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)

COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO MAYOR'S OFFICE ON DISABILITY ON TRACK 3 PROPOSALS AND WORKSHOP

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I. INTRODUCTION

In accordance with the Amended Scoping Memo and Ruling issued on April 21, 2020, and the Assigned Commissioner's Scoping Memo and Ruling issued on May 7, 2019, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco") submit comments on proposals on Track 3 Issues related to the TNC Access for All Act ("Act"). Our comments also summarize some of our presentation and discussion points, as well as respond to those of other parties, during the Commission's July 24, 2020 Workshop on the TNC Access for All Act Track 3 Issues (hereinafter referred to as the "Workshop"). In addition, the comments are filed and served consistent with ALJ Chiv's email ruling served on July 22, 2020 granting an extension of time pursuant to Rule 11.6 of the Commission's Rules of Practice and Procedure.

San Francisco is eager for the Commission to adopt final performance and reporting requirements that set clear standards and goals that result in equivalent service to wheelchair users as expediously as possible. Our comments focus on how to achieve this through: 1) establishing bright line criteria for TNCs to demonstrate presence and availability; 2) adopting annual benchmarks that clearly measure a TNC's progress towards equivalency; 3) revising reporting requirements so that they are uniform and easy to interpret; and, 4) encouraging flexibility so that access providers can meet the unique needs of communities that do not have adequate TNC WAV service.

Finally and generally, it is important to note that while it has been over a year since the TNC Access for All Fee went into effect, parties have not had access to vital program and performance data that would enable us to fully comprehend any progress made in the first year of the program and better inform final requirements. While Uber and Lyft present arguments supported by the supposed costs and needs of their current programs, because they have improperly redacted and concealed this important information in their offset requests, the Commission cannot and should not consider such arguments in determining offset and exemption criteria and reporting requirements. Instead, the Commission should remain focused on the needs of wheelchair users and set service standard expectations and reporting requirements that demonstrate whether a TNC is consistently improving, and ultimately providing, equivalent service to WAV users.

II. DISCUSSION

A. TNC Offset Requirements

1. Offsets are Limited to Incremental Costs and Should be Calculated Based on General Guidance Rather Than an Exact Formula.

San Francisco has consistently maintained that offsets should only be available to recover for the incremental costs between what it costs to provide standard TNC service and what it costs to provide accessible service, less the fare collected on each WAV trip. CPED, Marin Transit, Disability Advocates, SFTWA, and Uber all agree in their Track 3 proposals that expenses, which qualify for offsets, are limited to incremental costs. While none of the parties presented or felt it is necessary to develop an exact formula, CPED did recommend that TNCs "calculate their incremental costs based on a definition and general guidance from the Commission."[1] The Commission should explicitly require TNCs to demonstrate how the costs they accrue and seek to offset are unique to WAV service and/or more expensive than the same/similar costs accrued providing standard TNC service. For example, CPED's guidance suggests that "subsidizing fares for WAV trip users" is an eligible cost.[2] However, *all* TNC fares are subsidized and WAV riders do pay fares as well. If this is a cost for which a TNC seeks reimbursement, the TNC will need to demonstrate how the subsidy provided to a WAV user costs more to provide than the subsidy provided to a non-WAV user.

Only two parties, Lyft and Via, insist that all costs for which they seek reimbursement subjectively qualify for offset or reimbursement. Lyft focuses on the fact that the legislation states that TNCs may reduce the amount submitted to the Commission by the amounts *spent.* Lyft's narrow focus on the word "spent" ignores the statute's explicit reference to the difference in costs between standard and WAV services, as well as the fact that the legislation requires that eligible costs must explicitly *improve* WAV service.[3] As the Disability Advocates astutely acknowledge, the Act was not written to fund all aspects of TNC service; rather it "is specifically intended to address the fact that there is a higher cost to provision [of] WAV vehicles than standard vehicles."[4] Further, Lyft and Via both argue that they would not be able to reasonably determine actual incremental costs, with Via stating "[i]t

[1] CPED Track 3 Proposal, p. 3
[2] *Ibid.*
[3] Pub. Util. Code § 5440.5(a)(1)(B)(ii).
[4] Disability Advocates Track 3 Proposal, p. 8

would be challenging, if not impossible, to accurately identify a WAV expense versus a non-WAV expense"[5] and Lyft complaining that "[i]t is unclear as a practical matter, how one can accurately and reliably calculate the 'incremental' cost of providing WAV service as compared to standard TNC service."[6] Both of these statements are undermined by Uber's admission that "[c]osts provided within an accounting of funds expended already represent the incremental costs associated with enabling WAV services."[7] Therefore, San Francisco maintains that eligible offset reimbursements are limited to the incremental costs of providing WAV service, that TNCs should be able to calculate these amounts independent of an established "formula," and be able to reasonably support their requests.

2. The Commission Should Adopt the Disability Advocates' Proposal to Create a Threshold Requirement for "WAV Trips Completed" and Consider it in Conjunction with the Response Time Standard.

While the Commission has established bright line criteria for evaluating reasonable response times, it has not established clear criteria in order for a TNC to demonstrate "presence and availability."[8] While response times are an essential criterion to evaluate whether TNCs are providing WAV service that is comparable to TNC service available to the general public, when considered alone, response times are not a meaningful indicator of whether TNCs are truly providing an improved level of service. This is especially true if TNCs are only completing a small number of requests received. Importantly, it was never the intention of the Act to only measure "level of service" by the response times of completed trips. Rather the Act instructs the Commission to measure whether WAV users are receiving *consistently improved, reliable, and available service*.[9] Therefore, San Francisco supports the Commission adopting additional criteria regarding presence and availability.

This is important because, as the Disability Advocates noted, the obligation for presence and availability "has so far been rendered meaningless by the TNCs' initial steps toward implementation of the terms of that [Track 2] Decision."[10] CPED clearly elaborates in its Track 3 Proposal, saying that without additional requirements TNCs are currently "incentivized to avoid the risk of accepting trip

[5] Via Track 3 Proposal, p. 4.
[6] Lyft Track 3 Proposal, p. 3.
[7] Uber Track 3 Proposal, p. 1.
[8] Pub. Util. Code § 5440.5(a)(1)(B)(ii).
[9] *Id.,* § 5440.5(a)(1)(J) (Emph. added).
[10] Disability Advocates Track 3 Proposal, p. 11.

requests that may fall outside of the response time standard because of how changes in the number of accepted WAV trips affect the percentages of trips completed within a given response time, particularly in geographic areas with low numbers of WAV trip requests."[11] Marin Transit also notes that "[l]imiting the Commission evaluation to response times enables TNCs to cherry-pick or select for WAV rides they are willing to provide."[12] Therefore, San Francisco agrees with CPED, Disability Advocates, and Marin Transit that in addition to response times, the Commission must also consider how many rides are being requested and how many are being fulfilled, unfulfilled, canceled, or refused by the driver or rider in order to evaluate "presence and availability."

The Disability Advocates proposed a specific remedy that sets the following minimum thresholds for WAV Trips Completed: 60% through June 2020; 70% for July 2020-June 2021; 80% for July 2021-June 2022; and 90% for July 2022-June 2023. Or, if less than 90% of standard rides are typically completed, then these percentages could be calculated relative to the completion rate of standard rides, such that, by the time the TNC Access for All Act is set to sunset in 2026, the completion rate for WAV rides and for standard rides would need to be comparable in order for a TNC to qualify for an offset.[13] San Francisco supports the Disability Advocates' proposal because it is clear, it provides minimum thresholds that leave room for improvement over the life of the Act, and it sets an expectation that TNCs must provide WAV service that is equivalent or comparable to the service delivered to non-WAV users by the time the Act expires in 2026.

For the same reasons, San Francisco urges the Commission to reject CPED's proposal. First, CPED proposes that TNCs can demonstrate an "improved level of service" by "increasing the total number or percentage of WAV trips accepted and completed compared to the previous quarter" or by "increasing the total number or percentage WAV trips accepted and completed within the response time benchmarks compared to the previous quarter."[14] Parties have previously explained that looking at ridership in this way is not effective because of seasonal variations in ridership. Rather, annual

[11] CPED Track 3 Proposal, p.5.
[12] Marin Transit Track 3 Proposal, p. 4.
[13] Disability Advocates Track 3 Proposal, p. 13.
[14] CPED Track 3 proposal, p. 6.

benchmarks with a requirement to increase the percentage of completed trips, as proposed by the Disability Advocates, would provide a more effective way to evaluate improvement over time.

Second, CPED proposes that the Commission "[e]stablish a 'WAV Request Acceptance' standard that requires TNCs to accept and fulfill at least fifty percent (50%) of all WAV trip requests in a geographic area in order to be granted an offset."[15] It would be antithetical to the purpose of the Act to allow offsets and exemptions to TNCs who only fulfill half of the requests they ever receive and encourage unreliable service where riders cannot get a ride half of the times they need one. CPED also proposes the Commission "[a]ssign equal weight and value (50% each) to satisfaction of the current "WAV Response Time" standard and proposed "WAV Request Acceptance" standard and correspondingly authorize CPED to disallow half of the total requested offset amount for a TNC's failure to achieve one of the standards."[16] San Francisco understands the desire to provide some reward to TNCs showing a level of effort which results in some or any improvement to riders. However, we caution against adopting this proposal as it may encourage providing service that alternates between being reliable but with long wait times and unreliable with shorter wait times. It would be much simpler and much more consistent for riders if TNCs were required to meet the minimum threshold for presence and availability, and then also demonstrate that minimum response times are being met each year and are improving.

Finally, we note that Uber and Lyft both request the Commission consider a range of additional metrics such as an increased number of trips provided, an increased number of hours WAVs are available on the platform, and so on. But parties to this rulemaking cannot assess these proposals because both Uber and Lyft redacted this information in their public offset requests.[17] Notably, Lyft and Uber support these proposals by citing trends in data, none of which are visible or discernible to the public.[18] Because both Lyft and Uber have redacted and concealed this important information from the parties and it cannot be analyzed or confirmed, San Francisco urges the Commission to reject both

[15] CPED Track 3 Proposal, p. 6.
[16] *Ibid.*
[17] Both Lyft and Uber claimed in their Advice Letter offset requests that the redacted information is protected as trade secrets, among other things. San Francisco and the Disability Advocates disagreed, and objected to these claims. The CPED agreed with the objections, and referred the claims to Administrative Law Judge Chiv, where they are pending resolution.
[18] See Lyft Track 3 Proposal, pp. 4-6 and Uber Track 3 Proposal, pp. 2-3.

Lyft and Uber's requests to change the offset requirements. Data that supports offset requests should be public and should be uniform.

Uber's Workshop Presentation on July 24, 2020 brought to light that the data that the TNCs report is not uniform and that each TNC may be using different methodologies to report whether they are meeting established offset requirements. San Francisco shares Uber's concern and urges the Commission to adopt clear uniform definitions and data collection guidance to ensure that TNC reporting is consistent from company to company. Further, San Francisco believes all reporting requirements—for offsets, exemptions, and annual reports—should be provided in a format that is easy to report as well as to analyze and interpret. San Francisco has provided proposals on required reports that would enable this work and has also suggested the Commission develop a public-facing dashboard that summarizes performance. If staff are unable to implement such reporting standards and requirements, the Commission should immediately engage a consultant to assist in collecting and analyzing data to ensure public funds are being properly administered and disbursed.

3. The Commission Should Not Establish Separate Qualifying Standards for TNCs According to Distinguishing Criteria. The Programs in Question are Not Subject to the TNC Access for All Act.

San Francisco questions whether services being provided under contract to a public transit provider are properly considered TNC services at all. To the extent such services are subject to accessibility requirements governed and overseen by the Federal Transit Administration, we question whether they properly fall within CPUC jurisdiction and/or are reached by the TNC Access for All Act. We urge the Commission to examine these questions further and consider not requiring the collection of the TNC Access for All fee in connection with delivery of fully wheelchair accessible services under a contract with a public agency.

B. Access Fund Disbursements

1. The Commission Should Grant Funding to Transportation Carriers That It Does Not Regulate.

San Francisco disagrees with CPED's recommendation that, for the statewide program, the Commission should limit Access Fund disbursements to Commission-regulated entities.[19] CPED states

[19] CPED Proposal, pp. 11-12.

that "[t]hrough AFAs, the Commission created a mechanism for WAV program funding to be made available to locally regulated transportation carriers and other access providers deemed eligible by AFAs."[20] This reasoning suggests that access providers are defined by an administrator's ability to regulate a potential access provider. However, such a limitation was not contemplated in the legislation, nor was it explicitly contemplated by any party in support of establishing AFAs. Rather, San Francisco supported AFAs simply as a way to ensure Access Funds were being distributed based on a thorough understanding of community needs, regardless of the applicable regulatory framework. The distinct licensing requirements of potential access providers should not be a concern because public entities, including SFMTA and SFCTA, are very familiar with programming and distributing funds to entities that we do not regulate.

Further, while CPED may not have direct experience granting funding to providers, which the Commission does not regulate, there is precedent within the Commission to do so. At the July 24 Workshop, Center for Accessible Technology provided a specific example of how the CPUC grants money to wireless providers not regulated by the Commission through the Lifeline Low-Income Subsidy program. In this program, the CPUC utilizes voluntary agreements to grant funding to the wireless providers. Finally, if such a limitation were imposed, it is also unclear which transportation carriers regulated by the Commission would have the capacity or interest to apply for funds and provide wheelchair accessible service. The CPED proposal thus creates more barriers than opportunities for potential riders. For these reasons, San Francisco strongly urges the Commission not to limit eligible access providers only to entities regulated by the CPUC.

2. On Demand Transportation Should be Defined as Transportation Services That Do Not Follow a Fixed Route and/or Schedule.

The Commission seeks to define "on demand transportation" in order to reasonably limit the pool of access providers.[21] But, the needs of the disability community will vary from county to county and the ideal service model will also depend on the amount of funding available for the county. Therefore, in order to be "reasonable," the definition of on-demand transportation should provide local entities in consultation with their local disability community with ample flexibility to fund program

[20] *Ibid.*
[21] D. 20-03-007 at 67.

models and services that make the most sense both logistically and financially to meet the needs of disabled customers in that county. For this reason, San Francisco opposes CPED's recommendation that the Commission define on-demand transportation "to mean WAV transportation that can be requested and fulfilled within 24 hours."[22]

San Francisco also urges the Commission to reject Uber's argument that "[t]rue 'on-demand transportation' is currently only offered by TNCs" and that an access provider "must provide or enable on-demand transportation and receive a TNC permit."[23] There is no basis for this claim as many other transportation modes, including shared mobility options like scooters, bikes, carshare, taxis and paratransit are commonly referred to providing as "on demand" or "demand responsive transportation services." For similar reasons, San Francisco urges the Commission to reject Lyft's unsupported arguments such as "[o]n-demand service also contrasts with street hails, such as those provided by taxi services, in which a prospective passenger hails a ride from a passing or stationary vehicle,"[24] which are essentially also trying to limit the definition of "on demand transportation" to only service provided by TNCs. Therefore, for the purposes of defining access providers, San Francisco maintains that a reasonable limitation would instead be to define "on demand transportation" as services that do not follow a fixed route and/or schedule.

C. Reporting Requirements

1. Annual Benchmarks and Reporting Requirements Should Reflect Progress Towards Providing Equivalent Service to WAV Users in Each Geographic Area.

The Act instructs the Commission to establish annual benchmarks to ensure that WAV passengers are receiving continuously improved, reliable, and available service.[25] San Francisco maintains that the only reasonable benchmarks for WAV service are standards established and measured in relation to the performance demonstrated for riders who do not require WAV services. Instead, Uber and Lyft both propose that the Commission develop benchmarks based on more ephemeral measures, which they have not clearly defined. Both TNCs also urge the Commission to

[22] CPED Track 3 Proposal, p. 7.
[23] Uber Track 3 Proposal, p. 6.
[24] Lyft Track 3 Proposal, p. 9.
[25] Pub. Util. Code § 5440.5(a)(1)(J).

allow TNCs to effectively set their own low bar. For example, Lyft "proposes that the Commission refrain from establishing annual benchmarks until it has collected at least a year of data from the WAV programs that have been launched to date" and insists any other standards would be "arbitrary standards plucked out of thin air."[26] This is illogical. Comparing WAV service to standard service is in no way arbitrary. It is the only method to ensure the delivery of comparable service to WAV users. Uber "strongly urges the Commission against setting yearly benchmarks stringently tied to exceeding artificially created response times thresholds" and instead insists the Commission set benchmarks "at attainable and reasonably achievable levels of service."[27] This argument also makes no sense as most parties have proposed that response time benchmarks should be based on standard WAV service in the same area. Comparisons to standard services are not "artificial."

D. Additional Accessibility Issues

1. All TNC Drivers Should Receive Training on Disability Sensitivity and Passenger Assistance Techniques, Even if a TNC Does Not Provide WAV Service or Seek an Offset or Exemption.

It is vital that all TNC drivers are trained to provide service to passengers with a range of disabilities, regardless of which type of vehicle they operate or whether a TNC seeks an offset or exemption. TNCs already can and do serve many passengers with disabilities capable of riding in sedans and other non-WAV vehicles. For example, as SFTWA explains, this "includes training in transporting wheelchair users, many of whom have folding chairs that can fit in the rear of a conventional vehicle."[28] The Commission should require proof of training from all TNCs.

Further, if a TNC does not seek offsets or an exemption but is operating wheelchair accessible vehicles, then the Commission should require additional training on activities such as deploying lifts or ramps and using securements and require regular inspections to ensure WAVs are safe and operable. Lyft argues that it would be "inappropriate to condition the grant of a TNC permit on compliance with WAV inspection and driver training requirements," even if a TNC does not provide WAV service.[29] Uber argues "on-going WAV vehicle inspection would be unnecessary and

[26] Lyft Track 3 Proposal, p. 13.
[27] Uber Track 3 Proposal, pp. 8-9.
[28] SFTWA Track 3 Proposal, p. 6.
[29] Lyft Track 3 Proposal, p. 18.

redundant, after an initial inspection or certification (e.g. NMEDA Certificate) because the vehicle configurations of a WAV are generally non-modifiable."[30] However, as SFTWA notes, "[v]ehicle inspections are an indispensable component of for-hire transportation regulation."[31] As a regulator of for-hire services, San Francisco agrees—it would be imprudent for the Commission not to require adequate inspection of *all* WAV vehicles in operation even if a company does not seek an offset. Further, even if a WAV passes an initial inspection, essential components can break down without routine maintenance encouraged by regular inspections.

III. CONCLUSION

It is imperative that the Commission establish offset and exemption requirements that effectively improve TNC WAV service until the wheelchair accessible services provided are equivalent to the standard service provided to all customers. The Commission can achieve this by establishing bright line criteria for TNCs to demonstrate presence and availability; adopting annual benchmarks that clearly measure a TNC's progress towards equivalency; and, revising reporting requirements so that they are uniform and easy to interpret. Further, to constructively provide on-demand transportation in areas where TNCs are not meeting the goals of the Act, the Commission should not impose burdensome requirements on access providers or limit potential access providers to only entities regulated by the CPUC.

Dated: August 14, 2020

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[30] Uber Track 3 Proposal, pp. 12-13.
[31] SFTWA Track 3 Proposal, p. 6.

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