

**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)

**COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO
MAYOR'S OFFICE ON DISABILITY ON ADDITIONAL TRACK 5A PROPOSALS**

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INTRODUCTION

Pursuant to the Administrative Law Judge’s May 17, 2022 Ruling on Additional Track 5A Proposals and Advice Letter Amendments, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively “San Francisco” or “SF”) submit Comments on Additional Proposals on Track 5A related to the TNC Access for All Act.

San Francisco’s comments reaffirm the importance of prescheduled wheelchair accessible vehicle (“WAV”) services for passengers with disabilities and the need to develop a separate performance standard specifically for prescheduled service. San Francisco then compares our proposal to the Consumer Protection and Enforcement Division’s (“CPED”) proposal, noting the similarities in approach to the Trip Completion Standard, Response Time/Pickup Delay Benchmark, and Response Time/Pickup Delay Standard, and suggests alternative metrics that combine CPED’s structure with San Francisco’s data analysis. While San Francisco supports its original proposal that a Transportation Network Company (“TNC”) must provide the same types of WAV service as non-WAV service and meet both the on-demand and prescheduled minimum standards to be eligible for an offset, if the CPED’s proposal allowing TNCs to qualify separately for prescheduled and on-demand offsets is adopted, San Francisco proposes that on-demand and prescheduled funds be collected, held, and distributed separately.

San Francisco also explains our significant disagreements with Lyft Inc.’s (“Lyft”) proposal, which by suggesting a single integrated prescheduled and on-demand performance standard perpetuates the very issues Track 5A seeks to resolve. Additionally, San Francisco is alarmed that Lyft’s proposal would allow Lyft to unilaterally determine what constitutes on-time performance for prescheduled and Wait & Save trips.

Finally, San Francisco agrees with Uber Technologies Inc.’s (“Uber”) statement that “[o]ne would expect that a mature pre-scheduled feature may have improved reliability and response time

compared to an on-demand trip,”¹ and proposes, as does CPED, benchmarks that recognize this inherent difference between the two trip types.

DISCUSSION

A. In agreement with CPED and in disagreement with Uber and Lyft, San Francisco strongly believes that prescheduled WAV trips should be subject to a separate performance standard than on-demand WAV trips.

As San Francisco has stated, prescheduled trips have important differences from on-demand trips and should therefore be measured differently.² A separate performance standard is essential to ensuring reliable, high quality prescheduled service for wheelchair users. Therefore, San Francisco strongly agrees with CPED’s statement that “(g)iven the differing nature of these trip requests, CPED believes that pre-scheduled WAV trips should need to demonstrate they meet a separate performance standard to qualify for an offset or an exemption.”³ We disagree with Uber’s proposal that “the current response time benchmarks also be used for pre-scheduled WAV trips”⁴ and Lyft’s suggestion that “due to the low volume of pre-scheduled WAV trips, there is no justification to undertake the complex and time-consuming effort of developing an entirely new set of performance standards specifically for pre-scheduled rides.”⁵ As a disability community member noted at the April 27, 2022 Workshop, it was difficult to locate the prescheduled WAV feature on the Lyft app, and thus this low volume should not be used as a predictor of potential demand. The disability community has explained that having the ability to pre-schedule a WAV trip provides greater certainty that persons requiring a WAV will have their trip fulfilled.⁶ On February 17, 2022, the San Francisco Mayor’s Disability Council wrote a letter on the subject to Uber, stating that “[b]ecause our transportation options are limited, we need to be able to count on that WAV showing up, so we prefer to schedule it in advance.”⁷ The TNCs have also

¹ Uber’s Proposals on Additional Track Additional 5A Proposals and Advice Letter Amendments (“Uber’s Additional 5A Proposal”), at 1.

² Additional Proposal of San Francisco on Track 5A Issues (“SF’s Additional 5A Proposal”), at 3-4.

³ CPED’s Additional Track 5A Staff Proposal, at 5.

⁴ Uber’s Additional 5A Proposal, at 2.

⁵ Lyft’s Proposal on Assigned Commissioner’s Amended Track 5 Scoping Memo and Ruling (Track 5A: Questions 2.1.2 (“Lyft’s Additional 5A Proposal”), at 3.

⁶ Letter from San Francisco Mayor’s Disability Council to Uber, dated February 17, 2022.

⁷ *Id.*

demonstrated that there is demand for this type of service, having provided nearly 7 million prescheduled non-WAV trips in 2021.

B. San Francisco supports aspects of CPED’s approach to prescheduled WAV trips, but believes our standards are both consistent with the on-demand framework and reflective of the prescheduled trip data provided by TNCs. However, we would support CPED’s proposal with modifications.

San Francisco’s Additional 5A Proposal developed offset request standards for prescheduled service within the framework already established by the Commission for on-demand service and based on prescheduled non-WAV data submitted by TNCs. It further sought to clarify terminology by introducing the term “pickup delay” in place of “response time.” Similar to San Francisco’s proposal, CPED’s proposal also builds on the framework of the on-demand standards, but with important differences. In each of the following sections – “Trip Completion Standard,” “Pickup Delay Benchmark,” “Pickup Delay Standard,” and “Integration with On-Demand Standards” – we first describe the differences between San Francisco’s and CPED’s proposals in the relevant subject area and then propose alternative solutions.

1. Trip Completion Standard

Both San Francisco and CPED analyzed trip completion rates from prescheduled non-WAV service submitted by TNCs, but with different methodologies and arriving at different conclusions. Both use county groups previously adopted by the Commission. San Francisco proposed a prescheduled Trip Completion Standard that starts with non-WAV trip completion rates by county group and advances from there. San Francisco calculated non-WAV trip completion rates using data from all TNCs in all quarters of 2021, by county group, and weighted to the volume of requests each TNC received. San Francisco used 2021 data because it was the most recent of the data provided by TNCs, representing more mature service, and because the preceding two years were turbulent and included the early days of the Covid-19 pandemic. By contrast, CPED evaluated data from all quarters

from 2019-2021 at a county level, which appear to be unweighted.⁸ From these values, CPED staff picked a starting value they determined to be “reasonable.”⁹

Table 1 shows San Francisco’s and CPED’s proposals for the Prescheduled Trip Completion Standard side-by-side. It shows that, compared to CPED’s proposal, San Francisco’s proposal for County Group A starts lower but ends higher, for County Group B starts the same but ends higher, and that San Francisco’s proposal for County Group C both starts and ends higher. For example, for County Group A, San Francisco proposed in the first quarter that the Prescheduled Trip Completion Standard be 85%, increasing to 95% in the 8th quarter, compared to CPED’s proposal which uses 90% for all quarters.

Table 1: Comparison of San Francisco and CPED Proposals for Prescheduled Trip Completion Standard.

Minimum Completion Rate Percentage	San Francisco Proposal			CPED Proposal		
	County Group A	County Group B	County Group C	County Group A	County Group B	County Group C
1 st Quarter Submission	85%	80%	75%	90%	80%	65%
2 nd Quarter	85%	80%	75%	90%	81%	66%
3 rd Quarter	85%	80%	75%	90%	82%	67%
4 th Quarter	90%	90%	90%	90%	83%	69%
5 th Quarter	90%	90%	90%	90%	84%	71%
6 th Quarter	90%	90%	90%	90%	85%	74%
7 th Quarter	90%	90%	90%	90%	85%	77%
8 th (and subsequent) Quarter	95%	95%	90%	90%	85%	80%

The Commission has stated that “performance metrics for pre-scheduled WAV trips should be based on an evaluation of existing pre-scheduled WAV and non-WAV trip data.”¹⁰ Both San Francisco and CPED evaluated prescheduled non-WAV and WAV trip data and developed

⁸ Weighting allows for the accurate calculation of averages from data of different sizes. For example, suppose TNC X got 10 requests and fulfilled 5 of them, and TNC Y got 100 requests and fulfilled 100 of them, then TNC X has a completion rate of 50% and TNC Y has a completion rate of 100%. The unweighted average is $(50\% + 100\%) / 2 = 75\%$, which is biased because it overcounts TNC X and undercounts TNC Y. The weighted average is $(50\% \times 10 + 100\% \times 100) / 110 = \sim 95.5\%$. The weighted average correctly describes the combined completion rate.

⁹ CPED’s Additional Track 5A Staff Proposal, at 10.

¹⁰ Assigned Commissioner’s Ruling on Track 5A Issues and Data Submissions for Pre-Scheduled Trips (“Track 5A Ruling”), filed April 11, 2022, at 12.

recommendations. San Francisco’s proposal sticks closely to observed non-WAV trip completion rates, while CPED’s appear to use a greater degree of judgment in determining what is “reasonable.”

San Francisco believes that the standards we proposed, which are grounded directly in the data, are reasonable and preferable. We urge the Commission to adopt San Francisco’s proposed prescheduled Trip Completion Standard.

2. Pickup Delay Benchmark

For the sake of simplicity, San Francisco’s proposed prescheduled pickup delay benchmark does away with the 2-tier structure adopted by the Commission for on-demand service, in favor of a single benchmark for each county group. Table 2 shows a comparison of San Francisco’s and CPED’s proposals for prescheduled pickup delay/response time benchmarks. San Francisco’s pickup delay benchmark is calculated as the estimated 90th percentile for prescheduled non-WAV pickup delay across all TNCs providing service within the county group for all quarters of 2021.¹¹ By contrast, CPED’s proposal continues the 2-tier structure, but rather than examining the data submitted by TNCs to determine appropriate benchmarks, they simply scale the Level 1 and Level 2 Response Time benchmarks based upon the on-demand Tier 2 Offset Response Time Benchmark (“ORTB”).

Table 2: Comparison of San Francisco and CPED Proposed Prescheduled Pickup Delay/Response Time Benchmarks.

	San Francisco Proposal	CPED Proposal	
County Group	Pickup Delay Benchmark	Level 1 Response Time	Level 2 Response Time
County Group A	6	4	8
County Group B	8	7	13
County Group C	22	8	15

San Francisco’s proposal is consistent with the on-demand framework while simplifying it to reduce administrative burden on TNCs and CPED staff and is consistent with the Commission’s

¹¹ As San Francisco noted in its Additional 5A Proposal, trip level data is required for calculation of true percentiles across TNCs, quarters, and counties. While San Francisco’s estimates attempt to account for aggregation biases, it is not possible to do so completely.

direction to base standards on “an evaluation of existing pre-scheduled WAV and non-WAV trip data.”¹² CPED’s proposal is consistent with the on-demand framework, but is not based on prescheduled WAV and non-WAV data.

For these reasons, San Francisco urges the Commission to adopt their proposal. However, if the Commission sees fit to apply a 2-tier standard to prescheduled trips, then San Francisco urges the Commission to adopt San Francisco’s Proposed Revisions to CPED Prescheduled ORTBs, shown in Table 3. These Level 1 and Level 2 Pickup Delay/Response Time benchmarks are estimated from non-WAV pickup delay data reported by TNCs for all quarters of 2021, by county group, at the 75th percentile and 90th percentile, respectively.¹³ Because CPED proposes to apply the on-demand Offset Time Standard (“OTS”) to prescheduled trips, the percentiles used in Table 3 are taken from 8th quarter OTS values. Additionally, San Francisco recommends that the Commission adopt the term “pickup delay” because of its more intuitive application to prescheduled service and to further distinguish between on-demand and prescheduled standards.

Table 3: San Francisco’s Proposed Revisions to CPED Prescheduled ORTBs.

County Group	Level 1 Pickup Delay	Level 2 Pickup Delay
County Group A	3	6
County Group B	2	8
County Group C	12	22

3. Pickup Delay Standard

San Francisco’s proposed prescheduled Pickup Delay Standard does away with the 2-tier structure adopted by the Commission for on-demand service in favor of a single benchmark for each county group. By contrast, CPED adopts the on-demand Response Time Standard tiers and steps directly.

¹² Track 5A Ruling, at 12.

¹³ As previously noted, San Francisco used 2021 data because it was the most recent of the data provided by TNCs, theoretically representing more mature service, and because the preceding two years were turbulent and included the early days of the Covid-19 pandemic.

Table 4 compares San Francisco’s and CPED’s proposed Pickup Delay/OTSS. It shows that San Francisco’s proposal has the same starting point as the on-demand Level 2 Response Time Standard, but with fewer steps and a higher ending value.

Table 4: Comparison of San Francisco and CPED Pickup Delay/OTSS.

	San Francisco Proposal	CPED Proposal	
	Percentage of Completed Trips under Pickup Delay Benchmark	Percentage of Completed Trips under Level 1 Response Times	Percentage of Completed Trips under Level 2 Response Times
1st Quarter Submission	80%	50%	80%
2nd Quarter	80%	54%	81%
3rd Quarter	85%	57%	83%
4th Quarter	85%	61%	84%
5th Quarter	90%	64%	86%
6th Quarter	90%	68%	87%
7th Quarter	95%	71%	89%
8th Quarter (and subsequent) Quarter	95%	75%	90%

4. **San Francisco prefers the simplified Pickup Delay Standard but is comfortable with either approach. If the Commission adopts CPED’s 2-tier proposal to apply the OTS, San Francisco urges the Commission to adopt San Francisco’s revised Pickup Delay Benchmark (“San Francisco’s Proposed Revisions to CPED Prescheduled Offset Response Time Benchmarks”) described in Table 3 in the preceding section. Integration with On-Demand Standards**

While San Francisco is comfortable with several aspects of CPED’s proposal, we have more significant concerns about its approach to offset and exemption qualification. San Francisco has proposed that a TNC must provide the same types of WAV service as non-WAV service and meet both the on-demand and prescheduled standards, if such service is provided, for a given county and quarter to qualify for an offset.¹⁴ By contrast, CPED has proposed that a TNC can qualify separately for on-demand and prescheduled offsets in a given county and quarter, and that the amount of the offset available is proportional to the share of WAV trips of the qualifying type (on-demand or prescheduled) of all WAV trips in that county and quarter.¹⁵

¹⁴ SF's Additional 5A Proposal, at 3.

¹⁵ CPED’s Additional Track 5A Staff Proposal, at 3.

San Francisco’s proposal is intended to reduce administrative burden to CPED, to ensure that the standards promote equivalent service, and to avoid any incentive to discontinue or otherwise not provide a type of service to WAV users that is provided to non-WAV users. CPED’s proposal does not meet these goals. First, it increases administrative burden by requiring staff to segment and allocate funds separately between different services. Second, it does not ensure the promotion of equivalent service and may incentivize unwanted outcomes like the discontinuation or reduction of on-demand (or prescheduled) service in favor of the other. Take CPED’s example:

“[I]f a TNC meets the on- demand WAV exemption performance criteria, but not the pre-scheduled WAV exemption performance criteria, then that TNC would be able to retain the percentage of the funds available proportional to on-demand WAV trip volume (e.g., if on-demand is 90% of service and pre- scheduled is 10%, then they can retain 90% of the requested Access Funds) for the following year.”¹⁶

This example illustrates a serious issue especially if the results were skewed in the opposite direction. Suppose that it is easier and more cost effective to provide prescheduled WAV service than on-demand WAV service. Then a TNC could artificially eliminate or radically reduce their on-demand WAV service provided and provide mostly or only prescheduled WAV service and still qualify for off sets for most or all the Access Funds. This would be directly counter to the goals of the program to increase access to on-demand TNC service for wheelchair users who need WAVs and would not facilitate providing service to wheelchair users, whether prescheduled or on-demand, that is equivalent to that provided to other TNC users. Companies exercise extraordinary discretion over how their products are presented to customers, which trips are served, and the quality of service of those trips. As explained above, allocating funds proportionally to completed WAV trips opens the door to the manipulation of service, for example by refusing to accept on-demand trip requests from WAV users. Allocation to requested trips would be an improvement but still leaves the door open, for example, by refusing to present on-demand options or decreasing their visibility. The safest way to allocate funds

¹⁶ *Id.* at 3.

proportionally would be to do so from the outset, by establishing a separate On-Demand Access Fund and Prescheduled Access Fund.

San Francisco urges the Commission to adopt San Francisco's proposal. **If the Commission deems it necessary or appropriate to allow TNCs to qualify separately for prescheduled and on-demand offsets, then San Francisco recommends a departure from CPED's proposal:** on-demand and prescheduled funds should be collected, held, and distributed separately. The 10-cent fee collected from on-demand TNC non-WAV trips in a county would go into the On-Demand Access Fund for that county and the fees collected from prescheduled non-WAV trips would go into the Prescheduled Access Fund for that county. A TNC qualifying for an on-demand offset would request funding from the On-Demand Access Fund, and likewise, a TNC qualifying for a prescheduled offset would request funds from the Prescheduled Access Fund. This will prevent a scenario in which TNCs can deplete the Access Fund, which is intended to improve on-demand service and to offset prescheduled service costs while failing to provide adequate on-demand WAV service.

C. Lyft's proposal for a single integrated prescheduled and on-demand performance standard perpetuates the very issues Track 5A seeks to resolve.

The Commission established Track 5A to consider issues related to prescheduled trips in direct response to Lyft's use of prescheduled trips to artificially lower response times reported in their Advice Letters, in extreme cases so much that their response times were negative, an issue first raised by San Francisco on March 22, 2021. Nonetheless, "Lyft disagrees that simply including pre-scheduled rides in response times as previously proposed offers any meaningful advantage"¹⁷ and argues that "there is no justification to undertake the complex and time-consuming effort of developing an entirely new set of performance standards specifically for pre-scheduled rides."¹⁸ As previously noted, the reported low number of prescheduled WAV trips completed should not be used as a predictor of demand. The justification for developing new performance standards for prescheduled rides is that, in their absence, and contrary to Lyft's claims, Lyft has already used prescheduled rides to manipulate data to their advantage. Lyft proposes a single formula that integrates

¹⁷ Lyft's Additional 5A Proposal, at 7.

¹⁸ *Id.* at 3.

both prescheduled and on-demand performance to produce a single measure, which they claim “compares response times for true on-demand rides against the benchmarks established with on-demand rides in mind, while simultaneously allowing the Commission to measure improvement in pre-scheduled rides – without one impacting the other.”¹⁹ This is not true. By combining the two into a single measure, they both by definition affect the outcome, and furthermore it is impossible using Lyft’s proposed measure to evaluate improvement in either on-demand or prescheduled service separately. Lyft’s proposal for a single unified measure of both on-demand and prescheduled performance should be rejected.

D. Lyft’s proposal would allow Lyft to unilaterally determine what constitutes on-time performance and is not supported.

Lyft proposes that within their single formula, prescheduled trips be evaluated using a binary “on-time” standard “as measured by the expectations of the passenger”²⁰ Lyft claims correctly that “a binary, pass/fail approach leaves no room for gradients of performance,”²¹ as if this were an advantage rather than a limitation of their approach, and is a significant deviation from the approach used to evaluate on-demand trips. Lyft goes on to define a user’s expectation as a time window dictated by Lyft at Lyft’s convenience: “For example, if a passenger would like to be picked up at 4:10pm, the passenger will be informed [...] that their vehicle will arrive between 4:10pm and 4:25pm.”²² This is problematic for several reasons. First, it misrepresents a user’s expectations (a 4:10pm pickup) for Lyft’s convenience (sometime between 4:10pm and 4:25pm). Second, and more importantly, it gives Lyft sole discretion to define on-time performance and to unilaterally change it on a trip-by-trip basis. The unilateral discretion Lyft wishes to be granted would allow Lyft to, for example, inform a user that their prescheduled trip request for 12:00pm will arrive between 1:00-1:15pm, and then classify a 1:15pm arrival (1 hour and 15 minutes late) as on-time. If the passenger does not consent to the prescheduled pickup range, they will not be able to use the service. As the

¹⁹ Lyft’s Additional 5A Proposal, at 5.

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Id.*

Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively “Disability Advocates”) have explained many times, wheelchair users have very limited options for transportation.²³ A wheelchair user may have no choice but to accept a very delayed pickup time, but Lyft should not receive “on-time” credit for such requests. Allowing Lyft to individually set the response time range for each trip and still be considered “on-time” does not incentivize Lyft to respond promptly to prescheduled trip requests. Lyft’s proposal is not supported, and San Francisco recommends that response times for prescheduled service be evaluated based on the benchmarks described in Tables 2 and 3, and the pickup delay/response time benchmarks presented in Table 4.

E. Lyft’s Wait & Save trips should be treated as on-demand trips and their performance should be measured accordingly.

CPED staff correctly instructed Lyft to measure response times for their Wait & Save trips like all other on-demand trips, and the Commission should affirm this direction.²⁴ Wait & Save trips are on-demand trips. Lyft offers a reduced fare for these on-demand trips in exchange for a delayed arrival. San Francisco can only speculate on the reasons why Lyft offers this service (balancing supply and demand, managing customer expectations), but it doesn’t change the basic fact that it is on-demand service. By proposing to create a new classification and new standard for Wait & Save trips, Lyft seeks to determine, unilaterally, the length of the response time by choosing when the clock starts ticking. If accepted, Lyft’s Wait & Save proposal would allow them to claim offsets simply by presenting different information to users. In such a regime, a TNC could not only fail to improve service, but could actually allow it to get worse, all the while claiming offsets and eventually exemptions. Lyft is attempting to move the goalposts rather than improve service. Their Wait & Save proposal should be flatly rejected.

Trips that are requested as on-demand trips should be measured according to on-demand metrics, and trips that are requested as prescheduled trips should be measured according to the prescheduled metrics determined in the Track of the proceeding. TNCs may offer special prices and

²³ Disability Advocates Proposals on Track 5A Scoping Memo Questions, at 2-3.

²⁴ Lyft’s Additional 5A Proposal, at 8.

products to their riders, but to simplify the proceeding, reduce administrative burden, and ensure fairness, each additional product should not be individually evaluated.

F. San Francisco appreciates Uber’s comments but disagrees that current response time benchmarks should be used for prescheduled WAV trips.

San Francisco agrees with Uber’s statement that “[o]ne would expect that a mature pre-scheduled feature may have improved reliability and response time compared to an on-demand trip.”²⁵ It would follow, then, that the response time benchmarks for prescheduled trips would reflect the expectation of higher performance levels. Uber notes that “a pre-scheduled WAV trip that is booked twenty-four hours in advance is completely different from a fulfillment standpoint than a pre-scheduled WAV trip booked mere hours before the start of the trip.”²⁶ San Francisco is sympathetic to this argument, which is why our proposed response time benchmarks hold TNCs to higher standards for prescheduled trips but still allow space for a TNC to receive an offset without responding promptly to each and every trip by using the 90th percentile to establish the pickup delay/response time benchmarks.

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²⁵ Uber’s Additional 5A Proposal, at 1.

²⁶ *Id.* at 1.