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VIRGINIA RACING COMMISSION

June 17th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:37 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman  
I. Clinton Miller, Vice Chair  
David C. Reynolds  
Mark T. Brown

COMMISSION STAFF:

Victor I. Harrison, Executive Secretary  
David S. Lermond, Jr., Deputy Executive Secretary  
Kimberly M. Carter, Office Administrator

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

## I N D E X

|    |  |     |
|----|--|-----|
| 1  |  |     |
| 2  | 1. Approval of Minutes of May 20, 2009 meeting | 3   |
| 3  | 2. Commissioners Comments                      |     |
| 4  | a. William Passmore Resolution                 | 4   |
| 5  | 3. Committee Reports                           | 6   |
| 6  | 4. Executive Secretary's Report                |     |
| 7  | a. Opening Weekend                             | 6   |
| 8  | b. Racing Summit Working Group                 |     |
| 9  | Thoroughbred Meet                              | 11  |
| 10 | 5. Stakeholders                                |     |
| 11 | a. Colonial Downs report on Opening of         |     |
| 12 | 2009 Thoroughbred Meet                         | 14  |
| 13 | b. TwinSpires Best Offer Discussion            | 21  |
| 14 | c. Thoroughbred 100% Bonus- update             | 143 |
| 15 | 6. Public Participation                        | 148 |
| 16 | 7. Set next meeting -- July 15, 2009           | 148 |
| 17 | 8. Adjournment                                 | 149 |
| 18 |  |     |
| 19 |  |     |
| 20 |  |     |
| 21 |  |     |
| 22 |  |     |
| 23 |  |     |
| 24 |  |     |
| 25 |  |     |

1 JUNE 17, 2009

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

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

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

14 MR. BROWN: Make a motion to approve.

15 MR. REYNOLDS: Second.

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

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

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

25 I'm told that everything is fine with

1 Mr. Ferguson other than a business emergency that's  
2 going to prevent him from coming today, so we'll  
3 just continue on.

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

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

19 Whereas, William Passmore, a resident of  
20 Maryland, who died on the 14th day of May 2009, at  
21 the age of 76 years, was a lifelong contributor to  
22 the sport of horse racing; having spent 38 years as  
23 a successful and honored jockey, winning 3,531 races  
24 with purses accumulating over 23 million dollars in  
25 purse money; and

1           Whereas, he also served 20 years as a Racing  
2 Steward, including 11 years as a Steward at Colonial  
3 Downs Racetrack in the Commonwealth of Virginia; and

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

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

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

16           Be it resolved by the Virginia Racing  
17 Commission that, due to all of the above, and more,  
18 we do hereby honor William Passmore, and express our  
19 thanks and appreciation for all his contributions to  
20 our efforts to sustain a viable sport of horse  
21 racing and the horse industry in Virginia; and we  
22 commend him by this resolution as being an honorary  
23 Virginian who will be truly missed by all of us; and  
24 we express our deepest sympathy and condolences to  
25 his wife Charlene and his seven children and their

1 families on the great loss of this wonderful  
2 gentleman, whose memory is cherished by all here in  
3 the Commonwealth of Virginia who came to know him  
4 during his exemplary career.

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

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

10 MR. BURNETT: Thank you. Appreciate it.

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

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

15 As some of you may know, I was here last year,  
16 but I think I had been on the job about a week when  
17 the racing meet started last year. So this year I  
18 was able to step back and take an objective look at  
19 what was happening over there. It was very  
20 impressive. These folks, the horsemen director and  
21 his people, the staff veterinarian, the amount of  
22 traffic that comes through there was impressive and  
23 the way they handled themselves, and the way they  
24 managed the throughput of all that business was even  
25 more so.

1           So I just wanted to make that comment and as  
2 far as the issue of owners being licensed and  
3 entering their horses without being licensed, and  
4 trainers, I think we can probably do a better job in  
5 subsequent years, because we really threw a lot of  
6 time and energy in tracking down owners whose horses  
7 were entered, but didn't have a current license.

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

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

18           MR. BURNETT: If I could follow-up on that  
19 last comment. I think it was only this year that  
20 the Charles Town races changed their policy.  
21 Historically, for as long as I recall until this  
22 year, on the first of January when your new license  
23 was due, they would let you enter a horse, they  
24 would let you run that horse, and they would not --  
25 but they would not release the purse, and they

1 wouldn't let you run a second time until you came in  
2 and got your license.

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

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

19 I mean, we don't want to do all their work for  
20 them, but it is a real crunch on our licensing  
21 department to have it all come on the day of a race.  
22 So anything we could do to sort of ease it, just to  
23 be that much more hospitable here in Virginia for  
24 people who are coming to race, it might help both  
25 ways.



1 MR. HARRISON: I agree. It's magnified a  
2 little bit more, but due to the short length of our  
3 race meet, it would probably make sense in a  
4 jurisdiction like West Virginia with year-round  
5 racing.

6 MR. BURNETT: Sure.

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

12 MR. BURNETT: Sure.

13 MR. HARRISON: We'll work on it.

14 MR. PETRAMALO: May I make a comment?

15 MR. BURNETT: Please.

16 MR. PETRAMALO: I think some of the problem  
17 this year was caused by the fact that for the first  
18 time the Racing Commission did not mail out renewal  
19 forms to all owners. And even though we publicized  
20 this and the Commission publicized this, not  
21 everybody picked up on that, but going forward, I  
22 think it would be helpful if you saw fit to spend  
23 the money to make a mailing that maybe at the end of  
24 the year you make a mailing to all active licensees  
25 saying, "As of December 31st, your license expires.

1 If you're going to race here in 2010, please renew  
2 your license. You can go to our website and  
3 download the application," et cetera. Just to put  
4 them on notice that as of the end of the year, they  
5 have no license that's current in Virginia.

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

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

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

15 MR. PETRAMALO: Yeah. It's --

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

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

1 owner, and that's fine, but we want to treat  
2 everybody the same in that respect.

3 MR. BURNETT: Sure.

4 All right. The Racing Summit Working Group.

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

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

23 MR. PETRAMALO: This is next Thursday,  
24 correct?

25 MR. HARRISON: I'm sorry. June 25th.

1 MR. PETRAMALO: Right. Next Thursday?

2 MR. HARRISON: Yeah.

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

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

21 On the other end of that spectrum is certainly  
22 a member of the public, but a serious horseplayer,  
23 the ones that go regularly to our OTBs, the ones  
24 that cause our OTBs to have a \$300 per capita level,  
25 and my thought is that that type of fan and

1 horseplayer is perhaps deserving of being set apart  
2 and pursued or cultivated, and that perhaps we'd  
3 like to have some representative of that group of  
4 horseplayers, serious horseplayer, help us in what  
5 we're doing in terms of trying to expand the pie,  
6 which is the real focus of all this, is trying to  
7 figure out how to expand the pie.

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

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

14 MR. BURNETT: Thank you.

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

20 MR. HARRISON: Well --

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

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

25 MR. BURNETT: Well, thank you, Vic.

1           We'll next go to stakeholders. Colonial  
2 Downs' report on the 2009 Thoroughbred Meet, please.

3           MR. STEWART: Good morning.

4           MR. BURNETT: Good morning.

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

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

25           This weekend we're anticipating two really

1 good days. We have our Rhythm, Bets n' Brews  
2 Festival on Saturday in conjunction with the  
3 Colonial Turf Cup, and Father's Day on Sunday.

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

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

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

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

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

1 affect on us.

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

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

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

20 Like Ian said, we've got the Microbrew  
21 Festival tied into the Turf Cup on Saturday, and  
22 we've had close to 5,000 people the last two years  
23 for that event, and then with the -- you know, with  
24 all the big jockeys coming in town and the race  
25 card, we're looking for hopefully at least that



1 number, if not more. We've got events planned  
2 pretty much every weekend for the rest of the  
3 summer, so hopefully that will carry the torch.

4 MR. BURNETT: That's terrific.

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

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

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

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

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

18 MR. PICKLESIMER: Well, I think that's part of  
19 it. I think another part of it is horsemen in  
20 Maryland I think are more -- they're not as upset  
21 about the van this year. I think they've accepted  
22 that, you know, we're not going to offer a van, and  
23 they still want to come over and participate. They  
24 know they're treated well, so I think that's a big  
25 part of it.

1           MR. PETRAMALO: I think another thing is the  
2 earlier opening may have helped attract horsemen  
3 from Florida. It seems to me that we've got many,  
4 many horses from Florida than we've had in the past,  
5 because Tampa Bay shuts down I believe Derby  
6 weekend, and the horses need someplace to go, and a  
7 lot of them have come up here.

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

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

24           MR. BURNETT: Wow.

25           MR. PETRAMALO: That's outstanding.

1 MR. BURNETT: Outstanding. Absolutely.

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

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

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

14 MR. BURNETT: Trainer?

15 MR. PETRAMALO: Trainer, yes.

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

18 MR. PICKLESIMER: As far as --

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

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

22 MR. BURNETT: Wow.

23 MR. PICKLESIMER: So we've asked some pony  
24 people if they can ship them out for a day and free  
25 up a few stalls. It's tighter than it was last

1 year.

2 MR. BURNETT: Do you think the early opening  
3 of the track given -- it strikes me that the track  
4 being available for people to come to from Tampa or  
5 anyplace else is encouraging -- helping people to  
6 come; and secondly, that rest piece that you  
7 mentioned, you know --

8 MR. PICKLESIMER: Oh, yeah.

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

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

20 MR. BURNETT: I was looking a little bit at  
21 per diem averages in the Mid-Atlantic, and it seems  
22 to me, if my numbers are correct, that we're sitting  
23 at the high point for most racetracks in the  
24 Mid-Atlantic this summer. I thought I saw Delaware  
25 running in the 165 to \$180,000 a day range. I think

1 Charles Town has consistently been about 180,000,  
2 and so it would seem to me that us being up over  
3 200, that that has to have some appeal and some  
4 people might go the extra mile, come try to get a  
5 piece of that, particularly coupled with the turf  
6 opportunities. Does that make sense you?

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

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

12 MR. PICKLESIMER: Right.

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

17 Okay. Anything further from Colonial on this  
18 subject?

19 MR. STEWART: I don't think so.

20 MR. BURNETT: Thank you.

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

24 Good morning, Mr. Blackwell.

25 MR. BLACKWELL: Good morning.

1 MR. BURNETT: Thank you for joining us.

2 MR. BLACKWELL: Thank you for having me.

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

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

12 MR. CANAAN: Thank you.

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

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

20 I assume all parties have seen the order. It  
21 was distributed on the day of its signature by our  
22 executive secretary, authorized by the Commission.  
23 Do we have a motion to ratify nunc pro tunc the  
24 order of June 1; that is, despite the vote being  
25 taken today, the order would be effective as of its

1 date, June 1, and it relates back to June 1 with  
2 nunc pro nunc.

3 MR. MILLER: So move.

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

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

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

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

19 MR. BLACKWELL: Thank you.

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

23 As you know, the best offer submitted by  
24 TwinSpires was based on information presented by  
25 Commission staff, and that being the average source

1 market fee being paid by ADWs through this year, and  
2 just to back up a little bit.

3 In December, the Commission issued TwinSpires  
4 a temporary license along with stating that a source  
5 market fee would be paid of 8.3%, which at the time  
6 was an average based on the first three-quarters of  
7 2008. Since that time, I've been on record numerous  
8 times to state that we didn't think that was -- the  
9 average was actually reflective of what the true  
10 average of source market fees being paid were.

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

20 So the best offer presented by TwinSpires was  
21 based on the information presented by Commission  
22 staff. The statute clearly says that that would be  
23 the average. The statute says that that would be  
24 the average as determined by the Commission, so we  
25 have gone along with that.



1           As I argued or presented at the previous  
2 hearing, TwinSpires takes the stance that the  
3 statute is clear, that the temporary license  
4 period -- each time the temporary license period is  
5 mentioned in the statute, it clearly states that  
6 that rate should be the average. I've gone through  
7 that.

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

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

22           Some of those go through the end of this year;  
23 some end next year; and some go to the end of 2012.  
24 And obviously in those contracts, as Colonial Downs  
25 has stipulated in their motion, is that there's a

1 rate set, and then also at times there is a  
2 mechanism in place to protect against rising host  
3 fees, which we know is going on, and we'll address  
4 that issue later. So that's something that the  
5 Commission is required by statute to take into  
6 consideration in considering the best offers, and  
7 again TwinSpires' position is that rate is the  
8 average rate and the statute clearly points that  
9 out.

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

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

25 The other thing that I would like to point out

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

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

24 MR. BURNETT: Let me stop you there just to  
25 make sure I understand.

1 MR. BLACKWELL: Sure.

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

4 MR. BLACKWELL: Okay.

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

7 MR. BLACKWELL: Right. Right.

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

10 MR. BLACKWELL: Correct. Correct. And I  
11 think that -- and what I was trying to address,  
12 Chairman, is that in Colonial Downs' proposal, they  
13 said that they're fine with the 8.3% for the first  
14 six months of the year, and so then they proposed  
15 10% for the next six months. I'm looking at the two  
16 numbers that they're using to get to this average  
17 of, I think, 9.15% or something along those lines,  
18 but I'm saying the 8.3% is not an average. It's an  
19 old rate. We've already paid higher than that rate  
20 last year when those rates were in effect. 8.3% was  
21 the average. TwinSpires was paying 8.6%, again the  
22 highest of anyone else in this marketplace.

23 So they're taking -- they're wanting to take  
24 rates that are old, stale numbers, and again the  
25 statute clearly states the average. It doesn't talk

1 about an estimate based on prior numbers. It said  
2 the average. Commission staff has presented that  
3 average. That's been TwinSpires' best offer, and we  
4 feel that that's the only real consideration the  
5 Commission has. Again, I feel like this is the time  
6 and opportunity for the Commission to be able to  
7 weigh in on this new statute, in that these numbers  
8 just don't work, and right now clearly we're under  
9 the current statute. Clearly, the Commission has  
10 agreed it has an obligation to set the rate for  
11 TwinSpires' temporary license. Again, we feel that  
12 that temporary license should be set based on the  
13 average pursuant to statute.

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

22 One of the things that they surprisingly leave  
23 out is what those same costs are to Colonial Downs,  
24 and the reason that's left out is because there is  
25 no costs. When you look at the cost of account

1           wagering coming into the state, Colonial Downs  
2           incurs no time, no expense. They're also allowed to  
3           compete against out-of-state providers because they  
4           have their own account wagering system. So they're  
5           on a field where they can compete, but they don't  
6           have to incur costs that other ADWs are incurring in  
7           order to bring the signal in. They're actually  
8           profiting off the efforts of others. They're also  
9           profiting more than the people who are actually  
10          putting on the show or incurring the cost of  
11          bringing the signals in.

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

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

1 changed all that much.

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

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

22 We have no leverage at all and, in fact, we as  
23 a condition to getting a source market fee agreement  
24 in place, again at the highest rates of anyone else,  
25 we were required to provide our content to Colonial

1 Downs and their EZ Horseplay system. So clearly  
2 this supposed leverage does not exist. It's really  
3 false. We are paying the highest.

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

13 So I think that when we look at this, it's  
14 very clear what has been going on. We have tried to  
15 reach an agreement with Colonial Downs. We tried to  
16 negotiate through TwinSpires. We tried to negotiate  
17 through TrackNet Media, which Mr. Daruty can speak  
18 to later, and we have failed to make any progress  
19 because Colonial Downs has not wanted us to compete  
20 on a level playing field. They've not wanted us in  
21 the state, and it's been stated on the record that,  
22 you know, even the Virginia horsemen, I think  
23 Mr. Petramalo has stated, you know, go make your  
24 money somewhere else, that we're not welcomed in the  
25 state to make money.



1           What we're trying to do is compete on a level  
2 playing field. So when we present our best offer  
3 today, it's to be on a level playing field, to be at  
4 the average, which by statute we think we have a  
5 right to compete under.

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

8           MR. BLACKWELL: Sure.

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

14          MR. BLACKWELL: Correct.

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

20          MR. BLACKWELL: Correct.

21          MR. BURNETT: To the extent that our  
22 interpretation of the statute is that the -- once  
23 the license -- once we've had a breakdown or impasse  
24 in mediation, and that at that point we are required  
25 to impose -- an offer, the best offer of one or the

1 other parties, if those offers are not the average,  
2 then we have to choose one of the two offers,  
3 correct?

4 MR. BLACKWELL: Correct.

5 MR. BURNETT: Do you agree with that?

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

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

24 So I think when you look at that, there's  
25 really only two or three things that can be in that

1 agreement. There's the term, and as I mentioned,  
2 right now everyone outside of TwinSpires has an  
3 agreement that at least goes through the end of the  
4 year. There is another provider that I think has an  
5 agreement that goes through the end of next year.  
6 There's a third provider that has an agreement that  
7 goes to the end of 2012.

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

16 The other consideration that Colonial Downs  
17 has mentioned in their motion is that another part  
18 of that agreement can be protection against rising  
19 host fees, so that there is something that kind of  
20 keeps some type of balance between how those host  
21 fees affect all of the industry participants. So I  
22 think those are the considerations that would come  
23 out of those agreements, and I think the primary  
24 source, again what we're looking at, you're not  
25 questioning what our terms is going to be. You're

1 really questioning at what rate we're going to pay.  
2 And so I think in terms of taking those agreements  
3 into consideration, you're really looking at the  
4 rates of others. I think in doing so, you kind of  
5 get back to this average source market fee concept  
6 to where I think the intention of this, again, is to  
7 prevent someone from being excluded from the state  
8 from being able to operate because they're at the  
9 mercy of Colonial Downs. You're competing -- you  
10 are required to have an agreement in place with  
11 someone who is your competitor.

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

20 So I think there's a concept of trying to  
21 establish a level playing field. We're not coming  
22 in and asking for an advantage. We're coming in and  
23 wanting to compete on a level playing field with  
24 everyone else. That's all we're asking for. I  
25 think we should be granted that opportunity. I

1 think in terms of looking at establishing a higher  
2 rate, we already paid the highest rate last year  
3 despite this alleged leverage. Now we're being  
4 asked to pay a much higher rate this year compared  
5 to our competitors who are all under contract.

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

24 Colonial Downs has benefited from that.  
25 They've benefited significantly and also more so

1 than the other participants.

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

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

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

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

22 I think you look at fairness, I think you look  
23 at the value being added by the participants, again  
24 those putting on the show who are putting on the  
25 races that are actually being wagered upon, the

1 entity that is bringing in the signal, incurring the  
2 cost, I think those are adding value. Colonial  
3 Downs is not contributing to that process.

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

11 One, by the value being added by the  
12 participants, and also look at this percentage.  
13 Nine and a half percent does not exist. I mean the,  
14 9.15% does not exist in the marketplace, and if you  
15 are -- if we're paying 10% for the last six months  
16 of our temporary license, we cannot do business in  
17 this state. Host fees, for instance, on Santa Anita  
18 is eight and a half percent. There's a 20% take-out  
19 blend, and again Mr. Daruty can speak to this.

20 So if we're paying 10% to Colonial Downs and  
21 the horsemen, we're paying a half percent to the  
22 Racing Commission, that's ten and a half, eight and  
23 a half percent on the host fee to Santa Anita is  
24 19%, so there's one percent left.

25 MR. BURNETT: That goes to the Breeders' Fund.

1 MR. BLACKWELL: And that goes to the Breeders'  
2 Fund.

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

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

20 And last year, you may or may not recall,  
21 TwinSpires nor any other account wagering provider  
22 carried Churchill Downs, carried Calder, carried  
23 some of these other racetracks, some of which we  
24 owned, because the horsemen refused to consent to  
25 the signal going out to account wagering providers



1 unless they got a certain rate. They wanted to be  
2 paid for the show that they were putting. They  
3 didn't feel like they were being adequately  
4 compensated.

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

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

24 MR. BURNETT: Again, you're talking about the  
25 statute that goes into effect in a couple of weeks.

1 MR. BLACKWELL: Right. Which again is a rate  
2 that Colonial Downs is using in their best offer.  
3 They're asking you to take that rate, 10% source  
4 market fee, in addition to the 1% breeders fee, and  
5 the half percent, we just cannot operate in this  
6 state. We cannot. It runs us out of business in  
7 Virginia. We'll operate in other states, but we  
8 cannot operate in Virginia. That's why you're not  
9 seeing this overly aggressive source market fee. I  
10 mean, it just pushed it to the point where there's  
11 no room left.

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

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

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

25 MR. BLACKWELL: No.

1           MR. BURNETT: All right. We'll let each group  
2 have contributed to the best offer on behalf of  
3 Colonial Downs and the horsemen and let their  
4 representative speak.

5           Mr. Weinberg?

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

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

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

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

1 taxes which is the half percent to the Commission,  
2 less the variable host fee.

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

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

20 As those meets come on-line, we will see a  
21 further and further decline in source market fees.  
22 That decline has just begun. You can look at where  
23 we were in '07, where we went to in '08, and what  
24 the first quarter of '09 looks like, and the trend  
25 is downward for source market fees in Virginia.

1           So with that in mind, one could look at the  
2 host fees and ask, well, why are they going up? I  
3 think Mr. Daruty is here and Mr. Petramalo, they  
4 were intimately involved in that discussion and can  
5 give you the history, but by and large, if you look  
6 at the 18 tracks that are represented by TrackNet,  
7 those host fees are going up dramatically with the  
8 consequence that more revenue from account wagering  
9 is flowing to Churchill Downs than it was before  
10 those host fees went up. Some of it goes to the  
11 horsemen, no question about that, but at least half  
12 of it is going into TrackNet, which is owned by  
13 Churchill Downs, and Magna Entertainment  
14 Corporation.

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

23           So our point is, what is fair? Given the  
24 leverage that is being asserted in the account  
25 wagering market, whether it be under the hat of

1 TwinSpires or TrackNet, ultimately the big hat is  
2 Churchill Downs. More revenue is leaving Virginia  
3 and going to Churchill Downs.

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

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

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

1 hasn't changed. The retainage hasn't changed. The  
2 taxes haven't changed. Only the host fees have  
3 changed.

4 So that's why we think looking at 8.3%, which  
5 is the Commission's number, is the fair number to  
6 look at for the June 1 -- January 1 to June 30th  
7 period for 2009, and our request, our offer, the  
8 9.15% is based on taking an average of the two  
9 six-month periods covered by the temporary --  
10 yearlong temporary license. For the period  
11 beginning July 1, we do think that the statute is  
12 the appropriate basis to look at for host fees.

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

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

1 business model that makes this work.

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

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

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

23 So there is lots of leverage that Churchill  
24 Downs possesses to bring to this negotiation. And  
25 that's what it is. It is a negotiation. It is



1 about relative bargaining power. This statute  
2 provides some bargaining power to the Virginia  
3 stakeholders to talk to large ADW providers who have  
4 much greater leverage than we do. They control 18  
5 tracks, which in general represent about a quarter  
6 of all ADW dollars wagered in the United States. So  
7 it's a significant marketship.

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

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

25 So it is the same argument, but the case of

1 the milk case and the wine cases where there is  
2 clear discrimination in the statute between in and  
3 out-of-state providers represented the foundation  
4 for the constitutional issues in those cases. That  
5 is not the case here. Colonial Downs is no more  
6 exempt from the source market fee than any other  
7 provider. It provides uniformity to all.

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

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

1 forward.

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

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

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

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

1 Virginia the history is much more recent.

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

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

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

24 Simulcasting is a way for racetracks to expand  
25 the distribution of their product. Historically,

1 the only place the racetrack product was distributed  
2 was locally at the racetrack. Customers would come  
3 to the track and wager on the product. The  
4 simultaneous television transmission of horse races  
5 allowed racetracks to distribute their product to  
6 other tracks and OTBs where other customers could  
7 wager on them. These other tracks became a  
8 distribution network of retail outlets for a given  
9 kind of product.

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

25 The distributor retailer has to pay for the

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

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

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

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

1 18 racetracks in the United States.

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

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

22 The end result is that without a price  
23 increase to the customer, the producer, TrackNet and  
24 its horsemen, make more money than their distributor  
25 retailer, Colonial Downs and its horsemen make less.

1           There are four ADW companies besides EZ  
2           Horseplay operating legally in Virginia. Two of  
3           these companies, TwinSpires and XpressBet, are  
4           affiliated with TrackNet, and the two others, TVG  
5           and YouBet, are not.

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

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

23          TrackNet for their part has said many times  
24          that nationwide ADW host fees are going up. The  
25          market rate has increased. That may be true, but



1 the part they are not telling you is that they are  
2 the market leader. With 18 tracks, including some  
3 of the most heavily wagered on signals in the  
4 country, they're the ones driving the increase.  
5 When we look at the cost for signals for EZ  
6 Horseplay as a potential barometer for the fees that  
7 YouBet and TVG are paying, the vast majority of the  
8 increases come from TrackNet Media tracks. TrackNet  
9 is basically saying that the market price for a  
10 signal is going up because we decided to race.

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

23 So where does that leave us? We're in a very  
24 difficult time for racing. Small independent tracks  
25 without alternative gaming are extremely vulnerable.

1 Account wagering revenues have been very important  
2 in sustaining Virginia racing over the last couple  
3 years. We have fought very hard to make sure that  
4 Virginia retains its fair share of this revenue  
5 stream.

6 That's what the new legislation is about.  
7 Absent the change in how source market fees are  
8 paid, what is to prevent TrackNet from continuing to  
9 raise host fees and continue to erode this important  
10 revenue stream for Virginia?

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

17 Initially, this cannibalization of the OTB  
18 handle was not a problem because of our model ADW  
19 handle contributed as much to Virginia as OTB  
20 handle. Now we're in a situation where it continues  
21 to cannibalize and is contributing less. Given the  
22 price increases TrackNet Media is trying to impose,  
23 will continue to contribute less in the future. We  
24 may very well end up with more handle and less  
25 money.

1 Account wagering has been very beneficial to  
2 Virginia. Account wagering also has the potential  
3 to be very destructive for Virginia racing. As I  
4 said before, combining control of a product through  
5 TrackNet with basically an inexpensive and powerful  
6 distribution of retail network in TwinSpires and  
7 XpressBet puts us in a situation where they don't  
8 really need Colonial Downs, or for that matter, any  
9 live racing in Virginia. It just needs an audience  
10 to which it sells the product, horse racing from its  
11 tracks.

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

21 Now, account wagering can continue to help  
22 sustain racing in the Commonwealth. However, to do  
23 that account wagering in Virginia must work to  
24 benefit racing in Virginia rather than turn Virginia  
25 into a feeder market that is exploited to benefit

1 racing in other states. The promotion, growth, and  
2 sustenance of Virginia's native horse industry turns  
3 upon how Virginia benefits from account wagering,  
4 and that really is the question to be decided this  
5 morning.

6 MR. BURNETT: Any questions for Mr. Stewart?

7 MR. MILLER: Could I ask a question?

8 MR. BURNETT: Please.

9 MR. MILLER: This is just maybe a comment.

10 I'm just interested in knowing more about it.

11 You said that Colonial Downs would be willing  
12 to work with YouBet and TVG and other ADWs to try to  
13 find some solution to the problem they face by the  
14 increased host fees that they have to pay, and the  
15 fact that they have to pay the 10%, plus 1%, plus --  
16 11 and whatever it is.

17 MR. BURNETT: Eleven and a half here.

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

21 MR. STEWART: Well, that's an interesting  
22 question, and I've spent quite a bit of time over  
23 the last several months trying to figure out where  
24 the answer to all that is. I think that in the end,  
25 if you look at it sort of globally, YouBet and TVG,

1 and I can't speak for Mr. Daruty, but my guess is  
2 they're important to TrackNet because they're a  
3 distribution outlet for their track's products. So  
4 they would like to keep YouBet and TVG operational  
5 in Virginia.

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

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

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

25 MR. MILLER: You mean let -- you contemplate

1 the legislature by the passage of this act gives you  
2 the ability to discriminate by and between ADW  
3 providers insofar as the amount of money that  
4 Colonial Downs takes. As long as they pay the one  
5 and a half percent, you can make a deal and  
6 contravene the total 11 and a half percent by giving  
7 a break to company A or company B.

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

11 MR. MILLER: You could?

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

17 MR. MILLER: Okay.

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

24 MR. STEWART: I think -- and I'm speaking from  
25 memory, but I believe our submission basically says

1 that at the end. It's not that we're unwilling to  
2 negotiate, we just want to level the playing field.  
3 As I said, I guess maybe Mr. Blackwell doesn't feel  
4 like he has a whole lot of leverage, but I believe  
5 that they do.

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

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

14 MR. WEINBERG: That's correct.

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

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

24 MR. MILLER: Okay. Yeah.

25 MR. WEINBERG: And the 1% to the Breeders'

1 Fund is a separate part of the statute, but yes, the  
2 10% supersedes these contracts, in essence.

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

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

8 MR. MILLER: Could I ask a general question --

9 MR. BURNETT: Please.

10 MR. MILLER: -- to the congregation?

11 MR. BURNETT: That would be fine.

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

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

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

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

25 MR. BURNETT: For what it's worth to fellow



1 commissioners, but I think it's valuable for us to  
2 have a broader discussion.

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

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

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

1           apparently -- I wasn't there so I don't know.  
2           Apparently, there was no communication with the  
3           legislative committee that considered the  
4           legislation; is that right?

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

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

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

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

1 MR. WEINBERG: Okay.

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

3 MR. WEINBERG: Just wanted to be clear.

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

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

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

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

1 it.

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

16 MR. WEINBERG: I disagree.

17 MR. BURNETT: Okay.

18 MR. WEINBERG: I think you, with all due  
19 respect, overcomplicated it. It is clear that the  
20 Commission's role is to license ADW providers. The  
21 statute provides, in essence, a checklist of this is  
22 what you need to do to get a license. One of it is  
23 to make the payment of a 10% source market fee after  
24 the track, after the horsemen. If that's being  
25 done, then the Commission has fulfilled its -- it

1 can check that off its list and ADW providers  
2 qualify for a license.

3 MR. BURNETT: Okay.

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

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

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

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

23 MR. BURNETT: Well, the purse account  
24 language, and I was very involved in that, and as  
25 you know, there was enormous resistance on the part

1 of the Commission to go along with that plan. It  
2 was the racing business on the precipice that caused  
3 them, I think, to stretch what -- to a place they  
4 didn't really want to go, and we ended up making the  
5 argument based on the language of the statute, which  
6 we concluded only required that the money be paid  
7 into the purse account, then we thought it could be  
8 fairly assumed that it was up to the horsemen to  
9 determine how they wanted to expend their money.  
10 There was no requirement that the purse account  
11 money be all expended on purses such that rebates  
12 would be permitted, if I remember the argument.

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

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

23 MR. BURNETT: Right.

24 MR. MILLER: Mr. Chairman?

25 MR. BURNETT: Yes.

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

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

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

13 MR. WEINBERG: Correct. That's correct.

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

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

19 MR. STEWART: With help from time to time.

20 MR. BURNETT: YouBet.

21 MR. WEINBERG: You are correct.

22 MR. MILLER: Oh, that's right.

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

25 MR. BURNETT: Considerable enforcement there.

1 MR. WEINBERG: Yeah.

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

4 MR. REYNOLDS: Mr. Chairman?

5 MR. BURNETT: Please. Mr. Reynolds?

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

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

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

23 MR. REYNOLDS: Right.

24 MR. BURNETT: And I think that is interpreted  
25 by some as being -- our having been excluded from



1 the process, if you will, but simply that the  
2 governor's office did not want us for whatever  
3 reason to participate in the legislature's  
4 consideration of the statute. So it was carried by  
5 others and promoted by others.

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

19 MR. BURNETT: I'd like to pose several  
20 questions I have here. I've been taking notes as  
21 the two of you have presented. To Mr. Petramalo and  
22 Mr. Canaan, who I know probably have some additional  
23 things to say. I'm just asking you to listen to my  
24 questions and respond to them as you see fit going  
25 forward. It might abbreviate things a little bit.

1 They're not particularly complicated.

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

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

22 What I think becomes particularly difficult,  
23 and it's not -- I don't characterize it as a fault  
24 situation. It's a circumstance. When you have  
25 small independent tracks who are not operating

1 year-round, who are principally import states when  
2 it comes to where the wagering handle comes from and  
3 where their signals come from, there's almost an  
4 opposite affect of host fees compared to the track  
5 that races year-round. And so host fees in this  
6 environment essentially become the enemy of Colonial  
7 Downs, but were Colonial Downs running year-round,  
8 the host fees might well be their best friend.

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

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

20 This issue of leveraging troubles me because  
21 it's a slippery slope. I don't know where it ends,  
22 and is it appropriate to leverage TrackNet through  
23 TwinSpires if TwinSpires is only a 30% owner of  
24 TrackNet versus a 50% owner, and do we even know.  
25 At what point -- you know, where does it all take

1 us, and doesn't Colonial Downs get accused of doing  
2 the same thing in terms of leveraging through EZ  
3 Horseplay or EZ Horseplay leveraging through  
4 Colonial Downs.

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

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

22 MR. PETRAMALO: May I address that leverage  
23 issue?

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

1 the time you want.

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

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

21 And if that is so, is that something that's  
22 good for the sustenance, promotion, et cetera, of  
23 racing in Virginia, or could we find ourselves  
24 actually hurting racing through the implementation  
25 of the highest source market rates in the country.

1           So is it appropriate for us to consider the  
2 rates in other states and what impact that has on  
3 the various players that are here and how other  
4 states compare to us and what they're paying in  
5 other states? It seems you've shown us what other  
6 states' tracks are charging, but not what is being  
7 paid for source market fees in other states. I'm  
8 not sure we even need to go to that, but I put it  
9 out there, so thank you.

10           Mr. Petramalo?

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

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

21           So TwinSpires probably is operating in West  
22 Virginia with paying little or nothing in the way of  
23 source market fees to the racetracks or horsemen  
24 there. They certainly aren't paying eight and a  
25 half percent. If they do pay, they pay a small

1 percentage, 7% within 25 miles of a track. If you  
2 drew a circle around 25 miles of Colonial Downs,  
3 you'd find rabbits and trees and nobody else, but  
4 that aside.

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

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

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

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

1 mean source market fees.

2 MR. BURNETT: Other than collecting them.

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

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

7 MR. PETRAMALO: That's a different issue.

8 MR. BURNETT: Okay.

9 MR. PETRAMALO: That's a different issue.

10 MR. BURNETT: Okay.

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

19 But let me talk about leverage. On the normal  
20 Monday and Tuesday during our race meet, we have  
21 great signal sales, because of our product and the  
22 fact that we've got very little competition. So  
23 normally on a Monday or Tuesday, we have about a  
24 million dollars in handle; that is, people outside  
25 of Virginia at OTBs and ADWs betting here.



1 Well, this -- for the first two weeks, it's  
2 dropped considerably, probably about 25% or more.  
3 And guess why? TrackNet, right back there, is not  
4 taking our signal. And why are they not taking our  
5 signal, because they're disappointed with the way  
6 TwinSpires is being treated with regard to source  
7 market fee. That's leverage. That's what we're  
8 talking about, okay?

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

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

22 Now, whether you want to say it's a rebate or  
23 whether we're paying -- let me use Jim's example.  
24 Suppose YouBet were to say, you know, we think this  
25 10% is a little high. We say, okay, well, how about

1 if we rebate you a certain percentage based on the  
2 money you spend marketing the Virginia product and  
3 marketing your operation in Virginia because that's  
4 going to aid us. So we give them a ten -- a 1% or a  
5 2% rebate. What's wrong with that? That's  
6 perfectly appropriate. It requires nothing for the  
7 Commission to get involved with. It's a business  
8 deal. It's a business deal. If somebody else wants  
9 to come in and do the same thing, fine. We'll  
10 consider that.

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

21 There was another point that I think you --  
22 oh, the future statute. We're not saying that you  
23 should enforce -- you should -- you're bound to use  
24 the 10% in judging whether or not our last best  
25 offer makes sense, so that you would want to accept

1           it. I think all we're saying there is that it's  
2           certainly a guideline that you ought to look to and  
3           simply not ignore it, because this is what the  
4           legislative judgment was, and it's by taking that  
5           10% and averaging it with the earlier six months  
6           that we come to the 9.1 percent, which we think is  
7           reasonable.

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

16                    Now, this all came about because of varying --  
17          differing views between the horsemen and the ADW  
18          companies as to how the economic pie should be cut  
19          up. You said that this host fee thing is really  
20          getting complicated and it helps one person, but  
21          disadvantages the other. That's true. We, as  
22          horsemen, recognize it. That's why we proposed a  
23          completely new model that was divorced from the  
24          notion of host fees and source market fees, et  
25          cetera. It went nowhere other than to get us

1 involved in an anti-trust lawsuit in the Western  
2 District of Kentucky, but I wouldn't sit there and  
3 be concerned that Virginia is going to have this  
4 reputation.

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

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

25 MR. WEINBERG: I think Colonial's answer is

1 no. It doesn't matter.

2 MR. STEWART: Let's decide --

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

6 MR. PETRAMALO: I think the question is  
7 premature. I think what you ought to get, first of  
8 all, is a commitment from TrackNet that if it's  
9 7.2%, we'll take the signal. If it's nine, we  
10 won't. Why operate in the --

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

15 MR. BLACKWELL: Yeah, actually I would.

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

18 MR. BLACKWELL: Just two points. There was a  
19 number of things I wanted to address. One is that  
20 Colonial Downs through this is alienating itself  
21 from the rest of the industry. They proclaim  
22 they're on the forefront of doing something, but  
23 they're pricing themselves out of the market. You  
24 know, and I think they even have -- seemed to have  
25 admitted on record that this 10% is probably too

1 high, because they talk about ways to circumvent the  
2 10% by offering a rebate.

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

13 And to me for them to get up here and say, no,  
14 we won't negotiate; no, we won't consider anything  
15 else, they're arguing out of both sides of their  
16 mouth. They have clearly shown today, once again on  
17 the record, they're not willing to negotiate. They  
18 may be willing to cut a deal with YouBet. YouBet's  
19 name has come up numerous times as we've already  
20 talked to them about maybe doing something  
21 different. There may be a rebate. At no point --  
22 and we've been coming to this -- you know, the  
23 Commonwealth for four or five months straight trying  
24 to reach a deal. We've gone through mediation. We  
25 negotiated through TwinSpires. We negotiated

1 through TrackNet Media, and with TrackNet Media here  
2 today, they said no. We don't care about our signal  
3 going out to other places. Let's decide this rate,  
4 and let's be done with it.

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

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

22 The other thing -- and, Chairman, you pointed  
23 this out, and it's not a you could. Colonial Downs  
24 has increased its host fees, and they want to point  
25 the finger at Churchill Downs, but you know, there

1 are other entities -- and Mr. Daruty can speak to  
2 this -- NYRA has increased its host fees. Colonial  
3 Downs increased its own host fees, but they're not  
4 discussing that today. They want to point the  
5 finger at Churchill Downs. Churchill Downs is the  
6 only one increasing their host fees.

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

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

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

17 MR. BLACKWELL: Before December?

18 MR. REYNOLDS: Yeah. What was it?

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

24 MR. REYNOLDS: What rate have you been paying  
25 the last six months, eight months?



1 MR. BLACKWELL: It was based on 8.3, which was  
2 the average being paid by all licensees based on  
3 numbers that represented the first -- or I guess the  
4 first three-quarters of 2008.

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

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

9 MR. BURNETT: That's all we had.

10 MR. LERMOND: Right.

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

13 MR. REYNOLDS: And that is 7.2?

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

22 MR. REYNOLDS: Colonial's number is 9.15.

23 MR. BURNETT: Yeah. The two best offers are  
24 7.2 and 9.15.

25 Mr. Daruty, I'm not sure where you want to

1 start, but go right ahead. If you would identify  
2 yourself for the court reporter, please.

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

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

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

20 TrackNet, just to lay a little bit of  
21 background, we do represent 18 racetracks throughout  
22 the United States. They are tracks that are owned  
23 by Magna and Churchill, but they're also independent  
24 tracks. We represent those racetracks both --  
25 whether they sell or simulcast signals, be it

1 through other racetracks, simulcast facilities,  
2 account wagering companies, casinos, off-shore  
3 rebaters, you name it. We represent them in all the  
4 sales of their signals.

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

15 We don't typically negotiate their hub fee  
16 that they get out of a state like Virginia. That is  
17 left to, you know, Mr. Blackwell for TwinSpires and  
18 Mr. Scoggins for XpressBet, and frankly, you know,  
19 in some ways I don't -- from XpressBet and  
20 TwinSpires' perspective -- necessarily care how you  
21 guys come out on the issue before you. I mean,  
22 that's really for Mr. Scoggins and Mr. Blackwell to  
23 worry about, for Colonial Downs and its horsemen,  
24 and for this Commission to decide. My primary  
25 responsibility first and foremost is to represent

1 Magna and Churchill and independent racetracks who  
2 participate in TrackNet.

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

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

24 When you talk about account wagering, and  
25 that's primarily what we're here to talk about

1 today, it's really important that you have a bit of  
2 background. If you go back say five years, five to  
3 ten years, and you looked at the account wagering  
4 business, it was basically dominated by TVG at the  
5 time. TVG had setup a model where it paid host  
6 racetracks three and a half percent host fees, and  
7 it paid source market fees in the jurisdictions  
8 where it took wagers, but it didn't recognize -- it  
9 didn't take wagers hardly anywhere. At the time TVG  
10 was in ten states, and that's it.

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

20 Now, at the time it was pre-TrackNet.  
21 TrackNet didn't exist. Churchill Downs was not even  
22 in the account wagering business at the time, and I  
23 worked at Magna. And we at Magna looked at it and  
24 said this is crazy for our racetracks. Our tracks  
25 are not getting source market fees in the markets

1 where we operate. When we sell our signals, we'd  
2 only be getting three and a half percent. That's  
3 just not worth it.

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

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

21 What has happened that's so significant in  
22 terms of host fees is the tracks that used to be TVG  
23 exclusive, like Churchill Downs, have seen  
24 considerable increases in their host fees. What do  
25 I mean by that? Well, TVG had an exclusive on

1 Churchill Downs Racetrack, on Arlington Park  
2 Racetrack, on Calder Racetracks, on those Churchill  
3 owned racetracks. Those exclusives did not expire.  
4 Those contracts did not expire until 2007.

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

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

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

22 Typically source market fees were about 7%.  
23 That's kind of where they settled across the  
24 country. Magna -- and Mr. Petramalo said that  
25 source market fees are not regulated in many

1 jurisdictions, and he's correct. They're not  
2 regulated in many jurisdictions, but Magna, the  
3 racetrack owner, was in the same position that  
4 Colonial Downs is in today. Hey, you know, this is  
5 our market. We want to be fairly compensated, and  
6 at the time we setup 7% source market fees.

7 And then when TrackNet was formed and  
8 Churchill came out of its TVG relationship,  
9 Churchill adopted those 7% source market fees, and  
10 by and large the standard in the industry was around  
11 7%.

12 Now, there were a couple of outliers.  
13 California charges probably the highest source  
14 market fee in the country, and I don't think it's  
15 high as the 11 and a half percent total that's in  
16 the new the statute, but it's probably close.  
17 California, if you listen to their argument, they  
18 say they deserve that because they're about 50% of  
19 the account wagering business in the entire country.  
20 And that's a pretty accurate number. I don't know  
21 if it's exactly, but it's 40, 50%. They're a huge,  
22 huge portion of the total account wagering, and they  
23 say, hey, if these companies are doing this volume  
24 of business in our state, they can afford to pay us  
25 a higher source market fee.



1           So the California model, basically the ADWs  
2           are allowed to retain about 10%. So if you look to  
3           a 20 or 21% blended take-out under the California  
4           statute, the ADW would have to pay a source market  
5           fee of maybe 10 to 11%, something in that range, but  
6           again that's for the biggest account wagering market  
7           in the country.

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

16          The other numbers I'm quoting you from other  
17          states are all in. That's everything. If you take  
18          the all in number here in Virginia, you have to add  
19          in the half a point that goes to the Commission.  
20          You're already at -- you know, at the top, top of  
21          the class, and now we at TrackNet, we look at this  
22          new statute, and we say now it's pushing -- you  
23          know, you're already one of the top. Now you're  
24          pushing it several points higher. You're surpassing  
25          California, which is 50% of the account wagering

1 market, it just doesn't make sense. It just does  
2 not make economic sense.

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

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

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

21 So as I've said, the host fees have gone up  
22 from the historic levels of the three and a half  
23 percent for account wagering. Primarily that was  
24 more an attack on the margins of the account  
25 wagering companies than it was on the source market

1 fees. In other words, there was an objection when  
2 account wagering companies would make, let's say,  
3 10% on a bet. The host fees would be three and a  
4 half percent, and the source market fee would be 7%.  
5 That seemed crazy to us. So we did start to move  
6 the host fee rates up.

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

14 If you look at NYRA, NYRA's rates had actually  
15 increased -- the same issue. They were under TVG  
16 exclusives. They were getting three and a half  
17 percent. They filed bankruptcy. Magna, as you  
18 know, is in bankruptcy. I mean, we've got issues in  
19 this industry that the content providers are saying,  
20 wait a minute. We're not even making any money, and  
21 we're running Saratoga and Santa Anita and  
22 Goldstream, and some of the premiere tracks in the  
23 country. We've got to fix this model. We've got to  
24 make it a point where the guys putting on the races  
25 can make a decent amount of revenue.

1           So NYRA, as soon as they came out of their TVG  
2 exclusives, their host fees shot right up. Okay?  
3 Their host fees are very consistent with where the  
4 TrackNet host fees are. I can tell you that. I can  
5 assure you of that. Keeneland has been raising its  
6 rates. The Del Mars and Hollywood Parks of the  
7 world, they're not at TrackNet. They're raising  
8 their rates. The California rates are fairly  
9 publicly known, so I don't feel bad talking about  
10 them in this open forum. Hollywood Park, eight and  
11 a half percent, that's what they're charging  
12 national account wagering companies, eight and a  
13 half percent.

14           So as the tracks were in this effort both  
15 through originally Magna, and then Magna and  
16 Churchill, then TrackNet was formed, and NYRA and  
17 Keeneland, they came out of their TVG exclusive  
18 contracts, as they were in this effort to push host  
19 fees up, the horsemen came along through the THG and  
20 through Mr. Petramalo and many of his colleagues,  
21 and they said wait a minute. We are a little bit  
22 uncomfortable with the tracks and the ADWs just  
23 negotiating among themselves. So we want to come in  
24 and layer ourselves into the process to make sure  
25 the horsemen are being treated fairly.

1           As we said earlier, you know, every state,  
2           like it or not, tracks are partners with horsemen,  
3           and horsemen are partners with tracks. So we worked  
4           with the THG to see if we could arrive at a common  
5           understanding.

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

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

24          Now we come upon our statute in Virginia. Our  
25          statute in Virginia says 11 and a half percent stays

1 in the Virginia marketplace. It goes a half a  
2 percent to this Commission; it goes 1% to the  
3 breeders; and it goes 10% to the Virginia tracks and  
4 the horsemen. Well, I'm no mathematician, but 13  
5 minus 11 and a half leaves one and a half percent  
6 for the horsemen and the host jurisdiction to share  
7 with the host racetrack. That's insane. I mean,  
8 that is not an economic model that the rest of the  
9 country is going to participate in.

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

18 What this is about is the fact that Colonial  
19 Downs got a law passed in Virginia that would leave  
20 one and a half percent host fees for our 18  
21 racetracks. That's not acceptable to us. And we  
22 told Mr. Stewart back in the February/March time  
23 frame that that was not acceptable to us. We  
24 suggested that we needed to come up with a global  
25 solution to our relationship.

1           We have a very broad relationship with  
2 Colonial. We sell them our signals from wagering in  
3 this facility and the OTBs. We sell them our signal  
4 for wagering on their account wagering company, and  
5 we buy their signals for our OTBs and racetracks,  
6 and we buy their signals for our ADW companies.

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

22           So we're open to working with Colonial Downs.  
23 We want to solve this relationship issue. We want  
24 to import their signals. We want to sell our signal  
25 into the Virginia marketplace, but not on the

1 economic terms that have been outlined by the new  
2 statute.

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

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

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



1 fees. I have to go to the Mid-Atlantic, and I have  
2 to deal with them.

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

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

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

24 MR. BURNETT: The question that's on the tip  
25 of my tongue is -- because it's a concern to

1 everybody in Virginia right now is what it would  
2 take for the Virginia signal to get distributed by  
3 TrackNet, and if this number -- what's the magic  
4 number? Of course, we've only got two to choose  
5 from, as you know, under our statute here today.

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

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

15 This was handed out earlier today by  
16 Mr. Weinberg. This is last year's host fees, and  
17 this year's host fees. I put this in the category  
18 of everybody sees the world from their perspective.  
19 I'm sure from Mr. Weinberg's perspective and  
20 Mr. Stewart's perspective, they see this as entirely  
21 accurate, but I can tell you factually this is not  
22 even close to accurate. Okay? These are not the  
23 rates. The two 2008 rates that are listed on here  
24 are not remotely close to the rates we were charging  
25 YouBet or TVG. Well, we weren't charging TVG

1 because at the time we weren't selling them our  
2 signals, but YouBet or XpressBet or TwinSpires in  
3 2008. Not remotely close.

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

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

24 I'm happy to say that as of about 60 days ago,  
25 we finally reached our goal. We were distributing

1 our product through all of the account wagering  
2 companies, all four of the major national account  
3 wagering companies. We reached a deal with YouBet  
4 last year, and in about May we reached a deal with  
5 TVG.

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

18 So I guess that's a little bit of a  
19 non-answer, but I just want to make sure the focus  
20 is on a global solution, because it doesn't do us as  
21 racetrack owners outside the State of Virginia any  
22 good if we can only distribute through TwinSpires  
23 and not everybody else. We want full distribution.  
24 We want somebody in Virginia to be able to choose  
25 whatever platform he or she likes best, whether it's

1 TVG, YouBet, XpressBet, or TwinSpires or EZ  
2 Horseplay, and place their bet. We want to make  
3 sure that there's fair, reasonable compensation to  
4 Colonial Downs, and that there's fair, reasonable  
5 compensation to the racetracks. So that's our goal.

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

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

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

1 number and how that's going to applied, and whether  
2 it can be rebated and all the rest.

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

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

1 direction as a business.

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

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

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

23 MR. STEWART: I've got two things.

24 MR. BURNETT: We've got -- Mr. Scoggins has  
25 got his hand up. I missed you. I'm sorry.

1 MR. SCOGGINS: Greg Scoggins for XpressBet. I  
2 have some additional comment I would like to make  
3 from XpressBet's standpoint. Consistent with or  
4 somewhat related to what Scott had to say, but to  
5 the extent there are specific comments in response  
6 to what Scott had to say, I'll be happy to wait.  
7 It's related, but not exactly on point.

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

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

19 I'd like to address a couple of concerns that  
20 XpressBet has, and I'm here sitting with the hat of  
21 XpressBet. As Mr. Daruty pointed out, he's  
22 representing TrackNet and the tracks that TrackNet  
23 serves, and we have a slightly different set of  
24 issues. Not that they're totally unrelated, but  
25 they are different.



1           One of the things I'd like to stress that I  
2           think Scott made in his comments was if we have to  
3           pay a half percent because the track and its  
4           horsemen, and I have to stress the word its  
5           horsemen, because in the last 12 months the horsemen  
6           have played a significant role in making the host  
7           fees go higher. They haven't gotten to the  
8           one-third model, but they are significantly higher  
9           than they were even a year ago in 2007, and some  
10          tracks took a big hit getting to that point.

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

19           So we have two choices. One, we exit the  
20          State of Virginia, which may or may not be the  
21          desire of Colonial Downs. I would think that it  
22          shouldn't be the desire of Colonial Downs when you  
23          look at how much ADW handle is generated by the five  
24          ADWs in the state, or we can choose not to offer  
25          that particular signal to our Virginia resident

1 customers because it doesn't make sense for us to do  
2 that, which means that NYRA loses a market. It  
3 loses eight and a half percent. It has to rely on  
4 whatever handle it gets from a lower rate, not that  
5 it's a bad rate, but it's a lower rate that's  
6 applied to brick and mortar facilities.

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

16 MR. STEWART: Close.

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

21 And so the impact to TrackNet tracks is that  
22 we lose a very profitable or a very important share  
23 of the handle that we're generating, that generates  
24 a higher rate, that helps our purses and helps our  
25 tracks that are putting on the show, and XpressBet

1 loses the ability to compete, because it can't offer  
2 as many of the signals that it would otherwise offer  
3 to Virginia residents because it can't afford to  
4 offer those rates. So I wanted to stress that point  
5 from our perspective.

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

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

18 I specifically heard Mr. Weinberg say that  
19 they have little to no sympathy to XpressBet and  
20 TwinSpires in connection to their willingness of  
21 doing that when you compare that to YouBet and TVG.  
22 So I am concerned as it relates to leverage that  
23 TwinSpires and XpressBet could be equally leveraged  
24 in terms of their ability to participate on a level  
25 playing field in the State of Virginia than other

1 ADW providers, and it concerns me for the same  
2 reasons that I think, Chairman Burnett, that you've  
3 raised, which is you start creating a situation  
4 where you have disparate treatment of otherwise  
5 equally situated companies.

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

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

24 MR. BLACKWELL: Actually, the position they  
25 took was we want the same source market fee you paid

1 last year, which was the highest in the market, plus  
2 \$200,000 for TwinSpires to pay for their loss being  
3 attributed to higher host fees among its 18 tracks,  
4 14 of which we have no connection with other than  
5 being represented by the same entity.

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

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

23 MR. BURNETT: Any questions of Mr. Scoggins?

24 All right.

25 MR. REYNOLDS: What's for lunch?

1 MR. BURNETT: Do you want to take a short  
2 break?

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

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

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

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

22 MR. BURNETT: Go ahead.

23 MR. STEWART: You know, Mr. Daruty is  
24 absolutely right, you know. When you look at the  
25 same set of facts, reasonable people could come up

1 with completely different viewpoints looking at the  
2 same thing.

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

11 They made the point several times that -- and  
12 it may be true, that they say, well, we won't make  
13 any money on signal -- on NYRA, or we won't make any  
14 money on a particular expensive track. That may be  
15 true if that host fee -- if that -- I get twisted  
16 up, if that host fee doesn't change, but wouldn't it  
17 seem reasonable to you that if I'm NYRA and  
18 Mr. Scoggins comes to me and says, gee, NYRA, you're  
19 getting an 8% host fee and Virginia wants 10%.  
20 There's not enough left for me. Wouldn't you guys  
21 maybe -- instead of getting zero, maybe you might  
22 reduce your host fee a little bit, maybe Virginia  
23 might reduce their source market fee a little bit,  
24 and maybe everybody could, you know, do business  
25 together.

1           But I think the basic premise that they want  
2           you to accept is that the source market fees are set  
3           in stone -- I mean, gosh. I'm twisting myself. The  
4           host fees are set in stone, that there's nothing  
5           that can be done with those, and therefore, Virginia  
6           you have to accept the fact that in order for us to  
7           get what we want, what we need, host fees for our  
8           racetracks, you guys have got to take less. And I  
9           honestly don't accept that.

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

20           Again, this is getting painted as it's all  
21           TrackNet, and I'm not denying that we don't like the  
22           increased host fees, but frankly, the host fees have  
23           been pushed farther than I believe in some  
24           jurisdictions or for some host tracks they should  
25           have been pushed, and the only reason was because



1 the horsemen said we will absolutely, positively not  
2 let you sell it for a penny less than that.

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

6 MR. BLACKWELL: Well, at one point --

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

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

22 Now, you know, it's been said that we won't  
23 negotiate. You know, this whole thing started back  
24 in November. I got a phone call from Omar Aymen  
25 (phonetic) who is with TrackNet. We had the rates.

1 I said to Omar, I said, Omar, you know, these are  
2 going up. These are kind of high. What can we do?  
3 And Omar said to me, well, you know, if those rates  
4 don't really work for you, then maybe you shouldn't  
5 be taking the product, you know, on those particular  
6 tracks.

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

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

1 really seeing that.

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

4 MR. MILLER: No.

5 MR. DARUTY: May I --

6 MR. BURNETT: Please.

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

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

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

23 The regional ADW companies are racetrack owned  
24 ADW companies that do business only in their own  
25 state. Colonial Downs, New Jersey has its own

1 account wagering system run by the tracks that takes  
2 bets just from New Jersey residents. There's some  
3 tracks in Pennsylvania that have their own ADWs that  
4 take bets just out of Pennsylvania.

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

13 Historically, I described to you I know for a  
14 fact that Santa Anita, that Magna sold Santa Anita's  
15 signal to YouBet for 8% all the way back to  
16 2004/2005 time frame, but it was being sold to  
17 Colonial Downs for the -- for its account wagering,  
18 not at 8%, not at seven, not at six, not at five,  
19 not even at four, the exact same rate that Santa  
20 Anita was coming into this facility for wagering.

21 So what happened last fall was partly because  
22 of horsemen in various jurisdictions, and partly  
23 because of us coming to the conclusion, for our  
24 racetracks that probably isn't a policy that made  
25 sense anymore. We raised the rates to all regional

1 ADW companies. Did we take them to the national  
2 rates? No, we didn't. We left them well below the  
3 national rate, but what we did was we bumped them  
4 about 2%.

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

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

22 MR. BURNETT: Thank you.

23 Mr. Weinberg?

24 MR. WEINBERG: I did not -- if you'll indulge  
25 me, I didn't have a chance to respond to the four

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

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

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

1           impasse we're at.

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

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

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

21                      What has brought the parties together to have  
22 this discussion is Virginia is looking at a high  
23 source market fee. We're going to have, I hope, a  
24 productive discussion. This Commission is really  
25 faced in part with a very narrow issue, pick one or

1 two, and in the broadest sense, it is on the  
2 forefront of how are you going to resolve the  
3 discussion between importing states like Virginia  
4 and exporting states like Florida and California.

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

11 MR. REYNOLDS: Mr. Chairman?

12 MR. BURNETT: Go ahead.

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

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

22 MR. BLACKWELL: If I may, that 10% also as  
23 Mr. Daruty pointed out was based on host tracks  
24 receiving three and a half percent. It was a model  
25 also where TVG was exploiting those signals and



1 charging someone else more money for that same  
2 signal and pocketing that money. So it's a system  
3 that doesn't work.

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

17 So I think there's some insight as to what's  
18 going on, but I think, you know, more importantly  
19 here today, I think we have this issue before us,  
20 you know, of the two rates. This has been, I think,  
21 a healthy discussion as to where things can go, and  
22 obviously if Virginia is going to stay in the  
23 marketplace and not alienate itself, I think it's  
24 going to require some cooperation with TrackNet,  
25 with Colonial Downs, with the horsemen, and maybe

1 some other horsemen's groups, but I think today the  
2 focus right now, and I think, Chairman, with all due  
3 respect, you mentioned before, it's unfair to hold  
4 TrackNet or to keep reaching out in terms of  
5 leverage points. I mean, the focus is on our, you  
6 know, rate for the next -- or for this year, and  
7 again this is a time for the Commission to take a  
8 look at what was said today.

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

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

1 position is they're going to go with their contract.

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

5 MR. MILLER: Mr. Chairman?

6 MR. BURNETT: Yes.

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

11 You said before that your view was this 10%  
12 applies across the board July 1 to everyone, even  
13 though they have contracts in place and even though  
14 they have licenses in place predicated on those  
15 contracts, and you said it was -- I forgot the word  
16 you used for him to come here today and complain,  
17 that it was -- you didn't use the word weird,  
18 obviously. It's weird that he's here today  
19 complaining, but I would think that's why he's  
20 complaining is because of your letter that you sent  
21 before that indicated that you're taking the  
22 position that his contract and his license  
23 predicated on that contract doesn't mean anything in  
24 the face of the statute. So it's not odd for him to  
25 be here today complaining about this.

1 MR. WEINBERG: No. With all due respect, you  
2 missed my point.

3 MR. MILLER: Okay. I must have.

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

7 MR. MILLER: Right.

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

16 MR. MILLER: Okay.

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

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

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

24 MR. MILLER: Now is the time to do it, I  
25 guess.

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

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

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

23 MR. MILLER: One other point.

24 MR. BLACKWELL: If I may, just on that same  
25 topic, TwinSpires when we did have a contract in

1 place with Colonial Downs and the horsemen, i.e.  
2 2008, we also had a most favored nations clause in  
3 our agreement, yet we paid the highest rate of any  
4 other provider in the state.

5 MR. SCOGGINS: And we were the second highest.

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

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

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

22 Now, they may have done a lot of work. They  
23 may have worked day and night on this bill. Those  
24 legislators stayed up all night looking at all the  
25 facets of this. I don't believe they did, but they

1 may have. I may be wrong, but I can't believe that  
2 they passed a bill of this impact with so little  
3 exploration of the facts.

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

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

22 All right. Ten minutes.

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

25 MR. BURNETT: All right. We'll come back on

1 the record, madam court reporter.

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

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

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

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

24 In my opinion, I think that we've got to do  
25 what's best for Virginia, and I don't know if we can



1 make -- kind of in-between type package of what we  
2 need to do, but I'd like to hear from the Commission  
3 on what their thoughts are.

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

8 MR. BROWN: Just a one or two --

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

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

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

16 Any other comment?

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

1 MR. DARUTY: Mr. Daruty.

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

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

18 But the average fees, as I recall, the  
19 transcript should bear it out or the minutes would  
20 bear it out, were more down in the 7%, maybe a  
21 little above 7%, and the suggested best offer of  
22 TwinSpires of 7.2, I believe that's it, 7.2, that  
23 the 7.2 has a closer relationship, as I said, to  
24 what the source market fees have been in the past in  
25 Virginia, and have been acceptable in the first --

1 well, in all the quarters really of 2008.

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

11 MR. LERMOND: That's correct.

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

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

19 MR. MILLER: Well, it's --

20 MR. BURNETT: 9.15.

21 MR. MILLER: -- predicated upon the ten.

22 MR. BURNETT: Yes, sir.

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

24 MR. BURNETT: Yes, sir.

25 Commissioner Reynolds?

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

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

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

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

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

21 MR. BURNETT: Thank you.

22 To share my thoughts, one, I think the statute  
23 requires us to look at what others are paying,  
24 presumably for a reason, and so I think -- while I'm  
25 not going to say that I view it as what others are

1 paying as being entitled to any kind of a conclusive  
2 presumption or even a rebuttable presumption, I  
3 think that the legislature wanted us to use at least  
4 as a starting point what others are paying to come  
5 to a fair number.

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

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

24 The problem is we don't know what that number  
25 is. We don't know what those factors are. We're

1 left to speculate as to what that number might  
2 ultimately be, and I, too, am somewhat troubled  
3 about not just the process of how we got to have  
4 this statute or came to have this statute in place,  
5 but also by the lack of specificity in the statute,  
6 that it intends it not to be an absolute number and  
7 instead intends the number to be one that could be  
8 negotiated by the racetrack. I wish the legislature  
9 had said that in the statute. It would be helpful,  
10 because it still strikes me as somewhat odd.

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

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

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

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

25 MR. BURNETT: Do we have a second?

1 MR. REYNOLDS: Second.

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

3 All in favor indicate by saying aye.

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

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

11 MR. PETTY: Yes, sir.

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

16 MR. PETTY: So now is not the time to ask for  
17 2% from ADW?

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

19 MR. PETTY: It's pretty simple, the math, the  
20 first ten days of the meet, which as you mentioned  
21 is 25% of it. We paid out -- our number says  
22 88,000; Dave's number says 93. His number is  
23 probably correct. We paid 93 -- let's just use his  
24 number, \$93,000. Over the same period last year,  
25 the first ten days of the meet, winners only we

1 paid, according to our calculation, 136,000. So we  
2 are theoretically behind schedule, which is a good  
3 thing.

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

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

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

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

22 MR. BURNETT: My follow-up question was not as  
23 sophisticated as that. It was how many Virginia  
24 winners this year over the same number of days as  
25 there were last year.



1           We were something like 9 for 27 in the first  
2 three days, and then -- or 8 for 27, something like  
3 that, then went to 8 or 9 for 36, if I'm not  
4 mistaken in the first four days.

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

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

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

24           MR. BURNETT: Okay.

25           MR. PETTY: Essentially, I think, you know,

1 everybody likes money, so they're happy.

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

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

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

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

13 MR. PETTY: Yes, it was.

14 MR. LERMOND: Mr. Chairman?

15 MR. BURNETT: Yes.

16 MR. LERMOND: I just wanted to add something  
17 to the Breeders' Fund discussion. One thing that I  
18 witnessed firsthand being a steward this year is  
19 that the preference given to the Virginia-bred  
20 horses is really a nice advantage for these  
21 Virginia-bred people, and my example would be where  
22 you've got 26 entries in the box. You're only going  
23 to take 14. If there's two Virginia-bred horses,  
24 those two are automatically in that 14 and you're  
25 going to exclude 14 horses, but the Virginia-bred

1 horses don't have to worry about being excluded.

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

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

13 MR. LERMOND: I don't.

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

19 MR. BURNETT: It falls off at some point?

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

25 THE REPORTER: Give me one second, please.

1 MR. BURNETT: All right. The next item is  
2 public participation. Does any member of the public  
3 wish to address the Commission?

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

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

9 MR. BROWN: Second.

10 MR. BURNETT: We are adjourned.

11 MR. PETRAMALO: Couple things.

12 MR. BURNETT: I'm sorry.

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

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

24 MR. BURNETT: Thank you.

25 MR. BROWN: Thank you.

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

5           Note: The hearing concluded at 1:03 p.m.  
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CERTIFICATE

1 VIRGINIA:

2 COUNTY OF NEW KENT:

3  
4 I, MELISSA H. CUSTIS, RPR, hereby certify  
5 that I was the Court Reporter for the Virginia Racing  
6 Commission meeting on June 17th, 2009, New Kent,  
7 Virginia, at the time of the hearing herein.

8  
9 I further certify that the foregoing transcript is a  
10 true and accurate record of the meeting and other incidents  
11 of the hearing herein.

12  
13 Given under my hand this 22nd day of June, 2009.

14  
15  
16  
17  
18  
19 \_\_\_\_\_  
20 Melissa H. Custis, RPR

21 Notary Public for the State of Virginia at Large

22  
23 My Commission expires:

24 March 31, 2011  
25