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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
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Re: Protest to Lyft Advice Letter 5, Q3 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 and objections to confidentiality against Lyft Inc.'s ("Lyft") Advice Letter 5 requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letter").

Lyft's Advice Letter 5 is virtually the same in terms of redactions and overall deficiencies as its Advice Letters 1-4, to which San Francisco protested and objected to confidentiality. The main difference is that on October 1, 2020, ALJ Chiv rejected Lyft's claims of confidentiality in its Draft Resolution-ALJ 388 Resolution Denying the Appeals by Uber Technologies, Inc. and Lyft Inc. of the Consumer Protection and Enforcement Division's Confidentiality Determination In Advice Letters 1, 2, and 3 ("Draft Resolution"), which the Commission is scheduled to hear on November 5, 2020, the day after this protest is due.

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(3) and (6), San Francisco protests Lyft's Advice Letter on the grounds that: (1) pursuant to Section 7.4.2(3), Lyft has unjustifiably redacted the large majority of data provided in its offset request for over a million dollars 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 "presence and availability" of WAV service or an "improved level of service," including reasonable response times. San Francisco again includes in this protest an objection to

Lyft's claims of confidentiality pursuant to General Order 96-B, Section 10.5, as Lyft has utterly failed to meet its burden to prove that the redacted data should be withheld from disclosure under the Commission's governing decisions, orders, and also now the Draft Resolution.

Lyft again 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"). Lyft's assertion that data needed to demonstrate these minimum requirements are trade secrets from which the company derives "independent economic value," which must be shielded from public scrutiny is completely at odds with the purpose of the Act. Lyft's broad claims should be rejected, and the data should be made available immediately so the parties can meaningfully assess Lyft's claims for these public funds.

Accordingly, San Francisco requests that the CPED, as the Industry Division reviewing these requests, reject Lyft's claims for confidentiality and again refer the matter to the Administrative Law Judge Division; direct Lyft to re-serve unredacted Advice Letters 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 Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest. If, on the other hand, CPED is inclined to approve the Advice Letters 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 that disclosure of the redacted data would impair competition for the redacted WAV data.

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 Lyft has met any of the minimum requirements of the Act and the Track 2 Decision. The little information that is available in the Advice Letters shows that Lyft's claims of having met the offset time standards are entirely overshadowed by the fact that service is not available one third of each day, indicating a significant failure to demonstrate presence and availability. Further, the available data cannot justify the significant amounts Lyft seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Lyft 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 Lyft, but the parties were unable to resolve San Francisco's objections to its claims of confidentiality informally. As part of the meet and confer, Lyft offered to release the redacted data if San Francisco executed a non-disclosure agreement pending resolution of the Draft Resolution. As noted, Lyft has failed to meet its burden to show that the redacted information in Advice Letter 5 (or any of its previous Advice Letters 1-4) is subject to exemption under the California Public Records Act or San Francisco Sunshine Ordinance. 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 Lyft has failed to meet its burden 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 Lyft 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 California Legislature adopted the Act with the stated intent that wheelchair users who need WAVs "have prompt access to TNC services." (D. 19-06-033, 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 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 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 to protest and objections to confidentiality for the very purpose of challenging what the submitters provide. The Draft Resolution held that the Track 2 Decision "did not modify any of GO 96-B's requirements concerning the confidentiality of Advice Letter filings or the public's right to access information submitted in an Advice Letter, as set forth in Rule 10." (Draft Resolution, p. 18.) 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, as the Draft Resolution held, the Track 2 Decision 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. (Draft Resolution, p. 4; Track 2 Decision, 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 Draft Resolution, Governing Orders, and Decisions Caution Against Lyft's Claims.

The Draft Resolution affirmed the TNC Data Decision's caution against the TNC's use of broad-brush style confidentiality claims, warning that the Commission would view such sweeping claims with suspicion. (Draft Resolution, p. 6; TNC Data Decision, p. 30.) But that is precisely what Lyft did in its Advice Letters 1-4 and what it continues to do with this Advice Letter 5 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, Lyft again failed to 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."

As the Draft Resolution held, the person requesting confidentiality bears the burden to establish a basis for confidential treatment. (Draft Resolution, p. 6; 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." (Draft Resolution, p.6; 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. (Draft Resolution, p. 16.) "A private economic interest is an inadequate interest to claim in lieu of a public interest." (*Ibid*.; 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. Lyft is seeking over a million dollars in offsets of public funds in 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 Lyft has met the Commission's minimum requirements for offsets as set forth in its Track 2 Decision.

Just as the ALJ rejected Lyft's claims of confidentiality in the Draft Resolution, Lyft's claims in Advice Letter 5 fail again here. 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, Lyft 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, Lyft's offset requests should be rejected as clearly erroneous in failing to meet the minimum requirements for offsets.

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

Lyft makes two legal arguments that the redacted data in its Advice Letter 5 is subject to confidential protection: (1) the data constitutes trade secrets; and (2) under the public interest balancing test, the interest in confidentiality outweighs the interest in disclosure. (See AL 5, Declaration of Brett Collins in Support of Request for Confidential Treatment of Documents ("Collins Decl.").) Lyft's broad claims, which offer no specific facts in support and treat WAV service as if it were the same market as TNC service generally, are exactly what the TNC Data Decision warned against. And again, given that the purpose of Lyft's request is for reimbursement of over a million dollars of public funds for its investments in improving WAV service, scrutiny by interested parties to this rulemaking is essential. Lyft's claims fail under the holding of the Draft Resolution and the Commission's governing rules, as set forth below.

A. Lyft Has Not Met Its Burden to Identify Its Competitors.

As an initial matter, each of Lyft's claims, all of which assert it will suffer "competitive harm," should be rejected because its identification of Uber or a potential new entrant into the WAV marketplace, as competitors who would gain an unfair advantage if the WAV data was released is insufficient. (Collins Decl., ¶¶8, 13, 18, 19.) If a TNC claims, as Lyft 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, which 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 Lyft or Lyft that would use the disaggregated data to Lyft and Lyft's disadvantage." (TNC Data Decision, pp. 15-16.) For similar reasons, Lyft's new claim that a "potential new entrant into the WAV marketplace" is similarly unavailing. (Collins Decl., ¶¶8, 13, 18, 19.)

Moreover, Lyft fails to explain why releasing any of the data in the Advice Letter would create "competitive harm" between Uber and Lyft. The Commission already reviewed similar information when it reviewed the TNC annual reports in the TNC Data Decision. The annual reports include data on accidents, trip data, certain complaints, and, most relevant here, data on accessibility, which includes 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, pp. 4-5.) Regarding the annual report 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*., p. 20.)

The Draft Resolution affirmed that point, holding that as "part of their annual TNC reports to the Commission, Lyft and Uber are already required to submit the number and percentage of customers that request accessible vehicles, and how often Lyft and Uber comply with an accessible

vehicle request." (Draft Resolution, p. 9.) It held, "[w]hile TNCs are not required to report this information on a county level basis, at least a subset of the information at issue here is already publicly available and therefore, would not meet the requirement of Civ. Code § 3426.1(d) that the information is 'not generally known to the public….'" (*Ibid*.) In response, Lyft claims that the data at issue here is different in kind from the WAV data submitted in the annual reports because that data concerns accessible vehicle requests received by Lyft throughout California and fulfillment of requests by third parties, rather than by Lyft through its WAV program. (Collins Decl, ¶10.) However, as the Draft Resolution notes, this is a distinction without a difference as the underlying data in both is trip data related to wheelchair accessible vehicles, whether across the state or not. If the annual report data is not a trade secret, neither is the WAV data at issue here. Because the Commission all but foreclosed Lyft's arguments that Lyft would face "competitive harm" if the WAV data at issue were released, Lyft's claims of confidentiality fails on this ground alone. (Collins Decl., ¶¶8-10.)

B. None of Lyft's Data Constitutes a Trade Secret.

Lyft claims that the data in the following categories in its Advice Letter constitute trade secret information exempt from disclosure under the California Public Records Act ("CPRA") under the exemption set forth in Gov't. Code § 6254(k)("other law" exemption incorporating trade secret protection under Evidence Code §1060 and Civil Code § 3426.1): 1) WAV in Operation, WAV Trips Completed, WAV Trips Not Accepted, WAV Trips Cancelled - No Show, WAV Trips Cancelled Passenger, WAV Trips Cancelled Driver, Cancellations - Completed, Cancellations - Not Completed, Total Unique WAV Trips Completed, Offset Response Time (collectively "Ride Data"); 2) Training and Inspection; and 2) Funds Expended, Funds Expended Certification, and Contract Information, (collectively "Expenditure Data"). (AL 5, Collins Declaration, ¶¶ 6-10, 12-14, 16-20.)

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; Draft Resolution, pp. 5-6.)

1. WAV Ride Data

For the Ride Data, Lyft conveniently ignores that the Commission expressly required that TNCs provide this exact data to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request. (Track 2 Decision, p. 5.) "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." (*Ibid*.) 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*.) Even with this express direction from the Commission, Lyft claims that the public interest in the offset requests is "minimal." (Collins Decl., ¶¶11, 15, 21.)

In addition, Lyft claims that data produced in relation to response times is also protected as a "trade secret." In addition to presence and availability, TNCs must, at a minimum, 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.)

Lyft's claims fail to meet the first element of Civil Code § 3426, listed in the TNC Data Decision and affirmed in the Draft Resolution, which requires a showing that the data at issue qualifies as "a formula, pattern, compilation, program, device, method, technique or process." (*Ibid*.) The Draft Resolution held that "[t]he mere fact that Lyft and Uber possess a set of information and group that information for the purposes of applying for an Offset Request does not transform that information into a trade secret 'compilation.'" (Draft Resolution, p. 7.) As in the Draft Resolution, "the information Lyft seeks to protect is akin to the trip data at issue in D.16-01-014. The categories of information are being put together at the behest of the Commission in D.20-03-007." (*Ibid*.) Based on this, the ALJ found that Lyft failed to satisfy its burden to demonstrate that a trade secret exemption applies to any of the data, including the Ride Data at issue here. (*Id*., p. 8.) Lyft has failed to provide anything more here other than stating the data is "compiled," and its trade secret exemption arguments fails on this threshold basis.

Second, Lyft has failed to meet the second element of § 3426 to show that the Ride Data derives independent economic value (actual or potential) from not being generally known to the public or to other persons. Lyft cites its general business model for its regular TNC business, asserting this data is central to balancing supply and demand. However, Lyft ignores that the data provided is not "trip-level" but aggregated across a quarter by county. And to the extent Lyft claims their WAV service programs are "emerging markets" with "significant competition among companies seeking to gain and establish entry into this market," Lyft only references Uber, who is already involved in the same efforts as Lyft, as well as vague references to an unknown "potential entrant" waiting in the wings. (TNC Data Decision, p. 29; Collins Decl., ¶8.) Further, in many other filings in this rulemaking, Lyft repeatedly has claimed how difficult and unprofitable this market is to serve, which is why the Legislature had to create this fund in the first place. It also has stated in prior Advice Letters that the WAV market is miniscule, accounting for less than 1% of its business. If Lyft 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. Lyft also has failed to meet its burden on the second element to establish a trade secret, and the claim must be rejected.

2. Training and Inspections

Lyft also claims that training and inspection data, which includes the number of drivers it has recruited and WAV vehicles procured during a quarter constitutes trade secret information exempt from disclosure. (Collins Decl., ¶¶12-13.) Once again, Lyft's claims fail to meet the first requirement to show that any of the data listed above contains "a formula, pattern, compilation, program, device, method, technique or process," which as the ALJ noted in the Draft Resolution, is fatal. The Draft Resolution held that "The mere fact that Lyft and Uber possess a set of information and group that information for the purposes of applying for an Offset Request does not transform that information into a trade secret 'compilation.'" (Draft Resolution, p. 7.) Again, these categories of information are being put together at the behest of the Commission in D.20-03-007. (*Id*., p. 8.) Lyft has failed to provide anything more than basic information and its trade secret exemption arguments fails on this threshold basis.

Nor has Lyft met its burden to show that this data derives significant independent economic value from not being generally known. Lyft argues that the data would be valuable to its "competitors" looking to establish or improve its own WAV program without having to expend the substantial effort to obtain and compile the data, which Lyft does for strategic purposes. In particular, Lyft claims that the data regarding the number of drivers and WAVs is the product of substantial investment in money. (Collins Decl., ¶13.) But if investing money for a strategic purpose was all that was required to meet this element, then it is difficult to conceive of a business investment that would not qualify.

3. Expenditure Data

The Track 2 Decision held that 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. A TNC seeking an offset for a contractual arrangement with a WAV provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (Track 2 Decision, pp. 25-26.)

Lyft claims that the Expenditure Data regarding how it allegedly spent money to improve WAV service for which it is seeking to be reimbursed, constitutes trade secret information exempt from disclosure. (Collins Decl., ¶¶16-20.) But Lyft again fails to show that reporting on expenditures of funds contains a formula, pattern, compilation, program, device, method, technique or process. (*See* Draft Resolution, pp. 7-8; TNC Data Decision, p. 29.) The Expenditure Data is nothing more than an accounting for reimbursement of public funds, with no specific facts demonstrating anything more. In addition, Lyft's claims that the breakdown of funds expended derives "economic value" are nothing more than conclusory statements with no showing of how or what potentially derives this value. As the Draft Resolution stated, "[w]e cannot see how the fund amounts would reveal competitively harmful information, if disclosed. For example, the total amount Lyft or Uber expended on 'transportation service partner fees/incentives/management fees' is an aggregated amount, and does not differentiate hourly rates or specific pricing information that could be of use to a competitor." (Draft Resolution, p. 10.) Likewise, "disclosing the total amount expended on, for example, 'marketing costs'" does not reveal "any 'granularity' that a competitor could plausibly use." (*Ibid*.)

The Draft Resolution found that Lyft's conclusory assertions that all of the "funds expended" categories constitute trade secrets fails to satisfy its burden to prove with particular facts that such information meets the definition of a trade secret, providing "no basis for withholding any of the 'funds expended' amounts, pursuant to Civ. Code § 3426.1(d)." (Draft Resolution, p. 11.) The same is true again here, and Lyft has once again failed to meet its burden to demonstrate its Expenditure Data is entitled to protection as a "trade secret."

C. Lyft's Claims Fail the Public Interest Balancing Test.

Lyft next claims that the Ride Data, Training Data, and Expenditure Data are protected by Government Code § 6255(a), an exemption to the CPRA, which is commonly referred to as the "public interest balancing test." (Collins Decl., ¶¶11, 15, 21.) Just as in the Draft Resolution, Lyft's efforts to explain why this exemption applies to all categories of redacted data once again involve a single paragraph, which states generally that disclosure of the competitively sensitive information

would harm competition in the TNC marketplace, that strong public policy favors protecting trade secrets and sensitive business information, and that the public interest in public disclosure is minimal. (Draft Resolution, p. 16.)

Citing GO-66D's requirements, the Draft Resolution flatly rejected Lyft's argument:

> 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."
>
> (*Ibid*. [emphasis in original].)

It held that Lyft failed to provide any specificity "on the facts of the particular information why the public interest served by not disclosing the particular record outweighs the public interest served by disclosure" of the particular record. Rather, because Lyft employed "the 'broad-brush-style confidentiality claims' the Commission cautioned against in D.20-03-014," the ALJ found that Lyft "failed to meet its burden under Rule 10 of GO 96-B, as well as Section 3.2 of GO 66-D." (*Ibid*.)

Similarly, the Draft Resolution rejected Lyft's claim of competitive disadvantage under the public interest balancing test, reasoning that "Lyft's assertions are based principally on a fear of increased competition from its competitors, and a potentially negative impact on Lyft's corporate well-being, rather than on any argument that the public itself would be better off not seeing the information at issue." (*Id*., p. 17.) Lyft's sole reliance on a private economic interest is inadequate.

And finally, the Draft Resolution reaffirmed the public interest in information concerning the conduct of the people's business, finding that the direction and goals of the TNC Access for All Act and the Commission's TNC Access for All program evince a strong interest in public dialogue and transparency related to the WAV program. (*Ibid*.) Moreover, again rejecting Lyft's claims, it held that "public disclosure of the requested WAV information, as part of the Offset Request process, will greatly assist the Commission, parties to this proceeding, and the public in understanding the effectiveness of WAV programs in the State, as well as to assist in addressing challenges and ways to improve WAV availability and access." (*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.

The public interest in disclosure of the WAV data clearly outweighs Lyft's conclusory and unsupported claims about "competition." Lyft's claims should again be rejected.

V. Lyft'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, Lyft failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Lyft 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 the unredacted data in Lyft's Advice Letter does not demonstrate presence or availability. First, Lyft's public marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides standard service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act. In addition, Lyft's submitted and unredacted WAV data demonstrates an alarming percentage of WAV trips canceled by passengers - as high as 100% during some hours in Los Angeles and as high as 66.67% during some hours in San Francisco. Passenger cancellations should be unusual as they typically result in a fee charged to the passenger. If a large proportion of WAV riders are canceling their trip requests, it brings up serious concerns about the riders' experience and the quality of the service being provided. For these reasons, Lyft has not sufficiently demonstrated presence and availability of their service in any quarter for which they are seeking an offset. (AL 5, Exhibit 1.) The CPED should reject Lyft's requests as being materially incomplete at the very least.

B. Lyft 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. A TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. Because Lyft has redacted all information provided on the tab "Response Time Final," it is impossible to determine if Lyft has met the specified response

times for any region or demonstrated an improved level of service in each quarter for which an offset is requested. As a result, CPED must reject the requested offsets.

C. Lyft 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).) San Francisco urges staff to connect with members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Lyft makes a compelling case in this arena. However, we continue to note that we have received constituent feedback that the "WAV" option is not readily available in the Lyft app unless a rider knows to activate "Access mode" in the app settings. This makes the WAV service invisible to those not in the know.

D. Lyft's Unredacted Data Essentially Contains No Accounting of Funds Expended.

The Act allows TNCs to offset the amounts allegedly 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 Lyft's extensive redactions, it is unclear what costs Lyft incurred providing WAV service and there is no showing whether these investments improved WAV service.

VI. Conclusion

Once again, Lyft's offset request in its Advice Letter 5 fails on multiple grounds and should be rejected. The Draft Resolution aptly disposed of the each of the claims Lyft makes again here. First, Lyft has failed to meet its burden to establish that any of its claims are entitled to confidential treatment. Providing operational WAV data, training data, and expenditure data to improve WAV service do not constitute trade secrets, nor do they meet the public interest balancing test. Moreover, even for the limited data Lyft has shared, it fails to meet the threshold requirements for offsets in the Act and Track 2 Decision. Lyft's data does not show that there is presence and availability of WAV service to meet the Act's requirements; nor does the data show that there is an "improved level of service" in its response times. Its showing of outreach and accounting of expenditures is equally lacking.

Accordingly, San Francisco requests that the CPED reject Lyft's claims for confidentiality; refer the matter to the Administrative Law Judge Division; direct Lyft 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 be rejected outright as CPED cannot reasonably find that Lyft 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
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cc: Annette Tran, atran@lyft.com
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