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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
San Francisco, CA 94102

Re: Protest to Lyft 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 Lyft Technologies Inc.'s ("Lyft") 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 Lyft's Advice Letter on the grounds that the relief requested is unjust and unreasonable as Lyft fails to demonstrate adequately the "presence and availability" of WAV service or an "improved level of service," including reasonable response times.

San Francisco requests that the CPED, as the Industry Division reviewing these requests reject the offset requests as unjust and unreasonable because they fail to demonstrate that Lyft has met any of the minimum requirements for an offset request under the Act and Decision 20-03-007 ("Track 2 Decision"). Lyft failed to demonstrate presence and availability. Furthermore, Lyft has failed to meet the retroactive offset response time standard for San Francisco County for the subject quarter or demonstrate

¹ Lyft submitted Supplemental Advice Letters 1A-4A in an unredacted format in response to Resolution ALJ-388, which rejected Lyft's claims of confidentiality. 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.

improvement in 50th percentile response times between the subject quarter and the preceding quarter for San Francisco County. Therefore, Lyft's request that it be reimbursed \$1,500 per completed trip to improve service cannot be justified, and given the record, CPED cannot reasonably find that Lyft has met the required statutory burden.

II. Lyft'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, 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. 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. The fact that 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., further disproportionately weighs response time metrics during the hours it does operate WAV service. It is clear that during Q4 of 2019, WAV passengers continued to persistently experience unavailability or refusal of service from midnight to 7 am. As Lyft provides standard service 24 hours a day, such a limitation on WAV service hours is fundamentally at odds with the purpose of the Act.

B. Lyft Failed to Demonstrate Improved Level of Service, and Failed to Meet Response Time Requirements.

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.) Lyft fails to demonstrate improved level of service for San Francisco County between Q3 of 2019 and Q4 of 2019, as shown in Table 1.

Table 1. 50th Percentile Trip Response Times

	Q3 2019	Q4 2019
SAN FRANCISCO	20.25	20.25

Lyft also failed to meet the response time standards during this quarter. Table 2 compares the 50% and 75% response time requirement standards established by the Commission to Lyft’s actual response times. In San Francisco, the 50% target was not met. It was not possible to determine if the 75% target was met because the Commission’s reporting template only includes the 70% and 80% response times.

Table 2. Response Time Requirement Fulfillment

	50% RESPONS E TARGET	75% RESPONS E TARGET	50% RESPONS E ACTUAL	70% RESPONS E ACTUAL	80% RESPONS E ACTUAL	50% RESPONSE TIME MET	75% RESPONSE TIME MET
SAN FRANCISCO	15	30	20.25	26.07	30.02	NO	CAN'T DETERMINE DUE TO

							REPORTING STRUCTURE
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For these reasons, Lyft’s unredacted data shows that its WAV service failed to meet response time standards as required under the Track 2 Decision. Therefore, it would be unjust and unreasonable to award funds to Lyft and CPED should reject its offset requests in the Advice Letter on this basis.

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).) 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 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 and, as a result, may artificially suppress demand.

D. Lyft’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 3 shows a basic metric of the cost-effectiveness of TNC efforts to improve WAV service, which is the average offset request per completed TNC trip. This table shows that Lyft is requesting that it be paid from public monies an astounding \$1,500 per completed WAV trip in San Francisco County. Lyft is requesting that it be reimbursed at per completed trip rates that are unreasonable and should not be awarded an offset.

Table 3. Average offset request per COMPLETED TNC trip for the Offset Request Counties

	COMPLETED	OFFSET REQUEST	OFFSET REQUEST PER TRIP
SAN FRANCISCO	318	\$477,177.83	\$1,500.56

III. Conclusion

In sum, Lyft’s offset request in Supplemental Advice Letter 2A fails on multiple grounds and should be rejected. Lyft has failed to meet the threshold requirements for offsets in the Act and Track 2

Decision. Lyft's data do not show there is "presence and availability," did not achieve the required response times and "improved levels" of WAV service, or demonstrate adequate outreach to the disability community to meet the Act's requirements. Further, Lyft'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 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
San Francisco Mayor's Office on Disability

cc: Annette Tran