

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

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

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

**REPLY COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN
FRANCISCO MAYOR'S OFFICE ON DISABILITY ON WAIT AND SAVE SERVICE**

JEFFREY P. TUMLIN
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
(415) 646-2522
jeffrey.tumlin@sfmta.com

TILLY CHANG
Executive Director
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103
(415) 522-4832
tilly.chang@sfcta.org

NICOLE BOHN
Director
Mayor's Office on Disability
1155 Market Street 1st Floor
San Francisco, CA 94103
(415) 554-6789
nicole.bohn@sfgov.org

Dated: October 7, 2022

INTRODUCTION

Pursuant to the Administrative Law Judge's September 13, 2022 Ruling Requesting Proposals and Comments on Wait & Save Service, 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 Reply Comments on parties' comments and proposals for Wait & Save Service related to the TNC Access for All Act (the "Act").

Lyft Inc.'s ("Lyft's") proposals are not structured to be equitable to wheelchair users or to meet the benchmarks for offsets that have been set by the California Public Utilities Commission ("CPUC" or the "Commission") - they are engineered to ensure that Lyft will be able to complete trips within benchmarks they set themselves. San Francisco does not discourage TNCs ("transportation network companies") from providing WAV ("wheelchair accessible vehicle") riders with competitive fares, the same as they offer standard riders. However, our concern lies in the fact that "Wait & Save" discounts are offered in a way that essentially gives WAV riders no viable option other than selecting a lower level of service, and that Lyft's proposed calculations and standards would continuously reward TNCs for providing WAV users a level of service far inferior to what is provided to the general public. This sets a different expectation level for disabled riders than their non-disabled peers and does not keep with the spirit of the Act. Alternatively, the Commission's proposed calculation could just as easily be manipulated and would not accurately reflect the level of service being provided. The Commission should not entertain any other proposals for offset and exemption standards for discounted trips and they should be determined based on the existing on-demand definition of response time.

Further, we do not recommend that the Commission exclude "Wait & Save" trips from consideration for the purposes of awarding offsets and exemptions. We recognize Lyft's unprompted proposal and the Commission's subsequent ruling created a gray area that may discourage TNCs from offering different fare products while the issue is being considered, since simply providing them while the Commission defers consideration could prevent TNCs from being reimbursed for those associated costs regardless of the level of service provided. It is in everyone's best interest to resolve any uncertainty as quickly as possible. San Francisco joins the Disability Rights Education & Defense Fund, Center for Accessible Technology, Disability Rights California ("Disability Advocates" or

“DA”), San Francisco Taxi Workers Alliance (“SFTWA”), and Lyft in urging the Commission to swiftly issue a ruling so that service level expectations remain clear and that TNCs can continue receiving offsets or exemptions for providing the appropriate level of service.

DISCUSSION

I. RESPONSE TIMES FOR WAIT & SAVE TRIPS SHOULD BE CALCULATED THE SAME AS ALL ON-DEMAND TRIPS

There is consensus from the initial comments on “Wait & Save” service that the alternative calculation posed in the Commission’s ruling is not workable.¹ Instead, Uber supports Lyft’s old proposal,² which has now been rejected by all other parties, including Lyft itself;³ Lyft has provided a new proposal;⁴ and the Disability Advocates, SFTWA and San Francisco concur on using the existing response time standards and calculations.⁵ Since both the Commission’s proposal and Lyft’s first proposal have already been addressed, we will focus on why Lyft’s new proposal is also not suitable, and continue to urge the Commission that response times for “Wait & Save” trips should be calculated the same as all on-demand trips.

Lyft’s new proposal does away with measuring performance on response time for Wait & Save trips and instead recommends adopting “an approach in which a Wait & Save trip is considered to be ‘on time’ if a driver arrives before the delayed pick-up time accepted by the rider.”⁶ Lyft frames the new proposal as more in line with customer expectations. However, neither of Lyft’s proposals are in the best interest of WAV riders. Instead, Lyft’s proposals are engineered to determine its own benchmarks on-the-fly and the company’s concept of “rider expectations,” which they define as a

¹ Uber Technologies, Inc. (“Uber”) Proposals On Administrative Law Judge’s Ruling Requesting Proposals And Comments On Wait & Save Service (“Uber Proposal and Comments”), at 3; Comments of SF on Wait And Save Service (“SF Comments”), at 2; Lyft’s Proposal and Comments On Wait & Save Service (“Lyft Proposal and Comments”), at 2; DA’s Comments On Wait & Save Service (“DA Comments”), at 4; and Comments of SFTWA On Administrative Law Judge’s Ruling Requesting Proposals and Comments On Wait & Save Service (“SFTWA Comments”), at 2.

² Uber Proposal and Comments, at 3.

³ Lyft Proposal and Comments, at 3.

⁴ *Id.*

⁵ DA Comments, at 4-5; and SFTWA Comments, at 3.

⁶ Lyft Proposal and Comments, at 3.

window of time unilaterally determined by Lyft, is nothing more than sleight of hand to substitute their own standards for those set by the Commission.

Both Uber and Lyft repeatedly mischaracterize the choice of Wait & Save as purely one of customer preferences. Lyft states, "... a user willingly chooses to wait a bit longer for a ride..." and "... voluntarily chooses to accept that window to save money."⁷ Uber says Wait & Save trips "depends entirely on the specific passenger's preference."⁸ Both companies ignore their own power in setting the terms of service to get their customers to choose according to the TNC's preference. Simply put, a rider may want a trip as soon as possible, but may be presented such high monetary costs that they are forced instead to pay in time (i.e., a later pick-up time) and uncertainty (i.e., a possibly long arrival time window).⁹ This is especially true for riders with disabilities who are twice as likely to be low-income as someone without a disability and therefore more cost-sensitive.¹⁰ Further, wheelchair users have yet to be shown that TNCs can meet the regular WAV response time benchmarks - so wheelchair users are left with no choice but to take the lower-cost, longer wait time option. Why pay more when you have no confidence the time quoted for a "Standard" on-demand WAV trip will be met? For example, Jane requests a WAV trip, is given a "Standard" response time of 10 minutes for \$35, and a "Wait & Save" response time of 30 minutes for \$25. She has tried to take three trips with Lyft prior to "Wait & Save" being an option. One came in 30 minutes, one did not come at all, and one in 45 minutes. She has no confidence they can arrive in 10 minutes and does not want to pay more just to find out, so chooses the 30 minutes "Wait & Save" trip for \$25. This is not an example of a rider voluntarily choosing to wait longer because of a preference – it is an illustration of the pressures a TNC can apply to influence service outcomes.

San Francisco reminds the parties that the underpinning purpose of the Act is to ensure WAV users have prompt access to on-demand trips, just as the general public TNC user does. To achieve

⁷ Lyft Proposal and Comments, at 3-4.

⁸ Uber Proposal and Comments, at 3.

⁹ San Francisco does not take a position on the existence of Wait & Save or similar products. On the one hand, more options are typically better for consumers. On the other hand, "priority" service products can be discriminatory. San Francisco opposes, however, setting separate standards for them, and specifically the standards proposed by Lyft and supported by Uber.

¹⁰ Employment and Disability Institute at Cornell University, <https://www.disabilitystatistics.org/>

this, the letter of the Act calls on the Commission to develop specific benchmarks that ensure improved level of on-demand service to WAV users. Lyft's proposal fails here, too - rather than seeking to improve service for WAV users, Lyft seeks to define standards so flexible there may as well not be standards. Rather than improve response times, under Lyft's proposal, a TNC could simply present their customers with response time window wide enough to accommodate whatever level of service is convenient for the TNC.

To follow either of Lyft's proposals would be contrary to the letter and spirit of the Act. We concur with the Disability Advocates that "...the Commission should be measuring whether response times for WAV rides are reasonably comparable to response times for rides offered to the general public"¹¹ and urge that the Commission's Decision should clarify that response times for Wait & Save trips should be calculated the same as all on-demand trips.

II. WAIT & SAVE WAV TRIPS SHOULD NOT BE EXCLUDED FROM CONSIDERATION FOR THE PURPOSES OF DETERMINING MONIES APPROVED FOR AN OFFSET OR EXEMPTION

Uber is the only party that supports excluding Wait & Save Trips from being eligible for offsets/exemptions.¹² The company recommends "Any direct costs associated with those trips would...be excluded from any offset request" but does not provide a method for calculating what would be eligible.¹³ The appropriate calculation is not obvious, either - the DA rightly point out the difficulty of extricating direct Wait & Save trip costs from the direct costs of providing other WAV trips given that TNCs have generally chosen to contract out provision of the entirety of their WAV services to other organizations.¹⁴

¹¹ DA Comments, at 4.

¹² Uber Proposal and Comments, at 3; while Lyft opposes at 4, DA Comments, at 5 and SFTWA Comments, at 3.

¹³ Uber Proposal and Comments, at 3.

¹⁴ DA Comments, at 5.

Uber also argues that all “programmatic” costs should be allowable, whether or not they directly supported Wait & Save trips.¹⁵ Based on our review of Lyft’s and Uber’s Advice Letter data, operational or “programmatic” costs may make up only 2% of Uber’s costs but 22% of Lyft’s.¹⁶ This is a large range and would allow Lyft in particular to claim a significant amount of monies for efforts that do not actually support service that met established standards.

Hence, it would not be wise to exclude Wait & Save service costs from being eligible without a definite and accurate methodology or formula. Further, we agree with the Disability Advocates that excluding Wait & Save trips from consideration for offsets and exemptions would mean that response times that TNCs were required to report would be far lower than those actually experienced by riders.¹⁷ Therefore, we do not support Uber’s proposal. If the Commission does decide to exclude these trips from consideration, it would require a more precise calculation than Uber has offered and agree with the Disability Advocates that it would require a very close review of “accounting to ensure that [a TNC] is not asking to offset expenditure of funds that improved the accessibility of Wait & Save rides.”¹⁸

San Francisco notes SFTWA’s caution that if the Commission does not include Wait & Save trip performance for consideration of offsets and exemptions “there should be a reduction in the amount of any offset in proportion to the number of Wait & Serve [sic] trips compared to all trips included in the calculations” and that exemptions should also not be granted if Wait & Save trips are not included in the calculations.¹⁹ San Francisco maintains that the Commission should consider the entirety of WAV services being provided when determining offsets and exemptions and we do not

¹⁵ Uber Proposal and Comments, at 4; “Any programmatic costs that are not directly associated with [Wait & Save] trips should not be impacted, as the greater program should not be penalized as a result of the temporary exclusion of these trips.”

¹⁶ Transportation Network Company (TNC) Expenses Dashboard, <https://www.sfmta.com/reports/transportation-network-company-tnc-expenses>

¹⁷ DA Comments, at. 4.

¹⁸ *Id.*, at 6.

¹⁹ SFTWA Comments, at. 3.

support calculating proportions of offsets for this reason.²⁰ We also recognize Lyft has insinuated they would likely not offer Wait & Save trips if they are not eligible for offsets/exemptions.²¹ However, we agree with the SFTWA that, in the event Lyft or any other TNC does offer this fare product and the corresponding trips are exempted from consideration of offsets and exemptions at the Commission’s discretion, it would also need to establish some safeguards to ensure that TNCs do not have the opportunity to game the system. As the DA have explained, “...a TNC like Lyft can...control how much inefficiency is introduced into its system by [its] two-tier pricing system, because it can make people more or less likely to request a higher priority than they would otherwise get.”²² The Commission would need to closely consider how to structure offset and exemption requirements so that TNCs could not create inefficiencies in order to cherry-pick rides that are guaranteed to meet the standards. As the Disability Advocates suggested, this would include potentially establishing “additional standards regarding allowable price differences and time differences”²³ for example.

III. OTHER ISSUES WITH RESPECT TO DEFERRING THE INCORPORATION OF WAIT & SAVE TRIPS INTO THE ACCESS FOR ALL PROGRAM ON AN INTERIM BASIS

A. What should the Commission monitor with respect to Wait & Save WAV trips, if anything, while deferring consideration?

As stated, most parties agree with San Francisco and urge the Commission not to defer consideration of Wait & Save trips.²⁴ San Francisco agrees with SFTWA that “no further information is needed for the purpose of incorporating Wait & Serve [sic] trips into the Access for All Program in the same manner as any other “on-demand” request”²⁵ and with the Disability Advocates that only monitoring “response times for trips for which the rider has paid more for a higher priority would artificially and inaccurately lower” Lyft’s overall response times and not provide a clear picture of

²⁰ Comments of SF on Track 5A Proposals, at 7-9.

²¹ Lyft Proposal and Comments, at 4.

²² DA Comments, at 3.

²³ *Id.*, at. 5.

²⁴ SFTWA Comments, at 4; Lyft Proposal and Comments, at 4; DA Comments, at 5-6.

²⁵ SFTWA Comments, at 4.

TNC WAV performance in California.²⁶ We also agree with SFTWA that “in the longer term, the Commission should monitor when, where and how the Wait & Serve option is offered, to ensure it is not being done so discriminatorily.”²⁷

Uber is the lone supporter of deferring consideration and suggests the Commission should use this time to monitor the number of Wait & Save WAV trips being performed by TNCs and only incorporate them in the program “[i]f the number of trips becomes substantial.”²⁸ Uber is in the minority and does not even propose a threshold for what would be “substantial.” Therefore, SF recommends the Commission dismiss this suggestion. However, we agree with the DA that if the Commission ignores the overwhelming lack of support for the delay, and for some reason TNCs are still offering the Wait and Save fare product for WAV trips, the Commission should monitor their performance closely and continue to collect data on them in the same manner as on-demand trip requests and trips.²⁹

B. What data regarding Wait & Save WAV trips should be reported to the Commission?

Lyft proposes weaker reporting requirements for Wait & Save trips than are currently set for on-demand and pre-scheduled trips,³⁰ the adoption of which would result in a lack of crucial information such as time of day and day of week trips are provided, complaints, and most crucially, response times of any sort – such as quoted response times for “Standard” and “Save” fares; time between trip request and trip delivery; or even response time based on a negotiated window. The Commission and the program would benefit from more transparency on Wait & Save trips, not less, and in this circumstance, it appears Lyft’s proposal is an opportunity for them to divulge even less about WAV service than they already do. We concur with the Disability Advocates that TNCs should be required to report the same for Wait & Save trips as other trips, “including response times, the

²⁶ DA Comments, at 6.

²⁷ SFTWA Comments, at 4.

²⁸ Uber Proposal and Comments, at 4.

²⁹ DA Comments, at 5-6.

³⁰ Lyft Proposal and Comments, at 4-5.

presence and availability of rides, and costs associated with Wait & Save rides.” To further promote transparency, we also support the DA’s proposal that the Commission require TNCs to report the fares and wait times offered for each type of ride, including the same information for non-WAV rides.³¹

C. What are the consequences of delaying incorporation of Wait & Save WAV trips into the offset and exemption calculations?

Comments from the Disability Advocates and SFTWA support San Francisco’s arguments that delaying incorporation of “Wait & Save” trips into the offset and exemption calculations would result in a confluence of undesirable consequences. Only requiring TNCs to report response “times for trips for which the rider has paid more for a higher priority” would allow TNCs to “artificially and inaccurately lower overall response times that [they] report”³² and lead to “distorted results. . . [that] could result in the award of benefits to undeserving recipients.”³³

Lyft also contests that one of the main consequences of delaying incorporation is that in the meantime, TNCs will not offer the “Wait & Save” service since they are unsure of whether they will be reimbursed,³⁴ meaning that WAV riders would not have access to discounted fares in the meantime. San Francisco agrees with Lyft only insofar that it would be appropriate for the Commission to issue a ruling that clarifies offset and exemption standards for all rides as soon as possible so that operators can provide service and be reimbursed accordingly. However, the potential delay itself is not an argument to support Lyft’s proposal for calculating performance. Instead, the Commission has an opportunity to regulate transportation opportunities for people with disabilities in the arena by not forcing this community of potential WAV riders, many of whom are lower income and people of color, to pay more for better service. “Better” service, which should be noted, only needs to meet response time standards which are generally inferior to the standard service a standard TNC rider would receive for the same price.

³¹ DA Comments, at 6.

³² *Id.*

³³ SFTWA Comments, at 4-5.

³⁴ Lyft Proposal and Comments, at 5.

IV CONCLUSION

Fundamentally, TNCs should not be given dispensation to provide substandard response times for alternatives such as “Wait & Save” before they have first proven that they can even meet the response time benchmarks for regular WAV service. There is no such track record and without this proof, all alternative calculations or standards are just a mechanism to provide poor service that does not meet the current requirements. San Francisco respectfully requests that the Commission move on from this distraction and clarify that all on-demand trips are incorporated in the Access for All Program and subject to the same offset and exemption requirements intended to improve WAV service.

Dated: October 7, 2022

Respectfully submitted,

By: _____ /s/
Jeffrey P. Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency
Jeffrey.Tumlin@sfmta.com

By: _____ /s/
Tilly Chang
Executive Director
San Francisco County Transportation Authority
tilly.chang@sfcta.org

By: _____ /s/
Nicole Bohn
Director
Mayor’s Office on Disability
nicole.bohn@sfgov.org