

**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 2 PROPOSALS AND OCTOBER 10, 2019
WORKSHOP**

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I. Introduction

In accordance with the Amended Scoping Memo and Ruling issued on August 15, 2019, 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 these Comments on selected items addressed in other parties’ proposals on Track 2 issues. Our comments also summarize our presentation and discussion points, as well as respond to those of other parties, during the Commission’s October 10, 2019 Workshop on the TNC Access for All Act (hereinafter referred to as the “Act”).

Our comments address how the Commission can implement publicly accountable response time benchmarks and goals for TNC remittance offsets and exemptions, which demonstrate clear progress and improvement over time towards providing accessible service. Our recommendations are intended to shape a program that achieves equal access to TNCs for wheelchair users in a timely manner. Further, they provide guidance on how the Commission can ensure the process is transparent and accountable to consumers who are paying the Access for All fee to support wheelchair accessible service, both through appropriately verifying and authorizing offsets to TNCs and by providing local entities with reasonable discretion to fund access providers capable of filling service gaps left by TNCs. Finally, our comments provide guidance on the appropriate safety and training requirements that should be required of all permitted TNCs, regardless of whether they seek offsets or exemptions from remitting fees to the TNC Access for All fund.

II. Criteria for Offsets and Exemptions

A. **San Francisco Supports the CPED Staff Proposal to Establish WAV Trip Response Time Standards and Offset Service Levels for use in Determining TNC Offset Requests.**

CPED’s staff proposal offers the appropriate framework for evaluating whether TNCs are providing effective service.¹ CPED’s specific proposed response times and benchmarks are supported by response time data for the general public in each geographic area, which is the most reasonable

¹ See Consumer Protection and Enforcement Division Staff Proposals for Proceeding 19-02-012 (Track 2) (“CPED’s Track 2 Proposals”), pp. 8-10, Table 1.

measure of whether TNCs are providing equal access to riders who require wheelchair accessible service.² San Francisco appreciates the complex analysis that staff performed to formulate response times that preserve confidentiality, while offering consumers clear and relatable standards. For this reason, the CPED’s proposed WAV response time standards are inarguably the minimum standards to apply when determining TNC offset and exemption requests. In addition, the framework provides practicable and progressive offset service level benchmarks for TNCs to ramp up their WAV services and provide a continuously improved, reliable, and available level of service to wheelchair users consistent with the Act. In addition, the benchmarks reflect a sensible increase in service levels year over year and also offer TNCs flexibility by providing an alternative to meet the benchmark at a lower threshold for a larger percentage of trips. For these reasons, we support the CPED staff’s proposed WAV Trip Response Time Criteria for TNC Offsets.

B. Availability of WAV Service and Trip Fulfillment are Additional Key Criteria to Determine Whether TNCs are Providing an Improved Level of Service and Are Eligible for Offsets or Exemptions; Tracking Reasons for Cancellations, Either by Rider or Driver, is Essential.

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. However, response times are not a meaningful indicator of whether TNCs are truly providing an improved level of service without context, including how available the service is, how many rides are being requested, and how many are being fulfilled, unfulfilled, canceled or refused by the driver or rider. Exhibit 1 of San Francisco’s Proposal provides guidance on how TNCs should report publicly on these criteria in order for the CPUC to determine whether TNCs have are providing improved levels of service.

Further, we support the comments of the San Francisco Taxi Workers Alliance (SFTWA) and the Disability Advocates that recommend the CPUC carefully consider how trip fulfillment and response times are calculated. The SFTWA recommends that “[p]assenger cancellations should also be considered as requests, at least to the extent that they occur after the prescribed response time has elapsed.”³ The Disability Advocates emphasize the practical importance of this recommendation,

² *Id.*

³ *See* Proposals of the San Francisco Taxi Workers’ Alliance (SFTWA) on Track 2 Issues Pursuant to Assigned Commissioner’s Scoping Memo and ruling and Amended Scoring Memo and Ruling (“SFTWA’s Track 2 Proposals”), p. 5.

stating, “[p]eople with disabilities have reported to us that drivers cancel requests for WAV rides with some frequency, even after the person requesting the ride has been waiting.”⁴ In addition, “[a] passenger who has waited an unacceptably long time for TNC service may find another way to travel, or may abandon the trip entirely. Such rider cancellations, particularly if the rider initially requested a trip more than once, may well reflect service failures that must be counted in TNC data.”⁵ The Disability Advocates also offer the reasonable solution that “the response time in such cases must start from when the person first requested a ride.”⁶ Therefore, tracking the reasons for cancellations is vitally important and should be included in any data reporting by TNCs to the CPUC.

C. San Francisco Supports the CPED Staff Proposal to Authorize TNCs to Request Exemption Upon Meeting Designated Response Time Standards, But Also Require TNCs to Continue to Report Data Quarterly.

As required by the Act, TNCs that meet the requirement that 80% or more of WAV trip requests are fulfilled by the TNC within the geographic area’s WAV response time standard are eligible for an exemption for one year (four consecutive quarters). Consistent with the Act, we support the CPED staff proposal that TNCs must meet the response time standard for one year (four consecutive quarters) to be eligible for an exemption, and that TNCs should be authorized to apply annually on a schedule that aligns with Access Fund disbursements.⁷ We also concur with the CPED staff proposal that a TNC authorized to receive an exemption must submit the same information required for an offset request, as well as the Fee Statement that must accompany quarterly remittances to the Access Fund.

Moreover, consistent with our proposal and previous comments, we agree with the SFTWA that the CPUC should keep in mind that the 80% threshold for response time compliance is a minimum. San Francisco has recommended a 90% threshold for year four (4) of the program and beyond. In addition, SFTWA recommends that the CPUC “should consider a higher threshold,

⁴ See Track 2 Proposals of Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (“Disability Advocates’ Track 2 Proposals”), p. 4.

⁵ *Id.*, pp. 5-6.

⁶ *Id.*, p. 4.

⁷ See CPED’s Track 2 Proposals, pp 14-15.

especially for large urban areas where WAV demand service will be the greatest” and the expected level of service may be higher.⁸ We support the CPUC staff taking this into consideration.

D. Uber and Lyft’s Proposed Criteria for Determining Offsets and Exemptions Will Not Demonstrate Improved WAV Service.

Uber and Lyft both argue against focusing on response times when determining whether TNCs are eligible for offsets or exemptions. Instead, Uber recommends that the “critical overarching criteria to consider is whether the TNC is demonstrating that its WAV offerings on its platform continue to serve more riders, even if wait times remain the same.”⁹ This metric does not clearly show an improvement in service overall, and instead could represent an increase in service for only a small part of the population. For example, a TNC may set up a partnership to provide subsidized rides to patients of a certain health care provider or managed care organization. These rides may be scheduled in advance and be more attractive to WAV operators contracting with TNCs. The result may be an increase in rides provided by a WAV offering on a TNC’s platform, but it would not reflect an actual improvement in service to wheelchair users generally in that geographic area.

Similarly, Lyft recommends “that improvement must be measured not against a universal baseline applicable to all TNCs, but against the TNC’s own performance in the immediately preceding quarter.”¹⁰ This approach is not useful because it fails to provide clear and accountable guidelines to compel TNCs to provide truly equal access. Moreover, as highlighted by CPUC staff during the October 10, 2019 Workshop, it could further complicate and delay the CPUC’s rulemaking process as it would require even more time to collect data and establish standard response times.

Essentially, because proposals from both Uber and Lyft would allow TNCs to offset expenses without necessarily providing high-quality on-demand service to wheelchair users in a reasonable timeframe, San Francisco urges the CPUC to reject these proposals. Instead, as noted, response times and trip fulfillment are the appropriate criteria for determining offsets and exemptions.

⁸ See SFTWA’s Track 2 Proposals, p. 5.

⁹ See Uber Technologies, Inc. Proposal on Track 2 Issues (“Uber’s Track 2 Proposals”), p. 2.

¹⁰ See Lyft Proposals Regarding Track 2 Issues (“Lyft’s Track 2 Proposals”), p. 4.

III. Offset and Exemption Requests

A. A Tier 3 Advice Letter Process, including a Subsequent Commission Resolution, for Initial Offset Requests is Necessary to Meet the Goals of SB 1376.

As stated in our proposal, San Francisco supports Disability Rights Advocates' recommendation, including comments at the October 10, 2019 Workshop, that the CPUC should require a Tier 3 Advice Letter process to evaluate offset requests. San Francisco agrees with the CPED staff proposal that an advice letter process is the appropriate method through which to submit offset requests as it provides opportunities for public review and response, but asserts that a level of review higher than a Tier 2 advice letter is warranted.

CPED proposes requiring TNCs to submit advice letters that are subject to disposition of the reviewing industry division (CPED), with an opportunity for Commission review.¹¹ CPED staff suggests that approval of offset requests "require[s] only ministerial review by Commission staff and would therefore be appropriate for CPED's disposition."¹² At the Workshop, Commission Staff suggested that a Tier 2 advice letter balances the need for a thorough advice letter review with the need for a timely process.

While we recognize the need for efficiency, we agree with the Disability Advocates that initial offset request by TNCs require a higher level of review. TNCs must demonstrate that they are actively improving WAV service in order to qualify for an offset. This is not a ministerial determination, at least on an initial basis. Thus, to ensure TNCs are properly meeting benchmarks to qualify for offsets, initial requests warrant full Commission review. For this reason, a Tier 3 advice letter process for initial offset requests, including a subsequent Commission resolution, is necessary to meet the goals of SB 1376.

As noted in both San Francisco's and the Disability Advocates' proposals, subsequent requests by a TNC that has previously been approved for an offset, exemption, or funding allocation may not require such a high level of review. For those subsequent requests, it may be appropriate for the Commission to require only Tier 1 or Tier 2 review of TNC requests.

¹¹ See CPED's Track 2 Proposals, p. 2.

¹² *Id.*, p. 3.

B. For Offset Requests, All Required Reporting Information Should be Publicly Available and TNCs Must Provide Additional Confidential Back-Up Datasets to Verify the Requests.

1. Offset Requests Must be Publicly Available.

The CPED staff proposal recommends that the Commission require the data in an offset request be presented publicly.¹³ Uber’s proposal recommends that “[g]iven the sensitive nature of the TNC industry, this information should not be publicly made available.”¹⁴ Lyft expressed a view similar at the October 10 Workshop.

San Francisco agrees with the CPED staff proposal because a TNC seeking an offset is seeking to retain funds collected for a public purpose. Therefore, the offset reports must be publicly available. To address Uber’s and Lyft’s concerns, confidentiality can be preserved for the TNC’s customers by reporting data such as ridership, trip fulfillment, complaints, and response times, at an aggregate level and, per the CPED staff proposal, present a categorized accounting of funds while providing auditable financial documentation to the Commission.¹⁵ Exhibit 1 of San Francisco’s Proposal provides an example of how the CPUC can ask TNCs to report data at an aggregate level in a way that would be helpful to the public in understanding whether TNC WAV service meets the established criteria without compromising personal data privacy.

2. TNCs Should Submit Separate Confidential Datasets on a Quarterly Basis to Support the Aggregated Reporting Required in the Offset Request.

In addition, as the CPED staff proposal recognizes, “[f]or purposes of compliance verification and analysis for the required Report to the Legislature on compliance and the effectiveness of the program though...the Commission may need to obtain additional information from TNCs.”¹⁶ As San Francisco knows from experience as a regulator of multiple transportation providers, it will be necessary for CPUC to collect comprehensive datasets, including the proposed sets of information below on a regular basis, to effectively verify the offset requests TNCs will likely submit. Therefore, the CPUC should require TNCs to submit

¹³ *Id.*, p. 8.

¹⁴ *See* Uber’s Track 2 Proposals, p. 7.

¹⁵ *See* CPED’s Track 2 Proposals., p. 11.

¹⁶ *Id.*, pp.10-11.

separate confidential datasets, as proposed below, on the same schedule as offset requests are due to support the aggregated reporting required in the offset requests. Without this level of detail provided to the CPUC on a regular basis to back-up TNC's offsets requests, public confidence in the implementation of the Act will easily be undermined.

Per San Francisco's prior comments, TNCs must submit the following data to the CPUC in order for staff or an independent entity to perform proper oversight of the TNC Access for All program:

- **Trip records.** Including a unique vehicle identification number, detailed origin and destination information; timestamps and locations of the beginning and end of phases I, II, and III; vehicle miles traveled in phases I, II, and III; fare; party size; whether the vehicle is wheelchair accessible, whether the passenger has a wheelchair, and vehicle type (zero-emissions, non-zero-emissions)
- **Telemetry records.** Including a unique vehicle identification number, vehicle type (zero-emissions, non-zero-emissions), location (lat/lon), timestamp, acceleration, status (phase I, II, III), and number of passengers at 1-second resolution, and reason for cancellation.
- **Cancelled or declined trip records.** Including a driver identification number, timestamp, driver location, requested pick-up location, requested drop-off location, wheelchair requirements of the requestor
- **Driver information.** Including insurance status, background check status, and safety/accident data.

C. The Commission Should Only Allow Offsets for Expenses that are Clearly Related to the Additional Costs Related to Providing Wheelchair Accessible Service.

San Francisco has consistently maintained that offsets should only be allowed for the incremental costs between what it costs to provide standard service and what it costs to provide accessible service, less the fare collected on each WAV trip.

Consistent with this position, Disability Rights Advocates explained at the October 10, 2019 Workshop that the purpose of the statute is to offset the increment between standard rides and WAV rides, not to offset the entire cost of the WAV ride. For example, an incentive paid to drivers of WAV vehicles that other drivers do not receive would qualify for an offset. Administrative or other costs that are inherent in the business of providing transportation network services would not qualify, even if they are given the title “WAV” or “Access.”

Administrative costs should only qualify for offsets if TNCs can demonstrate that they represent a cost above and beyond the administration required for standard rides. Further, TNCs should account for the fare they collect from each WAV ride. TNCs are allowed to keep the revenue from each WAV ride, and can use the offsets to cover any difference between the cost of providing a WAV ride and a standard ride. Allowing them to use the offsets for anything else would represent a windfall to the TNCs.

Per our proposal, some examples of appropriate expenses may include:

- Vehicle subsidies both for capital and maintenance per vehicle
- Any amounts paid per trip for wheelchair pick-ups
- Any other amounts spent for direct costs such as training to provide the WAV service or enhancements to accessible vehicles made based on driver or rider feedback

Per proposals from Uber and Lyft, a non-exhaustive list of expenses cited in TNC proposals that *may not be* appropriate include:

- **Investments in market research and community engagement¹⁷ and Marketing Costs, including external creative and design agencies, print materials:**¹⁸ TNCs should not be able to claim offsets for expenses that are inherent to their business model, such as marketing, unless they can demonstrate that the specific type or extent of market research or community engagement to reach people with disabilities costs more and required unique and extraordinary measures.
- **Technology investments¹⁹ and engineering costs.**²⁰ All mobile apps and websites are already required to meet applicable website accessibility compliance guidelines, e.g. WCAG 2.0AA and therefore San Francisco would expect TNCs would maintain this requirement. The Act directs TNCs to ensure their main service (a mobile app) connects riders with a transportation service that meets their need, i.e. wheelchair

¹⁷ See Uber’s Track 2 Proposal, p. 6.

¹⁸ See Lyft’s Track 2 Proposal, p. 14.

¹⁹ See Uber’s Track 2 Proposal, p. 6.

²⁰ See Lyft’s Track 2 Proposal, p. 14.

accessible vehicles. Therefore, investments in this fleet or service that go beyond what has traditionally been provided, i.e. engaging a driver partner with a sedan, likely qualify. However, improvements to their existing driver and rider mobile apps are an existing cost of a TNC's business model and should not be reimbursed.

- **EV charging infrastructure, battery replacement, and associated costs:**²¹ There is no clear nexus between electric charging infrastructure and providing wheelchair accessible service. To our knowledge, the only electric vehicles in operation as TNC vehicles are: 1) privately owned or operated through a TNC agreement with a third party, such as a car rental company; and 2) not wheelchair accessible. Therefore, the costs associated with EVs are not an eligible expense for offsets.
- **Cleaning supplies/services, telematics hardware, etc.:**²² These expenses are not unique to the operation of wheelchair accessible vehicles and should not be considered as investments eligible for an offset.

IV. Safety and Training

A. **All TNCs Permitted by the CPUC Should be Responsible for Satisfying Safety and Training Requirements that Focus on Accessibility, Regardless of Whether They are Seeking an Offset or Exemption from Remitting Fees to the TNC Access for All Fund.**

The CPED staff proposal recommends that TNCs should be required to present evidence of WAV safety inspections and WAV driver training in offset requests and be able to certify that: 1) they require all WAVs are to be inspected annually and approved for conformance with the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles; 2) all applicable vehicle safety requirements for WAVs are met and continually maintained, and 3) that WAV drivers are required to receive specific training on transporting people with disabilities.²³ San Francisco agrees with this in principle, as all drivers should receive training and all WAV vehicles should be inspected.

Nevertheless, we concur with SFTWA that the CPED staff proposal does not go far enough. Driver training and the safety of vehicle accessibility equipment should be part of the permitting process for TNCs and other service providers operating WAVs, not only be required of those seeking offsets.²⁴ Similarly, we support the Disability Advocates proposal that “*all* drivers have training on disability issues relevant to their work (such as the fact that people have the right to bring service animals in a vehicle, that people with disabilities are the experts

²¹ *Id.*, p. 13.

²² *Id.*

²³ See CPED's Track 2 Proposals, pp. 11-14.

²⁴ See SFTWA Track 2 Proposals at p. 4.

on their own needs, how to communicate with people who have sensory disabilities, and so forth), since *any* drivers may be requested to give a ride to a person with a disability.”²⁵ In addition, we agree with Lyft’s comment that “WAV driver education and vehicle inspection prior to making WAVs available on TNC platforms.”²⁶ In contrast, Uber vaguely states that TNCs should be able to satisfy these requirements through a partnership with a WAV provider, and generally claims that “a WAV provider would have the expertise to satisfy such requirement of their vehicles and employee obligations.”²⁷ To the extent Uber’s comments conflict with San Francisco’s recommendation that safety and inspection trainings be required at the permitting level as described above, we disagree with Uber’s proposal.

Finally, regarding vehicle safety inspection requirements specifically, San Francisco supports Marin Transit’s comments that:

Vehicle safety inspection requirements should include periodic inspection and maintenance of lifts, ramps, and securement devices per the manufacturer’s recommendations or more frequently. Inspection and maintenance should be completed by the manufacturer or other entity licensed to provide inspection and maintenance services. Drivers should be trained and required to perform daily vehicle inspections prior to the start of each shift.²⁸

B. Guidance for standards on driver training and vehicle safety inspection.

At the October 10, 2019 Workshop, CPED staff requested that San Francisco provide standards that it employs in its paratransit practices for both driver training and vehicle inspection. The following provides guidance on San Francisco’s standards. The Community Transportation Association of America’s (CTAA) Passenger Assistance Safety and Sensitivity (PASS) Trainer and Driver Certification program is an industry standard curriculum for passenger assistance, disability awareness & sensitivity training and is the standard in San Francisco (<https://ctaa.org/pass/>). While standards for vehicle safety inspection can vary for a variety of reasons including make/model and types of assistive equipment available in the market, typically, equipment should be maintained in accordance with OEM (Original

²⁵ See Disability Advocates’ Track 2 Proposals at p. 15.

²⁶ See Lyft’s Track 2 Proposals, p. 16.

²⁷ See Uber’s Track 2 Proposals, p. 9.

²⁸ See Opening Comments of Marin Transit on Track 2 Issues, p. 6.

Equipment Manufacturer) specifications and thus be inspected to those very standards and specifications. In addition, San Francisco recommends having outside independent inspections at least periodically and randomly to ensure equipment is being properly maintained.

V. Access Fund Administration

A. San Francisco Supports the CPED Staff Proposal that TNCs May Apply for Access Fund Money as Access Providers if they have Already Received an Exemption in that County, with Conditions.

San Francisco agrees with the CPED staff proposal that TNCs that have received an exemption in a geographic area may apply as an access provider in that area to potentially receive Access Fund money remitted by other TNCs. However, to seek such funds as access providers, TNCs should be required to demonstrate that: 1) any fees collected while authorized to receive an exemption have been exhausted providing wheelchair accessible service, and 2) additional investments from the Access Fund will result in further improved response times.

B. The Commission Should Develop an Application Process to Engage Local Entities as Access Fund Administrators that is not Overly Burdensome and Appropriately Compensates Local Entities for Administrative Staff Time.

San Francisco supports the CPED staff proposal, which recognizes that local entities, such as MPOs and RTPAs, which are responsible for creating coordinated public transit human services transportation plans for their regions, are the most appropriate entities to assist the CPUC in administering the access fund, including developing local criteria and selecting access providers.²⁹ We also agree that an application process for local entities interested in serving in this capacity is reasonable in order to provide structure and clear expectations. Because it is in the CPUC's best interest to engage these entities as Access Fund administrators, the application process should not be overly burdensome or require an agency to have specialized knowledge of the CPUC's processes. In addition, San Francisco supports compensating local entities for staff time, as authorized by the Act, in order to provide administrative support as an Access Fund provider; the CPUC should set aside monies from the Access Fund to fund local entities' requests.

²⁹ See CPED's Track 2 Proposals, p.16.

C. The CPUC Should Impose Similar Basic Requirements on Access Providers as on TNCs to Ensure Public Safety and Protect Consumers.

San Francisco supports the CPED's recommendations that Access Fund Administrators should meet the same basic requirements for driver training and WAV safety inspections as TNCs.³⁰ (See Section IV.A above.) However, regarding data collection, we encourage the CPUC to consult local entities on the appropriate frequency and granularity of data that should be required from access providers. Access providers in many areas where Access Fund monies are available may be equipped to provide accessible service but may not be equipped to provide the level of detail TNCs regularly collect and provide to request an offset or exemption. Further, access providers may have fewer resources at their disposal to provide the same level of data, especially if they are relying solely on Access Fund monies.

D. WAV Response Time Standards Should Not be used to Inform the Annual Disbursements to Access Fund Administrators Made by the Commission.

The CPED staff proposal recommends that the information collected from access providers should inform the annual disbursements to Access Fund Administrators made by the Commission.³¹ To the extent that this recommendation seeks to impose performance-based criteria on how much funding is available in a geographic area, San Francisco disagrees with it. Access Fund administrators should have the flexibility to disburse the total amount of funds available for their geographic area(s) each year. Adjusting the amount disbursed in each area based on the performance of selected access providers in the previous year would not allow local entities the flexibility to fund promising proposals or locally relevant projects. Further, holding access providers, who are intended to fill gaps left by TNCs, to the same standards as companies with different business models, resources, and market penetration, could hinder the goals of the program rather than help them.

VI. Conclusion

For the reasons set forth herein, we strongly urge the CPUC to consider San Francisco's and other public entities responses to all issues in Track 2, as well as sub-issue b of Issue 1 in Track 3. It is

³⁰ See CPED's Track 2 Proposals, p.18.

³¹ *Id.*

imperative that the CPUC establish accurate program benchmarks for response times in each geographic area in order for the program to effectively improve TNC WAV service to wheelchair users. Further, close attention should be paid to establishing processes that facilitate transparent and effective oversight of funds being collected from the public in order to provide this access.

Dated: October 21, 2019

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