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Via E-Mail
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California Public Utilities Commission
Consumer Protection and Protection Division
Transportation Licensing and Analysis Branch
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest to Lyft Advice Letter 4A, Q2 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4 and Section 10.5, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco"), submit this protest against Lyft Technologies Inc.'s ("Lyft") Supplemental Advice Letter 4A requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letter").¹

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(6), San Francisco protests Lyft's Advice Letter on the grounds that: (1) pursuant to Section 7.4.2(6), the relief requested is unjust as Lyft fails to demonstrate adequately the "presence and availability" of WAV service and that the offset request amounts are unreasonable given the service provided.

While Lyft demonstrates improved response times that meet the Commission's targets for the subject counties, the current reporting appears to make the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all. Furthermore, this performance is overshadowed by a failure to demonstrate presence and availability, with 20%-40% of requested WAV trip requests uncompleted. Furthermore, Lyft fails to demonstrate the availability of WAV service at all times of day, especially during the overnight hours. Finally, Lyft is requesting offsets that exceed \$3,500 per single

¹ Lyft submitted Supplemental Advice Letters 1A-4A in an unredacted format in response to Resolution ALJ-388, which rejected Lyft's claims of confidentiality. Advice Letters 1A-4A are nearly identical in terms of supporting information and overall deficiencies, and San Francisco's protests are nearly the same as well.

completed trip in San Francisco County and almost \$800 per completed trip in Los Angeles County. Given the record, CPED cannot reasonably find that Lyft has met the required statutory burden.

II. Lyft's Advice Letter Contains Material Errors and Does Not Meet The Requirements for Award of Public Funds.

The California Legislature adopted the TNC Access for All Act ("Act") with the stated intent that wheelchair users who need WAVs "have prompt access to TNC services." (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas ("Track 1 Decision"), p. 16.) The Act required the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish the Access Fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the Access Fund. (*Id.*, p. 10.) As relevant here, the Act requires the Commission to "authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area" thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).)

The Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Based on the information submitted in this Advice Letter, Lyft failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Lyft Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence *and* availability of drivers with WAVs on its platform. While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not "demonstrate" presence and availability. If that were the case, then any submission of data that showed zero WAVs anywhere in the entire state would satisfy this requirement to "demonstrate" presence and availability. Such an interpretation is plainly inconsistent with the intent of the statute and would render the statutory requirement for presence and availability a nullity.

Presence and availability is a key requirement, especially in the wake of the Commission's Track 2 Decision, which found "[i]t is unnecessary to measure 'response time' at a passenger's initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-show will be captured in the 'presence and availability' data." (Track 2 Decision, p. 20.) Consequently, "response 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 reporting makes the response time

percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

Furthermore, Lyft's public marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides standard service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act.

Given the seemingly inflated numbers in the response time metrics, it is even more important that a demonstration of presence and availability under the Act must rest on an actual showing by the data. It is clear that during Q2 of 2020, WAV passengers continued to persistently experience unavailability or refusal of service—a key problem the Act was trying to fix. In fact, a considerable proportion of requests in Q2 of 2020 were not accepted or were cancelled by the driver.

Table 1 below clearly demonstrates the lack of availability and presence of TNCs in the counties for which Lyft is requesting an offset request. This table shows the number and share of WAV requests that were actually completed, indicating that for the counties for which Lyft is requesting offsets only 59% of all WAV requests were completed.

For these reasons, Lyft's unredacted data shows that its WAV service was not present and available to WAV passengers in Quarter 2 of 2020. Therefore, Lyft's data fails to demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letter on this basis.

Table 1. Percent of WAV Ride Requests COMPLETED for the Offset Request Counties

	REQUESTS	COMPLETED	% COMPLETED
LOS ANGELES	1416	809	57%
SAN FRANCISCO	156	124	79%
TOTAL	1572	933	59%

B. Lyft Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Lyft makes a compelling case in this arena. However, we continue to note that we have 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. This makes the WAV service invisible to those not in the know and, as a result, may artificially suppress demand.

C. Lyft's Accounting of Funds Does Not Demonstrate Improvements Due to Investments in WAV Service.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to *improve* WAV service (emphasis added). Under the fourth element required to be awarded an offset, a TNC must provide a "full accounting of funds," as well as demonstrate that an improved level of service, including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2 Decision, pp. 25-26 (emph. added).)

Offsets are payments of monies collected from all TNC trips in each county to TNCs for improving WAV service in that county. Table 2 shows a basic metric of the cost-effectiveness of TNC efforts to improve WAV service, which is the average offset request per completed TNC trip. This table shows that Lyft is requesting that it be paid from public monies an astounding \$3,500 per completed WAV trip in San Francisco County and almost \$800 per completed WAV trip in Los Angeles County.

Incredibly, for San Francisco County this is actually worse than the requested payment per completed WAV trip in the prior quarter, when Lyft asked for over \$2,400 per completed WAV trip, meaning that Lyft is becoming less cost-effective in providing these trips. These trip costs cannot be ascribed to "start up" costs of providing the service, and in fact after one full year of providing WAV service, Lyft's per trip costs are higher in both San Francisco and Los Angeles County than in all prior quarters. For these reasons, CPED should reject the offset request on this additional ground.

Table 2. Average offset request per COMPLETED TNC trip for the Offset Request Counties

	COMPLETED	OFFSET REQUEST	OFFSET REQUEST PER TRIP
LOS ANGELES	809	\$642,336.92	\$793.99
SAN FRANCISCO	124	\$435,927.86	\$3,515.55

V. Conclusion

In sum, while Lyft did demonstrate improved response times and met the response time targets over the prior quarter, Lyft's offset request in Supplemental Advice Letter 4A fails on multiple grounds and should be rejected. First, the reported response times and improvements in these times appear to be biased because they exclude times for trips that were not accepted or were cancelled by the driver. Second, Lyft has failed to meet the threshold requirements for offsets in the Act and Track 2 Decision. Lyft's data does not show there is "presence and availability," as evidenced by the fact that 20% - 40% of WAV trip requests in the subject counties are either not accepted or never completed. Furthermore, Lyft's public marketing materials indicate that WAV service is only available from 7 a.m. to midnight, meaning drivers with WAVs are, by definition, not present or available between midnight and 7 a.m. Lyft provides standard service 24 hours a day. Such a limitation on service hours is fundamentally at odds with the purpose of the Act. Finally, Lyft's extremely high costs of over \$3,500 per trip in San Francisco raise concerns about whether it is meeting the Act's requirements. For the reasons stated herein, San Francisco requests that the

Advice Letter is rejected outright as CPED cannot reasonably find that Lyft has met the required statutory burden.

Sincerely,

By: _____/s/
Tilly Chang
Executive Director
San Francisco County Transportation Authority

By: _____/s/
Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

By: _____/s/
Nicole Bohn
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San Francisco Mayor's Office on Disability

cc: Annette Tran