

**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)

**REPLY 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 1 ISSUES**

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## 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”) submit these Reply Comments responding to other parties’ comments on the Proposed Decision on Track 1 Issues: Transportation Network Company Trip Fee and Geographic Areas (the “Proposed Decision”).

We maintain our support for the Commission’s Proposed Decision and note that comments submitted by respondents Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft) fail to identify legal, factual or technical errors made in the Proposed Decision. Rather, they reiterate prior arguments and offer nothing new. In addition, they ask the Commission to go beyond Track 1 issues, as defined in the Scoping Memo, and issue early decisions on issues slated for Track 2. San Francisco urges the Commission to refrain from considering any comments that go beyond the Track 1 issues in the Proposed Decision, as doing so is not warranted, and would unfairly deny respondents the opportunity to evaluate or provide comment on the same.

## DISCUSSION

### A. Establishment of the TNC Access for All Fund

#### 1. It is within the Commission’s authority to establish a fee higher than \$0.05.

The Proposed Decision would adopt a \$0.10 per-trip fee for each TNC trip completed using the TNC’s online-enabled application or platform that originates in a designated geographic area beginning July 1, 2019.<sup>1</sup> SB 1376 directed the Commission to require each TNC to pay, on a quarterly basis, an amount “at minimum” of \$.05 for each TNC trip.<sup>2</sup> This provision

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<sup>1</sup> See Proposed Decision, page 10.

<sup>2</sup> Id.; Cal. Public Utilities (“Pub. Util.”) Code Section 5440.5(a)(1)(B)(i).

simply creates a floor from which the Commission may adopt a reasonable fee in each area.<sup>3</sup>

Accordingly, the Proposed Decision considered comments submitted by respondents and research conducted by Commission staff – all of which support the adoption of a fee higher than \$0.05 and no less than \$0.10.

Uber’s comments that the Commission was required to adopt an initial fee of \$.05 per trip ignore the express language that the per trip fee is the “minimum amount” required. Further, Uber’s references to earlier versions of the legislation are both misleading and irrelevant.<sup>4</sup> Because there are no factual or legal errors in the Commission’s conclusions or findings on the Access Fund fee, the Proposed Decision to adopt a \$.10 per trip fee should stand.

**2. The Commission did not propose a schedule or proposal for determining offset requirements in its Proposed Decision and should not issue a decision on these issues in Track 1.**

The Proposed Decision would adopt a schedule for remitting Access Fund fees, requiring that such fees be submitted on a schedule that mirrors the Public Utilities Commission Transportation Reimbursement Act (“PUCTRA”) requirements in which fees are due 15 days after a quarter ends.<sup>5</sup> Although Lyft initially supported this schedule, it now has changed its position, and “urges the Commission to revisit the schedule laid out in the Scoping Memo” because it claims that the schedule “cannot be reconciled” with Public Utilities Code Section 5440.5(a)(1)(B)(ii) (“Section 5440.5(a)(1)(B)(ii)”), which it claims requires that the Commission implement an offset procedure for the first quarter by which fees are required to be remitted.<sup>6</sup> Uber advocates the same position and goes even further by proposing that the Commission

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<sup>3</sup> See *id.*

<sup>4</sup> See Uber’s Comments on Proposed Decision – Track 1, page 8.

<sup>5</sup> See Proposed Decision, page 13.

<sup>6</sup> See Lyft’s Comments on Proposed Decision – Track 1, pages 3-5.

“address this...in its final decision on Track 1 issues by adding a Conclusion of Law Paragraph and Ordering Paragraph authorizing offsets and requiring TNCs to demonstrate compliance with the requirements delineated” in an Interim Offset Application Form which they developed and attached to their comments.<sup>7</sup>

As both Uber and Lyft acknowledge that rulings on the offset issue are not part of Track 1, their comments advocating that the Commission make determinations on the offset schedule or substance of the offset procedure are not relevant. Along the same lines, Uber’s submission of its proposed corresponding application process for offsets is premature and also not relevant to the Proposed Decision. Moreover, it is San Francisco’s position that the Commission is not required to incorporate an offset procedure for the first quarter in which fees are due. Rather, while Section 5440.5(a)(1)(B)(ii) states the Commission shall “authorize a TNC to offset against amounts due...for a particular quarter,” it does not mandate that the Commission authorize such offsets for the first quarter within which the fees are due.<sup>8</sup>

All issues in Track 2, but especially the schedule and process for how offsets are authorized, are critical to the implementation of SB 1376 and all respondents should have equal and ample opportunity to provide comments on Track 2 issues before the Commission issues a decision. San Francisco urges the Commission not to consider Uber and Lyft’s comments on these issues, as they are beyond the scope of the Track 1 issues included in the Proposed Decision, and should be addressed in Track 2 through the appropriate rulemaking process.

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<sup>7</sup> See Uber’s Comments on Proposed Decision – Track 1, page 5.

<sup>8</sup> See Pub. Util. Code Section 5440.5(a)(1)(B)(ii).

## **B. Geographic Areas**

### **1. Selecting limited geographic areas within the State to implement the TNC Access for All Act would be discriminatory.**

The Proposed Decision would designate each county in California as a geographic area for collection of fees and distribution of funds.<sup>9</sup> The Commission’s proposal establishes a non-discriminatory approach as is consistent with the intent of the TNC Access for All Act.<sup>10</sup> The Commission’s conclusion that “[s]electing each county in California as a distinct geographic area is a reasonable, non-discriminatory designation”<sup>11</sup> is accurate and in the spirit of existing federal and state regulations that guarantee equal access to people with disabilities. Uber’s suggestion that the Commission “instead limit the geographic scope of the program to either the greater San Francisco area or Los Angeles County” offers nothing new. Because it fails to address legal, factual, or technical errors, it is not a basis for the Commission to amend its Proposed Decision.

## **CONCLUSION**

San Francisco supports the proposals set out in the Commission’s Track 1 Proposed Decision and appreciates the opportunity to provide a reply to respondents’ comments on the Proposed Decision. We look forward to the Commission’s decision on issues addressed in Track 1 and urge the Commission not to consider issues that are scheduled for consideration in Track 2. Doing so would unfairly deny parties due process to consider and comment on the Commission’s decisions, many of which are critical to the fair and effective implementation of SB 1376.

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<sup>9</sup> See Proposed Decision, page 17.

<sup>10</sup> See Pub. Util. Code Section 5440(c).

<sup>11</sup> See Uber’s Comments on Proposed Decision – Track 1, page 10.

Dated: June 18, 2019

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