2 making. Maybe it came out a little bit overpassionate,
3 but it's very frustrating.

4 COMM. GIANNOULIS: That's not the point you
5 were making.

6 COMM. DEAR: The community -- and I'm not
7 going into if the Community Board split their vote --
8 the Community Board came back here. We don't split
9 hairs over how they voted, what they didn't vote. I

10 want to respect those elected officials, I want to
11 respect the community as well.
12 What I'm asking here also, you know, from
13 now on, if we're going to really, if there is
14 controversial ones like this, I don't want last minute
15 things to us, I don't want to be contacted. That's why
16 we're here, we're serving the public, but I think in all
17 fairness we have to really be a part of it; when it's a
18 serious one, we shouldn't now start twisting arms. We
19 should do it as a Commission together, where we all
20 could finally agree to something like this.
21 We all want more base stations, we all want
22 better base stations, we all want better service. This
23 Commission has come a long way from what it was years
24 ago. I think in all fairness, we must work much better
25 together, not in the dark. We should be told about

1 things.
2 I know we had a discussion about certain
3 other things, like last week they announced the new
4 hybrid cars, we should have been part of that. And I
5 want now a commitment from you, Mr. Chairman, that
6 you're going to be more open with us, let us know what's

7 going on.

8 CHAIRMAN DAUS: I have to deal with the
9 press every day. If you want to come to every press
10 conference that I have to go to, you're more than
11 welcome, but you'll be getting calls from me every day,
12 Noach.

13 COMM. DEAR: It's not a press conference.
14 Hybrid issues was something we were struggling with back
15 and forth and everything else. The next thing we read
16 about --

17 CHAIRMAN DAUS: Where is the lack of
18 openness?

19 COMM. DEAR: You're missing the point.

20 CHAIRMAN DAUS: I invite to Commissioners to
21 events designed for us and they don't come.

22 We're going back and forth here. With all
23 due respect, Noach, this is the most open Commission
24 we've ever had in the history of the Commission. Are
25 you really going to sit here and tell me that I am

1 secretive?

2 COMM. DEAR: Mr. Chairman, this process now

3 for this base station for today could have been more
4 open and could have been less fighting --

5 COMM. GIANNOULIS: Legal?

6 COMM. DEAR: That's all I'm asking for. I
7 view this process, and that's why I started the
8 statement, because when it gets to, and I hope it gets
9 to it, when there's a station we want to deny -- I'm
10 not -- let's get there when we get there.

11 COMM. SALKIN: If I could comment. I'd like
12 to point out to the Commissioners that this is a new
13 process and something we've been doing and playing with
14 and tinkering with. I think Commissioner Dar raises an
15 interesting point, I'll deal with staff based on that
16 statement to discuss ways in which, if we have
17 situations like this, before going forward to have the
18 process be a little bit more appropriate.

19 We're trying to make it as best a we can.
20 If there's flaws it's because it's new. I think there's
21 a lot of review and a lot of opportunity. Obviously,
22 you're suggesting there be more, and we'll look at that
23 and come back with suggestions.

24 MR. GONZALES: I would also say as a
25 process, this process appears to be very objective and

1 thorough and I'm actually -- it helped me make a more
2 objective assessment, and I do agree that I think at
3 this point whatever is represented as far as this
4 particular application, if there are issues going
5 forward, and the Chairman mentioned, a month from now,
6 we will have the other processes in place to make sure
7 that the community is well served.

8 CHAIRMAN DAUS: Okay, thank you. Any other
9 comments? Okay, thanks.

10 I know we are going to start to lose
11 Commissioners soon, so let's go through the other bases,
12 now.

13 MR. CARTER: The other application was Emery
14 Vasquez, doing business as Wall Street Executive Car
15 Service.

16 CHAIRMAN DAUS: Why don't we do a quick roll
17 call. If anyone has any issues with the other bases, as
18 Bill reads them, I just ask that you point it out and
19 we'll put it to the side.

20 You said Emery?

21 MR. CARTER: Yes.

22 CHAIRMAN DAUS: Any issues with Emery?

23 MR. CARTER: Next group of bases are renewal
24 applications.

25 Acapulco Car Service; Amadi U. Kate, doing

1 business as Kexpress Car Service; Blu-White Associated
2 Transportation Service; Broad Dykman Car Service;
3 Century Car Service; Community Quisqueya Car Service;
4 Concord Express of New York; Delancey Car Service;
5 Family San Juan Radio Dispatch; Fernando Nuesi, doing
6 business as Atlantic Car Service; FJA, doing business as
7 Village Car Service; Joe M Leasing Corp., doing business
8 as Four Twos Private Car Service; Lil D's Dispatch Inc.;
9 Mauser Service Inc., doing business as Nu Nu Car
10 Service; Mobil Car Service, Inc.; NY Saeta, doing
11 business as New Commando Car Service; Park-Eagle Inc.,
12 doing business as Jewel Car Service; Prestij
13 Transportation, Inc.; Queens Lincoln Car and Limousine
14 Service; Santo Domingo Car Service Inc.; TJQ Car Service
15 Inc., doing business as Quality Car Service.

16 Those are the renewals.

17 CHAIRMAN DAUS: What about Victory and
18 Yours.

19 MR. CARTER: Victory Limo Service and Yours
20 Limo Inc.

21 CHAIRMAN DAUS: Do any of the Commissioners
22 have any issues with these? Just to be consistent, as
23 we have in the past, there are several bases in this

24 package that have one or more convictions of dispatching
25 unlicensed or suspended drivers. That would include

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1 Acapulco, Century, Delancey, Family San Juan, Fernando
2 Nuesi, Joe M. Leasing, Li'l Dispatch, NY Saeta, Pak-
3 Eagle and Yours Car Service and I'd like to make a
4 motion that those bases be conditionally approved with
5 the understanding, as we did with other bases, that they
6 have a business plan submitted in accordance with your
7 SOP.

8 MR. CARTER: We'll get back to those bases
9 and ask them to submit a revised business plan, because
10 they have provided business plans. So we'll review the
11 business plan to see if it's addressed in there and if
12 not, we'll ask them to provide a revised business plan.

13 CHAIRMAN DAUS: Second to the motion?

14 COMM. SANDER: Second.

15 CHAIRMAN DAUS: All in favor.

16 (Chorus of "Ayes.")

17 CHAIRMAN DAUS: It's unanimous.

18 Could I have a motion for the bases that we
19 left out?

20 COMM. AROUT: Make a motion.
21 COMM. DEAR: Second.
22 CHAIRMAN DAUS: All in favor?
23 (Chorus of "Ayes.")
24 CHAIRMAN DAUS: It's approved. Relocations?
25 MR. CARTER: Relocations, Lil'd. That's the

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1 only relocation. That's it, that's the only one this
2 month.
3 CHAIRMAN DAUS: Okay. Any issues with them?
4 Are you recommending approval?
5 COMM. AROUT: Make a motion we accept it.
6 MR. CARTER: Change of ownership. We have
7 four items here. 7 Ocean Express, Inc.; Early Bird Car
8 Service Inc.; Tremont Dispatching Corp., they have two
9 licenses and both of them are changing ownership.
10 CHAIRMAN DAUS: What about Parsons; what's
11 their deal?
12 MR. CARTER: This is a combination. This is
13 a renewal and ownership change.
14 CHAIRMAN DAUS: Are there any issues with
15 any of those bases that were just read?
16 Do I have a motion to approve the

17 relocations, change of ownerships and combinations.

18 COMM. AROUT: Motion to approve.

19 CHAIRMAN DAUS: I'll second it.

20 All in favor.

21 (Chorus of "Ayes.")

22 CHAIRMAN DAUS: Any opposed? It passes.

23 MR. CARTER: The group of applications that
24 we are recommending disapproval, these bases are January
25 and February renewals which have not supplied us with

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1 the proper documentation. I might add, though, that on
2 three of the bases, I believe, they have come in to
3 supply documentation after the deadline in which we
4 submitted the packages to the Commission.

5 COMM. DEAR: Which three are they?

6 MR. CARTER: I might add also, we don't know
7 if the packages are complete.

8 CHAIRMAN DAUS: Which one?

9 MR. CARTER: 3210 Webster Avenue, Prestij
10 Car Service.

11 CHAIRMAN DAUS: What are the other two?

12 MR. CARTER: MOF Transportation and GDR

13 Car & Limo. Webster Avenue, GDR and MOF.
14 CHAIRMAN DAUS: Okay, I'm sorry.
15 MR. CARTER: Those are the three. Webster
16 Avenue, MOF and GDR. The three of them, either supplied
17 us with the documents or came in and asked us to accept
18 the documents after our deadline, but we have not
19 reviewed them yet.
20 CHAIRMAN DAUS: Well, it's better late than
21 never. Maybe it makes sense we consider that at the
22 next monthly meeting. Could we do that?
23 MR. CARTER: On all seven?
24 CHAIRMAN DAUS: On the three that came in.
25 I think that's fair.

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1 COMM. DEAR: Just in general. What happens,
2 when they send out and they don't send back, do any of
3 these guys have to go for renewal before or is this the
4 first time?
5 MR. CARTER: Their renewals were in January
6 and February. Four of these bases have attended our
7 seminars. We've spoken with the owners individually,
8 we've had them come in. Also if you noticed, we
9 supplied you with telephone logs where our staff has

10 called the bases to attempt to get them to bring the
11 documents in and what has happened, they just failed to
12 bring them in.

13 COMM. DEAR: I'm just curious, any of these
14 mentioned, if you don't mind, are any of these
15 applicants here? 3210 Webster?

16 VOICE: Here I am.

17 COMM. DEAR: I don't want him to come up, I
18 just want to know. GDR is the other one?

19 MR. CARTER: Yes.

20 COMM. DEAR: And MOF. Any of them here?
21 All right, they heard, this says something, 32 is here.
22 Obviously, I could address them, is that you hear what
23 we're saying to you, that you have to get your documents
24 and everything in in order for us to process it. It
25 just doesn't happen, you just can't open up a business.

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1 I don't know if they understand. Could we
2 have a Commissioner explain to them in Spanish?

3 MR. CARTER: Commissioner, we can set them
4 up with an appointment and reexplain to them, have them
5 come by the office to reexplain. If you want to give

6 them an extension, we can do that.

7 COMM. WEINSHALL: The staff is translating
8 for them right now.

9 COMM. VARGAS: Mr. Chairman, may I ask you a
10 question on these? On the packet of disapprovals,
11 recommended items for disapproval, what does it mean
12 when we are going to vote for disapproval? These bases
13 are currently in existence, so it means as of our vote
14 today they no longer exist?

15 CHAIRMAN DAUS: That they would be out of
16 business, basically.

17 COMM. VARGAS: As of today.

18 CHAIRMAN DAUS: Yes, if we voted to
19 disapprove them today, yes.

20 COMM. VARGAS: What about the possibility
21 of -- I think I had this conversation with you and the
22 General Counsel, some sort of possibility for like a
23 drop dead notice to let them know the Commission has
24 voted on this for you not submitting your documents and
25 you have X number of days to submit these documents and

1 if you do not, pursuant to our rules and regulations you
2 are no longer in business.

3 CHAIRMAN DAUS: It's a fair point. We had a
4 good decision about that. We very reluctantly want to
5 put people out of business, unless there's a good
6 reason. Three of these companies, including MOF and
7 GDR, since this came on for hearing tried to get their
8 act together, so I don't have a problem to accede to
9 your request and I don't have a problem giving them
10 another month at the next Commission meeting for them to
11 get their act together.

12 COMM. VARGAS: Mr. Carter, is this something
13 that has happened before where you send out drop dead
14 notices or something to that effect?

15 MR. CARTER: Yes. If you look at the packet
16 we sent to the Commissioner, in them are letters that we
17 sent to the bases that go back months and they have not
18 replied.

19 CHAIRMAN DAUS: I would like in the
20 interests of fairness, and of getting one last bite at
21 the apple, I'd like to make a motion that all of the
22 renewal apps that you mentioned, not just the three, all
23 of them get thirty days to complete their application,
24 and at that time I would like to make a motion that the
25 Commission bring it to the agenda and disapprove those

1 bases. I mean, how many bites at the apple are you
2 going to get? This is the final drop dead date.

3 COMM. SALKIN: In terms of staff, I think it
4 would be more appropriate to have that letter to come
5 from the Commission rather than from staff.

6 CHAIRMAN DAUS: You got it. I'll sign the
7 letter.

8 I have a motion on the floor.

9 COMM. WEINSHALL: Second.

10 CHAIRMAN DAUS: All in favor?

11 (Chorus of "Ayes.")

12 CHAIRMAN DAUS: Opposed? Okay. It's been a
13 long one.

14 The last item on the agenda is expedited
15 rule making or temporary rule making for the new annual
16 drug testing procedures which Commissioners have copies
17 of. Chuck, do you want to explain what this is all
18 about, for the record?

19 MR. FRASER: The proposed rule creates a new
20 procedure for licensee suspensions with regard to annual
21 drug testing of taxicab and FHV drivers.

22 Ordinarily, a license may be suspended only
23 after notice and an opportunity to contest the basis for
24 the suspension. Our existing rules also provide for
25 immediate suspension in case of imminent threat to

1 public health and safety, but only where we intend to
2 seek revocation of the suspended license. The rules do
3 not provide for immediate suspension with regard to
4 annual drug testing other than in the context of license
5 revocation.

6 The proposed rule would enable us to suspend
7 the license for failure to submit to the annual drug
8 testing, pending compliance with those rules, it would
9 not require us to commence license revocation
10 proceedings. In other words, where a driver has failed
11 to take a required annual drug test, we want to be able
12 to suspend the driver's TLC license, not pending
13 revocation, but pending compliance with the drug testing
14 requirement.

15 Existing rules allow a taxicab driver or an
16 FHV driver a thirty-day period within which to submit to
17 drug testing, which may be done at any of twelve
18 facilities around the city and fourteen more facilities
19 in the surrounding metropolitan area.

20 In addition to our rules, drivers are given
21 notice by mail that their drug testing deadline is
22 approaching. Pursuant to the proposed rule, upon

23 failure to submit to drug testing by the end of the
24 30-day period, the driver will be suspended. The
25 proposed rule provides then that upon the driver's

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1 failure to submit to annual required drug testing, the
2 driver's license will be suspended and the driver will
3 be notified that he or she has fifteen days to contest
4 the suspension by submitting written proof that he or
5 she did in fact submit to drug testing or by submitting
6 a written explanation for his or her failure to submit
7 to testing.

8 The written submission will be reviewed by
9 one of the Commission's Administrative Law Judges who
10 will decide whether to lift the suspension or to
11 continue the suspension pending compliance with the
12 driver's drug testing obligation. The judge's decision
13 will be subject to administrative appeal, according to
14 the Commission's existing rules governing appeals.

15 The proposed rule further provides that the
16 suspended driver may be reinstated in either of two
17 ways: First, the driver may contest the suspension and
18 prevail and, second, the driver may submit to drug
19 testing and come into compliance with the drug testing

20 rule. As an additional incentive for drivers to come
21 into compliance quickly, those who do so within thirty
22 days of their suspension will not be fined, whereas
23 those who only come into compliance later will have to
24 pay a \$200 fine for violation of the drug testing rule.

25 The proposed rule is presented as an

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1 expedited rule making pursuant to Section 1043(h) of the
2 Charter, and therefore will be effective immediately
3 upon approval, but temporarily pending permanent rule
4 making by the Commission. Expedited rule making is
5 necessary in this case because of the importance to
6 public safety of strict enforcement of the Commission's
7 drug testing requirements for licensed taxicab and FHV
8 drivers.

9 CHAIRMAN DAUS: Okay, any questions,
10 comments?

11 COMM. VARGAS: If I may, Mr. Chairman.
12 Mr. Fraser, the new language, the new rule that you're
13 asking us to adopt, specifically 817(a)1, it says that a
14 driver's license may be suspended pending an opportunity
15 to be heard. But I also heard you just say that it

16 shall be suspended.

17 MR. FRASER: Well, good point. I think the
18 answer to that is it will be done. This is something
19 that would be done by -- in other words, the person
20 would be identified by computer run and so therefore no
21 one is going to be looking at these and exercising
22 discretion. As to the word "may" I actually don't know
23 why we said "may" instead of "shall."

24 COMM. VARGAS: But it says "may be pending
25 an opportunity to be heard." So you're saying if an

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1 individual for whatever reason doesn't get the notice,
2 fails to go under these rules and their license is
3 suspended, then they have to come in and say, "I didn't
4 get the opportunity --"

5 CHAIRMAN DAUS: I'm glad we have more
6 attorneys on the Commission. That's a very good catch.
7 I think we make the motion to approve this with the word
8 "shall" being substituted for "may" in Section 817(a)1.
9 I think we said "shall."

10 COMM. VARGAS: It says "shall be pending an
11 opportunity to be heard." So you're going to do it
12 pending an opportunity.

13 CHAIRMAN DAUS: I'm glad you caught that.
14 We're going to lose a Commissioner, so could we take a
15 vote on the rules?

16 All in favor, signify by saying "aye."

17 (Chorus of "Ayes.")

18 CHAIRMAN DAUS: All opposed?

19 We'll make that change so the Law Department
20 is here, they're okay with it. Carlos is here and we'll
21 have a public hearing about this in another month or so
22 and we'll finalize it and see how the process works.

23 COMM. DEAR: Two comments. First, thank
24 you, Commissioner Vargas, you did very well replacing
25 the shoes, Alberto, and keep on doing that. We're all

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1 attorneys and we didn't pick it up. Thank you.

2 The other thing, we raised before about the
3 LA cars. Could I -- just a thought came up and it's
4 very serious. Could we have, I know, back to Pansy
5 Mullins, could we have some sort of task force that
6 she's in charge, talking about even going out and make
7 arrests? You have the power to do that, working with
8 the Police Department, DA's, do a test pilot, start in

9 Staten Island, anywhere you choose.

10 COMM. SALKIN: We've been looking at the LA
11 issue for several months now, perhaps at the next
12 meeting we can give you an update.

13 COMM. DEAR: But not letters. I'm talking
14 about going out --

15 COMM. SALKIN: We have a whole process for
16 that. People are going to be coming up for hearings,
17 and if they don't come to the hearings, to suspend the
18 vehicles.

19 COMM. DEAR: Better yet, do an update of
20 what we're doing to go after the LA's and all the
21 unlicensed, the dispatchers.

22 COMM. SALKIN: We have a whole LA program in
23 place. The problem with the LA plates, you can operate
24 as a legal livery with LA plates just like if you had a
25 TLC plate. The question is are you.

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1 COMM. DEAR: It's very narrow.

2 COMM. SALKIN: It's a little bit greater
3 than we thought.

4 COMM. DEAR: Also combined with the illegal,
5 I see the out of town plates. I got people from

6 Carolina picking up people and being dispatched. Could
7 we have a report for the next Commission meeting?

8 CHAIRMAN DAUS: Yes, and we're very proud of
9 what we're doing in this area.

10 COMM. DEAR: Like they do at COMSTAT. Do
11 the same thing for us at the Commission here.

12 CHAIRMAN DAUS: Thank you. Do I have a
13 motion to close the meeting?

14 COMM. DEAR: Make a motion.

15 CHAIRMAN DAUS: All in favor.

16 (Chorus of "Ayes.")

17 CHAIRMAN DAUS: Have a happy Thanksgiving
18 everyone. We'll see you in December.

19 (Time noted: 12:15 p.m.)

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CERTIFICATE

I, LINDA FISHER, a Certified Shorthand Reporter and notary public within and for the State of New York, do hereby certify that I reported the proceedings of the NEW YORK CITY TAXI AND LIMOUSINE COMMISSION on November 17, 2005, and that this is an accurate transcription of what transpired at that time and place.

Linda Fisher,
Certified Shorthand Reporter