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Administrator

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TAXICAB AUTHORITY

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Members
ROBERT FORBUSS
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JOSHUA C. MILLER

**BEFORE THE STATE OF NEVADA TAXICAB AUTHORITY
BOARD MEETING AND PUBLIC HEARING MINUTES**

March 23, 2010

The Board Meeting and Public Hearing of the State of Nevada Taxicab Authority was held on Tuesday, March 23, 2010. Drivers Appeals were heard at 8:25 a.m. The meeting was held at the Taxicab Authority, 1785 E. Sahara Avenue, Suite 200, Las Vegas, Nevada 89104. The Board Meeting began at 9:51 a.m.

Present were: Chairman Stacie Truesdell Michaels, Vice Chairman Susan Carrasco O'Brien, Member Robert Forbuss, Member John G. Marushok and Member Joshua C. Miller. Others present: were Administrator Gordon L. Walker, Legal Counsel, Deputy Attorney General Scott R. Davis and Legal Secretary/ Recording Secretary, Barbara A. Webb. Member Robert Forbuss was not present for Drivers Appeals.

1. Drivers Appeals

Nosherwan Raja – TA # 102335

Deputy Attorney General Scott Davis presented information to the Board regarding what was discussed before the Hearings Officer. He explained to the Board the circumstances from which the Hearings Officer made the decision to fine Mr. Raja. Mr. Raja was cited for careless driving because he was observed by ACO Barrett after he passed ACO Barrett on Return Lane at the airport in the right hand lane then changing lanes without signaling and proceeding to go into the breakdown lane on the left hand side passing another cab. This was his third citation under the 8848 penalty phase and second moving violation. DAG Davis stated the regular fine is \$300, State asked for \$300. The Hearing Officer fined him \$190 and told him he had 30 days if he wanted to file an appeal, which he did.

Mr. Raja commented on his behalf stating that he did not agree with Officer Barrett. He said he made a mistake and that everybody makes mistakes. He disagreed with what the speed limit was and said that he did signal. He claims he's never been cited. Mr. Raja stated that the ACO's statement was all wrong. The Chair did not understand the fact that he said he's never been cited when it was stated in the transcript that this was his third citation. Senior Deputy Attorney General Arguello, who presided in front of the Hearing Officer, stated that it is in the same penalty phase and there is not substantial evidence before the Board to change the Hearing Officer's decision. The Chair explained to Mr. Raja that no further evidence can be presented. Member Miller asked if the driver was able to make a rebuttal at the hearing and SDAG Arguello stated that when he was asked if he had anything further and he did not respond.

The following is the Board's motion -

Motion: Sustain Hearings Officer's decision
By: Vice Chair Carrasco O'Brien
Second: Member Marushok
Vote: Unanimously in favor of the motion.

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William Yuan - TA Permit # 29403

Deputy Attorney General Scott Davis stated that Mr. Yuan was in violation of NAC 706.8845(12). He stated that at the time Investigator Rivers had a clear and unobstructed view of the intersection on Spring Mountain. Under penalty phase 8848, he was fined \$50.

Mr. Yuan stated that he had presented a hand-drawn map to show the Spring Mountain intersection as well as the entrance to I 15 and where Officer Rivers said he was staged. He saw the officer but thought he was pulling someone else over. Investigator Rivers stated Mr. Yuan went through a red light, Mr. Yuan said it was yellow and described where the lights were. After being questioned by the Board Members, he was asked if this information was presented at the hearing and he said no. Mr. Yuan stated the Hearing Officer pulled up the map on Google of the intersection, but it was not part of the record. Member Miller stated that that was not acceptable. The Chair stated that it should have been put in the record. SDAG Arguello asked if they wanted to continue this and the Chair discussed it with the other Board Members. They decided that to make a motion.

The following is the Board's motion -

Motion: Reverse finding of Hearings Officer
By: Chair Michaels
Second: Member Miller
Vote: Unanimously in favor of the motion

Andrew Gnatovich - TA Permit # 28294

Deputy Attorney Scott Davis stated that Mr. Gnavotich was in violation of NAC 706.8845(9) – loading in a travel lane. It's his first offense and the Hearing Officer gave him a \$60 fine and stated that he had 30 days to file an appeal against her decision if he chose to.

Mr. Gnatovich asked if he could read his 6-page prepared statement which is available at the Taxicab Authority. His argument was that he was not obstructing traffic when he stopped in a travel lane as the regulation states. He said that if there was traffic he would not have stopped at that point. Some of the Board Members said that he cannot determine when traffic would approach that area and the regulation is that he cannot stop in a traffic lane. He argued that the statute language does not state that, it states that you cannot interfere with traffic and he said he wasn't, but did admit stopping in a lane of traffic. Discussion went back and forth between Mr. Gnavotich and the Board.

The following is the Board's motion –

Motion: Sustain decision of Hearings Officer
By: Vice Chair O'Brien
Second: Member Marushok
Vote: Unanimously in favor of the motion

3. Compliance with Open Meeting Law.

Administrator Walker stated that we are in compliance with the Open Meeting Law.



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***4. Approval of the December 18th, 2009 Board Meeting Minutes and the January 26th, 2010 Board Meeting Minutes.**

The Chair asked if the Board has read the Minutes from December 18th, 2009 and January 26th, 2010 and did they want to make a motion.

The following is the Board's motion –

Motion: Approve both Minutes from December 18, 2009 and Minutes from January 26th, 2010
By: Member Forbuss
Second: Vice Chair O'Brien
Vote: Unanimously in favor of the motion

5. Public Comment

Bill Shranko requested the Board to allow agenda items pertaining to LVCVA be intervened on because Mr. Patterson's speaks about the cab service for their conventions. He also feels that it is inappropriate for vendors or salespeople to have intervenor status, i.e. TaxiPass. He feels it should be done through administrative staff. He said companies work through a bidding process. He feels that giving vendors status to intervene can open the door for every credit card company or anyone trying to sell their product to the industry.

Steve Lanett, Whittlesea driver, stated that drivers are not getting the respect from tourists they deserve. He mentioned that it was helpful that the Administrator pulled cabs off the road during the last convention. He said he is the highest "book" and never made the \$500-\$600 nightly that one owner at the last meeting said his drivers make. He commented that so many of his passengers ask him why when he takes them to the airport the fare is \$11 and when they came from the airport the fare was \$35. He feels that if the Board can take "ownership" of what is being done it would make a difference.

Stephanie Edelman, USW, thanked the Administrator for the fair amount of cabs last month.

6. Discussion with Stephen Patterson, Traffic Manager for LVCVA regarding the taxicab service during January and February.

No one attended from LVCVA.

***7. Community Response Expectation Survey Results.**

Brock Croy made his presentation. He gave the Board his study analysis. He stated that, as he had requested, all companies provided him with percentages and numbers of radio calls from December 2009 through January 2010. The analysis chart is available at the Taxicab Authority.

There was much discussion between Board Members and Mr. Croy with regard to response time from when dispatch receives the call to when the passenger actually gets picked up. It is a known fact that residents will call multiple cab companies for a cab because they don't know if or what time a cab will arrive. Mr. Croy stated that the companies also have many pre-arranged pickups which were reported by all but one company. He stated that response time is on the chart. He said that the radius is important also as a company who has the Golden Triangle opposed to a company in another area. Company A and Company B, in his study, showed that 8% of their total business is radio calls and 2.17% of the business with other companies. An entire industry average, Mr. Croy said, is 4.45% radio calls. There was discussion between Mr. Croy and the Chair regarding when the data was collected and



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from where it was collected, Mr. Croy stated that it was an industry average that's important rather than company to company. Member Miller commented that the geographically restricted medallions and companies represent a significant portion of the radio calls. Brock commented that Whittlesea, YCS and Frias represent 75% of the market. Member Miller wanted to know how hard it would be to gather and provide data every 6 months.

Member Forbuss stated that he had gone to many companies and looked at their dispatch system and was impressed with the dispatchers and how they handled calls and got cabs out to the residential areas. He stated that people do call more than one company in hopes that one will get there soon and that residential calls are mostly from the morning to early evening. He asked Mr. Croy if reporting time is from time of pick up and was told yes.

Mr. Croy was asked if he did any comparisons with other areas and he said with Australia and they get data from reports which are a requirement for them. The best way to obtain data is through a GPS system but not all companies have them and the system has to be equipped to give the data that is needed.

Chair Michaels granted intervenor status to intervenors - A Cab, LLC, Frias Holding Company, Western Cab Company, Lucky Cab Company and Yellow/Checker/Star Cab Companies.

Jay Nady, A Cab, stated that his company uses time cards. They do not ask through dispatch where customer is going, but the card indicates where the destination is. He stated that over the years 42% of his business is radio calls. Mr. Nady said a lot of his customers have created relationships with his drivers and only want those particular drivers. He estimates a third of the customers call the drivers direct.

John Hickman, COO, Frias Holding Company, stated he would be happy to provide a periodic report. He stated that pre-arranged and radio calls would be included. Mr. Hickman said that 20% of their cabs have a digitalized tracking system which is a good management tool. Member Forbuss asked him how he felt about centralized dispatching and Mr. Hickman said he did not like that.

John Moran, Western Cab, said he had nothing further to discuss. When asked by the Chair if data was requested would he give it and he said yes. Member Miller asked if it was easy to pull up information from 2009 and would it be easier to start this in 2011 if the Board wanted a quarterly report

Desiree Dante, Lucky Cab, commented that they already track radio calls internally so getting the data would not be a problem unless the Board requested pick up and wait time.

Bill Shranko, YCS, stated that they will forever fight a centralized dispatch system. He said a study was done and no one in the country has a centralized system. He said it's the issue of years of competition with other companies and it would be cumbersome gathering data. Mr. Shranko said the 1.118 million is per year not 2 weeks as Mr. Croy reported it. Mr. Croy said he is misinterpreting what he said. The 1.118 million rides, Mr. Croy said is the total radio calls per year which represents 2 weeks worth of work. Mr. Shranko said that there is sensitive information that would only be given to the Board. He stated that drivers do have personal calls but they must be put on their trip sheets by law. They are willing to give the Board stats quarterly. Mr. Shranko, when asked, said management is told daily if there was a problem with long waits.



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Member Forbuss stated that there should be some guidelines to handle the long wait to residential areas. Member Miller said it would be a burden on the companies without some kind of technology, but would like to see some data in a year from now on a voluntary basis. The Chair felt it was a good idea for the Board to get this information. Deputy Attorney General Davis said that the Board can direct the companies and then put it on the Agenda. The Chair requested companies to give the Board radio call information in 6 months.

***8. Discussion and Possible Decision regarding the Matter of the Application of Ace Cab, Inc., Union Cab Co., A NLV Cab Co. Vegas-Western Cab Co., Inc. and Virgin Valley Cab Co., Inc. for Approval of Charge for Credit Card and Debit Card Transactions in Taxicabs and Setting of Maximum Allowable Such Charge.**

DAG Davis asked the Chair to grant intervenor status. The Chair asked Administrator Walker if there were any problems. The Administrator commented that TaxiPass intervened which he isn't opposed to, but that it is up to the Board to grant them intervenor status.

DAG Davis stated that the actual standard for intervention is that they need to demonstrate a direct and substantial interest in the subject matter in the proceeding and also not unduly broaden the issues. If that criterion had been met in your judgment, then you should grant the intervention. If not, then deny the intervention.

Neal Tomlinson, on behalf of the applicant, stated that it would be inappropriate to allow a vendor to intervene because that would open the door for every vendor to come before the Board with their intervention.

Member Miller didn't understand why they would have intervenor status, even though he understands the standard. He feels that this has nothing to do with Frias' application. He doesn't understand why a 3rd party vendor would have intervenor status.

DAG Davis said they the Board could hear from TaxiPass just on their petition to intervene.

The Chair deferred to the Board because it's a novel issue that's not come before this Board in the past. Member Miller said he was open to hear why TaxiPass thinks they should be an intervenor. Chair Michaels explained to Bob Winner, attorney for TaxiPass, that the discussion should only refer to what's in the intervention, not the Frias' application.

Attorney Bob Winner for TaxiPass stated that they do have a direct and substantial interest as the applicant is asking and an economic interest. It is their position that this application seeks to have the Board expand it's authority to regulate the charge of the processor not the rate on the meter but the processing fee of \$3.00. He agrees with the issue if they should not be allowed to be an intervenor because the Board regulates the certificate holders and the drivers which is his point, the Board does not regulate the manner in which the meter is paid. Chair Michaels stated that they do regulate the charge that the riding public pays that's why it's questionable. He feels that the application is asking the Board to expand their authority by regulating the \$3.00 fee. The Chair said that he cannot go into why the applicant is asking. Member Miller asked if when TaxiPass started with other companies, did they have a contract to charge this fee. The Chair commented that that gets into what the application is about and doesn't want to have that discussion at this time. DAG Davis stated that the Board should stick to the issues on the agenda. DAG Davis said what's on the agenda is the application from Frias as a certificate holder to began implementing a \$3.00 charge. It does not speak of method of payment.



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Vice Chair O'Brien told Attorney Winner that he has not made a significant case that the Board should recognize TaxiPass as an intervenor. Member Forbuss agreed and if the Board decides to regulate the processing fee, that's what they do. Member Miller asked if that's what they are contemplating. The Chair said she thought they were contemplating Frias to begin charging this fee. DAG Davis stated that the application is for Frias as a certificate holder to begin charging this fee because all the fees are uniform in the industry and would also grant authorization for other companies to charge this. The Chair asked would every other certificate holder have to come forward and ask for the Board's permission or is the argument that it only applies to Frias and if other certificate holders want to come forward with regard to this charge they need to submit an application to do so. DAG Davis said no they would not have to because, by law, the fees are uniform, therefore, if the fee has been approved for one it's been approved for all unless an exception is noted. Member Miller asked if the Board has approved the fee for this type of transaction historically for other companies and the DAG stated that the Board has never voted on and approved the processing fee and an order has never been issued. Member Miller questioned that with Frias' application it would create a regulated rate for all companies and DAG said that is what they are asking is to create a new charge. Member Miller feels that the proper intervenors would be the companies that utilize TaxiPass' services. The Chair agreed with him as some other companies are also using TaxiPass so she feels the proper way for intervening would be through their individual client. Bob Winner agrees with her logic but when the Board now wants to regulate this fee which is what they charge for their business and now you want to regulate it and because you say you are considering it, they have an interest. The Board does not regulate the processing fee. The Chair said the issue has not yet been discussed and that's the reason for the application and the Board is trying to establish whether or not intervenor status should be granted to TaxiPass. Mr. Winner said he can change their position to an interested party and therefore be cross-examined if that's what the Board would prefer. Neal Tomlinson, attorney for Frias, said they do not have a problem with TaxiPass providing information, but they are a vendor and that would open the door for other vendors to come before the Board. Mr. Tomlinson said he does not know of any other vendor that was granted intervenor status. The Chair agreed. She asked the DAG what the process would be to allow this interested party to provide information only to the Board. DAG Davis wasn't sure if there is a provision for that under the rules. Vice Chair O'Brien said the information would be good. Mr. Winner said he has never seen "interested party" here but it has been done in other agencies. Cheryl Knapp of Whittlesea Blue/Henderson Taxi said that it has happened in the past with the unions. DAG Davis referred the Board back to the statute whether someone is a certificate holder or a vendor really doesn't matter under the statute just how they demonstrated the direct and substantial interest and are they not going to unduly broaden the issues with their intervention – that's the standard that needs to be considered. The Chair stated that if they grant intervention status they are ultimately stating that they are going to regulate this fee and she doesn't feel they can at this point without having heard from any interested parties, but if they are excluded and the Board determines that they do feel that they have the right to regulate this fee, at that point they have a substantial interest in the outcome of the decision. She deferred to the other Board Members.

Cathie Olendorff, attorney for YCS, stated that besides TaxiPass there are other vendors in the audience and Frias may have another vendor so if they are granted intervenor status or interested party, it could make the situation very difficult and she doesn't feel the Board should have to go in that direction.

Neal Tomlinson commented that the Board always regulates things all the time that doesn't mean they should have intervenor status. He said that all advertisements on cabs are regulated by the Board, that doesn't give Clear Channel the right to come in as intervenors. The Chair stated that they haven't been operating under the perception that it's okay for Clear Channel to take it upon themselves to put advertising on the cabs before the issue was ever discussed because the Board never took a formal position on the matter and that's why it is a strange situation. Mr. Tomlinson feels the application should



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be heard first before making a decision, but he feels they should not have intervenor status, but that's the Board's decision. Member Miller said, as it stands, they do not regulate rates on credit cards at this time and therefore TaxiPass should not be granted intervenor status at this time whether or not later they are given interested party status he doesn't feel it is necessary to defer their decision because he doesn't feel they meet the threshold. Mr. Tomlinson agrees because their application has nothing to do with TaxiPass. Vice Chair agrees with Member Miller and the matters should not be unduly broadened, so she feels they should be denied intervenor status.

The following is the Board's motion –

Motion: Deny TaxiPass intervenor status
By: Vice Chair O'Brien
Second: Member Miller
Vote: Unanimously in favor of the motion

Chair Michaels commented that the other petitions to intervene – Desert Cab, Whittlesea, Western, ITPEU, A Cab, Frias, Western Yellow/Checker/Star – I don't see why they would not be proper intervenors for the purposes of this application. If the Board has no comments, I'll grant them intervenor status.

Neal Tomlinson, attorney for Frias, said Frias made a decision for the interest of their customers and the riding public to start accepting credit/debit cards in their taxicabs. He had questioned if any approval to do this is needed from their regulator. After discussions with the Administrator it was felt that this course would be the way to proceed. After looking back at the records, they found that the Board was never approached for their decision. Frias does not have the units in their cabs as yet, but would like to hear from the Board for their permission which is why the application was filed. He feels the Board can be allowed to regulate the charge unless they feel otherwise. They want to be sure they do the right thing before getting involved in this. They did research as to what is involved in installing credit/debit card machines with regard to fees which includes the investment in the equipment, printers for receipts, administrative services and other expenses. John Hickman has done research on this and after determining what the total costs would be felt that a \$3.00 transaction fee would cover the costs.

DAG Davis stated that before continuing on the application and before any evidence could be taken, intervenors need to have an opportunity to make opening statements if they desire. The Chair questioned opening statements. DAG said that procedurally, opening statements are made and evidence taken.

Mr. Tomlinson stated that his would be a 5-7-minute presentation and if the DAG could waive opening statements and allow Frias to make their presentation.....Chair Michaels agreed stating that if intervenors want to waive this opportunity to make opening statements that can do so. She will go through the intervenor list and if anyone wants to make an opening statement they can do so or if they want to waive that that would be great, too.

Desert – waived; Whittlesea – waived; Western – waived; ITPEU – not here; A Cab – wanted to know if the people that are not being allowed to intervene can be used as an expert on some of his intervention be allowed and the Chair asked if they are representing him and his interest and he said yes. They can partake in A Cab's intervention only to that extent. Jay Nady – A Cab – said he would waive also. Lucky – waived. YCS – waived.

Witnesses need to be sworn in as well per DAG.



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Cathie Olendorff, attorney for YCS, asked if they were going more towards a formal hearing process. The Chair responded that it was filed as an application, so that is why the DAG is advising us to follow the proper application process.

Barbara A. Webb, Legal Secretary for the Taxicab Authority, swore in John Hickman and Neal Tomlinson.

John Hickman, COO, Frias. They decided they wanted to offer their passengers the ability to use something other than cash. They knew there were costs involved and it was his job to look into what those costs would be to determine how much a transaction fee should be. After his research with other companies, other cities and companies he made his determination. He said calculating what the expenses would be for the equipment, financial fees and charges and the administrative support. Exhibit 1 of their application shows that. Mr. Tomlinson stated that the fees that they would charge and are currently being charged by other companies, never have been part of the rate on the taximeter it's a separate fee and that the transaction is separate and they don't want those paying cash to be charged a fee. He said the application is very basic – they want to provide the service, charge a maximum fee of \$3.00 per transaction that is at the customer's option, wants the rate to be uniform and the maximum allowable. In the past, he said, these charges have not been reported to the TA and they should be kept separate and exempt from reporting. The Chair asked why they should not be included in the reporting to the TA. Mr. Tomlinson stated that they have not been reported in the past and after discussion with the Administrator asked what should or should not happen with the reporting. If the vendor has been accepting the payment, because it is not regulated by the TA, TaxiPass does not report it to the TA. If the certificate holder accepted the payment then that would have to be revenue reported on the annual report. Frias wants to request proposals from outside vendors but wants the Board to let them know if it is okay to do or are they going to regulate it and how and then they will decide how they will proceed.

Member Miller commented that the fee has not been regulated up to this point and if they do agree to regulate, it should definitely be reported.

Chair Michaels reiterated that 1) should they be regulating the fee at all, 2) if so, then the certificate holders and vendors need to charge in a uniform fashion; 3) what would the maximum allowable amount of the fee be so everyone is uniform. The Administrator added the reporting requirement.

Chair Michaels questioned the DAG regarding the fee and is it appropriate for the TA to regulate. DAG commented that the Agency does have the authority to regulate. The Chair asked for the statute pertaining to do this. DAG commented there are more than one – the Authority is given broad authority under 706.8818 to take action to adopt a regulation as it may deem necessary for the conduct of the taxicab business and for the qualifications of the issues regarding the drivers, they would be given broad grant of authority under that ground. There is also the statutory provisions regulating taximeters and charges that have to show up on taximeters. The Administrator said that is NAC 471. The DAG said that it may be that only the Taxicab Authority can consider the rates, charges and fees to be charged by the taxicab. The Chair asked if they deem it to be a charge then that would be something that the Board would have the authority to regulate. The DAG said yes the Board does have the authority to regulate this charge.

The Chair stated that the intervenors have the opportunity to intervene since the decision will impact the totality of this application.

Vice Chair O'Brien commented that people are using credit cards now. Mr. Tomlinson said not in Frias' cabs, but in other cabs. He went on to explain how it works – you can opt out of using your credit card



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as it shows on the screen along that there is \$3.00 fee and also a place to put the driver's tip. You can opt out if you chose and pay cash. Member Marushok ask where is the \$3.00 fee showing at that point and was told when you swipe your card. Mr. Tomlinson commented that TaxiPass is the only one in Clark County at this time. Member Miller asked what is going on with the limo companies and are credit cards processed. John Hickman replied that they use their normal bank as the processor with no surcharges. Mr. Tomlinson stated there have been some changes recently that they can charge a fee.

The Chair asked the Board if they had any questions before the intervenors were heard. Member Forbuss asked if the \$3.00 will pay the cost of equipment, management fees, and the fees for the transaction and Mr. Hickman said yes.

Mr. Tomlinson addressed the question regarding limos – he said the fees are embedded in the company tariffs. Each company has an approved tariff at the NTA. In New York, they mandated that every cab accept credit cards and at that time that fee was put into the rate. They feel that it is better to have it separate otherwise it would be a subsidy that should not be there because people paying cash would be paying for the credit card fee, therefore, they are asking to keep it separate.

Member Forbuss questioned Mr. Hickman what percentage of the 7 million trips that his company does a year would use credit cards. Mr. Hickman said in his research, he estimates 25% more or less.

Mr. Tomlinson stated that due to the use of the credit cards, the meter will need to be maintained or replaced eventually. Mr. Hickman said there is always a cost. The Chair stated that the discussion of the fee is premature because other issues need to be addressed first and would like to discuss the fee after discussions.

Desert Cab – George Balaban – will wait.

Whittlesea – Cheryl Knapp – they have TaxiPass in Whittlesea's cabs and are in the process of installing them in their Henderson cabs. Their position is, based on current regulation, that the Board does not have the authority to regulate this particular fee and because NRS 706.88219 – specifically states that “the Taxicab Authority shall conduct final hearings and make final decisions on the following matters – 1) applications to adjust, alter or change the rates, charges or fares for taxicab service”. Those fares that are addressed in this NRS are fares that are on the meter this does not show on the taximeter ever. The fare on that meter in the front area of the cab is what is regulated by the Board whether the customer pays cash or credit/debit card. If they choose to pay by credit/debit card, they swipe their card on the TaxiPass equipment with language about the fee as the banks do, the customer has to agree to that fee which is a transaction between TaxiPass and the customer, the company has nothing to do with that. They don't see the \$3.00 at all and it doesn't affect their revenue. If the Board wants to regulate this fee, they would have to use the language that allows you to regulate meaning an NAC which means a workshop would need to be held, send it to LCB for approval. She stated that she doesn't feel the Board can make a decision today to regulate this fee because that affects the vendors and the Board does not regulate the advertising on cabs. The Chair stated that the Board is charged with protecting the welfare of the riding public. Ms. Knapp said she is not arguing that but if they do want to regulate the fee, it has to be done the right way. She said that it is not part of the meter per statutes. Member Miller said it could be a part of the meter. There is one jurisdiction on this spreadsheet where it is. He wanted to clarify that they receive no revenue stream from TaxiPass. Ms. Knapp stated that they do not receive that \$3.00 fee, we do have a revenue stream that we receive from TaxiPass and that revenue is reported under sundry and miscellaneous revenue on their annual reports. Member Marushok asked if that was part of the \$3.00 fee and she said no. She doesn't want to see where eventually companies have a way of not reporting that revenue. Member Miller stated that if they agree to regulate this, everyone has to be on a level playing field as far as reporting goes.



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John Moran, Western Cab – commented that with regard to the discussion, his company is a cash only company. As time goes by and he sees that everyone is benefiting by credit cards, his company will consider it then. He stated that his cab company is competing with the limo companies as well as double decker buses and they do own a limo company. The buses and limos are not charging these fees and they have to think of this.

ITPEU – not present.

Jay Nady, A Cab, commented on cash rides opposed to credit card rides when it comes to tips. When it's a cash ride, the money is turned in, the tip is given to the driver. When it's a credit card ride, the driver is given a voucher to collect his tip which means now it's an accounting issue which is a full-time job. He has had TaxiPass in his cabs for 4 or 5 years. He said his cabs are being called out of line because of the credit card capability. It is a good advantage and they never had any complaints nor any bad credit cards. The Chair asked him what his opinion is on the issue of the Board regulating it, he said he would leave it to his counselor, Bob Winner, to comment. Mr. Winner stated that he doesn't feel the Board could regulate it; how does the Board determine the amount of the fee. This is a very secure system and there have been no complaints. Member Miller commented that systems that are put into the cabs must be secure so there are no problems with having the data compromised as so many retailers were. Mr. Winner asked if they would regulate that and how would you do it. He commented that he didn't want to see phony corporations come into play where the Board cannot regulate and then there may be more problems in the future. Member Miller commented that if this isn't regulated then riders will be charged different fees by different companies, there will be no standard for keeping data secure. This seems to be a new era where everyone wants it as well as the drivers.

Desiree Dante - Lucky Cab – doesn't feel the Board has the authority to regulate, but feels they should be sure that the vendor is a suitable vendor and the public is protected. She feels that's the Board's limitation and agrees with Cheryl Knapp.

Cathie Olendorff – Bill Shranko - YCS – Also supports Cheryl Knapp – fee is a convenience fee not part of the taxicab service. The problem now is the Board feels they have the right to regulate and the companies disagree per the statute. It is not a taxicab service it's a convenience to the rider. Mr. Shranko stated there's a lot of built in protection, everything that the Board regulates is across the board. YCS is doing a very involved study on credit cards and they are considering TaxiPass. They are looking at other vendors as well before they make a decision. Member Marushok asked why are they against the top end that would protect a) your rides and b) keep competition if companies are charging different fees. He doesn't understand how having a regulated fee isn't good for the industry. Mr. Shranko stated that no cab company is allowed to put that on without the Board's permission and secondly, the fee is voluntary – the credit card meter tells them that. Member Marushok asked why would the industry be against a set number if they go in that direction – he doesn't understand the downside to that. Mr. Shranko says because you are implying that it is a mandatory charge. The Chair stated that she has never seen the fee posted on the outside of the cab, they do have the credit card emblem. She argued that a passenger doesn't have a choice if they don't have cash on them to pay that fee. Member Marushok is still unclear why the industry is against a standard fee. Member Miller stated it is time to speak of that. We call it a convenience fee, but we are at a point where 90% of the companies are contemplating adding credit cards to their cabs, is today's hearing a proper time, no, is it a proper time to look at this issue, yes. Cathie Olendorff stated if you pass it as a charge for taxicab service as opposed to a credit card fee or any other different terms, a lot more needs to go into the decision. Mr. Shranko stated that this is the time to start looking because most of the industry is using it.



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The Chair asked if there were any other questions from the Board. She asked if the staff had anything to add on this issue.

Kelly Kuzik told the Chair that if she had any questions, he could clarify anything on the chart. Vice Chair O'Brien asked if some of the cities indicated under column "C.C. Fee" does the "N" mean they are not charging the credit card fee and Kelly said yes. Member Marushok asked if those cities are charging the fees in their rates instead of charging.....Kelly said they are not. The Chair asked if New York City is the only place doing that. Kelly stated that they put it in their rate increase.....The Chair said a one-time rate increase and Kelly said yes back in 2004 to cover those costs. The other jurisdictions that he checked with are all IATR members, the companies, the individual owners, it's the cost of doing business and you are not allowed to put it into the fare and charge extra for it. Member Miller reiterated that he is saying that TaxiPass is not operating in these markets as they do in our market with an option convenience fee of \$3.00. Kelly said yes. Vice Chair O'Brien said that regarding what Kelly said about the cost of doing business, when she uses her credit card in a department store there is no fee to use the card, maybe they need more briefing on the situation and if they do have the authority to regulate it because a person is going into the taxicab and they are getting the service, if we're the only ones doing it a lot of research is needed to be sure it's fair. The Chair feels that it's a worthwhile discussion for the Board and doesn't feel today is the day to make a decision. The Board is very interested in this issue and she personally feels the Board has the authority to regulate the fee and she said it's important that they protect the riding public and that impacts the riding public. We are the only agency that would be looking out for the public with regard to that fee and the Board needs to be cognizant of and there's a lot more information that the Board would want to hear before making a decision. She wants to know how New York built the fee into the rates. Member Miller stated why would they be doing it differently than other major cities.

The Chair said she can appreciate that but she personally does not feel she can walk away and vote yes or no against this application today because this application has such far reaching implications beyond just whether or not Frias can begin to charge the \$3.00 fee. A lot of those issues have been flushed out with the concern and questions of the Board, even the intervenors themselves have raised questions. If anyone on the Board feels differently, speak up.

Neal Tomlinson asked if he could speak on some issues that came up – she said yes. He said that customers want to be able to pay by credit card and if no decision is made, they can go out and do what the other companies are doing but they do not want to do something they cannot. 1) If no decision is made today, can they do what the other companies are doing. Issue 2, board can regulate the rate that is being paid with the credit card and 3) they believe there should be a uniform maximum fee to protect the riding public. The maximum allowable fee should be approved as the applicant is asking to let them charge a \$3.00 fee. The industry is already charging the \$3.00 fee – there are no other issues being raised by the applicant. If a decision is not made today, can they have credit card machines installed.

The Chair said that they want to make sure they are making the right decision. She deferred to the DAG. She questioned whether to have a workshop because she doesn't want an appeal filed. Mr. Tomlinson stated that 706.8827(5) regulation and case listed to grant application to allow the \$3.00 fee which is currently being charged, that's what the application is asking. By not approving this, is the Board saying that what the other companies are already doing we are being denied to do and we are in a limbo status? The Chair asked if they vote yes for everything Frias wants, tomorrow would they be in your taxicab. Mr. Tomlinson not tomorrow but it would certainly be in the near future. He stated that remember this has already been tabled since January. The Chair understood that. He said the application is pretty straight forward if modifications are needed they'll make them. She said she has a lot of unanswered questions at this point. She doesn't know if \$3.00 is the magic number; she wants to



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know how other cities come up with their fees. The Chair feels there are too many issues to make a decision today and that's only her feelings.

Member Miller stated that the Board feels that they can make a ruling on this, but they raised a very good point that there are companies out there already doing it, but they're assertion is that they are going through a 3rd party vendor. He asked Mr. Tomlinson to explain. Mr. Tomlinson stated that Frias has not made a decision whether they will go with TaxiPass or another vendor or how they may do it. They talked about doing an RFP to do it, but they can't do anything without approval from the Board. They had discussions with the Administrator at the beginning if they should take it before the Board and all agreed the best way would be to file an application. The Chair commented that they appreciated Frias bringing it before the Board because a few months ago she had gone to the Administrator regarding the \$3.00 fee. She is not sure if all the questions have been answered today. Member Miller stated that if they trying to fast track a decision and he knows there's unanswered questions, but what is the fastest we can take a position on this. The Administrator commented that probably 90-120 days if they take the route of a regulation. Member Miller stated that we don't know that's the way they have to go. The Administrator suggested to the Chair and Board Members that the legal questions be asked of the DAG and schedule a workshop to discuss the issues. Prior to a workshop, he would like their questions sent to industry as well as to him, meanwhile, TaxiPass goes about its business and he is aware that they can raise that fee tomorrow. And if another vendor is used, they can have a higher fee and that's what the Board does not want. Mr. Tomlinson commented that is why they are asking in their application for the \$3.00 fee across the board. The Vice Chair commented that is why they cannot make a decision today. Member Miller asked how can you ask for a \$3.00 maximum when they have a list of 15 cities that don't charge a fee. He asked why would they want a Board who regulates the industry make such a flippant decision on such a big matter. Mark James came forward and asked the Chair if he could comment and was told yes. He said he would explain – this has been going on for 3 years and this is your industry to regulate. He said the Board should not have questions because it's been going on for 3 years. He said he doesn't care if they deny the application or grant it, he just wants the Board to say either the Board regulates it and they will set the fee or the Board doesn't which would be an endorsement of the existing practice. He feels they are entitled to an answer, that's why they filed the application. He doesn't want a rulemaking process that'll take a year and have to be approved by the legislature. He feels it's not effective that way. He feels that they cannot proceed without the TA saying yes or no to regulating it. He said with regard to the Vice Chair's comment about department stores – he said they are not regulated and the fee is imbedded in the cost. They are asking the rate which includes all the costs. He's gone back and looked at all TA minutes and every rate making issue regulated by this body. He has never seen anything that says the cost of offering these financing services to the customers. With regard to Member Miller's comment of is this apples to apples, he said that this is a 100% driver industry and that is not how the rest of the country is. There are many places where they are independent drivers. He said here is different. They would not be able to recover the cost unless the Board lets them do it in the rate. He feels the \$3.00 fee is a fair charge which is supported by both his documents and the industry which is why he filed the application. If the TA says they are not going to regulate this because it has not been done in the past, then they can go ahead with what they want to do. If they decide they are going to regulate it and agree to the \$3.00 fee being fair, there is nothing that says you cannot change it in the future. He knows their main concern is the riding public, but he feels there is no difference between what an independent contractor, TaxiPass and the certificate holder charges for this. He feels that by approving his application, the public will never be overcharged for their credit card transaction. If this is not approved today, they will be in limbo and it probably will go to court, either you have the authority or you don't and you have to decide that. He totally agrees with the DAG's recommendation. If the Board says application denied, that's fine, then they can do what they want to do and the Board can deal with it later through rulemaking. The Chair said that if they now say they don't have the authority how can they change that in the future. DAG Davis said that they are getting off topic and have to stick to the agenda and what was noticed and



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whether the Board can regulate TaxiPass or another vendor – that's not what's on the agenda. They are not to determine the legality of what TaxiPass is doing. The Chair said she doesn't feel the board is alleging that this has anything to do with TaxiPass, but she feels inherent in the application are other questions that the Board needs to determine. DAG stated the application is whether or not the certificate holder can charge this fee. The Chair stated before a decision can be made they have to determine whether they have the right to regulate the fee otherwise they are the wrong body to make that decision because it is outside of their administrative rights. The Vice Chair asked if they were to defer a decision on this application pending a memorandum from the AG's office so the issue of authority well delineated, the provisions being referred to, give this Board the authority to make a decision on this application and then put it on the April or May calendar. The Chair said she'd be willing to come back in 2 weeks and meet just on this issue to expedite the process. The DAG stated if the Board wants a memorandum, he'd be happy to provide one for them.

The Chair commented that there are still some intervenors who need to speak.

John Moran, Western Cab, commented that he believes Mr. Tomlinson and Frias do have a right to a decision. He also believes the Authority does have the jurisdiction to make this decision. He feels it should be approved or continue the hearing for a decision one way or the other. In the interim, he hopes the Chair and the Board would ask the attorney to submit the appropriate brief under the regulatory power of this board. He feels that anything that goes into the cabs for the public's convenience shouldn't be protected by the Board. He feels they are entitled to a decision whether it's 2 weeks or a month while the Board checks with their authority to see if they have the right to regulate which he feels they do.

Bill Shranko says he agrees with the Chair that more study needs to be done. He feels that 60 days is reasonable. This has been going on for 3-4 years so have the study done. Mark James commented that they suggested language in an order that would say what's happening in the industry is fully appropriate and this is how it's going to be done, that's what they are trying to achieve today.

Member Marushok reiterated that DAG Davis said they have the authority and the Chair also agreed; he's not sure why they would table a vote. Someone at some point must have approved TaxiPass – the Chair commented that the Board never approved them, an earlier Administrator determined it was okay. Member Marushok said nevertheless this has been going on and there was a charge allowed without regulation, and he doesn't feel this is an issue. Member Miller said there's more of an issue, even if they do have the authority, the application is asking to set a limit of \$3.00; they are still layering on their profit. He said that they have to think about the rider. No matter who is doing it, they are regulating the rate, they need to give it a lot of thought. Member Marushok agrees – they are allowing the rate to currently exist, if it's approved today and put on the agenda in another 6 months after all the facts are received, to not approve it today or not voting on it, it's not accomplishing anything because it already exists and all we are doing today is saying what is the best fee and we can revisit it and change it. Member Miller agrees that they need to move quickly because they are not using the credit card system, however, he doesn't feel that anyone would invest in a lot of equipment if they knew the Board would approve it for a short time and then change their mind on the fee. There's an uncertainty out there and he doesn't believe any business person would do that. The Chair stated her issue is not the Board's authority, it's with setting a maximum fee which has a lot of hidden costs that she doesn't feel should be passed on to the riding public. She doesn't know how to approve half of an application. The DAG said it would not be proper to either grant the application in part based on what's being requested, there's not a declaratory order requested whether or not the Board has authority to regulate this fee. The Chair asked if it would be proper for the Board to make a determination saying whether or not we have the authority to regulate the fee and then put off the issue about what the fee should be to a later date. Members commented that is not the agenda item. She said she knew that but that's the issue they



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have. DAG stated that under the agenda item, you do not issue a declaratory order. You can continue the hearing to address other issues at a future board meeting. Where we are right now, we do not issue a declaratory order. An order would be issued at the conclusion of the hearing.

Mr. Tomlinson stated the he would like the Board to vote on his application with regard to accepting credit card transactions in their cabs and charge a fee. He said that is his request based on their application. Member Miller asked him if he's changing his application. Mr. Tomlinson stated that if the amount of the fee is a concern of the Board, then he will amend the application to say they are asking for authority to accept credit card transactions within their cabs and charge a fee for that transaction. The Chair asked what happens if they decide to charge \$4.00 tomorrow. Now this Board has tacitly approved you to charge whatever fee you want which is where she is uncomfortable. The Chair hasn't taken any affirmative action saying that what's going on now is okay. Mr. Tomlinson commented that they are not asking the Board to endorse that but to allow them to accept credit cards in their taxicabs and allow them to charge a fee for the transaction. Member Miller said that would be affirmative action. Someone responded that it hadn't been noticed and Mark James replied that it was. Mr. James said they are not amending their application as his counsel had stated, we are asking if we can charge a fee. He stated that they are asking – 1) can they charge a \$3.00 fee and offer this service. They ask in a separate provision for the Board to set the maximum. He told the Board that they don't need to grant the entire application, the way things are going they want the Board to say yes or no. This application was noticed, it was continued, they are 90 days down the road, everyone had time to file briefs and they did sight cases re the Board's authority. They have machines in the cabs and they are ready to go. He said they want to charge a fee so can they charge one. The Chair said everyone knows where she stands but there are other board members who need to give their opinions. Member Miller stated that the Board needs to move very quickly because Frias was put in an unfair situation compared with their peers. Therefore, he is asking that they move very quickly and he is open to a meeting in 2 weeks. Vice Chair O'Brien agrees. Member Forbuss asked what the Board is hoping to find in 2 weeks. The Vice Chair feels that Frias cited authority, but counsel has given them different authority, she would like to reconcile that information to be sure the right decision is made and secondly, get some reconciliation on the charge that has been provided to them and cities that are not charging. That would help them make a better decision.

Cathie Olendorff, counsel for YCS, said she thinks that 2 weeks is too soon. Mark James said it's not fair that the other companies charge a fee and Frias doesn't until a decision is made. YCS does not charge a fee. Member Miller said that argument supports a 2-week window and the Vice Chair agreed. She said a short memorandum reconciling of jurisdictions, have it in the records clearly and whatever other information the Board would want to have. Member Miller stated he thinks the intervenors would want to provide information that supports the \$3.00 charge. Then compare with other cities and talk with staff if it's a reasonable fee. He has a real hard time thinking that some kind of fee is not built into the charges of the other cities. That needs to be investigated also. Member Forbuss stated that that's another issue whether to build it into another fee instead of \$3.00 maybe it'll be 50 cents and pass it along to everybody.

DAG Davis stated that if that's what the board chooses to do, just continue this hearing and we move on to the next agenda item. Member Forbuss said he would make a motion to continue the hearing for April 6th. Everyone agreed to that date including Frias' counsel. The Chair commented that it would disheartening if the Board was to see some charging an outrageous fee for credit card on the meter in light of the 2-week delay. She asked if everyone was aware that this will continue to April 6th at 9 A.M. The DAG will draft a memorandum points and authorities articulating his position that the Board has the authority to regulate the fee within the next couple of days to all the intervenors and you will have the opportunity to submit your opinion so the Board can make a decision on the 6th and the Board will request what additional information they are looking for from staff regarding maximum fee. Jay Nady



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asked if it wouldn't be better to let them charge a fee to be the on the same page as the other companies? Member Miller commented that there is no rule at this point because it was never presented to the Board at the beginning. Therefore, Member Miller commented that if Frias wanted to go ahead for the next 2 weeks they cannot stop them. A determination will be made in the next 2 weeks. Member Forbuss commented that he didn't think Frias would be out of line if they wanted to "launch" right now.

The Chair stated that the DAG will have his memorandum of points and authorities and sent to all intervenors prior to the next meeting. DAG said it would be out by Friday and your replies should be in by the following Wednesday. Then the Board could read the intervenors arguments prior to the meeting as on any other application. The Chair asked for a motion to continue this for 2 weeks.

The following is the Board's motion –

Motion: Motion to continue this for 2 weeks
By: Member Forbuss
Second: Vice Chair O'Brien
Vote: 4:1 with Member John Marushok voting nay

9. Staff Report

Administrator Walker commented there is a process that the Agency is currently going through to review and revise all TA Policies and Procedures with a completion date of June 1st, 2010.

Stats - Kelly Kuzik stated that February was the 6th month in a row that trips have increased and were up 2% for February of 2010 as opposed to February of 2009. The other numbers came up flat which was a push which is better than a decline. Any other declines were less than 1%. There are still increases in trips per shift. With regard to conventions, there were 15 medallions out with an anticipated 170,000.

Two days into the convention, the Administrator reviewed the information that was received daily and they consulted with the industry. The Administrator removed 7 of the 15 medallions and contemplated removing those also but, after consulting with the industry and this convention going into a big weekend, they decided to leave the 8 on the road. The averages were about 25 trips per shift for all the companies.

Chair Michaels stated that only LVCVA attends the meeting to give information on their conventions. She feels that we need to have representatives from the World Market Center. Kelly said they were working on that. Member Forbuss feels that Mandalay Bay and Sands Expo being the 2 largest convention centers in the United States should also be represented. Mr. Kuzik stated that at one time there was someone from the Sands that attended meetings and he will reach out and contact them and to the Mandalay Bay.

10. Report of Legal Counsel

DAG Scott Davis said that the Handicab application remains pending before the NTA. The Chair asked if there was a hearing date and he said he does not have a date. He stated that there is a motion to continue that probably to NTA's May Meeting. The Chair commented that she hopes that the agency is strongly opposing that motion. DAG Davis said that motion is still pending at the NTA regardless of any position we make, the NTA will consider it at the May meeting. He has spoken to the NTA and requested that it be no later than May and no Order has been received on that Motion. The Chair commented that this has been drawn out for a long time.



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11. Adjournment.

Motion to adjourn was made

By: Chair Michaels
Second: Member Forbuss
Vote: Passed unanimously

Respectfully submitted by:

Barbara A. Webb, Recording Secretary Date

Approved by:

Stacie Truesdell Michaels, Chairman Date

Gordon L. Walker, Administrator Date

