



FILED
12/23/21
04:59 PM

**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 METROPOLITAN TRANSPORTATION COMMISSION ON
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, DISABILITY RIGHTS
CALIFORNIA, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY'S
APPLICATION FOR REHEARING OF TRACK 4 DECISION**

Theresa Romell
Director, Funding Policy and Programs
Metropolitan Transportation Commission
375 Beale Street, Suite 800, San Francisco, CA 94105
Tel: 415-778-6772
E-mail: tromell@bayareametro.gov

December 23, 2021

**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 METROPOLITAN TRANSPORTATION COMMISSION ON
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, DISABILITY RIGHTS
CALIFORNIA, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY'S
APPLICATION FOR REHEARING OF TRACK 4 DECISION**

I. Introduction

In accordance with Rule 16.1(a) of the Commission's Rules of Practice and Procedure the Metropolitan Transportation Commission submits this response 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.

As the Disability Advocates note, quoting the California Public Utilities Commission (CPUC) 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.”¹

The Metropolitan Transportation Commission is the designated metropolitan planning organization and the regional transportation planning agency for the for the nine-county San Francisco Bay Area. The Metropolitan Transportation Commission supports the Disability Advocates’ (DA) Application for Rehearing of the Track 4 Decision. The Metropolitan Transportation Commission agrees with the DA position that the Track 4 Decision commits legal error because it does not comply with the statute language, which states 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.”² As the transportation planning agency, the Metropolitan Transportation Commission recognizes that this legal error will have negative consequences for wheelchair accessible transportation in the Bay Area and must be revised.

II. The CPUC’s Track 4 Decision Violates the Minimum Standards Adopted by the Legislature in the TNC Access for All Act

The Metropolitan Transportation Commission agrees with the Disability Advocates’ conclusion that the Exemption Standard does not meet the explicit statutory requirement that exemptions are only available for a TNC where it meets service response time standards for 80 percent of WAV trips *requested*. Instead, the Track 4 Decision allows a TNC to receive an exemption when it meets service response time standards for *completed* trips.³

As the Disability Advocates state, “[t]he Commission’s error, in essence, is to exclude rides that are requested but not completed from the equation entirely, when the statute provides that they must be included in the denominator.”⁴ In other words, the proper equation to calculate

¹ CPUC Rules of Practice and Procedure, Rule 16.1(c).

² Cal. Pub. Util. Code § 5440.5(a)(1)(G) (emphasis added)

³ CPUC Track 4 Decision, p. 28

⁴ Disability Advocates Application for Rehearing of Track 4 Decision, p. 10

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 trips completed in the denominator, the Decision reflects legal error and must be revised. Failing to revise this violates and undermines the purpose of the statute and fails to adequately serve wheelchair passengers.

III. The Disability Advocates' Application for Rehearing is Timely

The Commission has authority to reconsider erroneous elements of the Track 2 Decision that provide the foundation for an unlawful result in the Track 4 Decision. As the Disability Advocates note 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."⁵ Despite the origin of this error in Track 2, however, past illegality cannot excuse present illegal action by the Commission. 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. While the error in Track 4 builds upon a prior error in Track 2, the Commission should take the opportunity to fix the error to avoid the costs and time of litigation.

The Commission began the creation of an exemption program in Track 2 but did not finalize the Exemption Standard until Track 4.⁶ In Track 2, the Commission set the following standard for exemption eligibility:

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

⁵ 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.

⁶ CPUC Track 4 Decision, p. 61-62

(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.”⁷

The Track 2 Decision also adopted interim WAV response times and an interim Offset Time Standard.⁸ 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.⁹ 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].”¹⁰

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 were still in flux.¹¹ 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?”¹² Parties took conflicting positions on these issues, which were not resolved until the Track 4 Decision.

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,¹³ allowing parties to understand that no

⁷ CPUC Track 2 Decision, p. 91

⁸ CPUC Track 2 Decision, p. 84

⁹ CPUC Amended Track 4 Scoping Memo and Ruling, p. 2-4

¹⁰ CPUC Track 4 Decision, p. 61

¹¹ CPUC Amended Track 4 Scoping Memo and Ruling, p. 2-4

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

¹³ CPUC Track 4 Decision, p. 59-60

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.

IV. Conclusion

The Metropolitan Transportation Commission supports the Disability Advocates' request that "the Commission grant rehearing to correct the unlawful and erroneous standard for TNC Exemption Requirements adopted in the Track 4 Decision."¹⁴

Dated: December 23, 2021

Respectfully submitted,

/s/ Theresa Romell

Theresa Romell
Director, Funding Policy and Programs
Metropolitan Transportation Commission
375 Beale Street, Suite 800, San Francisco, CA 94105
Tel: 415-778-6772
E-mail: tromell@bayareametro.gov

¹⁴ Disability Advocates Application for Rehearing of Track 4 Decision, p. 12