

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 SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,  
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN  
FRANCISCO MAYOR'S OFFICE ON DISABILITY ON PROPOSED DECISION ON  
TRACK 2 ISSUES**

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## I. INTRODUCTION

In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, 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 the Proposed Decision on Track 2 Issues: Offsets, Exemptions, and Access Provider Disbursements, issued on February 7, 2020 (Proposed Decision). San Francisco strongly supports adoption of the Proposed Decision with the proposed amendments to the Evaluation Criteria (Presence and Availability in Section 3.1.1. and Qualifying Expenses in Section 3.1.4.1.), the Quarterly Report (Section 3.2), the Advice Letter Process (Section 3.3.2.), and the Exemption WAV Response Times (Section 4.1.1.) set forth below. San Francisco’s requested amendments address errors in the Proposed Decision that are inconsistent with the intent of the TNC Access for All Act (the Act), and include proposed modifications to specific Conclusions of Law as noted.

## II. DISCUSSION

### A. Establishment of Investment Offset Process - Evaluation Criteria

#### 1. San Francisco Strongly Supports Reasonable WAV Response Times Based On Response Times for Non-WAV Trips.

San Francisco strongly supports the Proposed Decision’s finding “that any evaluation of ‘reasonable’ WAV response times must at least consider response times for non-WAV trips” in Section 3.1.2.<sup>1</sup> Establishing comparable response times between WAV and non-WAV trips is an objective standard. Because the intent of the Act is that TNCs do not discriminate against persons with disabilities, including those who use nonfolding mobility devices, implementing such an objective standard must be part of any program or policy to ensure that Transportation

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<sup>1</sup> Proposed Decision, pp. 15-16

Network Company services provide comparable response times for both WAV and non-WAV users. While the methodology does not assume that demand for WAV services will be exactly the same as for non-WAV services,<sup>2</sup> it does establish “reasonable response times” based on the 80<sup>th</sup> percentile response times for each geographic area. Hence, San Francisco supports the WAV response time benchmarks in the Proposed Decision,<sup>3</sup> which provides TNCs with clear and objective standards for the WAV response times they should meet in each geographic area.

**2. Quarterly Reports Must Also Include Data By Zip Code To Adequately Demonstrate The Presence And Availability Of WAV Drivers In A Geographic Area.**

In Section 3.1.1., the Proposed Decision views “the reporting of WAV presence and availability information on an hourly basis to be a critical data point, particularly in evaluating the concern for ‘stranded’ WAV customers and whether such customers lack access to WAVs at certain times of the day.”<sup>4</sup> But, the Proposed Decision does not require TNCs to include data on presence and availability of WAV service by zip code in Quarterly Reports because “SB 1376 expressly considers WAV presence and availability ‘in the geographic area,’ or at the county level.”<sup>5</sup>

San Francisco asserts this decision is erroneous because, just as the Commission should know if TNCs are only providing WAV service during certain hours of the day, it should also know whether a rider could effectively be “stranded” in a certain area. By not requiring zip code level reporting in each geographic area, the Commission accepts too narrow a definition of “presence and availability” and limits the Commission and all parties from understanding whether WAVs are adequately available both within the entire geographic area and at all hours

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<sup>2</sup> *Id.*, p. 17

<sup>3</sup> *Id.*, p. 76

<sup>4</sup> *Id.*, p. 7

<sup>5</sup> *Id.*, p. 8

of the day. In the Decision on Track 1 Issues, the Commission established counties as geographic areas because they are a “reasonable, non-discriminatory approach that allows funds to be available to all areas in California” and because “county demarcations reasonably reflect boundaries and response times that are intuitive to customers.”<sup>6</sup> Importantly, the reasoning behind this decision to establish counties as geographic areas was to determine administratively where the Access Fee would be collected and distributed, and not in consideration of “presence and availability” of WAV service within a geographic area.

Indeed, it is critical to monitor this important aspect of service for riders who may live, work, and travel in varied areas within a county, and nothing in the Act prevents it. Without this level of reporting, there may not be WAV service in certain parts of a county where non-WAV service is available, and such deficits would not be accounted for in the reporting. Therefore, San Francisco contends it is error for the Commission to adopt this limitation because it does not provide an accurate picture of WAV services within each geographic area. The Proposed Decision’s Conclusion of Law No. 1, “CPED’s proposal to demonstrate the presence and availability of WAV drivers is appropriate, with modifications, and should be adopted”<sup>7</sup> is incorrect. San Francisco requests that the Commission amend its Proposed Decision and, specifically Conclusion of Law No. 1, to require that the CPED proposal add data by zip code in order to demonstrate presence and availability of WAV service.

### **3. TNCs Must Provide a Showing That Their Offset Expenses are Eligible for Reimbursement.**

San Francisco supports the Proposed Decision’s ruling to adopt criteria for qualifying offset expenses, including that the expense must be “a reasonable, legitimate cost that improves a

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<sup>6</sup> Decision on Track 1, dated June 27, 2019, p 17.

<sup>7</sup> Proposed Decision, p. 73

TNC’s WAV service” and the expense must fall within a category on the list of eligible expenses.<sup>8</sup> However, San Francisco does not support the list of eligible expenses as they do not address the concerns raised about TNCs being reimbursed for costs that would have been incurred regardless of whether a ride is a WAV ride. The Commission acknowledges this rationale but defers to parties to propose a formula for calculating “incremental costs” in Track 3.<sup>9</sup>

It is error for the Commission to require non-TNC parties to propose this formula. Rather, the burden of proof must fall on the TNCs requesting the offset to do so. As recognized in the Proposed Decision, some expenses proposed by TNCs were “ambiguous and unrelated to improve WAV services.”<sup>10</sup> The same concerns apply here, and therefore the TNCs must establish that their proposed costs are reasonable, legitimate costs that unambiguously improve their WAV service. For these reasons, the Proposed Decision and, specifically Conclusion of Law No. 5 that “Lyft’s proposed list of qualifying expenses, with modifications, provides clear guidance to TNCs as to eligible offset expenses,”<sup>11</sup> is incorrect. San Francisco requests the Commission amend the decision and Conclusion of Law No. 5 to require that TNCs make a showing that each proposed cost within the established buckets of expenses are “reasonable and legitimate.”<sup>12</sup>

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<sup>8</sup> Proposed Decision, p 23 and Appendix A

<sup>9</sup> *Id.*, p. 22-23

<sup>10</sup> *Id.*, p. 23

<sup>11</sup> *Id.*, p. 73

<sup>12</sup> *Id.*, p. 23.

**B. Establishment of Investment Offset Process - Offset Request Approval Process**

**1. The Proposed Advice Letter Process Is Too Narrow and Excludes Disadvantaged Communities From the Decision-Making Process.**

San Francisco disagrees with the Proposed Decision’s conclusion that General Rules of GO 96-B shall apply to this Advice Letter process with modifications to Rules 4.3 and 7.4.1.<sup>13</sup> The Proposed Decision’s Advice Letter process is narrower than the process established by GO-096-B in that it notably elects to limit protests and responses to an Offset Request to parties in this proceeding or any successor proceedings, and does not require TNCs to include on the service list any person who requests such inclusion.<sup>14</sup> San Francisco objects to this decision, which is erroneous as it would exclude important voices from being heard, particularly individual consumers who may have first-hand experience of the TNC WAV services. Further, this decision is not in line with the Commission’s Environmental and Social Justice goals to ensure outreach and access to disadvantaged communities, including those with disabilities.<sup>15</sup>

Therefore, the Proposed Decision and Conclusion of Law No. 11, which states “General Rules of GO 96-B should apply to the adopted Advice Letter Process, with modifications”<sup>16</sup> is incorrect. San Francisco requests the Commission amend the decision to remove “with modifications” from Conclusion of Law No. 11.

**C. Establishment of Investment Offset Process - Quarterly Report and Confidentiality**

**1. The Proposed Quarterly Report Format is Insufficient Proof of a TNC’s WAV Activities and Requires Further Clarification.**

San Francisco disagrees with the Proposed Decision’s conclusion that the Quarterly

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<sup>13</sup> *Id.*, p. 37

<sup>14</sup> *Id.*, pp. 35-36

<sup>15</sup> CPUC Environmental and Social Justice Action Plan

<sup>16</sup> Proposed Decision, p. 74

Report should mirror the requirements for an Offset Request.<sup>17</sup> First, data, beyond what the Commission has proposed for the Offset Request, is essential to verify the information within the requests and for the Commission to complete reports on required topics, such as WAV demand and program capabilities and deficiencies. While the Commission is considering TNC trip-level data in Rulemaking 12-12-011, there is a sufficient record in this rule-making that more comprehensive data on both WAV and non-WAV trips is required to implement the TNC Access for All Act. Second, the Proposed Decision does not adequately describe what information TNCs are required to provide in the Offset Request or Quarterly Report, nor does the decision include a proposed format that provides parties with a sufficient understanding of whether this reporting tool will be effective or transparent. The Commission’s decision must provide a template format for the Quarterly Reports, along with further guidance on what information TNCs are required to include in such reports. For example, TNCs are to report the “number of wheelchair accessible vehicles (WAV) in operation - by quarter and hour of the day.”<sup>18</sup> How does the Commission define “in operation” and in what format are TNCs to provide this information? Further, requirement (c) asks for “**Completed**” WAV trip request response times in **deciles**, by quarter.”<sup>19</sup> How are the response times in these deciles to be calculated and how will the report reflect the percentage of trips that are declined or not completed?

Without specificity in the requirements TNCs will not submit uniform reports that can be used to objectively analyze program performance. For example, without guidance, TNCs may define terms like “in operation” differently, resulting in incongruous reporting. Further, with neither the opportunity for objective analysis nor additional data on WAV trips, the public

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<sup>17</sup> *Id.*, p. 29

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.*, p. 30

cannot confidently expect the Commission to validate that information in the offset requests meets the established criteria. For these reasons, Conclusion of Law No. 9, which states that “[i]t is appropriate that information required in the Quarterly Report mirror information required in the Offset Request” is incorrect.<sup>20</sup> San Francisco requests that the Commission amend the Proposed Decision to require TNCs to provide more comprehensive data in the Quarterly Report than required in the Offset Request, and that the Commission provide a data reporting template and definitions. San Francisco urges the Commission to provide a reporting template similar to the model we provided as Exhibit 1 to its Opening Comments,<sup>21</sup> but tailored to the requirements that the Commission ultimately adopts for Track 2 in this rulemaking.

**2. San Francisco Supports The Commission’s Guidance That Access Providers Can Indicate Where They Cannot Provide Or Do Not Possess Requested Information.**

San Francisco agrees with the Proposed Decision’s finding that “some access providers that receive Access Fund moneys may not have the resources of larger TNCs and may not have the information requested in the Quarterly Report.”<sup>22</sup> There are a range of providers that may meet the criteria established by the Commission as well as meet the needs an Access Fund Administrator or Statewide Access Fund Administrator will prioritize for accessibility service in the geographic area. Therefore, we support the conclusion that an access provider that must submit a Quarterly Report should “indicate and explain where it cannot provide or does not possess the requested information.”<sup>23</sup>

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<sup>20</sup> *Id.*, p. 73

<sup>21</sup> Comments of San Francisco on Track 2 Issues, dated September 27, 2019, Exhibit 1.

<sup>22</sup> Proposed Decision, p. 31

<sup>23</sup> *Ibid.*



## **D. Establishment of Exemption Process**

### **1. The Exemption WAV Response Times Do Not Provide a Path to Comparable Service by 2024.**

San Francisco disagrees with the Proposed Decision's conclusion in Section 4.1.1. that it is reasonable to apply an 80% requirement for Level 2 WAV response times for TNCs to be eligible for an exemption.<sup>24</sup> The proposed Exemption Time Standard, as defined in the Proposed Decision,<sup>25</sup> is far too conservative and does not provide wheelchair users with the expectation that they will ever receive comparable TNC service to non-WAV riders. The Level 1 WAV Response Time Standards are based on the 80<sup>th</sup> percentile response times for non-WAV trips in geographic areas. Level 2 WAV Response Time Standards are double, or a waiting period twice as long as, Level 1. Allowing an exemption for meeting only 80% of the much less responsive Level 2 WAV Response Time significantly increases the discrepancy of service quality expected between a WAV trip and a non-WAV trip. It also discourages TNCs from improving beyond this lower standard of service throughout the life of the program because there is no incentive for TNCs to improve once it meets the requirements for an exemption. In addition, because TNCs would be exempt from collecting and remitting the Access Fee, it prevents access providers from providing supplemental service.

Further, given that the Commission proposes to reevaluate benchmarks after two years of the program<sup>26</sup> and that it is unlikely evaluation would result in setting more aggressive benchmarks, the WAV Response Times and Offset Time Standards (as defined in Sections 3.1.2.) established at the outset of the program should be stronger. Otherwise, the Commission risks only further weakening the effectiveness of the program. The Proposed Decision weighs the

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<sup>24</sup> *Id.*, p. 44

<sup>25</sup> *Id.*, pp. 82 and 83.

<sup>26</sup> *Id.*, p. 45

need for the standards to not be too challenging while also setting a sufficiently high standard.<sup>27</sup> Yet, the proposed exemption qualifications are erroneous because they do not set a sufficiently high standard to ensure wheelchair users receive adequate service. The intent of the Act is for this program to be effective in not discriminating against persons with disabilities, especially persons who use nonfolding mobility devices. Therefore, to meet the Act's intent, the Commission should amend its Proposed Decision, specifically Conclusion of Law No. 14, to read that for exemption eligibility, it is only reasonable to apply an 80 percent requirement for *Level 1* WAV response times.

**2. San Francisco Agrees That A TNC Must Meet The Exemption Requirement For Four Consecutive Quarters To Receive An Exemption For One Year, And That It Must Submit Quarterly Reports During The Exemption Period.**

The Proposed Decision would require TNCs to meet the designated exemption requirement for one year (four quarters) in order to receive an exemption.<sup>28</sup> It would also require TNCs that receive an exemption to submit Quarterly Reports during the Exemption Year.<sup>29</sup> San Francisco supports this decision as it is reasonable for a yearlong exemption to be based on the performance of one year rather than only two quarters. We also appreciate the consensus reached among parties, particularly the willingness of TNCs to submit reports on progress made in this important program.

**E. Access Fund Disbursement**

**1. San Francisco Agrees That Local Planning Entities Should Be Able to Apply To Serve As Access Fund Administrators And Be Reimbursed For Associated Expenses.**

San Francisco supports the Proposed Decision's finding that local planning agencies are

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<sup>27</sup> *Id.*, p 44

<sup>28</sup> *Id.*, p 45

<sup>29</sup> *Id.*, p. 46

best equipped and positioned to administer the Access Fund.<sup>30</sup> Local engagement will be essential to encourage and foster participation by access providers best suited to local needs. Also, because this program deserves and requires adequate resources to be implemented, San Francisco also supports the Proposed Decision’s ruling that “MPOs, RTPAs, and transportation commissions that may serve as AFAs should also receive compensation for serving in that role.”<sup>31</sup>

### III. CONCLUSION

San Francisco largely supports the Commission’s proposals set out in the Track 2 Proposed Decision and identifies errors, as noted above, which should be corrected in order to effectively implement a program consistent with the requirements of the TNC Access for All Act. We appreciate the opportunity to provide comments on the Proposed Decision, and we look forward to further discussion with other parties.

February 27, 2020

Respectfully submitted,

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<sup>30</sup> *Id.*, p. 57

<sup>31</sup> *Id.*, pp. 61-62