

Decision 20-03-007 March 12, 2020

**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 2 ISSUES: OFFSETS, EXEMPTIONS  
AND ACCESS PROVIDER DISBURSEMENTS**

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## **DECISION ON TRACK 2 ISSUES: OFFSETS, EXEMPTIONS AND ACCESS PROVIDER DISBURSEMENTS**

### **Summary**

This decision adopts rules and requirements for implementation of Senate Bill 1376, the “TNC Access for All Act.” The decision addresses issues scoped for Track 2 of this proceeding, including establishing requirements for the offset eligibility and exemption eligibility process, and the distribution of funds for the Transportation Network Company (TNC) Access for All Fund.

This proceeding remains open.

### **1. Background**

The California Legislature enacted Senate Bill (SB) 1376,<sup>1</sup> 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. Public Utilities (Pub. Util.) Code § 5431.5(b)<sup>2</sup> 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 the background of SB 1376 can be found in the Order Instituting Rulemaking (OIR) for this proceeding and Decision (D.)19-06-033.

On March 4, 2019, the Commission opened an OIR to implement SB 1376. On May 7, 2019, a Scoping Memo and Ruling (Scoping Memo) was issued by the assigned Commissioner that established three tracks for the issues in this proceeding (Tracks 1, 2, and 3). On August 15, 2019, the assigned Commissioner

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

<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise noted.

issued an Amended Scoping Memo and Ruling (Amended Scoping Memo) that modified the Track 2 schedule and scope.

On June 27, 2019, the Commission adopted D.19-06-033 addressing Track 1 issues (Track 1 decision). The Track 1 decision adopted requirements for the establishment of the TNC Access for All Fund (Access Fund), including the requirement that TNCs charge a \$0.10 per-trip fee for each TNC trip completed and designating the geographic areas for the TNC Access for All Fund as each county in California.

On September 27, 2019, Track 2 proposals were submitted by the Commission's Consumer Protection and Enforcement Division (CPED); the Disability Rights Education & Defense Fund, Disability Rights California, and Center for Accessible Technology (collectively, the Disability Advocates or DA); HopSkipDrive, Inc. (HSD); Lyft, Inc. (Lyft); Marin Transit; the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively, San Francisco or SF); San Francisco Taxi Workers Alliance (SFTWA); and Uber Technologies, Inc. (Uber).

A workshop on Track 2 proposals was held on October 10, 2019. Comments on the workshop and proposals were filed on October 21, 2019 by DA, SF, SFTWA, Uber, and Via Transportation Inc. (Via). Reply comments were filed on October 28, 2019 by DA, HSD, Lyft, Metropolitan Transportation Commission (MTC), SF, SFTWA, and Uber.

On October 30, 2019, the Administrative Law Judges (ALJs) granted leave to file a further response to Lyft's reply comments. On November 6, 2019, responses to Lyft's reply comments were filed by DA, SF, and Uber.

## **2. Issues Before the Commission**

Track 2 issues are summarized as follows:

1. Establish investment offset process: § 5440.5(a)(1)(B)(ii) allows for offsets against quarterly Access Fund payments for amounts spent by the TNC during that quarter to improve WAV service.
2. Establish exemption process: § 5440.5(a)(1)(G) allows a TNC to be exempt from remitting Access Fund fees in a geographic area if a TNC meets a designated level of WAV service.
3. Establish Access Fund disbursement process: § 5440.5(a)(1)(E) provides for access providers to apply for Access Fund funding.
4. Facilitate WAV ownership: § 5440.5(a)(1)(H) provides that a TNC may meet the requirements of § 5440.5(a)(1)(B)(ii) and (a)(1)(G) by providing WAV service with vehicles it owns or by contract with a transportation provider.

All Track 2 proposals and comments submitted by parties and CPED have been considered but given the number of parties and comments, some proposals may receive little or no discussion in this decision.

## **3. Establishment of Investment Offset Process**

Section 5440.5(a)(1)(B)(ii) provides that:

The commission shall authorize a TNC to offset against the amounts due pursuant to this paragraph for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area and thereby reduce the amount required to be remitted to the commission.

To establish the offset authorization process, we consider several implementation issues, including the evaluation criteria and the application and approval process.

### **3.1. Evaluation Criteria**

To qualify for an offset in a geographic area, SB 1376 provides that:

...[T]he commission shall require a TNC, at a minimum, to demonstrate, in the geographic area, the presence and availability of drivers with WAVs on its online-enabled application or platform, improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter, efforts undertaken to publicize and promote available WAV services to disability communities, and a full accounting of funds expended.<sup>3</sup>

We address these requirements, as well as other potential criteria, below.

#### **3.1.1. Presence and Availability of WAV Drivers**

Section 5440.5(a)(1)(B)(ii) provides that the Commission shall require a TNC, at a minimum, to demonstrate in the geographic area, “the presence and availability of drivers with WAVs on its online-enabled application or platform....”

To demonstrate “presence and availability” of WAV drivers, CPED proposes that TNCs report for each geographic area:

- (1) The number of WAVs in operation each month by hour of the day, and
- (2) The number and percentage of WAV trips completed; not accepted; cancelled by passenger; cancelled due to “passenger no-show;” and cancelled by driver<sup>4</sup> – by month, hour of the day, and zip code of trip request.<sup>5</sup>

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<sup>3</sup> Section 5440.5(a)(1)(B)(ii).

<sup>4</sup> “Not accepted” is defined as “when a request is not accepted because no drivers were available or no driver accepted the request.”

“Cancelled by passenger” is defined as “when a passenger cancels the request before or after it was accepted by the driver.”

“Cancelled due to no-show” is defined as “when a driver cancels a trip because the passengers was not at the pick-up location.”

CPED believes monthly data will provide visibility into whether a TNC's WAV service is improving during the quarter, and that data on the number of operable WAVs and trips by hour of day will give insight into WAV supply and demand, as well as safety issues related to stranded customers. SF and DA support CPED's proposal although DA believes TNCs should submit more granular data.<sup>6</sup>

Uber and Lyft generally agree with CPED, with some modifications. They view data on a monthly, hourly, or zip code basis as unnecessary, and propose that data should be aggregated by quarter and by county.<sup>7</sup> They reason that § 5440.5(a)(1)(B)(ii) does not require hourly data but refers to performance evaluation on a quarterly and geographic area basis. Uber cautions against collecting certain data such as "passenger no-shows" that can be unreliable, "cancellations by riders within two minutes of request" as related to riders changing their mind, and "cancellations by riders after a completed trip or non-WAV request" as related to a mistaken request.

DA and SFTWA oppose these exclusions, with DA stating that passenger no-show data can indicate a rider could not be located due to accessibility issues, and cancellations within two minutes can occur after a rider receives a projected

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"Cancelled by driver" is defined as "when a driver accepts a request but then cancels the trip of any other reason other than 'no-show.'"

<sup>5</sup> CPED Track 2 Proposal at 7.

<sup>6</sup> SF Track 2 Proposal, Exhibit 1 at 2-3, DA Track 2 Proposal at 12.

Note that SF and other parties submitted Track 2 proposals on September 27, 2019 titled as "Comments." For consistency's sake, proposals submitted on September 27, 2019 are identified as a "Track 2 Proposal." Comments submitted on October 21, 2019 are identified as "Opening Comments" and reply comments submitted on October 28, 2019 are identified as "Reply Comments."

<sup>7</sup> Uber Opening Comments at 6, Lyft Reply Comments at 18.

wait time.<sup>8</sup> HSD opposes CPED's proposal because collecting this data is unnecessary and disproportionately burdensome to smaller TNCs.<sup>9</sup>

### **3.1.1.1. Discussion**

We agree that collecting data on passenger no-shows and cancellations is necessary as it may reveal issues with rider accessibility or driver training that would be useful in evaluating a TNC's WAV program.

While SB 1376 does not require reporting hourly data, the statute does not preclude collecting such data. Section 5440.5(a)(1)(B)(ii) sets forth minimum requirements to consider in establishing offset eligibility: the Commission "shall require a TNC, *at a minimum*, to demonstrate, in the geographic area, the presence and availability of drivers with WAVs..." among other requirements (emphasis added). Thus, we reject the argument that the Commission cannot adopt requirements that are not expressly set forth in § 5440.5(a)(1)(B)(ii).

We view the reporting of WAV presence and availability information on an hourly basis to be a critical data point, particularly in evaluating the concern for "stranded" WAV customers and whether such customers lack access to WAVs at certain times of the day. Further, SB 1376 requires the Commission to submit a report to the Legislature on the WAV program's effectiveness and that report must include, among other things, "[a] study on the demand for WAVs, including demand according to time of day and geographic area."<sup>10</sup> Therefore, reporting WAV availability by hour of the day is reasonable and consistent with SB 1376's approach to evaluating the effectiveness of the WAV program.

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<sup>8</sup> DA Reply Comments at 3, SFTWA Opening Comments at 5.

<sup>9</sup> HSD Reply Comments at 5.

<sup>10</sup> Section 5440.5(a)(1)(K)(2).

While we understand parties' interest in collecting zip code level data for driver presence, we agree with Uber and Lyft that SB 1376 expressly considers WAV presence and availability "in the geographic area," or at the county level. Likewise, SB 1376 expressly considers a TNC's improved performance *over* the previous quarter, not monthly improvement within a quarter. Therefore, reporting CPED's proposed categories on a county level and on a quarterly basis is sufficient for purposes of an offset request (or Offset Request).

Accordingly, to demonstrate the presence and availability of drivers of WAV vehicles for an Offset Request, TNCs shall submit data on: (1) the number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week, and (2) the number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver - by quarter and aggregated by hour of the day and day of the week. "In operation" is defined as when a WAV: (a) is available to receive a trip request, (b) has accepted a trip request until the passenger exits the vehicle or until the trip request is no longer accepted. By "quarter and aggregated by hour of the day and day of the week" means the total number of WAVs for a certain hour of the day for each day of the week (*e.g.*, the total number of WAVs in operation at 1:00 p.m. on a Tuesday for the quarter is X).

Lastly, parties raise concerns about the confidentiality of data reported by TNCs. We address confidentiality issues for all types of data in Section 3.6.

### **3.1.2. Improved Level of Service**

Section 5440.5(a)(1)(B)(ii) provides that the Commission shall require a TNC, at a minimum, to demonstrate in a geographic area "improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter...." We summarize proposals below.

### 3.1.2.1. CPED's Proposal

CPED provides the most detailed proposal, which is to use existing TNC trip demand and response times for standard TNC trips to extrapolate a WAV trip response time for each geographic area. CPED analyzed TNC trip data from September 2017 to August 2018, collected from TNCs' Annual Reports, to calculate a "response time" for each trip.<sup>11</sup> CPED defines "response time" as the "elapsed time between when a trip is requested and the passenger is picked-up." CPED calculated the 50<sup>th</sup> and 80<sup>th</sup> percentile response time for each geographic area, aggregating and rounding for confidentiality. To account for variations in TNC service concentration, CPED adjusted the response time by dividing the number of completed trips in a geographic area by the area population to establish the TNC trips per person. This adjustment accounts for the fact that the number of trips in some counties are significantly higher than in other counties. CPED's proposed WAV response times are as follows:

<b>CPED's Response Time Proposal</b>		
Geographic Area/County	Response Time (mins)	2x Response Time (mins)
San Francisco	8	16
Alameda, Los Angeles, San Diego, San Mateo, Santa Clara	10	20
Napa, Orange, Sacramento, San Luis Obispo, Santa Barbara, Yolo	12	24
Butte, Fresno, Kern, Monterey, San Bernardino, Santa Cruz, Solano	15	30
Contra Costa, El Dorado, Marin, Placer, Riverside, San Joaquin, Shasta, Sonoma, Stanislaus, Ventura	20	40

<sup>11</sup> CPED Track 2 Proposal at 8, Attachments A, B and C.

Del Norte, Humboldt, Imperial, Inyo, Kings, Lassen, Mendocino, Madera, Merced, Mono, Nevada, Plumas, Sutter, Trinity, Tulare, Yuba	25	50
Alpine, Amador, Calaveras, Colusa, Glenn, Lake, Mariposa, Modoc, San Benito, Sierra, Siskiyou, Tehama, Tuolumne	30	60

CPED recommends two minimum thresholds to qualify for an offset, which gradually increase each year:

Implementation Period	Offset Service	Offset Service
July 2019 – June 2020	50%	75%
July 2020 – June 2021	60%	80%
July 2021 – June 2022	70%	85%
July 2022 – June 2023	80%	90%
July 2023 – onward	90%	--

For example, in San Francisco County in a quarter between July 2019 – June 2020, a TNC would demonstrate that either: (a) at least 50 percent of WAV trips in San Francisco had a response time of 8 minutes or less, or (b) at least 75 percent of WAV trips had a response time of 16 minutes or less. If a TNC received an offset in the prior quarter, the TNC’s percentage “must also improve each quarter” compared to the prior quarter.<sup>12</sup>

To verify a TNC’s WAV response times, CPED recommends the TNC submit for that geographic area “the completed WAV trip request response times in deciles each month for each zip code (*i.e.* 10 percent of all trips originating in zip code 00000 in September 2019 were fulfilled in 5.25 minutes, 20% fulfilled in

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<sup>12</sup> CPED Track 2 Proposal at 10.

6 minutes,...etc.).”<sup>13</sup> CPED suggests this data be collected by zip code to understand variances in response time within a geographic area.

Several parties support CPED’s proposal, including SF, SFTWA and DA, because it is backed by response time data for the general public, which furthers an effort to give WAV passengers equal treatment as compared to non-WAV passengers. DA asserts that reasonableness of WAV response times cannot be evaluated without consideration of standard vehicle wait times.<sup>14</sup> SF adds that CPED’s methodology preserves confidentiality, gives clear benchmarks, and offers TNCs flexibility to meet a lower response time threshold.<sup>15</sup>

Uber opposes CPED’s proposal, arguing that it fails to account for traffic pattern changes over time and incorrectly assumes that demand and demand density for WAV services will be the same as for non-WAV services.<sup>16</sup> DA disagrees with Uber and points out that CPED builds in a lower standard for WAV trips by using the 80<sup>th</sup> and 50<sup>th</sup> percentile of standard trip response times.<sup>17</sup>

### **3.1.2.2. Uber’s Proposal**

Uber offers an alternative approach that relies on population density for people with ambulatory difficulty to determine WAV response times. Uber’s methodology calculates population density for each county based on (a) total population and total land area, and (b) population with ambulatory difficulty and total land area. The methodology then “compare[s] population with ambulatory difficulty density to total population” to identify a “comparable

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<sup>13</sup> *Id.*

<sup>14</sup> DA Reply Comments at 7.

<sup>15</sup> SF Opening Comments at 2.

<sup>16</sup> Uber Opening Comments at 10.

<sup>17</sup> DA Reply Comments at 7.

county.”<sup>18</sup> Uber “use[s] Response Time for TNC Trips for Comparable County to set WAV Response Time Standard.” The proposed WAV response times are:

<b>Uber’s Response Time Proposal</b>		
Geographic Area/County	Response Time (mins)	2x Response Time (mins)
San Francisco, Los Angeles, Orange County, San Mateo	15	30
San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera	25	50
Riverside, San Bernardino, Fresno, Kern, Sonoma, Tulare, Monterey, Placer, Merced, Marin, Butte, Yolo, El Dorado, Napa, Humboldt, Kings, Nevada, Sutter, Mendocino, Yuba, Lake, Tehama, San Benito, Tuolumne, Calaveras, Siskiyou, Amador, Glenn, Del Norte, Lassen, Colusa, Plumas, Inyo, Mariposa, Mono, Trinity, Modoc, Sierra, Alpine	30	60

Uber suggests response time standards should be set for a two-year period and reevaluated as more data is acquired:

Implementation Period	Offset Service	Offset Service
July 2019 – June 2020	50%	75%
July 2020 – June 2021	60%	80%

Several parties oppose Uber’s proposal, including Lyft, DA, SF, and SFTWA. DA and SF note that the methodology calculates response times based only on services for people with disabilities. DA argues that “access and equality for people with disabilities means that people with disabilities receive services that are comparable to those offered to people without disabilities.”<sup>19</sup> SF and

<sup>18</sup> Uber Opening Comments at 10.

<sup>19</sup> DA Reply Comments at 7.

SFTWA disagree with establishing benchmarks for only the first two years of the program as contrary to SB 1376's intent.<sup>20</sup> Lyft argues, among other things, that the methodology fails to account for differences in Uber's WAV program versus other TNCs' programs, and applying these benchmarks would give Uber an unfair advantage.<sup>21</sup>

### **3.1.2.3. Lyft's Proposal**

Lyft opposes the use of predetermined, annual response times, citing § 5440.5(a)(1)(B)(ii) that states that a TNC must demonstrate "an improved level of service, including reasonable response times,...compared to the previous quarter...."<sup>22</sup> Lyft argues that improved service should be compared to an individual TNC's prior quarter's performance and that this is logical because TNCs have differing sizes and resources so TNCs cannot achieve universal benchmarks. Lyft's proposed benchmarks account for "the unpredictable impact of an expected increase in demand and supply constraints, and with the objective of developing a reasonable stretch goal that represents a substantial improvement in Lyft WAV service for persons with disabilities...."<sup>23</sup> Lyft's response times are "for Year 1 of Lyft's WAV program" because there is insufficient data to project response times for subsequent years.

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<sup>20</sup> SF Reply Comments at 5, SFTWA Reply Comments at 6.

<sup>21</sup> Lyft Reply Comments at 12.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 10.

<b>Lyft's Response Time Proposal</b>		
Geographic Area/County	Response Time (mins)	2x Response Time (mins)
San Francisco	20	40
Orange, Los Angeles, Alameda, San Mateo, Sacramento, San Diego, Santa Clara	30	60
Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Bernardino, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba	40	80

Implementation Period	Offset Service	Offset Service
July 2019 – June 2020	50%	75%

Multiple parties oppose Lyft's proposal, including SFTWA, SF, DA, and Uber, primarily because it measures a TNC's service only against that TNC's performance in the prior quarter. DA reiterates that this disregards services for those without disabilities and unfairly measures a TNC against its own service "no matter how dismal the TNC's own prior record might be."<sup>24</sup> SFTWA cautions that measuring a TNC against its own performance creates a perverse incentive to improve slowly.<sup>25</sup> A few parties argue that SB 1376 permits uniform annual benchmarks since the statute sets forth only minimum criteria for

<sup>24</sup> DA Opening Comments at 4.

<sup>25</sup> SFTWA Reply Comments at 6.

evaluating offsets.<sup>26</sup> Uber also views this proposal as administratively burdensome to implement.<sup>27</sup>

Parties point out that SB 1376 requires the Commission to “establish yearly benchmarks for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service” and that these annual benchmarks include response times.<sup>28</sup> Uber comments that if the Legislature intended for benchmarks to be tailored to each TNC, it would not elsewhere require annual benchmarks for all TNCs and access providers to show improved service. Uber adds that SB 1376 provides no indication that the specific resources or business model of each TNC must be considered.

#### **3.1.2.4. Other Proposals**

DA, SFTWA, and SF recommend that “response time” should be measured from a rider’s initial trip request in order to account for intervening cancellations by drivers or riders.<sup>29</sup> HSD proposes that criteria should only apply to TNCs that provide “a million or more rides per quarter in a given geographic area” to ensure that rules intended for larger TNCs will not have a disproportionate impact on smaller TNCs.<sup>30</sup>

#### **3.1.2.5. Discussion**

The Commission is not persuaded by Lyft’s argument that SB 1376 requires establishing unique benchmarks for each TNC. As discussed above,

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<sup>26</sup> See, e.g., SF Reply Comments to Lyft at 3, DA Opening Comments at 4.

<sup>27</sup> Uber Reply Comments to Lyft at 1.

<sup>28</sup> Section 5440.5(a)(1)(J); see, e.g., Uber Reply Comments to Lyft at 1.

<sup>29</sup> SF Opening Comments at 2, SFTWA Track 2 Proposal at 5, DA Opening Comments at 5.

<sup>30</sup> HSD Reply Comments at 4.

§ 5440.5(a)(1)(B)(ii) sets forth minimum requirements to demonstrate improved level of service, including reasonable response times. We do not accept this to mean the Commission must adopt unique response time benchmarks for each TNC. It is also compelling that § 5440.5(a)(1)(J) directs the establishment of annual benchmarks (including response times) to apply to all TNCs and access providers, further supporting that the Legislature did not intend to evaluate improved WAV service on an individual TNC-by-TNC basis.

It is unclear how Lyft's proposal could even be implemented. Lyft's response times cover one year of WAV service and apply only to Lyft. Lyft does not elaborate on how it calculated its response times, or how unique response times should be calculated for all other TNCs. The Commission rejects Lyft's proposal.

While we appreciate Uber's attempt to offer data-driven response times, Uber's methodology is also ambiguous. It is unclear how Uber arrived at its response times, how it developed a "floor of 15 minutes," and what it undertook to "compare" the population with ambulatory difficulty density to total population density to identify the comparable county. We are also persuaded that any evaluation of "reasonable" WAV response times must at least consider response times for non-WAV trips.

Smaller TNCs, like HSD, advocate for unique offset criteria depending on the size of the TNC. For the reasons discussed regarding Lyft's proposal, we do not interpret SB 1376 to require unique response times or criteria for each TNC. As with Lyft's proposal, no party has offered an implementable methodology for measuring response times for smaller TNCs. We note that in the Commission's history of rulemakings regulating TNCs, such as R.12-12-011, there have been no

instances of applying separate regulations for smaller TNCs, and we find insufficient basis for doing so here.

CPED's proposal offers a clear, data-supported methodology that uses standard trip response times as the basis for calculating WAV response times. The proposal gives TNCs clear thresholds that are aggregated to maintain confidentiality of trip data. We reject the argument that CPED's methodology assumes demand for WAV services will be the same as for non-WAV services, since CPED expressly includes a lower standard for WAV vehicles: the baseline WAV response time (referred to as Level 1) and the 2x WAV response time (referred to as Level 2) are based on the 80<sup>th</sup> percentile response time for each geographic area.

However, we acknowledge TNC parties' concerns that WAV response times should be flexible during the inception of the Access Fund program and that there is no existing WAV trip response time data. Implementing SB 1376 requires the Commission to balance several challenges, including: (1) adopting WAV response times for a new on-demand WAV program that has never been implemented for an entire state and on such a large scale, (2) adopting appropriate WAV response times when there is very little existing WAV response time data, and (3) encouraging WAV investment and innovation by TNCs, as was intended by the statute.

Considering these concerns, we believe it would be prudent to evaluate actual WAV response time data to better understand what is appropriate before adopting Offset Time Standards on a longer-term basis. However, SB 1376 sets forth specific timeframes for the Access Fund program, which will sunset in January 2026, that does not account for additional time to collect and evaluate existing WAV response times.

Weighing these competing interests, as well as comments on the proposed decision, the Commission concludes that it is appropriate and prudent to defer adoption of WAV response times on a longer-term basis for offsets, until actual WAV response times can be considered. The Commission will evaluate WAV response times in one year, after at least three quarters of response time data has been submitted by TNCs, and will issue a subsequent decision establishing the Offset Time Standards for future years. To that end, CPED is authorized to provide a report to the Commission by February 2021 that evaluates at least three quarters of WAV response times and percentage standards, including the number of TNCs that have qualified for an offset, the qualifying Offset Time Standard, and recommendations on modifications to the WAV response times and Offset Time Standard.

Until that time, we consider what WAV response time standard should be adopted for the upcoming year on an interim basis. We believe it is appropriate to adopt more conservative WAV response times for the initial year until TNC WAV data can be reviewed. For the reasons discussed, we find CPED's proposal to be a clear, appropriate methodology for calculating WAV response times. However, Uber's proposal presents a conservative approach that can be applied on an interim basis. We do not agree that San Francisco County should be grouped with Los Angeles, Orange and San Mateo counties at this time, due to San Francisco's size and uniquely high concentration of TNC trips per population. Accordingly, Uber's proposed WAV response times and percentages are adopted on an interim basis, as follows:

<b>Interim WAV Response Times</b>		
Geographic Area/County	Level 1 -	Level 2 - 2x

	WAV Response Time (mins)	WAV Response Time (mins)
San Francisco	15	30
San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera, Los Angeles, Orange, San Mateo	25	50
Riverside, San Bernardino, Fresno, Kern, Sonoma, Tulare, Monterey, Placer, Merced, Marin, Butte, Yolo, El Dorado, Napa, Humboldt, Kings, Nevada, Sutter, Mendocino, Yuba, Lake, Tehama, San Benito, Tuolumne, Calaveras, Siskiyou, Amador, Glenn, Del Norte, Lassen, Colusa, Plumas, Inyo, Mariposa, Mono, Trinity, Modoc, Sierra, Alpine	30	60

<b>Interim Offset Time Standard</b>	Offset Service	Offset Service
April 2020 until subsequent Commission decision	50%	75%

To show “improved level of service” for a given quarter and geographic area for the interim period, a TNC shall demonstrate it achieved either the Level 1 or Level 2 Offset Time Standard. If a TNC received an offset in the prior quarter, the TNC shall also achieve an Offset Time Standard that exceeds the percentage achieved in the prior quarter. For example, in San Francisco County in the quarter beginning July 2020, a TNC must demonstrate that either (1) at least 50 percent of WAV trips originating in San Francisco had a response time of 15 minutes or less, or (2) at least 75 percent of WAV trips had a response time of 30 minutes or less. If the TNC received an offset in San Francisco County in the prior quarter with 50 percent of WAV trips having a response time of 15 minutes or less, the TNC must demonstrate that at least 51 percent of WAV trips had a response time of 15 minutes or less in the next quarter. A TNC may demonstrate improved level of service by achieving a Level 1 Offset Time Standard in one

quarter and a Level 2 Offset Time Standard in the next quarter (or vice versa), so long as the TNC demonstrates improvement each quarter.

Section 5440.5(a)(1)(I)(iii) defines response time as “between when a WAV ride was requested and when the vehicle arrived.” We believe that is the appropriate definition of response time, for purposes of this decision. It is unnecessary to measure “response time” at a passenger’s initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-show will be captured in the “presence and availability” data. Accordingly, response time is defined as the time between when a WAV ride was requested and when the vehicle arrived.

To verify a TNC’s WAV response times, we adopt CPED’s proposal that a TNC shall provide data on completed WAV trip request response times in deciles. “Completed WAV trip” is defined as a WAV trip request that results in a passenger being dropped-off at the requested location. In addition to reporting the completed WAV trip response times, TNCs should break down the response time into: (a) time elapsed from when a trip is requested until the trip is accepted (Period A), and (b) time elapsed from when a trip is accepted until the vehicle arrives (Period B). For the reasons discussed for the “presence and availability” criteria above, it is sufficient that a TNC submit this data by geographic area and by quarter. For example, a TNC shall report that 10 percent of all trip requests originating in a geographic area and quarter were fulfilled in X minutes, 20 percent were fulfilled in X minutes, etc. In addition, a TNC shall report that the Period A time was X minutes for 10 percent of completed trips, that the Period B time was X minutes for 10 percent of completed trips, etc. Accordingly, to verify a TNC’s WAV response times, a TNC shall provide completed WAV trip

response times in deciles, as well as Periods A and B in deciles, by geographic area and by quarter.

### **3.1.3. Efforts to Promote Available WAV Service**

Section 5440.5(a)(1)(B)(ii) provides that the Commission shall require a TNC, at a minimum, to demonstrate in a geographic area “efforts undertaken to publicize and promote available WAV services to disability communities....”

CPED proposes that TNCs provide evidence of their outreach efforts, which may include the following: a list of entities the TNC partners with from disability communities, how the partnership publicized or promoted WAV services, and marketing or promotional materials of those activities (*e.g.*, advertisements, website screenshots).<sup>31</sup> DA support this proposal and no other proposals were offered.<sup>32</sup> We adopt CPED’s proposal as reasonable to demonstrate the efforts undertaken to publicize and promote WAV services to disability communities.

### **3.1.4. Accounting of Funds Expended**

Section 5440.5(a)(1)(B)(ii) provides that the Commission shall require a TNC, at a minimum, to demonstrate in a geographic area “a full accounting of funds expended.”

DA and SF suggest that invoices and other documentation be submitted to verify how funds were expended.<sup>33</sup> CPED recommends that TNCs present expenses by category and describe how investments were used to improve WAV

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<sup>31</sup> CPED Track 2 Proposal at 14.

<sup>32</sup> DA Opening Comments at 13.

<sup>33</sup> DA Track 2 Proposal at 10, SF Track 2 Proposal at 8.

service.<sup>34</sup> Lyft proposes that a TNC certify as to the accuracy of its accounting and states that submitting back-up materials is unwieldy and unnecessary but that documents should be retained and made available upon request.<sup>35</sup>

DA and SF propose that if a TNC meets its WAV requirements through a contract with another WAV provider, accounting should include “the amount spent on that contract and how that amount is determined, for instance: cost per revenue hour, revenue mile and/or amount per trip,” with an explanation of how the amounts were derived.<sup>36</sup>

Parties’ positions diverge as to what expenses should be eligible for an offset. We first address this issue as it relates to how funds are accounted for.

#### **3.1.4.1. Qualifying Expenses**

Section 5440.5(a)(1)(B)(ii) provides that a TNC may receive an offset for “the amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area....” SB 1376 does not provide further guidance on what expenses qualify as “amounts spent by the TNC...to improve WAV service....”

Parties’ proposals fall into two categories. On one end, the TNC parties and CPED support an expansive view that any expense that improves WAV service is an eligible expense. Lyft provides a broad list of eligible costs asserting that “[s]o long as the TNC certifies that the cost would not have been incurred but for the TNC’s adoption of WAV service,” the expense should be allowed.<sup>37</sup>

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<sup>34</sup> CPED Track 2 Proposal at 11.

<sup>35</sup> Lyft Track 2 Proposal at 14.

<sup>36</sup> DA Track 2 Proposal at 10, SF Track 2 Proposal at 8.

<sup>37</sup> Lyft Track 2 Proposal at 13.

HSD advocates that TNCs should be permitted to offset “reasonable and legitimate costs of a project that improves WAV service, including engineering and product costs.”<sup>38</sup> CPED proposes broad eligible categories, such as marketing and outreach, maintenance and equipment, and driver incentives.<sup>39</sup>

On the other end, parties recommend that allowable offsets should only include costs that: (a) go directly towards providing WAV services, and (b) are an incremental cost to the TNC above the cost for providing a non-WAV trip.<sup>40</sup> DA and SF assert that offset expenses should not include costs that are the same for a standard or WAV ride, such as electric vehicle charging infrastructure, tolls, market research, technology investments, engineering costs, and telematics hardware.<sup>41</sup> DA provides examples of incremental expenses that should be reimbursable, such as financial incentives for WAV drivers, driver training on maintenance and operation of WAVs, or purchase of WAVs.

Lyft objects to this approach stating that SB 1376 does not permit denying reimbursement for costs other than incremental costs.<sup>42</sup> Lyft reasons that since SB 1376 was enacted due to a lack of WAV services offered by TNCs, all expenses incurred by TNCs to improve WAV service should be reimbursable. Lyft also states it is unclear how incremental differences between WAV and non-WAV services would be identified, and that no party has offered such a formula.

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<sup>38</sup> HSD Reply Comments at 7.

<sup>39</sup> CPED Track 2 Proposal at 11.

<sup>40</sup> *See, e.g.*, DA Track 2 Proposal at 10, SF Track 2 Proposal at 7, SFTWA Track 2 Proposal at 3, Marin Transit Track 2 Proposal at 5.

<sup>41</sup> DA Opening Comments at 14, SF Opening Comments at 8.

<sup>42</sup> Lyft Reply Comments at 19.

We understand parties' rationale in reimbursing only incremental costs that exceed the cost of providing a standard trip, given that certain costs are incurred regardless of whether a ride is a WAV ride. However, we agree that parties in support of the incremental approach have not brought forth a formula for calculating incremental costs and thus, there is no implementable solution at this time. Parties may propose a viable method for calculating incremental costs in Track 3, which the Commission will consider.

The Commission finds that a qualifying offset expense is a reasonable, legitimate cost that improves a TNC's WAV service and that is incurred in the quarter for which a TNC requests an offset. Lyft's defined list of eligible costs is a clear approach that offers guidance to TNCs as to what expenses are reimbursable. However, for some of Lyft's proposed expenses, it is unclear how the expense relates to WAV improvement or what the expense refers to, such as for: conferencing/event costs, infleeting storage/transport, insurance (casualty/liability), EV charging infrastructure/battery replacement/associated costs, gas reimbursements for partnership costs, uncovered damages/losses, repossession, titles, licensing, plates/registration, and acquisition costs. Therefore, we deem these expenses as ambiguous and unrelated to improve WAV services and remove them from the list of eligible expenses.

That said, we include an "Other" category in which a TNC may provide an expense that is not otherwise listed, and describe (1) how such expense is a reasonable, legitimate cost that improves WAV service, and (2) represents a reasonable proportion of the total eligible expenses. The expenses eligible for an investment offset are attached as Appendix A and adopted in this decision.

Accordingly, a qualifying offset expense is: (1) a reasonable, legitimate cost that improves a TNC's WAV service, (2) incurred in the quarter for which a TNC requests an offset, and (3) on the list of eligible expenses attached as Appendix A.

#### **3.1.4.2. Accounting Process**

Returning to the issue of how TNCs shall demonstrate "a full accounting of funds expended," we agree that a TNC should provide a detailed accounting of expenses to verify how funds were expended. A TNC should complete Appendix A with sufficient detail to verify how the funds were expended in a given quarter and list the amount expended for each item. It is not necessary for TNCs to submit invoices and other supporting materials when submitting the Offset Request, but such materials should be retained for the duration of the Access Fund program, which is scheduled to sunset on January 1, 2026, and made available upon request. A TNC should also submit a certification attesting to the accuracy of its accounting practices.

Additionally, we agree that if a TNC has a contractual arrangement with a WAV provider for which it seeks an offset, or with which it meets some of its offset requirements, the TNC shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. It is also appropriate for a TNC to set up a tracking account to track eligible amounts spent for offset purposes and the Access Fund fees collected each quarter. That tracking account may be reviewed by Commission staff.

Accordingly, to demonstrate a full accounting of funds expended, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. A TNC seeking an offset for a contractual arrangement with a WAV provider shall identify the

parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. A TNC shall retain invoices, contracts, and other supporting documentation for the duration of the Access Fund program and provide such documentation promptly to the Commission if requested.

A TNC shall establish a tracking account to track eligible amounts spent for offset purposes and the Access Fund fees collected each quarter. A TNC's tracking account is subject to Commission review.

### **3.1.5. Additional Requirements**

As the requirements set forth in § 5440.5(a)(1)(B)(ii) are “minimum” requirements to qualify for an investment offset, we consider what additional requirements, if any, should be adopted.

#### **3.1.5.1. Driver Training and Vehicle Inspections**

CPED suggests that to receive an offset, a TNC provide certification that all drivers operating WAVs receive “specific training on transporting people with disabilities that includes sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures.”<sup>43</sup> Specifically, CPED proposes that a TNC certify that its WAV drivers received WAV training in the past three years, identify the WAV training programs used in the geographic area (including programs developed by the TNC), and report the number of drivers that completed WAV driver training during that quarter. CPED cites other jurisdictions, including Portland, OR and King County, WA, that require WAV driver training for their TNC WAV subsidy programs.

CPED also recommends that a TNC certify that WAVs operating on its platforms are “inspected and approved for conformance with the Americans

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<sup>43</sup> CPED Track 2 Proposal at 11.

with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles” in the past year.<sup>44</sup> CPED states that the inspection should be added to existing vehicle inspections, as required in D.13-09-045. CPED notes that other jurisdictions, such as Portland and King County, require similar WAV inspections.

Most parties support WAV driver training and vehicle inspections for TNCs seeking an offset but some believe the requirements should be applied more broadly. SF and SFTWA propose that WAV driver training and inspections should be part of the permitting process for TNCs and should apply to all providers operating WAVs (not just TNCs).<sup>45</sup> Lyft and Uber support WAV driver training and inspections, but Lyft supports the requirements for all operators of WAVs, asserting that SB 1376 does not allow adding criteria for offset eligibility.<sup>46</sup> Uber states that a TNC should be allowed to satisfy these requirements through WAV provider partnerships.<sup>47</sup>

The safety of WAV passengers is of critical importance in developing WAV programs and we agree with the broad consensus in favor of driver training and vehicle inspections. While we find merit in requiring WAV inspections and driving training as part of the TNC permit process, the issue of accessibility requirements that apply to all TNCs is scoped in Track 3 and we will revisit this issue in the next phase.

Accordingly, a TNC seeking an offset shall comply with the following:

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<sup>44</sup> *Id.* at 12.

<sup>45</sup> SF Opening Comments at 9, SFTWA Opening Comments at 5.

<sup>46</sup> Lyft Track 2 Proposal at 16.

<sup>47</sup> Uber Track 2 Proposal at 9.

- (1) Certify that its WAV drivers have completed WAV driver training within the past three years, which should include: sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures;
- (2) Report the WAV driver training programs used in that geographic area, and the number of WAV drivers that completed WAV training in that quarter; and
- (3) Certify that all WAVs operating on its platform have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year.

TNCs can determine their own WAV training programs and may satisfy these requirements through WAV provider partnerships. Records of completed WAV training and inspections shall be retained by the transportation provider and submitted to the Commission upon request.

#### **3.1.5.2. Complaints**

SF proposes that a TNC should report the number of complaints related to WAV services received in that quarter and the nature of the complaint by category: securement issue, driving training, vehicle safety, refused service animal, and stranded passenger.<sup>48</sup> DA and SFTWA support this proposal.<sup>49</sup>

We believe that reporting the number and type of complaints received is an important metric to evaluating the effectiveness of a WAV program and adopt the requirement here. Accordingly, a TNC seeking an offset shall provide the number of complaints related to WAV drivers or WAV services – by quarter and geographic area. A TNC shall provide the number of complaints categorized as

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<sup>48</sup> SF Track 2 Proposal, Exhibit A at 4.

<sup>49</sup> DA Opening Comments at 8, SFTWA Reply Comments at 7.

follows: securement issue, driving training (*e.g.*, customer service / disability sensitivity), vehicle safety and comfort (*e.g.*, issue with ramp, vehicle configuration), service animal issue, stranded passenger, and other.

Lastly, we authorize CPED to publish a template on its website that contains the required information for the Offset Requests.

### **3.2. Quarterly Report**

Section 5440.5(a)(1)(I) provides that “[w]ithin 30 days after the end of each quarter beginning after July 1, 2020,” a TNC that receives an offset – or an access provider that receives funding from the Access Fund – shall submit a report to the Commission that shall include, but is not limited to, the following:

- (i) The number of WAV rides requested.
- (ii) The number of WAV rides fulfilled.
- (iii) Data detailing the response time between when a WAV ride was requested and when the vehicle arrived.
- (iv) Information regarding education outreach to disability communities, including, but not limited to, information and promotion of availability of WAVs for wheelchair users.
- (v) A detailed description of expenditures or investments, as applicable.

We consider what additional information, if any, should be in the quarterly report (Quarterly Report). DA and SF suggest that Items (i), (ii), and (iii) should be reported by geographic area and zip code.<sup>50</sup> DA and SF propose that TNCs should submit a comprehensive disaggregated data set that includes trip records (*e.g.*, miles traveled, fare), telemetry records (*e.g.*, acceleration), and

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<sup>50</sup> DA Track 2 Proposal at 11, SF Track 2 Proposal at 8.

driver information (*e.g.*, background check).<sup>51</sup> DA states this data could be used to monitor compliance with other regulations, as well as SB 1376.

Lyft and Uber do not propose any additional reporting. HSD opposes the collection of detailed data sets with trip records and driver information as unnecessary and burdensome.<sup>52</sup>

### **3.2.1. Discussion**

The requirements of § 5440.5(a)(1)(I) are largely duplicative of the requirements set forth in § 5440.5(a)(1)(B)(ii) for offset eligibility (*e.g.*, presence and availability of drivers, response times, efforts to publicize WAV services, accounting of funds). Because of this and the recurring submission of Quarterly Reports, we determine that the Quarterly Report was intended as a means to: (1) monitor a TNC that receives an offset or an access provider that receives funding, on a quarterly basis, and (2) provide data to inform the Commission's 2024 report to the Legislature "on compliance with the section and on the effectiveness of the on-demand transportation programs or partnerships..." pursuant to § 5440.5(a)(1)(K)(2).

While the offset requirements have been expanded in this decision beyond the minimum requirements of § 5440.5(a)(1)(B)(ii), we view the expanded requirements as critical and relevant for evaluating the effectiveness of WAV programs for the 2024 Legislative report and for monitoring a TNC or access provider's WAV investments. Since § 5440.5(a)(1)(I) also sets forth minimum requirements for the Quarterly Report, it is appropriate that the requirements for the Quarterly Report mirror the requirements of an Offset Request.

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<sup>51</sup> SF Opening Comments at 7, DA Reply Comments at 5.

<sup>52</sup> HSD Reply Comments at 6.

We find insufficient record support for requiring a comprehensive data set from TNCs to include trip records, driver information, etc., and for collecting non-WAV trip data. We note that the issue of reporting TNC trip-level data is being considered in another Commission rulemaking, R.12-12-011.

Accordingly, information required in the Quarterly Report shall mirror the requirements for an Offset Request, as follows:

- (1) Number of WAVs in operation – by quarter and aggregated by hour of the day and day of the week;
- (2) Number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week;
- (3) Completed WAV trip request response times in deciles, as well as Periods A and B, by quarter;
- (4) Evidence of outreach efforts to publicize and promote available WAV services to disability communities, which may include a list of partners from disability communities, how the partnership promoted WAV services, and marketing or promotional materials of those activities;
- (5) Completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended, if applicable, and a certification attesting to the accuracy of the accounting practices;
- (6) Certification that a TNC or access provider's WAV drivers have completed WAV driver training within the past three years;
- (7) Report of WAV driver training programs used and number of WAV drivers that completed the training in that quarter;
- (8) Certify that all WAVs operating on its platform have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year; and

- (9) Number of complaints received related to WAV drivers or WAV services, categorized as follows: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, and other.

The Quarterly Report shall be submitted for each geographic area in which a TNC receives an offset or an access provider receives Access Fund moneys.

The Quarterly Report shall be submitted to the Commission 30 days after the end of each quarter after July 1, 2020. Therefore, the first set of reports shall be due July 30, 2020, followed by reports due October 30, 2020, January 30, 2021, etc. We authorize CPED to establish a process for submitting Quarterly Reports and provide that information on its website. We also authorize CPED to publish a template of the required information for the Quarterly Report on its website.

As further discussed below, we recognize that some access providers that receive Access Fund moneys may not have the resources of larger TNCs and may not have the information requested in the Quarterly Report. Therefore, an access provider that must submit a Quarterly Report should indicate and explain where it cannot provide or does not possess the requested information. Further, we are aware that a TNC that seeks an offset and submits a Quarterly Report for the same quarter will be submitting the same information to the Commission. However, because an Offset Request comes through via an Advice Letter and a Quarterly Report does not, such duplication may be required. A TNC may submit its Quarterly Report on the same schedule as its Offset Request for convenience.

### **3.3. Offset Request Approval Process**

SB 1376 does not provide guidance on how Offset Requests should be submitted and approved by the Commission. CPED offers the most detailed proposal, which replicates the “Advice Letter” process used by other

Commission-regulated utilities, such as gas, telephone, and water companies. CPED recommends an Advice Letter (AL) process using the established General Rules (Rule) of General Order (GO) 96-B, as summarized below:<sup>53</sup>

Rule 5.1 of GO 96-B describes the AL process as “a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions.” Under Rule 7.6.1, an AL is subject to review and disposition by the designated Industry Division if the disposition is deemed to be a “ministerial act.” Rule 7.6.1 provides:

Industry Division disposition is appropriate where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity, that the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statute or Commission orders.

The AL process used by other Industry Divisions utilizes “tiers” that govern the level of review and process for disposition. Tier 1 and 2 ALs generally involve matters subject to statute or Commission orders and subject to ministerial review by Commission staff. Tier 3 ALs generally require review that exceeds ministerial review and disposition that requires a resolution subject to Commission approval. For this program, CPED recommends an AL process subject to ministerial review for disposition by the Industry Division (that is, CPED) but without designation of a specific tier. CPED cites a number of benefits in an AL approach, including opportunity for process (*e.g.*, any person may protest or respond to an AL) and transparency (*e.g.*, an AL is served to the service list; ALs and responses are public records).

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<sup>53</sup> CPED Track 2 Proposal at 2.

Several parties support an AL for Offset Requests but disagree on the tier level for review. DA, SF, and SFTWA believe requests should initially be submitted as Tier 3 because they will require more than a ministerial review but subsequent requests could be submitted as Tiers 1 or 2.<sup>54</sup> Uber believes a Tier 1 process is appropriate because a Tier 1 is immediately effective upon submission and will minimize additional process and delay. Uber asserts that under SB 1376, a TNC fee remittance must first be reduced by the approved offset amount and thus an AL that is effective upon filing lends itself to an expedited review.<sup>55</sup> Uber points out that a Tier 2 or 3 AL may be suspended if the Industry Division does not complete review within 30 days, resulting in further delays. HSD agrees that a Tier 1 AL is sufficient but prefers that smaller TNCs be permitted to submit written Offset Requests with an attestation.<sup>56</sup>

Lyft opposes the AL process, asserting generally that GO 96-B does not contemplate use of the process for the transportation industry, an AL process is not suitable for Offset Requests that “are likely to be controversial and require Commission intervention,” and that ALs are public records.<sup>57</sup> Lyft states that allowing any person to file a protest will lead to lengthy delays in resolving Offset Requests, but Lyft does not oppose allowing parties to respond to requests. Lyft does not object to establishing rules “modeled in certain respects after the Advice Letter process,” with a more definitive time frame, permission to submit data confidentially, and public input that does not delay the process.

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<sup>54</sup> DA Opening Comments at 8, SF Opening Comments at 5, SFTWA Comments at 2.

<sup>55</sup> Uber Opening Comments at 3.

<sup>56</sup> HSD Reply Comments at 8.

<sup>57</sup> Lyft Reply Comments at 2.

### **3.3.1. Timing of Quarterly Fee Remittance**

Before addressing the appropriate approval process, a preliminary question is whether a TNC's quarterly Access Fund payments may be remitted to the Commission while Offset Requests are under review. CPED contends that an Offset Request should not delay a TNC's timely quarterly fee remittance. Once the offset is granted, CPED states that a TNC can submit a claim for the total offset amount authorized to be returned to the TNC.<sup>58</sup>

The TNC parties disagree with CPED's proposal as contrary to SB 1376's intent. The parties cite § 5440.5(a)(1)(B)(ii), which provides that a TNC may "offset against the amounts due pursuant to this subparagraph for a particular quarter the amounts spent by the TNC during that quarter...and thereby reduce the amount required to be remitted to the commission." The TNC parties state that the Commission must first determine whether an Offset Request is approved in order to reduce the TNC's fee remittance.<sup>59</sup> Uber and HSD add that CPED's proposal results in an inefficient exchange of money between TNCs and the Commission.<sup>60</sup> Lyft recommends that in the event a TNC appeals an Offset Request decision, a TNC should submit its Access Fund payment in an escrow account pending the outcome of the appeal. SF supports this proposal.<sup>61</sup>

The Commission is persuaded that a TNC's quarterly Access Fund remittance should first be reduced by the approved offset amount, based on § 5440.5(a)(1)(B)(ii). However, allowing TNCs to hold onto Access Fund payments pending the disposition of an Offset Request and potential appeal may

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<sup>58</sup> CPED Track 2 Proposal at 3.

<sup>59</sup> Lyft Track 2 Proposal at 9, Uber Opening Comments at 3.

<sup>60</sup> HSD Reply Comments at 7, Uber Opening Comments at 3.

<sup>61</sup> SF Reply Comments at 2.

lead to uncertainty in Access Fund availability and delay in disbursements to access providers.

We find that Lyft's proposal strikes a reasonable balance: a TNC that submits an Offset Request may retain its quarterly Access Fund payment until a decision on the Offset Request is reached. If the TNC appeals the disposition, the TNC shall submit its quarterly payment pending the outcome of the appeal. In the event of an appeal, we find it sufficient that a TNC remit its quarterly fee payment to the Commission in accordance with the Track 1 decision.

Accordingly, a TNC that submits an Offset Request for a geographic area may retain its quarterly Access Fund payment for that geographic area until a disposition has been reached. In the event the TNC appeals the disposition, the TNC shall submit its quarterly remittance to the Commission, as directed in D.19-06-033, Ordering Paragraph 5, pending the outcome of the appeal. If the Offset Request is approved, the TNC shall submit a claim for the offset amount authorized to be returned to the TNC.

### **3.3.2. Advice Letter Process**

We return to the issue of the appropriate approval process for an Offset Request. There is a consensus among parties that an Advice Letter for review by the Industry Division is appropriate but parties disagree on the level of review. Given that a TNC's quarterly remittance must first be reduced by the approved offset amount, it is in the interest of the Access Fund program and all participants to establish an approval process that is as efficient as possible. A protracted approval process will result in delayed disbursements to access providers and uncertainty as to the available amount in the Access Fund. A Tier 3 AL, requiring a resolution for every Offset Request to be voted on by the Commission, creates administrative challenges that will delay the efficient use of

Access Fund moneys. We believe a Tier 1 AL does not provide the necessary opportunity for response and protest.

We are persuaded that a Tier 2-like AL process strikes an appropriate balance in allowing for expeditious review and disposition of Offset Requests, while providing opportunity for response. The requirements for an Offset Request are adopted with sufficient specificity in this decision that the Industry Division (CPED) need only determine as a technical matter whether the Offset Request satisfies the requirements, and therefore, ministerial review and disposition by CPED is appropriate. It is not necessary to designate a tier for this Advice Letter process since tiers are designated in the Industry Rules for GO 96-B, which are not applicable to this proceeding.

However, we agree that certain rules of GO 96-B are unnecessary and burdensome to apply to review of an Offset Request. For example, parties state that allowing any person to protest or respond to an Offset Request, as permitted by Rule 7.4.1, may lead to unreasonable delay. Rule 7.4.1 was intended to apply broadly to utility companies, such as electric, gas, and telephone utilities, for which a tariff or rate change via an Advice Letter necessitated that any customer or ratepayer of that utility should have an opportunity to protest or comment. Given SB 1376's specificity in creating the offset process and the need for expeditious approval of offsets for Access Fund disbursements, we elect to limit protests and responses to an Offset Request to parties in this proceeding or any successor proceedings. Relatedly, TNCs submitting an AL need only serve their AL to the service list in this proceeding or any successor proceedings.

Parties have also expressed concern regarding Rule 7.5.2, which provides a 120-day suspension period of an AL if the Industry Division does not reach a disposition in the initial 30-day review period. Parties assert that if an AL

receives protests, the Industry Division may not reach its disposition within 30 days leading to a suspension and further delays. Rule 7.5.2 was intended in part to incentivize the Industry Division to review ALs within a 30-day period. Removing the suspension period does not necessarily resolve concerns of increased delay, as it may remove an incentive for the Industry Division to quickly dispose of the AL in 30 days. While we recognize the concern with applying this rule to Offset Requests, at this time, there is insufficient record to modify Rule 7.5.2. Parties may propose modifications to this rule in Track 3 for consideration, if needed.

Accordingly, Offset Requests shall be submitted via an Advice Letter process. We designate the Advice Letter as subject to ministerial review and disposition by the Industry Division (CPED). General Rules of GO 96-B shall apply to this Advice Letter process, with the following modifications:

- Rule 4.3 is modified such that “[t]he utility shall include on the service list any person who requests such inclusion” is replaced with “[t]he utility shall include on the service list all parties in this proceeding or any successor proceeding;”
- Rule 7.4.1 is modified such that “Any person (including individuals, groups, organizations)” is replaced with “Any party;” and
- Rule 9 does not apply to the Advice Letter process adopted in this decision.

### **3.3.3. Schedule for Offset Approval**

We next consider the schedule for submitting Offset Requests. CPED recommends that Offset Requests be submitted 15 days after the end of each quarter, following the schedule adopted for quarterly fee remittances.<sup>62</sup> SF

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<sup>62</sup> CPED Track 2 Proposal at 3.

agrees with this timeframe.<sup>63</sup> Lyft and Uber agree that Offset Requests should be submitted 15 days after quarter end but Lyft recommends a Staff decision on the Offset Request within 30 days after quarter end, while Uber recommends 35 days.<sup>64</sup> Lyft and Uber propose that the quarterly fee remittance and any appeal of Staff's decision should be due 45 days after quarter end, with the Commission issuing a decision on the appeal at the next voting meeting.

We find Lyft and Uber's proposed schedules to be reasonable, with some modifications. If a TNC is not requesting an offset for a geographic area, the TNC's quarterly fee remittance should be submitted 15 days after quarter end, as directed in the Track 1 decision. CPED Staff should issue a disposition of the AL within 30 days of submission to the extent possible. If a TNC appeals Staff's decision, the quarterly remittance shall be due 50 days after the end of the quarter, along with the appeal. The 50-day quarterly remittance (the delayed remittance) shall be submitted according to the process established in Section 3.3.1 above.

Accordingly, we adopt the following schedule for the offset requests:

<b>Offset Request Submission Schedule</b>	
Quarterly Fee Remittance Due, unless Offset Request is Submitted	15 days after quarter end
TNC Offset Request Due	15 days after quarter end
Staff Decision on Advice Letter	45 days after quarter end
Delayed Quarterly Fee Remittance Due	50 days after quarter end
TNC Appeal of Staff Decision Due	50 days after quarter end

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<sup>63</sup> SF Track 2 Proposal at 5.

<sup>64</sup> Lyft Reply Comments at 15, Uber Opening Comments at 3.

### **3.4. Retroactive Application of Offsets**

In the Track 1 decision, the Commission deferred consideration of offset requirements until Track 2, noting that we “acknowledge[] TNC parties’ concerns regarding potential and actual investments in accessibility services that could be impacted without an offset guarantee.” The Commission stated that “[w]hile 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.”<sup>65</sup>

Most parties support retroactive offsets, including Lyft, Uber, DA, and SF.<sup>66</sup> CPED recommends retroactive offsets beginning July 1, 2019 but that since the statute considers “improved level of service...compared to the previous quarter,” an Offset Request should be compared to the TNC’s prior quarter’s performance.

The Commission agrees that retroactive Offset Requests should be permitted for quarters that preceded the issuance of this decision, beginning with the quarter starting July 1, 2019. The requirements for a retroactive Offset Request shall be the same as the Offset Request requirements adopted in this decision, with some exceptions. In consideration for TNCs that were unaware of the WAV response time benchmarks adopted in this decision, the Offset Time Standards shall not apply to retroactive Offset Requests. Rather, to demonstrate “improved level of service, including reasonable response times,” we find it reasonable to evaluate the 50<sup>th</sup> percentile of a TNC’s completed WAV trip request

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<sup>65</sup> D.19-06-033 at 20.

<sup>66</sup> Lyft Track 2 Proposal at 15, Uber Track 2 Proposal at 8, DA Track 2 Proposal at 14, SF Track 2 Proposal at 10.

response times for a geographic area. In other words, a TNC must demonstrate that the 50<sup>th</sup> percentile of completed WAV trip request response times improved quarter-over-quarter. For example, in the quarter beginning April 1, 2019, a TNC may show that 50 percent of WAV trips in San Francisco County achieved a response time of 20 minutes or less. To qualify for a retroactive offset in the quarter beginning July 1, 2019, the TNC must demonstrate that 50 percent of WAV trips in San Francisco achieved a response time of 19 minutes or less.

Additionally, since TNCs were unaware of the requirements for WAV driver training and WAV inspections, a TNC may, but is not required to, provide certification and reporting associated with WAV driver training and WAV vehicle inspections in its retroactive Offset Requests.

Accordingly, a TNC may submit a retroactive Offset Request for each of the three quarters beginning with July 1, 2019, October 1, 2019, and January 1, 2020, consistent with the adopted offset eligibility requirements with the two noted exceptions. For purposes of verification and continuity, a TNC shall still submit data regarding completed WAV trip request response times in deciles, as well as Periods A and B, by geographic area. TNCs shall submit any retroactive Offset Requests for the preceding quarters by April 15, 2020, 15 days after the end of Q1 2020.

### **3.5. Access Fund Stability**

Another concern is that authorizing offsets – and thereby reducing a TNC’s quarterly fee remittance – has the potential to deplete the Access Fund or create uncertainty as to available Access Fund moneys. That uncertainty may make it difficult for potential access providers to know how much funding will be available in the Access Fund at a given point.

One potential solution is for TNCs to state their future intent to request an offset in order to provide notice of Access Fund availability. Most parties do not believe advance notice is necessary, including CPED, Uber, Lyft, and SF. Uber and Lyft assert that doing so restricts TNCs' flexibility to consider WAV investments.<sup>67</sup> Uber adds that there is no way for the Access Fund to have perfect stability due to the various contribution levels from TNCs.

CPED proposes that annual Access Fund disbursements be based on the Fund's balance "at the end of the quarter that elapses before the date on which the Commission may begin accepting applications."<sup>68</sup> SF and DA recommend that the Commission provide an estimate of available funds prior to the submission of access provider applications on April 1, 2020.<sup>69</sup>

The legislation provides two mechanisms by which TNCs can reduce their Access Fund payments (offsets and exemptions) and any remaining fees are remitted to the Access Fund. Given the intertwined ways to reduce the Access Fund, the available moneys in the Access Fund will inherently be in flux. A TNC's advance statement does not provide assurances of Access Fund stability. However, disclosing the balance of the Access Fund prior to the quarter that access provider applications are due may give applicants at least some information about the status of the Access Fund. Accordingly, CPED shall provide an estimate of the available Access Fund balance by the end of the fourth quarter prior to the access provider application deadline in April. As Q4 2019

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<sup>67</sup> Uber Track 2 Proposal at 3, Lyft Track 2 Proposal at 8.

<sup>68</sup> CPED Track 2 Proposal at 3.

<sup>69</sup> DA Track 2 Proposal at 7, SF Track 2 Proposal at 5.

has passed, CPED shall disclose the Access Fund balance beginning with Q4 2020.

A related issue is whether a TNC's offset claim should be capped at an amount below the TNC's total fee amount collected in a geographic area. A few parties suggest capping a TNC's offset claim to distinguish an offset from an exemption, stating that a TNC that does not qualify for an exemption could still claim a 100 percent offset using the lower offset eligibility requirement.<sup>70</sup> Uber, Lyft, and HSD disagree, asserting that SB 1376 does not impose a cap.<sup>71</sup> We agree that SB 1376 does not contemplate a cap and that it is unnecessary to distinguish an offset from an exemption, which has a higher standard for eligibility, as discussed below.

### **3.6. Confidentiality**

Parties raise concerns regarding the confidentiality of information submitted pursuant to SB 1376, including information in an Offset Request or Quarterly Report. Some parties argue that because an Offset Request seeks to retain funds collected for a public purpose, information in an Offset Request or Quarterly Report must be publicly disclosed.<sup>72</sup> The TNC parties assert that Offset Requests contain sensitive, business propriety data that should not be publicly available, such as data on funds expended.<sup>73</sup>

In another Commission rulemaking, R.12-12-011, a forthcoming decision discusses confidentiality issues related to TNCs' submission of data to the

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<sup>70</sup> DA Track 2 Proposal at 9, CPED Track 2 Proposal at 4.

<sup>71</sup> Lyft Track 2 Proposal at 11, HSD Reply Comments at 6, Uber Track 2 Proposal at 4.

<sup>72</sup> See, e.g., DA Track 2 Proposal at 11, SF Opening Comments at 6, Marin Transit Track 2 Proposal at 4, CPED Track 2 Proposal at 6, 10.

<sup>73</sup> Uber Track 2 Proposal at 7, HSD Reply Comments at 8, Lyft Reply Comments at 18.

Commission. The decision adopted in R.12-12-011 shall govern confidentiality protections as it relates to information submitted pursuant to SB 1376.

#### **4. Establishment of Exemption Process**

Section 5440.5(a)(1)(G) provides that a TNC may be exempt from remitting quarterly Access Fund fees in a geographic area if it satisfies certain requirements:

The commission shall adopt a designated level of WAV service that is required to be met in each geographic area via a TNC's online-enabled application or platform in order for the TNC to be exempt from paying the fee required pursuant to subparagraph (B) for the next year in that geographic area.

We note that some parties' proposals for exemption requests were largely duplicative of proposals for Offset Requests. To the extent we have already discussed and/or declined a proposal in Section 3, that discussion applies to exemptions, unless otherwise noted.

##### **4.1. Designated Level of WAV Service**

Section 5440.5(a)(1)(G) provides that:

As part of the designated level of WAV service for each geographic area, the commission shall require a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC's online-enabled application or platform within a time established by the commission for that geographic area.

##### **4.1.1. Exemption WAV Response Times**

We consider the requirements for the "designated level of WAV service." Several parties assert that an 80 percent threshold for WAV trip response times is appropriate but disagree about what response time standard should be applied. CPED and SF recommend using CPED's response time standards for Offset

Requests (Level 1 and Level 2 response times).<sup>74</sup> Uber supports the 80 percent threshold but based on its proposed 2x WAV response times.<sup>75</sup> Lyft opposes the use of CPED's response times but does not offer an alternative and supports deferring this issue to Track 3.<sup>76</sup> DA and SFTWA recommend a 90 percent threshold for WAV response times.<sup>77</sup> Lyft opposes this as contrary to SB 1376's intent.<sup>78</sup> HSD and Via propose adopting different thresholds depending on a TNC's size and the services provided.<sup>79</sup>

We find that the 80 percent threshold is a reasonably high standard that aligns with SB 1376's express intent, and therefore, we adopt it here. As discussed in Section 3.1.2.5, we find that CPED's Level 1 and 2 response times are clear, appropriate benchmarks that account for standard TNC trip response times and should be applied here for exemption eligibility. Accordingly, we adopt the following WAV response times:

<b>Exemption Time Standard</b>		
Geographic Area/County	Level 1 - WAV Response Time (mins)	Level 2 - 2x WAV Response Time (mins)
San Francisco	8	16
Alameda, Los Angeles, San Diego, San Mateo, Santa Clara	10	20

<sup>74</sup> CPED Track 2 Proposal at 14, SF Track 2 Proposal at 11.

<sup>75</sup> Uber Opening Comments at 12.

<sup>76</sup> Lyft Reply Comments at 21.

<sup>77</sup> DA Opening Comments at 6, SFTWA Reply Comments at 6.

<sup>78</sup> Lyft Reply Comments at 23.

<sup>79</sup> HSD Track 2 Proposal at 6, Via Opening Comments at 4.

Napa, Orange, Sacramento, San Luis Obispo, Santa Barbara, Yolo	12	24
Butte, Fresno, Kern, Monterey, San Bernardino, Santa Cruz, Solano	15	30
Contra Costa, El Dorado, Marin, Placer, Riverside, San Joaquin, Shasta, Sonoma, Stanislaus, Ventura	20	40
Del Norte, Humboldt, Imperial, Inyo, Kings, Lassen, Mendocino, Madera, Merced, Mono, Nevada, Plumas, Sutter, Trinity, Tulare, Yuba	25	50
Alpine, Amador, Calaveras, Colusa, Glenn, Lake, Mariposa, Modoc, San Benito, Sierra, Siskiyou, Tehama, Tuolumne	30	60

We recognize that requiring 80 percent of a WAV trips to meet a Level 1 response times may be challenging for the inception of the Access Fund program. In San Francisco County, for example, this would mean that 80 percent of WAV rides must have a response time of 8 minutes or less. On the other hand, an exemption qualification should have a sufficiently high standard since a qualifying TNC can retain its Access Fund fees for the next full year. As with the Offset Time Standards, there is little existing WAV response time data at this time. In an effort to both encourage WAV investment by TNCs and reward TNCs who have significantly improved WAV services, we deem it reasonable to apply the Level 2 WAV response times for exemption eligibility at this time, and adopt the requirement here. However, the Commission will monitor TNC's WAV response time data and should it be apparent that the WAV response times or Exemption Time Standard for exemption eligibility are not sufficiently high, we may modify these requirements. Additionally, CPED is authorized to provide a report to the Commission by June 2022 that evaluates the exemption response time benchmarks, including whether any TNCs qualified for an exemption and the qualifying Exemption Time Standard.

We next consider the timeframe under which a TNC must meet the WAV response time threshold. Most parties assert that a TNC should meet the requirement for four consecutive quarters, since the exemption also lasts for one year.<sup>80</sup> Lyft believes a TNC should meet the requirement for at least two quarters, and Uber supports this proposal.<sup>81</sup> Lyft argues that requiring four quarters means a TNC could not obtain an exemption until July 2021.<sup>82</sup> DA counters Lyft by noting that SB 1376 does not preclude qualifying for an exemption in any four consecutive quarters, and does not require waiting until July 2021.<sup>83</sup>

Since an exemption from remitting fees lasts for a one year period, the Commission finds it reasonable that a TNC should meet the designated level of service standard for one year. SB 1376 does not establish when the exemption evaluation period should begin; thus, a TNC may qualify for an exemption as soon as it can demonstrate the response time requirement for four consecutive quarters.

Accordingly, to qualify for an exemption, a TNC must demonstrate that:

- (a) 80 percent of its completed WAV trip response times achieve the corresponding Level 2 WAV response time, for a quarter in a geographic area,
- and (b) the TNC achieved the requisite response times for four consecutive quarters. We refer to this as the Exemption Time Standard. To verify that a TNC

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<sup>80</sup> See, e.g., Marin Transit Track 2 Proposal at 7, CPED Track 2 Proposal at 14, SF Track 2 Proposal at 11, DA Opening Comments at 6, SFTWA Reply Comments at 6.

<sup>81</sup> Lyft Track 2 Proposal at 19, Uber Opening Comments at 12.

<sup>82</sup> Lyft Reply Comments at 20.

<sup>83</sup> DA Reply Comments to Lyft at 10.

achieved the Exemption Time Standard, a TNC should submit completed WAV response times in deciles for each qualifying quarter, as well as Periods A and B.

#### **4.2. Additional Requirements**

Section 5440.5(a)(1)(G) establishes response times as only a “minimum” requirement “as part of the designated level of WAV service...” and thus we consider what other requirements should be adopted. Since an exemption permits a TNC to retain quarterly fees for the next full year, we find it reasonable that a TNC seeking an exemption should submit the same information required in an Offset Request. Accordingly, a TNC seeking an exemption shall submit the same information as required in an Offset Request for four consecutive quarters.

#### **4.3. Exemption Approval Process**

Parties largely offer the same Advice Letter proposals for exemption requests (or Exemption Requests) as were proposed for Offset Requests. Regarding the schedule for submitting Exemption Requests, CPED and DA recommend that they are submitted annually.<sup>84</sup> Lyft, Uber, and SF propose that requests be submitted on the same schedule as Offset Requests so a TNC can qualify for an exemption as soon as it meets the fourth quarter requirement.<sup>85</sup> Lyft states that CPED should issue a decision on Exemption Requests within 15 days, while Uber recommends approval 20 days after submission.

For the reasons discussed in Section 3.3, we determine that an Advice Letter process is appropriate for reviewing Exemption Requests, as it allows for an expeditious review and disposition by Commission Staff. Therefore, Exemption Requests shall be submitted via Advice Letter, applying the process

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<sup>84</sup> CPED Track 2 Proposal at 14, DA Opening Comments at 6.

<sup>85</sup> Lyft Reply Comments at 20, SF Track 2 Proposal at 11, Uber Opening Comments at 13.

adopted for Offset Requests in Section 3.3. It is unnecessary for a TNC to submit partial Exemption Requests on a quarterly basis. Rather, a TNC should retain documentation in support of its Exemption Request until it has achieved four quarters of the designated level of service, at which point the TNC shall submit the Exemption Request 15 days at the end of the fourth qualifying quarter. The schedule for the Exemption Request review process shall follow a similar schedule as adopted for Offset Requests:

<b>Exemption Request Submission Schedule</b>	
TNC Exemption Request Due	15 days after end of fourth quarter
Staff Decision on Advice Letter	45 days after end of fourth quarter
TNC Appeal of Staff Decision Due	50 days after end of fourth quarter

#### **4.4. Verification of Designated Level of Service**

CPED recommends that if an exemption is granted, the Commission should verify that the TNC continues to meet the designated level of service in that geographic area in the year the TNC is exempt from remitting fees (or the Exemption Year). CPED, SF, DA, and Marin Transit recommend that TNCs that receive an exemption submit Quarterly Reports.<sup>86</sup> Uber agrees to the submission of reports during the Exemption Year.

In addition, CPED recommends that if a TNC fails to meet the designated level of service during the Exemption Year, the failure may be a basis for denying an Exemption Request in the next year in that geographic area.<sup>87</sup> Lyft opposes an automatic disqualification for a TNC that fails to meet the designated level of

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<sup>86</sup> SF Track 2 Proposal at 12, DA Track 2 Proposal at 18, Marin Transit Track 2 Proposal at 8, Uber Track 2 Proposal at 11, CPED Track 2 Proposal at 14.

<sup>87</sup> CPED Track 2 Proposal at 14.

service but states that a future Exemption Request should specify the reason for the failure and whether the issue persists.<sup>88</sup> DA agrees with Lyft.<sup>89</sup>

There is a consensus among parties that a TNC that receives an exemption should submit reports during the Exemption Year. We agree that the Commission should verify that a TNC that receives an exemption continues to meet the Exemption Time Standard in that geographic area during the Exemption Year. We adopt a requirement that a TNC that receives an exemption should submit Quarterly Reports during the Exemption Year. If a TNC fails to satisfy the Exemption Time Standard during the Exemption Year, the TNC shall provide the reason for the failure and whether the issue remains, and such failure may be a consideration in future Exemption Requests for that geographic area.

## **5. Ownership of Vehicles for WAV Service**

Section 5440.5(a)(1)(H) provides that TNCs may meet the offset and exemption requirements “by facilitating WAV service through its online-enabled application or platform, by directly providing WAV service with vehicles that it owns, or by a contract to provide WAV service with a transportation provider, or by any combination of these methods.”

Under current rules established in D.13-09-045, a TNC is not authorized to own vehicles or contract with transportation providers for vehicles used in its operation under a TNC permit. In D.13-09-045, the Commission stated that “[t]he primary distinction between a TNC and other TCPs [Transportation Charter Parties] is that a TNC connects riders to drivers who drive their personal

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<sup>88</sup> Lyft Reply Comments at 21.

<sup>89</sup> DA Reply Comments to Lyft at 11.

vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose.”<sup>90</sup> The Commission concluded that “[a] TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicles....”<sup>91</sup> Thus, the provision that a TNC may “directly provide WAV service with vehicles that it owns” appears to be at odds with the Commission’s TNC permit rules.

CPED proposes that because owning vehicles and contracting with third-party transportation providers is authorized under a TCP permit, a TNC should obtain a TCP permit if it chooses to provide WAV service through its own vehicles or a contract with WAV transportation providers. CPED recommends that transportation providers used by a TNC to provide WAV service also possess a TCP permit, in light of existing TCP subcarrier requirements.<sup>92</sup>

Lyft asserts that TNCs should be permitted to own vehicles, citing case law that states that “[u]nless a matter is exclusively delegated to the Commission under the Constitution, agency regulations must yield to statutes covering the same subject.”<sup>93</sup> Lyft states that § 5440.5(a)(1)(H) should be interpreted to create a limited exception to the Commission’s rule. Uber states that it is unnecessary for a TNC to own vehicles and agrees that TNCs may obtain a TCP permit that allows contracting with transportation providers.<sup>94</sup>

The Commission has authority to interpret and apply statutes passed by the Legislature that impact the Commission’s power to regulate the utilities and entities subject to its jurisdiction. This is true with respect to the Commission's

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<sup>90</sup> D.13-09-045 at 67.

<sup>91</sup> *Id.* at 68.

<sup>92</sup> See GO 157-E Part 3.04.

<sup>93</sup> Lyft Reply Comments at 27.

<sup>94</sup> Uber Track 2 Proposal at 15.

jurisdiction over TNCs, as established in Article 7 under the Passenger Charter-Party Carriers' Act.<sup>95</sup> Referring to Article 7 that governs TNCs, Section 5441 makes clear:

The Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities related to transportation network companies.

To exercise its rulemaking authority consistent with Section 5430 *et seq.*, the Commission must interpret laws passed by the Legislature to ensure the Commission acts in accordance with the Legislature's intent. SB 1376 does not alter the Commission's regulatory duty to interpret and apply laws concerning the regulation of TNCs.<sup>96</sup> The Commission has discretion to interpret SB 1376 to be consistent with the Commission's broad rulemaking authority over TNCs.

Interpreting § 5440.5(a)(1)(G) in accordance with the rules established in D.13-09-045, we agree that a TNC that chooses to own vehicles to provide WAV service, or to contract with a third-party transportation provider to provide WAV services, shall obtain a TCP permit. Likewise, a transportation provider that chooses to use a TNC to provide WAV services shall possess a TCP permit.

A related issue is what additional requirements a TNC should meet if it provides WAV service using its own vehicles or through a contract with a transportation provider, such as WAV driver training and accessibility inspections. If a TNC pursues an offset or exemption, it must meet the requirements adopted in this decision, which includes driver training and

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<sup>95</sup> Pub. Util. Code § 5430, *et seq.*

<sup>96</sup> See, e.g., D.16-12-037, Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.

vehicle inspections. If a TNC that is not pursuing an offset or exemption but seeks to provide WAV service through its own vehicles or through a third-party transportation provider, this issue pertains to the broader WAV requirements and we defer this issue to Track 3.

## **6. Access Fund Disbursement**

Section 5440.5(a)(1)(C) provides that the Commission “shall distribute funds in the Access Fund on a competitive basis to access providers that establish on-demand transportation programs or partnerships to meet the needs of persons with disabilities, including wheelchair users who need a WAV, in the geographic areas selected....”

### **6.1. Access Fund Administrator**

Section 5440.5(3)(c) provides that “[t]he commission may hire an independent entity to administer the program established pursuant to subdivision (a) and to complete the report required pursuant to paragraph (2) of subdivision (a).”

CPED cautions that the Commission “does not possess the resources to efficiently process claims from individual transportation providers and to disburse timely payments from the Access Fund, nor is it effective for the Commission to fulfill that role for the entire State.”<sup>97</sup> SF adds that administration of the Access Fund will be a resource intensive role.<sup>98</sup> We agree with the assessment that the Commission does not have sufficient resources to effectively and efficiently administer the disbursement of Access Fund payments for the

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<sup>97</sup> CPED Track 2 Proposal at 16.

<sup>98</sup> SF Track 2 Proposal at 13.

entire State. Therefore, we consider what entity or entities may serve as an Access Fund administrator (or AFA).

#### **6.1.1. Eligible Administrators**

CPED recommends that a transit planning agency, such as a county transportation commission, a metropolitan planning organization (MPO), or regional transportation planning agency (RTPA), serve as an AFA in its geographic areas. CPED observes that in jurisdictions that have implemented WAV subsidy programs, such as Seattle, Chicago, and New York, local government entities manage the WAV programs, including “implementation responsibilities such as processing claims from regulated transportation providers, reviewing trip dispatch records, and disbursing weekly or monthly payments....”<sup>99</sup> CPED asserts that transit planning agencies have more experience and understanding of accessible transportation and are better positioned to distribute funds appropriately. SF, DA, and Marin Transit support this proposal.<sup>100</sup>

Uber and Lyft object to transit planning agencies or other government entities serving as AFAs. First, they assert that local and regional government entities are biased and not independent third parties, citing that these entities participate in TNC-related Commission proceedings and have taken adversarial positions toward TNCs.<sup>101</sup> Lyft posits that an independent administrator “may not have any interest in this proceeding, in the rules or criteria to be established

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<sup>99</sup> CPED Track 2 Proposal at 16.

<sup>100</sup> DA Opening Comments at 16, Marin Track 2 Proposal at 11, SF Opening Comments at 11.

<sup>101</sup> Uber Opening Comments at 14, Lyft Reply Comments at 25.

by this proceeding, or in the distribution of funds from the Access Fund.”<sup>102</sup> Lyft adds that local entities may seek Access Fund monies for themselves or affiliates, creating additional conflicts of interest.

Second, Lyft argues that while SB 1376 allows the designation of an Access Fund administrator, it does not allow delegating the Commission’s regulatory authority to another government agency pursuant to Article XII, Section 8 of the Constitution. Article XII provides that “[a] city, county or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission.”<sup>103</sup> Thus, Lyft states that a government entity cannot serve as an AFA. Additionally, Lyft focuses on the word “hire” in § 5440.5(c) to support its argument that “the Legislature envisioned that any ‘independent entity’ selected by the Commission would be a private or non-profit entity; not another government or quasi-governmental entity.”<sup>104</sup>

SF and DA object to the contention that transit agencies or other government agencies are biased due to their participation in or positions taken in Commission proceedings. DA comments that just because a government agency seeks party status in a TNC-related proceeding, or takes a position opposite to the TNCs, is no basis to say the entity is no longer independent, or unable to administer Access Funds impartially.<sup>105</sup> SF asserts that “[f]ederal and state law require these transportation agencies to distribute fairly the services and benefits

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<sup>102</sup> Lyft Reply Comments at 25.

<sup>103</sup> *Id.* at 24.

<sup>104</sup> *Id.*

<sup>105</sup> DA Reply Comments to Lyft at 11.

of the regional transportation network, with a specified focus on increasing the accessibility and mobility of people.”<sup>106</sup>

DA objects to Lyft’s citation of Article XII stating that the Commission would not be “delegating” regulatory authority but tasking a government entity to disburse Access Funds on a competitive basis, which is an “administrative” function.<sup>107</sup> DA disagrees that the word “hire” in § 5440.5(c) indicates that the Commission cannot seek assistance from government entities, noting that Lyft provides no authority for this proposition.

The Metropolitan Transportation Commission (MTC), the only MPO that submitted comments, states that while some MPOs and RTPAs develop transportation plans involving accessibility services, “not all MPOs and RTPAs are equipped to take on the role of the Access Fund Administrator; particularly without additional funding to support added responsibilities.”<sup>108</sup> MTC believes that MPOs and RTPAs “are best positioned to make policy decisions that include local priorities, but are not typically prepared to take on regulatory duties such as annual certifications of vehicle safety and operator training requirements.”<sup>109</sup> MTC supports certain functions remaining with the Commission, such as certification, compliance, and monitoring of the Access Fund.

Uber and Lyft offer an alternative proposal for a private entity, non-profit entity, or university to serve as an AFA. HSD offers that the Commission should serve as the administrator for the first three years.<sup>110</sup>

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<sup>106</sup> SF Reply Comments to Lyft at 8.

<sup>107</sup> *Id.*

<sup>108</sup> MTC Reply Comments at 3.

<sup>109</sup> *Id.*

<sup>110</sup> HSD Track 2 Proposal at 9.

#### **6.1.1.1. Use of Government Entities**

We first address whether the Commission may designate a government entity to serve as an independent administrator of the Access Fund. We do not accept the argument that Article XII, Section 8 of the Constitution precludes the designation of a government entity to serve as an AFA. Article XII provides that a government entity “may not regulate matters over which the Legislature grants regulatory power to the Commission,” but does not prohibit a government entity from serving in an administrative capacity. Lyft provides no legal or factual basis for interpreting the word “hire” in § 5440.5(c) to mean that an independent entity must be a “private or non-profit entity, not a government or quasi-governmental entity,” and we reject this argument.

Second, we are not persuaded that the mere fact that a government entity is a party in a TNC-related Commission proceeding or takes a position adverse to a TNC, means that the entity is biased and can no longer be independent. It is noteworthy that Uber and Lyft do not take the position that *only* those government entities that are parties to a TNC-related proceeding, or that have taken adverse positions, should not serve as an AFA. Rather, they argue that *all* transit planning agencies or government entities cannot serve as AFAs because a subset of those entities participate in Commission proceedings.

Additionally, we find SF’s argument compelling - that under federal and state law, transportation agencies are mandated to fairly distribute services and benefits of the regional transportation network, with a focus on accessibility and mobility. Under Uber and Lyft’s logic, should these transit agencies participate in proceedings or take adverse positions, they are biased and unable to equitably distribute transit benefits. We disagree with this contention.

Lastly, Uber and Lyft's position contradicts their own proposal for a non-profit, private entity, or university to serve as an administrator. Such entities are and may be parties to TNC-related proceedings and may assert adverse positions. However, Uber and Lyft do not advocate for the categorical denial of these entities to serve as AFAs, only government entities.

We find no basis to conclude that a transit planning agency or other government entity cannot serve as an Access Fund administrator so long as the entity is sufficiently independent. For purposes of SB 1376, we deem that an administrator is sufficiently independent if it does not stand to benefit directly from the Access Fund. That said, during the AFA selection process, the Commission will take into account whether the applicant is or has been a party to a TNC-related Commission proceeding as a factor in the selection process.

#### **6.1.1.2. Identity of an Access Fund Administrator**

We next consider what entity or entities should serve as an AFA. The broadest support from parties is for a regional or local transit planning agency, such as an MPO, RTPA or transportation commission, to serve as an AFA for a geographic area. We agree that these transit planning agencies have the necessary expertise and knowledge of accessibility needs for their geographic areas. As noted by parties, some transit agencies are already tasked to disburse funds for the Federal Transit Administration's Enhanced Mobility for Seniors and Individuals with Disabilities Program. It is also telling that other jurisdictions with WAV subsidy programs, such as Seattle and New York, utilize local government entities to manage the program. However, we recognize that MTC cautions that not all MPOs and RTPAs are equipped to take on this role, especially without additional funding and resources.

In the alternative, Uber and Lyft recommend that a private or non-profit entity, or university take on the administrator role. However, Uber and Lyft do not identify any entities for the Commission to consider, including evaluating whether other entities have the expertise in accessibility issues or transit planning. We lack sufficient record to consider this proposal.

The Commission concludes that MPOs, RTPAs, or transportation commissions are best equipped and positioned to administer the Access Fund based on the responsibilities discussed below. We adopt a process in the following sections to allow these agencies to apply to serve as AFAs in their geographic areas.

We recognize that these transit agencies may choose not to apply or may not qualify to be an AFA, or that selected transit agencies will not cover all geographic areas of the State. Therefore, it is reasonable to set forth a parallel process for Commission Staff to solicit and retain an independent entity to act as the statewide administrator of the Access Fund in California. This statewide Access Fund administrator (or SAFA) may be a private or non-profit entity. The SAFA shall serve as the AFA in geographic areas where there is no selected AFA. We authorize CPED Staff to begin the process of soliciting and selecting one or more independent entities to serve as a SAFA.

#### **6.1.2. Selection Process for Access Fund Administrators**

CPED recommends that Commission Staff develop an application process for AFAs and request annual approval of Access Fund moneys to transfer to the AFAs via Commission resolution.<sup>111</sup> SF agrees with CPED but cautions that the

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<sup>111</sup> CPED Track 2 Proposal at 17

application process should not be overly burdensome or require an agency to have specific knowledge of Commission processes.<sup>112</sup>

We agree that CPED Staff should develop an application process for potential AFAs, including guidelines for transit planning agencies. CPED Staff shall select AFAs by July 1, 2020.

### **6.1.3. Administrator Responsibilities**

CPED proposes that an AFA be tasked to select access providers based on criteria adopted by the Commission and to distribute Access Funds to those access providers.<sup>113</sup> SF supports this with the addition that an AFA should develop the access provider application and monitor access providers' performance.<sup>114</sup>

CPED also proposes that an AFA: (1) certify annually that it will spend and disburse Access Fund funding in accordance with the requirements adopted by the Commission, and (2) submit the same information as required for an Offset Request.<sup>115</sup> CPED states that this information should be used to inform the amount of annual disbursements to AFAs.

As discussed elsewhere in this decision, we are not delegating regulatory authority to another government agency; rather, AFAs will be selected to administer the distribution of Access Fund moneys in their geographic areas, based on requirements established by the Commission. Because transit planning agencies possess the understanding of the accessibility needs and gaps for their

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<sup>112</sup> SF Opening Comments at 11.

<sup>113</sup> CPED Track 2 Proposal at 17.

<sup>114</sup> SF Track 2 Proposal at 13.

<sup>115</sup> CPED Track 2 Proposal at 17.

local areas, an AFA's responsibilities shall include selecting access providers to receive funding and distributing Access Fund moneys to selected access providers.

Moreover, § 5440.5(a)(1)(I) requires that an access provider that receives funding from the Access Fund submit a Quarterly Report. Therefore, another responsibility of the AFA (or SAFA) is to receive and consolidate the Quarterly Reports from access providers in their geographic areas and submit the consolidated Quarterly Report to the Commission.

It is also important that an AFA and SAFA keep the Commission apprised of the progress of selected access providers, and any challenges encountered, as well as the amount of funds distributed. To that end, we require an AFA or SAFA to submit on a quarterly basis: (1) the amount of Access Funds requested by and distributed to access providers in a quarter, and (2) a brief description of the progress made by selected access providers, and any compliance or other challenges encountered. We also require that an AFA or SAFA submit an annual certification that Access Fund moneys will be distributed in accordance with the Commission's requirements. The AFA or SAFA's management of Access Fund moneys and process will be evaluated based on these reports in order to inform their ongoing performance and selection by the Commission on an annual basis.

Accordingly, the responsibilities of an AFA or SAFA shall be as follows:

- (1) To establish a submission process for the access provider application, including submission logistics, deadlines, and review process;
- (2) To select access providers to receive Access Fund moneys based on criteria adopted by the Commission and in consideration of the gaps and needs for accessibility service in the geographic area;

- (3) To distribute Access Fund moneys to selected access providers;
- (4) To submit a consolidated Quarterly Report to the Commission based on Quarterly Reports submitted by access providers that received Access Fund moneys in the geographic area;
- (5) To submit on a quarterly basis: (1) the amount of Access Funds requested by and distributed to access providers in a quarter, and (2) a brief description of the progress made by selected access providers, and any compliance or other challenges encountered; and
- (6) To submit an annual certification that Access Fund moneys will be expended and distributed in accordance with the requirements established by the Commission.

The consolidated Quarterly Report and other quarterly reporting shall be submitted 45 days after the end of each quarter to account for an AFA or SAFA's need to first collect this information from access providers in a geographic area.

## **6.2. Other Independent Entity**

Section 5440.5(c) provides that an independent entity may be hired by the Commission "to complete the report required pursuant to paragraph (2) of subdivision (a)." Section 5440.5(a)(2) states that the Commission shall issue a:

Report to the Legislature by January 1, 2024, on compliance with the section and on the effectiveness of the on-demand transportation programs or partnerships funded pursuant to this section.

CPED proposes that the Commission retain an independent entity with expertise in accessible transportation to support completion of the report to the legislature (the 2024 Report) and to "work directly with persons with disabilities and entities that support them to ensure that the program continuously meets

their needs.”<sup>116</sup> CPED also recommends that an independent entity be retained to “monitor and audit the collection of funds and the expenditure of funds to verify that Access Fund moneys are spent in compliance with the criteria established by the Commission.”<sup>117</sup> DA agrees with CPED.<sup>118</sup>

We agree that an independent entity with expertise in accessible transportation should be retained to assist with completing the 2024 Report. It is also appropriate to retain an independent entity to monitor and audit the collection and expenditure of Access Fund moneys to verify compliance with the Commission’s requirements. We authorize CPED Staff to begin soliciting and selecting one or more independent entities to assist in these responsibilities.

### **6.3. Payment of Administrators**

SF and DA propose that an administrator should be paid either by: (1) segregating funds from the Access Fund, (2) identifying PUCTRA funds available to cover administration costs, or (3) raising the Access Fund per-trip fee.<sup>119</sup> CPED supports using Access Fund moneys to cover administrator costs, while Uber advocates for using PUCTRA funds since Access Fund moneys should be used to increase WAV transportation.<sup>120</sup> SF supports compensating local entities for staff time to provide support as an Access Fund administrator.<sup>121</sup>

The Commission agrees that Access Fund moneys should be used to cover the costs for retaining independent entities to assist with the program, including

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<sup>116</sup> CPED Track 2 Proposal at 19.

<sup>117</sup> *Id.*

<sup>118</sup> DA Opening Comments at 16.

<sup>119</sup> SF Track 2 Proposal at 14, DA Track 2 Proposal at 19.

<sup>120</sup> CPED Track 2 Proposal at 19, Uber Opening Comments at 14.

<sup>121</sup> SF Opening Comments at 11.

a SAFA, an entity to assist with developing the 2024 Report, and an entity to provide monitoring and auditing services for the Access Fund. MPOs, RTPAs, and transportation commissions that may serve as AFAs should also receive compensation for serving in that role. An AFA applicant should submit the expected annual expenses associated with serving as an AFA in their application.

Accordingly, the Commission authorizes that funds shall be segregated from Access Fund moneys to cover the costs and expenses of the above-described independent entities, including the SAFA and AFAs.

#### **6.4. Eligible Access Providers**

Section 5431.5(a) provides that an “access provider” is “an organization or entity that directly provides, or contracts with a separate organization or entity to provide, on-demand transportation to meet the needs of persons with disabilities.” SB 1376 otherwise provides no definition as to what entities may be an eligible access provider.

##### **6.4.1. Parties’ Positions**

Uber and Lyft focus on the language of § 5431.5(a) that states that an access provider “directly provides, or contracts with a separate organization or entity to provide, *on-demand transportation....*” (emphasis added). Uber argues that “an access provider must be app-enabled to provide on-demand transportation” and that “on-demand” programs are only offered by TNCs. Therefore, Uber reasons that “all Access Providers should be TNCs.”<sup>122</sup> Uber and Lyft oppose government entities being considered access providers because these entities do not provide on-demand services.<sup>123</sup> Lyft adds that only access providers subject

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<sup>122</sup> Uber Track 2 Proposal at 14.

<sup>123</sup> *Id.*, Lyft Track 2 Proposal at 24.

to the Commission's regulatory authority should be eligible to allow the Commission to conduct audits and enforce compliance with SB 1376. SFTWA opposes Uber and Lyft's position stating that there is no requirement that an access provider provide WAV services through an app, but also that nothing prevents a city or taxi company from using an app for on-demand service.<sup>124</sup>

Several parties support a broad position that non-Commission-regulated transportation carriers, such as government entities and taxi companies, should be eligible access providers.<sup>125</sup> Via adds that a local agency that licenses on-demand technology for WAV or paratransit service should be considered an access provider.<sup>126</sup>

CPED also proposes that a TNC should be an eligible access provider in geographic areas where the TNC received an exemption. CPED reasons that if a TNC is not required to remit Access Fund fees because of an exemption (and satisfying the higher exemption standard), the TNC should be able to seek additional funding if needed. Requiring TNCs and access providers to submit the same information in their applications would allow an AFA to compare applications when distributing funds, especially where a TNC and access provider operate in the same geographic area. SF agrees with CPED's proposal but recommends that TNCs also show that: (1) a TNC's collected fees during the Exemption Year have been exhausted to provide WAV services, and (2) additional investments will result in further improved response times.<sup>127</sup>

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<sup>124</sup> SFTWA Opening Comments at 7.

<sup>125</sup> See, e.g., SF Track 2 Proposal at 15, DA Track 2 Proposal at 19, SFTWA Track 2 Proposal at 8, Marin Transit Track 2 Proposal at 11.

<sup>126</sup> Via Opening Comments at 4.

<sup>127</sup> SF Opening Comments at 11.

Uber and Lyft support CPED's proposal but Uber states that a TNC should be eligible if it qualifies for either an exemption or an offset.<sup>128</sup> SF and SFTWA oppose Uber's proposal to include offsets, with SF asserting that it is too vague and if more funding is needed to offset quarterly costs, the appropriate recourse is to raise the per-trip fee.<sup>129</sup> SFTWA objects to TNCs being able to offset fees and receive additional funding without meeting the higher exemption standard.<sup>130</sup> Marin Transit recommends that an access provider should have no financial relationship with a TNC prior to or while receiving funding.<sup>131</sup>

#### **6.4.2. Discussion**

First, we disagree with the view that SB 1376 prescribes that all access providers must be TNCs. Section 5431.5(a) provides that an access provider is "an organization or entity that directly provides, or contracts with a separate organization or entity to provide, on-demand transportation to meet the needs of persons with disabilities." SB 1376 does not provide that an access provider's service must be "app-enabled" and parties have not offered support for this position. Additionally, SB 1376 recounts the definition of a TNC from the Passenger Charter-party Carriers' Act and separately defines an "access provider."<sup>132</sup> Had the Legislature intended for all access providers to be TNCs, there would be no need for separate definitions. We reject these arguments.

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<sup>128</sup> Uber Opening Comments at 14, Lyft Reply Comments at 26.

<sup>129</sup> SF Opening Comments at 7.

<sup>130</sup> SFTWA Reply Comments at 7.

<sup>131</sup> Marin Transit Track 2 Proposal at 11.

<sup>132</sup> SB 1376 provides that "The Passenger Charter-party Carriers' Act defines a transportation network company as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for

We consider what constitutes “on-demand transportation” as set forth in § 5431.5(a). SB 1376 does not define “on-demand transportation” and parties have not proposed definitions for the term. It is possible that a non-Commission-regulated transportation provider, such as a government entity or taxi company, could provide on-demand transportation for WAV services or for a local transit agency to license on-demand technology for WAV services.

However,

“on-demand transportation” should be appropriately defined in order to reasonably limit the pool of access providers. At this time, there is insufficient record to adopt a definition for “on-demand transportation” or otherwise limit the category of access providers. Therefore, we elect to defer this issue to Track 3 to allow parties to propose definitions for “on-demand transportation” or other limitations on the category of eligible access providers.

Lastly, we find merit in the proposal that a TNC should be an eligible access provider in a geographic area if the TNC qualifies for an exemption in that geographic area and certifies that the TNC’s collected fees during the Exemption Year were exhausted to provide WAV services. We are concerned that a TNC may receive additional funding without having met the qualifications for an exemption requirement or the offset requirements, creating a third avenue for TNCs to access funding that may limit funding opportunities for access providers. However, we decline to adopt a requirement in this decision. We encourage parties to raise proposals in Track 3 on this issue, including considerations for how smaller TNCs may apply for funding.

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compensation using an online-enabled platform to connect passengers with drivers using their personal vehicles.” Legislative Counsel’s Digest to SB 1376.

## **6.5. Evaluation Criteria for Access Providers**

We consider what criteria should be used by an AFA or the SAFA to select access providers to receive Access Fund moneys. Section 5440.5(a)(1)(E) provides that:

As part of the criteria, the commission shall require an access provider to demonstrate in its application, at a minimum, how the program or partnership improves response times for WAV service compared to the previous year, the presence and availability of WAVs within the geographic area, and efforts undertaken to publicize and promote available WAV services to disability communities.

Uber and Lyft recommend that criteria adopted for access provider selection should mirror the requirements for TNCs.<sup>133</sup> SF disagrees, stating that AFAs should have flexibility to disburse funds in a geographic area, and not based on response times or other metrics. SF notes that access providers “who are intended to fill gaps left by TNCs” should not be held “to the same standards as companies with different business models, resources, and market penetration....”<sup>134</sup> SF adds that access providers may not have the resources to provide the services that TNCs provide but they may be able to offer some accessible service in certain geographic areas.

It is noteworthy that § 5440.5(a)(1)(E), outlining minimum requirements for access providers’ application criteria, does not duplicate the minimum requirements for offset eligibility (*e.g.*, reasonable response times, accounting of funds) or for exemption eligibility (*e.g.*, response times for 80 percent of WAV trips). While there are overlapping requirements for access providers and TNCs,

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<sup>133</sup> Uber Track 2 Proposal at 14, Lyft Reply Comments at 26.

<sup>134</sup> SF Opening Comments at 12.

we interpret the omissions in § 5440.5(a)(1)(E) to indicate that the Legislature recognized different standards for access providers and TNCs.

As discussed elsewhere, SB 1376 does not prescribe what entity can be an access provider other than that the entity provide on-demand transportation. Thus, unlike for TNCs, an access provider may be a new provider first developing accessibility services or an established provider, such as a taxi company, bolstering existing WAV services. We also agree that access providers may not have the same resources as TNCs and should not be held to the same standards to qualify for Access Fund moneys.

For the overlapping requirements of § 5440.5(a)(1)(E), we conclude that it is appropriate to require an access provider's application to include the same information as an Offset Request (that is, for improved WAV response times, presence and availability of WAVs, and efforts to publicize and promote WAV services). However, access providers should not be held to the Offset Time Standards since these benchmarks were developed based on TNC trip times and for TNCs to qualify for an offset based on past improvements to WAV service. It is also unnecessary to require an accounting of funds since access providers will apply before funds are expended. It is, however, important that access provider applicants provide the number of complaints related to WAV drivers or services and require WAV driving training and vehicle inspections.

An access provider applying for Access Funds need only provide this information for the quarter immediately preceding the application deadline, with the exception of the completed WAV trip request response times. Because § 5440.5(a)(1)(E) provides that an access provider should demonstrate "how the program or partnership improves response times for WAV service compared the

previous year,” the completed WAV trip request response times shall be provided for the four quarters preceding the application, if available.

Accordingly, an access provider’s application shall include the following information for the quarter preceding the application deadline:

- (1) Number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week;
- (2) Number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week;
- (3) Completed WAV trip request response times in deciles, as well as Periods A and B, by quarter;
- (4) Evidence of outreach efforts to publicize and promote available WAV services to disability communities, which may include a list of partners from disability communities, how the partnership promoted WAV services, or marketing and promotional materials of those activities;
- (5) Certification that the access provider’s WAV drivers have completed WAV driver training within the past three years;
- (6) Report of WAV driver training programs used and number of WAV drivers that completed the training that quarter;
- (7) Certification that all WAVs operating on an access provider’s platform have been inspected and approved to conform with the ADA Accessibility Specifications for Transportation Vehicles within the past year;
- (8) Number of complaints received related to WAV drivers or WAV services, categorized as follows: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, and other.

For Item 3 above, an access provider shall submit response time data for the preceding four quarters, if available.

For access providers offering newer accessibility services, some of the required information may be inapplicable or unavailable at the time of the application. An applicant should explain why the information is unavailable or not applicable; however, the applicant should not be disqualified for being unable to provide the information.

#### **6.5.1. Disclosure of Financial Information**

We consider whether an access provider's application should disclose financial or other company information. Several parties state that access providers should provide financial statements, including all streams of revenue the provider receives to provide WAV service.<sup>135</sup> SF and DA state that an access provider should submit financial information, such as the information provided in the Caltrans Grant Application for FTA Expanded 5310 Projects.<sup>136</sup> The Caltrans Grant Application includes information such as: (1) current annual budget (including estimated expenses and income); (2) sources of operating revenue, and (3) general questions related the funding request. Lyft proposes that access providers that do not have a permit from the Commission should submit the same information as required for a TNC permit.

We find the financial information required in the Caltrans Grant Application for FTA Expanded 5310 Projects to be appropriate to support an access provider's application. For the reasons discussed, access providers should not be held to the standards of TNCs and should not have to satisfy the requirements for a TNC permit. Accordingly, an access provider application shall include the following financial information about the access provider:

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<sup>135</sup> SFTWA Track 2 Proposal at 8, Marin Transit Track 2 Proposal at 11.

<sup>136</sup> SF Track 2 Proposal at 17, Exhibit 3, DA Track 2 Proposal at 21.

- (1) Estimated income (by passenger revenue; other revenue; and total grants, donations, and subsidy from other agency funds);
- (2) Estimated expenses (by wages, salaries, and benefits; maintenance and repair; fuels; casualty and liability insurance; administrative and general expense; other expenses; contract services); and
- (3) Fund sources: to list and explain all sources of operating revenue, including revenue for grants, donations, and local fund-raising projects that will be used to fund the transportation program, for the prior, current and budget year.

In Track 3, parties may propose additional requirements for the access provider applications. We note that any proposed access provider selection criteria may also be considered as additional requirements for TNC Offset Requests and Exemption Requests.

#### **6.6. Application Process for Access Providers**

As discussed, the Commission lacks the resources to efficiently and effectively review individual access provider applications and select them in the timeframe established by SB 1376. Rather, we have adopted a process for the Commission to review applications from potential Access Fund Administrators and select AFAs by July 1, 2020. Commission Staff will also begin soliciting and selecting an independent entity to serve as a SAFA, and we expect a SAFA will be retained later this year.

Thus, there will be a necessary delay in accepting access provider applications until AFAs or a SAFA are put into place. We note that allowing retroactive TNC Offset Requests, beginning from July 1, 2019 – March 30, 2020, adds further uncertainty to the available Access Fund moneys until those Offset

Requests are resolved. Once AFAs and a SAFA are selected and retroactive Offsets Requests are resolved, access provider applications may be submitted.

### **6.7. Additional Requirements for Access Providers**

There are several remaining implementation details to consider for the access provider distribution process, including: (1) additional reporting requirements for selected access providers, (2) restrictions on Access Fund usage, (3) whether selected access providers' services should be available for chartering on TNC apps, and (4) any additional requirements for the selection of access providers. Because the Commission defers consideration of eligible access providers to Track 3, we defer these implementation details to Track 3 as well.

## **7. Comments on Proposed Decision**

The proposed decision of the ALJ 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 February 27, 2020 by the DA, HSD, SF, SFTWA, Uber, and Via.. Reply comments were filed on March 3, 2020 by DA, Lyft, SF, SFTWA, and Uber.

All comments have been thoroughly considered. Significant aspects of the proposed decision that have been revised in light of comments are mentioned in this section. However, additional changes have been made to the proposed decision in response to comments that may not be discussed here. We do not summarize every comment but rather, focus on major arguments made in which the Commission did or did not make revisions. We note that some parties' comments attempt to re-litigate or elaborate on arguments that were raised during Track 2 of this proceeding, and do not focus on factual, legal or technical errors in the proposed decision, as required by Rule 14.3.

Several parties comment that the definition of “response time” should be modified. SFTWA states that the definition of “response time” is inconsistent with SB 1376 and that § 5440.5(a)(1)(I)(iii) provides that the quarterly reports must include response times “between when a WAV ride was requested and when the vehicle arrived.” SF and DA agree with SFTWA. Lyft agrees that the definition should be modified to arrival of the vehicle, but that it should start at the time of the request. We agree that the definition should be consistent with SB 1376 and therefore, the definition of response time is modified to be the time elapsed between when a WAV ride was requested and when the vehicle arrived.

Uber and Lyft argue that the Offset Time Standards in the proposed decision are unreasonable and unachievable, reiterating that it is not appropriate to base WAV response times on non-WAV trips and that the adopted WAV response times are not reasonably attainable. Lyft comments that CPED’s methodology and response times are arbitrary and bear no mathematical relationship to the calculated response times. Uber and Lyft recommend that the Offset Time Standards should be modified, with Uber supporting its Track 2 proposal and Lyft proposing new longer response times. Lyft disagrees with Uber’s proposal of combining San Francisco, Los Angeles, Orange and San Mateo counties, given the small size of San Francisco County in relation to Los Angeles. Uber states that the Offset Standards should only be set for the first two years and reevaluated when WAV data is available, while Lyft maintains that adopting WAV response times should be deferred until more data is collected.

We first note that CPED offered its proposed methodology in September 2019, which was followed by a workshop and two opportunities for party comments. At no point during that time did Lyft raise its concerns with CPED’s calculations or methodology, or attempt to obtain information from CPED about

its calculations through a data request. In comments to the proposed decision, Lyft now challenges CPED's response times as "arbitrarily assigned values with no mathematical relationship to the data upon which they are purportedly based" and CPED is not afforded an opportunity to respond. The Commission has insufficient basis to consider Lyft's arguments at this late stage.

Implementing SB 1376 requires the Commission to balance several challenges, including adopting WAV response times for a new WAV program that has never been rolled out for an entire state, adopting WAV response times when there is little existing WAV data, and encouraging WAV investment and innovation by TNCs. We believe it is prudent to evaluate actual WAV response times before adopting Offset Time Standards on a longer-term basis. However, SB 1376 sets forth specific timeframes for the Access Fund program that do not account for additional time to evaluate actual WAV data. Balancing the competing interests, and comments on proposed decision, we conclude it is appropriate and prudent to reconsider the Offset Time Standards in one year, after three quarters of WAV response time data has been submitted (with potentially three additional quarters for retroactive offsets). The decision has been modified with this change, as well as to direct CPED to provide a report by February 2021 evaluating three quarters of TNC WAV response times.

In the interim, we believe it is appropriate to adopt more conservative Offset Time Standards, rather than rely on each TNC's improved performance or use CPED's stricter WAV response times. We maintain that CPED's proposal is a clear, data-supported methodology and continue to use those response times for the Exemption Time Standard. However, we find Uber's Track 2 proposal to be a cautious, conservative approach that should be applied on an interim basis. We agree that San Francisco should not be grouped with Los Angeles, Orange

and San Mateo counties at this time. Therefore, the decision has been modified to adopt Uber's WAV response times as the interim Offset Time Standards.

Uber and Via comment that we should consider other ways for a TNC to meet improved level of service if WAV performance plateaus at a certain point. Uber supports showing improved level of service through increasing the number of WAV trips, and Via supports expanding a "zone of service" for WAV trips. The Commission agrees that additional ways of achieving improved level of service should be considered but there is insufficient record to consider this at this time. We encourage parties to raise such proposals in Track 3.

SF and DA seek clarification on reporting for the Quarterly Reports and Offset Requests, such as defining "in operation" for the presence and availability of WAV data and defining "completed WAV trip request" for response times calculations. Uber seeks clarification on what constitutes "by quarter" and "hour of the day" for reporting purposes. SF and DA request that the Commission provide a data reporting template. The Commission agrees that these terms should be clarified, and the decision has been modified as such. CPED is also authorized to publish a template of the required information for Offset Requests and Quarterly Reports on its website.

Uber seeks clarification as to whether improved level of service can be achieved with a combination of improvement in Level 1 and/or Level 2 response times. Since the Commission has adopted two levels of response times, it is reasonable that a TNC can use a combination of Level 1 and Level 2 Offset Time Standards to show improvement. In other words, a TNC may achieve a Level 1 Offset Time Standard in one quarter, and a Level 2 Offset Time Standard in the next quarter, to demonstrate improved level of service. The decision has been modified to reflect this.

Uber argues that SB 1376 does not permit treating TNCs and access providers differently for purposes of quarterly reporting or for evaluation criteria. SF and DA disagree that SB 1376 requires TNCs and access providers to be treated identically. SF asserts that the Act contemplates access provider applicants, as distinct from existing TNC providers, citing § 5440.5(1)(E) that provides that “[t]he commission may accept applications for *new* on-demand transportation programs or partnerships.” We agree with SF and DA. For the reasons discussed in the proposed decision, we maintain that SB 1376 does not preclude the Commission from applying different requirements for access providers and TNCs.

Uber states that for the access provider application, it is error to only require criteria for the previous quarter. Uber cites § 5440.5(a)(1)(E) that states: “As part of the criteria, the commission shall require an access provider to demonstrate in its application, at a minimum, how the program or partnership improves response times for WAV service compared to the previous year...” While we recognize this requirement, SB 1376 also acknowledges that some access providers will be new entities. We agree that the access provider criteria for response times should be submitted for the past four quarters, if such information is available. The decision has been modified to reflect this change.

Uber and HSD comment that TNCs should not be subject to restrictions in applying as an access provider. Uber acknowledges the concern that an TNC may potentially apply for Access Fund funding without achieving the exemption or offset requirement but states that can be addressed in the Access Fund application. HSD recommends deferring this issue to Track 3. We agree that further discussion on this issue would be beneficial and there is no urgency in adopting this requirement since access provider applications will not be accepted

until next year. Thus, we defer this issue to Track 3 and modify the decision to reflect this.

Via and HSD reiterate arguments that smaller TNCs should be held to different response time standard and other requirements. For the reasons stated in the decision, we reiterate that we do not interpret SB 1376 to require unique response times or criteria for distinct TNCs. In comments, HSD proposes new requirements for smaller TNCs; however, we have insufficient basis to now consider these proposals. We encourage parties to propose in Track 3 how smaller TNCs may apply as an access provider for Access Fund funding.

SF comments that it does not support the list of eligible expenses and that it is error to require non-TNC parties to propose an incremental costs formula. The Commission does not require non-TNC parties to propose an incremental costs formula but reiterates that no party has offered a formula into the record for the Commission to consider.

SF and DA comment that an 80 percent requirement for Level 2 WAV response times for exemptions is too low and should apply to Level 1 WAV response times. SF and DA state that although the Commission states it will reevaluate the benchmarks after two years of the program, “it is unlikely evaluation will result in setting more aggressive benchmarks....” We disagree with this statement and reiterate that the Commission may adjust the Exemption Time Standards as needed. However, we modify the decision to clarify that the Commission will closely monitor TNC WAV response times and should it become apparent that the Exemption Time Standards are not sufficiently high, the Commission can modify the adopted requirements.

Via comments that an exception should be carved out for new TNCs in order to qualify for an exemption, since a new TNC service would not have four

quarters of data available. The exemption was intended, in part, to incentivize and reward those TNCs that achieve a sufficiently high designated level of service and we do find that SB 1376 intended to carve out an exception for new TNC services.

## **8. Assignment of Proceeding**

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

### **Findings of Fact**

1. SB 1376 provides that a TNC may offset against the quarterly Access Fund payment amounts due for amounts spent to improve WAV service in a geographic area.
2. To qualify for an offset, SB 1376 states that the Commission shall require a TNC, at a minimum, to demonstrate the presence and availability of WAV drivers, improved level of service, efforts undertaken to publicize WAV services, and a full accounting of funds expended.
3. CPED's proposed WAV response time methodology is a clear, data-supported approach that uses standard trip response times as a basis for calculating benchmarks.
4. SB 1376 provides that a TNC may receive a quarterly offset for amounts spent to improve WAV service on its online-enabled application or platform.
5. A qualifying offset expense is a reasonable, legitimate cost that improves a TNC's WAV service.
6. The safety of WAV drivers and WAV operations is of critical importance in developing the Access Fund program.

7. SB 1376 requires a TNC that receives an offset or an access provider that receives Access Fund funding to submit a quarterly report to the Commission on its WAV program.

8. SB 1376 provides that a TNC may offset against the amounts due in a particular quarter and thereby reduce the amount required to be remitted to the Commission.

9. An Advice Letter process for review and disposition by the Industry Division is appropriate if the disposition is deemed a ministerial act and the Commission authorizes the action with sufficient specificity.

10. SB 1376 provides that a TNC may receive an exemption from remitting Access Fund fees if it satisfies a designated level of WAV service.

11. A designated level of WAV service shall include, at a minimum, response times for 80 percent of WAV trips requested on a TNC's online application or platform.

12. SB 1376 provides that TNCs may meet offset or exemption requirements by directly providing WAV service with vehicles the TNC owns, or by a contract to provide WAV service with a transportation provider.

13. D.13-09-045 prohibits a TNC permit holder from owning vehicles or contracting with transportation providers for vehicles used in its operation.

14. SB 1376 provides that the Commission may hire an independent entity to administer the Access Fund program or to complete a report to the Legislature on the effectiveness of WAV programs.

15. To qualify for Access Fund moneys, SB 1376 states that the Commission shall require an access provider to demonstrate, at a minimum, improved response times, the presence and availability of WAVs, and efforts undertaken to publicize WAV services.

## **Conclusions of Law**

1. CPED's proposal to demonstrate the presence and availability of WAV drivers is appropriate, with modifications, and should be adopted.
2. CPED's proposed Level 1 and Level 2 WAV response times are reasonable and should be adopted to apply to exemption eligibility.
3. It is appropriate to define response time as the time elapsed between when a WAV ride was requested and when the vehicle arrived.
4. Uber's proposed WAV response times are a conservative approach that should be adopted for offset eligibility on an interim basis, with modifications.
5. To verify WAV response times in a geographic area, it is appropriate to collect data on a provider's completed WAV trip request response times, as well as Periods A and B, in deciles.
6. CPED's proposal to demonstrate efforts undertaken to publicize and promote available WAV services is reasonable, and should be adopted.
7. Lyft's proposed list of qualifying expenses, with modifications, provides clear guidance to TNCs as to eligible offset expenses.
8. It is reasonable to require a transportation provider to complete Appendix A with sufficient detail to verify how funds were expended and list the amounts expended.
9. It is important that TNCs seeking an offset or exemption, and access providers that receive Access Fund moneys, require WAV drivers to complete WAV driver training and require vehicle safety inspections for WAVs.
10. Requiring TNCs and access providers to report the number of WAV-related complaints is a critical metric for evaluating a WAV program.
11. It is appropriate that information required in the Quarterly Report mirror information required in an Offset Request.

12. It is reasonable to allow a TNC submitting an Offset Request to retain its quarterly Access Fund payment until a decision is reached on the Request. It is also reasonable that a TNC appealing the decision should submit its quarterly fee payment to the Commission pending the outcome of the appeal.

13. Ministerial review and disposition of an Advice Letter by CPED is appropriate for Offset and Exemption Requests. General Rules of GO 96-B should apply to the adopted Advice Letter process, with modifications.

14. It is reasonable to allow the submission of retroactive Offset Requests in accordance with the requirements for offset eligibility, with some exceptions.

15. Disclosing the Access Fund balance prior to the quarter that access provider applications are due will give applicants useful information about the status of the Access Fund.

16. For exemption eligibility, it is reasonable to apply an 80 percent requirement for Level 2 WAV response times.

17. It is appropriate that information required in an Exemption Request mirror the information required in an Offset Request.

18. It is reasonable to verify that a TNC that receives an exemption continues to meet the designated level of service in that geographic area during the Exemption Year.

19. The Commission has discretion to interpret SB 1376 to be consistent with the Commission's broad rulemaking authority over TNCs, including D.13-09-045.

20. It is reasonable for a TNC that chooses to own vehicles to provide WAV service, or a transportation provider that chooses to use a TNC to provide WAV service, to obtain a TCP permit.

21. Given the Commission's lack of resources, it is reasonable to designate independent entities to serve as administrators for the Access Fund, as well as to select independent entities to assist with the 2024 Legislative report and to monitor and audit the Access Fund moneys.

22. It is reasonable for a MPO, RTPA or transportation commission to apply to serve as an Access Fund administrator in a geographic area.

23. It is appropriate for Access Fund moneys to be segregated to cover costs and expenses for the various independent entities.

24. It is reasonable that an access provider's application include the same information as required in an Offset Request, except for the Offset Time Standards and accounting of funds expended.

25. An access provider should disclose certain financial information in its application for Access Fund moneys.

## **O R D E R**

### **IT IS ORDERED that:**

1. To demonstrate the presence and availability of drivers of wheelchair accessible vehicles (WAV), a transportation provider shall submit data on:

- (a) The number of WAVs in operation - by quarter and aggregated by hour of the day and day of the week; and
- (b) The number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver - by quarter and aggregated by hour of the day and day of the week.

2. To evaluate offset requests, the following wheelchair accessible vehicles (WAV) response time benchmarks are adopted on an interim basis:

<b>Interim WAV Response Times</b>		
Geographic Area/County	Level 1 – WAV Response Time (mins)	Level 2 - 2x WAV Response Time (mins)
San Francisco	15	30
San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera Los Angeles, Orange County, San Mateo	25	50
Riverside, San Bernardino, Fresno, Kern, Sonoma, Tulare, Monterey, Placer, Merced, Marin, Butte, Yolo, El Dorado, Napa, Humboldt, Kings, Nevada, Sutter, Mendocino, Yuba, Lake, Tehama, San Benito, Tuolumne, Calaveras, Siskiyou, Amador, Glenn, Del Norte, Lassen, Colusa, Plumas, Inyo, Mariposa, Mono, Trinity, Modoc, Sierra, Alpine	30	60

Response time is defined as the time elapsed between when a WAV ride was requested and when the vehicle arrived.

3. For offset eligibility, the following Offset Time Standard is adopted on an interim basis:

<b>Interim Offset Time Standard</b>	Offset Service	Offset Service
April 2020 until subsequent Commission decision	50%	75%

4. To demonstrate improved level of service for offset eligibility, a Transportation Network Company (TNC) must demonstrate that it achieved either a Level 1 or Level 2 Offset Time Standard for a quarter in that implementation year. If a TNC received an offset in the prior quarter, the TNC

must achieve an Offset Time Standard that exceeds the percentage achieved in the prior quarter in either, a Level 1 or a Level 2 Offset Time Standard.

5. To evaluate exemption requests, the following wheelchair accessible vehicles (WAV) response time benchmarks are adopted:

<b>WAV Response Times</b>		
Geographic Area/County	Level 1 - Response Time (mins)	Level 2 - 2x WAV Response Time (mins)
San Francisco	8	16
Alameda, Los Angeles, San Diego, San Mateo, Santa Clara	10	20
Napa, Orange, Sacramento, San Luis Obispo, Santa Barbara, Yolo	12	24
Butte, Fresno, Kern, Monterey, San Bernardino, Santa Cruz, Solano	15	30
Contra Costa, El Dorado, Marin, Placer, Riverside, San Joaquin, Shasta, Sonoma, Stanislaus, Ventura	20	40
Del Norte, Humboldt, Imperial, Inyo, Kings, Lassen, Mendocino, Madera, Merced, Mono, Nevada, Plumas, Sutter, Trinity, Tulare, Yuba	25	50
Alpine, Amador, Calaveras, Colusa, Glenn, Lake, Mariposa, Modoc, San Benito, Sierra, Siskiyou, Tehama, Tuolumne	30	60

6. To verify wheelchair accessible vehicle (WAV) response times, an access provider or Transportation Network Company shall submit completed WAV trip request response times in deciles, as well as Periods A and B in deciles, by geographic area and quarter. Period A is defined as the time elapsed from when a trip is requested until the trip is accepted. Period B is defined as the time elapsed from when a trip is accepted until the vehicle arrives.

7. The Commission's Consumer Protection and Enforcement Division is authorized to provide a report to the Commission by February 2021 that

evaluates the wheelchair accessible vehicle (WAV) response times for at least three quarters and the Offset Time Standards, including the number of Transportation Network Companies that have qualified for an offset, the qualifying standard, and recommendations for modifications to the Offset Time Standard.

8. The Commission's Consumer Protection and Enforcement Division is authorized to provide a report to the Commission by June 2022 that evaluates the wheelchair accessible vehicle (WAV) response times and the Exemption Time standards, including the number of Transportation Network Companies that have qualified for an exemption and the qualifying standard.

9. To demonstrate efforts to publicize and promote available wheelchair accessible vehicle (WAV) services, a transportation provider shall submit evidence of outreach efforts, which may include: a list of partners from disability communities, how the partnership promoted WAV services, and marketing or promotional materials of those activities.

10. A qualifying offset expense is: (1) a reasonable, legitimate cost that improves a Transportation Network Company's (TNC) wheelchair accessible vehicle (WAV) service, (2) incurred in the quarter for which a TNC requests an offset, and (3) on the list of eligible expenses attached as Appendix A.

11. To demonstrate a full accounting of funds expended, a transportation provider shall submit:

- (a) A completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item; and
- (b) A certification attesting to the accuracy of its accounting practices.

A Transportation Network Company seeking an offset for a contractual arrangement with a wheelchair accessible vehicle provider shall identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined.

12. A Transportation Network Company (TNC) shall establish a tracking account to track eligible amounts spent for offset purposes and the Access Fund fees collected each quarter. The tracking account is subject to review by Commission Staff.

13. The following requirements shall apply to a Transportation Network Company (TNC) seeking an offset, a TNC seeking an exemption, and an access provider that receives Access Fund moneys:

- (a) Certify that its wheelchair accessible vehicle (WAV) drivers have completed WAV driver training within the past three years, which should include: sensitivity training, passenger assistance techniques, accessibility equipment use, door-to-door service, and safety procedures;
- (b) Report the WAV driver training programs used in that geographic area, and the number of WAV drivers that completed WAV training in that quarter; and
- (c) Certify that all WAVs operating on its platform have been inspected and approved to conform with the Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles within the past year.

14. The following requirement shall apply to 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:

Submit the number of complaints received that are related to wheelchair accessible vehicle (WAV) drivers or WAV

services – by quarter and geographic area. Submit the number of complaints based on the following categories: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, and other.

15. The information required in the Quarterly Report shall mirror the requirements of an Offset Request, as follows:

- (a) Number of wheelchair accessible vehicles (WAV) in operation – by quarter and aggregated by hour of the day and day of the week;
- (b) Number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver – by quarter and aggregated by hour of the day and day of the week;
- (c) Completed WAV trip request response times, as well as Periods A and B, in deciles, by quarter;
- (d) Evidence of outreach efforts to publicize and promote available WAV services to disability communities, which may include a list of partners from disability communities, how the partnership promoted WAV services, and marketing or promotional materials of those activities;
- (e) Completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended, if applicable, and a certification attesting to the accuracy of the accounting practices;
- (f) Certification that WAV drivers have completed WAV driver training within the past three years;
- (g) Report of WAV driver training programs used and number of WAV drivers that completed the training in that quarter;
- (h) Certification that all WAVs operating on its platform have been inspected and approved to conform with the Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles within the past year; and

- (i) Number of complaints received related to WAV drivers or WAV services, categorized as follows: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, and other.

16. The Quarterly Report shall be submitted for each geographic area in which a Transportation Network Company (TNC) receives an offset or an access provider receives Access Fund moneys. A TNC that receives an exemption shall submit a Quarterly Report for each quarter during its Exemption Year.

17. The Quarterly Report shall be submitted to the Commission 30 days after the end of each quarter after July 1, 2020. The first set of reports shall be due July 30, 2020, followed by reports due October 30, 2020, January 30, 2021, etc.

18. A Transportation Network Company (TNC) that submits an Offset Request for a geographic area may retain its quarterly Access Fund payment for that geographic area until a disposition is reached on the Offset Request. If the TNC appeals the disposition, the TNC shall submit its quarterly fee remittance to the Commission as directed in Decision 19-06-033, Ordering Paragraph 5, pending the outcome of the appeal. If the appeal is approved, the TNC shall submit a claim for the offset amount authorized to be returned to the TNC.

19. An Advice Letter process is adopted for the review and submission of Offset and Exemption Requests and the Advice Letter is subject to ministerial review and disposition by the Industry Division (the Consumer Protection and Enforcement Division).

20. General Rules of General Order 96-B shall apply to the adopted Advice Letter process, with the following modifications:

- (a) Rule 4.3 is modified such that “[t]he utility shall include on the service list any person who requests such inclusion” is replaced with “[t]he utility shall include on the service list all parties in this proceeding or any successor proceeding;”
- (b) Rule 7.4.1 is modified such that “Any person (including individuals, groups, organizations)” is replaced with “Any party;” and
- (c) Rule 9 does not apply to the Advice Letter process adopted in this decision.

21. The following Offset and Exemption Request submission schedule is adopted:

<b>Offset Request Submission Schedule</b>	
Quarterly Fee Remittance Due, unless Offset Request is Submitted	15 days after quarter end
Transportation Network Company (TNC) Offset Request Due	15 days after quarter end
Staff Decision on Advice Letter	45 days after quarter end
Delayed Quarterly Fee Remittance Due	50 days after quarter end
TNC Appeal of Staff Decision Due	50 days after quarter end

<b>Exemption Request Submission Schedule</b>	
TNC Exemption Request Due	15 days after end of fourth quarter
Staff Decision on Advice Letter	45 days after end of fourth quarter
TNC Appeal of Staff Decision Due	50 days after end of fourth quarter

22. A Transportation Network Company (TNC) may submit retroactive Offset Requests for each of the three quarters beginning July 1, 2019, October 1, 2019, and January 1, 2020. Requirements for retroactive Offset Requests shall be the same as the adopted Offset Request requirements, with the following exceptions.

- (a) A TNC need not comply with the response time benchmarks in Ordering Paragraphs 2 and 3. A TNC shall demonstrate improved level of service by showing that the 50<sup>th</sup> percentile of completed wheelchair accessible vehicle (WAV) trip response times in a geographic area improved over the previous quarter. A TNC shall submit data regarding completed WAV trip request response times, as well as Periods A and B, in deciles, by geographic area.
- (b) A TNC need not submit the certifications and reporting of completed WAV driver training or WAV vehicle inspections in Ordering Paragraph 13.

TNCs shall submit retroactive Offset Requests for preceding quarters by April 15, 2020.

23. The Consumer Protection and Enforcement Division (CPED) shall provide an estimate of the available balance in the Access Fund annually, by the end of the fourth quarter prior to the access provider application deadline. CPED shall disclose the available Access Fund balance beginning with Q4 2020.

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

- (a) 80 percent of its completed wheelchair accessible vehicle (WAV) trip response times achieve the corresponding Level 2 WAV response time, for a quarter and geographic area, and
- (b) The TNC achieved the requisite response times for four consecutive quarters.

This is referred to this as the exemption time standard. To verify that a TNC achieved the Exemption Time Standard, a TNC should submit completed

WAV response times, as well as Periods A and B, in deciles, for each qualifying quarter.

25. The information required in an Exemption Request shall mirror the requirements of an Offset Request for four consecutive quarters.

26. A Transportation Network Company (TNC) shall retain documentation in support of its Exemption Request until it has achieved four quarters of the designated level of service, at which point the TNC shall submit the Exemption Request 15 days after the end of the fourth qualifying quarter.

27. A Transportation Network Company (TNC) that receives an exemption shall submit Quarterly Reports during the Exemption Year. If a TNC fails to satisfy the Exemption Time Standard during the Exemption Year, the TNC shall provide the reason for the failure and whether the issue remains, and such failure may be a consideration in future Exemption Requests for that geographic area.

28. A Transportation Network Company (TNC) that chooses to own vehicles to provide wheelchair accessible vehicle (WAV) service, or to contract with a third-party transportation provider to provide WAV service, shall obtain a Charter-party Carrier (TCP) permit. A transportation provider that chooses to use a TNC to provide WAV services shall also possess a TCP permit.

29. A metropolitan planning organization, regional transportation planning agency, or transportation commission may apply to be an Access Fund administrator in its geographic area.

30. The Consumer Protection and Enforcement Division is authorized to begin soliciting and selecting one of more independent entities to: (1) serve as a statewide Access Fund administrator in geographic areas where no Access Fund administrator is designated, (2) assist with the completion of the 2024 report to

the Legislature, and (3) monitor and audit the collection and expenditure of Access Fund moneys.

31. The responsibilities of an Access Fund administrator or a statewide Access Fund administrator are as follows:

- (a) To establish a submission process for the access provider application, including submission logistics, deadlines, and review process;
- (b) To select access providers to receive Access Fund moneys based on criteria adopted by the Commission and in consideration of the gaps and needs for accessibility service in the geographic area;
- (c) To distribute Access Fund moneys to selected access providers;
- (d) To submit a consolidated Quarterly Report to the Commission based on Quarterly Reports submitted by access providers that received Access Fund moneys in the geographic area;
- (e) To submit on a quarterly basis: (1) the amount of Access Funds requested by and distributed to access providers in a quarter, and (2) a brief description of the progress made by selected access providers, and any compliance or other challenges encountered; and
- (f) To submit an annual certification that Access Fund moneys will be expended and distributed in accordance with the requirements established by the Commission.

The consolidated Quarterly Report and other quarterly reporting shall be submitted 45 days after the end of each quarter.

32. Access Fund moneys are authorized for use to cover the costs and expenses for independent entities, including the statewide Access Fund administrator and other Access Fund administrators, and such costs shall be segregated from the Access Fund moneys.

33. An access provider's application shall include the following information for the quarter preceding the application deadline:

- (1) Number of wheelchair accessible vehicles (WAV) in operation - by quarter and aggregated by hour of the day and day of the week;
- (2) Number and percentage of WAV trips completed, not accepted, cancelled by passenger, cancelled due to passenger no-show, and cancelled by driver - by quarter and aggregated by hour of the day and day of the week;
- (3) Completed WAV trip request response times, as well as Periods A and B, in deciles, by quarter;
- (4) Evidence of outreach efforts to publicize and promote available WAV services to disability communities, which may include a list of entities the access provider partners with from disability communities, how the partnership publicized or promoted WAV services, or marketing and promotional materials of those activities;
- (5) Certification that the access provider's WAV drivers have completed WAV driver training within the past three years;
- (6) Report of WAV driver training programs used and number of WAV drivers that completed the training that quarter;
- (7) Certification that all WAVs operating on an access provider's platform have been inspected and approved to conform with the Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles within the past year;
- (8) Number of complaints received related to WAV drivers or WAV services, categorized as follows: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, and other.

For Item 3, an access provider shall submit response time data for the four quarters preceding the application deadline, if available.

34. An access provider's application shall include the following financial information about the access provider:

- (1) Estimated income (by passenger revenue; other revenue; and total grants, donations, and subsidy from other agency funds);
- (2) Estimated expenses (by wages, salaries, and benefits; maintenance and repair; fuels; casualty and liability insurance; administrative and general expense; other expenses; contract services); and
- (3) Fund sources: to list and explain all sources of operating revenue, including revenue for grants, donations, and local fund-raising projects that will be used to fund the transportation program, for the prior, current and budget year.

35. Rulemaking 19-02-012 remains open.

This order is effective today.

Dated March 12, 2020, at Sacramento, California.

MARYBEL BATJER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

## **APPENDIX A**

APPENDIX A	
Eligible WAV Expenses	
<b>Vehicle Costs</b>	
Lease/Rental/Purchase Costs	
Rental Subsidies for Driver	
Inspections	
Maintenance, Service & Warranty	
Fuel Cost	
Cleaning Supplies/Services	
Other (Describe)	
<b>Partnership Costs</b>	
Transportation Service Partner Fees/Incentives and/or Management Fees	
Vehicle Subsidies	
Consultants/Legal	
Other (Describe)	
<b>Marketplace Costs</b>	
Recruiting	
Driver Onboarding	
Training Costs	
Driver Incentives	
Promo Codes for WAV	
Other (Describe)	
<b>Operational Costs</b>	
Marketing Costs	
Technology Investments/Engineering Costs/Enhancements	
Community Partnership/Engagement Costs	
Rental Management	
Pilot Management	
Wages, Salaries and Benefits (non-maintenance personnel)	
Other (Describe)	
<b>Other (Describe)</b>	
<b>Total</b>	

I hereby certify under the penalty of perjury under the laws of the State of California that the foregoing has been examined by me and is true, correct and complete to the best of my knowledge and belief.

Signature \_\_\_\_\_

Preparer \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

END OF APPENDIX A