

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

Tom Maguire
Interim Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
(415) 701-4720

Tilly Chang
Executive Director
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103
(415) 522-4800

Nicole Bohn
Director
Mayor's Office on Disability
1155 Market Street, 1st Floor
San Francisco, CA 94103
(415) 554-6789

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 Reply Comments on selected items raised in other parties’ comments on Track 2 proposals and the Commission’s October 10, 2019 Workshop on the TNC Access for All Act (hereinafter referred to as the “Act”).

II. TNC Offset Request Process

A. The Offset Request Process Must Be Public And Subject To Thorough Review.

In its comments, Uber argues that an offset request only should require a Tier 1 advice letter process. Uber claims that a Tier 3, or even a Tier 2, advice letter process would be too cumbersome because the Act states that the Commission shall authorize a TNC to offset its quarterly expenses if it meets criteria set forth in the statute.¹ From this, Uber assumes that merely by filling out the offset request, they should automatically receive an offset without further evaluation or verification into the data submitted.

But, the Act requires TNCs to submit evidence demonstrating that they have utilized the funds for which they wish to be reimbursed to provide an improved level of WAV service to wheelchair users. As Commission staff recognized at the October 10, 2019 Workshop, the offset request process needs to balance the need for a timely process with the needs for a thorough advice letter review. Therefore, San Francisco strongly disagrees with Uber’s proposal that the Commission adopt a Tier 1 advice letter process. Instead, this review requires more than a ministerial determination, at least on an initial basis, and warrants full Commission review. Accordingly, San Francisco maintains that a Tier 3 advice letter process is the best method to ensure TNCs are properly meeting the required benchmarks to qualify for offsets.

¹ Comments of Uber Technologies, Inc. on Workshop and Track 2 Proposals (“Uber Comments on Track 2 Proposals”), p. 2.

Further, because the funds collected as part of the Access for All fund are public monies intended for a public good, it is important that the process to review offset requests be as transparent as possible. Thus, San Francisco also disagrees with Uber's comment that all proposed content of offset requests are confidential and should be submitted under seal.²

Finally, Uber claims that a Tier 2 or Tier 3 advice letter process is not recommended because it would permit suspension of review of the request if CPUC staff does not complete their review within the initial period.³ While this may be true, the possibility that a delay may occur does not justify abandoning the appropriate level of review needed to meet the goals of SB 1376. In order to be effective and maintain the public trust, the offset request review process must be transparent and demonstrate actual improvements in service. Such requests can only be validated through a thorough review of the request and supporting data.

B. TNC Access For All Fees Should Be Held In Escrow Until The Commission Authorizes Any Offsets.

Both Uber and Lyft expressed concern about the administrative difficulties involved in remitting fees to the CPUC that may be refunded pending offset authorization or which may be held in the event of an appeal.⁴ These concerns have been raised before, and still do not warrant a change to the Commission's schedule or for it to abandon the appropriate level of review for offset requests. To the extent the TNCs are concerned about where the fees will be held, San Francisco maintains that fees should be held in escrow until a determination is made and offset amounts are authorized.

C. A Cap On Offset Requests May Be Appropriate In Order To Distinguish Offsets From Exemptions And The TNC Access For All Fee Can Be Raised If TNCs Require Additional Funds To Reimburse WAV-Related Expenses.

The CPED staff proposal recommends that offsets should be capped at 90% of fees collected to distinguish them from exemptions.⁵ The Disability Advocates agree that a cap would "clearly distinguish an offset from an exemption" and "ensure that the offset process does not swallow the

² See Uber Comments on Track 2 Proposals, p. 2.

³ See CPUC GO-96B, p. 14; Uber's Comments on Track 2 Proposals, p. 2.

⁴ Lyft Proposals Regarding Track 2 Issues ("Lyft Proposals"), pp. 10-11; Uber's Comments on Track 2 Proposals, pp. 3-4.

⁵ See Consumer Protection and Enforcement Division Staff Proposals for Proceeding 19-02-012 (Track 2) ("CPED's Track 2 Proposals"), p.4

exemption process by allowing TNCs to keep 100% of the funds they collect.”⁶ Uber disagrees, and explicitly states, that a cap would “create a perverse incentive for TNCs to cap their investments to match the offset cap.”⁷ San Francisco does not find Uber’s argument to be compelling and believes a cap would be appropriate to make an important distinction between offsets and exemptions. To the extent there needs to be additional funding to meet the needs of the Access for All fund, the Commission may “adjust the fee in each geographic area...based on the cost of providing adequate WAV service within the geographic area.”⁸

III. Required Contents Of TNC Offset Requests

A. **Offset Request Reporting Requirements Must Be Sufficient For Both CPUC Staff And The Public To Validate Whether A TNC Has Met The Minimum Criteria Outlined In The Act, As Well As Any Necessary Additional Criteria.**

Uber argues that the CPED staff proposal regarding the level of data that TNCs would be required to provide to validate whether a TNC has met the criteria required for an offset is “inappropriate” and claims that TNCs should be able to “provide confidential, competitively sensitive information under seal that is included in an Offset Request submitted as a Tier 1 Advice Letter.”⁹ But Uber’s proposal is vague, fails to provide a clear connection to how its proposed metrics satisfy the requirements of the Act, and fails to allow for public review.¹⁰

As noted above in Section II.A, offset requests must demonstrate that TNCs are actively improving service in order to receive an offset. The CPED staff proposal simply recommends that TNCs publicly report aggregate data to demonstrate they are achieving four key criteria of the Act: 1) presence and availability of WAV service; 2) improved response times; 3) a full accounting of funds expended; and, 4) efforts to promote and publicize available WAV services to disability communities.¹¹ It also recommends TNCs provide additional information on WAV driver training and WAV safety inspections. Because the Act only sets forth the “minimum” criteria necessary for offset

⁶ See Comments of Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology on Track 2 Proposals and October 10, 2019 Workshop (“Disability Advocates’ Track 2 Comments”), p. 6.

⁷ Uber Comments on Track 2 Proposals, p. 5.

⁸ California Public Utilities Code § 5440.5(a)(1)(B)(i)

⁹ Uber Comments on Track 2 Proposals, p. 7.

¹⁰ *Id.*

¹¹ CPED’s Track 2 Proposals, p. 7.

requests, these additional requirements are also appropriate and enjoy general support by most parties in these proceedings.

Moreover, as the monies are being collected from the public for a public purpose, the request and its authorization should be transparent to permit any individual, group, or organization sufficient information to respond to it. Therefore, San Francisco supports the CPED staff proposal requiring that TNCs report aggregated information on these criteria publicly in order to demonstrate compliance. To the extent that the proposal requires data from TNCs that is truly confidential, TNCs should make a showing to the CPUC demonstrating that it is subject to withholding from public disclosure.

B. To Verify Offset Requests, The CPUC Should Require TNCs To Confidentially Provide Additional And Comprehensive Back-Up Datasets On A Quarterly Basis.

As stated in its previous comments and proposals, San Francisco recommends that TNCs be required to report on all TNC WAV trips and trip requests, including all cancellations on a quarterly basis, in order for CPUC staff or an independent entity to validate all offset requests. To the extent that this requires TNCs to submit trip level data, San Francisco agrees TNC could submit these data sets confidentially. Also, for this task, an independent entity, such as a university or consulting firm, could support CPUC staff with expertise in the collection and analysis of these data.

San Francisco therefore disagrees with Uber's comments that the Commission should not collect data on certain types of cancellations at all.¹² The CPUC should require all necessary data, including confidential data sets that include cancellation data, in order to properly analyze and validate TNC offset requests. Such data may be helpful in assessing response times. For example, if CPUC's analysis finds that many trips are being cancelled within two minutes, it may indicate that the projected response time the customer received prior to requesting the ride often changes and that the ride may no longer be available after a rider's request has been accepted. Thus, failing to collect such data could hinder the CPUC's ability to monitor whether wheelchair users are receiving equal access to TNC services as non-wheelchair users.

¹² Uber Comments on Track 2 Proposals, pp. 7-8.

C. Response Time Benchmarks Are Appropriate, Required Measures And Should Be Established For the Length Of The Program.

1. Response Time Benchmarks Should Be Established For The Entire Length Of The Program.

While Uber's comments suggest it accepts the necessity of establishing response time benchmarks, San Francisco disagrees with its recommendation that benchmarks only should be established for the first two years of the program.¹³ Consistent with the Act's intent to eventually provide equal access to TNC services, the end goal also must be clear. Thus, San Francisco supports the CPED staff proposal to have benchmarks, which progressively increase year over year, to clearly establish the final goal of the program.¹⁴

2. Annual Benchmarks, With The Opportunity To Meet Them Each Quarter, Are An Appropriate Method To Determine If A TNC Has Provided An Improved Level Of Service.

Uber's comments seem to confuse the CPED staff proposal with regard to what offsets require. Uber claims that the proposal would somehow penalize TNCs if they meet or exceed an annual benchmark in each quarter.¹⁵ Rather, San Francisco understands the CPED staff proposal only to mean that TNCs must meet the established benchmark for the year; they do not also need to show that response times improved beyond the benchmark quarter over quarter within the same program year. Annual benchmarks are reasonable because they demonstrate an improvement in service over the same quarter of the preceding year, which is the most appropriate comparison due to the seasonality of service demand.

3. CPED Staff's Proposed Response Time Standards And Benchmarks Are Appropriately Based On The Experience Of TNC Customers Who Do Not Require Wheelchair Accessible Service.

In its comments, Uber raises new claims about calculations of response time benchmarks and proposes new WAV trip response time criteria based on these claims.¹⁶ But, parties in this proceeding have already established that accessible means equal access to what people without disabilities receive. Moreover, the Act establishes that TNCs must meet 80% of a standard response time in order

¹³ Uber Comments on Track 2 Proposals, p. 8.

¹⁴ CPED's Track 2 Proposals, p. 9.

¹⁵ Uber Comments on Track 2 Proposals, p. 9.

¹⁶ *Id.*, pp. 9-12.

to receive an exemption and essentially even less to receive an offset.¹⁷ Therefore, San Francisco supports the CPED staff proposal on this issue, which proposed appropriate response time standards and benchmarks that should not be weakened.

D. The Categories Of Expenditures Set Forth To Show Improved WAV Service In An Offset Request Are Not Commercially Sensitive And Should Be Publicly Available.

The Act clearly requires a full accounting of funds for a TNC to request and receive an offset.¹⁸ Further, both Uber and Lyft proposed highly questionable expenses as eligible to be reimbursed, which also indicates the need for a higher level of public scrutiny. Therefore, San Francisco supports the CPED staff proposal that TNCs should be required to present a categorized accounting of funds expended in their offset request.¹⁹ Uber disagrees with the CPED staff proposal, stating that this information should be considered “confidential and commercially sensitive” and not available publicly.²⁰ However, as noted above in Section III.A, Uber has not supported their claim with any details.

IV. TNC Exemption Requirements

A. TNCs Must Meet The Service Level Required For An Exemption Over Four Consecutive Quarters In Order To Receive An Exemption For The Same Duration Of Time.

Uber’s comments support Lyft’s proposal that TNCs should only achieve an established service level for two quarters (Q3 and Q4) in order receive an exemption for an entire program year.²¹ This is an incommensurate approach, which the CPUC should not consider. TNCs should meet established benchmarks for an entire program year to be exempt for the next program year. As support, the San Francisco Taxi Workers Alliance also astutely acknowledges that Q3 (January-March) “is the slowest time of the year for for-hire transportation” and also recommends “requests must be based on a full year of operations.”²²

¹⁷ California Public Utilities Code § 5440.5(a)(1)(G).

¹⁸ *Id.*, § 5440.5(a)(1)(I).

¹⁹ CPED’s Track 2 Proposal, p. 11.

²⁰ Uber Comments on Track 2 Proposals, p. 12.

²¹ *Id.*, pp. 12-13.

²² Opening Comments of the San Francisco Taxi Workers Alliance on Track 2 WAV Proposals, p.7.

B. The Service Level Required To Receive An Exemption Should Be 80% Of The General Public’s Standard Response Time In Each County, Per The Act.

As stated above in Section III.E., parties in this proceeding have already established that accessible means equal access to what people without disabilities receive. TNCs should have to fulfill, at a minimum 80% of trips within the standard response time for a county in order to receive an exemption. To the extent Uber proposes that the TNCs may meet twice the standard response time, San Francisco urges the Commission to reject this proposal.²³

V. Access Fund Administration

A. TNCs Should Not Be Eligible To Apply For Funds As An Access Provider Unless They Have Received An Exemption And Demonstrated They Have Expended All Collected Fees On Providing Wheelchair Accessible Service.

Uber’s comments offer a new proposal that TNCs should be able to apply for funds as an access provider if it qualifies for an offset.²⁴ San Francisco disagrees. Indeed, the CPUC should only allow TNCs to apply for Access Funds as an access provider if TNCs: 1) have already met the requirements for, and received, an exemption from collecting fees in a geographic area and 2) have expended all fees collected during the exemption period on providing wheelchair accessible service.

Uber’s proposal should be rejected for two reasons. First, it is too vague and does not provide sufficient detail to be properly considered. Second, to the extent that Uber has concerns that additional funding will be needed to offset their costs, the Act provides recourse. As mentioned in Section II.C. above, the Commission may raise the fee collected on every trip in order to reimburse TNCs eligible for offsets. If a TNC requires additional funds to provide wheelchair accessible services, the Commission should adjust the fee accordingly rather than allow TNCs to collect money from the Access Fund.

B. Requirements Should Not Be Consistent Between TNCs And Access Providers.

San Francisco disagrees with the CPED staff proposal and Uber’s comments that service level requirements should be consistent between TNCs and access providers.²⁵ 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 service TNCs provide to the general public in that area.

²³ Uber Comments on Track 2 Proposals, p.13.

²⁴ *Id.*, p. 14.

²⁵ See CPED’s Track 2 Proposals, p.18; Uber Track 2 Comments, p. 14.

Further, access providers may have fewer resources at their disposal to provide the same level of service, especially if they are relying solely on Access Fund monies. Neither of these challenges, however, should prevent access providers from receiving funding and filling gaps in demand-responsive wheelchair accessible service where TNCs are unable or unwilling to meet needs.

C. Local Transit Planning Agencies Are The Most Appropriate Entities To Administer The Distribution Of The Access Fund In Their Geographic Area.

Along with several other parties, San Francisco recommends that the CPUC engage local transportation planning agencies, like metropolitan planning organizations (MPOs) or regional transportation planning agencies (RTPAs), to administer the Access Fund in their respective geographic area(s). Federal and state law require these transportation agencies to distribute fairly the services and benefits of the regional transportation network, with a specified focus on increasing the accessibility and mobility of people.²⁶ In particular, these agencies are tasked with developing their region's Coordinated Public Transit-Human Services Transportation Plan to improve coordination among both transit agencies and other transportation providers to better meet the needs of older adults, people with disabilities, and low-income residents. Therefore, Uber's assertions that these agencies harbor bias or have a conflict of interest in this matter lack merit. As supported by the Metropolitan Transportation Commission's reply comments, local transit planning agencies are the most appropriate entity to administer the Access Fund in their geographic areas. In particular, San Francisco agrees that MPOs and RTPAs should have the option to support the CPUC in the role of Access Fund Administration and that funding should be set aside for such purposes and be made available to the designated Access Fund Administrator in each county.

Further, San Francisco continues to encourage the CPUC to consult local entities familiar with potential access providers on the appropriate frequency and granularity of data that access providers should be required to provide, as they may not be equipped to provide data on the same level as TNCs.

VI. Conclusion

San Francisco looks forward to reviewing a proposed decision addressing Track 2 Issues that further establishes a program to effectively and timely improve TNC WAV service to wheelchair

²⁶ See 23 U.S.C. § 134.

users. This includes accurate program benchmarks for response times and criteria in each geographic area and processes that facilitate transparent and effective oversight of funds being collected from the public in order to provide this access. Looking ahead to Track 3, we also look forward to addressing all of the important concerns raised by SB 1376 and the Commission's role in addressing TNC access for customers with disabilities.

Dated: October 28, 2019

Respectfully submitted,

By: _____ /s/
Tom Maguire
Interim Director of Transportation
San Francisco Municipal Transportation Agency

By: _____ /s/
Tilly Chang
Executive Director
San Francisco County Transportation Authority

By: _____ /s/
Nicole Bohn
Director
Mayor's Office on Disability