

Decision 19-06-033 June 27, 2019

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 1 ISSUES: TRANSPORTATION NETWORK COMPANY TRIP FEE AND GEOGRAPHIC AREAS

Table of Contents

Title	Page
DECISION ON TRACK 1 ISSUES: TRANSPORTATION NETWORK COMPANY TRIP FEE AND GEOGRAPHIC AREAS	2
Summary	2
1. Background.....	2
2. Issues Before the Commission	5
3. Discussion.....	5
3.1. Establishment of the TNC Access for All Fund.....	5
3.1.1. Definition of a TNC Trip.....	6
3.1.2. Per-Trip Fee	8
3.1.2.1. Discussion	10
3.1.3. Fee Presentation	11
3.1.4. Fee Payment Schedule	12
3.2. Designation of Geographic Areas.....	13
3.2.1. Parties' Proposals.....	14
3.2.2. Discussion	16
4. Comments on Proposed Decision	19
5. Assignment of Proceeding	21
Findings of Fact.....	21
Conclusions of Law	22
ORDER	23

DECISION ON TRACK 1 ISSUES: TRANSPORTATION NETWORK COMPANY TRIP FEE AND GEOGRAPHIC AREAS

Summary

This decision adopts rules and requirements for the initial implementation of the newly enacted Senate Bill 1376, the “TNC Access for All Act.” The Commission adopts requirements for the establishment of the TNC Access for All Fund, including the requirement that Transportation Network Companies (TNCs) charge a \$0.10 per-trip fee for each TNC trip completed. The Commission also designates the geographic areas for purposes of the TNC Access for All Fund as each county in California.

This proceeding remains open.

1. Background

The State Legislature enacted Senate Bill (SB) 1376,¹ the “TNC Access for All Act,” which requires Transportation Network Companies (TNCs) to provide services accessible to persons with disabilities through online-enabled applications or platforms, with a primary focus on wheelchair users who require a wheelchair accessible vehicle. SB 1376 provides that:

“There exists a lack of wheelchair accessible vehicles (WAVs) available via TNC online-enabled applications or platforms throughout California. In comparison to standard vehicles available via TNC technology applications, WAVs have higher purchase prices, higher operating and maintenance costs, higher fuel costs, and higher liability insurance, and require additional time to serve riders who use nonfolding motorized wheelchairs.”²

¹ Senate Bill 1376 (Hill 2018), Public Utilities (Pub. Util.) Code § 5440.5.

² Pub. Util. Code § 5440(f).

Therefore, one objective of SB 1376 is “that California be a national leader in the deployment and adoption of on-demand transportation options for persons with disabilities.”³ Public Utilities (Pub. Util.) Code § 5431.5(b)⁴ defines a wheelchair accessible vehicle (or WAV) as “a vehicle equipped with a ramp or lift capable of transporting nonfolding motorized wheelchairs, mobility scooters, or other mobility devices.”

The Commission regulates passenger carriers pursuant to Article XII of the California Constitution and the Passenger Charter-Party Carriers’ Act.⁵ The Commission initiated Rulemaking (R.) 12-12-011 to protect public safety and, among other things, respond to the emergence of new transportation businesses using online-enabled applications (apps) to arrange passenger transportation for compensation. Through the pendency of R.12-12-011, which is ongoing, the Commission has recognized a need to address issues relating to accessibility for persons with disabilities. Additional information on the history of the Commission’s decisions related to TNCs’ service accessibility for persons with disabilities is set forth in the Order Instituting Rulemaking for this proceeding and Decision (D.) 13-09-045.

On March 4, 2019, the Commission opened an Order Instituting Rulemaking (OIR) to implement SB 1376. In the OIR, we state that the “Commission is committed to ensuring that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities including those who use non-folding motorized wheelchairs.”⁶

³ *Id.* § 5440(g).

⁴ All statutory references are to the Public Utilities Code unless otherwise noted.

⁵ Pub. Util. Code § 5351 *et seq.*

⁶ OIR at 2.

Opening comments on the OIR were filed on April 3, 2019 by the Disability Rights Education & Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, the Disability Advocates); HopSkipDrive, Inc. (HSD); Los Angeles County Metropolitan Transportation Authority (Metro); Los Angeles Department of Transportation (LADOT); Lyft, Inc. (Lyft); Marin Transit; San Francisco Municipal Transportation Agency, San Francisco Transportation Authority, and the San Francisco Mayor's Office on Disability (collectively, San Francisco); Solano Transportation Authority (STA); Uber Technologies, Inc. (Uber); Via Transportation, Inc. (Via); and Zum Services, Inc. (Zum).

On April 18, 2019, an Administrative Law Judge's (ALJ) ruling enclosed a white paper and staff proposal from the Commission's Consumer Protection and Enforcement Division (CPED), and invited comments on CPED's proposal. Reply comments were filed on April 26, 2019 by the Disability Advocates, HSD, Lyft, San Francisco, and Uber.

Workshops on issues outlined in the OIR were held on December 5, 2018, February 15, 2019, and May 2, 2019. A prehearing conference was held on May 2, 2019. 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 set forth a schedule and process for addressing those issues.

Additional comments on the workshops were filed and served on May 10, 2019 by Access Services, the Disability Advocates, Lyft, Metro, San Francisco, and Uber.

The San Francisco Taxi Workers Alliance's (SFTWA) motion for leave to late-file opening and reply comments to the OIR was granted on June 12, 2019.

2. Issues Before the Commission

The Scoping Memo established three tracks for the issues in this proceeding (Tracks 1, 2, and 3). In general, Track 1 issues are time-sensitive issues that must be addressed prior to July 1, 2019 in accordance with SB 1376. In addition, Track 1 can make preliminary findings or policy determinations to provide guidance on issues to be addressed in more detail in Tracks 2 or 3.

Track 1 issues are summarized as follows:

1. Establish the “TNC Access for All Fund.” Pub. Util. Code § 5440.5(a)(1)(C) requires the Commission to create an Access Fund and deposit moneys collected in the Access Fund in accordance with § 5440.5(a)(1)(B).
2. Designate Geographic Area(s). Pub. Util. Code § 5440.5(a)(1)(D) requires the Commission to select geographic areas based on the demand for WAVs within the area (as developed during required workshops) to be funded by the Access Fund and allocate money from the Access Fund to each area.

All proposals and comments submitted by parties and CPED were considered, but given the number of parties, some comments and proposals may receive little or no discussion in this decision.

3. Discussion

3.1. Establishment of the TNC Access for All Fund

Pub. Util. Code § 5440.5(a)(1)(C) directs the Commission to create the “TNC Access for All Fund” (Access Fund) and deposit moneys into the Access Fund based on certain requirements. Pub. Util. Code § 5440.5(a)(1)(B)(i) provides that the Commission:

“shall require each TNC by July 1, 2019, to pay on a quarterly basis to the commission an amount equivalent to, at a minimum, 0.05 dollars (\$0.05) for each TNC trip completed using the [TNC’s] online-enabled application or platform that

originates in one of the geographic areas selected pursuant to subparagraph (D)...”

The Commission “may adjust the fee in each geographic area selected pursuant to subparagraph (D) to different levels based on the cost of providing adequate WAV service within the geographic area.”⁷ Further, “[e]ach TNC shall charge its customers on each TNC trip completed the full amount of the per-trip fee...and remit the total amount of those fees charged to the commission each quarter.”⁸ We address each of these requirements in turn.

3.1.1. Definition of a TNC Trip

A preliminary issue is whether TNC trips alone should be subject to the per-trip fee or whether all types of charter-party carrier (TCP) trips available on a TNC’s online-enabled app or platform should be subject to the per-trip fee.

Several parties, including the Disability Advocates, Marin Transit, Metro, LADOT, and San Francisco, recommend that the fee should be charged for all types of passenger charter-party carrier service trips available on a TNC’s app.⁹ By contrast, CPED, Lyft, Uber, and Zum disagree that TCPs should be subject to the fee, generally citing to the statutory language of § 5440.5(a)(1)(B)(i) that requires the fee amount be charged “for each TNC trip completed using the [TNC’s] online-enabled application or platform...”¹⁰

We find that the statutory language of § 5440.5(a)(1)(B)(ii) explicitly states that each TNC charge its customers for “each TNC trip completed.” With

⁷ Pub. Util. Code § 5440.5(a)(1)(B)(i).

⁸ *Id.* § 5440.5(a)(1)(B)(ii).

⁹ Disability Advocates Opening Comments at 4, Marin Transit Opening Comments at 3, Metro Opening Comments at 4, LADOT Opening Comments at 2, San Francisco Opening Comments at 3.

¹⁰ CPED Proposal at 2, Lyft Opening Comments at 5, Uber Opening Comments at 5, Zum Opening Comments at 2, 6.

express reference to “TNC trip,” we agree with comments that the statute should apply only to TNC trips (and not to TCP or other carrier trips) completed using a TNC’s online-enabled application or platform.

Additionally, Via requests an exemption from charging the Access Fund fee, arguing that it only deploys vehicles in California in partnership with cities and transit agencies. In West Sacramento and Los Angeles, Via states that it operates as a TNC for the sole purpose of “operating an accessible, end-to-end shared microtransit service with public funding and in coordination with [the cities]” and does not operate a “direct-to-consumer platform as a private business in California.”¹¹ Via requests that TNC operations funded by California public entities be exempt from the Access Fund fee since a “charge would effectively be paid in part by the city or transit agency’s budget.”¹² The Disability Advocates and San Francisco oppose Via’s request, stating that such TNCs should not receive preferential treatment and the exception is overly broad.¹³

While the Commission recognizes the potential concern with collecting Access Funds fees from a public entity’s budget, it is unclear from the record what volume of trips and amount of fees are at issue. At this point, the Commission find insufficient record support to create an exception for private TNCs funded by public entities and declines to adopt this exception. However, we may reconsider this proposal following the initial launch of the program as needed.

¹¹ Via Opening Comments at 3.

¹² *Id.*

¹³ Disability Advocates Reply Comments at 3, San Francisco Reply Comments at 4.

3.1.2. Per-Trip Fee

As Pub. Util. Code § 5440.5(a)(1)(B)(i) requires a minimum \$0.05 per-trip fee, we next consider the appropriate fee amount for each TNC trip completed.

Parties propose a range of per-trip fees. On the low end, HSD, Lyft, Uber, and Zum support a \$0.05 per-trip fee.¹⁴ On the high end, the Disability Advocates propose a \$0.25 - \$0.50 fee, and Marin Transit and Via propose that the fee be based on a percentage of the total trip cost, with Marin Transit recommending a minimum \$0.50 fee.¹⁵ CPED proposes a fee of \$0.10, and Access Services, LADOT, and San Francisco support \$0.15.¹⁶ Via and Metro do not recommend a specific amount, although Metro believes it should be higher than \$0.05.¹⁷

Proponents of the \$0.05 fee generally argue that programs in other jurisdictions are inapplicable to California's statewide application, that there is no comparable baseline for SB 1376's fee-funded program, and that there is no clear evidence to support requiring a higher per-trip fee.¹⁸ Uber contends that it is premature to adopt a fee greater than \$0.05 until a record is developed of how much will be collected, and that the minimum fee can be adjusted upward if needed.¹⁹

¹⁴ HSD Reply Comments at 2, Lyft Opening Comments at 4, Uber Opening Comments at 4, Zum Opening Comments at 2.

¹⁵ Marin Transit Opening Comments at 2, Disability Advocates Reply Comments at 2, Via Opening Comments at 4.

¹⁶ Access Services Comments to the May 2 Workshop at 3, CPED Proposal at 26, LADOT Opening Comments at 2, San Francisco Opening Comments at 2.

¹⁷ Metro Opening Comments at 3, Via Opening Comments at 4.

¹⁸ *See, e.g.*, HSD Reply Comments at 1, Lyft Reply Comments at 13, Uber Reply Comments at 3.

¹⁹ Uber Reply Comments at 3.

For its proposal, CPED conducted an analysis of similar WAV programs in other jurisdictions, such as Seattle, Chicago, and Portland. WAV-type programs in Seattle, as well as King County, and Chicago apply a \$0.10 per-trip charge, while Portland applies a \$0.50 surcharge to each taxi and TNC trip, although the fee is not specifically allocated to WAV services but to general city program administration and enforcement.²⁰ In supporting a lower range fee, CPED expresses concern with “ordering TNCs to collect significantly more from passengers for remittance to the Access Fund than ‘access providers’ are prepared to utilize and/or significantly more than the TNCs themselves are prepared to invest directing in providing WAV service.”²¹

Supporters of a \$0.15 or greater fee also cite to WAV programs in other jurisdictions, arguing that these cities collect a lower per-trip fee while covering a lower population density compared to statewide in California.²² San Francisco states that there “is far less harm in charging a nominally-higher fee...than charging the lowest possible fee - \$0.05 - which has not been proven sufficient to support wheelchair accessible service in other jurisdictions.”²³ We note that proponents of a higher fee make similar arguments as those who favor the minimum \$0.05 fee: that there is no concrete data or evidence as to why a higher amount is unreasonable or unfair.²⁴ San Francisco criticizes Uber’s statement that “[g]iven the volume of trips occurring on a daily basis, a \$0.05 fee per ride

²⁰ CPED Proposal at 5.

²¹ *Id.* at 28.

²² *See, e.g.*, LADOT Opening Comments at 2, San Francisco Opening Comments at 2.

²³ San Francisco Reply Comments at 2.

²⁴ *See, e.g.*, Disability Advocates Reply Comments at 2, San Francisco Reply Comments at 2.

will yield considerable funds for the geographic area,” pointing out that Lyft and Uber’s trip volumes are not publicly available and therefore not verifiable.²⁵

3.1.2.1. Discussion

The Commission finds other jurisdictions’ experiences with similar WAV programs and surcharges to be instructive. We do, however, acknowledge differences in these other programs, such as Seattle and Chicago’s programs that apply to both taxis and TNC-like vehicles, and that these programs fund only specific cities. That said, we also recognize that there is no exact or ideal comparison to the unique statewide implementation of SB 1376 and that similar WAV programs in other cities, such as Chicago and Seattle, are the only available proxies at this time.

Since the per-trip fee must be passed directly on to consumers, it is important to strike a balance between a less burdensome, lower per-trip fee for the consumer, and the need for an impactful fund to encourage WAV investment. Weighing parties’ comments and the analyses of similar WAV programs in other jurisdictions, the Commission finds it prudent to implement a lower fee at the initial outset of the program and concludes that a \$0.10 per-trip fee strikes a reasonable balance for the initial implementation.

Accordingly, we adopt a \$0.10 per-trip fee for each TNC trip completed using the TNC’s online-enabled application or platform that originates in a designated geographic area. Pursuant to Pub. Util. Code § 5440.5(a)(1)(B), the per-trip fee amount shall be collected beginning July 1, 2019. The Commission will monitor the initial collection of funds and the extent of utilization by access providers and TNCs, and may modify the per-trip fee in the future as needed.

²⁵ San Francisco Reply Comments at 2.

While the Commission may impose different fees in different geographic areas based on the cost of providing adequate WAV service,²⁶ there is a broad consensus among parties that the same fee levels and program requirements should apply equally to all TNCs.²⁷ We agree and decline to adopt different fee and program requirements at this time.

3.1.3. Fee Presentation

Section 5440.5(a)(1)(B)(ii) provides that each TNC shall charge customers the full amount of the per-trip fee, but does not specify how the fee should be presented.

CPED and multiple parties, including Marin Transit, Metro, Lyft, Uber, and Zum, support presenting the fee as an up-front line item to the consumer.²⁸ San Francisco advocates for presenting the fee “similar to how other fees are currently presented to the consumer. Existing fees are included in a customer’s bill under Tolls, Charges and Fee.”²⁹ On the other hand, the Disability Advocates and HSD propose that the fee not be presented as a separate line item charge so as not to stigmatize persons with disabilities.³⁰

Marin Transit and Metro propose that if presenting the fee as a line item, the fee should be titled “Equal Access Fee” on the consumer’s receipt.³¹ CPED

²⁶ See Pub. Util. Code § 5440.5(a)(1)(B)(i).

²⁷ See CPED Proposal at 26, Disability Advocates Opening Comments at 5, LADOT Opening Comments at 3, Lyft Opening Comments at 5, Marin Transit Opening Comments at 3, San Francisco Opening Comments at 3, Uber Opening Comments at 5, Zum Opening Comments at 2.

²⁸ CPED Proposal at 27, Marin Transit Opening Comments at 3, Metro Opening Comments at 4, Lyft Opening Comments at 4, Uber Opening Comments at 5, Zum Opening Comments at 2.

²⁹ San Francisco Opening Comments at 3.

³⁰ Disability Advocates Reply Comments at 11, HSD Reply Comments at 3.

³¹ Marin Transit Opening Comments at 3, Metro Opening Comments at 4.

proposes the fee be identified as the “Access Fund Fee.” Additionally, CPED proposes that along with the line item fee, TNCs should link to their website to provide information about the fee and Access Fund program.³² San Francisco supports CPED’s proposal.³³

The Commission agrees that the fee should be transparent to consumers and presented in a manner that is non-stigmatizing to persons with disabilities. We find that San Francisco’s proposal, that the fee be presented similar to how other fees are presented by a particular TNC, achieves this objective. If a TNC currently presents similar fees as line item charges, the Access Fund fee shall be presented as such. And if presenting the fee as a line item charge, the Commission concludes that the fee shall be identified as the “Access for All Fee.” Accordingly, the Commission adopts a requirement that TNCs shall present the Access Fund fee to customers in the same manner in which it presents other surcharges to its customers.

We find it unnecessary to require TNCs to create a webpage with information about the Access Fund, and inconsistent with requirements for other Commission-adopted surcharges, and decline to do so here.

3.1.4. Fee Payment Schedule

Section 5440.5(a)(1)(B)(ii) provides that each TNC shall “remit the total amount of those fees charged to the commission each quarter” but does not specify when the fees should be remitted.

The Disability Advocates, LADOT, and San Francisco recommend that the fees be collected no later than 10 days after the end of each quarter.³⁴ Metro

³² CPED Proposal at 26.

³³ San Francisco Opening Comments at 3.

³⁴ Disability Advocates Opening Comments at 5, LADOT Opening Comments at 3,

proposes that the fees be due one month after the end of each quarter.³⁵ CPED, HSD, and Lyft propose mirroring the requirements of the Public Utilities Commission Transportation Reimbursement Account (PUCTRA), in which fees are due fifteen days after quarter end.³⁶ Uber and Zum recommend that the fees be due two months after the end of the quarter to allow for necessary accounting for offsets or exemptions.³⁷

The Commission finds that requiring the quarterly Access Fund fees to be submitted on a schedule that mirrors the PUCTRA is reasonable and administratively efficient. Accordingly, each TNC shall remit its quarterly Access Fund fees on a schedule that mirrors the requirements for the PUCTRA, as provided in Pub. Util. Code § 423(b) and § 405.

3.2. Designation of Geographic Areas

Section 5440.5(a)(1)(D) provides that the Commission:

“shall select geographic areas, which shall be based on the demand for WAVs within the area and selected according to the outcome of workshops in subparagraph (A), for inclusion in the on-demand transportation program or partnerships funded pursuant to subparagraph (C). The commission shall allocate moneys in the Access Fund for use in each geographic area in a manner that is proportional to the percent of the Access Fund fees originating in that geographic area.”

San Francisco Opening Comments at 3.

³⁵ Metro Opening Comments at 4.

³⁶ CPED Proposal at 26, HSD Opening Comments at 3, Lyft Opening Comments at 5.

³⁷ Uber Opening Comments at 5, Zum Opening Comments at 3.

Pursuant to § 5440.5(a)(1)(D), the selected geographic area(s) have several applications for the purposes of SB 1376:

- (1) The geographic area is the area within which the Access Fund fee shall be collected; that is, the area where a completed TNC trip originates.
- (2) The geographic area is the area within which Access Fund funds shall be distributed in “a manner that is proportional to the percent of the Access Fund fees originating in that geographic area.”³⁸
- (3) The geographic area is the area within which a TNC must demonstrate it has satisfied the requisite criteria to receive an offset or exemption.³⁹

3.2.1. Parties’ Proposals

Parties’ proposals for the selection of geographic areas generally fall into two categories.

The first category is the proposal that all counties of the state are distinct geographic areas. This is recommended by CPED, the Disability Advocates, Metro, and San Francisco.⁴⁰ LADOT and Marin Transit also support a statewide approach but do not specify how the areas should be defined.⁴¹

San Francisco and the Disability Advocates argue that, with SB 1376’s purpose and intent in mind, declining to collect and distribute funds in all areas of the state unfairly excludes persons with disabilities in certain geographic areas who may benefit from WAVs.⁴² Several parties state that county level is appropriate

³⁸ See § 5440.5(a)(1)(D).

³⁹ See §§ 5440.5(a)(1)(B)(ii), 5440.5(a)(1)(G).

⁴⁰ CPED Proposal at 24, Disability Advocates Opening Comments at 6, Metro Opening Comments at 5, San Francisco Opening Comments at 4.

⁴¹ Marin Transit Opening Comments at 3, LADOT Opening Comments at 4.

⁴² San Francisco Opening Comments at 4, Disability Advocates Opening Comments at 6.

because county lines are clear boundaries, understandable to consumers, and easier to administer.⁴³

CPED supports each county as a geographic area, although as its lesser-preferred proposal, based on information that demand for WAVs “is likely to be latent due to the relative absence of this transportation option today as well as data from U.S. DOT suggesting that demand for WAVs is being unmet.”⁴⁴ Therefore, using current TNC or WAV demand data to designate geographic areas may inequitably exclude areas by failing to account for latent demand.

The second category of proposals recommend geographic areas based on where TNCs currently serve the majority of customers, based on either county or region. CPED analyzed TNC trip demand throughout California, in response to parties’ workshop comments indicating that “demand for WAV trips will mirror demand for non-WAV trips...”⁴⁵ Based on its analysis, CPED recommends designating the nine counties where a “substantial majority of all trips provided by TNCs in California originate” as the initial geographic areas. These counties are: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara. CPED recommends this, in part, due to the administrative practicalities of limiting the geographic areas at the start of a new program and allowing time to evaluate the initial launch.

Lyft supports CPED’s proposal but cautions that within some counties, such as Los Angeles County, assigning uniform service requirements

⁴³ San Francisco Opening Comments at 4, San Francisco Comments to May 2 Workshop at 2, Disability Advocates Comments to May 2 Workshop at 4, Access Services Comments to the May 2 Workshop at 3.

⁴⁴ CPED Proposal at 24.

⁴⁵ *Id.*

(e.g., response times) will be challenging given the differences in urban and rural parts of the county.⁴⁶ HSD agrees that disbursing funds to all counties will be administratively challenging and supports limiting the geographic areas.⁴⁷ Uber states that if CPED's proposal is adopted, the nine counties should be grouped into two regions (Northern and Southern California) to reflect multi-county trips and allow for aggregated data.⁴⁸

Uber recommends an even narrower approach with either the San Francisco area or Los Angeles County as the geographic area, since this is where the majority of TNC trips occur. Uber states that if fees are collected and distributed in a larger area, "the barrier of operational feasibility may prevent TNCs from exploring and investing in innovative solutions to enable increased access to WAV transportation options..."⁴⁹ Zum supports Uber's proposal.⁵⁰

3.2.2. Discussion

The stated intent of Senate Bill 1376 is "that wheelchair users who need WAVs have prompt access to TNC services, and for the commission to facilitate greater adoption of [WAVs] on [TNCs'] online-enabled applications or platforms."⁵¹ Further, the OIR described the Commission's commitment in this proceeding to "ensur[e] that the services offered by TNCs are accessible to, and do not discriminate against, persons with disabilities, including those who use non-folding motorized wheelchairs."⁵² Based on the intent of SB 1376, the

⁴⁶ Lyft Reply Comments at 14.

⁴⁷ HSD Reply Comments at 3.

⁴⁸ Uber Reply Comments at 9.

⁴⁹ Uber Opening Comments at 8.

⁵⁰ Zum Opening Comments at 3.

⁵¹ Pub. Util. Code § 5440(j).

⁵² OIR at 2.

Commission deems it critical that the geographic areas are selected in a manner that facilitates and encourages broader adoption of on-demand transportation options for persons with disabilities. Overly limiting the geographic areas necessarily excludes certain areas of the state from benefiting from opportunities and incentives for WAV investment – and ultimately undermines the purpose of SB 1376.

Weighing parties’ concerns and recommendations, the Commission is persuaded by proponents of designating each county in the state as a geographic area. We agree that this is a reasonable, non-discriminatory approach that allows funds to be available to all areas in California. The Commission also agrees that the fact that certain areas do not currently have large TNC demand may well be due to a lack of availability of TNCs and therefore, such areas should not be penalized and disallowed from an opportunity to develop WAV services.

Additionally, we find a general consensus among parties in support of county-level geographic areas (although some support a finite number of counties), agree that county demarcations reasonably reflect boundaries and response times that are intuitive to consumers. Accordingly, the Commission designates the geographic areas for the implementation of SB 1376 as each county in California.

The Commission recognizes that establishing each county in the state as a geographic area may be administratively challenging for Commission staff to implement and execute on the schedule provided in SB 1376. Several parties propose assigning a third-party entity, such as a Metropolitan Planning Organization or Regional Transportation Planning Agency, to administer the

Access Fund.⁵³ Parties point out that such entities are “experienced in developing criteria and policies to prioritize grant applications from operators providing transportation services with public funding.”⁵⁴ Lyft opposes the Commission relinquishing decision-making authority to a third-party administrator, but does not oppose a third-party administering the Access Fund.⁵⁵ To determine whether a third-party entity should be designated to oversee the Access Fund in Track 2 of this proceeding, the Commission encourages parties in Track 2 proposals to consider who the appropriate entity should be, what role(s) the administrator should have, and how the administrator should be funded.

The Commission acknowledges additional issues to consider with respect to the application of geographic areas. One issue, raised by Lyft, is that some counties, such as Los Angeles County, cover significant boundaries that make it challenging to apply uniform service requirements, including response times. A second issue, raised by CPED, is that SB 1376 does not appear to prohibit an access provider from “seeking funding to provide on-demand WAV service in more than one geographic area, allowing for the possibility that funds from more than one geographic area could be ‘pooled’ together to improve WAV service at a meaningful scale, so long as the access provider fulfills the requirements and provides the required information for each geographic area served.”⁵⁶ The Commission encourages parties to consider these two issues in workshops and in proposals for Track 2 of this proceeding.

⁵³ Access Services Comments to the May 2 Workshop at 5, Disability Advocates Comments to the May 2 Workshop at 4, San Francisco Comments to the May 2 Workshop at 2.

⁵⁴ See, e.g., San Francisco Comments to May 2 Workshop at 2.

⁵⁵ Lyft Comments to the May 2 Workshop at 9.

⁵⁶ CPED Proposal at 24.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judges Robert M. Mason III and Debbie Chiv were 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 June 13, 2019 by the Disability Advocates, Lyft, San Francisco, SFTWA, and Uber. Reply comments were filed on June 18, 2019 by the Disability Advocates, HSD, Lyft, San Francisco, SFTWA, and Uber. All opening comments and reply comments have been carefully considered. We do not summarize every comment but focus on substantial arguments made in which the Commission did or did not make revisions in response to party input.

Uber comments that the appropriate fee amount should be \$0.05 for each completed trip, arguing that the Legislature intended that the Commission "impose an initial \$0.05 per-trip fee as a baseline, subject to upward adjustment over time *only if* the actual cost of enabling access to WAV service in a given area justifies such an adjustment."⁵⁷ Several parties oppose Uber's interpretation of the statute, with San Francisco stating that Uber's comments "ignore the express language that the per trip fee is the 'minimum amount' required."⁵⁸ We find that the statute at issue expressly permits a minimum \$0.05 fee for each trip and disagree with Uber's interpretation.

Lyft and Uber comment that that the Commission must adopt an offset process applicable for the first quarter of remitted fees. Lyft proposes that the Scoping Memo schedule be revised to expedite a Commission decision on the

⁵⁷ Uber Comments to the Proposed Decision at 8.

⁵⁸ San Francisco Reply Comments to the Proposed Decision at 2; *see also* Disability Advocates Reply Comments to the Proposed Decision at 2, SFTWA Reply Comments to the Proposed Decision at 2.

offset process, while Uber proposes that the Commission add an Ordering Paragraph authorizing offsets in this decision with an interim offset application form.⁵⁹

Several parties, including SFTWA, the Disability Advocates, and San Francisco, respond that there is no requirement that the Commission adopt an offset process for the first quarter that fees are due. San Francisco states that “while Section 5440.5(a)(1)(B)(ii) states the Commission shall ‘authorize a TNC to offset against amounts due...for a particular quarter,’ it does not mandate that the Commission authorize such offsets for the first quarter within which fees are due.”⁶⁰ The Commission agrees that the statute contains no requirement that the offset procedure be authorized for the first quarterly fee remittance and declines to address the issue of offsets in this decision.

The Commission acknowledges TNC parties’ concerns regarding potential and actual investments in accessibility services that could be impacted without an offset guarantee. However, based on numerous comments received in this proceeding, the offset procedure is a more complex, contested issue and the Commission intends to ensure that a thorough record is developed. While there is no guarantee that the Track 2 decision will adopt retroactive offset procedures, the Commission encourages TNCs to keep a record of any identifiable expenses incurred that may be applicable to a potential offset application.

Relatedly, Lyft comments that the requirement that quarterly fees be submitted on a schedule that mirrors PUCTRA fees is problematic because it does not account for the approval of offsets, which must precede the remittance

⁵⁹ Lyft Comments to the Proposed Decision at 3, Uber Comments to the Proposed Decision at 5.

⁶⁰ San Francisco Reply Comments to the Proposed Decision at 3.

of Access Fund payments.⁶¹ For the reasons stated above, the Commission is not addressing the offset procedures in this decision. However, Lyft raises relevant questions regarding the offset process that should be raised in Track 2. The Commission declines to modify the quarterly fee schedule at this time but may revisit the schedule in Track 2. No changes were made to the proposed decision in response to comments.

5. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III and Debbie Chiv are the assigned Administrative Law Judges.

Findings of Fact

1. Based on the statutory language of Pub. Util. Code § 5440.5(a)(1)(B), each TNC shall charge its customers the full amount of the required per-trip fee for each TNC trip completed.

2. In establishing the per-trip fee pursuant to Pub. Util. Code § 5440.5(a)(1)(B), it is important to strike a balance between a less-burdensome, lower fee charged to the consumer and the need for an impactful fund to encourage WAV investment.

3. While there is no exact or ideal comparison to the unique statewide implementation of SB 1376, similar WAV programs in other jurisdictions serve as useful and reasonable proxies for consideration.

4. It is important that the per-trip fee be presented to the consumer transparently and in a non-stigmatizing manner for persons with disabilities.

5. The Commission seeks a reasonable schedule for the remittance of quarterly Access Fund fees that is administratively efficient.

⁶¹ Lyft Comments to the Proposed Decision at 2.

6. Based on the stated intent of Senate Bill 1376, it is critical that the geographic areas are selected in a manner that facilitates and encourages broader adoption of on-demand transportation options for persons with disabilities.

7. Overly limiting geographic areas will exclude certain areas of California from benefiting from opportunities and incentives for WAV investment, and ultimately undermine the purpose of SB 1376.

Conclusions of Law

1. The per-trip fee charge should apply only to TNC trips completed using a TNC's online-enabled application or platform.

2. For the initial implementation of the Access Fund, a \$0.10 per-trip fee amount strikes a reasonable balance between a lower initial fee to the consumer and the need for an impactful fund to encourage WAV investment.

3. In order to foster transparency and avoid a stigmatizing effect on persons with disabilities, each TNC should present the per-trip fee to the consumer in the same manner that the TNC currently presents similar fees. For those TNCs who present similar fees as line item charges, the Access Fund fee should be identified as the "Access for All Fee."

4. Requiring the remittance of quarterly Access Fund fees on a schedule that mirrors the PUCTRA requirements is an appropriate, administratively efficient timeframe.

5. Selecting each county in California as a distinct geographic area is a reasonable, non-discriminatory designation.

ORDER

IT IS ORDERED that:

1. Each Transportation Network Company (TNC) shall charge customers the per-trip fee for TNC trips that originate in a designated geographic area.

2. Each Transportation Network Company (TNC) shall be required, beginning July 1, 2019, to pay on a quarterly basis to the Commission an amount equivalent to 0.10 dollars (\$0.10) for each TNC trip completed using the TNC's online-enabled application or platform.

3. Each Transportation Network Company (TNC) shall present the per-trip fee to its customers in the same manner in which it currently presents similar surcharges. For a TNC that presents similar surcharges as line item fees to its customers, the per-trip fee shall be identified as the "Access for All Fee."

4. Each Transportation Network Company (TNC) shall submit its quarterly TNC Access for All Act Fund remittance to the Commission on the same schedule as the requirements for the Public Utilities Commission Transportation Reimbursement Account, as provided in Public Utilities Code Sections 423(b) and 405.

5. Pursuant to Public Utilities Code Section 5440.5(a)(1)(D), the designated geographic areas shall be each county in California. Each Transportation Network Company (TNC) shall submit its quarterly remittance by check or money order made payable to the California Public Utilities Commission. The check or money order, and accompanying fee statement, shall be mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California, with an accompanying Fee Statement, with the TNC's PSG Number written on the payment. This proceeding remains open.

This order is effective today.

Dated June 27, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners