INDEX

1. Approval of Minutes of May 20, 2009 meeting

2. Commissioners Comments
   a. William Passmore Resolution

3. Committee Reports

4. Executive Secretary's Report
   a. Opening Weekend
   b. Racing Summit Working Group
      Thoroughbred Meet

5. Stakeholders
   a. Colonial Downs report on Opening of
      2009 Thoroughbred Meet
   b. TwinSpires Best Offer Discussion
   c. Thoroughbred 100% Bonus- update

6. Public Participation

7. Set next meeting -- July 15, 2009

8. Adjournment

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MR. BURNETT: We're going to go ahead and start and hope everything is all right with Commissioner Ferguson. We'll start by welcoming everybody during our meet here. We're replete with racing on the screen provided by the HBPA.

The first order of business is at Tab 1. It's the approval of our minutes from our last meeting on May 20th.

Gentlemen, have you had a chance to go over the minutes? If there are any changes or corrections needed, I would like to hear from you now.

MR. BROWN: Make a motion to approve.

MR. REYNOLDS: Second.

MR. BURNETT: It's been moved and seconded to approve. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Brown and seconded by Commissioner Reynolds. All were in favor. The motion carries.

MR. BURNETT: The next item is the commissioners comments, and -- go ahead. Hold on just a second. I think we're about to get a message.

I'm told that everything is fine with
Mr. Ferguson other than a business emergency that's going to prevent him from coming today, so we'll just continue on.

Commissioners comments today are going to be limited to the presentation of a resolution by the Racing Commission in respect and remembrance of Bill Passmore, who all of us here know. I'd like to take a moment to read it into the record, and I think Jean Chalk is here, who's going to be a stand-in for the family, and will see to it that this framed resolution that has been signed by the four commissioners who are here, and I'm sure we'll get Mr. Ferguson's signature here shortly, gets to the family.

So, Jean, why don't you come forward, and I'll just come around and read this and ask you to accept it. Let me show it to everybody. This is prepared by our executive director, I think.

Whereas, William Passmore, a resident of Maryland, who died on the 14th day of May 2009, at the age of 76 years, was a lifelong contributor to the sport of horse racing; having spent 38 years as a successful and honored jockey, winning 3,531 races with purses accumulating over 23 million dollars in purse money; and
Whereas, he also served 20 years as a Racing Steward, including 11 years as a Steward at Colonial Downs Racetrack in the Commonwealth of Virginia; and

Whereas, during his career as a jockey, and after his retirement, he served as a mentor and tutor to younger jockeys and established himself as an appropriate role model in the sport; and

Whereas, as a jockey and Steward, he always supported and promoted safe and sound horsemanship; and

Whereas, Bill always exhibited a gracious sense of humor, and maintained a dignity that earned the respect and admiration of fans, and of his associates, personal and professional, as a true gentleman;

Be it resolved by the Virginia Racing Commission that, due to all of the above, and more, we do hereby honor William Passmore, and express our thanks and appreciation for all his contributions to our efforts to sustain a viable sport of horse racing and the horse industry in Virginia; and we commend him by this resolution as being an honorary Virginian who will be truly missed by all of us; and we express our deepest sympathy and condolences to his wife Charlene and his seven children and their
families on the great loss of this wonderful gentleman, whose memory is cherished by all here in the Commonwealth of Virginia who came to know him during his exemplary career.

This has been signed by the Racing Commission. I hope you'll give that to them. I thank you.

MR. CHALK: It's an honor to accept this for the family. I worked with Bill for over 20 years, and he and I were best of friends. Thank you.

MR. BURNETT: Thank you. Appreciate it.

All right. We'll next turn to committee reports. Executive Secretary's report?

MR. HARRISON: I just wanted to make a couple of comments about the beginning of the meet.

As some of you may know, I was here last year, but I think I had been on the job about a week when the racing meet started last year. So this year I was able to step back and take an objective look at what was happening over there. It was very impressive. These folks, the horsemen director and his people, the staff veterinarian, the amount of traffic that comes through there was impressive and the way they handled themselves, and the way they managed the throughput of all that business was even more so.
So I just wanted to make that comment and as far as the issue of owners being licensed and entering their horses without being licensed, and trainers, I think we can probably do a better job in subsequent years, because we really threw a lot of time and energy in tracking down owners whose horses were entered, but didn't have a current license.

It just seemed a little counterproductive in this day and age to have our folks doing all that background work on the day of a race when I think most of these owners and trainers have been at this for a while, and they should realize that when they enter a horse to race in any racing jurisdiction, they should be properly and currently licensed in that jurisdiction.

That's just an editorial comment I wanted to make.

MR. BURNETT: If I could follow-up on that last comment. I think it was only this year that the Charles Town races changed their policy. Historically, for as long as I recall until this year, on the first of January when your new license was due, they would let you enter a horse, they would let you run that horse, and they would not -- but they would not release the purse, and they
wouldn't let you run a second time until you came in and got your license.

I'm not so sure, others may know better than I do, that that doesn't occur in a number of jurisdictions, where they figure the purse money may be the incentive to actually get the owner's license taken care of. I don't have any problem with the way it's being done now, and I think properly so it should be done in advance.

I wonder if there might be a way that when Tyler is out recruiting and when we know what stables are coming, if we can reach out to some of these trainers who know -- they know who their owners are. They send bills every month. They know which horses they're bringing, and who owns them. Maybe there would be a way that somewhat in advance we could start sifting through some of those lists and send out reminders of some sort.

I mean, we don't want to do all their work for them, but it is a real crunch on our licensing department to have it all come on the day of a race. So anything we could do to sort of ease it, just to be that much more hospitable here in Virginia for people who are coming to race, it might help both ways.
MR. HARRISON: I agree. It's magnified a little bit more, but due to the short length of our race meet, it would probably make sense in a jurisdiction like West Virginia with year-round racing.

MR. BURNETT: Sure.

MR. HARRISON: But I think some of these folks will race one time this meet and not again. So there's a difference, I think, between exporting -- as I discussed in the past, exporting states and importing states.

MR. BURNETT: Sure.

MR. HARRISON: We'll work on it.

MR. PETRAMALO: May I make a comment?

MR. BURNETT: Please.

MR. PETRAMALO: I think some of the problem this year was caused by the fact that for the first time the Racing Commission did not mail out renewal forms to all owners. And even though we publicized this and the Commission publicized this, not everybody picked up on that, but going forward, I think it would be helpful if you saw fit to spend the money to make a mailing that maybe at the end of the year you make a mailing to all active licensees saying, "As of December 31st, your license expires."
If you're going to race here in 2010, please renew your license. You can go to our website and download the application," et cetera. Just to put them on notice that as of the end of the year, they have no license that's current in Virginia.

MR. BURNETT: I think some kind of reaching out like that. It's also an opportunity to remind people that we're still an option, whatever new we're offering in given a year.

MR. PETRAMALO: You also -- I shouldn't say this, but at $10 a license, you are by far the best deal in the entire world in terms of a license. You may want to look at that.

MR. BURNETT: It's still $10, though.

MR. PETRAMALO: Yeah. It's --

MR. BURNETT: All right. Anything further on that? Dave?

MR. LERMOND: Just one comment. What we -- currently we require that there's a completed application and payment, but if the fingerprints are the only requirement that we don't have, we do give that owner 30 days to comply and he can still run his horse, but we feel that, you know, we need to have the completed application and payment. A lot of times a trainer will come in and pay for the
owner, and that's fine, but we want to treat everybody the same in that respect.

    MR. BURNETT: Sure.

    All right. The Racing Summit Working Group.

    MR. HARRISON: We have a meeting scheduled for Thursday, July 25th, at 9:30 a.m. in Fredericksburg. Hopefully this will be the first of at least a handful, if not, several working group meetings. We've got the basic outline that we distributed to various individuals, interested parties via e-mail. We've already gotten some responses back.

    If individuals here -- we have some heavy hitters like Frank Petramalo who won't be able to make, so they'll have a stand-in there. Like I say, this will be the very first meeting. It'll bring some focus and give us some direction for moving forward. So I would think that the second and third meeting would be a lot more productive than this first one, but nonetheless, we are taking the initial step here towards resolving and focusing our attention on the issues that are specific to Virginia Racing.

    MR. PETRAMALO: This is next Thursday, correct?

    MR. HARRISON: I'm sorry. June 25th.
MR. PETRAMALO: Right. Next Thursday?

MR. HARRISON: Yeah.

MR. BURNETT: I'd welcome comment from anybody here about additions, deletions, changes of any sort to the outline that we have here. I don't think there's any particular magic to it. It's trying to hit the most important issues that need to be tackled first. Obviously, there is a ton of detail that goes behind any one of the many ideas we may consider, but we want to be as productive as we can, and we want to make sure we're inclusive as we can be.

I would make one comment that -- because I'd be curious to know how others feel about it. Under stakeholders down the list, we have the public. My thought is that there's -- the public comes in several forms, and for me specifically, there's the casual race fan who might attend the races once or twice a year and bets their birthday or their favorite color, that kind of thing.

On the other end of that spectrum is certainly a member of the public, but a serious horseplayer, the ones that go regularly to our OTBs, the ones that cause our OTBs to have a $300 per capita level, and my thought is that that type of fan and
horseplayer is perhaps deserving of being set apart and pursued or cultivated, and that perhaps we'd like to have some representative of that group of horseplayers, serious horseplayer, help us in what we're doing in terms of trying to expand the pie, which is the real focus of all this, is trying to figure out how to expand the pie.

Am I hitting on all cylinders on that, or am I --

MR. PETRAMALO: You know, there is a National Horseplayers Association. They have a website, and it might well be possible to draw somebody from that group in Virginia.

MR. BURNETT: Thank you.

Any other comments on this outline, the direction we're going with this? Anything that will help us move forward from anybody? I guess everything is just fine in the horse industry, right?

MR. HARRISON: Well --

MR. BURNETT: We've got it so well covered.

MR. HARRISON: We should have some news after this first meeting. I'm sure there will be changes to this during the meeting.

MR. BURNETT: Well, thank you, Vic.
We'll next go to stakeholders. Colonial Downs' report on the 2009 Thoroughbred Meet, please.

MR. STEWART: Good morning.

MR. BURNETT: Good morning.

MR. STEWART: Well, the live meet opened on Friday, June the 5th, and through nine days or Monday night, I'm pretty pleased with our results. Our attendance is up a little over 15% or almost 200 people per day, live wagering handle at the track is up almost 5%, and simulcast handle at the track is up 69%, but that's kind of heavily impacted on wagering on the Belmont stakes, but still even without that, it's up a little bit. Our out-of-state is down 19%; however, that's primarily due to the actions of TrackNet, which we'll get to later.

Our racing product has been excellent. Tyler and the race office staff have done a terrific job. We've averaged 10.8 entries per race this year. In spite of a lot of wet weather, which has taken us off the turf several times, 8.9 starters per race. This is a significant increase over the first nine days last year when we averaged eight and a half entries per race and a little over seven starters.

This weekend we're anticipating two really
good days. We have our Rhythm, Bets n' Brews Festival on Saturday in conjunction with the Colonial Turf Cup, and Father's Day on Sunday.

I think our Saturday card is particular impressive. We'll have 12 races that day with 141 entries, almost 12 horses a race. We've got many 14 horse fields, and a number of the top jockeys in the country will be here.

I would like Darrell and Tyler to talk a little bit more about what's coming up.

MR. PICKLESIMER: Like I say, I sent through Vic an e-mail telling you about the -- naming riders and scratch times. That's all -- I think that's gone fairly smooth. We haven't had, you know, any major issues there. Most of the guys around the country are use to the system. I think it's working out fairly well.

The coupling rule, I think that's helped already, more so in the dirt races, you know, where we get a six to a seven, you know, and that's going to continue to help us.

Entries have been strong. I think a big part of that is because Maryland shutdown a little earlier, and those guys were rested and looking for a place to run. So that's had a definite positive
affect on us.

Like I say, hopefully that carries through the next 27 days of entries.

MR. WOOD: From a promotional aspect, it seems like the big event days are going to work out well. Opening Saturday was Belmont Day. We had over 3,000 people, but when you combine the on-track handle and what our people bet on the simulcast, that number came up around $325,000. Outside of the Turf Cup or Derby Day, we don't see that kind of number too often.

Last Saturday we did our Fan Appreciation Day early in the meet instead of on the last Saturday. We had just under 3,400 people, real vibrant atmosphere. I think people had a good time, and hopefully now will have a chance to come back a second and a third time during the meet instead of -- if we held it on the last Saturday, there wouldn't be that opportunity.

Like Ian said, we've got the Microbrew Festival tied into the Turf Cup on Saturday, and we've had close to 5,000 people the last two years for that event, and then with the -- you know, with all the big jockeys coming in town and the race card, we're looking for hopefully at least that
number, if not more. We've got events planned pretty much every weekend for the rest of the summer, so hopefully that will carry the torch.

MR. BURNETT: That's terrific.

MR. BROWN: I must say your advertising has been -- it stands out when it does come on. Usually I don't pay too much attention to advertising, but I have noticed a couple.

MR. STEWART: Well, that's good. It's hard to break through the clutter.

MR. BURNETT: All right. Anything further? Oh, I'm sorry.

MR. REYNOLDS: Let me ask a question, Mr. Chairman.

So you attribute this positive number of horses in each race because of mainly Maryland's situation?

MR. PICKLESIMER: Well, I think that's part of it. I think another part of it is horsemen in Maryland I think are more -- they're not as upset about the van this year. I think they've accepted that, you know, we're not going to offer a van, and they still want to come over and participate. They know they're treated well, so I think that's a big part of it.
MR. PETRAMALO: I think another thing is the earlier opening may have helped attract horsemen from Florida. It seems to me that we've got many, many horses from Florida than we've had in the past, because Tampa Bay shuts down I believe Derby weekend, and the horses need someplace to go, and a lot of them have come up here.

Also, I think Tyler should be commended for the recruiting job that he's done, both with the Kentucky horsemen and the Florida horsemen, because we have a lot of new people here who have never been here before, and that is what's contributing to the field size.

And if you look at the numbers a little more closely, on the turf we're averaging ten starters -- more than ten starters per race. Now, because we've been off the turf for two and a half days because of the rain, we're only running now about 62% or have run 62% of the races on the grass. When that jumps up to it's normal 80%, I think we're going to see an average this year that may take us to around nine and a half horses per race, even if you throw in all the dirt races.

MR. BURNETT: Wow.

MR. PETRAMALO: That's outstanding.
MR. BURNETT: Outstanding. Absolutely.

MR. PETRAMALO: Of course, we offer the VHBPA bonus for running on the dirt. I just wanted to throw that little plug in since we're talking about advertising.

MR. BURNETT: Describe that -- we'll give you more time for the advertisement. Describe that bonus award, if you would, Frank.

MR. PETRAMALO: Yes. To encourage running in lower level races on the dirt, we pay a bonus for horses that run in $10,000 claimers or lower. The winning trainer gets 200; second place is 100; third place is 75; and everybody else gets $50.

MR. BURNETT: Trainer?

MR. PETRAMALO: Trainer, yes.

MR. BURNETT: Do we know what our barn area census is?

MR. PICKLESIMER: As far as --

MR. BURNETT: How many horses we're carrying?

MR. PICKLESIMER: We actually are looking for stalls for Saturday.

MR. BURNETT: Wow.

MR. PICKLESIMER: So we've asked some pony people if they can ship them out for a day and free up a few stalls. It's tighter than it was last
MR. BURNETT: Do you think the early opening of the track given -- it strikes me that the track being available for people to come to from Tampa or anyplace else is encouraging -- helping people to come; and secondly, that rest piece that you mentioned, you know --

MR. PICKLESIMER: Oh, yeah.

MR. BURNETT: -- an enforced rest sometimes creates that pent up demand, and here they are. There's nothing happening other than training, and they're getting ready, and then when the gates open, here we come.

MR. PICKLESIMER: You know, say two weeks before their meet shut down, they had books in their hand, so they -- you know, they we're -- they had a spot picked out. I think they were geared up for the first eight or ten days. Hopefully, we can carry that through.

MR. BURNETT: I was looking a little bit at per diem averages in the Mid-Atlantic, and it seems to me, if my numbers are correct, that we're sitting at the high point for most racetracks in the Mid-Atlantic this summer. I thought I saw Delaware running in the 165 to $180,000 a day range. I think
Charles Town has consistently been about 180,000, and so it would seem to me that us being up over 200, that that has to have some appeal and some people might go the extra mile, come try to get a piece of that, particularly coupled with the turf opportunities. Does that make sense you?

MR. PICKLESIMER: Yeah. I'm just wondering are the stakes included in their number, Delaware and --

MR. BURNETT: I'm not sure that 165 at Delaware isn't an overnight number.

MR. PICKLESIMER: Right.

MR. BURNETT: And historically Charles Town hasn't run enough stakes to make much difference, but recently have added a couple of big boys if you've noticed.

Okay. Anything further from Colonial on this subject?

MR. STEWART: I don't think so.

MR. BURNETT: Thank you.

All right. We'll move to the TwinSpires best offer discussion. We have documents from the parties at Tab 4.

Good morning, Mr. Blackwell.

MR. BLACKWELL: Good morning.
MR. BURNETT: Thank you for joining us.

MR. BLACKWELL: Thank you for having me.

MR. CANAAN: Mr. Chairman, can I just real quick for the record, Jerry Canaan on behalf of the Harness Association. Just put on the record that we formally do join the best offer put forth by Colonial Downs and the HBPA.

MR. BURNETT: Thank you for doing that, and I wanted to be sure that all of the recognized horsemen's groups were -- and the track were together on their position.

MR. CANAAN: Thank you.

MR. BURNETT: Thank you. Excuse me for a moment.

I'm being advised by or it's being suggested by our good counsel that the Commission ratify its June 1 order with respect to the TwinSpires license before we go into the discussion of the best offer that results from that.

I assume all parties have seen the order. It was distributed on the day of its signature by our executive secretary, authorized by the Commission. Do we have a motion to ratify nunc pro tunc the order of June 1; that is, despite the vote being taken today, the order would be effective as of its
date, June 1, and it relates back to June 1 with nunc pro nunc.

MR. MILLER: So move.

MR. BURNETT: The chair will second. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Miller and seconded by Commissioner Burnett. All were in favor. The motion carries.

MR. BURNETT: All right. The motion carries and that order has been ratified.

Now, let's move to the best offers. I don't know that there's any particular order in which you would take discussions. Anybody have an opinion on that? If not, I'm going to say that I think we received Churchill's order first, I think, and if I'm right about that, we'll ask Mr. Blackwell to go ahead and let us hear from him on anything he'd like us to hear above and beyond what was submitted.

MR. BLACKWELL: Thank you.

Brad Blackwell on behalf of Churchill Technology Initiatives Company. Thanks again for the opportunity to be here on this issue.

As you know, the best offer submitted by TwinSpires was based on information presented by Commission staff, and that being the average source
market fee being paid by ADWs through this year, and 
just to back up a little bit.

In December, the Commission issued TwinSpires 
a temporary license along with stating that a source 
market fee would be paid of 8.3%, which at the time 
was an average based on the first three-quarters of 
2008. Since that time, I've been on record numerous 
times to state that we didn't think that was -- the 
average was actually reflective of what the true 
average of source market fees being paid were.

And, in fact, when you look at the statute, 
the statute clearly states that during the term of 
the temporary license, the rate that would be set is 
the average source market fee being paid by the 
licensees. It doesn't talk about an estimate. It 
doesn't talk about using old numbers. It talks 
about the true average, and so I think that really 
the only numbers we have to consider today is that 
true average.

So the best offer presented by TwinSpires was 
based on the information presented by Commission 
staff. The statute clearly says that that would be 
the average. The statute says that that would be 
the average as determined by the Commission, so we 
have gone along with that.
As I argued or presented at the previous hearing, TwinSpires takes the stance that the statute is clear, that the temporary license period -- each time the temporary license period is mentioned in the statute, it clearly states that that rate should be the average. I've gone through that.

And if -- I think any other rate is really going outside the statute, because that statute was clearly intended to keep TwinSpires or any other licensee that's had the issue we've had in terms of getting a license on a level playing field, and so the statute is clear what should determine that fee.

If the Commission goes outside of that, then I think the statute is also clear that, among other things, the Commission is supposed to consider in setting this rate of a best offer, the other contractual agreements entered into by the other licensees. I think that the record has been clear that the other operators are under varying terms of contracts with Colonial Downs.

Some of those go through the end of this year; some end next year; and some go to the end of 2012. And obviously in those contracts, as Colonial Downs has stipulated in their motion, is that there's a
rate set, and then also at times there is a
mechanism in place to protect against rising host
fees, which we know is going on, and we'll address
that issue later. So that's something that the
Commission is required by statute to take into
consideration in considering the best offers, and
again TwinSpires' position is that rate is the
average rate and the statute clearly points that
out.

One of the things that Colonial Downs mentions
in their brief is that they agree that this
estimate, this 8.3% estimate, they do use the term
estimate, they're fine with that for the first six
months. Clearly, as I mentioned, that 8.3% was
based on last year.

During that time frame of the whole last year,
TwinSpires paid the highest source market fee rate
of anyone. We paid a rate of 8.6%, but we already
have paid through and above and beyond what any of
our competitors were paying for that same period.
So clearly it's not fair to use an old rate. I
think that there are real numbers. The Commission
staff has submitted those numbers, so there's real
numbers to consider.

The other thing that I would like to point out
is that Colonial Downs argues that the rate for this new statute should take place. TwinSpires has been on the record that we feel like this statute is unconstitutional. It presents a competitive disadvantage to all out-of-state providers, and also I think it's important that to my knowledge the Commission was not properly consulted when drafting that statute. The other participants in this market were not properly consulted and never given a chance to weigh in and look and see what works best for the industry, and I think clearly these numbers do not work for the industry.

It basically puts so much more money in the hands of Colonial Downs that no one else can participate in the market. It drives others to take or actually lose money. And with the rates that they are proposing for TwinSpires and if the other ADWs are subjected to these same rates, the other operators, all out-of-state operators will be forced to lose money if they're going to do business in this state, and clearly that's not in the best interest of racing, and clearly it's not in the best interest Virginia racing.

MR. BURNETT: Let me stop you there just to make sure I understand.
MR. BLACKWELL: Sure.

MR. BURNETT: You changed statutes on us there, I think.

MR. BLACKWELL: Okay.

MR. BURNETT: You're talking about the new statute --

MR. BLACKWELL: Right. Right.

MR. BURNETT: -- and the 10% rate is unconstitutional.

MR. BLACKWELL: Correct. Correct. And I think that -- and what I was trying to address, Chairman, is that in Colonial Downs' proposal, they said that they're fine with the 8.3% for the first six months of the year, and so then they proposed 10% for the next six months. I'm looking at the two numbers that they're using to get to this average of, I think, 9.15% or something along those lines, but I'm saying the 8.3% is not an average. It's an old rate. We've already paid higher than that rate last year when those rates were in effect. 8.3% was the average. TwinSpires was paying 8.6%, again the highest of anyone else in this marketplace.

So they're taking -- they're wanting to take rates that are old, stale numbers, and again the statute clearly states the average. It doesn't talk
about an estimate based on prior numbers. It said the average. Commission staff has presented that average. That's been TwinSpires' best offer, and we feel that that's the only real consideration the Commission has. Again, I feel like this is the time and opportunity for the Commission to be able to weigh in on this new statute, in that these numbers just don't work, and right now clearly we're under the current statute. Clearly, the Commission has agreed it has an obligation to set the rate for TwinSpires' temporary license. Again, we feel that that temporary license should be set based on the average pursuant to statute.

Also, I want to take the opportunity to just kind of walk through some of the points that Colonial Downs has made in their best offer. One, they start off by going through the cost of an ADW. They fail to present some other costs, such as video streaming, but they do go into some of the costs that an ADW has in terms of bringing signals into Virginia and taking wagers.

One of the things that they surprisingly leave out is what those same costs are to Colonial Downs, and the reason that's left out is because there is no costs. When you look at the cost of account
wagering coming into the state, Colonial Downs incurs no time, no expense. They're also allowed to compete against out-of-state providers because they have their own account wagering system. So they're on a field where they can compete, but they don't have to incur costs that other ADWs are incurring in order to bring the signal in. They're actually profiting off the efforts of others. They're also profiting more than the people who are actually putting on the show or incurring the cost of bringing the signals in.

One of the things, too, that I think is telling is that they've done a comparison of source market fees from 2007 through 2009. While they're claiming that host fees are going up and this is ruining, you know, Virginia, that TrackNet Media, TwinSpires, Churchill Downs, and Magna are all manipulating source market fees, I think that it shows that there hasn't been that large of a change in source market fees being paid.

When you look at YouBet from 2008 to 2009, it went from 7.8 to 7.3%, clearly not a huge difference. TwinSpires went from 8.6 to 8.3%, and this is again based on an average being applied. So I don't think that source market fees have really
changed all that much.

The other thing that's littered throughout their motion is the fact that Churchill Downs enjoys a competitive advantage and leverage in terms of negotiating. They mentioned that we control certain signals, that we own four racetracks, and somehow that has put us at a competitive advantage in terms of leveraging and negotiating. I think that's clearly false when you look at the source market fee we actually paid. TwinSpires, again, paid the highest source market fee of any operator in the state.

Now, if we have this so-called leverage, it seems like we would have been paying less than others, and what we found when we first entered the marketplace was that we did not have any leverage at all. It's either you agree to what Colonial Downs wants or you don't get a license. In fact, as I stated on the record before, we have had to file an affidavit twice now in order to secure a license in Virginia.

We have no leverage at all and, in fact, we as a condition to getting a source market fee agreement in place, again at the highest rates of anyone else, we were required to provide our content to Colonial
Downs and their EZ Horseplay system. So clearly this supposed leverage does not exist. It's really false. We are paying the highest.

One other thing that is mentioned in here was the source market fees being charged to Colonial Downs own account wagering system. The one thing that they, you know, fail to point out, they were paying lower than anyone else in the marketplace. And even this past year, they were presented with lower rates than any other account wagering provider was operating under in Virginia, and they declined to take the signals.

So I think that when we look at this, it's very clear what has been going on. We have tried to reach an agreement with Colonial Downs. We tried to negotiate through TwinSpires. We tried to negotiate through TrackNet Media, which Mr. Daruty can speak to later, and we have failed to make any progress because Colonial Downs has not wanted us to compete on a level playing field. They've not wanted us in the state, and it's been stated on the record that, you know, even the Virginia horsemen, I think Mr. Petramalo has stated, you know, go make your money somewhere else, that we're not welcomed in the state to make money.
What we're trying to do is compete on a level playing field. So when we present our best offer today, it's to be on a level playing field, to be at the average, which by statute we think we have a right to compete under.

MR. BURNETT: Any questions of Mr. Blackwell?
I do have a couple.

MR. BLACKWELL: Sure.

MR. BURNETT: I know that there is a difference of opinion between Churchill Downs and this Commission, at least as it's addressed in our order, as to the interpretation of the applicable statute that's in place.

MR. BLACKWELL: Correct.

MR. BURNETT: I heard you arguing initially that that statute requires us to impose the average source market fee of all other providers on Churchill Downs during the term of any temporary license.

MR. BLACKWELL: Correct.

MR. BURNETT: To the extent that our interpretation of the statute is that the -- once the license -- once we've had a breakdown or impasse in mediation, and that at that point we are required to impose -- an offer, the best offer of one or the
other parties, if those offers are not the average, then we have to choose one of the two offers, correct?

MR. BLACKWELL: Correct.

MR. BURNETT: Do you agree with that?

MR. BLACKWELL: Well, I think my point was, I guess arguing in the alternative, that if the Commission, and I understand the Commission is taking this stance, that they are purely considering the best offers of the party. And I think when you look at the statute, it is very clear that, you know, in doing so -- and I'm reading from the statute, "The Commission shall consider among other factors the contractual agreements that other advance deposit account wagering licensees have with an unlimited licensee and representatives of recognized majority horsemen's groups."

So I think when you take that into consideration, which you're required to do in choosing the best offer, then that is one of the considerations, and then probably the primary consideration given that it was mentioned in the statute.

So I think when you look at that, there's really only two or three things that can be in that
agreement. There's the term, and as I mentioned, right now everyone outside of TwinSpires has an agreement that at least goes through the end of the year. There is another provider that I think has an agreement that goes through the end of next year. There's a third provider that has an agreement that goes to the end of 2012.

So the term is one condition that would be in that agreement, the other is the source market fee being paid. So I think that's the other consideration that you should look at in looking at that agreement, and that gets back to the average. I think if you're going to look at the rate, you're going to look at the average of what everyone else is paying. So I think that's another consideration.

The other consideration that Colonial Downs has mentioned in their motion is that another part of that agreement can be protection against rising host fees, so that there is something that kind of keeps some type of balance between how those host fees affect all of the industry participants. So I think those are the considerations that would come out of those agreements, and I think the primary source, again what we're looking at, you're not questioning what our terms is going to be. You're
really questioning at what rate we're going to pay. And so I think in terms of taking those agreements into consideration, you're really looking at the rates of others. I think in doing so, you kind of get back to this average source market fee concept to where I think the intention of this, again, is to prevent someone from being excluded from the state from being able to operate because they're at the mercy of Colonial Downs. You're competing -- you are required to have an agreement in place with someone who is your competitor.

And so this process of a temporary license, which we're going through and I guess we've learned a lot through this process is that I think there's a general concept or the spirit of this is to make sure that people have access to the market when they qualify as we have established on record that we are otherwise qualified but for having this agreement in place.

So I think there's a concept of trying to establish a level playing field. We're not coming in and asking for an advantage. We're coming in and wanting to compete on a level playing field with everyone else. That's all we're asking for. I think we should be granted that opportunity. I
think in terms of looking at establishing a higher rate, we already paid the highest rate last year despite this alleged leverage. Now we're being asked to pay a much higher rate this year compared to our competitors who are all under contract.

Again, we've established on record, the only reason we're not under contract is because we haven't been able to reach an agreement with Colonial Downs, and Colonial Downs has no incentive to have a contract with us. They use their efforts to establish a statute that gives them a distinct competitive advantage. It gives them the ability to make more money than the other industry participants that participate in this process, the track putting on the show that's incurring costs that's putting on racing that people are wagering on, and the account wagering provider who's incurring the expense of having a website, of having technology that attracts customers to this board, and someone that's incurring market costs, streaming costs, tote costs, all the other costs associated with bringing those signals, providing the opportunity for Virginia residents to wager on horse racing.

Colonial Downs has benefited from that. They've benefited significantly and also more so
than the other participants.

MR. BURNETT: I agree with you that the legislature has clearly directed us to consider what other contractual arrangements are there. It's the thing they've told us to consider, but my interpretation of the statute is we're not limited to that, but obviously --

MR. BLACKWELL: Right. Right. It says among other things. I agree with that, but I think it's --

MR. BURNETT: I'm asking you are there other factors that you think we should consider in setting that rate other than the average rate.

MR. BLACKWELL: I think you have to look at really the fairness of the rate, and I think what you can see if you looked at the rest of the country, you're not going to see source market fees this high. I think that, you know, there's the fairness of what the industry has established. Again, Mr. Daruty who is more involved with this process can probably speak to that.

I think you look at fairness, I think you look at the value being added by the participants, again those putting on the show who are putting on the races that are actually being wagered upon, the
entity that is bringing in the signal, incurring the
cost, I think those are adding value. Colonial
Downs is not contributing to that process.

Now, when Colonial Downs runs their races and
those are being wagered upon, they're adding value
to the process and they're being compensated through
their host fees. Colonial Downs also has the
opportunity to compete against all out-of-state
operators through their EZ Horseplay system, but I
think you look at the fairness of the rate.

One, by the value being added by the
participants, and also look at this percentage.
Nine and a half percent does not exist. I mean the,
9.15% does not exist in the marketplace, and if you
are -- if we're paying 10% for the last six months
of our temporary license, we cannot do business in
this state. Host fees, for instance, on Santa Anita
is eight and a half percent. There's a 20% take-out
blend, and again Mr. Daruty can speak to this.

So if we're paying 10% to Colonial Downs and
the horsemen, we're paying a half percent to the
Racing Commission, that's ten and a half, eight and
a half percent on the host fee to Santa Anita is
19%, so there's one percent left.

MR. BURNETT: That goes to the Breeders' Fund.
MR. BLACKWELL: And that goes to the Breeders' Fund.

So TwinSpires is making zero on all races carried by Santa Anita, and that's not the only -- I mean, NYRA charges -- and again Mr. Daruty can speak to the host fees, but at the rate suggested by Colonial Downs, TwinSpires makes zero money and, in fact, in some cases may lose money on carrying races, and we cannot conduct business.

I know that Colonial Downs, you know, has been aggressive in the past, but now they've reached a point where they're overly aggressive. They've taken out all the profit from account wagering providers, and I don't know where they expect -- who's going to take the hit. I can tell you and Mr. Daruty can tell you that those putting on the show, the horsemen, and Mr. Petramalo can speak to this, the horsemen, you know, have played an integral role in raising host fees.

And last year, you may or may not recall, TwinSpires nor any other account wagering provider carried Churchill Downs, carried Calder, carried some of these other racetracks, some of which we owned, because the horsemen refused to consent to the signal going out to account wagering providers.
unless they got a certain rate. They wanted to be paid for the show that they were putting. They didn't feel like they were being adequately compensated.

So this model proposed by Colonial Downs will not make it profitable to carry a lot of quality signals, and I don't know who they expect to take the hit. I can tell you that -- and Mr. Daruty can speak to the fact that I don't think the -- you know, the horsemen and the tracks putting on the show aren't going to take the hit, and the account wagering providers are left with making zero money. It eliminates all competition in the marketplace and sets up an in-state provider to have a monopoly in the state. That's what this statute does.

So I think you have to take into consideration, if you follow Colonial Downs' proposal, you put TwinSpires out of business, and you set up this precedent that others will be put out of business. You're following a statute that is unconstitutional because it places out-of-state providers at a distinct disadvantage and an economic disadvantage that runs them out of business.

MR. BURNETT: Again, you're talking about the statute that goes into effect in a couple of weeks.
MR. BLACKWELL: Right. Which again is a rate that Colonial Downs is using in their best offer. They're asking you to take that rate, 10% source market fee, in addition to the 1% breeders fee, and the half percent, we just cannot operate in this state. We cannot. It runs us out of business in Virginia. We'll operate in other states, but we cannot operate in Virginia. That's why you're not seeing this overly aggressive source market fee. I mean, it just pushed it to the point where there's no room left.

Before when we were paying Colonial Downs more than we were actually making or more than the host fee -- the host track was actually making was extremely aggressive and, you know, one of the most aggressive throughout the country, they've taken it to a different level where they run out-of-state providers out of business.

MR. BURNETT: Thank you. Any further questions in light of mine?

Mr. Weinberg, before we start, are we going to hear from three counsel on behalf of the horsemen, or are we going to hear -- does anybody have any objection to that? Mr. Blackwell might.

MR. BLACKWELL: No.
MR. BURNETT: All right. We'll let each group have contributed to the best offer on behalf of Colonial Downs and the horsemen and let their representative speak.

Mr. Weinberg?

MR. WEINBERG: If I can just take a moment to pass this out. This is the chart that appeared in Colonial Downs' filing. It might be helpful to have them all on one page. I'm going to refer to it in my presentation. I'm not certain that everyone would have that with them. I perhaps over prepared.

MR. BURNETT: That's all right. Better than the alternative. Thank you.

MR. WEINBERG: I did want to just take a step back, because I think it is important when we look at source market fees to try to see the big picture, and I think the big picture is important as this Commission considers which of the two offers it has before it is the fairer of the two.

To review the basics, in Virginia there is a formula for source market fees that is currently calculated. That begins with the retainage amount, somewhere around 20, 21%. And from that is deducted an operator's fee, which is specified in each of the contracts that are on file with the Commission, plus
taxes which is the half percent to the Commission, less the variable host fee.

When we talked about in the past -- two years ago when we compared TwinSpires' application this year to what it was two years ago, I think we frequently heard nothing has changed. Well, taking a step back, the landscape of racing, and particularly in account wagering, has changed dramatically. It is that last component of the formula. The host fees.

The host fees are going up. There is no factual dispute about increasing host fees. One can see that as host fees go up, source market fees go down. That's the math. The chart you have before you gives you an estimate of what we think those fees are going up. We are not privy to what other ADW providers may or may not be paying, but I think what you have before you is indicative of the magnitude of the increase in host fees.

As those meets come on-line, we will see a further and further decline in source market fees. That decline has just begun. You can look at where we were in '07, where we went to in '08, and what the first quarter of '09 looks like, and the trend is downward for source market fees in Virginia.
So with that in mind, one could look at the host fees and ask, well, why are they going up? I think Mr. Daruty is here and Mr. Petramalo, they were intimately involved in that discussion and can give you the history, but by and large, if you look at the 18 tracks that are represented by TrackNet, those host fees are going up dramatically with the consequence that more revenue from account wagering is flowing to Churchill Downs than it was before those host fees went up. Some of it goes to the horsemen, no question about that, but at least half of it is going into TrackNet, which is owned by Churchill Downs, and Magna Entertainment Corporation.

So dollars that were once in Virginia to support purses and the operations of a live racetrack, which makes possible account wagering in Virginia. Without this track, there is no account wagering. So let's be clear. Colonial Downs is making a contribution every day to the existence of a market for account wagering providers in this state.

So our point is, what is fair? Given the leverage that is being asserted in the account wagering market, whether it be under the hat of
TwinSpires or TrackNet, ultimately the big hat is Churchill Downs. More revenue is leaving Virginia and going to Churchill Downs.

So what's fair? How do we somehow preserve what is a fair source market fee without suffering a continuing decline year to year to year so that five years hence we're looking at not whatever the average is, but maybe 2 or 3%.

So our proposal that is made on behalf of the track and the horsemen, the horsemen may have separate points to make, is that we should look at what the average would have been in the first six months roughly if the source market fees were not -- I'm sorry, if those host fees were not steadily going up.

We think just looking at the Commission's calculation of what the source market fees were for the first three-quarters of 2008 gives a rough barometer of what the source market fees should have been for the period January 1 to June 30th, 2009. That's the rationale for the 8.3, that if these host fees weren't increasing as dramatically as they were, maybe last year is a good indicator of where we would be this year, because that's the only thing that's changed in the formula. The operator's fee
hasn't changed. The retainage hasn't changed. The
taxes haven't changed. Only the host fees have
changed.

So that's why we think looking at 8.3%, which
is the Commission's number, is the fair number to
look at for the June 1 -- January 1 to June 30th
period for 2009, and our request, our offer, the
9.15% is based on taking an average of the two
six-month periods covered by the temporary --
yearlong temporary license. For the period
beginning July 1, we do think that the statute is
the appropriate basis to look at for host fees.

The legislation cured the defect of the
complaint raised by TwinSpires, that ADW providers
had to, quote, negotiate with a competitor. Well,
they were negotiating with the racetrack that made
ADW possible, not EZ Horseplay, but beyond that
point, the legislation cures that deficiency.
There's no longer a contract being set in the
legislation.

We think that 10% is fair. It was something
that at least TVG could afford to pay in 2007 before
host fees began to increase. I think at the time
they were one of the largest ADW providers in the
state, so it is certainly possible to have a viable
business model that makes this work.

Mr. Blackwell said that somehow the legislation was unfair because no one had an opportunity to be heard about it. Well, the General Assembly had numerous hearings and numerous opportunities to be heard. We've had no special privilege in those hearings. They were open to the public, and the opportunity to be heard was there.

I do want to comment a little bit -- both about leverage and constitutionality. I think it is no secret that Colonial Downs' signal is not being carried by any -- by any TrackNet track, any track represented by TrackNet is not accepting Colonial Downs' thoroughbred signal for wagers.

The two are not unrelated. To suggest that because TwinSpires has been paying a high source market, therefore, that's indicia that it has very little leverage in Virginia ignores the bigger picture, that TrackNet and TwinSpires share a common corporate parent, and that there is a connection in the negotiating posture between those two entities that affect the whole picture in Virginia.

So there is lots of leverage that Churchill Downs possesses to bring to this negotiation. And that's what it is. It is a negotiation. It is
about relative bargaining power. This statute provides some bargaining power to the Virginia stakeholders to talk to large ADW providers who have much greater leverage than we do. They control 18 tracks, which in general represent about a quarter of all ADW dollars wagered in the United States. So it's a significant marketship.

Let me just mention a word about constitutionality. First, from a process point of view, an administrative agent like the Commission does not look at constitutional issues. It is a division of power issue, separation of power issue. Courts are the only part of the government that are empowered to look at constitutional issues. Just a basic separation of powers argument.

But there are a number of cases that were cited in our earlier brief that talk about or at least address the constitutional argument. There is no distinction in the new statute between in and out-of-state ADW providers. Everyone pays the same source market fee. It is the same complaint in a different flavor, well, Colonial Downs is paying it to itself. Well, so is TwinSpires paying host fees to itself.

So it is the same argument, but the case of
the milk case and the wine cases where there is clear discrimination in the statute between in and out-of-state providers represented the foundation for the constitutional issues in those cases. That is not the case here. Colonial Downs is no more exempt from the source market fee than any other provider. It provides uniformity to all.

Let me make one other point. Contrary to TwinSpires' assertion that Colonial Downs and the horsemen don't want TwinSpires in the Commonwealth, that's inaccurate. For the last couple years, TwinSpires has enjoyed success in Virginia, and Colonial Downs and the horsemen have participated in that success in the form of a viable source market fee. The more success that TwinSpires has, as long as it is paying a reasonable source market fee, we want them in this state. We want them to penetrate the market as much as possible. We want other ADW providers in the state to reach as far a market in the Commonwealth as we possible can, but the question is, what is a fair source market fee?

We think the 9.15% we proposed is fair because it represents an average between source market fee that would exist but for the host fee that have been increased and what the statute provides going
forward.

I'm happy -- I know Mr. Stewart has a few comments that really talk to Colonial Downs' contribution to the ADW market and relative bargaining power that he would like to share.

MR. STEWART: I've got a couple thoughts for you this morning. This morning you're hearing a lot about account wagering, but the bottom line is this. TrackNet Media and its out-of-state horsemen want more money. The way they're going to do it is by paying Colonial Downs and the Virginia horsemen less money.

So as we go through the morning and listen to what I'm sure will be a lot of commentary, including what I hope will be some from the representatives of TrackNet, as they are quite honestly the reason we're here, please don't forget what it all adds up to. TrackNet wants more, and they think Virginia should take less.

Now, in many states the origins of pari-mutuel wagering on horse races goes back many years, and the ones responsible for bringing it to pass and the efforts involved are either forgotten or so much time has passed, their efforts have effectively been amortized over the time period. However, in
Virginia the history is much more recent.

Prior to February 1996, there was no pari-mutuel wagering in Virginia and prior to September 1st, 1997, there was no live racing with pari-mutual wagering in Virginia. The reasons those two things exist in Virginia today is the results of the efforts of many and the financial wherewithal of Colonial Downs.

Over 60 million dollars was spent by Colonial Downs to, in effect, open the Virginia market for pari-mutuel wagering. At that time account wagering was in its infancy, and no one was really thinking about it in the context of Virginia. However, one thing was clear and remains clear under the Virginia's racing act, Virginia would never be a place where wagering could take place, but there would be no live racing.

What was contemplated was simulcasting through a network of OTBs with customers wagering on a wide variety of tracks from around the country. The proceeds from that wagering would go to subsidize the cost of live racing, which was known even then to be a very expensive undertaking.

Simulcasting is a way for racetracks to expand the distribution of their product. Historically,
the only place the racetrack product was distributed was locally at the racetrack. Customers would come to the track and wager on the product. The simultaneous television transmission of horse races allowed racetracks to distribute their product to other tracks and OTBs where other customers could wager on them. These other tracks became a distribution network of retail outlets for a given kind of product.

This is extremely similar to a classic manufacturer/distributor retailing model. The manufacturer sells his product to the retailer, who then sells to the it customer. But wait a minute, you might say, this is a wager, not a widget. You know, how does that work? It's actually kind of simple. A $2 wager on a horse race usually costs the customers as a group 40-cents. Some wagers cost more, some cost less depending on the type of wagering in the state where the race takes place, but 40-cents is a good average. This calculates the amount of the take-out, 20%, which is removed from the wagering pool to pay for the business of wagering in racing. The other 80% is returned to the customer if they won wagers.

The distributor retailer has to pay for the
product, the horse race that it sells the wagers on.
For years, the standard cost of this product was
six-cents or 3% of the amount wagered. The
remainder went to taxes and operating costs to the
track and the horsemen, which are substantial.

Over the years wagering volume declined and
operating costs increased. However, two things
basically never changed. The price of the product
to the customer remained at 40-cents, and the cost
of the product remained at six-cents. The advent of
account wagering dramatically changed the
manufacturer/distributor retailer model in the
pari-mutuel wagering industry.

Now a racetrack is another option to
distribute its product. It can distribute it
through account wagering -- through account wagering
companies, over the internet, or stream its product
directly to customers over the internet.

The reason we are here this morning is the
producer and its partners who have a significant
portion of the wagering in this country want to
raise prices to their distributors and retailers.
TrackNet Media is a joint venture from Churchill
Downs and Magna Entertainment. They among other
things negotiate host fee agreements or prices for
18 racetracks in the United States.

Every racetrack has the horsemen as its partners, whether they like it or not, and the same is true for the horsemen. TrackNet claims their horsemen partners want to raise prices. I'm sure their partners have a different version of the story. Either way, the only thing that matters is the price for the product, simulcast of horse races is going up.

Now, in a classic situation, everybody knows what happens when the price of a distributor retailer increases. For example, in the oil industry, when the price of oil increases, what happens to the price of gasoline to the consumer? It goes up. However, in the pari-mutuel wagering industry, when the cost of wagering product to the distributor retailer goes up, the price of the consumer stays the same, 40-cents. The only way to pass the price increase to consumers along is to either increase the take-out or to add some sort wagering surcharge, neither of which is easily done.

The end result is that without a price increase to the customer, the producer, TrackNet and its horsemen, make more money than their distributor retailer, Colonial Downs and its horsemen make less.
There are four ADW companies besides EZ Horseplay operating legally in Virginia. Two of these companies, TwinSpires and XpressBet, are affiliated with TrackNet, and the two others, TVG and YouBet, are not.

The issues with TwinSpires and XpressBet are pretty simple. They're affiliates of TrackNet, and their TrackNet related host costs -- host fee costs are intercompany charges from the tracks their parent companies own. Increases in host fees from the TrackNet tracks are increases in intercompany charges.

For TwinSpires and XpressBet to argue that they can't afford to pay source market fees in Virginia because the intercompany host fees are increasing is like Colonial Downs saying it can't make any money in the OTBs because they decided to charge each one of them a management fee. The money is still there. Churchill Downs and Magna have decided to give it to their tracks in the form of increased host fees instead of paying it to Virginia for source market fees.

TrackNet for their part has said many times that nationwide ADW host fees are going up. The market rate has increased. That may be true, but
the part they are not telling you is that they are
the market leader. With 18 tracks, including some
of the most heavily wagered on signals in the
country, they're the ones driving the increase.
When we look at the cost for signals for EZ
Horseplay as a potential barometer for the fees that
YouBet and TVG are paying, the vast majority of the
increases come from TrackNet Media tracks. TrackNet
is basically saying that the market price for a
signal is going up because we decided to race.

The fact that there are two ADW companies in
Virginia independent of TrackNet complicates things
slightly. TVG and YouBet are truly caught in the
middle. They are facing increases in host fees from
TrackNet and increases in source market fees in
Virginia. I understand the position they find
themselves in. The fact is there should be enough
to go around for everybody, and I am more than
willing to talk about solutions to that problem.
The case for TwinSpires and XpressBet is much less
sympathetic. I'm unwilling to have Virginia take
less so that TrackNet can simply have more.

So where does that leave us? We're in a very
difficult time for racing. Small independent tracks
without alternative gaming are extremely vulnerable.
Account wagering revenues have been very important in sustaining Virginia racing over the last couple years. We have fought very hard to make sure that Virginia retains its fair share of this revenue stream.

That's what the new legislation is about.

Absent the change in how source market fees are paid, what is to prevent TrackNet from continuing to raise host fees and continue to erode this important revenue stream for Virginia?

Account wagering in Virginia now represents almost a third of the combined OTB and ADW handle. Clearly, with the decline in OTB handle we have experienced, while at the same time ADW handle is increasing, the growth in ADW handle is not -- does not all represent new customers.

Initially, this cannibalization of the OTB handle was not a problem because of our model ADW handle contributed as much to Virginia as OTB handle. Now we're in a situation where it continues to cannibalize and is contributing less. Given the price increases TrackNet Media is trying to impose, will continue to contribute less in the future. We may very well end up with more handle and less money.
Account wagering has been very beneficial to Virginia. Account wagering also has the potential to be very destructive for Virginia racing. As I said before, combining control of a product through TrackNet with basically an inexpensive and powerful distribution of retail network in TwinSpires and XpressBet puts us in a situation where they don't really need Colonial Downs, or for that matter, any live racing in Virginia. It just needs an audience to which it sells the product, horse racing from its tracks.

Now, of course, they would say they're all about supporting live racing, but the truth is they only need it to a certain degree. The ideal situation for them is to have account wagering predominate in Virginia, resulting in a weak Colonial Downs barely surviving. They need Colonial Downs to survive because they know that account wagering probably could not continue in Virginia if there's no live racing.

Now, account wagering can continue to help sustain racing in the Commonwealth. However, to do that account wagering in Virginia must work to benefit racing in Virginia rather than turn Virginia into a feeder market that is exploited to benefit
racing in other states. The promotion, growth, and sustenance of Virginia's native horse industry turns upon how Virginia benefits from account wagering, and that really is the question to be decided this morning.

MR. BURNETT: Any questions for Mr. Stewart?

MR. MILLER: Could I ask a question?

MR. BURNETT: Please.

MR. MILLER: This is just maybe a comment. I'm just interested in knowing more about it.

You said that Colonial Downs would be willing to work with YouBet and TVG and other ADWs to try to find some solution to the problem they face by the increased host fees that they have to pay, and the fact that they have to pay the 10%, plus 1%, plus -- 11 and whatever it is.

MR. BURNETT: Eleven and a half here.

MR. MILLER: Eleven and half here in Virginia. You said you would be glad to work with them. What would you do? What do you have to work with?

MR. STEWART: Well, that's an interesting question, and I've spent quite a bit of time over the last several months trying to figure out where the answer to all that is. I think that in the end, if you look at it sort of globally, YouBet and TVG,
and I can't speak for Mr. Daruty, but my guess is they're important to TrackNet because they're a distribution outlet for their track's products. So they would like to keep YouBet and TVG operational in Virginia.

I think to do that everybody is going to have to give a little. We never said that we wouldn't negotiate with anybody. I think all that has happened with the new law, contrary to Mr. Blackwell's opinion, my opinion is they have a tremendous amount of leverage, and they're exerting it every day. You can look at our out-of-state handle on our racetracks.

MR. MILLER: But the legislature has eliminated one thing that you can negotiate, because the 11 and a half percent is cast in stone.

MR. STEWART: Well, the 1% to the Breeders' Fund and the half a percent to the state is cast in stone. We could certainly do some kind of an arrangement in which they pay the statutory rate and were rebated a certain amount from us. I mean, we've done arrangements like that with the horsemen today. The horsemen, for instance, the purse agreements for the new OTBs basically do that.

MR. MILLER: You mean let -- you contemplate
the legislature by the passage of this act gives you the ability to discriminate by and between ADW providers insofar as the amount of money that Colonial Downs takes. As long as they pay the one and a half percent, you can make a deal and contravene the total 11 and a half percent by giving a break to company A or company B.

MR. STEWART: Well, I can certainly say to company A, pay me the 10%, and I will give you back 2%. I can say that.

MR. MILLER: You could?

MR. STEWART: Sure. We do that with the horsemen in the OTBs in the western part of the state. We pay in the statutory rate into the purse account, and then the horsemen write us back a check for what Mr. Petramalo refers to as a rebate.

MR. MILLER: Okay.

MR. WEINBERG: I mean, to add -- to clarify Mr. Stewart's statement. We can certainly enter into an agreement with YouBet, for example, that says so long as you do X, Y, and Z marketing in the state, we're prepared to pay to you 2% of the handle you generate in the state.

MR. STEWART: I think -- and I'm speaking from memory, but I believe our submission basically says
that at the end. It's not that we're unwilling to negotiate, we just want to level the playing field. As I said, I guess maybe Mr. Blackwell doesn't feel like he has a whole lot of leverage, but I believe that they do.

MR. MILLER: One other question, before we move on to the next counsel, for Jim.

Your submission, unless I'm reading it wrong, the fact that these other ADW providers have a license predicated from a certain rate they're paying for their source market fee, your position is as of July 1 of this year that doesn't matter. I mean, they're going to have to pay the full amount.

MR. WEINBERG: That's correct.

MR. MILLER: The company that was cited as going to 2011 or 2010, the fact they have a contract, you're expecting as of July 1 of this year, whatever rate they're paying for that source market fee within that contract is going to 11 and a half percent July 1?

MR. WEINBERG: Not -- I would say 10%. I mean, they're currently paying the point five to the Commission.

MR. MILLER: Okay. Yeah.

MR. WEINBERG: And the 1% to the Breeders'
Fund is a separate part of the statute, but yes, the
10% supersedes these contracts, in essence.

MR. MILLER: Have you heard from the other --
have you heard from YouBet and TVG in relation to
that point?

MR. WEINBERG: No, we have not had that
discussion.

MR. MILLER: Could I ask a general question --
MR. BURNETT: Please.

MR. MILLER: -- to the congregation?
MR. BURNETT: That would be fine.

MR. MILLER: Has anyone heard from TVG or
YouBet on that point?

MR. STEWART: Well, I would add, we did have a
brief conversation with YouBet that I think Jim
forgot. He wasn't on the phone, I was, but I never
heard from TVG.

Mr. Scoggins at XpressBet has asked us to
discuss this issue several times, but we wanted to
resolve this particular issue before we moved into
that.

MR. MILLER: Well, he happened to have raised
his hand. Have you -- is this appropriate? I mean,
I don't want to --

MR. BURNETT: For what it's worth to fellow
commissioners, but I think it's valuable for us to have a broader discussion.

MR. SCOGGINS: For the record, we view that the rate that we are currently paying as defined by our contract and as set forth, in essence, by the license, which was conditioned upon and reflected in the contract, should remain in effect throughout the duration of our license this year. We certainly would make an argument that that would continue to be in effect until the end of our contract, which expires in 2012.

We recognize that there will be vigorous debate over both of those positions, but I believe that if not directly, certainly indirectly I have made that comment to either Mr. Weinberg or Mr. Stewart. So I believe they're aware of our position as it relates to the impact of the July 1 date.

MR. MILLER: Just to give you the motivation as to why I asked the question. I just -- I think it's good for us to know as a Commission, and I think it's good all the parties to know that there is some concern within the other ADW entities with what is transpiring here in Virginia, even though we haven't had any formal communication from them, and
apparently -- I wasn't there so I don't know.

Apparently, there was no communication with the legislative committee that considered the legislation; is that right?

MR. SCOGGINS: Commission Miller, I can address both points. I am aware through communications that I have had with representatives of both YouBet and TVG that they are concerned about the rate and the impact that the rate of 10% will have on their business in Virginia. I am also aware, because there was a letter sent to the governor at the time he was considering whether to sign or veto or amend the bill, that all four ADWs signed on to a letter encouraging the governor not to sign the bill, which he ultimately did sign, but that -- there is an official record, if you will, in the context of the governor's consideration of the bill once we were aware that it had passed.

MR. MILLER: Thank you. That's all I have.

MR. WEINBERG: Just so the record is clear, I just want to make sure Commissioner Miller was -- did receive a copy of the letter Colonial Downs submitted on June 12th to the Commission asking about this.

MR. MILLER: Oh, yeah, that's why I asked.
MR. WEINBERG: Okay.

MR. MILLER: That's why I asked the question.

MR. WEINBERG: Just wanted to be clear.

MR. MILLER: It's not with me. I've got it at home.

MR. BURNETT: If I could follow-up on that question of Commissioner Miller's, help me with this concern.

To the extent that the Colonial Downs racetrack would expect the Commission to enforce this statutory amount -- the payment of this statutory amount by each licensee, and to the extent that that amount may be different in the end for each of the providers, each of the ADW providers, one may get a rebate of 3% and one might get a rebate of one and a half percent, which we may or may not be privy to, doesn't the Commission become a participant in determining the competitive playing field among all of these parties? Don't we get ourselves in some ways entangled in the marketplace in a way that regulators should not?

MR. WEINBERG: Are you there today? I mean, suppose this statute didn't exist. That's exactly what you do. You look at a contract that differs by ADW provider, and either you thumb up or thumb down
it.

MR. BURNETT: We don't negotiate those contracts. We have a statutory rate that's now been set, and the payment doesn't come to us. If they don't pay the Breeders' Fund or they don't pay the Commission, it's clear from the statute that we are empowered to pass rules and regulations to enforce debts to the Commonwealth, which those two certainly are. It's not clear to me that the 10%, because the statute requires it to be paid to Colonial Downs, and then that's further complicated by the fact that that amount may change based on private agreements, that's a debt due to the Commission that we ought to be involved in the enforcement or debt due to the Commonwealth that is set forth in the statute.

MR. WEINBERG: I disagree.

MR. BURNETT: Okay.

MR. WEINBERG: I think you, with all due respect, overcomplicated it. It is clear that the Commission's role is to license ADW providers. The statute provides, in essence, a checklist of this is what you need to do to get a license. One of it is to make the payment of a 10% source market fee after the track, after the horsemen. If that's being done, then the Commission has fulfilled its -- it
can check that off its list and ADW providers
qualify for a license.

    MR. BURNETT: Okay.

    MR. WEINBERG: I don't think it's any
different than now checking off the list is there a
contract or is there not a contract.

    MR. BURNETT: Well, I'm troubled by the fact
that the 10% may not be the 10%. I'm inclined to
agree with your argument if the 10% is being paid,
and it's a true payment. It's just -- it looks like
a slippery slope to me. Maybe I need to think more
on it further.

    MR. WEINBERG: But with all due respect, no
ADW provider is in exactly the same position, right?
The statute tries to begin with an opening baseline.
Here's where everyone is if you don't want to
talk -- if you don't talk to us about what you're
going to do for the Commonwealth, then pay 10%, and
you never have to talk to the horsemen or the track
again.

    MR. STEWART: It's really no different than
the purse account.

    MR. BURNETT: Well, the purse account
language, and I was very involved in that, and as
you know, there was enormous resistance on the part
of the Commission to go along with that plan. It was the racing business on the precipice that caused them, I think, to stretch what -- to a place they didn't really want to go, and we ended up making the argument based on the language of the statute, which we concluded only required that the money be paid into the purse account, then we thought it could be fairly assumed that it was up to the horsemen to determine how they wanted to expend their money. There was no requirement that the purse account money be all expended on purses such that rebates would be permitted, if I remember the argument.

I would want to look at this a little more closely, I think, get down the statutory language and a few words can make a difference is all I'm saying. I just wanted to hear your position on that.

MR. WEINBERG: Not to complicate the record unduly, but the purse account -- there are two accounts in the statute which gave rise to the ability to distinguish between those two accounts and the way that we have it.

MR. BURNETT: Right.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.
MR. MILLER: Could I ask to clarify something I should know as an esteemed commissioner, but I don't know off the top of my head. Right now -- not now, but in the year 2008 or the year 2007, or whenever, 2008, we'll say, how is the source market fee collected? Where does the money go initially?

MR. WEINBERG: It's paid to Colonial Downs, which then divides it in half and sends half to the horsemen, which in turn is apportioned based upon thoroughbred versus harness.

MR. MILLER: That's how it's always been done; is that correct?

MR. WEINBERG: Correct. That's correct.

MR. MILLER: And have you had occasion in the past where somebody didn't pay and you had to call on the Commission to enforce it?

MR. WEINBERG: We have not. We have been able to resolve our own collections.

MR. STEWART: With help from time to time.

MR. BURNETT: YouBet.

MR. WEINBERG: You are correct.

MR. MILLER: Oh, that's right.

MR. WEINBERG: They didn't have a license, though.

MR. BURNETT: Considerable enforcement there.
MR. WEINBERG: Yeah.

MR. MILLER: All right. I'm trying to remember that.

MR. REYNOLDS: Mr. Chairman?

MR. BURNETT: Please. Mr. Reynolds?

MR. REYNOLDS: There seems to be some difference of opinion about the involvement of the Commission in this new legislation. Somebody said that it wasn't involved, and you said it was opened to the public. What was the involvement of Commission with the legislation?

MR. WEINBERG: In this legislation? In the proposal? We had a working group. We circulated drafts of a number of pieces of legislation. You may recall, there was the Omnibus Bill. There was this bill. I think there was another bill as well.

MR. BURNETT: I think I can help on that a little bit. While we may have been consulted as Mr. Weinberg says, I don't disagree with what he says, we were not permitted by the administration to take a position in the legislature for or against the bill.

MR. REYNOLDS: Right.

MR. BURNETT: And I think that is interpreted by some as being -- our having been excluded from
the process, if you will, but simply that the governor's office did not want us for whatever reason to participate in the legislature's consideration of the statute. So it was carried by others and promoted by others.

MR. MILLER: But we did participate a little further, because even though the governor directed that we not take a position on the legislation, the governor's office may have -- they didn't forget, but they may not have realized that at some point every administrative agency has input into legislation that passes, because the governor's office solicits comments from the agency affected as to what affect this legislation may have on that agency as an executive agency. At that point we did advise the governor's office of what we felt the impact of this bill might be, but again nothing happened.

MR. BURNETT: I'd like to pose several questions I have here. I've been taking notes as the two of you have presented. To Mr. Petramalo and Mr. Canaan, who I know probably have some additional things to say. I'm just asking you to listen to my questions and respond to them as you see fit going forward. It might abbreviate things a little bit.
They're not particularly complicated.

One is this issue of host fees. Clearly, there has been a push in the industry by horsemen and tracks alike, and it's one of the few places I think that there is true alignment between track and their -- most tracks and their horsemen, which is to get as much as they can for host fees for the homeboys, if you will, for the folks that are putting on the show, that contributes to more purses at that racetrack, and their product getting sold for more money. The racetrack presumably has more money to wash windows and do concession and clean floors, keep the track up and all the things they do, including profit hopefully.

So if I'm not mistaken, Colonial Downs would not hesitate to move its host fees up for the benefit of its own corporate bottom line and its horsemen if it can do so reasonably in the marketplace and not get closed out for other reasons. Host fees are a negotiable item depending on the environment.

What I think becomes particularly difficult, and it's not -- I don't characterize it as a fault situation. It's a circumstance. When you have small independent tracks who are not operating
year-round, who are principally import states when it comes to where the wagering handle comes from and where their signals come from, there's almost an opposite affect of host fees compared to the track that races year-round. And so host fees in this environment essentially become the enemy of Colonial Downs, but were Colonial Downs running year-round, the host fees might well be their best friend.

So it's a -- it's to me an imperfection in the way our entire system is built, that this host fee model at some level, because of distributions like ADW simulcasting, penalizes those that don't run year-round that have to pay a lot of money for a host fee to import it, and don't have the offsetting income from selling their host fee at the track.

I just make that comment as being something -- it's not really a question. Everybody wants to increase their host fees because it helps the bottom line of both horsemen and racetrack.

This issue of leveraging troubles me because it's a slippery slope. I don't know where it ends, and is it appropriate to leverage TrackNet through TwinSpires if TwinSpires is only a 30% owner of TrackNet versus a 50% owner, and do we even know. At what point -- you know, where does it all take
us, and doesn't Colonial Downs get accused of doing
the same thing in terms of leveraging through EZ
Horseplay or EZ Horseplay leveraging through
Colonial Downs.

This getting to another entity through the one
that's before us when the other entity isn't before
us is troubling to me. I just don't -- margins ever
since big boxes have been dropping in a dramatic
way. The corner store jeweler can no longer mark up
its product 40% and expect to make a living with
Wal-Mart down the street having a 10% margin instead
of a 40% margin. I think margins are shrinking in
our business, and it's a very difficult problem
because expenses are going up all the way around.

The notion of our trying to correct or balance
the size of various business entities and their
competitive playing field by us monkeying with
rates, even with folks who aren't in front of us, to
me could carry us to places I don't think we want to
go, because it could take us as regulators into the
marketplace beyond where we should be.

MR. PETRAMALO: May I address that leverage
issue?

MR. BURNETT: Can you let me just finish one
more, and then come back to it? I'll give you all
the time you want.

I agree with you that we don't need to get involved in determining the constitutionality of statutes. We apply the law as we see it and as our counsel helps us interpret it in a proper way, and my question would be to all of you, what is -- why should we when we're operating under an existing statute be contemplating the terms of a future statute, leaving out the constitutionality of it. We're told what to do under the statute that's in place now. Why are we considering what some future statute is doing?

And then lastly, what -- reasonable is in the eye of the beholder. I hope when we go back a little further along that at least Mr. Daruty, in particular, can help us with the national picture of source market fees. What I'm looking to hear is is Colonial Downs -- is Virginia a place where we're going to get the label as of July 1 as having the highest source market fees in the country?

And if that is so, is that something that's good for the sustenance, promotion, et cetera, of racing in Virginia, or could we find ourselves actually hurting racing through the implementation of the highest source market rates in the country.
So is it appropriate for us to consider the rates in other states and what impact that has on the various players that are here and how other states compare to us and what they're paying in other states? It seems you've shown us what other states' tracks are charging, but not what is being paid for source market fees in other states. I'm not sure we even need to go to that, but I put it out there, so thank you.

Mr. Petramalo?

MR. PETRAMALO: Let me start with that before I get to leverage.

Source market fees. There probably are only a few states that actually regulate source market fees, California and Virginia, and I think maybe Washington state. The vast majority of states in which TwinSpires operates, and I think they operate in about 35 or so states, have no regulations whatsoever with regard to source market fees or even ADWs. It's the wild west out there.

So TwinSpires probably is operating in West Virginia with paying little or nothing in the way of source market fees to the racetracks or horsemen there. They certainly aren't paying eight and a half percent. If they do pay, they pay a small
percentage, 7% within 25 miles of a track. If you
drew a circle around 25 miles of Colonial Downs,
you'd find rabbits and trees and nobody else, but
that aside.

So what I had previously said about TwinSpires
doing business here in the Commonwealth, I think was
a little different from the way Mr. Blackwell had
characterized it. I don't believe I said TwinSpires
is unwelcome here. They can go do their business
someplace else.

What I was saying is if TwinSpires doesn't
think the margin here, whether it's 5% or 6% is good
enough compared to their margin of 12% in West
Virginia, they don't have to operate in this market,
but distributors throughout the country have
different margins depending on what market they're
in. This is nothing new.

Let me get to what I really wanted to talk
about, and that's leverage, because that's
important, and I think that's what the new statute
is all about. Leverage.

First of all, with the advent of the new
statute on July 1st, the Racing Commission is out of
the business of regulating rates or in any way
taking part in the rates. When I'm talking rates, I
mean source market fees.

MR. BURNETT: Other than collecting them.

MR. PETRAMALO: Well, you collect them for yourself. You're not going to collect them for us.

MR. BURNETT: We're being asked to enforce them for you. That's for another day.

MR. PETRAMALO: That's a different issue.

MR. BURNETT: Okay.

MR. PETRAMALO: That's a different issue.

MR. BURNETT: Okay.

MR. PETRAMALO: The question -- as Jim so succinctly pointed out, you've got the checklist, and all you have to do is check out when somebody comes in for a license. January 1st, you check off the box, pay 10%. You don't say, well, where's your contract? And if we don't have a contract, do we have mediation? All of that is gone. You're out of that business. Your job is very simple.

But let me talk about leverage. On the normal Monday and Tuesday during our race meet, we have great signal sales, because of our product and the fact that we've got very little competition. So normally on a Monday or Tuesday, we have about a million dollars in handle; that is, people outside of Virginia at OTBs and ADWs betting here.
Well, this -- for the first two weeks, it's dropped considerably, probably about 25% or more. And guess why? TrackNet, right back there, is not taking our signal. And why are they not taking our signal, because they're disappointed with the way TwinSpires is being treated with regard to source market fee. That's leverage. That's what we're talking about, okay?

So if I'm a horseman, as you know, we've got a lot of Maryland horsemen running here. We've got a lot of Florida horsemen running here. We've got a lot of Kentucky horsemen running here. Well, those owners back in those states cannot bet on their own horse because the signal isn't going there. Their only option is to get an account with TVG or YouBet. They're taking our signal. TwinSpires, no. XpressBet, no. OTBs in Florida, Jai Alai Frontons, no. Why? TrackNet controls that. That's leverage.

All right. What leverage do we have? As of July 1st, our leverage is 10%. As Ian pointed out, that's -- in my view, that's negotiable.

Now, whether you want to say it's a rebate or whether we're paying -- let me use Jim's example. Suppose YouBet were to say, you know, we think this 10% is a little high. We say, okay, well, how about...
if we rebate you a certain percentage based on the
money you spend marketing the Virginia product and
marketing your operation in Virginia because that's
going to aid us. So we give them a ten -- a 1% or a
2% rebate. What's wrong with that? That's
perfectly appropriate. It requires nothing for the
Commission to get involved with. It's a business
deal. It's a business deal. If somebody else wants
to come in and do the same thing, fine. We'll
consider that.

But guess what? We now have the leverage.
Ten percent is our leverage. Without that, we're
shot. The big guys come in here, and they squeeze
us. TwinSpires comes in and says, well, look, we're
only going to pay a source market fee of 3%, and we
tell them go pound sand. Well, TrackNet says okay.
We'll take care of you. We won't take your signal.
That's what this is all about, raw economic power,
and now the legislature has given us a tool to fight
back. It's as simple as that.

There was another point that I think you --
oh, the future statute. We're not saying that you
should enforce -- you should -- you're bound to use
the 10% in judging whether or not our last best
offer makes sense, so that you would want to accept
it. I think all we're saying there is that it's
certainly a guideline that you ought to look to and
simply not ignore it, because this is what the
legislative judgment was, and it's by taking that
10% and averaging it with the earlier six months
that we come to the 9.1 percent, which we think is
reasonable.

And then finally you raised the issue of
whether Virginia will get the reputation of having
the highest source market fee in the country. It
won't be a reputation. It'll probably be a fact,
because most other states don't do anything about
source market fees, but believe me, they will be
based on the feedback that we've been getting from
other horsemen's groups.

Now, this all came about because of varying --
differing views between the horsemen and the ADW
companies as to how the economic pie should be cut
up. You said that this host fee thing is really
getting complicated and it helps one person, but
disadvantages the other. That's true. We, as
horsemen, recognize it. That's why we proposed a
completely new model that was divorced from the
notion of host fees and source market fees, et
cetera. It went nowhere other than to get us
involved in an anti-trust lawsuit in the Western District of Kentucky, but I wouldn't sit there and be concerned that Virginia is going to have this reputation.

Well, if Virginia has a reputation, it should be that it's always out on the forefront. Even though we're a small state in terms of racing, we are always out there first on cutting issues, whether it's regulation of ADWs, whether it's statutory source market fees, or whether it's regulating steroids. So I wouldn't worry about getting a reputation.

MR. BURNETT: I don't know whether this is a proper question or not, but since we're on the subject of leveraging and all the rest, what would the position of the parties be if it were known that if this Commission said -- accepted Churchill Downs' number of 7.2%, and all of a sudden TrackNet is taking Colonial Downs' signal, but if we say 9.15%, they're not taking TrackNet's signal -- TrackNet is not taking Colonial's signal. Would that make any difference in this discussion? I'm not sure we should be considering it. I'm just putting it out there.

MR. WEINBERG: I think Colonial's answer is
no. It doesn't matter.

MR. STEWART: Let's decide --

MR. BURNETT: I'm just asking. It seems like that was a big -- that's what I'm hearing. You're getting beat up, and they're not taking your signal.

MR. PETRAMALO: I think the question is premature. I think what you ought to get, first of all, is a commitment from TrackNet that if it's 7.2%, we'll take the signal. If it's nine, we won't. Why operate in the --

MR. BURNETT: I always wondered who goes first in negotiations and all the rest, but Mr. Daruty is on his feet. Mr. Blackwell, do you want to speak before Mr. Daruty does?

MR. BLACKWELL: Yeah, actually I would.

MR. BURNETT: Mr. Daruty, just a moment, please.

MR. BLACKWELL: Just two points. There was a number of things I wanted to address. One is that Colonial Downs through this is alienating itself from the rest of the industry. They proclaim they're on the forefront of doing something, but they're pricing themselves out of the market. You know, and I think they even have -- seemed to have admitted on record that this 10% is probably too
high, because they talk about ways to circumvent the
10% by offering a rebate.

They said, oh, there's ways around it. They
talked about taking power away from the Commission,
the regulatory agency in saying, hey, let's give all
the power to Colonial Downs and the horsemen. Don't
you worry about it. You just either sign off
whether they filled out the form and checked the
boxes, but we're going to decide who operates in
this state, and we're going to decide at what rates,
and we have the fallback position of rates that make
it unprofitable for you to do business in our state.

And to me for them to get up here and say, no,
we won't negotiate; no, we won't consider anything
else, they're arguing out of both sides of their
mouth. They have clearly shown today, once again on
the record, they're not willing to negotiate. They
may be willing to cut a deal with YouBet. YouBet's
name has come up numerous times as we've already
talked to them about maybe doing something
different. There may be a rebate. At no point --
and we've been coming to this -- you know, the
Commonwealth for four or five months straight trying
to reach a deal. We've gone through mediation. We
negotiated through TwinSpires. We negotiated
through TrackNet Media, and with TrackNet Media here today, they said no. We don't care about our signal going out to other places. Let's decide this rate, and let's be done with it.

I mean, I think clearly they've shown they have no interest in negotiating with us. They want to hold us to a rate that is unprofitable, and Mr. Weinberg has said, you know, we welcome TwinSpires, as long as TwinSpires doesn't want to make any money. I mean, that's clearly the rate that they are providing and proposing. At one point they say, well, this is not really the rate. We can do something else. We're going to hold TwinSpires to this rate.

The other thing, and Mr. Daruty can speak to this more clearly, but Churchill Downs owns four racetracks. We do not make any money off of the other 14 racetracks in TrackNet Media as opposed to what was discussed today. Those tracks represent themselves, and TrackNet Media represents a number of tracks outside of Churchill Downs and Magna.

The other thing -- and, Chairman, you pointed this out, and it's not a you could. Colonial Downs has increased its host fees, and they want to point the finger at Churchill Downs, but you know, there
are other entities -- and Mr. Daruty can speak to
this -- NYRA has increased its host fees. Colonial
Downs increased its own host fees, but they're not
discussing that today. They want to point the
finger at Churchill Downs. Churchill Downs is the
only one increasing their host fees.

So I just wanted to make sure that those
inaccuracies are addressed on record, and I'll let
Mr. Daruty speak more intelligently about TrackNet
and what he represents.

MR. BURNETT: Before we ask Mr. Daruty to
speak, are there any questions from any commissioner
of the folks before us?

MR. REYNOLDS: I have -- just for the record,
what is the rate that you're paying now, or actually
before December?

MR. BLACKWELL: Before December?

MR. REYNOLDS: Yeah. What was it?

MR. BLACKWELL: Last year, according to
Commission staff, we paid 8.6%, 8.7% for the entire
year, which was again the highest rate paid by any
account wagering provider in the Commonwealth of
Virginia.

MR. REYNOLDS: What rate have you been paying
the last six months, eight months?
MR. BLACKWELL: It was based on 8.3, which was the average being paid by all licensees based on numbers that represented the first -- or I guess the first three-quarters of 2008.

MR. LERMOND: We had to set the rate at the December meeting.

MR. BLACKWELL: And that was the only number that staff had to work with.

MR. BURNETT: That's all we had.

MR. LERMOND: Right.

MR. BLACKWELL: And so now we have numbers for the actual period of time.

MR. REYNOLDS: And that is 7.2?

MR. BLACKWELL: That was, I think, 7.2 and that takes into consideration our own rate of 8.3%, which was an artificial rate. So that -- our own rate was used kind of against us to say, well, you were paying 8.3, which was the average last year, so that brings the average up. And we were not a licensee, we're a temporary licensee, and again our number was used off old data.

MR. REYNOLDS: Colonial's number is 9.15.

MR. BURNETT: Yeah. The two best offers are 7.2 and 9.15.

Mr. Daruty, I'm not sure where you want to
start, but go right ahead. If you would identify yourself for the court reporter, please.

MR. DARUTY: Yes. I'm Scott Daruty. I'm president of TrackNet Media Group. I appreciate the opportunity to be here this morning.

One thing that always stands out to me no matter where I go in this country is how much passion people have for our industry, and I certainly see that in this room today. I think both the commissioners themselves and the gentleman from Colonial Downs and the horsemen, I certainly believe everybody here this morning is genuine in wanting the best thing for the industry.

With that said, there were a number of statements that were made this morning that were just plain factually inaccurate. I think people see things from their point of view, and that point of view doesn't always reflect what's actually going on.

TrackNet, just to lay a little bit of background, we do represent 18 racetracks throughout the United States. They are tracks that are owned by Magna and Churchill, but they're also independent tracks. We represent those racetracks both -- whether they sell or simulcast signals, be it
through other racetracks, simulcast facilities, account wagering companies, casinos, off-shore rebaters, you name it. We represent them in all the sales of their signals.

We also represent those tracks and their affiliated OTBs when they purchase signals from third-party racetracks, such as Colonial Downs, such as NYRA, such as Del Mar, Keeneland. When those non-TrackNet tracks run their races, we purchase for our racetracks and OTBs, and we also purchase for TwinSpires and XpressBet. That's really TrackNet's only involvement with TwinSpires and XpressBet is that we purchase signals for them. We don't get them licensed in jurisdictions.

We don't typically negotiate their hub fee that they get out of a state like Virginia. That is left to, you know, Mr. Blackwell for TwinSpires and Mr. Scoggins for XpressBet, and frankly, you know, in some ways I don't -- from XpressBet and TwinSpires' perspective -- necessarily care how you guys come out on the issue before you. I mean, that's really for Mr. Scoggins and Mr. Blackwell to worry about, for Colonial Downs and its horsemen, and for this Commission to decide. My primary responsibility first and foremost is to represent
Magna and Churchill and independent racetracks who participate in TrackNet.

Now, we do a number of things. I'll just mention briefly in addition to just worrying about host fee rates. We have a full-time compliance officer who makes sure that all the facilities we sell our signals to are properly background checked and screened. Obviously, that's not an issue when we sell to a racetrack like Colonial Downs or any other regulated track across the country. It is an issue when we sell to Indian casinos or some of the smaller account wagering companies or off-shore rebaters.

We spend a lot of time on those kinds of compliance issues. We spend a lot of time putting in place regulations and requirements with respect to the sale of our signals to rebate companies. That's an area that there was a lot of focus on a year or two ago, is it good for the industry, bad for the industry. So we're trying to move the industry in a direction that's better for the racetracks, better for the tracks putting on the show.

When you talk about account wagering, and that's primarily what we're here to talk about
today, it's really important that you have a bit of background. If you go back say five years, five to ten years, and you looked at the account wagering business, it was basically dominated by TVG at the time. TVG had setup a model where it paid host racetracks three and a half percent host fees, and it paid source market fees in the jurisdictions where it took wagers, but it didn't recognize -- it didn't take wagers hardly anywhere. At the time TVG was in ten states, and that's it.

So TVG took bets in ten states, paid source market fees in those ten states, paid the host fees three and a half percent, and then guess what? They sublicensed the content to YouBet, who went out in about 35 states and took bets. They didn't pay -- YouBet did not pay source market fees. YouBet paid host fees to TVG of about eight to eight and a half percent. TVG pocketed 5%, turned around and gave the track three and a half.

Now, at the time it was pre-TrackNet. TrackNet didn't exist. Churchill Downs was not even in the account wagering business at the time, and I worked at Magna. And we at Magna looked at it and said this is crazy for our racetracks. Our tracks are not getting source market fees in the markets
where we operate. When we sell our signals, we'd only be getting three and a half percent. That's just not worth it.

So Magna got into the account wagering business by starting XpressBet. It got into the television business by starting HRTV, and it started to change the model. What was the first thing that changed? It was the host fees. This isn't new. The change of host fees doesn't just go back to 2007 and the formation of TrackNet. This goes back five, six, seven years. I know. I was working for Magna and XpressBet. I was negotiating on their behalf with YouBet to sell its signal. I'll tell you what, about five years ago, the host fee that YouBet was paying for Santa Anita Park was 8%. I know that because I negotiated that deal myself.

Today the host fee that's being charged for Santa Anita, eight and a half percent. Is it higher? Yeah, it's higher, but it's not this wide, wide swing that's been represented this morning.

What has happened that's so significant in terms of host fees is the tracks that used to be TVG exclusive, like Churchill Downs, have seen considerable increases in their host fees. What do I mean by that? Well, TVG had an exclusive on
Churchill Downs Racetrack, on Arlington Park Racetrack, on Calder Racetracks, on those Churchill owned racetracks. Those exclusives did not expire. Those contracts did not expire until 2007.

So if you look back to that time period, two years ago, what was Churchill Downs receiving as a host fee, it was receiving three and a half percent because it was under TVG exclusive. As soon as those exclusives expired and Churchill and Magna got together and formed TrackNet, Churchill's signals all of a sudden had increased host fees.

So it was somewhat -- I mean, it's somewhat accurate to say there's been this huge swing in host fees, but it's somewhat inaccurate to say that, because really what was keeping them down was the TVG exclusives.

So what happened as these -- as these host fees were increasing, prior to TrackNet but through Magna's effort at that time, as host fees were increasing, what was happening to source market fees?

Typically source market fees were about 7%. That's kind of where they settled across the country. Magna -- and Mr. Petramalo said that source market fees are not regulated in many
jurisdictions, and he's correct. They're not regulated in many jurisdictions, but Magna, the racetrack owner, was in the same position that Colonial Downs is in today. Hey, you know, this is our market. We want to be fairly compensated, and at the time we setup 7% source market fees.

And then when TrackNet was formed and Churchill came out of its TVG relationship, Churchill adopted those 7% source market fees, and by and large the standard in the industry was around 7%.

Now, there were a couple of outliers. California charges probably the highest source market fee in the country, and I don't think it's high as the 11 and a half percent total that's in the new the statute, but it's probably close. California, if you listen to their argument, they say they deserve that because they're about 50% of the account wagering business in the entire country. And that's a pretty accurate number. I don't know if it's exactly, but it's 40, 50%. They're a huge, huge portion of the total account wagering, and they say, hey, if these companies are doing this volume of business in our state, they can afford to pay us a higher source market fee.
So the California model, basically the ADWs are allowed to retain about 10%. So if you look to a 20 or 21% blended take-out under the California statute, the ADW would have to pay a source market fee of maybe 10 to 11%, something in that range, but again that's for the biggest account wagering market in the country.

Everywhere else is generally 7% or less. Colonial Downs and the Virginia marketplace is probably close to second under the old model. If you go back and you look at some of the numbers that are presented by staff, you know, a source market fee in the range of 7, 8, 8.5%, remember, then there's another half a percent on top of that goes to the Commission.

The other numbers I'm quoting you from other states are all in. That's everything. If you take the all in number here in Virginia, you have to add in the half a point that goes to the Commission. You're already at -- you know, at the top, top of the class, and now we at TrackNet, we look at this new statute, and we say now it's pushing -- you know, you're already one of the top. Now you're pushing it several points higher. You're surpassing California, which is 50% of the account wagering
market, it just doesn't make sense. It just does not make economic sense.

We do want the industry here in Virginia to be healthy. We want live racing. We want the horsemen to run for decent purses. We want all of that, but you have to look at the Virginia business model in the context of the broader national model.

I heard both Mr. Stewart and Mr. Weinberg say a couple of times, well, we need to look at the big picture. We need to look at the big picture, and they laid out the whole big picture for Virginia.

Well, I'm here to just show you the bigger big picture, which is the national picture, and I feel like my job here today is just to let you guys know what's going on nationally in the industry, and then let you pick and choose whatever facts you like or don't like and come to whatever conclusion you're going to come to, but I just wanted to make sure you guys understand what is going on outside the Commonwealth of Virginia.

So as I've said, the host fees have gone up from the historic levels of the three and a half percent for account wagering. Primarily that was more an attack on the margins of the account wagering companies than it was on the source market
fees. In other words, there was an objection when account wagering companies would make, let's say, 10% on a bet. The host fees would be three and a half percent, and the source market fee would be 7%. That seemed crazy to us. So we did start to move the host fee rates up.

When TrackNet got formed back in 2007 and we were on that endeavor, we were by no means the only one engaging in that effort to move the host fee market. It's been characterized today that TrackNet is the market leader, and TrackNet sets the rates. That's all very flattering, and I appreciate that, but it's not really accurate.

If you look at NYRA, NYRA's rates had actually increased -- the same issue. They were under TVG exclusives. They were getting three and a half percent. They filed bankruptcy. Magna, as you know, is in bankruptcy. I mean, we've got issues in this industry that the content providers are saying, wait a minute. We're not even making any money, and we're running Saratoga and Santa Anita and Goldstream, and some of the premiere tracks in the country. We've got to fix this model. We've got to make it a point where the guys putting on the races can make a decent amount of revenue.
So NYRA, as soon as they came out of their TVG exclusives, their host fees shot right up. Okay? Their host fees are very consistent with where the TrackNet host fees are. I can tell you that. I can assure you of that. Keeneland has been raising its rates. The Del Mars and Hollywood Parks of the world, they're not at TrackNet. They're raising their rates. The California rates are fairly publicly known, so I don't feel bad talking about them in this open forum. Hollywood Park, eight and a half percent, that's what they're charging national account wagering companies, eight and a half percent.

So as the tracks were in this effort both through originally Magna, and then Magna and Churchill, then TrackNet was formed, and NYRA and Keeneland, they came out of their TVG exclusive contracts, as they were in this effort to push host fees up, the horsemen came along through the THG and through Mr. Petramalo and many of his colleagues, and they said wait a minute. We are a little bit uncomfortable with the tracks and the ADWs just negotiating among themselves. So we want to come in and layer ourselves into the process to make sure the horsemen are being treated fairly.
As we said earlier, you know, every state, like it or not, tracks are partners with horsemen, and horsemen are partners with tracks. So we worked with the THG to see if we could arrive at a common understanding.

Ultimately, those negotiations didn't necessarily go so well, but one thing I want to point out to this Commission is if you go back and you look to the fundamental premise that the THG had back 18 months, two years ago, it was a one-third model. It was the one-third model. They said a third of the money should go to the ADW company, and a third of the money should go to the horsemen, and a third of the money should go to the tracks.

Well, let's do that math for a second. Okay. Let's assume a 20% blended take-out. It's six and a half percent ultimately. I'll just round a little bit to make the numbers easier. So six and a half percent would be a third. So the ADW should get six and a half percent, right? And the tracks and the horsemen should get two times six and a half percent. What is that? That's 13%. Six and a half to the ADW, 13% to the tracks and the horsemen.

Now we come upon our statute in Virginia. Our statute in Virginia says 11 and a half percent stays
in the Virginia marketplace. It goes a half a percent to this Commission; it goes 1% to the breeders; and it goes 10% to the Virginia tracks and the horsemen. Well, I'm no mathematician, but 13 minus 11 and a half leaves one and a half percent for the horsemen and the host jurisdiction to share with the host racetrack. That's insane. I mean, that is not an economic model that the rest of the country is going to participate in.

And so it was represented here this morning, and again I believe everybody was genuine in what they said. I don't think anybody is trying to misstate the facts. I think they're stating the facts as they seem them, but it was represented here this morning that TrackNet is upset with Colonial Downs over this licensing issue with TwinSpires. That's not what it's about.

What this is about is the fact that Colonial Downs got a law passed in Virginia that would leave one and a half percent host fees for our 18 racetracks. That's not acceptable to us. And we told Mr. Stewart back in the February/March time frame that that was not acceptable to us. We suggested that we needed to come up with a global solution to our relationship.
We have a very broad relationship with Colonial. We sell them our signals from wagering in this facility and the OTBs. We sell them our signal for wagering on their account wagering company, and we buy their signals for our OTBs and racetracks, and we buy their signals for our ADW companies.

There's this complicated relationship with all these different factors, and we said you have thrown that relationship significantly out of whack with your new statute. We need to sit down, and we need to talk about a way to deal with the global relationship, because we're not in a situation where we're going to allow them to put a fence around Virginia, limit our ability to sell our signal into the Virginia marketplace and what we believe its worth. And while they're doing that say, oh, that's fine. Business as usual. We'll continue to buy your signals and take them into our marketplace and spread them through Florida and Kentucky and Maryland and California, it doesn't work that way. Okay? It's got to be a two-way street.

So we're open to working with Colonial Downs. We want to solve this relationship issue. We want to import their signals. We want to sell our signal into the Virginia marketplace, but not on the
economic terms that have been outlined by the new statute.

What is a reasonable source market fee? I mean, I don't know. Reasonable means a lot of different things to a lot of different people, but I would say if you look to the marketplace, the 7% range is certainly on the very high end of what states are getting.

Now, Mr. Stewart said something, which I know is troubling to him and I'm sure it's troubling to this Commission, which is TrackNet is trying to raise its rates and by raising its rates, it's going to reduce the amount of money left in Virginia. It's a zero-sum game because we have a fixed take-out, and as host fees go up, whether it's account wagering or it's brick and mortar wagering, the amount left in the marketplace is going to go down.

I've got to be honest, and he's correct. Host fees are going up. It's not all TrackNet's doing. We buy signals, as I said earlier. We're one of the biggest buying cooperatives in the country, probably not as big as the Mid-Atlantic. It's kind of funny with all this talk about leverage and TrackNet's leverage, I don't even talk to these guys about host
fees. I have to go to the Mid-Atlantic, and I have
to deal with them.

So there's plenty of leverage going on both
directions here, but when we buy signals, we are
seeing rate increase. We're seeing them from
Keeneland. We're seeing them NYRA. We're seeing
them from Del Mar. We're seeing them from every
upper quality racetrack across the country. That's
the reality. They're going up. Does that mean that
there are going to be less monies left in the
jurisdiction like Virginia? I'm afraid it does, but
that's the reality we've all been dealt.

It's kind of like I pull up to the -- you
know, to the gas station to fill up my car. I used
to pay a dollar, a dollar-fifty a gallon. Now I pay
three dollars a gallon. I mean, the market
fluctuates, and the price is the price. If we ever
push our price too high or NYRA or Keeneland or Del
Mar pushes its price too high, at some point people
say we're not going to buy it. And that's the
market for us. That's how it should work.

So I'd be happy to answer any questions if
anybody has any.

MR. BURNETT: The question that's on the tip
of my tongue is -- because it's a concern to
everybody in Virginia right now is what it would
take for the Virginia signal to get distributed by
TrackNet, and if this number -- what's the magic
number? Of course, we've only got two to choose
from, as you know, under our statute here today.

Is 9.15 going to continue the impasse and 7.2
isn't, or are both numbers such that TrackNet is not
going to change its mind in terms of taking
Colonial's signal, if you're willing to answer that
question.

MR. DARUTY: I'm happy to answer that
question. There was one point I forgot to make, so
I'm going to make one point and then come back to
that.

This was handed out earlier today by
Mr. Weinberg. This is last year's host fees, and
this year's host fees. I put this in the category
of everybody sees the world from their perspective.
I'm sure from Mr. Weinberg's perspective and
Mr. Stewart's perspective, they see this as entirely
accurate, but I can tell you factually this is not
even close to accurate. Okay? These are not the
rates. The two 2008 rates that are listed on here
are not remotely close to the rates we were charging
YouBet or TVG. Well, we weren't charging TVG
because at the time we weren't selling them our signals, but YouBet or XpressBet or TwinSpires in 2008. Not remotely close.

To get to your question, I have to repeat something I said earlier. This isn't just about TwinSpires. In fact, it's not really the primary issue at all. The primary issue is at what rate are we going to be able -- we being TrackNet and its 18 racetracks, be able to sell our signals into this marketplace.

We think broad distribution is very important. We fought -- we at TrackNet and Magna and Churchill fought years long, you know, battles with TVG over exclusivity and over making the product available to everybody, and there was a long time when we at TrackNet were accused of trying to perpetuate the exclusive model so that our ADWs, TwinSpires and XpressBet, would have all the content and could put TVG and YouBet out of business. We always said that's not the case. We're trying to broadly distribute our product, but there are business issues right now that are preventing that broadening.

I'm happy to say that as of about 60 days ago, we finally reached our goal. We were distributing
our product through all of the account wagering companies, all four of the major national account wagering companies. We reached a deal with YouBet last year, and in about May we reached a deal with TVG.

The reason I give you all that history is because the reason I'm here today is not necessarily the TwinSpires rate issue, but it relates to all the ADW companies. So I guess what I'm saying is I don't care if they give, you know, a 2% source market deal to TwinSpires. If they're giving a 12% source market deal to TVG and YouBet, that means TVG and YouBet aren't going to be able to distribute our product in Virginia either. What we really need to do is arrive at a reasonable, balanced solution that allows Colonial Downs and all the ADW -- all the independent ADW companies to do business.

So I guess that's a little bit of a non-answer, but I just want to make sure the focus is on a global solution, because it doesn't do us as racetrack owners outside the State of Virginia any good if we can only distribute through TwinSpires and not everybody else. We want full distribution. We want somebody in Virginia to be able to choose whatever platform he or she likes best, whether it's
TVG, YouBet, XpressBet, or TwinSpires or EZ Horseplay, and place their bet. We want to make sure that there's fair, reasonable compensation to Colonial Downs, and that there's fair, reasonable compensation to the racetracks. So that's our goal.

With that said, I'll try to answer your question a little more directly. I'm sure there is a basis on which we could sit down and work things out. It's just up to this point, we really haven't had productive discussions.

MR. BURNETT: Well, this is very compressed from a time standpoint issue for two reasons, really. One is that we've got this new statute that's going into effect in a couple weeks, and it'll play out however it plays out, and we have a meet that is 25% over roughly. We've got 75% more to go.

You heard earlier, we're running 25% behind on signal sales out-of-state. We're doing well happily on -- you know, compared to prior years on where we are in state and on track, et cetera, but I think there's probably a place for the more global solutions going forward in that there's going to have to be some sorting out with the issues that we discussed here today with that 11 and a half percent
number and how that's going to applied, and whether it can be rebated and all the rest.

To me that's not before us right now. What's before us today is picking one of these two numbers, and we know that number is not going to be in effect very long. Under Colonial Downs' argument, it should be in effect for about two weeks. Under the other argument, it would be in effect through the end of the year. In either event, in my view what that number is looking at Virginia racing for 2009 is less than important than getting our signal sales back where they need to be for this meet, and engaging the parties in constructive discussions so that this doesn't have to recur over and over.

So I don't know if that helps you at all, but that's -- I see it as much more compressed and in need of immediate attention for the short-term, which in turn hopefully would allow people to sit down and work out a longer term type of solution, and I know Frank is sitting over there saying I told you, I told you, I told you. Seven percent, seven percent, seven percent. If we had just done that, it would have worked. We described that process. Maybe some day we'll get back to that model of that division, but we seem to be drifting in that
direction as a business.

    MR. DARUTY: Part of the problem from where I sit is -- I can't see the future anymore than any of you can. So if we were to reach an agreement on TwinSpires today, I could say to myself, well, that's great. At least I know for the balance of some period of time, we as outside racetracks are going to have the ability to sell our signals into the State of Virginia, because now XpressBet, TVG, YouBet, and TwinSpires all have licenses, all have effective hub rate agreements.

    The agreements are at rates that allow them to pay us the host fees we believe we're entitled to, so the problem is solved, but if we make that decision today, does that mean the problem is solved for the balance of the meet, or does that mean the problem is solved for two weeks? Come July 1, you know, the whole thing is going to blow up again. I'll tell you what, if that's the case, let's not waste our time trying to find a two-week solution.

    MR. BURNETT: I hear you on that. Any words of wisdom anywhere in this room? Any comment?

    MR. STEWART: I've got two things.

    MR. BURNETT: We've got -- Mr. Scoggins has got his hand up. I missed you. I'm sorry.
MR. SCOGGINS: Greg Scoggins for XpressBet. I have some additional comment I would like to make from XpressBet's standpoint. Consistent with or somewhat related to what Scott had to say, but to the extent there are specific comments in response to what Scott had to say, I'll be happy to wait. It's related, but not exactly on point.

MR. BURNETT: Go ahead and tell us what you can help us with.

MR. SCOGGINS: Well, helping is a relative term just like where we are in the industry. I realize that the purpose of this discussion in this hearing is to answer the question of what rate TwinSpires is to pay as a source market fee. I always realize that we have allowed this to be a format or a forum to kind of look at broader issues and what might be in the future, so it's on that basis that my comments are going to be made.

I'd like to address a couple of concerns that XpressBet has, and I'm here sitting with the hat of XpressBet. As Mr. Daruty pointed out, he's representing TrackNet and the tracks that TrackNet serves, and we have a slightly different set of issues. Not that they're totally unrelated, but they are different.
One of the things I'd like to stress that I think Scott made in his comments was if we have to pay a half percent because the track and its horsemen, and I have to stress the word its horsemen, because in the last 12 months the horsemen have played a significant role in making the host fees go higher. They haven't gotten to the one-third model, but they are significantly higher than they were even a year ago in 2007, and some tracks took a big hit getting to that point.

If we have to pay eight and a half percent in a state where we also have to agree to 11 and a half percent to the state, we have two decisions. Mr. Blackwell has brought this to the point -- brought this point up. If you're dealing with a state like California whose blended take-out rate is well below 20% or New York whose blended take-out rate is well below 20%, we're under water.

So we have two choices. One, we exit the State of Virginia, which may or may not be the desire of Colonial Downs. I would think that it shouldn't be the desire of Colonial Downs when you look at how much ADW handle is generated by the five ADWs in the state, or we can choose not to offer that particular signal to our Virginia resident
customers because it doesn't make sense for us to do that, which means that NYRA loses a market. It loses eight and a half percent. It has to rely on whatever handle it gets from a lower rate, not that it's a bad rate, but it's a lower rate that's applied to brick and mortar facilities.

Colonial Downs' OTBs and racetrack is charged a lower rate than the ADWs are charged, and it's a reflection or the recognition of the market strata that exists and the cost of doing business that an ADW has relative to an OTB. So you lose an eight and a half percent market when you have ADWs saying, we're not going to offer the -- that particular track's signal. And as I think Ian pointed out, a third of Virginia's handle is generated through ADW?

MR. STEWART: Close.

MR. SCOGGINS: So that's a significant amount of handle at eight and half percent that's being lost to the tracks that are charging six, seven, eight and a half percent.

And so the impact to TrackNet tracks is that we lose a very profitable or a very important share of the handle that we're generating, that generates a higher rate, that helps our purses and helps our tracks that are putting on the show, and XpressBet
loses the ability to compete, because it can't offer as many of the signals that it would otherwise offer to Virginia residents because it can't afford to offer those rates. So I wanted to stress that point from our perspective.

I'd like to touch the issue of leverage. You know, leverage is a function of where you're sitting at the time you're being -- the leverage is being applied in my judgment.

As Mr. Blackwell discussed, the 10% rate presents a point of leverage that the Virginia industry now has that as Mr. Stewart and Mr. Weinberg have said can be adjusted downward if the right circumstances exist. You make a commitment to do marketing, you do this, you do that, maybe we'll see that 10% go to -- the net effect of the 10% get reduced.

I specifically heard Mr. Weinberg say that they have little to no sympathy to XpressBet and TwinSpires in connection to their willingness of doing that when you compare that to YouBet and TVG. So I am concerned as it relates to leverage that TwinSpires and XpressBet could be equally leveraged in terms of their ability to participate on a level playing field in the State of Virginia than other
ADW providers, and it concerns me for the same reasons that I think, Chairman Burnett, that you've raised, which is you start creating a situation where you have disparate treatment of otherwise equally situated companies.

And if I were to offer the exact same marketing program, the exact terms and conditions to Colonial Downs that TVG would have, I would be concerned that I would not be granted the right to do business because they're not as sympathetic to us because of issues unrelated to XpressBet.

The other thing that I am concerned about and it goes to the point of leverage is that they may say, well, you know, one of the points they've made today is that XpressBet is related to an entity that owns racetracks that charge host fees. In December, I think TwinSpires' focused -- faced an issue in terms of Colonial Downs' willingness to agree to a contract with them is we think the TrackNet rates are too high. TwinSpires, we're not going to sign your contract unless you get TrackNet to reduce your rates. I'll let Mr. Blackwell respond to that, but I believe --

MR. BLACKWELL: Actually, the position they took was we want the same source market fee you paid
last year, which was the highest in the market, plus $200,000 for TwinSpires to pay for their loss being attributed to higher host fees among its 18 tracks, 14 of which we have no connection with other than being represented by the same entity.

MR. SCOGGINS: So my concern is that there's a leverage point there as well. TVG and YouBet can do certain things, and they're limited in other things that they can do. XpressBet and TwinSpires, because of their relationship with the tracks, gives Colonial Downs the opportunity to leverage those tracks and say you make your TrackNet tracks reduce their rates, and you give us whatever additional stuff that -- what YouBet and TVG will do or maybe do that instead of what they're willing to do, then we'll let you have a reduced rate for your source market fee.

So there's leverage everywhere, and there's the opportunity to exert leverage everywhere. I am concerned just as much as -- as the Virginia folks are concerned that the leverage is going to work out to our economic disadvantage.

MR. BURNETT: Any questions of Mr. Scoggins?

All right.

MR. REYNOLDS: What's for lunch?
MR. BURNETT: Do you want to take a short break?

MR. MILLER: Jerry, did you have anything to add?

MR. CANAAN: I adopt the comments of Ian and Jim and Frank. I would only say from the harness standpoint is we are obviously from the overall handle in the state 20 to 25% of the handle, and the ADW handle is 10 to 12%. From our standpoint, you could look at that and say, well, if one player left, it wouldn't make that big of a difference to us. If we look at it another way, we want every player in here because every little bit is necessary for the harness horsemen.

Having said that, the playing field has to be level and all that type of thing, but to say that from this horseman's standpoint, that we want TwinSpires up the road or out of the state, would not be accurate because every little bit helps.

MR. STEWART: I've got a couple comments, if I could.

MR. BURNETT: Go ahead.

MR. STEWART: You know, Mr. Daruty is absolutely right, you know. When you look at the same set of facts, reasonable people could come up
with completely different viewpoints looking at the same thing.

I think a lot has been made of the fact that their belief that they won't be able to operate in this state, and the basic premise of that belief if you really boil it down is that the source market fee -- I mean, the host fee to their racetracks is set in stone, that that number can't move, that the only way to make the equation work is to reduce what Virginia takes.

They made the point several times that -- and it may be true, that they say, well, we won't make any money on signal -- on NYRA, or we won't make any money on a particular expensive track. That may be true if that host fee -- if that -- I get twisted up, if that host fee doesn't change, but wouldn't it seem reasonable to you that if I'm NYRA and Mr. Scoggins comes to me and says, gee, NYRA, you're getting an 8% host fee and Virginia wants 10%. There's not enough left for me. Wouldn't you guys maybe -- instead of getting zero, maybe you might reduce your host fee a little bit, maybe Virginia might reduce their source market fee a little bit, and maybe everybody could, you know, do business together.
But I think the basic premise that they want you to accept is that the source market fees are set in stone -- I mean, gosh. I'm twisting myself. The host fees are set in stone, that there's nothing that can be done with those, and therefore, Virginia you have to accept the fact that in order for us to get what we want, what we need, host fees for our racetracks, you guys have got to take less. And I honestly don't accept that.

MR. DARUTY: Can I make a suggestion on that? Can we get the California, Florida, and Kentucky horsemen on the phone right now and ask them whether or not I would be authorized to agree to a lower host fee? Because I tell you what, I know the answer. We experienced the answer for an entire Churchill Downs meet last year, where Churchill Downs did not go to a single ADW company because the horsemen would not consent under the Interstate Horse Racing Act.

Again, this is getting painted as it's all TrackNet, and I'm not denying that we don't like the increased host fees, but frankly, the host fees have been pushed farther than I believe in some jurisdictions or for some host tracks they should have been pushed, and the only reason was because
the horsemen said we will absolutely, positively not
let you sell it for a penny less than that.

    MR. BURNETT: I'd like to see horsemen like
that, because our track and our horsemen get along
perfectly.

    MR. BLACKWELL: Well, at one point --

    MR. STEWART: I believe I've got the floor
here. I'd be happy to listen to Mr. Daruty when I
done.

    Now, I didn't say that was going to be simple.
I didn't say it was going to be easy. I suspect
that in order for it to work some people are going
to have to realize that perhaps they can't get the
fee that they want, but at the end of the day,
everybody is going to have to give a little, and
that probably includes the horsemen in Florida or
the horsemen in Kentucky or whoever. I just can't
sit back and accept that -- that Virginia has to
give in order for them to benefit in order to keep
the peace nationwide. That just doesn't make sense
to me.

    Now, you know, it's been said that we won't
negotiate. You know, this whole thing started back
in November. I got a phone call from Omar Aymen
(phonetic) who is with TrackNet. We had the rates.
I said to Omar, I said, Omar, you know, these are going up. These are kind of high. What can we do? And Omar said to me, well, you know, if those rates don't really work for you, then maybe you shouldn't be taking the product, you know, on those particular tracks.

So, I mean, that's kind of where this whole thing started. We've never been unwilling to negotiate. I've done nothing but negotiate for 12 years in this state. So to say that we're inflexible is wrong, but we have to have a level playing field. That's really what this is all about. And as I said, everybody is going to have to give, and that may be including those people that want the host fees that they want.

I agree with Mr. Daruty. He's probably right. There's probably some signals that they won't be able to make any money on and get the host fees that they want, but I've always believed that, you know, something is better than nothing. So maybe you can't get your 8% or your 9% host fee, maybe you'll take a little bit less. Maybe Colonial Downs will take a little bit less on the ten, and everybody can do business, but just to say that the one is set in stone so the other has to pay for it, I'm just not
really seeing that.

MR. BURNETT: Mr. Miller, did you have a question?

MR. MILLER: No.

MR. DARUTY: May I --

MR. BURNETT: Please.

MR. DARUTY: -- comment on one thing? Just a little bit more background.

With respect to the conversation in the fall that Mr. Stewart described, I just want to point out to this Commission that historically -- well, even today there is a distinction, at least TrackNet and I know many other tracks do make a distinction between national account wagering companies and regional account wagering companies.

What's the difference? TVG, YouBet, XpressBet, TwinSpires, and there's several others. Those are national. They take bets from 30, 35 states across the country. In TVG's case, they're a little more conservative, so maybe a dozen or so, but they're operating in states across the country. Those are national ADW companies.

The regional ADW companies are racetrack owned ADW companies that do business only in their own state. Colonial Downs, New Jersey has its own
account wagering system run by the tracks that takes
bets just from New Jersey residents. There's some
tracks in Pennsylvania that have their own ADWs that
take bets just out of Pennsylvania.

Historically, there was a decision made, and
whether it was the right decision or wrong decision,
I guess you could debate either side, that those
regional tracks would be allowed to conduct account
wagering at the same host fee rate as they conducted
on track wagering. I think this to me is getting to
some of the confusion here or where some of the
confusion is coming from.

Historically, I described to you I know for a
fact that Santa Anita, that Magna sold Santa Anita’s
signal to YouBet for 8% all the way back to
2004/2005 time frame, but it was being sold to
Colonial Downs for the -- for its account wagering,
not at 8%, not at seven, not at six, not at five,
not even at four, the exact same rate that Santa
Anita was coming into this facility for wagering.

So what happened last fall was partly because
of horsemen in various jurisdictions, and partly
because of us coming to the conclusion, for our
racetracks that probably isn't a policy that made
sense anymore. We raised the rates to all regional
ADW companies. Did we take them to the national rates? No, we didn't. We left them well below the national rate, but what we did was we bumped them about 2%.

Our feeling was to go to a racetrack and say if you're buying our signal for three and a quarter for wagering in your facility, then you should pay five and a quarter when you take a bet through account wagering because your costs are lower. We're not going to charge you the eight that we're charging YouBet or XpressBet or TwinSpires, who are our affiliates, but we're going to charge you something more than the three and a half percent or three and a quarter.

So I think what happened in the fall is maybe there was some sticker shock when these guys saw those rate increases and thought those were being implemented across the board on all the national ADWs, but really they weren't, because the national ADWs were already and are still paying much higher than the regional rates.

MR. BURNETT: Thank you.

Mr. Weinberg?

MR. WEINBERG: I did not -- if you'll indulge me, I didn't have a chance to respond to the four
questions you raised. I will try not to repeat what others have said, but we have talked this morning a lot about history. Candidly, it's not lost on me that four or five years ago we sat in these meetings, and we listened to AmericaTab and YouBet present the same arguments. We can't pay you a 5% source market fee. We'll never make any money in this state. We're not going to do it, and indeed they did.

They conducted business in the state on an unlicensed basis, but the irony is they ultimately did get licensed, and they ultimately did pay a source market fee well in excess of what they represented to the Commission could be paid.

I'm not accusing anyone of bad faith. My point is that there is lot of play. There are a lot of factors in how we get to who gets what under ADW. For example, the host fees that go up, I recognize that TrackNet, Mr. Daruty can't control what the horsemen do in that state, but the other half of the host fees do go to tracks. Some of which he has say in; some of which he does not. Now, if we're just going to live by the axiom, well, a track will never take less because of what the horsemen get, well, that's the type of thinking that does create the
impasse we're at.

So to your point of are we pricing ourselves out of the market, we've had that discussion for the last seven -- six, seven years. We've always managed to find a way not to price ourselves out of the market.

The other point is disparity of treatment. I find that ironic, and not to pick on Mr. Scoggins, but his contract has a most favored nation clause. I mean, to argue that this statute is going to change and create an environment where there is disparate treatment among ADW providers is at worst no different than where we are today, where each ADW provider has its own contract and some have even greater built-in protection.

So all we're doing is setting a baseline. I won't use the term even field, because I don't know if it's even or not, but with all due respect, I don't think Mr. Daruty would be here if we were talking about a 7% host fee -- source market fee.

What has brought the parties together to have this discussion is Virginia is looking at a high source market fee. We're going to have, I hope, a productive discussion. This Commission is really faced in part with a very narrow issue, pick one or
two, and in the broadest sense, it is on the
forefront of how are you going to resolve the
discussion between importing states like Virginia
and exporting states like Florida and California.

Candidly, this is the only tool we've got. We
don't have host fees. Our host fees don't matter
because we don't run enough. What matters in this
state is source market fees, and our offer
reflects -- give us the tools to have a meaningful
discussion with the national ADW providers.

MR. REYNOLDS: Mr. Chairman?

MR. BURNETT: Go ahead.

MR. REYNOLDS: You said something about a
baseline level of 10%. Where does the 10% come
from? On what basis do you come up with that
number?

MR. WEINBERG: If you look -- the chart that
you have before you only goes back to '07, but if
you look at TVG, for example, we looked at what
were -- when we began this process, what were ADW
providers paying. That's where the 10% came from.

MR. BLACKWELL: If I may, that 10% also as
Mr. Daruty pointed out was based on host tracks
receiving three and a half percent. It was a model
also where TVG was exploiting those signals and
charging someone else more money for that same
signal and pocketing that money. So it's a system
that doesn't work.

Unfortunately, I don't think we're going to
solve the industry issues here today, but I think
what Mr. Daruty has done is provided some insight as
to what will go on. And I can tell you -- you know,
say with confidence on the record that what we have
seen at Churchill Downs is that horsemen were
willing to withhold consent for those signals to go
throughout the country. They felt that strongly
about the pricing, and to say that, you know,
they're going to make an exception for one state, I
just don't see that happening. I think Mr. Daruty
can speak to that. He works with those horsemen
more intimately than I do.

So I think there's some insight as to what's
going on, but I think, you know, more importantly
here today, I think we have this issue before us,
you know, of the two rates. This has been, I think,
a healthy discussion as to where things can go, and
obviously if Virginia is going to stay in the
marketplace and not alienate itself, I think it's
going to require some cooperation with TrackNet,
with Colonial Downs, with the horsemen, and maybe
some other horsemen's groups, but I think today the
focus right now, and I think, Chairman, with all due
respect, you mentioned before, it's unfair to hold
TrackNet or to keep reaching out in terms of
leverage points. I mean, the focus is on our, you
know, rate for the next -- or for this year, and
again this is a time for the Commission to take a
look at what was said today.

I think the 7% rate seems to be something
that's on the high end nationally already, and
that's where our -- you know, our average rate that
is, one, being paid by our competition here in the
state is at that level, it's the rate that seems to
be high on the national end at that same level, and
more importantly, we've heard repeatedly how all the
other providers have contracts that run at least
through the end of the year.

I think to pick a rate that's higher than the
average here in Virginia and also higher than the
highest range nationally puts TwinSpires at a
competitive disadvantage right now, you know, within
two weeks and through the end of the year. I don't
know what's going to happen with those other
contracts, but they do have those in place. We've
heard Mr. Scoggins say that, you know, their
position is they're going to go with their contract.

So I think any other decision here by the Commission really puts TwinSpires at a disadvantage that no one else is being subjected to right now.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

MR. MILLER: I don't want to waste everybody's time, but there's two things. Number one, what is this most favored nation thing you're talking about with Mr. Scoggins?

You said before that your view was this 10% applies across the board July 1 to everyone, even though they have contracts in place and even though they have licenses in place predicated on those contracts, and you said it was -- I forgot the word you used for him to come here today and complain, that it was -- you didn't use the word weird, obviously. It's weird that he's here today complaining, but I would think that's why he's complaining is because of your letter that you sent before that indicated that you're taking the position that his contract and his license predicated on that contract doesn't mean anything in the face of the statute. So it's not odd for him to be here today complaining about this.
MR. WEINBERG: No. With all due respect, you missed my point.

MR. MILLER: Okay. I must have.

MR. WEINBERG: We are comparing two paradigms. The one we currently have where the track negotiates individual contracts with ADW providers.

MR. MILLER: Right.

MR. WEINBERG: The other paradigm being there is a flat rate of 10% with the understanding that there could be negotiations of alternative arrangements. Mr. Scoggins was complaining that that second paradigm gives rise to disparate treatment among the four other ADW providers, XpressBet is going to have a different feel than TVG or Colonial Downs could adopt TVG --

MR. MILLER: Okay.

MR. WEINBERG: I'm saying the irony for me is, well, that's exactly what we already have.

MR. MILLER: Okay. I did miss your point, and now you gave me the word, irony. I couldn't think of it. Excuse me.

MR. SCOGGINS: Commissioner Miller, given the opportunity, I'd like to comment on that.

MR. MILLER: Now is the time to do it, I guess.
MR. SCOGGINS: Well, I think, again, to borrow a very tired phrase that's been used. I think, you know, perspective depends on where you're sitting. We see the most favored nation clause, which was a clause that said that we get a certain rate, and in exchange for getting that rate, Colonial Downs would not grant to another ADW a higher rate than ours, and to the extent that it did, that we would be afforded the same rate.

The purpose behind that was to achieve a level playing field among the ADWs. So I don't think it's inconsistent at all to be here today being concerned about disparate treatment and having the MFN or the most favored nation clause in place, because the purpose of the most favored nation clause was to put us on a level playing field.

Because we were one of the first in the market, there was uncertainty about where the market was going to go and in order to protect ourselves relative to future entrance into the market, we asked and received the most favored nation clause. So I don't see the irony.

MR. MILLER: One other point.

MR. BLACKWELL: If I may, just on that same topic, TwinSpires when we did have a contract in
place with Colonial Downs and the horsemen, i.e. 2008, we also had a most favored nations clause in our agreement, yet we paid the highest rate of any other provider in the state.

MR. SCOGGINS: And we were the second highest.

MR. BLACKWELL: I just wanted that to be reflected on the record.

MR. MILLER: Mr. Chairman, at a risk of alienating everyone, I wondered myself where this 10% came from and now I know. It was picked out of the -- from TVG; is that correct? Is that what you said? That's the source market that they were paying in 2007, and that's what the legislature predicated this 10% on.

I just want to state for the record, and make sure this gets in the minutes, I am deeply disappointed at the Virginia legislature, that they didn't take the effort in passing this statute that's going to have such great affect on the future of racing in Virginia, they didn't take the time and they didn't take the effort apparently.

Now, they may have done a lot of work. They may have worked day and night on this bill. Those legislators stayed up all night looking at all the facets of this. I don't believe they did, but they
may have. I may be wrong, but I can't believe that they passed a bill of this impact with so little exploration of the facts.

If they would have brought this gentleman in there perhaps, and probably a myriad of other people dealing with racing nationwide, and the complexity of this issue of source marketing fees together with the host fees and the problems that are encountered nationwide, I am quite certain that with their high degree of intelligence that exists in the Virginia legislature, they would have reached a different result. And now I wash my hands of all their motivation.

MR. BURNETT: Why don't we take a short break in the nature of ten minutes. My instinct is that this Commission probably does not need legal advice to make this decision. I want to tell everybody, I want to poll my fellow commissioners to see if they agree. And if not, we'll come back, do a little deliberating, and hopefully pick between two numbers.

All right. Ten minutes.

Note: A short recess was taken, following which the hearing resumes as follows:

MR. BURNETT: All right. We'll come back on
the record, madam court reporter.

We're at the point now where we've heard from everybody, and in view of, I think, as I said earlier, that I would ask my fellow commissioners whether anybody felt the need for going into closed session for legal advice. We agreed we do not need to do that, and we are, therefore, prepared to deliberate at this time.

I would ask my fellow commissioners do they any observations or comments for us to take into consideration before we -- before I ask for a motion. Mr. Brown?

MR. BROWN: I guess after listening to everybody's reports and comments this morning, I think it still comes back to -- as far as the Commission goes, we have to look at what it's going to do -- what's best for Virginia racing.

I think -- again, I agree a little bit with Commissioner Miller, that I don't think things were well thought out in a lot of instance. I think handing a leverage package out from the word go, and then being able to back off of it, I don't know if I agree with that a hundred percent.

In my opinion, I think that we've got to do what's best for Virginia, and I don't know if we can
make -- kind of in-between type package of what we need to do, but I'd like to hear from the Commission on what their thoughts are.

MR. BURNETT: I think we're -- I don't think we would be estray as to what our counsel would tell us, that we got a choice today. We have to choose --

MR. BROWN: Just a one or two --

MR. BURNETT: One or the other offer we have to choose today. I don't think we can -- there's no splitting the baby in this particular circumstance.

MR. BROWN: That's kind of the way it lays out.

MR. BURNETT: That's what the statute requires of us.

Any other comment?

MR. MILLER: Well, I think -- to follow-up on Mr. Brown. That's the dilemma we're in because the way the statute is written, we can only choose between two numbers. I'll tell you, quite frankly, I would choose neither if I could. Probably have more time to explore the factual situation and to apply some of the information that we received today, especially some of the comments from -- what was your last name?
MR. DARUTY: Mr. Daruty.

MR. MILLER: Because I think there's a whole lot to explore in order to reach what might be a -- really an appropriate figure.

However, that being said, since we do have to choose between two numbers as far as my vote is concerned, I've got to pick a number that is more -- that has a closer relationship to what in reality has been an appropriate figure for source market fees in the past, and what apparently appears to be closer to the source market fees that are applicable on a widespread basis in the country as expressed by his testimony, indicating that the high source market fees apparently in California and Florida, and those high fees are the ones that are more in line with what was adopted by the General Assembly to go into effect as of July 1.

But the average fees, as I recall, the transcript should bear it out or the minutes would bear it out, were more down in the 7%, maybe a little above 7%, and the suggested best offer of TwinSpires of 7.2, I believe that's it, 7.2, that the 7.2 has a closer relationship, as I said, to what the source market fees have been in the past in Virginia, and have been acceptable in the first --
well, in all the quarters really of 2008.

And apparently -- well, that's not part of the evidence, but I saw a chart -- I saw a figure somewhere where for the first quarter of 2009 -- I stand to be corrected. I'll ask a staff member here to correct me if I'm wrong, but I believe that the source -- that the average paid by the ADW for the first quarter of 2009 had come down a little bit from what it was for the average for the four quarters of 2008.

MR. LERMOND: That's correct.

MR. MILLER: My point being that the 7.2%, that we have to choose either that or the 10, I would choose to vote to adopt the 7.2% best offer of TwinSpires.

MR. BURNETT: Commissioner Miller, just to be clear. You said to adopt that or the 10. I'm sure --

MR. MILLER: Well, it's --

MR. BURNETT: 9.15.

MR. MILLER: -- predicated upon the ten.

MR. BURNETT: Yes, sir.

MR. MILLER: It's an average. Averaging out.

MR. BURNETT: Yes, sir.

Commissioner Reynolds?
MR. REYNOLDS: Yeah. I think addressing this issue strictly on voting yea or nay on these two issues is very limiting, and I agree with Clint Miller. On a broader perspective, I'm disappointed in the way this whole thing went in the legislative process, and the amount of what I knew about this legislation that was passed by the legislature and signed by the governor.

I remember a lot of discussion about the Omnibus Bill --

THE REPORTER: Sir, I need you to speak up. I'm having a hard time hearing you.

MR. REYNOLDS: The Omnibus Bill, we had a lot of discussion about that, but I don't think in my records I have anything -- a discussion about a 10% rate. I'm just disappointed in that, and the way the process worked.

Other than that, I think coming back to the very specific issue that I share my view with Commissioner Miller.

MR. BURNETT: Thank you.

To share my thoughts, one, I think the statute requires us to look at what others are paying, presumably for a reason, and so I think -- while I'm not going to say that I view it as what others are
paying as being entitled to any kind of a conclusive
presumption or even a rebuttable presumption, I
think that the legislature wanted us to use at least
as a starting point what others are paying to come
to a fair number.

So then I would look for -- as I have, and
listened to Colonial Downs and the horsemen for what
the reasons are that we should depart from that
number, if that's the inclination, and what is
troubling to me is that what has held out as the
basis for Colonial Downs' number of 9.15% is the
averaging of the earlier payment and the 10% that is
coming under the statute, but the troubling part is
the 10% isn't really 10%.

The 10% is a starting point, and by the
track's own admission, it intends to use that 10%
as -- I don't want to use it in a pejorative sense,
but as a form of leverage, as a form of playing
field leveling such that they are closer to equal
bargaining with other providers -- with other
competitors in the market, and can get to what is
ultimately a fair number, presumably something less
than 10%.

The problem is we don't know what that number
is. We don't know what those factors are. We're
left to speculate as to what that number might ultimately be, and I, too, am somewhat troubled about not just the process of how we got to have this statute or came to have this statute in place, but also by the lack of specificity in the statute, that it intends it not to be an absolute number and instead intends the number to be one that could be negotiated by the racetrack. I wish the legislature had said that in the statute. It would be helpful, because it still strikes me as somewhat odd.

So I haven't found a basis sufficient in my mind to depart from what everybody else is paying and would, therefore, be inclined at this point to vote for the 7.2% offer of TwinSpires. Those are my comments. Do we have a motion?

MR. MILLER: I move we -- what is the question? We've already approved the temporary license for the balance of the year, so it is just the source market fee within that --

MR. BURNETT: Imposition of the rate of the best offer.

MR. MILLER: I move for the imposition of the rate of 7.2% as the source market fee for the duration of the temporary license.

MR. BURNETT: Do we have a second?
MR. REYNOLDS: Second.

MR. BURNETT: It's been moved and seconded.

All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Miller and seconded by Commissioner Reynolds. All were in favor. The motion carries.

MR. BURNETT: All right. We have one other substantive item on the agenda and that is the Thoroughbred 100% Bonus update, and I guess that would be Mr. Petty.

MR. PETTY: Yes, sir.

MR. BURNETT: Mr. Petty, can you bless us with a short report. We're all fairly -- have our brains filled with other rates, but if you'll tell us how it's going, it would be great to know.

MR. PETTY: So now is not the time to ask for 2% from ADW?

MR. BURNETT: I think it isn't a great time.

MR. PETTY: It's pretty simple, the math, the first ten days of the meet, which as you mentioned is 25% of it. We paid out -- our number says 88,000; Dave's number says 93. His number is probably correct. We paid 93 -- let's just use his number, $93,000. Over the same period last year, the first ten days of the meet, winners only we
paid, according to our calculation, 136,000. So we are theoretically behind schedule, which is a good thing.

So there's concern here, but the only reason there needs to be an update on this bonus is are we going to run out of money. We budgeted $125,000 for each two-week period, and we spent 93. So at that pace, we should come out of the meet $80,000 unspent.

MR. BURNETT: This is apples to apples with the exception of the $10,000 cap?

MR. PETTY: Winners to winners, and -- right. Yes, because last year in this early period I think Southwest and Mount Weather both won big allowance races and won almost $16,000 awards, so there's 12,000 of it right there.

I would assume the follow-up question would be what's the entry box. It's essentially the same. I think the first ten days last year, 150 Virginia-breds were entered in the first 10 days. This year, 160 I think have been entered.

MR. BURNETT: My follow-up question was not as sophisticated as that. It was how many Virginia winners this year over the same number of days as there were last year.
We were something like 9 for 27 in the first three days, and then -- or 8 for 27, something like that, then went to 8 or 9 for 36, if I'm not mistaken in the first four days.

MR. PETTY: Fifteen in 2008 and 13 by my count in 2009. So it's running pretty consistent. They call it fairly consistent, and maybe at the end of the day, it's the cap that keeps us in line.

MR. BURNETT: All right. What's the buzz out there? I ask that question of both Tyler, if he's here, and you. What are we hearing out there about people?

MR. PETTY: I think what I hear might be what you heard from Tyler and what I've heard from Frank is that the number of Virginia-breds targeting open races may be down a little bit because they're not making six or seven or eight grabs at second. So there's been probably more of a push for restricted races, because everybody knows their horse has limited resources, and they can only run a couple times. So the only real change is that I think trainers are managing how they probably enter a little bit differently.

MR. BURNETT: Okay.

MR. PETTY: Essentially, I think, you know,
everybody likes money, so they're happy.

MR. BURNETT: And if there were more, they'd
be happier.

MR. PETTY: I think the racing office has done
a good job of getting a couple Virginia-bred maiden
races to go, and they've got more in the book. I
think everybody seems to be content.

MR. BURNETT: Okay. Any questions of
Mr. Petty?

Thank you for coming so far down the road for
such a short report, but I'm sure it was worth it
for the rest.

MR. PETTY: Yes, it was.

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes.

MR. LERMOND: I just wanted to add something
to the Breeders' Fund discussion. One thing that I
witnessed firsthand being a steward this year is
that the preference given to the Virginia-bred
horses is really a nice advantage for these
Virginia-bred people, and my example would be where
you've got 26 entries in the box. You're only going
to take 14. If there's two Virginia-bred horses,
those two are automatically in that 14 and you're
going to exclude 14 horses, but the Virginia-bred
horses don't have to worry about being excluded.

So it's not a monetary reward for them, but I think it is a distinct advantage, and it's something we should probably just get on the record and let people know.

MR. BURNETT: There's two sides of that coin. The Virginia-bred people are all tickled to death to have that advantage. It's usually balanced by how much the others complain and feel like they have a hometown advantage, and so they've got it setup for the homeboys. Are you hearing much of that grumbling?

MR. LERMOND: I don't.

MR. PICKLESIMER: Yeah, you do to a certain degree. It's one of those things that if -- you know, if you want the program to get better, that's one of those things that may have to go away at some point.

MR. BURNETT: It falls off at some point?

MR. PICKLESIMER: Right. Because, you know, the goal is to put the best product out there you can. If you're watering it down with state-bred horses, sometimes that doesn't always, you know, promote well.

THE REPORTER: Give me one second, please.
MR. BURNETT: All right. The next item is public participation. Does any member of the public wish to address the Commission?

Seeing none, we'll move to the next item. The next meeting, July 15th, 2009. Any problem with that anybody? Are y'all okay with that?

All right. No need for a closed meeting. I move we adjourn. Can I have a second?

MR. BROWN: Second.

MR. BURNETT: We are adjourned.

MR. PETRAMALO: Couple things.

MR. BURNETT: I'm sorry.

MR. PETRAMALO: You'll notice that there's a little card in front of you. That's an invitation to our Owners Day reception this Saturday. This Saturday promises to be an excellent day of racing, but beforehand from twelve to one, we're holding a reception in here. You all are cordially invited.

And secondly, our disabled jockeys golf benefit this year will be July 22nd. It's a Wednesday. Next door at the Royal New Kent, which is a very good course, so you also are cordially invited to that.

MR. BURNETT: Thank you.

MR. BROWN: Thank you.
MR. BURNETT: Thank you all for coming. I know some of you traveled a great distance, and we appreciate everybody's patience. See you next month.

Note: The hearing concluded at 1:03 p.m.
I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on June 17th, 2009, New Kent, Virginia, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the meeting and other incidents of the hearing herein.

Given under my hand this 22nd day of June, 2009.

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Melissa H. Custis, RPR
Notary Public for the State of Virginia at Large

My Commission expires:
March 31, 2011