

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
12/22/21
12:54 PM

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)

**UBER TECHNOLOGIES, INC. RESPONSE TO
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, DISABILITY RIGHTS
CALIFORNIA, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY'S
APPLICATION FOR REHEARING OF TRACK 4 DECISION**

ALEXANDER LARRO
ADAM BIERMAN
1515 3rd Street
San Francisco, California 94158
Email: alarro@uber.com
Telephone: (707) 572-5216

December 22, 2021

Attorneys for Uber Technologies, Inc.

**UBER TECHNOLOGIES, INC. RESPONSE TO
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, DISABILITY RIGHTS
CALIFORNIA, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY’S
APPLICATION FOR REHEARING OF TRACK 4 DECISION**

I. RESPONSE

Pursuant to Rule 16.1(d) of the California Public Utilities Commission’s (the “Commission”) Rules of Practice and Procedure, Uber Technologies, Inc. (“Uber”) respectfully submits this response to the Application for Rehearing of Decision 21-11-004 filed by Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, the “Disability Advocates”) on December 8, 2021.

The Disability Advocates argue that the fee exemption standard established in Decision 21-11-004 (the “Track 4 Decision”) is legally faulty because it conflicts with the language of the TNC Access for All Act^{1,2}. However, the plain language of SB 1376 does not support the interpretation proposed by the Disability Advocates. At best for the Disability Advocates’ argument, the relevant language is unclear. Given that uncertainty, the Commission, as the agency charged with implementing SB 1376, has discretion to interpret it in the most reasonable manner. The Commission has done that in the Track 2 and Track 4 Decisions.³ The Commission’s rules proclaimed in those decisions are legally consistent with SB 1376, and they best advance the spirit of SB 1376 by providing opportunities for TNCs to obtain necessary funding to improve and expand wheelchair accessible vehicle (“WAV”) service upon a showing of sustained and significantly improved levels of service.

¹ S.B. 1376, Cal. Legis. Serv. Ch. 701 (2018) (the “TNC Access for All Act” or “SB 1376”); see also Pub. Util. Code § 5440.5(a)(1)(B)(ii).

² R.19-02-012, Application for Rehearing of Decision 21-11-004 filed by Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (“Application for Rehearing” or “Application”), Dec. 8, 2021, at 6.

³ See D.21-11-004, Decision on Track 4 Issues (“Track 4 Decision”), Nov. 08, 2021 at 30-34; D.20-03-007, the Decision on Track 2 Issues: Offsets, Exemptions and Access Provider Disbursements (the “Track 2 Decision”) at 44-53.

The Disability Advocates claim that SB 1376 requires that at least 80 percent of trip requests meet a response time set by the Commission.⁴ As Uber expressed in its Reply Comments on the Proposed Decision of Track 4 Issues, this argument misinterprets SB 1376.⁵ The Disability Advocates erroneously read a trip completion rate requirement into SB 1376's exemption criteria. This interpretation ignores—and in fact contradicts—the plain language of SB 1376. As the Track 4 Decision articulates, SB 1376's exemption provision requires response times for 80% of *completed trips*, not 80% of *trip requests*.⁶

Senate Bill 1376 establishes that a TNC may be exempt from paying the Access Fund fee in a geographic area if, for a particular year, the TNC has “**response times for 80 percent of WAV trips** requested via the TNC's online-enabled application or platform within a time established by the commission for that geographic area.”⁷ This language explicitly references WAV trips. A WAV trip, which occurs when a trip request has been accepted and a trip begins and is completed, is not the same thing as WAV trip requests. The clause beginning with the word “requested” describes how those WAV trips originated (i.e., the trips were requested through the TNC's online-enabled application or platform). The Disability Advocates ignore this plain reading of the statute. Instead, they argue that the word “requested” should be read in conjunction with the term “WAV trips” in an effort to change the statutory requirement from trips to trip requests. This would effectively introduce a minimum trip completion rate into this provision of the statute. If the Legislature intended to impose such a requirement, it could have done so explicitly. It did not. Instead, as the Track 4 Decision explains, a TNC cannot “have response times” for an unfulfilled trip request.⁸ By their very nature, response times only exist if

⁴ Application for Rehearing at 6-7.

⁵ R.19-02-012, Reply Comments of Uber Technologies, Inc. on Proposed Decision on Track 4 Issues (“Reply Comments”), Oct. 26, 2021, at 1-3.

⁶ Track 4 Decision at 30-31.

⁷ Pub. Util. Code § 5440.5(a)(1)(G) (emphasis added).

⁸ R.19-02-012, Proposed Decision on Track 4 Issues (“Proposed Decision”), Oct. 1, 2021, at 31.

an actual trip exists. The Track 4 Decision's rules applying the exemption response time standard to completed trips most aligns with the plain language of SB 1376.

The Track 4 Decision's adopted exemption criteria also best advance the spirit of SB 1376. The Track 4 Decision sets forth several requirements for a TNC to qualify for a fee exemption. First, a TNC has to demonstrate that they have qualified for an offset in four consecutive quarters. To do so, a TNC would have to show in each of the four quarters that they 1) met the applicable Offset Time Standard response time benchmark, 2) met the applicable minimum completion rate percentage, and 3) demonstrated a greater number of completed trips quarter-over-quarter.⁹ Second, and in addition to those requirements, the TNC would need to demonstrate that 80 percent of its completed WAV trips met or exceeded the corresponding Level 1 Offset Response Time Benchmarks for four consecutive quarters. Introducing a completion rate requirement into the second part of the exemption standard—despite the fact that such a requirement is embedded into the first part of the standard—would result in confusing and duplicative requirements. Moreover, it would be unnecessary. The battery of requirements necessary to qualify for an exemption, including increasing number of trips, increasing minimum trip completion percentage, and maintenance of response times over 4 quarters, comprehensively advances the spirit of SB 1376. Adding a second trip completion rate requirement would only complicate and frustrate its goals.

The Disability Advocates had several opportunities to advocate for their preferred policy for exemption criteria during the Track 4 rulemaking process. They made those points in their

⁹ Track 4 Decision at 56-60 (Ordering Paragraphs 1 through 6).

Comments on Track 4 Proposals,¹⁰ and in their Comments on the Proposed Track 4 Decision,¹¹ and Reply Comments on the Proposed Track 4 Decision.¹² The Commission considered these proposals and, in its discretion, adopted a different interpretation of SB 1376. The Application by the Disability Advocates is an attempt to relitigate policy decisions the Commission has already made. As such, the Application is improper. Even if the Application was timely, the Commission’s interpretation of SB 1376 was entirely reasonable and appropriate, and the exemption criteria should stand as adopted.

II. CONCLUSION

Uber appreciates the opportunity to work with the Commission and all stakeholders on this important issue. Increasing access for all will take collaboration, partnership, and robust dialogue around how best to serve the disabled community. Uber has, and will continue to, work to make an impact in providing improved accessibility for individuals with disabilities throughout California.

Respectfully submitted on this 22nd day of December, 2021 in San Francisco, California.

ALEXANDER LARRO
ADAM BIERMAN

/s/

By: Alexander Larro
1515 3rd Street
San Francisco, California 94158
Email: alarro@uber.com
Telephone: (707) 572-5216

Attorneys for Uber Technologies, Inc.

¹⁰ R.19-02-012, Post-Workshop Reply Comments on Revised Track 4 Proposals of Disability Rights Education & Defense Fund, Disability Rights California, and the Center for Accessible Technology (“Comments on Track 4 Proposals”), June 10, 2021, at 3-4.

¹¹ R.19-02-012, Comments of Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology on Proposed Decision on Track 4 Issues (“Comments on the Proposed Track 4 Decision”), Oct. 21, 2021, at 3-8.

¹² R.19-02-012, Reply Comments of Disability Rights Education & Defense Fund, Disability Rights California, and the Center for Accessible Technology on Proposed Decision on Track 4 Issues (“Comments on the Proposed Track 4 Decision”), Oct. 26, 2021, at 1-2.