MEMORANDUM

TO: Taxi and Limousine Commission
FROM: Ryan Price, Executive Director, Independent Driver Guild (IDG)
DATE: October 3, 2018
RE: **TLC Pay Proposal Memo of Support**

Right now, app-based drivers are making under minimum wage and working 12-hour days to provide for their families. All drivers need livable pay, benefits, and workplace protections to prevent company owners from further exploiting drivers and lowering pay.

Our main focus is to ensure all FHV drivers can provide for their families while working a fair and safe work week. App-based drivers are possibly the lowest paid workers in the industry — it is essential the City takes action and raises the floor.

The underlying structure of the Taxi and Limousine Commission's proposal meets multiple, complex objectives in a way that improves upon the IDG's proposals, and the proposal meets the demands and concerns that the IDG has made over the past several years — beyond just our 37% pay raise and regulation demand — elegantly. Demands including tying the number of drivers to the number of trips, increasing pay for Wheelchair Accessible Vehicle operators, annual CPI increases, and increasing pay for shared-ride pickups.

Concerns With and Dissent From the Proposal

Pay: While $15 per hour may be considered fair pay for fast food workers and minimum wage in general, is it fair pay for the transportation industry in New York City which has specialized and expensive licensure, training, and insurance requirements? Bus drivers and truckers often start at a pay rate of $20 per hour, MTA bus drivers start at $23.85 per hour plus full benefits.

Besides the question of if this is a fair minimum standard, the only additional cost priced in to the Independent Contractor pay is paid time off, which seems strange to single out. Imagine these workers were classified as employees, there would be a legal mandate for company sponsored healthcare; the worker would pay into and receive the benefits of disability insurance, family leave, and unemployment insurance. In light of all this, we would suggest a target independent contractor hourly rate of $22.96 after expenses.

Overtime: In addition, in the State of New York, when working over 40 hours in a week, workers have the legal right to time and a half. Our proposal, and more directly, the TLC's proposal would allow for the TLC to require overtime for working over 40 hours a week. Mandating overtime would reduce the profitability of dispatching to workers who have been working long weeks, which would likely curb the chronic exhaustion which is rampant in the industry — while shortening work weeks, which would be good for public safety. However such a proposal would only work if the underlying minimum pay is sufficient enough for most workers to be able to achieve their income goals within a 40 hour work week.

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Classes: In our petition to the TLC, we defined four different classes of vehicles that could receive dispatches according to their class: Standard (UberX), Van (UberXL), Luxury (UberBLACK), SUV (UberSUV).

The expenses in the proposal are pegged to a used Toyota Camry, which makes it the very bottom of the distribution. The majority of drivers will have higher expenses than those outlined in the report (the authors agree with this - they call their estimate conservative - p.26, paragraph 5). The proposed pay bump is a good starting point, but in order to meet the needs of the 70% of drivers who do not use a Toyota Camry the city needs to set that rate above the proposed rate, especially for workers operating larger vehicles.

One issue with coming up with an accurate model to achieve fair pay for workers operating larger vehicles is no one collects the necessary data to be able to estimate expenses or pay rates for these workers. Since the companies have no incentive to ensure a higher net pay for workers for operating a larger or luxury vehicle, it could be assumed that the current increased rates between each class is based on reimbursement. Therefore, one possible way to estimate a fair reimbursement is by averaging the difference between each class and their baseline class throughout the companies that would be affected by this proposed rule.

- Van: 148.69% of Standard
- Luxury: 224.57%
- SUV: 339.86%

So the mileage expense reimbursement rates under this theory would be:

- Van: $0.8476
- Luxury: $1.3025
- SUV: $1.9712

Those separate classes should also have the protected right to opt-out of receiving dispatches from other classes, including shared ride classes. The right to opt-out is something we worked hard to win for a subset of luxury and SUV Uber drivers and to lose that protection would destroy these drivers' ability to make enough to cover their costs.

Industrial Utilization Rate: Rather than a per-company utilization rate, we support an industry-wide Utilization Rate. Per-Company rates will incentivize Via's model, which is largely disliked by drivers. Via pays hourly, but works drivers' cars like public buses. In addition, much like Uber and Lyft, they nonstop hire new drivers, keeping pay desperately low. Per-company utilization rates would also disincentivize Juno's model of only hiring existing drivers, not doing shared rides, and being the highest paying app-based company. They are largely preferred by drivers for obvious reasons, and they are contributing to the problem of over-hiring the least, but the research that created this rule did not reflect that.

Out of Town trips: Currently, drivers are forced to log-out on trips that left New York City on their return trip. Not only do we believe this practice leads to drivers not being covered by workers compensation on return trips —putting the workers in danger of financial ruin —but this time of being logged off may not count towards the worker's utilization rates. Drivers must be reimbursed for their return trip, and it is essential that if they are injured while on the return trip that they be covered.

Expenses are grossly underestimated: While the city estimated lease costs at $635 per month, new data collected by the IDG shows the actual cost incurred by drivers averages nearly three times that. The IDG collected lease data from more than 500 app-based drivers who reported paying an average of more than $1800 per month. This is consistent with the lease prices offered at the city's major leasing companies for compact sedans. Many leases include industry-specific liability insurance, and some require extra fees to purchase TLC insurance. But even if you combine the city estimates for leasing and insurance ($400/month), the city's total ($1035 per month) still comes up far short of the average reported by drivers. What's more, the city's pay formula assumed that 80 percent of drivers own their vehicles and just twenty percent lease or rent, but multiple IDG surveys found that the breakdown is 60 percent own and 40 percent lease or rent. The IDG is calling on the city to update its pay formula to reflect the reality of drivers' expenses.

The Proposal Would Be Improved With a Worker Limit

The vehicle cap as passed by the City Council is largely poor labor policy. Placing a moratorium and a cap on the issuance of Universal Drivers Licenses by the Taxi and Limousine Commission, as IDG advocated, would be much more effective at pressuring wages up. Have the number of Universal Drivers Licenses decrease over time through attrition and have the City Council or TLC decide what the appropriate threshold would be to begin re-issuing licenses.

Unlike a vehicle cap, a license moratorium and cap provides value to the driver and limiting the labor pool will require all companies to compete to keep drivers working for them, meaning the companies' competition shifts away from undercutting each other on price (therefore driver pay), and naturally shifts them towards competing for drivers and thus providing incentives such as benefits and higher pay. The vehicle cap will only cause a shortage in the supply of vehicles, which will pressure the costs of vehicles up. And in this industry, if costs increase, effective wages decrease.

We Oppose Increasing Company Control

It has come to our attention that certain companies are pushing for a weekly pay regulation rather than a per minute, and per mile pay regulation. After two years of discussing all the different possibilities of pay regulation including daily, hourly, weekly, fare split, and several others, regulating and increasing the per mile and per minute pay rate was overwhelmingly the most preferred by drivers.

The issue with regulating how much a driver must make per week is it allows the companies to meet the minimum pay by manipulating driver's behavior through incentives. We do not expect, or want incentives to end, but those incentives should be in addition to a predictable and fair minimum pay rate per mile and minute.

The current proposed structure of regulating per mile and minute divided by the utilization rate is the right choice for drivers.

Conclusion

The TLC's proposal of a 22.5% raise and tying driver pay to available work is a huge step forward in the industry. We strongly support this structure but demand rates that reflect the situation on the ground.

Please let us know if you have any questions or need any additional data or information.

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