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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)

**RESPONSE OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN
FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO
MAYOR'S OFFICE ON DISABILITY RIGHTS EDUCATION AND DEFENSE FUND,
DISABILITY RIGHTS CALIFORNIA, AND THE CENTER FOR ACCESSIBLE
TECHNOLOGY'S APPLICATION FOR REHEARING OF TRACK 4 DECISION**

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Dated: December 22, 2021

INTRODUCTION

In accordance with Rule 16.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively, “San Francisco”, or “SF”) submit these comments on the Disability Advocates’ (Disability Rights Education & Defense Fund, Disability Rights California, and the Center for Accessible Technology) Application for Rehearing of D.21-11-004, the Decision on Track 4 Issues (the “Track 4 Decision”), issued on November 8, 2021.

The Commission should grant the Disability Advocates’ (“DA”) Application for Rehearing of the Track 4 Decision. San Francisco agrees with the DA that the Track 4 Decision commits legal error because it does not meet the explicit statutory requirement that “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

As the DA note, quoting the Commission’s Rules of Practice and Procedure, Rule 16.1(c), “The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”²

DISCUSSION

I. The Track 4 Decision Violates the Minimum Standards Adopted by the Legislature in the TNC Access for All Act

San Francisco agrees with the DAs’ conclusion that the Exemption Standard does not comply with the statute language that states exemptions are only available for a TNC where it meets service response time standards for 80 percent of WAV trips *requested*. The Track 4 Decision only requires a TNC to meet response time standards for 80 percent of *completed* trips,³ allowing a TNC to receive an exemption when it meets service response time standards for a

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

² CPUC Rules of Practice and Procedure, Rule 16.1(c).

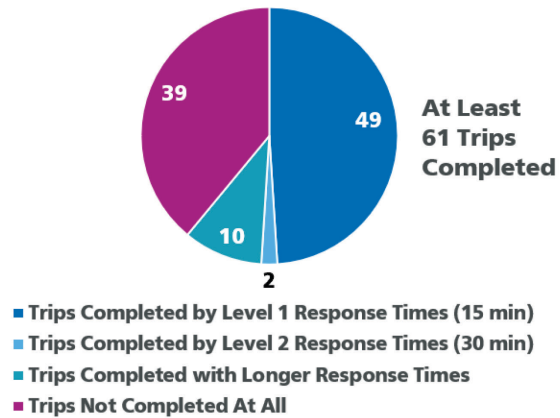
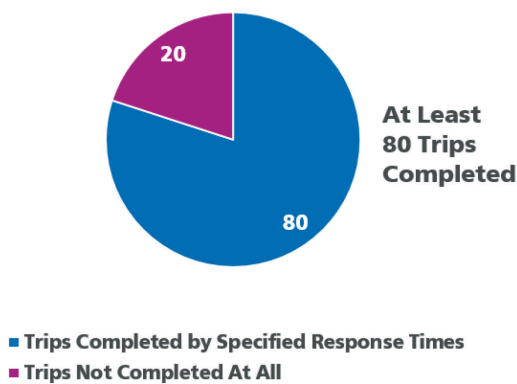
³ CPUC Track 4 Decision, pp. 31-32

much lower percentage of requested trips. This violates and undermines the purpose of the statute, as a TNC may receive an exemption when a large percentage of requests for service receive no response at all.

The charts below illustrate the difference between the performance required by the statute and the performance that the Track 4 Decision deems sufficient to warrant an exemption. Both charts use the example of 100 trips *requested* in San Francisco, the county with the most stringent exemption standards.

Performance Required by the Statute for Exemption Eligibility

Performance Required by the Track 4 Decision for Exemption Eligibility⁴



In summary, while the statute requires that 80 percent of requested trips must be completed by specified response times for a TNC to qualify for an exemption, the Track 4 Decision requires that *only 61 percent of trips must be completed at all*. Furthermore, the 61 percent threshold only applies in San Francisco; in all other counties across the state, a TNC can be eligible for an exemption after completing an *even lower* percentage of requested trips. As the DA state, “[t]he Commission’s error, in essence, is to exclude rides that are requested but not

⁴ Please note that the second pie chart reflects fourth quarter offset standards for San Francisco under the Exemption Standard adopted in Track 4. Because a TNC must be eligible for an offset for four consecutive quarters in order to be eligible for an exemption, this chart assumes that a TNC was eligible for an offset in its previous three quarters.

completed from the equation entirely, when the statute provides that they must be included in the denominator.”⁵ In other words, the proper equation to calculate exemption eligibility under the statute is the sum of trips served within the relevant response times set by the Commission over the total number of trips *requested*. Because the Track 4 Decision includes only completed trips in the denominator, the Decision reflects legal error and must be revised.

II. The DAs’ Application for Rehearing is Timely

a. The Commission has Authority to Reconsider the Erroneous Elements of Track 2 Decision That Provide Foundation for Unlawful Result in Track 4 Decision.

During the Commission’s November 7, 2021 public voting meeting, Commissioner Guzman Aceves acknowledged that the Commission had “a denominator problem” with the Exemption Standard but referred to the issue as “previously decided.”⁶ However, the Commission’s Rules of Practice and Procedure do not preclude review and correction of the Track 2 error that serves as the foundation upon which the Track 4 error is built. Despite the origin of this error in Track 2, past illegality cannot excuse present illegal action by the Commission. While the error in Track 4 builds upon a prior error in Track 2, the Commission can and should reconsider the erroneous elements of the Track 2 Decision that provide the foundation for an unlawful result in the Track 4 Decision. The Commission should take the opportunity to fix the error to avoid the costs and time of litigation.

b. Violation of Minimum Standards Adopted by Legislature Could Not be Fully Understood until Track 4 Decision.

While the Commission began the creation of an exemption program in Track 2, they did not finalize the Exemption Standard until Track 4.⁷ In Track 2, the Commission set the following standard for exemption eligibility:

⁵ DA’s Application for Rehearing of Track 4 Decision, p. 10

⁶ CPUC Nov. 4, 2021 Voting Meeting, recording available at http://www.adminmonitor.com/ca/cpuc/voting_meeting/20211104/; Commissioner Guzman Aceves’s comments begin at 1h 51m.

⁷ CPUC Track 4 Decision, pp. 61-62

“For exemption eligibility, a Transportation Network Company (TNC) must demonstrate that:

- (a) 80 percent of its completed wheelchair accessible vehicle (WAV) trip response times achieve the corresponding Level 2 WAV response time, for a quarter and geographic area, and
- (b) The TNC achieved the requisite response times for four consecutive quarters.”⁸

The Track 2 Decision also adopted interim WAV response times and an interim Offset Time Standard.⁹ In the Track 4 Scoping Memo, the Commission invited parties to submit proposals on several items consequential to the exemption requirements, including Modifications to the Offset Time Standard and Modifications to the Trip Completion Standard.¹⁰ In the Track 4 Decision, the Commission adopted a new Exemption Standard framework “to replace the combined Exemption Time Standard (ETS) and Trip Completion Standard (TCS) framework adopted in Decision (D.) 20-03-007 [Track 2] and D.21-03-005 [Track 3].”¹¹

Thus, while the legal error of the Track 4 Decision built upon a legal error in Track 2, the effects of these errors could not be fully understood before the Track 4 Decision revised the Offset Time Standard and adopted the Exemption Standard framework. Prior to the Track 4 Decision, trip completion requirements had not yet been finalized.¹² In the Track 4 Scoping Memo, the Commission asked, “[s]hould the Trip Completion Standard be modified to include a minimum baseline percentage or increasing benchmarks? Should the Trip Completion Standard take into account the Response Time Standards, and if so, how?”¹³ Parties took conflicting positions on these issues, which were not resolved until the Track 4 Decision.

⁸ CPUC Track 2 Decision, p. 91

⁹ CPUC Track 2 Decision, p. 84

¹⁰ CPUC Amended Track 4 Scoping Memo and Ruling, pp. 2-4

¹¹ CPUC Track 4 Decision, p. 61

¹² CPUC Amended Track 4 Scoping Memo and Ruling, pp. 2-4

¹³ CPUC Amended Track 4 Scoping Memo and Ruling, pp. 2-4

Because a TNC must qualify for an offset for four quarters in order to qualify for an exemption, the adopted Trip Completion Standard creates a minimum trip completion rate for offsets that is incorporated into exemptions. This Trip Completion Standard was finalized as part of the Offset Time Standard in the Track 4 Decision,¹⁴ allowing parties to understand that no adopted framework would require TNCs to meet the benchmark of 80 percent completion of trips requested. Only in Track 4 could parties fully comprehend the legal error and the negative consequences for WAV users that are illustrated in the charts above, and that are inconsistent with the clear statutory language.

CONCLUSION

San Francisco strongly supports the DAs' request that "the Commission grant rehearing to correct the unlawful and erroneous standard for TNC Exemption Requirements adopted in the Track 4 Decision."¹⁵

Dated: December 22, 2021

Respectfully submitted,

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¹⁴ CPUC Track 4 Decision, pp. 59-60

¹⁵ DA Application for Rehearing of Track 4 Decision, p. 12