

January 26, 2021

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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 Letter AL-4A

Dear CPED Staff:

Pursuant to General Order 96-B, Rule 7.4.3, Lyft, Inc. ("Lyft") responds to the protest submitted on January 19, 2021, by Disability Rights California and the Disability Rights Education & Defense Fund (collectively, "DRA") to Lyft Advice Letter AL-4A ("AL4A"), submitted on December 28, 2020.

DRA's protest of Lyft's AL4A cites General Order 96-B, Section 7.4.2(2) as its ground for protest.<sup>1</sup> However, DRA's protest recycles the arguments made in response to each of Lyft's prior Advice Letters, none of which explains how approval of AL4A would contravene a statute or Commission order. To the extent DRA makes new arguments here, those arguments misinterpret the data submitted in support of AL4A and apply standards that the Commission did not impose. Ultimately, DRA's real issue is not with Lyft's showing, or the success of Lyft's WAV program, but with the challenges of providing WAV service, particularly in the midst of a worldwide pandemic. In sum, DRA's arguments are not an appropriate ground for protest pursuant to General Order 96-B, Section 7.4.2.<sup>2</sup> DRA's arguments rely on policy objections and do not undermine in any way the fact that Lyft has satisfied each of the requirements established by the TNC Access for All Act ("the Act") and relevant Commission decisions. Respectfully, each of DRA's arguments should be rejected and Lyft's offset request approved without further delay.

### **1.1 Presence and Availability**

Public Utilities Code §5440.5(a)(1)(B)(ii) provides that in order to qualify for an offset, TNCs must, among other things, demonstrate "the presence and availability of drivers with WAVs on its online-enabled application or platform." It does not establish any minimum levels of presence and availability; only that drivers with WAVs be on the platform and available to provide rides.

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<sup>1</sup> General Order 96-B, Section 7.4.2(2) provides: "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." Please note that Lyft is not a utility and that the Track 2 Decision adopted the advice letter process under General Order 96-B for purposes of WAV offset filings.

<sup>2</sup> General Order 96-B, Section 7.4.2 states 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..."

DRA claims that Lyft has not met the requirement to show presence and availability “due to the extremely small number of WAV rides it actually provided during this period” and that “a significant portion of WAV rides that were requested went uncompleted, and no rides were available during several hours each day.”<sup>3</sup> This is incorrect. Lyft has shown presence and availability by demonstrating that WAVs were present on the app in the relevant geographic area from 7:00 am to midnight seven days a week, and were available to provide rides to those who need them during those hours. The fact that what DRA views as a small number of rides were completed during the period is a reflection of limited demand, not a lack of supply. In addition, DRA offers no support for its assertion that the completion rate calculated by DRA is an accurate indicator of presence and availability. A ride may not be completed for a number of reasons, many of which are beyond the TNC’s control and have nothing to do with presence or availability.<sup>4</sup> Moreover, neither the Act nor any Commission decision requires Lyft to establish any particular completion percentage in order to demonstrate presence and availability. DRA cannot simply make up metrics not contemplated by the Commission and then claim that Lyft has not met them. That is a mere policy objection and is not a proper basis for a protest.<sup>5</sup> Although DRA characterizes the results as “dismal,” DRA fails to recognize that the extent of demand for the service – particularly in the midst of a worldwide pandemic that has resulted in a steep decline in demand for all forms of passenger transportation – is largely beyond Lyft’s control. Lyft has amply met the statutory requirement to show that WAVs were both present and available during the relevant period.

## **1.2 Outreach Efforts**

Section 5440.5(a)(1)(B)(ii) requires that TNCs demonstrate “efforts undertaken to publicize and promote available WAV services to disability communities.” Lyft has documented its contacts with the disability community to promote awareness of and use of its WAV service in Los Angeles and San Francisco, and submitted copies of the materials used to promote such awareness, including a slide presentation which explains what the service is, where it is offered, and how to use the service.

DRA nevertheless argues that Lyft failed to satisfy the outreach requirement. DRA first complains that a few of the pages in the slideshow presentation submitted as part of the AL4A PDF package “look odd, with large blacked-out areas, leaving it unclear whether important information is being obscured.”<sup>6</sup> However, as Lyft previously explained to DRA and other protestors back in July 2020, the process of converting the slide presentation to PDF/A format for submission to the PUC resulted in a handful of conversion artifacts. When Lyft was alerted to the issue, Lyft provided a pre-conversion copy of this same slide presentation to DRA by email from Lyft’s counsel to both San Francisco and DRA (specifically, Autumn Elliot, Melissa Katnitz, and Marilyn Golden) on July 31, 2020.<sup>7</sup> Thus, DRA’s assertion that it is unclear what the slides say is not made in good faith.

DRA next argues that Lyft failed to meet the requirement to “publicize and promote available WAV services to disability communities” because the “PDF pages [which DRA claims it cannot read] explain, among other things, that one must change a Lyft app setting for the WAV option to even appear on the app.”<sup>8</sup> It goes on to assert: “Very few people will know to do this. In other words, Lyft has built

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<sup>3</sup> DRA Protest, p. 3.

<sup>4</sup> For example, a passenger may cancel a ride because the vehicle arrived more quickly than expected and the passenger was not ready, or because the passenger summoned both a Lyft and an Uber WAV and then canceled the one that arrived second.

<sup>5</sup> General Order 96-B, §7.4.2.

<sup>6</sup> DRA Protest, p. 3.

<sup>7</sup> See Exhibit A attached hereto.

<sup>8</sup> DRA Protest, p. 3.

in an obstacle to receiving WAV service.”<sup>9</sup> Putting aside the fact that DRA offers no support for its assertion that “few people will know to do this,” DRA’s complaint is not with Lyft’s outreach efforts, but the design of the app. The design of the Lyft app is not an appropriate basis for protest under General Order 96-B. Furthermore, even if what DRA said were true – which it is not – the assertion in no way undermines Lyft’s showing that it engaged in extensive outreach efforts during the period to promote awareness of its WAV service and how to use it. Indeed, the argument is illogical on its face, as it is the very outreach materials *used by Lyft to increase awareness of the service* which is the basis for DRA’s criticism.

In any event, there is a very good reason that Lyft currently requires users to toggle on *Wheelchair access* in order to be presented with the option of selecting a WAV (*Access*) ride in regions where *Access* (Lyft’s product offering that connects riders to vehicles specially outfitted to accommodate fixed-frame wheelchairs) is available. It is Lyft’s experience that when the general population is presented with the option of selecting a WAV ride on the main screen (i.e. when *Access* is the default), users who have no need for a WAV tend to select a WAV ride – particularly in periods of overall high demand – either because the wait for a WAV may be less than a standard ride, or a user believes they can obtain a larger vehicle that holds more people at a lower fare, as compared to the fare for an XL ride. This results in WAVs being used to provide rides to those without disabilities and fewer WAVs available for those who truly need them. Lyft firmly believes that the best way to ensure that WAVs remain available for those in the disability community who need them is to require users who need a WAV to toggle on *Access* mode and to educate those in the disability community who need WAVs how to do so. Lyft is not currently aware of a better way to ensure that a ride request was submitted by an individual who actually needs a WAV. Although DRA argues that Lyft has “built in an obstacle to users of its app,” Lyft has made toggling on access mode as easy and user-friendly as possible. One need only open the app Settings and select *Wheelchair access* one time. Once activated, anytime thereafter that a user opens the app, *Access* will remain active and the user will be conspicuously notified of the availability of WAV service where available.<sup>10</sup> DRA’s criticism of the design of the app should be rejected, as it is not a valid basis for protest and, in any event, would result in fewer WAVs being available for those who need them.

### 1.3 Accounting of Funds

Section 5440(a)(1)(B)(ii) requires that TNCs provide a full accounting of funds expended as part of an offset request. The Commission’s decision on Track 2 issues determined that a “qualifying offset expense is: (1) a reasonable, legitimate cost that improves a Transportation Network Company’s (TNC) wheelchair accessible vehicle (WAV) service, (2) incurred in the quarter for which a TNC requests an offset, and (3) on the list of eligible expenses attached as Appendix A.”<sup>11</sup> To implement that decision, CPED supplied a set of templates, including a template for documentation of qualifying expenses broken down by categories and with illustrative examples.<sup>12</sup> The Commission subsequently clarified that certain details called for by the CPED templates need not be submitted.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See Exhibit B hereto for a screenshot of the app illustrating how to select *Wheelchair access* and showing what the user sees after *Wheelchair access* is selected.

<sup>11</sup> Decision on Track 2 Issues: Offsets, Exemptions and Access Provider Disbursements (“Track 2 Decision”), Ordering Para. 10.

<sup>12</sup> See <https://www.cpuc.ca.gov/tncaccessAL/>

<sup>13</sup> See RESOLUTION ALJ-388- Resolution Denying the Appeals by Uber Technologies, Inc. and Lyft Inc. of the Consumer Protection and Enforcement Division’s Confidentiality Determination In Advice Letters 1, 2, and 3 (“ALJ Resolution”), p. 27.

DRA argues that the data submitted by Lyft does not provide a sufficient understanding as to how Lyft spent its funds, claiming that "in the real world of contracts or of public accountability, such large numbers with no further detail would never be considered a full accounting."<sup>14</sup> In so arguing, DRA attempts to impose its own standard for compliance with the Act, rather than the requirements established by the Commission. DRA fails to show how Lyft has violated a statute or Commission order where Lyft provided all of the detail required by Commission decisions and CPED instructions. DRA's policy arguments and disagreement with the manner in which the Commission or staff have implemented the Act is not a valid basis for protest.<sup>15</sup>

DRA also takes issue with the fact that in one instance, Lyft identified compensation paid to staff in "various positions ... working on WAV," arguing that it is not the same as the example provided by CPED, which "suggests" that TNCs must identify each position and their duties.<sup>16</sup> But nowhere does the Act, a Commission decision, or even staff instructions state that TNCs must list every position of every individual working to improve the WAV service, along with the amounts paid to them. Indeed, the ALJ Resolution cited this very description in determining that the expense data submitted by Lyft did not require confidential treatment, and gave no indication that the amount of detail provided was insufficient to meet the Act's requirements.<sup>17</sup> And, of course, DRA neglects to mention that the Commission's Track 2 decision also requires TNCs to maintain documentation of the expenses incurred and to submit to an audit, if requested to do so by the Commission. DRA may disagree with the requirements established by the Commission, but that disagreement provides no basis to deny Lyft's reimbursement.<sup>18</sup>

## **2. CONCLUSION**

DRA's protest lacks merit and should be denied. DRA suggests that the Industry Division should "review this protest and refer it to the Administrative Law Judge Division if the Industry Division is unable to resolve the objections."<sup>19</sup> But nothing in General Order 96-B suggests that the Industry Division cannot or should not resolve these protests itself; particularly where the protestant cannot provide an appropriate ground of protest and the objections asserted are so obviously devoid of merit. Lyft has satisfied all of the requirements imposed by the Commission and CPED staff. The Industry Division should approve Lyft's Advice Letter without any further delay.

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<sup>14</sup> DRA Protest, p. 4.

<sup>15</sup> See General Order 96-B, §7.4.2 ("[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.").

<sup>16</sup> DRA Protest, p. 4.

<sup>17</sup> ALJ Resolution, p. 27 ("For example, under the 'wages, salaries, and benefits' expense, Lyft provides the number of employees and hours spent "working on WAV" during a quarter in a given county. But Lyft still provides an aggregated total for wages, salaries, and benefits that does not reveal any hourly rates or salary information.").

<sup>18</sup> General Order 96-B, §7.4.2.

<sup>19</sup> DRA Protest, p. 4.

**Very truly yours,**

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

Daniel T. Rockey  
Bryan Cave Leighton Paisner  
Three Embarcadero Center  
7th Floor  
San Francisco, CA 94111

A handwritten signature in blue ink, appearing to read "Aichi Daniel".

Aichi Daniel  
Counsel, Regulatory  
(415) 289-9041  
185 Berry Street, Suite 5000  
San Francisco, CA 94107

DTR:bsw

## EXHIBIT A

## Rockey, Daniel

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**From:** Rocky, Daniel  
**Sent:** Friday, July 31, 2020 2:01 PM  
**To:** 'Veit, Julie (CAT)'; 'Aichi Daniel'  
**Cc:** Autumn Elliott; Marilyn Golden; Melissa Kasnitz; Rebecca Ruff; Traci Lee  
**Subject:** RE: Lyft, Inc. Advice Letter WAV-004  
**Attachments:** Lyft WAV Pilot Deck for LA SCLARC presentation.pdf

All

Attached is the preconversion version of the presentation slides.

Dan



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T: +1 415 268 1986

COVID-19 / CORONAVIRUS RESOURCES



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**From:** Veit, Julie (CAT) [mailto:Julie.Veit@sfcityatty.org]  
**Sent:** Friday, July 31, 2020 1:42 PM  
**To:** 'Aichi Daniel'  
**Cc:** Autumn Elliott; Rocky, Daniel; Marilyn Golden; Melissa Kasnitz; Rebecca Ruff; Traci Lee  
**Subject:** RE: Lyft, Inc. Advice Letter WAV-004

Thanks, Aichi.



Also, it looks like Lyft redacted some portions of its presentation attached to Advice Letter 4 (pages 18-23 of the PDF). Is this correct?

**Julie Veit**  
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\*Please note, as of 3/17/20, I will be working remotely. Please use email or call my cell phone.

**Attorney-Client – Confidential – Do Not Disclose**  
**Attorney Work Product – Confidential – Do Not Disclose**

# Lyft CA

## Wheelchair Accessible Vehicle Pilot



4/27/2020





# What is Lyft's WAV pilot?

## Summary:

Lyft launched a Wheelchair Accessible Vehicle (“WAV”) pilot program in LA and SF counties, with dedicated vehicles in each city, starting July 2019. The pilot period is one year.

## Partner - First Transit:

Lyft's WAV program is in partnership with First Transit, a nationally recognized paratransit service provider, and aims to provide available affordable and reliable WAV service on the Lyft platform for the benefit of individuals with disabilities.



# Partnership Model

**Summary:** First Transit provides the drivers and vehicles. Dispatch of rides are through the Lyft app.



**Pilot Markets:**

**San Francisco County, Los Angeles County**

# WAV Pilot

## What will Lyft be accomplishing during this pilot?

- Throughout the year-long pilot, Lyft is collecting and analyzing data from the WAV rides taken in SF and LA, as well as collecting feedback from community partner groups, in order to gain a more comprehensive understanding of passenger needs, driver response times, and WAV vehicle supply needs. We will use that data to determine how best to modify, extend, or expand the pilot program.

## Where can passengers get picked up and dropped off?

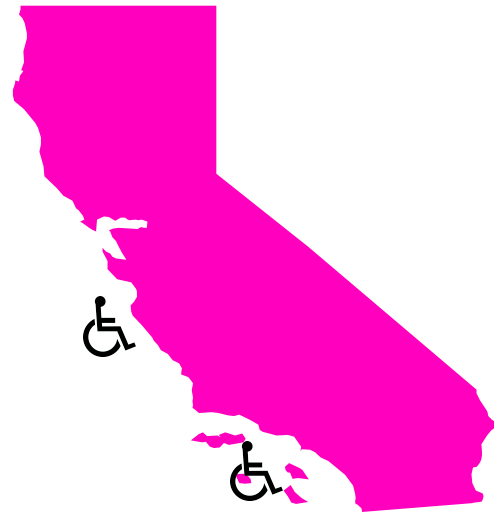
- In SF County, pick up within the County and drop off anywhere.
- In LA County, pick up and drop off within County limits only
- Curb-to-curb Service

## What are the operating hours?

- 7:00am - midnight, which is when we anticipate the highest demand for WAV rides.

## How much will WAV rides cost?

- Same as Classic Lyft rides



# The Drivers

## Who are the drivers?

- Drivers are employees of First Transit
- First Transit emphasizes driver training and best practices through:
  - Pre-employment and ongoing random drug and alcohol testing
  - Stringent background and record checks
  - Physical performance evaluations
  - Comprehensive customer service training
  - The Smith System of Defensive Driver Training program, completed as part of new driver training, and refreshers conducted through the year
  - Specialized training just for WAV and paratransit operations, including how to provide excellent service with patience and compassion for paratransit passengers, including individuals with various disabilities and the elderly.
    - Courses include Interacting with Passengers, Diffusing Conflicts, and Effective Communication.
- Drivers must also go through Lyft onboarding process



**All drivers will be background checked.**

# The Cars

## What kinds of cars are part of this pilot?

- 2019 Toyota Sienna Minivans modified by Transitworks for accessibility

## What is the wheelchair occupancy of these vans?

- 1 wheelchair rider & 4 ambulatory riders (plus driver) at full capacity.

## Are these vans rear or side entry for wheelchair users?

- Rear-entry

## Will these vans be marked as WAV?

- Yes, they are marked with a wheelchair symbol as well as Lyft trade dress

## Can I bring companions or aides in a WAV with me?

- Your driver will be more than happy to drive you and your friends in a Lyft WAV. Most vehicles on the platform can seat up to 4 passengers.

## Are service animals allowed in the WAV?

- Yes, drivers must comply with applicable laws and Lyft's Service Animal Policy. The law and Lyft's Service Animal Policy state that drivers may not deny service or otherwise discriminate against passengers with service animals.





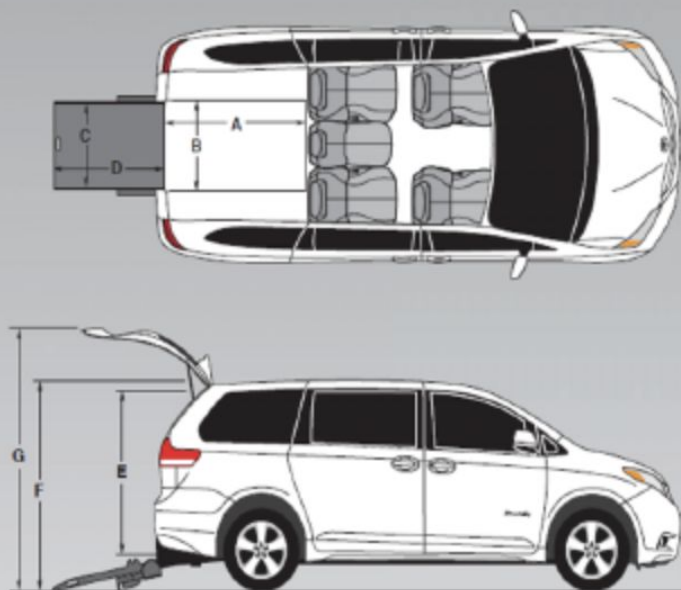








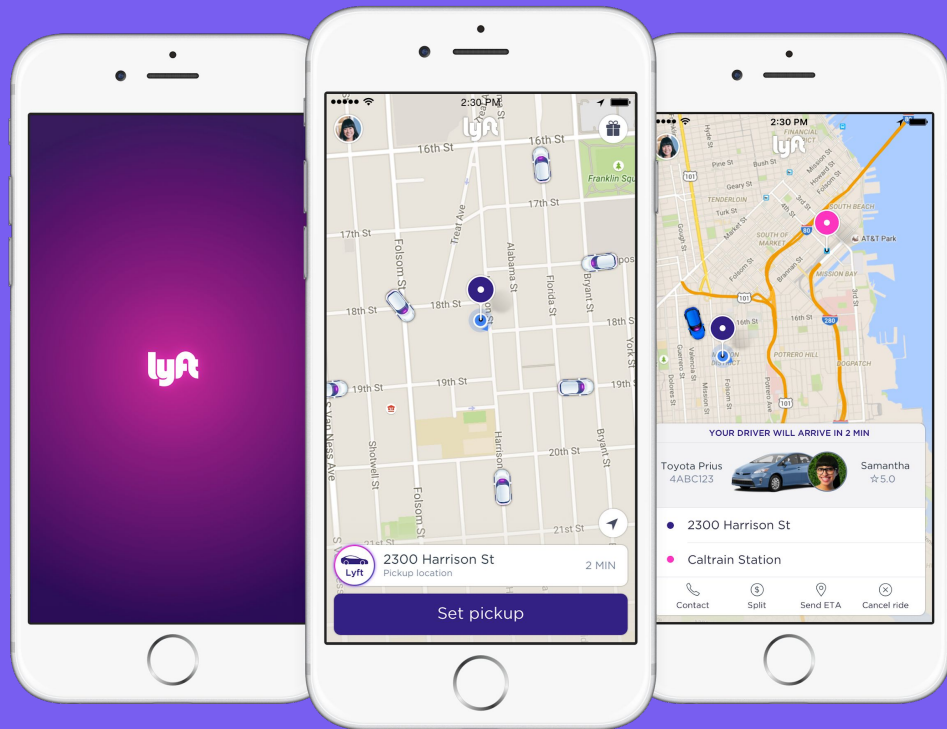


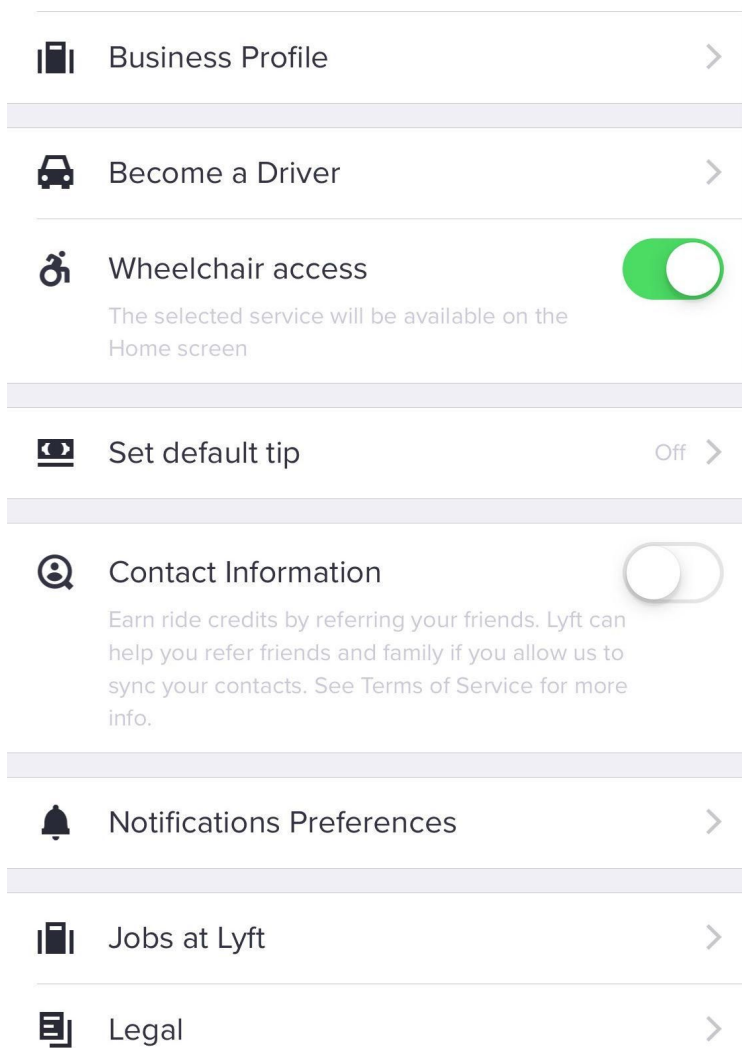


2011+

<b>A</b>	Lowered floor length	61
<b>B</b>	Lowered floor width	33
<b>C</b>	Usable ramp width	31-1/2
<b>D</b>	Ramp length	40
<b>E</b>	Entrance height	56
<b>F</b>	Overall height (hatch closed)	73
<b>G</b>	Overall height (hatch open)	85

# How Lyft Works

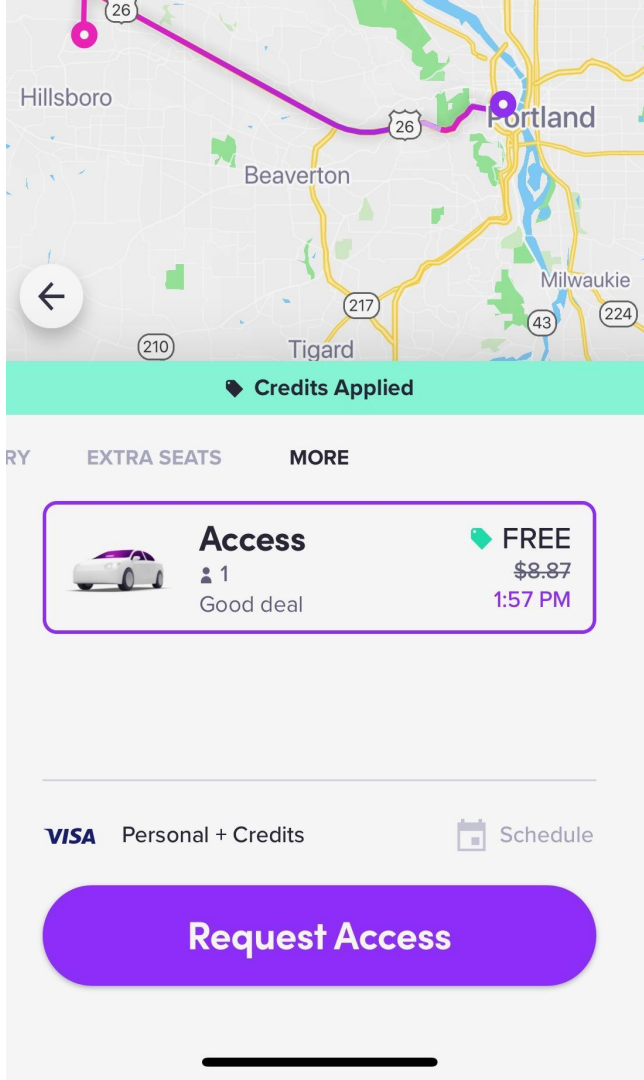




## Step 1: Download the app and set up your account

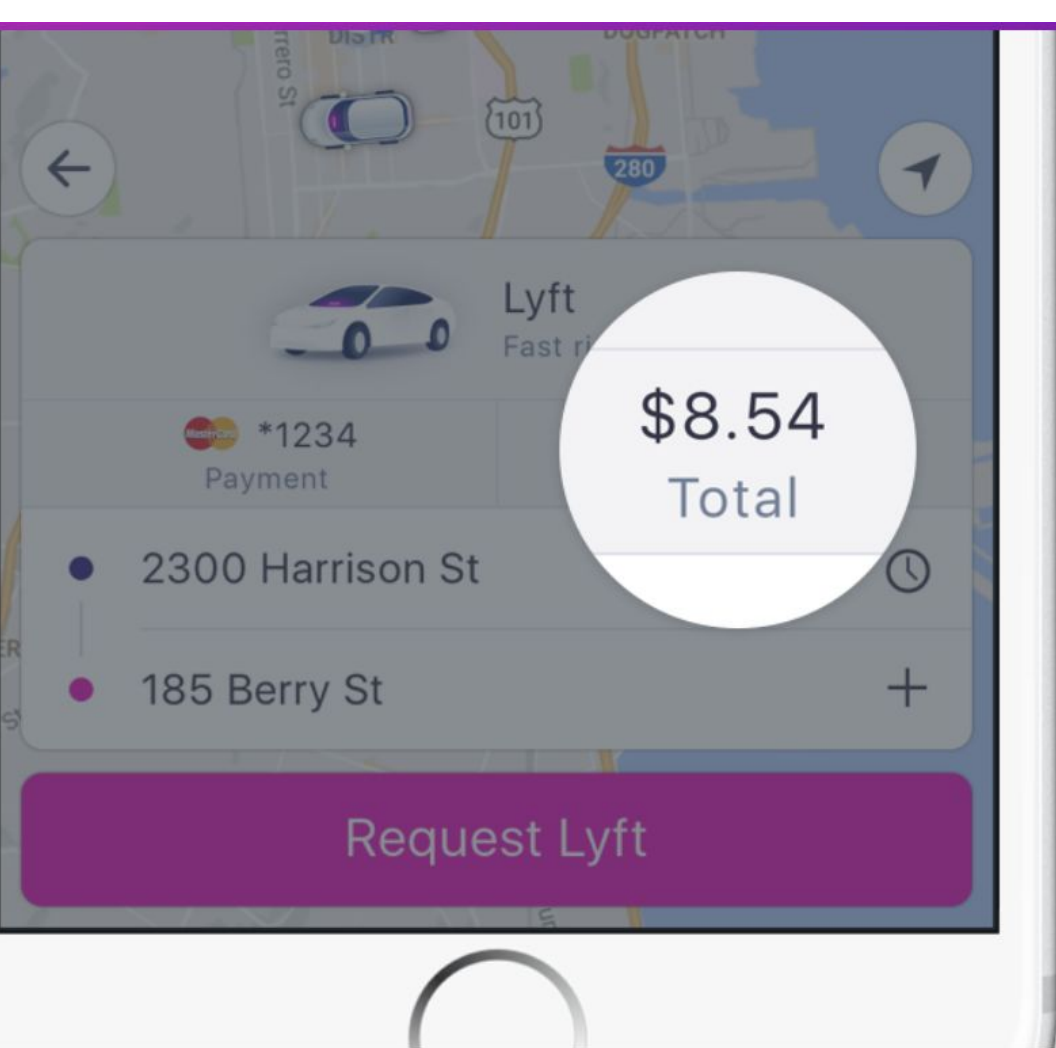
## Step 2: Enable Access Mode

- Tap the Menu icon in the top left corner of the app
- Scroll down and tap Settings
- Find Wheelchair access in the Menu
- Slide the toggle to the right to enable Access Mode so it turns green, indicating enabled.



## Step 3: Request your ride

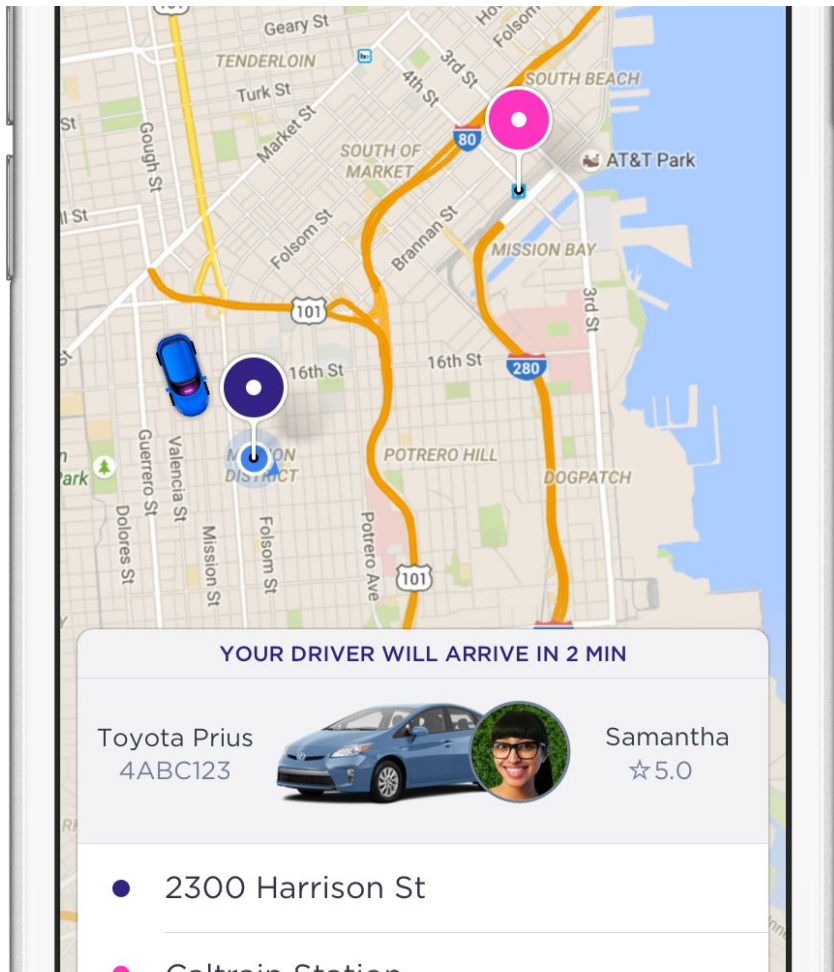
- Enter in your destination, then swipe left to see additional modes
- Tap More then tap Access to select Wheelchair Mode
- Tap "Request Access," confirm your pickup location, and you're all set!



## Requesting a Ride

- Enter destination
- See nearby Lyft cars
- Fares displayed up-front





# Matching with a Driver

- Driver name and headshot
- Car make, model and license plate
- Pick-up ETA

# Sharing Your Route

- **Share your route with friends directly within the Lyft app**
- **Allow anyone in your phone contacts to track your trip**







No tip

\$1

\$2

\$5

Other



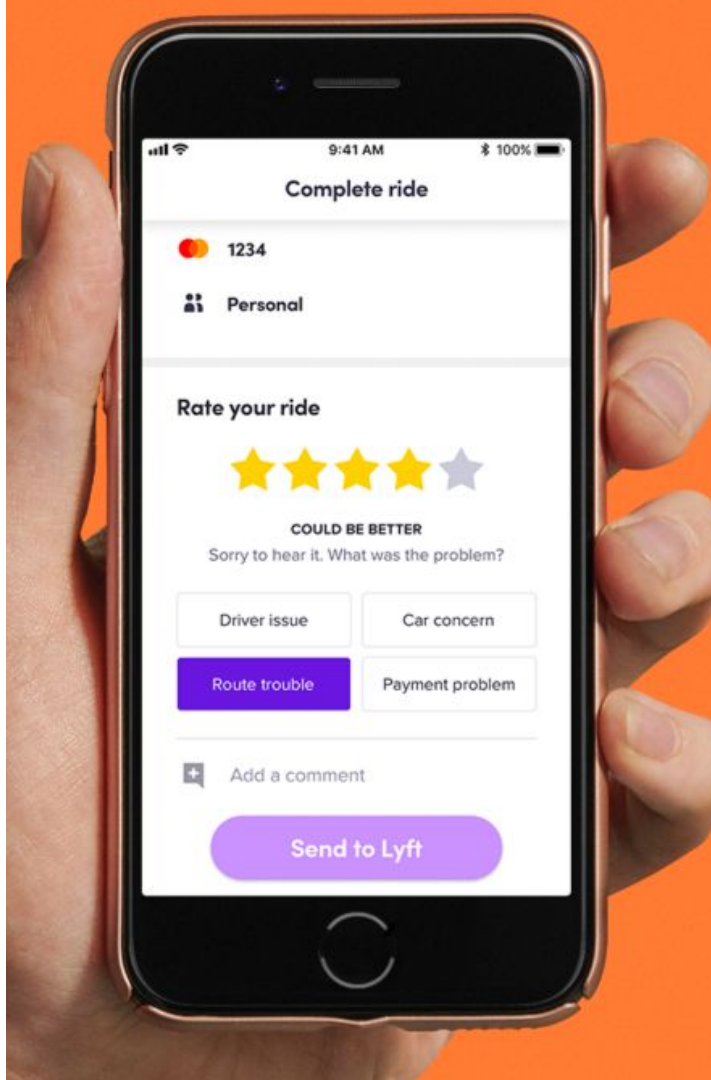
Payment

PERSONAL \*1234

\$9.00 ⓘ

## Finishing a Ride

- **Pre-selected credit or debit card charged**
- **In-app tipping further boosts driver earnings**

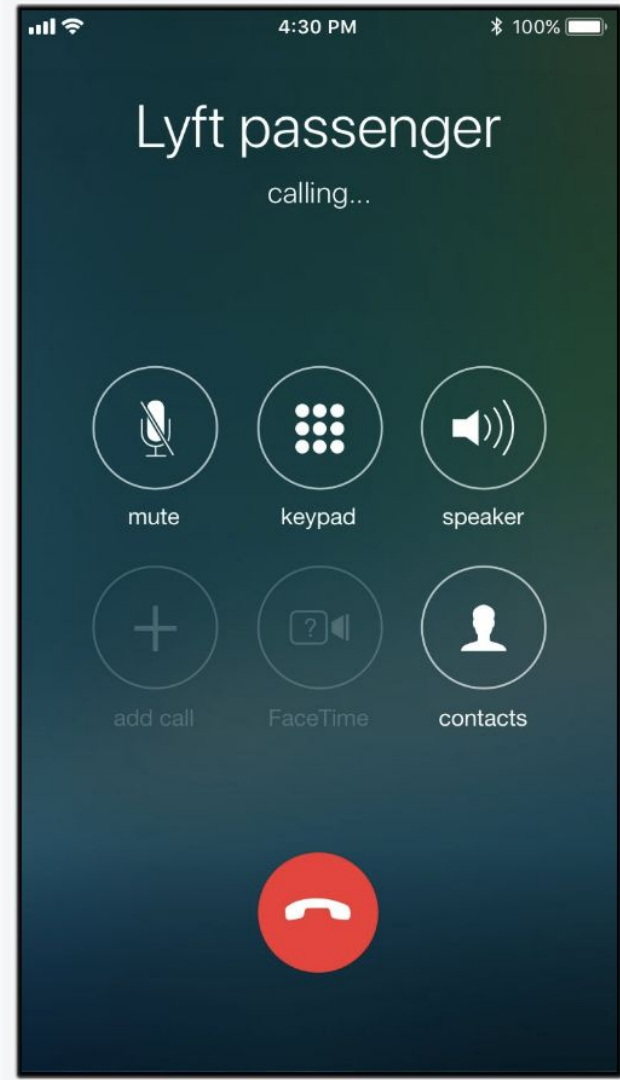


## Rating a Ride

- **Low ratings or prompt further feedback in app**
- **Both riders and drivers can report incidents to our dedicated Trust & Safety team available through a 24/7 Critical Response Line**

# In-App Safety Features

- **Contact protection**
- **GPS tracking**
- **Location-sharing with contacts**
- **Real-time feedback**





# Accessible Features

- Voiceover (iOS) controls
- Talkback (Android)
- Hard of hearing feature & Amp device
- Interface is simple, contrast is key
- Clear service animal policy
- Driver education videos remind our community about commitment to inclusion

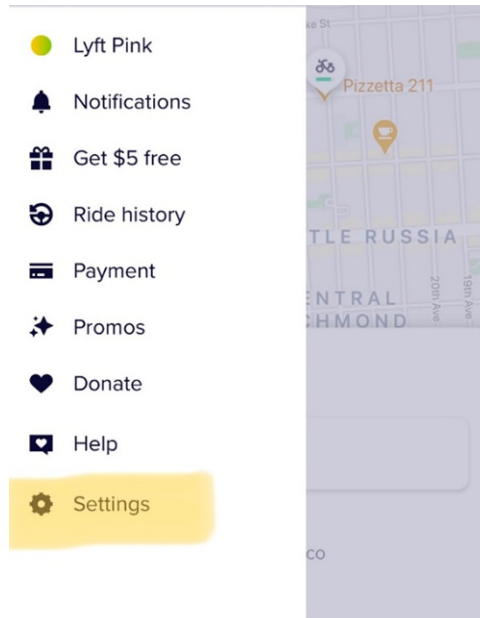
## Disclaimer:

This pilot program is subject to operational changes.

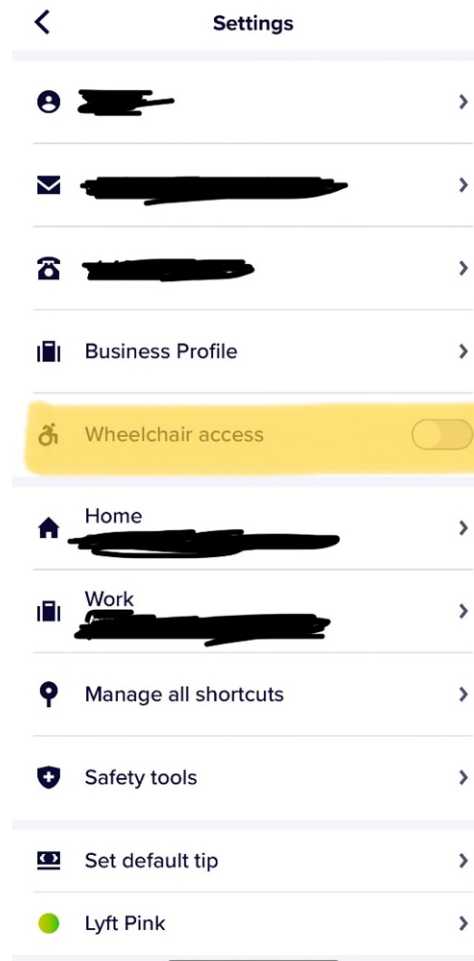
Questions?



## Settings



## Wheelchair Access



## Access Mode ON

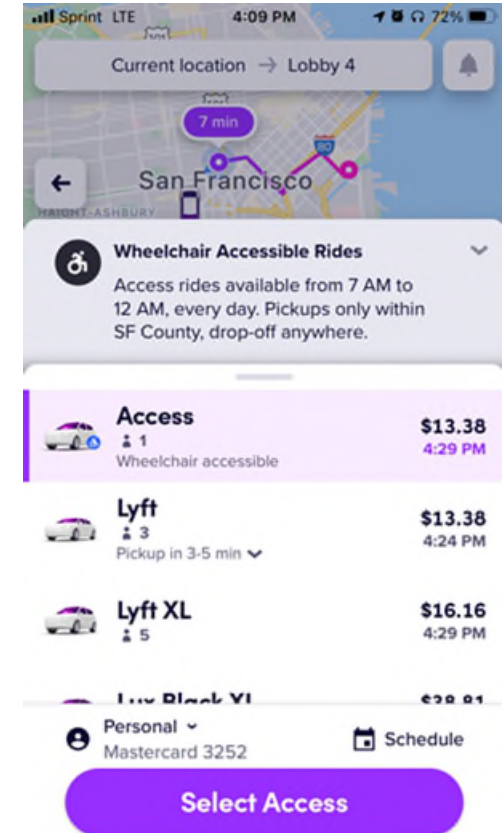


EXHIBIT B