

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing, and
New Online-Enabled Transportation Services.

R.12-12-011
(Filed December, 2012)

**RESPONSE OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY ON LYFT'S
APPLICATION FOR REHEARING OF THE DECISION REQUIRING TRANSPORTATION
NETWORK COMPANIES TO SUBMIT THEIR ANNUAL REPORTS FOR THE YEARS
2014-2019 TO THE COMMISSION WITH LIMITED REDACTIONS**

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Dated: January 31, 2024

INTRODUCTION

Pursuant to California Public Utilities Commission’s (the “Commission” or “CPUC”) Rules of Practice and Procedure 16.1(d), the San Francisco Municipal Transportation Agency and the San Francisco County Transportation Authority (together, “San Francisco”) submit this joint response opposing Lyft, Inc.’s (“Lyft”) Application for Rehearing of the Decision Requiring Transportation Network Companies to Submit their Annual Reports for the Years 2014-2019 to the Commission with Limited Redactions (the “Application for Rehearing”), filed on January 16, 2024.

DISCUSSION

San Francisco urges the Commission to reject Lyft’s Application for Rehearing of the Decision Requiring Transportation Network Companies to Submit their Annual Reports for the Years 2014-2019 to the Commission with Limited Redactions (the “Decision”). San Francisco reiterates its support of the Decision’s determination that Transportation Network Company (“TNC”) Annual Reports for reporting years 2014 to 2019 should no longer be afforded the presumption of confidentiality provided in footnote 42 in Decision (“D.”)13-09-0451¹ and the Decision’s conclusion that the TNCs have failed to carry their burden of proving that the trip data at issue should be shielded from public disclosure on privacy, trade secret, or any other grounds.² The vast majority of the arguments presented in the instant Application for Rehearing have been raised by Lyft *ad nauseam*, and have been consistently rejected by the Commission.³ No novel grounds have been presented by

¹ Decision at 127.

² *Id.* at 53 (“we conclude that except for the information identified above in the table, the balance of the trip data in the Annual Reports from 2014-2019 is not protected from disclosure on privacy grounds”); *id.* at 56 (“... we, again, reject the argument that trip data and other information in the Annual Reports for the years 2014-2019 is trade secret protected.”); *id.* at 128 (“It is reasonable to conclude that requiring TNCs to disclose the trip data at issue does not amount to an unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution [or] amount to a regulatory taking under the Fifth Amendment to the U.S. Constitution.”)

³ *See, e.g.*, Ruling on Uber’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, Lyft, HSD, and Nomad Nomad for Confidential Treatment of Portions of Their 2021 Annual Transportation Network Company (“TNC”) Reports, issued on November 24, 2021; Decision 21-06-023 Modifying Decision 20-03-014 and Denying Rehearing of Decision, As Modified on June 4, 2021; Decision Denying Appeal of Lyft Re: Ruling Denying, In Part, Motions by Uber and Lyft for Confidential Treatment of Certain Information in Their 2020 Annual Reports, issued on May 6, 2022; Order Modifying Decision 22-05-003 and Denying Rehearing of the Decision, as Modified, filed on February 24, 2023.

Lyft to warrant a departure from the Commission’s prior rejections of these arguments or to support a rehearing of the Decision.

In a notable departure from all prior decisions holding the bulk of the TNC Trip Data to be public records subject to disclosure without timestamp aggregation, the Decision determined that timestamp data for the 2014-2019 Annual Reports should be aggregated to the nearest 30-minute interval.⁴ As the Decision states, 30-minutes was decided on as a “compromise interval” after review of the Party comments on the Ruling Reopening the Record for Further Comments Regarding the Disclosure of TNC Annual Reports from 2014-2019 on Whether the Timestamp Data for Each TNC Trip Should be Aggregated and the Commission’s consideration of the City of Chicago’s aggregation practices and other sources.⁵ Lyft’s Application for Rehearing takes issue with this aggregation approach as insufficient to protect against re-identification concerns.⁶ But again, these arguments are ultimately predicated on speculative inferences – boogeyman claims of reidentification that have been found insufficient by the Commission⁷ and addressed by San Francisco in prior comments.⁸

Contrary to Lyft’s contentions regarding the sufficiency of the 30-minute timestamp aggregation approach adopted in the Decision, San Francisco strongly reiterates our opposition to aggregation of timestamp data for the 2014-2019 report years.⁹ As stated in San Francisco’s Opening Comments on the Proposed Decision, the decision to aggregate timestamp data is unsupported by the California Public Records Act and improperly undermines the people’s right of access. San Francisco has significant concerns regarding the consideration and extension of a similar timestamp aggregation approach for other TNC Annual Report years and for data collected and made available to the public

⁴ Decision at 107.

⁵ *Id.*

⁶ Application for Rehearing at 21-32.

⁷ Decision at 53, 81; *supra*, fn. 3.

⁸ *See* Joint Opening Comments of San Francisco on the Ruling Reopening the Record, filed on June 15, 2023; Joint Reply Comments of San Francisco on the Ruling Reopening the Record, filed on June 29, 2023; Joint Response of San Francisco to Motions of Uber Technologies, Inc., Lyft, Inc., Nomad Transit, LLC’s, and Hopskipdrive, Inc. for Confidential Treatment of Certain Data in their 2023 Annual Reports, filed on July 3, 2023; Joint Sur-Reply of San Francisco to the Reply of Lyft Re: Confidential Treatment of Certain Data in Its 2023 Annual Report, filed on August 23, 2023.

⁹ Joint Opening Comments of San Francisco on the Proposed Decision, filed November 29, 2023.

in other contexts, most notably data collected on Autonomous Vehicle operations. Precise, high-accuracy trip data is paramount to comprehensive transportation planning and curbside management, and will have an acute impact on the evaluation of response times in the Access for All proceeding.¹⁰ The timestamp aggregation approach adopted in the Decision, if left to stand,¹¹ should not be applied in any other context, and at the least would require full and substantive briefing by the Parties.

Dated: January 31, 2024

Respectfully submitted,

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¹⁰ *Id.* at 6-7. In San Francisco’s Opening Comments on the Proposed Decision, we explain that response times for wheelchair accessible vehicle (“WAV”) service identified in the Access for All proceeding are benchmarked against response times for non-WAV service, and that lack of precise timestamp data limits the ability of the Commission and interested parties to validate TNCs’ self-reported response times, which form the basis for administering reimbursements from the multimillion-dollar Access Fund. In the Decision, the Commission states these concerns are best addressed in the Access for All proceeding “after a sufficient record has been developed upon which to evaluate San Francisco’s argument.” Decision at 122. However, in the Decision on Track 5 Issues, issued on February 27, 2023 in R.19-02-012, the Commission declined to address changes to the TNC Annual Reports in R. 19-02-012, stating that such issues should be addressed in R.12-12-011. Given the Commission’s most recent direction on these issues in the Decision, San Francisco seeks clarification on the appropriate proceeding for addressing issues that impact both R. 12-12-011 and R. 19-02-012.

¹¹ As San Francisco has previously proffered, if the Commission maintains that some data submitted by TNCs is confidential, such as precise timestamp data for reporting years 2014-2019, pursuant to Government Code section 7921.505(b)(5) the Commission may still disclose that information to another governmental entity who agrees to treat that information as confidential.