

January 17, 2023

Rachel Peterson, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

SUBJECT: Reply Letter for AV Confidentiality Draft Resolution CPUC L-619

Director Peterson:

The San Francisco Municipal Transportation Agency (“SFMTA”) and San Francisco County Transportation Authority (“SFCTA”) submit this reply letter in response to the comment letters submitted by Waymo and the Silicon Valley Leadership Group (“SVLG”) related to Draft Resolution Number L-619 issued by the California Public Utilities Commission (“CPUC”) on December 9, 2022 related to California Public Records Act (“CPRA”) requests for disclosure of autonomous vehicle passenger service (“AVPS”) applications. The SFMTA and SFCTA (collectively “San Francisco”) write to reiterate their support for the reasoning contained in the Draft Resolution and respond briefly to the other comment letters.

Waymo seeks clarification on whether the Draft Resolution applies to it, and, if so, what is the scope of its application. San Francisco supports Waymo’s request for clarification but contends that the four categories of information described in the Draft Resolution that would be exempt from disclosure should apply to Waymo, as well as every other AVPS company. This would prevent future relitigation of the specific confidentiality claims addressed in the Draft Resolution, thus allowing the CPUC to both save staff time and promptly produce responsive nonexempt records. (Cal. Gov. Code § 7922.535).

SVLG makes several policy arguments seeking to limit disclosure. First, it asks that the DR only apply to current AVPS applications and that future applications should be reviewed separately. This request should be denied for similar reasons as described above. It would result in duplicative work for CPUC staff, waste resources, and delay production of responsive nonexempt records. Second, SVLG argues that because the AVPS industry is still in early stages, more information should be considered a trade secret or confidential than would be the case with a more mature industry, such as transportation network companies (“TNC”). This sort of generalized claim of trade secret protection for the entire AVPS industry would require the support of a thorough factual record and SVLG provides nothing of the sort.

While there may be differences between the AVPS industry and the TNCs, there are significant parallels between the two and the CPUC can and should draw on its years of work in that context as it continues to regulate the AVPS industry. To do otherwise would be inefficient and duplicative. Although the Commission initially authorized confidential treatment of TNC data in 2013, since 2020 the Commission has moved decisively and consistently away from its 2013 ruling and toward an approach that favors disclosure.¹ Thus, the Draft Resolution is consistent with and a logical extension of:

¹ See D. 20-09-014 Decision on Data Confidentiality Issues Track 3, issued on March 16, 2020, at 10 (“Decision on Data Confidentiality Issues Track 3”); Ruling on Uber Technologies, Inc.’s and Lyft’s Motion for Confidential Treatment of Certain Information in their 2020 Annual Reports, issued on December 21, 2020; Ruling on the Motions of Uber Technologies, Inc., Lyft, Inc., HopSkipDrive, Inc., and Nomad Transit, LLC for Confidential Treatment of Portions of their 2021 Annual Transportation Network Company Reports, issued on November 24, 2021; Decision Denying Appeal of Lyft, Inc. Re: Ruling Denying, In Part, Motions by Uber

1. The Commission's March 12, 2020 Decision 20-03-014 (TNC Data Track 3) that TNC data is presumptively public and that the industry bears a heavy burden to demonstrate that the public interest in non-disclosure must outweigh the public interest in disclosure;²
2. Multiple rulings requiring broad disclosure of TNC annual report data and approving only limited claims for confidential treatment based on privacy or trade secret;³
3. AVPS decisions that have adopted presumption of public disclosure consistent with D 20-03-014⁴.

SVLG disregards the other key factors that led the Commission to move away from confidential treatment—adoption of stricter standards and heightened public interest.⁵

Lastly, the SVLG and Waymo fail to even acknowledge the strong public interest in favor of disclosure that is both inherent in the CPRA and held by all other road users. The novelty of AV technology (a fully autonomous robotic vehicle) is magnitudes higher compared to the technology that enabled the TNC industry to exist (smartphone applications that connect drivers and passengers). Accordingly, the public interest in disclosure is stronger here and drivers, cyclists, transit riders, and pedestrians all have a strong interest in understanding AVPS impacts to safety, equity, accessibility, and environmental outcomes.

Dated: January 17, 2023

Respectfully submitted,
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By: _____/s/
MISHA TSUKERMAN

On behalf of: THE, SAN FRANCISCO
MUNICIPAL TRANSPORTATION
AUTHORITY

Technologies, Inc. and Lyft, Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, issued on May 6, 2022..

² Decision on Data Confidentiality Issues Track 3, at 37.

³ *Supra*, fn.1.

⁴ See D. 20-11-046 Decision Authorizing Deployment of Phase I Drivered and Driverless Autonomous Vehicle Passenger Service, issued on November 23, 2020 as modified by D. 21-050017 at Section 4.18;

⁵ *Supra*, fn. 2, at 20, 25.