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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.

R.19-02-012
(Filed February 21, 2019)

**COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO
MAYOR'S OFFICE ON DISABILITY ON PROPOSED DECISION ON TRACK 3 ISSUES**

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Dated: February 18, 2021

I. Introduction

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively San Francisco) submit these comments on the Proposed Decision on Track 3 Issues, issued on January 29, 2021 (Proposed Decision or PD). San Francisco strongly opposes adoption of the Proposed Decision unless the Commission adopts amendments to the Improved Level of Service Requirements (Section 3.1), the definition of Incremental Costs (Section 3.2), Access Fund Disbursements (Sections 4.2 and 4.5), and Reporting Requirements (Sections 5.1 and 5.2) set forth below.

The Proposed Decision puts forth several alarming proposals, which lack the urgency and detail required to meet the TNC Access for All Act's (Act) purpose of providing a vital service to wheelchair users. Instead, they serve to maintain the status quo by advocating for modest improvements to WAV service, limiting the potential for the program to provide any real relief to a population that has unnecessarily been waiting almost a decade for equal access. First, the decision to calculate trip completion in a way that authorizes variable WAV operating hours reflects at least three legal errors: 1) it was not addressed in the scoping memo and the parties have thus had not had any opportunity to comment on it; 2) it would allow TNCs to set their own pace for what is considered an improved level of service, continuing the snail's pace of improvements to riders, if any, undermining the intent and purpose of the Act; and 3) it undermines the purpose of the statute by authorizing TNCs to arbitrarily narrow WAV service compared to non-WAV service. As a result, there will be less access and not more, which is unacceptable after more than two years since the Act was adopted.

Second, by failing to net out fares paid by WAV users from the costs that may be recovered through an offset request, the PD allows TNCs to essentially charge twice for WAV rides – once to WAV users directly and once to fee payers. This practice allows TNCs to use public funds intended solely to support delivery of WAV service as a general slush fund. Third, two elements of the Proposed Decision entirely subvert the purpose of the Act: 1) the decision to require that Access Providers must be Commission-regulated entities (even though the Commission does not generally regulate the businesses that routinely provide rides to WAV users) and 2) the decision to allow TNCs

to service as Access Providers in counties where they choose not to provide WAV TNC service. The first proposal unnecessarily limits the type of access provider, excluding competent providers regulated by others, not actually addressing the Commission's stated safety concerns, and reducing access overall; and the second allows TNCs to create an end-run on service, which incentivizes them to both do less and delay their efforts in some counties. Finally, the proposed reporting requirements do not adequately capture the information needed to assess either the success or shortcomings of the program. Therefore, adoption of the PD in its current form would be both technical, factual, and legal error, and San Francisco cannot support moving forward without considerable revision to these sections.

As the Commission embarks on its third year of implementing the TNC Access for All program and intends to open a fourth track of rulemaking, it is more important than ever to take stock of whether this program will effectively achieve the ultimate goal of TNC Access for All – eliminating the discriminatory practice of not providing adequate and equivalent service to people with disabilities. San Francisco offers our comments and continued participation in the extensive rulemaking process with the hopes that this vision is achieved. However, we raise a flag now that the Commission's intentions to extend the rulemaking to Track 4 and rely solely on proposals from formal parties to the rulemaking to inform how to address disability access is concerning. Consumers with disabilities must be included and engaged in an ongoing manner that is less burdensome than the formal rulemaking and the Commission should develop its internal capacity, with haste, to ensure that access needs are being met on a much faster timeline than what is currently being contemplated. We are living in a time when access to flexible and accessible on-demand transportation is more critical than ever to the health and wellbeing of Californians with disabilities. The longer it takes the Commission to ensure access, the more inequitable the system becomes.

II. Discussion

1. Improved Level of Service Requirements

A. **The Structure Of The PD's Trip Completion Standard, Which Allows TNCs To Limit Hours Of Service To WAV Users Arbitrarily And Includes No Minimum Threshold For Trip Completion, Is Inconsistent With The Requirements Of The Statute.**

San Francisco appreciates the inclusion of a Trip Completion Standard, and notes that the inclusion of trip completion benchmarks is explicitly required by the Act, which states, "[t]he commission shall establish yearly benchmarks for TNCs and access providers *to meet* to ensure WAV users receive continuously improved, reliable, and available service. These benchmarks shall include... percentage of trips fulfilled versus trips requested."¹ With that, we are incredibly dismayed that the PD found that a TNC can demonstrate improved level of service either through (a) an increase in the **total number** of completed WAV trips compared to the previous quarter in that geographic area, or (b) an increase in the **percentage** of completed WAV trips compared to the previous quarter in that geographic area." The Act clearly directs the Commission to consider the percentage of completed trips when authorizing offsets and not the absolute number of WAV rides delivered. Authorizing offsets based on the percentage of requested WAV trips completed is not an option, it is a statutory requirement.

The Act also clearly states that TNCs should not discriminate against persons with disabilities, including wheelchair users who require WAV service.² Basing benchmarks for WAV service on the level of service TNCs choose to provide to WAV users rather than the standard level of service the general public expects is nonsensical. The only standard true to the fundamental intent of the Act is to provide incentives to TNCs to provide service to wheelchair users that is comparable to non-wheelchair users. Therefore, all standards that distract or deviate from comparability and instead allow service to improve at a pace set by TNCs with no incentive to go any faster, is inconsistent with the statute as it allows fee revenues to be diverted to efforts that do not demonstrate an improved level of service.

¹ Pub. Util Code § 5440.5(a)(1)(J) (Emph. added.)

² Pub. Util Code § 5440.5(c)

Further, the Proposed Decision’s statement that “there is insufficient record for the Commission to determine the appropriate minimum percentage or appropriate increasing benchmarks”³ is factually incorrect. The PD instead directs CPED to continue collecting data for an unspecified amount of time, without the promise of if or when it will establish benchmarks.⁴ The PD is mistaken factually that there is an insufficient record and “that before adopting a minimum standard, it is prudent to first evaluate actual WAV trip completion rates by geographic area and over a longer time period than currently available data allow to better understand an appropriate minimum requirement.”⁵ First, the Commission has already collected over a year’s worth of data in the Quarterly Reports. Second, multiple parties provided proposals throughout the rulemaking, grounded in existing WAV programs, as well as the timeline of the TNC Access for All program, the comparable experience of riders who enjoy standard TNC services, and the lived experience and desires of wheelchair users who require WAV service.⁶ A refusal to consider these proposals and the expertise and lived experience of those who proposed them does not mean there is an insufficient record.

Finally, the PD, multiple years into the program, is allowing TNCs to operate for an extended period without meeting any benchmarks and fails to establish *any* timeline for when the Commission will fulfill its obligation to set a benchmark for the trip completion standard. Instead, it directs CPED Staff “to submit a report to the Commission on the Trip Completion Standard and any other relevant information in December 2021”⁷ with no deadline to actually establish a standard. The Act, as noted above, instructs that TNCs should meet benchmarks to demonstrate improvement, in no way contemplates waiting an unspecified amount of time, which now is going on three years, before setting standards based solely on the performance of TNCs.

For these reasons, the Commission’s continued inaction and erroneous proposed benchmark structure violate the statute. San Francisco once again urges the Commission to amend the PD decision by incorporating the following minimum thresholds as proposed by the Disability Advocates for WAV

³ Proposed Decision, p. 11.

⁴ *Id.*, pp. 11-12.

⁵ *Id.*, p 11.

⁶ Disability Advocates Track 3 Proposal, p. 13. Supported by San Francisco in Comments on Track 3 Proposals and Workshop, p. 4.

⁷ Proposed Decision, p. 13.

Trips Completed: 60% through June 2020; 70% for July 2020-June 2021; 80% for July 2021-June 2022; and 90% for July 2022-June 2023. Or, if less than 90% of standard rides are typically completed, then these percentages could be calculated relative to the completion rate of standard (non-WAV) rides, such that, by the time the TNC Access for All Act is set to sunset in 2026, the completion rate for WAV rides and for standard rides would need to be comparable in order for a TNC to qualify for an offset.⁸

B. To Calculate The Percentage of Completed WAV Trip Requests Limited to Those Made During a Transportation Carrier’s WAV Operating Hours Is Technical and Legal Error.

The Track 3 Scoping Memo did not pose the basic question of how to calculate the number of trips requested versus the number of trips completed,⁹ nor does the Act contemplate any other definition of completed trips beyond “percentage of trips fulfilled versus trips requested.” Yet, in Section 3.1.3 of the PD, without providing any opportunity for parties to provide specific comment during Track 3, the Commission stated it “...agree[s] with Uber and Lyft that the calculation [of completed WAV trip requests] should be based on WAV trip requests made during a carrier’s WAV operating hours in that geographic area.”¹⁰ San Francisco objects to this finding on a technical and legal basis as it was not part of the formal rulemaking process, and therefore should be removed. San Francisco cannot possibly support a formula for calculating the percentage of completed WAV trips that both encourages and allows TNCs to offer significantly different and limited service hours to WAV users than it offers to the general public, which is able to access TNC service 24 hours a day.

The proposed calculation is erroneous because it will disincentivize TNCs to seek means to expand their hours of operation, and in fact may incentivize them to actually reduce WAV hours of operation, so as to be able to meet the standard from one quarter to the next, thus endorsing unequal service for WAV users. According to the language of the Act, “[i]t is the intent of the Legislature that wheelchair users who need WAVs have prompt access to TNC services, and for the commission to

⁸ Disability Advocates Track 3 Proposal, p. 13; *see also* San Francisco Comments on Track 3 Proposals and Workshop, p. 4.

⁹ See generally Amended Track 3 Scoping Memo and Ruling of Assigned Commissioner, dated April 21, 2020.

¹⁰ Proposed Decision, p.12.

facilitate greater adoption of wheelchair accessible vehicles on transportation network companies' online-enabled applications or platforms.”¹¹ Because of the perverse incentive that would be established, the consequence of a PD that calculates trips only based on trips requested during a carrier's chosen WAV operating hours would be less availability of WAVs on TNC apps and platforms. It certainly would not ensure WAV users have prompt access to TNC services considering there would be hours when service is completely unavailable. For these reasons, the Commission's proposed method to calculate the percentage of completed WAV trips by a carrier's WAV service hours is legal error and should be stricken entirely from the PD.

2. Incremental Costs

A. The Commission Should Amend the Proposed Decision to Clarify That TNCs Must Subtract Collected Fares From Offset Requests.

San Francisco has consistently maintained that offsets should only be allowed to cover the incremental costs between what it costs to provide standard service and what it costs to provide accessible service, **less the fare collected on each WAV trip**.¹² The CPED Track 3 Proposal notes that, “fares paid by passengers are not included on the list of eligible offset expenses, attached as Appendix A to D.20-03-007,” but it does not make clear that all fares collected for WAV rides must be subtracted from the requested offset amount.¹³ The fare paid by a disabled customer already reimburses a portion of the trip's cost, and that amount, for instance \$20 for the trip should be netted out from the total TNC WAV trip costs that may be recovered through an offset request. TNCs should be required to clearly enumerate the fares collected for all WAV trips during the quarter and subtract that amount, already collected from the passenger, from the offset request. San Francisco requests a clarification in the Proposed Decision that reporting and subtracting fares collected from WAV riders is required as part of the TNC's offset requests.

¹¹ Pub. Util. Code § 5440.5(a)(1)(J).

¹² SFMTA Track 2 and Oct 10, 2019 Workshop Comments, p. 7.

¹³ Proposed Decision, p. 16.

San Francisco continues to contend, as well, that offset requests should only be approved for the incremental additional expenses of WAV service. Examples of incremental costs that should be reimbursable are outlined below and were shared in our response to the CPED Track 2 Proposal.¹⁴

- An incentive paid to drivers of WAV vehicles that other drivers do not receive
- Vehicle subsidies for capital, operating and maintenance per vehicle
- Any amounts paid per trip for wheelchair pick-ups
- Any other amounts spent for direct costs such as training to provide the WAV service or enhancements to accessible vehicles made based on driver or rider feedback

These expenses are distinct from the normal costs of doing business as a TNC service, such as paying TNC drivers, covering app-development costs, covering costs associated with considering consumer complaints, etc.¹⁵ Failing to incorporate these requirements makes the Access Fund a reservoir for TNC financial support unmoored from its purpose.

3. Advice Letter Rule Modification

San Francisco supports the Commission's proposed decision to leave Rule 7.5.2 as is to allow the Industry Division sufficient time to evaluate the Advice Letters. It is appropriate to decline to modify Rule 7.5.2. for the reasons that parties have raised before and as cited in the PD.

4. Access Fund Disbursements

A. San Francisco Supports the Conclusions of Sections 4.1, 4.3, 4.4., 4.6 and 4.7 of the Proposed Decision.

San Francisco supports Sections 4.1 (On-Demand Transportation), 4.3 (Use of Access Provider Funds), 4.4 (Approval Process for Access Provider Application), 4.6 (Additional Requirements for Access Providers), and 4.7 (Compensation of Access Fund Administrators) of the PD. It is appropriate

¹⁴ San Francisco Track 2 Comments, p. 8.

¹⁵ San Francisco suggests that CPED Staff include an average cost-per-trip calculation for each TNC, in each county, per quarter as part of the WAV offset expenses by category report to the Commission in December 2021. From the data that has been submitted to date associated with offset requests, these costs can vary greatly among the TNCs and across geographic areas. This would be a useful metric to understand cost effectiveness and how efficient the service model is that the TNC has chosen and whether the service is gaining efficiency over time, as the TNC's are more cognizant of the demand for WAV service in each county.

to adopt the proposals in the aforementioned sections as they are broadly supported by the parties and do not impede Access Fund Administrators or CPED from advancing the goals of the Act.

B. The Commission Decision to Authorize Only Commission-Regulated Carriers to Serve as Access Providers is Inconsistent With the Purpose of the Act.

Throughout California, WAV services are typically provided by entities not regulated by the Commission (most frequently, taxi companies and other paratransit providers). It is contrary to the intent of the Act, which is to expand the availability of WAV service, to exclude these experienced service providers from providing reliable, cost-effective rides to the disabled simply because a provider is not regulated by the Commission. Therefore, San Francisco strongly disagrees with the Commission's decision that an "Access Provider shall be limited to either: (1) transportation carriers that are regulated by the Commission, or (2) transportation carriers that currently hold a Commission-issued permit or obtain a Commission-issued permit prior to applying to become an Access Provider."¹⁶

First, it has already been well established as far back as Track 2 that transportation carriers not regulated by the CPUC, such as taxicab companies or entities that provide non-emergency medical transportation, already do and could continue to provide quality wheelchair accessible service in certain geographic areas.¹⁷ Rather than acknowledge this fact, the PD focuses on the red herring, without any evidentiary support, that many access providers who apply for funds could be completely unregulated and unlicensed by any entity.¹⁸ This distracts from the Commission's obligation to ensure distribution of funds to existing and qualified access providers in many counties already providing WAV service.

Second, San Francisco takes issue with the fact the Commission only now, and not in the scoping memo or during workshops, expressed concerns about "about ensuring compliance with safety protocols for entities it does not regulate, such as insurance requirements or background checks."¹⁹

¹⁶ Proposed Decision, p. 25; Ordering Paragraph No. 8, p. 51.

¹⁷ See, e.g., SF Track 2 Proposal at 15, DA Track 2 Proposal at 19, SFTWA Track 2 Proposal at 8, Marin Transit Track 2 Proposal at 11, D. 20-03-007, p. 67.

¹⁸ Proposed Decision, p. 24 ("While some carriers are regulated by a local government or other regulatory body, others may not be subject to any regulatory oversight or safety protocols.")

¹⁹ Proposed Decision, p. 24.

Despite these concerns, the PD only vaguely describes the relevant requirements by stating that “Under the current TCP permit requirements, permit holders are subject to general liability insurance minimums depending on the number of passengers, worker’s compensation insurance, a 19-point vehicle inspection, drug testing, etc.”²⁰ Further, rather than provide an assessment of how non-TCP permit holders fall short, the PD provides only one example, falsely claiming that “the liability insurance minimum coverage amounts are consistently higher for TCPs than for locally regulated taxicabs.”²¹ If San Francisco and other parties to the rulemaking had been given the opportunity, we would have explained that, in fact, accessible paratransit trips in the largest markets in California, San Francisco and Los Angeles, require at least \$1 million coverage. And as the SFTWA referenced and the PD cited but ignored,²² in San Francisco, where all taxis are required to provide accessible paratransit trips, permitted drivers are subject to higher levels of scrutiny than drivers under Commission-issued permits. For example, San Francisco taxi drivers undergo DOJ fingerprint background checks while drivers regulated by the Commission undergo less rigorous background checks.²³ Basing the PD’s decision on erroneous claims without providing an opportunity for parties to comment is prejudicial, constituting technical and factual error, and must be amended.

Third, while the PD recognizes “that requiring an Access Provider to obtain a TCP permit is a greater undertaking that may reduce the number of potential Access Providers,”²⁴ it still puts the burden on parties to wait until Track 4 to “offer proposals as to how the Commission can ensure that non-jurisdictional transportation carriers can demonstrate compliance with safety requirements akin to the requirements for a TCP permit.”²⁵ But, in a subsequent section the PD states, “[i]n D.20-03-007, the Commission adopted a WAV training and inspection requirements for TNCs that seek an Offset Request and Access Providers that seek funding.”²⁶ Therefore, the Commission has already determined that it does, in fact, have a means to address safety concerns for entities it does not

²⁰ *Id.*, p. 23.

²¹ *Id.*, pp. 24-25.

²² SFTWA Track 3 Comments, p.5 as cited by the Proposed Decision, p. 23.

²³ See San Francisco Trans. Code §1103(c)(1) and Cal. Gov. Code §53075.5.

²⁴ Proposed Decision, p. 25.

²⁵ Proposed Decision, pp. 24-25.

²⁶ *Id.*, p. 40.

regulate, and in fact, allows TNCs to primarily use offset requests to fund third party providers who are not regulated by the Commission. The Commission's arguments to delay resolution of their concerns until Track 4 are unfounded, and prejudicial to WAV riders.

For these reasons, San Francisco strongly urges the Commission to amend the PD. Rather than limit access providers to entities regulated by the Commission, the PD should instead 1) clearly enumerate the TCP requirements²⁷ an access provider must also meet to satisfy the Commission's concerns, and 2) require access providers to satisfy the requirements as part of their application.

C. TNCs Should Not Be Eligible To Apply As Access Providers In Counties Where They Do Not Provide WAV Service.

San Francisco strongly opposes the Commission's proposal to allow TNCs to apply as access providers in counties where they do not provide WAV service.²⁸ Not only would it be inconsistent with the overall intent of the program, which sets out minimum requirements and expectations in order for a TNC to receive money for providing and improving already long delayed WAV services, it is contrary to the Commission's holding in the very same section of the decision. The PD states "a TNC should not be eligible to receive additional funding if it does not meet the higher requirements for an exemption or an offset. Otherwise, a TNC may opt not to satisfy the requirements of an exemption or offset, which are specifically set forth for TNCs, and instead compete for Access Fund moneys specifically set aside for Access Providers, which may be new or emerging services."²⁹ In addition, this proposal does not benefit from consensus or broad support and is a bad policy choice as it rewards TNCs, and one in particular, with funding merely because they have not attempted to provide service in a specific geographic area. Lyft was the only party to suggest TNCs should be allowed to apply as access providers in areas where they do not even attempt to provide WAV service³⁰ and would principally benefit because it has not yet attempted to provide WAV service beyond two out of 58 counties, Los Angeles or San Francisco.

²⁷ See Proposed Decision, p. 24, FN 59 (the hyperlink cited to provide the TCP requirements is broken)

²⁸ Proposed Decision, pp. 29-30; *see also* p. 47, Findings of Fact No. 9 ("It is reasonable that a TNC may apply as an Access Provider in a geographic area where it does not offer any WAV services.")

²⁹ *Id.*, p. 29.

³⁰ Lyft Track 3 Proposal, p. 10.

Further, combined with the PD’s decision to limit access providers to only CPUC-regulated entities, this ruling may effectively limit the pool of eligible access providers only to TNCs who delay making improvements. This would subvert the requirements of the Act to instead ask for an advance of public funds to attempt a program they should already be implementing alongside their service for the general public. For these reasons, San Francisco cannot possibly support the Proposed Decision and strongly urges the Commission to amend the PD so that TNCs are only eligible to apply as access providers if (a) the TNC qualifies for an exemption in that geographic area, and (b) certifies that the TNC’s collected fees during the Exemption Year were exhausted to provide WAV services.

5. Reporting Requirements

A. Information Provided in the Offset Requests, Exemption Requests, and Quarterly Reports Are Not Sufficient to Serve as a Baseline for the Yearly Benchmarks.

As San Francisco has stated consistently throughout this proceeding, the Act calls for the Commission to establish benchmarks of annual TNC performance, and expects TNCs to meet those benchmarks. The Act explicitly states that, “[t]he commission shall establish yearly benchmarks for TNCs and access providers *to meet to ensure WAV users receive continuously improved, reliable, and available service...*[which] shall include, but are not limited to, response times, percentage of trips fulfilled versus trips requested, and number of users requesting rides versus community WAV demand for each geographic area.”³¹ The Amended Scoping Memo asks “Pursuant to Pub. Util. Code § 5440.5(a)(1)(J), how should yearly benchmarks be established for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service? How should the benchmarks be used? In what form should TNCs and access providers submit such reports to the Commission, and should the reports be publicly available?”³² However, the PD only restates and answers the first question, stating it “views the yearly benchmarks as a means to monitor and evaluate the progress of the WAV program and individual carrier’s performance, and not to penalize any

³¹ Pub. Util. Code § 5440.5(a)(1)(J).

³² Amended Track 3 Scoping Memo and Ruling of Assigned Commissioner, dated April 21, 2020, p. 4. The Proposed Decision complete elides the three critical questions noted. We further note that inconsistencies between the Proposed Decision and the Amended Scoping Memo are not limited to data reporting and benchmarks. In fact, the text for 17 of the 23 questions or issues identified in the PD is different than the text in the Amended Scoping Memo. In some cases, these differences are minor, while in other cases these differences are significant and directly relevant to the questions before the Commission.

individual carrier for failing to meet the yearly benchmarks.”³³ This is contrary to the clear language of the Act as quoted above, which explicitly directs providers **to meet** benchmarks, and not just report on their progress.

Even if the benchmarks are viewed only as a monitoring tool rather than as a compliance requirement, the Proposed Decision is inadequate. The Commission concludes, agreeing only with Lyft, that “the information provided in [Quarterly] reports and [Offset and Exemption] requests are appropriate to serve as a baseline for the yearly benchmarks” and directs CPED to “provide an analysis of wheelchair accessible vehicle (WAV) response times submitted by Access Providers and Transportation Network Companies (TNC), and compare those response times to non-WAV response times, as submitted by TNCs in the Annual TNC Reports.”³⁴ San Francisco strongly supports the inclusion of WAV vs. non-WAV response time data to inform the yearly benchmarks, as this is an appropriate standard for measuring progress towards providing accessible, equivalent service to riders requiring WAVs. But, the data provided by the Offset Requests, Exemption Requests, and Quarterly Reports, is technically insufficient for establishing yearly benchmarks consistent with the plain language of the Act.

First, the Commission has not required TNCs to submit the data required for the Offset Requests, Exemption Requests, and Quarterly Reports for all counties. TNCs only provide data for a handful of counties in most of the quarterly reports and are not required to submit information for counties in which they are providing service and collecting data but not seeking an offset or exemption. At a minimum, to rely on the data requirements in these requests and reports, the Commission must require each TNC to submit data for all counties for every quarter. Otherwise, the Commission risks adopting annual benchmarks based on an incomplete and seemingly unpredictable set of data.

Second, the Act requires the Commission to establish benchmarks for the “number of users requesting rides versus community WAV demand for each geographic area.” The Act requires the Commission to identify benchmarks for community WAV demand in public workshops and it has

³³ Proposed Decision, p. 35.

³⁴ Proposed Decision, pp. 35-36

failed to do so.³⁵ Furthermore, no data in the Quarterly Reports and Offset and Exemption Requests addresses this requirement of the Act. As a result, these reports, as they currently stand, cannot support the statute's required benchmarks for trip requests in relation to WAV demand.

For the aforementioned reasons, the PD falls far short and is technically insufficient to meet the legal requirements of the Act. While the Proposed Decision rejects San Francisco's proposal for more comprehensive reporting which we believe would address the identified shortcomings of the PD, for purposes of transparency, consistency, and comprehensiveness, we strongly urge the Commission to align the yearly benchmarks with the quarterly reporting, which is currently deficient. The Commission should revise the PD to require consistent reporting for all counties for all quarters, enforcement of existing data reporting requirements such as community WAV demand, and the inclusion of metrics and benchmarks the Commission itself has deemed relevant such as the comparison of WAV and non-WAV response times. San Francisco maintains that the only approach to setting annual benchmarks and associated reporting requirements that is true to the intent and language of the Act is to set requirements that reflect continuously improved, reliable, and available progress towards providing equivalent service to WAV users in each geographic area.

B. Legislative Report

The PD states “[t]he metrics collected from TNCs and Access Providers over a four-year period from the inception of the WAV program, as well as the § 5440.5(a)(2)(A) requirements, will serve as an abundant volume of data to demonstrate the effectiveness of the WAV program and partnerships funded through the Access for All Act.”³⁶ As discussed above, these metrics are insufficient to demonstrate program effectiveness because up to this point in time the data reporting has been inconsistent and incomplete. For example, in the first six quarters of program reporting Lyft has provided data for only two counties in the entire state. While in the first quarter of program reporting (2019 Q3) Uber provided data for at least 44 out of 58 counties statewide, by the most recent quarter of program reporting (2020Q4) Uber provided data for only four counties. It will not be possible for any entity to discern anything from such inconsistent and gap-ridden data reporting.

³⁵ Pub. Util. Code § 5440.5(a)(1)(A).

³⁶ Proposed Decision, p. 38.

For the same reasons cited above regarding adequacy of the quarterly reporting to inform the yearly benchmarks, we urge the Commission to revise the quarterly reporting requirements. The legislative report requires consistent reporting for all counties for all quarters, enforcement of existing data reporting requirements such as community WAV demand, and the inclusion of metrics and benchmarks the Commission itself has deemed relevant such as the comparison of WAV and non-WAV response times.

6. Additional Accessibility Issues

A. Symbol of Accessibility Use and WAV Inspection and Driver Training

San Francisco supports the PD in Section 6.1 on the use of the International Symbol of Accessibility and is very pleased that, per section 6.2, driver training and WAV inspection requirements will now be incorporated in the TNC permit requirements. Accessibility should always be a priority and a requirement for passenger services offered to the public.

B. Additional Accessibility Needs

The PD states that “[t]he Commission believes that considering the accessibility needs of persons with disabilities that do not require a WAV is an important step towards ensuring that TNCs are accessible and safe for persons with disabilities” but that “[t]he proposals submitted thus far...lack sufficient detail as to what should be considered or required by the Commission.”³⁷ While San Francisco certainly agrees that TNCs should be accessible to all persons with disabilities, we are very concerned that the Commission’s approach is not proactive and creates additional barriers for consumers with disabilities. Consumers with disabilities must be included and engaged in an ongoing manner that is less burdensome than the formal rulemaking and the Commission should develop its internal capacity, with haste, to ensure that access needs are being met on a much faster timeline than what is currently being contemplated.

³⁷ Proposed Decision, p. 45

III. Conclusion

San Francisco appreciates the opportunity to provide comments on the Track 3 Proposed Decision. San Francisco strongly opposes adoption of the Proposed Decision unless the Commission adopts the entirety of our proposed amendments to the Improved Level of Service Requirements (Section 3.1), the definition of Incremental Costs (Section 3.2), Access Fund Disbursements (Sections 4.2 and 4.5), and Reporting Requirements (Sections 5.1 and 5.2).

Dated: February 18, 2021

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APPENDIX

Proposed Amendments to Findings of Fact

1. There is a consensus among parties that to demonstrate “improved level of service,” a TNC should increase the ~~number or~~ percentage of completed WAV trips each quarter.

2. To demonstrate “improved level of service” for an Offset Request or Exemption Request, it is reasonable to require a TNC to show ~~either: (a) an increase in the total number of completed WAV trips compared to the previous quarter, or (b)~~ an increase in the percentage of completed WAV trips compared to the previous quarter.

~~3. To calculate the percentage of completed WAV trip requests in a geographic area, it is appropriate to limit the total number of WAV requests to those requests made during a carrier’s WAV operating hours.~~

9. It is reasonable that a TNC may apply as an Access Provider in a geographic area if and so long as the TNC qualifies for an exemption in that geographic area and certifies that the TNC’s collected fees during the Exemption Year were exhausted to provide WAV services. ~~It is reasonable that a TNC may apply as an Access Provider in a geographic area where it does not offer any WAV services.~~

13. It is appropriate that the information submitted in the Quarterly Reports, Offset Requests and Exemption Requests serve as the baseline for the program’s yearly benchmarks provided that TNCs submit quarterly reports for every quarter in every county and that the Commission includes all required metrics and benchmarks, such as community WAV demand.

14. It is reasonable that the 2024 Legislative Report include an analysis of the collected metrics from the Quarterly Reports, Offset Requests, and Exemption Requests, as amended, in addition to the reporting requirements in § 5440.5(a)(2)(A).

Proposed Amendments to Conclusions of Law

1. To demonstrate “improved level of service” for an Offset Request or Exemption Request, a TNC should demonstrate ~~either: (a) an increase in the total number of completed WAV trips compared to the previous quarter, or (b) an increase in the percentage of completed WAV trips compared to the previous quarter.~~ This requirement should be in addition to the Offset Time Standard requirement.

~~2. To calculate the percentage of completed WAV trip requests in a geographic area, the total number of WAV requests should be limited to those made during a transportation carrier’s WAV operating hours.~~

8. A TNC should be permitted to apply as an Access Provider in a geographic area if and so long as the TNC qualifies for an exemption in that geographic area and certifies that the TNC’s collected fees during the Exemption Year were exhausted to provide WAV services. ~~A TNC should be permitted to apply as an Access Provider in a geographic area in which it does not offer any WAV services.~~

11. Information submitted in the Quarterly Reports, Offset Requests and Exemption Requests ~~should~~ shall be augmented to include all required metrics and benchmarks, such as community WAV demand, and data from all counties and for all quarters in order to serve as the baseline for the program’s yearly benchmarks.

12. ~~The 2024 Legislative Report should include an analysis of the~~ The collected metrics from the Quarterly Reports, Offset Requests, and Exemption Requests, in addition to the reporting requirements in § 5440.5(a)(2)(A) are insufficient to serve as the basis for analysis for the 2024 Legislative Report, therefore all quarterly reports shall be augmented to include all required metrics and benchmarks, such as community WAV demand, and data from all counties and for all quarters.

Proposed Amendments to ORDER

IT IS ORDERED that:

1. To show “improved level of service” for an Offset Request or an Exemption Request, a Transportation Network Company (TNC) must Demonstrate: ~~either: (a) an increase in the total number of completed wheelchair accessible vehicle (WAV) trips compared to the previous quarter in that~~

~~geographic area, or (b)~~ an increase in the percentage of completed WAV trips compared to the previous quarter in that geographic area. This requirement is referred to as the Trip Completion Standard. For exemption eligibility, a TNC shall demonstrate that it achieved the Trip Completion Standard for the four consecutive qualifying quarters for which it seeks an exemption. The requirement shall be effective for Offset Requests and Exemption Requests submitted for the second quarter of 2021 and thereafter.

3. The percentage of completed wheelchair accessible vehicle (WAV) trip requests in a geographic area shall be calculated as the total number of completed WAV trips divided by the total number of WAV requests made ~~during all hours of the day during the transportation carrier's WAV operating hours for a given geographic area and quarter, as follows:~~
$$\% \text{ Completed WAV Trip Requests} = \frac{\text{Total Completed Trips}}{\text{Total Trip Requests within Operating Hours}}$$

4. Data required for the Trip Completion Standard shall be added to the information required for the Quarterly Report and the Access Provider application. An Access Provider applicant shall provide data required of the Trip Completion Standard. ~~, to the extent available, but shall not be deemed ineligible to qualify as an Access Provider for failing to meet the Trip Completion Standard.~~

5. The Consumer Protection and Enforcement Division is directed to submit a report to the Commission in December 2021 analyzing and evaluating TNC performance in relation to the Access for All goals in relation to various metrics, including: (a) the Trip Completion Standard; and (b) Wheelchair accessible vehicle expenses requested and/or approved through Offset Requests. ~~(c) the cost-effectiveness of services that have received offsets.~~

~~8. A qualifying Access Provider shall be limited to either: (1) transportation carriers that are regulated by the Commission or (2) transportation carriers that currently hold a Commission issued permit or obtain a Commission issued permit prior to applying to be an Access Provider.~~ Access Providers shall demonstrate compliance with safety and financial responsibility standards equivalent to the requirements for a TCP permit.

~~12. A Transportation Network Company may apply as an Access Provider in a geographic area where it does not offer any wheelchair accessible vehicle services.~~

17. Information provided in the Quarterly Reports, Offset Requests, and Exemption Requests shall be augmented to include required metrics and benchmarks such as community WAV demand, and shall be augmented with information from all counties and for all quarters in order to form the baseline for the yearly benchmarks. The Consumer Protection and Enforcement Division is directed to submit a report on the yearly benchmarks to the Commission with the first report submitted in the first quarter of 2022.