

**Minority Report of the Commission on Traffic Mitigation**

**January 31, 2008**



## Index

|                                                                                                                                                                                                                                                                                                   |         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| I. Background and Process.....                                                                                                                                                                                                                                                                    | Page 1  |
| II. Commission Research Was Incomplete And Biased, Leaving The Commission Without The Facts And Information Needed To Reach A Rational Conclusion About Congestion Pricing                                                                                                                        | Page 2  |
| III. The Commission Did Not Focus On Its Statutory Mandate To Reduce Congestion And Focused On Tax/Revenue Generation Instead .....                                                                                                                                                               | Page 4  |
| IV. The Commission's Congestion Pricing Proposal Is A Regressive, Unfair, And Selective Tax, That Disproportionately Impacts Working Families And Exempts The Wealthy, Residents of New Jersey and Connecticut, And The Business Community From Their Fair Share Of The Cost Of Mass Transit..... | Page 5  |
| V. The Commission Proposal Does Not Provide For Promised Increased Mass Transit To Absorb The New Riders Congestion Pricing Will Produce. ....                                                                                                                                                    | Page 7  |
| VI. The Commission's Proposal Is Unfair To Residents Of The Outer Boroughs.....                                                                                                                                                                                                                   | Page 8  |
| VII. The Commission's Proposal Exempts Congestion Pricing From Legally Required SEQRA Review, Providing No Evidence Of Environmental Benefits Or Burdens.....                                                                                                                                     | Page 10 |
| VIII. The Commission's Proposal Does Not Adequately Address Neighborhood Residential Parking Permit Systems, Or Other Ways Of Mitigating Parking Problems Near The Zone                                                                                                                           | Page 12 |
| IX. The Commission's Proposals Do Not Adequately Protect Citizens Against Invasions Of Privacy.....                                                                                                                                                                                               | Page 14 |
| X. The Commission's Proposal Does Not Provide Assurance That Revenues Will Be Permanently Used For Mass Transit, Nor Does It Include Limits On Borrowing.....                                                                                                                                     | Page 15 |
| XI. The Commission's Proposal Does Not Provide For Fee Exemptions For Those Seeking Medical Care, The Religiously Observant Or Others.....                                                                                                                                                        | Page 16 |
| XII. The Commission Proposal Contains No Rational Way Of Collecting Fees From Those Without EZ-Pass .....                                                                                                                                                                                         | Page 17 |
| XIII. There Is Substantial Evidence That The Proposed Fee Is Too Small To Reduce Congestion And Will Be Rapidly Increased.....                                                                                                                                                                    | Page 18 |
| XIV. The Commission Did Not Fairly Or Adequately Consider Congestion Rationing, Other Broad-Based Revenues, Or Other Alternatives.....                                                                                                                                                            | Page 19 |
| XV. Alternative Revenues.....                                                                                                                                                                                                                                                                     | Page 19 |
| XVI. Conclusion.....                                                                                                                                                                                                                                                                              | Page 20 |

## I. Background And Process

The Traffic Congestion Mitigation Commission was created by statute in June of 2007 in response to a request by Mayor Michael Bloomberg for state permission to implement congestion pricing and other parts of PlaNYC 2030, and after his repeated attempts to enact enabling legislation before the end of the 2007 Regular Session. After the Mayor made his request, the Assembly held legislative hearings, and a Report was issued by Assemblyman Brodsky describing differences between the Mayor's public statements and PlaNYC, and raising concerns about the proposals.

Because serious questions about congestion pricing were unanswered, the Commission, with the support of the Mayor<sup>1</sup>, was created to "undertake a review and study of plans to reduce traffic congestion and other related health and safety issues within the city of New York, including but not limited to issues relating to the implementation of the traffic mitigation plan to be developed and submitted by the mayor of the city of New York."<sup>2</sup>

Revenue raising was not part of its statutory mandate. However, Chairman Marc Shaw indicated that finding revenue for mass transit was an important goal for him. "There are two ways to reduce congestion," Marc Shaw said. "Either have fewer people going to work...or find more productive ways to get people to work. That means mass transit, and finding a source of revenue for the MTA capital program."<sup>3</sup>

The Commission held initial hearings in the five boroughs and the northern and eastern suburbs as required by statute. These hearings were repeatedly criticized as inadequately noticed and scheduled, especially in the outer boroughs.

At the January 16 hearing at Hunter College New York City Councilmember Jessica Lappin stated,

While I appreciate the chance to speak, there are many people who are not here this afternoon to share their concerns. Due to lack of, or inadequate notice, people all over the city of New York have been effectively silenced. Congestion pricing will dramatically impact this city, and every New Yorker should be given a fair chance to testify.<sup>4</sup>

Veronica Vanterpool of the Tri-State Transportation Campaign criticized the scheduling of the Bronx October 31 hearing in particular,

I am submitting written testimony this evening, in lieu of being able to testify in person, due to the inconsiderate and inopportune scheduling of this hearing. This evening's hearing conflicts with Halloween which is both a family day for those who choose to go trick-or-treating with their young ones and a day many individuals, such as senior citizens, choose to

---

<sup>1</sup> It should be noted that most appointees of the Mayor, City Speaker, and Governor were outspoken supporters of PlaNYC. According to a July 23, 2007 article in Crain's New York Business, "The political deck [of the Commission] is likewise stacked in favor of congestion fees." Also, a August 22, 2007 New York Times article comments that, "The commission includes two other members appointed by the governor, who has endorsed the mayor's proposal, three members appointed by Mayor Bloomberg and three appointed by City Council Speaker Christine C. Quinn, who has also supported the plan. It would appear from those appointments that the mayor can count on a majority of commission members to back his plan." Congressman Anthony Weiner also commented that "This commission has been stacked in favor of the mayor," in a January 9, 2008 New York Sun article.

<sup>2</sup> Chapter 384 of the Laws of 2007

<sup>3</sup> Newsday, "New Spin on congestion pricing plan" December 7, 2007

<sup>4</sup> Hunter College Hearing, January 16, 2007

stay home. Tonight's hearing is a feeble attempt at soliciting public feedback in a borough that has a lot to say about congestion pricing.<sup>5</sup>

After release by staff of five alternatives, the Commission scheduled a single hearing in Manhattan. After strongly worded requests from Commissioner Cook among others, an additional six hearings were scheduled in the outer boroughs and the suburbs, all held on the night of January 24.<sup>6</sup>

Assemblymember Rory Lancman criticized the Commission for the scheduling of these final public hearings.

This is something that will have an enormous impact on New Yorkers, and I think that the commissioners have an obligation to spend a few more nights listening to what the people have to say in each community. I assume that the public will be extremely disappointed that the Commission didn't take advantage of the opportunity to listen, to have an open honest comprehensive discussion about how to reduce congestion.<sup>7</sup>

Staff work was mostly done by employees of New York City. Requests for public meetings between Commissioners and City staff, and requests for information on several areas suggested by Commissioners and the public were largely rejected.

Until the final Commission meeting, all Commission meetings were for the sole purpose of receiving City staff reports. No deliberative sessions were held.

## **II. Commission Research Was Incomplete And Biased, Leaving The Commission Without The Facts And Information Needed To Reach A Rational Conclusion About Congestion Pricing**

The research and information available to the Commission was controlled by the City of New York, was largely based on a computer model controlled by the City, and was managed to ensure favorable consideration of congestion pricing and unfavorable consideration of alternatives. Requests for important facts and data were either ignored or rejected. In an October 4, 2007 letter, Commissioners Farrell, Cook, and Brodsky asked for an objective assessment of who was actually driving in the Zone and of the air quality impacts in communities outside the Zone. The letter also requested information regarding how mass transit service enhancements will be funded and what communities will receive them. No such information was sought or provided by the Commission. To this day the Commission does not know who actually drives in the zone, where they start and end up, and at what time of day they drive.

Other elected officials also found difficulty soliciting information from the Commission. Senator Liz Krueger commented, saying that

Given the enormous potential impact on millions of people, one would expect this Commission to bend over backwards to solicit feedback, answer questions, and address the concerns of the public and the legislature. To date, this is not happening.<sup>8</sup>

---

<sup>5</sup> October 31, 2007, Hostos Community College Hearing at 5

<sup>6</sup> [https://www.nysdot.gov/portal/page/portal/programs/congestion\\_mitigation\\_commission#plan](https://www.nysdot.gov/portal/page/portal/programs/congestion_mitigation_commission#plan)

<sup>7</sup> "Queens pols weight in on congestion pricing." Queens Courier. January 23, 2008

<sup>8</sup> Hearing at Hunter College, October 25, 2007, distributed prepared testimony

Senator Bill Perkins spoke out about his concerns that the public had been deprived of necessary information,

The mayor tried to jam this down our throats without details. It wasn't simply the aggressive, self-righteous process that the mayor employed; it was the substance as well."<sup>9</sup>

Assemblyman Micah Kellner expressed concerns as well,

I can not help but observe that once again the critical details are missing – *none* of the five plans in the Interim Report adequately addresses the kind of concerns my constituents and I have raised regarding the preparations for any congestion pricing program, the equitable and efficient operation of such a program, and the use of the revenue the program would generate.... the public understands that when big ideas are implemented without enough attention to detail, it's the public who pays the price.<sup>10</sup>

In letters dated November 27, 2007 and December 12, 2007, Commissioner Brodsky noted the Commission's "consistent opposition to seeking information and to public briefings." The letter again requested a public briefing from the City, as well as an Origination and Destination study, which would provide information regarding who is traveling in the zone, and when they drive. Both requests were again ignored.

On many key issues, city staff analysis of data was incomplete and manipulated.

For example, the City used different analytical tools to answer different questions. The computer model was used on some issues, such as vehicle miles traveled, and "spreadsheets" were used for others, such as taxi impacts, not allowing data to be fairly compared. The City also made unfavorable assumptions for ideas for reducing congestion that they did not like, unfairly reducing the viability of those ideas.

A key example of data manipulation is the dispute about the impact of commuters on congestion. The City repeatedly and intentionally confused income and travel data for all who travel in the Zone, with the same data for "commuters" (those who regularly travel to work in the Zone). Since commuters make up only 15 to 18% of Zone travelers, any general conclusion about congestion cannot be drawn from data about commuters only.

Another key example is the City staff summary of the results of its Request For Expressions of Interest from purveyors of congestion pricing systems was inconsistent with the actual responses. It failed to disclose major criticisms of the Mayor's proposal, especially on the size of the fee needed to deter Zone travel, the ability to manage payment by non-EZ-Pass drivers, and the reliability of recognition technology. In addition, the City Staff report did acknowledge concerns about the ability of purveyors to meet Federal and other deadlines, but shrugged them off as suggesting the deadlines were "ambitious," rather than accurately reporting the real fear that the March 2009 implementation date could not be met. IBM's RFEI warns that, "To have a system of such complexity designed, developed, implemented, tested and launched before the U.S. Department of Transportation's desired start date at

---

<sup>9</sup> Press quote from Senator Perkin's website ([http://www.nyssenate30.com/press\\_archive\\_story.ask?id=1726](http://www.nyssenate30.com/press_archive_story.ask?id=1726))

<sup>10</sup> Hunter College Hearing, January 16, 2007

the end of Spring 2009 would be very challenging for a full scheme implementation.”<sup>11</sup>

The Majority Report continues the practice of misstating the work of both City staff and the Commission. A first review of the Majority Report reveals many distortions of the truth.

- It again obscures the truth about fairness and regressivity by cleverly focusing only on the 15% to 18% of Zone drivers who are commuters, rather than the overwhelming majority who are not. (“In terms of economic equity, the Commission’s plan will negatively impact a small proportion of New Yorkers of limited income: those who drive to work in the CBD and have no feasible transit alternative. This group represents less than one percent of all commuters to the CBD.”)
- As discussed elsewhere, The Majority Report fundamentally misstates the work of the staff and the Commission on environmental and public health matters.
- It describes the choice of the five alternative plans as a Commission choice, when it was in fact a choice made by City staff (Note that the title of the Interim Report is a Report “To” the Commission, not a Report “of” the Commission.)

In sum, the factual data needed to determine the causes, kinds, location, and reasons for congestion was not sought, and the data was manipulated and distorted in the interest of a pre-determined result, leaving the Commission unable to reach rational and defensible conclusions.

### **III. The Commission Did Not Focus On Its Statutory Mandate To Reduce Congestion And Focused On Tax/Revenue Generation Instead**

At various times, Commission leadership and some Commission members have taken inconsistent and contradictory positions on whether or not the Commission was charged with developing revenue sources for mass transit. The enabling statute does not include revenue generation as a Commission goal. After initially indicating that revenue generation was a goal of Chairman Shaw, he and several other Commissioners repeatedly criticized attempts by Commissioner Brodsky to analyze and even discuss revenue measures and broad based taxes other than congestion pricing. Eventually staff did a cursory review of some non-congestion pricing revenues, but not in the forms suggested by proponents.

Repeatedly, City staff focused on raising taxes rather than reducing congestion. For example, the Commission chose to eliminate the intra-Zone fee, which would have reduced the intra-Zone congestion. It replaced that fee with a variety of revenue-raisers such as a residential parking tax, which have no effect on congestion reduction. According to Dr. Falcoccio, a professor of transportation planning at Polytechnic University in Brooklyn and a supporter of congestion pricing “the City is not really counting on congestion reduction, as much as it is counting on revenues to improve the total transportation system, which then is a different message, as far as I’m concerned.”<sup>12</sup>

In sum, it remains an open question as to whether the Commission is authorized to discuss revenue measures, although the need for transit and transportation revenues across the state is clear. The Commission Majority admits that revenue generation “... was one of the main objectives sought by the

<sup>11</sup> IBM, “Expressions of interested: Implementation of New York City’s Proposed Congestion Pricing Plan.” Page 32.

<sup>12</sup> NYS Assembly Hearing, June 8, 2007 at 166-169.

Commission.” This is a profound understatement. The Commission admits that the congestion rationing plan would produce a greater reduction in congestion and a greater reduction in pollution than congestion rationing. Revenue generation is the only reason to recommend a plan that is inferior in its outcomes and otherwise so unfair and damaging to communities around the region. Revenue generation has become the fundamental purpose of the Commission’s recommendation.

#### **IV. The Commission’s Congestion Pricing Proposal Is A Regressive, Unfair, And Selective Tax, That Disproportionately Impacts Working Families And Exempts The Wealthy, Residents of New Jersey and Connecticut, And The Business Community From Their Fair Share Of The Cost Of Mass Transit.**

Congestion pricing is a market-based approach to the problem of urban congestion. It is based on the unremarkable proposition that by raising the price of travel in the Zone, certain people will be deterred from automobile use, and will choose to use mass transit instead.

Those who will change their behavior will be those for whom the additional charge is a substantial economic burden, while those who can easily afford it will not change their driving habits. It is equally unremarkable to conclude that those forced to change their way of travel are poor and moderate-income drivers, while wealthy drivers will pay the fee and continue to drive.

The flat fee of \$8 to \$21 proposed by the Commission is a regressive tax. A regressive tax by definition is a tax that takes a larger percentage of the income of low-income people than of high-income people.

Four particular facets of the pricing scheme exacerbate the regressivity and unfairness of the Commission’s proposal. First, it is a flat fee paid by all regardless of income. Second, those who pay tolls on other facilities are exempted from the fee, intensifying the unfairness because those in New Jersey, Connecticut, Westchester and Long Island tend to be wealthier than those in the outer boroughs who must pay the new fee. Third, there are clear wealth distinctions between the outer boroughs and Manhattan, and the decision to remove the intra-Zone fee increases the regressivity of the scheme. Fourth, the single largest group of contributors to congestion, taxi users, whose average income is higher than the average driver, is largely exempt from the fee.

There has been substantial public concern about the regressivity of congestion pricing. Dr. Falcochio, suggests that “some very serious studies should be conducted to identify who these people are to make sure that...those people who are least able to pay can still get into Manhattan to do their thing.”<sup>13</sup>

Bob Friedrich, president of the Board of Directors of a co-op in Queens said,

The vast majority of residents in our community, which is a working class community, we are not wealthy, we are working class people, we are opposed to it. This is an imposition of a lot of money on working class people. ... It is a regressive tax. It's not the way to do it.<sup>14</sup>

Assemblyman Micah Kellner also expressed concerns about the regressive nature of congestion

<sup>13</sup> NYS Assembly Hearing, June 8, 2007 at 136.

<sup>14</sup> Hofstra University Hearing, October 24, 2007 at 61-62.



pricing:

Corporate New York will benefit tremendously from a reduction in traffic congestion; it's only fair to ask that New York's businesses make a proportional share of the sacrifice.<sup>15</sup>

"The tax hurts those New Yorkers who are on fixed incomes, like seniors," said New York City Councilmember David Weprin, "it hurts those individuals and their families who have to travel to Manhattan's various hospitals for treatment; it hurts single mothers already struggling to provide for their child."<sup>16</sup>

Congressman Anthony Weiner expressed his concern on congestion pricing's impact on the middle class, saying that "Calling it capitalism and equating this with the choice to see a move misunderstands -again- the lousy choices so many in the middle class and those working to make it have."<sup>17</sup>

Weiner has also said that "We must look at innovative ways to face the challenges created by the city's own success, but a regressive tax on working middle class families and small business owners shouldn't be one of them."<sup>18</sup>

In response to concerns about regressivity, congestion pricing proponents have argued that since the funds will purportedly be used in the interest of mass transit users, and mass transit users as a group tend to make less than those paying the fee, we need not be concerned with fairness issues. The best that can be said about that argument is that it misses the point. If the beneficial use of tax revenues made a tax progressive, then the property tax, used primarily to educate our children, would be the most progressive tax.

If revenue generation is a valid goal, than all those who benefit from mass transit should contribute, not only those who use the systems. High employment businesses, large retail businesses, tourist-based business, and especially the real estate industry receive enormous benefits from mass transit. Yet this Commission completely excuses them from making any contribution to mass transit.

In this case fees of \$8 and \$21 dollars for private and commercial users respectively are proposed, an annual charge of about \$2000 annually (If this dollar increase was translated into an increase in the state income tax rate it would be about a 60% increase in the effective state tax rate), for the 15% to 20% of zone travelers who are believed to be commuters to work, and \$6000 for commercial users. This additional tax will be levied in addition to the recently enacted increase in MTA and Port Authority mass transit fares and tolls. The Commission grudgingly acknowledges the regressivity of its' recommendation, but fails to address any remedy, blandly suggesting "... that the State Legislature consider changes to State tax policy so as to mitigate any disproportionate impacts of the plan on drivers of limited income." The Majority fails to calculate the cost of such a tax change. It fails to require such mitigation. It most conveniently fails to reduce its' estimate of net revenue available for transit by the cost of any such change in state tax policy. It could not do so if a full SEQRA review was required.

Congestion pricing raises profound questions of fairness. The burden of addressing the economic and

---

<sup>15</sup> Hunter College Hearing, January 16, 2008

<sup>16</sup> York College Hearing, October 30, 2007

<sup>17</sup> "Congestion pricing opposition builds." Crain's New York Business. April 23, 2007.

<sup>18</sup> "City Hall Floats New Traffic Master Plan." Courier Life Publications. April 25, 2007

public health consequences of congestion should not be distributed based on income. Access to the public streets of Manhattan should not be easier for the rich and tougher for the poor and middle class. The Commission's failure to seriously address its' regressive, unfair and class based approach to congestion mitigation is itself a fatal flaw in its work.

#### **V. The Commission Proposal Does Not Provide For Promised Increased Mass Transit To Absorb The New Riders Congestion Pricing Will Produce.**

Mayor Bloomberg, Commission Members, and supporters of congestion pricing have acknowledged that it will not work unless there is an increase in available mass transit in place *prior* to the implementation of congestion pricing. Lord Mayor of London Ken Livingston, a leading supporter of the Mayor's proposal, has cautioned that enhanced mass transit is a "precondition" for the successful implementation congestion pricing.

In London, as will be the case in New York or any other city, an enhanced public transportation system was critical. To ensure readiness, we made significant upgrades to public transport. Our investment focus on enhancing London's bus system, rather than the subway, because we needed to increase capacity in the quickest most cost-effective way.<sup>19</sup>

Dr. Folcocchio added, "An improved system, that should be there before the congestion pricing is going to be implemented."<sup>20</sup>

Mayor Bloomberg agreed, stating, "we'll do the mass transit improvements before we institute congestion pricing."<sup>21</sup>

New York City Councilmember John Liu warned that public transportation needs to be improved before congestion pricing is implemented, supporting "alternative forms of mass transit that do not require huge capital outlays. Only then can we look people in the face and say, 'look, you have mass transit options.'"<sup>22</sup>

Andrew Darell, director for the Living Cities Program, cautioned that prior transit improvements are a must, "One of the most important things about doing a congestion pricing program is to have new transit opportunities in place ahead of time."<sup>23</sup>

Senator Liz Krueger also expressed concerns, saying "Since we clearly do not want to discourage people from living in, working in or visiting our City, we can not simply increase the costs of driving and expect a major decrease in congestion unless we increase public transportation options. Commuters from outside the City must have reliable train and bus service and places to park their cars near their home community rail and bus stations."<sup>24</sup>

---

<sup>19</sup> "Clear Up the Congestion-Pricing Gridlock," Op. Ed. The New York Times, July 2, 2007.

<sup>20</sup> NYS Assembly Hearing, June 8, 2007 at 135.

<sup>21</sup> NYS Assembly Hearing, June 8, 2007 at 81.

<sup>22</sup> Drum Major Institute public forum, May 18, 2007

<sup>23</sup> CUNY Graduate Center Auditorium Public Hearing, June 15, 2007

<sup>24</sup> Hearing at Hunter College, October 25, 2007, distributed prepared testimony

At the public hearing in White Plains on October 24, 2007, Lawrence Salley, commissioner of the Westchester County Department of Transportation said, "We have seen estimates of expected road-to-transit trip diversions in the northern suburbs that range from 2,500 commuters per day to 7,000. While those numbers are small relative to the number of diversions anticipated in New York City, they would inundate the existing access systems for Metro North stations and overwhelm the bus service provided by the Westchester Bee-Ling to Manhattan and to the Bronx subways. We do not have any combination of parking spaces and/or buses that can accommodate those riders. Nor do we have any potential source of funds to create them."<sup>25</sup>

The MTA and DOT, pursuant to the statute, presented plans for such increases (although there were serious criticisms made of these plans for their adequacy and fairness, especially to the outer boroughs). The cost of such increases was estimated at around \$1 billion dollars. The Commission makes no commitment to such a plan, nor provides funding for it.

Assemblyman Rory Lancman commented on this lack of commitment, saying that "the MTA report to this Commission illustrates how there will be virtually no real new mass transit options offered to Queens residents before they are hit with this tax."<sup>26</sup>

"We cannot be lulled by assurances that the MTA will take care of everything," said Assemblyman Micah Kellner. "We need guarantees as to what services will be expanded and how the expansion will be financed, and we need a concrete requirement that no congestion pricing program will be implemented until and unless certain benchmarks for service enhancement have been achieved."<sup>27</sup>

The Commission Majority again grudgingly recognizes that it breaks the promise made to fund mass transit improvements prior to implementation of congestion pricing. It first speaks of the MTA plan (it does not even recognize the existence of the DOT plan, which focuses on communities outside of New York City), offering only vague support for the unfunded, skeletal and inadequate MTA plan. It then explicitly rejects funding for the operating costs of that plan ("These funds should only be used for capital investments." "Funds should be used for both new capital expenditures and for debt service associated with those expenditures."), leaving the MTA with no way to pay for hundreds of millions of dollars in these new costs. It also again disingenuously fails to reduce its' claimed net revenues available for transit by these new costs, something it could not do if a SEQRA review was required.

The Commission Majority, in spite of eloquent pleas from all regions, fails to recommend the immediate mass transit improvements that supporters of congestion pricing believe are essential to a successful program. It leaves the existing systems unable to absorb new users, especially in the outer boroughs and the suburbs, and breaks the promise made by Mayor Bloomberg.

## **VI. The Commission's Proposal Is Unfair To Residents Of The Outer Boroughs.**

The Commission's Plan is fundamentally unfair to residents of the outer boroughs for four reasons. First, the fee is disproportionately paid by residents of the outer boroughs. Second, the promised immediate improvements in mass transit prior to congestion pricing implementation are inadequate in the outer boroughs and have not been funded. Third, the long-term capital improvements do not

<sup>25</sup> NYC Traffic Congestion Mitigation Commission transcript, January 24, 2007

<sup>26</sup> York College Performing Arts Center Public Hearing, October 30, 2007, at 23-24

<sup>27</sup> Hunter College Hearing, January 16, 2007

primarily benefit the outer boroughs. Fourth, toll offsets leave New Jersey, Connecticut, Long Island and Northern suburb drivers largely unaffected, while outer borough residents pay.

Congestion pricing, as proposed by the Mayor, was intended to have a disproportionate impact on residents of the outer boroughs. The Mayor candidly admitted that the purpose of congestion pricing is to "equalize" the cost of travel into Manhattan by requiring new payments from those who use the East River bridges, while excusing those who already pay tolls on other facilities. The Commission's congestion-pricing scheme implements the Mayor's objective, ensuring that residents of the outer boroughs pay the fee disproportionately.

According to data from the 2000 Census, residents of the Bronx who commute to Manhattan by car make about \$39,500 on average, residents from Brooklyn who commute to Manhattan by car make roughly \$41,000 and those from Queens make about \$43,000. On the other end of the spectrum are those who commute to Manhattan by car from Connecticut, making average of \$163,000 annually and those who commute from Essex county, making roughly \$103,000.<sup>28</sup>

Yet the fee will be paid largely by the residents of the Bronx, Brooklyn, Queens, and Staten Island and not by those in New Jersey and Connecticut.

Assemblymember Jeffrey Dinowitz commented that

The idea that people from New Jersey pay less than people from the Bronx is really outrageous. Very few people from the Bronx pay a toll to get into Manhattan. Therefore, they would not benefit from this toll offset whereas people from Jersey pay anywhere from four to six dollars to go over the GW bridge. So they would pay between two and four dollars for congestion pricing whereas most Bronxites would pay eight dollars. You can't include that in any plan that may be passed in the future. It's discrimination...<sup>29</sup>

The failure to identify mass transit improvements in the outer boroughs before and after implementation of congestion pricing exacerbates that unfairness.

According to Assemblymember Dinowitz,

There was only one [mass transit] improvement that they talked about in the Bronx, and it was not even the West Bronx, it was the East Bronx, which is nice, but as far as the area that I represent, there is not a single mass transit improvement that I'm aware of up until now, and I see no reason to believe that they're going to suggest any improvement in the near future.<sup>30</sup>

Senator Diane Savino commented on congestion pricing's unfair effect on the outer boroughs,

We know that this tax is going to disproportionately impact the outer boroughs and working class New Yorkers, people who can least afford it, the people who cannot afford another dollar in fare, another toll increase. The people who can't afford it because they are just making ends meet now. You know, people who are in Brooklyn who come here to visit their families pay \$9 now to cross the Verrazano Bridge - \$9. As residents we pay half that fare but

---

<sup>28</sup> 2000 U.S. Census

<sup>29</sup> Hostos Community College Public Hearing, October 31, 2007

<sup>30</sup> Hostos Community College Public Hearing, October 31, 2007

we are also the only borough in the city that does not have free access to Manhattan.<sup>31</sup>

Furthermore, the decision to eliminate the intra-Zone fee, coupled with the addition of a fee on the FDR and Westside highways intensifies regional discrimination. The decision to permit toll offsets against the new fee (“...the value of all tolls paid on MTA or Port Authority bridges and tunnels would be deducted from the fee up to \$8”) further disadvantages City residents, while dramatically reducing the contribution of residents of New Jersey, Connecticut, the Hudson Valley and Long Island make to mass transit funding.

The Commission Majority simply ignores the unfairness to residents of the outer boroughs caused by the toll offset, the failure to provide mass transit alternatives in the outer boroughs, the disproportionate impact of the new fee on outer borough residents. It makes one grudging admission about the repeated calls for regional fairness, although it does nothing about it. Focusing on New Jersey and some Hudson Valley residents, the Majority suggests that “...the State Legislature consider the concerns raised by some Commissioners regarding the contribution of commuters from west of the Hudson River to the MTA Capital Plan.”

The fears expressed by so many have been realized. The Majority proposal enshrines in public policy the fundamentally unfair policy that the costs of mass transit should be borne disproportionately by residents of the outer boroughs, whose mass transit needs are at least as great as those in Manhattan and who get little in terms of improved service from their plan.

## **VII. The Commission’s Proposal Exempts Congestion Pricing From Legally Required SEQRA Review, Providing No Evidence Of Environmental Benefits Or Burdens.**

The environmental consequences of congestion pricing are unknown. It makes intuitive sense that less auto traffic in the Zone will create less pollution in the Zone. But it is not clear if pollution is reduced or merely shifts to communities outside the zone. Its impact region-wide and especially in outlying communities have not been analyzed, in spite of requests by Commissioners and the public that such analyses be done. Assemblymember Ellen Jaffee cites “no required environmental review” as a “disturbing” aspect of the Commission’s plan.<sup>32</sup>

In spite of this the Commission proposes to exempt congestion pricing from SEQRA, and is supported by some environmental organizations. “It’s critical that we do this environmental impact study over the course of the project, the pilot,” commented Marcia Bystryn, the Executive Director of the New York League of Conservation Voters.<sup>33</sup>

Bland assertions of overall air quality improvement simply prove, once again, the wisdom of the State Environmental Quality Review Act, which currently requires a full environmental review of any congestion pricing proposal. The insistence of congestion pricing proponents that it be exempted from SEQRA is an enormous environmental and political setback.

For some leaders of the environmental community, SEQRA applies only to those projects they do not

---

<sup>31</sup> College of Staten Island Public Hearing, November 5, 2007, at 43-44

<sup>32</sup> Westchester County Center Hearing, October 24, 2007

<sup>33</sup> CUNY Graduate Center Auditorium Public Hearing, June 15, 2007

support. This leaves decision-makers completely in the dark about the actual environmental and public health impacts, and will come back to haunt public health advocates when other less politically correct and politically supported projects seek similar exemptions. Many members of the Assembly have expressed interest in applying SEQRA to any congestion pricing proposal put forth, as well as concern for the negative effects congestion pricing would have on the outer boroughs.

Assemblywoman Nolan stated, "I think there are a number of things in this bill that in my opinion are extremely problematic for a district in a neighborhood like mine. ...I think it needs an environmental impact statement."<sup>34</sup>

Speaker Silver questioned the lack of information about health benefits in June, stating "The children of the South Bronx, Bedford-Stuyvesant and Harlem, among others, are the ones who have been exposed to a lot of pollutants," he said. Not only would those neighborhoods not benefit from the plan, he said, "some of those areas will become parking lots with people driving around the neighborhoods looking for parking spots in order to avoid congestion pricing fees."

"There is a plan that can be put together that would obviously alleviate the environmental negativism of what takes place in Manhattan right now," he said, but added that it could be done "with or without" congestion pricing.<sup>35</sup>

Assemblyman Ruben Diaz Jr., a Bronx Democrat said he was concerned that congestion pricing could mean "that folks from other places are going to park their cars in my community" or that the toll would end up being a tax on his constituents without much benefit.<sup>36</sup>

The longest single portion of the Majority Report is dedicated to a tortured attempt to justify the gutting of SEQRA, that was apparently drafted by representatives of a leading environmental organization. While a more detailed analysis of the Majority's SEQRA exemption will be available shortly, the Majority makes two breathtaking assertions about environmental review.

The first is that the work by City staff constitutes valid and unbiased environmental analysis.

During the course of its work, the Commission undertook processes that, in effect, addressed many key elements of the SEQRA/CEQR process.<sup>37</sup> The Commission determined that its plan would have a beneficial impact on the environment by reducing auto traffic and vehicle emissions both in the congestion pricing zone and citywide.<sup>38</sup> Several laws have provided that the full SEQRA process is unnecessary when other processes have fully analyzed a project's environmental impacts in a public setting,...

---

<sup>34</sup> NYS Assembly Hearing, June 8, 2007 at 116.

<sup>35</sup> "Silver Challenges Health Benefits Promised in Manhattan Toll Plan." New York Times, June 12, 2007.

<sup>36</sup> "Silver Challenges Health Benefits Promised in Manhattan Toll Plan." New York Times, June 12, 2007.

<sup>37</sup> The Commission held two sets of public hearings and received comment on the environmental impacts of congestion pricing, mitigation measures, and alternative congestion mitigation plans. Public comment was incorporated into the Commission's ten evaluation criteria (which included environmental impacts), its research agenda, and the five alternative congestion mitigation plans selected for further review. Agency staff have conducted traffic and air quality impact analysis on each of the five alternatives, and made these analyses available for public review and comment.

<sup>38</sup> The plan would also generate funding for short and long-term transit improvements; further encouraging transit use and supporting the environmental goals of the program and benefiting the City's environment and economy. Congestion pricing, like all of the four alternatives plans considered, may cause an increase in park-and-ride activity in neighborhoods adjacent to the zone. However, these neighborhoods would also experience a significant reduction in through-traffic heading to Manhattan.

The Commission did none of those things, and the Majority's claim that it did is grossly untrue. City staff used a computer model that predicts traffic behavior. It never assessed the amount or nature of traffic and pollution in, near, or outside the Zone, the traffic patterns that were likely to arise in communities around the city, the air quality impacts of those patterns, the health impacts, especially asthma rates, the availability and impacts of alternatives, ways of mitigating those negative impacts, or any of things required by SEQRA. And the Commission itself, in spite of repeated and specific requests by Commissioners, did not do any environmental reviews of any kind. The Majority's assertion otherwise is untrue.

The second extraordinary assertion is that no alternatives to congestion pricing can be considered in the bowdlerized review it proposes to undertake. "... the Commission's alternatives analysis and public outreach should serve as the foundation of the environmental review. "... The approved plan should serve as the preferred alternative for the environmental review process." The extraordinary quality of this assertion can be seen in the simple fact that City staff concedes that the congestion rationing proposal reduces congestion and reduces pollution more than congestion rationing. Yet a fair analysis of congestion rationing is foreclosed by the Commission Majority. The only conclusion that can be reached is that the Majority is less interested in reducing congestion and pollution, and more interested in raising revenues. A full SEQRA review would prevent that.

The essential purposes of SEQRA are two, to ensure a complete and fair measurement of environmental consequences and to ensure that alternatives are fairly considered. The Majority seems to assume that its' recommendation cannot survive such a fair and thorough analysis. It is right in that assumption.

Furthermore, in a worsening of the Mayor's initial proposal, the Majority removes any pretense of this being a "pilot program". Final approval of this plan occurs prior to any environmental review.

The Commission Majority, in its' haste to force its' views on the people of the the region, undermines the single best tool to protect the health and safety of the citizenry that the

Legislature has ever devised. It would be bad enough if the negative impacts of congestion pricing were the only price we would pay. It is inevitable, if this recommendation becomes law, that we would receive similar requests from those who think their projects are equally important. Proponents of new power plants, new sewage facilities, new economic development projects would line up for similar exemptions. And the historic result of such unprincipled policies would be that the rich and powerful would end up making decisions that impact working communities. We cannot, in good conscience, permit such a result.

If congestion pricing is such a good thing, let it be subject to the same kind of reviews that the law requires of projects that impact the lives of our citizens. If it does in fact reduce pollution, let the inquiry that we require of others be applied to it. Let the truth decide what is in the public interest. The Majority turns its' back on those principles.

#### **VIII. The Commission's Proposal Does Not Adequately Address Neighborhood Residential Parking Permit Systems, Or Other Ways Of Mitigating Parking Problems Near The Zone.**

The Commission has been repeatedly asked about and urged to consider the impacts of congestion

pricing on adjacent or nearby communities that would be affected by a congestion-pricing Zone. In addition to concerns about the lack of an environmental impact statement, citizens and representatives of northern Manhattan, Queens, Brooklyn, and the Bronx gave sharp testimony about the dangers of park and ride behaviors.

“A big concern is people will park in Astoria and Long Island City and hop on a train [to Manhattan],” said Assemblyman Michael Gianaris. “I would hate to displace [traffic congestion] problems of Midtown Manhattan to us.”<sup>39</sup>

Senator George Onorato commented that “We would be the parking lot for all the Long Island commuters.”<sup>40</sup>

Assemblyman Hakeem Jeffries, from Brooklyn, has voiced concerns for many of his constituents when he testified at a public hearing in November.

... neighborhoods such as Fort Green and Clinton Hill risk becoming parking lots for commuters from South Brooklyn, Queens, and Long Island who seek to evade the toll by driving into our neighborhoods, parking their car and taking the short subway ride into Manhattan. This prospect is especially disconcerting given the Mayor’s argument that congestion pricing will improve the environment. A plan without residential permits stands the risk of increasing traffic in Fort Greene, Clinton Hill, and Bedford-Stuyvesant, neighborhoods that already have some of the highest asthma rates in the city. Increased traffic and its accompanying air pollution will only make an unacceptable problem worse.<sup>41</sup>

There was similar sharp testimony, although divided into supporters and opponents, on the merits of residential parking programs for affected communities. Supporters viewed them as essential to the health of and fairness of these outlying neighborhoods. Opponents argued that this would merely extend the problem to the next outlying neighborhood, would make shopping by outsiders difficult if not impossible, and would be an additional charge on a neighborhood already suffering from the effects of congestion pricing.

Assemblyman Micah Kellner expressed concerns of the Commission’s lack of specifics with regards to a possible residential parking permit program,

The mayor’s administration continues to give us vague assurances that the City will ‘work with local communities’ to address parking problems created by congestion pricing, including residential parking permits as a ‘possible solution.’ This is unacceptable. Neither the Mayor’s plan nor the Commission’s alternative congestion pricing plan includes specific steps to institute a residential permit program.<sup>42</sup>

Residential parking programs have also been criticized for discriminating against those who would not receive permits including employees of businesses in residential neighborhoods, customers of local businesses and visitors to local residents.

---

<sup>39</sup> Town Hall meeting, The Queens Gazette, January 16, 2008

<sup>40</sup> Town Hall meeting, The Queens Gazette, January 16, 2008

<sup>41</sup> Public Hearing at NYC Tech Klitgord Auditorium, November 1, 2007

<sup>42</sup> Hunter College Hearing, January 16, 2008



Assemblywoman Catherine Nolan argued that “residential parking...is not the answer. It inhibits movement between neighborhoods and I do not support that.”<sup>43</sup>

On the other side of the issue is New York City Councilmember Oliver Koppel, who stated that “if you gave residents of the neighborhood parking permits, not only would that discourage people from outside the neighborhood coming in and parking, but it would be a boon to the people who live in the neighborhood.”

The Majority recommendation on residential permit parking is unclear. It seems to endorse such a program, urging “... the State pass legislation authorizing New York City to implement RPP.” However, it seems to endorse the current actions by City DOT, which have never set forth clear standards as to who would get such a program, who would decide, and includes a significant fee paid by community residents to the City General Fund, not for transit purposes. “NYCDOT is currently developing a citywide parking policy through a community planning process. Under the policy, neighborhoods will be able to request RPP. NYCDOT will then work with the local community to develop the boundaries of the RPP zone, which must then be reviewed by the Community Board, Borough President, and City Council.” While the Majority recognizes the public outcry over residential parking programs it does not resolve the fundamental questions raised by communities across the City, and conveniently ignores the needs of communities outside the City. As specified in the Majority report, residential parking programs are not adequately analyzed or proposed.

#### **IX. The Commission’s Proposals Do Not Adequately Protect Citizens Against Invasions Of Privacy.**

The compilation, storage, and use of personal data are a major concern for those who recognize a legitimate personal privacy right. The explosion of invasive and extensive government monitoring of the citizenry, blandly supported by the Mayor and the majority of this Commission is neither necessary nor desirable. According to Accenture, “Technology that records the location of vehicles raises the obvious concern that the whereabouts of individual citizens could be made public.”<sup>44</sup> Reasonable privacy restrictions are a minimal necessity for this and similar programs.

In an op-ed for the New York Daily News, Chris Dunn, the associate legal director of the New York Civil Liberties Union (NYCLU), and Donna Lieberman, the executive director of the NYCLU discussed some major privacy concerns that haven’t been adequately considered by the commission:

A system of thousands of cameras would allow the government to build a massive database of the daily movements of the hundreds of thousands of people who drive around Manhattan. Also, it would create the infrastructure that could open the door to even broader tracking of pedestrians.<sup>45</sup>

The editorial by Dunn and Lieberman offers many solutions, including stringent privacy protections to assure that a congestion pricing program does not become a vehicle for blanket video surveillance and a massive database of the innocent comings and goings of New Yorkers. Also, the images collected

---

<sup>43</sup> NYC Traffic Congestion Mitigation Commission transcript, 10/30/07

<sup>44</sup> Accenture. “In Response to: New York City Economic Development Corporation Request for Expressions of Interest.” 10/02/07. Pg 43.

<sup>45</sup> “Mayor’s Intrepid Traffic Plan Must Avoid Being Intrusive.” New York Daily News, Wednesday December 12, 2007.

must be strictly limited to the license plate of a vehicle, the plan must guarantee that information collected will be solely used for collecting fees, there should be a creation of "camera free" toll lanes for people who do not want to be videotaped, the data collection should be retained for only the minimum amount of time, and there must be independent oversight of the camera system and database, assuring us that our privacy rights are not being violated and allowing the public to have a clear complaint procedure when concerned about possible violations.<sup>46</sup>

The Majority acknowledges the failure of the Mayor's plan to protect the rights of citizens. It makes several recommendations for improvements over the Mayor's plan, but does not reach the reasonable and thoughtful goals discussed above. In this area, the differences are within reach of adjustment, and the Majority recommendations, although inadequate, are the basis for further discussion consistent with a principled respect for privacy rights. Without addressing these additional concerns in a complete and fair approach, the Commission would be allowing an enormous infringement on our citizens' personal rights to privacy.

#### **X. The Commission's Proposal Does Not Provide Assurance That Revenues Will Be Permanently Used For Mass Transit, Nor Does It Include Limits On Borrowing.**

The Commission has failed to adequately define the use of funds generated from congestion pricing. The Mayor and City staff have at various times supported use of funds for mass transit capital improvements, and for operating assistance. Other uses of the funds, including for unfunded road and bridge purposes have been suggested. A concern has been raised that any funds be legally set aside for transit purposes, in what has been termed a "locked box". This concept has been repeatedly tried, most recently in enactment of the Environmental Protection Fund in 1993. In that case, and in many others, the laudable attempt to assure the public that the public promises made to them would be kept were unsuccessful. Hundreds of millions of dollars have been removed from the EPF by the normal and foreseeable operations of government when revenue became scarce. There is no logical or historical basis for any assurance that future Governors and Legislatures will not remove congestion pricing funds and use them for other purposes.

At the October 24, 2007 hearing, Assemblywoman Ellen Jaffee said, "Right now, many aspects of the plan are disturbing. These include...no language that provided assurance that the funds would be used for mass transportation"<sup>47</sup>

"First and foremost, we still don't know where the money from congestion pricing will go," said New York City Councilmember Jessica Lappin, "For me to support congestion pricing, I need a written guarantee that it will be used to make a real difference in terms of improving mass transit."<sup>48</sup>

The Commission Majority quietly acknowledges that these revenues will be used for other than mass transit purposes. "Funding the MTA Capital Plan must be the *primary* goal of revenues from congestion pricing"(emphasis added). Furthermore, the Commission recommends that substantial revenue go directly to New York City in the hope that they will be used for a variety of transit purposes. "All funds from increased on-street parking rates and the elimination of the resident parking tax exemption within the zone should be dedicated by the City of New York....."(emphasis added).

<sup>46</sup> "Mayor's Intrepid Traffic Plan Must Avoid Being Intrusive." New York Daily News, Wednesday December 12, 2007.

<sup>47</sup> New York City Traffic Congestion Mitigation Commission. Public Hearing. 10/24/2007, pg. 9.

<sup>48</sup> Hunter College Hearing, January 16, 2008

The decision by the Majority to permit non-transit use of the congestion pricing funds again violates commitments made by the Mayor and other advocates.

With respect to that portion of congestion pricing that would be used for mass transit capital, the Commission acknowledges the demand for a "locked box" by recommending an elaborate statutory scheme to protect the new revenue. "All net revenues generated by the congestion pricing fee and the taxi surcharge should be deposited into a dedicated MTA account similar to the agency's dedicated real estate tax accounts. These funds should only be used for capital investments for system improvement, expansion, and state of good repair projects, excluding normal replacement. Such projects may include, but are not limited to, new buses and bus facilities, BRT routes, park-and-ride facilities, commuter rail improvements, and subway expansion and rehabilitation. By law, revenues should not be used for any other purposes."

As seen in the raiding of other "locked boxes", there are simply no written assurances about the use of public dollars that can overcome the will of the Governor and the Legislature if they choose to redirect public dollars from their intended use. While the Majority recommends detailed cosmetic language, the budgetary needs of future governors will most likely determine the use of funds. Furthermore, there is no maintenance of effort provision recommended by the Majority, leaving open the danger that some or all of these funds will be used to replace existing expenditures, a criticism often directed at the New York Lottery respecting education funding.

A similar problem arises on the question of whether congestion pricing revenues can be securitized. It is clear from the Commission's recommendations that upon approval of this plan the City is authorized to issue bonds secured by these revenues making it virtually impossible for future Mayors' to reverse the initial decision.

#### **XI. The Commission's Proposal Does Not Provide For Fee Exemptions For Those Seeking Medical Care, The Religiously Observant Or Others.**

The Commission has received requests that exemptions from the fee be granted to a number of persons, including senior citizens, those seeking medical care, the religiously observant, owners of preferred types of autos and trucks, and others. It is useful to note that many companies that responded to the City's RFEI warned that exemptions were difficult to manage. Booz Allen Hamilton noted, "London, for example, has a grave problem with disabled exemptions and the use of valid disabled vehicles by non-disabled persons who borrow the vehicle from the exempted party".<sup>49</sup>

Another problem arises with EZ-Pass recognition. According to ConSysTec's RFEI,

Although the E-ZPass transponder tags currently allows classification of vehicles as emergency or transit vehicles, it does not distinguish taxis or handicapped vehicles. And even if the E-ZPass transponder tag did make all the proposed vehicle distinctions, it would still be necessary to visually verify that each vehicle entering the Central Business District (CBD) is paired with the proper transponder tag.<sup>50</sup>

---

<sup>49</sup> Booz Allen Hamilton, "Response to Requests for Expressions of Interests: Implementation of City's Proposed Congestion Pricing Plan." 10/02/07. Pg 2-10.

<sup>50</sup> ConSysTec, "Submittal In Response to A Request for Expressions of Interest for Implementation of the City's Proposed Congestion Pricing Plan." October 2, 2007.

Nonetheless, exemptions from the fee are an important issue for many. Greater New York Hospital Association President Kenneth Raske raised the issue of exemptions for hospital patients in an October 16, 2007 letter:

Under the London system, special exemptions are provided for patients who are too ill to travel to an appointment at a hospital on public transportation. It would seem reasonable, and vital for certain patients in the metropolitan area, to include a provision that would allow patients in New York a similar exemption, so that the congestion price would not be an added hardship for ill and disabled individuals seeking vital medical treatment.<sup>51</sup>

Assemblymember Michele Schimel also suggested exempting the handicapped and disabled from the congestion pricing fee by creating a

Centralized database of eligible people and the physicians that granted them status in a database managed by an overriding authority, perhaps the Department of Physical Challenges.<sup>52</sup>

City Councilmember Oliver Koppel expressed his concerns regarding exemptions from the fee as well:

There should absolutely be an exception for the disabled. No congestion pricing for the disabled. I think serious consideration should be given to an exception for all senior citizens. How many senior citizens can actually use their cars to commute to work?<sup>53</sup>

Assemblymember Jeffrey Dinowitz expressed concerns for parents who have to drive their children to school in Manhattan everyday, saying:

I know people who drive their children, their little children, to school in Manhattan everyday. People who live in my district, maybe their child goes to religious schools below 86<sup>th</sup> or some other school. I believe under the plan that would mean they would have to pay forty dollars a week to drive their child to school, forty times the number of weeks probably add up to about fifteen hundred dollars after tax dollars each and every year. So somebody would have to make at least twenty-five hundred dollars or more to make up for this congestion fee just to drive their child to school.<sup>54</sup>

The Commission acknowledges the validity of such exemptions, by granting one limited exemption to commercial vehicles that meet certain environmental standards. It does not offer exemptions to any of the persons suggested by testimony at the hearings.

## **XII. The Commission Proposal Contains No Rational Way Of Collecting Fees From Those Without EZ-Pass**

The City estimates that as many as 70% of the fees can be collected from EZ-Pass users. That leaves at least 30% who must self-pay, since there are no plans to provide payment options such as toll booths

<sup>51</sup> October 16, 2007 letter to Assemblyman Brodsky

<sup>52</sup> New York City Tech Klitgord Auditorium Public Hearing, November 1, 2007

<sup>53</sup> Hostos Community College Public Hearing, October 31, 2007

<sup>54</sup> Hostos Community College Public Hearing, October 31, 2007

upon entering the Zone for non-EZ-Pass drivers. Such drivers will apparently be required to self-pay using the Internet, telephone or storefront options that are not explained in any detail. Much of the program acceptance will be somewhat dependent on these independent retailers of the congestion pricing services, such as passes and payments. Majesco Mastek, an RFEI responder, raised the issue of, "Poor experience at the retail outlet may lead to credibility loss for program".<sup>55</sup>

Concerns have also been raised over whether or not drivers without EZ-Pass will seek out these locations and self pay, or ignore the fee all-together. "How will those without EZ-Pass be charged?" asked Assemblyman Jonathan Bing. "Are you expecting that drivers without EZ-Pass will opt (or not) to send in their fees in the same way that New York State residents are supposed to include on their income tax forms the taxes they should have paid on purchases over the internet."<sup>56</sup>

The failure to provide a rational way of collecting the congestion fee is a prescription for chaos and failure that ought to concern supporters of congestion pricing as much as its opponents.

### **XIII. There Is Substantial Evidence That The Proposed Fee Is Too Small To Reduce Congestion And Will Be Rapidly Increased.**

Testimony by traffic experts supporting congestion pricing, and companies responding to the RFEI are ample warning that the fee set by the Commission is likely to rapidly and dramatically increase. Dr. Folcochcio stated that a charge of \$15-\$20 would be the only way to influence congestion enough in New York City to actually change people's behavior and make the streets less congested. According to Dr. Falcoccio, "I think probably the fee should be in the neighborhood of anywhere between \$15.00 and \$20.00, to achieve that [in New York City]."<sup>57</sup> It is likely that the current fee levels will not produce the estimated revenue, and will not sufficiently deter congestion to meet the Commission stated goals. London's congestion pricing fee was "initially set at £5 in 2003 (about \$8 at the time)...the fee was increased to £8 (about \$15 at current exchange rates) in the fall of 2005."<sup>58</sup>

In addition, Consulting Stream stated in their RFEI that, "the \$8 cap does not seem to generate much of a deterrent."<sup>59</sup>

There is every reason to believe that the fee will be quickly and dramatically increased, thereby exacerbating its regional and class unfairness.

<sup>55</sup> MajescoMastek. "In Response to: New York City Economic Development Corporation Request for Expressions of Interest." 10/02/07. Pg 31 of 59.

<sup>56</sup> Hunter College Hearing, January 16, 2007

<sup>57</sup> NYS Assembly Hearing, June 8, 2007 at 166-169.

<sup>58</sup> Macrovision. "Macrovision Corporation's NYC Congestion Pricing Solution: *Response to the RFEI.*" October 2007. Pg 5

<sup>59</sup> Consulting Stream, "Response to Requests for Expressions of Interests: Implementation of New York City's Proposed Congestion Pricing Plan." 10/02/07. Pg 35.

#### **XIV. The Commission Did Not Fairly Or Adequately Consider Congestion Rationing, Other Broad-Based Revenues, Or Other Alternatives.**

The City staff calculations show that of all the alternatives considered, including congestion pricing, the program that will yield the largest reduction in both congestion and pollution is a license-plate based rationing system. It should be noted that the type of rationing system analyzed was that proposed by City staff, which had earlier announced their opposition to rationing. A fair and thorough analysis of this alternative is likely to give a better congestion and pollution outcome. Congestion rationing has been repeatedly mischaracterized by congestion pricing supporters. One article in the New York Times claimed, "Similar schemes have been tried in some Latin American cities, the report said, but in many cases, people have found ways to get around the restrictions, such as by buying a second car with a different license plate".<sup>60</sup> The media too has portrayed even the proposal of potential alternatives to be considered as a divisive tactic used to hinder public unity about the subject. A New York One report stated that "After a contentious two-hour meeting at MTA headquarters in Midtown, unanimity seems very unlikely. That's because Assemblyman Richard Brodsky instead wants license rationing – limiting entrance to the city based on the license plates on cars."<sup>61</sup> Those seeking maximum improvement in congestion and air quality ought to seriously reconsider their opposition to rationing.

#### **XV. Alternative Revenues**

The double standard applied by staff, Commission leadership, and some Commission Members to the issue of alternative revenues is consistent with the dismissal of alternatives in other areas. Revenue generation is not part of the Commission's mandate. Several Commissioners, on varying sides of the pricing issue, have separately suggested that funding of mass transit is a legitimate public policy goal. Mayor Bloomberg said that he believes "congestion-pricing monies...should be used to expand and improve mass transit."<sup>62</sup> However, congestion pricing supporters blocked attempts to consider revenue alternatives, and a cursory submission by staff on some alternatives was incomplete, biased, and unhelpful.<sup>63</sup> If revenue generation is to be included the Commission should have examined the alternatives available and proposed. It did not. The lack of attention to other non-pricing alternatives can be seen in the Commission's Interim Report released on January 10 2008 where the majority of the 57 page report focuses on pricing mechanisms.<sup>64</sup>

A series of suggestions have been made for alternative programs that address the issues of congestion and mass transit funding. These include congestion rationing (restrictions on Zone travel based on license plate numbers or other criteria), better traffic enforcement, time-of-day pricing on mass transit, taxes on gasoline, payroll, commuter, or stock transfer, fees on City issued parking permits, and others. In fact, a congestion rationing plan would lower VMT by 10.3 percent, more than any other plan.<sup>65</sup>

Additionally, a state-wide carbon dioxide emissions tax would provide both revenue for transportation upstate and in New York City along with an incentive for drivers to change their driving habits. In

<sup>60</sup> Neuman, William. "Ways to Cut City Traffic? Well, Maybe." New York Times

<sup>61</sup> NY1. "Traffic Panel Leaning Toward Modified Congestion Pricing Plan." January 10, 2008.

<sup>62</sup> "Mike's Plan Sparks More Congestion Indigestion." NY Post, November 20, 2007.

<sup>63</sup> Congestion Mitigation Strategies: Options for Evaluation. New York City Traffic Congestion Mitigation Commission. [https://www.nysdot.gov/portal/page/portal/programs/congestion\\_mitigation\\_commission/presentations](https://www.nysdot.gov/portal/page/portal/programs/congestion_mitigation_commission/presentations)

<sup>64</sup> "Interim Report to the Traffic Congestion Mitigation Commission," January 10, 2008.

<sup>65</sup> Interim Report to the Traffic Congestion Mitigation Commission, viii.

2004 New York State emitted 215.85 million metric tons of CO<sub>2</sub>.<sup>66</sup> With a ten dollar per metric ton carbon tax on CO<sub>2</sub> emissions, New York can raise over 2 billion dollars, half of which could be put towards transportation and transit projects. The other half could be passed back to the consumer equally. Those who create more CO<sub>2</sub> would pay more of the carbon tax while receiving the same rebate as those who consume less.

## **XVI. Conclusion**

The congestion pricing proposal made by the Commission Majority fails to advance the public interest.

In concept, pricing mechanisms and user fees are regressive ways to raise revenues from one particular segment of society, middle class citizens who use government services and facilities. The wealthy and the business community largely escape any requirement to fairly share the burdens of government. They are now widely proposed in New York. Fare increases, toll increases, tuition hikes, gambling revenues, and hundreds of other fees have been advanced and enacted while broad-based revenues are shunned. We are raising taxes, but only on the middle-class, and in ways that some believe provide political deniability. We should not do so as a way of dealing with the difficult problem of urban congestion.

In practice, this particular proposal is in essential ways unworkable and inefficient. The failure to deal with the particular unfairness to residents of the outer boroughs, to provide promised mass transit improvements that can absorb the newly displaced traveler, the failure to rationally collect the fee from those who are not EZ-Pass holders, the failure to do an Environmental Impact Statement, the decision to allow New Jersey, Connecticut, suburban, and other drivers to deduct their existing toll payments and thereby escape paying the fee, these and other individual systems have made the congestion pricing proposal unacceptable even to those who do not share the broader principled objections.

Urban congestion is a problem that can be addressed. But its' solution must meet the most basic tests of fairness and effectiveness. This proposal does not do so.

---

<sup>66</sup> Environmental Protection Agency, "CO<sub>2</sub> Emissions from Fossil Fuel Combustion Million Metric Tons CO<sub>2</sub> (MMTCO<sub>2</sub>).