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TO PARTIES OF RECORD IN RULEMAKING 19-02-012:

This is the proposed decision of Commissioner Genevieve Shiroma. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 23, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:mef
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER SHIROMA**
Mailed (1/20/2023)

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

DECISION ON TRACK 5 ISSUES

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Summary

This decision adopts and modifies rules for the implementation of Senate Bill 1376, the “TNC Access for All Act.” The Commission addresses issues scoped as Track 5 of this proceeding, including requirements for pre-scheduled wheelchair accessible vehicle (WAV) trips, requirements for Wait & Save WAV trips, and other modifications.

This proceeding remains open.

1. Background

Senate Bill (SB) 1376,¹ the “TNC Access for All Act” (Act), requires Transportation Network Companies (TNCs) to provide services accessible to persons with disabilities through online-enabled applications or platforms, with a focus on wheelchair users who require a wheelchair accessible vehicle. Public Utilities (Pub. Util.) Code § 5431.5(b)² defines a wheelchair accessible vehicle (WAV) as “a vehicle equipped with a ramp or lift capable of transporting nonfolding motorized wheelchairs, mobility scooters, or other mobility devices.” Additional information on SB 1376 can be found in the Order Instituting Rulemaking (OIR) for this proceeding, Decision (D.) 19-06-033, D.20-03-007, D.21-03-005, and D.21-11-004.

On March 4, 2019, the Commission opened the instant OIR to implement SB 1376. On May 7, 2019, a Scoping Memo and Ruling (Scoping Memo) was issued by the assigned Commissioner that identified the issues to be addressed in this proceeding and established three tracks for this proceeding (Tracks 1, 2, and 3). On March 19, 2021, the assigned Commissioner issued the Track 4 Amended Scoping Memo and Ruling (Amended Scoping Memo) that set forth

¹ SB 1376, Pub. Util. Code § 5440.5.

² All statutory references are to the Public Utilities Code unless otherwise noted.

the Track 4 schedule and scope. D.19-06-033 addressed Track 1 issues, D.20-03-007 addressed Track 2 issues, D.21-03-005 addressed Track 3 issues, and D.21-11-004 addressed Track 4 issues.

On January 14, 2022, the assigned Commissioner issued an amended Track 5 Scoping Memo that set forth the Track 5 schedule and scope and sub-divided Track 5 into Track 5A and Track 5B.

1.1. Background on Track 5A Issues

On January 28, 2022, responses to the Track 5A Scoping Memo Questions for TNCs were submitted by HopSkipDrive, Inc. (HopSkipDrive), Lyft, Inc. (Lyft), and Uber Technologies, Inc. (Uber). Track 5A proposals were submitted on February 14, 2022 by: the Disability Rights Education & Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, Disability Advocates); Lyft; San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office (collectively, San Francisco); San Francisco Taxi Workers Alliance (SFTWA); and Uber. The Commission's Consumer Protection and Enforcement Division's (CPED) proposal was filed via an Administrative Law Judge's (ALJ) ruling. A workshop on Track 5A proposals was held on February 17, 2022.

Opening comments on proposals and the workshop were filed on March 1, 2022 by: Disability Advocates, Lyft, San Francisco, SFTWA, and Uber. Reply comments were filed on March 11, 2022 by: Disability Advocates, Lyft, San Francisco, SFTWA, and Uber.

On April 11, 2022, an *Assigned Commissioner's Ruling on Track 5A Issues and Data Submission for Pre-Scheduled Trips* was issued, which addressed certain of the Track 5A issues and directed further record development on other issues. Opening comments on the April 11 ruling were filed on April 22, 2022 by:

Disability Advocates, Lyft, San Francisco, SFTWA, and Uber. Reply comments were filed on May 4, 2022 by San Francisco. On May 9, 2022, additional data on pre-scheduled WAV trips was submitted by: HopSkipDrive, Lyft, Nomad Transit, LLC (Nomad), and Uber.

On May 17, 2022, an assigned ALJ ruling was issued that permitted additional Track 5A proposals. On June 17, 2022, responses to an ALJ ruling regarding trip cancellations for pre-scheduled trips were submitted by Lyft and Uber. On June 30, 2022, additional Track 5A proposals were submitted by: CPED, Lyft, San Francisco, and Uber. On July 14, 2022, opening comments on additional proposals were submitted by: Disability Advocates, Lyft, San Francisco, SFWTA, and Uber. Reply comments on additional proposals were submitted on July 26, 2022 by: Disability Advocates, Lyft, San Francisco, SFTWA, and Uber.

On September 13, 2022, an assigned ALJ ruling was issued requesting additional proposals and comments on Lyft's Wait & Save WAV trips. Comments and proposals were submitted on September 30, 2022 by: Disability Advocates, Lyft, San Francisco, SFTWA, and Uber. Reply comments were submitted on October 10, 2022 by: Disability Advocates, Lyft, San Francisco, SFTWA, and Uber.

1.2. Background on Track 5B Issues

Proposals on Track 5B issues were submitted on April 15, 2022 by: CPED, Disability Advocates, Lyft, San Francisco, and Uber. Opening comments were submitted on May 16, 2022 by Disability Advocates, Lyft, San Francisco, and Uber. Reply comments were submitted on May 27, 2022 by Disability Advocates, Lyft, San Francisco, and Uber.

2. Issues Before the Commission

2.1. Track 5A Issues

In the assigned Commissioner's Amended Track 5 Scoping Memo, issued on January 14, 2022, Track 5A was scoped to "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."³

The Amended Scoping Memo identified the following issues for Track 5A:

1. How should the Commission define a "pre-scheduled" WAV trip (as compared to an "on-demand" WAV trip)?
2. 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?
3. 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?
4. Should the adopted "response time" definition, adopted in D.20-03-007, 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?
5. 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?
6. How should data on the use of pre-scheduled WAV trips be reported to the Commission?

³ Amended Scoping Memo at 4.

2.2. Track 5B Issues

The Amended Scoping Memo identified the following issues for Track 5B:

1. TNC Data Collection.
 - 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. 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 is anticipated to sunset on January 1, 2026, per Pub. Util. Code § 5440.5(e). 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?

All proposals and comments were considered; however, given the number of issues in this proceeding, some proposals or comments may receive little or no discussion in this decision.

3. Discussion

3.1. Definition of Pre-Scheduled WAV Trips

We first consider what the definition of a “pre-scheduled” WAV trip should be, as compared to an “on-demand” WAV trip. The assigned Commissioner’s Ruling on Track 5A Issues and Data Submission for Pre-Scheduled Trips (April 11 ACO Ruling) considered several proposed definitions and stated that:

We observe that a majority of parties agree on a similar definition for ‘pre-scheduled’ service and we find that definition to be reasonable. Accordingly, a “pre-scheduled” trip shall be defined as “any service that allows a passenger to schedule a trip with a specified pickup time.”⁴

The April 11 ACO Ruling adopted the definition of “pre-scheduled” WAV service for purposes of the ACO Ruling. The Commission finds it appropriate to apply the definition of “pre-scheduled” WAV trip to the Access for All Program as well. Accordingly, a “pre-scheduled” trip shall be defined as “any service that allows a passenger to schedule a trip with a specified pickup time.”

3.2. Definition of Response Time for Pre-Scheduled Trips

We next consider whether the “response time” definition, adopted in D.20-03-007, should be applied to pre-scheduled WAV trips. The April 11 ACO

⁴ Assigned Commissioner’s Ruling, April 11, 2022, at 4 (April 11 ACO Ruling).

Ruling considered several modifications to the “response time” definition and determined that:

A majority of parties agree on a similar modification to the “response time” definition as applied to pre-scheduled trips and we find the definition to be reasonable. Accordingly, for a pre-scheduled trip, “response time” shall be defined for purposes of this Ruling as: the time elapsed between the passenger’s scheduled pickup time and when the vehicle arrived. If the vehicle arrives before the passenger's scheduled pickup time, the response time shall be “0.”⁵

While Lyft supported the ACO Ruling’s definition of “response time,” Lyft now recommends modifying the definition for pre-scheduled trips such that “a driver is ‘on-time’ if they arrive during the desired pick up time.”⁶ San Francisco recommends adopting the term “pickup delay” to replace “response time” for pre-scheduled service, in order to differentiate this definition from the response time for on-demand trips.⁷ Disability Advocates supports adopting the term “pickup delay.”⁸ SFTWA recommends instead adopting the term “grace period.”⁹

The Commission finds that the definition of “response time” adopted in the April 11 ACO Ruling is appropriate to apply to the Access for All Program and finds insufficient basis to modify the definition here. The Commission agrees that differentiating the response time terminology for “on-demand” trips versus “pre-scheduled” trips would be useful to avoid confusion. We determine

⁵ April 11 ACO Ruling at 6.

⁶ Lyft Track 5A Reply Comments, July 26, 2022, at 3.

⁷ San Francisco Track 5A Additional Proposals, June 30, 2022, at 2.

⁸ Disability Advocates Track 5A Opening Comments, July 14, 2022, at 4.

⁹ SFTWA Track 5A Opening Comments, July 14, 2022, at 4.

that “pickup delay” is an appropriate term to refer to “response times” for pre-scheduled trips and therefore, the term is adopted here.

Accordingly, for a pre-scheduled WAV trip, the “pickup delay” shall be defined as: the time elapsed between the passenger’s scheduled pickup time and when the vehicle arrived. If the vehicle arrives before the passenger's scheduled pickup time, the “pickup delay” shall be “0.”

3.3. Modifications to the Offset Standard for Pre-Scheduled WAV Trips

In the April 11 ACO Ruling, we considered whether pre-scheduled WAV trips should be included in the Access for All Program for purposes of qualification for offsets, exemptions, or other requirements. We noted that:

There is general consensus that pre-scheduled WAV trips should be included in the Access for All Program for purposes of offsets and exemption eligibility; however, parties differ as to whether separate qualifications should be applied to pre-scheduled WAV trips as compared to real-time WAV trips.¹⁰

The April 11 ACO Ruling concluded that:

We agree with parties that recommend that pre-scheduled WAV trips should be eligible for offsets and exemptions only after separate performance metrics are considered and adopted. We concur that the current offset and exemption benchmarks did not contemplate pre-scheduled WAV trips when they were established in D.20-03-007, and modified in D.21-11-004.¹¹

The ACO Ruling stated that “it is reasonable to consider different performance metrics for pre-scheduled WAV trips” and that once pre-scheduled non-WAV and WAV data was submitted into the record by TNCs, parties could

¹⁰ April 11 ACO Ruling at 6.

¹¹ *Id.* at 12.

submit additional proposals on pre-scheduled WAV trip performance metrics.¹² We next consider proposals on performance metrics for pre-scheduled WAV trips.

3.3.1. CPED's Proposal

CPED analyzed pre-scheduled non-WAV and WAV trip data, where available, to determine the response times by county over a ten-quarter period.¹³ CPED recommends that TNCs demonstrate faster response times for pre-scheduled WAV trips, as compared to on-demand WAV response times, because pre-scheduled trips are known further in advance and thus should be easier to fulfill.¹⁴ Based on its analysis, CPED proposes that to qualify for an offset, the TNC meet two requirements: (1) a pre-scheduled Trip Completion Standard, and (2) an Offset Time Standard (OTS) within a pre-scheduled Offset Response Time Benchmark (PORTB).

For the PORTB, CPED recommends maintaining the existing ramp-up percentage of completed trips by meeting both Level 1 and Level 2, as adopted for on-demand WAV trips in D.21-11-004. The existing OTS ramp-up percentages are as follows:

Offset Time Standard (OTS)	
Percentage of Completed Trips under Level 1 Response Times	
1 st Quarter Submission	50%
2 nd Quarter	54%
3 rd Quarter	57%
4 th Quarter	61%
5 th Quarter	64%
6 th Quarter	68%

¹² *Id.* at 13.

¹³ CPED Track 5A Additional Proposals, June 30, 2022, at 5.

¹⁴ *Id.*

7 th Quarter	71%
8 th (and subsequent) Quarter	75%

Percentage of Completed Trips under Level 2 Response Times	
1 st Quarter Submission	80%
2 nd Quarter	81%
3 rd Quarter	83%
4 th Quarter	84%
5 th Quarter	86%
6 th Quarter	87%
7 th Quarter	89%
8 th (and subsequent) Quarter	90%

To determine the PORTB, CPED recommends applying a Level 2 PORTB, which would be half of the Level 1 on-demand ORTB, and a Level 1 PORTB, which would be half of the Level 2 PORTB. CPED believes these response times provide an incentive for TNCs to bring pre-scheduled WAV service response times more in line with pre-scheduled non-WAV service. CPED also states that the proposed response time benchmarks fall between current pre-scheduled WAV and pre-scheduled non-WAV response times, where data is available. CPED recommends maintaining the county groupings adopted in D.21-11-004.

CPED's proposed PORTB are as follows (with the ORTB adopted in D.21-11-004 included for reference):

Pre-scheduled Offset Response Time Benchmarks				
Geographic Area/County	PORTB Level 1 Response Time (mins)	PORTB Level 2 Response Time (mins)	ORTB Level 1 Response Time (mins)	ORTB Level 2 Response Time (mins)
San Francisco	4	8	15	30
Alameda, Contra Costa, Imperial, Los Angeles, Madera, Orange, Sacramento, San Joaquin, San Luis Obispo, San Diego, San Mateo,	7	13	25	50

Pre-scheduled Offset Response Time Benchmarks				
Geographic Area/County	PORTB Level 1 Response Time (mins)	PORTB Level 2 Response Time (mins)	ORTB Level 1 Response Time (mins)	ORTB Level 2 Response Time (mins)
Santa Barbara, Santa Clara, Santa Cruz, Shasta, Solano, Stanislaus, Ventura				
Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	8	15	30	60

To demonstrate offset eligibility for pre-scheduled WAV trips, CPED recommends that a TNC demonstrate it has met both the relevant Level 1 and Level 2 OTS within the pre-scheduled response time benchmarks for a given quarter in a geographic area.

CPED’s second proposed requirement is that a TNC meet a pre-scheduled Trip Completion Standard (PTCS), similar to that required for on-demand WAVs. CPED proposes a higher TCS than is required of on-demand WAV trips because the data reflects that pre-scheduled WAV trips have higher completion rates than on-demand WAV trips. CPED proposes maintaining the TCS ramp-up method adopted in D.21-11-004 and adopting the following PTCS:

Pre-scheduled Trip Completion Standard (PTCS) Percentages			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
1 st Quarter Submission	90%	80%	65%
2 nd Quarter	90%	81%	66%
3 rd Quarter	90%	82%	67%
4 th Quarter	90%	83%	69%
5 th Quarter	90%	84%	71%
6 th Quarter	90%	85%	74%
7 th Quarter	90%	85%	77%
8 th (and subsequent) Quarter	90%	85%	80%

To demonstrate offset eligibility under PTCS, CPED recommends that a TNC meet: (a) the applicable minimum percentage of trip requests completed, and (b) either: (1) a greater number of completed trips than the immediately prior quarter, or (2) a greater number of completed trips than the immediately prior year's same quarter, if sufficient data is available.

Lastly, CPED recommends that if approved, Access Fund monies should be awarded proportionate to the TNC's pre-scheduled versus on-demand service mix for that county and quarter. In other words, if a TNC meets the on-demand criteria but not the pre-scheduled service criteria, the TNC will be awarded a percentage of funds proportional to its on-demand WAV volume.

3.3.1.1. Comments on CPED's Proposal

San Francisco supports some aspects of CPED's proposal but expresses concern that a TNC is not required to provide the same types of service for its WAV and non-WAV offerings.¹⁵ Specifically, San Francisco is concerned that a TNC could reduce its on-demand WAV service to qualify for the pre-scheduled WAV service metrics. San Francisco states that CPED's proposal relies on a two-tier structure that is not as simple as San Francisco's proposal. If separate

¹⁵ San Francisco Track 5A Opening Comments, July 14, 2022, at 3.

pre-scheduled and on-demand requirements are adopted, San Francisco recommends that on-demand and pre-scheduled funds be collected and distributed separately. San Francisco states that this would avoid a scenario where a TNC could deplete the Access Fund while failing to provide adequate on-demand service.

Disability Advocates agrees with CPED that offset standards should be higher for pre-scheduled service than on-demand service.¹⁶ SFTWA objects to allowing TNCs to obtain offsets on a proportional basis and believes that these options can be manipulated by a TNC to its favored service.¹⁷

Lyft opposes CPED's proposal because the trip completion percentages for San Francisco and Los Angeles counties exceed the actual completion rates for non-WAV pre-scheduled trips.¹⁸ Lyft asserts that pre-scheduled WAV trips are dispatched similarly to on-demand trips, and it is unlikely that completion rates for pre-scheduled WAV trips will be materially different for pre-scheduled non-WAV trips. Rather, if a different standard is adopted for pre-scheduled trips, Lyft recommends applying the current completion standards for on-demand trips established in D.21-11-004. Lyft supports CPED's PORTB for Level 1 and Level 2 but recommends modifying the response time definition to reflect the time range a passenger agrees to when booking the pre-scheduled trip.

Uber states that CPED's proposed PORTB is currently unachievable for Lyft's pre-scheduled service.¹⁹ Uber argues that CPED's proposal does not account for differences between WAV and non-WAV pre-scheduled service,

¹⁶ Disability Advocates Track 5A Opening Comments, July 14, 2022, at 1.

¹⁷ SFTWA Track 5A Opening Comments, July 14, 2022, at 4.

¹⁸ Lyft Track 5A Opening Comments, July 14, 2022, at 2.

¹⁹ Uber Track 5A Opening Comments, July 14, 2022, at 3.

including costs and operational challenges, limited number of WAV operators, and that demand can be scattered across a county. Uber believes the proposed PTCS is overly ambitious and should be set lower to start, considering the lack of pre-scheduled WAV trip data to inform the standard. Uber remarks that this is especially the case for County Groups B and C, where there are currently no pre-scheduled WAV trips. Uber notes that ambitious benchmarks may have unintended consequences, such as TNCs dispatching a limited pool of WAV drivers earlier to complete pre-scheduled trips, which may result in fewer WAV trips or higher fares.

Uber states that if separate benchmarks are adopted for pre-scheduled trips, the standards should initially be set closer to the current levels for on-demand WAV trips.²⁰ Uber agrees that on-demand and pre-scheduled trips should be assessed independently and that Access Funds should be awarded on a pro-rated, proportionate basis according to the pre-scheduled/on-demand service mix. Uber disagrees with San Francisco's comments to hold the per-trip fee as separate on-demand and pre-scheduled funds, as this would duplicate administrative burden without a material benefit.²¹

3.3.2. San Francisco's Proposal

San Francisco recommends that a TNC seeking an offset in any county or quarter must: (1) provide the same types of WAV service as it provides for non-WAV service, and (2) meet the offset requirements.²² That is, if a TNC provides pre-scheduled non-WAV service in a county, it must provide pre-scheduled WAV service as well. San Francisco's proposed offset

²⁰ *Id.*

²¹ Uber Track 5A Reply Comments, July 26, 2022, at 5.

²² San Francisco Track 5A Additional Proposals, June 30, 2022, at 3.

requirements for pre-scheduled WAV service mirror those applied to on-demand WAV service: (1) a Trip Completion Standard, and (2) a Pickup Delay Benchmark that must be met within the Pickup Delay Standard.²³

To develop the Trip Completion Standard, San Francisco analyzed pre-scheduled non-WAV and WAV data, where available, and developed standards based on current non-WAV service levels. San Francisco asserts that its proposal balances attainability with service standards that increase over time, as is done with the current on-demand TCS. However, San Francisco proposes fewer steps due to the relatively higher pre-scheduled non-WAV completion rates. For the proposed TCS, a TNC must demonstrate that it has met the following minimum percentages of WAV trips completed:

Pre-scheduled Trip Completion Standard			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
Quarters 1 to 3	85%	80%	75%
Quarters 4 to 7	90%	90%	85%
Quarters 8 and after	95%	95%	90%

To develop the Pickup Delay Benchmark, San Francisco analyzed pre-scheduled WAV and non-WAV data and used a 90th percentile standard to account for worst-case pickup scenarios. For simplicity, San Francisco proposes combining the Level 1 and Level 2 benchmarks that are used in the on-demand ORTB. San Francisco recommends that a TNC must demonstrate it met the Pickup Delay Benchmark or completed trips, as follows:

County Group	Pre-scheduled Pickup Delay Benchmark
A	6 minutes
B	8 minutes
C	22 minutes

²³ *Id.* at 3-9.

For its Pickup Delay Standard, San Francisco recommends escalating percentages each quarter, as with on-demand OTS, but with fewer steps given what San Francisco observes is an already high level of service. The proposed Pickup Delay Standard is as follows:

Quarter	Percentage of Completed Trips under Pickup Delay Benchmark
1 st	80%
2 nd	80%
3 rd	85%
4 th	85%
5 th	90%
6 th	90%
7 th	95%
8 th and after	95%

For offset eligibility, San Francisco proposes that a TNC demonstrate it met the Pickup Delay Benchmark for a given quarter in a geographic area.

3.3.2.1. Comments on San Francisco's Proposal

Disability Advocates and SFTWA support San Francisco's proposal.²⁴ Disability Advocates supports San Francisco's proposal over CPED's proposal because it contends that the proposal is based on data for non-WAV pre-scheduled trips, is more straightforward, and is designed to achieve comparability with non-WAV service over time.

Uber largely reiterates the same concerns with San Francisco's proposal as with CPED's proposal, discussed above.²⁵ Uber and Lyft argue that the Pickup Delay Benchmarks are unachievable when applied to Lyft's existing

²⁴ SFTWA Track 5A Opening Comments, July 14, 2022, at 4; Disability Advocates Track 5A Opening Comments, July 14, 2022, at 4-6.

²⁵ Uber Track 5A Opening Comments, July 14, 2022, at 7.

pre-scheduled WAV data, and Lyft states that the trip completion percentages for San Francisco and Los Angeles counties exceed actual completion rates for non-WAV pre-scheduled trips.²⁶ Uber opposes San Francisco's PTCS percentages for not considering existing county-level data and due to the lack of pre-scheduled WAV data in many counties. Uber states that San Francisco has not demonstrated why this standard is workable or accurately reflects the realities of WAV service.

Uber and Lyft further object to the proposal that a TNC seeking an offset must offer both pre-scheduled and on-demand WAV services, if it offers such non-WAV services. Uber states that this is outside of the scope of Track 5A and retroactively adopts a new requirement that a TNC develop additional WAV services, despite the offset standards for on-demand WAV trips being in place for over two years. Lyft argues that there are barriers to a TNC offering the same range of service for WAV and non-WAV, including the lack of privately owned WAVs and the higher cost associated with WAVs.²⁷

3.3.3. Lyft's Proposal

Due to the low volume of pre-scheduled WAV trip data, Lyft recommends that new standards should not be developed specifically for pre-scheduled trips.²⁸ Lyft points out that since the 3rd quarter of 2019, there were only two quarters in which more than 10 percent of Lyft's completed WAV trips were pre-scheduled, and those quarters are outliers due to the overall decrease in total WAV trips due to the pandemic.

²⁶ Uber Track 5A Opening Comments, July 14, 2022, at 7; Lyft Track 5A Opening Comments, July 14, 2022, at 2.

²⁷ Lyft Track 5A Opening Comments, July 14, 2022, at 5.

²⁸ Lyft Track 5A Proposals, June 30, 2022, at 3.

Lyft observes that TNCs currently must show quarter-over-quarter improvements in both Level 1 and Level 2 response times using a formula that divides the number of on-demand rides under 15 minutes by the total number of on-demand rides. Lyft recognizes parties' concerns with using this formula for pre-scheduled trips, as it may give TNCs an advantage to favor pre-scheduled trips over on-demand trips. To address this, Lyft recommends a binary approach that considers whether the ride was "on-time" or not "on-time," as measured by the expectation of the passenger. Lyft recommends the following formula to determine the Level 1 percentile:

$$\text{Percentile} = (\# \text{ on-demand rides under 15 mins} + \# \text{ scheduled rides "on time"}) / (\# \text{ on-demand rides} + \# \text{ scheduled rides})$$

Lyft states that this formula allows performance to be measured for both on-demand and pre-scheduled rides. For the Level 2 benchmark, Lyft proposes the following formula:

$$\text{Percentile} = (\# \text{ on-demand rides under 30 mins} + \# \text{ scheduled rides "on time"}) / (\# \text{ on-demand rides} + \# \text{ scheduled rides})$$

Under these formulas, "on time" would be determined by whether the pre-scheduled WAV trip arrived according to the range of time offered to the requesting passenger. For example, a passenger may be given a range of time between 4:10 and 4:25 pm for pickup, and the ride would be deemed "on time" if the ride arrived by 4:25 pm.

3.3.3.1. Comments on Lyft's Proposal

Disability Advocates, SFTWA, and San Francisco oppose Lyft's proposal because it relies on Lyft's discretion to determine whether a ride is "on time."²⁹

²⁹ SFTWA Track 5A Opening Comments, July 14, 2022, at 2; Disability Advocates Track 5A Opening Comments, July 14, 2022, at 7; San Francisco Track 5A Opening Comments, July 14, 2022, at 6.

Disability Advocates and San Francisco object to the proposal because it is based on an assumption that pre-scheduled trips will be a small percentage of total WAV trips, and these parties state that low volume should not be a proxy for demand. Disability Advocates states that if Lyft's proposal is adopted, the Commission should set parameters to ensure appropriate arrival windows. Uber supports Lyft's proposal but comments that the proposal uses a 15-minute "on time" window, which may not be reasonable for some counties.³⁰ Uber adds that an estimated pickup range may not be feasible for all TNCs if they do not offer such a range.

3.3.4. Discussion

The Commission disagrees with adopting performance criteria for pre-scheduled WAV trips by using the same standards adopted for on-demand WAV trips, as proposed by Lyft. As was stated in the April 11 ACO Ruling, "[w]e agree with parties that recommend that pre-scheduled WAV trips should be eligible for offsets and exemptions only after separate performance metrics are considered and adopted."³¹ As such, we decline to adopt Lyft's proposed formula.

Both CPED and San Francisco propose variations of the current on-demand offset performance metrics to include: (a) a Trip Completion Standard and (b) a response time standard within a response time benchmark. Both CPED and San Francisco developed their proposals after analyzing pre-scheduled WAV and non-WAV data submitted by TNCs. The proposals differ, however, in how stringent the standard should be and whether a TNC

³⁰ Uber Track 5A Opening Comments, July 14, 2022, at 2.

³¹ April 11 ACO Ruling at 12.

must offer both pre-scheduled and on-demand WAV services to qualify for offsets. San Francisco proposes a completion rate and Pickup Delay Benchmarks that are more stringent than CPED's proposal.

The Commission recognizes the challenges in establishing performance metrics for a relatively new pre-scheduled WAV service, which is currently offered only by Lyft in San Francisco and Los Angeles counties. We also observe that pre-scheduled service can be a valuable option for WAV passengers that may prefer more flexibility or certainty in booking a WAV trip in advance. In developing performance metrics, it is therefore critical to balance the need to incentivize future development and expansion of pre-scheduled WAV service across California counties, with the need to incentivize rigorous performance standards for offset and exemption eligibility.

We recognize the concern that both San Francisco's and CPED's proposed response time benchmarks are not currently achievable when applied to Lyft's existing pre-scheduled WAV data. However, we find that CPED's proposed response time benchmarks offer a middle ground solution that still applies stringent standards for pre-scheduled WAV service and incentivizes increasingly higher performance metrics over time.

Parties raise concerns that CPED's framework is more complex because it uses both Level 1 and Level 2 benchmarks, as opposed to San Francisco's proposal that collapses a Pickup Delay Standard and Pickup Delay Benchmark into one level. We agree that applying either the Level 1 or Level 2 benchmark, mirroring San Francisco's proposal, would minimize complexity and administrative burden. We find that applying only CPED's Level 2 Offset Response Time and Level 2 Percentage of Completed Trips would still impose a sufficiently high standard that incentivizes increased performance over time.

This approach would also address TNCs' concerns that both CPED's and San Francisco's proposed metrics are not currently achievable. Therefore, we deem it reasonable to modify CPED's proposal to apply only the Level 2 Offset Response Time and Level 2 Percentage of Completed Trips.

Accordingly, CPED's proposed offset metrics are adopted, with a modification that only the Level 2 Offset Response Time and Level 2 Percentage of Completed Trips shall apply. To demonstrate improved level of service for pre-scheduled WAV trips, a TNC shall demonstrate it met the relevant Pickup Delay Standard (PDS) within the Pickup Delay Benchmark (PDB) for a given quarter in a given geographic area. The 1st Quarter benchmarks shall apply in the first quarter that a TNC applies for offsets for pre-scheduled WAV service. We have replaced the terminology "Offset Response Time" with "Pickup Delay" to align with the terminology adopted in Section 3.2.

Pre-scheduled PDS	
Percentage of Completed Trips under PDBs	
1 st Quarter Submission	80%
2 nd Quarter	81%
3 rd Quarter	83%
4 th Quarter	84%
5 th Quarter	86%
6 th Quarter	87%
7 th Quarter	89%
8 th (and subsequent) Quarter	90%

Pre-scheduled PDB	
Geographic Area/County	Response Time (mins)
San Francisco	8
Alameda, Contra Costa, Imperial, Los Angeles, Madera, Orange, Sacramento, San Joaquin, San Luis Obispo, San Diego, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Solano, Stanislaus, Ventura	13
Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	15

With respect to the Trip Completion Standard, CPED and San Francisco put forth similarly high percentages for trip completion that increase each quarter. San Francisco recommends a higher percentage of trip completions by Quarters 8 and after, with 95 percent trip completion in County Groups A and B and 90 percent for County Group C. CPED, by contrast, recommends that percentages by Quarter 8 reach 90 percent for County A, 85 percent for County B, and 80 percent for County C. The Commission agrees that the Trip Completion Standard should be set at a higher level than for on-demand WAV service because a pre-scheduled WAV trip is scheduled and known to the TNC in advance and therefore, should be easier to complete than an on-demand WAV trip.

CPED's proposal for County Group A sets an appropriately rigorous standard of 90 percent trip completion. However, for County Groups B and C, we find that CPED's trip completion percentage by the 8th Quarter should be set higher and more in line with San Francisco's proposal, to incentivize TNCs to achieve a similarly rigorous trip completion standard by the 8th Quarter as in

County A. Therefore, we find it appropriate to adopt CPED's proposal with the modification that the PTCS for County Groups B and C should reach 90 and 85 percent, respectively, by the 8th Quarter.

Accordingly, to demonstrate improved level of service for pre-scheduled WAV trips, a TNC shall meet: (a) the applicable minimum percentage of trip requests completed, and (b) either: (1) a greater number of completed trips than the immediately prior quarter, or (2) a greater number of completed trips than the immediately prior year's same quarter, if sufficient data is available. The County Groupings adopted in D.21-11-004 shall apply to the Trip Completion Standards.³² The minimum completion rate percentages are as follows:

Pre-scheduled Trip Completion Standard (PTCS) Percentages			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
1 st Quarter Submission	90%	80%	65%
2 nd Quarter	90%	81%	67%
3 rd Quarter	90%	82%	70%
4 th Quarter	90%	83%	73%
5 th Quarter	90%	84%	76%
6 th Quarter	90%	86%	79%
7 th Quarter	90%	88%	82%
8 th (and subsequent) Quarter	90%	90%	85%

³² In Ordering Paragraph (OP) 6 of D.21-11-014, the following county groupings were adopted:

- (1) County Group A: San Francisco
- (2) County Group B: Alameda, Contra Costa, Imperial, Los Angeles, Madera, Orange, Sacramento, San Joaquin, San Luis Obispo, San Diego, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Solano, Stanislaus, Ventura
- (3) County Group C: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba

The above-adopted requirements represent the requirements for a TNC to demonstrate improved level of service for offset eligibility for pre-scheduled WAV trips. In addition to improved level of service, a TNC must still meet the additional offset eligibility requirements adopted in D.21-03-005 and D.20-03-007 for pre-scheduled WAV trips.

Lastly, we agree that modifying the offset requirements to require a TNC to offer on-demand or pre-scheduled WAV, if it offers the same non-WAV service, is outside of the scope of this track. Further, there is insufficient record support to adopt such a material change to the offset requirements that TNCs have relied on since D.20-03-007 and D.21-03-005. However, we find it reasonable that Access Funds monies should be awarded proportional to the percentage of a TNC's on-demand versus pre-scheduled WAV service mix. In addition, the awarded proportion should be capped at the amount of Access Fund monies the TNC collected in that quarter and county for that specific service (on-demand or pre-scheduled). This addresses San Francisco's concern that a TNC cannot deplete the Access Fund monies with one type of WAV service for on-demand and pre-scheduled trips.

Accordingly, a TNC may submit an Offset Request for either its pre-scheduled WAV service or its on-demand WAV service, or both. Upon approval of an Offset Request, the TNC shall be awarded Access Fund monies proportionate to that county and quarter's pre-scheduled or on-demand WAV service mix, as applicable. The awarded proportion shall be capped at the amount of Access Fund monies the TNC collected in that quarter and county for the specific service (*i.e.*, pre-scheduled or on-demand trips). In its Offset Request, the TNC shall submit its total eligible WAV offset expenses, as required in D.20-03-007, and the breakdown of its on-demand and pre-scheduled WAV

service mix for that county and quarter. In its quarterly Access Fee Statement, the TNC shall provide a breakdown of the total Access Fund fees collected from on-demand and pre-scheduled trips for that county and quarter.

The offset eligibility requirements adopted here for pre-scheduled WAV trips shall be effective beginning the 3rd quarter of 2023.

3.4. Modifications to the Exemption Standard for Pre-Scheduled Trips

We next consider whether there should be any modifications to the exemption standard for pre-scheduled WAV trips. CPED recommends a similar exemption standard as was adopted for on-demand WAV service in D.21-11-004.³³ To qualify for an exemption for pre-scheduled trips, a TNC must demonstrate that:

- a. 80 percent of its pre-scheduled completed WAV trips met or exceeded the corresponding Level 1 Pre-scheduled Offset Response Time Benchmarks for a given geographic area for four consecutive quarters, and
- b. the TNC qualified for an offset in the given geographic area for the same four consecutive quarters.

CPED similarly recommends applying proportionate funding for exemptions, as was proposed for offset awards, based on a TNC's pre-scheduled/on-demand service mix. For example, if a TNC meets the on-demand WAV exemption criteria but not the pre-scheduled WAV exemption criteria, the TNC would retain the percentage of funds available proportionate to its on-demand WAV trip volume for the upcoming year.

³³ CPED Track 5A Additional Proposals, June 30, 2022, at 11.

San Francisco proposes a new exemption standard for pre-scheduled trips, with a TNC being required to meet the following:³⁴

- a. at least 95 percent of its completed pre-scheduled WAV trips met or exceeded the Pickup Delay Benchmark for a given geographic area for four consecutive quarters; and
- b. the TNC qualified for an offset in the given geographic area for the same four consecutive quarters.

Uber supports CPED's proposal for exemption eligibility, as it mirrors the framework adopted in D.21-11-004.³⁵ While Uber supports prorating exemptions based on a TNC's pre-scheduled/on-demand service mix, Uber does not support limiting award funds based on the service mix in place at the time the exemption was determined. Uber recommends that the exemption should be adjusted by quarter, if there is a future shift in the service mix. San Francisco objects to adjusting exemptions based on a future service mix.³⁶

Disability Advocates argues that there is no authority to grant TNCs a partial exemption for partial accessibility and that a TNC must be "fully accessible" to qualify for exemptions, which means both on-demand and pre-scheduled services must meet the Commission's standards.³⁷ However, Disability Advocates supports allowing a TNC that is "partially accessible, or only on their way toward full accessibility" to qualify for offsets but not

³⁴ San Francisco Track 5A Additional Proposals, June 30, 2022, at 9.

³⁵ Uber Track 5A Opening Comments, July 14, 2022, at 6.

³⁶ San Francisco Track 5A Reply Comments, July 26, 2022, at 4.

³⁷ Disability Advocates Track 5A Opening Comments, July 14, 2022, at 3.

exemptions. SFTWA supports San Francisco's exemption proposal because it is a more stringent standard.³⁸

3.4.1. Discussion

CPED's proposed 80 percent standard for exemption eligibility is the same standard as is currently required for on-demand WAV trips. San Francisco's proposal, by contrast, would require a higher 95 percent trip completion standard. We agree that the exemption standard for pre-scheduled trips should have a higher completion rate than on-demand trips since pre-scheduled trips are booked and known to the TNC further in advance. The Commission is persuaded that San Francisco's 95 percent trip completion standard is an appropriately rigorous requirement for exemption eligibility, given that an exemption approval allows a TNC to retain Access Fees in that county for a full year.

As discussed above, the Commission does not agree with San Francisco's proposal that a TNC must qualify for offsets for both pre-scheduled trips and on-demand trips in order to qualify for an exemption. Thus, a TNC can submit an Exemption Request for either its pre-scheduled WAV trips or on-demand WAV trips, or both. If the Exemption Request is approved, the Commission finds it reasonable that the Access Fund fees retained by the TNC for the future year should be the Access Fund fees collected for either pre-scheduled or on-demand TNC trips, whichever service the Exemption Request was based upon.

Accordingly, we adopt San Francisco's proposal with the modification that a TNC may submit an Exemption Request for either pre-scheduled WAV trips or

³⁸ SFTWA Track 5A Opening Comments, July 14, 2022, at 5.

on-demand WAV trips, or both. For exemption eligibility for pre-scheduled WAV trips, a TNC must demonstrate that:

- a. at least 95 percent of its completed pre-scheduled WAV trips met or exceeded the PDB (adopted in Section 3.3) for a given geographic area for four consecutive quarters, and
- b. the TNC qualified for an offset in the given geographic area for the same four consecutive quarters.

This will be referred to as the Pre-scheduled Exemption Time Standard.

To verify that a TNC achieved the Pre-scheduled Exemption Time Standard, a TNC shall submit completed WAV response times in deciles, for each qualifying quarter. A TNC's pre-scheduled Exemption Request shall mirror the requirements of a pre-scheduled Offset Request for four consecutive quarters.

Upon approval of an Exemption Request for pre-scheduled or on-demand WAV service, the TNC shall retain that county's Access Fund fee collection for either pre-scheduled or on-demand TNC trips for the future year, whichever service the exemption approval was based upon. The exemption eligibility requirements adopted for pre-scheduled WAV trips shall be effective beginning the 3rd quarter of 2023.

3.5. Lyft's Wait & Save Feature

In its June 30 proposal, Lyft states that it recently began offering its Wait & Save program to WAV users.³⁹ Lyft describes the program as follows:

As with Lyft on-demand, riders may request a same day trip, but have the option of choosing to wait upwards of 30 minutes for a vehicle to arrive in exchange for a discounted trip fee. When passengers select a Wait & Save trip, they are informed that a vehicle will arrive within "X" minutes, for example 15 minutes. A Wait & Save passenger does not

³⁹ Lyft Track 5A Additional Proposals, June 30, 2022, at 7.

choose a specific pick-up time but rather, elects to wait longer for an on-demand trip in exchange for a lower fee.

Lyft expresses concern that if response times for Wait & Save trips are calculated in the same manner as for on-demand trips (that is, measuring the elapsed time between the request time and the vehicle arrival time), Lyft will be penalized in the form of longer response times, which could potentially hinder its offset eligibility. Instead, Lyft proposes that Wait & Save trips should be considered as on-demand WAV trips but that their response time should be calculated “as the elapsed time between the delayed pick-up time to which the passenger has agreed at the time of the request and the actual arrival time of the vehicle.”⁴⁰ Lyft believes that this approach accounts for passenger’s expectations and measures performance against those expectations.

Alternatively, Lyft recommends that a Wait & Save trip should be considered “on time” if a driver arrives before the delayed pick-up time that was accepted by the passenger.⁴¹ In other words, if a passenger opts for a Wait & Save trip with a pickup window of 8:00 – 8:20 am, the trip is considered “on time” if the driver arrives before 8:20 am. If the driver is not “on time” (*i.e.*, arrives past the stated arrival time), the trip would not be included in the number of trips within the Level 1 and Level 2 response times. The trip, however, would be included in the total number of trips completed. Lyft states that its proposal penalizes a driver for arriving outside the pick-up window, similar to the penalty for a driver of an on-demand trip arriving outside of the response time benchmarks. Uber supports Lyft’s alternative proposal as it measures responsiveness based on a customer’s expectation and reduces

⁴⁰ *Id.* at 8.

⁴¹ Lyft Wait & Save Opening Comments, September 30, 2022, at 3.

administrative delay with creating new performance metrics.⁴² Uber suggests that TNCs provide documentation about Wait & Save service to address parties' concerns about TNCs skirting performance metrics.

Disability Advocates, San Francisco, and SFTWA oppose both of Lyft's proposals, stating that they give Lyft discretion to set the arrival window to determine what is "on time."⁴³ These parties advocate for response times for Wait & Save trips to be measured similarly to other "on-demand" WAV trips (*i.e.*, from the time when the passenger first requests the ride to when the vehicle arrives).⁴⁴ San Francisco disagrees that customers voluntarily choose a delayed pickup time and states that they may select the delayed pickup time due to lower costs.⁴⁵ San Francisco states that new standards should not be developed for every new fare product offered by TNCs and the Commission should use discretion to adapt the Access for All Program to new products.

Uber and Lyft oppose measuring Wait & Save response times the same as on-demand trips because it ignores the value of the Wait & Save feature in that a passenger intentionally elects for the delayed arrival time range in exchange for a lower fare.⁴⁶ Uber comments that measuring these as on-demand response times would penalize TNCs for offering such trips and Lyft states that parties have

⁴² Uber Wait & Save Reply Comments, October 10, 2022, at 4.

⁴³ Disability Advocates Wait & Save Opening Comments, September 30, 2022, at 1; San Francisco Wait & Save Reply Comments, October 10, 2022, at 2; SFTWA Wait & Save Reply Comments, October 10, 2022, at 3.

⁴⁴ Disability Advocates Track 5A Opening Comments, July 14, 2022, at 7; SFTWA Track 5A Opening Comments, July 14, 2022, at 3; San Francisco Track 5A Opening Comments, July 14, 2022, at 11.

⁴⁵ San Francisco Wait & Save Reply Comments, October 10, 2022, at 3.

⁴⁶ Uber Wait & Save Opening Comments, September 30, 2022, at 2; Lyft Wait & Save Reply Comments, October 10, 2022, at 5.

provided no evidence that TNCs have or would manipulate wait times to their advantage.

3.5.1. Discussion

In the assigned ALJ's Ruling Requesting Proposals and Comments on Wait & Save Service, issued September 13, 2022, we stated that:

The Commission recognizes a tension between calculating Wait & Save trips based on the "on-demand" response time definition, which could result in much longer response times, and calculating Wait & Save trips based on Lyft's proposal, which could potentially result in much shorter response times. We also recognize, however, a need to appropriately incentivize transportation network companies (TNCs) to offer features like the Wait & Save option, particularly given the stated popularity of this feature among WAV passengers.⁴⁷

Nearly all parties agree that Wait & Save trips should be considered "on demand" WAV trips, as opposed to "pre-scheduled" WAV trips.⁴⁸ We agree that Wait & Save WAV trips should be categorized as "on-demand" trips for purposes of offset and exemption eligibility. The outstanding issue is how to define the "response time" for a Wait & Save WAV trip.

To accept the Wait & Save option, a WAV customer voluntarily agrees to a delayed pickup time in exchange for a reduced trip fee. A Wait & Save customer thus declines the faster on-demand WAV option for a delayed pickup window. The Commission agrees with Lyft and Uber that applying the on-demand response time definition to Wait & Save trips would penalize a TNC, as it would

⁴⁷ ALJ Ruling Requesting Proposals and Comments on Wait & Save Service, September 13, 2022, at 3.

⁴⁸ SFTWA Wait & Save Reply Comments, October 10, 2022, at 2; San Francisco Wait & Save Opening Comments, September 30, 2022, at 1; Disability Advocates Wait & Save Opening Comments, September 30, 2022, at 1; Lyft Track 5A Reply Comments, July 14, 2022, at 8.

necessarily result in longer response. Given the stated popularity of the Wait & Save program among WAV passengers, we acknowledge that this is a feature that WAV customers appear to value.

Lyft's alternate proposal would consider a Wait & Save trip "on time" if a driver arrives before the stated pickup time. If the trip is not "on time," the trip would not be included in the number of trips within the Level 1 and Level 2 response times but would be included in the total number of trips completed. The Commission concludes that Lyft's alternate proposal is a reasonable solution that measures response time based on a passenger's "on time" expectation, while not penalizing (and potentially disincentivizing) TNCs for offering a feature strongly valued by WAV passengers.

Accordingly, Wait & Save WAV trips shall be categorized as "on-demand" WAV trips for purposes of the Access for All Program. A Wait & Save trip shall be considered "on time" if the driver arrives before the delayed pick-up time that was accepted by the passenger. If the trip is "on time," that trip will be included in the percentage of completed trips under the Level 1 and Level 2 Offset Time Standard response times, as adopted in Ordering Paragraph 1 of D.21-11-004. If the trip is not "on time," the trip shall not be included in the percentage of completed trips under the Level 1 and Level 2 response times. However, the trip shall be included in the total number of trips completed, for purposes of reporting under Ordering Paragraph 1 of D.20-03-007. The adopted requirements for Wait & Save trips shall be effective the 3rd quarter of 2023.

While Wait & Save WAV service represents an innovative, valued feature among WAV passengers, the primary purpose and intent of the Act is the deployment and adoption of "on-demand" WAV services. Because Wait & Save WAV service is a relatively new fare offering that was not contemplated when

the Act was passed, we would like to ensure that Wait & Save WAV trips do not overtake a TNC's traditional on-demand WAV trip offerings, or diminish the availability or service quality of traditional on-demand offerings. As such, we intend to monitor TNCs' implementation and expansion of Wait & Save trips and may modify the requirements in the future, as warranted. To that end, a TNC that offers Wait & Save WAV trip services shall submit the percentage and number of Wait & Save WAV trips out of the total on-demand WAV trips for the applicable quarter and county. The information shall be submitted via an Information Only Advice Letter 15 days after the end of the applicable quarter, regardless of whether the TNC seeks an Offset or Exemption Request. The Information Only submission requirements for Wait & Save trips shall be effective the 2nd quarter of 2023.

3.6. Data Reporting

We next consider whether: (a) additional data should be reported to inform the 2024 Legislative Report and potential modifications to the WAV response time benchmarks, as scoped in Track 5B, and (b) additional data should be reported for pre-scheduled WAV trips, as scoped in Track 5A. For the former, we also consider whether data collection can advance the goals of the Commission's Environmental and Social Justice (ESJ) Action Plan. CPED and San Francisco put forth a series of data reporting proposals, summarized below.

CPED states that TNCs currently report the number of WAVs in operation by quarter and aggregated by hour of the day and day of the week, but that this data does not provide the number of WAVs available at certain times of the day.⁴⁹ CPED recommends that TNCs provide the unique number of WAVs in

⁴⁹ CPED Track 5B Proposals, April 15, 2022, at 4.

operation (for pre-scheduled and on-demand requests) by hour of the day and day of the week, regardless of whether an offset was requested for that county. CPED states that the unique number of WAVs will help evaluate concerns about stranded WAV customers and whether customers lack WAV access at certain times of the day.

CPED also recommends that TNCs provide where within a county (by zip code) WAV service was requested, completed, and available in each quarter, regardless of whether an offset was requested for that county. Currently, county level data is collected for offset counties and such data does not provide granular data to identify WAV demand and availability within each county. CPED recommends that TNCs report total WAV trips requested and completed, broken out by county, zip code, and type of service (pre-scheduled or on-demand).

San Francisco and Disability Advocates support CPED's proposal, although San Francisco comments that it does not go far enough because it seeks only a portion of the data required in Advice Letter templates.⁵⁰ Rather, San Francisco recommends that all TNCs providing WAV service submit data on WAV service availability, retroactively and going forward. San Francisco states that this information is necessary for the Legislative Report and because TNCs operate WAV programs in counties in which they did not seek an offset and thus do not submit WAV availability data. Disability Advocates supports San Francisco's proposal.⁵¹

⁵⁰ San Francisco Track 5B Opening Comments, May 16, 2022, at 8; Disability Advocates Track 5B Opening Comments, May 16, 2022, at 2.

⁵¹ Disability Advocates Track 5B Opening Comments, May 16, 2022, at 3.

Lyft objects to providing the unique number of WAVs because it would not generate useful data and likely lead to misrepresented data.⁵² Lyft likewise does not support providing data by zip code because it would be burdensome and unlikely to generate useful data. San Francisco disagrees with the reporting of zip code data because zip codes are not designations of geographical areas but collections of addresses.⁵³ To meet the ESJ Action Plan goals, San Francisco posits that geographic reporting should reflect identified ESJ communities, including Disadvantaged Communities, tribal lands, and low-income census tracts. San Francisco proposes that Census Tract be added to the geographic area reporting, in addition to county. Disability Advocates supports San Francisco's proposals.⁵⁴

Uber opposes collecting data from TNCs that do not apply for an offset or exemption because it argues that the Act does not impose a reporting obligation for areas where a TNC does not seek an offset or exemption.⁵⁵ Uber objects to retroactive reporting and states that administrative rules should be forward-looking. Uber asserts that if additional data is collected, the focus should be on analyzing WAV availability across zip codes where reported trips occur. This data could identify opportunities to incentivize WAV expansion to provide outreach to underserved communities. Lyft opposes San Francisco's data collection proposal and notes that it was rejected by the Commission in Track 4.⁵⁶

⁵² Lyft Track 5B Opening Comments, May 16, 2022, at 4.

⁵³ San Francisco Track 5B Opening Comments, May 16, 2022, at 9.

⁵⁴ Disability Advocates Track 5B Opening Comments, May 16, 2022, at 3.

⁵⁵ Uber Track 5B Opening Comments, May 16, 2022, at 2.

⁵⁶ Lyft Track 5B Opening Comments, May 16, 2022, at 6.

San Francisco recommends revisions to the TNC Annual Reports, collected as part of Rulemaking (R.) 12-12-011, to determine whether WAV services are comparable to non-WAV services.⁵⁷ San Francisco comments that the Annual Reports do not differentiate between WAV and non-WAV service and recommends adding WAV-specific fields. Alternatively, San Francisco recommends that information requested in the Advice Letters be mirrored for non-WAV service. Disability Advocates supports San Francisco's proposal.⁵⁸ Lyft and Uber object to modifications to the Annual Reports and contend that this issue is outside the scope of this proceeding and should be addressed in R.12-12-011.⁵⁹

CPED observes that under the "other" complaint category, which TNCs are required to report for offset eligibility, complaints related to "pickup" and "drop off" are being reported with high frequency. CPED recommends modifying the categories to add separate categories for "pickup" or "drop off," as distinct from "other." Disability Advocates, Lyft, Uber, and San Francisco support this recommendation.⁶⁰ Uber states that "pickup and drop off" should be one category as Uber cannot necessarily discern from a complaint which category it would fall into.

San Francisco recommends seeking qualitative feedback from WAV users about the Access for All Program to inform the Legislative Report. Disability

⁵⁷ San Francisco Track 5B Proposals, April 15, 2022, at 2.

⁵⁸ Disability Advocates Track 5B Opening Comments, May 16, 2022, at 3.

⁵⁹ Lyft Track 5B Opening Comments, May 16, 2022, at 5; Uber Track 5B Opening Comments, May 16, 2022, at 3.

⁶⁰ Lyft Track 5B Opening Comments, May 16, 2022, at 2; San Francisco Track 5B Opening Comments, May 16, 2022, at 9; Uber Track 5B Opening Comments, May 16, 2022, at 4; Disability Advocates Track 5B Opening Comments, May 16, 2022, at 5.

Advocates, Lyft, and Uber support this proposal.⁶¹ San Francisco recommends that the Commission use public dashboards to publish data submitted in the Access for All Program.

San Francisco, Lyft, and Uber seek consistency in the manner that TNCs report trip cancellations since Lyft stated that it reports all cancellations that occur on a single trip (which led to a higher number of reported cancellations) and Uber stated that it reports only the final action of the trip.⁶² San Francisco recommends that the template for on-demand and pre-scheduled trips add a field to capture the number of drivers who were dispatched for a trip, regardless of how the trip was completed.

3.6.1. Discussion

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.⁶³

⁶¹ Lyft Track 5B Opening Comments, May 16, 2022, at 3; Uber Track 5B Opening Comments, May 16, 2022, at 2; Disability Advocates Track 5B Opening Comments, May 16, 2022, at 6.

⁶² San Francisco Track 5A Additional Proposals, June 30, 2022, at 11-12; Lyft Track 5A Opening Comments, July 14, 2022, at 6; Uber Track 5A Opening Comments, July 14, 2022, at 10.

⁶³ D.21-11-004 at 19.

The Commission considers what additional data reporting is needed to inform the 2024 Legislative Report and provide a more comprehensive picture of the state of WAV service in California.

The Commission agrees with CPED that to appropriately account for the number of WAVs in operation, additional information is needed on the number of unique WAVs that are available at certain times of the day. This information is important to understanding whether there are certain times of the day when WAV accessibility is limited and when WAV users may be stranded without an available return WAV ride. Further, we agree that a TNC should submit this data for any county in which it previously requested an offset, regardless of whether the TNC continues to seek an offset in that county.

Accordingly, a TNC that previously requested an offset in a given county shall report on a going-forward basis for that county: the unique number of WAVs in operation (whether to serve pre-scheduled or on-demand WAV requests) by hour of the day and day of the week. This information shall be provided in future Offset Requests. If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data via an Information Only Advice Letter 15 days after the end of the applicable quarter.

The Commission deems it critical for TNCs to provide more granular location information on where WAV service was requested, completed, and available, beyond the current county-level reporting. More granular location information is necessary for the 2024 Legislative Report to better understand the true range of WAV accessibility across California. We agree with San Francisco that WAV availability data should be provided by Census Tract, rather than zip code, which will better reflect identified ESJ communities and further the goals of the ESJ Action Plan. Accordingly, a TNC that previously requested an offset in a

given county shall report on a going-forward basis for that county: the total WAV trips requested and completed, broken out by Census Tract and type of service (pre-scheduled or on-demand). This information shall be provided in future Offset Requests. If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data as an Information Only Advice Letter 15 days after the end of the applicable quarter.

The Commission agrees that qualitative feedback from WAV users about the Access for All Program would be useful to inform the Legislative Report. In D.21-10-007, we authorized CPED to conduct an analysis of community WAV demand that would include, not be limited to, a survey of WAV users and/or consultation with disability rights organizations.⁶⁴ As such, this survey of WAV users shall include qualitative feedback from WAV users.

We agree that the complaint categories, adopted in D.20-03-007, should be modified to include “pickup” and “drop off” complaints as separate categories. Accordingly, Ordering Paragraph 14 of D.20-03-007 is modified as follows: A TNC seeking an offset, a TNC seeking an exemption, an access provider submitting an Access Fund application, and an access provider that receives Access Fund moneys shall submit:

- a. The number of complaints received that are related to WAV drivers or WAV services – by quarter and geographic area; and
- b. The number of complaints based on the following categories: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, pickup, drop off, and other.

⁶⁴ D.21-10-007 at OP 17.

The Commission agrees that it is important to maintain consistency with reporting cancellation requests for a single WAV trip. However, it is unnecessary for a TNC to report multiple cancellations on a single trip so long as the ultimate trip status is reported (*e.g.*, completed, cancelled by driver or passenger). It is also unnecessary that a TNC report how many drivers were dispatched for a single trip. Rather, it is appropriate for a TNC to report the ultimate trip status for any WAV trip for purposes of offset and exemption eligibility. This requirement is adopted here.

Lastly, we decline to address changes to the TNC Annual Reports in this proceeding and agree that such reporting is outside the scope of this proceeding. Such issues should be addressed in R.12-12-011.

Unless otherwise stated, the data reporting requirements adopted here shall be reported on a going-forward basis, effective beginning the 2nd quarter of 2023.

3.7. Community Outreach Requirements

In D.21-11-004, the Commission stated that “SB 1376 highlights the need for effective engagement with the disability community in multiple provisions.”⁶⁵ The Commission stated that it “concur[s] 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 and effectiveness of TNC’s engagement with the disability community.”⁶⁶

⁶⁵ D.21-11-004 at 48.

⁶⁶ *Id.*

Disability Advocates puts forth a proposal on improving the quality and effectiveness of engagement, summarized below:⁶⁷

1. Development of an annual outreach plan with measurable goals, objectives, and benchmarks on outreach to disability communities, including to underserved multi-ethnic communities and where English is not the predominant language;
2. Quarterly reporting on progress made on implementing outreach plan;
3. Quarterly reporting and tracking specific data, including:
 - a. The number of entities contacted for purposes of outreach and extent to which contacted entities represent disability and cultural diversity of California;
 - b. The method of contact (*e.g.*, e-mail, phone, newsletter) and whether information was distributed or received during contact;
 - c. The nature of the contact (*e.g.*, unilateral or interactive), outcome of the contact (*e.g.*, training, outreach, distribution of information), and whether follow up was conducted; and
 - d. The number of partnerships developed and how partnerships resulted in improved outreach efforts, including analysis of how those partnerships were used to publicize and promote available WAV services.
4. Quarterly reporting and tracking of TNC efforts to publicize and promote WAV service in each geographic area (*e.g.*, web or app content, social media, in-person event), and extent to which these efforts were accessible to lay persons, people who are limited English proficient, and people with disabilities.
5. Quarterly reporting and tracking of educational materials developed and distributed by TNCs and extent to which

⁶⁷ Disability Advocates Track 5B Proposals, April 15, 2022, at 9.

these materials were accessible to lay persons, people who are limited English proficient, and people with disabilities.

6. Quarterly reporting on outcome of TNC efforts to outreach and engage wheelchair users, including assessment of actual reach of each effort to reach targeted populations (*e.g.*, number of webpage views, number of trainings or in-person interactions, usage of promotional codes).

Disability Advocates recommends that the outreach plan and data be analyzed by the Commission to determine whether outreach and engagement has been effective. If efforts have not been effective, offsets and/or exemptions should be denied.

San Francisco proposes the following outreach recommendations:⁶⁸

1. Commission Staff should conduct a survey to determine general awareness of WAV options;
2. Commission Staff should re-form a Working Group and hold a workshop to provide opportunity for feedback on TNC outreach;
3. Commission Staff should analyze outreach efforts and submit a report on findings; and
4. TNCs should include information about disability access and WAVs in general marketing campaigns.

San Francisco supports Disability Advocates' proposal.⁶⁹ Lyft and Uber generally support Disability Advocates' and San Francisco's proposals, but recommend that TNCs have flexibility in administering and revising the plan and that quarterly reporting and tracking be limited to counties in which a TNC seeks an offset.⁷⁰ Lyft and Uber oppose reporting on the actual reach of each

⁶⁸ San Francisco Track 5B Proposals, April 15, 2022, at 10.

⁶⁹ San Francisco Track 5B Opening Comments, May 16, 2022, at 10.

⁷⁰ Lyft Track 5B Opening Comments, May 16, 2022, at 7; Uber Track 5B Reply Comments, May 27, 2022, at 4.

effort to targeted populations as overly burdensome. Lyft and Uber also oppose incorporating WAV services into general marketing campaigns, stating that deliberate marketing is more effective for specific programs, such as WAV.

Lyft and Uber seek additional guidance on the criteria TNCs should consider as to what entities to conduct outreach with and the definition of “partnership” and relationship maintenance. Disability Advocates responds with proposed criteria to determine entities to contact, including an entity’s reputation and longevity with the disability community, geographic area coverage, demonstrated commitment, and the groups served.⁷¹ Uber recommends the Commission compile a list of disability organizations and ensure those organizations have visibility into the WAV program.

Uber recommends that costs associated with additional outreach efforts be subject to separate fee offset rules, such that if a TNC meets these requirements, they should be eligible for fee offset costs whether or not the TNC meets the performance benchmarks.⁷² This allows a TNC to generate initial demand for a product in counties where the WAV program is in early stages.

3.7.1. Discussion

Disability Advocates’ and San Francisco’s proposals offer a thorough, attainable framework to encourage and measure community outreach and engagement. We do not find that quarterly reporting on the outcomes of TNCs’ efforts, such as number of trainings or in-person interactions, should be overly burdensome to TNCs. The Commission also agrees that TNCs should have flexibility in administering and revising the annual outreach plan. For example,

⁷¹ Disability Advocates Track 5B Reply Comments, May 27, 2022, at 8.

⁷² Uber Track 5B Reply Comments, May 27, 2022, at 5.

TNCs should have discretion to determine whether to create a broad annual outreach plan applicable to all counties, or to create county-specific outreach plans.

Accordingly, to address the quality and effectiveness of a TNC's community outreach and engagement, a TNC that seeks an offset or exemption in a given county and quarter shall meet the following requirements:

1. Develop an annual outreach plan with measurable goals, objectives, and benchmarks on outreach to disability communities, including to underserved multi-ethnic communities and where English is not the predominant language. The outreach plan can apply broadly to all counties or be county-specific.
2. Include information about disability access and WAVs in general marketing campaigns.
3. Submit a quarterly report for each offset county on:
 - a. Progress made towards implementing the outreach plan.
 - b. The number of entities contacted for purposes of outreach and whether entities represent disability and cultural diversity of California, including: (1) the method of contact (*e.g.*, e-mail, newsletter) and whether information was exchanged; (2) the nature of the contact (*e.g.*, unilateral, interactive); (3) outcome of the contact (*e.g.*, training, distribution of information) and whether follow up was conducted; (4) the number of partnerships developed and how partnerships resulted in improved outreach efforts for WAV services.
 - c. Efforts to publicize and promote WAV service in each offset county (*e.g.*, web or app content, social media, in-person event), and whether efforts were accessible to people with disabilities and limited English proficiency.

- d. Educational materials developed and distributed by TNCs and whether materials were accessible to people with disabilities and limited English proficiency.
- e. Outcome of TNC efforts to outreach and engage wheelchair users, including assessment of actual reach of each effort to reach targeted populations (*e.g.*, number of webpage views, number of in-person interactions, usage of promotional codes).

In addition to the TNC reporting requirements, it would be useful for TNCs to conduct a self-assessment of their outreach effectiveness each quarter when filing its quarterly report. TNCs shall address the following questions:

1. What methods of engagement did the TNC find most effective and why?
2. What common concerns/questions came up during the engagement process?
3. What challenges have you encountered? How do you plan to overcome them?

A TNC that seeks an offset or exemption in a given county and quarter shall submit its annual outreach plan to the Commission via an Information Only Advice Letter beginning July 1 of each year. Quarterly reporting shall be submitted with a TNC's Offset or Exemption Request and shall be effective beginning the 3rd quarter of 2023.

In addition, Commission Staff is authorized to do the following:

1. Conduct a survey to determine general awareness of WAV options;
2. Re-facilitate a Working Group and hold a workshop to solicit feedback on TNC outreach;
3. Analyze TNCs' quarterly reports and prepare a summary of findings in the Annual Benchmark Report, as directed in Ordering Paragraph 17 of D.21-03-005.

Lastly, parties seek guidance on how to determine what entities to conduct outreach with and other guidance on the outreach plan. We encourage parties to collaborate on these issues in the Working Group and workshop processes, including developing a list of organizations to conduct outreach with.

3.8. Multi-County Pooling Funds

In the Amended Track 5 Scoping Memo, we stated that:⁷³

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.

The Scoping Memo asks whether for counties where the amount of Access Fund moneys available is relatively small, Access Fund moneys should be pooled across multiple counties and what criteria should be used to determine pooling.⁷⁴ The Scoping Memo also asks whether pooling should be allowed in counties served by the Statewide Fund Administrator or LAFA, or both.

CPED asserts that in certain counties, fee collection by TNCs does not represent demand for WAV services, as some communities rely more heavily on personal cars, over TNCs.⁷⁵ Therefore, the Access Fund fees collected may be limited despite a potential high need for WAV accessibility. To address this, CPED recommends that Metropolitan Planning Organizations (MPO), Regional Transportation Planning Agencies (RTPA), or County Transportation Commission (CTC) that cover multiple counties should be allowed to pool

⁷³ Assigned Commissioner's Amended Track 5 Scoping Memo, January 14, 2022, at 9.

⁷⁴ *Id.*

⁷⁵ CPED Track 5B Proposals, April 15, 2022, at 7.

Access Fund moneys across multiple counties and determine how Access Funds should be allocated between counties. CPED also proposes that in order to maximize use of Access Funds, public transit agencies servicing should be eligible to apply as a LAFA. CPED recommends that preference for the LAFA should be given to eligible MPOs, RTPAs, and CTCs.

Lyft supports CPED's objective but argues that the Act does not allow for pooling of funds from different counties.⁷⁶ Lyft states that the geographic areas would have to be drawn differently to distribute funds in this manner.

San Francisco supports CPED's proposal but states there is no guidance as to what constitutes counties with "limited available funding."⁷⁷ San Francisco states that AFAs should be permitted to pool funds with other AFAs regardless of the total amount of available Access Fund monies.

The Commission recognizes that there are numerous California counties in which the amount of Access Fund fees collected is unlikely to be sufficient to build a viable WAV program by Access Providers, despite accumulating Access Fund fees over the past several years. That said, there is insufficient record support at this time to adopt a multi-county pooling proposal. We encourage parties to discuss this topic and potential solutions through the outreach working group and workshop. We also note that SB 1376 requires that the 2024 Legislative Report include, among other things, "[t]he availability of unallocated funds in the Access Fund, including the need to reassess Access Fund allocations."⁷⁸

⁷⁶ Lyft Track 5B Opening Comments, May 16, 2022, at 9.

⁷⁷ San Francisco Track 5B Opening Comments, May 16, 2022, at 12.

⁷⁸ Pub. Util. Code § 5440.5(a)(2)(A)(iii).

We agree, however, with CPED's proposal that public transit agencies should be eligible to apply as a LAFA, as such agencies have the appropriate knowledge of accessibility needs for their counties. We agree that when selecting an appropriate LAFA, preference should be given to eligible MPOs, RTPA, or CTCs. Accordingly, Ordering Paragraph 29 of D.20-03-007 is modified to state as follows:

A metropolitan planning organization (MPO), regional transportation planning agency (RTPA), county transportation commission (CTC), or public transit agency may apply to be an Access Fund administrator in its geographic area. When selecting the Access Fund administrator, preference shall be given to an eligible MPO, RTPA, or CTC.

3.9. Staff Delegation of Authority

In the Amended Track 5 Scoping Memo, we stated that:⁷⁹

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?

At this time, the Commission intends to extend the proceeding's close date past February 2023. Therefore, this issue need not be addressed at this time.

4. Comments on Proposed Decision

The proposed decision of Commissioner Genevieve Shiroma in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

⁷⁹ Assigned Commissioner's Amended Track 5 Scoping Memo, January 14, 2022, at 9.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Debbie Chiv and Robert M. Mason III are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The definition of “pre-scheduled” trip adopted in the April 11, 2022 assigned Commissioner’s Ruling is appropriate to apply to the TNC Access for All Program.

2. The definition of “response time” for pre-scheduled trips adopted in the April 11, 2022 assigned Commissioner’s Ruling is appropriate to apply to the TNC Access for All Program. It is appropriate to refer to “response time” for pre-scheduled trips as “pickup delay.”

3. CPED’s proposed response time benchmarks for pre-scheduled WAV trips, with modifications, represent a middle ground solution that applies a sufficiently high standard that incentivizes increasingly higher performance metrics over time.

4. CPED’s proposed trip completion percentages, with modifications, sets an appropriately rigorous standard to incentivize a high level of trip completion by the 8th quarter.

5. Upon approval of an offset, it is reasonable that Access Fund monies be awarded proportional to the percentage of a TNC’s on-demand versus pre-scheduled WAV service mix. It is also reasonable that the awarded proportion be capped at the amount of Access Fund monies the TNC collected in that quarter and county for that specific service.

6. San Francisco's 95 percent trip completion standard is an appropriately rigorous requirement for exemption eligibility, given that an exemption approval allows a TNC to retain Access Fees in that county for a full year.

7. It is reasonable that if an exemption is granted, the retention of Access Fund fees by the TNC for the future year should be based on the Access Fund fees collected for either pre-scheduled or on-demand TNC trips, whichever service the Exemption Request was based upon.

8. Lyft's Wait & Save trip alternate proposal is a reasonable solution that measures response time based on a passenger's "on time" expectation, while not penalizing TNCs for offering a feature strongly valued by WAV passengers.

9. Information on the number of unique WAVs that are available at certain times of the day is critical to understanding whether there are certain times of the day when WAV accessibility is limited and when WAV users may be stranded without an available return WAV ride.

10. More granular location information is necessary for the 2024 Legislative Report to better understand the true range of WAV accessibility across California. Reporting WAV availability data by Census Tract will better reflect identified ESJ communities and further the goals of the ESJ Action Plan.

11. It is reasonable to modify the complaint categories, adopted in D.20-03-007, to include "pickup" and "drop off" complaints as separate categories.

12. Disability Advocates' and San Francisco's proposals offer a thorough, attainable framework to encourage and measure community outreach and engagement.

13. Public transit agencies have the appropriate knowledge of accessibility needs for their counties.

Conclusions of Law

1. The definition of “pre-scheduled” trip adopted in the April 11, 2022 Ruling should be adopted.

2. The definition of “response time” for pre-scheduled trips adopted in the April 11, 2022 Ruling should be adopted. The term “response time” for pre-scheduled trips should be referred to as “pickup delay.”

3. CPED’s proposed response time benchmarks for pre-scheduled WAV trips, with modifications, should be adopted.

4. CPED’s proposed trip completion standard for pre-scheduled WAV trips, with modifications, should be adopted.

5. Upon offset approval, a TNC should be awarded the amount proportional to the percentage of a TNC’s on-demand versus pre-scheduled WAV service mix, and capped at the amount of Access Fund monies the TNC collected in that quarter and county for that specific service.

6. San Francisco’s 95 percent trip completion standard for exemption eligibility should be adopted.

7. Lyft’s Wait & Save trip alternate proposal should be adopted.

8. Additional information on the number of unique WAVs available at certain times of the day should be collected by in any county in which a TNC seeks, or previously sought, an offset.

9. Granular location information by Census Tract should be collected in any county in which a TNC seeks, or previously sought, an offset.

10. The complaint categories, adopted in D.20-03-007, should be modified to include “pickup” and “drop off” complaints as separate categories.

11. Disability Advocates’ and San Francisco’s proposals for community outreach and engagement should be adopted.

12. Public transit agencies should be permitted to apply to be a LAFA, with preference given to an eligible MPOs, RTPA, or CTCs.

O R D E R

IT IS ORDERED that:

1. A “pre-scheduled” trip shall be defined as: any service that allows a passenger to schedule a trip with a specified pickup time.
2. For a pre-scheduled trip, “pickup delay” shall be defined as: the time elapsed between the passenger’s scheduled pickup time and when the vehicle arrived. If the vehicle arrives before the passenger’s scheduled pickup time, the response time shall be “0.”
3. For purposes of offset eligibility for pre-scheduled wheelchair accessible vehicle (WAV) service, to demonstrate improved level of service, a transportation network company (TNC) must demonstrate it has met the following requirements in a given county and quarter: (1) the relevant Pickup Delay Standard within the Pickup Delay Benchmark, as outlined in Ordering Paragraph (OP) 4, and (2) the relevant Pre-scheduled Trip Completion Standard, as outlined in OP 5. In addition to the improved level of service requirements, a TNC must meet the offset eligibility requirements adopted in Decision (D.) 21-03-005 and D.20-03-007 as applied to pre-scheduled WAV trips.
4. To demonstrate improved level of service for pre-scheduled wheelchair accessible vehicle (WAV) trips, a transportation network company (TNC) shall demonstrate it met the relevant Pickup Delay Standard (PDS) within the Pickup Delay Benchmark (PDB) for a given quarter and geographic area, as follows:

Pre-scheduled Pickup Delay Standard (PDS)	
Percentage of Completed Trips under Pickup Delay Benchmarks	
1 st Quarter Submission	80%
2 nd Quarter	81%
3 rd Quarter	83%
4 th Quarter	84%
5 th Quarter	86%
6 th Quarter	87%
7 th Quarter	89%
8 th (and subsequent) Quarter	90%

Pre-scheduled Pickup Delay Benchmarks (PDB)	
Geographic Area/County	Response Time (mins)
San Francisco	8
Alameda, Contra Costa, Imperial, Los Angeles, Madera, Orange, Sacramento, San Joaquin, San Luis Obispo, San Diego, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Solano, Stanislaus, Ventura	13
Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba	15

The 1st Quarter Submission benchmark shall apply in the first quarter that a TNC applies for offsets for pre-scheduled WAV service.

5. To demonstrate improved level of service for pre-scheduled wheelchair accessible vehicle (WAV) trips, a transportation network company (TNC) shall demonstrate it has met the Pre-scheduled Trip Completion Standard (PTCS) for a given quarter and geographic area, as follows:

- a. The applicable minimum percentage of trip requests completed, and
- b. Either: (1) a greater number of completed trips than the immediately prior quarter, or (2) a greater number of completed trips than the immediately prior year's same quarter, if sufficient data is available.

Pre-scheduled Trip Completion Standard (PTCS) Percentages			
Minimum Completion Rate Percentage	County Group A	County Group B	County Group C
1 st Quarter Submission	90%	80%	65%
2 nd Quarter	90%	81%	67%
3 rd Quarter	90%	82%	70%
4 th Quarter	90%	83%	73%
5 th Quarter	90%	84%	76%
6 th Quarter	90%	86%	79%
7 th Quarter	90%	88%	82%
8 th (and subsequent) Quarter	90%	90%	85%

6. A transportation network company (TNC) may submit an Offset Request for either pre-scheduled wheelchair accessible vehicle (WAV) service or on-demand WAV service, or both. Upon approval of an Offset Request, the TNC shall be awarded Access Fund monies proportionate to that county and quarter's pre-scheduled or on-demand WAV service mix, as applicable. The awarded proportion shall be capped at the amount of Access Fund fees the TNC collected in that quarter and county for the specific service (pre-scheduled or on-demand trips). In its Offset Request, the TNC shall submit its total eligible WAV offset expenses, as required in Decision 20-03-007, and the breakdown of its on-demand and pre-scheduled WAV service mix for that county and quarter. In its quarterly Access Fee Statement, the TNC shall provide a breakdown of the total Access Fund fees collected from on-demand and pre-scheduled trips for that county and quarter.

7. For purposes of exemption eligibility for pre-scheduled wheelchair accessible vehicle (WAV) service, a transportation network company (TNC) must demonstrate that:

- a. at least 95 percent of its completed pre-scheduled WAV trips met or exceeded the Pickup Delay Benchmark, adopted in Ordering Paragraph 4, for a given geographic area for four consecutive quarters, and
- b. the TNC qualified for an offset in the given geographic area for the same four consecutive quarters.

This is referred to as the Pre-scheduled Exemption Time Standard. To verify that a TNC achieved the Pre-scheduled Exemption Time Standard, a TNC shall submit completed WAV response times in deciles, for each qualifying quarter. A TNC's pre-scheduled Exemption Request shall mirror the requirements of a pre-scheduled Offset Request for four consecutive quarters. Upon approval of a pre-scheduled or on-demand WAV Exemption Request, the TNC shall retain that county's Access Fund fee collection for pre-scheduled or on-demand TNC service for the future year, whichever service the exemption approval was based upon.

8. The offset and exemption eligibility requirements adopted for pre-scheduled wheelchair accessible vehicle trips shall be effective beginning the 3rd quarter of 2023.

9. A Wait & Save wheelchair accessible vehicle (WAV) trip shall be categorized as "on-demand" WAV trips for purposes of the Access for All Program. For purposes of offset and exemption eligibility, a Wait & Save trip shall be considered "on time" if the driver arrives before the delayed pick-up time that was accepted by the passenger. If the trip is "on time," that trip will be included in the percentage of completed trips under the Level 1 and Level 2

Offset Time Standard response times, as adopted in Ordering Paragraph (OP) 1 of Decision (D.) 21-11-004. If the trip is not “on time,” the trip shall not be included in the percentage of completed trips under the Level 1 and Level 2 response times. Whether “on time” or not, the trip shall be included in the total number of trips completed, for purposes of reporting under OP 1 of D.20-03-007. The adopted requirements for Wait & Save trips shall be effective the 3rd quarter of 2023.

10. A transportation network company (TNC) that offers Wait & Save wheelchair accessible vehicle (WAV) services shall submit the percentage and number of Wait & Save WAV trips out of the total on-demand WAV trips for the applicable quarter and county. The information shall be submitted via an Information Only Advice Letter 15 days after the end of the applicable quarter, regardless of whether the TNC seeks an Offset or Exemption Request. The submission requirements shall be effective the 2nd quarter of 2023.

11. A transportation network company (TNC) that requests (or previously requested) an offset in a given county shall report in its Offset Requests on a going-forward basis for that county: the unique number of wheelchair accessible vehicles (WAV) in operation (whether to serve pre-scheduled or on-demand WAV requests) by hour of the day and day of the week. If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data via an Information Only Advice Letter 15 days after the end of the applicable quarter.

12. A transportation network company (TNC) that requests (or previously requested) an offset in a given county shall report in its Offset Requests on a going-forward basis for that county: the total wheelchair accessible vehicles (WAV) trips requested and completed, broken out by Census Tract and type of

service (pre-scheduled or on-demand). If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data as an Information Only Advice Letter 15 days after the end of the applicable quarter.

13. Ordering Paragraph 14 of Decision 20-03-007 is modified as follows: A transportation network company (TNC) seeking an offset, a TNC seeking an exemption, an access provider submitting an Access Fund application, and an access provider that receives Access Fund moneys shall submit:

- a. The number of complaints received that are related to wheelchair accessible vehicle (WAV) drivers or WAV services – by quarter and geographic area; and
- b. The number of complaints based on the following categories: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, pickup, drop off, and other.

14. For purposes of offset and exemption eligibility, a transportation network company shall report the ultimate trip status for any wheelchair accessible vehicle trip.

15. The data reporting requirements adopted in Ordering Paragraphs 11-14 shall be reported on a going-forward basis effective beginning the 2nd quarter of 2023.

16. To address the quality and effectiveness of a transportation network company's (TNC) community outreach and engagement, a TNC that seeks an offset or exemption in a given county and quarter shall meet the following requirements:

1. Develop an annual outreach plan with measurable goals, objectives, and benchmarks on outreach to disability communities, including to underserved multi-ethnic communities and where English is not the predominant

- language. The outreach plan can apply broadly to all counties or be county-specific.
2. Include information about disability access and wheelchair accessible vehicles (WAV) in general marketing campaigns.
 3. Submit a quarterly report for each offset county on:
 - a. Progress made towards implementing the outreach plan.
 - b. The number of entities contacted for purposes of outreach and whether entities represent disability and cultural diversity of California, including: (1) the method of contact (*e.g.*, e-mail, newsletter) and whether information was exchanged; (2) the nature of the contact (*e.g.*, unilateral, interactive); (3) outcome of the contact (*e.g.*, training, distribution of information) and whether follow up was conducted; (4) the number of partnerships developed and how partnerships resulted in improved outreach efforts for WAV services.
 - c. Efforts to publicize and promote WAV service in each offset county (*e.g.*, web or app content, social media, in-person event), and whether efforts were accessible to people with disabilities and limited English proficiency.
 - d. Educational materials developed and distributed by TNCs and whether materials were accessible to people with disabilities and limited English proficiency.
 - e. Outcome of TNC efforts to outreach and engage wheelchair users, including assessment of actual reach of each effort to reach targeted populations (*e.g.*, number of webpage views, number of in-person interactions, usage of promotional codes).

TNCs shall address the following questions in its quarterly report:

1. What methods of engagement did the TNC find most effective and why?
2. What common concerns/questions came up during the engagement process?

3. What challenges have you encountered? How do you plan to overcome them?

A TNC that seeks an offset or exemption shall submit its annual outreach plan via an Information Only Advice Letter no later than July 1 of each year. Quarterly reporting shall be submitted with a TNC's Offset or Exemption Request. The quarterly reporting requirements shall be effective beginning the 3rd quarter of 2023.

17. Ordering Paragraph 29 of Decision 20-03-007 is modified as follows:

A metropolitan planning organization (MPO), regional transportation planning agency (RTPA), county transportation commission (CTC), or public transit agency may apply to be an Access Fund administrator in its geographic area. When selecting the Access Fund administrator, preference shall be given to an eligible MPO, RTPA, or CTC.

18. Rulemaking 19-02-012 remains open.

This order is effective today.

Dated _____, at San Francisco, California.