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NEW YORK CITY
TAXI & LIMOUSINE COMMISSION
PUBLIC HEARING ON PROPOSED AMENDED RULES
GOVERNING COMMUTER VAN SERVICES AND VEHICLES

October 2, 2009
2:45 p.m.
40 Rector Street
5th Floor
New York, New York

P R E S E N T:
DAVID KLAHR, Chief of Staff,
Taxi & Limousine Commission

CHRISTOPHER WILSON, ESQ., Assistant General
Counsel, Taxi & Limousine Commission

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1 MR. KLAHR: Good afternoon, everybody, my name
2 is David Klahr. I'm the chief of staff to the first deputy
3 here for the Taxi Limousine Commission. I'm also manager
4 of the rules revision project. To my left is Christopher
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5 Wilson, who is the assistant general counsel for the
6 Commission.

7 We are in the second phase of our rules revision
8 project, and just as a reminder to everyone, even though I
9 know you heard it before, this is the zero sum portion of
10 the project, which means we are rewriting the rules to make
11 them cleaner. We are using clean English to simplify them
12 so they're far more accessible, and we are also organizing
13 them in a way which we think is better. The most important
14 concept is that we are not the changing the substance of
15 the rules at this time. We are changing what they look
16 like and we are changing what order they go in, but we are
17 not changing the substance of them.

18 For those of you who are speaking today, and for those
19 of you who might read this transcript online, if you have
20 any comments about the substance, absolutely you can submit
21 them to us. However, we will not consider them until we go
22 to the next phase, Phase 3, which will not happen until
23 2010. We will definitely not get to it in 2009 at this
24 point. Even if the deadline for comments was yesterday,
25 it's past already, but we will still accept comments

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1 because we are not going to have a final vote on all the
2 rules and provisions until very late this year or early
3 next year. So if you have any comments after the hearing
4 and want to amend your comments, feel free to send them
5 in.

6 We have two persons signed up to speak. The first one
7 is Richard Thaler, Omni Media network.

8 MR. THALER: You will accept the comments on the
9 substance today?

10 MR. KLAHR: Sure.

11 MR. THALER: I think you have copies. I
12 submitted them earlier. Do you have my written comments?

13 MR. WILSON: You submitted three different
14 sets?

15 MR. THALER: Yes.

16 MR. WILSON: We have all three.

17 MR. THALER: The legal and technical issues are
18 here in my written comments, so I'll just use this time to
19 summarize. The first issue is trip record recording.
20 There are a number of circumstances where the driver is
21 required to record trip records from the TLC. In the event
22 the T-PEP trip record recording system fails, the driver is
23 required to record the trip records manually. That's one
24 case. The other case, if you look at the MTA taxi tax bill
25 passed by the state legislature, depending on the order

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1 category, the responsible taxpayer is required to keep trip
2 records. And my point here is that any driver then should
3 be able to have access and enjoy the benefit and
4 convenience of recording trip records electronically,
5 independent of the T-PEP system.

6 I'm not going to get into the technical viability or
7 how that would be done. But the idea is if he's a
8 responsible taxpayer, he has to do that regardless under
9 the bill, the state bill, and if he's recording manually
10 why, shouldn't he have the convenience and benefit, if the
11 T-PEP system fails for trip record recording, why shouldn't
12 he have the convenience of recording electronically? That
13 is the purpose of the first comment.

14 On the second comment, that has to do with store and
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15 forward based on poor wireless signal strength. If there
16 is poor wireless signal strength in the zone that the
17 vehicle happens to be stopping in at the destination, there
18 are various procedures that the driver has to use with the
19 passenger if the passenger wants to use credit card
20 payment. For example, the driver may be required to move
21 the car, or I guess ask the passenger if he's willing to
22 pay in cash.

23 I think all these things are needless. They should be
24 eliminated. I'm not sure if the T-PEP vendor systems now
25 have store and forward function with driver revenue

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1 protection; that is, if you're in a poor signal strength
2 area and you can't put the authorization request through,
3 after a time out period of a few seconds, the transaction
4 should be approved. Later on it can be submitted to the
5 store and forward process for approval, but the driver
6 should be protected by the vendor for loss of revenue in
7 case that particular transaction is declined.

8 The next comment has to do with incident reporting.
9 I think it's unfair that the driver is forced to babysit
10 the systems for an irresponsible vendor, and it should be
11 the responsibility of the Taxi Commission to require the
12 vendor to do real time system monitoring for malfunctions,
13 which is technically very possible for many years.
14 For example, simple network management protocol SNMP, you
15 embed software agents to detect any malfunctions in a
16 network management system run by a vendor. They should be
17 able to detect malfunction even before the driver is aware
18 of it. So the driver should not have to waste time by
19 filing an Incident report at all. It should be the

20 vendor's responsibility.

21 Frankly, if the driver has to monitor this for the
22 vendor, has to take the time to file an incident report,
23 they should be able to charge the vendor some consulting
24 fee for doing that.

25 The next issue has to do the soliciting of a

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1 passenger, that a driver must not sell, advertise or
2 recommend a service to the passenger without prior written
3 approval. I think the driver should be held harmless in
4 the event a tourist comes to New York and asks the driver
5 for a recommendation or advice for something. The driver
6 should be held harmless if the passenger solicits advice.

7 Obviously, the driver should be prohibited from
8 misleading the passenger or saying anything inappropriate,
9 but I think it would be -- pardon the sarcasm -- but it
10 would be inappropriate if a tourist asks for a particular
11 restaurant and the driver says wait, I have to go to Rector
12 Street to get a signed authorization to recommend this
13 particular restaurant.

14 MR. KLAHR: That seems pretty reasonable. My
15 understanding is that that rule is not generally enforced
16 in that way. Are you aware of any incidents of people
17 getting summonses for violation of this rule for exactly
18 what you describe?

19 For example, somebody gets in a cab and you say gee,
20 you look like a guy who really loves steak, and you
21 recommend a particular steakhouse. I don't think he should
22 be written up for that.

23 MR. THALER: The next thing has to do with the
24 mark-up fees. I think the Mayor, in an Op Ed in the Daily
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25 News, made a faux pas about the two dollars that the credit

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1 card companies -- and this is a quote -- impose on the
2 payment of parking tickets. I understand that the 1984
3 federal law eliminating surcharges on credit card
4 transactions expired, and that is why seven states wrote a
5 law to prohibit surcharges on credit card transactions.

6 If you look at the New York State Law business
7 section, Article 29(a) I think, it's 518, it clearly says
8 the seller can't mark up the charge. Normally the merchant
9 or processor has the interchange fee that they're allowed
10 to charge, plus some processing fees, but if there is any
11 surcharge, which is normally put on by the so-called
12 seller, which in this case is Parking Violations, my point
13 is, if it's illegal, they can't be used for parking
14 tickets. If it is legal, the driver should also be able to
15 apply a surcharge to a credit card transaction the same way
16 the city applies it to a parking ticket.

17 The last thing is, so it's acknowledged that there are
18 some circumstances where the T-PEP system may fail, so the
19 driver can't get electronic trip records done automatically
20 or they can't do credit card transactions. What I'm
21 suggesting is that the driver therefore has every right to
22 have an active stand-by backup system, independent of
23 T-PEP, so if T-PEP fails for any reason and the vendor for
24 that moment can't provide those contracted services,
25 independent of violating a contract, the driver should be

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1 able to use their independent stand-by to run those
2 services, whether it be trip record recording or credit

3 card transaction processing.

4 I'm not going to get into the technical details, but
5 it's pretty straightforward.

6 MR. KLAHR: I do have one question about that.
7 It's not a technical question. When you say an
8 "independent device," that would be something owned by the
9 driver, purchased by the driver that would be able to
10 interface with the meter in some way and then record the
11 information?

12 MR. THALER: Absolutely, and it would be read
13 only. Obviously, in order to comply with all the standards
14 of meters, it could not write to the meter or disrupt any
15 meter data. It would extract the information, and if it's
16 on the meter, they would have to add on by key entry all of
17 the other things, obviously, that are not available from
18 the meter.

19 But however, I think that the vendor should be
20 required to provide access in the vehicle to all the trip
21 record information, and perhaps at the driver's option, by
22 Blue Tooth they would capture that and have that data
23 directly. If gets a little bit more complicated in the
24 meter unless there is a uniform taxi meter manufacturer
25 format. Right now there are three or so proprietary

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1 formats that each vendor has, or they should be made
2 public. Let them post the format coming out of the meter
3 so this could be accomplished.

4 I also want to comment about the low signal strength
5 area. I think this is not addressed in the rules. If the
6 driver is aware that the credit card is not functioning
7 before the car is hired, they have to announce that. If

8 they want to accept the fare, announce it to the passenger
9 and have an agreement. However, there is a situation I
10 don't think -- which is neglected here in the rules, if a
11 failure malfunction happens after the meter is hired, I
12 think the governing rule would be passenger refuses to pay,
13 well, I'm not paying you in cash, then what do you do?

14 I think after the meter is hired, if it's a surprise
15 to the passenger and driver that the credit card
16 functioning, not because of a low signal strength, that it
17 has failed, I don't think that is addressed in the rules.

18 MR. KLAHR: I think that situation actually
19 might be addressed, but not in that exact situation. We
20 can check. I believe if that does happen, the driver picks
21 up a passenger and all of a sudden there is a problem with
22 the credit card system, they can close out the ride, handle
23 the ride in cash, and I believe they are supposed to go off
24 duty.

25 MR. THALER: But if the passenger doesn't want

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1 to pay in cash because he assumed he could use his credit
2 card, it would default to passenger doesn't want to pay.
3 That should be addressed.

4 MR. KLAHR: Thank you for your comments. Peter
5 Mazer.

6 MR. MAZER: Good afternoon, Mr. Klahr and
7 Mr. Wilson. My name is Peter Mazer, general counsel for
8 the Metropolitan Board of Trade, the trade association
9 representing the owners of approximately three thousand
10 five hundred million taxicabs. While I primarily
11 represent owners of million taxicabs, our members are
12 affected by rules governing the licensing of drivers, and

13 we join with all segments of the taxicab and for-hire
14 industries in ensuring there is safe, courteous and
15 professional pool of drivers, and that drivers are treated
16 fairly with respect to the rules governing licensing
17 standards and codes of conduct.

18 I am not providing extensive comments today and will
19 leave the detailed review of the drivers to those experts
20 in the industry who provide regular representation of
21 drivers. However, I will point out a few areas wherein the
22 proposed driver's rules contain significant deviation from
23 the existing set of rules.

24 Proposed Rule 4-02(b) relating to payment of fines and
25 license suspension for nonpayment fails to provide for a

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1 waiver of the payment of a fine if a timely appeal is
2 filed. This is required by the Administrative Code.

3 Section 4-02(c) correctly states that no driver may be
4 fined more than a thousand dollars for a single violation
5 of the driver's rule. However, certain rules continue to
6 provide for monetary penalties in excess of a thousand
7 dollars. This inconsistency exists in the current rules,
8 but should be addressed at this stage of the revision
9 process, and I call your attention, for example, to Section
10 4-11(d) of the rules, which carries a ten thousand dollar
11 penalty.

12 Proposed Rule 4-04(l) is similar to existing Rule
13 2-03(b), but contains a curious anomaly. This rule imposes
14 a twenty-five dollar fine upon, quote, providers of
15 authorized training services who use unapproved curricula.
16 Since these providers are not licensees of the Taxi and
17 Limousine Commission, I don't understand by what legal

18 authority TLC can issue summonses to them, adjudicate
19 summonses or impose fines after conviction.

20 Proposed Rule 4-12(d) and 4-12(e), dealing with
21 willful acts of omission and commission, are intended to
22 replace existing Rule 2-61(a)(2). However, the proposed
23 rule deletes the final phrase, quote, although not
24 specifically mentioned in these rules, close quotes. A
25 series of appeals and court decisions, which held that Rule

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1 2-61(a)(2) does not apply to acts which would be covered by
2 more specific rules, would be reversed and superseded if
3 this language is not reinstated into the proposed rules.
4 This change is significant and substantial and completely
5 changes the meanings of these rules.

6 Proposed Rule 4-13(b), dealing with drivers who are
7 receiving Workers' Compensation benefits, contains a subtle
8 but significant deviation from existing rules. In the
9 existing rule, it is the filing for Workers' Compensation
10 benefits which triggers the requirements that a license be
11 surrendered. It is the cessation of benefits which
12 triggers the return of the license to the driver. These
13 are objective criteria.

14 The proposed rule would replace this objective
15 criteria with the subjective criteria of sustaining a
16 work-related injury and recovery from the injury. Injury,
17 rather than the filing of Workers' Compensation benefits,
18 would be the triggering event.

19 Proposed Rule 4-27 makes substantial changes to the
20 TLC Critical Driver Program. As I am certain you know, the
21 TLC has recently begun enforcement of the provision and
22 issued more than twenty-four hundred summons, each of which

23 carry a penalty of license suspension or revocation. The
24 rules by which the summonses will be adjudicated have been
25 drafted more than ten years and ago, and numerous appeals

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1 decisions and several Article 78 proceedings have provided
2 insight into their interpretation. Therefore, any language
3 change whatsoever must be considered in light of the
4 decisions, particularly recent appeals decisions which
5 included interpretation of the rule based on policy rather
6 than the plain language of the rule, particularly with
7 respect to the impact of recent DMV summons issuance.

8 In addition, the rules contain one major change.
9 Section 4-27(a)(7), Subdivision 4, limits the driver to one
10 point reduction course every five years rather than the
11 current eighteen months. The Commission may wish to
12 revisit the audit report of the State Comptroller, issued
13 in 2000, which provided some recommendations for improving
14 the Critical Driver Program.

15 These comments are not intended to provide an
16 exhaustive review of the driver rules, but merely tend to
17 highlight some of the concerns we have. As the comments
18 demonstrate, subtle and apparently insignificant changes in
19 language will have a major effect on licensees to the point
20 where licensees will be put in jeopardy of losing their
21 license. I hope the Commission finds the comments useful,
22 and again, we are always ready to continue the dialogue
23 with the Commission and other stakeholders in revising
24 these rules to protect the public interest.

25 If you have any questions, I'll be happy to address

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1 them.

2 MR. KLAHR: Thank you very much for your time.
3 We will close out. If is there any anyone that wishes to
4 speak who has not already signed up. Could you state your
5 name for the record, please.

6 MR. CHOWDHURY: My name is Osman Chowdhury. I'm the
7 member of the New York Taxi Alliance. I'm here for section
8 operation of license; the passenger. I have a question
9 here. When I got the cab, some people want to be uptown.
10 You have uptown, midtown, downtown again. There is another
11 question, what can do driver, because all the time they're
12 losing their money, all the three stop, three
13 destinations. It's waste of not making enough money.

14 That is why I'm saying the original, the clear
15 concept. This is my one point.

16 MR. KLAHR: I have one question. How many stops
17 do you think is a reasonable amount of stops for one
18 trip?

19 MR. CHOWDHURY: I'm coming down east, then come
20 back again west. I'm not making money because we pay the
21 high lease. I think that sometimes they're losing their
22 income.

23 MR. KLAHR: Thank you. Is there anyone else?

24 MR. CHOWDHURY: I have another point. Sometime
25 old man or elder person driving the cab, sometimes the

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1 person has lots of luggage. The bag is very heavy. The
2 driver has back pain. He has no choice. If he refuse,
3 they get a summons. There is a lot of luggage. Sometimes
4 we don't take the fare; you have to be careful. Thank
5 you.

6 MR. KLAHR: If you want a chance to speak, this
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7 is your chance.

8 MR. LINDAUER: My name is Bill Lindauer. I'm
9 with the New York Taxi Workers' Alliance. I applaud the
10 effort to write the rules in plain English so normal
11 people, not lawyers, can understand it. It's about time.
12 There used to be, I think they passed a plain English law
13 up in the state legislator some time ago. It's good that
14 it's seeping down here.

15 But it's not only plain English we need, we need
16 substantive change in the laws. For one thing, the
17 Critical Driver Program, you know how easy it is to get two
18 tickets in fifteen months? That equals six points. You
19 can go two years without getting any tickets or any
20 convictions; fifteen months, suddenly you get two tickets,
21 whether they're deserved or not, and you're found guilty.
22 Taxis are targeted by the police, easy to meet the quotas
23 of the police. They don't call it quotas, they call it
24 productivity or some euphemism but it's the same thing.

25 Then drivers are suspended for thirty days or so. How

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1 are they going to feed their families pay the rent? They
2 still have to pay the expenses for the car. They have a
3 lease, they're responsible for that. So, not only do they
4 lose income, they have to spend a lot of money, which they
5 may not even have, just to keep their license. I think
6 it's cruel and unjust. I think the Supreme Court might
7 call it cruel and unusual punishment.

8 Talk about cruel and unusual punishment, the fines
9 that the TLC levies are ridiculously onerous. In Finland,
10 they fine people by the income they have. Like a doctor,
11 if they gets a speeding ticket, might be find two thousand

12 dollars, while a construction worker is find two hundred
13 dollars.

14 Taxi drivers do not make a lot of money, nothing like
15 your salary and your salary, I'm sure. Certainly a
16 fraction of the salary that the Chairman gets, maybe
17 twenty-five thirty thousand dollars working twelve hours a
18 day, maybe six, seven days a week. That is eaking out; a;
19 mere substantive existence. To fine somebody three hundred
20 dollars, especially in the kangaroo courts that the TLC is
21 noted for -- this is not a point of contention, this is a
22 fact -- I mean, after all, the judges are there to get
23 money for the TLC, and if they don't bring in enough money,
24 they wouldn't get the per diem appointments. This is true.
25 There is a book out called Unjust Justice, I think it's

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1 called, by Amy Block. It just came out.

2 MR. KLAHR: I think we're a little off the rules
3 here.

4 MR. LINDAUER: One of the substantive changes is
5 the Critical Driver Program and onerous fines and the fact
6 that suspension with a terrible punishment and undeserving.
7 How about equipment charges? If there is no E-Z Pass, you
8 rent a garage and suddenly there is no E-Z Pass, you fine
9 the garage and you fine the driver too. Are we responsible
10 for enforcing TLC rules?

11 MR. WILSON: You do have the option of bringing
12 your own E-Z Pass.

13 MR. LINDAUER: Please, if you don't have a
14 private car, you're not going to have an E-Z Pass. It's
15 not only making the rules clear and concise, it's to make
16 them fair. I know it's a strange concept with the TLC.

17 Fairness, human decency, compassion, understanding,
18 qualities that are totally alien to the TLC. For a change,
19 as the president says, let's have change in America, let's
20 have change at the TLC. Thank you.

21 MR. KLAHR: Thank you. Last call for comments.
22 Any further comments? If there are no further
23 comments, we will close the meeting. Thank you for coming
24 down and we will see you at the next one.

25 (Time noted: 3:05 p.m.)

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1 CERTIFICATION

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3 STATE OF NEW YORK)

4) ss:

5 COUNTY OF SUFFOLK)

6

7 I, JUDI GALLOW, a Stenotype Reporter
8 and Notary Public for the State of New
9 York, do hereby certify:

10 THAT this is a true and accurate transcription of
11 the NYC Taxi & Limousine Commission public hearing
12 held on October 2, 2009.

13 I further certify that I am not
14 related, either by blood or marriage, to
15 any of the parties in this action; and

16 I am in no way interested in the
17 outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 4th day of October, 2009.

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1002TLC
JUDI GALLOP

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