

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

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

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

**REPLY COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN
FRANCISCO MAYOR'S OFFICE ON DISABILITY ON PROPOSED DECISION ON
TRACK 3 ISSUES**

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Dated: February 23, 2021

I. Introduction

In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively San Francisco or SF) submit these Reply Comments responding to other parties’ comments on the Proposed Decision on Track 3 Issues (PD). It is clear from the comments submitted by all parties in response to the PD that the Commission must significantly reconsider and revise many of its findings. San Francisco maintains its strong opposition to adoption of the PD unless the Commission adopts amendments identified in our comments.

II. Discussion

1. IMPROVED LEVEL OF SERVICE REQUIREMENTS

There is consensus among all parties that the PD’s proposed Trip Completion Standard is erroneous for multiple reasons. First, the Disability Advocates (DA), Los Angeles County Metropolitan Transportation Authority (LACMTA), and SF all agree that a minimum annual threshold for trip completion for WAV service is supported by the record, necessary by statute, and that it should be set with targets that increase each year.¹ As LACMTA notes, the PD sets a benchmark for trip completion that “will fail to provide the effective mechanism for achieving parity of service that the law intends.”² SF agrees with the DA that “benchmarks may initially be set at less than full comparability...But they do need to be set,”³ and continue to support the framework the DA proposed.

Second, all parties who submitted comments, with the exception of Lyft,⁴ also agree that the PD commits legal error in its narrow focus on quarter to quarter improvements.⁵ Doing so fails to recognize the reality of seasonal transportation operations and as a result perversely disincentivizes TNCs to “hold back” service improvements from the beginning of the year to the end in order to

¹ See Disability Advocates Comments on Track 3 PD, p. 3; LACMTA Comments on Track 3 PD, p. 4.

² LACMTA Comments on Track 3 PD, p. 4.

³ Disability Advocates Comments on Track 3 PD, p. 5

⁴ See Lyft Comments on Track 3 PD, p. 9 (This proposal by Lyft has been rejected, and Lyft fails to identify errors in the findings of fact or conclusions of law. Further, Lyft’s comments are confusing as it cites concerns that looking only at a single metric (response times) quarter after quarter “sets up an inherently self-defeating standard that will lead to decreased investment and reduced service to the disability community,” but also states “the most prudent, and the only appropriate, course at this stage is to leave the current Track 2 Offset Time Standard in place.”)

⁵ Disability Advocates Comments on Track 3 PD, p. 5.

receive reimbursements. If the PD is adopted, TNCs likely would adjust their service models because, as Uber warns, it would “inappropriately deem a TNC that demonstrated increased WAV trips (or accepted a higher percentage of trip requests) and sustained timely response times ineligible for an offset.”⁶ Uber’s request to “clarify that satisfying the Offset or Exemption Time Standard means meeting or surpassing” an annual benchmark⁷ in lieu of quarter to quarter improvements is therefore supported by a majority of parties.

Third, there is consensus that measuring improvement by *number* of completed trip requests as opposed to the overall *percentage* of requests completed would not adequately satisfy the need to demonstrate an improved level of service. As Via notes, there is “a high degree of seasonality in the total number of TNC trip requests received each quarter. A decrease in the number of completed trips may be entirely unrelated to the level of service provided by a given TNC.”⁸ And as the DA point out, “[a] TNC that increases the number of WAV trips completed due to seasonal fluctuations or easing of pandemic restrictions...has not achieved greater comparability if the percentage of completed WAV trips relative to non-WAV trips has fallen.”⁹ SF cannot support a suggestion from both Uber and Lyft that the Trip Completion Standard be based on the number *or* percentage of trips accepted.¹⁰ The plain language of the Act states, “[t]hese benchmarks shall include...percentage of trips fulfilled versus trips requested.” The Act clearly says trips fulfilled, not trips accepted, as well as percentage, not number. While it is important to understand the rate of trip acceptance to monitor program progress and TNC performance (hence why the Advice Letters require these data), it is not an adequate metric for improved level of service.

Finally, LACMTA, DA, Uber, and SF all agree that WAV trip requests should be calculated based on the same operating hours as the non-WAV service and it is a technical and legal error not to do so.¹¹ Importantly, the DA note that the PD misunderstood their comments in Track 3 that TNCs should report their WAV operating hours; instead, the PD goes farther to suggest “that availability of

⁶ Uber Comments on Track 3 PD, p. 2.

⁷ *Ibid.*

⁸ Via Comments on Track 3 PD, p. 4.

⁹ Disability Advocates Comments on Track 3 PD, pp. 4-5.

¹⁰ Uber Comments on Track 3 PD, pp. 5-6; Lyft Comments on Track 3 PD, p. 7.

¹¹ See LACMTA Track 3 PD Comments, p. 5; DA Track 3 PD Comments, pp. 5-6; Uber Comments, p. 6.

WAV rides should only be evaluated within the window that WAV rides are offered, no matter how narrow that window may be.”¹² This is not what the DA intended and as Uber acknowledges, “[a]llowing a TNC to do so...would perversely incentivize a TNC to restrict its service hours and service areas to boost its completion (or acceptance) rate. This would directly undercut SB 1376’s goal of expanding and improving WAV service throughout the state.”¹³

2. INCREMENTAL COSTS

San Francisco maintains, along with LACMTA and the DA, that the Commission must amend the PD to clarify that TNCs must subtract collected WAV fares from their offset requests.¹⁴ The DA clarified that “if a TNC is able to recoup the entire cost of providing WAV service, then they must first deduct any fares received for that service.”¹⁵ Not doing so allows the TNCs to double dip, first getting payment from the WAV customer and then again from the publicly funded Access Fund.

3. ADVICE LETTER RULE MODIFICATION

SF also maintains its support for the PD that Rule 7.5.2 should apply to offsets and exemptions. Lyft’s argument that the PD “has no further relevance” on this issue is misplaced.¹⁶ That Lyft and Uber only began submitting unredacted versions of their Advice Letter data after the Commission ordered them to do so underscores the potential need for this rule. While the confidentiality issue is resolved, there may be other disputes warranting use of the suspension period going forward. Use of the suspension period will be unnecessary where the Advice Letters meet the Act’s requirements.

4. ACCESS FUND DISBURSEMENTS

A. The PD’s Definition Of On-Demand Transportation Is Appropriate.

Consistent with the Act, the PD would adopt a reasonable definition of “on-demand transportation” to ensure Access Funds improve wheelchair accessible transportation when and where TNCs are not meeting offset or exemption requirements. Lyft and Uber’s argument that the Commission’s definition is inappropriate fails to cite any legal or factual error. Instead, Lyft complains

¹² Disability Advocates Comments on Track 3 PD, p. 5.

¹³ Uber Comments on Track 3 PD, p. 6

¹⁴ See LACMTA Comments on Track 3 PD, pp.3-4; Disability Advocates Comments on Track 3 PD, p. 7.

¹⁵ Disability Advocates Comments on Track 3 PD, p.7.

¹⁶ Lyft Comments on Track 3 PD, p. 12.

the definition “in no way distinguishes Access Providers from traditional paratransit service”¹⁷ and Uber insists “[t]he Legislature could not have articulated more clearly that “on-demand transportation” is service offered by TNCs.”¹⁸ But, if the Legislature had intended to exclude paratransit providers as access providers or only distributing Access Funds to TNCs, then it would have done so. These late and unfounded concerns are misplaced, and should be rejected.¹⁹

B. Access Provider Requirements Should Not Be The Same As TNC Requirements.

Uber contends that reporting standards should be the same for TNCs and Access Providers because not doing so “will disincentivize TNCs from investing more resources into WAV programs.”²⁰ However, Uber has not demonstrated why the funds available through the offset process are not adequate to incentivize investments. Further, as we have previously stated, if TNCs require more funds to provide WAV service, the per-trip access fee can be raised.

C. Access Provider Eligibility.

The PD raises two major concerns about access provider eligibility. First, SF agrees with the DA’s comments that only allowing Commission-regulated carriers to serve as access providers works at cross-purposes with the Act’s goal of providing equal access for people with disabilities and is unworkable.²¹ Similarly, we agree that this issue cannot be deferred to Track 4, because AFAs, who are experienced in dispersing funds to such providers, must start soliciting proposals for WAV service from access providers soon and this will severely limit eligible applicants. Second, SF agrees with the DA that it contravenes the purposes of the Act to allow TNCs to fail to meet the full standards of providing WAV access in an area, and then turn around and apply to provide a lesser service in the same area as an “Access Provider.”²² The Commission should reject Uber and Lyft’s proposals to modify the PD to allow a TNC to apply as an access provider in areas it receives an offset.²³ It also

¹⁷ *Id.*, p. 14.

¹⁸ Uber Comments on Track 3 PD, p. 9.

¹⁹ See LACMTA Comments on Track 3 PD, p. 3; Via Comments on Track 3 PD, p. 3.

²⁰ Uber Comments on Track 3 PD, pp. 9-10

²¹ Disability Advocates Comments on Track 3 PD, p. 9.

²² *Ibid.*

²³ Lyft Comments on Track 3 PD, p. 11; Uber Comments on Track 3 PD, pp. 11-12.

should reject Lyft’s vague proposal that the Commission “authorize TNCs to apply retroactively to recover the excess expenses incurred during the course of the pandemic”²⁴ as untimely.

5. REPORTING REQUIREMENTS

Uber and Lyft complain the PD should not compare WAV service to non-WAV service but instead should measure WAV service against other providers of accessible service, such as paratransit.²⁵ First, this ignores the fact that parity between TNC WAV and non-WAV users is the only true measure of non-discrimination. Second, it is absurd for the TNCs to argue on one hand paratransit services are ineligible to serve as access providers but that they also are the only comparable standard for TNC WAV service. Third, both fail to understand critical differences between TNC services and federal mandates on ADA paratransit that truly make the comparison apples to oranges; crucially, the requirement that paratransit providers not deny any trip requests. Instead, the Commission is right to consider non-WAV services, but should go further. SF agrees with DA that “[a]ll factors, including percentages of completed trips, should be reported with respect to how service for people with disabilities compares to the level of service offered to the general public.”²⁶

6. ADDITIONAL ACCESSIBILITY ISSUES

San Francisco supports the DA’s hope that the Commission will address making data collection and reporting easily comprehensible and available to the public in Track 4.²⁷ SF does not support Uber’s argument that inspections of vehicles only be made once because it ignores the need for regular inspection of features that are not the same from year to year, like functioning ramps/lifts and restraints, which if not maintained properly can be unsafe.²⁸

III. Conclusion

Based on the foregoing, although San Francisco appreciates some of the findings of the PD, it strongly urges the Commission to revise the findings as stated herein prior to adoption.

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²⁴ Lyft Comments on Track 3 PD, p. 11.

²⁵ See Lyft Comments on Track 3 PD, pp. 14-15; Uber Comments on Track 3 PD, p. 12.

²⁶ Disability Advocates Comments on Track 3 PD; p. 12.

²⁷ *Id.*, p. 13.

²⁸ Uber Comments on Track 3 PD, p.13.

Dated: February 23, 2021

Respectfully submitted,

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