

**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)

**REVISED TRACK 4 PROPOSAL OF THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION
AUTHORITY, AND SAN FRANCISCO MAYOR'S OFFICE ON DISABILITY**

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I. INTRODUCTION

In accordance with the Amended Scoping Memo and Ruling issued on March 19, 2021 (“Track 4 Scoping Memo”) and ruling modifying the Track 4 schedule issued on May 6, 2021, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively “San Francisco”) submit revised proposals on Track 4 Issues related to the TNC Access for All Act (“Act”).¹ ~~San Francisco recognizes that these are initial proposals and will be revised following the May 11 workshop.~~

The Track 4 Scoping Memo addresses consequential decisions from previous tracks that require further refinement in order to provide on-demand WAV services. First, the recent Track 3 Decision (D. 21-03-005) of the TNC Access for All Rulemaking (“Track 3 Decision”) established interim standards for offset and exemption requirements. Yet, the interim standards do not acknowledge the large percentage of WAV requests that are unfulfilled by TNCs nor are they adequate to be considered as permanent standards because they do not ensure equivalent service is provided. As a result, TNCs can offset significant amounts of fees for providing inconsistent and unreliable service for the foreseeable future unless this standard is updated. In addition, the interim standards result in weak exemption eligibility requirements because the trip completion standard only requires increasing percentage or number of trips quarter to quarter with no minimum. San Francisco provides initial proposals herein to address these issues. We are also optimistic based on conversations with other parties, both during and following the May 11, 2021 workshop (“May 11 Workshop”), that we can find consensus on reasonable and functional requirements. Therefore, in this revised proposal we have spelled out more clearly the key principles that would satisfy San Francisco’s main interests and concerns and look forward to commenting on how any parties’ revised proposals meet these principles.

Second, Commission Decisions have created ambiguity about offsets available to TNCs from the Access Fund. San Francisco urges the Commission to clarify that Access Fund revenues are only available to cover *reasonable actual costs of providing WAV service that have not already been*

¹ Revisions to San Francisco’s proposals are noted in strikethrough for deletions and underline for additions.

recovered by a TNC from fares paid by WAV passengers or from other revenue sources reasonably allocable to the delivery of WAV service. Third, the Track 3 Decision adopted requirements for access provider eligibility that preclude qualified Access Providers, such as taxi companies, Non-Emergency Medical Transportation providers, and paratransit providers from participating. This is problematic because these (now ineligible) providers already exist in local communities, are most likely able to provide accessible demand response transportation, and were understood by the Legislature to be available and able to provide WAV services until such time as TNCs were able to demonstrate they could provide WAV service at equivalent levels. San Francisco supports the expedient adoption of CPED’s list of criteria for access providers to demonstrate comparable safety protocols to the Commission-issued permitting requirements. The Track 3 Decision also enables TNCs to decrease access in counties where they are already providing service and still remain eligible to apply for funds as an Access Provider, undermining the incentive the Act provided for them to work toward providing the same service for wheelchair users as they do for other members of the public. We urge the Commission to immediately resolve these barriers and close these loopholes to meet the intent of the Act.

Finally, the Commission continues to consider a question with which it has grappled since the initial TNC rulemaking began over nine years ago, which is how to ensure services are accessible to people with disabilities. It is San Francisco’s position that the Commission must address accessibility needs of people with disabilities who do not require WAVs regardless of whether it receives specific proposals from parties because it is the Commission’s obligation to ensure access under the Americans with Disabilities Act (ADA); we propose that the Commission immediately engage an ADA Coordinator to oversee transportation issues generally.

II. DISCUSSION

- 1. Transportation Network Company (TNC) Offset Requirements.**
 - a. Modifications To The Offset Time Standard.**

The Track 3 Decision adopted interim Offset Time Standards. The Track 4 Scoping Memo asks, “[i]n consideration of CPED’s report on WAV Response Times, what modifications should be

made to the interim standards?”² San Francisco proposes that the Offset Time Standard be revised to use the proposed “Adjusted Interim WAV Response Time Metric,” which is described below, in place of the existing Interim WAV Response Time metric when evaluating whether TNCs meet the Offset Time Standard. San Francisco also proposes eliminating the Level 2 (75% percentile) Offset Time Standard. In addition, the program’s standards and requirements continue to fluctuate and lack certainty for both service providers such as the TNCs and riders themselves. The Commission should establish permanent benchmarks and metrics that provide guardrails for TNCs as they bolster their services and also ensure progress towards equivalent service.

The recent CPED WAV Response Time report references, but does not adequately address, that the WAV response times currently reported to the Commission by the TNCs inherently tell an incomplete story as they do not reflect the fact that large numbers and large percentages of trips are never completed, thus leading to an unrealistically optimistic and distorted representation of the service actually experienced by potential WAV users. The report and the interim standard do not address the need to adopt offset standards that increase over the life of the program until WAV service standards are equivalent to non-WAV service standards.³ San Francisco proposes the following specific proposals to address these issues. Further, San Francisco appreciated the participation of all parties in the May 11 Workshop and was encouraged by the efforts made to discuss the issues critical to establishing a framework of reasonable and effective offset and exemption requirements. We are optimistic that continued discussions will lead to growing consensus around a set of requirements that will enable all parties to achieve our mutual goals. In that spirit, we also provide a set of key principles we will consider in our continued discussions.

² Track 4 Scoping Memo, p. 3.

³ At the March 4, 2021 CPUC Voting Meeting, Commissioner Shiroma provided remarks on the TNC Access for All proceeding and Track 3 Decision (Item 11 on the Consent Agenda) stating that she believed the Commission adopted benchmarks to ensure that TNCs provide WAV services that continue to grow and also improve in terms of response times and other metrics that are similar to non-wheelchair users. Recording available at http://www.adminmonitor.com/ca/cpuc/voting_meeting/20210304/; comments from Commissioner Shiroma begin at 37:55, with comments about benchmarks at approximately 39:00.

i. The Commission Should Adopt San Francisco’s Adjusted Interim WAV Response Time Metric To Account For Trip Completion Issues.

The Commission must incorporate trip completion rates as part of any response time metric to account for the actual ability of TNCs to meet demand, and to reflect the actual experience of WAV users and potential WAV users. Without this change, TNCs will receive both offsets and exemptions while providing service that is both inconsistent and not widely available.⁴ To account for trip completion issues, the Commission should use San Francisco’s Adjusted Interim WAV Response Time Metric, when evaluating whether TNCs meet the Commission’s Level 1 Offset Time Standard. The Adjusted Interim WAV Response Time Metric is calculated using the following formula:

- Adjusted 50th Percentile WAV Response Time = 50th percentile response time / % of trips completed (excluding those cancelled by the passenger)

Dividing the 50th percentile response time by the percent of trips completed (excluding those cancelled by passengers) is a simple way of accounting for the bias in the current WAV Response Time and Offset Time Standard, so that uncompleted trip requests are not discounted. For example, if a TNC reports that 50% of all trips in San Francisco were completed in 15 minutes or less and 100% of trip requests are completed, then the Adjusted WAV Response Time = (15 minutes/100%) = 15 minutes, then the Level 1 Offset Time Standard would be satisfied. However, if a TNC reports that 50% of all trips are completed in 15 minutes or less in San Francisco and only half of the trip requests are completed, then the Adjusted WAV Response Time = (15 minutes/50%) = 30 minutes, and the Level 1 Offset Time Standard would not be satisfied. Note that as the percentage of trip requests completed declines, the Adjusted WAV Response Time increases.

Furthermore, San Francisco suggests that the Commission should only use the Level 1 (50th percentile) Offset Time Standard benchmark (based on the Adjusted Interim WAV Response Time Metric) to evaluate offset eligibility. The Level 2 (75 percentile) Offset Time Standard benchmark should be dropped for three reasons: 1) the CPED’s report on WAV Response Times clearly demonstrates that the Level 2 Offset Time Standard benchmarks are set so arbitrarily high that they are

⁴ TNC Access for All Program Response Time Report by CPED, March 2021, p. 12, Figure 11, that “shows low numbers of completed WAV trips as a percentage of total requested trips per county.”

easily satisfied in 100% of the counties when uncompleted requests are not accounted for; 2) the either/or nature of the Level 1 and Level 2 Offset Time Standard benchmark combined with the easily satisfied Level 2 Offset Time Standard benchmark means that the entire Offset Time Standard evaluation has little meaning because the bar is so low; and 3) the data template does not include the information required to properly evaluate the 75th percentile, as the template requires reporting data for 70th percentile and 80th percentile but omits reporting for the 75th percentile.

ii. The Commission Should Establish Permanent Metrics And Benchmarks That Ensure Equivalent Service Levels.

Once the Commission addresses the fundamental issue of accurately assessing response time performance, it can focus on setting permanent metrics and standard benchmarks. To set permanent standard benchmarks, the Commission must adopt a framework that ensures WAV services provided by TNCs are equivalent to the TNC services offered to the general public. To establish equivalent service levels, the Adjusted WAV Response Time Metric should be calculated for non-WAV service for the subject county and quarter. To receive offsets and exemptions, TNCs should demonstrate quarter-over-quarter improvement towards achieving equivalent service.

Without access to the data required to conduct the required analysis, parties such as San Francisco cannot provide a more specific proposal. In Section 3 of this proposal (Additional Accessibility Issues) San Francisco proposes that the Commission establish an internal ADA Coordinator to oversee transportation accessibility issues within CPED. Among the responsibilities enumerated specific to the TNC Access for All Act, the ADA Coordinator should assist CPED staff in monitoring TNC performance to establish the appropriate equivalent service levels in each geographic area. In the meantime, San Francisco proposes continued discussion of how TNCs can demonstrate this improvement in the ~~May 11, 2021 workshop and~~ revised proposals and reply comments.

b. Additional Metrics.

The Track 4 Scoping Memo asks, “[i]n addition to the requirements adopted in D.20-03-007 and D.21-03-005, what additional metrics should be adopted to demonstrate ‘improved level of service,’ if any (e.g., service area expansion, increased WAV availability)?” During the less than two years of program implementation, the Commission has already adopted two sets of metrics and

standards. San Francisco suggests that the Commission evaluate the sufficiency of these current existing metrics in helping the Commission understand progress toward program goals prior to identifying the need for and developing additional metrics.

c. Trip Completion Standards.

The Track 4 Scoping Memo asks, “[s]hould the Trip Completion Standard be modified to include a minimum baseline percentage or increasing benchmarks? Should the Trip Completion Standard take into account the Response Time Standards, and if so, how?”⁵

As an initial matter, the Commission first should align the Trip Completion Standard with the language of the Act, which states explicitly, “[t]he commission shall establish yearly benchmarks for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service. These benchmarks **shall include**, but are not limited to, response times, **percentage of trips fulfilled versus trips requested.**”⁶ As San Francisco and other parties have asserted in Track 3 comments, the current Trip Completion Standard adopted by the Commission in the Track 3 Decision allows TNCs to report either the percentage **or** the number of trips completed, which renders the reporting of percentage of trips completed optional. This omission not only conflicts with the express language of the Act, it undermines its intent.

With respect to including a minimum baseline percentage or increasing benchmarks for the Trip Completion Standard, the most reasonable place to start would be relative to the trip completion rates for non-WAV service. For each quarter and each county, the reporting template should include the additional information about the total trips requested by day-of-week and hour-of-day, and the total number of trips completed for non-WAV service.⁷ Prior to establishing the type and level of

⁵ See D. 21-03-005, p. 12 defining “Trip Completion Standard,” “[t]o show “improved level of service” for an Offset Request or an Exemption Request, a Transportation Network Company (TNC) must demonstrate either: (a) an increase in the total number of completed wheelchair accessible vehicle (WAV) trips compared to the previous quarter in that geographic area, or (b) an increase in the percentage of completed WAV trips compared to the previous quarter in that geographic area. This requirement is referred to as the Trip Completion Standard. For exemption eligibility, a TNC shall demonstrate that it achieved the Trip Completion Standard for the four consecutive qualifying quarters for which it seeks an exemption. The requirement shall be effective for Offset Requests and Exemption Requests submitted for starting with the second quarter of 2021 and thereafter.”

⁶ Pub. Util Code § 5440.5(a)(1)(J).

⁷ See D. 20-03-014, Resolution ALJ-388 finding TNCs have not met their burden to show that trip data is confidential.

benchmark, the Commission should evaluate current WAV completion rates as compared to non-WAV completion rates.

d. Trip Completion Rate.

The Track 4 Scoping Memo asks, “[s]ome requirements adopted in D.20-03-007 and D.21-03-005 require TNCs to demonstrate quarter-over-quarter improvement of the percentage of trips completed, including the Trip Completion Standard and the Offset Time Standard. How should the Commission evaluate these requirements if a TNC approaches or reaches a 100% trip completion rate?” This is currently not an issue given the adopted “either/or” nature of the trip completion rate established by the Commission in Track 3; that is, currently a TNC can demonstrate either an increase in the percentage of trips completed or the number of trips completed.⁸ For example, a TNC could complete a single additional WAV trip in a given county from one quarter to the next and thus satisfy the Commission’s current low standard. Given the record of service delivery to date, in which no TNC is close to fulfilling 100% of WAV trip requests, it hardly seems time sensitive for the Commission to address the potential for near perfect performance.

This question raises the more relevant and problematic issue, however, that at present, the standards encourage and allow offset payments for minimal improvements, i.e. rewarding companies that complete one additional trip per quarter, rather than setting a clear path towards equivalency. The most pressing example of this problem is that the current Trip Completion Standard for exemption eligibility, which requires a TNC to demonstrate that it achieved the Trip Completion Standard for the four consecutive qualifying quarters for which it seeks an exemption, would allow a TNC that accepts only 30%, 31%, 32%, and 33% of all WAV requests per quarter, or alternatively completes 1 trip in Quarter 1, 2 trips in Quarter 2, 3 trips in Quarter 3, and 4 trips in Quarter 4 (completing only 10 trips in an entire year), to obtain an exemption from remitting fees for an entire year.

Parties, including San Francisco and the Disability Advocates, have previously urged the Commission to address the critical issue of revising the standard so that it encourages actual improvements quarter over quarter (rather than quarter to quarter) by requiring minimum trip

⁸ D. 21-03-005, p. 12.

completion standards that increase each year.⁹ This proposed framework would achieve the goal of encouraging recognizable improvements that move TNC WAV service closer to equivalency with the general public and does not penalize a TNC in the unlikely event it reaches a “100% trip completion rate.” Therefore, San Francisco urges the Commission to revisit and revise the standard, starting by adopting the Adjusted Interim WAV Response Time Metric proposed in Section 1.a. of this Proposal.

e. Eligible Offset Expenses.

The Track 4 Scoping Memo asks, “[i]n D.21-03-005, the Commission stated that ‘fares paid by passengers are not included on the list of eligible offset expenses attached as Appendix A to D.20-03-007.’ What clarifications, if any, should be made with respect to the exclusion of passenger fares from eligible offset expenses?” Uber Reply Comments in Track 3 state a clear position that TNCs should be able to recover gross WAV service costs from the Access Fund rather than net costs. While it appears the Commission concurs with several parties that TNCs should only be permitted to recover net costs, the Commission should clarify its requirements because Appendix A to D. 20-03-007 fails to solicit adequate information from TNCs to support a net cost approach and because the language of D. 21-03-005 makes confusing and ambiguous use of accounting terms. While there are many fine points of meaning and these terms of art have important differences in some contexts, as a general matter, ‘costs’ and ‘expenses’ would align on one side of an accounting ledger and ‘revenues’ or ‘fares’ (a subset of overall revenues in many transportation businesses) would align on the other side of an accounting ledger. Thus, to say, as D. 21-03-005 does, that “fares paid by passengers . . . are not. . . expenses”¹⁰ is a truism that confuses more than it explains about how TNC fares received from WAV passengers should be considered for purposes of costs TNCs may recover from Access Fund offsets. Resolving this ambiguity is important to ensuring appropriate use of Access Fund revenues.

The Act increased the cost of service to every California TNC user to support delivery of on-demand transportation that meets the needs of people with disabilities who need WAV service. It would fundamentally violate California law for Access Fund revenues to be available to a TNC as general company revenues. As the Commission seems to recognize, and contrary to Uber’s assertions,

⁹ Reply Comments of Uber Technologies, Inc, on Proposed Decision on Track 3 Issues, p. 3.

¹⁰ D. 21-03-005, p. 16.

allowing TNCs to charge WAV users fares for service, covering some of the costs of such service, and then allowing TNCs to recover those same costs from the Access Fund indeed risks allowing TNCs to double-recover their costs. The simple form found as Appendix A to D. 20-03-007 should be amended to require TNCs to report fare revenues received in connection with the service delivered in any given quarter that is the subject of an Access Fund offset request. Offset payments should be limited to costs net of fare revenues. The importance of soliciting information about revenues from TNC WAV service is demonstrated by the context: it is widely reported that Uber and Lyft *have never been profitable*.¹¹

For example, even before the pandemic, Uber reportedly lost \$8.5 billion in 2019 while Lyft lost \$2.6 billion in 2019. In other words, expenses to provide TNC service exceed the revenues generated by TNC service—even for non-WAV services. Under the circumstances, there is significant risk that TNCs seeking to recover Access Fund amounts use allocation methods that either overstate the costs of delivering WAV service or understate the revenues from delivering WAV service—or both—in an effort to reduce the larger revenue gap from delivering generally available TNC service. To prevent TNCs from improperly using the Access Fund to subsidize its still unprofitable TNC service, the Commission should require reporting of both reasonable actual incremental costs of providing WAV service and the fare revenues arising from WAV service, which should be netted out from any offset.

In short, San Francisco urges the Commission to amend Appendix A to require TNCs to identify fare revenues, or any other revenues, associated with the service giving rise to an offset request.¹² To resolve the ambiguity, the Commission should amend the language of D. 20-03-007 as follows:

Decision 20-03-007 Ordering Paragraph 10: A qualifying offset expense is: (1) a reasonable, legitimate cost that improves a Transportation Network Company's (TNC) wheelchair accessible vehicle (WAV) service, (2) incurred in the quarter for which a TNC requests an offset, and (3) on the list of eligible expenses attached as Appendix A. Total qualifying offset

¹¹ See, e.g., <https://www.theverge.com/2021/2/11/22277043/uber-lyft-earnings-q4-2020-profit-loss-covid>; <https://finance.yahoo.com/news/ubers-plan-profitable-2021-requires-210146426.html>;

¹² We have no information about revenues to TNCs; however, it is possible that TNCs receive advertising revenues or other revenues directly related to and otherwise allocated in TNC business records in relation to TNC service delivery. Appendix A should solicit information about all categories of revenue that TNCs otherwise allocate to service delivery – in an amount reflecting the share of TNC service that is WAV service in the relevant county and quarter.

expenses shall be net of fare revenues collected from WAV service delivery in the quarter for which a TNC requests an offset.¹³

f. Key Principles for Permanent Offset and Exemption Requirements

San Francisco appreciated hearing the perspectives of all parties at the May 11 Workshop and is optimistic that continued discussions will result in a final framework of offset and exemption requirements that will reasonably and effectively achieve the goals of the TNC Access for All Act. We look forward to reviewing revised proposals from other parties and are particularly interested in collaboratively reaching a final framework that meets the following key principles:

1. Offset and exemption requirements take into account all trip requests and requires a minimum completion rate that improves over time and advances towards a completion rate roughly equivalent to what is expected by the general public for non-WAV service.
2. Offset and exemption requirements incorporate response times that improve over time and advance towards response times that are roughly equivalent to what is expected by the general public for non-WAV service.
3. Offset and exemption requirements incorporate requirements that demonstrate a TNC is increasing capacity and reliability over time (i.e. increase in volume of trips; customer satisfaction; adequate outreach and knowledge of programs by the public)
4. Data is transmitted and tabulated in a transparent and rational format, including fees collected by each TNC by county by quarter, regardless of whether a TNC seeks an offset or exemption.
5. Exemption requirements sustain a TNC’s performance in the county where it has received an exemption and do not incentivize or condone a backslide in performance over the course of the exemption year.

2. Access Fund Disbursements

a. Non-Regulated Carriers

The Track 4 Scoping Memo asks, “[h]ow can the Commission ensure that non-Commission jurisdictional transportation carriers demonstrate compliance with safety requirements akin to the

¹³ This underlined sentence was included in San Francisco’s original proposal.

requirements for a charter-party carrier (TCP) permit? The Commission may consider existing requirements established by non-Commission jurisdictional transportation carriers that may serve as eligible Access Providers.” The Commission expresses concerns that potential access providers not regulated by the CPUC may not meet safety requirements akin to entities like TNCs, stating that “[f]or reference, TCP permit holders are subject to general liability insurance minimums depending on the number of passengers, worker’s compensation insurance, a 19-point vehicle inspection, drug testing, and others.”¹⁴ However, the Commission did not previously express the same concerns for entities contracted by TNCs, which are currently receiving offsets for the same services.

While the Track 2 Decision established that “a TNC that chooses to own vehicles to provide WAV service, or to contract with a third-party transportation provider to provide WAV services, shall obtain a TCP permit” and that “[l]ikewise, a transportation provider that chooses to use a TNC to provide WAV services shall possess a TCP permit,” it did not specifically require TNCs to only contract with third-party transportation providers that possess a TCP permit.¹⁵ San Francisco questions why access providers must meet different and additionally burdensome requirements.

Further, although San Francisco reviewed the TCP requirements cited, known to be General Order 157-E, it is not clear how the Commission expects parties to respond to these concerns, which continue to be undefined. For example, GO 157-E includes regulations for a range of TCP permit holders, some of which are not uniform for TNCs. In one case in particular, TNCs are excluded from Part 10 of the Order – the Controlled Substance and Alcohol Testing Certification Program.¹⁶ San Francisco, and likely other parties, can provide expertise as to how we regulate transportation carriers and manage risk, but we are much less equipped to analyze the Commission’s own requirements and assess the relevant risks about which the Commission has concerns.

For this reason, we respectfully request that the Commission provide an appreciate CPED’s initial analysis of its TNC standards and requirements so that the parties can provide input on how to

¹⁴ Track 4 Scoping Memo, pp. 4-5. Note that the Scoping Memo references a hyperlink in Footnote 9 with requirements for TCP permit holders. The link to the requirements was broken. However, CPED staff informed San Francisco that it pointed to General Order 157-E: Rules and Regulations Governing the Operations of Charter-Party Carriers of Passengers at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M322/K150/322150628.pdf>.

¹⁵ See D. 20-03-007, p. 52.

¹⁶ GO 157-E, part 10.01, p. 13.

~~address the Commission's concerns. Armed with this information, parties like San Francisco and Los Angeles could demonstrate or propose how potential access providers not regulated by the Commission either already do or can meet the requirements, and support the adoption of these requirements:~~

- Background checks – Carriers must perform background checks that meet or exceed what is required for a TNC under the Instructions for TNC Application Form.
- Insurance – Unregulated carriers must have levels of insurance that are equivalent or higher than what is required for charter-party carriers under General Order 115.
- Driver training – Carriers must have certification that their drivers have completed WAV driver training on transporting people with disabilities within the past three years including but not limited to the following: sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures to ensure that they are safely operating their vehicle prior to the driver being able to offer service.
- Controlled substance and alcohol testing – Carriers must be enrolled in a controlled substance and alcohol testing program.
- Secretary of State registration – Carriers must have their articles of incorporation filed with the Secretary of State.
- Motor Carrier Profile with CHP – Carriers must complete the California Highway Patrol (CHP) 362 Motor Carrier Profile and obtain a CA Number from the CHP.
- Inspection – Carriers must have certification that all WAVs have been inspected and approved to conform with the Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles within the past year, including the “19-point” vehicle safety inspection as required in both the TCP32 and TNC33 permitting process.

~~Without this information, however,~~ San Francisco appreciates this list of requirements because without it, we and other parties lack the information needed to propose solutions. For example, Rrather than provide an assessment of how non-TCP permit holders fall short, the Track 3 Decision provided

only one example, falsely claiming that “the liability insurance minimum coverage amounts are consistently higher for TCPs than for locally regulated taxicabs.”¹⁷ Unfortunately, San Francisco and other parties to the rulemaking were not given the opportunity to correct this issue before the Track 3 Decision became final because the concerns were not raised by the Commission prior to being included in the Track 3 Proposed Decision. Had parties been given the chance, San Francisco (and likely others) would have explained that, in fact, accessible paratransit trips in the largest markets in California, San Francisco and Los Angeles, require at least \$1 million coverage. And as the SFTWA stated and the Track Decision 3 ignored, in San Francisco, where all taxis are required to provide accessible paratransit trips, permitted drivers are subject to higher levels of scrutiny than drivers under Commission-issued permits. As one example, San Francisco taxi drivers undergo DOJ fingerprint background checks while drivers regulated by the Commission undergo less rigorous background checks.

For these reasons, San Francisco proposes that ~~Commission staff conduct the necessary analysis and set forth their required standards, ideally equivalent to the standards required of contractors providing services to TNCs who are receiving offsets. Once this information is available, parties can make informed proposals on how applicants can demonstrate that they meet these standards~~ the Commission adopt the list of requirements provided by CPED in order for access providers to demonstrate comparable safety protocols to the Commission-issued permitting requirements. In the meantime, San Francisco proposes that the Commission allow potential access providers to provide non-Commission certifications if they are regulated by other entities so as not to unfairly preclude them from participating in the access provider process while the Commission resolves its concerns.

b. Exceptions For Smaller TNCs.

San Francisco maintains that exceptions for “smaller TNCs” should not be considered or made.¹⁸ First, as the Track 4 Scoping Memo recognizes, “smaller TNCs” is a vague descriptor and it is unclear which TNCs permitted by the Commission would fall under this loose category or how

¹⁷ D. 21-03-005, p. 24.

¹⁸ Proposals of The San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office On Disability On Track 3 Issues, pp. 7-8.

companies would prove eligibility.¹⁹ Second, it is unclear how parties should provide proposed solutions for Track 4 when the Commission has not clearly defined what the problem is. For example, who are “smaller TNCs” and what barriers, roadblocks, or issues particular to these entities need to be solved? How will exceptions for such a category of TNCs improve TNC access to riders with disabilities, particularly wheelchair users? A question as open-ended as this is troubling, particularly in a rulemaking which already seems to be rife with a complicated and evolving set of rules and requirements. San Francisco urges that the Commission should not consider such an exception until the issue is clearly defined and relevant to improving access to riders with disabilities.

c. TNC Eligibility As An Access Provider In Counties It Does Not Provide WAV Service Should Not Be Permitted.

In the Track 3 Decision, the Commission noted that “San Francisco objects to allowing TNCs to apply as Access Providers in counties where they do not provide WAV service, stating that it is inconsistent with the Act and bad policy to reward a TNC with funding when it did not attempt to provide WAV service.”²⁰ While the Commission declined to modify their access provider eligibility requirement, it “note[d] a concern that a TNC that otherwise may have provided WAV service in an area could stop providing WAV service in order to apply as an Access Provider” and determined that this concern could be addressed in Track 4, with potential modifications. San Francisco maintains, for the same reasons raised in its Track 3 comments, that the decision to allow TNCs to apply for access funds where they do not operate WAV service is a mistake that undermines the purpose of the Act and the Commission should take the opportunity to fix this now by closing the loophole it temporarily opened.

In Track 3, the Commission rejected San Francisco’s objection by stating “[a] TNC that does not offer WAV service in a county but attempts to do so as an Access Provider would have to wait until the AFA’s next Access Provider application process, compete with other Access Provider applicants for funding, and may or may not be selected for funding.”²¹ Essentially, the Commission ignored San Francisco’s concerns, claiming that they might not come to pass because TNCs might not

¹⁹ Track 4 Scoping Memo, pp. 5-6.

²⁰ D. 21-03-005, p. 51.

²¹ *Id.*, pp. 51-52.

be selected as Access Providers. This response fails to address the issue. Moreover, not only did the Commission fail to consider that other parties also raised this concern,²² but it also failed to acknowledge that, per the Commission’s other Track 3 rulings, access provider eligibility is limited to TCP permit holders, many of whom do not currently offer appropriate or accessible services, making the competitive pool quite small and not competitive at all. While we understand the Commission hopes that non-TCP entities will apply for TCP permits and broaden the pool, it is highly unlikely this will occur; nor are there known efforts for the Commission or any other entity to facilitate making it more likely, e.g. simplifying the application process or expediting permits for interested parties.

Finally, the Commission’s reasoning that “[r]ather, a TNC that does not offer WAV service but offers non-WAV TNC service in a geographic area can much more readily apply for an offset in that area based on the per-trip Access Fund fees that it otherwise must remit to the Commission.”²³ Again, instead of addressing parties’ concerns, the Commission stated the problem would resolve itself on the off chance that TNCs would prefer the “easier” path of obtaining funds through the offset process. Further, it is concerning that the Access for All program created a promising pathway to provide additional access to TNC services to wheelchair users, which was the intent of the Act and this rulemaking, but then is weakening the program by allowing TNCs to bypass the offset and exemption requirements and apply for funds as an access provider instead. For these reasons, San Francisco proposes that the Commission exclude TNCs from being access providers in counties where they do not provide WAV service.

3. Additional Accessibility Issues.

The Commission must address TNC accessibility issues beyond what is explicitly covered in this rulemaking track. The Commissions should establish an ADA Coordination Office, make participation in rulemaking processes more feasible for disability advocates and members of the public, and consider public comments submitted as part of this proceeding.

²² Comments of The Disability Rights Education & Defense Fund, Disability Rights California, And The Center For Accessible Technology On Proposed Decision On Track 3 Issues, p. 9.

²³ D. 21-03-005, p. 52.

a. ADA Coordination Office

The Commission must address accessibility needs of people with disabilities who do not require WAVs regardless of whether it receives specific proposals from parties because it is the Commission's obligation to ensure access under the Americans with Disabilities Act (ADA). To monitor accessibility and continuously expand access, the CPUC should create an ADA Coordination Office to oversee transportation issues, including but not limited to Charter Party Carriers, Passenger Stage Corporation Carriers, Vessel Common Carriers, Transportation Network Companies, and Autonomous Vehicles.

The ADA Coordination Office's most essential duties as they pertain specifically to the TNC Access for All rulemaking should include:

- Ensuring physical, electronic, and programmatic accessibility of WAV and non-WAV TNCs so that people with all kinds of disabilities can use TNCs.
- Continuously tracking Access for All metrics, including response times, trip completion rates, and timelines for increased accessibility and working with TNCs and government agencies to improve metrics.
- Systematically engaging with people with disabilities, soliciting disability community feedback, and responding to complaints and concerns from the disability community.
- Offering ongoing training to TNCs on safe and effective practices for transporting people with disabilities, covering topics such as safe and secure tie down, how to escort someone with a disability who requires additional assistance, appropriate response and awareness of service animals, effective communication with people with different kinds of disabilities, including people who are D/deaf or Hard of Hearing, and disability etiquette.
- Working with TNCs to improve visibility of WAV service in the standard app and to increase accessible fleet size.
- Conducting formal needs assessments and setting guidelines and requirements to ensure TNCs meet the equivalent service standard and provide equal access to people with disabilities.

b. Rulemaking Process

The CPUC should not open a new rulemaking track, especially without intervenor compensation in the general TNC track. Disability advocates have stated that they are unable to participate in the general TNC track due to the lack of compensation. Additionally, the public participation process in the current rulemaking track has been unclear. CPUC staff has given conflicting instructions to parties and the public regarding submission and recording of public comments. During the May 11 Workshop, CPUC staff instructed attendees to submit public comment via the email address TNCaccess@cpuc.ca.gov. After the May 11 Workshop, CPUC staff instructed parties via email on May 18, 2021 that public comment should be submitted through the Docket Card or via the Public Advisor's email address (public.advisor@cpuc.ca.gov). Public comments submitted to the TNCaccess@cpuc.ca.gov email address are still not publicly available as of May 25, 2021. CPUC staff should make all public comments received available for parties to view and include such comments in the preceding record.

c. Public Input Received by the City and County of San Francisco

San Francisco has received direct feedback from members of the public that should be part of the record. The feedback notes that Lyft's WAV option is currently difficult to navigate and should be more visible in their mobile application. The following is an example of the comments San Francisco has received specific to the blind community but it is not clear whether these comments are in the record:

- Many drivers do not take the time to read passenger messages, and therefore do not know that their passenger is legally blind and unable to identify the TNC vehicle.
- Some drivers chastise blind passengers for not looking for their license plate numbers even after they identify themselves as blind or low vision.
- Drivers often stop somewhere in the general vicinity of the passenger, including right in front of the passenger, but give no indication that they have arrived.
- Some drivers leave and mark blind passengers as no-shows when in fact they were standing there waiting.
- Drivers sometimes refuse to carry passengers who are using guide dogs.

Furthermore, San Francisco would like to highlight this public comment from Brianna Gross (submitted May 11, 2021 via TNCaccess@cpuc.ca.gov): “It was always incredibly difficult to get a WAV vehicle. I have not used ride share since the pandemic, but last time I tried, Uber was the only company that offered WAVs (Lyft did not). Oftentimes, there were no Uber WAV vehicles available. And when they were available, the usual wait time was around 30-40 minutes. Sometimes, I would be waiting and waiting and the driver would never show up. Other times, I would wait for 30 minutes, then the driver would cancel my ride. And it would be the only WAV vehicle in the area, so I couldn't simply request another one. I would always be nervous about taking a TNC WAV vehicle somewhere, and then getting stuck there because there may not be any WAV vehicles around to take me home.”

San Francisco would also like to highlight this public comment from Alice Wong (submitted May 13, 2021 via TNCaccess@cpuc.ca.gov): “As a person who uses a power chair I believe it is imperative that companies such as Lyft and Uber provide more WAVs on demand. I haven't attempted to request one based on horror stories from other wheelchair users who had rides cancelled or over an hour late. Non-disabled people can request a ride at almost any time of the day from practically any location. This is not the case for people who use power wheelchairs and there must be an adequate and reliable supply of these vehicles before people like me can order a trip with confidence. Right now, it's simply unreliable and not a risk I'm willing to take.”

4. Yearly Benchmarks

With regards to yearly benchmarks, the Track 4 Scoping Memo asks “[h]ow should “community WAV demand” be determined and defined?”²⁴ For the purposes of this program, at a minimum, community WAV demand can be defined as the number of people who may be eligible to use and benefit from a program relating to accessibility for persons with disabilities, including wheelchair users who need a wheelchair-accessible vehicle (WAV). Community WAV demand can be further defined as the number of WAV trips taken by, or desired to be taken by, community WAV users. There may be a number of ways to determine community WAV demand. For example, the American Community Survey collected by the U.S. Census Bureau provides detailed information on the number of people with different disabilities, including ambulatory disabilities. While the number

²⁴ Track 4 Scoping Memo, p. 6.

of persons with ambulatory disabilities may not perfectly align with community WAV demand, this data is available at the county level, and possibly at even more granular spatial units. This data could be further supplemented with detailed information on WAV usage in different county and municipal jurisdictions. For example, the SFMTA has detailed information on trips completed using its ramp taxi program. Through a combination of aggregate Census and detailed local data the Commission could develop a profile of community WAV demand by county.

In addition, as the Disability Advocates have noted, demand for transportation in the disability community is often underestimated due to a lack of accessible options. As they explain, paratransit service is a good example of a service that grew from very few rides pre-ADA to 67 million rides per year by 2008. Based on the current Paratransit ridership among wheelchair users in San Francisco, the Disability Advocates estimate a latent demand of about 80,000 rides per year for TNC WAVs.²⁵

5. Other time-sensitive proposals raised by the Consumer Protection and Enforcement Division Staff or parties.

As noted in the May 11 workshop, San Francisco requests that the Commission publish the total Access Fund Fees collected, prior to offset authorizations, by each TNC, in each County, by quarter, for all quarters of program implementation.

III. CONCLUSION

San Francisco appreciates the opportunity to provide these ~~initial~~ revised proposals on Track 4 Issues and looks forward to collaborating with the Commission and parties to the proceeding ~~at the May 11, 2021 workshop~~ to further refine our contributions, ~~and submit revised proposals.~~

Dated: May 27, 2021

Respectfully submitted,

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²⁵ Track 4 Proposals of Disability Rights Education & Defense Fund, Disability Rights California, And The Center For Accessible Technology, p. 16.

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