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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
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Re: Protest to Lyft 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 Lyft Inc.'s ("Lyft") 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 Lyft's Advice Letters on the grounds that: (1) pursuant to Section 7.4.2(3), Lyft 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

¹ Because Lyft'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."

with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the “presence and availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Lyft’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Lyft 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, Lyft 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”). Lyft’s assertion that data needed to demonstrate these minimum requirements is “highly confidential information” from which the company derives “independent economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Lyft’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Lyft’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Lyft’s claims for confidentiality; direct Lyft 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, that disclosure of the redacted data would impair competition for the redacted WAV data, and that there was an in person meeting between Lyft and SFMTA staff on September 8 regarding outreach, 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 Lyft 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 Lyft’s claims of having met the offset time standards are entirely overshadowed by the fact that service is not available one third of each day, indicating a significant failure to demonstrate presence and availability. Further, the available data cannot justify the significant amounts Lyft seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Lyft 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 Lyft, 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 Lyft 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 reimbursement of public funds collected from every California passenger. Lyft 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

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.

proceeding to assess whether Lyft has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Lyft'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, Lyft 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, Lyft's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Lyft Has Failed to Meet Its Burden To Establish Confidentiality.

Lyft makes three legal arguments that the redacted data in its Advice Letters is subject to confidential protection: (1) the data constitutes trade secrets; (2) under the public interest balancing test, the interest in confidentiality outweighs the interest in disclosure; and (3) its complaints are investigatory. (See AL 1-3, Declaration of Brett Collins in Support of Request for Confidential Treatment of Documents ("Collins Declaration").) Lyft's broad claims, which offer no specific facts in support and treat WAV service as if it were the same market as TNC service generally, are exactly what the TNC Data Decision warned against. And again, it is important to keep in mind that the purpose of Lyft's requests are for reimbursement of millions of dollars of public funds for its investments in improving WAV service, thus making scrutiny by interested parties to this rulemaking essential. Lyft's claims fail under the Commission's governing rules, as set forth below.⁴

A. Lyft Failed to Identify a Competitor As Required.

As an initial matter, each of Lyft'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 Lyft 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 Lyft 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 Lyft or Lyft that would use the disaggregated data to Lyft and Lyft's disadvantage." (TNC Data Decision, pp. 15-16.)

Lyft's claims in the Advice Letters are no different, as they fail to identify a single competitor. While Lyft attempts to allege that there are specific competitors for WAV service waiting in the wings, it does not name any. (Collins Declaration, ¶9.) Moreover, Lyft has not explained why releasing any of the data in the Advice Letters would create an unfair competitive advantage between Lyft and Lyft. 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

⁴ Lyft 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."

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 at pp. 4-5.)

Regarding that data, the TNC Data Decision stated “[c]an either company honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly? The information known to date suggests otherwise.” (*Id.*, at p. 20.) Nothing has changed. Thus, the Commission all but foreclosed Lyft’s arguments that Lyft would have an unfair competitive advantage if the WAV data at issue were released, and Lyft’s claims of confidentiality fails on this ground alone. (AL 1-3, Collins Declaration, ¶¶6-9, 13-15.)

B. None of Lyft’s Data Constitutes a Trade Secret.

Lyft claims that all of the designated data in the following categories in Exhibit 1 to its Advice Letters constitutes trade secret information exempt from disclosure under the California Public Records Act (“CPRA”) exemption set forth in Gov’t. Code § 6254(k) (“other law” exemption incorporating trade secret protection under Evidence Code §1060): WAVs in operation, WAV trips completed, WAV trips not accepted, WAV trips cancelled by no show, passenger or driver, retroactive response times, complaints, training, and funds expended on improving WAV service. (AL 1-3, Collins Declaration ¶¶ 6-15.)

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 at p. 29.)

1. WAV Operational Data

For the data regarding WAVs in operation, trips completed, and trips canceled for any reason, Lyft conveniently ignores that the Commission expressly required that TNCs provide this exact data to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request. (Track 2 Decision p. 5.) “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.” (*Ibid.*) 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.*) Even with this express direction from the Commission, Lyft claims that the public interest in the offset requests is “minimal.” (Collins Declaration, ¶¶11, 17.)

In addition, Lyft claims that data produced in relation to response times is also protected as a “trade secret.” In addition to presence and availability, TNCs must, at a minimum, demonstrate in a geographic area “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.)

On the elements listed in the TNC Data Decision, which incorporates Civil Code § 3426, Lyft’s claims fail to meet the first requirement to show that any of the data listed above contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, its claims fail to establish the data is a “trade secret” on this basis alone.

Second, Lyft 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. Lyft cites its general business model for its regular TNC business, asserting this data is central to balancing supply and demand. However, Lyft ignores that the data provided is not “trip-level” but aggregated across a

quarter by county. Moreover, Lyft's claims in paragraph 7 are about Lyft's regular non-WAV business, and have no application here. And to the extent Lyft claims their WAV service programs "are emerging markets with significant competition among companies seeking to gain and establish entry into this market" and that "competition for WAV users is equally as important as with non-WAV service," Lyft again fails as it does not name its "competitors" trying to enter this market as required. (TNC Data Decision, p. 29; Collins Declaration, ¶¶8-9.) Further, in other filings in this rulemaking, Lyft repeatedly has claimed how difficult and unprofitable this market is to serve, which is why the Legislature had to create this fund in the first place. If Lyft 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. Lyft also has failed to meet the second element to establish a trade secret, and the claim must be rejected.

2. Expenditure Data

The Track 2 Decision held that 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. A TNC seeking an offset for a contractual arrangement with a WAV provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (Track 2 Decision, pp. 25-26.)

Even with this requirement, Lyft claims that the data regarding how it allegedly spent money to improve WAV service for which it is seeking to be reimbursed, constitutes trade secret information exempt from disclosure. As with Lyft's claims above, Lyft again fails to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. (See TNC Data Decision, p. 29.) The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating anything more. In addition, Lyft's claims that the breakdown of funds expended derives "economic value" 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 Lyft 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. Lyft again has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Lyft also 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 being able to see the data required to be presented, the parties cannot meaningfully assess whether Lyft has met this requirement, and Lyft's request should be denied. Lyft has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

C. Lyft's Claims Fail the Public Interest Balancing Test.

Lyft next claims that the operational WAV data and data regarding how Lyft expended funds listed above is protected by Government Code § 6255(a), an exemption to the CPRA, which is commonly referred to as the "public interest balancing test." (Collins Declaration, ¶¶11, 17.)

But the Commission already has flatly rejected Lyft's argument. In the TNC Data Decision, the Commission stated: "[i]f the information submitter cites Government Code § 6255(a) (the public interest balancing test) as the basis to withhold the document from public release, then the information submitter must demonstrate with *granular specificity* on the facts of the particular information 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. [emphasis added].)

First, ignoring the purpose of the Act, Lyft casually argues that “the public interest in public disclosure of the information is minimal,” and “[t]here is no reason why members of the public also require access to the data.” (Collins Declaration, ¶11.) This is an incredible statement ignoring the public purpose behind the Act, this rulemaking and the creation of a public fund from which Lyft now seeks reimbursement. Lyft cannot be permitted to have its cake and eat it too. Second, Lyft claims that disclosing this information would “harm competition in the TNC marketplace.” (*Ibid.*) The Legislature and Commission have spoken about the need to provide this information to the public to show an increase in WAV service and to be entitled to access the public Access for All Funds. And Lyft has patently failed to meet the requirements of the TNC Data Decision to show with “granular specificity” how the public is served. The public interest in disclosure clearly outweighs Lyft’s conclusory and unsupported claims about “competition.”

D. Lyft’s Complaints Are Not Protected.

Finally, Lyft claims that quarterly complaints about WAV service constitutes “investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,” which are exempt from disclosure under the exemption set forth in Gov’t. Code § 6254(f). (Collins Declaration, ¶13.) If the Commission believed that the complaints were exempt on this basis, it would not require such complaints to be listed in Advice Letters, which are public documents. Thus, Lyft has failed to meet its burden on this claim as well.

Lyft’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. Lyft’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, Lyft failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Lyft 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-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 the unredacted data in Lyft’s Advice Letters contains material errors and omissions, and thus do not demonstrate presence or availability. First, the submittals contain basic math errors, where the sums of the percentages of trips reported on the tabs that begin with “% WAV Trips...” exceed 100% in many cells. (See Attachment 1 to SFMTA et al Protest - Lyft Retroactive Offset Check.) The submittal also leaves many cells in these tabs blank without a percentage reported and it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no ride was requested). Finally, Lyft’s marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act. For these reasons, Lyft has not sufficiently demonstrated presence and availability of their service in any quarter for which they are seeking an offset. (AL 1-3, Exhibit 1.) The CPED should reject Lyft’s requests as being materially incomplete at the very least.

B. Lyft 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. A TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. Because Lyft has redacted all information provided on the tab “Retroactive Response Time Final,” it is impossible to determine if Lyft has met the specified response times for any region or demonstrated an improved level of service in each quarter for which an offset is requested. As a result, CPED must reject the requested offsets.

C. Lyft 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).) San Francisco urges staff to connect with members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Lyft makes a compelling case in this arena. However, we do note that we have received constituent feedback that the “WAV” option is not readily available in the Lyft app unless a rider knows to activate “Access mode” in the app settings. This makes the WAV service invisible to those not in the know. In addition, Lyft’s offset request describes an “in-person meeting” with the SFMTA and SF Paratransit on Sunday, September 8, 2019. The SFMTA’s Accessible Services staff are well known to Lyft. After a reasonable survey of SFMTA staff and our paratransit vendor, we have found no one with any knowledge of any such meeting.

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

The Act allows TNCs to offset the amounts allegedly 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 Decision, pp. 25-26 (emphasis added).) Due to Lyft’s extensive redactions, it is unclear what costs Lyft incurred providing WAV service and there is no showing whether these investments improved WAV service.

V. Conclusion

In sum, Lyft’s offset requests in the Advice Letters fail on multiple grounds and should be rejected. First, Lyft 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; do not meet the public interest balancing test and are not “investigatory” files. Moreover, even for the limited data Lyft has shared, it fails to meet the threshold requirements for offsets in the Act and Track 2 Decision. Lyft’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. Its showing of outreach and accounting of expenditures is equally lacking.

Accordingly, San Francisco requests that the CPED reject Lyft’s claims for confidentiality; direct Lyft 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 Lyft 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

Attachment

cc: Aichi Daniel, adaniel@lyft.com
Traci Lee, tracilee@lyft.com

ATTACHMENT 1

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Completed by Hour and Day of the Quarter

Q1 2020		SATURDAY																							
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Alameda	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	110.00%	195.00%	100.00%	100.00%	100.00%	100.00%	100.00%	105.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Los Angeles	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
San Francisco	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	200.00%	100.00%	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	0.00%	0.00%	100.00%	0.00%

London N. Breed
Mayor



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May 5, 2020

Via E-Mail
TNCaccess@cpuc.ca.gov

California Public Utilities Commission
Consumer Protection and Protection Division
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Re: Protest to Lyft Advice Letter 2, Q4 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 Lyft Inc.'s ("Lyft") 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 Lyft's Advice Letters on the grounds that: (1) pursuant to Section 7.4.2(3), Lyft 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

¹ Because Lyft'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."

with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the “presence and availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Lyft’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Lyft 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, Lyft 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”). Lyft’s assertion that data needed to demonstrate these minimum requirements is “highly confidential information” from which the company derives “independent economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Lyft’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Lyft’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Lyft’s claims for confidentiality; direct Lyft 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, that disclosure of the redacted data would impair competition for the redacted WAV data, and that there was an in person meeting between Lyft and SFMTA staff on September 8 regarding outreach, 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 Lyft 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 Lyft’s claims of having met the offset time standards are entirely overshadowed by the fact that service is not available one third of each day, indicating a significant failure to demonstrate presence and availability. Further, the available data cannot justify the significant amounts Lyft seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Lyft 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 Lyft, 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 Lyft 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 reimbursement of public funds collected from every California passenger. Lyft 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

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.

proceeding to assess whether Lyft has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Lyft'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, Lyft 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, Lyft's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Lyft Has Failed to Meet Its Burden To Establish Confidentiality.

Lyft makes three legal arguments that the redacted data in its Advice Letters is subject to confidential protection: (1) the data constitutes trade secrets; (2) under the public interest balancing test, the interest in confidentiality outweighs the interest in disclosure; and (3) its complaints are investigatory. (See AL 1-3, Declaration of Brett Collins in Support of Request for Confidential Treatment of Documents ("Collins Declaration").) Lyft's broad claims, which offer no specific facts in support and treat WAV service as if it were the same market as TNC service generally, are exactly what the TNC Data Decision warned against. And again, it is important to keep in mind that the purpose of Lyft's requests are for reimbursement of millions of dollars of public funds for its investments in improving WAV service, thus making scrutiny by interested parties to this rulemaking essential. Lyft's claims fail under the Commission's governing rules, as set forth below.⁴

A. Lyft Failed to Identify a Competitor As Required.

As an initial matter, each of Lyft'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 Lyft 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 Lyft 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 Lyft or Lyft that would use the disaggregated data to Lyft and Lyft's disadvantage." (TNC Data Decision, pp. 15-16.)

Lyft's claims in the Advice Letters are no different, as they fail to identify a single competitor. While Lyft attempts to allege that there are specific competitors for WAV service waiting in the wings, it does not name any. (Collins Declaration, ¶9.) Moreover, Lyft has not explained why releasing any of the data in the Advice Letters would create an unfair competitive advantage between Lyft and Lyft. 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

⁴ Lyft 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."

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 at pp. 4-5.)

Regarding that data, the TNC Data Decision stated “[c]an either company honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly? The information known to date suggests otherwise.” (*Id.*, at p. 20.) Nothing has changed. Thus, the Commission all but foreclosed Lyft’s arguments that Lyft would have an unfair competitive advantage if the WAV data at issue were released, and Lyft’s claims of confidentiality fails on this ground alone. (AL 1-3, Collins Declaration, ¶¶6-9, 13-15.)

B. None of Lyft’s Data Constitutes a Trade Secret.

Lyft claims that all of the designated data in the following categories in Exhibit 1 to its Advice Letters constitutes trade secret information exempt from disclosure under the California Public Records Act (“CPRA”) exemption set forth in Gov’t. Code § 6254(k) (“other law” exemption incorporating trade secret protection under Evidence Code §1060): WAVs in operation, WAV trips completed, WAV trips not accepted, WAV trips cancelled by no show, passenger or driver, retroactive response times, complaints, training, and funds expended on improving WAV service. (AL 1-3, Collins Declaration ¶¶ 6-15.)

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 at p. 29.)

1. WAV Operational Data

For the data regarding WAVs in operation, trips completed, and trips canceled for any reason, Lyft conveniently ignores that the Commission expressly required that TNCs provide this exact data to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request. (Track 2 Decision p. 5.) “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.” (*Ibid.*) 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.*) Even with this express direction from the Commission, Lyft claims that the public interest in the offset requests is “minimal.” (Collins Declaration, ¶¶11, 17.)

In addition, Lyft claims that data produced in relation to response times is also protected as a “trade secret.” In addition to presence and availability, TNCs must, at a minimum, demonstrate in a geographic area “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.)

On the elements listed in the TNC Data Decision, which incorporates Civil Code § 3426, Lyft’s claims fail to meet the first requirement to show that any of the data listed above contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, its claims fail to establish the data is a “trade secret” on this basis alone.

Second, Lyft 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. Lyft cites its general business model for its regular TNC business, asserting this data is central to balancing supply and demand. However, Lyft ignores that the data provided is not “trip-level” but aggregated across a

quarter by county. Moreover, Lyft's claims in paragraph 7 are about Lyft's regular non-WAV business, and have no application here. And to the extent Lyft claims their WAV service programs "are emerging markets with significant competition among companies seeking to gain and establish entry into this market" and that "competition for WAV users is equally as important as with non-WAV service," Lyft again fails as it does not name its "competitors" trying to enter this market as required. (TNC Data Decision, p. 29; Collins Declaration, ¶¶8-9.) Further, in other filings in this rulemaking, Lyft repeatedly has claimed how difficult and unprofitable this market is to serve, which is why the Legislature had to create this fund in the first place. If Lyft 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. Lyft also has failed to meet the second element to establish a trade secret, and the claim must be rejected.

2. Expenditure Data

The Track 2 Decision held that 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. A TNC seeking an offset for a contractual arrangement with a WAV provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (Track 2 Decision, pp. 25-26.)

Even with this requirement, Lyft claims that the data regarding how it allegedly spent money to improve WAV service for which it is seeking to be reimbursed, constitutes trade secret information exempt from disclosure. As with Lyft's claims above, Lyft again fails to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. (See TNC Data Decision, p. 29.) The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating anything more. In addition, Lyft's claims that the breakdown of funds expended derives "economic value" 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 Lyft 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. Lyft again has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Lyft also 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 being able to see the data required to be presented, the parties cannot meaningfully assess whether Lyft has met this requirement, and Lyft's request should be denied. Lyft has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

C. Lyft's Claims Fail the Public Interest Balancing Test.

Lyft next claims that the operational WAV data and data regarding how Lyft expended funds listed above is protected by Government Code § 6255(a), an exemption to the CPRA, which is commonly referred to as the "public interest balancing test." (Collins Declaration, ¶¶11, 17.)

But the Commission already has flatly rejected Lyft's argument. In the TNC Data Decision, the Commission stated: "[i]f the information submitter cites Government Code § 6255(a) (the public interest balancing test) as the basis to withhold the document from public release, then the information submitter must demonstrate with *granular specificity* on the facts of the particular information 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. [emphasis added].)

First, ignoring the purpose of the Act, Lyft casually argues that “the public interest in public disclosure of the information is minimal,” and “[t]here is no reason why members of the public also require access to the data.” (Collins Declaration, ¶11.) This is an incredible statement ignoring the public purpose behind the Act, this rulemaking and the creation of a public fund from which Lyft now seeks reimbursement. Lyft cannot be permitted to have its cake and eat it too. Second, Lyft claims that disclosing this information would “harm competition in the TNC marketplace.” (*Ibid.*) The Legislature and Commission have spoken about the need to provide this information to the public to show an increase in WAV service and to be entitled to access the public Access for All Funds. And Lyft has patently failed to meet the requirements of the TNC Data Decision to show with “granular specificity” how the public is served. The public interest in disclosure clearly outweighs Lyft’s conclusory and unsupported claims about “competition.”

D. Lyft’s Complaints Are Not Protected.

Finally, Lyft claims that quarterly complaints about WAV service constitutes “investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,” which are exempt from disclosure under the exemption set forth in Gov’t. Code § 6254(f). (Collins Declaration, ¶13.) If the Commission believed that the complaints were exempt on this basis, it would not require such complaints to be listed in Advice Letters, which are public documents. Thus, Lyft has failed to meet its burden on this claim as well.

Lyft’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. Lyft’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, Lyft failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Lyft 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-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 the unredacted data in Lyft’s Advice Letters contains material errors and omissions, and thus do not demonstrate presence or availability. First, the submittals contain basic math errors, where the sums of the percentages of trips reported on the tabs that begin with “% WAV Trips...” exceed 100% in many cells. (See Attachment 1 to SFMTA et al Protest - Lyft Retroactive Offset Check.) The submittal also leaves many cells in these tabs blank without a percentage reported and it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no ride was requested). Finally, Lyft’s marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act. For these reasons, Lyft has not sufficiently demonstrated presence and availability of their service in any quarter for which they are seeking an offset. (AL 1-3, Exhibit 1.) The CPED should reject Lyft’s requests as being materially incomplete at the very least.

B. Lyft 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. A TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. Because Lyft has redacted all information provided on the tab “Retroactive Response Time Final,” it is impossible to determine if Lyft has met the specified response times for any region or demonstrated an improved level of service in each quarter for which an offset is requested. As a result, CPED must reject the requested offsets.

C. Lyft 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).) San Francisco urges staff to connect with members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Lyft makes a compelling case in this arena. However, we do note that we have received constituent feedback that the “WAV” option is not readily available in the Lyft app unless a rider knows to activate “Access mode” in the app settings. This makes the WAV service invisible to those not in the know. In addition, Lyft’s offset request describes an “in-person meeting” with the SFMTA and SF Paratransit on Sunday, September 8, 2019. The SFMTA’s Accessible Services staff are well known to Lyft. After a reasonable survey of SFMTA staff and our paratransit vendor, we have found no one with any knowledge of any such meeting.

cc: Aichi Daniel, adaniel@lyft.com
Traci Lee, tracilee@lyft.com

ATTACHMENT 1

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Completed by Hour and Day of the Quarter

Q1 2020		WEDNESDAY																							
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Alameda	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	104.00%	102.00%	100.00%	96.00%	100.00%	100.00%	107.00%	100.00%	100.00%	101.00%	100.00%	100.00%	100.00%	100.00%	100.00%
San Francisco	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Completed by Hour and Day of the Quarter

Q1 2020		SATURDAY																							
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Alameda	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Los Angeles	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	110.00%	195.00%	100.00%	100.00%	100.00%	100.00%	100.00%	105.00%	100.00%	100.00%	106.00%	100.00%	100.00%	100.00%	100.00%	100.00%
San Francisco	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	200.00%	100.00%	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%

London N. Breed
Mayor



Tilly Chang
Executive Director

Nicole Bohn
Mayor's Office
on Disability

Jeffrey P. Tumlin
Director of
Transportation

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 Lyft Advice Letter 3, Q1 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

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¹ Because Lyft'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."

with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the “presence and availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Lyft’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Lyft 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, Lyft 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”). Lyft’s assertion that data needed to demonstrate these minimum requirements is “highly confidential information” from which the company derives “independent economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Lyft’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Lyft’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Lyft’s claims for confidentiality; direct Lyft 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, that disclosure of the redacted data would impair competition for the redacted WAV data, and that there was an in person meeting between Lyft and SFMTA staff on September 8 regarding outreach, 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 Lyft 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 Lyft’s claims of having met the offset time standards are entirely overshadowed by the fact that service is not available one third of each day, indicating a significant failure to demonstrate presence and availability. Further, the available data cannot justify the significant amounts Lyft seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Lyft 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 Lyft, 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 Lyft 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 reimbursement of public funds collected from every California passenger. Lyft 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

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.

proceeding to assess whether Lyft has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Lyft'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, Lyft 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, Lyft's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

III. Lyft Has Failed to Meet Its Burden To Establish Confidentiality.

Lyft makes three legal arguments that the redacted data in its Advice Letters is subject to confidential protection: (1) the data constitutes trade secrets; (2) under the public interest balancing test, the interest in confidentiality outweighs the interest in disclosure; and (3) its complaints are investigatory. (See AL 1-3, Declaration of Brett Collins in Support of Request for Confidential Treatment of Documents ("Collins Declaration").) Lyft's broad claims, which offer no specific facts in support and treat WAV service as if it were the same market as TNC service generally, are exactly what the TNC Data Decision warned against. And again, it is important to keep in mind that the purpose of Lyft's requests are for reimbursement of millions of dollars of public funds for its investments in improving WAV service, thus making scrutiny by interested parties to this rulemaking essential. Lyft's claims fail under the Commission's governing rules, as set forth below.⁴

A. Lyft Failed to Identify a Competitor As Required.

As an initial matter, each of Lyft'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 Lyft 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 Lyft 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 Lyft or Lyft that would use the disaggregated data to Lyft and Lyft's disadvantage." (TNC Data Decision, pp. 15-16.)

Lyft's claims in the Advice Letters are no different, as they fail to identify a single competitor. While Lyft attempts to allege that there are specific competitors for WAV service waiting in the wings, it does not name any. (Collins Declaration, ¶9.) Moreover, Lyft has not explained why releasing any of the data in the Advice Letters would create an unfair competitive advantage between Lyft and Lyft. 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

⁴ Lyft 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."

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 at pp. 4-5.)

Regarding that data, the TNC Data Decision stated “[c]an either company honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly? The information known to date suggests otherwise.” (*Id.*, at p. 20.) Nothing has changed. Thus, the Commission all but foreclosed Lyft’s arguments that Lyft would have an unfair competitive advantage if the WAV data at issue were released, and Lyft’s claims of confidentiality fails on this ground alone. (AL 1-3, Collins Declaration, ¶¶6-9, 13-15.)

B. None of Lyft’s Data Constitutes a Trade Secret.

Lyft claims that all of the designated data in the following categories in Exhibit 1 to its Advice Letters constitutes trade secret information exempt from disclosure under the California Public Records Act (“CPRA”) exemption set forth in Gov’t. Code § 6254(k) (“other law” exemption incorporating trade secret protection under Evidence Code §1060): WAVs in operation, WAV trips completed, WAV trips not accepted, WAV trips cancelled by no show, passenger or driver, retroactive response times, complaints, training, and funds expended on improving WAV service. (AL 1-3, Collins Declaration ¶¶ 6-15.)

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 at p. 29.)

1. WAV Operational Data

For the data regarding WAVs in operation, trips completed, and trips canceled for any reason, Lyft conveniently ignores that the Commission expressly required that TNCs provide this exact data to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request. (Track 2 Decision p. 5.) “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.” (*Ibid.*) 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.*) Even with this express direction from the Commission, Lyft claims that the public interest in the offset requests is “minimal.” (Collins Declaration, ¶¶11, 17.)

In addition, Lyft claims that data produced in relation to response times is also protected as a “trade secret.” In addition to presence and availability, TNCs must, at a minimum, demonstrate in a geographic area “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.)

On the elements listed in the TNC Data Decision, which incorporates Civil Code § 3426, Lyft’s claims fail to meet the first requirement to show that any of the data listed above contains “a formula, pattern, compilation, program, device, method, technique or process.” (*Ibid.*) Therefore, its claims fail to establish the data is a “trade secret” on this basis alone.

Second, Lyft 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. Lyft cites its general business model for its regular TNC business, asserting this data is central to balancing supply and demand. However, Lyft ignores that the data provided is not “trip-level” but aggregated across a

quarter by county. Moreover, Lyft's claims in paragraph 7 are about Lyft's regular non-WAV business, and have no application here. And to the extent Lyft claims their WAV service programs "are emerging markets with significant competition among companies seeking to gain and establish entry into this market" and that "competition for WAV users is equally as important as with non-WAV service," Lyft again fails as it does not name its "competitors" trying to enter this market as required. (TNC Data Decision, p. 29; Collins Declaration, ¶¶8-9.) Further, in other filings in this rulemaking, Lyft repeatedly has claimed how difficult and unprofitable this market is to serve, which is why the Legislature had to create this fund in the first place. If Lyft 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. Lyft also has failed to meet the second element to establish a trade secret, and the claim must be rejected.

2. Expenditure Data

The Track 2 Decision held that 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. A TNC seeking an offset for a contractual arrangement with a WAV provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (Track 2 Decision, pp. 25-26.)

Even with this requirement, Lyft claims that the data regarding how it allegedly spent money to improve WAV service for which it is seeking to be reimbursed, constitutes trade secret information exempt from disclosure. As with Lyft's claims above, Lyft again fails to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. (See TNC Data Decision, p. 29.) The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating anything more. In addition, Lyft's claims that the breakdown of funds expended derives "economic value" 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 Lyft 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. Lyft again has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Lyft also 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 being able to see the data required to be presented, the parties cannot meaningfully assess whether Lyft has met this requirement, and Lyft's request should be denied. Lyft has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

C. Lyft's Claims Fail the Public Interest Balancing Test.

Lyft next claims that the operational WAV data and data regarding how Lyft expended funds listed above is protected by Government Code § 6255(a), an exemption to the CPRA, which is commonly referred to as the "public interest balancing test." (Collins Declaration, ¶¶11, 17.)

But the Commission already has flatly rejected Lyft's argument. In the TNC Data Decision, the Commission stated: "[i]f the information submitter cites Government Code § 6255(a) (the public interest balancing test) as the basis to withhold the document from public release, then the information submitter must demonstrate with *granular specificity* on the facts of the particular information 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. [emphasis added].)

First, ignoring the purpose of the Act, Lyft casually argues that “the public interest in public disclosure of the information is minimal,” and “[t]here is no reason why members of the public also require access to the data.” (Collins Declaration, ¶11.) This is an incredible statement ignoring the public purpose behind the Act, this rulemaking and the creation of a public fund from which Lyft now seeks reimbursement. Lyft cannot be permitted to have its cake and eat it too. Second, Lyft claims that disclosing this information would “harm competition in the TNC marketplace.” (*Ibid.*) The Legislature and Commission have spoken about the need to provide this information to the public to show an increase in WAV service and to be entitled to access the public Access for All Funds. And Lyft has patently failed to meet the requirements of the TNC Data Decision to show with “granular specificity” how the public is served. The public interest in disclosure clearly outweighs Lyft’s conclusory and unsupported claims about “competition.”

D. Lyft’s Complaints Are Not Protected.

Finally, Lyft claims that quarterly complaints about WAV service constitutes “investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,” which are exempt from disclosure under the exemption set forth in Gov’t. Code § 6254(f). (Collins Declaration, ¶13.) If the Commission believed that the complaints were exempt on this basis, it would not require such complaints to be listed in Advice Letters, which are public documents. Thus, Lyft has failed to meet its burden on this claim as well.

Lyft’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. Lyft’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, Lyft failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Lyft 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-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 the unredacted data in Lyft’s Advice Letters contains material errors and omissions, and thus do not demonstrate presence or availability. First, the submittals contain basic math errors, where the sums of the percentages of trips reported on the tabs that begin with “% WAV Trips...” exceed 100% in many cells. (See Attachment 1 to SFMTA et al Protest - Lyft Retroactive Offset Check.) The submittal also leaves many cells in these tabs blank without a percentage reported and it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no ride was requested). Finally, Lyft’s marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act. For these reasons, Lyft has not sufficiently demonstrated presence and availability of their service in any quarter for which they are seeking an offset. (AL 1-3, Exhibit 1.) The CPED should reject Lyft’s requests as being materially incomplete at the very least.

B. Lyft 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. A TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. Because Lyft has redacted all information provided on the tab “Retroactive Response Time Final,” it is impossible to determine if Lyft has met the specified response times for any region or demonstrated an improved level of service in each quarter for which an offset is requested. As a result, CPED must reject the requested offsets.

C. Lyft 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).) San Francisco urges staff to connect with members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Lyft makes a compelling case in this arena. However, we do note that we have received constituent feedback that the “WAV” option is not readily available in the Lyft app unless a rider knows to activate “Access mode” in the app settings. This makes the WAV service invisible to those not in the know. In addition, Lyft’s offset request describes an “in-person meeting” with the SFMTA and SF Paratransit on Sunday, September 8, 2019. The SFMTA’s Accessible Services staff are well known to Lyft. After a reasonable survey of SFMTA staff and our paratransit vendor, we have found no one with any knowledge of any such meeting.

D. Lyft's Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts allegedly 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 Decision, pp. 25-26 (emphasis added).) Due to Lyft's extensive redactions, it is unclear what costs Lyft incurred providing WAV service and there is no showing whether these investments improved WAV service.

V. Conclusion

In sum, Lyft's offset requests in the Advice Letters fail on multiple grounds and should be rejected. First, Lyft 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; do not meet the public interest balancing test and are not "investigatory" files. Moreover, even for the limited data Lyft has shared, it fails to meet the threshold requirements for offsets in the Act and Track 2 Decision. Lyft'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. Its showing of outreach and accounting of expenditures is equally lacking.

Accordingly, San Francisco requests that the CPED reject Lyft's claims for confidentiality; direct Lyft 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 Lyft 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

Attachment

cc: Aichi Daniel, adaniel@lyft.com
Traci Lee, tracilee@lyft.com

ATTACHMENT 1

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Completed by Hour and Day of the Quarter

Q1 2020		WEDNESDAY																							
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Alameda	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	96.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
LOS ANGELES	150.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	105.00%	104.00%	102.00%	100.00%	117.00%	96.00%	100.00%	107.00%	100.00%	100.00%	101.00%	100.00%	100.00%	100.00%	100.00%	100.00%
San Francisco	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	0.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	0.00%

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Completed by Hour and Day of the Quarter

Q1 2020		SATURDAY																							
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Alameda	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	110.00%	195.00%	100.00%	100.00%	100.00%	100.00%	100.00%	105.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Los Angeles	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
San Francisco	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	200.00%	100.00%	100.00%	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Improved Level of WAV Service: Presence and Availability of WAV Service
 Percentage of WAV Trips Not Accepted by Hour and Day of the Quarter

Q1 2020

Q1 2020

MONDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA	20.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	20.00%	20.00%	20.00%	20.00%	20.00%	4.00%	20.00%	20.00%	4.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%
LOS ANGELES										3.00%															
SAN FRANCISCO																									

TUESDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA											4.00%		5.00%	12.00%											
LOS ANGELES																									
SAN FRANCISCO																									

WEDNESDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA												11.00%	12.00%	13.00%	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
LOS ANGELES	100.00%								4.00%	5.00%		3.00%	5.00%	17.00%	14.00%						8.00%	20.00%			
SAN FRANCISCO																									

THURSDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA													12.00%	13.00%	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
LOS ANGELES													3.00%	6.00%							7.00%			50.00%	
SAN FRANCISCO																									

FRIDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA												11.00%	12.00%	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
LOS ANGELES												8.00%		10.00%											50.00%
SAN FRANCISCO																									

SATURDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA													5.00%			6.00%									
LOS ANGELES																									
SAN FRANCISCO																									

SUNDAY																									
County	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	
Sample: ALAMEDA														8.00%											
LOS ANGELES																									
SAN FRANCISCO																						50.00%			

