BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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 (Filed February 21, 2019)

RESPONSE OF THE SAN FRANCISCO TAXI WORKERS ALLIANCE (SFTWA) TO DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, DISABILITY RIGHTS CALIFORNIA, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY'S APPLICATION FOR REHEARING OF TRACK 4 DECISION

December 23, 2021

Mark Gruberg
Executive Board Member
San Francisco Taxi Workers Alliance
1415 Palou Avenue
San Francisco, CA 94124
Tel: 415-534-5221
Email: mark1106@att.net

The San Francisco Taxi Workers Alliance (SFTWA) submits this Response to the Application of Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology ("Disability Advocates") for rehearing of Track Four Decision.

I. Introduction

SFTWA supports Disability Advocates' Application for a Rehearing of the Commission's Track Four Decision. As a matter of law, the Commission cannot approve a scheme that is in clear contradiction of the governing statute. On account of this legal error, the Rehearing must be granted.

II. The governing law is crystal clear.

The TNC Access for All Act ("Act") provides:

> As part of the designated level of WAV service for each geographic area, the commission shall require a TNC, at a minimum, to have 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.[1]

The Commission's formulation, which substitutes *completed* trips for *requested* trips, is in clear violation of this statutory requirement. SFTWA fully agrees with Disability Advocates' comments on this point.

III. The Commission's rationale for not counting no-shows is flawed.

While the decision to base exemptions on completed rides is unlawful, the rationale behind it is also flawed. The discussion of the response time definition in D.21-11-004 mischaracterizes the statute. Here is what the law says:

> Within 30 days after the end of each quarter beginning after July 1, 2020, a transportation network company . . . shall submit a report to the

[1] California Public Utilities Code Section 5440.5(a)(1)(G). Emphasis added.

> commission. The report shall include, but shall not be limited to, all of the following:
> . . .
> (iii) Data detailing the response time between when a WAV ride was requested and when the vehicle arrived.[2]

The Commission characterized this reporting requirement as a "definition" of response time:

> In evaluating the exemption eligibility requirements under §5440.5(a)(1)(G), the Commission first considered the definition of "response time." In D.20-03-007*, the Commission set forth that "Section 5440.5(a)(1)(I)(iii)* ***defines*** *response time as 'between when a WAV ride was requested and when the vehicle arrived.'*[3]

The Commission then relied on this misconstrued "definition" in establishing its own definition of response time:

> We believe that is the appropriate definition of response time, for purposes of this decision. Thus, the following definition for "response time" was adopted: "the time elapsed between when a WAV ride was requested and when the vehicle arrived."[4]

From this shaky platform the Commission made an impermissible leap, concluding that no-shows shouldn't be counted because they don't have response times. In doing so, the Commission elevated an unlawful standard over the requirements of the statute.

The Commission cannot treat its error as water under the bridge. These impure waters will continue to taint this proceeding and compromise the purposes of the Act. But the Commission can adopt the proper standard without reference to its faulty definition. As SFTWA stated in its Reply Comments to the Proposed Decision (PD):

> The PD argues that an uncompleted ride lacks a response time, and therefore should not be included in the calculation. But the logic is faulty. Under the statute, the clock starts to run when the request for service is made. It stops once the benchmark time has passed. The point is to

[2] Pub. Util. Code Section 5440.5(a)(1)(I).

[3] D.21-11-004 at 31. Emphasis added; footnote omitted.

[4] *Id*. Footnote omitted.

> determine whether the vehicle arrived in time for the trip to meet the benchmark. Whether the vehicle arrives late or not at all is irrelevant for this purpose.[5]

The Commission may wish to revisit its flawed definition of response time at some point, but it has no bearing on the issue at hand.

IV. The Commission's formula leads to an absurd result.

While legal error compels the granting of the rehearing, the sheer illogic of the Commission's approach deserves mention. The unwarranted substitution of completed trips for requested trips elevates non-arrivals over late arrivals, since the former don't count in the calculation while the latter do. By way of analogy, imagine a teacher telling her class before a test that they would suffer deductions for incorrect answers, but wouldn't be penalized for not answering at all.

IV. The current standard is bad for service.

The Commission should also be aware of the real-world harm the current rule could cause. As Disability Advocates have demonstrated, a San Francisco TNC could gain exemption for the first quarter of operations while fulfilling as little as 40% of ride requests within the applicable time standard. Even for the fourth quarter of operations, exemption could be gained with only 49% compliance. Even lower rates of compliance could qualify in the rest of the state. From a passenger's standpoint, that level of performance would be abysmal.

Furthermore, service problems in poorly served counties will be compounded if Access Providers can't get funding. There are only two major TNCs. If one or the other gains exemption in a given county, it will significantly decrease fund revenues. If both

[5] SFTWA Reply Comments, 10/26/21 at 3. Footnote omitted.

were to be exempt, funding opportunities for Access Providers would dry up. That would make it extremely difficult, if not impossible, for Access Providers to establish themselves or extend their operations. The result could be perpetually sub-standard WAV service in any county where this occurs.

V. Conclusion

The Commission must correct its error and adopt a response time standard that meets the requirements of the TNC Access for All Act.

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Respectfully submitted,

/s/Mark Gruberg