

NEW YORK TAXI WORKERS ALLIANCE

AFL-CIO; Intl. Transport Workers' Federation

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August 30, 2024

Honorable Mayor Eric Adams
City Hall
New York, NY 10007

Dear Honorable Mayor Adams,

The **New York Taxi Workers Alliance, Towards Justice and the Open Markets Institute** write on behalf of the New York Taxi Workers Alliance and its thousands of members to urge your administration to cease facilitating Uber and Lyft's anticompetitive conduct, which harms drivers and consumers across the City, and instead stand up for the interests of New Yorkers in the face of the companies' outrageous abuses of corporate power.

First, we have serious concerns about your administration's support for and apparent facilitation of an agreement between Uber and Lyft to coordinate their practice of locking New York City drivers out of the companies' apps.¹ This agreement is a plain violation of black-letter antitrust law, which prohibits companies colluding over wages and suppressing labor outputs. *See* 15 U.S.C. § 1; N.Y. Gen. Bus. L. § 340. The agreement marks a commitment to the companies' ongoing subversion of New York's minimum pay standards. Here, the agreement apparently facilitated by your office entrenches Uber and Lyft's deceptive practices while giving them the imprimatur of City approval, but without any City oversight. Pursuant to this private agreement, Uber will maintain but gradually phase out its lockouts in exchange for Lyft increasing its lockouts.²

As an initial matter, this collusive arrangement allows the companies to maintain artificially low pay by locking drivers out of the companies' apps, thus failing to count all time when drivers have made themselves available to work—time which should be paid under the Taxi and Limousine Commission's (TLC) pay rules. This is a blatant subversion of the TLC pay rules.³

¹ See *Mayor Adams Secures Agreement With Uber, Lyft to put Money Back Into Drivers' Pockets by Drastically Reducing Lockouts* (July 31, 2024), available at <https://www.nyc.gov/office-of-the-mayor/news/604-24/mayor-adams-secures-agreement-uber-lyft-put-money-back-drivers-pockets-by>; David Do, *Putting the "You" in Utilization Rate*. Black Car News (July 29, 2024), available at <https://www.blackcarnews.com/article/an-appreciation-for-accessibility>.

² Although Uber e-mailed drivers yesterday that “[b]eginning September 3rd, we will remove demand-based restrictions to the Uber driver app,” this message doesn’t change the contours of Uber and Lyft’s agreement, which appears to be indefinite. E-mail from Uber to New York City Drivers, “Important Updates to Access in NYC” (Aug. 28, 2024). Indeed, Uber’s e-mail notes that “this change is contingent on Lyft’s performance” and that “we may need to re-introduce demand-based restrictions in the future.” *Id.*

³ Drivers have reported an immediate loss of as much as half their income due to being locked out of the apps mid-shift. Meanwhile, the lockouts are explicitly designed to deprive drivers of income in the long-term by manipulating the data used to set drivers’ minimum payments. *See* Evan Gorelick, *Uber is Locking Out NYC Drivers Mid-Shift to Lower Minimum Payments*, BLOOMBERG (June 24, 2024) available at <https://www.bloomberg.com/news/articles/2024-06-24/uber-is-locking-out-new-york-city-drivers-mid-shift-to-lower-minimum-pay>.

You have seemingly surrendered your role as regulator and permitted in place of regulation a harmful collusive arrangement between powerful duopolists. The only purported benefit to drivers—Uber’s promise to “reduce” lockouts—not only seems unenforceable, but will have little impact on drivers’ working conditions when the tradeoff is that Lyft will have to simultaneously increase lockouts in order to quickly reach a 50% utilization rate.

In addition to its failure to address plummeting driver pay and the companies’ explicit manipulation of the pay rules, this agreement appears to be a blatant violation of black-letter antitrust law. After all, Uber has apparently promised to phase out its harmful, unfair, and deceptive strategy of locking drivers out of the Uber app only in exchange for Lyft continuing to reaching a “utilization rate,” of 50% as measured by the data that has been corrupted by the lockouts—a goal that can only be attained with further Lyft lockouts, considering that Lyft remained below 50% in June even after initiating driver lockouts. This is an illegal agreement among horizontal competitors in restraint of trade.

The harms of the companies’ collusive conduct are far-ranging. The private agreement to maintain lockouts causes harm to consumers and drivers by reducing drivers’ access to the apps while also increasing consumer costs. At the same time as drivers are losing thousands of dollars in income, NYTWA has uncovered evidence that even as the companies lock drivers out of the apps, they also engage in surge-pricing, increasing consumer costs based on an apparent scarcity of drivers.

But the harm doesn’t end there. By locking drivers out of their apps—in direct conflict with their public statements that they provide flexible and independent work that is available whenever the driver wants—the companies have artificially manipulated New York City’s minimum driver pay rates, which are supposed to increase when drivers spend less of their logged-in time actively transporting passengers.⁴ Already, this gaming of the pay rules has led TLC to a record an increase in utilization, based on corrupted, lockout-manipulated data; while drivers have been available to work but are locked out for hours a day, TLC reports paint a picture that Uber drivers are busier than they’ve ever been, leading to an increased year-to-date 53% industrywide utilization rate,⁵ just enough to avoid raising driver pay rates to make up for decreased workloads under the current version of the driver pay rule, which does not require the rate to be adjusted so long as the UR stays within the 53-58% range.⁶ An agreement to decrease the amount of recorded time drivers are available to work is effectively a wage-fixing agreement.

Second, the companies’ collusive practices come in the wake of months of unfair competition in the form of driver lockouts. These companies insist that their drivers are purported independent businesses, but the practice of excluding drivers from the apps at the companies’ whims, especially when designed to suppress minimum wage rates, reveals that the companies exploit their power over drivers to control them and suppress their wages. This not only subverts New York City’s minimum pay standards for rideshare drivers, it also violates laws prohibiting unfair methods of competition.

⁴ See *Uber is Locking Out NYC Drivers Mid-Shift to Lower Minimum Payments*, n 1.

⁵ See *TLC Factbook* (website), at p. 3 of 5, available at <https://app.powerbigov.us/view?r=eyJrIjoiY2FINjI3YWQtMDkzOS00MjliLTk0MTQtODc2NzU4OTYwNjFiIiwidCI6IjMyZjU2ZmM3LTVmODEtNGUyMi1hOTVlTE1ZGE2NjUxM2JiZj9&pageName=ReportSection28c004ce23fc37acd783>.

⁶ See 35 R.C.N.Y. § 59D-22(b).

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Your office has the responsibility to stand up to powerful corporations that flout New York City law to the detriment of workers and consumers. When confronted with the companies' unfair practice of locking drivers out of their apps to undermine driver pay rules, a practice that has resulted in the outcry of thousands of drivers,⁷ the City must strengthen pay rules to protect driver wages and hold the companies accountable. Instead, in this case, you've allowed two private companies to collude and flout the law. The City has not only failed to find a solution for the economic crisis confronting tens of thousands of drivers, it has rested its so-called solution on a private agreement that is in violation of the law, leaving drivers vulnerable while Uber and Lyft continue to actively subvert existing local regulations meant to ensure drivers are paid for all the time they spend at work. The City must rectify this egregious abdication of its duty. Beyond the agreement's legal vulnerability, the right to a dignified living for tens of thousands of Uber and Lyft drivers—the largest private sector workforce in New York City—is at stake.

Sincerely,

/s/ *Zubin Soleimany*
Senior Staff Attorney
New York Taxi Workers Alliance

/s/ *David Seligman*
Executive Director
Towards Justice

/s/ *Brian Callaci*
Chief Economist
Open Markets Institute

⁷ See *Uber and Lyft Drivers Take to NYC Streets to Call For End to “Lockout” Policies*, Democracy Now (July 19, 2024) available at <https://www.democracynow.org/shows/2024/7/19> at 1:09:58.