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Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
California Public Utilities Commission
505 Van Ness Avenue
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Service List: R.19-02-012

Re: Reply of Lyft, Inc. to Protests of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability to Lyft Advice Letter AL-004

Dear CPED Staff:

By this Reply, Lyft, Inc. ("Lyft") responds to the protest submitted by the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability (collectively, "SF") to Lyft's Advice Letter AL-004 (the "AL4").

1. Preliminary Statement

SF's Protest of Lyft's AL4 is essentially identical to SF's protest of Lyft's ALs 001-003, combining improper objections to confidentiality with assertions regarding purported "errors" in Lyft's filing which Lyft has previously shown to be inaccurate. In the August 3, 2020, meet and confer with SF, Lyft proposed a stipulation whereby the parties could avoid unnecessary briefing and avoid burdening staff by agreeing to await resolution of Lyft's ALs 001-003 prior to filing any protest to AL4, but that proposal was rejected. Regardless, SF's Protest here should be rejected because it fails to comply with General Order 96-B ("GO 96-B") and fails to raise any pertinent objection to the substance of Lyft's AL4.

2. SF's Protest Does Not Comply with General Order 96-B and Should Be Disregarded

SF's Protest once again ignores the requirements of GO 96-B, which expressly identifies the grounds upon which a protest may be premised.¹ Section 7.4.2 limits the grounds for protest of an

¹ The allowable grounds for protest are: (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; (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding; (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

advice letter to non-policy objections to the **substance** of the relief requested in the advice letter.² Those grounds do **not** include objections to a request for confidential treatment. Objections to confidentiality are governed by an entirely separate set of procedures set forth in GO 96-B, §10.5 *et seq.*, which requires SF to meet and confer with Lyft and the Consumer Protection and Enforcement Division ("CPED"), and if no informal resolution can be had, to seek relief from the Administrative Law Division -- as SF has done with respect to Lyft's Advice Letters 001 - 003. Yet, nearly all of SF's Protest to Lyft's AL4 (8 of 10 pages) is addressed **solely** to purported objections to Lyft's claim for confidential treatment. SF's Protest thus fails to comply with GO 96-B.

Objections to claims of confidentiality cannot be resolved by Industry Division staff.³ It is therefore unclear why SF continues to try to short circuit the process set out in §10.5 *et seq.* by interjecting arguments regarding confidentiality into its Protest and asking CPED to deny Lyft's AL based upon those arguments. Regardless, neither GO 96-B, nor Decision (D.) 20-03-007, authorizes CPED staff to deny the relief requested in an advice letter based upon purported concerns regarding confidentiality. Nor do they authorize CPED staff to grant any of the other "creative" forms of relief requested by SF, such as continuing or re-opening the protest period, allowing for supplemental protest, or holding a hearing on SF's confidentiality objections.⁴

Granting such relief would not be appropriate in any event. Although the majority of SF's Protest focuses on SF having to evaluate Lyft's AL4 without all of the data, the fact that SF did not have the data in preparing its Protest is an issue entirely of SF's own making for several reasons. First, just as it did with Lyft's AL's 001-003, SF did not meet and confer with Lyft regarding its confidentiality objections until just before the protest was due.⁵ This fact alone raises a question as to whether SF made a good effort to try to resolve its objections, or was simply "checking the box" so that it could continue to advocate for an inappropriate denial of Lyft's AL4 based on purported confidentiality issues.

Second, just as it did with ALs 001-003, Lyft once again offered to provide SF with complete, unredacted access to **all of the data** supporting its AL4, subject only to a nondisclosure agreement. SF once again rejected Lyft's offer of access to the data.⁶ In an effort to justify its refusal to accept the data, SF contends that because it does not subjectively believe that Lyft has "met its burden" of establishing a Public Records Act exemption, SF is precluded by its own San Francisco Sunshine Ordinance from entering into a nondisclosure agreement, as that "would prospectively prohibit it from meeting its statutory duty, and thereby expose it to potential liability."⁷

As Lyft understands the argument, SF contends that because it has unilaterally determined that the data should be public, SF would be required to publicly disclose the data regardless of what the Commission determines. Lyft is perplexed by this argument, which is not only self-serving, but entirely circular as well. It is unclear why SF believes it is appropriate for it to unilaterally pre-determine the confidentiality issue without awaiting a decision by the Commission -- assuming for itself authority vested in the Commission under GO 96-B.

² Section 10.5 allows a party to object to a claim of confidentiality by meeting and conferring in an effort to resolve the dispute and, to the extent the dispute cannot be resolved, by CPED referring the issue to the Administrative Law Judge division for resolution.

³ GO 96-B, §10.5 (CPED must refer disputes regarding confidentiality to the Administrative Law Division).

⁴ SF Protest, p. 2.

⁵ With respect to Lyft's AL-004, SF first reached out on July 28 and met and conferred with Lyft on Monday, July 3, one day prior to the due date for protest.

⁶ SF Protest, p. 2- 3.

⁷ SF Protest, p. 3.

Even more puzzling is why SF declined even to **consider** a NDA, and in so doing, closed off its own path forward to substantively review Lyft's data. There was nothing preventing SF from negotiating a reasonable NDA that would carve out an exception if the Commission subsequently ruled that Lyft's data, or certain portions thereof, should be disclosed. However, SF declined even to consider any form of nondisclosure agreement; prioritizing its own conclusion that the data is public over that of the Commission. It is this self-defeating determination that is the cause of SF's inability to conduct a substantive review of the data, not Lyft's decision to redact the data, which is expressly permitted by both GO 96-B and General Order 66-D.

Equally concerning, SF's current stance represents a one-hundred and eighty degree turnabout from its previously asserted views on the issue. SF has previously accepted TNC data in multiple instances subject to restrictions on disseminating or disclosing the data, notwithstanding the existence of the Sunshine Ordinance.⁸ Indeed, it did so despite explicitly maintaining its position that the documents should not be deemed confidential, stating in its appellate brief in *City and County of San Francisco v. Uber Technologies, Inc.*:

In rulemaking, the City has argued that the CPUC should share all CPUC Reports publically, because they are regulatory documents about the people's business. The City neither requested nor received such a ruling from the superior court, but instead agreed to the protective order.⁹

By now claiming that its hands are tied and it cannot accept data subject to a nondisclosure agreement, SF contradicts itself and leaves no room for a reasonable path forward to resolve the impasse.¹⁰

SF was offered access to the data and could have worked with Lyft to agree upon an appropriate nondisclosure agreement. It chose instead to reject Lyft's proposal and to continue to decry its lack of access to the data. SF's protest should be rejected both because it fails to comply with GO 96-B and because SF cannot be heard to complain about a lack of access when that lack of access is entirely its own fault.

3. SF's Arguments that Lyft Failed to Establish Presence and Availability Lack Merit

At page 8 of its Protest, SF eventually gets around to addressing the substance of Lyft's AL4. Each of SF's arguments is entirely lacking in merit. SF first argues that:

"[R]esponse times" are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if

⁸ See Respondent's Brief, filed by City and County of San Francisco, available at 2018 WL 3860911 (Cal.App. 1 Dist.) ("Lyft produced its versions of the CPUC Reports, pursuant to an identical subpoena provision and subject to a protective order preserving any trade secrets the reports might contain.").

⁹ *City and County of San Francisco, Respondent, v. Uber Technologies, Inc., et al.*, Appellants., 2018 WL 3860911 (Cal.App. 1 Dist.), 30.

¹⁰ In meet and confer, SF attempted to distinguish its prior position by saying that the Commission has since revoked footnote 42 of Decision (D) 13-09-045, but SF's brief in the Uber matter made no mention of that decision as a reason for its agreement to a protective order and instead acknowledged the potential for trade secret protection.

response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.¹¹

As a threshold matter, it is not at all clear how one would calculate a “response time” for a ride that never took place. More to the point, however, Lyft calculated response times as directed in D.20-03-007 and as indicated in the templates provided by CPED staff. To the extent SF objects to the Commission’s definition of response time, a protest is not a proper vehicle for raising that issue. GO 96-B, §7.4.2 expressly cautions that “a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility.”

SF next takes issue with the Commission’s determination in D.20-03-007 that TNCs can demonstrate presence and availability by submitting data on WAVs in operation by quarter, hour and day of the week and the number and percentage of trips completed, not accepted, or cancelled by the passenger and the number of driver and passenger no-shows.¹² SF asserts that CPED cannot “simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility” and that “[m]ere submission of data does not ‘demonstrate’ presence and availability.” Once again, however, SF takes issue not with Lyft’s AL, but with D.20-03-007 and staff’s interpretation of it. A protest is not the vehicle by which to express that disagreement.

SF also asserts that Lyft fails to demonstrate presence and availability because “the submittals contain basic math errors, where the sums of the percentages of trips reported on the tabs that begin with ‘% WAV Trips....’ exceed 100% in many cells.”¹³ It is not clear what SF is saying here and SF offers no further explanation; however, Lyft presumes that SF believes that adding up percentages across the various tabs should equal 100%. If so, SF is making a basic error. The categories of instances reflected in the percentage tabs do not constitute the universe of possible scenarios that might be encountered in offering WAV service and, therefore, should not be expected to total 100% when added together. For example, Lyft observed instances in which a driver canceled a ride request, but the ride request was accepted by a different driver and the ride was completed. In that instance, Lyft counted both the cancelled and the completed ride. In other instances, an “administrative cancel” may have occurred, such as an instance in which Lyft observed that a driver forgot to hit the “drop off” button in the app to record a completed ride. When Lyft detected that a completion had not been recorded, Lyft administratively canceled the ride and tallied the cancellation, despite the fact that the passenger was picked up and arrived at his or her destination. In these instances, which may include a driver, passenger, or “admin” cancellation, as well as a completed ride, both a cancel and a completed ride are recorded. As a result, adding percentages across tabs may produce a number greater than 100%, or less than 100%. That does not mean that Lyft made an error. Notably, Lyft could have declined to record cancellations in such instances. That would have made Lyft’s cancellation figures appear more favorable. However, Lyft believes recording such cancellations more accurately reflects the user experience and is more useful in evaluating the level of service offered by its WAV programs.

SF also states that some of the data fields are left blank, and that it does not know whether the blank fields represent 100%, 0% or not applicable. To be clear, if there were no instances of the specified activity, Lyft left the field blank. For example, in the % completed field, if there were no ride requests during the specified day and hour, nothing was recorded in the corresponding cell. Likewise, if no cancellations by driver were recorded in a given hour and day, no value was placed in that cell. Lyft believed that this was clear from the context, but is happy to further clear up any confusion.

¹¹ SF Protest, p. 9.

¹² SF Protest, p. 9.

¹³ *Id.*

Finally, SF argues that because Lyft's WAV pilot programs do not operate 24 hours a day every day, Lyft's request for reimbursement should be denied.¹⁴ SF points to no statute, decision, or ruling, however, providing that only WAV programs that operate 24 hours a day are eligible for reimbursement. Second, Lyft has designed its initial pilot programs based upon feedback from the community that it serves and the data collected from the program, rather than arbitrary coverage targets. For example, Lyft initially offered WAV service between 7:00 am and 9:00 pm, but extended the hours of service to midnight based upon feedback from the disability community and observed demand, and to minimize the risk of stranded passengers. Given the extremely limited demand Lyft has observed for service outside of the current operating hours, and the enormous costs of providing such service, Lyft believes its current operating hours are appropriate. Lyft continues to monitor demand and solicit input from users and is prepared to make adjustments where appropriate. Nevertheless, SF's argument that only WAV programs that operate 24 hours a day are eligible for reimbursement should be rejected, as it is not a requirement and would not be a sound policy. Finally, to the extent SF believes this should be a requirement, a protest is not the appropriate forum to raise the issue.

4. SF's Assertion that Lyft Failed to Demonstrate Outreach to the Disability Community Is Unfounded

SF also claims that Lyft failed to demonstrate outreach to the disability community. First, SF claims that it "received constituent feedback that the "WAV" option is not readily available in the Lyft app unless a rider knows to activate 'Access mode' in the app settings."¹⁵ Lyft appreciates and has considered this feedback, however, SF's criticism is not of Lyft's outreach efforts, but rather its product design. Suggested improvements in product design are not a basis for denying an offset request.

5. SF's Request for Relief Is Contrary to Law and Is Unsupported

SF requests "that the CPED reject Lyft's claims for confidentiality; direct Lyft to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest."¹⁶ SF's request finds no support in the law and lacks any justification on the record here.

SF cites no authority that would authorize Staff to re-open the protest period specified in GO 96-B or permit SF an additional 20 days to submit a supplemental protest. Moreover, D.20-03-007 clearly sets out the schedule for Staff decisions on offsets requests, which are to be made within 30 days after submission of the offset request. No provision is made for extension of the briefing period. Finally, to the extent SF claims entitlement to additional time to evaluate Lyft's requests, its lack of diligence in attempting to resolve those objections, and its unreasonable refusal to agree to receive the data, warrants denial of any additional time.

For all of the foregoing reasons, SF's protest should be rejected.

¹⁴ SF Protest, p. 8.

¹⁵ *Id.*

¹⁶ SF Protest, p. 9.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Rockey".

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