BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services	Rulemaking 12-12-011 (Filed December 20, 2012)

REPLY BRIEF OF LYFT, INC. ON LIMITED REHEARING OF DECISION 23-12-015

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Lyft, Inc. ("Lyft") submits the following reply brief pursuant to the February 25, 2025, email ruling of Administrative Law Judge Robert Mason granting leave to submit a reply brief, not to exceed 5 pages, in accordance with Rule 11.1(f) of the Commission's Rules of Practice and Procedure.

The Commission Has Unfettered Authority to Modify Its Prior Decisions on Rehearing

In its Opening Brief of Lyft, Inc. on Limited Rehearing of Decision 23-12-015 ("Opening Brief"), Lyft presented new, unrebutted evidence establishing that the 2014 – 2019 Annual Report data continues to have significant independent economic value for Lyft, actual and potential competitors, and various other third parties. Lyft additionally urged the Commission, however, in the event that it was inclined not to revisit its decision to order disclosure of Lyft's trade secrets, to adopt an important additional safeguard utilized by the City of Chicago: aggregating any disclosed data at the TNC level. As Lyft explained, no public interest has been articulated, and none exists, for disclosing the Trip Data individually for each TNC, and no harm would arise from disclosing the data in aggregated format.

In the Opposition of the San Francisco County Transportation Authority to the Opening Brief of Lyft, Inc. on Limited Rehearing of Decision 23-12-015 ("SF Opp."), San Francisco argues, among other things, that "Lyft's proposal to aggregate data at the TNC level is beyond the scope of the limited rehearing. Rehearing was granted solely on the issue of 'whether Lyft, Inc.'s trip data for 2014-2019 is not stale and therefore has independent economic value' and Lyft's aggregation proposal is improper and must be denied.'" San Francisco cites neither statutory nor decisional law divesting the Commission of its inherent authority to modify its prior decisions. Nor does it cite any authority suggesting that the Commission is precluded from aggregating data prior to disclosure unless it has previously memorialized its formatting decisions in a formal written decision. No such authority exists. To the contrary, the Commission is expressly authorized to

modify its prior decision, and even if it was not, nothing requires the Commission to issue a formal written decision memorializing a decision to aggregate data in the interest of preserving the privacy of third parties and trade secrets of Lyft.

1. The Public Utilities Code expressly authorizes the Commission to modify "any part of" a nonfinal order

Public Utilities Code § 1731, subdivision (b)(1) provides that, "After an order or decision has been made by the [C]ommission, a party to the action or proceeding ... may apply for a rehearing in respect to matters determined in the action or proceeding and specified in the application for rehearing. The [C]ommission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear." Significantly here, § 1736 provides that "[i]f, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the [C]ommission is of the opinion that the original order or decision ***or any part thereof*** is in any respect unjust or unwarranted, or should be changed, the [C]ommission may abrogate, change, or modify it." Pub. Util. § 1736.

As explained in *BullsEye Telecom, Inc. v. California Public Utilities Com.* (2021) 66 Cal.App.5th 301, 310, in contrast to § 1708, which authorizes the Commission to modify, amend, or abrogate any previously issued final decision, and which includes a requirement that the Commission hold a hearing to take evidence in so doing, § 1736, authorizing rehearing, allows the Commission to modify a decision before it becomes final, without any requirement to take further evidence or conduct a formal hearing. *Bullseye*, 66 Cal.App.5th at 312 ("Section 1708 'permits the [C]ommission at any time to reopen proceedings even after a decision has become final,' while section 1736 empowers the Commission 'to rehear a decision not yet final.'"); *City of Los Angeles v. Public Utilities Com.* (1975) 15 Cal.3d 680, 706. Thus, nothing in the provisions governing rehearing precludes the Commission from modifying its prior, non-final decision, as Lyft has requested here. And, indeed, the Code expressly authorizes the Commission to grant rehearing as to all or part of a decision, while also explicitly allowing the Commission to abrogate, change, or modify the original decision "or any part thereof."

2. Nothing in the CPRA precludes the Commission from aggregating the Annual Report Data at the TNC Level

The California Public Records Act ("CPRA") establishes a right of access to information concerning the conduct of the people's business, while also being "mindful of the right of

individuals to privacy." Gov. Code, § 7921.000; *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 238 ("The right of access to public records under the CPRA is not absolute….The California Constitution contains an explicit right of privacy that operates against private and governmental entities."). A public agency seeking to withhold a record from disclosure bears the burden of demonstrating that an exception to the CPRA's disclosure directive applies. *Edais v. Superior Court* (2023) 87 Cal.App.5th 530, 538, *as modified* (Jan. 25, 2023), *as modified on denial of reh'g* (Feb. 6, 2023), *review denied* (Apr. 19, 2023); Gov. Code, § 7922.000. Lyft has already demonstrated that exceptions from disclosure apply and the Commission should withhold the data on that basis. Lyft's alternate proposal of data aggregation is another way in which the Commission may protect the privacy of and trade secrets of affected parties.

Nothing in the CPRA precludes an agency from aggregating information in the interest of preserving the rights of individuals impacted by the disclosure. *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 326 (upholding right of agency to produce data in deidentified form to preserve individual privacy); *Los Angeles Unified School Dist.,* 228 Cal.App.4th at 245 (upholding deidentification of test scores prior to disclosure under CPRA). This is particularly true where the data was submitted with an expectation that the data would be maintained confidentially. *Sander*, 58 Cal.4th at 325 ("Under longstanding common law and statutory principles, information obtained through a promise of confidentiality is not subject to the right of public access when the public interest would be furthered by maintaining confidentiality."). Furthermore, where an agency determines it is appropriate to aggregate data in the interest of privacy, nothing compels that agency to issue a new, formal written decision memorializing that determination. Instead, to the extent a party or member of the public objects to that determination, the CPRA authorizes that party or member of the public to seek a court determination regarding the propriety of that methodology. Gov. Code, § 7923.000 ("Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records."). To the extent San Francisco believes that there is anything improper or unlawful about aggregating the Annual Report data at the TNC level, it has an avenue to challenge that determination. But nothing in the Public Utilities Code or the CPRA divests the Commission of the authority to make that determination in the first instance and it is not required to hold a hearing or issue a formal written opinion prior to doing so.

Dated: March 11, 2025 **Lyft, Inc.**	**BRYAN CAVE LEIGHTON PAISNER LLP**	
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