

**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 ADDITIONAL TRACK 5A
PROPOSALS**

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Dated: July 26, 2022

I. 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 Reply Comments on Additional Proposals on Track 5A related to the TNC Access for All Act (“Act”). San Francisco reaffirms the importance of prescheduled trips to members of the disability community, who have stated in letters and in public comment during the TNC Access for All proceeding that prescheduled trips allow them to feel more secure in their ability to get a ride to the doctor, to the store, to see friends and family, and to take all manner of trips.¹ Recognizing the importance of these services to the disability community, we appreciate the California Public Utilities Commission’s (the “Commission” or “CPUC”) diligence in opening an additional track to address this aspect of Transportation Network Company (“TNC”) services as well as their request for non-wheelchair accessible vehicle (“WAV”) prescheduled trip data to inform WAV standards. For this reason, we hope the Commission swiftly dismisses suggestions from Uber Technologies, Inc. (“Uber”) and Lyft, Inc. (“Lyft”) that prescheduled WAV service is neither required nor subject to standards that provide WAV users equivalent service.

The intent of the TNC Access for All legislation was to provide wheelchair accessible TNC service that mirrors the level of service available to the general public. TNCs provide prescheduled service to the general public and collect Access Fees on these trips, too. Despite complaints from TNCs, which we have addressed within these comments, companies have not presented compelling evidence for why they should collect and receive Access Fees on these trips but not provide the same service to WAV users, as their proposals would effectually allow. San Francisco’s proposed standards, attached hereto as Exhibit 1, have been modified based on comments in Track 5A, and provide a clear and reasonable framework to ensure TNCs not only provide equivalent service to wheelchair users but are also able to receive significant public funds if they do so. We urge the Commission to adopt our

¹ Letter from San Francisco Mayor’s Disability Council Co-Chairs to Uber, February 17, 2022.

standards as proposed in these Reply Comments and look forward to commenting on a Proposed Decision in the near future.

II. DISCUSSION

A. Offsets and Exemptions Standards for Prescheduled Trips

1. TNCs should provide the same WAV services as they do to the general public to qualify for offsets and exemptions.

San Francisco reiterates its proposal that in order to qualify for offsets and exemptions, a TNC must “provide the same types of WAV service in that county as they provide non-WAV service. In other words, if a TNC provides on-demand non-WAV service in a given county, they must also provide on-demand WAV service in that county, and if a TNC provides prescheduled non-WAV service in a given county, they must also provide prescheduled WAV service in that county.”² While Uber and Lyft object, their concerns are unfounded, and the Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (“Disability Advocates” or “DA”) and San Francisco Taxi Workers Alliance (“SFTWA”) provide further support for San Francisco’s reasoning.

First, Uber claims that San Francisco’s proposal is “untimely and outside the scope of narrow issues raised in the Track 5A Scoping Memo,” falsely stating that, “parties had ample opportunity to propose this rule as an additional offset requirement. None did so.”³ This ignores the fact that Track 5A was opened specifically because “[t]he issues of pre-scheduled WAV trips has not been considered in the proceeding to this date,” as stated in the Amended Track 5 Scoping Memo.⁴ Previous tracks did not consider prescheduled service in designing offset and exemption requirements because San Francisco

² Proposal of SF on Additional Track 5A Issues (“SF Additional Track 5A Proposal”), filed June 30, 2022, at 3.

³ Comments of Uber on Additional Track 5A Proposals and Advice Letter Amendments (“Uber Comments on Additional Track 5A Proposals”), at 8.

⁴ Assigned Commissioner’s Amended Track 5 Scoping Memo and Ruling (“Amended Track 5 Scoping Memo”), filed January 14, 2022, at 2.

and several other parties were unaware at the time that TNCs were performing either prescheduled WAV or non-WAV trips and both collecting and receiving Access Fund dollars for the service. San Francisco reminds all parties that the need for a track contemplating prescheduled trips arose from Lyft including prescheduled trips in their WAV data without identifying their trips as such.

Second, Lyft argues that they should not be required to “provide the same range of services” in order to qualify for offsets and exemptions because of a shortage of “privately owned wheelchair accessible vehicles that can be onboarded onto a TNC platform” and “inherently higher cost associated with these vehicles.”⁵ The Commission should reject this argument. The TNC Access for All program is structured to provide funds to offset the higher cost of providing WAV service. Furthermore, Lyft is *already providing* prescheduled WAV service in counties where it is providing on-demand WAV service, a real-world example of the program’s feasibility.

San Francisco appreciates the Disability Advocates’ clear and compelling statement regarding the role of prescheduled trips in the broader context of the Act and civil rights legislation. They say:

As the Disability Advocates have previously explained, the TNCs were started after the enactment and effective dates of the Americans with Disabilities Act and other civil rights laws. They should have designed their services to be accessible from the beginning but failed to do so. The legislature passed the TNC Access for All Act in an effort to remediate that failure. TNCs that now choose to offer additional services, such as pre-scheduled rides, to the general public but *not* to people with disabilities should not be permitted to receive offsets or exemptions. To do so would be contrary to the entire purpose of the Act, as well as violating civil rights statutes.⁶

San Francisco agrees with the Disability Advocates that the TNCs must be required to provide equivalent services in order to be eligible for offsets and exemptions, although as San Francisco explains in Section II.A.2. (in agreement with the Disability Advocates), a TNC could provide

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

⁶ DA Comments on Additional Track 5A Proposals, at 5.

prescheduled WAV service that does not meet the offset standards and still qualify for an on-demand offset.

San Francisco also appreciates the perspective of the SFTWA, which states that “[d]ifferent types of WAV service demand different standards, but the service is all of a piece, whether it’s ‘on-demand’, pre-scheduled, or some other variety.”⁷ San Francisco agrees: prescheduled service requires taking reservations ahead of time, but it is not a fundamental change in operations.

Therefore, San Francisco believes its additional requirement for TNCs to provide the same types of service to WAV users as the general public in order to qualify for offsets and exemptions are well within the scope of the current track and the Commission should ignore Uber and Lyft’s objections.

2. TNCs must meet standards for both prescheduled and on-demand service to qualify for *exemptions*. However, TNCs may qualify separately for prescheduled and on-demand WAV *offsets* if the funds collected from prescheduled and on-demand non-WAV trips are separated.

In their Comments on Additional Track 5A Proposals, Uber introduced a dangerous new proposal that would allow a TNC to earn a “partial” exemption and then expand the exemption to *all* service in the qualifying county based on a TNC’s future discretionary service mix.⁸ Uber’s recommendation is impracticable and could easily be abused. For example, a TNC could receive an exemption for prescheduled service while 15% of its trips are prescheduled. *Then, by ceasing on-demand WAV service in the following quarters, prescheduled service would account for 100% of WAV service, and entitle a TNC to a full exemption, allowing them to keep all of their collected Access Fees.*

⁷ Opening Comments of the SFTWA on Additional Track 5A Proposals, at 4.

⁸ “Uber recommends against limiting the amount of funds retained to the service mix in place at the time the exemption was determined. For example, if there is a shift in the pre-scheduled to on-demand service mix in subsequent quarters (for example, from 10/90 to 25/75), the exemption amount retained should be positively adjusted on a by-quarter and by-county basis.” *See* Uber Comments on Additional Track 5A Proposals, at 6-7.

Uber’s proposal should be rejected due to the fact that it is impracticable. Further, as the Disability Advocates explain:

[T]here is no authority to award a TNC a partial exemption for partial accessibility in the TNC Access for All Act. Under the structure of the statute, either a TNC is accessible – in which case it is exempt for a year from paying the charge – or it is not, in which case it is able to keep a portion of the fees it collects if it can qualify for offsets. As a result, in order to qualify for an exemption, a TNC must be fully “accessible,” which means that all of its services – both on-demand and pre-scheduled – must meet the standards set forth by the Commission. TNCs that are only partially accessible, or only on their way toward full accessibility, may qualify for offsets but not exemptions.⁹

Therefore, a TNC should not be granted a partial exemption – TNCs should meet the standards for both prescheduled and on-demand WAV service in order to be exempt from remitting the Access Fees for one year.

However, while TNCs should only be exempt from collecting a fee if they are providing both satisfactory on-demand and prescheduled WAV service, San Francisco supports the ability for TNCs to qualify for on-demand and prescheduled offsets separately, in agreement with the Disability Advocates and Consumer Protection and Enforcement Division (“CPED”).¹⁰ To enable this, the Commission should follow San Francisco’s proposal that the Commission collect Access Funds from non-WAV prescheduled and on-demand trips separately, and that these two separate funds should be the basis for proportioning offset funds.¹¹ As San Francisco noted, “[t]his 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.”¹² San Francisco strongly cautions the Commission against adopting CPED’s proposal which would split

⁹ DA Comments on Additional Track 5A Proposals, at 4.

¹⁰ *Id.*; CPED Additional Track 5A Staff Proposal, at 5-6.

¹¹ Comments of SF on Additional Track 5A Proposals (“SF Comments on Additional Track 5A Proposals”), at 9.

¹² *Id.*

Access Fund monies between prescheduled and on-demand trips based on completed number of WAV trips.¹³ This proposal is also impracticable and would allow for TNCs to take advantage of a structure that can easily be manipulated. Under this proposal, a TNC could decide to primarily complete prescheduled trips (which are easier to fulfill than on-demand trips)¹⁴ and receive large offsets from the Access Fund while performing minimal on-demand service, diminishing service quality, which is in direct contradiction to the intention of the Access for All Act. Therefore, San Francisco recommends the Commission adopt our modified proposal, where on-demand and prescheduled funds would be collected, held, and distributed separately as outlined in Exhibit 1.

3. TNCs should not be able to determine what qualifies as on-time, on a trip-by-trip basis.

Per the Commission’s instructions, San Francisco proposed on-time performance standards for prescheduled trips that align with the existing on-demand standards and are based on prescheduled WAV and non-WAV trip data.¹⁵ Lyft, however, continues to propose an on-time performance standard where prescheduled trips are deemed “on-time” if Lyft meets the response time window that they themselves propose.¹⁶ San Francisco reiterates its alarm that Lyft is proposing it be able to determine its own on-time performance standards on a trip-by-trip basis. As the SFTWA notes:

Lyft says ‘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.’ Yet, it goes on to elaborate a new performance standard of its own design, *in which it gets to determine what standard it will have to meet -- ride by ride!*¹⁷

¹³ CPED Additional Track 5A Staff Proposal, at 5-6.

¹⁴ There is consensus on this issue from several parties. *See* CPED Additional Track 5A Staff Proposal, at 5; DA Comments on Additional Track 5A Proposals, at 5.

¹⁵ Assigned Commissioner’s Ruling on Track 5A Issues and Data Submissions for Pre-Scheduled Trips (“Track 5A Ruling”), filed April 11, 2022, at 12; SF Additional Track 5A Proposal, at 7-9.

¹⁶ Lyft Additional Track 5A Proposal, at 5.

¹⁷ Opening Comments of the SFTWA on Additional Track 5A Proposals, at 2.

SFTWA continues, “[r]ather than accepting the passenger's requested pickup time, Lyft wants to open a window of time to suit its own convenience.”¹⁸ The Disability Advocates echo these misgivings, saying they “have strong concerns about the fact that Lyft’s proposal would provide TNCs with unfettered discretion as to what constitutes an ‘on-time’ pre-scheduled ride.”¹⁹ Uber, meanwhile, states that “[b]ased on the pickup range it provides to passengers at the time of booking, Lyft appears to suggest a 15 minute ‘on-time’ window from the rider’s requested pickup time.”²⁰ Lyft’s proposal suggests nothing of the sort. In fact, nothing in Lyft’s proposal would limit TNCs to anything less than absolute discretion to set a pickup window – which could be 15 hours just as easily as 15 minutes – on a trip-by-trip basis as they see fit. Lyft merely presents a “reasonable” example hoping to distract from the fact that their proposal is completely unreasonable. San Francisco again recommends its original or modified proposals, both of which are data-driven and neither of which allow TNCs to decide for themselves what “on-time” means.

4. SF's prescheduled trip standard proposals are not "overly ambitious" nor would they undermine existing service provision – they are data-driven proposals designed to accomplish the stated intentions of the Access for All legislation.

Pursuant to the Commission’s Ruling dated April 11, 2022, which 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,” San Francisco proposed prescheduled performance standards using prescheduled WAV and non-WAV trip data submitted by TNCs.²¹ The Disability Advocates supported San Francisco’s proposal, stating that they “urge the Commission to adopt the standards proposed by San Francisco [...] because they are grounded in the data regarding standard pre-

¹⁸ Opening Comments of the SFTWA on Additional Track 5A Proposals, at 3.

¹⁹ DA Comments on Additional Track 5A Proposals, at 7.

²⁰ Uber Comments on Additional Track 5A Proposals, at 2.

²¹ Track 5A Ruling, at 12.

scheduled trips [...] and because comparability to the experience of people without disabilities is the appropriate standard for accessibility.”²²

Despite the Commission’s guidance to use data to develop standards, Uber complains that “San Francisco’s proposed pickup delay benchmarks and standards and trip completion standard are based on non-WAV service levels, yet the proposals, like CPED’s, fail to properly account for the material differences between WAV and non-WAV markets,”²³ and goes on to claim that “San Francisco has not demonstrated why their standard would be workable or accurately reflects the realities of WAV service.”²⁴ But, in fact, San Francisco *did* evaluate prescheduled WAV completion rates and pickup delays and presented them in their proposal. The data provided by Lyft and included in our original comments showed that prescheduled WAV completion rates *exceeded* prescheduled non-WAV completion rates in county groups A and B. Prescheduled WAV pickup delays did not meet the required benchmark for county group A, but did for county group B. Prescheduled WAV trips were not provided in county group C. It is difficult to understand Uber’s alarm, given that TNCs have already demonstrated prescheduled WAV service that is comparable to (and in some cases superior to) prescheduled non-WAV service.

Lyft agrees with Uber that San Francisco’s trip completion rates are too high, claiming that, “San Francisco’s proposed completion standards exceed the actual completion rates for both San Francisco and Los Angeles Counties for standard pre-scheduled trips.”²⁵ San Francisco concedes that their first quarter trip completion standard for San Francisco does exceed actual trip completion rates – by a single percentage point – because San Francisco rounded their proposed targets to the nearest 5%. With respect to Los Angeles, San Francisco considered county-group data consistent with the Trip

²² DA Comments on Additional Track 5A Proposals, at 5.

²³ Uber Comments on Additional Track 5A Proposals, at 7.

²⁴ *Id.*, at 7-8.

²⁵ Lyft Comments on Additional Track 5 Proposals, at p. 2.

Completion Standard adopted by the Commission for on-demand service, and again at a county-group level San Francisco’s proposal exceeds non-WAV prescheduled trip completion rates by a single percentage point. San Francisco would accept a Proposed Decision that adopted San Francisco’s proposal but lowered both of these targets by a single percentage point. However, the Commission should note that, as discussed above, TNCs are *already* exceeding the trip completion standards in the county groups where they provide prescheduled non-WAV service.

In addition to unfounded concerns about San Francisco’s specific proposed standards, Uber generally complains that setting *any* standards based on a TNCs’ ability to perform prescheduled trips is unfair, arguing that prescheduled service undermines a TNC’s ability to provide adequate on-demand services.²⁶ Uber states that “[s]etting benchmarks and standards at the levels proposed could also lead to unintended consequences,” such as “higher fares” or “higher subsidies” but does not provide any evidence to support this claim.²⁷ These concerns are strictly speculation and ignore that Uber and Lyft receive funds to offset the cost of providing WAV service—funds that are explicitly intended to support higher service levels. Unlike non-WAV service, WAV service is subsidized—TNCs receive public funds to help them meet their obligation of equivalent service. Requiring TNCs to provide the same type of service they provide to the general public in order to receive public funds is not unfair, it is the intent of the legislation and the underpinning of the Access for All program. Further, as has been supported in previous comments from San Francisco and the SFTWA, prescheduled service is easier to provide as the provider is given the origin and destination of the trip ahead of time, making it easier to plan to serve the trip request, which should make the reasonable response times included in San Francisco’s proposal very possible to achieve.

²⁶ Uber Comments on Additional Track 5A Proposals, 5.

²⁷ *Id.*, at 6.

Therefore, rather than being “overly ambitious” as Uber claims, San Francisco’s proposal is reasonably based on the prescheduled non-WAV data that the TNCs provided. And as the data further demonstrates, not only are the targets achievable, but *they have already been achieved* in some cases. For these reasons, the Commission should adopt San Francisco’s proposal as included in Exhibit 1.

B. Data Reporting

1. The Commission should adopt San Francisco’s data reporting proposals, including clarifying reporting of cancellations and using the term “pick-up delay.”

San Francisco notes consensus among parties that there must be consistency in reporting²⁸ and reiterates its request that the Commission clarify for all parties how TNCs should report cancelled trips.

However, we note that Uber takes issue with San Francisco’s request to add clarifying data reporting in light of Lyft’s cancellation reporting methodologies. Uber says that:

San Francisco has not shown why the number of drivers assigned or any other data on any intermediate cancellations, rather than the data on the terminal status of the trip and the ultimate response time (as measured by the time between the scheduled pickup time and the driver’s actual arrival for pre-scheduled trips or the time between the initial trip request and the driver’s arrival for on-demand trips), is necessary to assess the performance of a pre-scheduled WAV service.²⁹

As San Francisco explained in our proposal, however, data on multiple cancellations is valuable for understanding passenger experience. As San Francisco stated in its Additional 5A Proposal, “[t]his additional data would help interested parties better understand the experience of riders, who may encounter multiple driver cancellations in the course of attempting to find a ride.”³⁰ For example, in a situation where multiple TNC drivers cancel on a passenger before the passenger ultimately gives up

²⁸ Lyft Comments on Additional Track 5A Proposals, at 6; Uber Comments on Additional 5A Proposals, at 10.

²⁹ Uber Comments on Additional Track 5A Proposals, at 11.

³⁰ SF Additional Track 5A Proposal, at 12.

and cancels, Uber would only report this trip as a passenger cancellation. San Francisco agrees with this ultimate designation, but as previously stated would like to see “an additional field to capture the number of drivers who were dispatched requested trips, regardless of whether the trips were ultimately completed.”³¹ As the Disability Advocates helpfully note:

[T]he things that matter are (1) the time delay between when the person first requested the ride and when the ride actually showed up; (2) whether there were issues in between (e.g., was the person required to repeatedly re-request the ride? did the person watch the WAV drive in circles or stop several blocks away in the hope that the rider would cancel?); and (3) whether the ride ever showed up at all. The Commission should ensure that the trip cancellation data accurately reflects these aspects of the trip, and that they are consistently reported by each TNC.³²

Finally, San Francisco notes that the Disability Advocates—

[A]gree with San Francisco that response times for on-demand rides and for pre-scheduled rides are entirely different in nature, and that for clarity the Commission should adopt a different term for the time elapsed between when a customer expects a pre-scheduled ride to arrive and when it actually arrives, such as ‘pickup delay.’³³

San Francisco again requests that the Commission adopt “pickup delay” in place of “response time” for prescheduled trips.

³¹ SF Additional Track 5A Proposal, at 12.

³² DA Comments on Additional Track 5A Proposals, at 6.

³³ *Id.*, at 4.

Dated: July 26, 2022

Respectfully submitted,

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Exhibit 1: Prescheduled WAV Performance Metric Proposals

Proposed Offset Request Requirements

For any geographic area and quarter, a TNC seeks an offset, they must:

- a) Meet the Trip Completion Standard³⁴
- b) Meet the Prescheduled Pickup Delay Standard (for Prescheduled Offset) or Response Time Standard (for On-Demand Offset)
- c) Provide the same types of WAV service in each geographic area as is provided to the general public/non-WAV users.³⁵

Table 1: Proposed Prescheduled WAV Trip Completion Standard

County Group	Quarters 1 to Quarter 3	Quarter 4 to Quarter 7	Quarter 8 and after
A	85%	90%	95%
B	80%	90%	95%
C	75%	85%	90%

To demonstrate improved level of service for offset eligibility for prescheduled WAV service, a TNC must demonstrate that it met or exceeded the applicable minimum percentage of prescheduled WAV trip requests completed.

Table 2: Prescheduled Pickup Delay Benchmark

County Group	Pickup Delay Benchmark (minutes)
A	6
B	8
C	22

³⁴ Standards have already been adopted for on-demand trips. San Francisco’s Proposed Prescheduled Trip Completion Standard can be found in Table 1 of Exhibit 1.

³⁵ For example, if a TNC provides on-demand non-WAV service in a given county, they must also provide on-demand WAV service in that county, and if a TNC provides prescheduled non-WAV service in a given county, they must also provide prescheduled WAV service in that county.

Table 3: Proposed Prescheduled Pickup Delay Standard

Quarter	Percentage of Completed Trips under Pickup Delay Benchmark
1 st	80%
2 nd	80%
3 rd	85%
4 th	85%
5 th	90%
6 th	90%
7 th	95%
8 th and after	95%

To demonstrate improved level of service for offset eligibility for prescheduled WAV service, a TNC must demonstrate that it met or exceeded the Pickup Delay Benchmark for a given quarter in a given geographic area. The 1st Quarter percentages shall apply to the first quarter that a TNC submits an Offset Request for prescheduled WAV service in a given county. Once the schedule begins for a TNC in a given county, the schedule shall advance each quarter, regardless of whether a TNC submits an Offset Request for prescheduled WAV service in that quarter.

Prescheduled WAV Exemption Standard

- a) At least 95 percent of its completed prescheduled WAV trips met or exceed the Pickup Delay Benchmark for a given geographic area for four consecutive quarters, and
- b) The TNC qualified for an offset for both on-demand and prescheduled service in the given geographic area for the same four consecutive quarters.

Methodology to Divide and Distribute Access Funds

In order to distribute funds to TNCs requesting offsets for only one type of service, on-demand and prescheduled funds are collected, held, and distributed separately. The 10-cent fee collected from on-demand TNC non-WAV trips in a county will go into the On-Demand Access Fund for that county and the

fees collected from prescheduled non-WAV trips will go into the Prescheduled Access Fund for that county. A TNC qualifying for an on-demand offset will request funding from the On-Demand Access Fund, and likewise, a TNC qualifying for a prescheduled offset will request funds from the Prescheduled Access Fund.