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Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Service List: R.19-02-012

Re: Reply of Lyft, Inc. to Protests of the Disability Rights California and the Disability Rights Education & Defense Fund to Lyft Advice Letters AL-1 through AL-3

Dear CPED Staff:

By this Reply, Lyft, Inc. ("Lyft") responds to the protest submitted by the Disability Rights California and the Disability Rights Education & Defense Fund (collectively, "DRA") to Lyft Advice Letters AL-1 through AL-3 (collectively, "ALs").

1. DRA's Protest Lacks Merit

DRA asserts three primary objections to Lyft's ALs. None of these objections have any merit whatsoever.

1.1 Lyft's Advice Letters Were Not Improperly Filed and Served

As its first objection, DRA complains that the emails transmitting Lyft's ALs were delivered "at 5:04pm, 5:08pm, and 5:21pm respectively on April 15, 2020," and that Lyft filed corrected versions the next day. DRA does not claim that filing a few minutes after 5:00 pm, or serving corrected versions, prejudiced DRA in any way. Instead, DRA claims it has "complicated Disability Rights California and DREDF's review of the Advice Letters and made it difficult to calculate when this protest is due."¹ Lyft does not dispute that the emails transmitting the public version of its advice letters, like similar emails sent by Uber, were unexpectedly delivered shortly after 5:00 pm. Lyft submits, however, that no party was in any way prejudiced as a result, and, further, that some leeway is appropriate given the novelty and complexity of these first ever retroactive offset submissions.

As Staff is well aware, the three April 15 retroactive offset requests represented the first opportunity for Staff and TNCs to navigate the new, hybrid advice letter process established by Decision (D.) 20-03-007. Lyft greatly appreciates Staff's effort to provide templates and detailed instructions, however, despite these efforts, the process was nevertheless fairly complicated, and unanticipated issues arose in finalizing the documents for submission. In particular, Lyft experienced unanticipated difficulties in populating and redacting the Excel template supplied by Staff. Lyft also experienced certain technical issues in the process of combining the required documents (including two certifications

¹ DRA Protest, p. 1.

that had to be extracted from the Excel template) into a single combined PDF/A compliant document. Lyft understands that Uber experienced similar difficulties.

Although Lyft made an intensive effort to submit all six required documents (i.e. one combined PDF and one Excel template for each of the three filings), as a result of these last-minute, unanticipated difficulties, it was unable to do so until a few minutes past 5:00 pm. And although it is true that Lyft filed corrected versions (to combine two previously served documents into a single PDF and make a few technical corrections to the Excel spreadsheet), the corrections involved only formatting issues and did not alter the content of the submissions in any way. Lyft respectfully submits that DRA was not harmed in any way by these events and that in view of the novelty and complexity of these inaugural submissions, reasonable leeway is appropriate regarding the standard 5:00 pm filing cut-off. Lyft also points out that if DRA had questions regarding how to calculate the due date for protests, it could have sought timely clarification from the Commission. To Lyft's knowledge, it made no effort to do so.

1.2 DRA's Argument that Lyft Failed to Establish the Presence and Availability of WAVs because Data Necessary to Evaluate the Issue Was Unavailable to DRA Is Both Factually and Legally Inaccurate

The second argument in DRA's protest is that Lyft has purportedly failed to show the presence and availability of WAVs because "there is no data available to Disability Rights California, or to DREDF, which makes this showing." To be clear, D.20-03-007 requires TNCs to demonstrate **to the Commission** that it has met the presence and availability requirement, not DRA or any other party. To that end, Lyft dutifully complied with Staff's instructions to serve a redacted, public version of its ALs on the service list, and subsequently to file a non-public, unredacted version of its filings with the Commission when directed to do so. The fact that DRA claims it did not have access offers no legal or other reasonable justification for denial of Lyft's offset requests.

More substantively, DRA's assertion that Lyft's request should be denied because it was unable to verify Lyft's compliance is unsupported as either a legal or a factual matter. Pursuant to GO 96-B, a utility submitting an advice letter is expressly authorized to seek confidential treatment for an advice letter, or portions thereof, in accordance with the process set forth in §10.3. Indeed, it is routine for utilities to seek confidential treatment of data underlying advice letters submitted to the Commission.² The fact that a party requests confidential treatment offers no grounds for denying the relief requested in an advice letter.

Pursuant to §10.5, in the event a party objects to a claim of confidentiality, that party must meet and confer with the utility in an effort to resolve the objection. If the parties are unable to resolve the objection, the Industry Division is directed to refer the dispute to the Administrative Law Judge Division for resolution. DRA did eventually notify Lyft of its objections, but waited a full fifteen days -- until Thursday, April 30, at the close of business -- before doing so. Lyft initially proposed to meet and confer on Friday afternoon, however, upon receiving a second request to meet and confer from San

² See, e.g., *In Re Order Instituting Rulemaking* (Aug. 19, 2005) 2005 WL 2036510, at *6 (upholding Southern California Edison's claim of confidentiality with respect to data underlying advice letter); *In Re Pac. Gas & Elec. Co.* (Dec. 14, 2006) 2006 WL 3831303, at *2 (finding that PG&E justified confidential treatment of data in advice letter); see *Resolution E-4388. San Diego Gas & Elec. (SDG&E) Requests Approval of Two Renewable Power Purchase Agreements with Centinela Solar Energy, LLC.* (Jan. 13, 2011) 2011 WL 732001, at *2 (ruling that "confidential appendices attached to the Advice Letter 2171-E and the confidential portions of the Advice Letter 2171-E will not be made public upon Commission approval of the Advice Letter 2171-E.").

San Francisco³ (on Friday at 11:15 am), Lyft proposed a meet and confer with all parties on Monday morning given the impending due date for lodging of protests. The parties met and conferred on Monday, May 4, at 10:00 am. At the meet and confer, Lyft offered to make the full, unredacted versions of its ALs available to both San Francisco and DRA, subject to a reasonable nondisclosure agreement.⁴ DRA indicated that it would consider the offer, but ultimately stated that it would not agree to be bound by a nondisclosure agreement. DRA offers the same purported justification for its refusal here, claiming that "people with disabilities that they advocate on behalf of have a strong interest in knowing whether Lyft and other TNCs have actually met the offset criteria set forth in the TNC Access for All Act and the Track 2 Final Decision."⁵

DRA's refusal to agree to a nondisclosure agreement is not only contrary to law and practice, but seemingly misapprehends the nature of its participation in this proceeding. Section 10.3(a) of GO 96-B expressly provides that a party seeking confidential treatment of information in an advice letter shall provide notice "that the information will be made available to those who execute a nondisclosure agreement" and list "the name and contact information of the person or persons who will provide the nondisclosure agreement and access to the confidential information."⁶ Thus, GO 96-B expressly provides for the very process that DRA rejected.

Furthermore, DRA is participating in this proceeding as a representative of members of the disability community, to act on their behalf and to advance their interests. Indeed, DRA and DREDF have justified their participation in this proceeding -- and their multiple requests for intervenor compensation -- by purporting to represent and protect the interests of the disability community.⁷ As a party to R.19-02-012 and representative of the disability community, it is both DRA's right and obligation to act on behalf of, and as a proxy for, members of that community. In that role, it is appropriate to permit DRA access to data submitted in support of TNC offset requests so that it can adequately represent those interests. Indeed, the process is no different than what is routinely done in litigation, where protective orders are routinely entered so that parties can zealously represent their own interests or those of the general public, without destroying confidentiality of information. DRA's argument suggests that it cannot adequately represent the rights of the disability community unless all members of the community have access to confidential information. Lyft does not believe that to be the case. Lyft further submits that the process contemplated by GO 96-B, and routinely employed in court proceedings, is also appropriate in this instance.

In sum, there is nothing improper about Lyft conditioning access to confidential data on a nondisclosure agreement. DRA's refusal to agree to such a process obviously hampers its ability to represent the interests of the disability community. That, however, is a problem of DRA's own making, as Lyft expressly agreed to provide access to that data and DRA chose not to accept it.

³ San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability.

⁴ See Disability Rights Protest, p. 4 ("At the meet and confer, Lyft offered to share data with Disability Rights California and DREDF with a nondisclosure agreement.").

⁵ DRA Protest, p. 4.

⁶ GO 96-B, §103(a).

⁷ See, e.g., 5/28/19 Disability Rights Advocates Notice of Intent to Request Intervenor Compensation ("Disability Rights California is an organization that is authorized by its bylaws to represent the interests of residential customers with disabilities before the Commission. Specifically, Article 2 of our bylaws states that DRC is 'responsible for protecting and advocating for the rights of persons with disabilities.'"); 5/22/19 Disability Rights Education & Defense Fund Notice of Intent to Request Intervenor Compensation ("DREDF is a national law and policy center that is authorized by its bylaws to represent the interests of people with disabilities.").

1.3 DRA's Additional Arguments for Denial of Lyft's Offset Requests Are Equally Lacking in Merit

DRA also argues that Lyft has not demonstrated presence and availability because "during a number of hours, a significant percentage of trips were not completed."⁸ DRA points to no statute, order, or ruling that requires that a TNC have a 100% completion rate in order to qualify for an offset. Indeed, such a standard would be impossible to meet. In that regard, it is important to note that in launching their WAV pilot programs, Lyft and Uber are attempting to do what no one else has previously accomplished – offering an affordable, sustainable, on-demand transportation service for individuals who require fixed-frame wheelchairs. There are very good reasons why such a service has not before been available. Developing such a service requires a constant, sustained effort to identify and resolve numerous complex, seemingly intractable logistical issues. It is absurd to suggest that TNCs must have a fully-formed – indeed, flawless -- WAV program from the very outset in order to qualify for an offset. Such a requirement would discourage any TNC from even attempting to launch a WAV service, would seriously undermine the objectives of SB 1376, and would harm the very members of the disability community that DRA claims to represent.

Lyft is extremely proud of its WAV service pilots, which have been very favorably received by those who actually use the service. Lyft's completion rates, as reported in each of its three ALs, are very reasonable, particularly given that Lyft's program is still in its early stages. Furthermore, completion rates are impacted by a variety of factors, a number of which are beyond Lyft's reasonable control. As shown by the expenditures reported in its ALs, Lyft has spent millions of dollars to make WAVs available in SF and LA alone and has achieved a level of success of which it can be proud. DRA's unfair criticism that 100% of rides were not completed offers no basis for denial of Lyft's offset requests. There is no such requirement and imposition of such a requirement would discourage further investments in WAV service.

Lastly, DRA argues that Lyft's request for reimbursement should be denied because the requests purportedly include "material errors or omissions."⁹ In support, DRA points out that the tab for Offset Response Time in Lyft's ALs includes no data. *Id.* DRA fails to understand the relevant requirements. Per the detailed filing instructions provided by CPED Staff, TNCs are not required to include data on the Offset Response Time tab for retroactive offset requests.¹⁰ The fact that Lyft followed instructions obviously offers no grounds to deny its requests.

2. CONCLUSION

DRA's substantive objections to Lyft's ALs are entirely lacking in merit and should be rejected. To the extent DRA objects to Lyft's claim of confidentiality, those objections must be referred to the Administrative Law Division and resolved separately in that forum pursuant to GO 96-B, §10.5. DRA's confidentiality objections are not a proper subject of protest and offer no basis for denial of Lyft's requests for reimbursement. Lyft's requests should be approved without delay, consistent with the schedule set forth in Decision (D.) 20-03-007, which requires a decision by staff within 30 days of filing of an offset request.

⁸ DRA Protest, p. 3.

⁹ DRA Protest, p. 3.

¹⁰ See

https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Licensing/Transportation_Network_Companies/TNCAccess/TNCAccessforAllChecklist.pdf

Very truly yours,

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