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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Senate Bill 1376 Requiring
Transportation Network Companies to
Provide Access for Persons with
Disabilities, Including Wheelchair Users
who need a Wheelchair Accessible
Vehicle.

Rulemaking 19-02-012

**ADMINISTRATIVE LAW JUDGE'S RULING ON PROPOSAL OF
CONSUMER PROTECTION AND ENFORCEMENT DIVISION
AND WORKSHOP COMMENT SCHEDULE**

An April 11, 2019 ruling in this proceeding extended the deadline for reply comments on the Order Instituting Rulemaking to April 26, 2019. Attached to this ruling is a White Paper and Staff Proposal issued by the Commission's Consumer Protection and Enforcement Division (CPED). Parties should include any comments to CPED's proposal in their April 26, 2019 reply comments and be prepared to discuss the proposal at the May 2, 2019 workshop.

In addition, parties will have an opportunity to submit written comments following the May 2, 2019 workshop. Comments to the topics discussed at the workshop may be filed and served by May 10, 2019.

IT IS RULED that:

1. A White Paper and Staff Proposal issued by the Commission's Consumer Protection and Enforcement Division is attached to this ruling.

2. Parties should include any comments to the Staff Proposal in their reply comments and be prepared to discuss the Staff Proposal at the May 2, 2019 workshop.

3. Parties may file and serve written comments to the topics addressed at the May 2, 2019 workshop by May 10, 2019.

Dated April 18, 2019, at San Francisco, California.

/s/ DEBBIE CHIV
Debbie Chiv
Administrative Law Judge

**Consumer Protection and Enforcement Division Staff White
Paper and Proposals for Proceeding 19-02-012: Order Instituting
Rulemaking Related to Transportation Network Companies and
Accessibility for Persons with Disabilities**

Staff White Paper and Proposals

Consumer Protection and Enforcement Division

April 18, 2019

Staff White Paper and Proposals

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Summary

This document contains CPED’s Staff White Paper and Staff Proposals on Order Instituting Rulemaking (R.) 19-02-012 related to Transportation Network Companies (TNCs) and Accessibility for Persons with Disabilities.

The Staff White Paper begins with a review of the accessibility requirements on TNCs enacted in R.12-12-011 on “Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services” followed by a summary of the provisions of Senate Bill (SB) 1376, the “TNC Access for All” Act, concerning the “geographic areas” that the Commission must establish for collection of the per-trip fee. The fees collected will be used to create the “TNC Access for All Fund” that will be used to increase “on-demand” transportation for persons with disabilities who need a wheelchair accessible vehicle (WAV).

The Staff White Paper then discusses programs in municipal jurisdictions throughout the country that have imposed mandates on, or established incentives for, their regulated transportation carriers to improve WAV service and compares these municipal programs to the approach designed for California by SB 1376. The Staff White Paper also summarizes discussions held during the two public workshops held to date on where to establish the geographic areas for the new program and how to determine WAV demand for purposes of establishing the geographic areas. The Staff White Paper builds on those workshop discussions by analyzing potential WAV supply and/or demand using data that the Commission possesses about transportation charter-party passenger carriers (TCPs) and TNCs and also by reviewing data from the U.S. Department of Transportation (DOT).

In the Staff Proposals, based on known TNC demand identified through CPED’s analysis of TNC trip data, CPED recommends that the Commission initially establish the counties of Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara as separate, distinct geographic areas. In the alternative, based on a probable latent demand for on-demand WAV service, CPED proposes that each county could be established as its own geographic area to immediately implement the new program across the entire State. Concerning the fee itself, CPED recommends that it be initially be set at \$0.10 per “TNC trip” uniformly in each geographic area and be presented as a line-item on a consumer’s bill.

Concerning the ability for TNCs to offset or be exempted from remitting fees to the Access Fund, CPED recommends that the Commission establish the criteria for offsets and exemptions in a timely manner after selection of the initial geographic areas.

1. Accessibility Requirements on Transportation Network Companies Enacted in R.12-12-011

On December 27, 2012, the Commission issued Order Instituting Rulemaking (R.) 12-12-011 on “Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation

Services”¹ in response to the operations of new transportation carriers that had begun using “mobile internet, social media, and location services to offer new ways of arranging transportation services,” making specific references to companies Lyft, Sidecar, and Uber. Specifically, these companies were utilizing smartphones to connect passengers with drivers and vehicles either already regulated by the Commission as passenger carriers or by cities and counties as taxis or with private drivers and vehicles not regulated as passenger carriers or taxis.² At the time, the Commission referred to these companies as “New Online Enabled Transportation Services” or NOETS.

Following the opening of proceeding R.12-12-011, an Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling (Ruling) was issued on April 2, 2013³ and included in the initial scope of the proceeding a set of questions related to “Accessibility and Equal Access Issues” for NOETS.⁴ The inclusion of accessibility issues from the outset of R.12-12-011 led to the establishment of accessibility requirements for these new carriers, designated formally as “Transportation Network Companies (TNCs),” through the Commission’s issuance of Decision (D.) 13-09-045 on September 23, 2013 adopting rules and regulations to protect public safety while allowing new entrants to the transportation industry.⁵ The Commission defined a TNC as “as an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles”⁶ and designated them as transportation “charter party carriers” who must obtain a “class P” permit from the Commission to operate.⁷

In D.13-09-045, the Commission required TNCs to allow passengers to indicate whether they require a wheelchair accessible vehicle or a vehicle otherwise accessible to individuals with disabilities.⁸ The Commission also required TNCs to file accessibility plans with a timeline for (a) modifying their apps so passengers could signal their need for a wheelchair accessible vehicle or other disabled access, (b) making such vehicles available through driver incentives, (c) accommodating service animals, and (d) ensuring nondiscrimination. In addition to their accessibility plans, the Commission required TNCs

¹ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=40862944>.

² Order Instituting Rulemaking 12-12-011 issued December 27, 2012 at 4.

³ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=63373675>.

⁴ R.12-12-011 Scoping Ruling issued April 2, 2013 at 7-8 (“5.5 Accessibility and Equal Access Issues”).

⁵ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=77192335>.

⁶ D.13-09-035 at 1.

⁷ Ordering Paragraph 3 of D.13-09-045.

⁸ D.13-09-045 at 30.

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to file plans⁹ describing how they would ensure there was not a service divide between the non-disabled and disabled communities.¹⁰

The Commission further required TNCs to submit an annual report¹¹ to the Consumer Protection and Enforcement Division (CPED)¹² detailing the number and percentage of TNC customers who requested accessible vehicles and how often the TNC was able to comply with that request.¹³ The Commission required the reports to address (a) compliance with the Commission’s disabled access rules, (b) planned improvements to ensure no divide between service provided to the able and disabled communities, and (c) how the TNCs addressed persons with disabilities’ complaints of unfair treatment or discrimination.¹⁴

Following issuance of D.13-09-045, within subsequent phases of R.12-12-011, the Commission continued to keep accessibility issues scoped in the proceeding, as expressed in the Scoping Rulings issued on November 26, 2014¹⁵ and June 12, 2017,¹⁶ until a Scoping Memo and Ruling of the Assigned Commissioner issued on April 3, 2018 indicated that accessibility issues would be addressed in a new rulemaking.¹⁷ Meanwhile, also in 2018, California State Senator Jerry Hill proposed legislation – Senate Bill (SB) 1376, the “TNC Access for All Act” – related to TNCs and accessibility for persons with disabilities.¹⁸ SB 1376 was ultimately enacted into law in 2018, adding Sections 5431.5 and 5440.5 to the California Public Utilities Code (Pub. Util. Code), requiring the Commission “to establish a program relating to accessibility for persons with disabilities, including wheelchair users who need a wheelchair-accessible vehicle (WAV).”¹⁹

2. SB 1376 (Hill, 2018): “The TNC Access for All Act”

Within its findings and declarations, among other things, SB 1376 states:

(c) It is the intent of the Legislature that the commission initiate regulation of charter-party carriers in accordance with Section 5440.5 to ensure that transportation network company

⁹ Accessibility Plans filed by TNCs are available at <http://www.cpuc.ca.gov/General.aspx?id=3046>.

¹⁰ D.13-09-045 at 56.

¹¹ Annual Accessibility Reports filed by TNCs are available at <http://www.cpuc.ca.gov/General.aspx?id=3046>.

¹² The Commission moved the regulatory and safety oversight of transportation programs from the Safety and Enforcement Division to CPED.

¹³ D.13-09-045 at 30-31.

¹⁴ *Id.* at 54.

¹⁵ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=143311123>.

¹⁶ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=190174048>.

¹⁷ Available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=213518103>.

¹⁸ Available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1376.

¹⁹ Pub. Util. Code § 5440.5(a)(1).

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services do not discriminate against persons with disabilities, including those who use nonfolding mobility devices.²⁰

(f) There exists a lack of wheelchair accessible vehicles (WAVs) available via TNC online-enabled applications or platforms throughout California. 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.²¹

(j) It is the intent of the Legislature that wheelchair users who need WAVs have prompt access to TNC services, and for the commission to facilitate greater adoption of wheelchair accessible vehicles on transportation network companies' online-enabled applications or platforms.²²

In imposing various requirements, it is primarily “the lack of WAVs available via TNC online-enabled applications or platforms” to serve riders who use nonfolding motorized wheelchairs that the legislation seeks to address.²³ In California, the lack of WAVs on TNC platforms has resulted in class action complaints for injunctive and declaratory relief filed against Lyft²⁴ and Uber²⁵ by Disability Rights Advocates²⁶ on behalf of the Independent Living Resource Center for San Francisco and others.

To address the lack of WAVs, the law requires the Commission to establish a new program by creating of the “TNC Access for All Fund” (Access Fund). To initiate the program, by July 1, 2019, the Commission must take the following actions:

- Require each TNC to pay on a quarterly basis to the Commission an amount equivalent to, at minimum, 0.05 dollars (\$0.05) for each “TNC trip” completed using the TNC’s online-enabled application or platform that originates in a “geographic area” designated by the Commission²⁷
- Designate the geographic areas, based on demand for WAVs and the outcomes of workshops with stakeholders including California cities and counties, disability rights organizations, persons with disabilities, transportation and transit agencies, social service

²⁰ Pub. Util. Code § 5440(c).

²¹ Pub. Util. Code § 5440(f).

²² Pub. Util. Code § 5440(j).

²³ Fact Sheet for SB 1376 available at https://sd13.senate.ca.gov/sites/sd13.senate.ca.gov/files/factsheet_sb_1376.pdf.

²⁴ Available at <https://dralegal.org/case/ilrc-v-lyft/>.

²⁵ Available at <https://web.archive.org/web/20180309162905/http://dralegal.org/featured/uber-sued-by-disability-rights-groups-for-illegal-discrimination-against-wheelchair-users/>

²⁶ <https://dralegal.org/about/>.

²⁷ Pub. Util. Code § 5440.5(a)(1)(B)(i).

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transportation providers, paratransit coordinating councils, and transportation network companies, within which the per-trip fee will be collected²⁸

The statute requires that each TNC charge its customers the full amount of the per-trip fee.²⁹ While the minimum per-trip fee is set at \$0.05, the Commission is allowed to “adjust the fee in each geographic area... to different levels based on the cost of providing adequate WAV service in the geographic area.”³⁰ The moneys collected by the TNCs from the per-trip fee are then remitted to the Commission and deposited into the Access Fund, to be allocated by the Commission, “for use in each geographic area in a manner that is proportional to the percent of Access Fund fees originating in that geographic area.”³¹

In the alternative, although a TNC would still collect the per-trip fee from customers, instead of remitting the full amount of moneys for deposit into the Access Fund and subsequent allocation on a competitive basis by the Commission, the statute allows a TNC to “offset against amounts due... for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area and thereby reduce the amount required to be remitted to the [C]ommission.”³²

In addition, instead of only reducing the amount of fee moneys that would be otherwise remitted to the Access Fund, SB 1376 allows a TNC to be entirely exempt from remitting any fee moneys collected from trips originating in a given geographic area, for the next year, by meeting a “designated level of WAV service” established by the Commission that includes, at a minimum, having “response times for 80% of WAV trips requested via the TNC’s online-enabled application or platform within a time established by the [C]ommission for that geographic area.”³³

3. Discussion of WAV Programs in Other Jurisdictions

In explanation of the policies advanced in SB 1376, the bill’s fact sheet referred to programs in other jurisdictions – namely Seattle and Chicago – that have “lev[ied] surcharges... on TNC trips to be deposited in an accessibility fund to be used for incentives and investments in wheelchair accessible on-demand transit” while also noting that “California is one of the few states to regulate TNCs at a state level.”³⁴

²⁸ Pub. Util. Code § 5440.5(a)(1)(D).

²⁹ Pub. Util. Code § 5440.5(a)(1)(B)(ii).

³⁰ Pub. Util. Code § 5440.5(a)(1)(B)(i).

³¹ Pub. Util. Code § 5440.5(a)(1)(D).

³² Pub. Util. Code § 5440.5(a)(1)(B)(ii).

³³ Pub. Util. Code § 5440.5(a)(1)(G).

³⁴ Fact Sheet for SB 1376 available at https://sd13.senate.ca.gov/sites/sd13.senate.ca.gov/files/factsheet_sb_1376.pdf.

In order to meet the needs of wheelchair users in their communities and to address a similar lack of WAVs, other jurisdictions have imposed mandates on, and established incentives for, their regulated transportation carriers to improve WAV service. However, important differences exist in how California and these other jurisdictions regulate passenger transportation that affect how programs to provide WAV service can be implemented. Importantly, in Seattle, Chicago, and the other municipal programs described in this section, the regulatory entity involved oversees both for-hire vehicles (FHV), which are analogous to the charter party carriers (including TNCs) regulated by the Commission in California, as well as taxis and other carriers that are not regulated by the Commission.³⁵

While other specific regulatory differences exist, it is also critical to acknowledge that California would be the first jurisdiction in the nation to embark on the establishment and administration of a statewide, fee-funded program to facilitate on-demand WAV service utilizing TNCs. As such, although several municipalities have implemented programs to increase WAVs, some of which involve TNCs, it is advisable to recognize that their approaches and experiences may differ when scaled to meet the needs of California, the most populous state in the country and third largest by area.

3.1 Seattle and King County

In Seattle, TNCs and taxi medallion owners must pay \$0.10 per ride³⁶ surcharge (“Wheelchair Accessible Services Surcharge” or WAS) for all rides originating in the city for each vehicle to be deposited into the “Wheelchair Accessible Services Fund” (WASF).^{37,38} According to the city’s ordinance, the surcharge must be used *“to offset the higher operational costs of wheelchair accessible taxi (WAT) services for owners and operators including, but not limited to: vehicle costs associated with purchasing and retrofitting an accessible vehicle, extra fuel and maintenance costs, and time involved in providing wheelchair accessible trips.”*³⁹ (italics added)

Currently, disbursement of moneys from the city’s Wheelchair Accessible Services Fund⁴⁰ is limited to the drivers and owners of the 45 city-licensed wheelchair accessible taxis. Costs eligible for reimbursement are divided into three categories: 1) Dispatch Wheelchair Passenger Trip (WPT) Calls; 2) Wheelchair Accessible Taxicab (WAT) Operating Costs; and 3) Maintenance and Equipment Costs.

³⁵ Pub. Util. Code § 5353(g).

³⁶ Taxi medallion owners are granted the alternative option to pay an annual estimated Wheelchair Accessible Services surcharge based on a calculated average number of trips per taxi.

³⁷ Seattle Municipal Code § 6.310.175 available at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT6BURE_SUBTITLE_IVNELICO_CH6.310TAFRE_VE_IGEPR_6.310.175WHACSEFU.

³⁸ Seattle Administrative Rule CPU-11-2016 available at <http://clerk.seattle.gov/search/clerk-files/321010>.

³⁹ *Id.*

⁴⁰ Seattle Administrative Rule CPU-07-2014 available at <http://clerk.seattle.gov/search/clerk-files/319353>.

The actual reimbursable expenses and rates are further categorized into “Driver” and “Owner” Expenses and summarized in the Table below:⁴¹

Rule Section	Category	Reimbursement Rate	Driver	Owner	Frequency
A1	Dispatched WPT Calls	\$20 per dispatched WPT request	\$20 per dispatched WPT request	Not available	Associations pay drivers and invoice the City monthly.
A2 & B1	Wheelchair Accessible Taxicab Operating Costs	Up to \$15/shift (as prorated)	WAT lease cap: \$15 less per shift	Up to \$15/shift operated or leased (as prorated)	Owners invoice the City for every operational shift monthly.
B2	Maintenance and Equipment Costs	Up to \$3500/year (as prorated)	Not available	\$ Up to \$3500/year (as prorated)	City directly pays owners annually.

The fund’s reimbursement rates are calculated based on the city’s estimated funding level of \$850,000 annually.⁴² Depicted below is the last publicly published data (ending in 2015) from Seattle on reimbursements from the Wheelchair Accessible Services Fund:⁴³

Reimbursement Type	Total Number	Total Amount of Reimbursements	Reimbursement Period
Wheelchair passenger trips (WPT)	7,033	\$140,660.00	Nov. 12, 2014 – Dec. 31, 2015 (13 1/2 months)
WAT shifts (>4 hours)	8,704	\$130,560.00	June 1, 2015 – Dec. 31, 2015 (Seven months)
Maintenance and Equipment costs	44 WAT ^A	\$124,940.78	Jan. 1, 2013 – Dec. 31, 2015 (Three years)
Total		\$396,160.78	

^A One WAT owner was new and had no costs to submit for Maintenance + Equipment reimbursement. There are a total of 45 dual-medallion WAT eligible for reimbursement from the WASF.

According to the table, a total of \$396,160.78 was disbursed from the Wheelchair Accessible Services Fund. While this publicly available data ends in 2015 and CPED does not possess the data on the current balance of this fund, if the city’s estimated funding level of \$850,000 is accurate and because disbursements from the fund are still limited to the city’s WATs, CPED believes it is highly likely that Seattle has collected more money in its Wheelchair Accessible Services Fund than it has disbursed to date.

Similarly, in King County (within which Seattle is incorporated), TNCs pay a \$0.10 per ride surcharge for all rides originating in the unincorporated areas of the county or in any municipality that contracts with the county for the county to license taxicabs, for-hire vehicles, or transportation

⁴¹ *Id.*

⁴² *Id.*

⁴³ Available at <https://www.seattle.gov/Documents/Departments/FAS/RegulatoryServices/WASF-REIMBURSEMENTS-2015.pdf>.

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network companies that operate in the municipality.⁴⁴ According to the county's ordinance, the surcharge must be used *"to offset the operational costs incurred by owners and operators of wheelchair accessible taxi, wheelchair accessible for-hire vehicle or wheelchair accessible transportation network company endorsed vehicle services including, but not limited to, the costs associated with purchasing and retrofitting an accessible vehicle, fuel and maintenance costs and the time involved in providing wheelchair accessible trips."*⁴⁵ (italics added)

Notably, unlike Seattle's program, disbursement of moneys from the county's Wheelchair Accessible Services Fund includes "for-hire vehicle" owners and drivers rather than strictly taxis.⁴⁶ Costs eligible for reimbursement are similarly divided into three categories: 1) Dispatched Wheelchair Passenger Trip (WPT) Reimbursement; 2) Wheelchair Accessible Service (WAS) Vehicle Maintenance/Acquisition Reimbursement; and 3) WAS Training Fund.⁴⁷

In the county's program, the reimbursement rates mirror those of the City of Seattle but with added criteria regarding WAS vehicle maintenance and acquisition disbursement according to the model of the vehicle's age:

King County WAT vehicles:

Age of Vehicle (based on Model Year)	Original Receipts required (Yes/No)	Maximum Reimbursement Amount
0-5	No	\$5,000
6	Yes	\$4,750*
7		\$4,250*
8-10		\$4,000*

King County and Seattle (Dual) licensed WAT vehicles:

Age of Vehicle (based on Model Year)	Original Receipts required (Yes/No)	Maximum Reimbursement Amount
0-5	No	\$1,500
6	Yes	\$1,250*
7		\$1,000*
8-10		\$750*

* Expenses already reimbursed by the City of Seattle WAS fund are not eligible.

In addition, unlike Seattle's program, the county's program sets aside up to 5% of the total WAS Fund collected quarterly to provide WAS driver training.

Data on disbursement of moneys from King County's Wheelchair Accessible Services Fund could not be obtained by CPED. However, CPED notes that King County and the City of Seattle have issued a Request for Proposal to award 25 new dual WAT medallions in 2019, and each awardee is eligible for up to a combined total of \$5,000 per year for a period of five years from the city and county towards

⁴⁴ King County Code § 6.64.111 available at https://kingcounty.gov/council/legislation/kc_code/09_Title_6.aspx.

⁴⁵ *Id.*

⁴⁶ However, CPED does not possess the number of WAVs available from "for-hire vehicle" operators as this information is not publicly available.

⁴⁷ King County Public Rule FIN-103-PR available at <https://www.kingcounty.gov/~media/depts/records-licensing/RALS/Documents/WAS-signed-publicrule.ashx?la=en>.

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the expense of putting a new WAV into service. As such, CPED infers that at least \$625,000 (25 awardees x \$5000 x 5 years) is currently or will be available between the city's and county's WASFs.⁴⁸

3.2 Chicago

In Chicago, TNCs⁴⁹ pay a \$0.10 per vehicle per ride to the city's "Accessibility Fund" for each TNC vehicle registered with the licensee that is not a wheelchair-accessible transportation network vehicle.⁵⁰ Regarding the use of the funds collected, the city's ordinance, states: *"Uses of this fund include, but are not limited to, reimbursement for costs associated with converting or purchasing a vehicle to be used as a taxicab or transportation network vehicle that is fully wheelchair accessible by ramp or lift, and costs to a licensee for the provision of wheelchair-accessible vehicle taxi rides to customers where the cost to provide the ride exceeds the cost charged to the customer."*⁵¹ (italics added)

The city's Accessibility Fund was established in 2012, as part of legislation reforming regulations on the taxi industry, to help support a new mandate that taxi licensees with at least 20 medallions maintain at least 5% of them as wheelchair accessible vehicles.⁵² In 2014, coinciding with the establishment of new regulations on TNCs, the city also required TNCs to contribute to the Accessibility Fund by imposing a \$0.10 fee per trip for each non-accessible vehicle. At the same time, citing a new mandate to put 400 WAVs on the road by the end of 2018, doubling its then-current number of WAVs, Chicago expanded its accessibility mandate on taxis two-fold by requiring taxi licensees who own at least 10 medallions to have 10% of their vehicles made up of WAVs by the end of 2018.⁵³ Then, by 2022, any licensee that owns or controls 5 or more taxicab licenses is required to have at least 25% of its taxicab fleet be WAVs, and the required percentage of WAVs increases by 5% each year until 2030 when at least 50% of the fleet must be WAVs.

In 2016, Chicago established new incentives for taxi medallion owners, funded by the city's Accessibility Fund that now included revenues collected from TNC trips, including elimination of a \$2,500 cumulative fee for centralized WAV taxicab dispatch; a \$15,000 subsidy for the conversion costs of a WAV and a \$20,000 subsidy toward the purchase of a factory-built WAV; a \$10,000 "early bird" incentive for medallion owners that placed WAV taxicabs into service by December 1, 2016, ahead of the 2018 deadline; a voucher for WAV taxicab conversion; a vehicle maintenance grant of up to \$5000

⁴⁸ <https://www.seattle.gov/Documents/Departments/FAS/RegulatoryServices/WAT-RFP-Summary.pdf>.

⁴⁹ Chicago designates companies called "transportation network companies" (TNCs) in California as "transportation network providers" (TNPs). For convenience, CPED will refer to these same entities as TNCs.

⁵⁰ Chicago Municipal Code § 9-115-140.

⁵¹ Chicago Municipal Code § 9-112-010.

⁵² <https://www.chicago.gov/dam/city/depts/bacp/publicvehicleinfo/taxiindustrynotices/taxiindustrynotice12-004newtaxipublicvehicleord.pdf>.

⁵³ Chicago Municipal Code § 9-112-570.

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annually; and reimbursement credits or subsidies for taxicab drivers that lease WAV taxicabs to help offset the higher fuel costs for WAVs.⁵⁴

In May 2017, Chicago reported that its Accessibility Fund received approximately \$6.5 million and, in 2017 alone, the city stated that it had disbursed more than \$1.5 million year-to-date in these funds to support an increase in wheelchair-accessible vehicle options including 45 WAV taxicab conversions; the purchase of 18 new factory-built WAV taxicabs; 50 “early bird” incentives for WAV taxicabs purchased in 2016; and maintenance on 37 WAV taxicabs.⁵⁵ As a result, since 2012, the city claimed that the number of WAV taxicabs operating in Chicago had increased from 91 to 298, more than tripling the total number in the city’s fleet.⁵⁶ In addition, as a result of reforms enacted in 2016 requiring TNCs to submit plans to enhance service to customers with disabilities, the city reported that TNCs would be placing 50 WAVs into service over the ensuing six months.⁵⁷

At present, Chicago’s WAV taxicab incentive program, supported by its Accessibility Fund, offers taxi medallion owners up to a \$20,000 subsidy for the conversion costs of a WAV and a \$25,000 subsidy toward the purchase of a factory-built WAV; a vehicle maintenance grant of up to \$8000 annually; and reimbursement subsidies to taxicab drivers that pay to lease and drive WAV taxicabs that serve passengers who use wheelchairs.⁵⁸ Drivers are eligible to apply for a \$15 subsidy for a 12-hour lease/\$30 subsidy for a 24-hour lease to help offset the higher fuel costs for WAVs.⁵⁹

According to CPED’s analysis of data from the city’s Data Portal on public passenger vehicles,⁶⁰ which includes licensed taxicabs (medallions), liveries, ambulances, medicars, charter-sightseeing buses, horse-drawn carriages, and pedicabs, CPED found that 399 vehicles were identified as “Wheelchair Accessible” as of April 7, 2019. Of those 399 WAVs, CPED found that 374 are listed as taxis; 20 as medicars; 4 as liveries; and 1 as a charter-sightseeing bus.

As such, the approach taken by Chicago to provide WAV service relies almost exclusively on its locally regulated taxi industry – a sector outside of the Commission’s regulation in California – although the incentives are funded by fees on both taxi and TNC trips. Notably, however, starting in November 2018, Chicago launched a pilot program establishing a WAV incentive for TNCs to increase the number

⁵⁴ <https://www.chicago.gov/city/en/depts/bacp/provdrs/vehic/news/2016/april/wavpr.html>.

⁵⁵

https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2017/april/Wheelchair_Accessible_Transit.html.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ <https://www.chicago.gov/content/dam/city/depts/bacp/publicvehicleinfo/medallionowners/20190116pvwavflyer.pdf>.

⁵⁹ *Id.*

⁶⁰ <https://data.cityofchicago.org/Community-Economic-Development/Public-Passenger-Vehicle-Licenses/tfm3-3j95>.

of WAV trips by allowing them to apply for a \$15 reimbursement subsidy per WAV trip service request performed through their platforms.⁶¹

3.3 Portland

In Portland, while there is no surcharge or fee collected specifically for the provision of WAV service yet, the city imposed a \$0.50 surcharge starting in 2016 on each taxi and TNC trip that originates in the city for purposes of program administration and enforcement.⁶² ⁶³ While CPED does not possess data on the current balance of this account, a media report in March 2018 indicated that \$6.7 million had been collected by the city since the surcharge was established, resulting in a \$3 million surplus in the fund.⁶⁴

Portland has also enacted an ordinance establishing specific accessible service requirements and performance guidelines⁶⁵ for TNCs that include authorization to implement an “Accessible Transportation Fee” and establish an “Accessible Transportation Fund.”⁶⁶ Based on that ordinance, the city established an Accessible Service Fund and has taken initial steps to establish an Accessible Service Program and incentive fee, called as “PDX WAV,”⁶⁷ to “provide better and more consistent [private for-hire transportation] Wheelchair Accessible Vehicle (WAV) service by helping to mitigate the higher costs of providing this service.”⁶⁸

At this time, Portland’s PDX WAV program primarily functions as a centralized dispatcher for WAVs, allowing customers to request a wheelchair accessible taxi by calling a single telephone number.⁶⁹ Customers can also utilize the Lyft and Uber apps to request a WAV, and an accessible vehicle is expected to arrive within 30 minutes.⁷⁰ While it has not been established at this time, Oregon Public Radio reported in April 2018 that a \$15 per trip WAV subsidy for taxis and TNCs was being contemplated.⁷¹

⁶¹

<https://www.chicago.gov/content/dam/city/depts/bacp/publicvehicleinfo/publicvehicle/newtnpwavinentivenotice20181106.pdf>.

⁶² Portland City Code § 16.40.220 available at <https://www.portlandoregon.gov/citycode/article/689630>.

⁶³ Portland TRN-3.450 available at <https://www.portlandoregon.gov/citycode/article/536367>.

⁶⁴ <https://www.kgw.com/article/news/investigations/portland-collects-3-million-more-than-it-needs-from-uber-and-lyft-passengers/283-527957254>.

⁶⁵ Portland TRN-14.29 available at <https://www.portlandoregon.gov/citycode/article/697330>.

⁶⁶ Portland City Code § 16.40.290 available at <https://www.portlandoregon.gov/citycode/article/689637>.

⁶⁷ <https://www.portlandoregon.gov/transportation/76679>.

⁶⁸ Portland TRN-14.30 available at <https://www.portlandoregon.gov/citycode/article/687965>.

⁶⁹ <https://www.portlandoregon.gov/transportation/76679>.

⁷⁰ *Id.*

⁷¹ <https://www.opb.org/radio/programs/thinkoutloud/segment/portland-new-plan-improve-wheelchair-accessible-ride->

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3.4 New York City

New York City also has a taxi accessibility program, the Taxi Improvement Fund (TIF), funded by a \$0.30 surcharge on all street hail yellow taxi⁷² and street hail livery (green) taxi⁷³ trips in the city. Enrolled drivers receive a \$1 for every trip made in a wheelchair accessible taxi, and drivers are still eligible for payments for trips made in WAVs even if the passenger is not a wheelchair user.⁷⁴ Taxi owners are also eligible to receive a one-time payment of \$14,000 to offset purchase costs and up to an additional \$4,000 a year for four years as financial assistance for owning and using a WAV vehicle (up to \$30,000 total over four years).⁷⁵ “For Hire Vehicle (FHV) Bases”⁷⁶ – a designation that covers the services provided by TNCs – do not currently pay into the fund. As such, FHV Base drivers are not currently eligible for the subsidy.

However, both taxis and FHV Bases are subject to requirements to provide WAV service. In New York City, FHV Bases are required to either dispatch a minimum percentage of their annual trips, increasing each year, to WAVs (known as “the Trip Mandate Rule”) or to work with an approved Accessible Vehicle Dispatcher to service WAV trips within certain wait time limits (“the Central Dispatch Exception”).⁷⁷ According to CPED’s analysis of data from the city’s Data Portal on for-hire vehicles,⁷⁸ CPED found that 625 vehicles were identified as “Wheelchair Accessible” as of April 7, 2019.

Under the Trip Mandate Rule, for the period beginning on January 14, 2019 through June 30, 2019, at least 5% of an FHV Base’s total trips must be completed by an FHV WAV.⁷⁹ Then, starting on July 1, 2019, the total trips that must be completed by an FHV WAV increases by 5% on an annual basis through 2022 when the trip percentage requirement reaches its goal of 25%:⁸⁰

[service/](#).

⁷² New York City Taxi and Limousine Commission Rule 58-26 available at https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_58.pdf.

⁷³ New York City Taxi and Limousine Commission Rule 82-26 available at https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_82.pdf.

⁷⁴ <https://www1.nyc.gov/site/tlc/about/taxi-improvement-fund-faq.page>.

⁷⁵ <https://www1.nyc.gov/site/tlc/about/tif-owner-program.page>.

⁷⁶ New York City specifically designates companies called “transportation network companies” (TNCs) in California as “high-volume for-hire vehicle (HVFHV) Bases.” However, as the rules discussed herein apply to FHV Bases, it is not necessary to distinguish them further as HVFHV Bases.

⁷⁷ New York City Taxi and Limousine Commission Rule 59B-17 available at https://www1.nyc.gov/assets/tlc/downloads/pdf/rule_book_current_chapter_59.pdf.

⁷⁸ <https://data.cityofnewyork.us/Transportation/For-Hire-Vehicles-FHV-Active/8wbx-tsck>.

⁷⁹ New York City Taxi and Limousine Commission Rule 59B-17(c)(1).

⁸⁰ https://www1.nyc.gov/assets/tlc/downloads/pdf/faq_fhv_accessibility_rule_information.pdf.

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Year	Start Date	End Date	Minimum percentage of trips to WAVs
1	January 14, 2019	June 30, 2019	5%
2	July 1, 2019	June 30, 2020	10%
3	July 1, 2020	June 30, 2021	15%
4	July 1, 2021	June 30, 2022	20%
5 and beyond	July 1, 2022	June 30, 2023	25%

Failing to meet the trip percentage requirement subjects the FHV Base to a penalty of \$50 for each 100 trips by which the FHV Base missed the percentage of trips it was required to dispatch to WAVs that year. For example, if an FHV Base dispatches 100,000 trips between July 1, 2018 and June 30, 2019, but only dispatches 2,500 trips to WAVs, the FHV Base will have missed the 5% requirement by 2,500 trips and be subject to a \$1,250 fine. If an FHV Base fails to dispatch enough trips to WAVs to meet at least half of its percentage requirement, it is subject to suspension or revocation of its license.

In the alternative to fulfilling the Trip Mandate Rule, an FHV Base may satisfy its WAV accessibility requirements through the Central Dispatch Exception by working with an approved Accessible Vehicle Dispatcher to service WAV trips rather than sending a minimum percentage of trips to WAVs each year.⁸¹ FHV Bases may opt into this exemption by 1) becoming an Accessible Vehicle Dispatcher, responsible for receiving and dispatching requests for WAVs from associated FHV Bases and dispatching WAVs on behalf of itself and its associated FHV Bases or 2) by associating with an approved Accessible Vehicle Dispatcher and sending its requests for WAVs to its associated Accessible Vehicle Dispatcher.⁸²

Under the Central Dispatch Exception, Accessible Vehicle Dispatchers must meet specified response time requirements as listed below:⁸³

- For 2019, the accessible vehicle dispatcher must service at least 60% of requests it receives in under 15 minutes and 90% in under 30 minutes (using June 2019 as a representative sample).
- For 2020, the accessible vehicle dispatcher must service at least 80% of requests it receives in under 15 minutes and 90% in under 30 minutes (using June 2020 as a representative sample).
- For 2021, the accessible vehicle dispatcher must service at least 80% of requests it receives in under 10 minutes and 90% in under 15 minutes (using June 2021 as a representative sample).
- The percentage of trips that meet the response times criteria must improve each quarter.

⁸¹ https://www1.nyc.gov/assets/tlc/downloads/pdf/faq_fhv_accessibility_pilot_wav_dispatchers.pdf.

⁸² New York City Taxi and Limousine Commission Rule 59B-17(f)(1).

⁸³ New York City Taxi and Limousine Commission Rule 59B-17(f)(3).

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If an Accessible Vehicle dispatcher fails to meet these response time requirements, they are granted 30 days to come into compliance. If it fails to do so, its approval to be an Accessible Vehicle Dispatcher may be terminated, immediately subjecting it to the Trip Mandate Rule requirements.⁸⁴

Notably, the FHV Base Central Dispatch Exception is the direct result of the settlement⁸⁵ of litigation⁸⁶ filed by Lyft, Uber, and another TNC called Via – which are regulated as FHV Bases in New York City – against the New York City Taxi and Limousine Commission in response to the Trip Mandate Rule.

3.5 Boston

In April 2019, Boston’s Massachusetts Bay Transportation Authority (MBTA) and the Massachusetts Department of Transportation (MassDOT) announced the initiation of one-year WAV subsidy pilot program with TNCs to offer on-demand transit.⁸⁷ Under the pilot, the TNCs will receive a \$24 per-hour subsidy for each hour that an Uber or Lyft WAV is available on their platforms within the service area where the city’s paratransit service, The RIDE, operates. TNCs will be reimbursed on a weekly basis by the MBTA according to the number of “WAV Supply Hours” – a measure of the availability of wheelchair-accessible vehicles for use by customers. The expected annual cost of this one-year pilot is approximately \$2.4 million, and the goal is to quadruple the WAV supply hours. The agencies estimate that this subsidy will cover approximately 50% of actual WAV supply cost with TNCs contributing the remainder.⁸⁸ This program is funded by the \$0.05 per-trip fee imposed by the State on TNC operations.⁸⁹

4. Establishment of Geographic Areas: Outcomes of Commission Workshops on December 5, 2018 and February 15, 2019

SB 1376 requires, by January 1, 2019, that the Commission begin conducting workshops with stakeholders with specified stakeholders “in order to determine community WAV demand and supply and to develop and provide recommendations on the establishment of geographic areas, criteria for Access Fund expenditures, and educational outreach objectives for on-demand services and

⁸⁴ New York City Taxi and Limousine Commission Rule 59B-17(f)(3)(iv).

⁸⁵ <https://www.politico.com/states/f/?id=00000163-fac8-dd00-af77-fef9518a0001>.

⁸⁶ <https://www.politico.com/states/f/?id=00000162-bfef-da97-a972-bfeff1140001>.

⁸⁷ <https://www.mbtta.com/news/2019-04-01/massdot-and-the-mbta-partner-transportation-network-companies-support-more>.

⁸⁸ *Id.*

⁸⁹ <https://www.bostonglobe.com/metro/2019/04/02/uber-lyft-state-fees-will-help-expand-wheelchair-accessible-vehicles-for-disabled-riders/SVnkybhUaYoir8HX3DXAMK/story.html>.

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partnerships.”⁹⁰ The law requires the Commission to conduct a minimum of 5 workshops throughout the State.⁹¹

To date, the Commission has hosted 2 public workshops: 1) December 5, 2018 in San Francisco and 2) February 15, 2019 in Sacramento.⁹² Concerning the establishment of geographic areas, the Commission posed the following questions for discussion at the workshops:

- Where should the Commission designate the “geographic areas” of the State for collection of the per-trip Access Fund fee and distribution of Access Fund moneys for on-demand transportation programs or partnerships to provide wheelchair accessible vehicle (WAV) service?
- What transportation planning areas exist that can inform the establishment of geographic areas to implement the Act? For example, should the Commission use assessments of WAV demand, metropolitan planning organization boundaries, city/county jurisdictional boundaries, or another method of establishing geographical boundaries?
- What information can be used by the Commission to determine WAV supply and demand throughout the State to establish the geographic areas?
- Are there existing quantitative assessments of demand for accessible transportation in regions of California that should be considered and used in the implementation of this program? If not, what quantitative demand assessment tools should be considered?

In the following section, CPED summarizes the discussions on the establishment of the geographic areas that took place during the December 5, 2018 and February 15, 2019 workshops.

4.1 Where to Establish the Geographic Areas

Concerning where the Commission should designate the geographic areas, workshop participants representing transportation and transit agencies⁹³ and disability rights organizations or persons with disabilities⁹⁴ encouraged the Commission to ensure that all areas of the State were covered by the geographic areas designated by the Commission.

Transportation and transit agencies generally recommended establishing the geographic areas along county boundaries but did not express support for utilizing metropolitan planning organization (MPO) boundaries or transit operator service areas due to their size or overlapping service areas.

⁹⁰ Pub. Util. Code § 5440.5(a)(1)(A).

⁹¹ *Id.*

⁹² Recordings and copies of the presentations from these workshops are available at <http://www.cpuc.ca.gov/tncaccess/>.

⁹³ Entities represented include Central Contra Costa Transit Authority (CCCTA), Los Angeles Department of Transportation (LADOT), Marin Transit, San Francisco Municipal Transportation Agency (SFMTA), and San Mateo County Transit District (SamTrans).

⁹⁴ Entities represented include Center for Accessible Technology (CforAT), Center for Independent Living (TheCIL), Disability Rights California (DRC), Disability Rights Education & Defense Fund (DREDF), San Francisco Mayor’s Office on Disability (SF MOD).

Transportation and transit agencies noted that challenges have existed for a long time in providing paratransit service across county boundaries due to how funding is apportioned locally. Since the fee is collected from the geographic area where the trip originates, SamTrans emphasized the importance of figuring out how to provide on-demand WAV service across county boundaries. SFMTA noted that cross-county roundtrips are common so, if a fee is collected for one county for a departure trip, it will be collected for the other county on the return trip.

Transportation and transit agencies generally agreed on the following factors for establishing the geographic areas:

- understanding where TNCs provide service
- how TNCs group markets together, and
- where TNCs intend to provide WAV service versus looking to others to meet demand

In specific consideration of how the geographic areas determine the distribution of collected funds, Center for Accessible Technology (CforAT) and Disability Rights California (DRC) expressed support for establishing the geographic areas regionally rather than by individual county. Counties with large populations where many TNC trips occur will generate more revenue, which will be needed to provide service in those areas, but establishing the geographic areas regionally – grouping markets together – would also allow the moneys from those areas to be used to provide funding for accessibility improvements at a meaningful scale in counties where fewer TNC trips occur (and therefore fewer funds would be collected) but demand for WAVs still exists. CforAT observed that designating the geographic areas may need to be an iterative process.

Uber explained that it looks at providing service in terms of broader markets, such as the San Francisco Bay Area, not strictly at county boundaries, and that having the funds apportioned by the State can help to overcome local funding barriers. Uber encouraged the Commission to establish Los Angeles County and the 12 counties that constitute the company’s “San Francisco Service Area,” which include Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma,” as the program’s geographic areas.

Uber stated that Los Angeles and its San Francisco Service Area represent about 80% of their TNC demand. Uber explained that, through a partnership with fleet provider MV Transportation to deliver “UberWAV”⁹⁵ service in Los Angeles and its San Francisco Service Area, the company has observed trends indicating a strong demand for on-demand WAVs such that, in the last 6 months, Uber has seen a 24x increase in unique monthly WAV riders and a 30x total increase in WAV trips. Because TNC demand is greatest in these geographic areas, Uber suggests using these areas as a baseline to learn about providing WAV service before launching into other areas, adding that the purpose of the bill is to foster innovation.

Uber argued that allowing for the establishment of specific geographic areas, rather than collecting the fee in all areas of the State, was intended to create a competitive balance so that incentives exist

⁹⁵ <https://www.uber.com/ride/uberwav/>

for TNCs to meet certain levels of service, where they opt to do so directly, instead of having to remit money to the State for distribution to access providers. If the geographic areas are overly inclusive, Uber claimed there is less incentive for them to invest further in those areas, bringing down the average level of service. Uber also noted that they only provide service in 28 of the State's 58 counties.

4.2 Determining WAV Supply and Demand

SB 1376 requires that the geographic areas be established "based on demand for WAVs within the area and selected according to the outcomes of the workshops."⁹⁶ Disability Rights California noted that data from both TNCs and transportation and transit agencies would be useful to understand WAV demand.

Lyft and Uber emphasized the need to obtain data from municipal transportation and transit agencies about WAV supply and demand that they argued these entities possess as a result of providing paratransit services. Lyft specifically cited the need for data on WAV supply including weekly driver hours and WAV utilization; the prevalence and pricing of existing transportation; and information about demand such as the number of people in fixed-frame wheelchairs and their population density; the transportation budgets of wheelchair users; the number of weekly WAV trips per user; the average estimated time of arrival of current WAV service; peak demand hours for WAVs; and the WAV request/pick-up conversion rate.

Uber noted that, using overall TNC trip data, they understand where TNC demand exists broadly. Uber believes that WAV demand will mirror overall TNC demand. Uber used its data on TNC demand to target the location of its partnership with MV Transportation to pilot WAV service in its Los Angeles and the San Francisco Service Areas. Using U.S. Census data from the 2013-2017 American Community Survey, Uber calculated that 45% of all California residents with "Ambulatory Disability" reside in the Los Angeles and San Francisco Service Areas.

Transportation and transit agencies similarly agreed that demand for WAV trips will be consistent with where demand for TNC trips currently exists. As such, they argued that the establishment of geographic areas should be informed by TNC trip data because that data shows demand. Marin Transit and SFMTA also emphasized that a significant latent demand for TNC WAV service exists because wheelchair users are aware that TNCs do not currently offer on-demand WAVs and, therefore, they do not attempt to utilize them. As such, understanding the actual demand for TNC WAVs will be informed by the actual experience of providing them on-demand. CabConnect, a software company that processes payment for transportation services including paratransit, similarly noted that demand for WAVs is broad and not limited to dense urban areas.

Transportation and transit agencies also asserted that they lack data on WAV demand or that the data they collect does not reflect the demand for TNC WAV service. CCCTA noted that a lack of good information exists beyond attempting to extrapolate demand from the number of applicants for paratransit service and the number of wheelchair users who use fixed-route services. Marin Transit and SFMTA explained that the profiles of paratransit riders and wheelchair users who would utilize on-

⁹⁶ Pub. Util. Code § (a)(1)(D).

demand WAV service are different. Paratransit has specific eligibility requirements, as the service is provided to individuals who cannot use fixed-route services, so it does not fully represent WAV demand. By providing on-demand WAV service, TNCs would be tapping into a new market.

5. Analyses of WAV Supply and/or Demand

5.1 TCP “Handicapped Accessible” Vehicles and TNC Accessibility Data

In California, the “Passenger Charter-party Carriers’ Act”⁹⁷ is the statute governing the vast majority of transportation providers⁹⁸ (including TNCs), referred to as transportation “charter party carriers” (TCPs), that are regulated by the Commission. As of January 31, 2019, there were 6,734 regulated passenger carriers, most of which are for-hire transportation providers designated as TCPs, whose authorities were active or suspended.⁹⁹

The Passenger Charter-party Carriers Act contains numerous relevant exemptions, described in Pub. Util. Code § 5353, that distinguish the State from many municipalities. In particular, the Passenger Charter-party Carriers’ Act does not apply to the following (*italics added*):

(a) Transportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance.

(g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver.

(i) Vehicles used exclusively to provide medical transportation, including vehicles employed to transport developmentally disabled persons for regional centers established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

As such, unlike Seattle, Chicago, Portland, or New York, the Commission does not regulate the taxi industry, which is utilized extensively either by incentive or mandate or both, to provide WAV service in those jurisdictions.

Furthermore, concerning “medical transportation,” in a 1991 Decision, the Commission found that if a “*vehicle were to provide service solely to wheelchair (or gurney) users and persons accompanying them, it would clearly be within the classification of ‘medical transportation vehicle’ (cf. Jerry’s Ambul-Cab Decision No. 90069 in Application No. 10125 and related cases); under Public Utilities (PU) Code § 226(d), its operation would not be subject to this Commission’s jurisdiction.*”¹⁰⁰ (*italics added*)

⁹⁷ Pub. Util. Code §§ 5351-5450.

⁹⁸ Laws governing “passenger stage corporations,” entities which provide common carrier transportation services between fixed termini or over a regular route, are contained in Pub. Util. Code §§ 1031-1046.

⁹⁹ CPED Monthly Activity Report for January 2019 available at <http://cpuc.ca.gov/cpedreports/>.

¹⁰⁰ D.91-09-053 (Slip Opinion at 2.)

Therefore, in contrast to the “medicars” in Chicago that provide 20 WAVs under regulation by the city, these transportation providers are also outside of the Commission’s jurisdiction.

When a charter party carrier (TCP) applies for an operating authority from the Commission, or applies to transfer it, the applicant is required to complete and sign a form which states, in relevant part, the following: *“I (we) (we) further certify (or declare), under penalty of perjury, that a final judgment has not been entered against the applicant(s) pursuant to Section 3716.2 of the Labor Code (workers’ compensation violations) and **that I (we) am (are) in compliance with the Americans with Disabilities Act of 1990 as required by D.92-12-065.**”*¹⁰¹ (emphasis added) A TNC applicant must also complete and sign a similar form in its application that contains an identical statement.¹⁰²

For TCPs, the Commission maintains a list of the vehicles, all of which must be registered as “commercial” vehicles, that the carrier is authorized to use. When a TCP seeks to include a particular vehicle for use under the operating authority issued by the Commission, the carrier must submit a form called a “Passenger Carrier Equipment Statement”¹⁰³ which, among other things, requires the carrier to check a box on the form indicating “Yes” or “No” that the vehicle is “Handicapped Accessible.”¹⁰⁴

To estimate the number of WAVs available among TCPs, CPED analyzed the vehicle data in its Transportation Management Information System (TMIS) and identified, as of April 4, 2019, an estimated 975 “Handicapped Accessible” vehicles and 220 carriers that offered at least one “Handicapped Accessible vehicle.”¹⁰⁵ However, this total is only a general estimate of the stock of TCP vehicles that could be used as WAVs and should not be relied on as a precise assessment of the number of TCP vehicles that may be available to provide WAV service under this new program.

Although TNCs are also regulated as charter party carriers,¹⁰⁶ they are a unique subtype that relies on drivers using their “personal vehicles,”¹⁰⁷ and TNCs are not permitted to themselves own vehicles used in their operation or own fleets of vehicles. A “personal vehicle” must have a seating capacity of

¹⁰¹ PL 739 Form available at

[http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/2.%20PL739%20Application%20Pages%20\(rev.%200518\).pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/2.%20PL739%20Application%20Pages%20(rev.%200518).pdf).

¹⁰² PL 739-TNC Form available at

[http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/TNC%20Application%20Form%20\(rev.%201017\).pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/TNC%20Application%20Form%20(rev.%201017).pdf).

¹⁰³ PL 664 Form available at

http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/PL664_102018.pdf.

¹⁰⁴ Reporting this information is required by Commission General Order 157, Part 4.01. However, the phrase “Handicapped Accessible” is not a defined term and, therefore, this information may be reported inconsistently by carriers.

¹⁰⁵ For purposes of this calculation, CPED excluded vehicles with a seating capacity of more than 30 seats and excluded TCP class “C” and “S” permit holders.

¹⁰⁶ D.13-09-045, Conclusion of Law #6 at 71.

¹⁰⁷ Pub. Util. Code § 5431 available at

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC§ionNum=5431.

eight persons or less (including the driver),¹⁰⁸ and be owned, leased, rented by the driver for a term that does not exceed 30 days.¹⁰⁹ The Commission does not require TNCs to complete a Passenger Carrier Equipment Statement and therefore does not maintain any record of the number of WAVs utilized on TNC platforms in California. However, the Commission does collect data, reported on an annual basis by TNCs and posted publicly on the Commission’s website, the total number of customer requests for “Accessible Vehicles,”¹¹⁰ total percentage of customer rides with Accessible Vehicles, and total number of fulfilled Accessible Vehicle requests.¹¹¹

5.2 Analysis of Transit Patterns, Availability of Paratransit Service, and an Estimated Demand for Accessible Transit from TNCs

In February 2019, a study commissioned by the American Association of People with Disabilities (AAPD)¹¹² estimated the current unmet needs for transportation among individuals with a disability using data from the U.S. Department of Transportation (DOT) to analyze the travel patterns of these populations as well as publicly available data from regional transit authorities, including Los Angeles County Metropolitan Transit Authority (LA Metro), San Diego Metropolitan Transit System (MTS), and San Francisco Municipal Transportation Agency (SFMTA), to identify the average number of paratransit vehicles in operation per capita. Using data from the U.S. DOT, U.S. Census Bureau, and other sources, AAPD’s study also approximated aggregate demand for accessible vehicles in several metropolitan areas of the country including “San Francisco/Oakland” in California.

Concerning transit patterns, AAPD’s study found that, compared to the non-travel limited population, the wheelchair-using and the travel-limited populations are six times more likely to live in zero vehicle households, and the motorized wheelchair-using population is eight times more likely.¹¹³ In addition, a vehicle-owning wheelchair user on average travels less frequently than a non-vehicle owner who is not travel-limited.¹¹⁴

Concerning public transit and paratransit services, AAPD’s study calculated the ratio of paratransit vehicles per 100,000 metro population and found 18.05 in Los Angeles, 5.21 in San Diego, and 17.11 in

¹⁰⁸ Pub. Util. Code § 5431(a)(1).

¹⁰⁹ Pub. Util. Code § 5431(a)(2).

¹¹⁰ D.13-09-045 does not define “accessible vehicle” specifically, but the Decision makes numerous references to “wheelchair accessible vehicles.” In addition, what actions taken by a TNC constitute a “fulfilled” accessible vehicle request is not defined.

¹¹¹ Available at <http://www.cpuc.ca.gov/General.aspx?id=3046>.

¹¹² des Cognets, J. and Rafert, G. (2019). *Assessing the Unmet Transportation Needs of Americans with Disabilities*. Retrieved from American Association of People with Disabilities Website: <https://www.aapd.com/advocacy/transportation/assessing-the-unmet-transportation-needs-of-americans-with-disabilities/>

¹¹³ *Id.* at 7.

¹¹⁴ *Id.* at 8.

San Francisco.¹¹⁵ In comparison, using New York City as an example, there are 155 taxis per 100,000 and nearly 800 for-hire vehicles per 100,000.¹¹⁶ AAPD's study concludes that, in these large metropolitan areas, "[T]he number of available paratransit vehicles is too low to provide reliable, on-demand, transportation to the travel-limited and wheelchair-using populations."¹¹⁷

Using U.S. Census Bureau and U.S. DOT data, AAPD's study also presented a general approximation of aggregate demand for accessible vehicles in several metropolitan areas including San Francisco/Oakland:¹¹⁸

Table 2
Demand for Accessible Transit - Ridesharing Fleets

Metropolitan Area	Population	Travel-Limited Population	Daily Trips	Accessible Vehicles Supported
Washington, D.C.	6,200,000	290,301	1,248,294	39,009
Boston, MA	4,790,000	224,281	964,408	30,138
San Francisco/Oakland, CA	4,700,000	220,067	946,288	29,571
Phoenix, AZ	4,660,000	218,194	938,234	29,320
Nashville, TN	1,900,000	88,963	382,542	11,954
United States	328,900,000	15,400,000	66,220,000	2,069,375

Notes:

- [1] Assumes approximately 4.7% American average rate of travel-limitation applies equally to each metropolitan area's general population.
- [2] Assumes 4.3 trips per person per day.
- [3] Assumes each WAV vehicle can support 32 trips per day (4 trips per hour over 8 hours per day).

Sources:

- [A] U.S. Census Bureau.
- [B] Discussions with ridesharing companies.
- [C] DOT Survey Analysis.

5.3 Analysis of Demand from TNC Annual Report Trip Data (2017-2018)

In order to understand the potential demand for WAVs throughout the State, CPED analyzed trip location data collected from TNCs in their most recently submitted Annual Reports¹¹⁹ covering the period of September 1, 2017 through August 31, 2018. CPED presents this data using dot-density maps, representing aggregate data, to show TNC trips statewide¹²⁰ and more distinctly in the regions of Los

¹¹⁵ *Id.* at 12.

¹¹⁶ *Ibid.*

¹¹⁷ *Id.* at 13.

¹¹⁸ *Id.* at 14.

¹¹⁹ <http://www.cpuc.ca.gov/general.aspx?id=3989>.

¹²⁰ Attachment 01 (California TNC Rides).

(continued on next page)

Angeles,¹²¹ San Francisco,¹²² San Diego,¹²³ Sacramento,¹²⁴ and the Central Valley.¹²⁵ In addition, to show the aggregate proportional distribution of TNC trips throughout the State by county, CPED presents this information as a treemap.^{126, 127}

TNC demand in California is most densely concentrated in just two counties: Los Angeles and San Francisco. More than half of all TNC trips in California were provided in these two counties during the 2017-18 reporting period. More regionally, in Northern California, TNC trips are concentrated in San Francisco, Alameda, Santa Clara, and San Mateo Counties while, in Southern California, they are concentrated in Los Angeles, Orange, and San Diego Counties.

6. Establishment of Geographic Areas

Concerning the establishment of the geographic areas, CPED presents two options to the Commission:

Option 1: Initially establish each of the following counties as distinct geographic areas: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara. Option 1 is CPED's recommended option.

Option 2: Establish each county in the State as a distinct geographic area.

CPED staff recommends Option 1 as these geographic areas are based on known TNC demand, which is expected to mirror demand for WAV service from TNCs, and these nine counties represent where the vast majority of TNC trips occur in California. Limiting the initial implementation of this program to these counties also enables the Commission to learn about the program before implementing it more broadly.

As an initial matter, it is necessary to distinguish the multiple functions assigned to a "geographic area" and on what criteria SB 1376 states that the selection of the geographic areas must be based. Fundamentally, a geographic area is the unit within which implementation of the law occurs. The geographic area is where the fee, on each completed "TNC trip" that originates in that area, is collected.¹²⁸ For moneys remitted to the Access Fund, the geographic area is where moneys must be

¹²¹ Attachment 02 (Los Angeles Area TNC Rides).

¹²² Attachment 03 (San Francisco Bay Area TNC Rides).

¹²³ Attachment 04 (San Diego Area TNC Rides).

¹²⁴ Attachment 05 (Sacramento Area TNC Rides).

¹²⁵ Attachment 06 (Central Valley Area TNC Rides).

¹²⁶ Attachment 07 (California TNC Trips by County).

¹²⁷ Due to data visualization limitations, only the top 32 counties by number of TNC trips are depicted in Attachment 07. The number of TNC trips in the remaining 26 counties are proportionally too few to meaningfully visualize as the tiles would be extremely small.

¹²⁸ Pub. Util Code § 5440.5(a)(1)(B)(i).

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distributed in a manner proportional to the percent of Access Fund fees originating in a geographic area.¹²⁹ For purposes of offsetting, or being exempted from, their remittance of Access Fund fees, the geographic area is also the unit within which TNCs must demonstrate that they have satisfied the criteria established by the Commission to be granted an offset¹³⁰ or exemption.¹³¹

Concerning the criteria that must be used to select the geographic areas, SB 1376 states that they must be based on demand for WAVs within the area and according to the outcomes of workshops that the law mandates be conducted.¹³²

A. CPED Proposal: Establish Specific Counties as Individual Geographic Areas for Initial Implementation of the TNC Access for All Program

Using the areas where demand for TNC trips has been identified through analysis of TNC trip data and in light of the discussion during the workshops that demand for WAV trips will mirror demand for non-WAV trips, CPED recommends that the Commission select a limited number of distinct counties as the geographic areas for initial implementation of this program.

Specifically, CPED recommends that the following counties each be established as a separate, distinct geographic area: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, San Francisco,¹³³ San Mateo, and Santa Clara. A substantial majority of all trips provided by TNCs in California originate in these counties.

SB 1376 takes a novel approach in its mandate for a new state program to provide on-demand transportation to meet the needs of wheelchair users who need a WAV. While programs based on the collection of fees on TNC trips to subsidize on-demand WAV service are being implemented in other jurisdictions, including Seattle and Chicago, these are local programs that are implemented under different regulatory frameworks. Unlike the Commission in California, these municipalities regulate taxis, for-hire vehicles, and TNCs. As a result, they have more direct control over each type of entity that can be utilized to provide WAV service. Collection and distribution of moneys can all occur within each municipality's regulated transportation industry and, therefore, more certainty exists in how the programs are implemented. In these municipalities with fees on TNC trips for accessible transportation, taxis have been used as a primary source of WAVs, and the moneys collected have been used to provide incentives to taxi owners and drivers and/or to support their fulfillment of WAV service level mandates.

Because TNCs are regulated statewide in California rather than locally, SB 1376 mandates fee collection on TNC trips and apportionment of the fund by the State. Rather than simply make the funds available to their locally-regulated transportation providers as municipalities do to subsidize on-demand WAV service, the law being implemented by the Commission requires entities called "access

¹²⁹ Pub. Util Code § 5440.5(a)(1)(D).

¹³⁰ Pub. Util Code § 5440.5(a)(1)(B)(ii).

¹³¹ Pub. Util Code § 5440.5(a)(1)(G).

¹³² Pub. Util. Code § 5440.5(a)(1)(D).

¹³³ The reference to San Francisco as a county includes its designation as a city and county.

providers” to apply for funding.¹³⁴ Presumably, municipalities could apply as access providers if they directly provide, or contract a separate organization or entity to provide, on-demand WAV service.

Unlike the WAV programs in other jurisdictions, SB 1376 envisions possible significant reliance on TNCs to invest in WAV service by affording them the ability to spend the funds themselves, by offsetting or exempting remittance to the State of per-trip fees they collect, if they fulfill criteria established by the Commission. However, the extent to which TNCs may avail themselves of the ability to offset or exempt their remittances by investing in WAV service is unknown at this time. Uber launched its partnership with MV Transportation, which includes Los Angeles and San Francisco, in November 2018 – fewer than six months ago – and Lyft only provides referrals to local accessible vehicle dispatch services, not any actual WAV service, at this time.

In addition to basing the establishment of geographic areas on where known TNC demand exists, there are practical administrative benefits to selecting a limited number of geographic areas for initial implementation of the new program. The distribution of the collected fees on a competitive basis to access providers; the determination of whether and to what extent a TNC has satisfied required criteria to be granted remittance offsets; the determination of whether a TNC has achieved a designated level of WAV service, including satisfactory trip response times, to be granted a remittance exemption; and the establishment of yearly benchmarks to ensure that WAV users receive continuously improved, reliable, and available service are all performed for each geographic area established by the Commission. Given that this is a new program and uncertainty exists in how the Access Fund will be administered – including how many applications for funding are received and to what extent TNCs seek offsets or exemptions – CPED recommends starting this program with a limited number of geographic areas so that the Commission can learn about the different features before it implements the program more broadly.

B. Alternative to CPED Proposal: Establish Each County in California as a Distinct Geographic Area for Initial Implementation of the TNC Access for All Program

As an alternative to CPED’s recommendation, CPED proposes that the Commission establish each county in the State as a geographic area to ensure that moneys collected in the Access Fund may be distributed throughout the entire State. This recommendation is based on the discussions that demand for “on-demand” WAVs is likely to be latent due to the relative absence of this transportation option today as well as data from U.S. DOT suggesting that demand for WAVs is being unmet.

Under this option, by allowing the fee to be collected on each TNC trip in the State, moneys in the Access Fund would be available upon application from an access provider to improve WAV service in any county – even if in relatively small amounts. Although Access Fund moneys must be allocated for use in each geographic area in a manner that is proportional to the percent of the Access Fund fees originating in a geographic area, SB 1376 contains no apparent prohibition on an access provider seeking funding to provide on-demand WAV service in more than one geographic area, allowing for

¹³⁴ Access providers means “an organization or entity that directly provides, or contracts with a separate organization or entity to provide, on-demand transportation to meet the needs of persons with disabilities.” (Pub. Util Code § 5431.5(a)).

the possibility that funds from more than one geographic area could be “pooled” together to improve WAV service at a meaningful scale, so long as the access provider fulfills the requirements and provides the required information for each geographic area served.¹³⁵

Importantly, however, CPED does not recommend that the Commission combine counties into geographic area “regions” initially. Although such designations would allow Access Fund moneys to be more broadly distributed to provide funding for accessibility improvements within counties where fewer TNC trips occur, regional geographic areas may substantially impact the measurement of a satisfactory trip response time – a key WAV service level requirement for remittance offsets and exemptions – depending on the size and composition of the geographic area region. Ultimately, selection of the geographic areas is likely to be an iterative process, and designation of regional geographic areas may be feasible after the Commission has information about how the program is being implemented.

7. Access Fund Fee

SB 1376 requires each TNC to pay, on a quarterly basis to the Commission, an amount equivalent to, at a minimum, \$0.05 for each “TNC trip” completed using the TNC’s online-enabled application or platform that originates in a geographic area selected by the Commission.¹³⁶ The Commission is allowed to adjust the fee in each geographic area to different levels based on “the cost of providing adequate WAV service within the geographic area.”¹³⁷ The law also requires that the TNCs charge its customers the full amount of the per-trip fee on each completed TNC trip.¹³⁸

As an initial matter, because “TNC trip” is not defined, it is necessary to distinguish its meaning. The statutory definition of a TNC is “an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”¹³⁹ (underline added)

While a TNC’s online-enabled application or platform is most commonly used to connect passengers with drivers using a “personal vehicle,” the applications or platforms may also be used to connect passengers exclusively to TCP carriers regulated by the Commission. Such services include

¹³⁵ CPED also notes that, when the criteria for access fund expenditures are established, there is no apparent prohibition in SB 1376 on allowing an access provider to utilize moneys to subsidize trips across counties even if only one of those counties is selected as a “geographic area.”

¹³⁶ Pub. Util. Code § 5440.5(a)(1)(B)(i).

¹³⁷ *Id.*

¹³⁸ Pub. Util. Code § 5440.5(a)(1)(B)(ii).

¹³⁹ Pub. Util. Code § 5431(c).

UberBLACK, UberSUV, and UberLUX that are offered to passengers under the Uber’s authority as a TCP, not as a TNC.¹⁴⁰

If it was the case that the per-trip fee was intended to be applied to both trips provided by passengers using a personal vehicle (offered under the company’s authority as a TNC) as well as trips provided by TCP carriers that utilize commercial vehicles (offered under the company’s authority as a TCP), there would be no reason for the law to identify that the fee is applied to a “TNC trip” completed using the TNC’s online-enabled application or platform when the word “trip” alone would have sufficed. CPED’s interpretation is that the use of the phrase “TNC trip” is meant to include only those transportation services that are offered under its authority as a TNC despite other trips being available through the company’s online-enabled application or platform.

A. CPED Proposal: Establish a Uniform Per-Trip Fee of \$0.10 in Each Geographic Area

CPED recommends that the Commission establish a uniform per-trip fee of \$0.10 per “TNC trip” in each geographic area. While the law allows the fee to be adjusted based on “the cost of providing adequate WAV service within the geographic area,” CPED does not believe that the Commission possesses adequate information at this time about the cost to provide “adequate WAV service” to justify setting any area-specific fees.

In Seattle, wherein a \$0.10 per-trip “Wheelchair Accessible Services” surcharge is imposed on TNC trips, the city estimated that the fee would result in \$850,000 annually. Chicago similarly imposes \$0.10 fee on TNCs for each trip provided by a non-accessible vehicle. While the total amounts of money collected for the Access Fund depends entirely on how the Commission selects the geographic areas, it is a practical certainty that a \$0.10 fee would result in the collection of tens of millions of dollars. The San Francisco County Transportation Authority (SFCTA) estimated that TNCs make over 170,000 vehicle trips within San Francisco on a typical weekday.¹⁴¹ Using that estimate to calculate the number of trips annually yields 62,050,000 trips annually in San Francisco. As such, a \$0.10 fee yields equals \$6,205,000.

In the initial implementation of this program, CPED is concerned about the possibility of ordering TNCs to collect significantly more from passengers for remittance to the Access Fund than “access providers” are prepared to utilize and/or significantly more than the TNCs themselves are prepared to invest directly in providing WAV service. Ultimately, it is important to bear in mind that the per-trip fee is mandated to be passed through to consumers. Therefore, as is the case in Seattle and Chicago, CPED recommends that the Commission impose a fee of \$0.10 per trip to provide funding for WAV service. CPED believes a \$0.10 fee will result in a reasonable amount of funding in the Access Fund for initial implementation of this program.

¹⁴⁰ D.18-04-005 at 4.

¹⁴¹ https://www.sfcta.org/sites/default/files/content/Planning/TNCs/TNCs_Today_112917.pdf.

B. CPED Proposal: Present the Fee as a Line-Item “Access Fund Fee” and Remit Payments in Accordance with PUCTRA

CPED recommends that the fee be identified as a line-item on receipts and proposes that it be identified as the “Access Fund Fee.” Presentation of the fee should also be accompanied by a link to each TNC’s website wherein consumers can obtain information about the fee and the accompanying program. CPED recommends that TNCs be required to work with organizations representing persons with disabilities to ensure that the information provided is appropriate and nondiscriminatory.

CPED further recommends that quarterly Access Fund fees be due on the schedule of reporting and payments to the PUC Transportation Reimbursement Account (PUCTRA).

8. Access Fund Fee Offsets

Background

By mandating collection of a fee on a regulated transportation provider to be used to provide on-demand WAV service, SB 1376 essentially establishes the TNC Access for All Fund for that purpose and makes it available to two categories of entity: TNCs and “access providers.” SB 1376 then assigns responsibility to the Commission to determine what these entities must demonstrate to be allowed to provide services using the Access Fund and, if authorized to do so, what information they must provide to account for how it has been spent.

SB 1376 establishes substantially similar minimum criteria that both access providers and TNCs must satisfy in order to be authorized to use the public’s money. When an access provider applies to the Commission for funds, which the law states it may do beginning on April 1, 2020, an access provider is required to demonstrate, at a minimum, how it will “**improve response times** for WAV service compared to the previous year, the **presence and availability of WAVs** within the geographic area, and efforts undertaken to **publicize and promote available WAV services** to disability communities.”¹⁴² (emphasis added) The law then states that, by July 1, 2020, that the Commission shall select “on-demand transportation programs and partnerships to receive funding”¹⁴³ (presumably referring to access providers) and will distribute funds “within 90 days following the end of each year.”¹⁴⁴ If an access provider receives funding, it must submit a quarterly report that contains, among other things, “[a] detailed description of expenditures or investments, as applicable.”¹⁴⁵

Similarly, to offset against the amounts due for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area, SB 1376 states that the TNC must “demonstrate, in the geographic area, **the presence**

¹⁴² Pub. Util. Code § 5440.5(a)(1)(E).

¹⁴³ Pub. Util. Code § 5440.5(a)(1)(E).

¹⁴⁴ Pub. Util. Code § 5440.5(a)(1)(F).

¹⁴⁵ Pub. Util. Code § 5440.5(a)(1)(I)(v).

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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.**¹⁴⁶ (emphasis added)

While the law calls for access providers to be selected by July 1, 2020, because the fee must be collected on TNC trips starting on July 1, 2019 and be paid quarterly and because TNCs can already make investments in WAV service in a geographic area, ostensibly, they could also be granted offsets from quarterly remittances (thereby reducing the amount of money remitted to the Access Fund for use by access providers) whenever the Commission establishes criteria that they must satisfy in order to offset their quarterly payments.

As the law mandates that the fee collection begin on July 1, 2019 and that payments to the Access Fund be remitted quarterly, the first payment would be due on a date after September 30, 2019. However, the law requires that a comparison be made between the quarter within which an offset is requested and the “previous quarter.” As such, for purposes of the first quarter of fee collection, the previous quarter would be April 1, 2019 through June 30, 2019 during which no fee collection would have occurred.

A. CPED Proposal: Establish the Criteria for Offsets in a Timely Manner after Selection of the Geographic Areas

CPED recommends that the Commission establish the criteria for offsets after selection of the geographic areas. As a practical matter, since offsets must be requested by geographic area, what constitutes a “reasonable response time” in each geographic area must be determined after the Commission has established the geographic areas.

More importantly, however, the establishment of criteria for offsets is a significant step in implementation of this new program that does not need to occur at the same time as the establishment of the geographic areas or the designation of the per-trip fee amount. For access providers, such criteria need to be established by April 1, 2020 when applications may be accepted.

Ultimately, the Commission is tasked with setting the criteria to ensure that the public’s money is appropriately spent by TNCs and access providers, and the Commission will solicit input and comments from stakeholders on how to ensure that both access providers and TNCs are held accountable for doing so.

Since the law designated an “improved level of service... due to those investments in WAV service”¹⁴⁷ as a criterion in the law, the Commission must have a baseline from which to measure any improvement in each geographic area. Since TNCs have largely taken little to no meaningful action to date in most areas of California to provide WAV service, the baseline in many areas of the State may be very low. As such, particularly in the first quarter, TNCs could largely claim that any moneys spent

¹⁴⁶ Pub. Util. Code § 5440.5(a)(1)(B)(ii).

¹⁴⁷ *Id.*

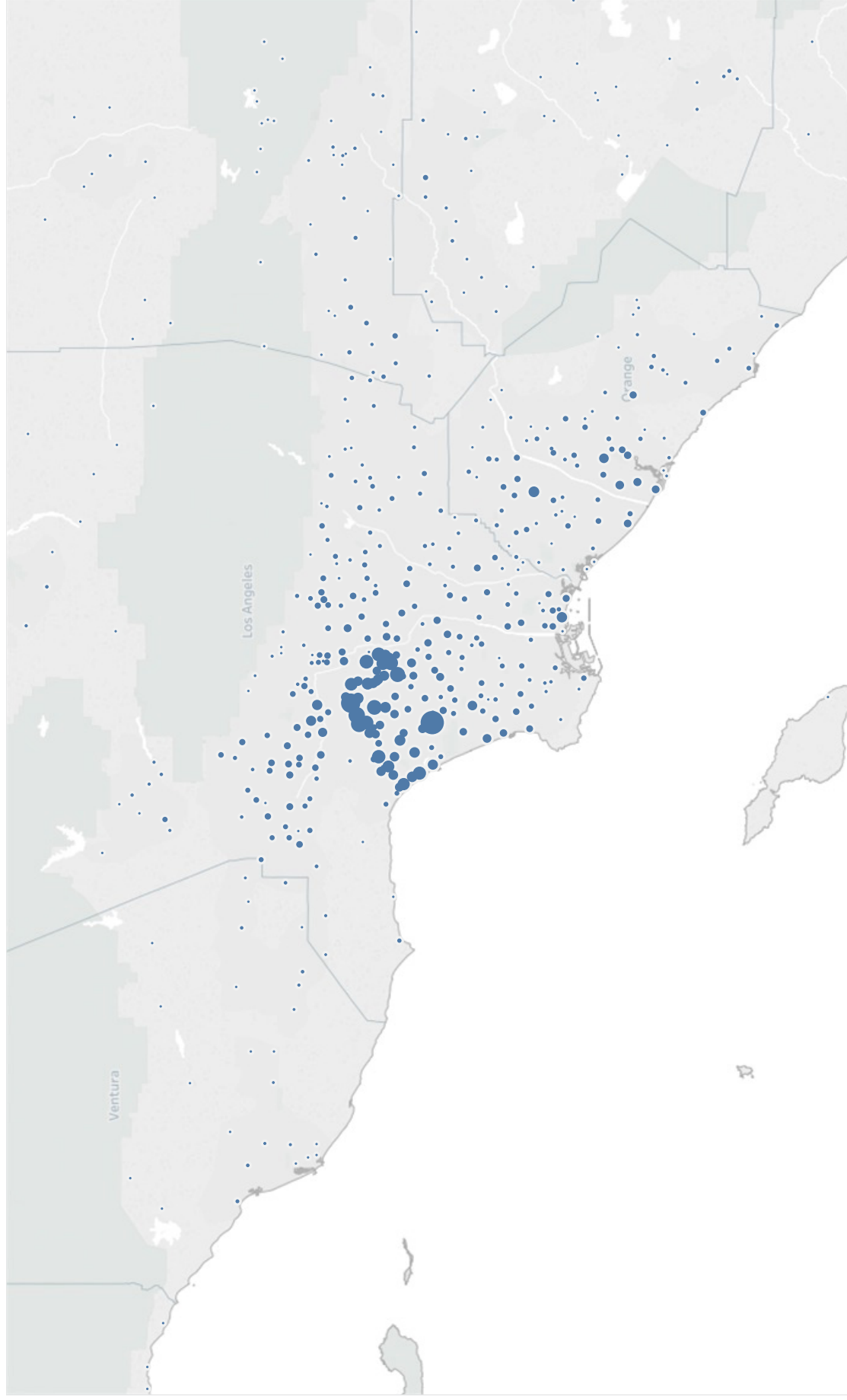
to provide WAV service, without regard to the efficiency of those expenditures, have resulted in “an improved level of service.” The law also allows “efforts undertaken to publicize and promote available WAV services to disability communities” to be counted in the calculation of an offset.¹⁴⁸ For example, while delivering information about the availability of WAVs is a necessary and important action for the success of the program, particularly because of a general awareness that TNCs have not served the needs of wheelchair users, expensive marketing campaigns may not be an appropriate use of Access Fund moneys.

Moreover, the Commission must determine what data needs to be collected in order to evaluate if the TNCs have spent the money effectively. CPED is concerned about the use of the public’s money and its potential to be utilized ineffectively by TNCs if specific criteria governing how the money can be spent and how it must be accounted for are not put in place first. Although TNCs may already have programs providing WAV service in California, even after the fee is imposed, it is CPED’s position that TNCs are not entitled to claim any of the public’s money, simply because they are required to collect it, until the Commission establishes controls on its use and accountability measures to verify that its being spent appropriately.

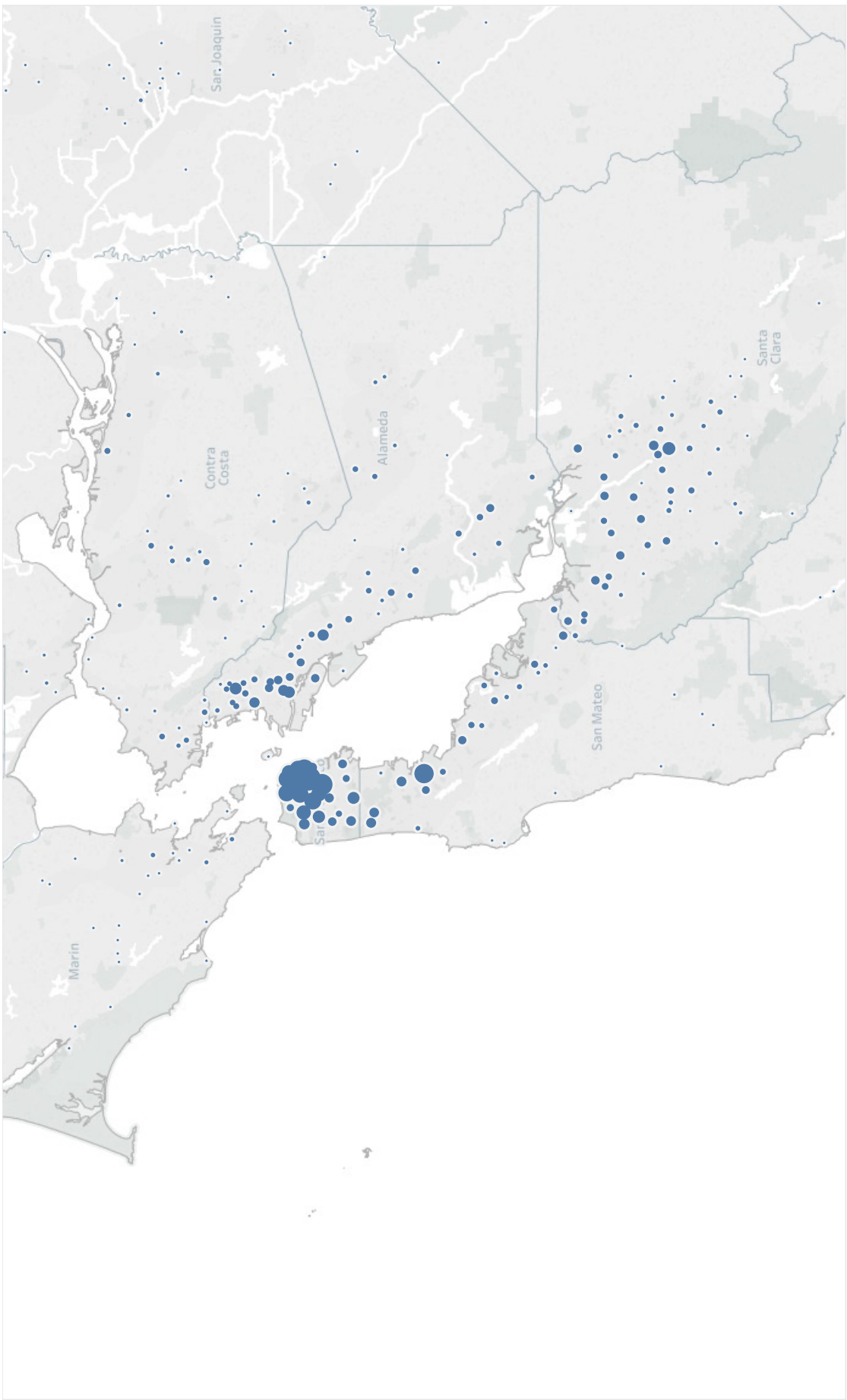
Such controls and accountability measures should be developed in a timely manner so that both access providers and TNCs are fully aware of the conditions that govern their use of Access Fund moneys, but it is not necessary that the Commission set those conditions at the same time as initiation of fee collection.

¹⁴⁸ *Id.*

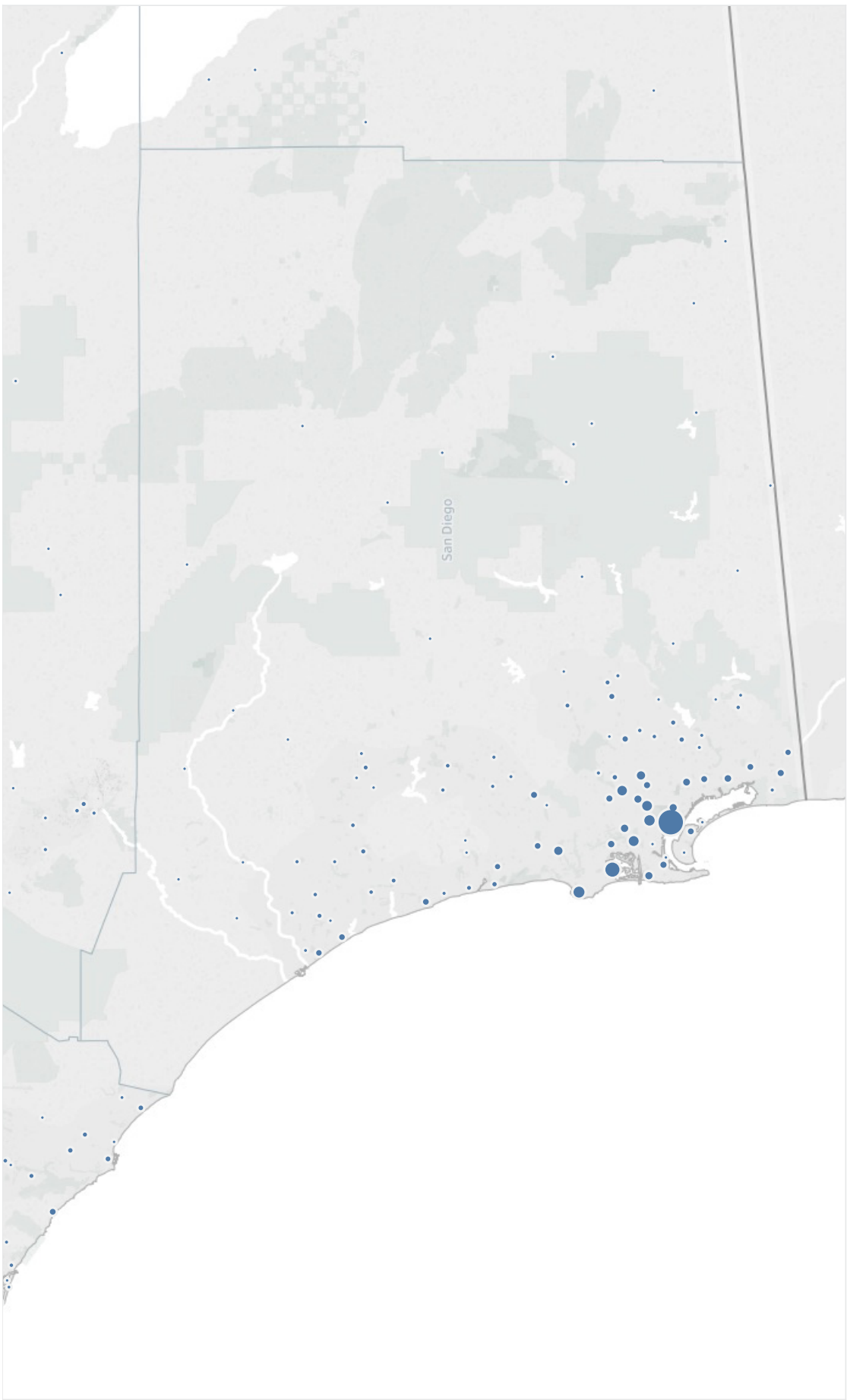
Los Angeles Area TNC Rides



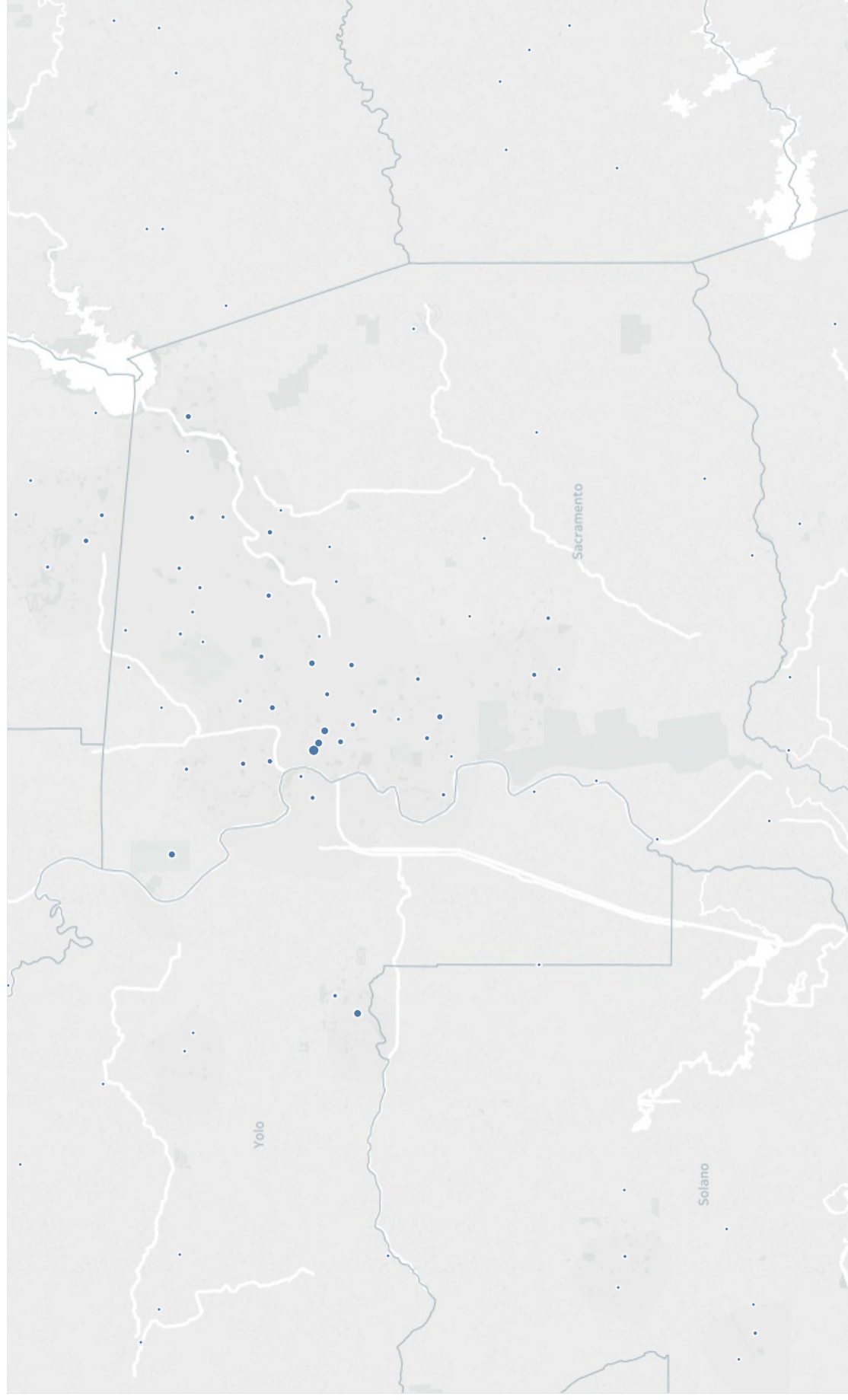
San Francisco Bay Area TNC Rides



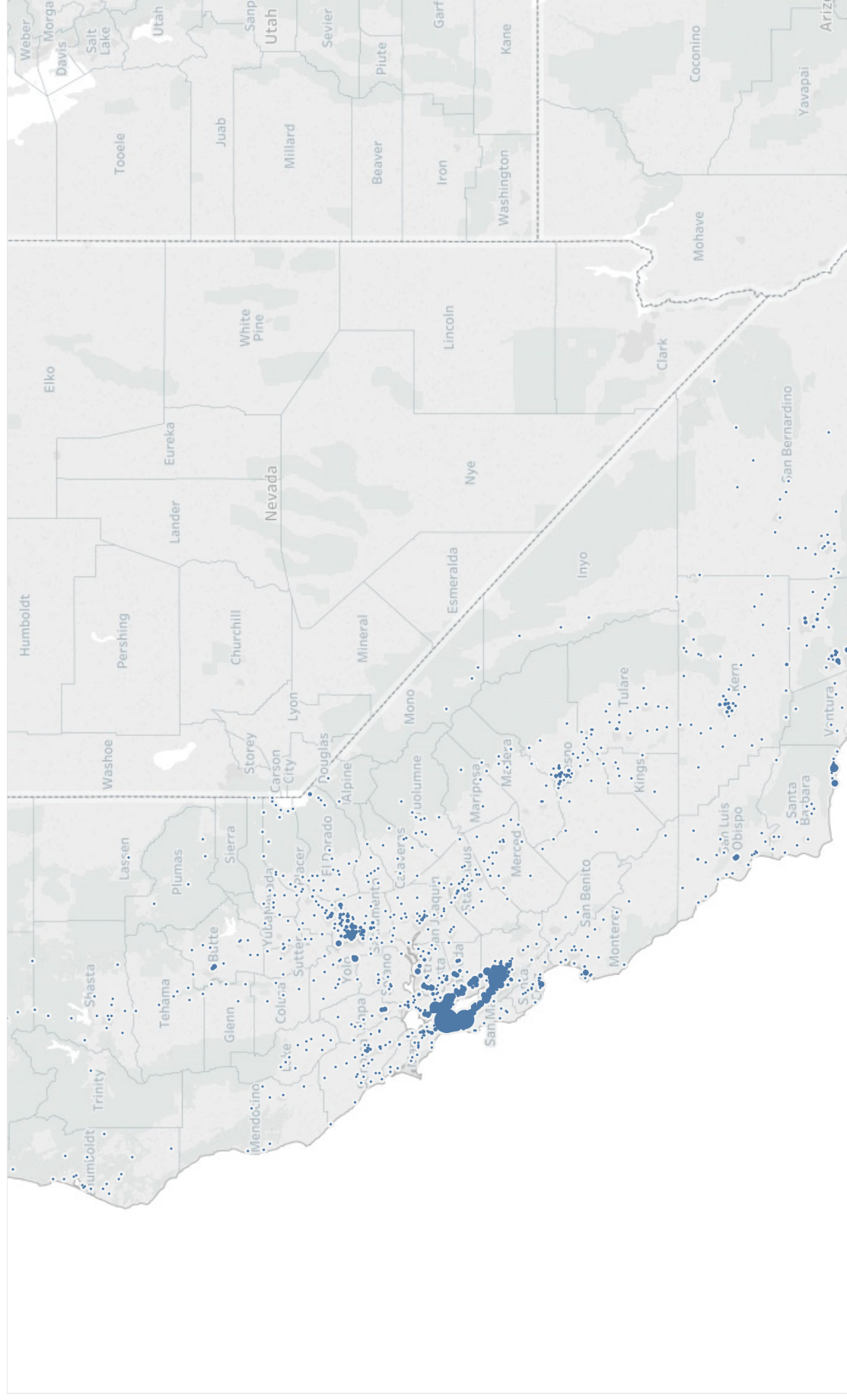
San Diego Area TNC Rides



Sacramento Area TNC Rides



Central Valley TNC Rides



California TNC Trips By County

