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California Public Utilities Commission
Consumer Protection and Protection Division
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505 Van Ness Avenue
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Re: Protest to Uber Advice Letter 4, Q2 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4 and Section 10.5, 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 and objection to confidentiality against Uber Technologies Inc.'s ("Uber") Advice Letter 4 requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letter").¹

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(3) and (6), San Francisco protests Uber's Advice Letter on the grounds that: (1) pursuant to Section 7.4.2(3), Uber has unjustifiably redacted the large majority of data provided in its offset request for hundreds of thousands dollar in public funds, which has material errors or omissions throughout its analysis and data; and (2) pursuant to Section 7.4.2(6), the relief requested is unjust and unreasonable as the data presented is inconsistent with directions provided by CPED; and, even the data that is available fails to demonstrate adequately the

¹ Because Uber's Advice Letter 4 is nearly identical in terms of redactions, the grounds for supporting the same, and overall deficiencies, San Francisco's protest and objections to confidentiality to this Advice Letter 4 are nearly the same as its protests and objections to confidentiality to Advice Letters 1-3 submitted on May 5, 2020.

“presence and availability” of WAV service or an “improved level of service,” including reasonable response times. San Francisco includes in this protest an objection to Uber’s claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Uber has utterly failed to meet its burden to prove that the redacted data should be withheld from disclosure under the Commission’s governing decisions and orders.

In its Advice Letter, Uber ignores the critical public interest that the TNC Access for All Act (“Act”), and Access for All Fund (“Access Fund”) serves—to improve Transportation Network Company (“TNC”) access to the disabled community. The Act called for imposition of a fee on every TNC ride and creation of the Access Fund for the sole purpose of improving service to people who use wheelchairs, not to create a slush fund for TNC recovery of routine business costs. Request for reimbursement/offsets must demonstrate, at a minimum, that every dollar requested supports improvements in equal access to TNC service in wheelchair accessible vehicles (“WAVs”). Uber’s assertion that data needed to demonstrate these minimum requirements is “sensitive business information” from which the company derives “economic value,” which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Uber’s broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Uber’s claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Uber’s claims for confidentiality and refer the matter to the Administrative Law Judge division; direct Uber to re-serve the unredacted Advice Letter on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letter to allow the parties to analyze the Advice Letter and, if necessary, submit a supplemental protest. If, on the other hand, CPED is inclined to approve the Advice Letter without providing for further scrutiny and protests by the parties, San Francisco hereby preserves the right to request an evidentiary hearing under General Order 96-B, Section 7.4.1 based on the following disputed facts: that the redacted data is sensitive business information and disclosure of the redacted data would impair competition for the redacted WAV data, among other things.

Alternatively, San Francisco requests that the CPED reject the offset requests outright as clearly erroneous pursuant to General Order 96-B, Section 7.6.1, as they fail to demonstrate that Uber has met any of the minimum requirements of the Act and Decision 20-03-007 (“Track 2 Decision”). The little information that is available in the Advice Letter shows that 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. Further, the level of service provided, including response times for trips requests that were fulfilled, did not noticeably improve quarter over quarter, 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. Meet and Confer

In accordance with Section 10.5 of General Order 96-B, San Francisco met and conferred with Uber, but the parties were unable to resolve San Francisco’s objections to its claims of confidentiality informally. As part of the meet and confer, Uber offered to release the redacted data if San Francisco executed a non-disclosure agreement. Because, as detailed below, Uber has failed to meet its burden to show that the redacted information in Advice Letter 4 (or any of its previous Advice Letters 1-3) is subject to exemption under the California Public Records Act or San Francisco Sunshine Ordinance, San Francisco is not able to enter into a non-disclosure agreement. As a public entity, San Francisco is required to disclose all records responsive to applicable public

records requests that are not exempt from disclosure. This is especially true given the California Constitution's requirement that courts broadly construe provisions in state law that further the people's right of access and narrowly construe provisions that limit the right of access. As Uber has failed to demonstrate that the redacted information in any of its Advice Letters and attachments qualifies for such protection, San Francisco could not enter into such an agreement, which would prospectively prohibit it from meeting its statutory duty, and thereby expose it to potential liability for failing to comply with applicable public records laws. In addition, because Uber failed to meet its burden, coupled with the fact that the offset requests concern whether public funds are being spent appropriately, as a stakeholder, San Francisco could not agree to keep this information from the public. To do so would violate the purpose of the Act.

III. Background: The Commission has Rejected Sweeping TNC Confidentiality Claims, Confirming that Such Claims Must be Supported Consistent with California Public Records Law.

The California Legislature adopted the 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.) The Commission is committed to "ensur[ing] that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities, including those who use non-folding motorized wheelchairs." (*Ibid.*)

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).) In its Track 2 Decision, the Commission established rules for a TNC to seek such offsets, which is the subject of the Advice Letter.

A. Track 2 Advice Letter Process Incorporates Confidentiality Rules in D. 20-03-014.

The Commission specifically ruled that the Advice Letter process applies for the purpose of allowing the parties to review and assess the requests. It specifically includes a procedure for protests and objections to confidentiality for the very purpose of challenging what the submitters provide. The modifications in the Track 2 Decision to the advice letter process did nothing to detract from this right to review and protest. Rather, it merely states that "[g]iven SB 1376's specificity in creating the offset process and the need for expeditious approval of offsets for Access Fund disbursements, we elect to limit protests and responses to an Offset Request to parties in this proceeding or any successor proceedings." (Track 2 Decision, p. 38.)

By limiting protests to the stakeholders to this rulemaking, the Commission did not give a green light for unsubstantiated redactions to keep important data underlying offset claims from the public. To the contrary, the Track 2 Decision expressly held that requests for confidentiality of data related to the Act, and particularly data in offset requests, would be treated pursuant to the procedures set forth in Decision 20-03-014 in R. 12-12-011 ("TNC Data Decision"), which sets forth explicit requirements for TNCs to assert claims of confidentiality regarding their data. (*Id.*, p. 44.) The TNC Data Decision, incorporates General Order 66-D, which expressly applies to advice letters. (See GO 66-D, §§ 3.2, 3.3.) Because the Track 2 Decision held that offset requests should be

submitted through the advice letter process, the TNC Data Decision necessarily applies to these Advice Letters.

B. The Commission's Governing Orders and Decisions Caution Against Uber's Claims.

The TNC Data Decision expressly cautions any TNC against the use of broad-brush-style confidentiality claims, warning that the Commission would view such sweeping claims with suspicion. (TNC Data Decision, p. 30.) But that is precisely what Uber did in its Advice Letters 1-3 and what it continues to do with this Advice Letter 4 offset request. General Order 96-B is consistent, stating "it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process" and that "requests shall be narrowly drawn." (GO 96-B, §§ 10.1, 10.3.) Moreover, Uber's request fails as it did not attach a proposed protective order as required to comply with Section 10.3 of General Order 96-B, which states that requests for confidentiality in an advice letter "shall attach a proposed protective order, or reference an effective protective order applicable to advice letter submittals previously submitted by the person."

Pursuant to the TNC Data Decision, General Order 66-D, and General Order 96-B, the person requesting confidentiality bears the burden to establish a basis for confidential treatment. (TNC Data Decision, pp. 22-23, GO 66-D, § 3.2; GO 96-B, § 10.2.) If a TNC claims that the release of its information "will place it an unfair business disadvantage, the TNC's competitor(s) must be identified and the unfair business advantage must be explained in detail." (TNC Data Decision, p. 29.) Moreover, "if the TNC cites Government Code § 6254(k) (which allows information to be withheld when disclosure is prohibited by federal or state law), it must cite the applicable statutory provision and explain why the specific statutory provision applies to the particular information." (TNC Data Decision, p. 29; GO 66-D, § 3.2; see also GO 96-B, § 10.3.)

And finally, if the TNC cites Government Code § 6255(a), the public interest balancing test, as the basis to withhold information, then it "must demonstrate with granular specificity" why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. "A private economic interest is an inadequate interest to claim in lieu of a public interest." (TNC Data Decision, p. 29; GO 66-D, § 3.2.)

Against this backdrop, one must consider the public policy interests at play in these offset requests. In addition to meeting the goals of SB 1376, which was enacted solely for the purpose of requiring improvement in TNC access to disabled individuals, the purpose of the rulemaking and required data submissions in the offset requests is to ensure that the public Access Funds are being used on expenditures that improve WAV service. Of particular importance, the data here is being provided for reimbursement of public funds collected from every California passenger. Uber is seeking hundreds of thousands in offsets of public funds for this Advice Letter alone, but then incredibly, also is attempting to shield this data from parties to this rulemaking on the unsupported premise that the data in and of itself is economically valuable. This twisted logic turns the purposes of the Act and the California Public Records Act on its head. More importantly, the redactions make it impossible for the parties to this proceeding to assess whether Uber has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

As explained in further detail below, Uber's claims of confidentiality fail under the requirements of the TNC Data Decision, General Order 66-D and General Order 96-B. Therefore, the CPED should find the claims unwarranted and refer the matter to the Administrative Law Judge Division. Because the Advice Letter contains material omissions, and are unjust and unreasonable pursuant to General Order 96-B, 7.4.2.(3) and (6), respectively, Uber should be required to re-serve the unredacted Advice Letter, and the CPED should continue or reopen the protest period to allow the parties additional time to submit

supplemental protests after reviewing the same. In the alternative, Uber's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

IV. Uber Has Failed to Meet Its Burden To Establish Confidentiality in its Advice Letter.

Uber's claims of confidentiality in its Advice Letter fall into two main categories: (1) operational WAV data, and (2) data regarding WAV expenditures. Uber asserts that the redacted data is trade secret, "highly confidential" and/or "commercially sensitive" information. For the operational WAV data, Uber also claims the data is "sensitive from a privacy" perspective and subject to the public interest balancing test. (See Uber AL 4, Declaration of Confidentiality Pursuant to General Order 96-B, Section 10.3 on behalf of Uber Technologies, Inc. Regarding Advice Letter 4 ("Uber Declaration"), §§ 2-4.) Uber's broad claims, which offer no specific facts in support, are exactly what the Commission warned against in its TNC Data Decision and can be dismissed on the grounds detailed below.

A. Uber Has Not Met its Burden to Identify its Competitors Are Insufficient.

As an initial matter, each of Uber's claims, which all assert an unfair competitive advantage, should be rejected because its identification of competitors including "Lyft and all other [TNCs] as competitors who would gain an unfair advantage if the WAV data was released is insufficient. (Uber Declaration, §2(a)(1), fn. 1.) If a TNC claims, as Uber does here, that the release of its information will place it at "an unfair business disadvantage, the TNC's competitor(s) must be identified and the unfair business advantage must be explained in detail." (TNC Data Decision, p. 29.) The TNC Data Decision found that there is no competition in the TNC market other than Uber or Lyft who make up 99% of rides in California. Therefore, the Commission "fails to see any California permitted TNC, or a TNC that is waiting in the wings, who could be a viable competitor to either Uber or Lyft that would use the disaggregated data to Uber and Lyft's that would use the disaggregated data to Uber and Lyft's disadvantage." (*Ibid.*)

Moreover, Uber has not explained why releasing any of the data in the Advice Letters would create an unfair competitive advantage between Uber and Lyft. The Commission already reviewed information similar to what is at issue here in the TNC Data Decision, by reviewing the TNC annual reports, which include data on accidents, trip data, certain complaints, and most relevant here data on accessibility, including the number and percentage of customers who requested accessible vehicles, how often the TNC was able to comply with request for accessible vehicles, any instances or complaints of unfair treatment or discrimination of persons with disabilities, and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that there is no divide between service provided to the able and disabled communities. (TNC Data Decision at pp. 4-5.)

Regarding that data, the TNC Data Decision stated "[c]an either company honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly? The information known to date suggests otherwise." (*Id.*, at p. 20.) Nothing has changed. Thus, the Commission all but foreclosed Uber's arguments that Uber would have an unfair competitive advantage if the WAV data at issue were released, and Uber's claims of confidentiality fails on this ground alone. (AL 4, Uber Declaration, §§ 2(a)(i); 2(b)(i)-(viii).)

B. None of Uber's Redacted Data Constitutes a Trade Secret.

In Section 2(b) of its declaration, Uber claims that data, including the number of WAVs in operation, WAV trips completed, WAV cancellations by passenger, WAV cancellations by driver, response time, driver training (WAV operational data), and data regarding the breakdown and certification of funds expended on WAV service (WAV fund data) is confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and

operational capacity. Uber vaguely claims that all of this data constitutes trade secrets under Evidence Code § 1060. (Uber Declaration, §3.)

Where a TNC claims that the release of information will violate a trade secret (as provided by Civil Code §§ 3426 through 3426.11), “the TNC must establish that the data (a) contains information such as a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.” (TNC Data Decision, p. 29; Civ. Code § 3426.)

1. Required WAV Operational Data is Not a Trade Secret.

The Commission expressly required that TNCs provide the operational WAV data Uber seeks to protect to demonstrate the presence and availability of drivers of WAV vehicles for an offset request, as required by the Act. (Track 2 Decision, p. 5.) It found that collecting data on passenger no-shows and cancellations is necessary to reveal issues with rider accessibility or driver training that would be useful in evaluating a TNC’s WAV program. (*Id.*, p. 7.) Accordingly, in order to seek an offset of public funds, TNCs must submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week. (*Ibid.*) The Commission emphasized, “[w]e view 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.” (*Ibid.*)

Uber redacted all of its operational WAV data—WAVs in operation, WAV trips, WAV cancellations by driver, passenger or no show, and driver training and inspection data—asserting that “[t]his data contains economically valuable information which is not generally known to the public” and allegedly is a trade secret. (Uber Declaration, §§ 2(b)(i)-(v), (vii), 3.) Uber’s conclusory statements are patently insufficient.

Uber also claims, without more, that data produced in relation to response times is “confidential business sensitive information, the disclosure of which would reveal valuable information about product demand and operational capacity.” (Uber Declaration, § 2(b)(vi).) In addition to presence and availability, this data is necessary to determine whether Uber is able to demonstrate in a geographic area “improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter. . . .” (Track 2 Decision, p. 8.)

Uber’s vague statement that all information “reveals proprietary internal formulas, methods, salaries, techniques, investments, and tools” is too conclusory to meet the first requirement to show that any of the data listed above actually contains “a formula, pattern, compilation, program, device, method, technique or process” to establish a trade secret. (*Ibid.*) Therefore, Uber failed to establish the any of the data is a “trade secret” on this basis alone.

Second, Uber has failed to show that this data derives independent economic value (actual or potential) from not being generally known to the public or to other persons. Again in conclusory fashion, Uber states all “data contains economically valuable information which is not generally known to the public. Disclosure of this data may inhibit competition, and is thus against public interest. Competitors may be able to use this data to determine supply and demand and gain an unfair competitive advantage.” (Uber Declaration, §§2(b).) Uber does not even mention WAV service in these statements; and there is nothing to show why this specific information provides

“economic value” to anyone. Uber has failed to meet the second element to establish a trade secret, and the claim must be rejected.

Indeed, to ensure that the public purpose of the Act is met, parties must have access to the WAV data Uber seeks to hide to assess whether Uber has met the “presence and availability” or “improved level of service” factors required to show whether it is entitled to its offset requests. It is difficult to comprehend how sharing the number of WAVs in operation, trips completed, and cancellations over the course of a quarter by county and hour and day or “response times” could create an “unfair competitive advantage” for anyone, especially when Uber maintains that such trips comprise less than 1% of TNC demand. (AL 4, p. 4.)

Without being able to see the data required to be presented, the parties cannot meaningfully assess Uber’s requests. Uber has failed to meet its burden to show that this data should be redacted; and the public interest in disclosure strongly outweighs its claims.

2. Expenditure Data To Support A Claim for Public Funds is Not a Trade Secret.

Uber claims that data about the hundreds of thousands of dollars in funds it has expended for Quarter 2 of 2020 for which it is seeking offsets, certification of those funds, and payment to third party vendors is confidential. To demonstrate a full accounting of funds expended, the fourth required element of an offset request, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. (Track 2 Decision, pp. 25-26.) A TNC seeking an offset for a contractual arrangement with a WAV provider must identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (*Ibid.*) Notwithstanding these express requirements, Uber claims the breakdown and certification of funds is confidential because it is a trade secret or “highly confidential.” Uber’s claims are completely insufficient.

Initially, Uber’s claim that the amount of money it paid its third party contractors to provide WAV service is somehow highly confidential. (Uber Declaration, §2(a)(i).) Uber cites Government Code Section 6254(k) as a basis for statutory protection, but fails to cite an applicable statute in support as required by the TNC Data Decision. Thus, Uber has failed to meet its burden to prove this threshold requirement. (TNC Data Decision, p. 29; see also GO 96-B § 10.2)

Moreover, where Uber has asserted trade secrets as a source of statutory protection to keep the public from seeing how much public money Uber seeks as reimbursement for its investments to increase access to WAV service throughout California during Quarter 2 of 2020, Uber again has failed to meet the TNC Data Decision’s requirements.

First, Uber’s claims fail to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. The data at issue is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating otherwise. Second, Uber’s claims that the breakdown of funds expended derives “economic value” also are nothing more than conclusory statements with no showing of how or what potentially derives this value. It is elementary that when seeking reimbursement of public funds, the amount of the expenditures is subject to public disclosure. And again, If Uber needs public funds to reimburse it for these investments to improve WAV service, it cannot at the same time claim the data supporting that claim is too economically valuable to share. Uber’s claims of trade secret fail on this additional ground.

Uber continues to ignore the strong public interest and need for parties to review this data. The Act requires a breakdown of funds, echoed by the Commission in the Track 2 Decision, reflecting the need to make sure that public dollars collected to improve WAV access are being spent appropriately. Without the parties to the rulemaking being able to see the breakdown of funds, it is impossible for parties to assess whether Uber meets this requirement.

Uber's requests for confidentiality fails on all of the grounds above, and its claims of offset should be rejected on the grounds that the requests contains material omissions and are unreasonable under the circumstances. (General Order 96-B, § 7.4.2.)

C. Uber's Privacy Claims Are Unsubstantiated.

Uber also makes vague claims about protecting privacy interests in its declaration regarding WAV trips and cancelled trips, asserting that the "data is also sensitive from a user privacy perspective because due to the low volume this data might be used to identify individual riders and drivers." (Uber Declaration, §2(b)(ii)-(v). Uber's claims first fail because it does not identify a statutory basis to entitle it to protection under Section 6254(k) or "explain why the specific statutory provision applies to the particular information." (TNC Data Decision, p. 29; GO 66-D, § 3.2; see also GO 96-B, § 10.3.) Therefore, Uber also failed to meet its burden on these claims.

Even if Uber had properly identified an applicable statute, the claims fall flat. As noted, the data at issue is geographically aggregated by county and would not identify any individual. For the counties where the volume of trips per quarter is potentially so low that Uber believes it may be possible to implicate individual concerns, Uber has not identified what number of trips qualify as "low volume" or in which specific counties this is an issue. Instead, it has redacted all data for all counties. This is patently insufficient. Even if Uber were able to identify a county where the volume is so "low" that a privacy interest could be implicated, there are mitigating measures it could employ short of complete redactions to protect those interests. However, as Uber has failed to meet its burden to specifically identify the privacy law at issue and/or the counties where "low volume" is a problem, and its claims for confidentiality fail.

D. Uber's Claim that "Trip Data" is Subject to Balancing Test Exemption Lacks Merit.

Uber next claims that "trip data" is protected by Government Code § 6255(a), an exemption to the CPRA, which is commonly referred to as the "public interest balancing test." (Uber Declaration, §4.) Uber claims that the "highly competitive data" redacted would be of "great value to TNCs (actual and potential), such as Lyft." (*Ibid.*)

But, the Commission already has flatly rejected Uber's argument. In the TNC Data Decision, the Commission stated: "[i]f the information submitter cites Government Code § 6255(a) (the public interest balancing test) as the basis to withhold the document from public release, then the information submitter must demonstrate with *granular specificity* on the facts of the particular information why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. *A private economic interest is an inadequate interest to claim in lieu of a public interest.*" (TNC Data Decision, p. 29. [emphasis added].)

First, ignoring the purpose of the Act, Uber goes on to state "[t]he public would not benefit from disclosure of such data that could reduce competition in the rideshare marketplace." (Uber Declaration, §4.) This is an incredible statement ignoring the public purpose behind the Act, this rulemaking, and the creation of a public fund from which Uber now seeks reimbursement. Uber cannot have its cake and eat it too. Second, Uber claims that disclosing this information would "reduce competition in the rideshare marketplace." (*Ibid.*) The Legislature and Commission have spoken about the need to provide this information to the public to show an increase in WAV service

and to be entitled to access the public Access for All Funds. And Uber has patently failed to meet the requirements of the TNC Data Decision to show with “granular specificity” how the public is served. The public interest in disclosure clearly outweighs Uber’s conclusory and unsupported claims about “competition.”

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

As noted above, 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. Even based on what is reviewable in the offset requests, 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. This 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 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.

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, no matter how few drivers and vehicles the data show were present or available for WAV service, would meet this requirement. Such an interpretation would render the statutory requirement for presence and availability a nullity.

A demonstration of presence and availability under the Act must rest on an actual showing by the data. Even from Uber’s unredacted data, it is clear that during Q2 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 Q2 of 2020 were not accepted and an alarming percentage of requests were cancelled by the passenger, which could indicate that quoted response times were too long or that riders had other discouraging experiences, such as a driver circling until

a rider gave up (AL 4, Exhibit 1, “Percentage WAV Trips Not Accepted” Tab and “Percentage WAV Trips Cancelled by Passenger” Tab.)²

Moreover, Uber left many cells in all tabs beginning with “% WAV Trips...” blank without a percentage reported and therefore it is unclear whether these cells should be interpreted as 0%, 100%, or simply not applicable (meaning that no requests were made during that hour, for example) unless one manually compares each cell to the other reported tabs. Further, 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 2 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 unredacted 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 meet the second element of “improved level of service” for a retroactive offset, a TNC must demonstrate that the 50th percentile of completed WAV trip requests met the specified response times for the region. In San Francisco, the fiftieth percentile of WAV trip response times must receive service in twenty minutes or less. 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. (Track 2 Decision, pp. 40-41.) 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.” In its public offset request Uber has redacted all data provided on that tab except for rows in the column labeled “Level 1 or Level 2.” Therefore, it is impossible for parties to understand whether Uber has met the requirement or demonstrated an improved level of service from quarter to quarter. Further, Uber’s Advice Letter suggest that the Commission and CPED should consider measures other than response times, such as whether the number of complaints decreased.³ While complaints are an important consideration, the sheer volume from quarter to quarter or year to year are not an objective measure on their own, and a simple reduction in volume is not basis for granting an offset. For these reasons, CPED should reject the offset request on this additional ground.

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

² For example, See AL 4, Q2 2020: On Mondays, during hours which Uber received requests, it was only able to, on average, complete 38% of requests and did not accept 30% of requests. Passengers canceled an average of 30% of requests.

³ See AL 4, Q2 2020, p10

proceeding, who are best suited to assess whether Uber makes a compelling case in this arena. However, we do note that despite a reference to marketing such as “earned and social media” in Attachment C of the Advice Letter 4, Uber’s offset request only describes outreach that continues to rely on community partners to publicize WAV services to potential riders. For example, the outreach reported in San Francisco for Q2 of 2020, includes one email, one phone call and one stakeholder interview. The information Uber has submitted does not demonstrate a significant effort to reach out to riders who need WAVs to advertise or promote the availability of service.

D. Uber’s Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to improve WAV service. Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of fund,” 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 (emphasis added). Due to Uber’s extensive redactions, it is unclear what costs Uber incurred providing WAV service and there is no showing whether these investments improved WAV service.

VI. Conclusion.

In sum, Uber’s offset request in Advice Letter 4 fails on multiple grounds and should be rejected. First, Uber has failed to meet its burden to establish that any of its claims are entitled to confidential treatment. Providing operational WAV data and data establishing the breakdown of expenditures to improve WAV service do not constitute trade secrets; nor are they sensitive business information entitled to protection. The claims also fail to meet the requirements of privacy protection of the balancing test exemption of Section 6255(a). Second, even considering the limited data Uber has shared, it fails 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” of WAV service to meet the Act’s requirements. Further, Uber’s showing of outreach and accounting of expenditures is equally lacking.

Accordingly, San Francisco requests that the CPED reject Uber’s claims for confidentiality; refer the matter to the Administrative Law Judge Division; direct Uber to re-serve an unredacted Advice Letter on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letter to allow the parties to analyze the Advice Letter and, if necessary, submit a supplemental protest. Alternatively, for the reasons stated herein, San Francisco requests that the Advice Letter is rejected outright as CPED cannot reasonably find that Uber has met the required statutory burden.

Sincerely,

By: _____/s/_____

Tilly Chang
Executive Director
San Francisco County Transportation Authority

By: _____/s/_____

Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

By: _____/s/_____

Nicole Bohn

Director

San Francisco Mayor's Office on Disability

Attachment

cc: Shivani Sidhar, westregs@uber.com