

# Exhibit H

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RULES, PRIVILEGES AND ELECTIONS

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STATE AND FEDERAL LEGISLATION

**Testimony of NYC Council Member Brad Lander**  
Deputy Leader for Policy  
Chair, Committee on Rules, Privileges and Elections

To the New York City Taxi and Limousine Commission  
Regarding Proposed FHV Pay Regulations  
October 3, 2018

Good morning, Chair Joshi and TLC Commissioners. I am Council Member Brad Lander, prime sponsor of Intro 890-B, Local Law 150 of 2018, legislation which directs the Taxi and Limousine Commission to promulgate these rules to protect driver earnings. I am here this morning to speak in support of the proposed rules, and to make a few suggestions that I believe will strengthen this groundbreaking regulation.

First, I want to thank Commissioner Meera Joshi and the NYC Taxi and Limousine Commission staff for their dedication to improving the lives of taxi and for-hire drivers in New York City. I also want to thank so many drivers for their tireless organizing and for ringing the alarm bell on driver pay. As independent contractors, for-hire drivers are denied many of the rights, protections and benefits of traditional employees, making it difficult to piece together a decent standard of living.

James A. Parrott and Michael Reich's July 2018 report<sup>1</sup> showed that 85% of app-based drivers earn less than a living wage, (determined to be \$17.22 an hour, which is the independent contractor equivalent of \$15 per hour plus an allowance for paid time off). Most FHV drivers work full-time hours but suffer from low pay and high company mark-ups that generate huge returns for investors but leave drivers in poverty. Setting \$17.22 as the floor will increase driver earnings by about 14 percent, equivalent to about \$6,345 a year for those currently under the proposed threshold.

In addition to ensuring drivers can earn a decent living and fair compensation for the hours they work, a secondary goal of Intro 890-B is to provide drivers with more predictable compensation. Most drivers in the sector, like those who drive for Uber and Lyft, are paid on a per-trip basis that is determined by complex and opaque algorithms. Supply and demand, time of day, upfront fare estimates, per-mile cost, per-minute cost,

<sup>1</sup> "An Earnings Standard for New York City's App-Based Drivers: Economic Analysis and Policy Assessment," [July 2018](#), James A. Parrott and Michael Reich

shared rides, promotions, incentives and surcharges all factor into driver compensation per trip, with no guaranteed floor for earnings.

I support the TLC's minimum per-trip payment formula, which will help take some of the guesswork out of drivers' lives and ensure drivers receive a fair and dependable share of each and every trip they complete. Driver pay at peak demand periods should not be used an offset to allow companies to pay subminimum pay when demand is low. The minimum pay requirement should be a floor for all trips, on top of which incentives can be added; it should not be an average that allows subminimum pay at some times to offset incentives at others.

I also support the reporting requirements that will require base owners to provide the TLC with detailed trip data, including gross and net driver earnings, to insure the TLC has reliable and accurate data to inform its future policymaking around this issue.

However, some app-based companies, particularly Via, compensate drivers on an hourly basis, which I believe meets the standard of fair and dependable compensation and fulfills the spirit of Intro 890-B, so long as drivers are making at least the equivalent of a living wage. The Parrott and Reich report showed that during the study period, Via paid a net hourly median of \$20.99 and a mean of \$21.73, well above other industry players and the \$17.22 goal. Via combines its hourly payment approach with an emphasis on shared rides, resulting in model which is good for both driver pay predictability and for reducing solo rides (thus hopefully contributing to a reduction in congestion).

I therefore suggest creating a second path for compliance that would allow for companies to pay drivers on an hourly basis, so long as they demonstrate that drivers are paid at least \$17.22 per hour at all times, after expenses. For this compliance path, it would appropriate to review their pay records on a weekly or monthly basis, rather than per-trip. However, it should still be the rule that every hour must be compensated above the minimum.

For companies that opt for an hourly pay compliance path, I would support waiving the shared-ride bonus for drivers. In this narrow slice of the sector where workers are paid an hourly payment equivalent or above a living wage, this waiver of the shared-ride bonus would help keep the cost of shared rides low, while ensuring drivers earn dependable and fair payments for each hour they spend on the road.

Back in the arena of per-trip compliance, I support the Driver Utilization model proposed by the TLC, which will provide an incentive for the high-volume app companies to achieve less time for on the road without passengers, and will ultimately will help curb congestion. Doing this right is a challenge. We want to give incentives to each company to improve their utilization rate. However, at the moment, company-based utilization rates raise very real concerns about monopolization in the sector.

As Parrott and Reich's report notes, Uber alone would be the largest for-profit private employer in NYC if Uber drivers were classified as employees rather than independent contractors. Uber accounted for 92% of drivers and 72% of trips in the high-volume<sup>2</sup> sector as of June 2018. At the current moment, given Uber's near monopoly status in this sector, a company-specific utilization rate may increase Uber's share of this market even further in the short-term, creating a monopoly that will drive out competitive compensation and fare for drivers and riders, alike.

Uber's use of cash bonuses and driver incentives may inflate their utilization rates in the short-term and crowd-out competitors in the sector that cannot compete or sustain their business while providing comparable incentives. While this would have a short-term positive impact on Uber drivers' take-home pay, it would likely drive long-term inequities in the market. I would therefore support the the TLC's *initial use of an industry-wide utilization rate*, with the understanding we will learn much more about competition and utilization in the industry as a result of TLC's forthcoming study and data collection, as required by the proposed rules.

The initial combination of an industry-wide utilization rate with an additional (optional) compliance path for companies to pay their drivers hourly (especially given the current reality that this is most likely in the sector of the market where the utilization rates tend to be highest) would support the diversity and competition that is critical to creating a healthy market in the for-hire vehicle sector, while achieving the goal of more stable, predictable, and adequate driver pay.

While Intro 890-B did not address this issue, I also want to express full support for the TLC's proposal to reduce the daily credit card surcharge limit that can be charged by taxi cab owners from \$11 to \$7, which will save a full-time taxi driver more than \$1,000 per year. I also look forward to working with the TLC as you move forward in your studies pursuant to the other bills in our recent legislative package, including my bill to consider the relationship between FHV and taxi fares, so that we can better achieve the goals of more stable, predictable, and adequate driver pay for taxi drivers as well.

As the regulating agency for private transportation in NYC, the TLC has demonstrated a commitment to ensuring a more equitable, fair market for drivers and consumers alike. I appreciate the work the TLC has done to create a more fair playing field in the sector and ensure drivers earn a decent living. I look forward to working closely with the agency as it continues to collect data and study the issue to improve drivers' lives. Thank you for the opportunity to testify on this proposed rule.

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<sup>2</sup> High-volume for-hire services are companies dispatching more than 10,000 trips per day (Uber, Lyft, Juno, Via).

**Lyft, Inc.'s Comments on the Taxi and Limousine Commission's Proposed Regulations  
Regarding Driver Income & Vehicle Lease Transparency**

Since launching in New York City, Lyft, Inc. ("Lyft") has provided valuable and flexible earning opportunities for thousands of drivers. Indeed, Lyft's entrance into the market positively changed the for-hire industry by providing drivers with increased options for when and how they choose to make money. Given Lyft's commitment to its New York City drivers, Lyft welcomes the opportunity to submit comments on the rules proposed by the Taxi and Limousine Commission (the "TLC") pursuant to the mandate established by Intro 890-B and Intro 144-B.

Lyft understands that Intro 890-B requires the TLC to promulgate rules that will establish minimum earnings for high-volume for-hire vehicle drivers, while Intro 144-B authorizes the TLC to establish utilization standards and obtain data from for-hire services (the "Proposed Rules"). Lyft stands ready to work with the TLC to ensure that drivers earn as much as possible. However, as currently written, Lyft believes that the Proposed Rules will have unintended negative consequences for driver earnings and the health of the high-volume for-hire vehicle market. Specifically, the Proposed Rules will likely increase congestion, reduce valuable earning opportunities for new and existing drivers, and decrease service and access to transportation for passengers. Importantly, the Proposed Rules will severely limit Lyft's ability to continue building a product that ensures drivers have access to a flexible earning opportunity.

Lyft respectfully urges the TLC to incorporate the following recommendations, set forth in more detail below, to improve the Proposed Rules:

1. *Payments should be based on a weekly aggregate, not per-ride.* The Proposed Rules require the minimum-pay standard to apply to each trip, regardless of when or where it occurs. This will likely result in increased fares on a majority of rides - even during off-peak hours - which could lead to fewer trips and have the unintended effect of decreasing drivers' earning opportunities. The per-ride requirement could also encourage drivers to spend more time in areas of greater congestion, thereby decreasing supply in the boroughs where access to transportation is most needed. To address these downsides, Lyft proposes an

alternative that would require the minimum pay standard to apply to drivers' weekly earnings. This will allow Lyft to continue using incentives and pricing to ensure that driver supply meets passenger demand, and maximize driver earnings in the market.

2. *The TLC should use an industry-wide utilization rate, not company-specific.* Company-specific utilization will allow a single player to dominate the market. This could ultimately result in decreased driver choice, and increased passenger prices. Lyft proposes implementation of an industry-wide utilization rate. This would encourage continued healthy competition in the high-volume for-hire vehicle market, increase incentives for companies to maximize utilization rates, and ensure that both drivers and passengers are still able to exercise choice over the for-hire services they use.
3. *Wheelchair accessible vehicle and shared rides should be promoted, not taxed.* The proposed shared-ride bonus and higher rate card for wheelchair accessible vehicles ("WAV") run counter to the goal of a less-congested, more equitable future for transportation in New York City. Requiring shared and WAV rides to be more expensive will increase costs for both passengers and companies. This will result in less demand for shared rides, increased congestion, and fewer WAVs available for those in need. Therefore, Lyft proposes removing the additional costs on shared and WAV rides.

**I. Payments should be based on a weekly average, not per-ride.**

The Proposed Rules require companies to ensure that each ride meets a minimum pay standard, regardless of when or where that ride occurs. As an alternative, Lyft proposes that minimum pay should be assessed on a weekly basis. Lyft's proposal is consistent with the

TLC's own study,<sup>1</sup> which states that driver earnings should be assessed on a weekly basis, and with the Council's legislation,<sup>2</sup> which also supports weekly assessments.

**A. Per-Ride Minimums Could Negatively Affect Earning Opportunities for Drivers.**

The high-volume for-hire vehicle market has both peak and off-peak times. During peak times, drivers have higher utilization and earnings per ride. During off-peak times, ride demand is naturally lower. If the TLC requires implementation of a minimum fare across all rides, this will likely increase prices for passengers - particularly during off-peak times - and have the unintended outcome of reducing ride demand overall. Fewer ride requests could result in decreased earnings opportunities for drivers.

A per-ride minimum payment requirement impacts a company's ability to provide driver incentives. Companies use incentives to entice drivers to give rides during times and in places of high demand, and drivers generally plan the times they will drive based on incentives that companies distribute the week in advance. Companies also use unplanned incentives to encourage drivers to respond to spikes in demand, such as when other modes of transportation becomes unavailable. If companies are forced to meet a per-ride minimum, the money needed to finance these rides will be spent at the expense of incentives and other driver bonuses. Lyft wants to spend its resources in a manner that effectively increases driver earnings, and ensures that passengers have reliable and affordable access to rides. A requirement that essentially forces companies to subsidize rides (or otherwise increase passenger prices) is not a financially sustainable proposal.

Conversely, by using a weekly pay-minimum, companies can maintain the flexibility needed to improve utilization by providing different incentives for different routes and times. Importantly, companies would still be required to meet the pay minimum under this proposal.

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<sup>1</sup> In the report the TLC commissioned to study the economics of New York City's for-hire vehicle industry ("the Report"), the authors note, "Generally, for a set time period (such as a week or a month), companies will evaluate each driver's earnings using the total trip mileage and trip minutes for that company."

<sup>2</sup> Intro. 890-B specifically states that the rules promulgated by the TLC "shall not prevent payments to for-hire vehicle drivers from being calculated on an hourly *or weekly basis* . . ." (emphasis added)

Lyft's proposal ensures that drivers will earn the same minimum (or a greater) amount proposed by the TLC, whether it comes from ride fares, or in the form of incentives and bonuses. A weekly review of driver earnings would occur to ensure that fares and incentives meet the required minimum pay standard. Those drivers whose weekly aggregate did not meet the minimum would receive the additional compensation necessary to meet the minimum pay standard. Importantly under this weekly-pay proposal, companies could still react quickly to promote incentives in areas where demand is outpacing supply. Accordingly, Lyft proposes that the TLC employ the following formula to calculate drivers' weekly minimum earnings:

$$\text{TripEarnings}/_{Week} + \text{IncentiveEarnings}/_{Week} \geq \frac{0.580}{\text{Utilization}} * \text{Miles}_{Week} + \frac{0.287}{\text{Utilization}} * \text{Minutes}_{Week}$$

### **B. Per-Ride Minimums Could Increase Congestion.**

The Proposed Rules would incentivize drivers to work in areas of traffic congestion, and forego trips farther from the Central Business District ("CBD"). Currently, Lyft's rate card pays drivers \$1.58 per mile and \$0.32 per minute, but the TLC's Proposed Rules would set minimum rates at \$0.58 per mile and \$0.287 per minute, each divided by a utilization rate. This rate card reflects simply the average cost-per-mile of an average for-hire vehicle, and targeted earnings divided by sixty minutes; it does not account for New York's geography or traffic, and it is not a measured review of what would benefit New York City's drivers or passengers. Indeed, this proposed rate card would pay drivers relatively more for time with passengers than for the distance they travel per ride. This means that the Proposed Rules would incentivize driving in high congestion areas, *i.e.*, the CBD, and rejecting quicker rides of longer distances, *i.e.*, in and between the boroughs and airports.

Lyft is concerned that the TLC's proposal will negatively impact our goal of ensuring New Yorkers have access to reliable and affordable transportation in every borough. Based on Lyft's analysis, which has been shared with the TLC, the proposed rules will result in drivers taking more trips in the CBD, and fewer trips in boroughs. A significant amount of for-hire rides begin and end outside of Manhattan, by passengers who live further from public transit and have previously struggled to obtain rides. The data shows that this proposal will negatively impact

service for these passengers, with particularly ill effects on lower income neighborhoods and communities of color.

Lyft's proposal would alleviate the concerns raised above. Basing payments on a weekly aggregate instead of per-ride would ensure that drivers are not forced to seek rides in the heavily-congested CBD, simply because the TLC's distorted rate cards makes these rides more attractive. By allowing for-hire services to focus on drivers' weekly income, instead of individual rides, companies can keep rate cards set in such a way that incentivizes drivers to operate in the boroughs, where the need for service is generally greater. Accordingly, Lyft proposes that the TLC revise the relevant provisions of the Proposed Rules to clarify that minimum driver payments will be based on a per-week aggregate, and not a per-ride requirement.

**II. The TLC should establish an industry-wide utilization rate, not company-specific.**

The TLC's proposal for company-specific utilization rates will foster a winner-take-all scenario. Under the Proposed Rules, the company with the highest utilization rate is given an immediate and perpetual advantage over companies with lower utilization. This institutional inequality would compound over time, as companies with lower utilization would struggle to improve against a competitor who can charge lower prices or spend more on driver incentives. Given that there are only four high-volume for-hire vehicle companies, the player with the highest initial utilization could quickly monopolize the market.

Encouraging driver and passenger choice should underpin the TLC's analysis when promulgating rules, and instituting company-specific utilization rates would limit that choice. Therefore, Lyft proposes that the TLC implement an industry-wide utilization rate, which will allow all companies to compete fairly, and preserve diversity in the market. An industry-wide utilization rate will incentivize companies to increase driver utilization, while safeguarding passenger and driver choice. An industry-wide rate has the added benefit of ensuring that no company's utilization is miscalculated when accounting for the many drivers who provide rides for multiple apps.

Accordingly, Lyft proposes that the definition of “Utilization Rate” in the Proposed Rules be revised to indicate that the TLC will establish an industry-wide utilization rate, and that the calculation of minimum driver payments in the Proposed Rules be revised to indicate that the industry-wide utilization rate will apply.

**III. Shared rides and wheelchair accessible vehicle (WAV) rides should be promoted, not taxed.**

Shared rides are critical to reducing congestion in New York City, and WAVs must be widely available in order to provide accessible transportation. The Proposed Rules run contrary to these goals, as they will likely result in reduced demand for shared rides, increased traffic congestion, and fewer WAVs available for those in need.

**A. The shared ride “bonus” will negatively affect a price sensitive community and reduce demand.**

Lyft is committed to promoting shared rides. Indeed, our goal is that shared trips will account for 50 percent of all Lyft rides by the end of 2020. By default, all Lyft drivers are available to give shared rides, and they cannot “opt-out” of this service. Thus, the proposed “bonus” on shared rides will not incentivize drivers to be available for shared ride requests, as they are all already available to do so. Rather, the bonus will only serve to increase the cost of shared rides for passengers. Those passengers who choose shared rides are some of the most price sensitive consumers, which means that adding additional cost to these rides will only hurt the individuals who most rely on them. The TLC serves the riding public, and must not ignore their needs. Accordingly, Lyft proposes removal of all references to the “Shared Ride Bonus” in the Proposed Rules.

**B. Adding additional expense to WAV rides is contrary to the goal of increasing accessible options.**

Lyft is committed to working with the TLC to provide accessible transportation to all New York City residents and visitors. However, the TLC’s proposal will make it more expensive to dispatch WAV rides, and stands in the way of getting WAVs to the passengers who

need them. The TLC recently amended its rules in order to increase the availability of WAVs, and conceded that WAVs have historically been underutilized because they are more expensive to maintain and operate. Adding an additional cost to dispatching WAVs is contrary to the goal of increasing WAV utilization, and will only serve to make WAVs less-readily available for those passengers who need them.

Increasing the cost of WAV rides will not help increase accessibility for New Yorkers. Accordingly, Lyft believes that the Proposed Rules should be revised to make both the per-mile and per-minute rates for trips dispatched to an accessible vehicle equal to those rates required for a non-accessible vehicle.

#### **IV. Conclusion.**

Lyft appreciates the TLC's consideration of these comments. High-volume for-hire vehicle service has brought tremendous benefits to passengers, drivers, and the larger New York community. With Lyft, passengers across all five boroughs can access affordable, reliable rides with the tap of a button, and those who previously struggled to get a ride in their neighborhood are now able to access one within minutes. Additionally, thousands of New Yorkers are earning on their own schedule by driving with Lyft all over the city. Lyft is committed to continuing to provide these transportation solutions and earning opportunities to New Yorkers. We look forward to working with the TLC to craft a workable regulatory framework that addresses driver earnings and high-volume for-hire vehicle service in a sustainable manner.

Sincerely,

Temilola Sobowale  
Counsel, Regulatory Compliance

**Goddin, Daniel (TLC)**

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**From:** Joshi, Meera (TLC)  
**Sent:** Friday, September 14, 2018 8:04 PM  
**To:** Wilson, Chris (TLC); Wanttaja, Ryan (TLC)  
**Subject:** Fwd: Potential Problem with Parrott Reich Methodology, Part II

## Comments

Begin forwarded message:

**From:** "Dave (MetroBuggy)" <[dave@metrobuggy.com](mailto:dave@metrobuggy.com)>  
**Date:** September 14, 2018 at 5:51:35 PM EDT

Here are some additional critical considerations that the TLC should be aware of:

- The proposed Minimum Per-trip Payment Formula will drive out of the market companies with relatively low utilization rates, such as Juno. The demise of a \$200 million company, such as Juno, may not be in the best interests of consumers or drivers if only Uber and Lyft remain.
- The Minimum Per-trip Payment Formula may encourage too many pooled rides, which may not be as good as it sounds when viewed in the context of Bruce Schaller's report on the topic of traffic congestion. Furthermore, encouraging such pooled rides can potentially siphon off additional ridership from MTA buses and subways....thereby creating all sorts of issues. In addition, taxicabs will be at a disadvantage as it is difficult for them to coordinate pooled rides and they will likely lose out on price conscious passengers. Price elasticity will become a major issue in January once the new MTA surcharges kick in.
- Despite driver advocate push-back on the notion of a potential earnings ceiling, I am concerned that while some drivers will do very well under the new system others will still find it hard to earn a live-able wage. For instance, what prevents drivers with fancier cars from getting a disproportionate amount of referrals relative to the guy in the five year old camry? In general, wouldn't Uber and Lyft achieve higher ratings and consumer loyalty with dispatching better vehicles?
- What happens to Medallion owners when their drivers opt for the more secure earnings afforded by the Minimum Per-trip Payment Formula?
- I have some concerns about analyzing FHV and passenger data after the industry has been "disrupted" by the proposed Minimum Per-trip Payment Formula.
- This proposed system does not provide for any meaningful way to alleviate traffic congestion.
- As a reminder, some of my other concerns can be found in the email below. This is a very risky strategy, perhaps it would be helpful to share my concerns with Parrott-Reich and see how they envision everything working out as planned.

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**From:** Dave (MetroBuggy) [<mailto:dave@metrobuggy.com>]  
**Sent:** Thursday, August 30, 2018 2:49 PM  
**To:** Furrey, Charles (TLC) <[Furreyc@tlc.nyc.gov](mailto:Furreyc@tlc.nyc.gov)>; Stiles, Rodney (TLC) <[Stilesr@tlc.nyc.gov](mailto:Stilesr@tlc.nyc.gov)>  
**Cc:** Joshi, Meera (TLC) <[joshim@tlc.nyc.gov](mailto:joshim@tlc.nyc.gov)>  
**Subject:** Potential Problem with Parrott Reich Methodology

Charles,

Overall, the Parrott Reich concept is brilliant. Nevertheless, there are concerns if it will actually work in NYC. First, the utilization rate concept to derive driver pay will likely result in driver arbitrage whereby drivers will have a preference to drive in higher than average utilization rate areas if driver pay is tied to a single utilization rate for each provider. If the plan is to have multiple utilization rates for different areas then drivers will avoid the stress associated with Manhattan and may gravitate to the outer-boroughs, or the opposite scenario may also be feasible. It all depends on the utilization rates associated in each area. Such driver pay format may cause a huge surplus of drivers in certain areas and a dearth of drivers in other areas. The notion of having the operators incentive drivers to be at the right place at the right time is going to be a challenge in light of the proposed reduction in commissions to keep fares low in light of the price elasticity. In addition, I think the Parrott Reich report omitted, perhaps because it predated, the new \$2.75 MTA surcharges which further complicates the price elasticity concerns and underlying assumptions on how this plan will work. There are other risks associated with this concept, but these are the ones that are most obvious to me.

Best Regards,

Dave

Charles,

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Best Regards,

Dave