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February 4, 2021

Via E-Mail
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California Public Utilities Commission
Consumer Protection and Protection Division
Transportation Licensing and Analysis Branch
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest to Uber Advice Letter 8, Q4 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco"), submit this protest against Uber Technologies Inc.'s ("Uber") Advice Letter 8 requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letter").

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(6), San Francisco protests Uber's Advice Letter on the grounds that the relief requested is unjust as Uber fails to demonstrate adequately the "presence and availability" of WAV service or an "improved level of service," including reasonable response times for three of the subject counties.

Contrary to Uber's suggestions, San Francisco is not relitigating past policy decisions, and appreciates Uber's disclosure of the underlying data and attempts to comply with the Act.¹ San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject the offset requests as unjust and unreasonable because they fail to demonstrate that Uber has met the minimum requirements of the Act and Decision 20-03-007 ("Track 2 Decision"). Uber's occasional record of reasonably prompt response times is entirely overshadowed by a consistent pattern of refusal of service to WAV users, indicating a significant failure to demonstrate presence and availability. In two of the subject counties, less than 2% of WAV ride requests were fulfilled, while in a third only 5% of WAV ride requests were fulfilled. Further, the level of service provided, including response times for trips requests that were

¹ See, e.g., Uber Reply to Protests by SFMTA, SFCTA, and SFMOD to Uber AL 4A.

fulfilled, did not demonstrably improve quarter over quarter (between Q3 and Q4 2020), and cannot justify the significant amounts Uber seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Uber has met the required statutory burden.

II. Uber’s Advice Letters Contain Material Errors and Do Not Meet The Burden for Award of Public Funds.

The California Legislature adopted the TNC Access for All Act (“Act”) with the stated intent that wheelchair users who need WAVs “have prompt access to TNC services.” (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas (“Track 1 Decision”), p. 16.) The Act required the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish the Access Fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the Access Fund. (*Id.*, p. 10.) As relevant here, the Act requires the Commission to “authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area” thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).)

The Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Based on the information submitted in this Advice Letter, Uber failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Uber Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence and availability of drivers with WAVs on its platform. While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not “demonstrate” presence and availability. If that were the case, then any submission of data that showed zero WAVs anywhere in the entire state would satisfy this requirement to “demonstrate” presence and availability. Such an interpretation is plainly inconsistent with the intent of the statute and would render the statutory requirement for presence and availability a nullity.

Presence and availability is a key requirement, especially in the wake of the Commission’s Track 2 Decision, which found “[i]t is unnecessary to measure “response time” at a passenger’s initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-show will be captured in the ‘presence and availability’ data.” (Track 2 Decision, p. 20.) Consequently, “response times” are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This reporting makes the response time

percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

Given the inflated numbers in the response time metric, it is even more important that a demonstration of presence and availability under the Act must rest on an actual showing by the data. It is clear that during Q4 of 2020, WAV passengers continued to persistently experience unavailability or refusal of service—a key problem the Act was trying to fix. In fact, a large proportion of requests in Q4 of 2020 were never completed.

Table 1 and Table 2 below clearly demonstrate the lack of availability and presence of TNCs in three of the four counties for which Uber is requesting an offset request. Table 1 shows that the number of completed WAV trips declined in Alameda County and remained in the low single or double digits in Riverside and Orange counties. Only in Los Angeles did the number of completed WAV trips increase significantly. Further Table 2 shows the percentage of WAV trip requests that were completed. This data shows that in Alameda and Riverside counties less than 2% of WAV trip requests were completed, while in Orange County about 5% of trip requests were completed. Even in Los Angeles, less than 60% of WAV trip requests were completed.

Table 1. Number of WAV Trip Requests Completed

	# COMPLETED PRIOR QUARTER Q3 2020	# COMPLETED CURRENT QUARTER Q4 2020
ALAMEDA	545	8
LOS ANGELES	4845	5982
ORANGE	20	30
RIVERSIDE	1	2

Table 2. Percent of WAV Trip Requests Completed

	% COMPLETED PRIOR QUARTER Q3 2020	% COMPLETED CURRENT QUARTER Q4 2020
ALAMEDA	27.8%	1.5%
LOS ANGELES	47.8%	59.0%
ORANGE	2.1%	5.3%
RIVERSIDE	0.6%	1.1%

Finally, Uber continues to not report “Cancellations due to Passenger No Shows” at all claiming “there is insufficient reliable data to report.” San Francisco continues to find this claim dubious, as it is a standard practice for TNCs, including Uber, to charge riders a fee for canceling late, arriving late, or not showing up for a requested ride without canceling the ride request.

For these reasons, Uber’s unredacted data shows that its WAV service was not present and available to WAV passengers in Quarter 4 of 2020. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum requirements of the Act. Uber’s data fails to

demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letter on this basis.

B. Uber Failed to Demonstrate Improved Level of Service, Including Adequate Response Times.

To show “improved level of service” for a given quarter and geographic area for the interim period, a TNC shall demonstrate it achieved either the Level 1 or Level 2 Offset Time Standard as set forth in the Track 2 Decision. (Track 2 Decision, p. 18.) However, to meet the improved level of service standard, a TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. (*Ibid.*) The Track 2 Decision suggests that improvements should be measured in minutes and requires that TNCs provide this response time data on the template tab titled “Offset Response Times.” Table 3 shows the 50th percentile response time for the prior quarter (2020 Q3) and the current quarter (2020 Q4) for the subject counties. In three of the four counties response times worsened. Only in Riverside County, where Uber served only 2 trips during the entire quarter, did response times improve. This same pattern can be observed in the 80th percentile response times (note that 75% percentile response times are not included in the required report template). Furthermore, as noted in prior protest letters, response times are virtually meaningless as a metric when 40%, or even 95%-98% of WAV trip requests go unfulfilled.

Table 3. 50th Percentile Trip Response Times

	PRIOR QUARTER Q3 2020	CURRENT QUARTER Q4 2020	DEMONSTRATE IMPROVED SERVICE (50 th PERCENTILE)
ALAMEDA	18.1	27.6	NO
LOS ANGELES	17.5	18.3	NO
ORANGE	8.8	11.3	NO
RIVERSIDE	5.2	4.3	YES

C. Uber Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Uber makes a compelling case in this arena.

D. Uber’s Does Not Demonstrate Improvements Due to Investments in WAV Service.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to *improve* WAV service (emphasis added). Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of funds,” as well as demonstrate that an improved level of service,

including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2 Decision, pp. 25-26 (emph. added).)

Offsets are payments of monies collected from all TNC trips in each county to TNCs for improving WAV service in that county. Table 3 shows that a basic metric of the cost-effectiveness of TNC efforts to improve WAV service, which is the average offset request per completed TNC trip. This table shows that Uber is requesting that it be paid from public monies over \$650 per completed WAV trip in Alameda and Riverside counties and \$350 per completed WAV trip in Orange County. Uber's accounting of funds raises concerns about cost-effectiveness and whether the reported investments are in fact improving WAV service.

Table 4. Average offset request per COMPLETED TNC trip for the Offset Request Counties

	COMPLETED	OFFSET REQUEST	OFFSET REQUEST PER TRIP
ALAMEDA	8	\$5,504.75	\$688.09
LOS ANGELES	5982	\$621,641.80	\$103.92
ORANGE	30	\$10,600.24	\$353.34
RIVERSIDE	2	\$1,310.27	\$655.14

III. Conclusion

In sum, Uber's offset request in Advice Letter 8 fails on multiple grounds and should be rejected. First, Uber has failed to meet the threshold requirements for offsets in the Act and Track 2 Decision. Uber's data does not show there is "presence and availability," "improved levels" of WAV service, or adequate outreach to the disability community to meet the Act's requirements. Further, Uber's high costs per trip raise concerns about whether it is meeting the Act's requirements. For the reasons stated herein, San Francisco requests that the Advice Letter be rejected as CPED cannot reasonably find that Uber has met the required statutory burden.

Sincerely,

By: _____ /s/

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By: _____ /s/

Jeffrey Tumlin
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San Francisco Municipal Transportation Agency

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