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 TRACK 3 PROPOSALS AND WORKSHOP

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I. INTRODUCTION

In accordance with the Amended Scoping Memo and Ruling issued on April 21, 2020, the Scoping Memo and Ruling issued on May 7, 2019, and ALJ Chiv's email ruling served on July 22, 2020, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco") submit Reply Comments responding to comments on Track 3 proposals and the July 24, 2020 Workshop.

San Francisco appreciates the opportunity to provide feedback on the implementation of the TNC Access for All Act ("Act") and looks forward to a Proposed Decision on Track 3 Issues that reflects the Act's intent to ensure TNC services do not discriminate against persons with disabilities, including those who use nonfolding mobility devices. Since equivalency between WAV and non-WAV service is the only explicit metric to establish non-discrimination, we urge the Commission to adopt clear and publicly accountable offset and exemption requirements that measure progress towards this goal. With equivalent service for WAV riders being denied for so long, we also urge the Commission to establish Access Fund requirements that do not arbitrarily limit eligible access providers based on whether the Commission regulates the access provider or a narrow definition of "on-demand transportation;" instead the Commission should spare no effort to fill gaps where TNC WAV service is either nonexistent or inadequate.

II. DISCUSSION

A. It is Practicable to Calculate Incremental Costs Without a Formula.

Lyft states that San Francisco and the Disability Advocates (DA) "fail to offer any workable standard that the Commission could employ" to determine incremental costs.[1] However, Lyft confuses and mischaracterizes San Francisco's comments. While it is not necessary to adopt a "formula" to determine incremental costs, it is both practicable and possible for TNCs to determine which of their costs are solely attributable to providing WAV service. A number of these costs are named in the Act, such as "WAVs have higher purchase prices, higher operating and maintenance costs, higher fuel costs, and higher liability insurance, and require additional time to serve riders who use nonfolding

[1] Lyft Comments on Track 3 Proposals, p. 5.

motorized wheelchairs."[2] San Francisco's position is supported in comments by SFTWA, DA, Marin Transit, Uber, and the Los Angeles County Metropolitan Transportation Authority (LA Metro).[3]

Lyft also argues that it is "not aware of any disagreement or uncertainty with respect to the costs for which reimbursement has been sought or as to which kinds of costs are recoverable" and states that "[t]his absence of disagreement between TNCs and CPED with respect to recoverable costs for the first four quarters of implementation provides further assurance to the Commission that the current formulation is working and need not be burdened by adopting jargon."[4] This statement is disingenuous. Because Lyft redacted most of the cost data for which it seeks reimbursement, it was impossible for any party to analyze the merits of its requests. San Francisco and the DA maintain in their objections to Lyft's claims that it failed to demonstrate that the redactions are warranted.

B. Uber and Lyft Urge the Commission to Apply a Different Framework to Measure Improved Level of Service, But Fail to Propose Viable Alternatives.

While Uber and Lyft both agree that improved level of service can be demonstrated in multiple ways, neither proposes a viable framework to consistently or clearly evaluate TNC WAV performance. Instead, Lyft proposes a "multi-metric approach" that a TNC could satisfy by meeting *at least one* metric of many in a proposed laundry list, and fail to include any baselines.[5] This approach is questionable as it potentially would allow a TNC to cherry-pick among metrics without demonstrating consistently improved, reliable, and available service. If the Commission were to adopt Lyft's proposed measures, they would be of no recognizable significance to a WAV rider from quarter to quarter, or even year to year. As for Uber, it only insists that "any attempt to calculate improved levels of service must be based on the number of completed WAV trips on the platform."[6] Alone this metric is not sufficient to demonstrate improved service. San Francisco continues to support the DA's proposed metrics for completed trips because it is a quantitative metric demonstrating whether the level of service is adequately improved year over year and accounts for seasonal variations from quarter to quarter.

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[2] Pub. Util. Code § 5440.5(f).
[3] SFTWA Comments on Track 3 Proposals, p. 3; DA Comments on Track 3 Proposals, pp.1-3; Marin Transit Track 3 Proposal, p. 3; Uber Track 3 Proposal, p. 1; LA Metro Comments on Track 3 Proposals, p. 3.
[4] Lyft Comments on Track 3 Proposals, p. 7.
[5] *Id*., p. 10.
[6] Uber Comments on Track 3 Proposals, p. 2.

C. The Commission Should Establish Access Fund Requirements That Support a Range of TNC WAV Alternatives Rather Than Limit Them.

A critical element of the Act is the Access Fund, which enables eligible entities to temporarily provide service where TNC WAV programs are either non-existent or underperforming. Recognizing that this funding may be volatile from year to year, that needs in communities are not consistent across counties, and that this is a critical service for riders who have been left behind, most parties urge the Commission to establish requirements that are inclusive of more eligible entities rather than limiting them. The only exceptions are Uber and Lyft. Uber alone suggests that "maintaining accountability over the funds" requires that access providers be limited to Commission-regulated entities.[7] As the DA suggest, "the Commission can condition acceptance of funding on compliance with program rules including acceptance of Commission authority to oversee compliance."[8] Uber and Lyft also argue that "on-demand transportation" should be so narrowly construed to effectively only afford TNCs the opportunity of serving as access providers.[9] But this is moot as the Commission already found TNCs are *not* the only entities intended to be access providers.[10] Further, as LA Metro notes, "it would be out of the scope of the Commission's role to adopt a narrow definition of what constitutes…level of service,"[11] rather than allow a local community to define what it needs. For these reasons, San Francisco urges the Commission: 1) to not limit Access Fund disbursements to Commission-regulated entities and 2) to not adopt an overly-narrow definition of "on-demand transportation."

D. The Program Would Clearly Benefit From Revised Reporting Requirements.

Despite Uber's claims that San Francisco "offers an entirely new series of reports," San Francisco has urged the Commission to establish clear and transparent reporting requirements throughout this proceeding, as well as in the parallel rulemaking in R.12-12-011. Good data is necessary to inform any effective program, and the fact that the public generates the funds for the Access Fund only heightens the need for clear and transparent reporting. Therefore, San Francisco maintains that current reporting requirements, as adopted by the Commission and further developed by

[7] Uber Comments on Track 3 Proposals, p. 6.
[8] DA Comments on Track 3 Proposals, p. 9.
[9] Uber Track 3 Proposal, p. 6 and Lyft Comments on Track 3 Proposals, pp. 12-13.
[10] Decision on Track 2 Issues: Offsets, Exemptions and Access Provider Disbursements, D. 20-03-007, p. 66.
[11] LA Metro Comments on Track 3 Proposals, p. 5.

CPED staff, are not adequate and require revision. Uber's observations support this need by pointing out repeatedly that reporting requirements require further definition and clarity.[12]

San Francisco put forward a clear proposal meeting the program's needs in a format and standard that is objective and uniform. While Uber continues to wrongly paint this proposal as raising privacy and trade secret concerns, nothing is new and their claims continue to be unfounded.[13] First, Uber claims that the proposed report includes "sensitive, confidential data that, if published, could endanger" Uber's competitive advantage "because it could offer insights into our pricing and routing algorithms."[14] But no route data was included. With respect to pricing, Uber and Lyft publicly provide cost estimates for specific locations and times. Second, Uber claims without justification that some data "is clearly personally identifiable because it could potentially be used to identify a person."[15] But Uber fails to identify what specific information could be used in this way. Also, Uber's claims that NHTSA representatives "have taken the position that [VINs] are personally identifiable information," lacks foundation. The citation, from an undated PowerPoint about "vPICs," provides no context or authority that it applies here. Uber fails to counter the authority San Francisco cited in R. 12-12-011, including that there is no reasonable expectation of privacy in VIN numbers.[16]

E. The Commission Should Not Modify Rule 7.5.2 For Advice Letters.

Lyft's and Uber's arguments that parties' recent objections to their unfounded claims of confidentiality regarding their wholesale redactions of the data underlying their Advice Letter offset requests means the Commission should limit Rule 7.5.2 regarding suspension defy logic. Lyft argues that "to the extent a dispute arises regarding confidentiality, or any other *non-substantive* issue, that issue should be resolved separately and shall not…delay approval of reimbursements."[17] Lyft's blithe assertion that such objections are "non-substantive issues" completely misses the point. Indeed, the objections are necessarily intertwined with the merits because the unwarranted redactions make it impossible for San Francisco and other parties to assess the merits of Lyft's offset requests. And as

[12] Uber Comments on Track 3 Proposals, p. 3.
[13] *See generally*, San Francisco Reply Comments to Phase III.C Scoping Memo and Ruling, R. 12-12-011, dated 12/20/19.
[14] *Id.,* p. 10.
[15] *Ibid.*
[16] *See New York v. Class*, 475 U.S. 106, 113-14 (1986); SF Reply Comments, pp. 12-13, cited in Footnote 13.
[17] Lyft Comments on Track 3 Proposals, p. 15 (Emphasis added.); see also Uber Comments on Track 3 Proposals, p. 10.

stated repeatedly in the objections, the TNCs have failed to meet their burden to show the redactions are warranted.[18] San Francisco strongly opposes Lyft's proposal. To allow it would give the TNCs a green light to shield the parties from reviewing underlying data even where they fail to show it is entitled to confidential protection by public records laws, keeping parties from protesting the adequacy of the requests on the "merits." Doing so could eviscerate stakeholders right to review offset requests.

Next, Lyft argues that "referral of a decision on the initial offset requests to permit resolution of confidentiality objections was unnecessary and unwarranted, as both Lyft and Uber offered to provide the protesting parties" with unredacted access to the data subject to a nondisclosure agreement.[19] As Lyft and Uber well know, San Francisco would not be able to enter into such an agreement because, as a public entity, it is required to disclose all records responsive to public records requests unless they are exempt from disclosure under applicable public records laws. As the TNCs failed to demonstrate that the redacted information in any of its Advice Letters qualifies for any such exemption, San Francisco could not enter into such an agreement, which would prospectively prohibit it from meeting its statutory duty, thereby exposing it to potential liability for failing to comply with public records laws.[20] In addition, that the offset requests concern whether public funds are being spent appropriately, means that, as a stakeholder, San Francisco could not agree to keep this information from the public. For these reasons, San Francisco could not enter into such an agreement.

San Francisco urges the Commission to reject Lyft and Uber's proposals to limit the right of parties to protest the offset or exemption requests, including the right to object to inadequate claims of confidentiality to ensure that the parties can assess the merits of the requests.

III. CONCLUSION

San Francisco appreciates the opportunity to provide comments on Track 3 of this proceeding and urges the Commission to adopt San Francisco's proposals in its Proposed Decision.

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[18] *See* San Francisco's Protests to Uber Advice Letters 1-3 (May 5, 2020) and Advice Letter 4 (August 4, 2020); San Francisco's Protests to Lyft's Advice Letters 1-3 (May 5, 2020), Advice Letter 4 (August, 5 2020); San Francisco's respective Comments to Lyft and Uber's Appeal of CPED Referral to ALJ Re Claims of Confidentiality, dated August 10, 2020; Disability Advocates' related filings responding to the Advice Letters and Appeals.

[19] Lyft Comments on Track 3 Proposals, p. 15.

[20] *See* San Francisco's respective Protests to Uber and Lyft Advice Letter 4, dated August 4, 2020; San Francisco's respective Comments to Uber's and Lyft's Appeal of CPED Referral to ALJ Re Claims of Confidentiality, dated August 10, 2020; Disability Advocates' related filings responding to the Advice Letters and Appeals.

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Respectfully submitted,

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