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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.

Rulemaking 19-02-012

**ASSIGNED COMMISSIONER'S AMENDED  
TRACK 5 SCOPING MEMO AND RULING**

This Amended Scoping Memo and Ruling (Amended Scoping Memo) amends the previously issued Scoping Memo in this proceeding to designate the scope and schedule of Track 5, which is sub-divided into Track 5A and Track 5B. Except as expressly set forth in this Amended Scoping Memo, the terms of the previously issued Scoping Memo remain unchanged.

**1. Background**

The assigned Commissioner's Scoping Memo, issued on May 7, 2019, identified the issues to be addressed in this proceeding and established three tracks for the issues in this proceeding (Tracks 1, 2, and 3). On August 15, 2019, an Amended Scoping Memo was issued that added issues to Track 2 and modified the Track 2 schedule. On April 21, 2020, an Amended Track 3 Scoping Memo was issued that set forth the schedule and scope for Track 3. On March 19, 2021, an Amended Track 4 Scoping Memo was issued that set forth the schedule and scope for Track 4.

Issues scoped as Track 1 were addressed in Decision (D.) 19-06-033. Issues

scoped as Track 2 were addressed in D.20-03-007. Issues scoped as Track 3 were addressed in D.21-03-005. Issues scoped as Track 4 were addressed in D.21-11-004.

## **2. Track 5 Issues**

In D.21-11-004, the Commission identified several additional issues to be addressed in a future phase of this proceeding. In addition, it has come to the Commission's attention that at least one Transportation Network Company (TNC) has been offering pre-scheduled wheelchair accessible vehicle (WAV) trips. The issue of pre-scheduled WAV trips<sup>1</sup> has not been considered in this proceeding to date. To address this topic, as well as the additional issues referenced in D.21-11-004, the Commission sub-divides Track 5 into Track 5A and Track 5B.

### **2.1. Issues for Track 5A**

On July 15, 2020, Lyft Inc. (Lyft) submitted Advice Letter WAV-004 seeking an offset for the 2<sup>nd</sup> Quarter of 2020 for Los Angeles and San Francisco counties.<sup>2</sup> On March 12, 2021, the Consumer Protection and Enforcement Division (CPED) issued a disposition letter approving Lyft's Advice Letter WAV-004.<sup>3</sup>

On March 22, 2021, San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco

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<sup>1</sup> Here, pre-scheduled WAV trips refer to trip requests submitted to a TNC with a future pick-up time, such as requesting a pick-up for the following day.

<sup>2</sup> Lyft Advice Letter WAV-004, available at: [www.cpuc.ca.gov/regulatory-services/licensing/transportation-licensing-and-analysis-branch/transportation-network-companies/tnc-accessibility-for-persons-with-disabilities-program/tnc---access-advice-letter-status](http://www.cpuc.ca.gov/regulatory-services/licensing/transportation-licensing-and-analysis-branch/transportation-network-companies/tnc-accessibility-for-persons-with-disabilities-program/tnc---access-advice-letter-status).

<sup>3</sup> *Id.*

Mayor's Office on Disability (collectively, San Francisco) appealed CPED's disposition letter on the grounds that, among other things, Lyft's reported WAV response times for San Francisco "include negative values, meaning that trips are accepted before they are requested."<sup>4</sup> In Lyft's Advice Letter WAV-004, Lyft provided negative response time values for Period A.<sup>5</sup> In D.20-03-007, Period A was defined as the time from when a trip is requested until the trip is accepted.<sup>6</sup> As one example, in San Francisco, Lyft identified that 10 percent of its WAV trips in the 2<sup>nd</sup> Quarter of 2020 had a response time of -9.09 minutes from the time the trip was requested until the time the trip was accepted.

Based on Lyft's clarifications to CPED, the Commission is aware that the negative value response times resulted from the inclusion of "pre-scheduled" WAV trips. In this proceeding, however, the Commission did not consider or define Period A or Period B for pre-scheduled WAV trips offered by TNCs, nor did we consider the potential effects of pre-scheduled WAV trips on key outcome metrics, such as the Offset Time Standard.

Indeed, the concept of pre-scheduled WAV trips has only been raised in this proceeding in Track 3 when considering the appropriate definition of "on-demand transportation."<sup>7</sup> We note that parties in Track 3, including Lyft, opposed defining "on-demand transportation" to include pre-scheduled WAV service.<sup>8</sup>

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<sup>4</sup> San Francisco's Appeal of CPED Disposition of Lyft Advice Letter 4B, March 22, 2021, at 1.

<sup>5</sup> Lyft Advice Letter 4B Supplemental Data, February 4, 2021, Offset Response Time Tab.

<sup>6</sup> D.20-03-007 at Ordering Paragraph (OP) 6.

<sup>7</sup> D.21-03-005 at 19.

<sup>8</sup> *Id.*

For these reasons, Track 5A will consider whether pre-scheduled WAV trips should be permitted to qualify in the Access for All Program and if permitted, how such trips should be calculated for purposes of Offset Requests, Exemption Requests, and other requirements. Track 5A issues will be addressed on an expedited schedule because there are pending Offset Request Advice Letters submitted by TNCs, as well as the amount of Access Fund moneys available, that are impacted by the outcome of these issues. Note that until Track 5A is completed, the disposition of any pending Advice Letter that included pre-scheduled WAV trips is suspended.

The Commission seeks comments from parties on several questions. Section 2.1.1 encompasses questions directed at TNCs that are a party to this proceeding to better understand TNCs' use of pre-scheduled WAV trips. Section 2.1.2 encompasses questions to be considered by any party.

#### **2.1.1. Questions for TNCs**

1. How does the TNC define a "pre-scheduled" WAV trip (as compared to an "on-demand" WAV trip)?
2. Is the TNC currently offering pre-scheduled WAV trips, and has it offered pre-scheduled WAV trips in the past?
3. If yes to Number 2, respond to the following:<sup>9</sup>
  - a. Provide the date range that the TNC has offered or is offering pre-scheduled WAV trips and the applicable counties.
  - b. How far in advance may a passenger schedule a WAV trip?

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<sup>9</sup> When responding, a TNC should use its definition of "pre-scheduled" WAV trips, as provided in response to Question 1.

- c. Approximately what percentage of the TNC's WAV trips are pre-scheduled? For both trip requests and trip completions, provide the percentage by applicable quarter and county.
- d. Once a passenger requests a pre-scheduled WAV trip, how far in advance of the passenger's scheduled time does the TNC dispatch the trip request to the driver pool? What criteria or method does the TNC use to determine what time to issue the trip request to the driver pool?
- e. Were pre-scheduled WAV trips included in any of the TNC's past Offset Request or Exemption Request Advice Letter submittals? If so, which Advice Letters?
- f. For each Advice Letter submittal that included pre-scheduled WAV trips, please provide the following (by county and quarter):
  - i. What percentage of requested WAV trips consisted of pre-scheduled WAV trips? What percentage of completed WAV trips consisted of pre-scheduled WAV trips?
  - ii. What percentage of requested WAV trips consisted of pre-scheduled trips scheduled more than 24 hours in advance of the requested pick-up time? What percentage of completed WAV trips consisted of pre-scheduled trips scheduled more than 24 hours in advance of the requested pick-up time?
  - iii. What percentage of requested WAV trips consisted of pre-scheduled trips scheduled less than 24 hours in advance of the requested pick-up time? What percentage of completed WAV trips consisted of pre-scheduled trips scheduled less than 24 hours in advance of the requested pick-up time?

4. If the TNC does not currently offer, or has not offered, pre-scheduled WAV trips, does the TNC plan to offer pre-scheduled WAV rides in the future?

### **2.1.2. Questions for All Parties**

1. In D.21-03-005, the Commission defined “on-demand transportation” as “any transportation service that does not follow a fixed route and / or schedule.”<sup>10</sup> The Commission also stated that: “Access Fund Administrators should prioritize the selection of Access Provider applicants that offer wheelchair accessible vehicle transportation that can be requested and fulfilled within 24 hours.”<sup>11</sup>
  - a. How should the Commission define a “pre-scheduled” WAV trip (as compared to an “on-demand” WAV trip)?
  - b. Should “pre-scheduled” WAV trips be included in the Access for All Program for purposes of qualification for offsets, exemptions, access providers, and other requirements?
  - c. If “pre-scheduled” WAV trips are included in the Access for All Program, should such trips be subject to different performance requirements than “on-demand” WAV trips? If so, what performance framework or requirements should be applied?
2. In D.20-03-007, the Commission defined “response time” as “the time elapsed between when a WAV ride was requested and when the vehicle arrived” where “Period A is defined as the time elapsed from when a trip is requested until the trip is accepted. Period B is defined as the time elapsed from when a trip is accepted until the vehicle arrives.”<sup>12</sup>

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<sup>10</sup> D.21-03-005 at OP 6.

<sup>11</sup> *Id.*

<sup>12</sup> D.20-03-007 at OP 2 and 6.

- a. Should the adopted “response time” definition be applied to pre-scheduled WAV trips? If yes, how should the definitions of Periods A and B be applied? If no, how should “response time” be defined for pre-scheduled WAV trips?
  - b. For example, should Period A be defined as the time between when the TNC dispatches a trip request to its driver pool and when a driver ultimately accepts/denies that request? Should Period B be defined as the time between when a driver accepts a trip request and when the driver arrives at the passenger’s pickup location?
3. How should previously approved Advice Letters that included pre-scheduled WAV trips be treated? How should pending Advice Letters that include pre-scheduled WAV trips be treated?
  4. How should data on the use of pre-scheduled WAV trips be reported to the Commission?

## **2.2. Issues for Track 5B**

In D.21-11-004, the Commission identified several additional issues to be addressed in a future phase of this proceeding. After addressing the issues scoped in Track 5A, the Commission will consider the topics outlined below as Track 5B.

### **1. TNC Data Collection.**

In D.21-11-004, the Commission stated:

Although we do not adopt additional data reporting requirements at this time (beyond the list of counties), the Commission recognizes that the TNC Access For All Program is approaching its third year since implementation. We also recognize that more comprehensive data analysis will be necessary to inform the 2024 Legislative Report, as well as potential modifications to response time benchmarks, as discussed in this decision. For these reasons, following

the issuance of this decision, the Commission intends to seek comments from parties on a proposal for more comprehensive data collection from TNCs related to the TNC Access for All Program.<sup>13</sup>

- a. What additional data should be collected from TNCs and Access Providers to inform the 2024 Legislative Report and potential modifications to the WAV response time benchmarks?
  - b. How can this data collection advance the goals of the Commission's Environmental and Social Justice Action Plan?
2. TNC Community Outreach.

In D.21-11-004, the Commission stated:

...Senate Bill (SB) 1376 highlights the need for effective engagement with the disability community in multiple provisions. For example, to demonstrate "improved level of service" for offset eligibility, a requirement is that a TNC demonstrate "efforts undertaken to publicize and promote available WAV services to disability communities." Further, SB 1376 states that:

The Legislature finds that adoption of services in communities that were previously underserved may take time, and requires robust dialogue, educational outreach, and partnerships to build trust in the new services.

The Commission concurs that effective engagement with the disability community by TNCs is a critical component to furthering the acceptance and expansion of on-demand WAV service. As such, we deem that this proceeding should address the issue of the quality

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<sup>13</sup> D.21-11-004 at 19.



and effectiveness of TNCs' engagement with the disability community.<sup>14</sup>

- a. How should the Commission ensure that TNCs undertake effective engagement with the disability communities to further acceptance and expansion of on-demand WAV service?
3. Multi-County Pooling of Funds. In certain California counties, the amount of Access Fund moneys available may be relatively small due to: the reduced presence of TNC service, TNCs' qualification for offsets, or TNCs' qualification for exemptions in those counties. Therefore, the amount of Access Fund moneys in those individual counties may be unlikely to be sufficient to build a WAV program by Access Providers.
- a. For counties where the amount of Access Fund moneys available is relatively small, should Access Fund moneys be permitted to be "pooled" across multiple counties? If so, what criteria should be used to determine multi-county pooling? What other requirements should be considered?
  - b. Should the Commission allow fund pooling only in counties served by the Statewide Fund Administrator, only in counties served by individual Local Access Fund Administrators, or both?
4. This proceeding is set to close in February 2023, while the Access for All Act Program will sunset on January 1, 2026, pursuant to SB 1376. Should Commission Staff be delegated authority to make decisions on certain aspects of the Access for All Program once the proceeding has closed? If so, which issues?

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<sup>14</sup> *Id.* at 48.

### 3. Schedule

The Commission seeks comments on Track 5A on an expedited schedule due to pending Offset Request Advice Letters that are impacted by the pre-scheduled WAV trip issue. The schedule for Track 5A and Track 5B is below.

The assigned Commissioner or assigned Administrative Law Judges (ALJs) may modify the schedule as necessary to promote the efficient management and fair resolution of this proceeding.

<b>Track 5A Calendar</b>	
TNC Responses to Scoping Memo Questions (Section 2.1.1) due	January 28, 2022
Proposals on all other Scoping Memo Questions (Section 2.1.2) due <sup>15</sup>	February 11, 2022
Workshop on Track 5A proposals	February 17, 2022
Comments on proposals and workshop due	March 1, 2022
Reply comments on proposals and workshop due	March 11, 2022
Ruling or Proposed Decision on Track 5A	Q2 2022
<b>Track 5B Calendar</b>	
Proposals on Track 5B Issues due <sup>16</sup>	April 15, 2022
Workshop on Track 5B proposals	Late April 2022
Comments on proposals and workshop	May 16, 2022
Reply comments on proposals and workshop	May 27, 2022
Proposed Decision on Track 5B	Q3 2022

To the extent necessary, the assigned Commissioner or the assigned ALJs may further adjust or supplement the schedule.

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<sup>15</sup> CPED may issue a proposal concurrently or in advance of party proposals.

<sup>16</sup> CPED may issue a proposal concurrently or in advance of party proposals.

#### 4. Schedule for Completion

It is the Commission's intent to complete this proceeding within 13 months from the date this Amended Track 5 Scoping Memo is issued. This proceeding shall be completed by February 22, 2023. This deadline may be extended by order of the Commission pursuant to Public Utilities Code § 1701.5(a) and (b).

**IT IS RULED** that:

1. The amended scope of this proceeding for Track 5A and Track 5B is as described above.
2. The schedule of this proceeding for Track 5A and Track 5B is as set forth above.
3. Except as expressly set forth in this Amended Scoping Memo, the terms of the previously issued Scoping Memo and Ruling remain unchanged.

Dated January 14, 2022, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma  
Assigned Commissioner