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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 Uber Supplemental Advice Letter 2A, Q4 of 2019, 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 against Uber Technologies Inc.'s ("Uber") Supplemental Advice Letter 2A 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(6), San Francisco protests Uber's Advice Letter on the grounds that the relief requested is unjust and unreasonable as Uber fails to demonstrate adequately the "presence and availability" of WAV service or an "improved level of service," including reasonable response times.

Contrary to Uber's suggestions, San Francisco is not relitigating past policy decisions, and appreciates Uber's attempts to comply with the Act.² San Francisco simply requests that the CPED, as the Industry Division reviewing these requests reject the offset requests as unjust and unreasonable

¹ Uber submitted Supplemental Advice Letters 1A-4A in an unredacted format in response to Resolution ALJ-388, which rejected Uber's claims of confidentiality, aside from a limited confidentiality claim in Advice Letter 4A. Advice Letters 1A-4A are nearly identical in terms of supporting information and overall deficiencies, and San Francisco's protests are nearly the same as well.

² See Uber Reply to Protests by SFMTA, SFCTA, and SFMOD to Uber AL 6.

because they fail to demonstrate that Uber has met any of the minimum requirements for an offset request under the Act and Decision 20-03-007 (“Track 2 Decision”). 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 demonstrably improve the 50th percentile of completed wheelchair accessible vehicle (WAV) trip response times in a geographic area over the previous quarter, and therefore 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. Uber’s Advice Letters Do Not Meet The Requirements for Award of Public Funds.

The California Legislature adopted the TNC Access for All Act (“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.) 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).)

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).) In the case of retroactive offsets requested for each of the three quarters beginning July 1, 2019, October 1, 2019, and January 1, 2020, TNCs must comply with the same adopted Offset Request requirements, with the following exceptions: (1) a TNC need not comply with the response time benchmarks in Ordering Paragraphs 2 and 3. Instead, a TNC shall demonstrate improved level of service by showing that the 50th percentile of completed wheelchair accessible vehicle (WAV) trip response times in a geographic area improved over the previous quarter; and (2) a TNC need not submit the certifications and reporting of completed WAV driver training or WAV vehicle inspections in Ordering Paragraph 13.

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. Based on the information submitted in this Advice Letter, 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. 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 that showed zero WAVs anywhere in the entire state would satisfy this requirement to “demonstrate” presence and availability. Such an interpretation is plainly inconsistent with the intent of the statute and would render the statutory requirement for presence and availability a nullity.

Presence and availability 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 reporting 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.

Given the inflated numbers in the response time metric, it is even more important that a demonstration of presence and availability under the Act must rest on an actual showing by the data. It is clear that during Q4 of 2019, 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 Q4 of 2019 were not accepted or cancelled by the driver. Table 1 below clearly demonstrates the lack of availability and presence of TNCs in the counties for which Uber is requesting an offset request. This table shows the number and percentage of WAV requests that are unfulfilled either because they were outright not accepted, or they were cancelled by the driver. In the counties for which Uber is requesting offsets, 71% of WAV ride requests were either not accepted or were declined by Uber, which is worse than 67% of WAV ride requests were either not accepted or were declined by Uber during Q3 of 2019 for offset request counties, failing to meet the statutorily required improved level of service. Los Angeles County, 77% of WAV requests, up from 73% in Q3 of 2019, while in San Francisco County, 62% of WAV requests are not accepted or cancelled by the driver, up from 50% in Q3 of 2019.

Table 1. Percent of WAV Ride Requests NOT ACCEPTED or CANCELLED BY DRIVER for the Offset Request Counties

	REQUESTS	NOT ACCEPTED OR CANCELLED BY DRIVER	% NOT ACCEPTED OR CANCELLED BY DRIVER
ALAMEDA	4360	2087	48%
CONTRA COSTA	1054	762	72%
LOS ANGELES	21715	16784	77%
MARIN	54	39	72%
MONTEREY	11	8	73%
ORANGE	914	608	67%
SAN FRANCISCO	2474	1525	62%
SAN MATEO	1372	841	61%
SOLANO	51	44	86%
VENTURA	96	80	83%

TOTAL	32101	22778	71%
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A further measure of the presence and availability of WAV vehicles is the number and share of WAV requests that were actually completed. Table 2 shows that for the counties for which Uber is requesting offsets only 17% of WAV requests were completed, which is worse than the 19% of WAV request rides that were completed in Q3 of 2019. In Los Angeles County only 11% of WAV requests were completed (down from 14% in Q3 of 2019). In San Francisco County, only 24% of WAV requests were completed (down from 33% in Q3 of 2019).

Table 2. Percent of WAV Ride Requests COMPLETED for the Offset Request Counties

	REQUESTS	COMPLETED	% COMPLETED
ALAMEDA	4360	1841	42%
CONTRA COSTA	1054	191	18%
LOS ANGELES	21715	2296	11%
MARIN	54	3	6%
MONTEREY	11	1	9%
ORANGE	914	75	8%
SAN FRANCISCO	2474	589	24%
SAN MATEO	1372	363	26%
SOLANO	51	2	4%
VENTURA	96	2	2%
TOTAL	32101	5363	17%

Finally, 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 4 of 2019. Furthermore, Uber is requesting that it be reimbursed at per trip rates that are comparable to the cost of a first class cross-country flight. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum requirements of the Act. Uber’s 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 show “improved level of service” for a given quarter and geographic area for the interim period, a TNC shall demonstrate improved level of service by showing that the 50th percentile of completed wheelchair accessible vehicle (WAV) trip response times in a geographic area improved over the previous quarter (Track 2 Decision, p. 91.) 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 “Retroactive Offset Response Times.” Even if we are to ignore the large number of trips denied or not completed, Uber did not meet the required standard. Of the 10 counties for which Uber is requesting retroactive offset requests, Uber fails to demonstrate

improved level of service for two of the counties because no data on prior quarter response times is not provided, and thus improvement cannot be demonstrated. 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 Commission did not include complaint frequency as an appropriate metric, and the sheer volume from quarter to quarter or year to year are not an objective measure on their own, and a simple reduction in complaints is not recognized as a basis for granting an offset. For these reasons, CPED should reject the offset request on this additional ground.

Table 3. 50th Percentile Trip Response Times

	Q3 2019	Q4 2019
ALAMEDA	15.83	15.43
CONTRA COSTA	18.18	17.92
LOS ANGELES	11.6	9.63
MARIN	24.12	16.58
MONTEREY	N/A	21.1
ORANGE	11.53	11.13
SAN FRANCISCO	17.2	17.05
SAN MATEO	17.38	16.6
SOLANO	N/A	19.82
VENTURA	21.75	3.92

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 proceeding, who are best suited to assess whether Uber makes a compelling case in this arena.

D. Uber's Data Does Not Demonstrate Improvements Due to Investments in WAV Service.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to *improve* WAV service (emphasis added). Under the fourth element required to be awarded an offset, a TNC must provide a "full accounting of funds," 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 (emph. added)).

Offsets are payments of monies collected from all TNC trips in each county to TNCs for improving WAV service in that county. Table 4 shows that a basic metric of the cost-effectiveness

³ See AL 2A, Q4 2019, p 7.

of TNC efforts to improve WAV service, which is the average offset request per completed TNC trip. This table shows that Uber is requesting that it be paid from public monies \$220 - \$700 per completed WAV trip in Q4 of 2019. For example, Uber is requesting reimbursement of over \$1.5 million of public money for providing only 2296 WAV trips, or an astounding \$681.80 per trip.

In the prior quarter Uber also requested over \$1.5 million of public money but provided more trips, meaning that Uber's cost-effectiveness is getting worse. As in other quarters, Uber appears to be applying some sort of per WAV trip rate to calculate these payments of public money to Uber as many counties appear to have the exact same reimbursement rate per completed trip. For these reasons, CPED should reject the offset request on this additional ground.

Table 4. Average offset request per COMPLETED TNC trip for the Offset Request Counties

	COMPLETED	OFFSET REQUEST	OFFSET REQUEST PER TRIP
ORANGE	75	\$52,226.96	\$696.36
LOS ANGELES	2296	\$1,565,422.98	\$681.80
VENTURA	2	\$1,355.39	\$677.70
SAN FRANCISCO	589	\$234,795.70	\$398.63
MARIN	3	\$1,185.04	\$395.01
MONTEREY	1	\$395.01	\$395.01
SOLANO	2	\$790.02	\$395.01
SAN MATEO	363	\$140,916.14	\$388.20
CONTRA COSTA	191	\$73,533.91	\$384.99
ALAMEDA	1841	\$405,213.50	\$220.11

III. Conclusion

In sum, Uber's offset request in Supplemental Advice Letter 2A fails on multiple grounds and should be rejected. Uber has failed to meet the threshold requirements for offsets in the Act and Track 2 Decision. Uber's data do not show there is "presence and availability," "improved levels" of WAV service, or adequate outreach to the disability community to meet the Act's requirements. Further, Uber's extremely high costs per trip raise concerns about whether it is meeting the Act's requirements. 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
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By: _____ /s/

Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

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Nicole Bohn
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