

**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 4 PROPOSALS**

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I. INTRODUCTION

In accordance with the Scoping Memo and Ruling issued on March 19, 2021 (“Track 4 Scoping Memo”) and ruling modifying the Track 4 schedule issued on May 6, 2021, 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 on Track 4 Proposals and Revised Proposals related to the TNC Access for All Act (“Act”). San Francisco is heartened that Track 4 has spurred collaboration and consensus among the parties. Our comments herein focus mainly on TNC Offset and Exemption Requirements and Access Fund Disbursements as the record most significantly developed in these areas since our last comments. However, SF continues to strongly urge the CPUC to establish an ADA coordinator and ensure all accessibility issues are considered expediently as well as on an ongoing basis with the full participation of disability advocates, and we look forward to a Proposed Track 4 Decision reflecting this.

II. DISCUSSION

1. Transportation Network Company (TNC) Offset Requirements.

a. Parties Support Uber’s Proposed Framework for Offsets and Exemptions With Modifications To The Specific Standards.

During Track 4, parties submitted revised proposals and built consensus around what a framework for offset and exemption standards should look like. We believe the record now clearly supports the framework and requirements submitted as Exhibit A in SF’s Comments on Track 4 Proposals, filed June 10, 2021 (“SF’s Exhibit A”).¹ Further, while LACMTA (“Metro”) did not voice direct support for Uber’s general framework or yet have the opportunity to endorse SF’s Exhibit A, Metro supports SF’s key principles and described its own requirements for a satisfactory requirements.² With SF’s proposed modifications to Uber’s specific standards (i.e. response time standards and minimum completion rates), SF is confident the Commission would satisfy Metro’s stated requirements by adopting SF’s Exhibit A.

¹ While parties share significant concerns about Lyft and CPED’s proposals (See DA comments, pp. 5-6 ; Uber pp. 11-12; and Via, p. 6), most parties voiced support for the general framework Uber presented in its Revised Proposal (pp 4-7 and Exhibit A) - See SF Comments on Proposals, p. 2; DA Comments on Proposals, p. 2; Lyft Comments on Proposals, p. 5. Note that all references to parties’ Comments on Proposals in these Reply Comments are to Track 4.

² LACMTA Comments on Proposals, p. 4.

Based on all parties' comments, in order for Uber's proposed framework to fully meet both the language and intent of the Act, the Commission should adopt it with the following modifications:

Response Time Benchmarks Should Reflect Standards Equivalent to Non-WAV Service.

The Commission should consider that the current Interim Level 1 and Level 2 Response Time Benchmarks, incorporated in Uber's proposal, do not adequately reflect the non-WAV standards of service the Commission recognized in its Track 2 Decision. As the DA comments point out, because of this, Uber's proposed response time standards "would not result in comparability of service between WAV and non-WAV rides even after the completion of the eight quarter timeline."³ Metro shares this concern and "requests that the Commission adopt the originally-proposed response time standards."⁴ For this reason, SF supports the DA proposal that "either the standards need to be improved to a level that does achieve comparability by the eighth quarter or the Commission needs to revisit the numbers eighteen months from when they are adopted to establish further improvements in the standards and improved movement toward comparability in future years."⁵

Revised Minimum Completion Benchmarks. Supporting SF's comments on Uber's proposal, both the DA and Metro agree that the Commission should adopt minimum completion benchmarks and that there is currently no support in the record for completion rates that vary by geographic area. While Uber maintains "benchmarks should reflect the differences that exist across different counties," it offers that it "is open to further discussions about the specific figures in its minimum benchmark schedules."⁶ Therefore, it would be reasonable, in the meantime, to establish minimum completion rate standards that are uniform across counties. There is also support for a minimum completion benchmark floor of 50%. As the DA point out, "[p]eople without disabilities would not tolerate a service that had greater than even odds of leaving them stranded at their location –

³ DA Comments on Proposals, p. 3.

⁴ LACTMA Comments on Proposals, p. 4.

⁵ When doing so, the Commission should reject Uber's proposal that response time requirements should take into account alternatives such as public transportation and paratransit. As the DA point out in their Comments on Track 4 Proposals, and is clear in the record, these services are not relevant points of comparison to TNC service. For example, ADA Paratransit is scheduled at least one day before and operators cannot deny any trip requests.

⁶ Uber Comments on Proposals, p. 6.

the Commission should not allocate funds collected for a public purpose to TNCs that expect people with disabilities to use such a service.”⁷

Revised Exemption Standards. SF and the DA do not support Uber’s proposal for exemption standards, which recommend that a TNC should qualify for an exemption after four straight quarters of meeting its proposed offset standards. For the reasons SF explained in its Comments and as the DA also made clear, “[t]his proposal flies in the face of the language and structure of the TNC Access for All Act, which requires that a TNC’s service be ‘accessible’ to people with disabilities in order to receive an exemption” and should be rejected. Instead, the Commission should adopt the Exemption requirements included in SF’s Comments and in its Exhibit A.⁸

b. If The Commission Does Not Adopt A Revised Framework, It Should At Minimum Adopt SF’s Proposed Adjusted Interim WAV Response Time Metric.

Of utmost concern, and despite Lyft’s misrepresentation to the contrary, the Commission’s current response time requirements do not require a designated completion metric.⁹ Instead, the Commission’s interim requirements only consider response times for completed trips and do not adequately address a TNC’s ability to meet WAV demand. In transportation, the reliability of a service is one of the greatest factors in customer satisfaction. Imagine using a TNC to get to work every day. It would not serve a customer if on Monday the service had a good response time and came within 10 minutes but the remaining four days that week, when a request was made, the TNC didn’t arrive at all. It would make little difference to that customer that one of the four trips they requested had a decent response time if the other four didn’t arrive at all. This would not be a service a customer could rely on for mobility. So, while Uber believes it “is approaching 100% of WAV trips meeting the applicable response time benchmark in several counties,”¹⁰ this is simply not a true statement, or practical or sufficient standard, since it is not based on also completing close to 100% of all WAV trip requests in those counties. Therefore, if the Commission maintains its current offset and exemption framework rather than the proposed modified framework initiated by Uber and adjusted by San Francisco, it

⁷ DA Comments on Proposals, pp 4-5.

⁸ SF Comments on Proposals, Exhibit A.

⁹ Lyft Comments on Proposals, p. 6.

¹⁰ Uber Comments on Proposals, p. 6.

should adopt SF’s proposed Adjusted Interim WAV Response Time Metric to ensure uncompleted trips are accounted for in the determination of offset and exemption requests. Metro shares SF and the DA’s concerns and we agree with Metro that the Commission has “depleted the Access Fund by not including uncompleted trips in the calculation of whether a TNC has met its interim time standard, which itself provides a far more relaxed benchmark than what Commission staff originally proposed.”¹¹

c. The Commission Should Regularly Collect Additional Information From TNCs On WAV and Non-WAV Services And Has The Authority To Do So.

SF supports Metro’s request that TNCs submit the equivalent data for non-WAV trips¹² and maintains support for CPED’s proposal that TNCs should be required to submit quarterly reporting every quarter and in every county, regardless of whether a company requests an offset request.¹³ As to CPED’s proposal, Uber protests that the Act “does not authorize the Commission to regularly collect WAV data in counties for which a TNC is not seeking an offset.”¹⁴ This is patently false as it is within the CPUC’s discretion as a regulator to collect any data necessary to its oversight of TNC operations.

2. Access Fund Disbursements.

a. TNC Concerns About Carriers’ Ability to Comply With Commission Requirements Are Unfounded and Unsupported.

Without support, Uber and Lyft both insist that entities without permits from the CPUC will be unable to demonstrate adequate compliance with safety requirements. But, the record clearly supports that non-CPUC regulated entities, such as taxis and Non-Emergency Medical Transportation Providers, already do provide exemplary and safe WAV service throughout California. Confusingly, while Lyft agrees with CPED’s list of requirements for Access Providers, it still insists Access Providers should be limited to those under “Commission jurisdiction” and should be required to hold a TCP permit to meet CPED’s proposed requirements, without saying why this is necessary.¹⁵ This is

¹¹ LACMTA Comments on Track 4 Proposals, p. 4.

¹² *Id.*, p. 5.

¹³ CPED Track 4 Proposal, p. 4.

¹⁴ Uber Comments on Track 4 Proposals, p. 2.

¹⁵ Lyft Comments, p. 8. SF also notes that here Lyft misconstrues SF’s example that SF taxis are already subject to similar safety requirements to mean that the Commission need not be concerned about completely unregulated Access Providers. (*See id.*)

just one example, among others we cited previously, why San Francisco agrees with the DA that the “issues” raised by the TNCs “are spurious and indicate that [they] are less concerned about safety for people with disabilities and more concerned with limiting possible competitors for Access Funds.”¹⁶

b. Uber, Lyft and CPED Provide No Evidence To Support TNC Eligibility in Counties Where They Do Not Provide Service.

SF maintains that the Track 3 Decision allowing TNCs to apply as access providers in counties where they have not already received an exemption undermines the Act and is contrary to the law. This reasoning is cogently supported by other parties, including the SFTWA, as well as the DA who cite established disability access laws while warning “[t]he Commission should neither incentivize nor reward a reduction in the accessibility of a service, nor can it condone a direct threat by the TNCs to decline to address the need for WAV service.”¹⁷ Further, parties which support allowing TNCs to apply as access providers where they have not provided or have ceased to provide WAV service, do not offer any compelling support for how this decision upholds the intent of the law or why it should be maintained. CPED essentially argues that creating a loophole around the Act is not a concern because it believes TNCs will not take advantage of it. And Uber’s argument that TNCs should be access providers so as not to limit the pool of providers is incredibly hard to swallow when it also insists it would be unreasonable for qualified WAV transportation operators to become access providers in the first place.¹⁸ For these reasons, as well as those stated in SF’s comments, the CPUC should rescind the eligibility of TNCs to apply for Access Funds in areas they do not provide WAV service.

c. San Francisco concurs with Via that on-demand services operated by TCP permittees on behalf of public agencies are not subject to the TNC Access for All Act.

As SF has previously stated,¹⁹ and reiterated at the May 11, 2021 workshop, we question whether services being provided under contract to a public transit provider are properly considered TNC services at all. Therefore, we concur with Via that the services for which they seek an exception are not subject to the Act.

¹⁶ DA Comments on Proposals, p. 7.

¹⁷ Id., p. 8.

¹⁸ Uber comments, pp. 8-9.

¹⁹ San Francisco Comments on Track 3 Proposals and Workshop, August 14, 2020, p. 6

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Respectfully submitted,

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