



January 20, 2021

Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
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San Francisco, CA 94102-3298
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RE: Protest regarding Lyft's Advice Letter 1A Requesting Offsets pursuant to the TNC Access for All Act

To the Transportation Licensing and Analysis Branch:

Thank you for the opportunity to protest Lyft's Supplemental Advice Letter 1A requesting retroactive offsets against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 3 of 2019. Disability Rights California, the Disability Rights Education & Defense Fund (DREDF), and the Center for Accessible Technology (collectively, the "Disability Advocates") protest this advice letter pursuant to Section 7.4.2 of General Order 96-B.

Lyft submitted its Advice Letter 1A summary form on December 16, 2020 and submitted its supporting Excel data sheet on December 28, 2020. Pursuant to General Order 96-B protests are typically due within 20 days from the day the Advice Letter is filed. However, the Disability Advocates requested an extension to account for the holidays and CPED, in an email on December 18, 2020, granted a 15-day extension and stated that protests for this advice letter are due January 20, 2021. This protest is therefore timely.

The Disability Advocates protest Lyft's Advice Letter 1A on the grounds that the relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the regulated entity relies, pursuant to Section 7.4.2 of General Order 96-B.

A. Relief requested would violate statute or Commission order, or is not authorized by statute or Commission order

The TNC Access for All Act (the Statute) requires a Transportation Network Company (TNC) to make a showing of presence and availability of wheelchair-accessible vehicles (WAVs), as well as a showing regarding outreach to inform potential customers about the availability of WAVs, and a full accounting of funds spent to provide and promote WAVs in order to be eligible to claim offset funds. Section 5440.5(a)(1)(B)(ii) of the California Public Utilities Code provides:

In order to offset amounts due pursuant to this subparagraph in a geographic area, the commission shall require a TNC, at a minimum, to demonstrate, in the geographic area, the presence and availability of drivers with WAVs on its online-enabled application or platform, improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter, efforts undertaken to publicize and promote available WAV services to disability communities, and a full accounting of funds expended.

Lyft has not made these necessary showings in Advice Letter 1A and thus awarding the relief requested in Advice Letter 1A is not authorized by the TNC Access for All Act.

Presence and Availability: The statute requires TNCs that seek to retain funds collected pursuant to the TNC Access for All Act to demonstrate "the presence and availability of drivers with WAVs on its online-enabled application or platform."¹ Lyft has not made this showing due to the small number of WAV rides it actually provided during this period, particularly in San Francisco.

¹ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

In addition, a significant portion of the WAV rides that were requested went uncompleted. The data on percentage of WAV trips completed varies considerably, and ranges as high as 85%, suggesting that people who use wheelchairs cannot actually depend on getting a ride.

The rates of WAV trips cancelled by passengers are in some cases quite high. There are some in the 80th percentile and even hundredth percentile in San Francisco; and in Los Angeles they range up to the 40th, 50th, and 60th percentiles. This indicates that some relevant factor, such as the length of response times, is causing people who use wheelchairs to cancel a significant portion of rides. That means that, as a practical matter, WAV service is *not* present and available for those individuals. And Lyft admits in its materials that no WAV rides were available during several hours each day, even though standard Lyft service was available during those times.

Given all of these results, Lyft did not make an adequate showing of presence and availability and should therefore be found not to be eligible for offset funds.

Response Times: Lyft did not meet the response time standards set by the Commission during this quarter.

Outreach: Under the TNC Access for All Statute, TNCs must “demonstrate” outreach efforts to inform potential customers about the availability of WAV service, and the Track 2 Decision requires TNCs to “provide evidence of their outreach effort.”² Lyft’s Advice Letter 1A provides what appears to be – it is unclear from Lyft’s materials – information sent to other organizations. Some of these PDF pages look odd, with large blacked-out areas, leaving it unclear whether important information is being obscured.

These PDF pages explain, among other things, that one must change a Lyft app *setting* for the WAV option to even appear on the app. Very few people will know to do this. In other words, Lyft has *built in* an obstacle to receiving WAV service. The DAs’ Reply comments in Track 3 discussed this very problem:

In order to obtain WAV service via Lyft, a person must change the default settings of the app; if they do not know to do that, they will not

² California Public Utilities Code Section 5440.5(a)(1)(B)(ii); D.20-03-007 at p. 21.

even be able to see the option of requesting a WAV ride. The Disability Advocates have received multiple queries about this issue. If a potential WAV customer cannot easily find the way to call for WAV service on a TNC's app, demand for the service will be artificially lowered. This is termed a "capacity constraint" under the Americans with Disabilities Act and is the opposite of what the TNC Access for All Act requires, which is sufficient outreach to raise awareness of WAV capability among TNCs. The Disability Advocates reiterate that the Commission should require TNCs to ensure that it is straightforward and easy for a customer to indicate that they need WAV service from their online-enabled applications, and it should also require TNCs to report on the steps a person requesting a WAV ride needs to take. TNC apps must plainly show all of the options available to customers, including WAV rides. This requirement, and an easy to view WAV option, will also help raise awareness of the availability of WAV service.³

The fact that Lyft has built in an obstacle to users of its app even knowing of the existence and availability of WAV rides has surely contributed to Lyft's low WAV ride numbers, and worked at cross-purposes to its required outreach efforts. A TNC that has created obstacles to access within its own app should not be permitted to offset funds collected under the TNC Access for All Act.

Full Accounting of Funds: Under the Statute, TNCs must present "a full accounting of funds expended."⁴ At a minimum, a "full accounting" should provide an understanding of what Lyft is spending funds collected for a public purpose on. The information provided in the Advice Letter does nothing of the sort – it simply lists broad categories for expenditures, such as "fee with partnership(s) to gain preferred access of utilizing vehicles," "Consultant fees to help with implementation and compliance of the WAV program," and "25 [or 24] employees and 1 contractor of various positions (including operations, science, and engineering) working on WAV."⁵ It is inappropriate to award offset funds to Lyft based on this limited showing. In the real world of contracts or of public accountability, such large numbers with no further detail would never be considered a full accounting. The

³ Disability Advocates, Track 3 Reply Comments at p. 7.

⁴ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

⁵ "Funds Expended" Tab to Lyft AL 1A Supplement Data Spreadsheet.

reporting does not even meet the level of detail set forth in the template provided by CPED. For instance, the template suggests that, if a TNC seeks to offset funds for staff, the TNC must provide details of the individuals' position and duties, such as "5 customer service reps responding to WAV complaints."⁶ By contrast, Lyft's report on staff time simply says "various positions . . . working on WAV."⁷

Nor does Lyft's report meet the level of detail set forth in the Commission's Track 2 Decision. At Paragraph 11 of the Order, which addresses demonstration of "a full accounting of funds expended," the Commission states that "A Transportation Network Company seeking an offset for a contractual arrangement with a wheelchair accessible vehicle provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined."⁸ There is no explanation at all for "how the amount was determined" for the largest expenditures reported by Lyft, \$172,388.93 for Los Angeles and \$186,336.32 for San Francisco, "to gain preferred access of utilizing vehicles"⁹ other than that the amount was "agreed upon."¹⁰

Additionally, while it is commendable that Lyft sponsored the Southern California Rehabilitation Services Pride Parade in the amount of \$10,000, there is no explanation of how this meets the statutory requirement that funds that Lyft seeks to offset be "amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area."¹¹

Conclusion

Offsets funding is only intended to be provided to a TNC that has met its obligations to demonstrate presence and availability of WAVs, that has conducted and reported sufficient outreach, and that has provided a full accounting of funds expended to support improved WAV service. Because Lyft has not met its obligations, the Commission should determine that Lyft is not eligible to offset funds for Q3 2019.

⁶ *Id.*

⁷ *Id.*

⁸ Track 2 Decision, D.20-03-007, at pp. 86-87.

⁹ "Funds Expended" Tab to Lyft AL 3A Supplement Data Spreadsheet.

¹⁰ "Contract Information" Tab to Lyft AL 1A Supplement Data Spreadsheet.

¹¹ California Public Utilities Code Section 5440.5(a)(1)(B)(ii).

The Disability Advocates request that the Industry Division review this protest and refer it to the Administrative Law Judge Division if the Industry Division is unable to resolve the objections.

Thank you for your time and consideration of these protests.

Sincerely,

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