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Consumer Protection and Enforcement Division  
Transportation Licensing and Analysis Branch  
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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-004A

Dear CPED Staff:

Pursuant to General Order 96-B, §7.4.3, Lyft, Inc. ("Lyft") responds to the protest submitted on January 19, 2021 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-004A (the "AL4A"), submitted on December 28, 2020.

SF's protest of Lyft's AL4A cites General Order 96-B, Section 7.4.2(6) as its ground for protest.<sup>1</sup> Specifically, SF alleges that the requested relief is "unjust as Lyft fails to demonstrate adequately 'presence and availability' of WAV service and that the offset request amounts are unreasonable given the service provided."<sup>2</sup> To support its contention, SF also argues that AL4A contains material errors and does not meet the requirements for the award of public funds.<sup>3</sup> However, SF did not identify any material errors in AL4A, but instead, misconstrues the data submitted in support of the advice letter and applies standards that the Commission did not impose. Ultimately, SF's real issue is not with Lyft's showing, or the success of Lyft's WAV program, but with the challenges inherent in providing WAV service, particularly in the midst of a worldwide pandemic. In sum, SF's arguments are not an appropriate ground for protest pursuant to General Order 96-B, Section 7.4.2.<sup>4</sup> They rely entirely on impermissible policy objections and do not in any way undermine the fact that Lyft has satisfied each of the requirements established by the TNC Access for All Act ("the Act") and relevant Commission decisions. SF's arguments should be rejected and Lyft's offset request approved without further delay.

### **1.1 Presence and Availability**

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<sup>1</sup> General Order 96-B, Section 7.4.2(6) provides: "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."

<sup>2</sup> SF Protest, p. 1.

<sup>3</sup> SF Protest, p. 2.

<sup>4</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...."

Public Utilities Code §5440.5(a)(1)(B)(ii) provides that in order to qualify for an offset, TNC's 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."

SF argues that Lyft failed to meet the presence and availability requirement but begins by criticizing the Consumer Protection and Enforcement Division ("CPED") for not establishing a "specified standard" by which to measure presence and availability, despite SF's own acknowledgement that the Track 2 decision did not establish a specific methodology. SF complains that CPED cannot simply "write the statutory requirement ... out of the analysis," and oddly contends that under CPED's approach, "any submission of data that showed zero WAVs anywhere in the entire state would satisfy this requirement to 'demonstrate' presence and availability."<sup>5</sup> Lyft is perplexed by this argument, as CPED has not yet made any determination; but SF appears to presume that CPED has ignored the issue of presence and availability in its analysis. SF's criticism is both unsupported and unwarranted.

Neither the Act, nor any Commission decision, requires that any particular level of presence and availability be shown to qualify for an offset. They simply require that the TNC demonstrate that WAVs are both present (i.e., appear on the app) and that they are actually available to provide WAV rides. Lyft has amply done so, submitting data documenting the number of WAVs available during each hour and day during the period, as well as certifications that the WAVs have been inspected and that the drivers have been trained. Furthermore, in reporting that data, Lyft has carefully followed the requirements, and utilized the templates, provided by CPED. Lyft has done everything required of it and SF has not offered any valid basis to deny Lyft an offset.<sup>6</sup>

SF also argues that Lyft cannot establish presence and availability unless WAV service is offered 24 hours a day/seven days a week, but fails to point to any requirement in the Act or any Commission decision requiring that a WAV program be offered around the clock to qualify for an offset. Once again, SF asserts inappropriate policy objections, rather than a valid basis for protest. Lyft nonetheless addresses the argument because such a requirement would make neither practical nor economic sense. Lyft has established operating hours, consistent with its actual, real world experience, during the hours Lyft expects to have the greatest level of demand (between 7:00 am and midnight). Subsidizing the availability of WAVs during all hours of the night, when few if any rides are requested, would result in substantially increased overall expenditures and a much higher cost-per-ride. That would not be good policy. Furthermore, SF's argument regarding presence and availability is entirely at odds with its subsequent argument regarding an accounting of funds (addressed more fully below) – i.e., that Lyft should be denied an offset due to the high cost of providing WAV rides. SF cannot have it both ways.

Building on its unsupported argument that only a service operated 24/7 is eligible for an offset, SF further argues that the completion percentages reported by Lyft, in accordance with instructions and templates provided by CPED, are "seemingly inflated."<sup>7</sup> SF does not explain what it means by this, and Lyft is at a loss as to how to respond to such a vague and ambiguous assertion. However, nothing in the Act compels a TNC to offer WAV service 24/7 and, as noted, an all-or-nothing approach would be

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<sup>5</sup> SF Protest, p. 2.

<sup>6</sup> 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>7</sup> SF Protest, p. 3.

bad policy. Lyft has fully complied with the instructions provided by CPED staff in reporting its data and SF offers no valid basis to protest or deny reimbursement.<sup>8</sup>

Lastly, SF argues that Lyft failed to show presence and availability based on SF's calculation of an average completion percentage across all hours of service and days of the week during the period.<sup>9</sup> As an initial matter, there is nothing in the Act or Commission decisions requiring Lyft to establish any level of completion percentage in order to establish presence and availability. SF cannot simply make up its own metrics and then claim that Lyft has not met them.<sup>10</sup> By doing so, SF improperly attempts to relitigate issues the Commission has already decided. That effort should be rejected.

Nor is SF's calculation of a completion rate a reliable indicator of presence and availability. There are various reasons why a ride may not be completed which have nothing to do with whether a vehicle is present or available. For example, SF's calculation takes the number of completed rides and divides it by the number of requests received. But the number of requests received also includes rides that were canceled by the passenger, a variable largely beyond Lyft's control and which says little or nothing about the performance of the WAV program.<sup>11</sup> This is particularly true because Lyft makes it easy for prospective riders to cancel. Passenger cancellations include, for example, instances in which a WAV arrives too quickly, before a rider is prepared to leave, and the rider cancels and summons another ride. In other instances, riders may summon both a Lyft and an Uber to see which one arrives first, and then cancel the other. These examples of passenger cancellations reflect unavoidable realities of operating a WAV service and none of which demonstrate a lack of presence or availability more generally. Thus, although SF complains that CPED's calculation of completion percentage is "inflated," it is actually SF's calculation that suffers from that flaw. Lyft has met all requirements established by the Act or the Commission and need not jump through any additional hoops created by SF to qualify for reimbursement.

For all of these reasons, SF's argument that Lyft failed to establish presence and availability is entirely lacking in merit.

## **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 and where it is offered, and how to use the service.

SF concedes that "the Track 2 Decision does not specify a methodology for evaluating outreach efforts,"<sup>12</sup> but then paradoxically argues that Lyft did not meet the requirement. CPED staff directed TNCs to submit evidence of their outreach efforts, including details regarding dates, times, and persons or organizations, and Lyft has done that. SF cannot fault Lyft for doing precisely what it was instructed to do.

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<sup>8</sup> General Order 96-B, §7.4.2.

<sup>9</sup> SF Protest, p. 3.

<sup>10</sup> General Order 96-B, §7.4.2.

<sup>11</sup> In fact, Lyft's data shows that approximately 65% of rides not completed resulted from a passenger cancellation.

<sup>12</sup> SF Protest, p. 3.

SF also complains that “the ‘WAV’ option is not readily available in the Lyft app unless a rider knows to activate ‘Access mode’ in the app settings,” which SF contends “makes the WAV service invisible to those not in the know and, as a result, may artificially suppress demand.”<sup>13</sup> First, SF’s suggestions for improving the design of the app are not a proper basis for protest and have nothing to do with whether Lyft engaged in outreach efforts. As the documentation submitted with AL4A amply demonstrates, Lyft engaged in extensive, targeted outreach to the disability community to ensure that likely users of the service are aware of it and how to use it. In fact, as that documentation shows, Lyft’s outreach efforts included a tutorial on how to toggle on to *Wheelchair Access* and explained that a user must do so only once. Once activated, a user will see the available WAVs whenever she opens the app. Furthermore, there is a good reason why users who wish to use *Wheelchair Access* mode are required to first go into settings and toggle it on. It is Lyft’s experience that when *Access* mode is automatically enabled for all users, users who have no need for a WAV tend to select a WAV anyway, especially during periods of high demand, resulting in fewer WAVs being available for those in the disability community who need WAVs to use the service. Thus, by arguing that Lyft should make *Access* mode the default for all users, SF argues for a change that would, in fact, result in **fewer** WAVs being available for those who truly need them. This suggestion is ill-considered and should be rejected.

### 1.3 Funds Expended

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>14</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>15</sup> The Commission subsequently clarified that certain details called for by the CPED templates need not be submitted.<sup>16</sup>

SF’s primary argument on Lyft’s expenditures is not that Lyft failed to document them, but that Lyft should be denied reimbursement because the cost to provide WAV service is too high when viewed on a cost-per-ride basis. This argument is truly puzzling, given that a key reason for the Legislature having passed the Act was the significantly greater cost of providing WAV service, as compared to traditional TNC service.<sup>17</sup> SF’s argument takes issue not with Lyft’s program, but with the reality of providing WAV service. Unlike traditional TNC service, which benefits from large numbers of users with vehicles willing to provide rides at any given time, few individuals own WAVs and still fewer own WAVs and are willing to provide rides on the Lyft platform. Thus, in order to offer a reliable WAV service, which has WAVs and drivers available to provide rides on demand, Lyft must pay for WAVs and drivers to be available, whether or not a ride is requested. That is an extremely costly endeavor, but Lyft is aware of no better or less costly way to ensure that WAVs are available when needed and SF offers

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<sup>13</sup> SF Protest, p. 4.

<sup>14</sup> Decision on Track 2 Issues: Offsets, Exemptions and Access Provider Disbursements (“Track 2 Decision”), Ordering Para. 10.

<sup>15</sup> See <https://www.cpuc.ca.gov/tncaccessAL/>

<sup>16</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.

<sup>17</sup> Pub. Util. Code, §5440(f) (“In comparison to standard vehicles available via TNC technology applications, WAVs have higher purchase prices, higher operating and maintenance costs, higher fuel costs, and higher liability insurance, and require additional time to serve riders who use nonfolding motorized wheelchairs.”).

none. Furthermore, Lyft's WAV program is comparatively new, with significant trial and error still a daily reality in managing such a complex endeavor – an endeavor, by the way, had not been attempted prior to the Act, due to its enormous costs and complexity.

SF also argues that on a cost-per-ride basis, Lyft's costs actually increased quarter over quarter, and asserts that the increase shows that "Lyft is becoming less cost-effective in providing these trips." SF Protest, p. 4. SF is mistaken. As an initial matter, by focusing on cost-per-ride, SF is making a policy objection by inventing a metric that has no relevance in the Act or Commission decisions. For that reason alone, SF's argument should be rejected. However, it is worth noting that SF's analysis simplistically looks at cost-per-ride in isolation, ignoring entirely that we are currently in the midst of a deadly pandemic, during which Lyft, like other transportation providers, has experienced a dramatic decline in demand for both its traditional service and its WAV service. As Exhibit A hereto illustrates, in both San Francisco and Los Angeles, Lyft's WAV program was experiencing increased demand through March 2020 – when the pandemic hit – and then saw rapid declines in ride volume. Despite the decrease in demand, Lyft has continued to operate its WAV program throughout the pandemic so as not to withdraw from the disability community an important and much safer transportation option than high capacity options, such as Muni. Through this period, Lyft has done what it could to reduce costs in the WAV program, however, most of those costs are the subject of long-term contractual commitments, are relatively fixed, and cannot easily be turned off. When demand decreases dramatically, while costs remain fixed, the cost-per-ride will reflect a correspondingly dramatic increase. However, this has nothing to do with efficiency or inefficiency. It is the unavoidable result of SF focusing on a metric that fails to account for the current reality. Thus, unless SF is suggesting that Lyft reduce costs by making fewer WAVs and drivers available on the platform, which would result in increased wait times and a significant degradation in service, these particularly high cost-per-ride figures are the stark reality of providing WAV for the foreseeable future -- at least until life begins to get back to normal and demand for the service rebounds.

In the end, SF seeks to have its cake and eat it too. It demands that WAVs be available in abundance at all hours of the day and night, regardless of the demand for WAV service, but then complains that the cost of providing such a service is too high. It cannot have it both ways. Lyft has satisfied all of the requirements imposed by the Commission and CPED staff and SF has failed to identify any appropriate ground for denial of Lyft's AL4A.

## **2. CONCLUSION**

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

Very truly yours,



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# Exhibit A

## Los Angeles



## San Francisco

