

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill 1376 Requiring Transportation
Network Companies to Provide Access for
Persons with Disabilities, Including Wheelchair
Users who need a Wheelchair Accessible
Vehicle.

R.19-02-012
(Filed February 21, 2019)

**COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO
MAYOR'S OFFICE ON DISABILITY ON PROPOSED DECISION ON TRACK 4 ISSUES**

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I. Introduction

In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively “San Francisco” or “SF”) submit these comments on the Proposed Decision on Track 4 Issues, issued on October 1, 2021 (“Proposed Decision” or “PD”) related to the TNC Access for All Act (“Act”).

The Commission should not adopt the Proposed Decision as circulated because it rests on a very significant legal error. The Proposed Decision would effectively authorize a TNC to earn an exemption from collecting and remitting Access for All fees when the company has not met the statutory requirement of demonstrating that 80 percent of wheelchair accessible vehicle (WAV) trips *requested* are: (a) delivered, and (b) delivered within the response time standard set by the Commission. As the Proposed Decision construes the statute, a TNC could receive an exemption by only providing service that meets the 4th Quarter Trip Completion Standard (TCS), which is a 61% trip completion rate in San Francisco.¹ The Proposed Decision must be revised to correct this legal error.

II. Discussion

1. Transportation Network Company (TNC) Offset Requirements

San Francisco commends the Commission’s progress in replacing the interim Offset Time Standard (OTS) with the framework adopted in the Proposed Decision in Order paragraph 1, starting on page 51. However, as required by the Act, minimum completion rates should advance toward completing 80% of all trip requests across all counties.² The current TCS for San Francisco begins at 50% and increases toward 75%. In other County Groups the standard is even lower, increasing to only

¹ PD, p. 54, Order Paragraph 6.

² Pub. Util. Code § 5440.5(a)(1)(G)

60% for County Group C. These standards clearly do not meet the threshold of 80% trip completion, as required by the plain language in the Act, and San Francisco continues to support modifications to the new OTS that would align with this statutory requirement.

San Francisco appreciates the Proposed Decision’s adoption of San Francisco’s clarification that “total qualifying offset expenses shall be net of fare revenues collected from wheelchair accessible vehicle (WAV) service delivery in the quarter for which a Transportation Network Company requests an offset.”³

2. TNC Exemption Requirements

With regard to Exemption Requirements, the Proposed Decision continues to make a significant legal error that runs counter to the plain language of the Act and undermines the purpose of the statute—which is to ensure the delivery of TNC service that is accessible to wheelchair users—by establishing an exemption standard less stringent than is required by the Act. The Exemption Requirements put forth in the Proposed Decision are inconsistent with Section 5440.5(a)(1)(G) of the statute, which states:

“The commission shall require each transportation network company to be accessible to persons with disabilities in order to be exempt from paying the charge required pursuant to subparagraph (B)...As part of the designated level of WAV service for each geographic area, *the commission shall require a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC’s online-enabled application or platform within a time established by the commission for that geographic area*” [emphasis added].

The statute is unambiguous. Exemption is only available where 80 percent *of WAV trips requested* are delivered and meet minimum response times. Notwithstanding this plain language, the Proposed Decision reiterates the Commission’s previous unlawful ruling that this section of the statute is “meant to apply to completed WAV trips, not merely any requested WAV trip...”⁴ Without any

³ PD, p. 56

⁴ PD, p. 31

basis in the statute or the record to support this conclusion, the Proposed Decision thus erroneously states that to qualify for an exemption, a TNC need only demonstrate that: “(a) 80 percent of its *completed wheelchair accessible vehicle (WAV) trips* met or exceeded the corresponding Level 1 Offset Response Time Benchmarks for...four consecutive quarters, and (b) the TNC qualified for an offset...for the same four consecutive quarters”⁵ [emphasis added]. These requirements plainly do not reflect the language of the statute, which states that 80% of trips must be both delivered and delivered within the Commission’s response time standards.

Instead, the proposed Exemption Requirements only take trip completion rates into account through the incorporation of TCSs in the required underlying offset eligibility.⁶ To qualify for an offset, a TNC must meet or exceed the “applicable minimum percentage of trip requests completed.” The Trip Completion Standard begins at 50% in San Francisco for the 1st quarter submission and rises to only 61% by the 4th quarter.⁷ **Therefore, under the Proposed Decision, a TNC need only complete 61% of trips requested to be eligible for an exemption.** That percentage is even lower in other counties; a TNC would only need to deliver 54% of trips in County Group C to meet the TCS. This is before response times are even taken into account; of the 61% of trips requested that are actually delivered, only 61% of those trips would need to be completed by Level 1 Response Times and only 84% by Level 2. If a wheelchair user can only count on receiving a trip 6 out of every 10

⁵ PD, p. 56

⁶ As stated above, the PD requires that a TNC qualify for an offset for four consecutive quarters in order to be eligible for an exemption. To qualify for an offset, “a TNC must demonstrate that it met or exceeded both the relevant Level 1 and Level 2 Response Time Benchmarks for a given quarter in a given geographic area,” and “a TNC must demonstrate that it met or exceeded:

(a) The applicable minimum percentage of trip requests completed, and
(b) Either: (a) a greater number of completed trips than in the immediately prior quarter, or (b) a greater number of competed (sic) trips than in the immediately prior year’s same quarter, if sufficient data is available.” (PD, p. 55)

⁷ PD, p. 54, Order paragraph 6

times they place a request in San Francisco, TNC WAV service is simply not a reliable transportation option and cannot be considered “accessible to persons with disabilities.”

San Francisco offers the following example to illustrate this point: assume a TNC receives 100 trip requests in SF. In order to receive an exemption, which requires that they received an offset in four consecutive quarters, the TNC need only meet the following requirements in that 4th quarter:⁸

To qualify for an offset (a prerequisite for exemption):

- a) As few as 61 of the 100 requested WAV trips are actually completed at all (leaving 39 WAV users without any transportation).
- b) As few as 37 trips of the 100 requests are served within 15 minutes (61% of completed trips by Level 1 Response Time).
- c) As few as 14 additional trips of the 100 requests are served within 30 minutes (84% of completed trips by Level 2 Response Time).⁹

To meet the benchmark of 80% of completed trips meeting Level 1 Response Times:

- a) As few as 49 of the 100 requests are completed in 15 minutes.¹⁰

To summarize, in San Francisco—the county with the most stringent requirements—a TNC that receives 100 requests for WAV trips could be exempt from remitting quarterly Access Fund fees after a 4th quarter where they *only deliver 61 of 100 requested trips and deliver less than half of their requested trips by the Level 1 Response Time* (15 minutes). In this scenario, only 49 out of 100 trip

⁸ This example assumes the TNC met or exceeded "either: (a) a greater number of completed trips than in the immediately prior quarter, or (b) a greater number of completed trips than in the immediately prior year's same quarter, if sufficient data is available." Numbers are rounded to the nearest whole.

⁹ 84% of 61 trips = 51 trips. 51 trips – 37 trips covered by Level 1 Response Time = 14 additional trips by Level 2 Response Time.

¹⁰ Given both parts of the Exemption Requirements (offset eligibility and 80% of completed trips by Level 1 Response Times), the effective response time requirements for an initial exemption are as follows: Level 1 Response Times – 80% of completed trips; Level 2 Response Times – 4th quarter OTS (84% of completed trips in SF).

requests would have to be completed within 15 minutes, 2 additional trips would have to be completed within 30 minutes (the Level 2 Response Time needed to qualify for an offset), 10 trips would have to be completed but could have response times greater than 30 minutes, and *39 potential riders could receive no trip at all.*¹¹

These proposed Exemption Requirements defy not only the language of the statute but also logic and the ambition of the Legislature that “California be a national leader in the deployment and adoption of on-demand transportation options for persons with disabilities.”¹² A TNC granted an exemption keeps the Access Fund fees from their riders, does not need to account for their WAV expenses, and effectively prevents Access Providers from using Access Fund fees to provide additional wheelchair accessible service. TNC service should be comprehensive and accessible to meet this standard. By misapplying the 80 percent timely service benchmark to only completed trips, the Proposed Decision sets the bar for exemption far too low and is not in keeping with the statute requirements.

To correct the legal error found in the Proposed Decision, the Exemption Standard (Order paragraph 10) should be revised as follows:¹³

“To qualify for an exemption, a TNC must demonstrate that:

(a) 80 percent of its requested trips are completed for a given geographic area for four consecutive quarters,

~~(a)~~(b) 80 percent of its ~~completed~~ requested wheelchair accessible vehicle (WAV) trips meet or exceeded the corresponding Level 1 Offset Response Time Benchmarks for a given geographic area for four consecutive quarters, and

¹¹ According to the Proposed Decision, only 61 out of 100 trip requests must be completed. Of these, 80%, or 49 trips must meet the Level 1 Response Time. To qualify for an offset and thus be eligible to qualify for an exemption, 84% (4th Quarter OTS for SF) of trips must meet the Level 2 Response Time (51 trips). 49 of those 51 trips must meet Level 1, leaving 2 additional trips that must meet Level 2. $61 - 51 = 10$ trips that must be completed but by no specified response time. 100 trip requests $- 61$ completed trips $= 39$ trips not served at all.

¹² Pub. Util. Code § 5440.5(g)

¹³ Additions are designated by underline and deletions are designated by ~~strikethrough~~.

(b)(c) The TNC qualified for an offset in the given geographic area for the same four consecutive quarters.”

Furthermore, while the Commission is correct that San Francisco proposed that the Commission simplify requirements and apply the Level 1 Offset Response Time Benchmarks (ORTB) to exemptions, San Francisco *only supported this response time benchmark alignment under the condition that the 80 percent trip completion threshold discussed above is adopted.*¹⁴ Conclusion of Law paragraph 7 erroneously states that the Commission has adopted the San Francisco proposal, but the Proposed Decision and Order omit a critical element of the San Francisco proposal. Without adopting the 80 percent completion threshold, aligning ORTB and Exemption Response Time Benchmarks standards simply weaken the standard for meeting exemption requirements.

3. Access Fund Disbursements

In prior rulemaking tracks, the Commission suggested that TNCs could become Access Providers and compete to receive compensation for delivering services to WAV users as Access Providers.¹⁵ As San Francisco argued in Track 3, nothing in the statute ever contemplated such a result, and this result undermines the purpose of the statute by giving TNCs access to TNC passenger funds without requiring them to meet the minimum standard set for offsets.¹⁶

The Proposed Decision has narrowed the circumstances under which a TNC may compete for funds as Access Providers; however, it retains this possibility under the provision that a TNC “is eligible to serve as an Access Provider in a geographic area so long as it has not provided wheelchair accessible vehicle (WAV) services in that geographic area since July 2019.”¹⁷ Allowing TNCs to apply as Access Providers in counties where they have not already received an exemption undermines

¹⁴ SF Comments on Track 4 Proposals, p. A-1

¹⁵ Track 2 Decision; Track 3 Decision

¹⁶ SF Comments on Track 3 Proposed Decision, p. 10-11

¹⁷ PD, p. 58

the Act and is contrary to the law. The New Service Exception, while potentially preventing TNCs from ceasing WAV service in order to become Access Providers in a particular geographic area, might deter TNCs from *initiating* WAV service in a given location.

In addition, by allowing TNCs to operate as Access Providers in some geographic areas, the Proposed Decision effectively hollows out the scope and scale of the Act and allows TNCs to provide WAV service in a vast swath of California without ever having to meet the offset and exemption requirements in the Act. Since the Proposed Decision sets no time limit on eligible TNCs operating as Access Providers, a TNC could theoretically provide indefinite WAV service as an Access Provider without meeting some of the Act’s essential requirements. While the Act was designed to apply statewide, the Proposed Decision would effectively limit the offset and exemption requirements to a very small number of counties.

Accordingly, San Francisco again reiterates our position that there is nothing in the statute that supports the notion that TNCs can receive Access for All funds as Access Providers. Rather, they were encouraged to use the funds collected to make measurable steps toward providing an equivalent level of service to wheelchair users with a goal of TNC Access for All. The remaining funds were to be available to other existing Access Providers to provide wheelchair accessible service if the TNCs did not. The Commission should revise its Proposed Decision to prohibit TNCs from using Access for All funds by operating as Access Providers.

4. Yearly Benchmarks

San Francisco appreciates the Commission adopting its proposed definition of “community WAV demand,” pending further study.¹⁸

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¹⁸ PD, p. 45

5. Additional Accessibility Issues

San Francisco agrees with the Commission’s conclusion that the quality and effectiveness of TNCs’ engagement with the disability community should be addressed in a future phase of this proceeding.¹⁹ However, the Proposed Decision also contemplates addressing broader TNC accessibility issues in a separate proceeding, which as San Francisco and the Disability Advocates have stated will almost certainly limit advocate participation.²⁰ Disability Advocates have been a critical voice in this proceeding—one that is otherwise difficult for laypeople to access—and enabling their continued engagement with these issues is necessary to achieve accessible TNC services. As the Proposed Decision notes, the statute highlights the importance of dialogue, outreach, and partnerships with the disability community.²¹ The Commission is making a factual error if it believes that addressing further TNC accessibility issues in a separate proceeding will increase, rather than decrease, the quality of input it receives from the community with lived experience of facing accessibility barriers.

III. Conclusion

San Francisco appreciates the opportunity to provide comments on the Track 4 Proposed Decision. San Francisco strongly opposes adoption of the Proposed Decision unless the Commission: (1) rectifies its significant legal error with respect to the statutory requirement to demonstrate that 80 percent of WAV trips *requested* are a) delivered, and b) delivered within the response time standard

¹⁹ PD, p. 48

²⁰ SF Comments on Track 4 Proposals p. 10

²¹ PD, p. 48

set by the Commission, (2) prohibits TNCs from becoming Access Providers, and (3) commits to addressing broader TNC accessibility issues within this proceeding.

Dated: October 21, 2021

Respectfully submitted,

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APPENDIX

Proposed Amendments to ORDER

IT IS ORDERED that:

10. For a Transportation Network Company (TNC) seeking an exemption, the following Exemption Standard framework is adopted to replace the combined Exemption Time Standard (ETS) and Trip Completion Standard (TCS) framework adopted in Decision (D.) 20-03-007 and D.21-03-005. To qualify for an exemption, a TNC must demonstrate that:

- (a) 80 percent of its requested trips are completed for a given geographic area for four consecutive quarters,
- (a)(b) 80 percent of its ~~completed~~ requested wheelchair accessible vehicle (WAV) trips meet or exceeded the corresponding Level 1 Offset Response Time Benchmarks for a given geographic area for four consecutive quarters, and
- (b)(c) The TNC qualified for an offset in the given geographic area for the same four consecutive quarters.

14. ~~For the purposes of Access Provider eligibility, a Transportation Network Company (TNC) is eligible to serve as an Access Provider in a geographic area so long as it has not provided wheelchair accessible vehicle (WAV) services in that geographic area since July 2019. This shall be referred to as the New Service Exception. The definition of “operating WAV service in Ordering Paragraph 4 shall apply here.~~

~~For a TNC that has operated WAV services since July 1, 2019 in a given geographic area, the TNC may continue to be eligible as an Access Provider in that geographic area if it qualifies under the exemption adopted in Decision 21-03-005.~~