

**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, 2019)

**JOINT REPLY COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN
FRANCISCO MAYOR'S OFFICE ON DISABILITY ON TRACK 5 PROPOSED DECISION**

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Dated: February 14, 2023

I. INTRODUCTION

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 14.3(a), 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 joint reply comments to parties' comments on the Proposed Decision on Track 5 Issues ("Proposed Decision" or "PD") filed by the Commission on January 20, 2023.

San Francisco continues to encourage the Commission to adopt the proposed definitions for pre-scheduled WAV trips and response time of pre-scheduled WAV trips, the proposed modifications to the offset and exemption standards for pre-scheduled WAV trips, and the proposed community outreach requirements. In addition, we support the Disability Advocates ("DA's") request for clarification regarding response time calculation for completed trips with at least one cancellation and Uber's recommendation that a TNC may include required data from counties without a current offset request as part of an Offset Request Advice Letter. However, comments submitted by Uber and Lyft on Wait & Save and pre-scheduled service and reporting requirements fail to identify legal, factual or technical errors made in the PD. Rather, they reiterate prior arguments and offer nothing new. For these reasons, the Commission should dismiss these recommendations.

II. DISCUSSION

A. Wait & Save

1. **The Commission should reject Lyft's proposed modification to the definition of response times for Wait & Save trips and instead adopt San Francisco's proposed modification.**

Lyft requests that the Commission modify the PD "to state that the delayed pick-up time means the upper bound of the range to which the passenger agreed at the time the ride was requested in exchange for a reduced fare."¹ Instead of addressing a technical error in the PD, Lyft's requested modification to the definition of "delayed pick-up" time only further underscores SF's and the DA's points that the PD's reasoning for adopting Lyft's alternate proposal is based on a technical error, which conflates the definition of "prescheduled" trips and "on-demand" trips and undermines the previously adopted definitions and standards.² Therefore, San Francisco maintains that Wait & Save

¹ See Lyft Opening Comments on PD ("Lyft Comments"), Subject Index, and at 1-3.

² SF Comments on Track 5 PD ("SF Comments"), at 2; DA Comments on Track 5 PD ("DA Comments"), at 5.

rides should be measured and reported as either on-demand or pre-scheduled trips, and the TNCs will need to meet the existing standards associated with those trips. To do otherwise would be in error.

B. Pre-Scheduled Wav Trips

1. The Commission has appropriately developed standards for pre-scheduled WAV trips and should dismiss Lyft’s objection and alternate proposals.

Lyft opposes the PD’s On-Time Standards (OTS) and completion rate standards for pre-scheduled trips because the company asserts they are “not attainable,” hypothesizing that TNCs will be disincentivized from providing pre-scheduled service.³ To address this concern, Lyft urges the Commission to adopt a new proposal. This alternate proposal is Lyft taking another bite at the apple after the record has already been developed, based on arguments Lyft already presented and which the Commission had the opportunity to consider. Lyft offers no evidence that the PD errs in any way. Further, it is not the Commission’s responsibility to ensure TNC services are economically sustainable. To address this issue in detail would be far outside the scope of this proceeding. Instead, the Commission has appropriately established standards to achieve the purpose of the Act to ensure offsets reward TNCs who provide WAV riders with continuously improved and reliable service, including reasonable response times. If Lyft is genuinely concerned the Access Fund is not sufficient to reimburse TNCs for providing an adequate level of WAV service, the Commission should address this by increasing the Access Fee in a future track of the rulemaking.⁴ However, as the Access Fee is outside of Track 5 scope and Lyft’s points do not address an error regarding the standards themselves, the Commission should dismiss Lyft’s objections and adopt the PD’s OTS and Completion Rates for pre-scheduled WAV trips.

2. The Commission should provide clarification on how offsets will be awarded for pre-scheduled trips but should dismiss Uber’s requested changes to the PD.

Uber argues that the PD’s decision to cap Access Fund fees by trip type (on-demand or prescheduled) is an error because such treatment is not authorized by SB 1376; was not properly scoped during Track 5; and would impair the improvement and expansion of on-demand WAV

³ Lyft Comments, at 3-6.

⁴ Pub. Util. Code 5440.5(a)(1)(B)(i). “The commission may adjust the fee in each geographic area selected pursuant to subparagraph (D) to different levels based on the cost of providing adequate WAV service within the geographic area.”

service.⁵ First, the PD’s decision to cap fees based on trip type is squarely within the Act’s goal to “enable increased access to on-demand transportation services for people with disabilities”⁶ Rather than preventing TNCs from being able to offset expenses for qualifying WAV on-demand service, capping Access Fund monies proportional to trip type is necessary to ensure the integrity of the Act, as failing to do so would allow a TNC to “deplete the Access Fund, which is intended to improve on-demand service and to offset prescheduled service costs while failing to provide adequate on-demand WAV service.”⁷ Second, Track 5A was undertaken for the explicit reason of determining how prescheduled trips should be integrated into the TNC Access for All Program, including if and how those trips should qualify for offsets and exemptions.⁸ That integration of prescheduled trips into the Program could result in fund capping and separate reporting on Access Fund fees collected from on-demand and pre-scheduled trips is completely logical. Moreover, Uber’s claim that the “parties did not have an opportunity to provide meaningful input into this change during the proposal and commenting phase of the rulemaking”⁹ is disingenuous, as Uber submitted comments responding to both CPED and SF’s proposals regarding treatment of proportionate Access Fund eligibility.¹⁰ Third, Uber does not offer any evidence as to how capping the proportion of reimbursements based on service provision would impair the improvement and expansion of on-demand WAV service. Similar to Lyft’s claims that the funds available to TNCs do not ensure economic sustainability, the issue would be more directly addressed by adjusting the Access Fee. Additionally, Uber expresses concern that the PD is earmarking and capping Access Fund fees based on the trip type offered to non-WAV users,¹¹ while Lyft seeks clarification that offset funds will only be allocated if a TNC offers both trip types.¹² SF’s understanding is that Access Fees will be awarded proportionally to “the percentage of a TNC’s on-demand versus pre-scheduled WAV service mix,”¹³ but that offsets for both will be capped at the

⁵ Opening Comments of Uber on PD (“Uber Comments”), at 2.

⁶ SB 1376; Pub. Util. Code § 5440(d).

⁷ SF’s Comments on Additional Track 5A Proposals, at 9. SF also notes that it stands by its original proposal regarding trip type and eligibility for offsets and exemptions. *See Id.*, at 7 (“San Francisco has proposed that a TNC must provide the same types of WAV service as non-WAV service and meet both the on-demand and prescheduled standards, if such service is provided, for a given county and quarter to qualify for an offset.”)

⁸ *See* Assigned Commissioner’s Amended Track 5 Scoping Memo and Ruling, filed on January 14, 2022.

⁹ Uber Comments, at 4.

¹⁰ *See* Comments of Uber on Additional Track 5A Proposals; Reply Comments of Uber on Additional Track 5A Proposals.

¹¹ Uber Comments, at 4.

¹² Lyft Comments, at 7.

¹³ PD, at 25.

amount of fees collected for either service (standard or WAV) in the relevant county and quarter, i.e. the PD does not require a TNC to provide any level of either service, but does cap the fees based on service mix provided. SF encourages the Commission to provide further clarification to address any uncertainty.

C. Outreach

San Francisco supports the DA comments that in addition to the outreach conducted by TNCs, “the Commission *itself* [should] engage in regular critical and substantive analyses of TNC outreach plans and data” to determine their effectiveness.¹⁴ We share DA’s concern that “despite being authorized to undertake quality assurance measures, there is no clear commitment or plan on the Commission’s behalf to do so.”¹⁵ Additionally, SF echoes the DA reminder that although other parties can offer feedback on TNC outreach plans, conducting outreach remains a statutory obligation of the TNCs and they should not attempt to shift that work onto other parties or the Commission.¹⁶

San Francisco disagrees with Lyft’s and Uber’s assertions that the PD’s marketing requirements are in error. Uber repeats its unproven claim that “targeted outreach in disability communities is likely to yield better results for increasing awareness of and engagement with the UberWAV offering,”¹⁷ and Lyft seeks further delay of marketing requirements, again ignoring that outreach is required in the statute.¹⁸ Both categorize the requirement as vague, but the PD is straightforward—there are many different possible strategies for incorporating WAV and accessibility information into general marketing campaigns, and the TNCs have the flexibility to determine which is most effective. The requirement in the PD that TNCs must “[i]nclude information about disability access and wheelchair accessible vehicles (WAV) in general marketing campaigns”¹⁹ should stand.

D. Data Reporting

San Francisco supports the DA request for clarification with respect to the requirement that a TNC must “report the ultimate trip status for any WAV trip.”²⁰ As the DA explain, in the event where

¹⁴ DA Comments, at 2.

¹⁵ *Id.*

¹⁶ *Id.*, at 2-3.

¹⁷ Uber Comments, at 7.

¹⁸ Lyft Comments, at 8.

¹⁹ PD, at 59.

²⁰ DA Comments, at 6.

a rider requests a trip which is then cancelled by the driver before being dispatched to another driver, “[e]ither each request needs to be reported as a separate trip (one with a cancellation and one with a successful pickup) or, if the TNCs are permitted to simply report the ‘ultimate trip status’ (successful pickup, with no mention of the interim cancellation), then the reported response time needs to run from the *original* request, not the subsequent request.”²¹

Finally, SF agrees with Uber that requiring TNCs to report non-offset county data separately through an Information Only Advice Letter creates an unnecessary administrative burden. SF supports Uber’s proposal that a TNC may include required data from counties without a current offset request as part of an Offset Request Advice Letter.²² As Uber explains, “[I]f no Offset Request is being submitted, then the required information can be filed as an Information Only Advice Letter.”²³

E. Other Issues

Lyft requests that in a future track of the proceeding, the Commission evaluate whether accumulated monies in the Access Fund should be available to TNCs for reimbursement. Lyft makes this request because “the amount of access funds [currently] collected is insufficient to offset the cost of providing WAV service” and “guarantees a substantial economic deficit.”²⁴ As addressed in Sections II.A. and II.B. of our comments, the lever for generating a sufficient level of funding is the amount of the Access Fee. Further, accumulated monies in the Access Fund are, by statute, to be made available to access providers in each geographic area and should not be retroactively re-programmed.²⁵

III. CONCLUSION

San Francisco respectfully requests that the Commission take action consistent with our recommendations and issue a revised decision incorporating our suggested changes

²¹ Id.

²² Uber Comments, at 6.

²³ Id.

²⁴ Lyft Comments, at 8-9.

²⁵ Pub. Util. Code § 5440.5(a)(1)(C).

Dated: February 14, 2023

Respectfully submitted,

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