BEFORE THE PUBLIC UTILITIES COMMISSION OF

THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users who need a Wheelchair Accessible Vehicle.	R.19-02-012 (Filed February 21, 2019)

REPLY COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO MAYOR'S OFFICE ON DISABILITY ON PROPOSED DECISION ON TRACK 2 ISSUES

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INTRODUCTION

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco") submit these Reply Comments responding to other parties' comments on the Proposed Decision on Track 2 Issues: Offsets, Exemptions, and Access Provider Disbursements (PD).

We maintain our support for adoption of the PD with San Francisco's proposed amendments set forth in our Comments. We also support proposed amendments from the SFTWA and the Disability Advocates (DA) on response times and complaints, and request the Commission accept the DA's request that their input "and the input of other parties to this proceeding regarding TNC trip-level data be entered in the record in [R. 12-12-011]."[1] Finally, we urge the Commission to reject amendments proposed by Uber, which fail to identify errors in the PD. Rather, Uber attempts to improperly reiterate prior arguments, confusing the Commission's discretionary and regulatory authority with legal, factual or technical errors.

DISCUSSION

A. The Commission Must Revise Its Definition Of How To Calculate Response Times.

The PD would adopt a definition of response time as "the elapsed time between when a trip request is accepted and the passenger is picked up."[2] As stated by SFTWA, this definition is inconsistent with the Act, which explicitly defines response time as the time "between when a WAV ride was requested and when the vehicle arrived."[3] San Francisco supports SFTWA's proposed amendment to reflect the language of response time stated in the Act.

[1] Disability Advocates' (DA) Comments on Track 2 Proposed Decision, p. 4.
[2] Proposed Decision, p. 19.
[3] SFTWA Opening Comments on Track 2 Proposed Decision, pp. 1-2.

B. The Commission Should Clarify and Amend Data Reporting Requirements.

San Francisco agrees with Uber that "the Commission should clarify how data showing the presence and availability of WAV drivers may be presented."[4] However, we disagree with Uber regarding what should be changed and/or clarified. San Francisco agrees with the DA that "the Proposed Decision errs in its interpretation of the requirements" of the Act,[5] and that the Commission should require collection of data at the zip code level to determine presence and availability of WAV drivers. In addition, San Francisco and the DA requested clarification to provide specific direction on how TNCs should present information in both the Quarterly Report and Offset Request.[6] Moreover, it is imperative the Commission collect data on WAV service in trip-level data required by R. 12-12-011 so that these summary level reports can be validated.

San Francisco does not agree with Uber's proposed amendment to eliminate "cancelled due to passenger no show" data from this requirement. Indeed, the PD's ruling is appropriate as the DA have previously asserted, "data regarding these types of cancellations can be indicative of accessibility problems,"[7] and Uber has failed to identify any factual or legal error with it.

C. The Proposed Decision's Improved Level Of Service Thresholds Are Based On Relevant Data And Are Reasonably Achievable.

Consistent with the Act, the PD would adopt reasonable response time standards, which necessarily incorporate response times for non-WAV trips.[8] While Uber claims that it is a factual error to do so,[9] the Commission should reject this argument as Uber only reiterates a methodology the Commission has already deemed to be "ambiguous."[10] The Act directs the

[4] Uber Comments on Track 2 Proposed Decision, p. 1.
[5] DA Comments on Track 2 Proposed Decision, pp. 1-2.
[6] *Id*., pp. 4-6; San Francisco Comments on Track 2 Proposed Decisions, pp. 5-7.
[7] Reply Comments of the Disability Advocates on Track 2 Proposals and October 10 Workshop, pp. 3-4.
[8] Proposed Decision, pp. 15-16.
[9] Uber Comments on Track 2 Proposed Decision, pp. 3-5.
[10] Proposed Decision, p. 16.

Commission to require TNCs to demonstrate improved level of service, including "reasonable response times," among other things, due to investments in WAV service, to be eligible for an offset.[11] The PD's ruling that basing WAV response times on non-WAV response times is reasonable as it incorporates existing standards of service and ties improved level of service to objective benchmarks. Moreover, no party has demonstrated that there is any legal or factual error with the ruling.

Uber also requests that the Commission clarify that "to demonstrate an improved level of service for offset eligibility, a TNC can use either, or a combination of, improved Level 1 or Level 2 Offset Time Standards, quarter over quarter."[12] To the extent Uber is advocating that a TNC can compare different levels over quarters for offset eligibility, San Francisco disagrees. Logically, TNCs only should compare commensurate levels of service, meaning comparing either Level 1 to Level 1 or Level 2 to Level 2 for the same quarter year after year.[13]

D. The Proposed "Refused Service Animal" Complaint Category Is Too Narrow.

The DA's comments correctly point out that the proposed Complaint category of "refused service animal" is inappropriately narrow and should be broadened to "service animal issue" so that it is not only about refusing transportation to the animal, but any problem related to a service animal.[14] San Francisco supports the DA's proposed amendment.

E. For Exemption Eligibility, The Commission Should Adopt An 80% Requirement For Level 1 WAV Response Times.

The DA agree with San Francisco's finding that Conclusion of Law No. 14 is erroneous.[15] Without amendment, allowing Level 2 WAV response times as the exemption

[11] Pub. Util. Code § 5440.5(1)(B)(ii).
[12] Uber Comments on Track 2 Proposed Decision, pp. 6-7.
[13] San Francisco maintains that it would be more effective to measure improvement by quarterly performance year over year, e.g. Q1 of Year 1 to Q1 of Year 2, rather than Q1 of Year 1 to Q2 of Year 1.
[14] DA Comments on Track 2 Proposed Decision, p. 3.
[15] *Id*., pp. 6-7.

standard is far too conservative to achieve the intent of the Act, which is to make access to TNC service equivalent to persons with disabilities as it is to those without disabilities.

F. San Francisco Supports The Proposed Decision's Definition Of Eligible Access Provider And Application Criteria For Access Providers.

The PD would adopt criteria that TNCs can only be an "eligible access provider" if the TNC "qualifies for an exemption in that geographic area" and certifies the TNCs received an exemption and exhausted all other Access funds.[16] Uber and HopSkipDrive (HSD) both oppose these criteria. But, neither party has demonstrated that this determination has a legal, factual, or technical error. While HSD claims "the PD does not justify a linkage" in the criteria, the decision is explained in detail on page 65. And despite Uber's claims, the language in the Act does not even contemplate a TNC as an access provider.[17] Hence, it is within the Commission's regulatory authority to make this distinction and San Francisco reiterates its position that if more funding is needed to offset quarterly costs, the appropriate recourse is to raise the per-trip fee.

The PD also would adopt application criteria for access providers to include the same information as a TNC Offset Request, except for Offset Time Standards and accounting of funds, but that for Quarterly Reports, access providers should "indicate and explain where it cannot provide or does not possess the requested information."[18] Uber argues this is error because TNCs and access providers must be held to the same reporting and service level requirements.[19] However, this is simply an opinion with no factual or legal support. The PD does not contradict the application or reporting requirements laid out in the legislation.[20] Indeed, the Act explicitly states that "[t]he commission may accept applications for ***new*** on-demand transportation

[16] Proposed Decision, p. 65.
[17] Uber Comments on Track 2 Proposed Decision, p. 9.
[18] Proposed Decision, p. 68.
[19] Uber Comments on Track 2 Proposed Decision, pp. 10-12.
[20] Pub. Util. Code § 5440.5(a)(1)(E) and (a)(1)(J).

programs or partnerships."[21] And it is reasonable that a new service provider would not be able to provide the same level of information as an existing TNC. Because it is within the Commission's discretionary and regulatory authority to adopt the proposed application and reporting criteria for access providers, the Commission should reject Uber's proposed amendments and should not grant HSD's request to defer a decision to Track 3.

G. Public Transit Agencies' Services Are Not Subject to Regulation or the Act; and the Commission Should Not Provide Different Regulations for Smaller TNCs.

Via Transportation Inc. (Via) argues that "microtransit service that is funded by, and operated exclusively on behalf of, a public entity is fundamentally different" than traditional TNC service, and therefore the Commission should "not base its entire rulemaking around how only the largest players operate."[22] The Commission should disregard this argument. As an initial matter, transportation service rendered by a publicly owned transit system is not subject to regulation by the Commission.[23] Additionally, to the extent Via uses public transit vehicles in its service, they are not TNCs, and therefore not subject to the Act. And finally, even if Via's services were subject to the Act, the Commission should reject Via's and HSD's calls for different requirements for smaller TNCs as the PD notes there is insufficient basis for having different standards.[24]

CONCLUSION

San Francisco supports the proposals set out in the Commission's Track 2 Proposed Decision, with the amendments set forth in our Comments and Reply Comments, and appreciates the opportunity to provide a reply to respondents' comments on the Proposed Decision.

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[21] Pub. Util. Code § 5440.5(1)(E)(emphasis added).
[22] Via Comments on Track 2 Proposed Decision, pp. 2 and 5.
[23] *See* Pub. Util. Code § 5353(e)(excluding public transit from the Charter Party Carrier Act).
[24] Proposed Decision, p. 16.

March 3, 2020

Respectfully submitted,

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