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May 5, 2020

Via E-Mail
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California Public Utilities Commission
Consumer Protection and Protection Division
Transportation Licensing and Analysis Branch
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest to Uber Advice Letter 1, Q3 of 2019, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco"), submit this protest against Uber Technologies Inc.'s ("Uber") Advice Letters 1-3 requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letters").¹

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(3) and (6), San Francisco protests Uber's Advice Letters on the grounds that: (1) pursuant to Section 7.4.2(3), Uber has unjustifiably redacted the large majority of data provided in its offset requests for millions of dollars in public funds, which has material errors or omissions throughout its analysis and data; and (2) pursuant to Section 7.4.2(6), the relief requested is unjust and unreasonable as the data presented is inconsistent with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the "presence and

¹ Because Uber's Advice Letters 1-3 are identical in terms of redactions, the grounds for supporting the same, and overall deficiencies, San Francisco's protests are also identical for purposes of objecting to its confidentiality claims and protesting generally. Out of convenience, the protests refers to all three advice letters as "Advice Letters."

availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Uber’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Uber has utterly failed to meet its burden to prove that the redacted data should be withheld from disclosure under the Commission’s governing decisions and orders.²

In its Advice Letters, Uber ignores the critical public interest that the TNC Access for All Act (“Act”), and Access for All Fund (“Access Fund”) serves—to improve Transportation Network Company (“TNC”) access to the disabled community. The Act called for imposition of a fee on every TNC ride and creation of the Access Fund for the sole purpose of improving service to people who use wheelchairs, not to create a slush fund for TNC recovery of routine business costs. Request for reimbursement/offsets must demonstrate, at a minimum, that every dollar requested supports improvements in equal access to TNC service in wheelchair accessible vehicles (“WAVs”). Uber’s assertion that data needed to demonstrate these minimum requirements is “sensitive business information” from which the company derives “economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Uber’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Uber’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Uber’s claims for confidentiality; direct Uber to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest. If, on the other hand, CPED is inclined to approve the Advice Letters without providing for further scrutiny and protests by the parties, San Francisco hereby preserves the right to request an evidentiary hearing under General Order 96-B, Section 7.4.1 based on the following disputed facts: that the redacted data is sensitive business information and disclosure of the redacted data would impair competition for the redacted WAV data, among other things.

Alternatively, San Francisco requests that the CPED reject the offset requests outright as clearly erroneous pursuant to General Order 96-B, Section 7.6.1, as they fail to demonstrate that Uber has met any of the minimum requirements of the Act and the Track 2 Decision. The little information that is available in the Advice Letters shows that Uber’s occasional record of reasonably prompt response times is entirely overshadowed by a consistent pattern of refusal of service to WAV users, indicating a significant failure to demonstrate presence and availability. Further, the level of service provided, including response times for trips requests that were fulfilled, did not noticeably improve quarter over quarter, and cannot justify the significant amounts Uber seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Uber has met the required statutory burden.

II. Background: The Commission has Rejected Sweeping TNC Confidentiality Claims, Confirming that Claims of Confidentiality Must be Supported Consistent with California Public Records Law.

The California Legislature adopted the Act with the stated intent that wheelchair users who need WAVs “have prompt access to TNC services” (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas (“Track 1 Decision”), p. 16.) The Act required

² In accordance with Section 10.5 of General Order 96-B, San Francisco met and conferred with Uber, but the parties were unable to resolve San Francisco’s objections informally, and thus understand that CPED will refer this request to the Administrative Law Judge Division.

the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish a fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the fund. (*Id.*, p. 10.) The Commission is committed to “ensur[ing] that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities, including those who use non-folding motorized wheelchairs.” (*Ibid.*)

As relevant here, the Act requires the Commission to “authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area” thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) In its Track 2 Decision, the Commission established rules for a TNC to seek such offsets, which are the subject of the Advice Letters. The Track 2 Decision also held that requests for confidentiality of data related to the Act, and particularly data in offset requests,³ would be treated pursuant to the procedures set forth in Decision 20-03-014 in R. 12-12-011 (“TNC Data Decision”), which sets forth explicit requirements for TNCs to assert claims of confidentiality regarding their data. (Track 2 Decision, p. 44.) The TNC Data Decision, incorporates General Order 66-D, and expressly applies to advice letters. (See GO 66-D, §§ 3.2, 3.3.)

The TNC Data Decision expressly cautions any TNC against the use of broad-brush-style confidentiality claims, warning that the Commission would view such sweeping claims with suspicion. (TNC Data Decision, p. 30.) But that is precisely what Uber has done in this first round of advice letter offset requests. General Order 96-B is consistent, stating “it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process” and that “requests shall be narrowly drawn.” (GO 96-B, §§ 10.1, 10.3.)

Pursuant to the TNC Data Decision, General Order 66-D, and General Order 96-B, the person requesting confidentiality bears the burden to establish a basis for confidential treatment. (TNC Data Decision, pp. 22-23, GO 66-D, § 3.2; GO 96-B, § 10.2.) If a TNC claims that the release of its information “will place it an unfair business disadvantage, the TNC’s competitor(s) must be identified and the unfair business advantage must be explained in detail.” (TNC Data Decision, p. 29.) Moreover, “if the TNC cites Government Code § 6254(k) (which allows information to be withheld when disclosure is prohibited by federal or state law), it must cite the applicable statutory provision and explain why the specific statutory provision applies to the particular information.” (TNC Data Decision, p. 29; GO 66-D, § 3.2; see also GO 96-B, § 10.3.)

And finally, if the TNC cites Government Code § 6255(a), the public interest balancing test, as the basis to withhold information, then it “must demonstrate with granular specificity” why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. “A private economic interest is an inadequate interest to claim in lieu of a public interest.” (TNC Data Decision, p. 29; GO 66-D, § 3.2.)

Against this backdrop, one must consider the public policy interests at play in these offset requests. In addition to meeting the goals of SB 1376, which was enacted solely for the purpose of requiring improvement in TNC access to disabled individuals, the purpose of the rulemaking and required data submissions in the offset requests is to ensure that the public Access Funds are being used on expenditures that improve WAV service. Of particular importance, the data here is being provided for

³ Because the Track 2 Decision also held that offset requests should be submitted through the advice letter process, the TNC Data Decision necessarily applies to these Advice Letters.

reimbursement of public funds collected from every California passenger. Uber is seeking millions of dollars in offsets of public funds, but then incredibly, also attempting to shield this data from parties to this rulemaking on the unsupported premise that the data in of itself is economically valuable. This twisted logic turns the purposes of the Act and the California Public Records Act on its head. More importantly, the redactions make it impossible for the parties to this proceeding to assess whether Uber has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Uber's claims of confidentiality fail under the requirements of the TNC Data Decision, General Order 66-D and General Order 96-B. Therefore, because the Advice Letters contain material omissions, and are unjust and unreasonable pursuant to General Order 96-B, 7.4.2.(3) and (6), respectively, Uber should be required to re-serve unredacted Advice Letters, and the CPED should continue or reopen the protest period to allow the parties additional time to submit supplemental protests after reviewing the same. In the alternative, Uber's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Uber Has Failed to Meet Its Burden To Establish Confidentiality in its Advice Letters.

Uber's claims of confidentiality in its Advice Letters fall into two main categories: (1) operational WAV data; and (2) data regarding WAV expenditures. Uber asserts that the redacted data is trade secret, "highly confidential" and/or "commercially sensitive" information. (See Uber AL 1-3, Declaration of Confidentiality Pursuant to General Order 96-b, Section 10.3(a-h) on behalf of Uber Technologies, Inc. Regarding Advice Letter 1-3 ("Uber Declaration"), §§2-3.) Uber's broad claims, which offer no specific facts in support, are exactly what the Commission warned against in its TNC Data Decision and can be dismissed on the grounds details below.

A. Uber Fails to Identify a Competitor As Required.

As an initial matter, each of Uber's claims, which all assert an unfair competitive advantage, should be rejected because they fail to identify a competitor who would gain an unfair advantage if the WAV data was released. If a TNC claims, as Uber does here, that the release of its information will place it at "an unfair business disadvantage, the TNC's competitor(s) must be identified and the unfair business advantage must be explained in detail." (TNC Data Decision, p. 29.) The TNC Data Decision found that there is no competition in the TNC market other than Uber or Lyft who make up 99% of rides in California. Therefore, the Commission "fails to see any California permitted TNC, or a TNC that is waiting in the wings, who could be a viable competitor to either Uber or Lyft that would use the disaggregated data to Uber and Lyft's that would use the disaggregated data to Uber and Lyft's disadvantage." (*Ibid.*)

Uber's attempts to identify a competitor in the Advice Letters are equally as vague here, as Uber fails to identify a single competitor that could rival them. Moreover, Uber has not claimed, nor is there any specific evidence, that releasing any of the data in the Advice Letters would create an unfair advantage. The TNC annual reports, which include data on accidents, trip data, certain complaints, and most relevant here data on accessibility, including the number and percentage of customers who requested accessible vehicles, how often the TNC was able to comply with request for accessible vehicles, any instances or complaints of unfair treatment or discrimination of persons with disabilities, and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that there is no divide between service provided to the able and disabled communities, contain very similar data to what Lyft is claiming is confidential here. (TNC Data Decision, pp. 4-5.)

The data at issue is not markedly different from the accessibility data requested in the annual reports. Nor is there "any information to suggest that the public release" of such information would create an unfair competitive disadvantage between Uber and Lyft. (TNC Data Decision, pp. 15-16; Uber

Declaration.) Rather, Uber’s vague statements that “[c]ompetitors may be able to use this data,” are plainly insufficient, and each of Uber’s claims of confidentiality fails on the ground alone. (AL 1-3, Uber Declaration, §§ 2(a)(i); 2(b)(i)-(viii).)⁴

B. None of Uber’s Redacted Data Constitutes a Trade Secret.

In Section 2(b) of its declaration, Uber claims that data, including the number of WAVs in operation, WAV trips completed, WAV cancellations by passenger, WAV cancellations by driver, response time (WAV operational data), and data regarding the breakdown and certification of funds expended on WAV service (WAV fund data) is confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity. Uber vaguely claims that all of this data constitutes trade secrets under Evidence Code § 1060. (Uber Declaration, §3.)

Where a TNC claims that the release of information will violate a trade secret (as provided by Civil Code §§ 3426 through 3426.11), “the TNC must establish that the data (a) contains information such as a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.” (TNC Data Decision, p. 29; Civ. Code § 3426.)

1. Required WAV Operational Data is Not a Trade Secret.

The Commission expressly required that TNCs provide the operational WAV data Uber seeks to protect to demonstrate the presence and availability of drivers of WAV vehicles for an offset request, as required by the Act. (Track 2 Decision, p. 5.) It found that collecting data on passenger no-shows and cancellations is necessary to reveal issues with rider accessibility or driver training that would be useful in evaluating a TNC’s WAV program. (*Id.*, p. 7.) Accordingly, in order to seek an offset of public funds, TNCs must submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week. (*Ibid.*) The Commission emphasized, “[w]e view the reporting of WAV presence and availability information on an hourly basis to be a critical data point, particularly in evaluating the concern for “stranded” WAV customers and whether such customers lack access to WAVs at certain times of the day.” (*Ibid.*)

Uber redacted all of its operational WAV data—WAVs in operation, WAV trips, WAV cancellations by driver, passenger or no show—asserting that “[t]his data contains economically valuable information which is not generally known to the public” and allegedly is a trade secret. (Uber Declaration, §§ 2(b)(i)-(v), 3.) Uber’s conclusory statements are patently insufficient.

Uber also claims, without more, that data produced in relation to response times is “confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity.” (Uber Declaration, § 2(b)(vi).) In addition to presence and availability, this data is necessary to determine whether Uber is able to demonstrate in a geographic area

⁴ Uber also failed to attach a proposed protective order as required to comply with Section 10.3 of General Order 96-B, which states that requests for confidentiality in an advice letter “shall attach a proposed protective order, or reference an effective protective order applicable to advice letter submittals previously submitted by the person.”

“improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter...” (Track 2 Decision, p. 8.)

Of the elements listed in the TNC Data Decision to establish a trade secret, Uber’s vague statement that all information “reveals proprietary internal formulas, methods, salaries, techniques, investments, and tools” is too conclusory to meet the first requirement to show that any of the data listed above actually contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, Uber failed to establish the any of the data is a “trade secret” on this basis alone.

Second, Uber has failed to show that this data derives independent economic value (actual or potential) from not being generally known to the public or to other persons. Again in conclusory fashion, Uber states all “data contains economically valuable information which is not generally known to the public. Disclosure of this data may inhibit competition, and is thus against public interest. Competitors may be able to use this data to determine supply and demand and gain an unfair competitive advantage.” (Uber Declaration, §§2(b).) Uber does not even mention WAV service in these statements; and there is nothing to show why this specific information provides “economic value” to anyone. Uber has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Indeed, to ensure that the public purpose of the Act is met, parties must have access to the WAV data Uber seeks to hide to assess whether Uber has met the “presence and availability” or “improved level of service” factors required to show whether it is entitled to its multi-million dollar offset request. It is difficult to comprehend how sharing the number of WAVs in operation, trips completed, and cancellations over the course of a quarter by county and hour and day or “retroactive response times” could create an “unfair competitive advantage” for anyone, especially when Uber maintains that such trips comprise such a small volume of its trips. Nor has Uber demonstrated otherwise.

Without being able to see the data required to be presented, the parties cannot meaningfully assess Uber’s requests. Uber has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

2. Expenditure Data To Support A Claim for Public Funds is Not a Trade Secret.

Uber claims that data about the millions of dollars in funds it has expended during each quarter for which it is seeking offsets, certification of those funds, and payment to third party vendors is confidential. To demonstrate a full accounting of funds expended, the fourth required element of an offset request, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. (Track 2 Decision, pp. 25-26.) A TNC seeking an offset for a contractual arrangement with a WAV provider must identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (*Ibid.*) Notwithstanding these express requirements, Uber claims the breakdown and certification of funds is confidential because it is a trade secret or “highly confidential.” Uber’s claims are completely insufficient.

Initially, Uber’s claim that the amount of money it paid its third party contractors to provide WAV service is somehow highly confidential. (Uber Declaration, §2(a)(i).) Uber cites Government Code Section 6254(k) as a basis for statutory protection, but fails to cite an applicable

statute in support as required by the TNC Data Decision. Thus, Uber has failed to meet its burden to prove this threshold requirement. (TNC Data Decision, p. 29; see also GO 96-B § 10.2)⁵

Moreover, where Uber has asserted trade secrets as a source of statutory protection to keep the public from seeing how much public money Uber seeks as reimbursement for its investments to increase access to WAV service throughout California during a particular quarter, Uber again has failed to meet the TNC Data Decision's requirements.

First, Uber's claims fail to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating otherwise. Second, Uber's claims that the breakdown of funds expended derives "economic value" also are nothing more than conclusory statements with no showing of how or what potentially derives this value. It is elementary that when seeking reimbursement of public funds, the amount of the expenditures is subject to public disclosure. And again, If Uber needs public funds to reimburse it for these investments to improve WAV service, it cannot at the same time claim the data supporting that claim is too economically valuable to share. Uber's claims of trade secret fail on this additional ground.

And Uber continues to ignore the strong public interest and need for parties to review this data. The Act requires a breakdown of funds, echoed by the Commission in the Track 2 Decision, reflecting the need to make sure that public dollars collected to improve WAV access are being spent appropriately. Without the parties to the rulemaking being able to see the breakdown of funds, it is impossible for parties to make assess whether Uber meets this requirement.

Uber's requests for confidentiality fails on all of the grounds above, and its claims of offset should be rejected on the grounds that the requests contains material omissions and are unreasonable under the circumstances. (General Order 96-B, § 7.4.2.)

IV. Uber's Advice Letters Contain Material Errors and Do Not Meet The Burden for Award of Public Funds.

As noted above, the Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Even based on what is reviewable in the offset requests, Uber failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Uber Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence *and* availability of drivers with WAVs on its platform. This is a key requirement, especially in the wake of the Commission's Track 2 Decision, which found "[i]t is unnecessary to measure "response time" at a passenger's initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-

⁵ Uber also makes vague claims about protecting privacy interests in its declaration, but fails to identify a statutory basis to entitle it to protection under Section 6254(k). Therefore, Uber also failed to meet its burden on these claims.

show will be captured in the ‘presence and availability’ data.” (Track 2 Decision, p. 20.) Consequently, “response times” are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not “demonstrate” presence and availability. If that were the case, then any submission of data, no matter how few drivers and vehicles the data show were present or available for WAV service, would meet this requirement. Such an interpretation would render the statutory requirement for presence and availability a nullity.

A demonstration of presence and availability under the Act must rest on an actual showing by the data. Even from Uber’s unredacted data, it is clear that during the last three quarters, WAV passengers continued to persistently experience unavailability or refusal of service – a key problem the Act was trying to fix. Uber acknowledges this problem in its offset request for Q1 2020, stating that in Los Angeles “the broad geographic distribution of WAV requests across such a large service area makes it challenging for drivers to cover the full service area and service all of the trips.” (AL 3, p. 6.) In fact, Uber failed to provide service to more than half of passengers who requested WAV service during crucial commute hours in both San Francisco and Los Angeles in every quarter since the beginning of the program. (AL 1-3, Exhibit 1, “Percentage of Trips Not Accepted” Tab)⁶

Moreover, Uber left many cells in all tabs beginning with “% WAV Trips...” blank without a percentage reported and therefore it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no requests were made during that hour, for example). (AL 1-3, Exhibit 1.) Further, Uber did not report “Cancellations due to Passenger No Shows” at all “because there is insufficient reliable data to report.” (*Ibid.*) San Francisco finds this claim dubious, as it is a standard practice for TNCs, including Uber, to charge riders a fee for canceling late, arriving late, or not showing up for a requested ride without canceling the ride request.

For these reasons, Uber’s unredacted data shows that its WAV service was not present and available to WAV passengers in any of the last three quarters. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum requirements of the Act. Uber’s unredacted data fails to demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letters on this basis.

⁶ For example, See AL 2, Q4 2019: during peak work and school commute hours in Los Angeles (6-9 am and 3-6pm on weekdays), Uber reports that 2/3 of passenger requests for WAVs were consistently denied (“not accepted”), if not more (the range is 61-93%). While Uber is able to report that the 80th percentile of response was 18.57 minutes that quarter, that is only true for the lucky few passengers whose rides were even fulfilled.

B. Uber Failed to Demonstrate Improved Level of Service, Including Adequate Response Times.

To meet the second element of “improved level of service” for a retroactive offset, a TNC must demonstrate that the 50th percentile of completed WAV trip requests met the specified response times for the region. In San Francisco, the fiftieth percentile of WAV trip response times must receive service in twenty minutes or less. However, to meet the improved level of service standard, a TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. (Track 2 Decision, pp. 40-41.) The Track 2 Decision suggests that improvements should be measured in minutes. From the data that is unredacted, Uber reported that 50th percentile of response times for trips in San Francisco was 17.2 minutes in Q3 of 2019, 17.05 minutes in Q4 of 2019 (an improvement of 0.15 minutes, and 17.47 minutes in Q1 of 2020 (a decline in response time in relation to both of the previous quarters)). (AL Data 1-3.) This simply does not demonstrate an improved level of service from quarter to quarter, and the CPED should reject the offset requests on this additional ground. Further, the CPED should consider that the Uber submittal does not contain the following required template tabs: “Offset Response Time” and “Exemption Response Time” and is thus inadequate on its face.

C. Uber Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Uber makes a compelling case in this arena. However, we do note that Uber’s offset request describes outreach that does not appear applicable to publicizing its WAV services to potential riders. For example, Uber notes in Attachment B, Uber Technologies, Inc.’s Outreach Materials, to its Advice Letters that “[i]n March 2018, Uber sponsored the California Society for the Blind’s annual gala, and an Uber representative spoke in multiple forums on Uber’s support for SB 1376.” (AL 1-3, Attachment B.) Further, the Outreach List provided largely includes parties to this proceeding and other TNC proceedings at the CPUC. Finally, we note that the Center for Independent Living, for which Uber reports providing a non-descript type of sponsorship in San Francisco, is located in Berkeley, Alameda, and Oakland. The center for independent living⁷ in San Francisco is the Independent Living Resource Center. The information Uber has submitted does not demonstrate a significant effort to reach out to riders who need WAVs to advertise or promote the availability of service.

D. Uber’s Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to improve WAV service. Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of fund,” as well as demonstrate that an improved level of service, including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2

⁷ “Center for independent living” means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

Decision, pp.25-26 (emphasis added). Due to Uber's extensive redactions, it is unclear what costs Uber incurred providing WAV service and there is no showing whether these investments improved WAV service.

V. Conclusion.

In sum, Uber's offset requests in the Advice Letters fail on multiple grounds and should be rejected. First, Uber has failed to meet its burden to establish that any of its claims are entitled to confidential treatment. Providing operational WAV data and data establishing the breakdown of expenditures to improve WAV service do not constitute trade secrets; nor are they sensitive business information entitled to protection. Second, even considering the limited data Uber has shared, it fails to meet the threshold requirements for offsets in the Act and Track 2 Decision. Uber's data does not show that there is "presence and availability" of WAV service to meet the Act's requirements; nor does the data show that there is an "improved level of service" in its retroactive response times. Uber's showing of outreach and accounting of expenditures is equally lacking.

Accordingly, San Francisco requests that the CPED reject Uber's claims for confidentiality; direct Uber to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest. Alternatively, for the reasons stated herein, San Francisco requests that the Advice Letters are rejected outright as CPED cannot reasonably find that Uber has met the required statutory burden.

Sincerely,

By: /s/

Tilly Chang
Executive Director
San Francisco County Transportation Authority

By: /s/

Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

By: /s/

Nicole Bohn
Director
San Francisco Mayor's Office on Disability

cc: Shivani Sidhar, westregs@uber.com

London N. Breed
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May 5, 2020

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I. Introduction

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availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Uber’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Uber has utterly failed to meet its burden to prove that the redacted data should be withheld from disclosure under the Commission’s governing decisions and orders.²

In its Advice Letters, Uber ignores the critical public interest that the TNC Access for All Act (“Act”), and Access for All Fund (“Access Fund”) serves—to improve Transportation Network Company (“TNC”) access to the disabled community. The Act called for imposition of a fee on every TNC ride and creation of the Access Fund for the sole purpose of improving service to people who use wheelchairs, not to create a slush fund for TNC recovery of routine business costs. Request for reimbursement/offsets must demonstrate, at a minimum, that every dollar requested supports improvements in equal access to TNC service in wheelchair accessible vehicles (“WAVs”). Uber’s assertion that data needed to demonstrate these minimum requirements is “sensitive business information” from which the company derives “economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Uber’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Uber’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Uber’s claims for confidentiality; direct Uber to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest. If, on the other hand, CPED is inclined to approve the Advice Letters without providing for further scrutiny and protests by the parties, San Francisco hereby preserves the right to request an evidentiary hearing under General Order 96-B, Section 7.4.1 based on the following disputed facts: that the redacted data is sensitive business information and disclosure of the redacted data would impair competition for the redacted WAV data, among other things.

Alternatively, San Francisco requests that the CPED reject the offset requests outright as clearly erroneous pursuant to General Order 96-B, Section 7.6.1, as they fail to demonstrate that Uber has met any of the minimum requirements of the Act and the Track 2 Decision. The little information that is available in the Advice Letters shows that Uber’s occasional record of reasonably prompt response times is entirely overshadowed by a consistent pattern of refusal of service to WAV users, indicating a significant failure to demonstrate presence and availability. Further, the level of service provided, including response times for trips requests that were fulfilled, did not noticeably improve quarter over quarter, and cannot justify the significant amounts Uber seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Uber has met the required statutory burden.

II. Background: The Commission has Rejected Sweeping TNC Confidentiality Claims, Confirming that Claims of Confidentiality Must be Supported Consistent with California Public Records Law.

The California Legislature adopted the Act with the stated intent that wheelchair users who need WAVs “have prompt access to TNC services” (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas (“Track 1 Decision”), p. 16.) The Act required

² In accordance with Section 10.5 of General Order 96-B, San Francisco met and conferred with Uber, but the parties were unable to resolve San Francisco’s objections informally, and thus understand that CPED will refer this request to the Administrative Law Judge Division.

the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish a fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the fund. (*Id.*, p. 10.) The Commission is committed to “ensur[ing] that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities, including those who use non-folding motorized wheelchairs.” (*Ibid.*)

As relevant here, the Act requires the Commission to “authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area” thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) In its Track 2 Decision, the Commission established rules for a TNC to seek such offsets, which are the subject of the Advice Letters. The Track 2 Decision also held that requests for confidentiality of data related to the Act, and particularly data in offset requests,³ would be treated pursuant to the procedures set forth in Decision 20-03-014 in R. 12-12-011 (“TNC Data Decision”), which sets forth explicit requirements for TNCs to assert claims of confidentiality regarding their data. (Track 2 Decision, p. 44.) The TNC Data Decision, incorporates General Order 66-D, and expressly applies to advice letters. (See GO 66-D, §§ 3.2, 3.3.)

The TNC Data Decision expressly cautions any TNC against the use of broad-brush-style confidentiality claims, warning that the Commission would view such sweeping claims with suspicion. (TNC Data Decision, p. 30.) But that is precisely what Uber has done in this first round of advice letter offset requests. General Order 96-B is consistent, stating “it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process” and that “requests shall be narrowly drawn.” (GO 96-B, §§ 10.1, 10.3.)

Pursuant to the TNC Data Decision, General Order 66-D, and General Order 96-B, the person requesting confidentiality bears the burden to establish a basis for confidential treatment. (TNC Data Decision, pp. 22-23, GO 66-D, § 3.2; GO 96-B, § 10.2.) If a TNC claims that the release of its information “will place it an unfair business disadvantage, the TNC’s competitor(s) must be identified and the unfair business advantage must be explained in detail.” (TNC Data Decision, p. 29.) Moreover, “if the TNC cites Government Code § 6254(k) (which allows information to be withheld when disclosure is prohibited by federal or state law), it must cite the applicable statutory provision and explain why the specific statutory provision applies to the particular information.” (TNC Data Decision, p. 29; GO 66-D, § 3.2; see also GO 96-B, § 10.3.)

And finally, if the TNC cites Government Code § 6255(a), the public interest balancing test, as the basis to withhold information, then it “must demonstrate with granular specificity” why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. “A private economic interest is an inadequate interest to claim in lieu of a public interest.” (TNC Data Decision, p. 29; GO 66-D, § 3.2.)

Against this backdrop, one must consider the public policy interests at play in these offset requests. In addition to meeting the goals of SB 1376, which was enacted solely for the purpose of requiring improvement in TNC access to disabled individuals, the purpose of the rulemaking and required data submissions in the offset requests is to ensure that the public Access Funds are being used on expenditures that improve WAV service. Of particular importance, the data here is being provided for

³ Because the Track 2 Decision also held that offset requests should be submitted through the advice letter process, the TNC Data Decision necessarily applies to these Advice Letters.

reimbursement of public funds collected from every California passenger. Uber is seeking millions of dollars in offsets of public funds, but then incredibly, also attempting to shield this data from parties to this rulemaking on the unsupported premise that the data in of itself is economically valuable. This twisted logic turns the purposes of the Act and the California Public Records Act on its head. More importantly, the redactions make it impossible for the parties to this proceeding to assess whether Uber has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Uber's claims of confidentiality fail under the requirements of the TNC Data Decision, General Order 66-D and General Order 96-B. Therefore, because the Advice Letters contain material omissions, and are unjust and unreasonable pursuant to General Order 96-B, 7.4.2.(3) and (6), respectively, Uber should be required to re-serve unredacted Advice Letters, and the CPED should continue or reopen the protest period to allow the parties additional time to submit supplemental protests after reviewing the same. In the alternative, Uber's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Uber Has Failed to Meet Its Burden To Establish Confidentiality in its Advice Letters.

Uber's claims of confidentiality in its Advice Letters fall into two main categories: (1) operational WAV data; and (2) data regarding WAV expenditures. Uber asserts that the redacted data is trade secret, "highly confidential" and/or "commercially sensitive" information. (See Uber AL 1-3, Declaration of Confidentiality Pursuant to General Order 96-b, Section 10.3(a-h) on behalf of Uber Technologies, Inc. Regarding Advice Letter 1-3 ("Uber Declaration"), §§2-3.) Uber's broad claims, which offer no specific facts in support, are exactly what the Commission warned against in its TNC Data Decision and can be dismissed on the grounds details below.

A. Uber Fails to Identify a Competitor As Required.

As an initial matter, each of Uber's claims, which all assert an unfair competitive advantage, should be rejected because they fail to identify a competitor who would gain an unfair advantage if the WAV data was released. If a TNC claims, as Uber does here, that the release of its information will place it at "an unfair business disadvantage, the TNC's competitor(s) must be identified and the unfair business advantage must be explained in detail." (TNC Data Decision, p. 29.) The TNC Data Decision found that there is no competition in the TNC market other than Uber or Lyft who make up 99% of rides in California. Therefore, the Commission "fails to see any California permitted TNC, or a TNC that is waiting in the wings, who could be a viable competitor to either Uber or Lyft that would use the disaggregated data to Uber and Lyft's that would use the disaggregated data to Uber and Lyft's disadvantage." (*Ibid.*)

Uber's attempts to identify a competitor in the Advice Letters are equally as vague here, as Uber fails to identify a single competitor that could rival them. Moreover, Uber has not claimed, nor is there any specific evidence, that releasing any of the data in the Advice Letters would create an unfair advantage. The TNC annual reports, which include data on accidents, trip data, certain complaints, and most relevant here data on accessibility, including the number and percentage of customers who requested accessible vehicles, how often the TNC was able to comply with request for accessible vehicles, any instances or complaints of unfair treatment or discrimination of persons with disabilities, and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that there is no divide between service provided to the able and disabled communities, contain very similar data to what Lyft is claiming is confidential here. (TNC Data Decision, pp. 4-5.)

The data at issue is not markedly different from the accessibility data requested in the annual reports. Nor is there "any information to suggest that the public release" of such information would create an unfair competitive disadvantage between Uber and Lyft. (TNC Data Decision, pp. 15-16; Uber

Declaration.) Rather, Uber’s vague statements that “[c]ompetitors may be able to use this data,” are plainly insufficient, and each of Uber’s claims of confidentiality fails on the ground alone. (AL 1-3, Uber Declaration, §§ 2(a)(i); 2(b)(i)-(viii).)⁴

B. None of Uber’s Redacted Data Constitutes a Trade Secret.

In Section 2(b) of its declaration, Uber claims that data, including the number of WAVs in operation, WAV trips completed, WAV cancellations by passenger, WAV cancellations by driver, response time (WAV operational data), and data regarding the breakdown and certification of funds expended on WAV service (WAV fund data) is confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity. Uber vaguely claims that all of this data constitutes trade secrets under Evidence Code § 1060. (Uber Declaration, §3.)

Where a TNC claims that the release of information will violate a trade secret (as provided by Civil Code §§ 3426 through 3426.11), “the TNC must establish that the data (a) contains information such as a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.” (TNC Data Decision, p. 29; Civ. Code § 3426.)

1. Required WAV Operational Data is Not a Trade Secret.

The Commission expressly required that TNCs provide the operational WAV data Uber seeks to protect to demonstrate the presence and availability of drivers of WAV vehicles for an offset request, as required by the Act. (Track 2 Decision, p. 5.) It found that collecting data on passenger no-shows and cancellations is necessary to reveal issues with rider accessibility or driver training that would be useful in evaluating a TNC’s WAV program. (*Id.*, p. 7.) Accordingly, in order to seek an offset of public funds, TNCs must submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week. (*Ibid.*) The Commission emphasized, “[w]e view the reporting of WAV presence and availability information on an hourly basis to be a critical data point, particularly in evaluating the concern for “stranded” WAV customers and whether such customers lack access to WAVs at certain times of the day.” (*Ibid.*)

Uber redacted all of its operational WAV data—WAVs in operation, WAV trips, WAV cancellations by driver, passenger or no show—asserting that “[t]his data contains economically valuable information which is not generally known to the public” and allegedly is a trade secret. (Uber Declaration, §§ 2(b)(i)-(v), 3.) Uber’s conclusory statements are patently insufficient.

Uber also claims, without more, that data produced in relation to response times is “confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity.” (Uber Declaration, § 2(b)(vi).) In addition to presence and availability, this data is necessary to determine whether Uber is able to demonstrate in a geographic area

⁴ Uber also failed to attach a proposed protective order as required to comply with Section 10.3 of General Order 96-B, which states that requests for confidentiality in an advice letter “shall attach a proposed protective order, or reference an effective protective order applicable to advice letter submittals previously submitted by the person.”

“improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter....” (Track 2 Decision, p. 8.)

Of the elements listed in the TNC Data Decision to establish a trade secret, Uber’s vague statement that all information “reveals proprietary internal formulas, methods, salaries, techniques, investments, and tools” is too conclusory to meet the first requirement to show that any of the data listed above actually contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, Uber failed to establish the any of the data is a “trade secret” on this basis alone.

Second, Uber has failed to show that this data derives independent economic value (actual or potential) from not being generally known to the public or to other persons. Again in conclusory fashion, Uber states all “data contains economically valuable information which is not generally known to the public. Disclosure of this data may inhibit competition, and is thus against public interest. Competitors may be able to use this data to determine supply and demand and gain an unfair competitive advantage.” (Uber Declaration, §§2(b).) Uber does not even mention WAV service in these statements; and there is nothing to show why this specific information provides “economic value” to anyone. Uber has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Indeed, to ensure that the public purpose of the Act is met, parties must have access to the WAV data Uber seeks to hide to assess whether Uber has met the “presence and availability” or “improved level of service” factors required to show whether it is entitled to its multi-million dollar offset request. It is difficult to comprehend how sharing the number of WAVs in operation, trips completed, and cancellations over the course of a quarter by county and hour and day or “retroactive response times” could create an “unfair competitive advantage” for anyone, especially when Uber maintains that such trips comprise such a small volume of its trips. Nor has Uber demonstrated otherwise.

Without being able to see the data required to be presented, the parties cannot meaningfully assess Uber’s requests. Uber has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

2. Expenditure Data To Support A Claim for Public Funds is Not a Trade Secret.

Uber claims that data about the millions of dollars in funds it has expended during each quarter for which it is seeking offsets, certification of those funds, and payment to third party vendors is confidential. To demonstrate a full accounting of funds expended, the fourth required element of an offset request, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. (Track 2 Decision, pp. 25-26.) A TNC seeking an offset for a contractual arrangement with a WAV provider must identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (*Ibid.*) Notwithstanding these express requirements, Uber claims the breakdown and certification of funds is confidential because it is a trade secret or “highly confidential.” Uber’s claims are completely insufficient.

Initially, Uber’s claim that the amount of money it paid its third party contractors to provide WAV service is somehow highly confidential. (Uber Declaration, §2(a)(i).) Uber cites Government Code Section 6254(k) as a basis for statutory protection, but fails to cite an applicable

statute in support as required by the TNC Data Decision. Thus, Uber has failed to meet its burden to prove this threshold requirement. (TNC Data Decision, p. 29; see also GO 96-B § 10.2)⁵

Moreover, where Uber has asserted trade secrets as a source of statutory protection to keep the public from seeing how much public money Uber seeks as reimbursement for its investments to increase access to WAV service throughout California during a particular quarter, Uber again has failed to meet the TNC Data Decision's requirements.

First, Uber's claims fail to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating otherwise. Second, Uber's claims that the breakdown of funds expended derives "economic value" also are nothing more than conclusory statements with no showing of how or what potentially derives this value. It is elementary that when seeking reimbursement of public funds, the amount of the expenditures is subject to public disclosure. And again, If Uber needs public funds to reimburse it for these investments to improve WAV service, it cannot at the same time claim the data supporting that claim is too economically valuable to share. Uber's claims of trade secret fail on this additional ground.

And Uber continues to ignore the strong public interest and need for parties to review this data. The Act requires a breakdown of funds, echoed by the Commission in the Track 2 Decision, reflecting the need to make sure that public dollars collected to improve WAV access are being spent appropriately. Without the parties to the rulemaking being able to see the breakdown of funds, it is impossible for parties to make assess whether Uber meets this requirement.

Uber's requests for confidentiality fails on all of the grounds above, and its claims of offset should be rejected on the grounds that the requests contains material omissions and are unreasonable under the circumstances. (General Order 96-B, § 7.4.2.)

IV. Uber's Advice Letters Contain Material Errors and Do Not Meet The Burden for Award of Public Funds.

As noted above, the Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Even based on what is reviewable in the offset requests, Uber failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Uber Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence *and* availability of drivers with WAVs on its platform. This is a key requirement, especially in the wake of the Commission's Track 2 Decision, which found "[i]t is unnecessary to measure "response time" at a passenger's initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-

⁵ Uber also makes vague claims about protecting privacy interests in its declaration, but fails to identify a statutory basis to entitle it to protection under Section 6254(k). Therefore, Uber also failed to meet its burden on these claims.

show will be captured in the ‘presence and availability’ data.” (Track 2 Decision, p. 20.) Consequently, “response times” are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not “demonstrate” presence and availability. If that were the case, then any submission of data, no matter how few drivers and vehicles the data show were present or available for WAV service, would meet this requirement. Such an interpretation would render the statutory requirement for presence and availability a nullity.

A demonstration of presence and availability under the Act must rest on an actual showing by the data. Even from Uber’s unredacted data, it is clear that during the last three quarters, WAV passengers continued to persistently experience unavailability or refusal of service – a key problem the Act was trying to fix. Uber acknowledges this problem in its offset request for Q1 2020, stating that in Los Angeles “the broad geographic distribution of WAV requests across such a large service area makes it challenging for drivers to cover the full service area and service all of the trips.” (AL 3, p. 6.) In fact, Uber failed to provide service to more than half of passengers who requested WAV service during crucial commute hours in both San Francisco and Los Angeles in every quarter since the beginning of the program. (AL 1-3, Exhibit 1, “Percentage of Trips Not Accepted” Tab)⁶

Moreover, Uber left many cells in all tabs beginning with “% WAV Trips...” blank without a percentage reported and therefore it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no requests were made during that hour, for example). (AL 1-3, Exhibit 1.) Further, Uber did not report “Cancellations due to Passenger No Shows” at all “because there is insufficient reliable data to report.” (*Ibid.*) San Francisco finds this claim dubious, as it is a standard practice for TNCs, including Uber, to charge riders a fee for canceling late, arriving late, or not showing up for a requested ride without canceling the ride request.

For these reasons, Uber’s unredacted data shows that its WAV service was not present and available to WAV passengers in any of the last three quarters. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum requirements of the Act. Uber’s unredacted data fails to demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letters on this basis.

⁶ For example, See AL 2, Q4 2019: during peak work and school commute hours in Los Angeles (6-9 am and 3-6pm on weekdays), Uber reports that 2/3 of passenger requests for WAVs were consistently denied (“not accepted”), if not more (the range is 61-93%). While Uber is able to report that the 80th percentile of response was 18.57 minutes that quarter, that is only true for the lucky few passengers whose rides were even fulfilled.

B. Uber Failed to Demonstrate Improved Level of Service, Including Adequate Response Times.

To meet the second element of “improved level of service” for a retroactive offset, a TNC must demonstrate that the 50th percentile of completed WAV trip requests met the specified response times for the region. In San Francisco, the fiftieth percentile of WAV trip response times must receive service in twenty minutes or less. However, to meet the improved level of service standard, a TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. (Track 2 Decision, pp. 40-41.) The Track 2 Decision suggests that improvements should be measured in minutes. From the data that is unredacted, Uber reported that 50th percentile of response times for trips in San Francisco was 17.2 minutes in Q3 of 2019, 17.05 minutes in Q4 of 2019 (an improvement of 0.15 minutes, and 17.47 minutes in Q1 of 2020 (a decline in response time in relation to both of the previous quarters)). (AL Data 1-3.) This simply does not demonstrate an improved level of service from quarter to quarter, and the CPED should reject the offset requests on this additional ground. Further, the CPED should consider that the Uber submittal does not contain the following required template tabs: “Offset Response Time” and “Exemption Response Time” and is thus inadequate on its face.

C. Uber Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Uber makes a compelling case in this arena. However, we do note that Uber’s offset request describes outreach that does not appear applicable to publicizing its WAV services to potential riders. For example, Uber notes in Attachment B, Uber Technologies, Inc.’s Outreach Materials, to its Advice Letters that “[i]n March 2018, Uber sponsored the California Society for the Blind’s annual gala, and an Uber representative spoke in multiple forums on Uber’s support for SB 1376.” (AL 1-3, Attachment B.) Further, the Outreach List provided largely includes parties to this proceeding and other TNC proceedings at the CPUC. Finally, we note that the Center for Independent Living, for which Uber reports providing a non-descript type of sponsorship in San Francisco, is located in Berkeley, Alameda, and Oakland. The center for independent living⁷ in San Francisco is the Independent Living Resource Center. The information Uber has submitted does not demonstrate a significant effort to reach out to riders who need WAVs to advertise or promote the availability of service.

D. Uber’s Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to improve WAV service. Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of fund,” as well as demonstrate that an improved level of service, including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2

⁷ “Center for independent living” means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

London N. Breed
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Nicole Bohn
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May 5, 2020

Via E-Mail
TNCaccess@cpuc.ca.gov

California Public Utilities Commission
Consumer Protection and Protection Division
Transportation Licensing and Analysis Branch
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest to Uber Advice Letter 3, Q1 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco"), submit this protest against Uber Technologies Inc.'s ("Uber") Advice Letters 1-3 requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letters").¹

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(3) and (6), San Francisco protests Uber's Advice Letters on the grounds that: (1) pursuant to Section 7.4.2(3), Uber has unjustifiably redacted the large majority of data provided in its offset requests for millions of dollars in public funds, which has material errors or omissions throughout its analysis and data; and (2) pursuant to Section 7.4.2(6), the relief requested is unjust and unreasonable as the data presented is inconsistent with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the "presence and

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Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Uber’s claims for confidentiality; direct Uber to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest. If, on the other hand, CPED is inclined to approve the Advice Letters without providing for further scrutiny and protests by the parties, San Francisco hereby preserves the right to request an evidentiary hearing under General Order 96-B, Section 7.4.1 based on the following disputed facts: that the redacted data is sensitive business information and disclosure of the redacted data would impair competition for the redacted WAV data, among other things.

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II. Background: The Commission has Rejected Sweeping TNC Confidentiality Claims, Confirming that Claims of Confidentiality Must be Supported Consistent with California Public Records Law.

The California Legislature adopted the Act with the stated intent that wheelchair users who need WAVs “have prompt access to TNC services” (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas (“Track 1 Decision”), p. 16.) The Act required

² In accordance with Section 10.5 of General Order 96-B, San Francisco met and conferred with Uber, but the parties were unable to resolve San Francisco’s objections informally, and thus understand that CPED will refer this request to the Administrative Law Judge Division.

the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish a fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the fund. (*Id.*, p. 10.) The Commission is committed to “ensur[ing] that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities, including those who use non-folding motorized wheelchairs.” (*Ibid.*)

As relevant here, the Act requires the Commission to “authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area” thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) In its Track 2 Decision, the Commission established rules for a TNC to seek such offsets, which are the subject of the Advice Letters. The Track 2 Decision also held that requests for confidentiality of data related to the Act, and particularly data in offset requests,³ would be treated pursuant to the procedures set forth in Decision 20-03-014 in R. 12-12-011 (“TNC Data Decision”), which sets forth explicit requirements for TNCs to assert claims of confidentiality regarding their data. (Track 2 Decision, p. 44.) The TNC Data Decision, incorporates General Order 66-D, and expressly applies to advice letters. (See GO 66-D, §§ 3.2, 3.3.)

The TNC Data Decision expressly cautions any TNC against the use of broad-brush-style confidentiality claims, warning that the Commission would view such sweeping claims with suspicion. (TNC Data Decision, p. 30.) But that is precisely what Uber has done in this first round of advice letter offset requests. General Order 96-B is consistent, stating “it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process” and that “requests shall be narrowly drawn.” (GO 96-B, §§ 10.1, 10.3.)

Pursuant to the TNC Data Decision, General Order 66-D, and General Order 96-B, the person requesting confidentiality bears the burden to establish a basis for confidential treatment. (TNC Data Decision, pp. 22-23, GO 66-D, § 3.2; GO 96-B, § 10.2.) If a TNC claims that the release of its information “will place it an unfair business disadvantage, the TNC’s competitor(s) must be identified and the unfair business advantage must be explained in detail.” (TNC Data Decision, p. 29.) Moreover, “if the TNC cites Government Code § 6254(k) (which allows information to be withheld when disclosure is prohibited by federal or state law), it must cite the applicable statutory provision and explain why the specific statutory provision applies to the particular information.” (TNC Data Decision, p. 29; GO 66-D, § 3.2; see also GO 96-B, § 10.3.)

And finally, if the TNC cites Government Code § 6255(a), the public interest balancing test, as the basis to withhold information, then it “must demonstrate with granular specificity” why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. “A private economic interest is an inadequate interest to claim in lieu of a public interest.” (TNC Data Decision, p. 29; GO 66-D, § 3.2.)

Against this backdrop, one must consider the public policy interests at play in these offset requests. In addition to meeting the goals of SB 1376, which was enacted solely for the purpose of requiring improvement in TNC access to disabled individuals, the purpose of the rulemaking and required data submissions in the offset requests is to ensure that the public Access Funds are being used on expenditures that improve WAV service. Of particular importance, the data here is being provided for

³ Because the Track 2 Decision also held that offset requests should be submitted through the advice letter process, the TNC Data Decision necessarily applies to these Advice Letters.

reimbursement of public funds collected from every California passenger. Uber is seeking millions of dollars in offsets of public funds, but then incredibly, also attempting to shield this data from parties to this rulemaking on the unsupported premise that the data in of itself is economically valuable. This twisted logic turns the purposes of the Act and the California Public Records Act on its head. More importantly, the redactions make it impossible for the parties to this proceeding to assess whether Uber has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Uber's claims of confidentiality fail under the requirements of the TNC Data Decision, General Order 66-D and General Order 96-B. Therefore, because the Advice Letters contain material omissions, and are unjust and unreasonable pursuant to General Order 96-B, 7.4.2.(3) and (6), respectively, Uber should be required to re-serve unredacted Advice Letters, and the CPED should continue or reopen the protest period to allow the parties additional time to submit supplemental protests after reviewing the same. In the alternative, Uber's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Uber Has Failed to Meet Its Burden To Establish Confidentiality in its Advice Letters.

Uber's claims of confidentiality in its Advice Letters fall into two main categories: (1) operational WAV data; and (2) data regarding WAV expenditures. Uber asserts that the redacted data is trade secret, "highly confidential" and/or "commercially sensitive" information. (See Uber AL 1-3, Declaration of Confidentiality Pursuant to General Order 96-b, Section 10.3(a-h) on behalf of Uber Technologies, Inc. Regarding Advice Letter 1-3 ("Uber Declaration"), §§2-3.) Uber's broad claims, which offer no specific facts in support, are exactly what the Commission warned against in its TNC Data Decision and can be dismissed on the grounds details below.

A. Uber Fails to Identify a Competitor As Required.

As an initial matter, each of Uber's claims, which all assert an unfair competitive advantage, should be rejected because they fail to identify a competitor who would gain an unfair advantage if the WAV data was released. If a TNC claims, as Uber does here, that the release of its information will place it at "an unfair business disadvantage, the TNC's competitor(s) must be identified and the unfair business advantage must be explained in detail." (TNC Data Decision, p. 29.) The TNC Data Decision found that there is no competition in the TNC market other than Uber or Lyft who make up 99% of rides in California. Therefore, the Commission "fails to see any California permitted TNC, or a TNC that is waiting in the wings, who could be a viable competitor to either Uber or Lyft that would use the disaggregated data to Uber and Lyft's that would use the disaggregated data to Uber and Lyft's disadvantage." (*Ibid.*)

Uber's attempts to identify a competitor in the Advice Letters are equally as vague here, as Uber fails to identify a single competitor that could rival them. Moreover, Uber has not claimed, nor is there any specific evidence, that releasing any of the data in the Advice Letters would create an unfair advantage. The TNC annual reports, which include data on accidents, trip data, certain complaints, and most relevant here data on accessibility, including the number and percentage of customers who requested accessible vehicles, how often the TNC was able to comply with request for accessible vehicles, any instances or complaints of unfair treatment or discrimination of persons with disabilities, and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that there is no divide between service provided to the able and disabled communities, contain very similar data to what Lyft is claiming is confidential here. (TNC Data Decision, pp. 4-5.)

The data at issue is not markedly different from the accessibility data requested in the annual reports. Nor is there "any information to suggest that the public release" of such information would create an unfair competitive disadvantage between Uber and Lyft. (TNC Data Decision, pp. 15-16; Uber

Declaration.) Rather, Uber’s vague statements that “[c]ompetitors may be able to use this data,” are plainly insufficient, and each of Uber’s claims of confidentiality fails on the ground alone. (AL 1-3, Uber Declaration, §§ 2(a)(i); 2(b)(i)-(viii).)⁴

B. None of Uber’s Redacted Data Constitutes a Trade Secret.

In Section 2(b) of its declaration, Uber claims that data, including the number of WAVs in operation, WAV trips completed, WAV cancellations by passenger, WAV cancellations by driver, response time (WAV operational data), and data regarding the breakdown and certification of funds expended on WAV service (WAV fund data) is confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity. Uber vaguely claims that all of this data constitutes trade secrets under Evidence Code § 1060. (Uber Declaration, §3.)

Where a TNC claims that the release of information will violate a trade secret (as provided by Civil Code §§ 3426 through 3426.11), “the TNC must establish that the data (a) contains information such as a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.” (TNC Data Decision, p. 29; Civ. Code § 3426.)

1. Required WAV Operational Data is Not a Trade Secret.

The Commission expressly required that TNCs provide the operational WAV data Uber seeks to protect to demonstrate the presence and availability of drivers of WAV vehicles for an offset request, as required by the Act. (Track 2 Decision, p. 5.) It found that collecting data on passenger no-shows and cancellations is necessary to reveal issues with rider accessibility or driver training that would be useful in evaluating a TNC’s WAV program. (*Id.*, p. 7.) Accordingly, in order to seek an offset of public funds, TNCs must submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week. (*Ibid.*) The Commission emphasized, “[w]e view the reporting of WAV presence and availability information on an hourly basis to be a critical data point, particularly in evaluating the concern for “stranded” WAV customers and whether such customers lack access to WAVs at certain times of the day.” (*Ibid.*)

Uber redacted all of its operational WAV data—WAVs in operation, WAV trips, WAV cancellations by driver, passenger or no show—asserting that “[t]his data contains economically valuable information which is not generally known to the public” and allegedly is a trade secret. (Uber Declaration, §§ 2(b)(i)-(v), 3.) Uber’s conclusory statements are patently insufficient.

Uber also claims, without more, that data produced in relation to response times is “confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity.” (Uber Declaration, § 2(b)(vi).) In addition to presence and availability, this data is necessary to determine whether Uber is able to demonstrate in a geographic area

⁴ Uber also failed to attach a proposed protective order as required to comply with Section 10.3 of General Order 96-B, which states that requests for confidentiality in an advice letter “shall attach a proposed protective order, or reference an effective protective order applicable to advice letter submittals previously submitted by the person.”

“improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter....” (Track 2 Decision, p. 8.)

Of the elements listed in the TNC Data Decision to establish a trade secret, Uber’s vague statement that all information “reveals proprietary internal formulas, methods, salaries, techniques, investments, and tools” is too conclusory to meet the first requirement to show that any of the data listed above actually contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, Uber failed to establish the any of the data is a “trade secret” on this basis alone.

Second, Uber has failed to show that this data derives independent economic value (actual or potential) from not being generally known to the public or to other persons. Again in conclusory fashion, Uber states all “data contains economically valuable information which is not generally known to the public. Disclosure of this data may inhibit competition, and is thus against public interest. Competitors may be able to use this data to determine supply and demand and gain an unfair competitive advantage.” (Uber Declaration, §2(b).) Uber does not even mention WAV service in these statements; and there is nothing to show why this specific information provides “economic value” to anyone. Uber has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Indeed, to ensure that the public purpose of the Act is met, parties must have access to the WAV data Uber seeks to hide to assess whether Uber has met the “presence and availability” or “improved level of service” factors required to show whether it is entitled to its multi-million dollar offset request. It is difficult to comprehend how sharing the number of WAVs in operation, trips completed, and cancellations over the course of a quarter by county and hour and day or “retroactive response times” could create an “unfair competitive advantage” for anyone, especially when Uber maintains that such trips comprise such a small volume of its trips. Nor has Uber demonstrated otherwise.

Without being able to see the data required to be presented, the parties cannot meaningfully assess Uber’s requests. Uber has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

2. Expenditure Data To Support A Claim for Public Funds is Not a Trade Secret.

Uber claims that data about the millions of dollars in funds it has expended during each quarter for which it is seeking offsets, certification of those funds, and payment to third party vendors is confidential. To demonstrate a full accounting of funds expended, the fourth required element of an offset request, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. (Track 2 Decision, pp. 25-26.) A TNC seeking an offset for a contractual arrangement with a WAV provider must identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (*Ibid.*) Notwithstanding these express requirements, Uber claims the breakdown and certification of funds is confidential because it is a trade secret or “highly confidential.” Uber’s claims are completely insufficient.

Initially, Uber’s claim that the amount of money it paid its third party contractors to provide WAV service is somehow highly confidential. (Uber Declaration, §2(a)(i).) Uber cites Government Code Section 6254(k) as a basis for statutory protection, but fails to cite an applicable

statute in support as required by the TNC Data Decision. Thus, Uber has failed to meet its burden to prove this threshold requirement. (TNC Data Decision, p. 29; see also GO 96-B § 10.2)⁵

Moreover, where Uber has asserted trade secrets as a source of statutory protection to keep the public from seeing how much public money Uber seeks as reimbursement for its investments to increase access to WAV service throughout California during a particular quarter, Uber again has failed to meet the TNC Data Decision's requirements.

First, Uber's claims fail to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating otherwise. Second, Uber's claims that the breakdown of funds expended derives "economic value" also are nothing more than conclusory statements with no showing of how or what potentially derives this value. It is elementary that when seeking reimbursement of public funds, the amount of the expenditures is subject to public disclosure. And again, If Uber needs public funds to reimburse it for these investments to improve WAV service, it cannot at the same time claim the data supporting that claim is too economically valuable to share. Uber's claims of trade secret fail on this additional ground.

And Uber continues to ignore the strong public interest and need for parties to review this data. The Act requires a breakdown of funds, echoed by the Commission in the Track 2 Decision, reflecting the need to make sure that public dollars collected to improve WAV access are being spent appropriately. Without the parties to the rulemaking being able to see the breakdown of funds, it is impossible for parties to make assess whether Uber meets this requirement.

Uber's requests for confidentiality fails on all of the grounds above, and its claims of offset should be rejected on the grounds that the requests contains material omissions and are unreasonable under the circumstances. (General Order 96-B, § 7.4.2.)

IV. Uber's Advice Letters Contain Material Errors and Do Not Meet The Burden for Award of Public Funds.

As noted above, the Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Even based on what is reviewable in the offset requests, Uber failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Uber Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence *and* availability of drivers with WAVs on its platform. This is a key requirement, especially in the wake of the Commission's Track 2 Decision, which found "[i]t is unnecessary to measure "response time" at a passenger's initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-

⁵ Uber also makes vague claims about protecting privacy interests in its declaration, but fails to identify a statutory basis to entitle it to protection under Section 6254(k). Therefore, Uber also failed to meet its burden on these claims.

show will be captured in the ‘presence and availability’ data.” (Track 2 Decision, p. 20.) Consequently, “response times” are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not “demonstrate” presence and availability. If that were the case, then any submission of data, no matter how few drivers and vehicles the data show were present or available for WAV service, would meet this requirement. Such an interpretation would render the statutory requirement for presence and availability a nullity.

A demonstration of presence and availability under the Act must rest on an actual showing by the data. Even from Uber’s unredacted data, it is clear that during the last three quarters, WAV passengers continued to persistently experience unavailability or refusal of service – a key problem the Act was trying to fix. Uber acknowledges this problem in its offset request for Q1 2020, stating that in Los Angeles “the broad geographic distribution of WAV requests across such a large service area makes it challenging for drivers to cover the full service area and service all of the trips.” (AL 3, p. 6.) In fact, Uber failed to provide service to more than half of passengers who requested WAV service during crucial commute hours in both San Francisco and Los Angeles in every quarter since the beginning of the program. (AL 1-3, Exhibit 1, “Percentage of Trips Not Accepted” Tab)⁶

Moreover, Uber left many cells in all tabs beginning with “% WAV Trips...” blank without a percentage reported and therefore it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no requests were made during that hour, for example). (AL 1-3, Exhibit 1.) Further, Uber did not report “Cancellations due to Passenger No Shows” at all “because there is insufficient reliable data to report.” (*Ibid.*) San Francisco finds this claim dubious, as it is a standard practice for TNCs, including Uber, to charge riders a fee for canceling late, arriving late, or not showing up for a requested ride without canceling the ride request.

For these reasons, Uber’s unredacted data shows that its WAV service was not present and available to WAV passengers in any of the last three quarters. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum requirements of the Act. Uber’s unredacted data fails to demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letters on this basis.

⁶ For example, See AL 2, Q4 2019: during peak work and school commute hours in Los Angeles (6-9 am and 3-6pm on weekdays), Uber reports that 2/3 of passenger requests for WAVs were consistently denied (“not accepted”), if not more (the range is 61-93%). While Uber is able to report that the 80th percentile of response was 18.57 minutes that quarter, that is only true for the lucky few passengers whose rides were even fulfilled.

B. Uber Failed to Demonstrate Improved Level of Service, Including Adequate Response Times.

To meet the second element of “improved level of service” for a retroactive offset, a TNC must demonstrate that the 50th percentile of completed WAV trip requests met the specified response times for the region. In San Francisco, the fiftieth percentile of WAV trip response times must receive service in twenty minutes or less. However, to meet the improved level of service standard, a TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. (Track 2 Decision, pp. 40-41.) The Track 2 Decision suggests that improvements should be measured in minutes. From the data that is unredacted, Uber reported that 50th percentile of response times for trips in San Francisco was 17.2 minutes in Q3 of 2019, 17.05 minutes in Q4 of 2019 (an improvement of 0.15 minutes, and 17.47 minutes in Q1 of 2020 (a decline in response time in relation to both of the previous quarters)). (AL Data 1-3.) This simply does not demonstrate an improved level of service from quarter to quarter, and the CPED should reject the offset requests on this additional ground. Further, the CPED should consider that the Uber submittal does not contain the following required template tabs: “Offset Response Time” and “Exemption Response Time” and is thus inadequate on its face.

C. Uber Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Uber makes a compelling case in this arena. However, we do note that Uber’s offset request describes outreach that does not appear applicable to publicizing its WAV services to potential riders. For example, Uber notes in Attachment B, Uber Technologies, Inc.’s Outreach Materials, to its Advice Letters that “[i]n March 2018, Uber sponsored the California Society for the Blind’s annual gala, and an Uber representative spoke in multiple forums on Uber’s support for SB 1376.” (AL 1-3, Attachment B.) Further, the Outreach List provided largely includes parties to this proceeding and other TNC proceedings at the CPUC. Finally, we note that the Center for Independent Living, for which Uber reports providing a non-descript type of sponsorship in San Francisco, is located in Berkeley, Alameda, and Oakland. The center for independent living⁷ in San Francisco is the Independent Living Resource Center. The information Uber has submitted does not demonstrate a significant effort to reach out to riders who need WAVs to advertise or promote the availability of service.

D. Uber’s Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to improve WAV service. Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of fund,” as well as demonstrate that an improved level of service, including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2

⁷ “Center for independent living” means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

