



May 5, 2020

Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
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San Francisco, CA 94102-3298
Email: TNCAccess@cpuc.ca.gov

RE: Protest and Confidentiality Objections regarding Lyft's Advice Letters 001, 002, and 003 Requesting Offsets pursuant to the TNC Access for All Act

To the Transportation Licensing and Analysis Branch:

Thank you for the opportunity to protest and to object to the confidentiality requested of Lyft's Advice Letters 001, 002, and 003 requesting retroactive offset against the quarterly Access Fee payments collected to improve wheelchair accessible vehicle service in Quarter 3 of 2019, Quarter 4 of 2019, and Quarter 1 of 2020, respectively. Disability Rights California and the Disability Rights Education & Defense Fund (DREDF) protest each of these advice letters pursuant to Section 7.4.2 of General Order 96-B, and also present their objections to Lyft's requests for confidential treatment of the information redacted in the Advice Letters and attachments pursuant to Section 10.5 of General Order 96-B.

I. Protests

Disability Rights California and DREDF protest each of Lyft's advice letters on the following grounds: (1) The utility did not properly serve or give notice of the advice letter; (2) 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 utility relies; (3) The analysis, calculations, or data in the advice letter contain material errors or omissions.

A. Improper service or notice

Lyft provided notice of the original versions of its Advice Letters 001, 002, and 003 at 5:04pm, 5:08pm, and 5:21pm respectively on April 15, 2020. However, it emailed notice of corrected versions of each Advice Letter around 6pm later that day, and corrected versions of each Advice Letter at the end of the day on April 17.

These repeated re-sendings of the documents, on different dates, including dates after the deadline for submission, have complicated Disability Rights California and DREDF's review of the Advice Letters and made it difficult to calculate when this protest is due.

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

Awarding the relief requested in each of the Advice Letters would violate the TNC Access for All Act and/or is not authorized by the TNC Access for All Act. 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.

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 This demonstration must be made through the data presented to the Commission in Lyft's Advice Letters. However, there is no data available to Disability Rights California, or to DREDF, which makes this showing. Lyft redacted WAVs in operation, WAV trips cancelled, WAV trips not accepted, number of complaints received, funds expended, and number of drivers

¹ Cal. Pub. Util. Code § 5440.5(a)(1)(B)(ii).

who received WAV training. There is no data to show how many people were served, and how quickly. There is no data listed under the tab “Offset Response Times.” If Lyft does not present this data, it cannot demonstrate “the presence and availability of drivers with WAVs on its online-enabled application or platform.”

What data *is* made public suggests that in fact there is *not* “presence and availability” of WAVs in Los Angeles. The percentage of WAV trips completed by Lyft in Los Angeles is often less than half. The “% WAV trips not Accepted” tab tells the same story: during a number of hours, a significant percentage of trips were not completed.

In addition, under the statute, TNCs must present “a full accounting of funds expended.” The data available to Disability Rights California and DREDF does nothing of the sort – it simply lists total amounts.

As a result, allowing Lyft to retain the funds collected pursuant to the TNC Access for All Act would violate the statute and, in the alternative, is not authorized by the statute, which requires TNCs to demonstrate presence and availability of WAVs, outreach efforts, and a full accounting of funds expended in order to be eligible to offset funds.

C. Analysis, calculations, or data in the advice letter contain material errors or omissions

The data in each of the Advice Letters contains material omissions. Again, Disability Rights California and DREDF are unable to see the redacted data. There is no data at all. There is no data listed under the tabs “WAVs in Operation,” or “Offset Response Time” in any of the Advice Letters. Lyft does not list “entities the TNC partners with from disability communities,” as described in the Track 2 Final Decision, nor does it attach a full set of materials (such as the emails that it sent out) to document what efforts it did make. It also does not provide “a full accounting of fund expended” as required by the statute; instead, it simply lists total amounts. Each of these is a material omission.

II. Objections to Confidentiality

Disability Rights California and DREDF contacted Lyft to request that Lyft meet and confer with them regarding their objections to Lyft’s requests for confidential treatment of the information redacted in the Advice Letters and attachments. Disability Rights California and DREDF met and conferred

with Lyft on May 4, 2020 but were unable to resolve their objections. Disability Rights California and DREDF request that the Industry Division review their protest and refer it to the Administrative Law Judge Division if the Industry Division is unable to resolve the objections.

The data redacted by Lyft is necessary to establish whether Lyft has met the requirements under the TNC Access to All Act and the Final Track 2 Decision to qualify to offset funds. These funds are not Lyft's own money – they are funds collected for a public purpose, to redress the fact that, since their inception, the TNCs have failed to comply with disability access laws. If the funds are not applied as an offset, they will instead be distributed by the government for the purpose of providing accessible rides to people with disabilities. The public, and the parties to the proceeding before the Commission, therefore have a strong interest in knowing whether Lyft has actually met the statutory requirements for offsets.

At the meet and confer, Lyft offered to share data with Disability Rights California and DREDF with a nondisclosure agreement. However, Lyft stated that the agreement would require Disability Rights California and DREDF to redact any data alleged by Lyft to be confidential in any protest they submitted. Disability Rights California and DREDF are nonprofit organizations that advocate on behalf of all Californians with disabilities. The 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. They also have a strong interest in knowing the extent to which the framework set forth in the TNC Access for All Act is actually succeeding in providing access for people with disabilities. And all people paying the per-ride surcharge with the understanding that it will be expended for a public purpose have an interest in knowing that the funds are being spent consistent with the law. Disability Rights California and DREDF cannot agree to a process that not only shields the underlying data from view but also hides from the public the data on which any protests are based.

Each category of data redacted by Lyft is relevant to determining whether Lyft has met the criteria for offsets, and Lyft has not established that it has a valid interest in keeping those categories of data from the public. Tellingly, Lyft observes that disclosing data about WAV trips would provide “insights into Lyft’s actual success in offering rides to passengers who request accessible vehicles.”² But that is the entire point of the Advice

² Decl. of Brett Collins at para. 7.

Letter submission – to give the public an understanding of the extent of any “actual success in offering rights to passengers who request accessible vehicles” by TNCs seeking to retain funds collected pursuant to the TNC Access for All Act.

In addition, the fact that Uber disclosed some of the information that Lyft redacted is evidence that there is no legitimate interest in keeping those categories confidential. Moreover, disclosure of data that an entity might otherwise be able to keep to itself is inherent in accepting public funds. Should Lyft wish not to disclose the data requested by the CPUC, it may simply use its own funds to improve the accessibility of its services, not the funds collected pursuant to the TNC Access for All Act.

As a result, Lyft should be required to resubmit its Advice Letters 001, 002, and 003 requesting an offset of funds with no redactions.

Thank you for your time and consideration of these protests and objection regarding confidentiality. Please contact Autumn Elliott at Autumn.Elliott@disabilityrightsca.org or (213)213-8125 with any questions.

Sincerely,



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